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Folder Title: 03/27/2002 [H.R. 2356] [771156]

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Statement	[Draft re: H. R. 2356] - To: Harriet E. Miers - From: David S. Addington	2	03/26/2002	P5;
002	Statement	[Draft re: H. R. 2356]	2	03/26/2002	P5;
004	Statement	[Draft re: H. R. 2356] - From: Karen Hughes	2	03/25/2002	P5;
005	Statement	[Misfiled draft re: Judge Charles Pickering] - From: Karen Hughes	1	03/14/2002	P5;
006	Statement	[Misfile draft re: U. S. missionary plane incident with fax cover sheet and email attachments] - From: Karen Hughes and John Bellinger	3	03/19/2002	P1/b1; P5;
007	Email	[Misfile re: U. S. missionary plane incident] - To: Karen Hughes and Krista L. Ritacco - From: John B. Bellinger	4	03/14/2002	P5; P6/b6;
008	Statement	[Misfile draft re: campaign finance reform] - From: Karen Hughes	1	N. D.	P5;

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Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:
03/27/2002 [H.R. 2356] [771156]

FRC ID:
6358

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

'his document was prepared on Thursday, August 08, 2013

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
T003	Statement	H.R. 2365 Signing Statement - From: The White House	1	03/27/2002	Transferred

COLLECTION TITLE:
Executive Clerk, Office Of the

SERIES:
Saunders, G. Timothy (Tim) - Bill Files

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03/27/2002 [H.R. 2356] [771156]

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Barcode Scanning Sheet

Collection Code: **SECLOG**

Staff Name:

Document Date:

Correspondent: **TIM SAUNDERS**

Subject/Description: **OVERSIZE ATTACHMENT # 9465 NARA # 9356 BOX 1 FOLDER 13 BILL FILL RECEIVED FROM THE OFFICE OF THE EXECUTIVE CLERK - MAR 27 02 ENROLLED BILL H.R. 2356 □ BIPARTISAN CAMPAIGN REFORM ACT OF 2002**

THE PRESIDENT HAS SEEN
3-27-02
APPROVED
MAR 27 2002

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

March 26, 2002

'02 MAR 26 PM 7:53

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2356 - Bipartisan Campaign Reform Act of 2002
Sponsors - Rep. Shays (R) Connecticut and Rep. Meehan (D) Massachusetts

Last Day for Action

April 6, 2002 - Saturday

Purpose

Makes changes to several areas of Federal election campaign law including: (1) prohibiting national committees of political parties from receiving "soft money" contributions; (2) raising limits on "hard money" contributions to candidates for Federal office; and (3) placing limits on the use of "issue ads" that mention the name or show the likeness of a clearly identified candidate for Federal office.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	No recommendation
Department of the Treasury	No objection (Informally)

Discussion

The most significant provisions of H.R. 2356 are summarized below. Other important provisions of the enrolled bill are detailed in an Attachment.

Soft Money Contributions

Prohibitions on Use of Soft Money by National Political Party Committees and Federal Candidates. The enrolled bill would prohibit national committees of political parties (including national congressional campaign committees) and entities directly or indirectly established, financed, maintained, or controlled by these committees from soliciting, receiving, spending, or transferring so-called "soft money," i.e., funds or any other things of value that are not subject to

the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act (FECA). In addition, with one exception, any amounts disbursed for Federal election activities by (a) a State, district, or local committee of a political party or (b) an association of candidates for or individuals holding State or local office would have to be made from funds subject to the limitations, prohibitions, and reporting requirements of FECA (i.e., "hard money"). Also, amounts spent by national, State, district, or local committees to raise funds used on Federal election activities would have to be made from hard money.

The enrolled bill would also prohibit Federal candidates for and individuals holding Federal office (and any entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of such candidates or officeholders) from raising or spending soft money in connection with Federal elections. This restriction would not apply to funds raised or spent on an election for State or local office by a Federal candidate or officeholder who is or was also a candidate for that State or local office, so long as reference is made only to that individual or other candidates for that State or local office. The enrolled bill would not prohibit a Federal candidate or officeholder from attending, speaking, or appearing as a featured guest at a fundraising event for a State, district, or local committee of a political party.

Prohibition of Political Party Contributions to Non-Profit Organizations. The enrolled bill would prohibit national, State, district, and local committees of political parties, or entities controlled by such committees, from making contributions to, or soliciting donations for, non-profit organizations (referred to as "501(c) organizations") that spend money in connection with Federal elections, or political organizations (referred to as "527 organizations") other than (a) political committees, (b) State, district, or local committees of a political party, or (c) authorized campaign committees of candidates for State or local office. This provision is intended to prevent political parties from collecting soft money and funneling it through other organizations engaged in Federal electioneering.

Exception for Certain Federal Election Activity. An exception to the soft money prohibition would allow State, district, and local committees to spend soft money on voter registration (in the last 120 days before a Federal election), get-out-the-vote activities, voter identification, and political party promotion subject to the following conditions: (1) the activity could not make reference to a candidate for Federal office; (2) no single donor could give more than $10,000 per year to a committee to spend on these activities; (3) funds spent on broadcast advertising would have to refer only to candidates for State or local office; (4) funds expended could not have been raised by a national committee or any other State, district, or local committee; and (5) hard money must also be allocated for these activities in accordance with Federal Election Commission (FEC) regulations. The committees would be required to raise funds for these activities, and these funds could not be transferred between State and national party organizations.

Federal candidates and officeholders would be permitted to solicit up to $20,000 per year from any individual specifically for voter registration and get-out-the-vote activities conducted by a non-profit organization. Candidates and officeholders would also be permitted to solicit unlimited funds for non-profit organizations whose primary purpose is not voter registration or get-out-the-vote activities, as long as the solicitation does not specify the use of the money.

Defraying Costs of Office Facilities. The enrolled bill would repeal the provision in current law which specifies that contributions to national or State committees of political parties to defray the costs of purchase or construction of an office building are not considered hard money. However, the enrolled bill would allow State and local committees to use soft money, subject to State laws, for these purposes. As a result, the effect of the enrolled bill would be to prohibit national committees from using soft money to purchase or construct office facilities.

Limits on Hard Money Contributions

The enrolled bill would generally increase current limits on hard money contributions at the national level. The maximum amount that an individual could give to a Federal candidate would be increased from $1,000 to $2,000 per two-year election cycle. The maximum amount that an individual could give to a national committee of a political party each year would be increased from $20,000 to $25,000. The maximum aggregate amount that an individual could give to parties, political action committees (PACs), and candidates combined per year would be increased from $25,000 per year to $95,000 per two-year election cycle, including not more than $37,500 per cycle to candidates, and not more than $57,500 for any other contributions, of which not more than $37,500 may be for political committees other than committees of national political parties. The amount that a senatorial campaign committee could contribute to a Senate candidate would be increased from $17,500 to $35,000. All of the limits increased by these provisions would be indexed for inflation and would apply to contributions made on or after January 1, 2003. The enrolled bill would also increase the amount that individuals may contribute to State committees of political parties from $5,000 to $10,000 per year.

Contributions to Candidates Facing Wealthy Opponents

H.R. 2356 would allow Senate and House candidates whose opponents spend large amounts of their personal wealth to raise larger contributions from individual donors by increasing the limits for these contributions under certain circumstances. For Senate candidates, the bill would establish three different threshold amounts. The exact threshold amounts in each State would vary according to the size of that State's voting age population. Specifically, when a wealthy candidate's personal spending is greater than $300,000 plus eight cents for every person of voting age in the candidate's State, the contribution limits on the opposing candidate would be three times the otherwise applicable limit. When a wealthy candidate's personal spending is greater than $600,000 plus 16 cents for every person of voting age in the candidate's State, the contribution limits on the opposing candidate would be six times the original limit. When a wealthy candidate's personal spending is greater than $1.5 million plus forty cents for every person of voting age in the candidate's State, the individual contribution limits to the opposing candidate would be six times the original limit, and limits on coordinated spending by a national or State committee of a political party would not apply.

The amount of additional contributions to and party expenditures for the non-wealthy candidate at all three levels would be limited to 110 percent of the "opposition personal funds amount," which would be determined by taking the wealthy opponent's personal wealth spending and subtracting the amount the non-wealthy candidate spends of his or her own personal wealth and one-half of the fundraising advantage (for fundraising done between June 30 and December 31 of the year before the election), if any, that the wealthy opponent may have over the non-wealthy candidate.

The enrolled bill would also establish other rules and limitations for use of funds under the increased limits, including: (1) a prohibition against raising contributions to repay loans that candidates may make to their own campaigns of over $250,000; and (2) a requirement that any funds received under the increased limits that are not spent within 50 days of having been received must be returned to the original contributor.

For House candidates, when a wealthy candidate's personal spending exceeds $350,000, the contribution limits on the opposing candidate would be three times the otherwise applicable limits. In addition, limits on party coordinated spending would be lifted for the opposing candidate. The total amount of additional contributions to and party expenditures for the non-wealthy candidate would be limited to 100 percent of the "opposition personal funds amount."

<u>Limitations on Issue Advertising</u>

<u>Definition of Electioneering Communications ("Issue Ads")</u>. Electioneering communications would be defined as broadcast, cable, or satellite communications that mention the name or show the likeness of a clearly identified candidate for Federal office within 60 days of a general, special, or run-off election or 30 days of a primary election, convention, or caucus, and which is targeted to the candidate's State (in the case of a candidate for the Senate) or district (in the case of a candidate for the House of Representatives). Under the enrolled bill, electioneering communications would not include news broadcasts, candidate debates or forums, sponsors' advertisements for debates and forums, and communications that expressly advocate the election or defeat of a clearly identified candidate. The FEC would be authorized to promulgate additional exceptions.

In addition, the enrolled bill would provide that, if the above definition of "electioneering communication" is found to be constitutionally insufficient to support regulation, then the term would instead be defined as any broadcast, cable, or satellite communication that promotes or attacks a candidate for Federal office and has no plausible meaning other an exhortation to vote for or against that candidate.

Prohibitions on Corporations and Unions. The enrolled bill would prohibit corporations and labor organizations from making disbursements for electioneering communications (60 days before a general election or 30 days before a primary election). Corporations and labor organizations could finance such advertisements through their political action committees. Non-profit organizations and political organizations would be permitted to pay for electioneering communications as long as: (1) they use money contributed by individuals who are U.S. citizens, U.S. nationals, or permanent legal residents; (2) they meet the disclosure requirements in the bill; (3) they pay for electioneering communications from an account to which only individuals can contribute and is separate from accounts containing funds derived from business activities or contributions from corporations or labor organizations; and (4) the communication is not targeted to the electorate of the candidate referenced in the communication.

Prohibitions on State and Local Candidates. The enrolled bill would prohibit candidates for State or local office from spending soft money on electioneering communications (60 days before a general election or 30 days before a primary election). The bill would exempt communications that refer to a Federal candidate who is also a candidate for State or local office.

Requirements for Federal Candidates to Receive Lowest Broadcast Ad Rates. The enrolled bill would provide that a Federal candidate is not entitled to receive the lowest unit rate for broadcast ads available under current law unless the candidate certifies that he or she will only make a direct reference to another candidate for the same office if he or she includes at the end of the ad, for at least four seconds, a clearly identifiable photographic or similar image (for a television ad) and a statement of candidate approval (clearly readable on TV and spoken by the candidate on radio). Failure to include the required statement of candidate approval would make the candidate ineligible for the lowest unit rate for any portion of the forty-five days preceding the date of a primary or primary runoff election or the sixty days preceding the date of a general or special election that occurs on or after the date of the broadcast.

Requirements for Identification of Advertising Sponsors. The enrolled bill would amend requirements in current law that the sponsors of election-related advertising identify themselves in their ads. These modifications would include: (1) applying the requirements to any disbursement for public political advertising, including electioneering communications; (2) requiring the street address, telephone number, or Internet address of persons other than candidates who purchase public political advertising to appear in the ad; (3) requiring candidate radio ads to include a statement by the candidate that he or she has approved the communication; (4) requiring a television ad to include the same audio statement along with a picture of the candidate or a full screen view of the candidate making the statement, and a written version of that statement that appears for at least four seconds; and (5) requiring entities that run ads not authorized by a candidate to include an audio statement that the entity "is responsible for the content of this advertising."

Coordinated Communications as Contributions. In addition, the enrolled bill would specify that disbursements for electioneering communications that are coordinated with candidates or with political parties would be deemed to be contributions to the candidate supported by the communication or that candidate's party and subject to the appropriate limitations on these contributions.

Independent and Coordinated Expenditures

H.R. 2356 would establish reporting requirements for independent expenditures, defined as expenditures expressly advocating the election or defeat of a clearly defined candidate that is not made at the request or suggestion of, or with the cooperation of, or in consultation with, another candidate or an authorized committee or agent of that candidate. (This definition is in contrast to "coordinated" expenditures, which are made at the request or suggestion of, or with the cooperation of, or in consultation with any candidate or an authorized committee or agent of such candidate.) Any person or group, including a political committee, that makes independent expenditures totaling $10,000 or more prior to the 20th day before an election would be required to file a report with the FEC within 48 hours of the money being spent or contracted to be spent. Additional reports would have to be filed within 48 hours of each additional aggregate independent expenditure of $10,000 or more. In the last 20 days before an election, a report would have to be filed within 24 hours of each independent expenditure totaling more than $1,000. The enrolled bill would clarify that, for purposes of determining whether these reports are filed within 24 hours, they would be considered filed when they are actually received by the FEC or by any other recipient to whom the report is required to submitted.

The enrolled bill would require political parties to choose between making independent or coordinated expenditures once the party's candidate has been nominated by prohibiting a political party from making: (1) coordinated expenditures after it makes any independent expenditure; and (2) independent expenditures after it makes any coordinated expenditure. For purposes of this requirement, all national and State party committees would be considered to be a single political committee, so that, for example, a national party could not make an independent expenditure if a State party has already made a coordinated expenditure with respect to a particular candidate.

The enrolled bill would also provide that an expenditure made by an entity, other than a candidate, in coordination with a political party will be treated as a contribution to the party committee. In addition, the FEC's current regulations on coordinated communications paid for by persons other than candidates would be repealed 270 days after enactment, at which time FEC would be required to have promulgated new regulations on coordination between candidates or parties and outside groups, addressing a number of specified situations where coordination might be found. These regulations could not require agreement or formal collaboration to establish coordination.

Effective Dates and Regulations

Except for provisions having to do with severability and judicial review, and the increased limits on hard money contributions to national, State, and local campaigns, the enrolled bill would take effect on November 6, 2002 (the day after the 2002 general election). The new hard money limits would take effect on January 1, 2003. The severability and judicial review provisions would take effect upon enactment. Prior to January 1, 2003, national parties would be allowed to spend any remaining soft money that was received prior to November 6, 2002, only for debts or obligations incurred in connection with the 2002 election or any previous election (including any runoff or recount resulting from an election that occurred before that date), but only for expenses for which it would otherwise be permissible to spend soft money. No soft money could be spent by a national party on office buildings or facilities after November 6, 2002. Other provisions in the bill, including the prohibitions and penalties described above, would not apply to runoff elections or recounts resulting from an election held before November 6, 2002.

The FEC would be required to promulgate regulations no later than 90 days after the enactment of this bill to carry out the new hard money and soft money provisions in the bill, and would be required to promulgate regulations no later than 270 days after the enactment of this bill to carry out the remainder of the bill that is under the FEC's jurisdiction.

Severability and Judicial Review

H.R. 2356 would provide that, if any provision of the bill, or its application to any person or circumstance, is held unconstitutional, the remainder of the enrolled bill would not be affected by the holding.

The enrolled bill would also provide that, if any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of the bill, the action would have to be filed in the U.S. District Court for the District of Columbia and heard there by a three-judge court. A copy of the complaint would have to be delivered promptly to the Clerk of the House and the Secretary of the Senate. A final decision would be reviewable only by appeal directly to the U.S. Supreme Court. The appeal would have to be taken by the filing of a notice of appeal within 10 days of the entry of a final decision and the filing of a jurisdictional statement within 30 days of the entry of a final decision. The District Court and the Supreme Court would be required to expedite the disposition of the case to the greatest possible extent. Under the enrolled bill, these expedited procedures would automatically apply to actions filed on or before December 31, 2006. After that date, the expedited procedures would only apply if the person filing an action chooses to have these procedures applied to the action.

The enrolled bill would authorize any member of Congress to bring an action for declaratory or injunctive relief to challenge the constitutionality of any provision of the enrolled bill. In addition, in any action challenging the constitutionality of the bill, any member of Congress would have the right to intervene in support of or in opposition to a party to the case. In order to avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action could make any orders it considers necessary, including orders to require that similar positions be filed jointly or be represented by a single attorney at oral arguments.

The severability and judicial review provisions would take effect upon enactment of the enrolled bill. As a result, actions could be brought challenging the constitutionality of certain provisions of the bill before they become effective.

Conclusion and Recommendations

We recommend approval of H.R. 2356, which passed the House by a vote of 240-189 and the Senate by 60-40.

M E Daniels, Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

Attachment

Other Provisions of H.R. 2356

Miscellaneous Prohibitions

Foreign Nationals. The enrolled bill would prohibit foreign nationals, except for permanent resident aliens, from directly or indirectly making any contribution to a committee of a political party or any contribution in connection with a Federal, State or local election, including any electioneering communications. The enrolled bill would also prohibit anyone from soliciting, accepting, or receiving these contributions from foreign nationals other than permanent resident aliens. This would clarify that the ban on contributions by foreign nationals applies to soft money, as well as hard money, donations. The enrolled bill would clarify that the prohibition on contributions from foreign nationals does not include U.S. nationals. A U.S. national is a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States. The enrolled bill would prohibit a Presidential Inaugural Committee from accepting any donations from foreign nationals.

Activity in Federal Offices. The enrolled bill would specify that it is unlawful for any person to solicit or receive a campaign contribution for a Federal, State, or local election from a person located in a room or building used in the discharge of official duties by a Federal official. It would also specify that it is unlawful for any Federal official (including the President, Vice President, and members of Congress) to solicit or receive a campaign contribution for a Federal, State, or local election from any person while that official is located in a room or building used in the discharge of official duties by a Federal official. Violation of these prohibitions would be punishable by a fine of no more than $5,000, a prison term of no more than 3 years, or both.

Personal Use of Campaign Funds. The enrolled bill would codify current FEC regulations prohibiting the personal use of campaign funds by Federal candidates. Contributions would be considered converted to personal use if they are used for an expense that would exist irrespective of the individual's campaign or duties as a Federal officeholder, including, among other expenses, home mortgage or rent, clothing, vacation expenses, tuition payments, noncampaign-related automobile expenses, and admission to a sporting event, concert, or other form of entertainment not associated with an election campaign.

Fraudulent Misrepresentation. The enrolled bill would prohibit an entity from fraudulently misrepresenting that it is speaking, writing, or otherwise acting on behalf of a candidate or political party for the purpose of soliciting campaign contributions.

Individuals Under Age 18. The bill would prohibit individuals 17 years old or younger from making contributions to political candidates or political party committees.

Disclosure Requirements

Political Party Committees. H.R. 2356 would require national committees of political parties (including congressional campaign committees) to report all receipts and disbursements for reporting periods established under the Federal Election Campaign Act. State, district, and local political party committees would be required to report receipts and disbursements of soft money permitted by the bill (i.e., spending of capped soft money on certain voter registration and get-out-the-vote activities), unless the total sum of these receipts and disbursements is less than $5,000 in a calendar year. If a committee covered by these provisions has covered receipts or expenditures from or to any entity in excess of $200 for any calendar year, the committee would be required to separately itemize its reporting for that entity in the manner prescribed by the Federal Election Campaign Act.

National party committees would be required to file certain reports monthly in all years, instead of having a choice between monthly and quarterly reports.

Federal Candidates. The enrolled bill would require the FEC to promulgate standards for software vendors to develop software that would allow: (1) candidates to easily record information on receipts and expenditures when they occur; (2) the recorded information to be transmitted immediately to the FEC; and (3) FEC to post the information on the Internet immediately upon receipt. The FEC would be required to make a copy of the software available to each candidate required to report electronically, at which point each candidate would be required to use the software. As soon as practicable, FEC would be required to post information received electronically on the Internet.

The enrolled bill would require candidates to file certain reports quarterly instead of semi-annually in non-election years.

Presidential Inaugural Committees. The enrolled bill would require a Presidential Inaugural Committee to file a report with the FEC within 90 days of the inaugural ceremony on any donations to the committee of $200 or more.

Federal Election Commission. The enrolled bill would require the FEC to maintain a central site on the Internet to make accessible to the public all publicly available reports filed with the FEC under the Federal Election Campaign Act. Other Federal agencies receiving election-related information that must be made public would be required to coordinate with FEC to make this information available for posting on the FEC website in a timely manner. The enrolled bill would require all reports filed with the FEC under the Federal Election Campaign Act to be posted on the Internet and available for inspection within 48 hours of receipt, or within 24 hours for reports filed electronically.

Broadcast Stations. The enrolled bill would require radio and television broadcasting stations to maintain and make available for public inspection records of requests to purchase broadcast time by candidates or by other entities intending to communicate a message relating to any political matter of national importance. These records would have to include the name of the candidate or other entity requesting to purchase the time, whether the request is accepted, the date and time that the communication aired, and the rates charged for the broadcast.

Specific Requirements for Disclosure Statements for Electioneering Communications. H.R. 2356 would require any entity that spends over $10,000 in a calendar year for the costs of producing and airing electioneering communications to file a disclosure statement within 24 hours after reaching that expenditure amount and again within 24 hours of each day on which spending exceeds an additional aggregate of $10,000. A disclosure statement would have to identify: (1) the entity making the disbursement; (2) the principal place of business of that entity; (3) the amount of each disbursement of over $200 and the identity of the entity receiving the disbursement; and (4) the election to which the communication pertains and the candidate or candidates identified. If the disbursement is made from a segregated account to which only individuals who are U.S. citizens, U.S. nationals, or lawful permanent residents have contributed only for electioneering communications, the disclosure statement would have to include the names and addresses of all contributors of $1,000 or more to that account since the beginning of the preceding calendar year. If the disbursement is not made from such a segregated account, then the names and addresses of all donors of $1,000 or more to that account since the beginning of the preceding calendar year would have to be disclosed. Money in the segregated account could be used for purposes other than electioneering communications. The enrolled bill would require the Federal Communications Commission (FCC) to compile and maintain any information the FEC may require to carry out these disclosure requirements and make such information available to the public on the FCC's website.

Penalties

Under current law, violations of Federal campaign financing laws involving contributions of at least $2,000 are punishable by a fine of no more than the greater of $25,000 or 300 percent of the contribution in question, a prison term of no more than one year, or both. The enrolled bill would provide that violations of at least $2,000 but less than $25,000 would be punishable by a fine of no more than $100,000, a prison term of no more than one year, or both. Violations totaling $25,000 or more would be punishable by a fine of no more than $250,000, a prison term of no more than five years, or both.

The enrolled bill would also extend the statute of limitations for violations of Federal campaign laws from three to five years and would make the extension applicable to violations committed on or after the enrolled bill's effective date.

H.R. 2356 would direct the U.S. Sentencing Commission to: (1) within 90 days of the effective date of the bill, or within 90 days after a majority of the members of the Commission are appointed and holding office (whichever is sooner), promulgate guidelines, or amend existing guidelines, for penalties under Federal campaign and election laws; and (2) submit to Congress an explanation of any such guidelines and any legislative or administrative recommendations regarding enforcement. The bill would specify considerations for such guidelines, including that they reflect the serious nature of violations of Federal campaign laws and the need for aggressive and appropriate law enforcement action to prevent violations.

The enrolled bill would increase the maximum civil penalty that can be assessed by the FEC for a violation of the conduit contribution prohibition (i.e., knowing and willful violation of the ban on contributions made in the name of another) from the greater of $10,000 or 200 percent of the contribution involved to between 300 percent of the amount involved and the greater of $50,000 or 1,000 percent of the amount involved. The bill would also increase the maximum term of imprisonment for a criminal violation of the conduit contribution ban involving amounts of between $10,000 and $25,000 from one to two years, and would increase the maximum criminal penalty to the greater of $50,000 or 1,000 percent of amount involved. The minimum criminal penalty would be 300 percent of the amount involved.

Public Financing Study

The enrolled bill would direct General Accounting Office (GAO) to conduct a study of the "clean money, clean election systems" in Arizona and Maine, which provide for public financing, in whole or in part, of election campaigns. GAO would be required to report to the Congress within one year of the enrolled bill's enactment on the effect of these State laws on the 2000 elections in Arizona and Maine.

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

March 26, 2002

The Honorable Mitchell Daniels
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Daniels:

This responds to your request for the views of the Justice Department on the enrolled bill H.R. 2356, the "Bipartisan Campaign Reform Act of 2002."

Title I of H.R. 2356 would amend the Federal Election Campaign Act of 1971 ("FECA") to prohibit: 1) national political party committees (including any officer, agent, or entity they directly or indirectly established, financed, maintained, or controlled) from soliciting, receiving, directing, transferring, or spending money that is subject to FECA limitations, prohibitions, and reporting requirements; 2) soft money spending (spending not currently subject to FECA) for a Federal election activity by State, district, and local political party committees or by an association or similar group of candidates for State or local office or State or local officials; 3) soft money spending for fundraising costs by any such committee, officer, agent, or entity; 4) national, State, district, or local political party committees (including national political party congressional campaign committees, entities, officers, or agents) from soliciting, any funds for, or making or directing any donations to certain tax-exempt organizations; and 5) candidates for Federal office, Federal office holders, or their agents from soliciting, receiving, directing, transferring, or spending funds in connection with a Federal election, including funds for any Federal election activity, unless they are subject to FECA limitations, prohibitions, and reporting requirements, or doing so in connection with any non-Federal election unless such funds met specified requirements.

Title II of the bill would amend FECA to require disclosure to the Federal Election Commission ("FEC") of electioneering communications by any spender costing in excess of $10,000 per year (including contracts to disburse funds), within 24 hours of each specified disbursement date (disclosure date). It would amend FECA to define independent expenditure as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

Title III would amend FECA to codify FEC regulations on permissible uses for contributions and donations. It would retain the ban on the conversion of a contribution or donation to personal use.

Title IV sets forth severability, effective date, and judicial review provisions.

Title V would amend FECA to require all designations, statements, reports, and notifications filed with the FEC to be available for public inspection in FEC offices and to be accessible to the public on the Internet within 48 hours after receipt by the FEC. It would retain requirement under current law that disclosure materials filed electronically with FEC be accessible to the public on the Internet within 24 hours after receipt by the FEC.

The bill contains a number of provisions that would benefit criminal law enforcement. Specifically, the bill would make FECA violations involving sums of $25,000 or more felonies punishable by a term of imprisonment of up to 5 years and would make conduit contributions involving more than $10,000 felonies punishable by up to 2 years. It would clarify that the FECA's prohibition against campaign contributions by foreign nationals (set forth at 2 U.S.C. § 441e) covers non-Federal as well as Federal contributions. It would amend the law governing the places from which campaign contributions may be solicited (18 U.S.C. § 607) to once again reach both Federal and non-Federal contributions. In addition, the bill would require the United States Sentencing Commission to promulgate guidelines and sentencing enhancements for violations of the FECA. Finally, the bill would extend the FECA's statute of limitations for criminal prosecutions from 3 to 5 years – a change that we long have advocated. We believe that these provisions would increase our ability to prosecute campaign financing crimes and we support them.

Thank you for the opportunity to present our views. Please feel free to call upon us if we may be of additional assistance.

Sincerely,

Daniel J. Bryant

Daniel J. Bryant
Assistant Attorney General

THE PRESIDENT HAS SEEN
3/24/02

Signing Statement: H.R. 2356, Bipartisan Campaign Reform Act of 2002

Today, I sign into law H.R. 2356, the Bipartisan Campaign Reform Act of 2002. I believe that this legislation, although far from perfect, will improve the current financing system for federal campaigns.

The bill reforms our system of financing campaigns in several important ways. First, this law will prevent unions and corporations from making unregulated, "soft" money contributions -- a legislative step for which I repeatedly have called. Often, these groups take political action without the consent of their members or shareholders, so that the influence of these groups on elections does not necessarily comport with the actual views of the individuals who comprise these organizations. This prohibition will help to right that imbalance. Second, this law will raise the decades-old limits on giving imposed on individuals who wish to support the candidate of their choice, thereby advancing my stated principle that election reform should strengthen the role of individual citizens in the political process. Third, this legislation creates new disclosure requirements and compels speedier compliance with existing ones, which will promote the free and swift flow of information to the public regarding the activities of groups and individuals in the political process. I long have believed that complete and immediate disclosure of the source of campaign contributions is the best way to reform campaign finance.

These provisions of the bill will go a long way toward fixing some of the most pressing problems in campaign finance today. They will result in an election finance system that encourages greater individual participation, and provides the public more accurate and timely information, than does the present system. All of the American electorate will benefit from these measures to strengthen our democracy.

The bill does have flaws, however. Certain provisions present serious constitutional concerns. In particular, H.R. 2356 goes farther than I originally proposed by preventing all individuals, not just unions and corporations, from making donations to political parties in connection with federal elections. I believe individual freedom to participate in elections should be expanded, not diminished; and when individual freedoms are restricted, questions arise under the First Amendment. I also have reservations about the constitutionality of the broad ban on issue advertising, which restrains the speech of a wide variety of groups on issues of public import in the months closest to an election. I expect that the courts will resolve these legitimate legal questions as appropriate under the law.

As a policy matter, I would have preferred a bill that included a provision to protect union members and shareholders from involuntary political activities undertaken by their leadership. Individuals have a right not to have their money spent in support of candidates or causes with which they disagree, and those rights should be better protected by law. I hope that in the future the Congress and I can work together to remedy this defect of the current financing structure.

This legislation is the culmination of more than six years of debate among a vast array of legislators, citizens, and groups. Accordingly, it does not represent the full ideals of any one point of view. But it does represent progress in this often-contentious area of public policy debate. Taken as a whole, this bill improves the current system of financing for federal campaigns, and therefore I have signed it into law.

Withdrawal Marker
The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	[Draft re: H. R. 2356] - To: Harriet E. Miers - From: David S. Addington	2	03/26/2002	P5;

This marker identifies the original location of the withdrawn item listed above. For a complete list of items withdrawn from this folder, see the Withdrawal/Redaction Sheet at the front of the folder.

COLLECTION:
Executive Clerk, Office Of the

SERIES:
Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:
03/27/2002 [H.R. 2356] [771156]

FRC ID:
6358

OA Num.:
9465

NARA Num.:
9356

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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TIME OF TRANSMISSION: TIME OF RECEIPT:

WHITE HOUSE SITUATION ROOM

PRECEDENCE CLASSIFICATION: RELEASER:

IMMEDIATE DATE/TIME:

MESSAGE #:

FROM: **CAROL CLEVELAND**	PHONE: **62702**	ROOM: **GD FL WW**	
SUBJECT: **ENROLLED BILL MEMO**		PAGES: 15	

PLEASE DELIVER TO:

LOCATION	DELIVER TO	ROOM	PHONE
AF 1	**HARRIET MIERS**		

SPECIAL DELIVERY INSTRUCTIONS/REMARKS:

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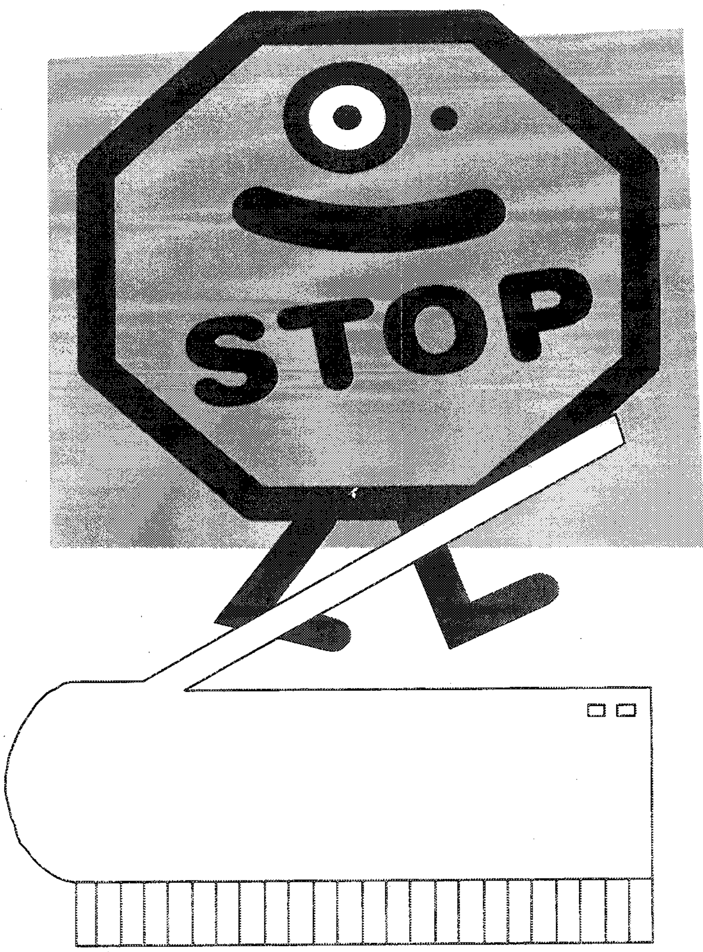
Scanning insert sheet



Remainder of case not scanned

THE PRESIDENT HAS SEEN
3-27-02
APPROVED
MAR 27 2002

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

March 26, 2002

THE PRESIDENT HAS SEEN
3-27-02

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2356 - Bipartisan Campaign Reform Act of 2002
Sponsors - Rep. Shays (R) Connecticut and Rep. Meehan (D) Massachusetts

Last Day for Action

April 6, 2002 - Saturday

Purpose

Makes changes to several areas of Federal election campaign law including: (1) prohibiting national committees of political parties from receiving "soft money" contributions; (2) raising limits on "hard money" contributions to candidates for Federal office; and (3) placing limits on the use of "issue ads" that mention the name or show the likeness of a clearly identified candidate for Federal office.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	No recommendation
Department of the Treasury	No objection (Informally)

Discussion

The most significant provisions of H.R. 2356 are summarized below. Other important provisions of the enrolled bill are detailed in an Attachment.

Soft Money Contributions

Prohibitions on Use of Soft Money by National Political Party Committees and Federal Candidates. The enrolled bill would prohibit national committees of political parties (including national congressional campaign committees) and entities directly or indirectly established, financed, maintained, or controlled by these committees from soliciting, receiving, spending, or transferring so-called "soft money," i.e., funds or any other things of value that are not subject to

the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act (FECA). In addition, with one exception, any amounts disbursed for Federal election activities by (a) a State, district, or local committee of a political party or (b) an association of candidates for or individuals holding State or local office would have to be made from funds subject to the limitations, prohibitions, and reporting requirements of FECA (i.e., "hard money"). Also, amounts spent by national, State, district, or local committees to raise funds used on Federal election activities would have to be made from hard money.

The enrolled bill would also prohibit Federal candidates for and individuals holding Federal office (and any entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of such candidates or officeholders) from raising or spending soft money in connection with Federal elections. This restriction would not apply to funds raised or spent on an election for State or local office by a Federal candidate or officeholder who is or was also a candidate for that State or local office, so long as reference is made only to that individual or other candidates for that State or local office. The enrolled bill would not prohibit a Federal candidate or officeholder from attending, speaking, or appearing as a featured guest at a fundraising event for a State, district, or local committee of a political party.

<u>Prohibition of Political Party Contributions to Non-Profit Organizations</u>. The enrolled bill would prohibit national, State, district, and local committees of political parties, or entities controlled by such committees, from making contributions to, or soliciting donations for, non-profit organizations (referred to as "501(c) organizations") that spend money in connection with Federal elections, or political organizations (referred to as "527 organizations") other than (a) political committees, (b) State, district, or local committees of a political party, or (c) authorized campaign committees of candidates for State or local office. This provision is intended to prevent political parties from collecting soft money and funneling it through other organizations engaged in Federal electioneering.

<u>Exception for Certain Federal Election Activity</u>. An exception to the soft money prohibition would allow State, district, and local committees to spend soft money on voter registration (in the last 120 days before a Federal election), get-out-the-vote activities, voter identification, and political party promotion subject to the following conditions: (1) the activity could not make reference to a candidate for Federal office; (2) no single donor could give more than $10,000 per year to a committee to spend on these activities; (3) funds spent on broadcast advertising would have to refer only to candidates for State or local office; (4) funds expended could not have been raised by a national committee or any other State, district, or local committee; and (5) hard money must also be allocated for these activities in accordance with Federal Election Commission (FEC) regulations. The committees would be required to raise funds for these activities, and these funds could not be transferred between State and national party organizations.

Federal candidates and officeholders would be permitted to solicit up to $20,000 per year from any individual specifically for voter registration and get-out-the-vote activities conducted by a non-profit organization. Candidates and officeholders would also be permitted to solicit unlimited funds for non-profit organizations whose primary purpose is not voter registration or get-out-the-vote activities, as long as the solicitation does not specify the use of the money.

Defraying Costs of Office Facilities. The enrolled bill would repeal the provision in current law which specifies that contributions to national or State committees of political parties to defray the costs of purchase or construction of an office building are not considered hard money. However, the enrolled bill would allow State and local committees to use soft money, subject to State laws, for these purposes. As a result, the effect of the enrolled bill would be to prohibit national committees from using soft money to purchase or construct office facilities.

Limits on Hard Money Contributions

The enrolled bill would generally increase current limits on hard money contributions at the national level. The maximum amount that an individual could give to a Federal candidate would be increased from $1,000 to $2,000 per two-year election cycle. The maximum amount that an individual could give to a national committee of a political party each year would be increased from $20,000 to $25,000. The maximum aggregate amount that an individual could give to parties, political action committees (PACs), and candidates combined per year would be increased from $25,000 per year to $95,000 per two-year election cycle, including not more than $37,500 per cycle to candidates, and not more than $57,500 for any other contributions, of which not more than $37,500 may be for political committees other than committees of national political parties. The amount that a senatorial campaign committee could contribute to a Senate candidate would be increased from $17,500 to $35,000. All of the limits increased by these provisions would be indexed for inflation and would apply to contributions made on or after January 1, 2003. The enrolled bill would also increase the amount that individuals may contribute to State committees of political parties from $5,000 to $10,000 per year.

Contributions to Candidates Facing Wealthy Opponents

H.R. 2356 would allow Senate and House candidates whose opponents spend large amounts of their personal wealth to raise larger contributions from individual donors by increasing the limits for these contributions under certain circumstances. For Senate candidates, the bill would establish three different threshold amounts. The exact threshold amounts in each State would vary according to the size of that State's voting age population. Specifically, when a wealthy candidate's personal spending is greater than $300,000 plus eight cents for every person of voting age in the candidate's State, the contribution limits on the opposing candidate would be three times the otherwise applicable limit. When a wealthy candidate's personal spending is greater than $600,000 plus 16 cents for every person of voting age in the candidate's State, the contribution limits on the opposing candidate would be six times the original limit. When a wealthy candidate's personal spending is greater than $1.5 million plus forty cents for every person of voting age in the candidate's State, the individual contribution limits to the opposing candidate would be six times the original limit, and limits on coordinated spending by a national or State committee of a political party would not apply.

The amount of additional contributions to and party expenditures for the non-wealthy candidate at all three levels would be limited to 110 percent of the "opposition personal funds amount," which would be determined by taking the wealthy opponent's personal wealth spending and subtracting the amount the non-wealthy candidate spends of his or her own personal wealth and one-half of the fundraising advantage (for fundraising done between June 30 and December 31 of the year before the election), if any, that the wealthy opponent may have over the non-wealthy candidate.

The enrolled bill would also establish other rules and limitations for use of funds under the increased limits, including: (1) a prohibition against raising contributions to repay loans that candidates may make to their own campaigns of over $250,000; and (2) a requirement that any funds received under the increased limits that are not spent within 50 days of having been received must be returned to the original contributor.

For House candidates, when a wealthy candidate's personal spending exceeds $350,000, the contribution limits on the opposing candidate would be three times the otherwise applicable limits. In addition, limits on party coordinated spending would be lifted for the opposing candidate. The total amount of additional contributions to and party expenditures for the non-wealthy candidate would be limited to 100 percent of the "opposition personal funds amount."

Limitations on Issue Advertising

Definition of Electioneering Communications ("Issue Ads"). Electioneering communications would be defined as broadcast, cable, or satellite communications that mention the name or show the likeness of a clearly identified candidate for Federal office within 60 days of a general, special, or run-off election or 30 days of a primary election, convention, or caucus, and which is targeted to the candidate's State (in the case of a candidate for the Senate) or district (in the case of a candidate for the House of Representatives). Under the enrolled bill, electioneering communications would not include news broadcasts, candidate debates or forums, sponsors' advertisements for debates and forums, and communications that expressly advocate the election or defeat of a clearly identified candidate. The FEC would be authorized to promulgate additional exceptions.

In addition, the enrolled bill would provide that, if the above definition of "electioneering communication" is found to be constitutionally insufficient to support regulation, then the term would instead be defined as any broadcast, cable, or satellite communication that promotes or attacks a candidate for Federal office and has no plausible meaning other an exhortation to vote for or against that candidate.

Prohibitions on Corporations and Unions. The enrolled bill would prohibit corporations and labor organizations from making disbursements for electioneering communications (60 days before a general election or 30 days before a primary election). Corporations and labor organizations could finance such advertisements through their political action committees. Non-profit organizations and political organizations would be permitted to pay for electioneering communications as long as: (1) they use money contributed by individuals who are U.S. citizens, U.S. nationals, or permanent legal residents; (2) they meet the disclosure requirements in the bill; (3) they pay for electioneering communications from an account to which only individuals can contribute and is separate from accounts containing funds derived from business activities or contributions from corporations or labor organizations; and (4) the communication is not targeted to the electorate of the candidate referenced in the communication.

Prohibitions on State and Local Candidates. The enrolled bill would prohibit candidates for State or local office from spending soft money on electioneering communications (60 days before a general election or 30 days before a primary election). The bill would exempt communications that refer to a Federal candidate who is also a candidate for State or local office.

Requirements for Federal Candidates to Receive Lowest Broadcast Ad Rates. The enrolled bill would provide that a Federal candidate is not entitled to receive the lowest unit rate for broadcast ads available under current law unless the candidate certifies that he or she will only make a direct reference to another candidate for the same office if he or she includes at the end of the ad, for at least four seconds, a clearly identifiable photographic or similar image (for a television ad) and a statement of candidate approval (clearly readable on TV and spoken by the candidate on radio). Failure to include the required statement of candidate approval would make the candidate ineligible for the lowest unit rate for any portion of the forty-five days preceding the date of a primary or primary runoff election or the sixty days preceding the date of a general or special election that occurs on or after the date of the broadcast.

Requirements for Identification of Advertising Sponsors. The enrolled bill would amend requirements in current law that the sponsors of election-related advertising identify themselves in their ads. These modifications would include: (1) applying the requirements to any disbursement for public political advertising, including electioneering communications; (2) requiring the street address, telephone number, or Internet address of persons other than candidates who purchase public political advertising to appear in the ad; (3) requiring candidate radio ads to include a statement by the candidate that he or she has approved the communication; (4) requiring a television ad to include the same audio statement along with a picture of the candidate or a full screen view of the candidate making the statement, and a written version of that statement that appears for at least four seconds; and (5) requiring entities that run ads not authorized by a candidate to include an audio statement that the entity "is responsible for the content of this advertising."

Coordinated Communications as Contributions. In addition, the enrolled bill would specify that disbursements for electioneering communications that are coordinated with candidates or with political parties would be deemed to be contributions to the candidate supported by the communication or that candidate's party and subject to the appropriate limitations on these contributions.

Independent and Coordinated Expenditures

H.R. 2356 would establish reporting requirements for independent expenditures, defined as expenditures expressly advocating the election or defeat of a clearly defined candidate that is not made at the request or suggestion of, or with the cooperation of, or in consultation with, another candidate or an authorized committee or agent of that candidate. (This definition is in contrast to "coordinated" expenditures, which are made at the request or suggestion of, or with the cooperation of, or in consultation with any candidate or an authorized committee or agent of such candidate.) Any person or group, including a political committee, that makes independent expenditures totaling $10,000 or more prior to the 20th day before an election would be required to file a report with the FEC within 48 hours of the money being spent or contracted to be spent. Additional reports would have to be filed within 48 hours of each additional aggregate independent expenditure of $10,000 or more. In the last 20 days before an election, a report would have to be filed within 24 hours of each independent expenditure totaling more than $1,000. The enrolled bill would clarify that, for purposes of determining whether these reports are filed within 24 hours, they would be considered filed when they are actually received by the FEC or by any other recipient to whom the report is required to submitted.

The enrolled bill would require political parties to choose between making independent or coordinated expenditures once the party's candidate has been nominated by prohibiting a political party from making: (1) coordinated expenditures after it makes any independent expenditure; and (2) independent expenditures after it makes any coordinated expenditure. For purposes of this requirement, all national and State party committees would be considered to be a single political committee, so that, for example, a national party could not make an independent expenditure if a State party has already made a coordinated expenditure with respect to a particular candidate.

The enrolled bill would also provide that an expenditure made by an entity, other than a candidate, in coordination with a political party will be treated as a contribution to the party committee. In addition, the FEC's current regulations on coordinated communications paid for by persons other than candidates would be repealed 270 days after enactment, at which time FEC would be required to have promulgated new regulations on coordination between candidates or parties and outside groups, addressing a number of specified situations where coordination might be found. These regulations could not require agreement or formal collaboration to establish coordination.

Effective Dates and Regulations

Except for provisions having to do with severability and judicial review, and the increased limits on hard money contributions to national, State, and local campaigns, the enrolled bill would take effect on November 6, 2002 (the day after the 2002 general election). The new hard money limits would take effect on January 1, 2003. The severability and judicial review provisions would take effect upon enactment. Prior to January 1, 2003, national parties would be allowed to spend any remaining soft money that was received prior to November 6, 2002, only for debts or obligations incurred in connection with the 2002 election or any previous election (including any runoff or recount resulting from an election that occurred before that date), but only for expenses for which it would otherwise be permissible to spend soft money. No soft money could be spent by a national party on office buildings or facilities after November 6, 2002. Other provisions in the bill, including the prohibitions and penalties described above, would not apply to runoff elections or recounts resulting from an election held before November 6, 2002.

The FEC would be required to promulgate regulations no later than 90 days after the enactment of this bill to carry out the new hard money and soft money provisions in the bill, and would be required to promulgate regulations no later than 270 days after the enactment of this bill to carry out the remainder of the bill that is under the FEC's jurisdiction.

Severability and Judicial Review

H.R. 2356 would provide that, if any provision of the bill, or its application to any person or circumstance, is held unconstitutional, the remainder of the enrolled bill would not be affected by the holding.

The enrolled bill would also provide that, if any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of the bill, the action would have to be filed in the U.S. District Court for the District of Columbia and heard there by a three-judge court. A copy of the complaint would have to be delivered promptly to the Clerk of the House and the Secretary of the Senate. A final decision would be reviewable only by appeal directly to the U.S. Supreme Court. The appeal would have to be taken by the filing of a notice of appeal within 10 days of the entry of a final decision and the filing of a jurisdictional statement within 30 days of the entry of a final decision. The District Court and the Supreme Court would be required to expedite the disposition of the case to the greatest possible extent. Under the enrolled bill, these expedited procedures would automatically apply to actions filed on or before December 31, 2006. After that date, the expedited procedures would only apply if the person filing an action chooses to have these procedures applied to the action.

The enrolled bill would authorize any member of Congress to bring an action for declaratory or injunctive relief to challenge the constitutionality of any provision of the enrolled bill. In addition, in any action challenging the constitutionality of the bill, any member of Congress would have the right to intervene in support of or in opposition to a party to the case. In order to avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action could make any orders it considers necessary, including orders to require that similar positions be filed jointly or be represented by a single attorney at oral arguments.

The severability and judicial review provisions would take effect upon enactment of the enrolled bill. As a result, actions could be brought challenging the constitutionality of certain provisions of the bill before they become effective.

Conclusion and Recommendations

We recommend approval of H.R. 2356, which passed the House by a vote of 240-189 and the Senate by 60-40.

M E Daniels, Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

Attachment

Other Provisions of H.R. 2356

Miscellaneous Prohibitions

Foreign Nationals. The enrolled bill would prohibit foreign nationals, except for permanent resident aliens, from directly or indirectly making any contribution to a committee of a political party or any contribution in connection with a Federal, State or local election, including any electioneering communications. The enrolled bill would also prohibit anyone from soliciting, accepting, or receiving these contributions from foreign nationals other than permanent resident aliens. This would clarify that the ban on contributions by foreign nationals applies to soft money, as well as hard money, donations. The enrolled bill would clarify that the prohibition on contributions from foreign nationals does not include U.S. nationals. A U.S. national is a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States. The enrolled bill would prohibit a Presidential Inaugural Committee from accepting any donations from foreign nationals.

Activity in Federal Offices. The enrolled bill would specify that it is unlawful for any person to solicit or receive a campaign contribution for a Federal, State, or local election from a person located in a room or building used in the discharge of official duties by a Federal official. It would also specify that it is unlawful for any Federal official (including the President, Vice President, and members of Congress) to solicit or receive a campaign contribution for a Federal, State, or local election from any person while that official is located in a room or building used in the discharge of official duties by a Federal official. Violation of these prohibitions would be punishable by a fine of no more than $5,000, a prison term of no more than 3 years, or both.

Personal Use of Campaign Funds. The enrolled bill would codify current FEC regulations prohibiting the personal use of campaign funds by Federal candidates. Contributions would be considered converted to personal use if they are used for an expense that would exist irrespective of the individual's campaign or duties as a Federal officeholder, including, among other expenses, home mortgage or rent, clothing, vacation expenses, tuition payments, noncampaign-related automobile expenses, and admission to a sporting event, concert, or other form of entertainment not associated with an election campaign.

Fraudulent Misrepresentation. The enrolled bill would prohibit an entity from fraudulently misrepresenting that it is speaking, writing, or otherwise acting on behalf of a candidate or political party for the purpose of soliciting campaign contributions.

Individuals Under Age 18. The bill would prohibit individuals 17 years old or younger from making contributions to political candidates or political party committees.

Disclosure Requirements

Political Party Committees. H.R. 2356 would require national committees of political parties (including congressional campaign committees) to report all receipts and disbursements for reporting periods established under the Federal Election Campaign Act. State, district, and local political party committees would be required to report receipts and disbursements of soft money permitted by the bill (i.e., spending of capped soft money on certain voter registration and get-out-the-vote activities), unless the total sum of these receipts and disbursements is less than $5,000 in a calendar year. If a committee covered by these provisions has covered receipts or expenditures from or to any entity in excess of $200 for any calendar year, the committee would be required to separately itemize its reporting for that entity in the manner prescribed by the Federal Election Campaign Act.

National party committees would be required to file certain reports monthly in all years, instead of having a choice between monthly and quarterly reports.

Federal Candidates. The enrolled bill would require the FEC to promulgate standards for software vendors to develop software that would allow: (1) candidates to easily record information on receipts and expenditures when they occur; (2) the recorded information to be transmitted immediately to the FEC; and (3) FEC to post the information on the Internet immediately upon receipt. The FEC would be required to make a copy of the software available to each candidate required to report electronically, at which point each candidate would be required to use the software. As soon as practicable, FEC would be required to post information received electronically on the Internet.

The enrolled bill would require candidates to file certain reports quarterly instead of semi-annually in non-election years.

Presidential Inaugural Committees. The enrolled bill would require a Presidential Inaugural Committee to file a report with the FEC within 90 days of the inaugural ceremony on any donations to the committee of $200 or more.

Federal Election Commission. The enrolled bill would require the FEC to maintain a central site on the Internet to make accessible to the public all publicly available reports filed with the FEC under the Federal Election Campaign Act. Other Federal agencies receiving election-related information that must be made public would be required to coordinate with FEC to make this information available for posting on the FEC website in a timely manner. The enrolled bill would require all reports filed with the FEC under the Federal Election Campaign Act to be posted on the Internet and available for inspection within 48 hours of receipt, or within 24 hours for reports filed electronically.

Broadcast Stations. The enrolled bill would require radio and television broadcasting stations to maintain and make available for public inspection records of requests to purchase broadcast time by candidates or by other entities intending to communicate a message relating to any political matter of national importance. These records would have to include the name of the candidate or other entity requesting to purchase the time, whether the request is accepted, the date and time that the communication aired, and the rates charged for the broadcast.

Specific Requirements for Disclosure Statements for Electioneering Communications. H.R. 2356 would require any entity that spends over $10,000 in a calendar year for the costs of producing and airing electioneering communications to file a disclosure statement within 24 hours after reaching that expenditure amount and again within 24 hours of each day on which spending exceeds an additional aggregate of $10,000. A disclosure statement would have to identify: (1) the entity making the disbursement; (2) the principal place of business of that entity; (3) the amount of each disbursement of over $200 and the identity of the entity receiving the disbursement; and (4) the election to which the communication pertains and the candidate or candidates identified. If the disbursement is made from a segregated account to which only individuals who are U.S. citizens, U.S. nationals, or lawful permanent residents have contributed only for electioneering communications, the disclosure statement would have to include the names and addresses of all contributors of $1,000 or more to that account since the beginning of the preceding calendar year. If the disbursement is not made from such a segregated account, then the names and addresses of all donors of $1,000 or more to that account since the beginning of the preceding calendar year would have to be disclosed. Money in the segregated account could be used for purposes other than electioneering communications. The enrolled bill would require the Federal Communications Commission (FCC) to compile and maintain any information the FEC may require to carry out these disclosure requirements and make such information available to the public on the FCC's website.

Penalties

Under current law, violations of Federal campaign financing laws involving contributions of at least $2,000 are punishable by a fine of no more than the greater of $25,000 or 300 percent of the contribution in question, a prison term of no more than one year, or both. The enrolled bill would provide that violations of at least $2,000 but less than $25,000 would be punishable by a fine of no more than $100,000, a prison term of no more than one year, or both. Violations totaling $25,000 or more would be punishable by a fine of no more than $250,000, a prison term of no more than five years, or both.

The enrolled bill would also extend the statute of limitations for violations of Federal campaign laws from three to five years and would make the extension applicable to violations committed on or after the enrolled bill's effective date.

H.R. 2356 would direct the U.S. Sentencing Commission to: (1) within 90 days of the effective date of the bill, or within 90 days after a majority of the members of the Commission are appointed and holding office (whichever is sooner), promulgate guidelines, or amend existing guidelines, for penalties under Federal campaign and election laws; and (2) submit to Congress an explanation of any such guidelines and any legislative or administrative recommendations regarding enforcement. The bill would specify considerations for such guidelines, including that they reflect the serious nature of violations of Federal campaign laws and the need for aggressive and appropriate law enforcement action to prevent violations.

The enrolled bill would increase the maximum civil penalty that can be assessed by the FEC for a violation of the conduit contribution prohibition (i.e., knowing and willful violation of the ban on contributions made in the name of another) from the greater of $10,000 or 200 percent of the contribution involved to between 300 percent of the amount involved and the greater of $50,000 or 1,000 percent of the amount involved. The bill would also increase the maximum term of imprisonment for a criminal violation of the conduit contribution ban involving amounts of between $10,000 and $25,000 from one to two years, and would increase the maximum criminal penalty to the greater of $50,000 or 1,000 percent of amount involved. The minimum criminal penalty would be 300 percent of the amount involved.

Public Financing Study

The enrolled bill would direct General Accounting Office (GAO) to conduct a study of the "clean money, clean election systems" in Arizona and Maine, which provide for public financing, in whole or in part, of election campaigns. GAO would be required to report to the Congress within one year of the enrolled bill's enactment on the effect of these State laws on the 2000 elections in Arizona and Maine.

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

March 26, 2002

The Honorable Mitchell Daniels
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Daniels:

This responds to your request for the views of the Justice Department on the enrolled bill H.R. 2356, the "Bipartisan Campaign Reform Act of 2002."

Title I of H.R. 2356 would amend the Federal Election Campaign Act of 1971 ("FECA") to prohibit: 1) national political party committees (including any officer, agent, or entity they directly or indirectly established, financed, maintained, or controlled) from soliciting, receiving, directing, transferring, or spending money that is subject to FECA limitations, prohibitions, and reporting requirements; 2) soft money spending (spending not currently subject to FECA) for a Federal election activity by State, district, and local political party committees or by an association or similar group of candidates for State or local office or State or local officials; 3) soft money spending for fundraising costs by any such committee, officer, agent, or entity; 4) national, State, district, or local political party committees (including national political party congressional campaign committees, entities, officers, or agents) from soliciting any funds for, or making or directing any donations to certain tax-exempt organizations; and 5) candidates for Federal office, Federal office holders, or their agents from soliciting, receiving, directing, transferring, or spending funds in connection with a Federal election, including funds for any Federal election activity, unless they are subject to FECA limitations, prohibitions, and reporting requirements, or doing so in connection with any non-Federal election unless such funds met specified requirements.

Title II of the bill would amend FECA to require disclosure to the Federal Election Commission ("FEC") of electioneering communications by any spender costing in excess of $10,000 per year (including contracts to disburse funds), within 24 hours of each specified disbursement date (disclosure date). It would amend FECA to define independent expenditure as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

Title III would amend FECA to codify FEC regulations on permissible uses for contributions and donations. It would retain the ban on the conversion of a contribution or donation to personal use.

Title IV sets forth severability, effective date, and judicial review provisions.

Title V would amend FECA to require all designations, statements, reports, and notifications filed with the FEC to be available for public inspection in FEC offices and to be accessible to the public on the Internet within 48 hours after receipt by the FEC. It would retain requirement under current law that disclosure materials filed electronically with FEC be accessible to the public on the Internet within 24 hours after receipt by the FEC.

The bill contains a number of provisions that would benefit criminal law enforcement. Specifically, the bill would make FECA violations involving sums of $25,000 or more felonies punishable by a term of imprisonment of up to 5 years and would make conduit contributions involving more than $10,000 felonies punishable by up to 2 years. It would clarify that the FECA's prohibition against campaign contributions by foreign nationals (set forth at 2 U.S.C. § 441e) covers non-Federal as well as Federal contributions. It would amend the law governing the places from which campaign contributions may be solicited (18 U.S.C. § 607) to once again reach both Federal and non-Federal contributions. In addition, the bill would require the United States Sentencing Commission to promulgate guidelines and sentencing enhancements for violations of the FECA. Finally, the bill would extend the FECA's statute of limitations for criminal prosecutions from 3 to 5 years – a change that we long have advocated. We believe that these provisions would increase our ability to prosecute campaign financing crimes and we support them.

Thank you for the opportunity to present our views. Please feel free to call upon us if we may be of additional assistance.

Sincerely,

Daniel J. Bryant

Daniel J. Bryant
Assistant Attorney General

STATEMENT BY THE PRESIDENT

Today I have signed into law H.R. 2356, the "Bipartisan Campaign Reform Act of 2002." I believe that this legislation, although far from perfect, will improve the current financing system for Federal campaigns.

The bill reforms our system of financing campaigns in several important ways. First, it will prevent unions and corporations from making unregulated, "soft" money contributions -- a legislative step for which I repeatedly have called. Often, these groups take political action without the consent of their members or shareholders, so that the influence of these groups on elections does not necessarily comport with the actual views of the individuals who comprise these organizations. This prohibition will help to right that imbalance. Second, this law will raise the decades-old limits on giving imposed on individuals who wish to support the candidate of their choice, thereby advancing my stated principle that election reform should strengthen the role of individual citizens in the political process. Third, this legislation creates new disclosure requirements and compels speedier compliance with existing ones, which will promote the free and swift flow of information to the public regarding the activities of groups and individuals in the political process. I long have believed that complete and immediate disclosure of the source of campaign contributions is the best way to reform campaign finance.

These provisions of the bill will go a long way toward fixing some of the most pressing problems in campaign finance today. They will result in an election finance system that encourages greater individual participation, and provides the public more accurate and timely information, than does the present system. All of the American electorate will benefit from these measures to strengthen our democracy.

However, the bill does have flaws. Certain provisions present serious constitutional concerns. In particular, H.R. 2356 goes farther than I originally proposed by preventing

all individuals, not just unions and corporations, from making donations to political parties in connection with Federal elections. I believe individual freedom to participate in elections should be expanded, not diminished; and when individual freedoms are restricted, questions arise under the First Amendment. I also have reservations about the constitutionality of the broad ban on issue advertising, which restrains the speech of a wide variety of groups on issues of public import in the months closest to an election. I expect that the courts will resolve these legitimate legal questions as appropriate under the law.

As a policy matter, I would have preferred a bill that included a provision to protect union members and shareholders from involuntary political activities undertaken by their leadership. Individuals have a right not to have their money spent in support of candidates or causes with which they disagree, and those rights should be better protected by law. I hope that in the future the Congress and I can work together to remedy this defect of the current financing structure.

This legislation is the culmination of more than 6 years of debate among a vast array of legislators, citizens, and groups. Accordingly, it does not represent the full ideals of any one point of view. But it does represent progress in this often-contentious area of public policy debate. Taken as a whole, this bill improves the current system of financing for Federal campaigns, and therefore I have signed it into law.

THE WHITE HOUSE,

March 27, 2002.

have

Signing Statement: H.R. 2356, Bipartisan Campaign Reform Act of 2002

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THE WHITE HOUSE,

OFFICE OF THE EXECUTIVE CLERK
TRACKING SHEET FOR PRESIDENTIAL DOCUMENTS

TITLE: Campaign Finance Reform

TYPE DOCUMENT:

PROCLAMATION — LETTER(S)

EXECUTIVE ORDER — MESSAGE TO THE CONGRESS/SENATE

MEMORANDUM — STATEMENT BY THE PRESIDENT

DECISION MEMORANDUM — SIGNING STATEMENT

DETERMINATION (numbered) — ~~TREATY/CONVENTION~~/AGREEMENT, etc.

OTHER: ____

RECEIVED: (Advance: __/__/02 Time: ~~4:45~~ a.m./p.m.)
In final: 3/26/02 Time: 4:45 a.m./p.m.

SENT TO CORRESPONDENCE FOR TYPING IN FINAL:

(Advance: 3/26/02 Time: 4:46 a.m./p.m.)
In final: __/__/02 Time: ____ a.m./p.m.

TO HARRIET MIERS' OFFICE:

(For staffing: 3/26/02 Time: 5 a.m./p.m.)
In final: __/__/02 Time: ____ a.m./p.m.

*INFO, INCLUDING STENCIL AND DISC, TO PRESS OFFICE:

Date: 3/27/02 Time: 10 a.m./p.m.
POSTED: __/__/02 Time: ____ a.m./p.m.

NOTIFICATIONS:

____ (Person/time) — NSC (#____), when appropriate -- Desk Officer; W.H. Situation Room -- x6-9425.

____ (Person/time) — Ginger Gregory, x6-2230, Legislative Affairs (for messages to the Congress)

____ (Person/time) — ____ (Other)

____ (Person/time) — ____ (Other)

OTHER INFORMATION:

THE PRESIDENT HAS SEEN
3-27-02

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THE WHITE HOUSE,

Memo to the Record

Date: 09/12/2016

Collection: Executive Clerk, Office of the

Series: Saunders, G. Timothy (Tim) - Bill Files

Hollinger ID: 85162

Folder Title: 03/27/2002 [H.R. 2356] [771156]

RE: [107th Congress 1st Session House of Representatives report, 107-16]

A copy of the report entitled "Bipartisan Campaign Reform Act of 2001" is included at this location in this folder. It was not scanned.

It can be viewed at https://www.congress.gov/107/crpt/hrpt131/CRPT-107hrpt131-pt.pdf. If this link is broken, please contact the George W. Bush Presidential Library archives for additional information regarding this item.

Original
w/ Bill
in Harritt's
office on
Credenza

Document Originally
Attached to
Following Page

513034

THE DIRECTOR

March 26, 2002

MEMORANDUM FOR THE PRESIDENT

'02 MAR 26 PM 7:53

SUBJECT: Enrolled Bill H.R. 2356 - Bipartisan Campaign Reform Act of 2002
Sponsors - Rep. Shays (R) Connecticut and Rep. Meehan (D) Massachusetts

Last Day for Action

April 6, 2002 - Saturday

Purpose

Makes changes to several areas of Federal election campaign law including: (1) prohibiting national committees of political parties from receiving "soft money" contributions; (2) raising limits on "hard money" contributions to candidates for Federal office; and (3) placing limits on the use of "issue ads" that mention the name or show the likeness of a clearly identified candidate for Federal office.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	No recommendation
Department of the Treasury	No objection (Informally)

Discussion

The most significant provisions of H.R. 2356 are summarized below. Other important provisions of the enrolled bill are detailed in an Attachment.

Soft Money Contributions

Prohibitions on Use of Soft Money by National Political Party Committees and Federal Candidates. The enrolled bill would prohibit national committees of political parties (including national congressional campaign committees) and entities directly or indirectly established, financed, maintained, or controlled by these committees from soliciting, receiving, spending, or transferring so-called "soft money," i.e., funds or any other things of value that are not subject to

the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act (FECA). In addition, with one exception, any amounts disbursed for Federal election activities by (a) a State, district, or local committee of a political party or (b) an association of candidates for or individuals holding State or local office would have to be made from funds subject to the limitations, prohibitions, and reporting requirements of FECA (i.e., "hard money"). Also, amounts spent by national, State, district, or local committees to raise funds used on Federal election activities would have to be made from hard money.

The enrolled bill would also prohibit Federal candidates for and individuals holding Federal office (and any entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of such candidates or officeholders) from raising or spending soft money in connection with Federal elections. This restriction would not apply to funds raised or spent on an election for State or local office by a Federal candidate or officeholder who is or was also a candidate for that State or local office, so long as reference is made only to that individual or other candidates for that State or local office. The enrolled bill would not prohibit a Federal candidate or officeholder from attending, speaking, or appearing as a featured guest at a fundraising event for a State, district, or local committee of a political party.

Prohibition of Political Party Contributions to Non-Profit Organizations. The enrolled bill would prohibit national, State, district, and local committees of political parties, or entities controlled by such committees, from making contributions to, or soliciting donations for, non-profit organizations (referred to as "501(c) organizations") that spend money in connection with Federal elections, or political organizations (referred to as "527 organizations") other than (a) political committees, (b) State, district, or local committees of a political party, or (c) authorized campaign committees of candidates for State or local office. This provision is intended to prevent political parties from collecting soft money and funneling it through other organizations engaged in Federal electioneering.

Exception for Certain Federal Election Activity. An exception to the soft money prohibition would allow State, district, and local committees to spend soft money on voter registration (in the last 120 days before a Federal election), get-out-the-vote activities, voter identification, and political party promotion subject to the following conditions: (1) the activity could not make reference to a candidate for Federal office; (2) no single donor could give more than $10,000 per year to a committee to spend on these activities; (3) funds spent on broadcast advertising would have to refer only to candidates for State or local office; (4) funds expended could not have been raised by a national committee or any other State, district, or local committee; and (5) hard money must also be allocated for these activities in accordance with Federal Election Commission (FEC) regulations. The committees would be required to raise funds for these activities, and these funds could not be transferred between State and national party organizations.

Federal candidates and officeholders would be permitted to solicit up to $20,000 per year from any individual specifically for voter registration and get-out-the-vote activities conducted by a non-profit organization. Candidates and officeholders would also be permitted to solicit unlimited funds for non-profit organizations whose primary purpose is not voter registration or get-out-the-vote activities, as long as the solicitation does not specify the use of the money.

Defraying Costs of Office Facilities. The enrolled bill would repeal the provision in current law which specifies that contributions to national or State committees of political parties to defray the costs of purchase or construction of an office building are not considered hard money. However, the enrolled bill would allow State and local committees to use soft money, subject to State laws, for these purposes. As a result, the effect of the enrolled bill would be to prohibit national committees from using soft money to purchase or construct office facilities.

Limits on Hard Money Contributions

The enrolled bill would generally increase current limits on hard money contributions at the national level. The maximum amount that an individual could give to a Federal candidate would be increased from $1,000 to $2,000 per two-year election cycle. The maximum amount that an individual could give to a national committee of a political party each year would be increased from $20,000 to $25,000. The maximum aggregate amount that an individual could give to parties, political action committees (PACs), and candidates combined per year would be increased from $25,000 per year to $95,000 per two-year election cycle, including not more than $37,500 per cycle to candidates, and not more than $57,500 for any other contributions, of which not more than $37,500 may be for political committees other than committees of national political parties. The amount that a senatorial campaign committee could contribute to a Senate candidate would be increased from $17,500 to $35,000. All of the limits increased by these provisions would be indexed for inflation and would apply to contributions made on or after January 1, 2003. The enrolled bill would also increase the amount that individuals may contribute to State committees of political parties from $5,000 to $10,000 per year.

Contributions to Candidates Facing Wealthy Opponents

H.R. 2356 would allow Senate and House candidates whose opponents spend large amounts of their personal wealth to raise larger contributions from individual donors by increasing the limits for these contributions under certain circumstances. For Senate candidates, the bill would establish three different threshold amounts. The exact threshold amounts in each State would vary according to the size of that State's voting age population. Specifically, when a wealthy candidate's personal spending is greater than $300,000 plus eight cents for every person of voting age in the candidate's State, the contribution limits on the opposing candidate would be three times the otherwise applicable limit. When a wealthy candidate's personal spending is greater than $600,000 plus 16 cents for every person of voting age in the candidate's State, the contribution limits on the opposing candidate would be six times the original limit. When a wealthy candidate's personal spending is greater than $1.5 million plus forty cents for every person of voting age in the candidate's State, the individual contribution limits to the opposing candidate would be six times the original limit, and limits on coordinated spending by a national or State committee of a political party would not apply.

The amount of additional contributions to and party expenditures for the non-wealthy candidate at all three levels would be limited to 110 percent of the "opposition personal funds amount," which would be determined by taking the wealthy opponent's personal wealth spending and subtracting the amount the non-wealthy candidate spends of his or her own personal wealth and one-half of the fundraising advantage (for fundraising done between June 30 and December 31 of the year before the election), if any, that the wealthy opponent may have over the non-wealthy candidate.

The enrolled bill would also establish other rules and limitations for use of funds under the increased limits, including: (1) a prohibition against raising contributions to repay loans that candidates may make to their own campaigns of over $250,000; and (2) a requirement that any funds received under the increased limits that are not spent within 50 days of having been received must be returned to the original contributor.

For House candidates, when a wealthy candidate's personal spending exceeds $350,000, the contribution limits on the opposing candidate would be three times the otherwise applicable limits. In addition, limits on party coordinated spending would be lifted for the opposing candidate. The total amount of additional contributions to and party expenditures for the non-wealthy candidate would be limited to 100 percent of the "opposition personal funds amount."

Limitations on Issue Advertising

Definition of Electioneering Communications ("Issue Ads"). Electioneering communications would be defined as broadcast, cable, or satellite communications that mention the name or show the likeness of a clearly identified candidate for Federal office within 60 days of a general, special, or run-off election or 30 days of a primary election, convention, or caucus, and which is targeted to the candidate's State (in the case of a candidate for the Senate) or district (in the case of a candidate for the House of Representatives). Under the enrolled bill, electioneering communications would not include news broadcasts, candidate debates or forums, sponsors' advertisements for debates and forums, and communications that expressly advocate the election or defeat of a clearly identified candidate. The FEC would be authorized to promulgate additional exceptions.

In addition, the enrolled bill would provide that, if the above definition of "electioneering communication" is found to be constitutionally insufficient to support regulation, then the term would instead be defined as any broadcast, cable, or satellite communication that promotes or attacks a candidate for Federal office and has no plausible meaning other an exhortation to vote for or against that candidate.

Prohibitions on Corporations and Unions. The enrolled bill would prohibit corporations and labor organizations from making disbursements for electioneering communications (60 days before a general election or 30 days before a primary election). Corporations and labor organizations could finance such advertisements through their political action committees. Non-profit organizations and political organizations would be permitted to pay for electioneering communications as long as: (1) they use money contributed by individuals who are U.S. citizens, U.S. nationals, or permanent legal residents; (2) they meet the disclosure requirements in the bill; (3) they pay for electioneering communications from an account to which only individuals can contribute and is separate from accounts containing funds derived from business activities or contributions from corporations or labor organizations; and (4) the communication is not targeted to the electorate of the candidate referenced in the communication.

Prohibitions on State and Local Candidates. The enrolled bill would prohibit candidates for State or local office from spending soft money on electioneering communications (60 days before a general election or 30 days before a primary election). The bill would exempt communications that refer to a Federal candidate who is also a candidate for State or local office.

Requirements for Federal Candidates to Receive Lowest Broadcast Ad Rates. The enrolled bill would provide that a Federal candidate is not entitled to receive the lowest unit rate for broadcast ads available under current law unless the candidate certifies that he or she will only make a direct reference to another candidate for the same office if he or she includes at the end of the ad, for at least four seconds, a clearly identifiable photographic or similar image (for a television ad) and a statement of candidate approval (clearly readable on TV and spoken by the candidate on radio). Failure to include the required statement of candidate approval would make the candidate ineligible for the lowest unit rate for any portion of the forty-five days preceding the date of a primary or primary runoff election or the sixty days preceding the date of a general or special election that occurs on or after the date of the broadcast.

Requirements for Identification of Advertising Sponsors. The enrolled bill would amend requirements in current law that the sponsors of election-related advertising identify themselves in their ads. These modifications would include: (1) applying the requirements to any disbursement for public political advertising, including electioneering communications; (2) requiring the street address, telephone number, or Internet address of persons other than candidates who purchase public political advertising to appear in the ad; (3) requiring candidate radio ads to include a statement by the candidate that he or she has approved the communication; (4) requiring a television ad to include the same audio statement along with a picture of the candidate or a full screen view of the candidate making the statement, and a written version of that statement that appears for at least four seconds; and (5) requiring entities that run ads not authorized by a candidate to include an audio statement that the entity "is responsible for the content of this advertising."

Coordinated Communications as Contributions. In addition, the enrolled bill would specify that disbursements for electioneering communications that are coordinated with candidates or with political parties would be deemed to be contributions to the candidate supported by the communication or that candidate's party and subject to the appropriate limitations on these contributions.

Independent and Coordinated Expenditures

H.R. 2356 would establish reporting requirements for independent expenditures, defined as expenditures expressly advocating the election or defeat of a clearly defined candidate that is not made at the request or suggestion of, or with the cooperation of, or in consultation with, another candidate or an authorized committee or agent of that candidate. (This definition is in contrast to "coordinated" expenditures, which are made at the request or suggestion of, or with the cooperation of, or in consultation with any candidate or an authorized committee or agent of such candidate.) Any person or group, including a political committee, that makes independent expenditures totaling $10,000 or more prior to the 20th day before an election would be required to file a report with the FEC within 48 hours of the money being spent or contracted to be spent. Additional reports would have to be filed within 48 hours of each additional aggregate independent expenditure of $10,000 or more. In the last 20 days before an election, a report would have to be filed within 24 hours of each independent expenditure totaling more than $1,000. The enrolled bill would clarify that, for purposes of determining whether these reports are filed within 24 hours, they would be considered filed when they are actually received by the FEC or by any other recipient to whom the report is required to submitted.

The enrolled bill would require political parties to choose between making independent or coordinated expenditures once the party's candidate has been nominated by prohibiting a political party from making: (1) coordinated expenditures after it makes any independent expenditure; and (2) independent expenditures after it makes any coordinated expenditure. For purposes of this requirement, all national and State party committees would be considered to be a single political committee, so that, for example, a national party could not make an independent expenditure if a State party has already made a coordinated expenditure with respect to a particular candidate.

The enrolled bill would also provide that an expenditure made by an entity, other than a candidate, in coordination with a political party will be treated as a contribution to the party committee. In addition, the FEC's current regulations on coordinated communications paid for by persons other than candidates would be repealed 270 days after enactment, at which time FEC would be required to have promulgated new regulations on coordination between candidates or parties and outside groups, addressing a number of specified situations where coordination might be found. These regulations could not require agreement or formal collaboration to establish coordination.

Effective Dates and Regulations

Except for provisions having to do with severability and judicial review, and the increased limits on hard money contributions to national, State, and local campaigns, the enrolled bill would take effect on November 6, 2002 (the day after the 2002 general election). The new hard money limits would take effect on January 1, 2003. The severability and judicial review provisions would take effect upon enactment. Prior to January 1, 2003, national parties would be allowed to spend any remaining soft money that was received prior to November 6, 2002, only for debts or obligations incurred in connection with the 2002 election or any previous election (including any runoff or recount resulting from an election that occurred before that date), but only for expenses for which it would otherwise be permissible to spend soft money. No soft money could be spent by a national party on office buildings or facilities after November 6, 2002. Other provisions in the bill, including the prohibitions and penalties described above, would not apply to runoff elections or recounts resulting from an election held before November 6, 2002.

The FEC would be required to promulgate regulations no later than 90 days after the enactment of this bill to carry out the new hard money and soft money provisions in the bill, and would be required to promulgate regulations no later than 270 days after the enactment of this bill to carry out the remainder of the bill that is under the FEC's jurisdiction.

Severability and Judicial Review

H.R. 2356 would provide that, if any provision of the bill, or its application to any person or circumstance, is held unconstitutional, the remainder of the enrolled bill would not be affected by the holding.

The enrolled bill would also provide that, if any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of the bill, the action would have to be filed in the U.S. District Court for the District of Columbia and heard there by a three-judge court. A copy of the complaint would have to be delivered promptly to the Clerk of the House and the Secretary of the Senate. A final decision would be reviewable only by appeal directly to the U.S. Supreme Court. The appeal would have to be taken by the filing of a notice of appeal within 10 days of the entry of a final decision and the filing of a jurisdictional statement within 30 days of the entry of a final decision. The District Court and the Supreme Court would be required to expedite the disposition of the case to the greatest possible extent. Under the enrolled bill, these expedited procedures would automatically apply to actions filed on or before December 31, 2006. After that date, the expedited procedures would only apply if the person filing an action chooses to have these procedures applied to the action.

The enrolled bill would authorize any member of Congress to bring an action for declaratory or injunctive relief to challenge the constitutionality of any provision of the enrolled bill. In addition, in any action challenging the constitutionality of the bill, any member of Congress would have the right to intervene in support of or in opposition to a party to the case. In order to avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action could make any orders it considers necessary, including orders to require that similar positions be filed jointly or be represented by a single attorney at oral arguments.

The severability and judicial review provisions would take effect upon enactment of the enrolled bill. As a result, actions could be brought challenging the constitutionality of certain provisions of the bill before they become effective.

Conclusion and Recommendations

We recommend approval of H.R. 2356, which passed the House by a vote of 240-189 and the Senate by 60-40.

M E Daniels, Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

Attachment

Other Provisions of H.R. 2356

Miscellaneous Prohibitions

Foreign Nationals. The enrolled bill would prohibit foreign nationals, except for permanent resident aliens, from directly or indirectly making any contribution to a committee of a political party or any contribution in connection with a Federal, State or local election, including any electioneering communications. The enrolled bill would also prohibit anyone from soliciting, accepting, or receiving these contributions from foreign nationals other than permanent resident aliens. This would clarify that the ban on contributions by foreign nationals applies to soft money, as well as hard money, donations. The enrolled bill would clarify that the prohibition on contributions from foreign nationals does not include U.S. nationals. A U.S. national is a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States. The enrolled bill would prohibit a Presidential Inaugural Committee from accepting any donations from foreign nationals.

Activity in Federal Offices. The enrolled bill would specify that it is unlawful for any person to solicit or receive a campaign contribution for a Federal, State, or local election from a person located in a room or building used in the discharge of official duties by a Federal official. It would also specify that it is unlawful for any Federal official (including the President, Vice President, and members of Congress) to solicit or receive a campaign contribution for a Federal, State, or local election from any person while that official is located in a room or building used in the discharge of official duties by a Federal official. Violation of these prohibitions would be punishable by a fine of no more than $5,000, a prison term of no more than 3 years, or both.

Personal Use of Campaign Funds. The enrolled bill would codify current FEC regulations prohibiting the personal use of campaign funds by Federal candidates. Contributions would be considered converted to personal use if they are used for an expense that would exist irrespective of the individual's campaign or duties as a Federal officeholder, including, among other expenses, home mortgage or rent, clothing, vacation expenses, tuition payments, noncampaign-related automobile expenses, and admission to a sporting event, concert, or other form of entertainment not associated with an election campaign.

Fraudulent Misrepresentation. The enrolled bill would prohibit an entity from fraudulently misrepresenting that it is speaking, writing, or otherwise acting on behalf of a candidate or political party for the purpose of soliciting campaign contributions.

Individuals Under Age 18. The bill would prohibit individuals 17 years old or younger from making contributions to political candidates or political party committees.

Disclosure Requirements

Political Party Committees. H.R. 2356 would require national committees of political parties (including congressional campaign committees) to report all receipts and disbursements for reporting periods established under the Federal Election Campaign Act. State, district, and local political party committees would be required to report receipts and disbursements of soft money permitted by the bill (i.e., spending of capped soft money on certain voter registration and get-out-the-vote activities), unless the total sum of these receipts and disbursements is less than $5,000 in a calendar year. If a committee covered by these provisions has covered receipts or expenditures from or to any entity in excess of $200 for any calendar year, the committee would be required to separately itemize its reporting for that entity in the manner prescribed by the Federal Election Campaign Act.

National party committees would be required to file certain reports monthly in all years, instead of having a choice between monthly and quarterly reports.

Federal Candidates. The enrolled bill would require the FEC to promulgate standards for software vendors to develop software that would allow: (1) candidates to easily record information on receipts and expenditures when they occur; (2) the recorded information to be transmitted immediately to the FEC; and (3) FEC to post the information on the Internet immediately upon receipt. The FEC would be required to make a copy of the software available to each candidate required to report electronically, at which point each candidate would be required to use the software. As soon as practicable, FEC would be required to post information received electronically on the Internet.

The enrolled bill would require candidates to file certain reports quarterly instead of semi-annually in non-election years.

Presidential Inaugural Committees. The enrolled bill would require a Presidential Inaugural Committee to file a report with the FEC within 90 days of the inaugural ceremony on any donations to the committee of $200 or more.

Federal Election Commission. The enrolled bill would require the FEC to maintain a central site on the Internet to make accessible to the public all publicly available reports filed with the FEC under the Federal Election Campaign Act. Other Federal agencies receiving election-related information that must be made public would be required to coordinate with FEC to make this information available for posting on the FEC website in a timely manner. The enrolled bill would require all reports filed with the FEC under the Federal Election Campaign Act to be posted on the Internet and available for inspection within 48 hours of receipt, or within 24 hours for reports filed electronically.

Broadcast Stations. The enrolled bill would require radio and television broadcasting stations to maintain and make available for public inspection records of requests to purchase broadcast time by candidates or by other entities intending to communicate a message relating to any political matter of national importance. These records would have to include the name of the candidate or other entity requesting to purchase the time, whether the request is accepted, the date and time that the communication aired, and the rates charged for the broadcast.

Specific Requirements for Disclosure Statements for Electioneering Communications. H.R. 2356 would require any entity that spends over $10,000 in a calendar year for the costs of producing and airing electioneering communications to file a disclosure statement within 24 hours after reaching that expenditure amount and again within 24 hours of each day on which spending exceeds an additional aggregate of $10,000. A disclosure statement would have to identify: (1) the entity making the disbursement; (2) the principal place of business of that entity; (3) the amount of each disbursement of over $200 and the identity of the entity receiving the disbursement; and (4) the election to which the communication pertains and the candidate or candidates identified. If the disbursement is made from a segregated account to which only individuals who are U.S. citizens, U.S. nationals, or lawful permanent residents have contributed only for electioneering communications, the disclosure statement would have to include the names and addresses of all contributors of $1,000 or more to that account since the beginning of the preceding calendar year. If the disbursement is not made from such a segregated account, then the names and addresses of all donors of $1,000 or more to that account since the beginning of the preceding calendar year would have to be disclosed. Money in the segregated account could be used for purposes other than electioneering communications. The enrolled bill would require the Federal Communications Commission (FCC) to compile and maintain any information the FEC may require to carry out these disclosure requirements and make such information available to the public on the FCC's website.

Penalties

Under current law, violations of Federal campaign financing laws involving contributions of at least $2,000 are punishable by a fine of no more than the greater of $25,000 or 300 percent of the contribution in question, a prison term of no more than one year, or both. The enrolled bill would provide that violations of at least $2,000 but less than $25,000 would be punishable by a fine of no more than $100,000, a prison term of no more than one year, or both. Violations totaling $25,000 or more would be punishable by a fine of no more than $250,000, a prison term of no more than five years, or both.

The enrolled bill would also extend the statute of limitations for violations of Federal campaign laws from three to five years and would make the extension applicable to violations committed on or after the enrolled bill's effective date.

H.R. 2356 would direct the U.S. Sentencing Commission to: (1) within 90 days of the effective date of the bill, or within 90 days after a majority of the members of the Commission are appointed and holding office (whichever is sooner), promulgate guidelines, or amend existing guidelines, for penalties under Federal campaign and election laws; and (2) submit to Congress an explanation of any such guidelines and any legislative or administrative recommendations regarding enforcement. The bill would specify considerations for such guidelines, including that they reflect the serious nature of violations of Federal campaign laws and the need for aggressive and appropriate law enforcement action to prevent violations.

The enrolled bill would increase the maximum civil penalty that can be assessed by the FEC for a violation of the conduit contribution prohibition (i.e., knowing and willful violation of the ban on contributions made in the name of another) from the greater of $10,000 or 200 percent of the contribution involved to between 300 percent of the amount involved and the greater of $50,000 or 1,000 percent of the amount involved. The bill would also increase the maximum term of imprisonment for a criminal violation of the conduit contribution ban involving amounts of between $10,000 and $25,000 from one to two years, and would increase the maximum criminal penalty to the greater of $50,000 or 1,000 percent of amount involved. The minimum criminal penalty would be 300 percent of the amount involved.

Public Financing Study

The enrolled bill would direct General Accounting Office (GAO) to conduct a study of the "clean money, clean election systems" in Arizona and Maine, which provide for public financing, in whole or in part, of election campaigns. GAO would be required to report to the Congress within one year of the enrolled bill's enactment on the effect of these State laws on the 2000 elections in Arizona and Maine.

Linda

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

March 26, 2002

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MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2356 - Bipartisan Campaign Reform Act of 2002
Sponsors - Rep. Shays (R) Connecticut and Rep. Meehan (D) Massachusetts

Last Day for Action

April 6, 2002 - Saturday

Purpose

Makes changes to several areas of Federal election campaign law including: (1) prohibiting national committees of political parties from receiving "soft money" contributions; (2) raising limits on "hard money" contributions to candidates for Federal office; and (3) placing limits on the use of "issue ads" that mention the name or show the likeness of a clearly identified candidate for Federal office.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	No recommendation
Department of the Treasury	No objection (Informally)

Discussion

The most significant provisions of H.R. 2356 are summarized below. Other important provisions of the enrolled bill are detailed in an Attachment.

Soft Money Contributions

Prohibitions on Use of Soft Money by National Political Party Committees and Federal Candidates. The enrolled bill would prohibit national committees of political parties (including national congressional campaign committees) and entities directly or indirectly established, financed, maintained, or controlled by these committees from soliciting, receiving, spending, or transferring so-called "soft money," i.e., funds or any other things of value that are not subject to

the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act (FECA). In addition, with one exception, any amounts disbursed for Federal election activities by (a) a State, district, or local committee of a political party or (b) an association of candidates for or individuals holding State or local office would have to be made from funds subject to the limitations, prohibitions, and reporting requirements of FECA (i.e., "hard money"). Also, amounts spent by national, State, district, or local committees to raise funds used on Federal election activities would have to be made from hard money.

The enrolled bill would also prohibit Federal candidates for and individuals holding Federal office (and any entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of such candidates or officeholders) from raising or spending soft money in connection with Federal elections. This restriction would not apply to funds raised or spent on an election for State or local office by a Federal candidate or officeholder who is or was also a candidate for that State or local office, so long as reference is made only to that individual or other candidates for that State or local office. The enrolled bill would not prohibit a Federal candidate or officeholder from attending, speaking, or appearing as a featured guest at a fundraising event for a State, district, or local committee of a political party.

Prohibition of Political Party Contributions to Non-Profit Organizations. The enrolled bill would prohibit national, State, district, and local committees of political parties, or entities controlled by such committees, from making contributions to, or soliciting donations for, non-profit organizations (referred to as "501(c) organizations") that spend money in connection with Federal elections, or political organizations (referred to as "527 organizations") other than (a) political committees, (b) State, district, or local committees of a political party, or (c) authorized campaign committees of candidates for State or local office. This provision is intended to prevent political parties from collecting soft money and funneling it through other organizations engaged in Federal electioneering.

Exception for Certain Federal Election Activity. An exception to the soft money prohibition would allow State, district, and local committees to spend soft money on voter registration (in the last 120 days before a Federal election), get-out-the-vote activities, voter identification, and political party promotion subject to the following conditions: (1) the activity could not make reference to a candidate for Federal office; (2) no single donor could give more than $10,000 per year to a committee to spend on these activities; (3) funds spent on broadcast advertising would have to refer only to candidates for State or local office; (4) funds expended could not have been raised by a national committee or any other State, district, or local committee; and (5) hard money must also be allocated for these activities in accordance with Federal Election Commission (FEC) regulations. The committees would be required to raise funds for these activities, and these funds could not be transferred between State and national party organizations.

Federal candidates and officeholders would be permitted to solicit up to $20,000 per year from any individual specifically for voter registration and get-out-the-vote activities conducted by a non-profit organization. Candidates and officeholders would also be permitted to solicit unlimited funds for non-profit organizations whose primary purpose is not voter registration or get-out-the-vote activities, as long as the solicitation does not specify the use of the money.

Defraying Costs of Office Facilities. The enrolled bill would repeal the provision in current law which specifies that contributions to national or State committees of political parties to defray the costs of purchase or construction of an office building are not considered hard money. However, the enrolled bill would allow State and local committees to use soft money, subject to State laws, for these purposes. As a result, the effect of the enrolled bill would be to prohibit national committees from using soft money to purchase or construct office facilities.

Limits on Hard Money Contributions

The enrolled bill would generally increase current limits on hard money contributions at the national level. The maximum amount that an individual could give to a Federal candidate would be increased from $1,000 to $2,000 per two-year election cycle. The maximum amount that an individual could give to a national committee of a political party each year would be increased from $20,000 to $25,000. The maximum aggregate amount that an individual could give to parties, political action committees (PACs), and candidates combined per year would be increased from $25,000 per year to $95,000 per two-year election cycle, including not more than $37,500 per cycle to candidates, and not more than $57,500 for any other contributions, of which not more than $37,500 may be for political committees other than committees of national political parties. The amount that a senatorial campaign committee could contribute to a Senate candidate would be increased from $17,500 to $35,000. All of the limits increased by these provisions would be indexed for inflation and would apply to contributions made on or after January 1, 2003. The enrolled bill would also increase the amount that individuals may contribute to State committees of political parties from $5,000 to $10,000 per year.

Contributions to Candidates Facing Wealthy Opponents

H.R. 2356 would allow Senate and House candidates whose opponents spend large amounts of their personal wealth to raise larger contributions from individual donors by increasing the limits for these contributions under certain circumstances. For Senate candidates, the bill would establish three different threshold amounts. The exact threshold amounts in each State would vary according to the size of that State's voting age population. Specifically, when a wealthy candidate's personal spending is greater than $300,000 plus eight cents for every person of voting age in the candidate's State, the contribution limits on the opposing candidate would be three times the otherwise applicable limit. When a wealthy candidate's personal spending is greater than $600,000 plus 16 cents for every person of voting age in the candidate's State, the contribution limits on the opposing candidate would be six times the original limit. When a wealthy candidate's personal spending is greater than $1.5 million plus forty cents for every person of voting age in the candidate's State, the individual contribution limits to the opposing candidate would be six times the original limit, and limits on coordinated spending by a national or State committee of a political party would not apply.

The amount of additional contributions to and party expenditures for the non-wealthy candidate at all three levels would be limited to 110 percent of the "opposition personal funds amount," which would be determined by taking the wealthy opponent's personal wealth spending and subtracting the amount the non-wealthy candidate spends of his or her own personal wealth and one-half of the fundraising advantage (for fundraising done between June 30 and December 31 of the year before the election), if any, that the wealthy opponent may have over the non-wealthy candidate.

The enrolled bill would also establish other rules and limitations for use of funds under the increased limits, including: (1) a prohibition against raising contributions to repay loans that candidates may make to their own campaigns of over $250,000; and (2) a requirement that any funds received under the increased limits that are not spent within 50 days of having been received must be returned to the original contributor.

For House candidates, when a wealthy candidate's personal spending exceeds $350,000, the contribution limits on the opposing candidate would be three times the otherwise applicable limits. In addition, limits on party coordinated spending would be lifted for the opposing candidate. The total amount of additional contributions to and party expenditures for the non-wealthy candidate would be limited to 100 percent of the "opposition personal funds amount."

Limitations on Issue Advertising

Definition of Electioneering Communications ("Issue Ads"). Electioneering communications would be defined as broadcast, cable, or satellite communications that mention the name or show the likeness of a clearly identified candidate for Federal office within 60 days of a general, special, or run-off election or 30 days of a primary election, convention, or caucus, and which is targeted to the candidate's State (in the case of a candidate for the Senate) or district (in the case of a candidate for the House of Representatives). Under the enrolled bill, electioneering communications would not include news broadcasts, candidate debates or forums, sponsors' advertisements for debates and forums, and communications that expressly advocate the election or defeat of a clearly identified candidate. The FEC would be authorized to promulgate additional exceptions.

In addition, the enrolled bill would provide that, if the above definition of "electioneering communication" is found to be constitutionally insufficient to support regulation, then the term would instead be defined as any broadcast, cable, or satellite communication that promotes or attacks a candidate for Federal office and has no plausible meaning other an exhortation to vote for or against that candidate.

Prohibitions on Corporations and Unions. The enrolled bill would prohibit corporations and labor organizations from making disbursements for electioneering communications (60 days before a general election or 30 days before a primary election). Corporations and labor organizations could finance such advertisements through their political action committees. Non-profit organizations and political organizations would be permitted to pay for electioneering communications as long as: (1) they use money contributed by individuals who are U.S. citizens, U.S. nationals, or permanent legal residents; (2) they meet the disclosure requirements in the bill; (3) they pay for electioneering communications from an account to which only individuals can contribute and is separate from accounts containing funds derived from business activities or contributions from corporations or labor organizations; and (4) the communication is not targeted to the electorate of the candidate referenced in the communication.

Prohibitions on State and Local Candidates. The enrolled bill would prohibit candidates for State or local office from spending soft money on electioneering communications (60 days before a general election or 30 days before a primary election). The bill would exempt communications that refer to a Federal candidate who is also a candidate for State or local office.

Requirements for Federal Candidates to Receive Lowest Broadcast Ad Rates. The enrolled bill would provide that a Federal candidate is not entitled to receive the lowest unit rate for broadcast ads available under current law unless the candidate certifies that he or she will only make a direct reference to another candidate for the same office if he or she includes at the end of the ad, for at least four seconds, a clearly identifiable photographic or similar image (for a television ad) and a statement of candidate approval (clearly readable on TV and spoken by the candidate on radio). Failure to include the required statement of candidate approval would make the candidate ineligible for the lowest unit rate for any portion of the forty-five days preceding the date of a primary or primary runoff election or the sixty days preceding the date of a general or special election that occurs on or after the date of the broadcast.

Requirements for Identification of Advertising Sponsors. The enrolled bill would amend requirements in current law that the sponsors of election-related advertising identify themselves in their ads. These modifications would include: (1) applying the requirements to any disbursement for public political advertising, including electioneering communications; (2) requiring the street address, telephone number, or Internet address of persons other than candidates who purchase public political advertising to appear in the ad; (3) requiring candidate radio ads to include a statement by the candidate that he or she has approved the communication; (4) requiring a television ad to include the same audio statement along with a picture of the candidate or a full screen view of the candidate making the statement, and a written version of that statement that appears for at least four seconds; and (5) requiring entities that run ads not authorized by a candidate to include an audio statement that the entity "is responsible for the content of this advertising."

Coordinated Communications as Contributions. In addition, the enrolled bill would specify that disbursements for electioneering communications that are coordinated with candidates or with political parties would be deemed to be contributions to the candidate supported by the communication or that candidate's party and subject to the appropriate limitations on these contributions.

Independent and Coordinated Expenditures

H.R. 2356 would establish reporting requirements for independent expenditures, defined as expenditures expressly advocating the election or defeat of a clearly defined candidate that is not made at the request or suggestion of, or with the cooperation of, or in consultation with, another candidate or an authorized committee or agent of that candidate. (This definition is in contrast to "coordinated" expenditures, which are made at the request or suggestion of, or with the cooperation of, or in consultation with any candidate or an authorized committee or agent of such candidate.) Any person or group, including a political committee, that makes independent expenditures totaling $10,000 or more prior to the 20th day before an election would be required to file a report with the FEC within 48 hours of the money being spent or contracted to be spent. Additional reports would have to be filed within 48 hours of each additional aggregate independent expenditure of $10,000 or more. In the last 20 days before an election, a report would have to be filed within 24 hours of each independent expenditure totaling more than $1,000. The enrolled bill would clarify that, for purposes of determining whether these reports are filed within 24 hours, they would be considered filed when they are actually received by the FEC or by any other recipient to whom the report is required to submitted.

The enrolled bill would require political parties to choose between making independent or coordinated expenditures once the party's candidate has been nominated by prohibiting a political party from making: (1) coordinated expenditures after it makes any independent expenditure; and (2) independent expenditures after it makes any coordinated expenditure. For purposes of this requirement, all national and State party committees would be considered to be a single political committee, so that, for example, a national party could not make an independent expenditure if a State party has already made a coordinated expenditure with respect to a particular candidate.

The enrolled bill would also provide that an expenditure made by an entity, other than a candidate, in coordination with a political party will be treated as a contribution to the party committee. In addition, the FEC's current regulations on coordinated communications paid for by persons other than candidates would be repealed 270 days after enactment, at which time FEC would be required to have promulgated new regulations on coordination between candidates or parties and outside groups, addressing a number of specified situations where coordination might be found. These regulations could not require agreement or formal collaboration to establish coordination.

Effective Dates and Regulations

Except for provisions having to do with severability and judicial review, and the increased limits on hard money contributions to national, State, and local campaigns, the enrolled bill would take effect on November 6, 2002 (the day after the 2002 general election). The new hard money limits would take effect on January 1, 2003. The severability and judicial review provisions would take effect upon enactment. Prior to January 1, 2003, national parties would be allowed to spend any remaining soft money that was received prior to November 6, 2002, only for debts or obligations incurred in connection with the 2002 election or any previous election (including any runoff or recount resulting from an election that occurred before that date), but only for expenses for which it would otherwise be permissible to spend soft money. No soft money could be spent by a national party on office buildings or facilities after November 6, 2002. Other provisions in the bill, including the prohibitions and penalties described above, would not apply to runoff elections or recounts resulting from an election held before November 6, 2002.

The FEC would be required to promulgate regulations no later than 90 days after the enactment of this bill to carry out the new hard money and soft money provisions in the bill, and would be required to promulgate regulations no later than 270 days after the enactment of this bill to carry out the remainder of the bill that is under the FEC's jurisdiction.

Severability and Judicial Review

H.R. 2356 would provide that, if any provision of the bill, or its application to any person or circumstance, is held unconstitutional, the remainder of the enrolled bill would not be affected by the holding.

The enrolled bill would also provide that, if any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of the bill, the action would have to be filed in the U.S. District Court for the District of Columbia and heard there by a three-judge court. A copy of the complaint would have to be delivered promptly to the Clerk of the House and the Secretary of the Senate. A final decision would be reviewable only by appeal directly to the U.S. Supreme Court. The appeal would have to be taken by the filing of a notice of appeal within 10 days of the entry of a final decision and the filing of a jurisdictional statement within 30 days of the entry of a final decision. The District Court and the Supreme Court would be required to expedite the disposition of the case to the greatest possible extent. Under the enrolled bill, these expedited procedures would automatically apply to actions filed on or before December 31, 2006. After that date, the expedited procedures would only apply if the person filing an action chooses to have these procedures applied to the action.

The enrolled bill would authorize any member of Congress to bring an action for declaratory or injunctive relief to challenge the constitutionality of any provision of the enrolled bill. In addition, in any action challenging the constitutionality of the bill, any member of Congress would have the right to intervene in support of or in opposition to a party to the case. In order to avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action could make any orders it considers necessary, including orders to require that similar positions be filed jointly or be represented by a single attorney at oral arguments.

The severability and judicial review provisions would take effect upon enactment of the enrolled bill. As a result, actions could be brought challenging the constitutionality of certain provisions of the bill before they become effective.

Conclusion and Recommendations

We recommend approval of H.R. 2356, which passed the House by a vote of 240-189 and the Senate by 60-40.

M E Daniels, Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

Attachment

Other Provisions of H.R. 2356

Miscellaneous Prohibitions

Foreign Nationals. The enrolled bill would prohibit foreign nationals, except for permanent resident aliens, from directly or indirectly making any contribution to a committee of a political party or any contribution in connection with a Federal, State or local election, including any electioneering communications. The enrolled bill would also prohibit anyone from soliciting, accepting, or receiving these contributions from foreign nationals other than permanent resident aliens. This would clarify that the ban on contributions by foreign nationals applies to soft money, as well as hard money, donations. The enrolled bill would clarify that the prohibition on contributions from foreign nationals does not include U.S. nationals. A U.S. national is a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States. The enrolled bill would prohibit a Presidential Inaugural Committee from accepting any donations from foreign nationals.

Activity in Federal Offices. The enrolled bill would specify that it is unlawful for any person to solicit or receive a campaign contribution for a Federal, State, or local election from a person located in a room or building used in the discharge of official duties by a Federal official. It would also specify that it is unlawful for any Federal official (including the President, Vice President, and members of Congress) to solicit or receive a campaign contribution for a Federal, State, or local election from any person while that official is located in a room or building used in the discharge of official duties by a Federal official. Violation of these prohibitions would be punishable by a fine of no more than $5,000, a prison term of no more than 3 years, or both.

Personal Use of Campaign Funds. The enrolled bill would codify current FEC regulations prohibiting the personal use of campaign funds by Federal candidates. Contributions would be considered converted to personal use if they are used for an expense that would exist irrespective of the individual's campaign or duties as a Federal officeholder, including, among other expenses, home mortgage or rent, clothing, vacation expenses, tuition payments, noncampaign-related automobile expenses, and admission to a sporting event, concert, or other form of entertainment not associated with an election campaign.

Fraudulent Misrepresentation. The enrolled bill would prohibit an entity from fraudulently misrepresenting that it is speaking, writing, or otherwise acting on behalf of a candidate or political party for the purpose of soliciting campaign contributions.

Individuals Under Age 18. The bill would prohibit individuals 17 years old or younger from making contributions to political candidates or political party committees.

Disclosure Requirements

Political Party Committees. H.R. 2356 would require national committees of political parties (including congressional campaign committees) to report all receipts and disbursements for reporting periods established under the Federal Election Campaign Act. State, district, and local political party committees would be required to report receipts and disbursements of soft money permitted by the bill (i.e., spending of capped soft money on certain voter registration and get-out-the-vote activities), unless the total sum of these receipts and disbursements is less than $5,000 in a calendar year. If a committee covered by these provisions has covered receipts or expenditures from or to any entity in excess of $200 for any calendar year, the committee would be required to separately itemize its reporting for that entity in the manner prescribed by the Federal Election Campaign Act.

National party committees would be required to file certain reports monthly in all years, instead of having a choice between monthly and quarterly reports.

Federal Candidates. The enrolled bill would require the FEC to promulgate standards for software vendors to develop software that would allow: (1) candidates to easily record information on receipts and expenditures when they occur; (2) the recorded information to be transmitted immediately to the FEC; and (3) FEC to post the information on the Internet immediately upon receipt. The FEC would be required to make a copy of the software available to each candidate required to report electronically, at which point each candidate would be required to use the software. As soon as practicable, FEC would be required to post information received electronically on the Internet.

The enrolled bill would require candidates to file certain reports quarterly instead of semi-annually in non-election years.

Presidential Inaugural Committees. The enrolled bill would require a Presidential Inaugural Committee to file a report with the FEC within 90 days of the inaugural ceremony on any donations to the committee of $200 or more.

Federal Election Commission. The enrolled bill would require the FEC to maintain a central site on the Internet to make accessible to the public all publicly available reports filed with the FEC under the Federal Election Campaign Act. Other Federal agencies receiving election-related information that must be made public would be required to coordinate with FEC to make this information available for posting on the FEC website in a timely manner. The enrolled bill would require all reports filed with the FEC under the Federal Election Campaign Act to be posted on the Internet and available for inspection within 48 hours of receipt, or within 24 hours for reports filed electronically.

Broadcast Stations. The enrolled bill would require radio and television broadcasting stations to maintain and make available for public inspection records of requests to purchase broadcast time by candidates or by other entities intending to communicate a message relating to any political matter of national importance. These records would have to include the name of the candidate or other entity requesting to purchase the time, whether the request is accepted, the date and time that the communication aired, and the rates charged for the broadcast.

Specific Requirements for Disclosure Statements for Electioneering Communications. H.R. 2356 would require any entity that spends over $10,000 in a calendar year for the costs of producing and airing electioneering communications to file a disclosure statement within 24 hours after reaching that expenditure amount and again within 24 hours of each day on which spending exceeds an additional aggregate of $10,000. A disclosure statement would have to identify: (1) the entity making the disbursement; (2) the principal place of business of that entity; (3) the amount of each disbursement of over $200 and the identity of the entity receiving the disbursement; and (4) the election to which the communication pertains and the candidate or candidates identified. If the disbursement is made from a segregated account to which only individuals who are U.S. citizens, U.S. nationals, or lawful permanent residents have contributed only for electioneering communications, the disclosure statement would have to include the names and addresses of all contributors of $1,000 or more to that account since the beginning of the preceding calendar year. If the disbursement is not made from such a segregated account, then the names and addresses of all donors of $1,000 or more to that account since the beginning of the preceding calendar year would have to be disclosed. Money in the segregated account could be used for purposes other than electioneering communications. The enrolled bill would require the Federal Communications Commission (FCC) to compile and maintain any information the FEC may require to carry out these disclosure requirements and make such information available to the public on the FCC's website.

Penalties

Under current law, violations of Federal campaign financing laws involving contributions of at least $2,000 are punishable by a fine of no more than the greater of $25,000 or 300 percent of the contribution in question, a prison term of no more than one year, or both. The enrolled bill would provide that violations of at least $2,000 but less than $25,000 would be punishable by a fine of no more than $100,000, a prison term of no more than one year, or both. Violations totaling $25,000 or more would be punishable by a fine of no more than $250,000, a prison term of no more than five years, or both.

The enrolled bill would also extend the statute of limitations for violations of Federal campaign laws from three to five years and would make the extension applicable to violations committed on or after the enrolled bill's effective date.

H.R. 2356 would direct the U.S. Sentencing Commission to: (1) within 90 days of the effective date of the bill, or within 90 days after a majority of the members of the Commission are appointed and holding office (whichever is sooner), promulgate guidelines, or amend existing guidelines, for penalties under Federal campaign and election laws; and (2) submit to Congress an explanation of any such guidelines and any legislative or administrative recommendations regarding enforcement. The bill would specify considerations for such guidelines, including that they reflect the serious nature of violations of Federal campaign laws and the need for aggressive and appropriate law enforcement action to prevent violations.

The enrolled bill would increase the maximum civil penalty that can be assessed by the FEC for a violation of the conduit contribution prohibition (i.e., knowing and willful violation of the ban on contributions made in the name of another) from the greater of $10,000 or 200 percent of the contribution involved to between 300 percent of the amount involved and the greater of $50,000 or 1,000 percent of the amount involved. The bill would also increase the maximum term of imprisonment for a criminal violation of the conduit contribution ban involving amounts of between $10,000 and $25,000 from one to two years, and would increase the maximum criminal penalty to the greater of $50,000 or 1,000 percent of amount involved. The minimum criminal penalty would be 300 percent of the amount involved.

Public Financing Study

The enrolled bill would direct General Accounting Office (GAO) to conduct a study of the "clean money, clean election systems" in Arizona and Maine, which provide for public financing, in whole or in part, of election campaigns. GAO would be required to report to the Congress within one year of the enrolled bill's enactment on the effect of these State laws on the 2000 elections in Arizona and Maine.

H. R. 2356

One Hundred Seventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday, the twenty-third day of January, two thousand and two

An Act

To amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Bipartisan Campaign Reform Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

"(B) the rate charged for the broadcast time;

"(C) the date and time on which the communication is aired;

"(D) the class of time that is purchased;

"(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

"(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

"(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

"(3) TIME TO MAINTAIN FILE.—The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.".

Speaker ~~of the House of Representatives.~~
pro tempore

~~Vice President of the United States and~~
President of the Senate pro tempore.

3/27/02

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release March 27, 2002

STATEMENT BY THE PRESIDENT

Today I have signed into law H.R. 2356, the "Bipartisan Campaign Reform Act of 2002." I believe that this legislation, although far from perfect, will improve the current financing system for Federal campaigns.

The bill reforms our system of financing campaigns in several important ways. First, it will prevent unions and corporations from making unregulated, "soft" money contributions -- a legislative step for which I repeatedly have called. Often, these groups take political action without the consent of their members or shareholders, so that the influence of these groups on elections does not necessarily comport with the actual views of the individuals who comprise these organizations. This prohibition will help to right that imbalance. Second, this law will raise the decades-old limits on giving imposed on individuals who wish to support the candidate of their choice, thereby advancing my stated principle that election reform should strengthen the role of individual citizens in the political process. Third, this legislation creates new disclosure requirements and compels speedier compliance with existing ones, which will promote the free and swift flow of information to the public regarding the activities of groups and individuals in the political process. I long have believed that complete and immediate disclosure of the source of campaign contributions is the best way to reform campaign finance.

These provisions of the bill will go a long way toward fixing some of the most pressing problems in campaign finance today. They will result in an election finance system that encourages greater individual participation, and provides the public more accurate and timely information, than does the present system. All of the American electorate will benefit from these measures to strengthen our democracy.

However, the bill does have flaws. Certain provisions present serious constitutional concerns. In particular, H.R. 2356 goes farther than I originally proposed by preventing all individuals, not just unions and corporations, from making donations to political parties in connection with Federal elections. I believe individual freedom to participate in elections should be expanded, not diminished; and when individual freedoms are restricted, questions arise under the First Amendment. I also have reservations about the constitutionality of the broad ban on issue advertising, which restrains the speech of a wide variety of groups on issues of public import in the months closest to an election. I expect that the courts will resolve these legitimate legal questions as appropriate under the law.

As a policy matter, I would have preferred a bill that included a provision to protect union members and shareholders from involuntary political activities undertaken by their leadership. Individuals have a right not to have their money spent in support of candidates or causes with which they disagree, and those rights should be better protected by law. I hope that in the future the Congress and I can work together to remedy this defect of the current financing structure.

This legislation is the culmination of more than 6 years of debate among a vast array of legislators, citizens, and groups. Accordingly, it does not represent the full ideals of any one point of view. But it does represent progress in this often-contentious area of public policy debate. Taken as a whole, this bill improves the current system of financing for Federal campaigns, and therefore I have signed it into law.

GEORGE W. BUSH

THE WHITE HOUSE,
March 27, 2002.

# # #

old edits
from Karen
Hughes

please
include
in

Statement on
Campaign
Reform act
file

Document Originally
Attached to
Following Page

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	[Draft re: H. R. 2356] - From: Karen Hughes	2	03/25/2002	P5;

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COLLECTION:
Executive Clerk, Office Of the
SERIES:
Saunders, G. Timothy (Tim) - Bill Files
FOLDER TITLE:
03/27/2002 [H.R. 2356] [771156]
FRC ID:
6358
OA Num.:
9465
NARA Num.:
9356

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	[Misfiled draft re: Judge Charles Pickering] - From: Karen Hughes	1	03/14/2002	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	[Misfile draft re: U. S. missionary plane incident with fax cover sheet and email attachments] - From: Karen Hughes and John Bellinger	3	03/19/2002	P1/b1; P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	[Misfile re: U. S. missionary plane incident] - To: Karen Hughes and Krista L. Ritacco - From: John B. Bellinger	4	03/14/2002	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Statement	[Misfile draft re: campaign finance reform] - From: Karen Hughes	1	N. D.	P5;

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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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