

NLWJC - Kagan

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Campaign Finance [Folder 1][2]

Express Advocacy—January 16 Draft

Section 431(9)(A) is amended by adding at the end:

for the purpose of influencing any election for federal office

(iii) any payment for a communication that is made through any broadcast medium, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising by a national, state, district or local committee of a political party, including any congressional campaign committee of a party, that refers by name, description or likeness to a clearly identified candidate for federal office, and

(iv) any payment for a communication that contains express advocacy.
Express advocacy means –

(1) any communication that conveys a message that advocates the election or defeat of a clearly identified candidate fo r federal office by using expressions such as “vote for,” “elect,” “support,” “vote against,” “defeat,” “reject,” “vote pro-life,” or “vote pro-choice,” accompanied by a listing or picture of clearly identified candidates described as “pro-life” or “pro-choice,” “reject the incumbent,” or similar expressions, or

(2) any communication that is made through any broadcast medium, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising that refers to a clearly identified candidate for federal office, that a reasonable person would understand as advocating the election or defeat of such candidate, and that is made within 30 days prior to a primary election (and is targeted to the state in which the primary is occurring) or 60 days prior to a general election, or

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(3) any communication that is made through any broadcast medium, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising that refers to a clearly identified candidate for federal office, that a reasonable person would understand as advocating the election or defeat of such candidate, that is made prior to the period covered in subparagraph (2), and that is made for the purpose of advocating the election or defeat of such candidate, as shown by one or more factors such as statements or actions by the person

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making the communication, or the targeting or placement of the communication, or the use by the person making the communication of polling, demographic or other similar data relating to the candidate's campaign or election.

- (4) The term "express advocacy" does not include the publication or distribution of a communication that is limited solely to providing information about voting records of elected officials on legislative matters.

and that a reasonable person would not understand to be primarily advocating the election or defeat of a specific candidate.

Definition of Coordination – January 16 Draft

Section 301(8)(A) is amended by adding new paragraphs (iii) and (iv) as follows:

(8)(A) The term contribution includes –

(iii) any payment made for a communication or anything of value that is for the purpose of influencing an election for Federal office and that is made in coordination with a candidate. Payments made in coordination with a candidate include:

(1) payments made by any person in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any general or particular understanding with a candidate, his authorized political committees, or their agents acting on behalf of the candidate or authorized committee; or

(2) payments made by any person for the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his authorized political committees, or their agents, but not including communications exempted under section 301(9)(B)(I), or communications that advocate the candidate's defeat; or

(3) payments made based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate or the candidate's agents;

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(4) payments made by any person if, in the same election cycle, the person making the payment is or has been serving as a member, employee, fundraiser or agent of the candidate's authorized committee in an executive or policy making position; or

(5) payments made by any person if the person making the payments has served in any formal policy or advisory position with the candidate's campaign or has participated in any strategic or policy making relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle.

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(6) payments made by a person if, in the same election cycle, the person making the payments retains the professional services of any individual or other person who has provided or is providing campaign related services in the same election cycle to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, including any services relating to the candidate's decision to seek Federal office, and the professional is retained to work on activities relating to that candidate's campaign. For purposes of this clause, the term professional services shall include any services in support of any candidate's or candidates pursuit of nomination for election, or election, to Federal office such as polling, media advice, direct mail, soliciting voluntary contributions or facilitating the making of voluntary contributions, campaign research

(bb) For purposes of this subparagraph, person shall include any officer, director, employee or agent of such person.

Section 315(a)(7) [2 U.S.C. 441a(a)(7)] is amended by revising paragraph (B) as follows:

(B) Expenditures made in coordination with a candidate, as described in section 301(8)(A)(iii), shall be considered to be contributions to such candidate and, in the case of limitations on expenditures, shall be treated as expenditures for purposes of this section.

Section 316(b) [2 U.S.C. 441b(b)] is amended by revising paragraph (2) as follows:

(2) For purposes of this section and section 791(h) of title 15, the terms "contribution or expenditure" shall include the definitions of those terms at sections 301(8)(A) and 301(9)(A) and shall also include any direct or indirect payment... [continue with current statute]

Section 301 [2 U.S.C. 431] is amended by striking paragraph (17) and inserting the following:

(17) (A) The term "independent expenditure" means an expenditure

that —

(i) contains express advocacy; and

(ii) is made without the participation or cooperation of, or without consultation of, or without coordination with a candidate or a candidate's authorized committee or agent, as defined in section 301(8)(A)(iii).

(B) Any expenditure or payment made in coordination with a candidate as defined in section 301(8)(A)(iii) is not an independent expenditure under paragraph (17).

Section 441a(d) is amended by adding the word "coordinated" between the words "make" and "expenditures", by adding (4) after (3), in subparagraph (1), and by adding new paragraphs as follows:

(4) Before a party committee may make coordinated expenditures in connection with a general election campaign for federal office in excess of \$5,000 pursuant to this subsection, it shall file with the Federal Election Commission a certification, signed by the treasurer, that it has not and will not make any independent expenditures in connection with that campaign for federal office. A party committee that determines to make coordinated expenditures pursuant to this subsection shall not make any transfers of funds in the same election cycle to, or receive any transfers of funds in the same election cycle from, any other party committee that determines to make independent expenditures in connection with the same campaign for federal office.

(5)(a) A political committee established and maintained by a political party shall be considered to be in coordination with a candidate of that party if it has made any payment for a communication or anything of value in coordination with such candidate, as defined in section 301(8)(A)(iii), or has:

(i) made any coordinated expenditure pursuant to section 441a(d) on behalf of such candidate; or

(ii) participated in joint fundraising with such candidate, or in any way has solicited or received contributions on behalf of such candidate; or

(iii) communicated with such candidate or his agents, including pollsters, media consultants, vendors, advisors or staff, acting on behalf of the candidate,

about advertising, message, allocation of resources, fundraising or other campaign related matters including campaign operations, staffing, tactics or strategy; or provided in-kind services, polling data or anything of value to such candidate.

(b) For purposes of subparagraph (5):

- (i) all political committees established and maintained by a national political party, including all congressional campaign committees, shall be considered a single political committee, and all political committees established by a state political party shall be considered to be a single political committee, and
- (ii) a national political party committee and a state political party committee shall be considered a single political committee during an election cycle if they engage in any joint fundraising activities, if there is any transfer of funds between the committees, if they share staff or any other resources, if there is any delegation of section 441a(d) authority, if one committee pays any of the costs of the other, or if there is any joint campaign activities during that election cycle.

(c) For purposes of subparagraph (5), any coordination between a political committee established and maintained by a political party and a candidate of that party, after the candidate has filed a Statement of Candidacy, shall constitute coordination for the period from the filing of the Statement of Candidacy through the remainder of the election cycle.

Party and Coordination

Section 301(8)(A) is amended by adding new paragraphs (iii) and (iv) as follows:

(8)(A) The term contribution includes --

(iii) (aa) any expenditure for a communication that is made in coordination with a candidate. Coordination with a candidate includes:

(1) payments made by any person in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any explicit or implicit understanding with a candidate, his authorized committee or agent acting on behalf of the candidate or authorized committee. Evidence of an implicit understanding may include evidence that expenditures were made based upon information about the candidate's plans, projects or needs provided to the expending person by the candidate or his agents; evidence that the person making the expenditure has advised or counseled the candidate or the candidate's agents on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including advice relating to the candidate's decision to run for office; or other evidence of an understanding between the candidate and the person making the expenditure.

(2) payments made by any person for the dissemination, distribution or republication, in whole or in part, of any broadcast or any written graphic, or other form of campaign materials prepared by the candidate, his authorized committee, or their agents acting on behalf of the candidate or authorized committee;

(3) payments made by any person if, in the same election cycle, the person making the payment is or has been serving as a member, employee, fund raiser, or agent of the candidate's authorized committee in an executive or policy making position;

(4) payments made by any person if the person making the expenditure retains the professional services of any individual or other person who has provided or is providing campaign related services to the candidate such as polling, media advice, oversight of a direct mail operation, campaign research, but not including legal or accounting services, in the same election cycle to the candidate in connection with the candidate's pursuit of nomination for election, or election to Federal office, including any services relating to the candidate's decision to seek Federal office.

(bb) For purposes of this subparagraph, the person making the expenditure shall include all political committees established and maintained by a political party including all national state district and local committees of that party and all congressional campaign committees and any agent, if acting on behalf of the person for the purpose of influencing any election for Federal office.

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Section 315(a)(7) [441a(a)(7)] is amended by revising paragraph (B) as follows:

(B) Expenditures made in coordination with a candidate, as described in section 301(8)(A)(iii), shall be considered to be contributions to such candidate and, in case of limitations on expenditures, shall be treated as expenditures for purposes of this section.

Party and coordination language – December 17 Draft

Section 301(9)(A)(2 U.S.C. 431(9)(A)) is amended by adding new paragraph (iii) as follows:

(9)(A) The term “expenditure” includes –

(iii) any communication that is made by a national, state, district or local committee of a political party, including any congressional campaign committee of a party, that refers to a clearly identified candidate for federal office.

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Section 301(8)(A) (2 U.S.C. 431(8)(A)) is amended by adding new paragraphs (iii) and (iv) as follows:

(8)(A) The term “contribution” includes --

(iii) (aa) any [payment] made for a communication or anything of value that is made in coordination with a candidate. Payments made in coordination with a candidate include:

(1) payments made by any person in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any [general or particular] understanding with a candidate, his authorized ~~political~~ committees, or their agents;

(2) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his authorized ~~political~~ committees, or their agents; or

(3) payments made based on information about the candidate’s plans, projects, or needs provided to the expending person by the candidate or the candidate’s agents;

(4) payments made by any person if, in the same election cycle, the person making the payment is or has been --

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(I) authorized to raise or expend funds on behalf of the candidate or the candidate's authorized committees; or

(II) serving as a member, employee, or agent of the candidate's authorized committees in an executive or policymaking position.

(5) payments made by any person if the person making the payments has advised or counseled the candidate or the candidate's agents at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office.

(6) payments made by a person if the person making the payments retains the professional services of any individual or other person who has provided or is providing services in the same election cycle to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, including any services relating to the candidate's decision to seek Federal office. For purposes of this clause, the term 'professional services' shall include any services (other than legal and accounting services solely for purposes of ensuring compliance with any Federal law) in support of any candidate's or candidates' pursuit of nomination for election, or election, to Federal office.

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(bb). For purposes of this subparagraph, the person making the payment shall include any officer, director, employee or agent of such person, or any other entity established, financed or maintained by such person.

→ see pg 6 of memo

(cc). For purposes of this subparagraph, any coordination between a person and a candidate during an election cycle shall constitute coordination for the entire election cycle.

Section 315(a)(7) [2 U.S.C. 441a(a)(7)] is amended by revising paragraph (B) as follows:

(B) Expenditures made in coordination with a candidate, as described in section 301(8)(A)(iii), shall be considered to be contributions to such candidate and, in the case of limitations on expenditures, shall be treated as expenditures for purposes of this section.

Elisa Millsap
01/24/97 03:38:06 PM

Bill Marshall
~~*Karen ?*~~

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Campaign Finance Reform Meetings

There will be an internal campaign finance reform meeting in John Hilley's office on Monday, January 27 at 2 p.m.

There will be another campaign finance reform meeting on Tuesday at 3:00 p.m. in the Roosevelt Room with Common Cause folks, Congressional Staff and White House staff.

Please let me know if you will be unable to attend. Thank you!!!!!!!

Message Sent To:

John M. Quinn/WHO/EOP
Cheryl L. Sweitzer/WHO/EOP
Peter G. Jacoby/WHO/EOP
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Karen L. Hancox/WHO/EOP
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Kathryn O. Higgins/WHO/EOP
Elizabeth M. Toohy/WHO/EOP
Gordon Li/WHO/EOP

Express Advocacy

431 (9) (A)

The term "expenditure" means any purchase, payment, distribution, loan, advance, deposit, or gift of money, or anything of value, made by any person for the purpose of influencing any election for federal office and any written contract, promise, or agreement to make an expenditure, including --

(i) for a communication by a national, state, district or local committee of a political party, including any congressional campaign committee of a party, that refers to a clearly identified candidate for federal office for the purpose of influencing any election for federal office; and

(ii) for a communication that contains express advocacy. Express advocacy means --

(1) any communication that conveys a message that advocates the election or defeat of a clearly identified candidate for federal office by using expressions such as "vote for," "elect," "support," "vote against," "defeat," "reject," "vote pro-life," or "vote pro-choice," accompanied by a listing or picture of clearly identified candidates described as "pro-life" or "pro-choice," "reject the incumbent," or similar expressions, or

(2) any communication that is made through any broadcast medium, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising, that involves an aggregate disbursement of \$10,000 or more, that refers to a clearly identified candidate for federal office, and that a reasonable person would understand as primarily advocating the election or defeat of such candidate, provided such communication:

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(a) is made within 30 days prior to a primary election or 60 days prior to a general election; or

(b) is made for the purpose of advocating the election or defeat of such candidate, as shown by one or more factors such as statements or actions by the person making the communication, or the targeting or placement of the communication, or the use by the person making the communication of polling, demographic or other similar data relating to the candidate's campaign or election, or

(3) any communication that is made is coordination with a candidate, as defined in section 301(8) (A).

(4) The term express advocacy does not include the publication or distribution of a communication that is limited solely to providing information about voting records of elected officials on legislative matters, that a reasonable person would not understand to be primarily advocating the election or defeat of a specific candidate, and that is not made in coordination with a candidate as defined in section 301(9)(A)(ii)(3).

PRELIMINARY CONCERNS AND PROPOSED REDRAFT
EXPRESS ADVOCACY -- DEC. 17, 1996 DRAFT

(A) Express Advocacy. The term "express advocacy" means:

(1) any communication that conveys a message that advocates the election or defeat of a clearly identified candidate for federal office by using expressions such as "vote for," "elect," "support," "vote against," "defeat," "reject," "vote pro-life" or "vote pro-choice" accompanied by a listing or picture of clearly identified candidates described as "pro-life" or "pro-choice", "reject the incumbent," or similar expressions, or

(2) any ~~paid advertisement communication or series of communications~~ that is made through any broadcasting station, newspaper, magazine, or outdoor advertising facility or any other type of general public communication or political advertising, that involves an aggregate disbursement of \$10,000 or more, and that refers to a clearly identified candidate for federal office, and that can be reasonably understood as conveying a message which advocates the election or defeat of such candidate, provided such ~~advertisement communication or series of communications~~:

(a) is made within 30 days prior to a primary election or 60 days prior to a general election [the following is optional] and is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate; or

(b) is made for the purpose of advocating the election or defeat of such candidate, as shown by one or more [objective] factors such as statements or actions by the person making the communication, or the targeting or placement of the communication, or the use by the person making the communication of polling, demographic or other similar data relating to the candidate's campaign or election, or

(3) any communication that is made in coordination with a candidate, as defined in section 301(8) (A).

~~(B) Voting Records. The term "express advocacy" does not include the publication and distribution of a communication that is limited solely to providing information about votes by elected officials on legislative matters, that cannot be reasonably understood as conveying a message which advocates the election or defeat of a candidate, and that is not prepared or distributed in coordination with, or pursuant to~~

~~any general or particular understanding with, a candidate described in section 301(8)(A)(iii).~~

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**Preliminary Concerns to Discuss With Drafters Regarding
Section 301(8) (A) "Party and Coordination
Language - December 17 Draft"**

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In Buckley v. Valeo, the Supreme Court distinguished between political "contributions," which Congress may constitutionally subject to monetary caps, and "independent expenditures," which Congress may regulate to some degree (e.g., disclosure requirements) but may not subject to monetary caps. Expenditures that are "coordinated" with a candidate or his authorized committees are deemed to be "contributions" because they are not made independently. The party and coordination language contained in § 301(8)(A) seeks to establish constitutionally permissible conclusive presumptions that certain disbursements are sufficiently "coordinated" to constitute "contributions."

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In Colorado Republicans, a 1996 decision, the Supreme Court for the first time considered when an expenditure may be deemed to be sufficiently coordinated for constitutional purposes to constitute a "contribution" that may then be subject to a monetary cap. The case concerned the constitutionality of restricting the Colorado Republican Party's expenditure of funds for an ad that attacked a Democratic candidate for Senate. Although seven of the justices agreed that restricting the party's expenditure violated the First Amendment, no single opinion attracted the support of a majority of the Court.

Writing for a three-justice plurality, Justice Breyer, joined by Justice Souter and Justice O'Connor, held that neither Congress nor the FEC had established any basis in the record for establishing a conclusive presumption that all expenditures by political parties may be deemed to be sufficiently coordinated to constitute contributions. The plurality further concluded that there was no evidence in the record to support the more limited conclusion that the Colorado Republican Party's actual expenditure was "in fact" coordinated. As a result, the plurality held that it would be unconstitutional to treat the particular expenditure under review as if it were a "contribution" rather than an "independent expenditure." The plurality opinion did not resolve whether Congress may impose conclusive presumptions of coordination in some circumstances, or whether instead all determinations of coordination must be made on a case-by-case basis.

In a separate opinion, Justice Kennedy agreed that political party expenditures on behalf of party candidates were "contributions," but he concluded that the constitution prohibited Congress from placing monetary caps on such contributions. In an opinion joined by Chief Justice Rehnquist and Justice Scalia, Justice Thomas concluded that Buckley erred in permitting Congress to place monetary caps on any contributions, whether made by political parties, individuals, or other groups. Justice Stevens, in an opinion joined by Justice Ginsburg, dissented on the ground that the constitution permitted Congress to place limitations on

political party expenditures generally without showing that particular expenditures had been "coordinated" with the candidate.

The upshot of these opinions is that it is simply impossible to determine whether this Court will sustain revisions to the campaign finance laws that have the effect of presuming certain payments to be coordinated with a candidate, without proof of coordination in fact. Our comments on the constitutionality of the presumptions set forth in § 301(8)(A) must be understood in light of the underlying legal uncertainty that persists after the divided decision in Colorado Republicans. At the same time, it is also clear that the Court's decision does not foreclose an argument that Congress may constitutionally establish some conclusive presumptions of coordination provided that it establishes a sufficient legislative record to support those presumptions in light of its compelling interests in combatting corruption and the appearance of corruption in the political process. Congress may also have somewhat broader authority to establish rebuttable presumptions -- i.e., those presumptions that place the burden of proof upon the regulated individual but permit that individual to disprove coordination in a particular case -- although even these less determinative presumptions would have to be supported by appropriate legislative findings. The degree to which sufficient findings could be produced to support presumptions that cover certain types of disbursements, or even to support the use of a conclusive, rather than a rebuttable presumption, will generally depend on answers to empirical questions about the current campaign finance system.

Presumptions that are not supported by sufficient legislative findings are overbroad in the sense that, under Buckley, they impose limits on protected expression without sufficient governmental justification. To the extent that some of the presumptions set forth in § 301(8)(A) are overbroad, there may be reason to draft a separate provision identifying particular evidentiary factors that may be relied upon to demonstrate coordination in particular cases, even though such factors could not themselves provide the basis for a constitutionally permissible presumption of coordination.

The use of presumptions of coordination also raises a question whether persons deemed to be "recipients" of such presumed "contributions" can be held responsible for them. To the extent presumptions of coordination render some disbursements "contributions" even though the supposed recipient plays no role in effecting them, it would be constitutionally problematic to impose legal obligations or consequences on such "recipients" with respect to such "contributions."

The following comments on the specific provisions set forth in the December 17 draft of § 301(8)(A) are provided with these general observations in mind. The comments do not include a

redlined version of the proposed language on coordinated expenditures because the constitutional problems identified below may be addressed through a variety of means. The means used to address these problems will largely depend upon the specific policy goals of the drafters, rather than any particular legal requirements. It is therefore difficult at this stage to make specific drafting suggestions.

The Use of the Term "Payment" in § 301(8)(A)

It appears that any "payment" by a person who meets the criteria set forth in subsection (iii)(aa) is a "contribution." That renders the term "contribution" potentially overbroad given the ordinary meaning of the words "payment." Without a particular definition of "payment," the term could be construed to include even disbursements that are unrelated to an election campaign as well as a host of other disbursements that are currently exempted from the definition of "expenditure" in § 431(9)(a). At least some disbursements that are made in relation to an election campaign -- for example, those that are made to facilitate the printing of an independent newspaper story -- would have to be excluded from the definition of "payment" -- just as they are exempted from the current definition of "expenditure" -- in order to avoid rendering the term "contribution" overbroad. Moreover, the term "payment" may have to include some additional exemptions not currently included in the statutory definition of "expenditure" because § 301(8)(A) broadens the definition of "contribution" beyond the scope of that term in the current statute. In addition to overbreadth concerns, we note that any definition of "payment" will be subject to the requirement that it not be vague.

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Section 301(8)(A)(iii)(aa)(1)

The section is not problematic as applied to understandings with "a candidate," or "authorized political committees," because it may fairly be presumed that such payments have been authorized by the candidate. There appears to be an overbreadth problem, however, with the inclusion of the phrase "or their agents" to the extent that this term may be read to apply to "payments" made in consultation with low-level agents who are not acting on behalf of the candidate or the "authorized political committee." We note also that there are overbreadth problems unless the term "payment" is narrowed in the manner discussed above. Finally, the use of the term "authorized political committee" is potentially confusing. The present statute defines "authorized committees" to include certain "political committees" -- a term that the present statute also specifically defines -- but does not define the term "authorized political committee." It may therefore be useful to delete the word "political." (The same holds true for subsection (2)'s use of the phrase "authorized political committee.")

Agents

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Section 301(8)(A)(iii)(aa)(2)

Dissemination

The section poses severe overbreadth concerns. The phrase "financing" the "dissemination, distribution, or republication" would appear to apply to a seemingly limitless array of actions, many of which would not even be related to an electoral campaign and others of which -- such as the publication of a story in an independent newspaper -- could not plausibly be understood to pose a risk of corruption or to create the appearance of corruption. The phrase should be limited in a manner that would restrict its application to those disbursements that are akin to those discussed in the section suggesting that the definition of "payment" needs to be narrowed.

Even if subsection (2) were limited in this manner, it would remain overbroad. The provision does not require a showing that the person making the disbursement in fact coordinated with anyone connected with the candidate, while subsection (1) at least requires that there be some indication of cooperation between an individual and persons sharing a direct tie to the candidate. Furthermore, the candidate may have no control over the uses to which his materials are put, and it may therefore be unreasonable in some circumstances to presume that the use of those materials demonstrates the candidate's involvement. For example, the use of a candidate's campaign poster in an ad may show no more than that someone took a picture of the publicly displayed poster. In addition, subsection (2) would appear to cover even instances in which materials are used in communications that could not conceivably be understood to be intended to further the election of the candidate whose materials are reproduced -- e.g., quoting from a candidate's briefing book in an ad that attacks him. The presumption therefore seems to cover disbursements unrelated to the government's interest in combatting either corruption or the appearance of corruption.

Evidence of Coordination

It may be that a narrow, rebuttable presumption could be drawn regarding the use of certain "campaign materials," although there would be significant difficulties in drafting a provision that was neither vague, nor overbroad, yet was useful as an enforcement tool. We note in this regard that a provision that set forth general evidentiary considerations for a finding of coordination could certainly identify the use of campaign materials as a particular kind of relevant evidence.

Section 301(8)(A)(iii)(aa)(3)

The section poses severe overbreadth problems unless the term "payment" is limited in the manner discussed above. In addition, the phrase "based on information" appears to aggravate the overbreadth. For example, the provision would apply to disbursements based on public information that was neither disseminated nor received, nor could reasonably be understood to

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have been disseminated or received, as part of a coordinated effort to bring about the disbursement. Even payments made as a consequence of information provided by a candidate during an interview on a general news broadcast would seem to be covered. In light of vagueness concerns, it would be very difficult to write a provision that would sufficiently narrow the general phrase "based on information" yet remain a viable enforcement tool. Again, however, a general evidentiary provision could list information regarding the "candidate's plans, projects or needs" as among the kinds of evidence that could be used to support a specific finding of coordination.

Section 301(8)(A)(iii)(aa)(4)(I) & (II)

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 Subsection (I) is highly problematic because the term "authorized" would appear to apply to virtually every person who could engage in fundraising. Many of these people could not plausibly be understood to be acting in concert of purpose with the candidate. The mere act of fundraising, let alone the status of being "authorized" to engage in fundraising, seems to provide an insufficient basis for a presumption of coordination, rebuttable or not. Moreover, a definition of "authorized" in subsection (I) that was sufficiently narrow to avoid overbreadth concerns would appear to merely track the language already set forth in subsection (II), which applies only to persons who exercise an executive or policymaking role in the campaign.

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 The presumption effected in subsection (II) is probably permissible because it is limited to persons who perform executive or policymaking functions in the campaign. At the very least, the appearance of corruption is at its zenith with respect to such persons. To ensure that important fundraisers are not omitted from the provision's reach, we recommend that the word "fundraiser" be added after the word "employee" in subsection (II), and that subsection (I) be deleted.

Section 301(8)(A)(iii)(aa)(5) & (6)

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fix*
 Subsection (5) is overbroad. It sweeps in far too many people to be constitutionally supportable. To the extent that it could be narrowed to conform to constitutional requirements, it would probably merely cover persons already covered by subsection (6). We therefore recommend its deletion. Moreover, we note that subsection (6) is itself, at present, overbroad. The term "services" presumably applies even to volunteers working at phone banks. A person who retains someone to provide media services for an ad campaign in support of a candidate, for example, could not plausibly be deemed to be acting in a coordinated fashion with the candidate merely because the person who had been retained previously volunteered at a phone bank for that same candidate. It would be better to define "services" for the candidate more narrowly -- i.e., polling, media coordination, preparation of

sensitive campaign documents, etc. Also, the term "any services relating to the candidate's decision to seek Federal office" may be overbroad because, for example, in the days before announcing one's candidacy, one may consult with a broad range of people not all of whom one expects to be supporters in the end. Finally, there may be cause for concern because subsection (6) appears to make the decision to retain one person's services sufficient to taint all payments by the employer, regardless of the actual role played by the employee. (As a matter of language, the phrase "any individual or other person" is an odd one, unless "person" is defined elsewhere in the Act.)

Section 301(8)(A)(iii)(bb)

The provision gives rise to severe overbreadth problems. A person should not be deemed to be "making a payment" merely because a person is an "agent" of a person who actually makes a payment. To the extent that the provision would make anyone who works for the person making a payment legally responsible for that payment, therefore, it would seem to impose legal liability on persons unfairly. To ensure that persons otherwise covered by § 301(8)(A) may not avoid its reach by delegating the act of making payments to persons acting on their behalf, the provision could state that actions of persons acting on behalf of persons covered by §301(8)(A) shall be attributed to those persons on whose behalf they are acting.

Section 301(8)(A)(iii)(cc)

The provision is overbroad. It mandates that once an individual engages in any coordinated activity, all of his future activity will be deemed to be coordinated. That general presumption of coordination is problematic because it does not require any showing that the conduct that supposedly justified the initial finding of "coordination" was connected to the content of those subsequent payments the provision deems "coordinated." For example, if an individual makes one payment for an ad on the basis of information supplied to him by a candidate, it is not clear that all subsequent payments for ads by that individual will be similarly made with the assistance or approval of the candidate. Nevertheless, the provision appears to presume that those subsequent payments are made with such assistance or approval. It is doubtful that such a presumption may be constitutionally supported. The overbreadth problem is even more severe when one considers that the term "payment" is undefined, and that some instances of coordination, as defined in § 301(8)(A), are themselves overbroad. (We note also that the provision is somewhat confusing as it uses the term "coordination," even though §301(8)(A) does not itself define that term. The definition is apparently located in a later provision.)

Professional Services

agent on behalf of person for purpose

Draft “express advocacy” language -- December 17

(A) Express Advocacy. The term “express advocacy” means:

(1) any communication that conveys a message that advocates the election or defeat of a clearly identified candidate for federal office by using expressions such as “vote for,” “elect,” “support,” “vote against,” “defeat,” “reject,” “vote pro-life” or “vote pro-choice” accompanied by a listing or picture of clearly identified candidates described as “pro-life” or “pro-choice”, “reject the incumbent,” or similar expressions, or

(2) any communication or series of communications that is made through any broadcasting station, newspaper, magazine, outdoor advertising facility or any other type of general public communication or political advertising, that involves an aggregate disbursement of \$10,000 or more, that refers to a clearly identified candidate for federal office, and that can be reasonably understood as conveying a message which advocates the election or defeat of such candidate, provided such communication or series of communications:

(a) is made within 30 days prior to a primary election or 60 days prior to a general election; or

(b) is made for the purpose of advocating the election or defeat of such candidate, as shown by one or more [objective] factors such as statements or actions by the person making the communication, or the targeting or placement of the communication, or the use by the person making the communication of polling, demographic or other similar data relating to the candidate’s campaign or election, or

(3) any communication that is made in coordination with a candidate, as defined in section 301(8)(A).

(B) Voting Records. The term “express advocacy” does not include the publication and distribution of a communication that is limited solely to providing information about votes by elected officials on legislative matters, that cannot be reasonably understood as conveying a message which advocates the election or defeat of a candidate, and that is not prepared or distributed in coordination with, or pursuant to any general or particular understanding with, a candidate as described in section 301(8)(A)(iii).

FOREIGN CONTRIBUTIONS BAN

____. Section 319(b) of FECA (2 USC § 441e(b)) is amended to read as follows:

"(b) As used in this section, the term 'foreign national' means--

(1) any individual who is not a citizen of the United States;

(2) any person other than an individual which is a foreign principal as such term is defined by section 611(b) of title 22;

(3) any corporation which is a foreign subsidiary;

(4) any partnership of which the rights to governance, or in which the majority of the ultimate beneficial ownership or interests, are held or controlled, directly or indirectly, by individuals who are not citizens of the United States; and

(5) any person other than an individual, a corporation or a partnership, whose activities are directly or indirectly supervised, directed, controlled, financed or subsidized in whole or major part by a foreign principal as such term is defined by

*Permanent
resident
aliens*

section 611(b) of title 22.

For purposes of this subsection (b), the term 'foreign subsidiary' shall mean any corporation (i) the ultimate beneficial ownership of which is held or controlled, directly or indirectly, by individuals who are not citizens of the United States or (ii) a majority of the total combined voting power of all classes of stock of which is ultimately held or controlled, directly or indirectly, by individuals who are not citizens of the United States."

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*** CURRENT THROUGH P.L. 104-234, 10/2/96 ***
***EXCEPT FOR PLs 193, 208, 226 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

2 USCS @ 431 (1996)

@ 431. Definitions

When used in this Act:

(1) The term "election" means--

(A) a general, special, primary, or runoff election;

(B) a convention or caucus of a political party which has authority to nominate a candidate;

(C) a primary election held for the selection of delegates to a national nominating convention of a political party; and

(D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

(2) The term "candidate" means an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election--

(A) if such individual has received contributions aggregating in excess of \$ 5,000 or has made expenditures aggregating in excess of \$ 5,000; or

(B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of \$ 5,000 or has made such expenditures aggregating in excess of \$ 5,000.

(3) The term "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

(4) The term "political committee" means--

(A) any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$ 1,000 during a calendar year or which makes expenditures aggregating in excess of \$ 1,000 during a calendar year; or

(B) any separate segregated fund established under the provisions of section 316(b) [2 USCS @ 441b(b)]; or

(C) any local committee of a political party which receives contributions aggregating in excess of \$ 5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined in section 301 (8) and (9) aggregating in excess of \$ 5,000 during a calendar year, or makes contributions aggregating in excess of \$ 1,000 during a calendar year or makes expenditures aggregating in excess of \$ 1,000 during a calendar year.

(5) The term "principal campaign committee" means a political committee designated and authorized by a candidate under section 302(e)(1) [2 USCS @ 432(e)(1)].

(6) The term "authorized committee" means the principal campaign committee or any other political committee authorized by a candidate under section 302(e)(1) [2 USCS @ 432(e)(1)] to receive contributions or make expenditures on behalf of such candidate.

(7) The term "connected organization" means any organization which is not a political committee but which directly or indirectly establishes, administers, or financially supports a political committee.

(8) (A) The term "contribution" includes--

(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or

(ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.

(B) The term "contribution" does not include--

(i) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;

(ii) the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on behalf of any single candidate does not exceed \$ 1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed \$ 2,000 in any calendar year;

(iii) the sale of any food or beverage by a vendor for use in any candidate's campaign or for use by or on behalf of any political committee of a political party at a charge less than the normal comparable charge, if such charge is at least equal to the cost of such food or beverage to the vendor, to the extent that the cumulative value of such activity by such vendor on behalf of any single candidate does not exceed \$ 1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed \$ 2,000 in any calendar year;

(iv) any unreimbursed payment for travel expenses made by any individual on behalf of any candidate or any political committee of a political party, to the extent that the cumulative value of such activity by such individual on behalf of any single candidate does not exceed \$ 1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed \$ 2,000 in any calendar year;

(v) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to any cost incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(vi) any payment made or obligation incurred by a corporation or a labor organization which, under section 316(b) [2 USCS @ 441b(b)], would not constitute an expenditure by such corporation or labor organization;

(vii) any loan of money by a State bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan--

(I) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors;

(II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(III) shall bear the usual and customary interest rate of the lending institution;

(viii) any gift, subscription, loan, advance, or deposit of money or anything of value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office;

(ix) any legal or accounting services rendered to or on behalf of--

(I) any political committee of a political party if the person paying for such services is the regular employer of the person rendering such services and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) an authorized committee of a candidate or any other political committee, if the person paying for such services is the regular employer of the individual rendering such services and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of the Internal

2 USCS @ 431 (1996)

Revenue Code of 1954 [26 USCS @@ 9001 et seq. or 9031 et seq.].

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 304(b) [2 USCS @ 434(b)] by the committee receiving such services;

(x) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: Provided, That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(xi) the payment by a candidate, for nomination or election to any public office (including State or local office), or authorized committee of a candidate, of the costs of campaign materials which include information on or reference to any other candidate and which are used in connection with volunteer activities (including pins, bumper stickers, handbills, brochures, posters, and yard signs, but not including the use of broadcasting, newspapers, magazines, billboards, direct mail, or similar types of general public communication or political advertising): Provided, That such payments are made from contributions subject to the limitations and prohibitions of this Act;

(xii) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: Provided, That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates;

(xiii) payments made by a candidate or the authorized committee of a candidate as a condition of ballot access and payments received by any political party committee as a condition of ballot access; and

(xiv) any honorarium (within the meaning of section 323 of this Act [2 USCS @ 441i]).

2 USCS @ 431 (1996)

(9) (A) The term "expenditure" includes--

(i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and

(ii) a written contract, promise, or agreement to make an expenditure.

(B) The term "expenditure" does not include--

(i) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization (including a labor organization) or by a corporation directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate), shall, if such costs exceed \$ 2,000 for any election, be reported to the Commission in accordance with section 304(a)(4)(A)(i) [2 USCS @ 434(a)(4)(A)(i)], and in accordance with section 304(a)(4)(A)(ii) [2 USCS @ 434(a)(4)(A)(ii)] with respect to any general election;

(iv) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed state card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(v) any payment made or obligation incurred by a corporation or a labor organization which, under section 316(b) [2 USCS @ 441b(b)], would not constitute an expenditure by such corporation or labor organization;

(vi) any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate, except that this clause shall not apply with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 315(b) [2 USCS @ 441a(b)], but all such costs shall be reported in accordance with section 304(b) [2 USCS @ 434(b)];

(vii) the payment of compensation for legal or accounting services--

*Add
Express
Advocacy
Rule*

2 USCS @ 431 (1996)

(I) rendered to or on behalf of any political committee of a political party if the person paying for such services is the regular employer of the individual rendering such services, and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) rendered to or on behalf of a candidate or political committee if the person paying for such services is the regular employer of the individual rendering such services, and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [26 USCS @@ 9001 et seq. or 9031 et seq.]

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 304(b) [2 USCS @ 434(b)] by the committee receiving such services;

(viii) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: Provided, That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(ix) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: Provided, That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates; and

(x) payments received by a political party committee as a condition of ballot access which are transferred to another political party committee or the appropriate State official.

(10) The term "Commission" means the Federal Election Commission.

(11) The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or

group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

(12) The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(13) The term "identification" means--

(A) in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and

(B) in the case of any other person, the full name and address of such person.

(14) The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission.

(15) The term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission.

(16) The term "political party" means an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee or organization.

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

(18) The term "clearly identified" means that--

(A) the name of the candidate involved appears;

(B) a photograph or drawing of the candidate appears; or

(C) the identity of the candidate is apparent by unambiguous reference.

(19) The term "Act" means the Federal Election Campaign Act of 1971 as amended.

HISTORY: (As amended Jan. 8, 1980, P.L. 96-187, Title I, @ 101, 93 Stat. 1339.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

REFERENCES IN TEXT:

"This Act", referred to in this section, is Act Feb. 7, 1972, P.L. 92-225, 86 Stat. 3, popularly known as the Federal Election Campaign Act of 1971, which is generally classified as 2 USCS @@ 431 et seq. For full classification of the Act, consult USCS Tables volumes.

2 USCS @ 431 (1996)

"The Federal Election Campaign Act of 1971, as amended", referred to in para. (19), is Act Feb. 7, 1972, P.L. 92-225, 86 Stat. 3, which is generally classified as 2 USCS @ 431 et seq. For full classification of the Act, consult USCS Tables volumes.

In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, P.L. 95-514, @ 2, 100 Stat. 2095, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

EFFECTIVE DATE OF SECTION:

Act Feb. 7, 1972, P.L. 92-225, Title IV, @ 408 [406], 86 Stat. 20; Oct. 15, 1974, P.L. 93-443, Title III, @ 302, 88 Stat. 1289, provided that this section should become effective on Dec. 31, 1971, or 60 days after the date of enactment, whichever is later.

AMENDMENTS:

1974. Act Oct. 15, 1974, in the introductory matter, inserted "and title IV of this Act"; in subsec. (a), inserted "and" preceding "(4)", and deleted ", and (5) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States"; substituted subsec. (d) for one which read: "'political committee' means any committee, association, or organization which accepts contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$ 1,000;"

"(e) 'contribution' means--

(1) a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to Federal office or as a presidential or vice-presidential elector, or for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(2) a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

"(3) a transfer of funds between political committees;

"(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge for any such purpose; and

"(5) notwithstanding the foregoing meanings of 'contribution', the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;"

Such Act further substituted subsec. (f) for one which read:

"(f) 'expenditure' means--

(1) a purchase, payment, distribution, loan advance, deposit, or gift of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to Federal office, or as a presidential and vice-presidential elector, or for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination

of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(2) a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure, and

"(3) a transfer of funds between political committees;"

Such Act further substituted subsec (g) for one which read: "'supervisory officer' means the Secretary of the Senate with respect to candidates for Senator; the Clerk of the House of Representatives with respect to candidates for Representative in, or Delegate or Resident Commissioner to, the Congress of the United States; and the Comptroller General of the United States in any other case;"; in subsec. (h), deleted "and" following "persons;"; in subsec. (i), substituted ";" for "." at the end thereof and added subsecs. (j)--(n).

Section 410 of such Act Oct. 15, 1974, P.L. 93-443, Title IV, 88 Stat. 1304, provided:

"(a) Except as provided by subsection (b) and subsection (c), the foregoing provisions of this Act [which among other things, amended this section; for full classification, consult USCS Tables Volumes] shall become effective January 1, 1975.

"(b) Section 104 [18 USCS @ 591 note] and the amendment made by section 301 [amendment to 2 USCS @ 453] shall become effective on the date of the enactment of this Act [Oct. 15, 1974].

"(c)(1) The amendments made by sections 403(a) [amendment to 26 USCS @ 9006], 404 [amendments to 26 USCS @@ 9002--9007, 9009--9012], 405 [amendments to 26 USCS @ 9003, 9005], 406 [amendments to 26 USCS @ 276, prec. @@ 9001, 9008, 9009, 9012], 408 [26 USCS @@ 9031--9042, amendments to 26 USCS prec. @ 1, prec. @ 9001, repeal of 26 USCS @ 9021], and 409 [amendment to 26 USCS @ 9009] shall apply with respect to taxable years beginning after December 31, 1974.

"(2) The amendment made by section 407 [amendment to 26 USCS @ 6012] shall apply with respect to taxable years beginning after December 31, 1971."

1976. Act May 11, 1976, in subsec. (a)(2), substituted "which has authority to" for "held to"; in subsec. (e), in para. (2), inserted "written", and deleted "express or implied," following "or agreement,"; in para. (4), inserted: ", except that this paragraph shall not apply in the case of legal or accounting services rendered to or on behalf of the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), other than services attributable to activities which directly further the election of a designated candidate or candidates to Federal office, nor shall this paragraph apply in the case of legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of insuring compliance with the provisions of this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1954 (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), but amounts paid or incurred for such legal or accounting services shall be reported in accordance with the requirements of section 304(b)"; in para. (5), in cl. (E), deleted "or" at the end thereof; in cl. (F), substituted "section 321(b)" for "the last paragraph of section 610 of title 18, United States Code"; added cls. (G)--(I); and, in the conclusory matter, substituted "person" for "individual"; in subsec. (f)(4), in cl. (C), inserted ", except that the costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$ 2,000 per election, be

reported to the Commission"; in cl. (F), deleted "or" at the end thereof; in cl. (G), deleted "or" at the end thereof; in cl. (H), substituted "section 321(b)" for "the last paragraph of section 610 of title 18, United States Code"; added cls. (I)--(K); in subsec. (m), deleted "and" following "organization;"; in subsec. (n), substituted "302(e)(1)" for "302(f)(1)", substituted ";" for "." at the end thereof; and added subsecs (o)--(q).

1980. Act Jan. 8, 1980, substituted this section for former one which read: "When used in this title and title IV of this Act--

"(a) 'election' means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party which has authority to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, and (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President;

"(b) 'candidate' means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for elections, or election, to Federal office, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

"(c) 'Federal office' means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

"(d) 'political committee' means any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$ 1,000;

"(e) 'contribution'--

"(1) means a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of--

"(A) influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party, or

"(B) influencing the result of an election held for the expression of a preference for the nomination of persons for election to the office of President of the United States;

"(2) means a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution for such purposes;

"(3) means funds received by a political committee which are transferred to such committee from another political committee or other source;

"(4) means the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose, except that this paragraph shall not apply in the case of legal or accounting services rendered to or on behalf of the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), other than services attributable to activities which directly further the election of a designated candidate or candidates to Federal office, nor shall this paragraph apply in the case of legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of insuring compliance with the provisions of this Act or chapter 95 or chapter 96 of the Internal

Revenue Code of 1954 (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), but amounts paid or incurred for such legal or accounting services shall be reported in accordance with the requirements of section 304(b); but

"(5) does not include--

"(A) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

"(B) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities;

"(C) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;

"(D) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate;

"(E) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

"(F) any payment made or obligation incurred by a corporation or a labor organization which, under the provisions of section 321(b), would not constitute an expenditure by such corporation or labor organization;

"(G) a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, but such loans--

"(i) shall be reported in accordance with the requirements of section 304(b); and

"(ii) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance thereof that each endorser or guarantor bears to the total number of endorsers or guarantors; or

"(H) a gift, subscription, loan, advance, or deposit of money or anything of value to a national committee of a political party or a State committee of a political party which is specifically designated for the purpose of defraying any cost incurred with respect to the construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office, except that any such gift, subscription, loan, advance, or deposit of money or anything of value, and any such cost, shall be reported in accordance with section 304(b); or

"(I) any honorarium (within the meaning of section 328); to the extent that the cumulative value of activities by any person on behalf of any candidate under each of clauses (B), (C), and (D) does not exceed \$ 500 with respect to any election;

"(f) 'expenditure'--

"(1) means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of--

"(A) influencing the nomination for election, or the election, of any

person to Federal office, or to the office of presidential and vice-presidential elector; or

"(B) influencing the results of a primary election held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States;

"(2) means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure;

"(3) means the transfer of funds by a political committee to another political committee; but

"(4) does not include--

"(A) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

"(B) nonpartisan activity designed to encourage individuals to register to vote or to vote;

"(C) any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office except that the costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$ 2,000 per election, be reported to the Commission;

"(D) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activities if the cumulative value of such activities by such individual on behalf of any candidate do not exceed \$ 500 with respect to any election;

"(E) any unreimbursed payment for travel expenses made by an individual who on his own behalf volunteers his personal services to a candidate if the cumulative amount for such individual incurred with respect to such candidate does not exceed \$ 500 with respect to any election;

"(F) any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office;

"(G) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply in the case of costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines or other similar types of general public political advertising;

"(H) any payment made or obligation incurred by a corporation or a labor organization which, under the provisions of section 321(b), would not constitute an expenditure by such corporation or labor organization;

"(I) any costs incurred by a candidate in connection with the solicitation of contributions by such candidate, except that this clause shall not apply with respect to costs incurred by a candidate in excess of an amount equal to 20

percent of the expenditure limitation applicable to such candidate under section 320(b), but all such costs shall be reported in accordance with section 304(b);

"(J) the payment, by any person other than a candidate or political committee, of compensation for legal or accounting services rendered to or on behalf of the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), other than services attributable to activities which directly further the election of a designated candidate or candidates to Federal office, or the payment for legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of insuring compliance with the provisions of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1954 (unless the person paying for such services is a person other than the regular employer of the individual rendering such services), but amounts paid or incurred for such legal or accounting services shall be reported under section 304(b); or

"(K) a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, but such loan shall be reported in accordance with section 304(b)

"(g) 'Commission' means the Federal election commission;

"(h) 'person' means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons;

"(i) 'State' means each State of the United States, the District of Columbia, and Commonwealth of Puerto Rico, and any territory or possession of the United States;

"(j) 'identification' means--

"(1) in the case of an individual, his full name and the full address of his principal place of residence; and

"(2) in the case of any other person, the full name and address of such person;

"(k) 'national committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission;

"(l) 'State committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission;

"(m) 'political party' means an association, committee, or organization which nominates a candidate for election to any Federal office, whose name appears on the election ballot as the candidate of such association, committee, or organization;

"(n) 'principal campaign committee' means the principal campaign committee designated by a candidate under section 302(e)(1).

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

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

"(q) 'clearly identified' means that (1) the name of the candidate appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate is apparent by unambiguous reference."

SHORT TITLES:

2 USCS @ 431 (1996)

Act Feb. 7, 1972, P.L. 92-225, @ 1, 86 Stat. 3, provided: "this Act [which appears generally as 2 USCS @@ 431 et seq.] may be cited as the 'Federal Election Campaign Act of 1971'." For full classification of such Act, consult USCS Tables volumes.

Act Oct. 15, 1974, P.L. 93-443, @ 1, 88 Stat. 1263, provided: "That this Act [which, among other things, amended this section] may be cited as the 'Federal Election Campaign Act Amendments of 1974'." For full classification of such Act, consult USCS Tables volumes.

Act May 11, 1976, P.L. 94-283, @ 1, 90 Stat. 475, provided: "This Act [which, among other things, amended this section] may be cited as the 'Federal Election Campaign Act Amendments of 1976'." For full classification of such Act, consult USCS Tables volumes.

Act Jan. 8, 1980, P.L. 96-187, @ 1, 93 Stat. 1339, provided: That this Act may be cited as the 'Federal Election Campaign Act Amendments of 1979'. For full classification of this Act, consult USCS Tables volumes.

OTHER PROVISIONS:

Effective date of amendments made by Act Jan. 8, 1980. Act Jan. 8, 1980, P.L. 96-187, Title III, @ 301, 93 Stat. 1368, provided: "(a) Except as provided in subsection (b), the amendments made by this Act are effective upon enactment.

"(b) For authorized committees of candidates for President and Vice President, section 304(b) of the Federal Election Campaign Act of 1971 [2 USCS @ 434(b)] shall be effective for elections occurring after January 1, 1981."

Voting System Study. Act Jan. 8, 1980, P.L. 96-187, Title III, @ 302, 93 Stat. 1368, provided: "The Federal Election Commission, with the cooperation and assistance of the National Bureau of Standards, shall conduct a preliminary study with respect to the future development of voluntary engineering and procedural performance standards for voting systems used in the United States. The Commission shall report to the Congress the results of the study, and such report shall include recommendations, if any, for the implementation of a program of such standards (including estimates of the costs and time requirements of implementing such a program). The cost of the study shall be paid out of any funds otherwise available to defray the expenses of the Commission."

Transition provisions. Act Jan. 8, 1980, P.L. 96-187, Title III, @ 303, 93 Stat. 1368, provided: "(a) The Federal Election Commission shall transmit to the Congress proposed rules and regulations necessary for the purpose of implementing the provisions of this Act, and the amendments made by this Act, prior to February 29, 1980.

"(b) The provisions of section 311(d) of the Federal Election Campaign Act of 1971 [2 USCS @ 438(d)] allowing disapproval of rules and regulations by either House of Congress within 30 legislative days after receipt shall, with respect to rules and regulations required to be proposed under subsection (a) of this section, be deemed to allow such disapproval within 15 legislative days after receipt."

Abolition and transfer of functions of Federal Savings and Loan Insurance Corporation. For abolition and transfer of functions of the Federal Savings and Loan Insurance Corporation, see Act Aug. 9, 1989, P.L. 101-73, Title IV, @@ 401-406, which appears as 12 USCS @ 1437 note

NOTES:

CODE OF FEDERAL REGULATIONS

Scope and definitions (2 U.S.C. 431), 11 CFR Part 100.

Candidate status and designations (2 U.S.C. 432(e)), 11 CFR Part 101.

2 USCS @ 431 (1996)

Reports by political committees (2 U.S.C. 434), 11 CFR Part 104.
 Independent expenditures (2 U.S.C. 431(17), 434(c)), 11 CFR Part 109.
 Contribution and expenditure limitations and prohibitions, 11 CFR Part 110.
 Corporate and labor organization activity, 11 CFR Part 114.

CROSS REFERENCES

This section is referred to in 2 USCS @@ 58, 59e, 433, 437a; 18 USCS @@ 602, 603, 607; 22 USCS @ 3944; 42 USCS @ 5043.

RESEARCH GUIDE

FEDERAL PROCEDURE L ED:

10A Fed Proc L Ed, Elections and Elective Franchise @@ 28:258, 259, 268, 303, 307.

10A Fed Proc L Ed, Elections and Elective Franchise @@ 28:296, 297, 312, 347, 352.

AM JUR:

16 Am Jur 2d, Constitutional Law @ 163, 323.

16A Am Jur 2d, Constitutional Law @ 545.

26 Am Jur 2d, Elections @@ 381, 383, 465, 483, 484.

26 Am Jur 2d, Elections @@ 371.5, 381.

77 Am Jur 2d, United States @@ 22, 24.

FORMS:

8 Federal Procedural Forms L Ed, Elections and Elective Franchises, @ 25:53.

ANNOTATIONS:

Supreme Court's views regarding the First Amendment right of association as applied to the advancement of political beliefs. 67 L Ed 2d 859.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS @@ 431--454) pertaining to disclosure of campaign funds. 18 ALR Fed 949.

Actionability, under 42 USCS & 1983, of claim arising out of maladministration of election. 66 ALR Fed 750.

Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Election campaign activities as ground for disciplining attorney. 26 ALR4th 170.

Validity and construction of enactments requiring public officers or candidates for office to disclose financial condition and relationships. 37 ALR3d 1338.

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

LAW REVIEW ARTICLES:

Election law--Regulation of Campaign Financing. 1976 Ann Survey Am L 649, 1976.

Cox, Constitutional Issues in the Regulation of the Financing of Election Campaigns. 31 Clev St L Rev 395, Summer, 1982.

Constitutionality of Financial Disclosure Laws. 59 Cornell L Rev 345, January, 1974.

The Federal Election Campaign Act of 1971: Reform of the Political Process?
60 Georgetown L J 1309.

Campaign Contributions and Federal Bribery Law. 92 Harvard L Rev 451,
December, 1978.

Campaign Reporting and Disclosure Act of 1973. 11 Houston L Rev 971, May,
1974.

INTERPRETIVE NOTES AND DECISIONS

1. Constitutionality
2. Purpose
3. Construction and application, generally
4. Relationship with other laws
5. Political committees
6. Contributions and expenditures
7. Powers and duties of Attorney General

1. Constitutionality

Because audit provisions neither explicitly nor implicitly authorize disclosure by Federal Election Commission of contribution records, confidential status of those records precludes any claim of real or threatened injury to First Amendment interests arising from public disclosure. *Buckley v Valeo* (1975) 171 US App DC 172, 519 F2d 821, 75-2 USTC para.9750, affd in part and revd on other grounds in part (1976) 424 US 1, 46 L Ed 2d 659, 96 S Ct 612, 76-1 USTC para. 9189 and mod on other grounds (1976) 174 US App DC 300, 532 F2d 187.

Reporting and disclosure provisions of Federal Election Campaign Act were not overbroad, in violation of First Amendment speech and association rights, insofar as they applied to contributions to minor parties and independent candidates since any serious infringement of First Amendment rights was highly speculative and harm generally alleged was outweighed by substantial government interest in informing public as to source of campaign moneys, deterring corruption, and gathering data to detect violation of act's contributions limitations (18 USCS @ 608); blanket exemption for minor parties from reporting and disclosure provisions was not required to protect their right of freedom of association, but minor parties could show act's requirements could not be constitutionally applied to them, and evidence offered needed to show only reasonable probability that compelled disclosure of contributors' names would subject them to threats, harassment or reprisals from government officials or private parties; monetary thresholds set in reporting and disclosure provisions of act, in 2 USCS @@ 431 et seq., did not violate First Amendment speech and association rights as being overbroad in their extension to contributions as small as \$ 10 to \$ 100 since act did authorize disclosure outside commission of contributions between \$ 10 and \$ 100; threshold was within reasonable latitude given legislature since Supreme Court could not require Congress to establish highest possible threshold, and limits were not wholly without rationality in relation to purposes of act. *Buckley v Valeo* (1976) 424 US 1, 46 L Ed 2d 659, 96 S Ct 612, 76-1 USTC para. 9189.

Provisions of Federal Election Campaign Act (2 USCS @@ 431--442, 441--455) were designed to protect integrity of political process and to insure that political debate and political speech are effective, and in this regard Congress acted to vindicate First Amendment interests, not to derogate them; thus, provisions in Act are constitutional. *California Medical Asso. v Federal Election Com.* (1980, CA9 Cal) 641 F2d 619, affd (1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.

Third-party candidate and voter lacked standing to challenge constitutionality of Act on grounds that, by "authorizing" out-of-state

contributions, Act violates their rights to free association, equal protection, and republican form of government, since Act neither authorizes nor prohibits such contributions and causal connection with plaintiffs' alleged injuries is therefore lacking, and claim is frivolous as well since plaintiffs sought unprecedented limitation on constitutionally protected freedom of political expression. *Whitmore v Federal Election Comm'n* (1995, CA9 Alaska) 68 F3d 1212, 95 CDOS 8334, 95 Daily Journal DAR 14399.

Burroughs v United States (1934) 290 US 534, 78 L Ed 484, 54 S Ct 287, forecloses inquiry as to whether there is substantial connection between disclosure requirements of Federal Election Campaign Act of 1971 (2 USCS @@ 431--454), and compelling governmental interest, and therefore, Act could constitutionally override plaintiffs' asserted rights of privacy and of freedom of association since Congress possessed power to pass appropriate legislation to safeguard elections from improper use of money to influence result, and Congress' conclusion that public disclosure of political contributions, together with names of contributors and other details, would tend to prevent corrupt use of money to affect elections, was reasonable conclusion; attack by Conservative Party on Federal Election Campaign Act of 1971, challenging constitutionality of provisions which in effect serve to place ceiling on amounts which candidates may spend for election campaigns, were so insubstantial that three-judge court would not be convened and complaint would be dismissed. *Pichler v Jennings* (1972, SD NY) 347 F Supp 1061.

2 USCS @ 431(b) (2) [now 2 USCS @ 431(2)] is constitutional since Congress has authority to regulate campaign of "private citizen" who is not officially candidate, but is "unofficial candidate" within terms of @ 431(b) (2) [now @ 431(2)]; if Act did not include unofficial candidates within in purview, obvious and enormous loophole would exist. *Gifford v Congress* (1978, ED Cal) 452 F Supp 802.

Federal Election Campaign Act of 1971 (FECA)(2 USCS @@ 431 et seq.) does not violate First or Fifth Amendments as overbroad and does not deprive candidates of Ninth Amendment rights. *Republican Nat. Committee v Federal Election Com.* (1980, SD NY) 487 F Supp 280, affd (1980) 445 US 955, 64 L Ed 2d 231, 100 S Ct 1639.

Potential candidate, who chose not to seek election because he believed he could not raise funds necessary to mount effective campaign, and his potential supporters lack standing to challenge constitutionality of Federal Election Campaign Act (FECA) (2 USCS @@ 431 et seq.) insofar as it allows for use of private moneys in federal elections, because alleged harm is, at this stage, abstract and conjectural, candidate opted not to participate in election process, and, in light of goal of eliminating contribution of private funds to politicians and leveling electoral playing field, declaring FECA, which limits such contributions, unconstitutional would not redress candidate's and supporters' injury. *Alsanese v Federal Election Comm'n* (1995, ED NY) 884 F Supp 685.

2. Purpose

Primary purpose of Federal Election Campaign Act of 1971 which imposes limitations upon giving and spending of money in political campaigns for federal offices, is to limit actuality and appearance of corruption resulting from large individual financial contributions. *Buckley v Valeo* (1976) 424 US 1, 46 L Ed 2d 659, 96 S Ct 612, 76-1 USTC para. 9189.

Principal congressional concern in enacting Federal Election Campaign Act of 1971 [2 USCS @@ 431 et seq.] was reform of political campaign financing. *United States v National Committee for Impeachment* (1972, CA2 NY) 469 F2d 1135, 18 ALR Fed 925.

Federal Election Campaign Act of 1971 [2 USCS @@ 431--454] represents complete revision of prior law and Congress revised old law because it considered reporting requirements pertaining to general elections to be inadequate for purpose of keeping electorate informed as to sources of political campaign money. *Pichler v Jennings* (1972, SD NY) 347 F Supp 1061.

3. Construction and application, generally

Appearance in large metropolitan newspaper of advertisement headed "Resolution To Impeach Richard M. Nixon as President of United States", paid for by National Committee for Impeachment, did not bring such committee within purview of Federal Election Campaign Act of 1971 (2 USCS @@ 431--454) since Act applies only to committees soliciting contributions or making expenditure major purpose of which is nomination or election of candidates and National Committee did not attempt to influence outcome of congressional or presidential primary or general elections; Act did not apply to national committee organized to promote impeachment of President on ground of his Vietnam war policy. *United States v National Committee for Impeachment* (1972, CA2 NY) 469 F2d 1135, 18 ALR Fed 925.

State medical association could not be embraced by phrase "membership organization" thus falling within exemption for unlimited administrative support under 2 USCS @ 431(e)(5)(F) [now 2 USCS @ 431(8)(B)(vi)] and 2 USCS @ 441b(b)(2)(C) as "membership organization" language was only intended to rescue organizations that would otherwise fall within @ 441b's blanket prohibition of any election activity. *California Medical Asso. v Federal Election Com.* (1980, CA9 Cal) 641 F2d 619, affd (1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.

In determining whether speech is "expressed advocacy" for purposes of Federal Election Campaign Act, speech must be susceptible of no other reasonable interpretation than exhortation to vote for or against specific candidate where speech is read as whole and with limited reference to external events; speeches are "express" for determining what are independent expenditures that must be disclosed, if message is unmistakable, unambiguous, and suggestive of only one plausible meaning; speech may only be termed "advocacy" when it presents clear plea for action. *Federal Election Com'n v Furgatch* (1987, CA9 Cal) 807 F2d 857, cert den (1987) 484 US 850, 98 L Ed 2d 106, 108 S Ct 151, appeal after remand (1989, CA9 Cal) 869 F2d 1256, 13 FR Serv 3d 684.

FECA's rule limiting "members"--to whom membership organization can convey political messages and solicitations--to individuals having right to vote for at least one member of organization's highest governing body is not reasonable interpretation of FECA; interpretation presents First Amendment difficulties and explicitly but inexplicably excludes certain labor unions that would otherwise be covered as well as federated farm and rural electric cooperatives. *Chamber of Commerce of the United States v Federal Election Comm'n* (1995, App DC) 69 F3d 600, reh, en banc, den (1996, App DC) 1996 US App LEXIS 3954.

Every phase of nominating process, preference primaries, conventions, primaries, run-offs, special and general elections, even election of delegates to constitutional conventions, is brought within specific coverage of 2 USCS @@ 431--454, and every candidate for nomination or election to federal elective office and political committees, whether national or local, so long as committees individually accept contributions or make expenditures of an aggregate amount exceeding \$ 1,000 during calendar year. *Pichler v Jennings* (1972, SD NY) 347 F Supp 1061.

2 USCS @ 431 is applicable only to committees soliciting contributions or making expenditures nature or purpose of which is nomination or election of candidates. *American Civil Liberties Union, Inc. v Jennings* (1973, DC Dist Col) 366 F Supp 1041, vacated on other grounds (1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.

4. Relationship with other laws

Specific provisions of Hatch Act (5 USCS @ 7324) control over more general provisions of Federal Election Campaign Act (2 USCS @@ 431 et seq.) in dispute over extent of political activities of labor unions representing federal employees. *American Federation of Government Employees v O'Connor* (1984, DC Dist Col) 589 F Supp 1551, vacated on other grounds (1984) 241 US App DC 311, 747 F2d 748, cert den (1985) 474 US 909, 88 L Ed 2d 243, 106 S Ct 279.

5. Political committees

"Draft" groups which aim to produce someday candidate acceptable to them, but have not yet succeeded, are not promoting specific candidate for office, and do not fall within limited definition of political committees. *Federal Election Com. v Machinists Non-Partisan Political League* (1981) 210 US App DC 267, 655 F2d 380, cert den (1981) 454 US 897, 70 L Ed 2d 213, 102 S Ct 397.

Because reporting, disclosure and registration provisions of Act apply only to political committees soliciting contributions or making expenditures for major purpose of nominating or electing candidates or to expenditures by political committees made with authorization, consent or control of candidates, district court erred in granting preliminary injunction at request of government against "National Committee for Impeachment," which had no connection with any candidate for office. *United States v National Committee for Impeachment* (1972, CA2 NY) 469 F2d 1135, 18 ALR Fed 925.

FEC's conclusion that organization, although it had made contributions that likely crossed \$ 1,000 threshold, is not political committee under statute because its campaign-related activities constitute only small portion of its overall activities and are not organization's major purpose, which is lobbying to promote U.S.-Israel relations, was not arbitrary, capricious, contrary to law, or abuse of discretion. *Akins v Federal Election Comm'n* (1995, App DC) 66 F3d 348.

Organization, on basis of its newspaper advertisement that criticized Nixon administration on issue of school busing, and praised certain congressmen, could not be classified on that ground alone as a "political committee." *American Civil Liberties Union, Inc. v Jennings* (1973, DC Dist Col) 366 F Supp 1041, vacated on other grounds (1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.

Under 2 USCS @ 431 (h) [now 2 USCS @ 431(11)], if two or more political action committees (multi-candidate political committees under 2 USCS @ 441(a)(4)) are controlled by one person or one group of persons, then the committees should be treated as one committee for purpose of controlling political contributions; @ 431 provides no exception based on special relationship between union and organization like AFL-CIO. *Walther v Federal Election Com.* (1979, DC Dist Col) 468 F Supp 1235, 101 BNA LRRM 2198.

Although there are certain specific time limits established in various sections of FEC Act, there is no relevant 6 month time limit for enforcement of FEC subpoena, particularly where any significant delays are attributable to campaign committee's actions, and not to any malice on part of FEC. *Federal Election Com. v Citizens for Freeman* (1985, DC Md) 602 F Supp 1250, dismd without op (1985, CA4 Md) 767 F2d 911.

Federal Election Commission's complaint against GOPAC, Inc., may proceed, where complaint alleges that GOPAC violated 2 USCS @@ 433(a) and 434(a) during distribution of its "Campaign For Fair Elections" communication between June 1989 and August 1990, which advocated breaking Democrats' 35-year stranglehold on power in Congress, because complaint can fairly be construed to contend that GOPAC was acting as "political committee" within meaning of 2 USCS @ 431(4). *Federal Election Comm'n v GOPAC, Inc.* (1994, DC Dist Col) 871 F Supp 1466.

Federal Election Commission's civil action against GOPAC, Inc., alleging that in 1989 and 1990 GOPAC was "political committee" which had failed to register and report as required by 2 USCS @@ 433(a) and 434(a), must fail, where GOPAC avoided directly supporting federal candidates although its ultimate major purpose was to influence election of Republican candidates for House of Representatives, because bright-line test is necessary in this First Amendment arena and GOPAC's activities did not clearly cross line to make it @ 431 "political committee" during years in question. Federal Election Comm'n v GOPAC, Inc. (1996, DC Dist Col) 917 F Supp 851.

6. Contributions and expenditures

Assuming that regular newsletter of nonprofit corporation formed to support "pro-life" causes is exempt as periodical publication from prohibition against corporate campaign expenditures under Federal Election Campaign Act provision (2 USCS @ 441b), such exemption does not apply to special edition of newsletter urging readers to vote pro-life and identifying pro-life candidates in upcoming state election where special edition newsletter cannot be considered comparable to any single issue of regular newsletter since it was prepared by staff not connected with regular newsletter, it was not distributed to newsletter's regular audience, it did not bear corporation's masthead, and contained no volume or issue number identifying it as continuing series of issues. Federal Election Com. v Massachusetts Citizens for Life, Inc. (1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.

Words "made for purpose of influencing" various election processes, as used in Federal Election Campaign Act of 1971's provision defining words "contribution" (2 USCS @ 431(e)) [now 2 USCS @ 431(8)] and "expenditure" (2 USCS @ 431(f)) [now 2 USCS @ 431(9)], mean expenditure made with authorization or consent, express or implied, or under control, direct or indirect, of candidate or his agents. United States v National Committee for Impeachment (1972, CA2 NY) 469 F2d 1135, 18 ALR Fed 925.

Postelection loan guarantees of at least \$ 5,000 to retire political candidate's campaign costs violated Federal Election Campaign Act limitations on campaign contributions by individual donors by exceeding \$ 1,000 limit on contributions made for purpose of influencing any election for federal office, since Federal Election Committee's interpretation of phrase "for the purpose of influencing any election for Federal office" in its regulations and advisory opinions included postelection loan guarantees for retiring campaign costs; FEC's construction of FECA is entitled to strong deference since Congress failed to affirmatively define what it intended by phrase regarding influencing an election for federal office, and further failed to state whether postelection contributions were subject to @ 431; Congress' acquiescence to FEC's interpretation of postelection contributions indicates Congress does not disapprove of interpretation, where Congress failed to disapprove regulation including postelection contributions made to retire campaign debts has not created exception for postelection contributions. Federal Election Com. v Ted Haley Congressional Committee (1988, CA9 Wash) 852 F2d 1111.

Congressional concern was with political campaign financing, not with the funding of movements dealing with national policy, and expenditures "made for the purpose of influencing" include expenditures "made with the authorization or consent, express or implied, under the control, direct or indirect, of a candidate or his agents." American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041, vacated on other grounds (1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.

In order to trigger reporting requirement of 2 USCS @ 431(f)(4)(C) [now 2 USCS @ 431(9)(B)(ii)], material must come within statutory definition of

communication expressly advocating election or defeat of clearly identified candidate, and at same time it must not be primarily devoted to subjects other than express advocacy of election or defeat of candidate; poster was type of political speech which is protected from regulation under 2 USCS @@ 431 et seq. where (1) poster depicted then-President Gerald Ford, wearing button reading "Pardon Me" and embracing former President Richard Nixon, but (2) although poster included clearly identified candidate and may have tended to influence voting, it contained communication on public issue widely debated during campaign. Federal Election Com. v American Federation of State, County & Municipal Employees (1979, DC Dist Col) 471 F Supp 315, 101 BNA LRRM 2574.

Federal Election Commission (FEC) must submit concise reports at 90-day intervals on its progress toward rules regulating soft money expenditures that influence federal elections, where current regulations leave too much discretion to state and local committees allowed to allocate percentage of funding used for federal as opposed to state and local elections, because 2 USCS @ 431 requires that only hard money--contributed within special federal election limits--be used for volunteer, voter registration and "get-out-the vote" activities with regard to federal elections, and both petition of voter organization and recommendations of FEC's general counsel indicate need for tighter regulation of hard money/soft money allocation. Common Cause v Federal Election Com. (1988, DC Dist Col) 692 F Supp 1397.

7. Powers and duties of Attorney General

Action by private citizens for mandamus to force attorney general of United States and United States attorney for District of Columbia to enforce Federal Corrupt Practices Act did not state a claim on which court could grant relief; apart from fact that Act on which suit was based has since been repealed and replaced by Federal Election Campaign Act of 1971 and apart from the fact that plaintiff admitted attorney general did investigate and refused prosecution of certain persons suggested as violators by plaintiff, the judiciary had no power to compel discretionary action by members of executive branch of government. Nader v Kleindienst (1973, DC Dist Col) 375 F Supp 1138.

At no place in Federal Election Campaigns Act (2 USCS @@ 431 et seq.) is specific provision made prohibiting Attorney General from going forward with criminal investigation without referral by Federal Election Commission; in absence of such specific provision, general authority of Attorney General cannot be limited. United States v Tonry (1977, ED La) 433 F Supp 620.

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*** CURRENT THROUGH P.L. 104-234, 10/2/96 ***
***EXCEPT FOR PLs 193, 208, 226 ***

TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

2 USCS @ 441a (1996)

@ 441a. Limitations on contributions and expenditures

(a) Dollar limits on contributions.

(1) No person shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$ 1,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed \$ 20,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed \$ 5,000.

(2) No multicandidate political committee shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$ 5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed \$ 15,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed \$ 5,000.

(3) No individual shall make contributions aggregating more than \$ 25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term "multicandidate political committee" means a political committee which has been registered under section 303 [2 USCS @ 433] for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [26 USCS @@ 9001 et seq. or 9031 et seq.]. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(7) For purposes of this subsection--

(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

(B) (i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; and

(C) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United

States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(b) Dollar limits on expenditures by candidates for office of President of the United States.

(1) No candidate for the office of President of the United States who is eligible under section 9003 of the Internal Revenue Code of 1954 [26 USCS @ 9003] (relating to condition for eligibility for payments) or under section 9033 of the Internal Revenue Code of 1954 [26 USCS @ 9033] (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of--

(A) \$ 10,000,000, in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e)), or \$ 200,000; or

(B) \$ 20,000,000 in the case of a campaign for election to such office.

(2) For purposes of this subsection--

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by--

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(c) Increases on limits based on increases in price index.

(1) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation established by subsection (b) and

subsection (d) shall be increased by such percent difference. Each amount so increased shall be the amount in effect for such calendar year.

(2) For purposes of paragraph (1)--

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items--United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means the calendar year 1974.

(d) Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office.

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e)). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds--

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of--

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e)); or

(ii) \$ 20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, \$ 10,000.

(e) Certification and publication of estimated voting age population. During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident

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population, 18 years of age or older.

(f) Prohibited contributions and expenditures. No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(g) Attribution of multi-State expenditures to candidate's expenditures limitation in each State. The commission shall prescribe rules under which any expenditure by a candidate for presidential nominations for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(h) Senatorial candidate. Notwithstanding any other provision of this Act, amounts totaling not more than \$ 17,500 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

HISTORY: (Feb. 7, 1972, P.L. 92-225, Title III, @ 315 [320], as added May 11, 1976, P.L. 94-283, Title I, @ 112(2), 90 Stat. 487; Jan. 8, 1980, P.L. 96-187, Title I, @ 105(5), 93 Stat. 1354.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

REFERENCES IN TEXT:

"This Act", referred to in this section, is Act Feb. 7, 1972, P.L. 92-225, 86 Stat. 3, popularly known as the Federal Election Campaign Act of 1971, which is generally classified as 2 USCS @@ 431 et seq. For full classification of the Act, consult USCS Tables volumes.

In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, P.L. 95-514, @ 2, 100 Stat. 2095, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

EXPLANATORY NOTES:

Another @ 320 of Act Feb. 7, 1972, P.L. 92-225 was classified to 2 USCS @ 441 and was repealed by Act May 11, 1946, P.L. 94-283, Title I, @ 112(1), 90 Stat. 486.

REDESIGNATION:

Section 105(5) of Act Jan. 8, 1980, redesignated @ 320 of Act Feb. 7, 1972, P.L. 92-225, Title III, as @ 315 of such Act.

NOTES:

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CODE OF FEDERAL REGULATIONS

- Allocations of candidate and committee activities, 11 CFR Part 106.
- Contribution and expenditure limitations and prohibitions, 11 CFR Part 110.
- Excess campaign funds and funds donated to support Federal officeholder activities (2 U.S.C. 439a), 11 CFR Part 113.
- Debts owed by candidates and political committees, 11 CFR Part 116.

CROSS REFERENCES

This section is referred to in 2 USCS @ 434; 26 USCS @@ 9004, 9008, 9034, 9035.

RESEARCH GUIDE

FEDERAL PROCEDURE L ED:

10A Fed Proc L Ed, Elections and Elective Franchise @@ 28:258, 276.

AM JUR:

26 Am Jur 2d, Elections @@ 478, 482, 483.
26 Am Jur 2d, Elections @@ 371.5, 381.

ANNOTATIONS:

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

LAW REVIEW ARTICLES:

Craine and Tollison, Campaign Expenditures and Political Competition. 19 JL & Econ 177, April, 1976.

Freeman, Political Party Contributions and Expenditures Under the Federal Election Campaign Act: Anomalies and Unfinished Business. 4 Pace L Rev 267, Winter, 1984.

INTERPRETIVE NOTES AND DECISIONS

1. Constitutionality
2. Enforcement authority
3. Purpose of contributions
4. Contributions to political committees
5. Committee expenditures
6. Aggregation of contributions

1. Constitutionality

Provisions of former 18 USCS @ 608 which impose ceilings on political contributions do not violate First Amendment speech and association rights or invidiously discriminate against nonincumbent candidates and minority party candidates, but are supported by substantial governmental interest in limiting corruption and its appearance; provisions which limit independent political expenditures by individuals and groups, and personal expenditures by candidates, and which fix ceilings on overall campaign expenditures by candidates are unconstitutional as impermissibly burdening right of free expression under First Amendment, and cannot be sustained on basis of certain enumerated governmental interests. Buckley v Valeo (1976) 424 US 1, 46 L Ed 2d 659, 96 S Ct 612, 76-1 USTC para. 9189.

Provision of Federal Election Campaign Act (2 USCS @ 441a(a)(1)(C)), which prohibits individuals and unincorporated associations from contributing more than \$ 5,000 per calendar year to any multicandidate political committee, does not violate First Amendment. California Medical Asso. v Federal Election Com.

(1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.

Provision of Federal Election Campaign Act setting expenditure limits, for Presidential candidates eligible to receive payments from Secretary of Treasury (2 USCS @ 441a(b)(1)(B)) does not violate First, Fifth or Ninth Amendment of Constitution. Republican Nat. Committee v Federal Election Com. (1979, CA2 NY) 616 F2d 1, affd (1980) 445 US 955, 64 L Ed 2d 231, 100 S Ct 1639.

Payment to multicandidate political committee could, from constitutional standpoint, be subject to same regulatory power as campaign donations made directly to candidate without violation of First or Fifth Amendments in view of Federal Election Campaign Act definition of political committee and by reason of substantial latitude permitted associations for political expression, including right to make unlimited expenditures except for direct candidate contributions or payments to multicandidate political committees. California Medical Asso. v Federal Election Com. (1980, CA9 Cal) 641 F2d 619, affd (1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.

The regulatory procedure enforcing spending limitations upon candidates for federal office imposed impermissible prior restraints in violation of the First Amendment. American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041, vacated on other grounds (1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.

The regulatory procedure enforcing spending limitations upon candidates for federal office imposed impermissible prior restraints in violation of the First Amendment; regulations required prior certification of statements "in derogation" of any candidate and imposed criminal penalties for publishing an advertisement not meeting certification requirements. American Civil Liberties Union, Inc. v Jennings (1973, DC Dist Col) 366 F Supp 1041, vacated on other grounds (1975) 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646.

If 2 USCS @ 441b were intended by Congress to prohibit antiabortion group's expenditures of printing and distributing of newsletters containing compilation of voting records of candidates for office, it would be unconstitutional under First Amendment since expenditures at issue were independent of any candidate or party, and were made by nonprofit corporation formed to advance ideological cause and for purpose of publishing direct political speech. Federal Election Com. v Massachusetts Citizens for Life, Inc. (1984, DC Mass) 589 F Supp 646, affd (1985, CA1 Mass) 769 F2d 13, 12 Media L R 1041, jur noted (1986) 474 US 1049, 88 L Ed 2d 762, 106 S Ct 783, motion gr (1986) 475 US 1063, 89 L Ed 2d 599, 106 S Ct 1373 and motion gr (1986) 475 US 1116, 90 L Ed 2d 177, 106 S Ct 1630 and affd (1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.

Interpretation of Federal Election Campaign Act of 1971, (2 USCS @@ 431 et seq.) under which contributions independently made by voluntarily associated labor organizations are aggregated should be avoided where possible as such interpretation raises serious constitutional questions concerning the restriction of exercise of First Amendment rights. Federal Election Com. v Sailors' Union of Pacific Political Fund (1986, ND Cal) 624 F Supp 492, affd (1987, CA9 Cal) 828 F2d 502.

Provision of 2 USCS @ 441a which restricts amount of contribution allowable by unincorporated association and its political action committee is constitutional because to overturn such restriction would be to grant such associations special privilege of unlimited and direct contribution ability, which is privilege not extended to individual persons. California Medical Asso. v Federal Election Com., No. 79-4426 (9th Cir May 23, 1980) petition for cert US Sup. Ct 6/12/80 (Doc No. 79-1952).

Monetary caps in @ 441a(d)(3) on coordinated expenditures by political committees do not impermissibly burden committees' speech and association rights since, by treating coordinated expenditures as contributions, FECA effectively

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precludes political committees from literally or in appearance securing political quid pro quo from current and potential office holders, and contribution limits regulate quantity of political speech but do not foreclose speech or political association; monetary cap is not content-based but rather consequence of funding source. Federal Election Comm'n v Colorado Republican Fed. Campaign Comm. (1995, CA10 Colo) 59 F3d 1015.

2. Enforcement authority

Under 2 USCS @ 437c Federal Election Commission has exclusive primary jurisdiction with respect to civil enforcement of Federal Election Campaign Act (2 USCS @@ 431 et seq.); plaintiff Common Cause does not have right of action against American Medical Association on alleged ground that on numerous occasions Association had violated Federal Election Campaign Act by making political contributions through its political committees in excess of \$ 5,000 limit to candidate for federal electoral office (2 USCS @ 441a(a)(2)(A)), unless United States District Court directed Commission to proceed and it failed to do so. Common Cause v Federal Election Com. (1979, DC Dist Col) 82 FRD 59.

3. Purpose of contributions

Loan guarantors violated dollar limits on campaign contributions where solicitations and guarantees were made 3 months after election by personal friends and relatives of candidate to repay campaign debt and candidate declared intention never to run for office again, because under these circumstances guarantees were for purpose of influencing election; to hold otherwise would allow candidate to run campaign at deficit and collect excessive contributions after election. Federal Election Com. v Ted Haley Congressional Committee (1988, CA9 Wash) 852 F2d 1111.

California Medical Association and political action committee violated statutory limitation of 2 USCS @ 441a on contributions made to and knowingly accepted by committee when contributions were not earmarked for particular use, and when committee used such contributions for purpose of influencing federal elections as well as for other purposes beyond FECA's (2 USCS @@ 431 et seq.) regulatory embrace; Federal Election Commission is not required to prove that each contribution was made for purpose of influencing federal elections. Federal Election Com. v California Medical Asso. (1980, ND Cal) 502 F Supp 196.

Treasurer of United States House of Representatives candidate's campaign committee "knowingly accepted" \$ 5,000 contribution from Republican committee, which at time contribution was made was not multicandidate political committee in violation of 2 USCS @ 441a(f), despite treasurer's assertion that he had no knowledge that committee was not qualified to make contribution, where (1) contribution in excess of \$ 1,000 is facially defective and requires further inquiry to determine if it is made in violation of 2 USCS @ 441a(f) and (2) Federal Election Commission index of political committees was readily available to treasurer. Federal Election Com. v John A. Dramesi for Congress Committee (1986, DC NJ) 640 F Supp 985.

4. Contributions to political committees

Designation by political party's state committees of national senatorial campaign committee as agent for purpose of making campaign expenditures does not violate 2 USCS @ 441a. Federal Election Com. v Democratic Senatorial Campaign Committee (1981) 454 US 27, 70 L Ed 2d 23, 102 S Ct 38.

Value of administrative services donated by association to political committee is included in computation of contributions for purposes of \$ 5000 limit imposed by 2 USCS @ 441a. California Medical Asso. v Federal Election Com. (1980, CA9 Cal) 641 F2d 619, affd (1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct

2712.

Commission's construction of terms direction and control in its regulation regarding earmarked contributions to national committee was reasonable, hence it was appropriate to dismiss complaint that National Republican Senatorial Committee had violated campaign contribution limits by not counting earmarked contributions against its limit but only passing on contributions to individual candidates for counting against contributor's per candidate limit. Federal Election Com. v National Republican Senatorial Committee (1992, App DC) 966 F2d 1471.

Federal Election Commission's dismissal of complaint was improper under 2 USCS @ 441a(h) as arbitrary and capricious, where political committee treated contributions received as result of mass mailing as "earmarked" for certain senatorial campaigns when committee exerted direction or control over choice of recipients and thus violated spending limits. Common Cause v Federal Election Com. (1990, DC Dist Col) 729 F Supp 148, summary judgment gr (1991, DC Dist Col) 761 F Supp 813, revd on other grounds (1992, App DC) 966 F2d 1471.

Federal Election Commission's (FEC) decision not to investigate allegations that political action committee (PAC) violated campaign contribution limits by conducting advertising campaign urging voters to support U.S. Senate candidate was not contrary to law, where only record fact supporting possibility that PAC's expenditures were made in cooperation or in concert with candidate so as to make them "contributions" subject to limitation under 2 USCS @ 441a(a)(7)(B)(i) was PAC's use of same key political consultants as candidate's campaign, because mere fact of use of common consultants is not enough to lead to inference of coordination and to require investigation, giving proper deference to FEC's decision. Democratic Senatorial Campaign Committee v Federal Election Com. (1990, DC Dist Col) 745 F Supp 742.

5. Committee expenditures

While 2 USCS @ 441a, which limits amount that national committee and state committees of political party may spend in connection with general election of candidate for United States congressional office, does not authorize national committee to make expenditures in its own right, it does not foreclose state committee of political party from designating national committee as its agent for purpose of making expenditures allowed by Federal Election Campaign Act (2 USCS @ 4431 et seq.). Federal Election Com. v Democratic Senatorial Campaign Committee (1981) 454 US 27, 70 L Ed 2d 23, 102 S Ct 38.

Government recoupment of portion of federal matching campaign funds paid to presidential candidate which exceed individual state expenditure limits as set forth in @ 441a was not unconstitutional, since recoupment did not deny benefits to candidate because candidate was exercising constitutional rights where recoupment remedy does not recall private monies expended in state campaign but polices restrictions Congress placed on expenditures of public monies. John Glenn Presidential Committee, Inc. v Federal Election Com. (1987) 262 US App DC 35, 822 F2d 1097.

Claim of Federal Election Commission alleging that state political party and its treasurer violated 2 USCS @ 441a(d)(3) by failing to report payment for radio advertisement as expenditure is denied summarily, where advertisement indirectly discouraged voters from supporting election of candidate to federal office but did not contain direct plea for specific action, because advertisement therefore did not contain express advocacy, so expenditure was not "in connection with" general election campaign for federal office under 2 USCS @ 441a(d)(3). Federal Election Comm'n v Colorado Republican Fed. Campaign Comm. (1993, DC Colo) 839 F Supp 1448.

6. Aggregation of contributions

In holding that Republican National Independent Expenditure Committee and National Republican Senatorial Committee were not affiliated and therefore that there was not probable cause to believe that they had exceeded expenditure limits, FEC did not adequately analyze issue of affiliation in terms prescribed by governing statute and regulation; there was no discussion of affiliation issue independent of analysis of separate coordination issue. *Common Cause v Federal Election Com.* (1990) 285 US App DC 11, 906 F2d 705.

Two affiliate unions of Seafarers International Union of North America are not local units for purposes of aggregating campaign funds contributed by three independent political action committees to determine whether union complied with @ 441a, since affiliates were independent labor organizations and, defendant union lacked requisite degree of control over affiliates activities, notwithstanding international union had authority to regulate dues collected by affiliate unions, audit affiliates' records, and to appoint financial custodian when affiliate fails to submit financial reports or pay per capita tax, where affiliates predated existence of international union and international union's constitution specifically provides that affiliates may disassociate with international union at will. *Federal Election Com. v Sailors' Union of Pacific Political Fund* (1987, CA9 Cal) 828 F2d 502.

"Independent expenditures" exception did not apply to defendant's contributions to candidate's campaign allegedly because he gave money to media organization rather than directly to candidate, since agents of candidate and defendant were acting in concert and candidate cooperated with defendant by accepting money and performing commercial, and it was immaterial that defendant also secretly supported another candidate's campaign. *United States v Goland* (1992, CA9 Cal) 959 F2d 1449, 92 CDOS 2548, 92 Daily Journal DAR 4067, reh, en banc, den (1992, CA9) 977 F2d 1359, 92 CDOS 8779, 92 Daily Journal DAR 14542 and petition for certiorari filed (Jan 6, 1993).

Federal Elections Committee cannot treat 3 political action committees (PACs) as related organizations whose campaign contributions must be aggregated for purposes of determining compliance with statutory limitations on political contributions even though labor organizations to which PACs are associated are members of international union, since international union does not control its member unions and since rules governing relationship between international union and members preserves independence of member unions; alternatively individual member unions are not divisions, departments or local units of international union where there is no indicia of such relationship and international union's constitution preserves autonomy of its members. *Federal Election Com. v Sailors' Union of Pacific Political Fund* (1986, ND Cal) 624 F Supp 492, affd (1987, CA9 Cal) 828 F2d 502.

Interpretation of Federal Election Campaign Act of 1971, (2 USCS @@ 431 et seq.) under which contributions independently made by voluntarily associated labor organizations are aggregated should be avoided where possible as such interpretation raises serious constitutional questions concerning the restriction of exercise of First Amendment rights. *Federal Election Com. v Sailors' Union of Pacific Political Fund* (1986, ND Cal) 624 F Supp 492, affd (1987, CA9 Cal) 828 F2d 502.

No conspiracy to defraud United States by violating Federal Election Campaign Act is shown by actions of group of securities brokers borrowing from firm's branch manager to donate \$ 1,000 each to Senate campaign, since no single contributor donated more than \$ 1,000 to campaign. *United States v Valentine* (1986, SD NY) 637 F Supp 196, 22 Fed Rules Evid Serv 201.

Summary judgment is denied against Federal Election Commission where FEC's interpretation--that candidate's express or direct coordination is necessary

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prerequisite to determine if political contributions were impermissible under campaign contribution limits to candidate or political party's committee which is unauthorized by any candidate--is not unreasonable or contrary to law, and thus court cannot substitute its judgment for FEC's in light of limited judicial review of agency action. *Common Cause v Federal Election Com.* (1986, DC Dist Col) 655 F Supp 619, revd, in part, vacated, in part on other grounds (1988) 268 US App DC 440, 842 F2d 436.

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TITLE 2. THE CONGRESS
CHAPTER 14. FEDERAL ELECTION CAMPAIGNS
DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

2 USCS @ 441b (1996)

@ 441b. Contributions or expenditures by national banks, corporations, or labor organizations

(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

(b)(1) For the purposes of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 791(h)), the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, but shall not include (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful--

(A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and

(C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

(4) (A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful--

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of \$ 50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar

year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

HISTORY: (Feb. 7, 1972, P.L. 92-225, Title III, @ 316 [321], as added May 11, 1976, P.L. 94-283, Title I, @ 112(2), 90 Stat. 490; Jan. 8, 1980, P.L. 96-187, Title I, @@ 105(5), 112(d), 93 Stat. 1354, 1366.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

AMENDMENTS:

1980. Act Jan. 8, 1980, in subsec. (b)(4)(B), substituted "It" for "it".

REDESIGNATION:

Section 105(5) of Act Jan. 8, 1980, redesignated @ 321 of Act Feb. 7, 1972, P.L. 92-225, Title III, as @ 316 of such Act.

NOTES:

CODE OF FEDERAL REGULATIONS

Contribution and expenditure limitations and prohibitions, 11 CFR Part 110.
Corporate and labor organization activity, 11 CFR Part 114.
Debts owed by candidates and political committees, 11 CFR Part 116.

CROSS REFERENCES

This section is referred to in 2 USCS @@ 432, 433, 437g, 441c.

RESEARCH GUIDE

FEDERAL PROCEDURE L ED:

10A Fed Proc L Ed, Elections and Elective Franchise @ 28:306.

AM JUR:

18B Am Jur 2d, Corporations @ 2095.
26 Am Jur 2d, Elections @ 481.
26 Am Jur 2d, Elections @@ 380, 381.
48 Am Jur 2d, Labor and Labor Relations @ 421.

ANNOTATIONS:

Constitutionality, construction, and application of [former] 18 USCS @ 610 [now 2 USCS @ 441b], prohibiting national banks, corporations, and labor organizations from making contributions or expenditures in connection with federal elections. 24 ALR Fed 162.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

LAW REVIEW ARTICLES:

Corporate Campaign Funding. 4 Cumber-Sam L R 544, Winter, 1974.

Cloke, Mandatory Political Contributions and Union Democracy. 4 Industrial Relations L J 527, 1981.

Corporate Democracy and the Corporate Political Contribution. 61 Iowa L R 545, December, 1975.

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I. IN GENERAL

1. Generally

Goal of assuring purity of federal electoral process by preventing undue influence by labor unions could not be achieved less restrictively by limiting maximum amounts that could be contributed by unions, rather than by banning contributions entirely; such proposition misinterpreted scope and scheme of predecessor to 26 USCS @ 441b, since predecessor only prohibited contributions from monies that were not strictly segregated from union dues and assessments; while predecessor to 2 USCS @ 441b may have restricted in some degree union's otherwise unlimited right of speech; less restrictive alternative that would prevent use of union's aggregate will in federal elections and also protect union minority interests was never presented. *United States v Boyle* (1973) 157 US App DC 166, 482 F2d 755, 83 BNA LRRM 2835, 71 CCH LC para. 13839, 24 ALR Fed 144, cert den (1973) 414 US 1076, 38 L Ed 2d 483, 94 S Ct 593, 84 BNA LRRM 2835, 72 CCH LC para. 14213.

Predecessor to 2 USCS @ 441b cannot be construed to bar any political activity of any person on payroll of labor organization, from its president to its janitor, where such regularly employed persons devote any appreciable time in support of, or in opposition to, any candidate for federal office. *United States v Construction & General Laborers Local Union* (1951, DC Mo) 101 F Supp 869, 29 BNA LRRM 2408.

As it relates to election contributions from national banks, predecessor to 2 USCS @ 441b was meant to apply to all elections, state, federal, and judicial. *United States v Clifford* (1976, ED NY) 409 F Supp 1070.

2. Constitutionality

Predecessor to 2 USCS @ 441b was not unconstitutional on ground that it infringed on union's freedom of speech. *United States v Boyle* (1973) 157 US App DC 166, 482 F2d 755, 83 BNA LRRM 2835, 71 CCH LC para. 13839, 24 ALR Fed 144, cert den (1973) 414 US 1076, 38 L Ed 2d 483, 94 S Ct 593, 84 BNA LRRM 2835, 72 CCH LC para. 14213.

2 USCS @ 441b(b)(4)(C), construed to require that those solicited be sufficiently attached to corporate structure in order to qualify as "member" is constitutional, where (1) associational rights asserted by corporation can be and are overborne by governmental interests in preventing use of substantial aggregations of wealth amassed by corporations to incur political debts from legislatures aided by contributions and (2) statutory prohibitions and exceptions in question are sufficiently tailored to those purposes to avoid undue restriction on associational interests asserted by corporation; @ 441b(b)(4)(C) is not unconstitutionally vague in providing that corporations without capital stock can solicit funds only from its members for separate and segregated fund established to receive and make contributions on behalf of federal candidates, even though there may be more than one way under statute to determine who are "members" of corporation, where it is clear that neither right to associate nor right to participate in political activities is absolute, and activities of corporation in question extended to people who would not be

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members under any reasonable interpretation of statute. Federal Election Com. v National Right to Work Committee (1982) 459 US 197, 74 L Ed 2d 364, 103 S Ct 552, on remand (1983) 230 US App DC 283, 716 F2d 1401.

Provision of Federal Election Campaign Act (2 USCS @ 441b) that prohibits corporations from expending treasury funds in connection with any public office election was unconstitutional under First Amendment as infringement upon protected speech as applied to nonprofit, nonstock corporation formed to support "pro-life" causes where corporation used treasury funds to publish special edition of its regular news letter that urged readers to vote pro-life in upcoming primary election, but disclaimed endorsement of particular candidates, since nonprofit corporation was formed for express purpose of promoting political ideas, corporation had no shareholders or other affiliated persons to lay claim on its assets or earnings, and was not established by business corporation or labor union. Federal Election Com. v Massachusetts Citizens for Life, Inc. (1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.

Because Congress, in passing predecessor to 2 USCS @ 441b, was attempting to protect individual union member's right to his own political views and right to support or not to support them through money contributions, and in light of substantial interest each individual has in his own political activities, Congress in passing legislation was responding to compelling governmental interest that overrode interest of free association in activities prohibited. United States v Pipefitters Local Union (1970, CA8 Mo) 434 F2d 1116, 74 BNA LRRM 2509, 74 BNA LRRM 2755, 63 CCH LC para. 10953, adhered to (1970, CA8 Mo) 434 F2d 1127, 75 BNA LRRM 2675, 64 CCH LC para. 11302, revd on other grounds (1972) 407 US 385, 33 L Ed 2d 11, 92 S Ct 2247, 80 BNA LRRM 2773, 68 CCH LC para. 12783.

Predecessor to 2 USCS @ 441b did not violate equal protection clause of Fifth Amendment by making an arbitrary classification because it prevented members of the working class from political action whereas members of richer classes were not so prohibited, since members of the working class were not prohibited from such activity but only prohibited from being forced into it; with respect to labor unions predecessor to @ 441b was not unconstitutional under the First Amendment since it narrowly achieved the legitimate congressional purpose of protecting union members from making contributions to parties not of their choice, without needlessly treading on constitutional rights. United States v Pipefitters Local Union (1970, CA8 Mo) 434 F2d 1116, 74 BNA LRRM 2509, 74 BNA LRRM 2755, 63 CCH LC para. 10953, adhered to (1970, CA8 Mo) 434 F2d 1127, 75 BNA LRRM 2675, 64 CCH LC para. 11302, revd on other grounds (1972) 407 US 385, 33 L Ed 2d 11, 92 S Ct 2247, 80 BNA LRRM 2773, 68 CCH LC para. 12783.

Predecessor to 2 USCS @ 441b was not unconstitutional as being vague or overly broad. United States v Chestnut (1976, CA2 NY) 533 F2d 40, cert den (1976) 429 US 829, 50 L Ed 2d 93, 97 S Ct 88.

2 USCS @ 441b(b)(4)(D) does not infringe trade associations, and their political action committees, right of assembly guaranteed by First Amendment or deny them due process of law in violation of Fifth Amendment and is not unconstitutionally vague for failing to define "terms soliciting contributions" and "trade association". Bread Political Action Committee v Federal Elections Com. (1980, CA7 Ill) 635 F2d 621, revd on other grounds (1982) 455 US 577, 71 L Ed 2d 432, 102 S Ct 1235, on remand (1982, CA7 Ill) 678 F2d 46.

Provisions of 2 USCS @ 441b prohibiting banks from making loans or permitting overdrafts in connection with election and out of ordinary course of business do not violate First Amendment, since transactions have no significant speech elements, and do not violate Fifth Amendment right to equal protection. Federal Election Com. v Lance (1981, CA5 Ga) 635 F2d 1132, cert den and app dismd (1981) 453 US 917, 69 L Ed 2d 999, 101 S Ct 3151.

Prohibition against expenditures cannot be constitutionally applied to

nonprofit corporation's publication of newsletter containing list of candidates which support organization's position so long as nonprofit corporation does not contribute directly to political campaign. Federal Election Com. v Massachusetts Citizens for Life, Inc. (1985, CA1 Mass) 769 F2d 13, 12 Media L R 1041, jur noted (1986) 474 US 1049, 88 L Ed 2d 762, 106 S Ct 783, motion gr (1986) 475 US 1063, 89 L Ed 2d 599, 106 S Ct 1373 and motion gr (1986) 475 US 1116, 90 L Ed 2d 177, 106 S Ct 1630 and affd (1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.

Predecessor to 2 USCS @ 441b represented proper exercise of congressional power to provide laws which regulate elections for Senators and Representatives; predecessor to @ 441b neither prevented nor purported to prohibit freedom of speech or of press, its purpose being merely to guard elections from corruption and electorate from corrupting influences in arriving at their choices. United States v United States Brewers' Assn. (1916, DC Pa) 239 F 163.

Predecessor to 2 USCS @ 441b was well within limits of federal legislative power, as proper exercise of legislative power under clause of Constitution granting to Congress power to regulate manner of holding elections for federally elected representatives, as well as under "necessary and proper" clause of Constitution, and was not invalidated by its incidental effect in restraining freedoms protected by First Amendment; right of people, by free election, to keep control of their own government is truly fundamental and preponderates even over freedoms of First Amendment. United States v Painters Local Union (1948, DC Conn) 79 F Supp 516, 22 BNA LRRM 2372, 15 CCH LC para. 64670, revd on other grounds (1949, CA2 Conn) 172 F2d 854, 23 BNA LRRM 2331, 16 CCH LC para. 64953.

Predecessor to 2 USCS @ 441b placed unreasonable restraint on First Amendment right of free association, to extent that it prohibited fully secured loans from being made at normal bank rates in ordinary course of business to candidates for elective office; evil in predecessor to @ 441b was not that it prohibited political expression of national bank, but that it directly affected individuals who may have wished to utilize their assets to secure credit on behalf of particular candidate; predecessor to @ 441b arbitrarily deprived national bank of ordinary operation of its business, in violation of Fifth Amendment, to extent that any prohibition on fully secured loans made at ordinary bank rates in normal course of business could not meaningfully be related to "purity of elections" objective of predecessor to @ 441b. United States v First Nat. Bank (1971, SD Ohio) 329 F Supp 1251.

Predecessor to 2 USCS @ 441b was both constitutional on its face, and as utilized by indictment in conjunction with 18 USCS @@ 2 and 371. United States v Russell (1975, WD Tex) 415 F Supp 9.

Prohibitions of predecessor to 2 USCS @ 441b against illegal campaign contributions directed at national banks were constitutional, and statute was not unconstitutional for vagueness. United States v Clifford (1976, ED NY) 409 F Supp 1070.

Limited exception of 2 USCS @ 441b(b)(4) allowing corporations without capital stock to solicit their members for contributions is not unconstitutionally vague and limits on corporate solicitation do not violate First Amendment rights to free speech and association. Federal Election Com. v National Right to Work Committee (1980, DC Dist Col) 501 F Supp 422, revd on other grounds (1981) 214 US App DC 215, 665 F2d 371, revd on other grounds (1982) 459 US 197, 74 L Ed 2d 364, 103 S Ct 552, on remand (1983) 230 US App DC 283, 716 F2d 1401.

Nonprofit corporation is entitled to declaratory judgment that regulation limiting corporate financial support for federal candidates is unconstitutionally broad, where FEC restriction of election activities should not be permitted to intrude in any way upon public discussion of issues,

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because 11 CFR @ 100.22(b) definition of "express advocacy" goes beyond power of FEC under 2 USCS @ 441b(a). *Maine Right to Life Comm. v Federal Election Comm'n* (1996, DC Me) 914 F Supp 8.

3. Purpose

Earliest predecessor statute to former 18 USCS @ 610 [now 2 USCS @ 441b] appeared to have been motivated by consideration of necessity for destroying influence over elections that corporations exercised through financial contributions, and feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without consent of stockholders. *United States v CIO* (1948) 335 US 106, 92 L Ed 1849, 68 S Ct 1349, 22 BNA LRRM 2194, 15 CCH LC para. 64586.

Initial purpose of predecessor to 2 USCS @ 441b was to prevent large corporation from using aggregate corporate wealth, directly or indirectly, to send members to legislature in order to vote for corporate protection and advancement of corporate interests, as against those of public, or moreover, to sustain active, alert responsibility of individual citizen in democracy for wise conduct of government. *United States v International Union United Auto., etc.* (1957) 352 US 567, 1 L Ed 2d 563, 77 S Ct 529, 39 BNA LRRM 2508, 32 CCH LC para. 70534, reh den (1957) 353 US 943, 1 L Ed 2d 763, 77 S Ct 808.

One purpose of predecessor to 2 USCS @ 441b was to minimize influence that labor unions exercised over elections through monetary expenditures. *Pipefitters Local Union v United States* (1972) 407 US 385, 33 L Ed 2d 11, 92 S Ct 2247, 80 BNA LRRM 2773, 68 CCH LC para. 12783.

Clear intent of predecessor to 2 USCS @ 441b was to permit expenditures from separate, segregated funds if contributions to it were voluntary, and to prohibit expenditures from union's general treasury. *United States v Boyle* (1973) 157 US App DC 166, 482 F2d 755, 83 BNA LRRM 2835, 71 CCH LC para. 13839, 24 ALR Fed 144, cert den (1973) 414 US 1076, 38 L Ed 2d 483, 94 S Ct 593, 84 BNA LRRM 2835, 72 CCH LC para. 14213.

Enactment of predecessor to 2 USCS @ 441b was necessary to insure public confidence that official action, especially in realm of policy making, was shaped with due regard for welfare of country as whole, unaffected by gifts from especially privileged aggregations. *United States v Painters Local Union* (1948, DC Conn) 79 F Supp 516, 22 BNA LRRM 2372, 15 CCH LC para. 64670, revd on other grounds (1949, CA2 Conn) 172 F2d 854, 23 BNA LRRM 2331, 16 CCH LC para. 64953.

Purposes of predecessor to 2 USCS @ 441b were to prevent corporations and labor unions with their power and their wealth from controlling elections contrary to public interest, and to protect union members from having union officials endorse candidates or attempt to influence voters in manner that might be contrary to wishes of individual union members. *United States v Anchorage Cent. Labor Council* (1961, DC Alaska) 193 F Supp 504, 48 BNA LRRM 2143, 42 CCH LC para. 16910.

Purposes of predecessor to 2 USCS @ 441b were to promote informed electorate, to insure that elected officials were responsive to needs of majority who elected them, and as far as possible, to prevent elective office from becoming exclusive prize of influential or rich. *United States v First Nat. Bank* (1971, SD Ohio) 329 F Supp 1251.

Purpose of predecessor to 2 USCS @ 441b was to assure a popularly elected government of all the people in the United States and its main concern was to eliminate the effect of aggregated wealth on federal elections; secondary concern was protection of dissenting or minority shareholders. *Ash v Cort* (1972, ED Pa) 350 F Supp 227, affd (1973, CA3 Pa) 471 F2d 811, later proceeding (1974, CA3 Pa) 496 F2d 416, revd on other grounds (1975) 422 US 66, 45 L Ed 2d 26, 95 S Ct 2080 and later proceeding (1975, CA3 Pa) 512 F2d 909, 19 FR Serv

2d 1385.

Purpose of federal statute regulating campaign contributions and expenditures by corporations and labor unions (2 USCS @ 441b, formerly 18 USCS @ 610), is to protect populace from undue influence by corporations and labor unions, and to ensure responsiveness of elected officials to public at large. *Louchheim, Eng & People, Inc. v Carson* (1978) 35 NC App 299, 241 SE2d 401.

4. Construction, generally

Federal Election Commission's adoption of two part objective test for determining whether corporate contributions to picnic for senior citizens sponsored by political incumbent were lawful donations to non-political event, was permissible interpretation of @ 441b since, inter alia, (1) nothing in statute or legislative history foreclosed agency interpretation that donations are not unlawful "contributions" or "expenditures" unless someone at funded event expressly advocates re-election of incumbent or defeat of political opponent or solicits or accepts money to support incumbent's re-election, (2) nothing in statute prohibits FEC from adopting objective test for examining corporate donations and (3) agency interpretation was entitled to judicial deference. *Orloski v Federal Election Com.* (1986) 254 US App DC 111, 795 F2d 156.

Nonprofit corporation formed to support "pro-life" causes which has no shareholders or other persons affiliated so as to have claim on its assets or earnings is not deprived of "members" within meaning of @ 441b, that can be solicited for donations to separate segregated fund for making contributions to candidates as required under @ 441b for corporations wishing to make candidate contributions. *Federal Election Com. v Massachusetts Citizens for Life, Inc.* (1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.

Strict standards of definiteness applied to predecessor to 2 USCS @ 441b since if man is required to act at his peril in matters involving federal elections, free dissemination of ideas may be inhibited. *United States v Chestnut* (1975, SD NY) 394 F Supp 581, adhered to (1975, SD NY) 399 F Supp 1292, affd (1976, CA2 NY) 533 F2d 40, cert den (1976) 429 US 829, 50 L Ed 2d 93, 97 S Ct 88.

Even if it were possible to ascertain interpretation of predecessor to 2 USCS @ 441b made by various United States Attorneys in past, such interpretation was not binding for purpose of determining whether predecessor to @ 441b applied to contributions to judicial elections; predecessor to @ 441b must be interpreted in light of its language and purpose. *United States v Clifford* (1976, ED NY) 409 F Supp 1070.

5. Relationship with other laws

General federal saving statute, 1 USCS @ 109, nullified any abatement of prosecution for violating predecessor to 2 USCS @ 441b if prosecution was begun prior to 1972 amendment of provision. *Pipefitters Local Union v United States* (1972) 407 US 385, 33 L Ed 2d 11, 92 S Ct 2247, 80 BNA LRRM 2773, 68 CCH LC para. 12783.

Predecessor to 2 USCS @ 441b and 29 USCS @ 501(c) do not punish identical conduct; first statute is violated by officer who simply knows of and acquiesces in expenditure of union funds for political campaign, while second statute requires some affirmative action to transfer union funds for this or any other unlawful purpose, and unlawful objective may or may not have anything to do with prohibited union political contributions. *United States v Boyle* (1973) 157 US App DC 166, 482 F2d 755, 83 BNA LRRM 2835, 71 CCH LC para. 13839, 24 ALR Fed 144, cert den (1973) 414 US 1076, 38 L Ed 2d 483, 94 S Ct 593, 84 BNA LRRM 2835, 72 CCH LC para. 14213.

Individual in his capacity as voter and as corporate president has standing to invoke expedited review under 2 USCS @ 437h of constitutional challenge to @ 441b(a) and to raise individual challenges as well as those of corporation, although corporation has no standing under @ 437h to invoke expedited review, as corporate president, he will be limited to making arguments as to corporations only, and may not represent challenges of banks or labor unions. *Athens Lumber Co. v Federal Election Com.* (1982, CA11 Ga) 689 F2d 1006, on reh (1983, CA11 Ga) 718 F2d 363, cert den and app dismd (1984) 465 US 1092, 80 L Ed 2d 114, 104 S Ct 1580.

II. CONSTRUCTION AND APPLICATION OF PARTICULAR TERMS

6. Contribution or expenditure in connection with any election

To deny that use of union dues to sponsor commercial television broadcasts designed to influence electorate to select certain candidates for Congress constituted "expenditure in connection with any [federal] election" was to deny long series of congressional efforts calculated to avoid deleterious influences on federal elections resulting from use of money by those who exercise control over large aggregations of capital. *United States v International Union United Auto., etc.* (1957) 352 US 567, 1 L Ed 2d 563, 77 S Ct 529, 39 BNA LRRM 2508, 32 CCH LC para. 70534, reh den (1957) 353 US 943, 1 L Ed 2d 763, 77 S Ct 808.

"Expenditure" did not include expending corporate funds for advertisement that only publicized voting record of candidates for federal office since that was not active electioneering prohibited by predecessor to 2 USCS @ 441b. *United States v Lewis Food Co.* (1966, CA9 Cal) 366 F2d 710.

Corporation's payments to advertising agency in satisfaction of campaign's debts, where organization itself owed no debts to advertising agency, constituted unlawful "contribution" to campaign and campaign manager was properly convicted of causing advertising agency to receive unlawful contribution. *United States v Chestnut* (1976, CA2 NY) 533 F2d 40, cert den (1976) 429 US 829, 50 L Ed 2d 93, 97 S Ct 88.

Publication by antiabortion group of compiled list of positions concerning abortion of candidates for office does not constitute "expenditure" since publication was uninvited by any candidate and uncoordinated with any campaign; publication in question constitutes "news story, commentary, or editorial" distributed through facilities of periodical publication since compilation of voting records and questionnaire responses constitute news and since special election edition is similar in newsprint, sheet form, size, and format to newsletter published on periodical basis. *Federal Election Com. v Massachusetts Citizens for Life, Inc.* (1984, DC Mass) 589 F Supp 646, affd (1985, CA1 Mass) 769 F2d 13, 12 Media L R 1041, jur noted (1986) 474 US 1049, 88 L Ed 2d 762, 106 S Ct 783, motion gr (1986) 475 US 1063, 89 L Ed 2d 599, 106 S Ct 1373 and motion gr (1986) 475 US 1116, 90 L Ed 2d 177, 106 S Ct 1630 and affd (1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.

National Organization of Women is not in violation of 2 USCS @ 441b(a) by using corporate funds to make expenditure "in connection with" federal election where it used its corporate treasury to engage in issue advocacy rather than express advocacy of election of specific candidates. *Federal Election Com. v NOW* (1989, DC Dist Col) 713 F Supp 428.

7. Separate segregated fund

Despite recognition that "separate" when juxtaposed to "segregated" normally would be read to mean apartness beyond "segregated," on basis of legislative history of 1972 amendment to predecessor to 2 USCS @ 441b utilizing phrase "separate segregated fund," "separate" was synonymous with "segregated";

difficulty existed in conceiving how valid political fund could be meaningfully "separate" from sponsoring union in any other way than "segregated." Pipefitters Local Union v United States (1972) 407 US 385, 33 L Ed 2d 11, 92 S Ct 2247, 80 BNA LRRM 2773, 68 CCH LC para. 12783.

8. Membership organization

Although "threat," as used in predecessor to 2 USCS @ 441b, could be construed as referring only to expression of actual intent to inflict injury, legislative history of predecessor to @ 441b established that term was therein used to include creation of appearance of intent to inflict injury even without design to carry it out; term "threat" was read broadly to encompass solicitation schemes that insured freedom of individual solicited to refuse to make contribution without reprisal, and term included apparent as well as actual threats. Pipefitters Local Union v United States (1972) 407 US 385, 33 L Ed 2d 11, 92 S Ct 2247, 80 BNA LRRM 2773, 68 CCH LC para. 12783.

State medical association could not be embraced by phrase "membership organization" thus falling within exemption for unlimited administrative support under 2 USCS @ 431(e)(5)(F) [now 2 USCS @ 431(8)(B)(vi)] and 2 USCS @ 441b(b)(2)(C) as "membership organization" language was only intended to rescue organizations that would otherwise fall within @ 441b's blanket prohibition of any election activity. California Medical Asso. v Federal Election Com. (1980, CA9 Cal) 641 F2d 619, affd (1981) 453 US 182, 69 L Ed 2d 567, 101 S Ct 2712.

9. Members

Non-profit corporation's solicitation of funds from individuals who had previously contributed money to help it achieve its goals, for separate segregated fund it established to receive and make contributions on behalf of federal candidates, was not limited to "members" of non-profit corporation within meaning of 2 USCS @ 441b(b)(4)(C) where (1) those solicited were insufficiently attached to corporate structure of corporation to qualify as "members", (2) solicitation letter made no reference to members, (3) members played no part in operation or administration of corporation, and had no control over expenditure of their contributions and (4) corporation's own articles of incorporation explicitly disclaimed existence of members; legislative history of 2 USCS @ 441b(b)(4)(C) suggests that "members" are to be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions, which in turn suggests that some significant financial or organizational attachment is required to be "member" under @ 441b(b)(4)(C). Federal Election Com. v National Right to Work Committee (1982) 459 US 197, 74 L Ed 2d 364, 103 S Ct 552, on remand (1983) 230 US App DC 283, 716 F2d 1401.

Definition of word "member" under 2 USCS @ 441, which restricts solicitation of political contributions for segregated fund by corporation without capital stock to its members does not include solicited persons merely because they previously made contributions to corporation. Federal Election Com. v National Right to Work Committee (1982) 459 US 197, 74 L Ed 2d 364, 103 S Ct 552, on remand (1983) 230 US App DC 283, 716 F2d 1401.

FECA's rule limiting "members"--to whom membership organization can convey political messages and solicitations--to individuals having right to vote for at least one member of organization's highest governing body is not reasonable interpretation of FECA; interpretation presents First Amendment difficulties and explicitly but inexplicably excludes certain labor unions that would otherwise be covered as well as federated farm and rural electric cooperatives. Chamber of Commerce of the United States v Federal Election Comm'n (1995, App DC) 69 F3d 600, reh, en banc, den (1996, App DC) 1996 US App LEXIS 3954.

10. Threat

11. Dues, fees, or other moneys

Although recognizing that phrase "dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment," as used in predecessor to 2 USCS @ 441b, could be interpreted to mean only actual dues or assessments, legislative history of former @ 610 [now 2 USCS @ 441b] established that phrase included contributions effectively assessed even if not actually required for employment or union membership; phrase was read broadly so as to encompass within its proscription solicitation schemes that did not make plain political nature of fund for which solicitation was being made, and phrase included apparent as well as actual dues or assessments. *Pipefitters Local Union v United States* (1972) 407 US 385, 33 L Ed 2d 11, 92 S Ct 2247, 80 BNA LRRM 2773, 68 CCH LC para. 12783.

III. PARTICULAR CONDUCT AS VIOLATION OF ACT

12. Union expenditures, generally

Expenditures made by union with authorization of its membership, and approved by its president, did not violate predecessor to 2 USCS @ 441b, where indictment had been brought against small painting trades union, and its president, charging violation of predecessor to 441b because expenditures had paid for political advertisement in daily newspaper of general circulation; court found no logical justification for interpretation of predecessor to 2 USCS @ 441b which would allow expenditures in case of union newspaper and prohibit them when made by union through use of independent newspaper or radio station. *United States v Painters Local Union* (1949, CA2 Conn) 172 F2d 854, 23 BNA LRRM 2331, 16 CCH LC para. 64953.

Granting that use of union dues money in violation of predecessor to 2 USCS @ 441b was unlawful, it did not follow that such use rendered union shop agreement based upon payment of dues to union illegal, or subjected union or railroad to liability for any or all action taken in reliance on agreement; in such case injunction against wrongful use of money or against collection of dues or future invocation of agreement until abuses were stopped appeared to be appropriate remedy. *Hostetler v Brotherhood of R. Trainmen* (1960, DC Md) 183 F Supp 281, 46 BNA LRRM 2186, 40 CCH LC para. 66540, affd (1961, CA4 Md) 287 F2d 457, 47 BNA LRRM 2703, 42 CCH LC para. 16806, reh den (1961, CA4 Md) 294 F2d 666, 48 BNA LRRM 3049, 43 CCH LC para. 17192 and cert den (1962) 368 US 955, 7 L Ed 2d 387, 82 S Ct 397, 49 BNA LRRM 2359, 44 CCH LC para. 17353.

Reverse check-off as method for collecting contributions to finance union's political activities is per se violative of 2 USCS @ 441b(b)(3)(A)'s prohibition against financing political funds by dues, fees, or other monies required as condition of membership in labor organization; such decision does not, however, preclude union from using payroll deduction method for funding its political action committee, but merely requires that union member be asked beforehand if he wants contribution to be deducted along with his dues. *Federal Election Com. v National Education Asso.* (1978, DC Dist Col) 457 F Supp 1102, 99 BNA LRRM 2263.

13. -Voluntariness of contributions

There was no violation of predecessor to 2 USCS @ 441b by publication in regularly issued periodical published by labor organization, of article urging union members to support certain candidate for federal elective office, where, so far as it appeared, funds expended by union in publishing periodical may have been obtained from subscriptions or proportions of union dues directly

allocated by union members to pay for periodical. *United States v CIO* (1948) 335 US 106, 92 L Ed 1849, 68 S Ct 1349, 22 BNA LRRM 2194, 15 CCH LC para. 64586.

Proscriptions of predecessor to 2 USCS @ 441b did not apply to union contributions and expenditures in elections or primaries made out of political funds financed by the voluntary donations of its members; although solicitation of donative funds by union officials is permissible, such solicitation must indicate that donations are for a political purpose and that those solicited may decline to contribute without any sort of reprisal whatever; moreover, although the fund so established must be strictly segregated from union dues and assessments, the political sub-organization administering the fund need not be formally or functionally independent of union control. *Pipefitters Local Union v United States* (1972) 407 US 385, 33 L Ed 2d 11, 92 S Ct 2247, 80 BNA LRRM 2773, 68 CCH LC para. 12783.

Certain television broadcasts criticizing certain congressional campaign candidates were not violative of predecessor to 2 USCS @ 441b, in that they were at least partially funded by voluntary contributions to television fund of union council, which was association of some 26 local labor unions governed by delegates elected or appointed by member unions; council assessed no dues against individual union members, but collected "per capita tax" from unions, amount of which was largely determined by unions themselves, and also collected from member unions contributions to television program fund, into which no local union was called upon to pay since each local union decided by vote of its membership, first, whether they would contribute, and second, how much. *United States v Anchorage Cent. Labor Council* (1961, DC Alaska) 193 F Supp 504, 48 BNA LRRM 2143, 42 CCH LC para. 16910.

Where union established separate and segregated fund as its political fund to be used in connection with federal elections, and fund was derived exclusively from allocations from monthly dues of members who signed a form designated "political fund authorization", expenditures out of fund for political purposes constituted violation of predecessor to 2 USCS @ 441b; union members who had voluntarily authorized part of their dues payment to go to political fund were not found to be thereby making voluntary contributions of their own funds, since amount of their dues was fixed and payable to union in all events, with each union member in same wage scale being required to pay identical amount as dues. *Barber v Gibbons* (1973, DC Mo) 367 F Supp 1102, 84 BNA LRRM 2632, 72 CCH LC para. 14135.

14. Corporate expenditures

No abuse of discretion by Federal Election Commission in determining that picnic for senior citizens sponsored by incumbent Congressman just prior to election was non-political event such that corporate contributions of free food and bus transportation to picnic were not illegal corporate political "contributions" or "expenditures" and that complaint of defeated political candidate should therefore be dismissed since rational basis exist for conclusion that picnic was non-political where at picnic there was no express advocacy of incumbent's re-election and no advocacy of defeat for opponents notwithstanding that incumbent's sponsorship of picnic before election solicitation of support of senior citizens was among purposes for having picnic. *Orloski v Federal Election Com.* (1986) 254 US App DC 111, 795 F2d 156.

Although held unconstitutional as applied, nonprofit, nonstock corporation formed to support "pro-life" causes, was within scope of Federal Election Campaign Act provision (2 USCS @ 441b) when corporation used its treasury funds to publish special edition of its regular newsletter that (1) urged readers to vote "pro-life" in upcoming primary election, identified particular candidates as supporting or opposing pro-life legislation, but disclaimed endorsement of

any particular candidates since special news letter, by identifying particular candidates and including their pictures constituted "express advocacy" despite disclaimer of no endorsements of any particular candidate. *Federal Election Com. v Massachusetts Citizens for Life, Inc.* (1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.

Contributions by corporation's political action committee did not violate act where they were made to support legitimate federal candidates, candidates facing weak opposition or none at all, made without regard to candidates' attitudes toward business, to two or more candidates in same race, and to support incumbents. *Stern v Federal Election Com.* (1990) 287 US App DC 256, 921 F2d 296.

Predecessor to 2 USCS @ 441b proscribes corporation's expenditures only if they finance partisan communications; nothing in language or legislative history of predecessor to 2 USCS @ 441b makes expenditure lawful simply because no candidate was named in communication corporation paid for. *Ash v Cort* (1974, CA3 Pa) 496 F2d 416, revd on other grounds (1975) 422 US 66, 45 L Ed 2d 26, 95 S Ct 2080 and later proceeding (1975, CA3 Pa) 512 F2d 909, 19 FR Serv 2d 1385.

Corporation's payments to advertising agency in satisfaction of campaign's debts, where organization itself owed no debts to advertising agency, constituted unlawful "contribution" to campaign and campaign manager was properly convicted of causing advertising agency to receive unlawful contribution. *United States v Chestnut* (1976, CA2 NY) 533 F2d 40, cert den (1976) 429 US 829, 50 L Ed 2d 93, 97 S Ct 88.

Publication by nonprofit corporation of newsletter supporting campaign of candidates for federal office based upon their position on issue of special interest constitutes expenditure where it clearly advocates election of clearly identified candidates. *Federal Election Com. v Massachusetts Citizens for Life, Inc.* (1985, CA1 Mass) 769 F2d 13, 12 Media L R 1041, jur noted (1986) 474 US 1049, 88 L Ed 2d 762, 106 S Ct 783, motion gr (1986) 475 US 1063, 89 L Ed 2d 599, 106 S Ct 1373 and motion gr (1986) 475 US 1116, 90 L Ed 2d 177, 106 S Ct 1630 and affd (1986) 479 US 238, 93 L Ed 2d 539, 107 S Ct 616.

FEC regulation restricting issue advocacy in voter guides prepared and distributed by corporation exceeded statutory authority under which Commission may restrict only "express advocacy." *Faucher v Federal Election Com.* (1991, CA1 Me) 928 F2d 468, cert den (1991, US) 116 L Ed 2d 52, 112 S Ct 79.

When the purpose of an advertisement by a large corporation was not to influence the election of a specific candidate, but rather to seek an honest campaign and election and, incidentally, to respond to an accusation leveled against the business community, the payment for the advertisement did not constitute an unlawful expenditure. *Ash v Cort* (1972, ED Pa) 350 F Supp 227, affd (1973, CA3 Pa) 471 F2d 811, later proceeding (1974, CA3 Pa) 496 F2d 416, revd on other grounds (1975) 422 US 66, 45 L Ed 2d 26, 95 S Ct 2080 and later proceeding (1975, CA3 Pa) 512 F2d 909, 19 FR Serv 2d 1385.

2 USCS @ 441b(a) was not violated by newspaper publication, prior to presidential primary, of chart outlining 3 major candidates' campaign positions, since newspaper is neither owned nor controlled by political committee or candidate; publication constitutes news story in chart form and thus is not corporate political advertising. *Kay v Federal Election Com.* (1981, DC Dist Col) 7 Media L R 1474.

FEC regulation prohibiting publication of voter guides by corporations is improper under 2 USCS @ 411b, to extent that it is applied to guides that advocate public policy positions, because FEC only may limit express advocacy for election or defeat of identifiable candidates. *Faucher v Federal Election Com.* (1990, DC Me) 743 F Supp 64, affd (1991, CA1 Me) 928 F2d 468, cert den (1991, US) 116 L Ed 2d 52, 112 S Ct 79.

2 USCS @ 441b (1996)

Political fund is penalized Federal Election Commission's full costs of investigating and prosecuting action against it, where fund allowed its corporate partner to pay for mail solicitation, then reimbursed it for solicitation expenses, but then accepted reimbursement amount back at later date when inaccurate financial projections had left it in need of adequate budget to pay for its substantive campaign-related activities, because even though original payment for solicitation was legal, repayment 81 days later was well beyond 30-day time limit on reimbursements for solicitation expenses and in clear violation of 2 USCS @ 441b(b)(2)(C). Federal Election Com. v NRA Political Victory Fund (1991, DC Dist Col) 778 F Supp 62.

Regulations restricting contact or coordination between corporation and candidate when corporation publishes candidate voting records or voter guides are invalid as not authorized by Federal Election Campaign Act (2 USCS @@ 431 et seq.), where regulations go far beyond language of @ 441b, despite arguments for streamlined enforcement, because Federal Election Commission cannot use mere act of communication between corporation and candidate to turn First-Amendment-protected expenditures for issue advocacy into unprotected contributions to candidate. Clifton v FEC (1996, DC Me) 927 F Supp 493.

15. Indirect contributions

Discharge of campaign organization's financial obligations, in lieu of giving money directly to organization, constitutes "contribution," and one who causes such indirect payments drawn on corporate accounts violates 18 USCS @ 2 and predecessor to 2 USCS @ 441b. United States v Chestnut (1976, CA2 NY) 533 F2d 40, cert den (1976) 429 US 829, 50 L Ed 2d 93, 97 S Ct 88.

Donations of table favors, raffle premiums, or journal ads to political clubs by federally chartered savings and loan associations would generally constitute prohibited contribution; however, savings and loans can make contributions that are specifically excluded from definition of contribution, in other words, savings and loans may donate table favors and raffle premiums or pay for journal ads if proceeds or items given to political clubs will not be used directly or indirectly in connection with any election or nominating procedures or any political office. Memorandum T 68-2, FHLBB Journal, Feb 1982, p 40.

All forms of political advertising are prohibited by federal savings and loan associations, including, but not limited to, purchase of political dinner tickets and advertisements in political literature such as political party newsletters and political party convention programs. Memorandum T 68, FHLBB Journal, Aug 1981, p 35.

16. Contributions in state elections

If state law permits corporations to use corporate funds as contributions in state elections, shareholders are on notice that their funds may be so used and have no recourse under predecessor to 2 USCS @ 441b or any federal statute. Cort v Ash (1975) 422 US 66, 45 L Ed 2d 26, 95 S Ct 2080.

Prohibitions against national bank contributions in predecessor to 2 USCS @ 441b were meant to apply to all elections, state as well as federal, since Congress has undoubted right to restrict and regulate corporations of its own creation. United States v Clifford (1976, ED NY) 409 F Supp 1070.

Labor unions were not prohibited from contributing funds to influence state legislative matters on ballots, or influencing state elections in other ways. De Mille v American Federation of Radio Artists (1947) 31 Cal 2d 139, 187 P2d 769, 21 BNA LRRM 2111, 13 CCH LC para. 64195, 175 ALR 382, cert den (1948) 333 US 876, 92 L Ed 1152, 68 S Ct 906, 22 BNA LRRM 2024.

17. Miscellaneous

District Court order requiring refund of all money collected and assessing civil penalty is improper where record does not support finding of defiance or knowing, conscious, and deliberate flaunting of act; civil penalty is not warranted where alleged violation of act resulted from ambiguity of statute and failure of Federal Election Commission to provide guidance or clarification of ambiguity and group's apparent willingness to comply. *National Right to Work Committee, Inc. v Federal Election Com.* (1983) 230 US App DC 283, 716 F2d 1401.

Advertising political records of candidates for public office could not constitute violation of predecessor to 2 USCS @ 441b unless there was intent to influence public to vote for particular party or candidates. *United States v Lewis Food Co.* (1966, CA9 Cal) 366 F2d 710.

In prosecution for conspiracy to cause national bank to make illegal campaign contributions in violation of former 18 USCS @ 610 [now 2 USCS @ 441b], it was necessary to prove intent to influence election, though court could not conclude as matter of law that post-election contribution was made for purpose other than influencing election. *United States v Clifford* (1976, ED NY) 409 F Supp 1070.

IV. PRACTICE AND PROCEDURE

18. Parties, generally

Shareholders are within class for whose protection predecessor to 2 USCS @ 441b was enacted. *Miller v American Tel. & Tel. Co.* (1974, CA3 Pa) 507 F2d 759, on remand (1975, ED Pa) 394 F Supp 58, affd without op (1976, CA3 Pa) 530 F2d 964.

Corporation may challenge constitutionality of 2 USCS @ 441b under federal question jurisdiction of federal courts rather than under @ 437h if it satisfies standing requirements as to actual injury and connection between injury and challenged action. *Athens Lumber Co. v Federal Election Com.* (1982, CA11 Ga) 689 F2d 1006, on reh (1983, CA11 Ga) 718 F2d 363, cert den and app dismd (1984) 465 US 1092, 80 L Ed 2d 114, 104 S Ct 1580.

Union need not be indicted and convicted of conspiracy to violate predecessor to 2 USCS @ 441b, prohibiting labor unions from making political contributions, as condition precedent to indictment and conviction of its officers. *United States v Boyle* (1972, DC Dist Col) 338 F Supp 1028, 79 BNA LRRM 2745, 68 CCH LC para. 12597.

19. -Intervention

District Court did not abuse its discretion in denying intervention by union as party defendant in action by corporation challenging constitutionality of 2 USCS @ 441b(a), where (1) union is not real party in interest, (2) interest of union is adequately represented by defendant Federal Election Commission, and (3) introduction of additional party would unduly delay proceedings, brought under expedited disposition provisions of 2 USCS @ 437h. *Athens Lumber Co. v Federal Election Com.* (1982, CA11 Ga) 690 F2d 1364, 35 FR Serv 2d 652.

20. Private right of action, generally

Predecessor to 2 USCS @ 441b did not authorize private right of action where union members brought action against union charging that dues of union members set aside for state community action program were used for political purposes. *McNamara v Johnston* (1975, CA7 Ill) 522 F2d 1157, 90 BNA LRRM 2401, 77 CCH LC para. 11085, cert den (1976) 425 US 911, 47 L Ed 2d 761, 96 S Ct 1506, 91 BNA LRRM 2916, 78 CCH LC para. 11344.

A private right of action for direct damages could not be implied from predecessor to 2 USCS @ 441b. *Miller v American Tel. & Tel. Co.* (1975, ED Pa) 394 F Supp 58, affd without op (1976, CA3 Pa) 530 F2d 964.