Members of the
Federal Election Commission
c/o Office of the General Counsel
999 E Street, N.W.
Washington, D.C. 20463

To the Members of the Federal Election Commission:

I am writing to you, pursuant to 11 CFR Part 200, to request that you take action under your existing statutory authority to ban "soft money" and end the system under which both political parties compete to raise unlimited sums from individuals, labor unions, and corporations.

The rules governing our system of financing Federal election campaigns are sorely out of date. Enacted more than two decades ago when election campaigns were much less expensive, the rules have been overtaken by dramatic changes in the nature and cost of campaigns and the accompanying flood of money. Today, money is raised and spent in ways that simply were not contemplated when the Congress last overhauled our campaign finance laws. We must bring the rules up to date to reflect the changes in elections and campaigning.

An important step in this process would be to change the rules governing the use and solicitation of "soft money" -- funds not subject to the contribution limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (FECA). Currently Federal Election Commission (FEC) regulations (11 CFR 106.5) allow political parties to raise and spend soft money in elections involving State and Federal candidates by providing an allocation formula between Federal and non-Federal expenses incurred by party committees. These regulations, and limited additional guidance provided through advisory opinions, are the basis upon which party committees make expenditures and raise funds with respect to Federal and State elections. The use of soft money by party committees is largely based on the direction provided in these regulations.

Whatever the merit of these regulations at the time they were adopted, it has become abundantly clear today that they are no longer adequate to the task of regulating campaigns. The role of soft money has grown dramatically in the past several elections so that by the 1996 elections the two parties raised more than $250 million, more than triple the total of 4 years before.

more

(OVER)

The current allocation system, in short, is simply outmoded. Accordingly, I propose that the FEC adopt new rules requiring that candidates for Federal office and national parties be permitted to raise and spend only "hard money" -- funds subject to the restrictions, contribution limits, and reporting requirements of FECA.

The soft money ban I seek achieves similar goals as provisions of the "Bipartisan Campaign Reform Act of 1997," introduced by Senators John McCain and Russell Feingold, and Representatives Christopher Shays and Martin Meehan. Specifically, I am requesting that the FEC consider new rulemaking to accomplish the following:

1. Prohibit national political parties (and their congressional campaign committees or agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of FECA. (This action would preclude, for example, contributions directly from corporate or union treasuries, or contributions from individuals in excess of the amount an individual can give to a national party's Federal account.)

2. Prohibit any Federal officeholder or candidate (and his or her agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of FECA.

3. Provide that any expenditure by any national, State, or local political party during a Federal election year for any activity that influences a Federal election (including any voter registration or get-out-the-vote drive, generic advertising, or any communication that refers to a Federal candidate) must be paid for from funds subject to FECA. (This would end the allocation system, currently authorized by the FEC, under which hard and soft money are mixed for campaign activities that affect both State and Federal elections.)

These steps, available to you under your existing statutory authority, will enable our election laws to catch up with the reality of the way elections are financed today, and along with new campaign finance reform legislation, will take significant strides toward restoring public confidence in the campaign finance process.

Sincerely,

WILLIAM J. CLINTON

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release June 5, 1997

STATEMENT BY THE PRESIDENT ON FEC PETITION

Today, I have asked the Federal Election Commission to act, within its current legal authority, to end the soft money system. Currently, both parties compete to raise large sums from corporations, individuals and labor unions. There is too much money in politics, and the problem worsens with every election. This escalating arms race must stop, and I am determined that we will reform campaign finances, by every means we can.

Such an action by the FEC cannot be a substitute for comprehensive campaign finance reform legislation, which is currently before the Congress. In my State-of-the-Union Address, I challenged Congress to act by July 4th and pass bipartisan reform. That deadline is now one month away, and there is still time for Congress to move forward on this priority. I call on Congress to pass legislation that institutes voluntary spending limits, provides free broadcast time to candidates who abide by those limits, restricts special interest contributions, addresses independent expenditures, and bans soft money.

It is clear that the current campaign finance system has been overwhelmed by an unprecedented volume of money. If we are to restore the publicÆs faith in our institutions and the political system, we must reform the campaign finance system. This request to the FEC makes clear my determination that, one way or another, we will see reform, and we will end the soft money. I want to work in the coming days with members of Congress to pass bipartisan and comprehensive campaign finance reform.

Our democracy is the oldest and most successful in the world. But we know that there is something deeply wrong with the way we pay for elections. Our campaign finance laws were last rewritten 23 years ago. For quite a long while those laws worked well, but they have been overwhelmed by a flood of money and the changes in the way we communicate with one another and the cost of communication. Spending in congressional campaigns has risen sixfold in the last two decades. Money is raised and spent in ways that simply were not contemplated when the Congress last overhauled our campaign finance laws. We must bring the rules up to date to reflect the changes in elections and campaigning.

An important step in this process would be to ban ~~change the rules governing the use and solicitation~~ of so called "soft money" -- large sums raised by both parties from corporations, labor unions and individuals. Since 1992, I have consistently believed that soft money contributions should be eliminated from our system. This year I have given my full support to the McCain- Feingold/ Shays -Meehan legislation in the Senate and House because it contains a ban on soft money, along with many other effective campaign reform provisions.

We can do more than wait for legislation. The Federal Election~~s~~ Commission has the authority to require that candidates for federal office and national parties only be permitted to raise and spend "hard money" -- funds subjected to the contribution limitations and prohibitions of the federal election laws. On June 4th, 1997, I sent a petition the Federal Election Commission to ban soft money contributions, requesting that the Commission bring to an end to the outdated system that they govern. Bipartisan lawmakers led by Representative Chris Shays and Marty Meehan have asked for the same thing. I am proud to be working with them, and I am pleased that the FEC has begun reviewing our requests.

You too can join us in this national effort. For the first time, all of you now have the opportunity to let the FEC know your views on whether it should act to change its rules on soft money. I encourage you to write to the FEC, make use of the Internet as a tool of democracy and advocate a change in the laws which govern our political system.

Draft March 7, 1997, noon

FACT SHEET
President Clinton's Radio Address On Campaign Finance Reform
March 8, 1997

In today's radio address, the President announced that he will ask the Federal Election Commission (FEC) to revisit its rules on "soft money" and act to ban the use of soft money in federal elections, as anticipated by bipartisan campaign finance reform legislation. The petition proposes to end the current soft money system by requiring that candidates for federal office and national parties only be permitted to raise and spend "hard money" -- funds subject to the restrictions, contribution limits, and reporting requirements of the 1974 Federal Election Campaign Act (FECA). This ban would apply to all political parties, as anticipated by the bipartisan campaign finance reform legislation.

"Soft money" and federal elections

"Soft money" plays an increasingly large role in funding political parties and campaigns. So called "hard money" contributions are those that are given to candidates or parties subject to the limits and disclosure of federal law. "Soft money," on the other hand, goes to national or state political parties, and can be raised in large amounts and from sources that could not give under federal election law (directly from corporations and unions).

The role of "soft money" has grown dramatically in the past several elections. In 1996, the Democratic Party raised $124 million, and the Republican Party raised $154 million in soft money -- more than [triple] the total of four years before.

Soft money is today lawful under a series of regulations put forward by the Federal Election Commission (FEC). The FEC first issued advisory opinions on this in 1978. It did not take further action during the 1980's, as the role of "soft money" grew. In 1990, ordered to take some action on "soft money" by a federal court, the FEC promulgated regulations that govern how parties can allocate funds between federal and non-federal activities. (The court deferred to the agency as to <u>how</u> to address the issue, but noted that the agency could go as far as to ban the use of soft money for mixed federal- and state-political activity.)

In addition, the 1979 statutory amendments to the Federal Election Campaign Act (FECA) authorized allocation of national and state "hard money " for joint activities.

President Clinton's support for a soft money ban

President Clinton has consistently called for legislation that would ban the use of "soft money" in federal elections. He called for this legislation during the 1992 campaign, and supported the campaign finance reform legislaiton taht was vetoed that year by President Bush (which would have banned soft money). The campaign finance reform plan he proposed in May 1993 included a "soft money" ban; this proposal was passed by both chhambers but was killed by a filibuster in 1994.

The bipartisan campaign finance reform legislation introduced by Senators McCain and Feingold and Representatives Shays and Meehan would prohibit the use of soft money in federal elections.

In January, 1993, the Democratic National Committee voluntarily announced that it would restrict contributions it can currently accept under the law. It would not accept soft money contributions in excess of $100,000 per year, and it would not accept contributions from individuals who are not citizens or from domestic subsidiaries of foreign corporations.

Contents of the Petition

The President will call on Congress to enact the bipartisan legislation to reform campaign financign and ban soft money. And he will formally request the FEC to act <u>now</u>, to put in place the legislation's ban on soft money:

- New rules should prohibit national political parties (and their congressional campaign committees or agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of the Federal Election Campaign Act. (This would preclude, for example, contributions directly from corporate or union treasuries, or contributions from individuals in excess of the amount an individual can give to a federal party.)

- Prohibit any federal officeholder or candidate (and their agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of FECA.

- Provide that any amount of funds expended by a state party during a federal election year for any activity that might affect a federal election (including a get-out-the-vote drive, generic advertising or any communication that mentions a federal candidate) must be paid for from funds subject to FECA. (This would end the allocation system, currently authorized by the FEC, under which "hard" and "soft" money are mixed for campaign activities that affect both state and federal elections.)

Supplemental funding for the FEC

[Language to come]

April _, 1997

Members of The Federal Election Commission
c/o Office of the General Council
999 E Street , NW
Washington, DC 20463

To the Members of the Federal Election Commission:

I am writing to you to request that you take action, under your existing statutory authority, to ban soft money and end the system under which both political parties compete to raise unlimited sums from individuals, labor unions and corporations.

The rules governing our system of financing federal election campaigns are sorely out of date. Enacted more than two decades ago when election campaigns were much less expensive, they have been overtaken by events, by dramatic changes in the nature and cost of campaigns and the flood of money that has followed them. Today, money is raised and spent in ways that simply could not have been imagined when Congress last overhauled our campaign finance laws. We must bring the rules up to date to reflect the changes in elections and campaigning that have overtaken our political system.

An important step in this process would be to change the rules governing the use and solicitation of funds not subject to the contribution limitations and prohibitions of the 1971 Federal Election Campaign Act, as amended ('soft money'). Currently FEC regulations (11 CFR 106.5) allow political parties to raise and spend 'soft money' in elections involving state and federal candidates by providing an allocation formula between federal and non-federal expenses incurred by party committees. These regulations, and limited additional guidance provided through advisory opinions, are the basis upon which party committees make expenditures and raise funds with respect to federal and state elections today. The use of so-called soft money by party committees today are largely based on the direction provided in these regulations.

Whatever the merit of those regulations at the time they were adopted, it has become abundantly clear today that they are no longer adequate to the task of regulating current campaigns. The role of "soft money" has grown dramatically in the past several elections so that by the 1996 elections the two parties raised more than $250 million; $138 million by the Republican Party and $123 by the Democratic Party, more than triple the total of four years before.

The current allocation system, in short, is simply outmoded. Accordingly, I propose that the FEC adopt new rules requiring that candidates for federal office and national parties only be permitted to raise and spend "hard money" -- funds subject to the restrictions, contribution limits, and reporting requirements of the Federal Election Campaign Act (FECA) of 1971, as amended.

The soft money ban I seek is modeled after the provisions of the "Bipartisan Campaign Reform Act of 1997", introduced by Senators John McCain and Russell Feingold, and Representatives Christopher Shays and Martin Meehan. Specifically, I am requesting that the Commission consider new rulemaking to accomplish the following:

1. Prohibit national political parties (and their congressional campaign committees or agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of FECA. (This would preclude, for example, contributions directly from corporate or union treasuries, or contributions from individuals in excess of the amount an individual can give to a national parties federal account.)

2. Prohibit any federal officeholder or candidate (and their agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of FECA.

3. Provide that any amount of funds expended by a political party during a federal election year for any activity that influences a federal election (including any voter registration or get-out-the-vote drive, generic advertising, or any communication that refers to a federal candidate) must be paid for from funds subject to FECA. (This would end the allocation system, currently authorized by the FEC, under which 'hard' and 'soft' money are mixed for campaign activities that affect both state and federal elections.)

These steps, available to you under your existing statutory authority, will enable our election laws to catch up with the reality of the way elections are financed today, and along with new camapign finance reform legislation, will take significant strides toward restoring public confidence in the campaign finance process.

Sincerely,

William Jefferson Clinton

TALKING POINTS FOR CALL TO DASCHLE & GEPHARDT

As you may know, we are planning to ask the Federal Election Commission to put the McCain-Feingold soft-money ban into effect by regulatory action. The legislation requires that hard money to be used in connection with federal elections, and prohibits federal candidates from raising soft money. That's what we would be asking the FEC to do by rulemaking, under their existing statutory authority.

This is nothing more than another way to advance the President's publicly stated support for banning soft money. Every reform proposal, including the House and Senate Democrats, would ban soft money [*Erskine: the proposals differ in the details*]. This is not, for example, unilaterally giving up soft money. This would have the same impact as if reform legislation passed -- it would affect both parties. And as you know, last cycle, for all our efforts, the GOP raised $154 million in soft money, while the Democrats raised $124 million.

There is <u>no</u> reason to think the FEC is going to act on this any time soon. Even if they move forward, it will be at a slower pace than legislation. This is not a ban of soft money tomorrow.

Here's the political bottom line: We believe that there <u>is</u> going to be reform enacted this year. Trent Lott said as much. Democrats <u>must</u> be in the room when that deal is cut. To do that, we need to burnish our reform credentials.

MEMORANDUM FOR RAHM EMANUEL

FROM: MICHAEL WALDMAN

SUBJECT: CAMPAIGN FINANCE REFORM ISSUES

Possible presidential 'actions' on FEC

Petition before the FEC on soft money. Throughout the 1980s and 1990s, the FEC was pressured by reform groups to rule that the existing law -- the 1974 Federal Election Campaign Act (FECA) -- effectively prohibited the use of soft money for federal elections. The FEC refused to make such a ruling (in some instances they were tied 3-3; in others, they simply rejected the reformers' contention). In 1990, a federal court forced the FEC to make a ruling on soft money; the "allocation" system was the result. We could file a petition, in effect asking the FEC to put into effect by executive action the soft money restrictions in the proposed bipartisan legislation. This would reverse the DNC's position in the previous rulemakings, though the President himself was not involved (all the action predates his term).

Supplemental spending bill. The FEC has written to Congress saying that they need [x] to enforce current law. The President has previously supported adequate funding for the FEC, in the face of general GOP opposition in the past. He could propose a supplemental to pay for the FEC to investigate the 1996 elections (obviously, they would be investigating both parties and congressional campaigns as well as presidential campaigns). Downside: the obvious inference to be drawn by opponents is that it is the investigation of the President's campaign that requires extra resources.

Setting up a bipartisan citizen advisory board to recommend FEC appointments. Current law gives the President sole power to appoint FEC commissioners, but by tradition the President has deferred to Republican leaders in picking the Republican members. As you know, we have been concerned that if the GOP appoints its hack, and we appoint an independent and fair-minded person, we would wind up with lots of 4-2 votes that always tilt against the Democrats, and never against the Republicans.

The President could announce that he is establishing a citizens advisory board to recommend people to be appointed to the FEC -- much the same way that some senators, such as Moynihan and D'Amato, have bipartisan committees to make judgeship recommendations. This would put Lott in a difficult position, since he could hardly publicly insist on appointing his hack over someone recommended by this board; on the other hand, it would be

THE WHITE HOUSE

WASHINGTON

February 28, 1997

Information

MEMORANDUM FOR THE PRESIDENT

FROM: MICHAEL WALDMAN MW

SUBJECT: SOFT-MONEY PETITION BEFORE THE FEC

Last week, you asked whether it would be possible to file a petition before the Federal Election Commission to enact a significant part of the McCain-Feingold ban on soft money through agency action.

The preliminary short answer is: Yes, the significant elements of a soft money ban could be accomplished through a majority vote of the FEC (without waiting for passage of campaign finance reform legislation).

The statutory basis

The FEC could act by saying that new, strict soft-money provisions are permitted under the 1974 Federal Election Campaign Act (FECA), which requires "hard" money for federal elections. As you know, over the years the agency has authorized significant amounts of soft money fundraising in a manner that affects federal elections. The Courts forced the agency to issue rules on soft money in 1990, but gave it almost complete deference on how to do so. In fact, the court specifically mentioned that the agency could end allocations between hard and soft money for joint activities altogether.

Any petition would have to be carefully drawn so as not to affect any legal position taken by the reelection campaign or the DNC relating to existing rules.

What the petition could ask for

McCain-Feingold bill approaches the soft-money ban from three directions.

First, it prohibits the national political parties (and their congressional campaign committees or agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of the FECA.

Second, it prohibits any federal officeholder or candidate (and their agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of the FECA.

Third, it provides that any amount expended by a state party during a federal election year for any activity that might affect a federal election (including a get-out-the-vote drive, generic advertising or any communication that mentions a federal candidate) must be paid for from funds subject to the FECA.

That leaves state parties free to raise and spend non-federal or soft money on any activities that do not affect a federal election, including contributions to state and local candidates, campaign materials that name only state and local candidates or campaign activity that is solely on behalf of state or local candidates.

We could petition the FEC to incorporate these provisions into regulation, while eliminating the existing provisions that allow for allocation of mixed expenses.

Political considerations

The petition would most appropriately be filed by the United States Government (rather than the DNC), possibly as a joint petition with reform groups. (We are working on this, on a confidential basis, with Common Cause's General Counsel Don Simon [a former partner of Jack Quinn's] and Robert Rozen, as well as our Counsel's Office.) It may be possible to informally consult with the FEC itself to help frame the arguments.

However, the threshold question remains: Such a petition would not pass the credibility threshold -- i.e., it would neither have much chance of being acted upon nor being taken seriously -- if we do not take some additional action to renew the FEC. Therefore, any decision whether to proceed with a soft-money petition will likely depend upon a decision about other steps relating to the FEC.

We will continue to work on this pending a decision whether to proceed.

INFORMATION REPORT

Document No. 206627

WHITE HOUSE STAFFING MEMORANDUM

DATE: ______ ACTION/CONCURRENCE/COMMENT DUE BY: ----------

SUBJECT: SUBMITS RECOMMENDATIONS FOR LEGISLATIVE ACTION IN ACCORDANCE WITH 2 U.S.C. 438

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McCURRY	☐	☐
BOWLES	☐	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☐	☐	QUINN	☐	☐
MATHEWS	☐	☐	RASCO	☐	☐
RAINES	☐	☐	REED	☐	☐
BAER	☐	☐	SOSNIK	☐	☐
	☐	☐	LEWIS	☐	☐
EMANUEL	☑	☐	YELLEN	☐	☐
GIBBONS	☐	☐	STREETT	☐	☐
HALE	☐	☐	SPERLING	☐	☐
HERMAN	☐	☐	HAWLEY	☐	☐
HIGGINS	☐	☐	WILLIAMS	☐	☐
HILLEY	☑	☐	RADD	☐	☐
KLAIN	☐	☐	Waldman	☑	☐
BERGER	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐

REMARKS: Please return report to this office after review. If you would like a copy of this report to keep, contact this office. Thank you.

RESPONSE:

Staff Secretary
Ext. 6-2702

ID# 206627

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

'97 FEB 28 PM4:17

DATE RECEIVED: FEBRUARY 21, 1997

NAME OF CORRESPONDENT: THE HONORABLE JOHN WARREN MCGARRY

SUBJECT: SUBMITS RECOMMENDATIONS FOR LEGISLATIVE ACTION IN ACCORDANCE WITH 2 U.S.C. 438 (~~A~~ a) (9) ✓

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION: ACT CODE	ACTION: DATE YY/MM/DD	DISPOSITION: TYPE RESP	DISPOSITION: C D	DISPOSITION: COMPLETED YY/MM/DD
TIM SAUNDERS		ORG	97/02/21		C	97/02/26
REFERRAL NOTE:						
Todd Stern		A	97/02/26			
REFERRAL NOTE:						
REFERRAL NOTE:						
REFERRAL NOTE:						
REFERRAL NOTE:						

COMMENTS: ENCLOSURES
Not for the President's transmittal to the Congress.

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES:

MI MAIL USER CODES: (A)____ (B)____ (C)____

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS OF SIGNER
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	CODE = A
*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF OUTGOING
*F-FURNISH FACT SHEET	*S-SUSPENDED	
*I-INFO COPY/NO ACT NEC		
*R-DIRECT REPLY W/COPY		
*S-FOR-SIGNATURE		
*X-INTERIM REPLY		

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

February 19, 1997

206627

The Honorable William J. Clinton
The President
The White House
Washington, D.C. 20500

Dear Mr. President:

In accordance with 2 U.S.C. § 438(a)(9), the Federal Election Commission is pleased to submit for your consideration 56 recommendations for legislative action.

We are submitting these recommendations in three parts. We particularly call your attention to Part I: Legislative Recommendations to Improve the Efficiency and Effectiveness of Current Law. This part contains 23 administrative recommendations that, if incorporated into the statute, would greatly ease the burden on political committees and streamline the administration of the current campaign finance law.

To illustrate how these 23 recommendations would reduce the difficulties encountered by committees in complying with the law, here are brief summaries of five of the recommendations:

1. Electronic Filing Threshold - Would result in better use of government and political committee resources by granting the FEC the authority to require electronic filing of reports by committees that meet a specific level of financial activity.

2. Filing Reports Using Registered or Certified Mail - Would simplify the law and prevent delays in mail delivery of campaign finance reports by eliminating the mail date and requiring that reports be filed by a specific due date.

3. Campaign-Cycle Reporting - Would eliminate burdensome recordkeeping and reporting provisions that require campaigns to track contributions on both a calendar-year basis and a per-election basis.

4. Election Period Limitations - Would eliminate complicated and time-consuming bookkeeping requirements by applying a single contribution limit to an election cycle, instead of separate limits for the primary and general elections.

5. Ensuring Independent Authority of FEC in All Litigation - Would ensure nonpartisan enforcement of the law by explicitly authorizing the Commission to petition the Supreme Court for certiorari under Title 2.

Part II: General Legislative Recommendations contains 23 additional recommendations concerning areas in the law that have been problematic. In each case the Commission describes the problem and asks Congress to consider clarification or more comprehensive reform of the law.

Finally, Part III: Conforming Legislative Recommendations contains 10 recommendations that seek to correct outdated or inconsistent portions of the law.

As in the past, each recommendation is followed by an explanation of the need for and expected benefits from the recommended change.

We hope that these proposals will be helpful. After 22 years of experience in regulating campaign financing, the Federal Election Commission stands ready to assist in whatever way possible.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosure

1997

Legislative Recommendations

Contents

Part I
Legislative Recommendations to Improve Efficiency and Effectiveness of Current Law

Disclosure

Electronic Filing Threshold (1997)
Section: 2 U.S.C. §434(a)

Recommendation: The Commission recommends that Congress give the FEC authority to require committees with a certain level of financial activity to file FEC reports electronically.

Explanation: Public Law 104-79, effective December 28, 1995, authorized the electronic filing of disclosure reports with the FEC. Starting January 1997, political committees (except for Senate campaigns) may opt to file FEC reports electronically.

The FEC has created the electronic filing program and is moving towards providing software to committees in order to assist committees that wish to file reports electronically. To maximize the benefits of electronic filing, Congress should consider requiring committees that meet a certain threshold of financial activity to file reports electronically. The FEC would receive, process and disseminate the data from electronically filed reports more easily and efficiently, resulting in better use of Commission resources. Moreover, information in the FEC's database would be standardized for committees at a certain threshold, thereby enhancing public disclosure of campaign finance information. In addition, committees, once participating in the electronic filing program, should find it easier to complete and file reports.

Filing Reports Using Registered or Certified Mail (1997)
Section: 2 U.S.C. §434(a)(2)(A)(i), (a)(4)(A)(ii) and (a)(5)

Recommendation: The Commission recommends that Congress delete the option to file campaign finance reports via registered or certified mail when the report is postmarked by a specific date. Instead, Congress should consider simply requiring political committees to file their reports with the Commission (or the Secretary of the Senate) by the due date of the report.

Explanation: Section 434 of the Act permits committees to file their reports by registered or certified mail, provided that the report is postmarked by a certain date. (In the cases of a quarterly, monthly, semi-annual or post general report, the report must be postmarked by the due date if sent by registered or certified mail. In the case of a pre-primary or pre-general election report, the report must be postmarked 15 days before the election.)

In the 1996 election cycle, because of the extra handling required, the Postal Service often delivered reports filed via registered or certified mail to the FEC more than a week after the report's due date. The delayed delivery presented an obstacle to full public disclosure of campaign finances immediately before the the 1996 election. Moreover, there is little likelihood of improvement in future election cycles because of continuing staff reductions within the Postal Service.

To minimize this delay in disclosure, Congress should eliminate the option in the law that allows committees to rely on the postmark of a registered or certified mailed report. Instead, Congress should simply require that reports be filed with the FEC (or the Secretary of the Senate) by the due date specified in the law. This approach would result in more effective public disclosure of campaign finance information, because reports would be available for donations on a calendar year basis. Second, to comply with the law's contribution limits, the committee must track contributors' donations on a per-election basis. Simplifying the law's reporting requirement to allow reporting on a campaign-to-date basis would make the law's recordkeeping requirements less burdensome to committees. (Likewise, the Commission recommends that contribution limits be placed on a campaign-cycle basis as well. See the recommendation entitled "Election Period Limitations.")

This change would also benefit public disclosure of campaign finance activity. Currently, contributions from an individual are itemized only if the individual donates more than $200 in the aggregate during a calendar year. Likewise, disbursements are itemized only if payments to a specific payee aggregate in excess of $200 during a calendar year. Requiring itemization once contributions from an individual or disbursements to a payee aggregate in excess of $200 during the campaign would capture information of interest to the public that is currently not available. Moreover, to determine the actual campaign finance activity of a committee, reporters and researchers must compile the total figures from several year-end reports. In the case of Senate campaigns, which may extend over a six-year period, this change would be particularly helpful.

Monthly Reporting for Congressional Candidates
Section: 2 U.S.C. §434(a)(2)

Recommendation: The Commission recommends that the principal campaign committee of a Congressional candidate have the option of filing monthly reports in lieu of quarterly reports.

Explanation: Political committees, other than principal campaign committees, may choose under the Act to file either monthly or quarterly reports during an election year. Committees choose the monthly option when they have a high volume of activity. Under those circumstances, accounting and reporting are easier on a monthly basis because fewer transactions have taken place during that time. Consequently, the committee's reports will be more accurate.

Principal campaign committees can also have a large volume of receipts and expenditures. This is particularly true with Senatorial campaigns. These committees should be able to choose a more frequent filing schedule so that their reporting covers less activity and is easier to do.

Reporting Deadlines for Semiannual, Year-End and Monthly Filers
Section: 2 U.S.C. §§434(a)(3)(B) and (4)(A) and (B)

Recommendation: The Commission recommends that Congress change the reporting deadline for all semiannual, year-end and monthly filers to 15 days after the close of books for the report.

Explanation: Committees are often confused because the filing dates vary from report to report. Depending on the type of committee and whether it is an election year, the filing date for a report may fall on the 15th, 20th or 31st of the month. Congress should require that monthly, quarterly, semiannual and year-end reports are due 15 days after the close of books of each report. In addition to simplifying reporting procedures, this change would provide for more timely disclosure, particularly in an election year. In light of the increased use of computerized recordkeeping by political committees, imposing a filing deadline of the fifteenth of the month would not be unduly burdensome.

Commission as Sole Point of Entry for Disclosure Documents (revised 1997)
Section: 2 U.S.C. §432(g)

Recommendation: The Commission recommends that it be the sole point of entry for all disclosure documents filed by federal candidates and political committees. This would affect Senate candidate

Facsimile Machines
Section: 2 U.S.C. §434(b)(6)(B)(iii) and (c)(2)

Recommendation: The Commission recommends that Congress modify the Act to provide for the acceptance and admissibility of 24-hour notices of independent expenditures via telephone facsimiles.

Explanation: Independent expenditures that are made between 20 days and 24 hours before an election must be reported within 24 hours. The Act requires that a last-minute independent expenditure report must include a certification, under penalty of perjury, stating whether the expenditure was made "in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee." This requirement appears to foreclose the option of using a facsimile machine to file the report. The next report the committee files, however, which covers the reporting period when the expenditure was made, must also include the certification, stating the same information. Given the time constraint for filing the report, the requirement to include the certification on the subsequent report, and the availability of modern technology that would facilitate such a filing, Congress should consider allowing such filings via telephonically transmitted facsimiles ("fax" machines). This could be accomplished by allowing the committee to fax a copy of the schedule disclosing the independent expenditure and the certification. The original schedule would be filed with the next report. Acceptance of such a filing method would facilitate timely disclosure and simplify the process for the filer.

State Filing for Presidential Candidate Committees
Section: 2 U.S.C. §439

Recommendation: The Commission recommends that Congress consider clarifying the state filing provisions for Presidential candidate committees to specify which particular parts of the reports filed by such committees with the FEC should also be filed with states in which the committees make expenditures. Consideration should be given to both the benefits and the costs of state disclosure.

Explanation: Both states and committees have inquired about the specific requirements for Presidential candidate committees when filing reports with the states. The statute requires that a copy of the FEC reports shall be filed with all states in which a Presidential candidate committee makes expenditures. The question has arisen as to whether the full report should be filed with the state, or only those portions that disclose financial transactions in the state where the report is filed.

The Commission has considered two alternative solutions. The first alternative is to have Presidential candidate committees file, with each state in which they have made expenditures, a copy of the entire report filed with the FEC. This alternative enables local citizens to examine complete reports filed by candidates campaigning in a state. It also avoids reporting dilemmas for candidates whose expenditures in one state might influence a primary election in another.

The second alternative is to require that reports filed with the states contain all summary pages and only those receipts and disbursements schedules that show transactions pertaining to the state in which a report is filed. This alternative would reduce filing and storage burdens on Presidential candidate committees and states. It would also make state filing requirements for Presidential candidate committees similar to those for unauthorized political committees. Under this approach, any person still interested in obtaining copies of a full report could do so by contacting the Public Disclosure Division of the FEC.

election is held, the contributor makes other contributions during the election year and inadvertently exceeds his $25,000 limit. By requiring contributions to count against the limit of the calendar year in which the donor contributes, confusion would be eliminated and fewer contributors would inadvertently violate the law. The change would offer the added advantage of enabling the Commission to better monitor the annual limit. Through the use of our data base, we could more easily monitor contributions made by one individual regardless of whether they were given to retire the debt of a candidate's previous campaign, to support an upcoming election (two, four or six years in the future) or to support a PAC or party committee. Such an amendment would not alter the per candidate, per election limits. Nor would it affect the total amount that any individual could contribute in connection with federal elections.

Certification of Voting Age Population Figures and Cost-of-Living Adjustment
Section: 2 U.S.C. §441a(c) and (e)

Recommendation: The Commission recommends that Congress consider removing the requirement that the Secretary of Commerce certify to the Commission the voting age population of each Congressional district. At the same time, Congress should establish a deadline of February 15 for supplying the Commission with the remaining information concerning the voting age population for the nation as a whole and for each state. In addition, the same deadline should apply to the Secretary of Labor, who is required under the Act to provide the Commission with figures on the annual adjustment to the cost-of-living index.

Explanation: In order for the Commission to compute the coordinated party expenditure limits and the state-by-state expenditure limits for Presidential candidates, the Secretary of Commerce certifies the voting age population of the United States and of each state. 2 U.S.C. §441a(e). The certification for each Congressional district, also required under this provision, is not needed.

In addition, under 2 U.S.C. §441a(c), the Secretary of Labor is required to certify the annual adjustment in the cost-of-living index. In both instances, the timely receipt of these figures would enable the Commission to inform political committees of their spending limits early in the campaign cycle. Under present circumstances, where no deadline exists, the Commission has sometimes been unable to release the spending limit figures before June.

Explanation: The statute now requires that before the Commission proceeds in a compliance matter it must wait 15 days after notifying any potential respondent of alleged violations in order to allow that party time to file a response. Furthermore, the Act mandates extended time periods for conciliation and response to recommendations for probable cause. Under ordinary circumstances such provisions are advisable, but they are detrimental to the political process when complaints are filed immediately before an election. In an effort to avert intentional violations that are committed with the knowledge that sanctions cannot be enforced prior to the election, and to quickly resolve matters for which Commission action is not warranted, Congress should consider granting the Commission some discretion to deal with such situations on a timely basis.

Even when the evidence of a violation has been clear and the potential impact on a campaign has been substantial, without the authority to initiate a civil suit for injunctive relief, the Commission has been unable to act swiftly and effectively in order to prevent a violation. The Commission has felt constrained from seeking immediate judicial action by the requirement of the statute that conciliation be attempted before court action is initiated, and the courts have indicated the Commission has little if any discretion to deviate from the administrative procedures of the statute. *Perot '96 and Natural Law Party v. FEC et al.*, Nos. 96-2196 and 96-2132 (D.D.C. 1996), *aff'd*, 97 F.3d 553, (D.C. Cir. 1996); *RNC v. DNC and FEC*, No. 96-2494 (D.D.C. 1996); *In re Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538 (D.C. Cir. 1980); *Common Cause v. Schmitt*, 512 F.Supp. 489 (D.D.C. 1980), *aff'd by an equally divided court*, 455 U.S. 129 (1982); *Durkin for U.S. Senate v. FEC*, 2 Fed. Election Camp. Fin. Guide (CCH) ¶9147 (D.N.H. 1980).

If Congress allows for expedited handling of compliance matters, it should authorize the Commission to implement changes in such circumstances to expedite its enforcement procedures. As part of this effort, Congress should consider whether the Commission should be empowered to promptly initiate a civil suit for injunctive relief in order to preserve the status quo when there is clear and convincing evidence that a substantial violation of the Act is about to occur. Congress should consider whether the Commission should be authorized to initiate such civil action in a United States District Court, under expressly stated criteria, without awaiting expiration of the 15-day period for responding to a complaint or the other administrative steps enumerated in the statute. The person against whom the Commission brings the action would enjoy the procedural protections afforded by the courts.

The Commission suggests the following legislative standards to govern whether it may seek prompt injunctive relief:

1. The complaint sets forth facts indicating that a potential violation of the Act is occurring or will occur;

2. Failure of the Commission to act expeditiously will result in irreparable harm to a party affected by the potential violation.

3. Expeditious action will not result in undue harm or prejudice to the interests of other persons; and

4. The public interest would be served by expeditious handling of the matter.

Subpoena and Reason-to-Believe Notification Signature Authority (1997)
Sections: 2 U.S.C. §§437d(a)(3) and 437g(a)(2)

Recommendation: The Commission recommends that Congress clarify these provisions to permit any member of the Commission to sign duly-authorized subpoenas and notifications of findings of reason-to-believe, rather than limiting signature authority to the Chairman and Vice Chairman.

the district. The Commission, which conducts all of its litigation nationwide from its offices in Washington, D.C., is unable to comply with those rules without compromising its independence by engaging the local United States Attorney to assist in representing it in courts outside of Washington, D.C. Although most judges have been willing to waive applying these local counsel rules to the Commission, some have insisted that the Commission obtain local representation. An amendment to the statute specifying that such local counsel rules cannot be applied to the Commission would eliminate this problem.

Concerning the third recommendation, the FECA explicitly authorizes the Commission to "appear in and defend against any action instituted under this Act," 2 U.S.C. §437c(f)(4), and to "initiate...defend...or appeal any civil action...to enforce the provisions of this Act and chapter 95 and chapter 96 of title 26," 2 U.S.C. §437d(a)(6). These provisions do not explicitly cover instances in which the Commission appears as an *amicus curiae* in cases that affect the administration of the Act, but do not arise under it. A clarification of the Commission's role as an *amicus curiae* would remove any questions concerning the Commission's authority to represent itself in this capacity.

Concerning the final recommendation, prior to its amendment effective December 1, 1993, Rule 4(c)(B) of the Federal Rules of Civil Procedure provided that a summons and complaint shall be served by the United States Marshal's Service on behalf of the United States or an officer or agency of the United States. Rule 4, as now amended, requires all plaintiffs, including federal government plaintiffs such as the Commission, to seek and obtain a court order directing that service of process be effected by the United States Marshal's Service. Given that the Commission must conduct litigation nationwide from its offices in Washington, D.C., it is burdensome and expensive for it to enlist the aid of a private process server or, in the alternative, seek relief from the court, in every case in which it is a plaintiff. Returning the task of serving process for the Commission to the United States Marshal's Service would alleviate this problem and assist the Commission in carrying out its mission.

Enhancement of Criminal Provisions
Section: 2 U.S.C. §437g(a)(5)(C) and (d)

Recommendation: The Commission recommends that it have the ability to refer appropriate matters to the Justice Department for criminal prosecution at any stage of a Commission proceeding.

Explanation: The Commission has noted an upsurge of §441f contribution reimbursement schemes, that may merit heavy criminal sanction. Although there is no prohibition preventing the Department of Justice from initiating criminal FECA prosecutions on its own, the vehicle for the Commission to bring such matters to the Department's attention is found at §437g(a)(5)(C), which provides for referral only after the Commission has found probable cause to believe that a criminal violation of the Act has taken place.[2] Thus, even if it is apparent at an early stage that a case merits criminal referral, the Commission must pursue the matter to the probable cause stage before referring it to the Department for criminal prosecution. To conserve the Commission's resources, and to allow the Commission to bring potentially criminal FECA violations to the Department's attention at the earliest possible time, the Commission recommends that consideration be given to explicitly empower the Commission to refer apparent criminal FECA violations to the Department at any stage in the enforcement process.

[2] The Commission has the general authority to report apparent violations to the appropriate law enforcement authority (see 2 U.S.C. §437d(a)(9)), but read together with §437g, §437d(a)(9) has been interpreted by the Commission to refer to violations of law unrelated to the Commission's FECA jurisdiction.

the fundraising limitation, the compliance cost exemption, the volunteer service provisions, the unreimbursed personal travel expense provisions, the use of a personal residence in volunteer activity exemption, and a complex series of allocation schemes have developed into an art which, when skillfully practiced, can partially circumvent the state limitations.

Finally, the allocation of expenditures to the states has proven a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the Commission. For all these reasons, the Commission decided to revise its state allocation regulations for the 1992 Presidential election. Many of the requirements, such as those requiring distinctions between fundraising and other types of expenditures, were eliminated. However, the rules could not undo the basic requirement to demonstrate the amount of expenditures relating to a particular state. Given our experience to date, we believe that this change to the Act would still be of substantial benefit to all parties concerned.

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns
Section: 2 U.S.C. §§431(9)(B)(vi) and 441a

Recommendation: The Commission recommends that the separate fundraising limitation provided to publicly financed Presidential primary campaigns be combined with the overall limit. Thus, instead of a candidate's having a $10 million (plus COLA[3]) limit for campaign expenditures and a $2 million (plus COLA) limit for fundraising (20 percent of overall limit), each candidate would have one $12 million (plus COLA) limit for all campaign expenditures.

Explanation: Campaigns that have sufficient funds to spend up to the overall limit usually allocate some of their expenditures to the fundraising category. These campaigns come close to spending the maximum permitted under both their overall limit and their special fundraising limit. Hence, by combining the two limits, Congress would not substantially alter spending amounts or patterns. For those campaigns which do not spend up to the overall expenditure limit, the separate fundraising limit is meaningless. Many smaller campaigns do not even bother to use it, except in one or two states where the expenditure limit is low, e.g., Iowa and New Hampshire. Assuming that the state limitations are eliminated or appropriately adjusted, this recommendation would have little impact on the election process. The advantages of the recommendation, however, are substantial. They include a reduction in accounting burdens and a simplification in reporting requirements for campaigns, and a reduction in the Commission's auditing task. For example, the Commission would no longer have to ensure compliance with the 28-day rule, i.e., the rule prohibiting committees from allocating expenditures as exempt fundraising expenditures within 28 days of the primary held within the state where the expenditure was made.

Eligibility Threshold for Public Financing
Section: 26 U.S.C. §9033

Recommendation: The Commission recommends that Congress raise the eligibility threshold for publicly funded Presidential primary candidates.

Explanation: The Federal Election Commission has administered the public funding provisions in five Presidential elections. The statute provides for a cost-of-living adjustment (COLA) of the overall primary spending limitation. There is, however, no corresponding adjustment to the threshold requirement. It remains exactly the same as it was in 1974. An adjustment to the threshold requirement would ensure that funds continue to be given only to primary candidates who demonstrate broad national support. To reach this higher threshold, the Commission recommends increasing the number of states in which the candidate had to raise the qualifying amount of matchable contributions; and/or

[3] Spending limits are increased by the cost-of-living adjustment (COLA), which the Department of Labor calculates annually.

Part II: General Legislative Recommendations

Disclosure

Candidates and Principal Campaign Committees
Section: 2 U.S.C. §§432(e)(1) and 433(a)

Recommendation: The Commission recommends that Congress revise the law to require a candidate and his or her principal campaign committee to register simultaneously.

Explanation: An individual becomes a candidate under the FECA once he or she crosses the $5,000 threshold in raising contributions or making expenditures. The candidate has 15 days to file a statement designating the principal campaign committee, which will subsequently disclose all of the campaign's financial activity. This committee, in turn, has 10 days from the candidate's designation to register. This schedule allows 25 days to pass before the committee's reporting requirements are triggered. Consequently, the financial activity that occurred prior to the registration is not disclosed until the committee's next upcoming report. This period is too long during an election year. For example, should a report be due 20 days after an individual becomes a candidate, the unregistered committee would not have to file a report on that date and disclosure would be delayed. The next report might not be filed for 3 more months. By requiring simultaneous registration, the public would be assured of more timely disclosure of the campaign's activity.

PACs Created by Candidates
Section: 2 U.S.C. §441a(a)

Recommendation: The Commission recommends that Congress consider whether PACs created by candidates should be deemed affiliated with the candidate's principal campaign committee.

Explanation: A number of candidates for federal office, including incumbent officeholders, have created PACs in addition to their principal campaign committees. Under current law, such PACs generally are not considered authorized committees. Therefore, they may accept funds from individuals up to the $5,000 limit permitted for unauthorized committees in a calendar year and may make contributions of up to $5,000 per election to other federal candidates once they achieve multicandidate status. In contrast, authorized committees may not accept more than $1,000 per election from individuals and may not make contributions in excess of $1,000 to other candidates.

The existence of PACs created by candidates can present difficult issues for the Commission, such as when contributions are jointly solicited with the candidate's principal campaign committee or the resources of the PAC are used to permit the candidate to gain exposure by traveling to appearances on behalf of other candidates. At times the operations of the two committees can be difficult to distinguish.

If Congress concludes that there is an appearance that the limits of the Act are being evaded through the use of PACs created by candidates, it may wish to consider whether such committees are affiliated with the candidate's principal campaign committee. As such, contributions received by the committees would be aggregated under a single contribution limit and subjected to the limitations on contributions to authorized committees. The same treatment would be accorded to contributions made by them to other candidates.

should limit such disclosure to secondary payments above a certain dollar threshold or to payments made to independent subcontractors.

Explanation: The Commission has encountered on several occasions the question of just how detailed a committee's reporting of disbursements must be. See, e.g., Advisory Opinion 1983-25, 1 Fed. Election Camp. Fin. Guide (CCH), ¶ 5742 (Dec. 22, 1983) (Presidential candidate's committee not required to disclose the names, addresses, dates or amounts of payments made by a general media consultant retained by the committee); Advisory Opinion 1984-8, 1 Fed. Election Camp. Fin. Guide (CCH), ¶ 5756 (Apr. 20, 1984) (House candidate's committee only required to itemize payments made to the candidate for travel and subsistence, not the payments made by the candidate to the actual providers of services); Financial Control and Compliance Manual for Presidential Primary Election Candidates Receiving Public Financing, Federal Election Commission, pp. 123-130 (1992) (distinguishing committee advances or reimbursements to campaign staff for travel and subsistence from other advances or reimbursements to such staff and requiring itemization of payments made by campaign staff only as to the latter). Congressional intent in the area is not expressly stated, and the Commission believes that statutory clarification would be beneficial. In the area of Presidential public financing, where the Commission is responsible for monitoring whether candidate disbursements are for qualified campaign expenses (see 26 U.S.C. §§9004(c) and 9038(b)(2)), guidance would be particularly useful.

Excluding Political Committees from Protection of the Bankruptcy Code
Section: 2 U.S.C. §433(d)

Recommendation: The Commission recommends that Congress clarify the distribution of authority over insolvent political committees between the Commission's authority to regulate insolvency and termination of political committees under 2 U.S.C. §433(d), on one hand, and the authority of the bankruptcy courts, on the other hand.

Explanation: In 2 U.S.C. §433(d), the Commission is given authority to establish procedures for "the determination of insolvency" of any political committee, the "orderly liquidation of an insolvent political committee," the "application of its assets for the reduction of outstanding debts," and the "termination of an insolvent political committee after such liquidation..." However, the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, generally grants jurisdiction over such matters to the bankruptcy courts, and at least one bankruptcy court has exercised its jurisdiction under Chapter 11 of the Bankruptcy Code to permit an ongoing political committee to compromise its debts with the intent thereafter to resume its fundraising and contribution and expenditure activities. *In re Fund for a Conservative Majority,* 100 B.R. 307 (Bankr. E.D.Va. 1989). Not only does the exercise of such jurisdiction by the bankruptcy court conflict with the evident intent in 2 U.S.C. §433(d) to empower the Commission to regulate such matters with respect to political committees, but permitting a political committee to compromise debts and then resume its political activities can result in corporate creditors effectively subsidizing the committee's contributions and expenditures, contrary to the intent of 2 U.S.C. §441b(a). The Commission promulgated a regulation generally prohibiting ongoing political committees from compromising outstanding debts, 11 CFR 116.2(b), but the continuing potential jurisdiction of the bankruptcy courts over such matters could undermine the Commission's ability to enforce it. Accordingly, Congress may want to clarify the distribution of authority between the Commission and the bankruptcy courts in this area. In addition, Congress should specify whether political committees are entitled to seek Chapter 11 reorganization under the Bankruptcy Code.

The Commission considered expanding the general disclaimer requirements in the course of the rulemaking; however, this was not included in the final rules, which rather clarify the scope of some of the subordinate requirements. Most of these problems would be eliminated if the language of 2 U.S.C. §441d were simplified to require a registered committee to display a disclaimer notice whenever it communicated to the public, regardless of the purpose of the communication and the means of preparing and distributing it. The general public would benefit by being aware of who has paid for a particular communication. Moreover, political committees and the Commission would benefit because they would no longer have to examine the content of communications or the manner in which they were disseminated to determine whether a disclaimer was required.

This proposal is not intended to eliminate exemptions for communications appearing in places where it is inconvenient or impracticable to display a disclaimer.

Fourth, Congress might want to consider adding disclaimer requirements for so-called "push poll" activity. This term generally refers to phone bank activities or written surveys that seek to influence voters, such as by providing false or misleading information about a candidate. This practice appears to be growing. The Commission has considered requiring disclaimers on push poll communications, but has declined to do so for a number of reasons, including difficulty in defining push polls and the fact that many such polls do not appear to expressly advocate the election or defeat of a clearly identified candidate. If Congress enacted the general disclaimer requirement proposed above, this would encompass push poll communications by political committees. Congress might also wish to require disclosure by other groups engaging in this practice.

Finally, Congress should change the sponsorship identification requirements found in the Federal Communications Act to make them consistent with the disclaimer notice requirements found in the FECA. Under the Communications Act, federal political broadcasts must contain an announcement that they were furnished to the licensee, and by whom. See FCC and FEC Joint Public Notice, FCC 78-419 (June 19, 1978). In contrast, FECA disclaimer notices focus on who authorized and paid for the communication. The Communications Act should be revised to ensure that the additional information required by the FECA is provided without confusion to licensees and political advertisers. In addition, the FECA should be amended to require that the disclaimer appear at the end of all broadcast communications.

Fraudulent Solicitation of Funds
Section: 2 U.S.C. §441h

Recommendation: The current §441h prohibits fraudulent misrepresentation such as speaking, writing or acting on behalf of a candidate or committee on a matter which is damaging to such candidate or committee. It does not, however, prohibit persons from fraudulently soliciting contributions. The Commission recommends that a provision be added to this section prohibiting persons from fraudulently misrepresenting themselves as representatives of candidates or political parties for the purpose of soliciting contributions which are not forwarded to or used by or on behalf of the candidate or party.

Explanation: The Commission has received a number of complaints that substantial amounts of money were raised fraudulently by persons or committees purporting to act on behalf of candidates. Candidates have complained that contributions which people believed were going for the benefit of the candidate were diverted for other purposes. Both the candidates and the contributors were harmed by such diversion. The candidates received less money because people desirous of contributing political parties, and other organizations is an in-kind contribution because it is coordinated with a candidate or a candidate's campaign.

Explanation: The 1996 election cycle saw an explosion in "issue advocacy" advertising. Such advertising explores an officeholder's, a party's or a candidate's stand on a particular issue, but does not expressly advocate the election or defeat of a clearly identified candidate or party. Courts have ruled that the Act's prohibition on expenditures by corporations and labor organizations does not extend to issue advocacy that does not contain express advocacy. See *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986); *FEC v. Christian Action Network*, 894 F.Supp. 946 (W.D. Va. 1995), *aff'd,* 92 F.3d 1178 (4th Cir. 1996); *Clifton v. FEC*, 927 F.Supp. 493 (D.Me. 1996) and *Maine Right to Life v. FEC*, 914 F. Supp. 8 (D.Me. 1996), *aff'd*, 98 F.3d 1 (1st Cir. 1996).

The Act defines the term "contribution" to include funds that are spent "for the purpose of influencing an election." Although advertisements devoted solely to issue advocacy do not contain express advocacy, such advertising may benefit or harm a candidacy and consequently influence the election process, particularly if the communication is coordinated with a candidate or his/her campaign. In a series of cases, the Supreme Court has viewed public communications coordinated with campaigns as in-kind contributions. As contributions, such communications were subject to the Act's limitations and prohibitions, but were not subject to the same level of First Amendment protection as expenditures. See *Buckley v. Valeo*, 424 U.S. 1 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986); and *Colorado Republican Federal Campaign Committee v. FEC*, 116 S.Ct. 2309 (1996).

In accordance with these rulings, Congress should stipulate when coordination of an issue advocacy advertisement with a candidate or campaign would be considered an in-kind contribution. Additionally, Congress should state that coordination of such a public communication with a corporation or a labor organization would be prohibited activity. Such a prohibition would help the Commission address the public's concern about the use of soft money--funds that are raised or spent outside the prohibitions of the Act (such as corporate or union treasury funds)--to influence federal elections.

Candidate's Use of Campaign Funds (revised 1997)
Section: 2 U.S.C. §439a

Recommendation: Congress may wish to examine whether the use of campaign funds to pay a salary to the candidate is considered to be a "personal use" of those funds.

Explanation: Under §439a of the Act, excess campaign funds cannot be converted by any person to personal use. The Commission has promulgated final rules on what would constitute "personal use" of excess funds. See 11 CFR 113.1(g). It was unable, however, to decide whether excess campaign funds may be used to pay a salary to the candidate. In the past, some have argued before the Commission that candidate salary payments are legitimate campaign expenditures, while others have felt that such payments constitute a personal use of excess funds prohibited by §439a. Congressional guidance on this issue would be helpful.

Disposition of Excess Campaign Funds
Section: 2 U.S.C. §439a

Recommendation: In those cases where a candidate has largely financed his campaign with personal funds, the Commission recommends that Congress consider limiting the amount of excess campaign funds that the campaign may transfer to a national, state or local committee of any political party to $100,000 per year.

Explanation: Under current law, a candidate may transfer unlimited amounts of excess campaign funds to a political party. This makes it possible for

Party committees may also make expenditures for generic party-building activities, including get-out-the-vote and voter registration drives. These activities are not directly attributable to a clearly identified candidate. In contrast to coordinated party expenditures, these activities are not subject to limitation.

When deciding, in advisory opinions and enforcement matters, whether an activity is a §441a(d) expenditure or a generic activity, the Commission has considered the timing of the expenditure, the language of the communication, and whether it makes reference only to candidates seeking a particular office or to all the party's candidates, in general. However, the Commission still has difficulty determining, in certain situations, when a communication or other activity is generic party building activity or a coordinated party expenditure. Congressional guidance on this issue would be helpful.

Volunteer Participation in Exempt Activity
Section: 2 U.S.C. §§431(8)(B)(x) and (xii); 431(9)(B)(viii) and (ix)

Recommendation: The Commission recommends that Congress clarify the extent to which volunteers must conduct or be involved in an activity in order for the activity to qualify as an exempt party activity.

Explanation: Under the Act, certain activities conducted by state and local party committees on behalf of the party's candidates are exempt from the contribution limitations if they meet specific conditions. Among these conditions is the requirement that the activity be conducted by volunteers. However, the actual level of volunteer involvement in these activities has varied substantially.

Congress may want to clarify the extent to which volunteers must be involved in an activity in order for that activity to qualify as an exempt activity. For example, if volunteers are assisting with a mailing, must they be the ones to stuff the envelopes and sort the mail by zip code or can a commercial vendor perform that service? Is it sufficient involvement if the volunteers just stamp the envelopes or drop the bags at the post office?

Contributions from Minors
Section: 2 U.S.C. §441a(a)(1)

Recommendation: The Commission recommends that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf.

Explanation: The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another.

Application of Contribution Limitations to Family Members
Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that Congress examine the application of the contribution limitations to immediate family members.

Explanation: Under the current posture of the law, a family member is limited to contributing $1,000 per election to a candidate. This limitation applies to spouses and parents, as well as other immediate family members. (See S. Conf. Rep. No. 93–1237, 93d Cong., 2d Sess., 58 (1974) and *Buckley v. Valeo*, 424 U.S. 1, 51 (footnote 57)(1976).) This limitation has caused the Commission substantial problems in attempting to implement and enforce the contribution limitations.[4]

[4] While the Commission has attempted through regulations to present an equitable solution to some of these problems (see Explanation and Justification, Final Rule, 48 Fed. Reg. 19019, April 27, 1983, as prescribed by the Commission on July 1, 1983), statutory resolution is required in this area.

as to allow the Commission to open an investigation with a sworn complaint, or after obtaining evidence in the normal course of its supervisory responsibilities. Essentially, this would change the "reason to believe" standard to "reason to open an investigation."

Explanation: Under the present statute, the Commission is required to make a finding that there is "reason to believe a violation has occurred" before it may investigate. Only then may the Commission request specific information from a respondent to determine whether, in fact, a violation has occurred. The statutory phrase "reason to believe" is misleading and does a disservice to both the Commission and the respondent. It implies that the Commission has evaluated the evidence and concluded that the respondent has violated the Act. In fact, however, a "reason to believe" finding simply means that the Commission believes a violation may have occurred if the facts as described in the complaint are true. An investigation permits the Commission to evaluate the validity of the facts as alleged.

It would therefore be helpful to substitute words that sound less accusatory and that more accurately reflect what, in fact, the Commission is doing at this early phase of enforcement.

In order to avoid perpetuating the erroneous conclusion that the Commission believes a respondent has violated the law every time it finds "reason to believe," the statute should be amended.

Protection for Those Who File Complaints or Give Testimony (revised 1997)
Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that the Act be amended to make it unlawful to improperly discriminate against employees or union members solely for filing charges or giving testimony under the statute.

Explanation: The Act requires that the identity of anyone filing a complaint with the Commission be provided to the respondent. In many cases, this may put complainants at risk of reprisals from the respondent, particularly if an employee or union member files a complaint against his or her employer or union. This risk may well deter many people from filing complaints, particularly under §441b. *See, e.g., NLRB v. Robbins Tire & Rubber Company,* 437 U.S. 214, 240 (1978); *Brennan v. Engineered Products, Inc.,* 506 F.2d 299, 302 (8th Cir. 1974); *Texas Industries, Inc. v. NLRB,* 336 F.2d 128, 134 (5th Cir. 1964). In other statutes relating to retaliation for filing complaints, Congress has made it unlawful to discriminate against employees or other individuals for filing charges or giving testimony under the statute. *See, e.g.,* 29 U.S.C. §158(a)(4) (National Labor Relations Act); 29 U.S.C. §215(3) (Fair Labor Standards Act); 42 U.S.C. §2000e-3(a) (Equal Employment Opportunity Act); 42 U.S.C. §3617 (Fair Housing Act). The Commission recommends that Congress consider including a similar provision in the FECA.

Public Financing

Supplemental Funding for Publicly Funded Candidates
Section: 26 U.S.C. §§9003 and 9004

Recommendation: The Commission recommends that Congress consider whether to modify the general election Presidential public funding system in instances where a nonpublicly funded candidate exceeds the spending limit for publicly funded candidates.

Explanation: Major party Presidential candidates who participate in the general election public funding process receive a grant for campaigning. In order to receive the grant, the candidate must agree

Part III Conforming Legislative Recommendations

Disclosure

Definition of Political Committee (1997)
Section: 2 U.S.C. §431(4)(A)

Recommendation: The Commission recommends that Congress revise the definition of political committee to incorporate "major purpose" as the test recognized by the courts.

Explanation: Section 431(4)(A) of the Act defines a political committee as a group which raises or spends in excess of $1,000 during a calendar year. In *Buckley v. Valeo*, the Supreme Court, citing First Amendment concerns, ruled that the definition of political committee "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Subsequent court rulings have cited the Buckley case in interpreting the statute to include "major purpose" as the test. See *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) and *FEC v. GOPAC, Inc.*, 917 F.Supp. 851 (D.D.C. 1996).

Recently, however, an appeals court has interpreted the wording of the statute narrowly, ruling that the $1,000 threshold is the only applicable factor in determining if an organization is a political committee. See *Akins v. FEC*, No. 92-1864(JLG) (D.D.C. 1994); *aff'd*, 66 F.3d 348 (D.C. Cir. 1995, *appeal vacated and reh'g en banc granted*, 74 F.3d 287 (D.C. Cir. 1996), *rev'd*, (D.C. Cir. 1996).

Congress should amend the statute to rectify the conflicting court rulings and to clarify Congressional intent regarding the meaning of "major purpose."

Point of Entry for Pseudonym Lists
Section: 2 U.S.C. §438(a)(4)

Recommendation: The Commission recommends that Congress make a technical amendment to section 438(a)(4) by deleting the reference to the Clerk of the House.

Explanation: Section 438(a)(4) outlines the processing of disclosure documents filed under the Act. The section permits political committees to "salt" their disclosure reports with 10 pseudonyms in order to detect misuse of the committee's FEC reports and protect individual contributors who are listed on the report from unwanted solicitations. The Act requires committees who "salt" their reports to file the list of pseudonyms with the appropriate filing office.

Public Law No. 104-79 (December 28, 1995) changed the point of entry for House candidate reports from the Clerk of the House to the FEC, effective December 31, 1995. As a result, House candidates must now file pseudonym lists with the FEC, rather than the Clerk of the House. To establish consistency within the Act, the Commission recommends that Congress amend section 438(a)(4) to delete the reference to the Clerk of the House as a point of entry for the filing of pseudonym lists.

Contributions and Expenditures

Broader Prohibition Against Force and Reprisals
Section: 2 U.S.C. §441b(b)(3)(A)

Recommendation: The Commission recommends that Congress revise the FECA to make it unlawful for a corporation, labor organization or separate segregated fund to use physical force, job discrimination, financial reprisals or the threat thereof to obtain a contribution or expenditure on behalf of any candidate or political committee.

Acceptance of Cash Contributions

Section: 2 U.S.C. §441g

Recommendation: The Commission recommends that Congress modify the statute to make the treatment of 2 U.S.C. §441g, concerning cash contributions, consistent with other provisions of the Act. As currently drafted, 2 U.S.C. §441g prohibits only the *making* of cash contributions which, in the aggregate, exceed $100 per candidate, per election. It does not address the issue of *accepting* cash contributions. Moreover, the current statutory language does not plainly prohibit cash contributions in excess of $100 to political committees other than authorized committees of a candidate.

Explanation: Currently this provision focuses only on persons making the cash contributions. However, these cases generally come to light when a committee has accepted these funds. Yet the Commission has no recourse with respect to the committee in such cases. This can be a problem, particularly where primary matching funds are received on the basis of such contributions.

While the Commission, in its regulations at 11 CFR 110.4(c)(2), has included a provision requiring a committee receiving such a cash contribution to promptly return the excess over $100, the statute does not explicitly make acceptance of these cash contributions a violation. The other sections of the Act dealing with prohibited contributions (i.e., §§ 441b on corporate and labor union contributions, 441c on contributions by government contractors, 441e on contributions by foreign nationals, and 441f on contributions in the name of another) all prohibit both the making and accepting of such contributions.

Secondly, the statutory text seems to suggest that the prohibition contained in §441g applies only to those contributions given to candidate committees. This language is at apparent odds with the Commission's understanding of the Congressional purpose to prohibit any cash contributions which exceed $100 in federal elections.

Public Financing

Applicability of Title VI to Recipients of Payments from the Presidential Election Campaign Fund

Section: 26 U.S.C. §§9006(b), 9008(b)(3) and 9037.

Recommendation: The Commission recommends that Congress clarify that committees receiving public financing payments from the Presidential Election Campaign Fund are exempt from the quirements of Title VI of the Civil Rights Act of 1964, as amended.

Explanation: This proposed amendment was prompted by the decision of the U.S. District Court for the District of Columbia in *Freedom Republicans, Inc., and Lugenia Gordon v. FEC,* 788 F. Supp. 600 (1992), *vacated,* No. 92-5214 (D.C. Cir. January 18, 1994). The Freedom Republicans' complaint asked the district court to declare that the Commission has jurisdiction to regulate the national parties' delegate selection process under Title VI. It also requested the court to order the Commission to adopt such regulations, direct the Republican Party to spend no more of the funds already received for its 1992 national nominating convention, and seek refunds of moneys already disbursed if the Republican Party did not amend its delegate selection and apportionment process to comply with Title VI. The district court found that the Commission "does have an obligation to promulgate rules and regulations to insure the enforcement of Title VI. The language of Title VI is necessarily broad, and applies on its face to the FEC as well as to both major political parties and other recipients of federal funds." 788 F. Supp. at 601.

The Commission appealed this ruling on a number of procedural and substantive grounds, including that Title VI does not apply to the political parties' apportionment and selection of delegates to their conventions. However, the court of appeals overruled the district court decision on one of the non-

Miscellaneous

Ex Officio Members of Federal Election Commission
Section: 2 U.S.C. §437c(a)(1)

Recommendation: The Commission recommends that Congress amend section 437c by removing the Secretary of the Senate, the Clerk of the House, and their designees from the list of the members of the Federal Election Commission.

Explanation: In 1993, the U.S. Court of Appeals for the District of Columbia ruled that the ex officio membership of the Secretary of the Senate and the Clerk of the House on the Federal Election Commission was unconstitutional. (*FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *cert. dismissed for want of jurisdiction*, 115 S. Ct. 537 (12/6/94).) This decision was left in place when the Supreme Court dismissed the FEC's appeal on the grounds that the FEC lacks standing to independently bring a case under Title 2.

As a result of the appeals court decision, the FEC reconstituted itself as a six-member body whose members are appointed by the President and confirmed by the Senate. Congress should accordingly amend the Act to reflect the appeals court's decision by removing the references to the ex officio members from section 437c.

Draft 1 (March 5: 11:55 pm)
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FACT SHEET
President Clinton's Radio Address On Campaign Finance Reform
March 8, 1997

In today's radio address, the President announced that he is directing his Administration (the Justice Department) to petition the Federal Election Commission (FEC) to issue new, tighter rules regarding the solicitation and acceptance of "soft money" by candidates and parties. The petition proposes to end the current soft money system by requiring that candidates for federal office and national parties only be permitted to raise and spend "hard money" -- funds subject to the restrictions, contribution limits, and reporting requirements of the 1974 Federal Election Campaign Act (FECA).

A Commitment To Ending Business As Usual: Banning Soft Money

Time and again, President Clinton has exhibited his commitment to curbing the influence of special interests and money in our political system. Since 1992, the President has consistently called for a ban on soft money in federal elections:

- 1992: In *Putting People First*, the President proposed to "end the unlimited soft money contributions that are funneled through national, state and local parties to presidential candidates."

- 1993: The President submitted to Congress comprehensive campaign finance reform legislation that includes a ban on soft money. A version of the bill passes both the Senate and the House of Representatives but conferees fail to reach agreement on a final version of the legislation. **(Michael, is this correct?)**

- 1996: In the 1996 State of the Union, the President announces his support of the bipartisan McCain-Feingold reform legislation which includes a ban on soft money in federal elections. He repeats his call for passage of this bipartisan bill in his 1997 State of the Union.

- 1997: The President challenges the Republican Party to join with the Democratic Party to stop accepting soft money contributions prior to passage of bipartisan campaign finance reform legislation.

Background

Federal law requires that expenditures incurred for the purpose of influencing a federal election must be paid for with funds subject to the limits of federal law; that is with so-called "hard money." In the case of candidates, that means $1,000 contributions from individuals and $5,000 contributions from PACs. For many years the FEC struggled with defining exactly what that meant and how political party expenditures that have an apparent mixed purpose -- in that they support both federal and state candidates -- should be treated.

After some delay, and in the wake of protracted litigation that eventually resulted in a federal court order, the FEC issued regulations in 1990 establishing a system for allocating party

William P. Marshall
03/06/97 10:43:03 AM

Record Type: Record

To: Paul J. Weinstein Jr./OPD/EOP

cc: Michael Waldman/WHO/EOP, Laura K. Capps/WHO/EOP
Subject: Re: Campaign Finance Reform Petition

Paul,

Some suggestions:

1. First paragraph.

Check and see if McCain-Feingold prohibits national parties from using soft money for non-campaign activities such as capital projects, conventions etc. If it doesn't and we haven't taken that position, the last sentence in this paragraph is slightly overstated in its claim that we are proposing that "national parties only will be permitted to raise and spend 'hard money'." Limit the sentence so that it is clear our petition applies to campaigns.

2. Second paragraph in Background section.

I would eliminate the last two sentences of this paragraph. They are not necessary and the implicit suggestion, in the context of our proposal, is that the original objectors were right and soft money was "abused." I do not think we should go that far.

3. Final paragraph in background section.

Whether Justice will initiate the petition still hasn't been worked out.

4. Final paragraph in background section.

Eliminate the last sentence of the background section which says that a federal court recognized that the "FEC has the authority to act and end ..... allocations .. for joint activities altogether." The case is not clear on this and the sentence is not needed. It may also raise the question, if the law is so clear, as to why we haven't moved on this before.

Good job.

DON SIMON:

committee expenditures between federal and non-federal purposes. Those regulations came under some criticism when they were first issued by those who claimed an allocation system would be abused by a determined effort to use soft money to influence federal elections. Others believed the rules accurately reflected the dual purpose of many party committee expenditures for generic party activities in support of both federal and non-federal candidates.

It is now become abundantly clear that the FEC regulations governing the use of soft money are not working. Both major party committees and their state affiliates have come to rely to an alarming extent on the use of some money in their national elections. Large contributions well in excess of $100,000 from individuals, corporations, and labor unions, have become common today as both political parties struggle to gain a competitive advantage. It is well past time for the FEC to reassess this matter and issue new regulations governing the use of soft money to influence federal elections.

Next week the Justice Department, at the President's directions, will be sending a formal petition to the FEC asking it to consider new regulations that will ban the use of soft money to influence federal elections. The allocation system in use today must be thrown out and replaced by new rules that recognize the reality of modern political campaigns. As the federal court recognized when it ordered the FEC to issue rules back in the late 1980s, the FEC has the authority to act and end the current soft money system by ending allocations between hard and soft money for joint activities altogether.

Contents of the Petition

The President's petition asks the FEC to take the following three actions regarding the solicitation and disbursement of soft money:

- Prohibit national political parties (and their congressional campaign committees or agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of FECA.

- Prohibit any federal officeholder or candidate (and their agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of FECA.

- Provide that any amount of funds expended by a state party during a federal election year for any activity that might affect a federal election (including a get-out-the-vote drive, generic advertising or any communication that mentions a federal candidate) must be paid for from funds subject to FECA.

SUBCHAPTER B—ADMINISTRATIVE REGULATIONS

PART 200—PETITIONS FOR RULEMAKING

AUTHORITY: 2 U.S.C. 437d(a)(8); 2 U.S.C. 438(a)(8), 5 U.S.C. 553(e).

SOURCE: 57 FR 34510, Aug. 5, 1992, unless otherwise noted.

§ 200.1 Purpose and scope.

This part prescribes the procedures for the submission, consideration, and disposition of petitions filed with the Federal Election Commission. It establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

[57 FR 34510, Aug. 5, 1992; 57 FR 39743, Sept. 1, 1992]

§ 200.2 Procedural requirements.

(a) Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of a rule implementing any of the following statutes:

(1) The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.*;

(2) The Presidential Election Campaign Fund Act, as amended, 26 U.S.C. 9001 *et seq.*;

(3) The Presidential Primary Matching Payment Account Act, as amended, 26 U.S.C. 9031 *et seq.*;

(4) The Freedom of Information Act, 5 U.S.C. 552; or

(5) Any other law that the Commission is required to implement and administer.

(b) The petition shall—

(1) Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal; [illegible]

(2) Identify itself as a petition for the issuance, amendment, or repeal of a rule;

(3) Identify the specific section(s) of the regulations to be affected;

(4) Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and

(5) Be addressed and submitted to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.

(c) The petition may include draft regulatory language that would effectuate the petitioner's proposal.

(d) The Commission may, in its discretion, treat a document that fails to conform to the format requirements of paragraph (b) of this section as a basis for a sua sponte rulemaking. For example, the Commission may consider whether to initiate a rulemaking project addressing issues raised in an advisory opinion request submitted under 11 CFR 112.1 or in a complaint filed under 11 CFR 111.4. However, the Commission need not follow the procedures of 11 CFR 200.3 in these instances.

§ 200.3 Processing of petitions.

(a) If a document qualifies as a petition under 11 CFR 200.2, the Commission, upon the recommendation of the Office of General Counsel, will—

(1) Publish a Notice of Availability in the FEDERAL REGISTER, stating that the petition is available for public inspection in the Commission's Public Records Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the notice;

(2) Send a letter to the Commissioner of Internal Revenue, pursuant to 2 U.S.C. 438(f), seeking the IRS's comments on the petition; and

(3) Send a letter to the petitioner, acknowledging receipt of the petition and informing the petitioner of the above actions.

(b) If the petition does not comply with the requirements of 11 CFR 200.2(b), the Office of General Counsel may notify the petitioner of the nature of any discrepancies.

(c) If the Commission decides that a Notice of Inquiry, Advance Notice of Proposed Rulemaking, or a public hearing on the petition would contribute to its determination whether to commence a rulemaking proceeding, it will publish an appropriate notice in the FEDERAL REGISTER, to advise interested persons and to invite their participation.

(d) The Commission will not consider the merits of the petition before the expiration of the comment period on the Notice of Availability.

(e) The Commission will consider all comments filed within the comment period prescribed in the relevant FEDERAL REGISTER notice. The Commission may, at its discretion, consider comments received after the close of the comment period.

§ 200.4 Disposition of petitions.

(a) After considering the comments that have been filed within the comment period(s) and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate a rulemaking based on the filed petition.

(b) If the Commission decides not to initiate a rulemaking, it will give notice of this action by publishing a Notice of Disposition in the FEDERAL REGISTER and sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision, except in an action affirming a prior denial.

(c) The Commission may reconsider a petition for rulemaking previously denied if the petitioner submits a written request for reconsideration within 30 calendar days after the date of the denial and if, upon the motion of a Commissioner who voted with the majority that originally denied the petition, the Commission adopts the motion to reconsider by the affirmative vote of four members.

§ 200.5 Agency considerations.

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations—

(a) The Commission's statutory authority;

(b) Policy considerations;

(c) The desirability of proceeding on a case-by-case basis;

(d) The necessity or desirability of statutory revision;

(e) Available agency resources.

§ 200.6 Administrative record.

(a) The agency record for the petition process consists of the following:

(1) The petition, including all attachments on which it relies, filed by the petitioner.

(2) Written comments on the petition which have been circulated to and considered by the Commission, including attachments submitted as a part of the comments.

(3) Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process.

(4) All notices published in the FEDERAL REGISTER, including the Notice of Availability and Notice of Disposition. If a Notice of Inquiry or Advance Notice of Proposed Rulemaking was published it will also be included.

(5) The transcripts or audio tapes of any public hearing(s) on the petition.

(6) All correspondence between the Commission and the petitioner, other commentators and state or federal agencies pertaining to Commission consideration of the petition.

(7) The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.

(b) The administrative record specified in paragraph (a) of this section is the exclusive record for the Commission's decision.

PART 201—EX PARTE COMMUNICATIONS

AUTHORITY: 2 U.S.C. 437d(a)(8), 437f, 438(a)(8), 438(b); 26 U.S.C. 9007, 9008, 9009(b), 9038, 9039(b).

THE WHITE HOUSE

WASHINGTON

February 28, 1997

Information

MEMORANDUM FOR THE PRESIDENT

FROM: MICHAEL WALDMAN MW

SUBJECT: SOFT-MONEY PETITION BEFORE THE FEC

Last week, you asked whether it would be possible to file a petition before the Federal Election Commission to enact a significant part of the McCain-Feingold ban on soft money through agency action.

The preliminary short answer is: Yes, the significant elements of a soft money ban could be accomplished through a majority vote of the FEC (without waiting for passage of campaign finance reform legislation).

The statutory basis

The FEC could act by saying that new, strict soft-money provisions are permitted under the 1974 Federal Election Campaign Act (FECA), which requires "hard" money for federal elections. As you know, over the years the agency has authorized significant amounts of soft money fundraising in a manner that affects federal elections. The Courts forced the agency to issue rules on soft money in 1990, but gave it almost complete deference on how to do so. In fact, the court specifically mentioned that the agency could end allocations between hard and soft money for joint activities altogether.

Any petition would have to be carefully drawn so as not to affect any legal position taken by the reelection campaign or the DNC relating to existing rules.

What the petition could ask for

McCain-Feingold bill approaches the soft-money ban from three directions.

First, it prohibits the national political parties (and their congressional campaign committees or agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of the FECA.

Second, it prohibits any federal officeholder or candidate (and their agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of the FECA.

Third, it provides that any amount expended by a state party during a federal election year for any activity that might affect a federal election (including a get-out-the-vote drive, generic advertising or any communication that mentions a federal candidate) must be paid for from funds subject to the FECA.

That leaves state parties free to raise and spend non-federal or soft money on any activities that do not affect a federal election, including contributions to state and local candidates, campaign materials that name only state and local candidates or campaign activity that is solely on behalf of state or local candidates.

We could petition the FEC to incorporate these provisions into regulation, while eliminating the existing provisions that allow for allocation of mixed expenses.

Political considerations

The petition would most appropriately be filed by the United States Government (rather than the DNC), possibly as a joint petition with reform groups. (We are working on this, on a confidential basis, with Common Cause's General Counsel Don Simon [a former partner of Jack Quinn's] and Robert Rozen, as well as our Counsel's Office.) It may be possible to informally consult with the FEC itself to help frame the arguments.

However, the threshold question remains: Such a petition would not pass the credibility threshold -- i.e., it would neither have much chance of being acted upon nor being taken seriously -- if we do not take some additional action to renew the FEC. Therefore, any decision whether to proceed with a soft-money petition will likely depend upon a decision about other steps relating to the FEC.

We will continue to work on this pending a decision whether to proceed.

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