

NLWJC - Kagan

Counsel - Box 033 - Folder 007

Campaign Finance [Folder 1][3]

21. -Stockholders' derivative actions

No private right of action was contemplated by predecessor to 2 USCS @ 441b, where stockholders sought preliminary injunction to enjoin corporation from expending general corporate funds to finance advertisement dealing with elections in general, and alleged that such activity was violation of predecessor to @ 441b. *Cort v Ash* (1975) 422 US 66, 45 L Ed 2d 26, 95 S Ct 2080.

Derivative damage relief in a private cause of action by a stockholder to remedy violation of predecessor to 2 USCS @ 441b was not available under predecessor to @ 441b itself, at least with regard to violation of predecessor to 441b occurring prior to the 1974 amendments to Federal Election Campaign Act (2 USCS @@ 431 et seq.). *Cort v Ash* (1975) 422 US 66, 45 L Ed 2d 26, 95 S Ct 2080.

Mere proof of noncollection of debt is insufficient to establish violation of federal prohibition against corporate campaign spending, and therefore shareholders bringing derivative action against corporation for its failure to collect debt owed by Democratic National Committee were required to establish to satisfaction of factfinder that gift, whenever made, was made for purpose of aiding one candidate or party in federal election. *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.

22. Limitation of actions

District Court finding that delay of 47 months in bringing indictment for violations of former 18 USCS @@ 610 [now 2 USCS @ 441b] and 656 caused substantial prejudice to defendant's defense and necessitated dismissal of indictment on due process grounds was not clearly erroneous; fact that five-year statute of limitations applicable to defendant's alleged violations was not due to expire until thirteen months after indictment was filed did not foreclose assertion of prejudice from pre-indictment delay. *United States v Barket* (1976, CA8 Mo) 530 F2d 189.

Since statute of limitations begins to run from date of last overt act in any case where conspiracy charges are involved, and since limitations period for violation of predecessor to 2 USCS @ 441b is designated as 5 years in 18 USCS @ 3282, indictment was not barred by statute of limitations where it indicated that last overt act occurred well within 5 year limitations period. *United States v Boyle* (1972, DC Dist Col) 338 F Supp 1028, 79 BNA LRRM 2745, 68 CCH LC para. 12597.

23. Venue

Since substantive offense consisted of making "contribution" to campaign organization by paying its financial obligations, venue was proper for such offense in district where checks were deposited since it was at this point that substantive offense of receiving and accepting unlawful contributions occurred. *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.

24. Indictment

Indictment which alleges contribution or expenditure from general treasury of union or corporation in connection with federal election states offense under predecessor to 2 USCS @ 441b, which outlaws corporate and union contributions in federal elections. *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.

Indictment charging corporation with making expenditure for advertisement

2 USCS @ 441b (1996)

which only publicized voting record of candidates was proper under predecessor to 2 USCS @ 441b because jury question was presented as to whether advertisement went beyond these bounds in being designed to influence public at large to vote for or against particular candidates. *United States v Lewis Food Co.* (1966, CA9 Cal) 366 F2d 710.

Indictment charging violation which occurred prior to 1972 amendment to predecessor to 2 USCS @ 441b did not subject defendant to *ex post facto* prosecution despite fact that similarity existed between language of indictment and that of amendment, and that statutory citation in indictment was incomplete, since defendant was in no way misled to his prejudice and amendment made no relevant substantive change in prior statute. *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.

Indictment stated an offense under 18 USCS @ 2 and predecessor to 2 USCS @ 441b because it charged defendant with causing advertising agency to accept and receive contribution to a Senator's campaign from milk producer's corporation. *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.

25. Bill of particulars

Government failed to comply with bill of particulars request in proceedings involving prosecution of union and union officials for alleged violations of predecessor to 2 USCS @ 441b when it failed to reveal composition of special political action fund, circumstances of contributions made to fund, and other alleged overt acts, requiring dismissal of indictment. *United States v Seafarers International Union* (1972, ED NY) 343 F Supp 779, 80 BNA LRRM 2840, 68 CCH LC para. 12829.

Defendant who is charged with violation of former 18 USCS @ 610 [now 2 USCS @ 441b] was entitled to bill of particulars informing him of details of Government's charges in order to properly prepare defense or to avoid prejudicial surprise at trial. *United States v Barket* (1974, WD Mo) 380 F Supp 1018.

26. Subpoenas

Subpoena *duces tecum*, requiring production of evidence used by government prosecutors in prosecuting defendants under predecessor to 2 USCS @ 441b, was quashed by court involved in prosecution of defendants for receiving contribution, since proof of violation by one who receives contribution is wholly different in character from that required to establish violation by donor. *United States v Boyle* (1971, DC Dist Col) 338 F Supp 1025, 66 CCH LC para. 12121, motion den (1971, DC Dist Col) 331 F Supp 1181.

27. Mootness

Where basis of election controversy remains after election and where dispute is likely to recur, case will not be found moot, even where prospective relief alone is sought. *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.

28. Evidence, generally

Element of willfulness, essential to violation of predecessor to 26 USCS @ 441b, could be inferred from evidence that defendant actively participated in elaborate indirect procedures for making improper political contributions, and evidence of similar acts from which willfulness could be inferred were properly admitted. *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.

29. -Presumptions

If "voluntary" and "involuntary" funds are commingled and then portion is expended for political purposes, because it is impossible to tell whether "voluntary" or "involuntary" money is being expended, expenditures from commingled funds will be presumed to consist of proportionate shares of different types of money. 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.

30. -Burden of proof

If the government proves that source of funds directed to a political contribution is the general union treasury, derived in part from dues and assessments, this is all that need be established on question of voluntary or involuntary contributions by union members. 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.

31. -Admissibility

Proof of similar acts by defendant in accepting three illegal corporate campaign contributions was admissible as tending to show knowledge and intent at time of events charged in indictment. 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.

32. -Sufficiency

Evidence that officers of union sought to hide source of illegal contributions by having checks on union fund made out to cash, depositing proceeds in their personal accounts, and then making contributions with personal check, was sufficient to indicate knowledge and approval of efforts to conceal source of funds involved. 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.

Evidence was sufficient to support defendant's conviction of willfully violating predecessor to 2 USCS @ 441b since it showed that defendant knew he caused advertising agency employed in senatorial campaign to accept or receive illegal corporate contribution to the campaign. 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.

33. Determination of issues by jury, generally

Whether person condoning alleged illegal corporate contribution, and with whom defendant was alleged to have conspired or was alleged to have aided and abetted, was "officer" of corporation was essential element of government's proof under indictment, definition of "officer", as used in predecessor to 2 USCS @ 441b and indictment, being question of law for court's charge to jury; therefore, whether particular individual fell within legal definition of "officer" as given by court in its charge, was question of fact for jury to determine. United States v Russell (1975, WD Tex) 415 F Supp 9.

34. -Instructions

Instructions to jury, in prosecution under predecessor to 2 USCS @ 441b, which did not include direction to jury that it should acquit if it found that

contributions to union fund were made voluntarily, were erroneous. 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.

35. Injunctions

Since shareholder alleged economic injury, as stockholder whose interest was worth less than it would have been if defendants had not caused challenged expenditures to be made, and further injury as citizen and voter whose ability to secure response if federal government action had been mitigated, such injury could be remedied by injunctive and damage relief sought under former 18 USCS @ 610 [now 2 USCS @ 441b]. 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.

Federal court dismissed plaintiff's complaint to extent it requested injunctive relief against labor organization for future violations of predecessor to 2 USCS @ 441b, since both language and legislative history of Federal Election Campaign Act Amendments indicated that Congress intended statutory remedy before Federal Election Commission to govern all allegations of misconduct concerning labor organization expenditures for political purposes in future federal elections. 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.

36. Review

In appeal from conviction of labor union and its officers for conspiring to violate predecessor to 2 USCS @ 441b, evidence was required to be viewed in light most favorable to party prevailing in jury trial, which, in this case, was government. 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.

Since federal law count was nowhere included in plaintiffs' complaint, and there was no indication in record that this question was ever presented to District Court, stockholders appealing from dismissal of derivative action against corporation for failure to collect debt owed corporation by Democratic National Committee could not have direct federal cause of action "implied" in their favor against defendant directors of corporation for alleged violation of predecessor to 2 USCS @ 441b. 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.

Government was foreclosed from appealing decision of District Court to acquit corporation on charges of making political contributions which violated predecessor to 2 USCS @ 441b since appeal by Government would violate double jeopardy clause of USCS Constitution, Amendment 5, and since "fundamental fairness" required that Government, having had full try at establishing criminal wrongdoing, should not have another opportunity. United States v Security Nat. Bank (1976, CA2 NY) 546 F2d 492, cert den (1977) 430 US 950, 51 L Ed 2d 799, 97 S Ct 1591.

United States District Court refused jurisdiction to review decision of Executive Branch and its attorneys who brought indictment charging defendant with violation of predecessor to 2 USCS @ 441b where, even if court did have jurisdiction, exercise of jurisdiction would not only frustrate will of Congress in enacting predecessor to @ 441b, but would also open up difficulties in connection with administration of justice and proper enforcement of criminal

2 USCS @ 441b (1996)

laws. United States v Boyle (1971, DC Dist Col) 338 F Supp 1025, 66 CCH LC para. 12121, motion den (1971, DC Dist Col) 331 F Supp 1181.

37. Miscellaneous

Defendant, acquitted of violation of former 18 USCS @ 656, was not put in double jeopardy in trial for violation of predecessor to 2 USCS @ 441b arising from same events since violations of two statutes must be proved by different evidence in that predecessor to @ 441b requires consent to a political contribution and does not contemplate either unauthorized payments or purpose to defraud or injure bank, important factors in former @ 656 violation; predecessor to @ 441b is not lesser included offense of former @ 656, and fundamental difference exists in purposes of two statutes; statements of trial judge in granting defendant's motion for acquittal on former @ 656 charge which allegedly resolved some factual issues common to prosecution under predecessor to @ 441b in defendant's favor did not unambiguously foreclose any issues essential to latter prosecution on grounds of collateral estoppel. United States v Barket (1975, CA8 Mo) 530 F2d 181, cert den 429 US 917, 50 L Ed 2d 282, 97 S Ct 308.

§ 431

FEDERAL ELECTION CAMPAIGN LAWS

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 441i of this title).

(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 ex-

**EXPLANATION OF PROPOSED REDRAFT
EXPRESS ADVOCACY -- DEC. 17, 1996 DRAFT**

I. Section (A) (1)

Section (A) (1) passes constitutional muster because its terms essentially track the examples of express advocacy provided by the Court in Buckley v. Valeo, 424 U.S. 1 (1976), and FEC v. MCFL, 479 U.S. 238 (1986).

II. Section (A) (3)

Section (A) (3) complies with the Constitution to the extent that the terms of section 301(8) (A) also pass constitutional muster under Buckley and its progeny. We have constitutional concerns about the December 17, 1996 draft of section 301(8) (A) to be discussed elsewhere.

III. Section (A) (2)

Section (A) (2), as written, raises constitutional vagueness issues. Eliminating the language that gives rise to the vagueness problems, however, creates overbreadth and other vagueness concerns.

A. The section (A) (2) phrase "can be reasonably understood as conveying a message which advocates the election or defeat of such candidate" raises vagueness concerns. These concerns are exacerbated by the fact that criminal penalties can be imposed for violations of the FECA.

B. Eliminating the "can be reasonably understood" language would make section (A) (2) vulnerable to further vagueness and overbreadth challenges, which we will discuss below.

C. Subsection (A) (2) (a)

Eliminating the phrase "can reasonably be understood as conveying a message which advocates the election or defeat of such candidate" would create an overbreadth issue with respect to subsection (A) (2) (a). This problem can be avoided by, at a minimum, limiting the kinds of communications covered by subsection (A) (2) (a) to advertising through the media specifically listed in section (A) (2). This approach would also eliminate the potential for vagueness and overbreadth challenges to the term "general public communication," the meaning of which is unclear. An approach that would provide even more protection against an overbreadth challenge would be to include the Ninth Circuit's "susceptible of no other reasonable interpretation but as an exhortation to vote" standard, which was crafted in FEC v. Furgatch, 807 F.2d 857 (9th Cir.), cert. denied, 484 U.S. 850 (1987). If the Furgatch standard is used, there would be no need

to limit the types of communications captured by subsection (A)(2)(a) to advertising through the media specifically listed, though we would still recommend clarifying what is meant by the term "general public communication."

D. Subsection (A)(2)(b)

Our comfort with subsection (A)(2)(b) stems from our understanding that its purpose element requires actual purpose. Changes in the language might be necessary to make this clear. It might also be helpful to clarify that factors other than those listed may be used to demonstrate purpose. Moreover, because subsection (A)(2)(b) contains a purpose element, there is no need to limit the types of communications covered thereby to only advertising through the media specifically listed in section (A)(2).

IV. Section (B)

Section (B) raises vagueness concerns. It is also vulnerable to the charge that it effects a content-based classification of speech, as it appears to favor one form of speech -- voting records-- over others based on its content. Limiting the types of communications covered in section (A)(2)(a) to advertising through the media specifically listed would just as effectively exempt nonpartisan voting records, without raising these issues.

Campaign Finance

1/10/97

January 21, 1997 - Introduction of Bill

Can't vote → can't contribute

Express advocacy

① Issues vs Voter Guides

Important to have voter guide w/

② Paid advertisement

→ Direct mailing need to include

"Public communication" already in the statute

→ Internet

③ Susceptible of no other reasonable interpretation

"Reasonable person would understand"

Why not in (b) [HAVE INTENT]

→ If you narrow paid advertisement etc may not need

Coordination

① Presumptious dealing with Parties ②

② 'Payments' Have to tie to campaign activities w/out limiting to specific candidates

③ Agent - acting on behalf of candidate
Used ~~it~~ elsewhere in the bill

④ Republication - in the law now
I'm well check

⑤

431(8)(B) - see also 431(9)(B) (viii), (ix)

CAMPAIGN LAWS

TITLE 2. THE CONGRESS

of money by a State bank, a fed-
pository institution, or a depository
osits or accounts of which are in-
ral Deposit Insurance Corporation,
redit Union Administration, other
made with respect to a checking
made in accordance with applica-
ordinary course of business, but

l be considered a loan by each en-
ntor, in that proportion of the un-
that each endorser or guarantor
al number of endorsers or guaran-

be made on a basis which
ent, evidenced by a written in-
subject to a due date or amortiza-

bear the usual and customary in-
ending institution;

subscription, loan, advance, or
anything of value to a national
of a political party specifically
ny cost for construction or pur-
ility not acquired for the pur-
election of any candidate in
for Federal office;

accounting services rendered

tical committee of a political
paying for such services is
of the person rendering
such services are not attrib-
which directly further the
ted candidate to Federal

committee of a can-
tical committee, if the
services is the regular
rendering such serv-
solely for the pur-
with this Act or
title 26,

but amounts paid or incurred by the regular employer
for such legal or accounting services shall be reported
in accordance with section 434(b) of this title 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 cost of
campaign materials or activities used in connec-
tion with any broadcasting, newspaper, maga-
zine, billboard, direct mail, or similar type of
general public communication or political adver-
tising;

(2) such payments are made from con-
tributions subject to the limitations and prohibi-
tions 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 in-
formation 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, di-
rect mail, or similar types of general public commu-
nication 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 connec-
tion with any broadcasting, newspaper, maga-
zine, billboard, direct mail, or similar type of

Express advocacy

Reasonable person may be ok - may be not

Why isn't express advocacy defined as an expenditure

Change to communicate

interactive computer service

~~§ 101~~

Coordinated - Parties

9A add reasonable person standard

Expenditure 9(A)

payment for

- (a) common purpose of influencing elect
- (b) party communication
- (c) express advocacy

Coordinated

Soft money payments not contributions under
the statute. So could amend statute
to clearly cover

1/13/97

Express Advocacy

- A. Paid advertisement
interactive computer services, etc.

Clearly understood - primarily as an exhortation

A reasonable person would understand as
primarily an exhortation to vote

or

That is most reasonably understood

- B. Voting Records

As drafted - not express advocacy anyway
Peter thinks may be out for new ~~language~~

Coordination

- A. Payment

Expenditure - intended to influence the election

Expenditure - if coordinated may not be known to candidate
Amend reporting section Anything else

Parties

Party building activities covered ?

Not sererable

Daw Simon

Campaign Finance

Payment

"Expenditure"

441 A a III B

made to influence the state election

Agents act on behalf of the candidates

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

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."

alien residents
uncl. - 2: 4

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

K
John

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."

John
5/2

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.

Payment

?

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

agents
acting
on behalf
of
candidate
or
author
political
committee

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

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.

Dissemination

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.

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.

Evidence of Coordination

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

*will
for
reg*

4 with a view toward

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)

authorized
 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.

*Don
 sup
 ole*
 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)

*Can
 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.

↑
Professional Services

Aggr
on
behalf
of
Pers
for
purps

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.)

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).~~

**EXPLANATION OF PROPOSED REDRAFT
EXPRESS ADVOCACY -- DEC. 17, 1996 DRAFT**

I. Section (A) (1)

Section (A) (1) passes constitutional muster because its terms essentially track the examples of express advocacy provided by the Court in Buckley v. Valeo, 424 U.S. 1 (1976), and FEC v. MCFL, 479 U.S. 238 (1986).

II. Section (A) (3)

Section (A) (3) complies with the Constitution to the extent that the terms of section 301(8) (A) also pass constitutional muster under Buckley and its progeny. We have constitutional concerns about the December 17, 1996 draft of section 301(8) (A) to be discussed elsewhere.

III. Section (A) (2)

Section (A) (2), as written, raises constitutional vagueness issues. Eliminating the language that gives rise to the vagueness problems, however, creates overbreadth and other vagueness concerns.

A. The section (A) (2) phrase "can be reasonably understood as conveying a message which advocates the election or defeat of such candidate" raises vagueness concerns. These concerns are exacerbated by the fact that criminal penalties can be imposed for violations of the FECA.

B. Eliminating the "can be reasonably understood" language would make section (A) (2) vulnerable to further vagueness and overbreadth challenges, which we will discuss below.

C. Subsection (A) (2) (a)

Eliminating the phrase "can reasonably be understood as conveying a message which advocates the election or defeat of such candidate" would create an overbreadth issue with respect to subsection (A) (2) (a). This problem can be avoided by, at a minimum, limiting the kinds of communications covered by subsection (A) (2) (a) to advertising through the media specifically listed in section (A) (2). This approach would also eliminate the potential for vagueness and overbreadth challenges to the term "general public communication," the meaning of which is unclear. An approach that would provide even more protection against an overbreadth challenge would be to include the Ninth Circuit's "susceptible of no other reasonable interpretation but as an exhortation to vote" standard, which was crafted in Furgatch, 807 F.2d 857 (9th Cir.), cert. denied, 484 U.S. 850 (1987). If the Furgatch standard is used, there would be no need

to limit the types of communications captured by subsection (A)(2)(a) to advertising through the media specifically listed, though we would still recommend clarifying what is meant by the term "general public communication."

D. Subsection (A)(2)(b)

Our comfort with subsection (A)(2)(b) stems from our understanding that its purpose element requires actual purpose. Changes in the language might be necessary to make this clear. It might also be helpful to clarify that factors other than those listed may be used to demonstrate purpose. Moreover, because subsection (A)(2)(b) contains a purpose element, there is no need to limit the types of communications covered thereby to only advertising through the media specifically listed in section (A)(2).

IV. Section (B)

Section (B) raises vagueness concerns. It is also vulnerable to the charge that it effects a content-based classification of speech, as it appears to favor one form of speech -- voting records -- over others based on its content. Limiting the types of communications covered in section (A)(2)(a) to advertising through the media specifically listed would just as effectively exempt nonpartisan voting records, without raising these issues.

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).

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.

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 --

(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.

(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.

(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.

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 representative, 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 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 national 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), including but not limited to:

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

(ii) it has made a contribution to, or made any transfer of funds to, such candidate;
or

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

(iv) it has provided in-kind services, polling data or anything of value to such candidate, or has communicated with such candidate or his agents, including pollsters, media consultants, vendors or other advisors, about advertising, message, allocation of resources, fundraising or other campaign related matters including campaign operations, staffing, tactics or strategy.

(b) For purposes of this subsection, all political committees established and maintained by a political party, including all national, state, district and local committees of that political party, and all congressional campaign committees, shall be considered to be a single political committee.

(c) For purposes of this subsection, any coordination during an election cycle between a political committee established and maintained by a political party and a candidate of that party shall constitute coordination during the entire election cycle.

✓ Call Don Simon 736-5709

Call Beth Nolan 514-2069

5:30 Friday

Conference Room 4726

Projects

Foreign Contribs

Express Advocacy

Coordination

Parties

Outside folks

Payment

Agents

Soft Money

✓ Fax materials to Elena

66472

Executive Office of the President

OEOB Conference Rooms/White House Conference Center

Date of Meeting:	11/10/97
Time:	10:00 to 11:30

12:30 - 2:00

CONFIRMATION AND NOTIFICATION

Name of Individual Hosting Event: <i>Wendy White</i>		Office/Agency: <i>WFO-Counsel</i>	
Staff Contact: <i>Wendy White</i>	Extension No.: <i>6-6229</i>	Pager No.:	Room No.: <i>136</i>
Type of Event: <input checked="" type="checkbox"/> Meeting <input type="checkbox"/> Reception <input type="checkbox"/> Other _____			
Name/Description of Event: <i>Campaign Finance Reform Mtg.</i>			
Number of Outside Guests: <i>5 to 7</i>		In Attendance:	
Total Number of Attendees: <i>12</i>		<input type="checkbox"/> President <input type="checkbox"/> First Lady <input type="checkbox"/> Vice President <input type="checkbox"/> Mrs. Gore	
Room(s) Requested:			
<input type="checkbox"/> Roosevelt Room <input type="checkbox"/> Rm. 180 <input checked="" type="checkbox"/> Rm. 472 <input type="checkbox"/> Rm. 474 (Indian Treaty Room) <input checked="" type="checkbox"/> Rm. 476 <input type="checkbox"/> Rm. 450 <input type="checkbox"/> Rm. 459 <input type="checkbox"/> Other: _____			
White House Conference Rooms: <input type="checkbox"/> Truman Room <input type="checkbox"/> Wilson Room <input type="checkbox"/> Eisenhower Room <input type="checkbox"/> Jackson Room <input type="checkbox"/> Lincoln Room			
General Services:			
<input type="checkbox"/> Elevator Service <input type="checkbox"/> #4 <input type="checkbox"/> #6 <input type="checkbox"/> #7 Time Reserved: _____ Floors Reserved: _____ <input type="checkbox"/> Podium <input type="checkbox"/> Flags			
Special Room Arrangements for the Indian Treaty/Truman Room:			
<input type="checkbox"/> Conference Style <input type="checkbox"/> Theatre Style <input type="checkbox"/> Other _____ Number of Chairs: _____ Number of Table(s): _____			
Entrance/Gate Preferred:			
<input checked="" type="checkbox"/> 17th & G <input type="checkbox"/> Pennsylvania Avenue <input type="checkbox"/> Southwest Appointments Gate <input type="checkbox"/> Northwest Appointments Gate <input type="checkbox"/> East Appointments Gate <input type="checkbox"/> East Visitors Gate			
Additional Requirements or Requests:			

Forms Must be Returned to Room 1, OEOB, 48 Hours Prior to Event



U. S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

FACSIMILE TRANSMISSION SHEET

FROM: Beth Nolan OFFICE PHONE: 514-2069

TO: Wendy White OFFICE PHONE: 456-2361

NUMBER OF PAGES: 6 PLUS COVER SHEET

FAX NUMBER: 456-2146

REMARKS:
1st round on "coordination"

IF YOU HAVE ANY QUESTIONS REGARDING THIS FAX, PLEASE CONTACT KATHLEEN MURPHY OR KEVIN SMITH ON 514-2057

OFFICE OF LEGAL COUNSEL FAX NUMBER: (202) 514-0563
FTS NUMBER: (202) 368-0563



U. S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

Date: January 6, 1997

FACSIMILE TRANSMISSION SHEET

FROM: Beth Nolan OFFICE PHONE: 514-2069

TO: Wendy White OFFICE PHONE: _____

NUMBER OF PAGES: 4 PLUS COVER SHEET

FAXS NUMBER: 456-2146

REMARKS:

The express advocacy language, as discussed. I left you a message that we continue to work on coordination and soft money issues, both of which raise a variety of issues of varying degrees of seriousness, particularly in light of the SCt's decision last term in Colorado Republican. We may be able to have more by the meeting, if it's in the afternoon. *Beth*

ANY QUESTIONS, PLEASE CONTACT KATHLEEN MURPHY ON 514-2057 OR KEVIN SMITH ON 514-2067

OFFICE OF LEGAL COUNSEL FACS NUMBER - 514-0563
FTS - 368-0563

THE WHITE HOUSE
WASHINGTON

Office of Legislative Affairs

House Liaison

Fax Cover Sheet

Date: 1/9

To: Wendy White

Fax Number: _____

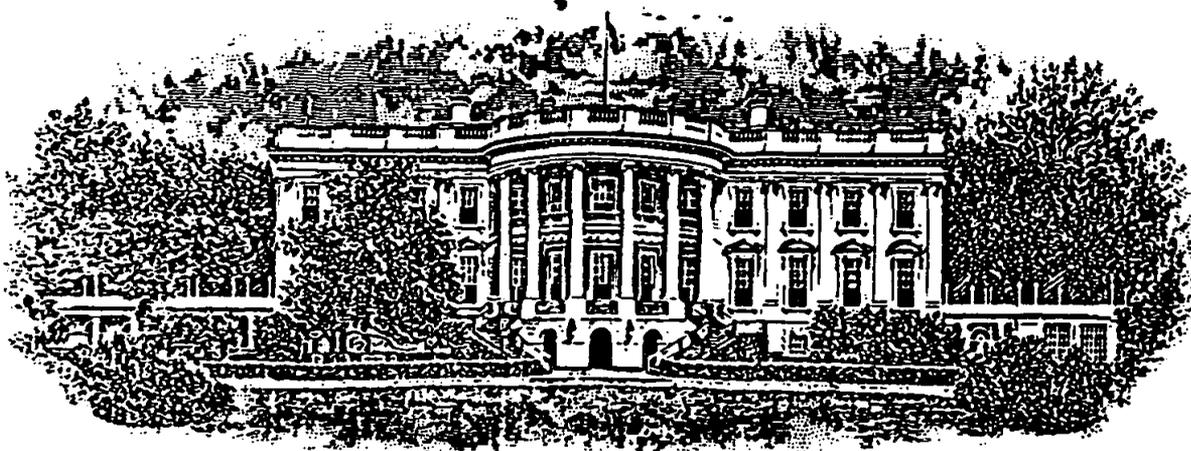
From: **Peter Jacoby** at (202) 456-6620
Special Assistant to the President
for Legislative Affairs

Comments: Foreign language -
I believe we are only interested
in the Constitutional of
(b) (1) at this point -
file

Note: The information contained in this facsimile message is **CONFIDENTIAL** and intended for the recipient **ONLY**. If there is a problem with the transmission, please contact the sender as soon as possible.

Number of pages including cover: 3

The White House



COUNSEL'S OFFICE

Facsimile Transmission Cover Sheet

Telephone 202 456-6229

Fax 202 456-2146

DATE:

1/9/97

TO:

BETH NOWAN

FACSIMILE NUMBER:

514-0563

TELEPHONE NUMBER:

FROM:

Wendy White

TELEPHONE NUMBER:

PAGES (WITH COVER):

COMMENTS:

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

THE WHITE HOUSE

Office of the Counsel to the President

Telephone 202 456-7900

Fax 202 456-1647



Facsimile Transmittal Sheet

To: Peter Jacobi

From: Wandy White

No. of pages (including cover): _____ Date: 1/16/97

Fax Number: 6-2604

Comments: New Draft ~~NO~~
With OLC Comments 3:45 pm

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

THE WHITE HOUSE

Office of the Counsel to the President

Telephone 202 456-7900

Fax 202 456-1647



Facsimile Transmittal Sheet

To: Don Simon

From: Wandy White

No. of pages (including cover): _____ Date: 1/16/97

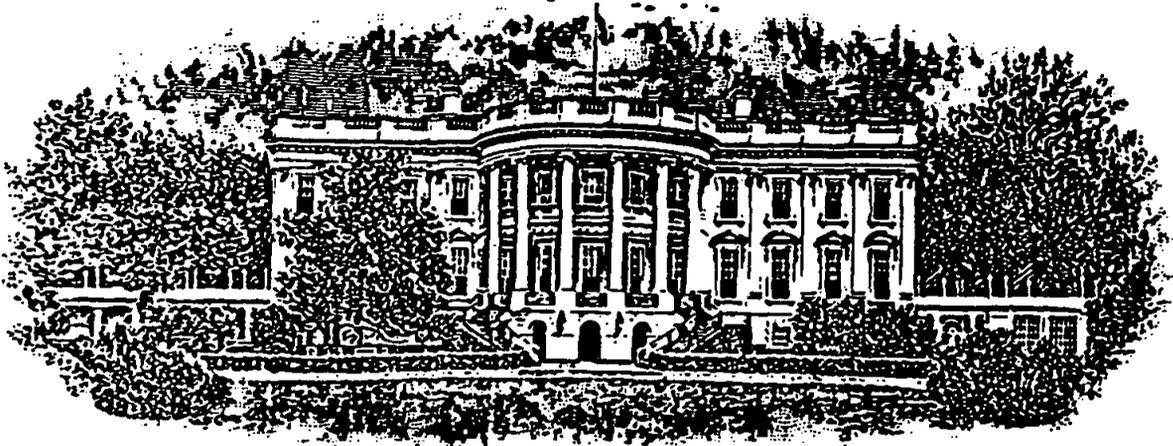
Fax Number: 659-3716

Comments: New Draft 10:00 am

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

The White House



COUNSEL'S OFFICE

Facsimile Transmission Cover Sheet

Telephone 202 456-6229

Fax 202 456-2146

DATE:

1/16/97

TO:

Both Nolan

FACSIMILE NUMBER:

514 - 0539

TELEPHONE NUMBER:

FROM:

Windy White

TELEPHONE NUMBER:

456 - 7361

PAGES (WITH COVER):

New Draft 10:00 am

COMMENTS:

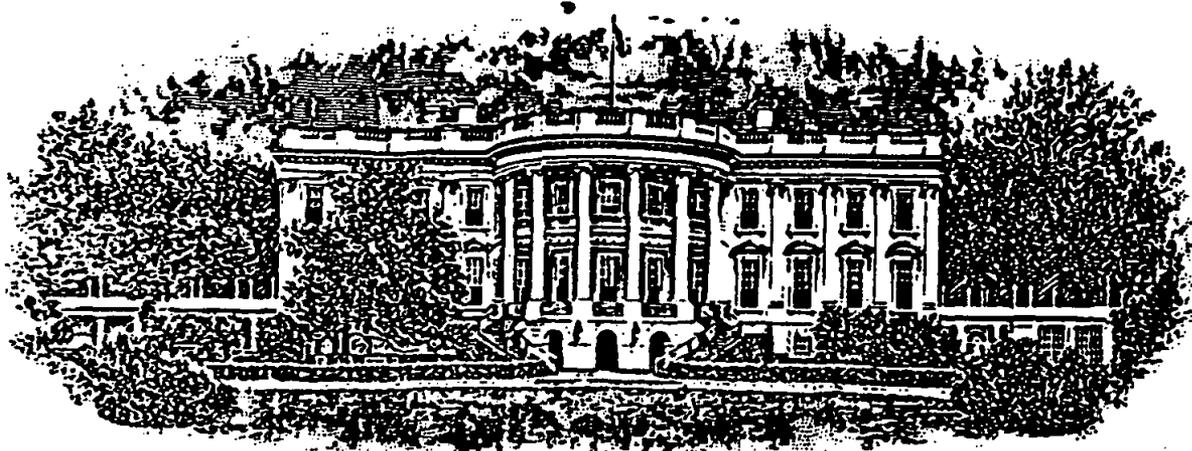
Here's what we came up with
here. Views?

Windy

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

The White House



COUNSEL'S OFFICE

Facsimile Transmission Cover Sheet

Telephone 202 456-6229

Fax 202 456-2146

DATE:

TO:

Martha Foley

FACSIMILE NUMBER:

62271

TELEPHONE NUMBER:

FROM:

Wendy White

TELEPHONE NUMBER:

PAGES (WITH COVER):

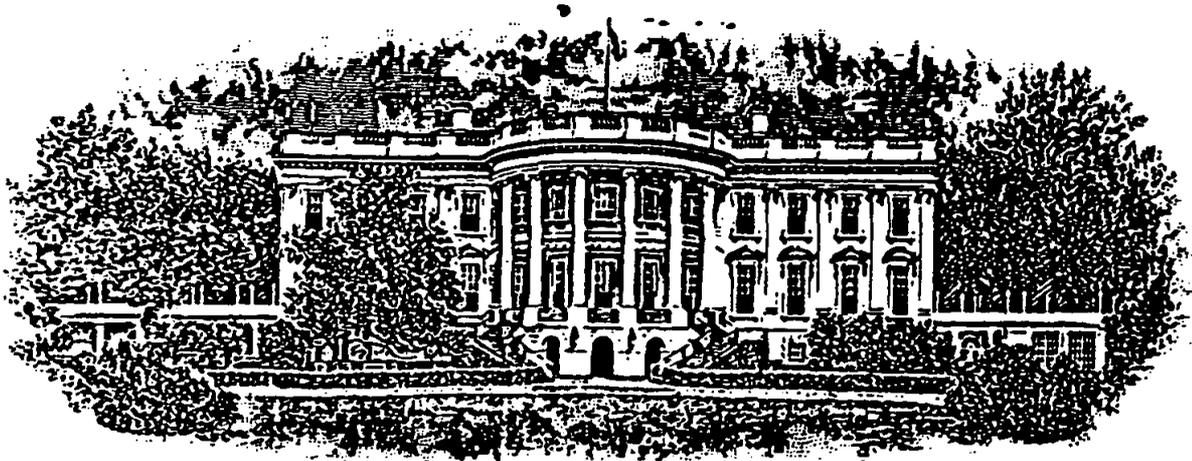
COMMENTS:

Common Cause Language
Please call

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

The White House



COUNSEL'S OFFICE

Facsimile Transmission Cover Sheet

Telephone 202 456-6229

Fax 202 456-2146

DATE:

TO:

Elena Kagan

FACSIMILE NUMBER:

65557

TELEPHONE NUMBER:

FROM:

Wandy

TELEPHONE NUMBER:

PAGES (WITH COVER):

COMMENTS:

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

Express

OLC

1. Exhortation rather than advocate
2. primarily
3. is (3) circular
4. gives 3 (4)

Party a Coordination

~~Costs~~ Coordinated ~~expenses~~ expenditures = contributions
for all purposes including reporting

434 - Reg shall not apply to contributions
301(B)-(A)(iii) unless the candidate
had actual knowledge of the
contribution

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) ~~any payment~~ 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, and

(ii) ~~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 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 advocating the election or defeat of such candidate, provided such communication:

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

and that is not made in coordination with a candidate 301 (9) (A) (i) (3).

for the purpose of influencing any election for federal office

? [

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 made for a communication that is made in coordination with a candidate. Expenditures made in coordination with a candidate include:

payments
(1) ~~expenditures~~ 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.

payments
(2) ~~expenditures~~ 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;

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

payments
(4) ~~expenditures~~ 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, direct mail, ~~soliciting voluntary contributions or facilitating the making of voluntary contributions~~, 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 acting on behalf of the person for the purpose of influencing any election for Federal office.

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

Over broad because now presumed coordinated

fund raiser

operated

oversight of

if

(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

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.

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.

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:

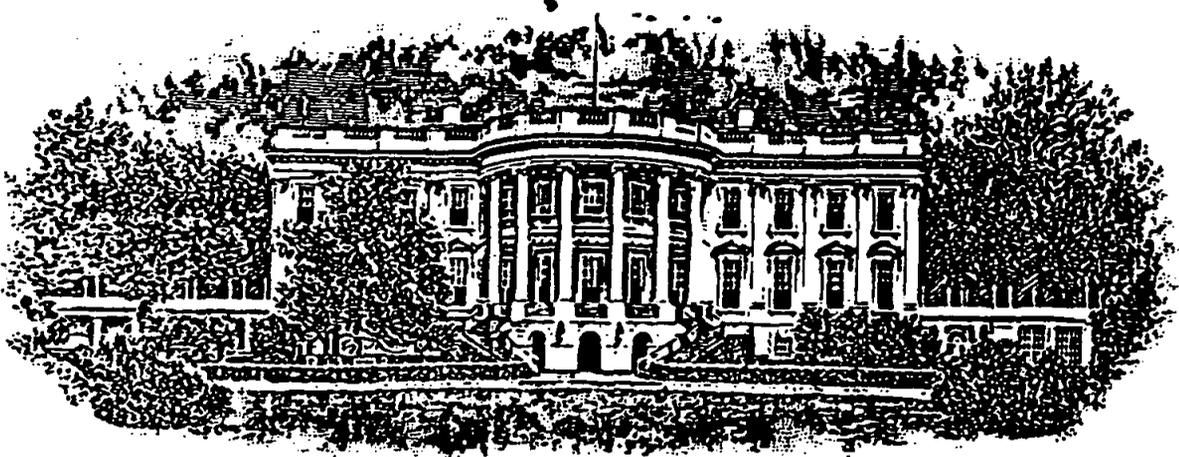
(a) is made within 30 days prior to a primary election or 60 days prior to a general election; or

(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).

The White House



COUNSEL'S OFFICE

Facsimile Transmission Cover Sheet

Telephone 202 456-6229

Fax 202 456-2146

DATE:

11/17/97

TO:

Robert Rosen

FACSIMILE NUMBER:

293-8811

TELEPHONE NUMBER:

FROM:

Wendy White

TELEPHONE NUMBER:

456-7361

PAGES (WITH COVER):

COMMENTS:

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

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) any payment 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; and

(ii) 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 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 advocating the election or defeat of such candidate, provided such communication:

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

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 made for a communication that is made in coordination with a candidate. Expenditures made in coordination with a candidate include:

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

(4) expenditures 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, direct mail, soliciting voluntary contributions or facilitating the making of voluntary contributions, 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 acting on behalf of the person for the purpose of influencing any election for Federal office.

Section 315(a)(7) [441 a(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.

Express Advocacy

431 (9) (A) *lot of money*

?
for Federal office

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

(i) any payment 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; and

what does this cover?

of 2

of

(ii) any payment for a communication that contains express advocacy. Express advocacy *(?) includes -- 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,"~~ "reject the incumbent," or similar expressions, or

I'd delete; at the least, include CC's accompanying language

(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, and that refers to a clearly identified candidate for federal office, provided such communication:

(a) is made within 30 days prior to a primary election or 60 days prior to a general election *(and a reasonable person would understand the communication as constituting an* ~~exhortation to vote for or against a specific candidate;~~ *or*

(excluding hand bills)

that a person hears of / such - if language is used

? Where's we changing this placement?

(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

should be parallel

(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 and that a reasonable person would not understand to constitute an ~~exhortation to vote for or against a specific candidate.~~

Same language

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 made for a communication that is made in coordination with a candidate. Expenditures made in coordination with a candidate include:

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

(4) expenditures 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, direct mail, soliciting voluntary contributions or facilitating the making of voluntary contributions, 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 acting on behalf of the person for the purpose of influencing any election for Federal office.

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.

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) any payment 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; and

(ii) 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 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 advocating the election or defeat of such candidate, provided such communication:

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

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) any payment 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; and

(ii) 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 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 advocating the election or defeat of such candidate, provided such communication:

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