Morton,

Here is the material on FEC I promised last Friday.

Bill

From
Bill Wilson

FEC

I

97TH CONGRESS
1ST SESSION

H. R. 4351

To amend the Federal Election Campaign Act with respect to contributions and expenditures by national banks, corporations, and labor unions.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1981

Mr. DICKINSON (for himself, Mr. STANGELAND, Mrs. HOLT, Mr. WHITEHURST, Mr. FORSYTHE, Mr. BETHUNE, Mr. BAFALIS, Mr. CORCORAN, Mr. JOHNSTON, Mr. MCCLORY, and Mr. LOEFFLER) introduced the following bill; which was referred to the Committee on House Administration

---

A BILL

To amend the Federal Election Campaign Act with respect to contributions and expenditures by national banks, corporations, and labor unions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 316(b)(2)(C) of the Federal Election Campaign Act is amended by inserting before the period "; provided all contributions, gifts, or payments for such activities are made freely and voluntarily, and are unrelated to dues, fees, or other moneys required as a condition of employment".

SEC. 2. Section 316(b)(3) of the Federal Election Campaign Act is amended by—

(1) striking "and" at the end of subparagraph (B);

(2) striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) adding after subparagraph (C) the following:

"(D) to use any fees, dues, or assessments paid to any organization as a condition of employment, or money or anything of value secured by physical force, job discrimination, or financial reprisal for (i) registration or get-out-the-vote campaigns, (ii) campaign materials or partisan political activities used in connection with any broadcasting, direct mail, newspaper, magazine, billboard, telephone banks, or any similar type of political communication or advertising, (iii) establishing, administering, or soliciting contributions to a separate segregated fund, or (iv) any other expenditure in connection with any election to any political office or in connection with any primary election or political convention or caucus held to select candidates for any political office.".

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97TH CONGRESS
1ST SESSION

S. 1550

To amend the Federal Election Campaign Act to prohibit the use of compulsory union dues for political purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30 (legislative day, JULY 8), 1981

Mr. HELMS (for himself, Mr. EAST, Mr. GOLDWATER, Mr. GRASSLEY, Mr. HAYAKAWA, Mr. HUMPHREY, Mr. LAXALT, Mr. SYMMS, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

---

A BILL

To amend the Federal Election Campaign Act to prohibit the use of compulsory union dues for political purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 316(b)(2)(C) of the Federal Election Campaign Act is amended by inserting before the period "; provided all contributions, gifts, or payments for such activities are made freely and voluntarily, and are unrelated to dues, fees, or other moneys required as a condition of employment".

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COMPULSORY UNION DUES FOR POLITICAL PURPOSES

S. 1550

Introduced by Senator
Jesse Helms (R-NC)

Cosponsors

1. John East (R-NC)
2. Barry Goldwater (R-AZ)
3. Charles Grassley (R-IA)
4. S. I. Hayakawa (R-CA)
5. Gordon Humphrey (R-NH)
6. Paul Laxalt (R-NV)
7. James A. McClure (R-ID)
8. Don Nickles (R-OK)
9. Steven D. Symms (R-ID)
10. Strom Thurmond (R-SC)

HR 4351

Introduced by Congressman
William L. Dickinson (R-AL)

Cosponsors

1. Bill Archer (R-TX)
2. John M. Ashbrook (R-OH)
3. L.A. (Skip) Bafalis (R-FL)
4. Douglas Bernard (D-GA)
5. Ed Bethune (R-AR)
6. Thomas Bliley, Jr. (R-VA)
7. Tom Corcoran (R-IL)
8. Edwin B. Forsythe (R-NJ)
9. Tom Hagedorn (R-MN)
10. J. P. Hammerschmidt (R-AR)
11. Marjorie S. Holt (R-MD)
12. Eugene Johnston (R-NC)
13. Thomas N. Kindness (R-OH)
14. Ken Kramer (R-CO)
15. Tom Loeffler (R-TX)
16. Robert McClory (R-IL)
17. Bill McCollum (R-FL)
18. Larry P. McDonald (D-GA)
19. James Martin (R-NC)
20. John Napier (R-SC)
21 Norman D. Shumway (R-CA)
22. Floyd Spence (R-SC)
23. Arlan Stangeland (R-MN)
24. Bob Stump (D-AZ)
25. William Whitehurst (R-VA)
26. Robert Whittaker (R-KS)
27. Larry Winn, Jr. (R-KS)
28. M. Caldwell Butler (R-VA)

Issue Briefing Paper

National Right to Work Committee

Date: April 9, 1980

Subject: THE COURTS AND THE PROBLEM OF POLITICAL SPENDING FROM COMPULSORY UNION DUES

Confronted with the issue of compulsory contributions to religious establishments in 1786, Thomas Jefferson wrote: "To compel a man to furnish contributions for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical."

Nearly two centuries have passed since Jefferson penned those historic words. And in spite of the numerous laws which have been drafted to protect the freedom of speech and association of Americans, the menace of forced ideological contributions persists -- currently in the form of compulsory union dues for political and ideological purposes.

As explained more fully in a previous Issue Briefing Paper, current federal law permits union officials to spend staggering sums of forced union dues on behalf of their favored candidates. Taking advantage of the legal loopholes for indirect "in-kind" expenditures, union officials operate massive union political machines with money taken from workers as a condition of employment.

Every election year, these compulsory dues dollars are used to finance a barrage of partisan political pitches to millions of union members and their families, many of whom are unalterably opposed to the candidates and causes they are forced to support. Not surprisingly, in 1978 Opinion Research Corporation discovered that a full 54 percent of union members felt that union officials fought for their own political goals -- not those of the dues-paying members.

The use of forced dues for politics has given rise to a vicious cycle of compulsion. Simply stated, union officials spend massive sums of money extorted from workers on behalf of their favored politicians. Once in office, those politicians reward them richly by granting them even greater compulsory unionism powers. Growing in strength with every revolution, this cycle places greater and greater limitations on the political freedom of American workers every election year.

But over the last decade, growing numbers of workers have challenged this special union privilege in court. With the help of the National Right to Work Legal Defense Foundation, a sister organization to the National Right to Work Committee, they have fought to regain many of their lost freedoms -- and to shake the very foundations of compulsory unionism.

Their task has been complicated by the fact that under current federal law, the American labor force is actually a composite of four smaller labor forces, each governed by a different set of labor laws. General private sector workers are governed by the National Labor Relations Act (NLRA); railroad and airline employees are under the Federal Railway Labor Act; public employees are covered by the Civil Service Act and various state statutes; and agricultural workers are under various state farm labor laws.

While these work force subgroups are not viewed as airtight compartments with no interplay under the law, court decisions favorable to the employees of one subgroup who object to the use of their compulsory union dues for politics will not necessarily provide advantageous precedents for employees in another field taking similar legal action.

In order to put an end to the use of compulsory union dues for political purposes for all American workers, Legal Defense Foundation attorneys are assisting victimized employees in each of the four work forces in lawsuits to regain their individual political freedom.

Private Sector Employees: From Bleak Beginnings to Solid Gains

The NLRA, while permitting union officials to collect dues from workers as a condition of employment, also authorizes states to enact Right to Work laws. Consequently, private sector workers in the 20 Right to Work states are not subject to the abuse of compulsory dues for politics. But their counterparts in the 30 compulsory unionism states are forced to pay millions of dollars every year for the advancement of union political goals.

In the mid-1960's, private sector employees who objected to being forced to contribute to a political candidate had little or no recourse. If, however unlikely, they happened to have a small fortune and any number of years to spare, they might dare to face a battery of well-paid union attorneys in court.

But in so doing, they would expose themselves and their families to grave dangers at the hands of powerful union officials. In the words of Watergate prosecutor Archibald Cox, "Individual workers who sue union officers run enormous risks, for there are many ways, legal as well as illegal, by which entrenched officials can 'take care of' recalcitrant members."

Furthermore, there were pitifully few precedents on which to base a lawsuit. In 1961, the U.S. Supreme Court had ruled on International Association of Machinists v. Street, in which the high court frowned upon union political spending of compulsory dues, but left the victimized workers without any genuine legal remedies. And the following decade brought no new decisions providing relief from this abuse.

Encouraged by the high court's failure to take decisive action against them, union political operatives continued their spending of ever-increasing sums of forced dues dollars. And in 1974, a U.S. District Court made matters even worse.

By that time, many union officials, recognizing their vulnerability to charges of violating the First Amendment rights of workers, had developed political rebate schemes for workers who objected to the use of their forced dues for politics. In many cases, workers were required to send lengthy application forms via registered mail to the union headquarters, only to receive miniscule rebates -- often too small even to cover the cost of the postage.

In the case of Reid v. United Auto Workers, workers petitioned the court to develop a remedy for their objections to the UAW's spending of their compulsory dues for politics. But the court simply passed them back into the arms of the union's phony rebate system. The objecting worker was left at the mercy of the union official who was now the sole judge of rebate rates and application procedures.

Against the backdrop of the Street and Reid decisions, private sector lawsuits against union political abuses faced dismal prospects. But by the early 1970's, initial victories for employee rights in the private sector were already taking shape. In 1967, George Seay and 28 other McDonnell-Douglas aerospace workers began a protracted lawsuit against the use of their forced union dues for politics by the International Association of Machinists union (IAM).

In 1970, the Seay v. McDonnell-Douglas and IAM plaintiffs achieved an early breakthrough with a favorable U.S. Court of Appeals ruling: "Agency fees exacted from employees...must be limited to...negotiating and administering collective agreements and the cost of adjudgement and settlement of disputes." The court further stated that the use of compulsory dues "to support candidates and causes the plaintiffs oppose renders them captive to the ideas, associations, and causes espoused by others."

In the wake of the Reid decision in 1973, the trial court dismissed the Seay plaintiffs' suit when the union set up its own political rebate procedure. Refusing to be taken in by the union rebate scheme, the plaintiffs appealed the ruling, and in 1976, the Ninth Circuit Court of Appeals reinstated the case, ordering the trial court to make the union prove the legality of its political spending and rebate schemes.

The appeals court's ruling in Seay represented a major breakthrough for workers' rights, placing the burden of proof upon union officials who claimed to spend only minute portions of compulsory dues for politics. To date, no union has dared to open its books to public scrutiny in order to support these claims.

While the Seay case was approaching its final stages, another pivotal private sector lawsuit was gathering steam in Maryland. In Beck v. Communications Workers of America, Harry Beck and 19 other telephone workers filed suit against the CWA-union for spending their compulsory "agency shop" fees for purposes unrelated to collective bargaining -- including politics.

After three years of litigation, Legal Defense Foundation attorneys representing the telephone workers obtained a landmark ruling: The collection or spending of compulsory dues for any non-collective bargaining activities -- not just politics -- was declared to be a violation of workers' rights under both statutory law and the First Amendment.

Public Sector Employees: "Fair Share" Fees for Politics Ruled Unfair

Compulsory unionism in the public sector is doubly injurious to the rights of workers. First, they are forced to pay tribute to a private organization for the right to serve their government. Then, they must stand by and watch that tribute used to increase the power of union officials -- often in ways damaging to workers' interests.

The first major victory for the rights of public employees came in 1977, when the U.S. Supreme Court ruled on Abood v. Detroit Board of Education, restricting the use of "agency shop" fees to "collective bargaining, contract administration, and grievance adjustment purposes." Furthermore, the high court held that the First Amendment protects workers from being compelled to subsidize the political and ideological activities of a union.

In spite of the Supreme Court's high-sounding rulings in Abood, in fact the Court merely sent the case back to the Michigan courts to develop remedies of their own, thus failing to provide any broadly applicable remedies for victimized public employees.

These remedies came in 1978 in the case of Ball v. City of Detroit. After eight years of litigation, 65 municipal employees won a ruling from the Michigan Court of Appeals which put teeth into the Supreme Court's Abood decision. While restating the principle that compulsory dues must not be used for any purpose other than collective bargaining-related matters, the court went on to set up an escrow account into which the union was required to deposit the compulsory dues payment of all objecting workers.

The Ball decision was a crucial victory for workers because it deprived union officials of the right to use objecting workers' compulsory dues until they open their books and reveal just how much in compulsory dues they spend for politics. As in the private sector Seay case, no union has ventured to come forward with the evidence.

Railway and Airline Workers Challenge Illegal Union Political Spending

In their courtroom battle against the use of compulsory dues for politics, private sector workers have victories in Seay and Beck. Public employees have Abood and Ball. And now railway and airline workers are also regaining their rights in Ellis/Fails v. Brotherhood of Railway and Airline Clerks (BRAC).

For railway and airline workers, courtroom victories are the only protection against compulsory unionism and its attendant political abuses. Because the Federal Railway Labor Act does not recognize state Right to Work laws for workers under its coverage, railway and airline workers nationwide are vulnerable to these abuses.

In 1973, the Ellis/Fails case began when over 200 airline workers in California sued to prevent BRAC-union officials from spending their forced dues for purposes not related to collective bargaining -- and especially for political and ideological purposes.

Although the case is still in litigation, the workers scored a breakthrough in 1976 when the Federal District Court ruled against the use of forced union dues for any non-collective bargaining purposes. The court also agreed to regard Ellis/Fails as a class action on behalf of similarly situated airline and railway workers victimized by the misuse of compulsory dues.

Reacting to the Court's Ellis/Fails decision, Alexander Barkan, AFL-CIO political chief, thundered to an audience of union officials, "It'll be the end of the labor movement as we know it!" Rather than evoking sympathy or alarm, Barkan's prediction merely stands as a pathetic commentary on a movement which has come to rely almost entirely on forced political contributions.

Agricultural Workers: Still Rendering Unto Cesar

The most offensive abuses of compulsory unionism in America are perpetrated against California farm workers. Unlike any other wage earners in the country, these farm workers can be forced to remain "union members in good standing" in order to keep their jobs. And the union official is permitted to act as the sole judge of a worker's "good standing."

This unbridled union power has given rise to massive violations of workers' political freedom. Cesar Chavez' United Farm Workers union, for example, makes a regular practice of compelling workers to make large cash contributions to the union's political fund. And workers who dare to protest face the virtual certainty of incurring Chavez' wrath and being found "not in good standing."

In June 1978, Cervando Perez and eleven other California farm workers refused to submit to the UFW's coerced political contributions scheme. Immediately, all were expelled from the union, and Perez was fired from his job.

Not to be bullied into submission, Perez and his fellow workers fought for their rights in court. In what promises to be a long and bitter court fight, California's Agricultural Labor Relations Board condoned a whitewash of the UFW's political spending practices, forcing Foundation attorneys to challenge the very constitutionality of the California farm labor law in state court.

For Perez and his coworkers there is a long, hard road ahead. Armed with the weapon of compulsion, Chavez and his subordinates enjoy almost absolute control over the lives of California farm workers. Many of those workers are unskilled, having worked on farms all their lives. For many, it is work in the fields or no work at all. Living under the dreaded threat of being found "not in good standing," they all too readily submit to Chavez' dictates. But if the Perez case follows the pattern set by Seay, Beck, and Ellis/Fails, farm workers too will have the benefit of a judicial proscription against the use of forced union dues for politics.

Genuine Remedies and the Need for Right to Work Legislation

In any situation, one's legal rights exist only in abstract. One must sue in order to make the laws apply to one's own situation.

At the present time, the courts have yet to come up with precedents that would make it practical for an individual to gain legal remedies without vast expenditures of personal funds. And ultimately, even with stronger court precedents, individual workers would be required to bear extensive litigation costs. When the convictions of a farm worker, machinist, or airline clerk have been violated by union officials, these workers can hardly afford to spend tens of thousands of dollars in court in order to vindicate their beliefs.

In Congress, however, a group of concerned legislators are working to offer genuine legal remedies to the victims of union political spending abuses. Led by North Carolina Senator Jesse Helms and Alabama Representative William Dickinson, they have introduced legislation in both the House and Senate — the Compulsory Campaign Contributions Reform Act of 1980 — designed to guarantee that workers' dues dollars will not be used to support union officials' pet political goals.

In order to win back the rights wrested from them by union officials, Harry Beck, Cervando Perez, and hundreds of other freedom-loving workers have sacrificed a great deal of time, energy, and personal resources in long and exhausting court battles. But if Helms and Dickinson succeed in their legislative efforts, the judicial principles established by these courtroom victories will be undergirded by statutory law. Then, every American worker's right to support candidates and causes of his or her own choosing will enjoy full and effective legal guarantees.

Issue Briefing Paper

National Right to Work Committee

Date: March 11, 1980

Subject: COMPULSORY UNION DUES
FOR POLITICAL PURPOSES

Every year since 1975, union organizers have lost more representation elections than they have won. Union representation has dwindled to a mere 19.7 percent of the U. S. work force, the lowest level since World War II.

But in spite of the growing worker rejection of union representation, union political clout is growing stronger than ever. Behind this strange paradox are two widespread union special privileges:

1. The National Labor Relations Act grants union officials the power to force workers to pay money to the union as a condition of employment;

2. The Federal Election Campaign Act then allows union officials to spend those compulsory dues dollars to support union-backed political candidates and causes.

This paper will focus on the second practice: the use of non-voluntary, compulsory union dues for political and ideological causes, regardless of the convictions and political views of individual union dues-payers.

Compulsory Union Dues: Nearly $10 Million Daily Flow

In 1960, the Department of Labor reported that annual American labor union income totalled nearly $1.5 billion. Although the DOL declined to publish total union dues income for the ensuing two decades, expert research based on figures from the Bureau of Labor Statistics set the 1976 total for union dues income at over $3.5 billion -- or nearly $10 million per day.

Using these vast resources, union officials fuel a highly sophisticated, perpetually active political machine. In every state, those millions of dollars in compulsory dues go to work on behalf of union officials' handpicked candidates and causes.

Boasting of the extent of the union political machinery, AFL-CIO COPE director Alexander Barkan said in December, 1977: "We've got

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1. National Labor Relations Act: Sec. 7, Sec. 8(a)(3), (b)(2).

2. Federal Election Campaign Act: 2 U.S.C. Sec. 441(b)(2)(A), (B), (C), (4)(B).

organizations in 50 damn states and it goes right down from the states to the cities. There's no party can match us.

"Every election it gets better and better. Give us 10 years or 15 years and we'll have the best political organization in the history of the country. We're at it the year 'round. We've got full time people in every state of the union."

Federal Labor Law and Union Political Spending

The Federal Election Campaign Act (FECA), as amended in 1976, gives the appearance of restricting the use of compulsory dues for political purposes. The law prohibits the use of compulsory dues for direct cash contributions to political candidates.

It does not, however, prohibit the use of forced union dues for a number of other indirect means of supporting union political candidates and causes.

The FECA specifically permits union officials to use money, taken from workers as a condition of employment, to communicate with union members and their families, urging their support for a particular candidate; to conduct registration and get-out-the-vote drives in support of a candidate; and to operate and administer the sophisticated union PACs.

In short, the law prohibits union officials from giving a worker's dollars directly to a candidate which the worker may oppose. But at the same time, it permits those union officials to use the worker's compulsory dues dollars to support that same candidate through numerous indirect means.

In light of this dichotomy, union officials have segmented their political expenditures into two categories: (1) "Hard money" given directly to the union officials' favored candidates, taken from funds given voluntarily by union members; (2) "Soft money" consisting of compulsory dues dollars used for indirect support of political candidates, and for the operation of union PACs.

While union "hard money" is subject to the limits covering all political contributions from individuals and PACs, there is no ceiling on the amount of "soft money" a union can spend. Because of this, reported union cash political contributions are merely the tip of the iceberg. Beneath the surface are tens of millions of undocumented and unreported compulsory dues dollars in "soft" union political expenditures.

"Soft Money," Hard Impact

Respected labor columnist Victor Riesel turned the spotlight on union officials' "soft" political contributions shortly after the 1976 elections. "During the political hunting season inside labor," wrote Riesel, "'soft money' is hard electioneering currency. Actually it's dues money. By the millions."

For the sake of clarity, union "soft money" can be divided into two major categories: (1) Compulsory dues "soft money" used to finance the operation of union PACs such as the extensive network of AFL-CIO COPEs; (2) "Soft money" used to pay for massive "in-kind" political services.

Union "soft money" which operates the union PACs pays the salaries of numerous full-time union political operatives across the nation. It provides PAC supplies, finances mass mailings and travel expense accounts, and purchases sophisticated office machinery and computers.

Even voluntary contributions from union members originate with "soft money." Compulsory dues bankroll the administrative overhead costs of union partisan political fundraisers. Union officials spend huge amounts of forced dues every year to raise these supposedly voluntary contributions.

Compulsory dues "soft money" for union PACs runs well into the millions every year. In July, 1976, AFL-CIO public relations director Bernard Albert admitted that the annual budget of the National COPE alone ran to approximately $2 million.

But in spite of the vast sums of compulsory union dues which are funnelled into union PACs, the bulk of "soft money" goes for the second category -- "in-kind" political expenditures.

"In-Kind" Contributions: Unreported Political Spending From Compulsory Dues

The July, 1979 issue of Steelabor offered its readers as straightforward an explanation of "in-kind" political spending as can be found. Union dues money, reported the Steelworkers' union paper, "can't go for direct political contributions -- but it can do a lot: mailings supporting or opposing political candidates, phone banks, precinct visits, voter registration and get-out-the-vote drives...."

Steelabor's admission, though enlightening, is far from complete. To present a more accurate picture of "inkind" political spending from compulsory union dues, a few more major expenditures must be added to the list: weeks, sometimes months, of the staff time of hundreds of thousands of union employees devoted almost solely to partisan politics; hordes of election day "volunteers," paid overtime rates from compulsory dues; millions of political pamphlets and flyers; and paid election day carpools and babysitters, to name a few.

These "in-kind" expenditures are not subject to any limitations under the FECA. They come directly from compulsory union dues. And they represent the overwhelming bulk of union political expenditures. In the words of AFL-CIO COPE director Alexander Barkan, "Money is just a minor feature of the support we can give a candidate."

But, of course, the "support" the union officials give candidates does cost money. Forced dues money. Taken from workers who must pay on peril of their jobs.

Because of the fact that the FECA requires no documentation or reporting of "in-kind" political spending, no official statistics for total union "in-kind" expenditures are available. But labor columnist Riesel put the 1976 total at $100 million -- not including recorded cash donations. Many legislative experts consider Riesel's figure to be conservative.

Most Campaign Spending "Reforms" Ignore "Soft" Union Millions

Because of the influence on Congress of special interest groups, it has become fashionable on Capitol Hill to call for election spending "reforms." The 96th Congress has already been faced with several such "reform" bills, including HR 1, S. 1700, and HR 4970, the Obey-Railsback bill.

While these measures would impose strict limitations on individual contributions through PACs, they would do nothing to restrict the use of union "soft money" for partisan political activity.

Many legislative experts agree that if such proposed legislation were enacted into law, union political operatives would be granted even greater advantages in electoral campaigns. They would be free to continue their spending of compulsory union dues for "in-kind" political services, while competing interests, relying on voluntary cash contributions, would be bound by strict spending limitations.

Helms' Bill Would Stop Compulsory Union Dues for Politics

On February 27, S. 2325, a campaign reform of a totally different sort, was proposed in the Senate. Rather than merely imposing arbitrary ceilings on direct cash political contributions, S. 2325 would prevent the use of any compulsory funds for politics.

Introduced by North Carolina Senator Jesse Helms, the bill is designed to guarantee that workers' forced dues will not be used to support union officials' pet candidates and causes. Because compulsory union dues comprise the overwhelming bulk of union political expenditures, Helms' bill is certain to evoke strong opposition from union lobbyists.

According to National Right to Work Committee president Reed Larson, Helms' bill would correct the foremost abuse of the American political system. "As long as Congress continues to permit union officials to force workers to support political candidates against their convictions," said Larson, "plaudits of American political freedoms will continue to have a hollow ring."

for ER RC

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 15, 1981

Reed Larson
President
National Right To Work Committee
8001 Braddock Road, Suite 500
Springfield, Virginia 22160

Dear Mr. Larson:

Thank you for your comments on the Commission's Notice of Proposed Rulemaking on Sections 114.3 and 114.4. The hearing on this rulemaking will be held on October 26, 1981, in the Commission's 5th Floor meeting room at 10:00 a.m. We are pleased that you have requested to testify and have scheduled your appearance for 2:30 p.m.

As a participant, you will be asked to make a brief statement on the issues in this rulemaking with which you are concerned. We ask that your statement not be a reading of previously submitted comments into the record as these comments have already been made a part of the public record. You will be allotted five minutes for your opening statement. The remainder of your time is reserved for questions from the Commission and its General Counsel.

If you have any questions regarding your appearance on October 26, please call Susan Propper, Assistant General Counsel, at (202) 523-4143.

Sincerely,

John W. McGarry

John W. McGarry
Chairman
Federal Election Commission

PROCEDURES FOR HEARINGS

1. The Chairman shall conduct the hearing.

2. The Chairman shall have the responsibility for preparing all Commissioners for the hearing with the aid of the General Counsel.

3. The Chairman shall open the hearing and make an opening statement on behalf of the Commission.

4. Each participant will be allotted thirty (30) minutes in which to make an opening statement of his or her concerns and to respond to questions from the Commission and its General Counsel. A participant's opening statement shall not exceed five (5) minutes.

   The following schedule of appearances has been approved by the Chairman.

   October 26, 1981

   10:00 a.m. - Opening of Hearing by Chairman

   10:15 a.m. - Thomas A. Daly, General Counsel
   National Soft Drink Association

   10:45 a.m. - Erwin G. Krasnow, Counsel
   National Association of Broadcasters

   11:15 a.m. - Paul D. Kamenar
   Washington Legal Foundation

   2:00 p.m. - James P. Greene, Senior Counsel
   Southern California Gas Company

   2:30 p.m. - Reed Larson, President
   National Right to Work Committee

   3:00 p.m. - Larry Gold, Special Counsel
   AFL-CIO

   3:30 p.m. - Clair A. Snyder, Executive Vice President
   American Bank and Trust Company of Pa.

5. The Chairman shall have the initial opportunity to question each witness. The Chairman will then provide time for each Commissioner in turn to pose questions to each witness.

6. The Chairman may also have the General Counsel pose questions to witnesses.

7. The Chairman will determine the length of time each Commissioner may question each witness.

8. The General Counsel's Office will summarize the written comments of each witness and present the summaries to each Commissioner in advance of the hearing.

RL from Paul M

Kera — F.Y.I. PK

American Federation of Labor and
Congress of Industrial Organizations
815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

'81 OCT 9 P3:22

October 8, 1981

Ms. Susan E. Propper, Assistant
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: Comments on Proposed Revisions to
11 CFR 114.4

Dear Ms. Propper:

On September 8, 1981, the Federal Election Commission published a notice of proposed rulemaking requesting comments on revisions which the Commission is considering making to its regulations on partisan and nonpartisan communications by corporations and labor organizations. (11 CFR 114.3 and 114.4.)

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), on its own behalf and that of its affiliates files these comments to urge that the proposed revisions to 11 CFR 114.4 be changed to: (1) strictly limit corporate and union registration and get-out-the-vote communications to the general public to statements urging registration or voting; (2) delete the section (proposed §114.4(b)(4)) on voting records; (3) retain the present regulation (11 CFR 114.4(c)(3)) on voter guides; (4) delete from the proposed §114.4(c) the "cosponsor" requirement on union and corporation nonpartisan registration and get-

out-the-vote drives; and (5) delete proposed §114.4(d) in order to consider separately whether the activities of incorporated membership organizations and non-stock corporations should still be regulated under 11 C.F.R. 114.

The purpose of the Federal Election Campaign Act is to safeguard the integrity of federal elections. Such an effort necessarily has an effect on the right of free expression protected by the First Amendment. As the courts have on numerous occasions reminded the Commission, Congress therefore strictly confined the Act's scope to activities "for the purpose of influencing any election for Federal office." As we show below portions of the proposed regulations at issue here do not respect that limitation.

Within the area that is covered by the Act — activities that are unmistakably addressed to citizens as voters — Congress placed strict limits on the use of corporate and union treasury money to finance activity directed to the general public and most particularly on partisan activities. This is not the proper occasion or the proper forum to debate the wisdom of that limitation; the Commission is required to faithfully execute Congress' will. It is our view that in several respects the proposed regulations give the term "nonpartisan" activity such a broad and idiosyncratic meaning as to frustrate Congress' determination that corporations and unions should not use treasury money to finance election activity directed at the general public that is "partisan" in fact.

I. Registration and Get-Out-The-Vote Communications Which Cover "Issues of Public Concern" Are Not Nonpartisan.

Under proposed §114.4(b)(2) corporations and labor organizations

motivates an individual to vote is by its very nature a campaign issue. An appeal to register or vote in order to further the compelling desire of electing a candidate, or putting a party in power, who will work the voter's will on the major issues is a partisan appeal. Communications which offer a partisan issue as the reason for people to register or vote are the very type of expenditure which 2 USC 441b is intended to prevent. The core purpose of the Act's prohibition of corporate or union expenditures in connection with a federal election is to prevent the spending of treasury money for "active public partisan politicking". 117 Cong. Rec. 43380 (Rep. Hansen).

In contrast, the present regulation (11 CFR 114.4(c)) is consistent with Congressional intent since that section limits voter registration and get-out-the-vote communications to messages which are nonpartisan on their face; e.g., "Vote Today", "Register to Vote". In so doing, it sets an objective standard which enables the Commission to ensure that voter registration and/or get-out-the-vote communications paid for with treasury monies are nonpartisan and should therefore be retained.

II. The Proposed Voting Record Regulation Goes Beyond The Area of the Commission's Authority.

The proposed regulations add voting records to the nonpartisan communications which corporations and labor organizations may make to the general public. Proposed §114.4(b)(4). Voting Records are there defined as publications which describe, in a nonpartisan manner, bills and other legislative measures acted on by Congress and which state the factual record of each officeholder's votes on such bills and measures.

Voting records may or may not be communications issued in connection with an election. For example, such records are often

would be permitted to expend treasury money to make nonpartisan communications urging members of the public to register and to vote in federal elections, as "nonpartisan" is defined therein. Under that section a communication that "mentions an issue of public concern with regard to the need to register or vote without linking any candidates or political parties with a particular position on that issue" is considered nonpartisan. With all respect, that portion of the proposed regulation makes nonsense out of the term nonpartisan.

The proposed regulations recognize that a communication that does expressly link issues and candidates is partisan; it is beyond reasoned dispute that a communication that mentions both issues and candidates and lets the reader infer the link is equally a partisan communication.

Candidates and parties normally tie their campaigns to issues of special concern to those voters to whom they look for support. Candidates communicate their positions on these issues to the public in their campaign literature and political advertisements. The result is that candidates become identified with certain issues in the minds of the voters.

Once a candidate becomes identified with a particular campaign issue, a voter registration or get-out-the-vote communication tied to the same issue will have the same effect as a communication that expressly links the candidate's name with the need to vote. For example, in the most recent election the Republican Party was generally identified with its programmatic call for a tax cut. In such circumstances, an ad which says, "Vote today, high taxes are of concern to everyone," would be clearly partisan.

To put it in plainest terms, an issue of public concern which

educational tools designed to mobilize public opinion on certain legislative issues — a form of grassroots lobbying. Their publication on a year-in, year-out basis strengthens the democratic process by keeping the public informed of what Congress is doing thereby making Members of Congress more responsible for their legislative actions. And, as we have already noted, the FECA does not regulate such communications; the Act regulates only those communications which, taken in their entirety and considering their timing, are aimed at influencing voting behavior in an election

In its proposed regulations, the Commission has attempted to articulate a set of eight conditions which separate a nonpartisan voting record from a partisan record. This approach is both too narrow and too broad. It is too narrow because a voting record which satisfies all eight conditions could still be highly partisan. For example, in the context of an election where one candidate was running on the issues of law and order, tax cuts and opposition to abortion, a corporate-sponsored ad which says "This Corporation Favors A Return To Old-Time Values" and lists the voting records of the State's Representatives and Senators on tax cuts, abortion and criminal code reform characterized as either "For Old-Time Values" or "Against Old-Time Values" would, under the proposal, be considered "nonpartisan" when it is not. It is too broad because a voting record which fails to satisfy one or more of the conditions and whose issuance to the general public would, therefore, be unlawful and could still be entirely outside the Act's regulatory scope. For example, a voting record distributed two years before an election which describes the votes of Members on the sale of AWAC planes to Saudi Arabia would not be

permitted under the proposed regulation.

The Commission, in sum, does not have the authority to regulate records that are intended to influence legislative behavior, only voting records that are intended to influence an election. The partisan use of voting records should be regulated through the Commission's compliance process taking into account all the facts and circumstances.

III. Corporate and Union Voting Guides Should Be Prepared By A Nonpartisan Organization As 11 CFR 114.4(c)(3) Now Requires.

Voting guides are on their face communications directly related to elections. Even in their purest nonpartisan form they are designed to influence the outcome of an election by educating the voter on the views of the respective candidates. Their purpose is to help voters decide how to vote.

The Commission's present regulations permit corporations and unions to pay for the distribution of voter guides to the public but guard against partisanship by requiring that the content of the guides do not favor one candidate over another and further that end by requiring that the guide be authored by a nonpartisan civic or other nonprofit organization which does not endorse or support and is not affiliated with a candidate or political party. 11 CFR 114.4(c)(3).

The proposed revision would eliminate the present requirement for cosponsorship and substitute instead a number of conditions on the content and the distribution of voting guides intended to ensure nonpartisanship. These conditions include a requirement that the guide contain questions on a "variety of issues" and preclude any editorial

comment or expression by the sponsoring corporation or union of its "views" on the issues covered by the questions or the candidates' responses.

In this instance, as in the proposed regulation on registration and get-out-the-vote communications, by allowing the sponsoring organizations to select the questions limited only by the meaningless restriction that the questions cover a "variety of issues," the Commission would extend the term "nonpartisan" to cover partisan activity. Under the proposed regulation for example, a voter guide which asks a conservative candidate and a liberal candidate to answer questions on busing, abortion, right to work laws, and school prayer or on the equity of the recent tax and budget cuts would qualify as "nonpartisan." Thus, the exception swallows the whole. It is beyond the capacity of the most powerful and subtle mind to write prescriptions to guide partisans in framing questions to candidates that are not proscribed editorial comments.

The only effective way to insure the nonpartisan character of voter guides is to require that they be authored by a nonpartisan civic or other non-profit organization. This requirement does not limit the ability of corporations and unions to distribute nonpartisan voter guides, and it does provide a sure, effective standard for determining what is and is not permissible activity in this area. Therefore, the substance of the present regulation on voter guides should remain unchanged.

IV. The "Cosponsor" Requirement for Union and Corporation Registration and Get-Out-The-Vote Drives Should be Deleted.

The Commission's obligation to ensure that the permission to corporations and unions to engage in nonpartisan registration and

get-out-the-vote drives is not misused is far simpler than ensuring that the permission to issue voter guides is not misused. Yet the safeguard of third party participation is retained in the proposed regulation on the former and deleted in the latter. This is the precise opposite of the proper rule.

So long as a registration or get-out-the-vote drive is directed to all the residents of a particular area or to the members of a particular population group, treats all those potential voters as equals, and is not tainted by partisan communications, it is a "nonpartisan" drive as Congress intended to use that term in this instance. Compare 117 Cong. Rec. 4338 (Rep. Hansen).

As the Commission recognizes in part by permitting corporations and unions to make unrestricted use of their own premises for such drives, it is therefore not necessary to require the additional safeguard of third party sponsorship. And, we submit, that the Act does not provide any basis for distinguishing between conducting registration and get-out-the-vote drives on one's own premises and conducting such drives throughout a given area. It is impossible for us to derive any reason whatsoever for the Commission's evident initial view that cosponsorship is not required for the former but is required for the latter. The proper course is therefore to delete the cosponsor requirement from proposed §114.4(c).

V. The Commission Should Consider Whether Membership Organizations and Non-stock Corporations May Still Be Regulated Under 11 C.F.R. 114.

In proposed §114.14(d), the Commission addresses the issue of nonpartisan communications to the public by trade associations,

incorporated membership organizations, cooperatives, and non-stock corporations.

Before promulgating regulations concerning communications by incorporated membership organizations or non-stock corporations, we suggest that the Commission should first consider whether in light of National Right to Work Committee v. FEC, No. 80-1847 (D.C. Cir., September 4, 1981) the activities of such organizations should be regulated at all by 2 U.S.C. 441b, or rather should be regulated under the provisions that now cover partnerships and other unincorporated entities.

* * *

The AFL-CIO hereby requests the opportunity to testify during the public hearing on the proposed revision of 11 CFR 114.4.

Respectfully submitted,

J. Albert Woll
General Counsel, AFL-CIO
815 15th Street, N.W.
Washington, D.C. 20005

Laurence Gold
Special Counsel, AFL-CIO
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Washington Counsel,
International Union UAW
1730 K Street, N.W.
Washington, D.C.

National Right To Work Committee

A COALITION OF EMPLOYEES AND EMPLOYERS

REED LARSON, *President*

October 8, 1981

Susan E. Propper
Assistant General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463

RE: Notice of Proposed Rulemaking With Respect To
11 C.F.R. §114.3 and .4

Dear Ms. Propper:

The National Right to Work Committee is a non-profit organization formed to educate the public on, and to advocate voluntary unionism. It is supported by the voluntary contributions and active participation of its more than 1.5 million members.

We have reviewed the proposed changes to FEC Regulations §114.3 and .4, which were published for public comment in the Federal Register, Vol. 46, No. 173, p. 44964, September 8, 1981, and object to their issuance on two grounds:

1. The regulations will permit the officials of labor organizations to use agency fees, collected involuntarily from workers as a condition of employment, for political purposes with which those workers disagree; and

2. The regulations employ unconstitutionally vague language which either will be impossible to enforce or which will permit discriminatory enforcement by agents of the Commission.

A. POLITICAL USE OF COMPULSORY DUES

Congress and the courts have long recognized that officials of organized labor are in a position to divert fees, collected involuntarily from workers as a condition of employment, to pet political projects of the officials. United States v. Boyle, 482 F.2d. 755 (D.C. Cir., 1973), cert. den. 94 S.Ct. 593 (1973).

Although well-aware of this Congressional and judicial concern, the Commission has a history of blatant insensitivity to the interests of forced union dues payers. In 1976, the Commission refused to act on a complaint filed by our Committee charging the National Education Association union with employing a "reverse check-off" scheme to obtain coerced contributions to its political action fund from teachers. Only after the Committee sued the Commission did the Commission act on the Committee's complaint. FEC v. NEA, 457 F.Supp. 1102, 99 LRRM 2263, 99 LRRM 3463 (D.D.C., 1978).

At this very moment, Congress is considering legislation that would amend the Federal Election Campaign Act (the "Act") to prohibit the use of compulsory dues under the three exceptions to §441b (political communications to members, registration and get-out-the-vote campaigns aimed at members, and the establishment, administration and solicitation of contributions to a separate segregated political fund). [S. 1550, H.R. 4351.]

Now, the Commission appears to be conspiring to provide big labor bosses with another avenue by which to "pick the pockets" of workers and to compel support for pet political projects.

The proposed regulations, as currently drafted, do nothing to curtail the use of dues, fees or other monies collected as a condition of employment to defray the cost of the activities which will be permitted thereunder.

While every effort of citizens to join voluntarily in promoting political views of their own choosing is laudable, the Committee stands steadfastly opposed to any attempt to compel working men and women to support political causes with which they disagree under the threat of losing their jobs.

The Committee urges that the following paragraph be added to both subsections of §114:

> "A labor organization may not use any fees, dues, or assessments paid to it as a condition of employment, or money or anything of value secured by physical force, job discrimination, or financial reprisal to defray the cost of any activities conducted hereunder."

Such a paragraph would ensure that only voluntary contributions would be used to defray the cost of these activities.

B. UNCONSTITUTIONALLY VAGUE LANGUAGE

As you are no doubt aware, the Committee has been engaged in an almost six-year legal battle with the Commission to determine the meaning of the term "member," as used in §441b of the Act. The Committee and its members have been barred from participation in the political process since 1976 because the Commission has unjustifiably failed to recognize the Committee's members and has refused to define the terms "member" or "membership organization." The United States Court of Appeals for the District of Columbia Circuit ruled unanimously, on September 4, 1981, that the Committee could solicit its members under the Act, and agreed with us that the Commission has "avoided the core problem of defining the terms 'member' and 'membership organization.'"

The treatment the Committee's members have received at the hands of the Commission should not happen to any other American citizen. The public is entitled to have terms affecting their constitutional right to participate in the political process defined with clarity and consistency.

The proposed regulations use the term "nonpartisan communication," and then go on to ask: "[W]hat makes a communication nonpartisan?"

Simply asking the question is not enough. The Commission must answer the question before promulgating any additional regulations. The Supreme Court has already provided a definition of this critical term.

First, it must be recognized that these regulations are addressed to the independent activity of labor organizations or corporations because if the activity is coordinated, a "contribution" has been made and §441b has been violated directly. The key question, then, is whether an "expenditure" has been made. This question may be answered by referring to the 1976 Supreme Court decision, Buckley v. Valeo, 424 U.S. 1.

In Buckley, the term "expenditure" was defined for purposes of the Act to encompass "only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." 424 U.S. at 80. That definition was enunciated in order to avoid having to strike down the statute as unconstitutionally vague and overbroad.

American citizens can recognize a communication that meets this express advocacy test. No more than a cursory

review is required to determine whether a candidate is clearly identified or whether the communication expressly advocates the candidate's election or defeat. Any other test is unconstitutional, and injects into the inquiry a subjective, discretionary review by bureaucrats more intent on perpetuating their jobs than on facilitating participation in the political process.

C. CONCLUSION

The Committee is opposed to the issuance of these regulations because they will exacerbate the already existing constitutional violation under which the Commission authorizes labor organizations to use compulsory fees, collected as a condition of employment, for political purposes with which workers disagree. They will create an unconstitutionally vague test for determining whether proscribed activities have taken place. On behalf of all workers who are forced to support a labor organization as a condition of employment, we urge you to correct these omissions or withdraw the proposed regulations.

The Committee requests the opportunity to testify at the hearings scheduled to commence on October 26, 1981.

Sincerely,

Reed Larson

RL/cjm

AGENDA DOCUMENT #81-146

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 AUG 21 P 3: 53

August 21, 1981

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: Legislative Recommendation

On June 9, 1981, the Commission directed the Office of General Counsel to draft legislative recommendations in conjunction with the drafting of a petition for a writ of certiorari in Federal Election Commission v. Machinists Non-Partisan Political League, and Federal Election Commission v. Citizens for Democratic Alternatives in 1980. The petition for a writ of certiorari, filed with the Supreme Court on August 14, 1981, argues that the precise statutory language, supported by legislative history, clearly requires a reversal of the court of appeals' judgments in these cases.

Pursuant to preliminary discussions with the Commission on these recommendations, the attached draft incorporates specific language for the Commission to recommend that Congress enact to accomplish the desired clarification of the statute. In drafting the specific recommendation for revision of 2 U.S.C. § 441b, we concluded that amendment to the definition of "contribution and expenditure" in § 441b(b)(2) would require the least repetition and would result in the least cumbersome statutory language. Accordingly, in order to keep the recommendations parallel and as simple as possible, the attached recommendation is similarly to amend those definitions in § 431. We suggest this in contrast to adding a new subsection to the definition or "political committee" as we previously considered. Thus, we are recommending four statutory changes: to sections 431(8)(A)(i), 431(9)(A)(i), 441b(b)(2) and 441a(a)(1).

AGENDA ITEM
For Meeting of: 8-27-81
Agenda Item No:
Exhibit No:

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Honorable Charles McC. Mathias
Chairman, Committee on Rules
and Administration
United States Senate
305 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Court of Appeals for the District of Columbia Circuit recently rendered its judgments in Machinists Non-Partisan Political League v. Federal Election Commission, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9151 (D.C. Cir. May 19, 1981) and Citizens for Democratic Alternatives in 1980 v. Federal Election Commission, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9152 (D.C. Cir. May 19, 1981). The court vacated district court Orders enforcing Commission subpoenas issued to MNPL and CDA in connection with an investigation of alleged violations of the Federal Election Campaign Act of 1971, as amended. The court of appeals found that committees organized or engaging in activities designed to influence an individual to seek the nomination for election for federal office or supporting the nomination of such an individual were not regulated by FECA prior to the 1979 Amendments to the Act and arguably, even after the 1979 Amendments, only required to comply with FECA's reporting requirements. In addition, the court failed to make any distinction whatsoever between such activities conducted by so-called "draft" committees and similar efforts by separate segregated funds.

The impact of the court's decisions is that any group organized to gain grassroots support for an undeclared candidate will operate completely outside the strictures of FECA. This committee will not be subject to the § 441a limitations on contributions found constitutional by the Supreme Court nor arguably subject to the § 441b prohibition. However, any group organized to support a declared candidate will be subject to the Act's requirements and contribution limitations. The Commission anticipates a proliferation of these so-called "draft" committees since support for undeclared candidates through such committees would not be limited by FECA, making it advantageous for individuals to delay formal declaration of candidacy. This might require more extensive investigations to determine the true nature of

such draft activities, and the potential exists for funnelling large aggregations of money, both corporate and private, into the federal electoral process, overturning many of the electoral reforms enacted by Congress during the past 70 years.

The Commission believes that the court's decisions are both seriously erroneous under the existing statute and represent a statutory interpretation which will create a serious imbalance in the election law and in the political process, undermining Congress's legislative efforts. The Commission has filed with the Supreme Court a petition for a writ of certiorari in which the Commission argues that the judgments of the court of appeals represent a misinterpretation of the precise statutory language enacted by Congress. The Commission submits, however, that the political inequities and practical problems created by the court's decisions warrant immediate legislative action to reaffirm congressional intent in this area before the 1982 elections.

The Commission therefore suggests that Congress directly address the serious problems resulting from the court's judgments, and hereby submits the various alternatives through which Congress may approach and rectify these problems. Thus, Congress may wish to consider revising section 441a to state explicitly that no person shall make contributions to any committee established to support the nomination for election or election of a clearly identified individual to federal office or to influence a clearly identified individual to seek the nomination for election or election to federal office which in the aggregate exceed $1,000. The exclusion by the court of political committees organized to support potential candidates, and necessarily advocating the defeat of a declared candidate, from the provisions of FECA is an exception which has never been made by the Congress. Indeed, to limit the term political committee to those groups supporting "candidates" was a concept rejected by the Congress in 1974. In accordance with the language of the statute and with congressional intent, the Commission has consistently held that draft committees are political committees under FECA. See 1975-1980 FEC Annual Reports to Congress.

In connection therewith, Congress may wish to revise sections 431(8)(A)(i) and 431(9)(A)(i) to clarify that the terms "contribution" and "expenditure" include those made "for the purpose of influencing a clearly identified individual to seek nomination for election or election to federal office." By such action Congress, having the constitutional power to regulate federal elections, will resolve the issue and make clear its intent to the courts that such activities are within the purview of FECA.

Finally, even if the court-designed exception to FECA for certain political committees remains, Congress may wish to consider creating a distinction between activities to influence an individual to seek the nomination for election or election to federal office conducted by separate segregated funds and other political committees. Separate segregated funds are so closely connected to the sponsoring corporation or labor organization, mere extensions of the corporate or union entity, that the potential for funnelling exceedingly large amounts of money into the election process is greatly increased. See California Medical Association v. Federal Election Commission, 641 F.2d 619 (9th Cir. 1980)(en banc), aff'd ____ U.S. ____, 101 S.Ct. 2712 (June 26, 1981); Pipefitters Local Union No. 562 v. United States, 407 U.S. 385 (1972). The Commission is concerned that an extension of the court's judgments may permit such payments since, in the court's view, committees organized to influence the nomination and election or potential candidates are completely outside the Act and thus may accept contributions prohibited by FECA. Thus, Congress may wish to state expressly that corporations, labor organizations and national banks may not give general treasury funds to such committees. 2 U.S.C. § 441b.

The Commission respectfully submits that Congress should give rapid and serious consideration to enacting legislation to address these concerns. The Commission suggests that the proposed statutory amendments set forth in the attached legislative draft would achieve these objectives.

Sincerely,

John Warren McGarry
Chairman

Enclosure

LEGISLATIVE RECOMMENDATIONS

(1) Revise 2 U.S.C. § 431(8)(A):

"(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office, including those made for the purpose of influencing a clearly identified individual to seek nomination for election or election to federal office; or"

(2) Revise 2 U.S.C. § 431(9)(A):

"(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, including those made for the purpose of influencing a clearly identified individual to seek nomination for election or election to federal office; or"

(3) Revise 2 U.S.C. § 441b(b):

"(2) For purposes of this section and section 791(h) of title 15, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, and shall include any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) made for the purpose of influencing a clearly identified individual to seek nomination for election or election to any of the offices referred to in this section but shall not include--

(A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;

(B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and

(C) the establishment, administration, and solicitation

of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock."

(4) Add to 2 U.S.C. § 441a(a)(1):

"(D) no person shall make contributions to any committee established to influence the nomination or election of a clearly identified individual for any Federal office which, in the aggregate, exceed $1,000."

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Honorable Augustus F. Hawkins
Chairman, Committee on House
Administration
United States House of Representatives
H-326 Capitol
Washington, D.C. 20515

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The impact of the court's decisions is that any group organized to gain grassroots support for an undeclared candidate will operate completely outside the strictures of FECA. This committee will not be subject to the § 441a limitations on contributions found constitutional by the Supreme Court nor arguably subject to the § 441b prohibition. However, any group organized to support a declared candidate will be subject to the Act's requirements and contribution limitations. The Commission anticipates a proliferation of these so-called "draft" committees since support for undeclared candidates through such committees would not be limited by FECA, making it advantageous for individuals to delay formal declaration of candidacy. This might require more extensive investigations to determine the true nature of

LEGISLATIVE RECOMMENDATION

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In connection therewith, Congress may wish to revise sections 431(8)(A)(i) and 431(9)(A)(i) to clarify that the terms "contribution" and "expenditure" include those made "for the purpose of influencing a clearly identified indivicual to seek nomination for election or election to federal office." By such action Congress, having the constitutional power to regulate federal elections, will resolve the issue and make clear its intent to the courts that such activities are within the purview of FECA.

Finally, even if the court-designed exception to FECA for certain political committees remains, Congress may wish to consider creating a distinction between activities to influence an individual to seek the nomination for election or election to federal office conducted by separate segregated funds and other political committees. Separate segregated funds are so closely connected to the sponsoring corporation or labor organization, mere extensions of the corporate or union entity, that the potential for funnelling exceedingly large amounts of money into the election process is greatly increased. See California Medical Association v. Federal Election Commission, 641 F.2d 619 (9th Cir. 1980)(en banc), aff'd ____ U.S. ____, 101 S.Ct. 2712 (June 26, 1981); Pipefitters Local Union No. 562 v. United States, 407 U.S. 385 (1972). The Commission is concerned that an extension of the court's judgments may permit such payments since, in the court's view, committees organized to influence the nomination and election of potential candidates are completely outside the Act and thus may accept contributions prohibited by FECA. Thus, Congress may wish to state expressly that corporations, labor organizations and national banks may not give general treasury funds to such committees. 2 U.S.C. § 441b.

The Commission respectfully submits that Congress should give rapid and serious consideration to enacting legislation to address these concerns. The Commission suggests that the proposed statutory amendments set forth in the attached legislative draft would achieve these objectives.

Sincerely,

John Warren McGarry
Chairman

Enclosure

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"(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, including those made for the purpose of influencing a clearly identified individual to seek nomination for election or election to federal office; or"

(3) Revise 2 U.S.C. § 441b(b):

"(2) For purposes of this section and section 791(h) of title 18, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, and shall include any direct or indirect payment, distribution, loan, advance, deposit or gift or money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) made for the purpose of influencing a clearly identified individual to seek nomination for election or election to any of the offices referred to in this section but shall not include--

(A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;

(B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and

(C) the establishment, administration, and solicitation

of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock."

(4) Add to 2 U.S.C. § 441a(a)(1):

"(D) no person shall make contributions to any committee established to influence the nomination or election of a clearly identified individual for any Federal office which, in the aggregate, exceed $1,000."

AGENDA DOCUMENT #81-145

RECEIVED
OFFICE OF THE
SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 AUG 19 P2:23

MEMORANDUM

TO: COMMISSIONERS

FROM: B. ALLEN CLUTTER
STAFF DIRECTOR

SUBJECT: NOTICE OF PROPOSED RULEMAKING FOR 11 C.F.R. 114.3 AND 114.4: COMMUNICATIONS BY CORPORATIONS AND LABOR ORGANIZATIONS

DATE: AUGUST 19, 1981

The attached memorandum on Notice of Proposed Rulemaking is being submitted for discussion at the Open Meeting on August 27, 1981.

Attachment

AGENDA ITEM
For Meeting of: 8-27-81
Agenda Item No:
Exhibit No:

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 AUG 19 P2:23

August 18, 1981

MEMORANDUM

TO: The Commission

THROUGH: B. Allen Clutter
Staff Director

FROM: Charles N. Steele, General Counsel
Susan E. Propper, Assistant General Counsel

SUBJECT: Notice of Proposed Rulemaking for 11 C.F.R. 114.3 and 114.4: Communications by Corporations and Labor Organizations

I. Summary of Issue and Background

The Commission has directed the Office of General Counsel to revise 11 C.F.R. 114.4 dealing with nonpartisan communications by corporations and labor organizations. This revision was initiated in response to the issue raised by the "Rexnord II" advisory opinion (AO 1980-20) and subsequent opinions. An Advance Notice of Proposed Rulemaking was approved by the Commission and published in the Federal Register on August 25, 1980. (45 Fed. Reg. 56349) The Advance Notice sought comments on four possible revisions of 11 C.F.R. 114.4. First, should Section 114.4 be revised, in light of the Rexnord decision, to permit corporations or labor organizations to make contributions or expenditures for nonpartisan communications to the general public with regard to registration and voting. Second, should section 114.4 be revised to permit corporations or unions to make contributions or expenditures to prepare and distribute to the general public publications concerning the record of a candidate, including the voting record of an officeholder. Third, should section 114.4 be revised to permit corporations or unions to make contributions or expenditures to prepare and distribute to the general public voter guides setting forth positions of candidates on various issues. Finally, should section 114.4 be revised to include a provision prohibiting any activity which is not specifically permitted under that section or should section 114.4 be revised to include a provision permitting any activity which is indistinguishable from those activities specifically permitted under that section. */

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*/ Copies of all 24 comments received in response to the Advance Notice have been distributed.

11 C.F.R., Chapter I
Communications by Corporations
and Labor Organizations

AGENCY: Federal Election Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Commission requests comments on proposed rules to govern contributions or expenditures by corporations or labor organizations for nonpartisan communications. The proposed revision would also change the titles of 11 C.F.R. 114.3 and 114.4 and would add subtitles to 11 C.F.R. 114.3, to clarify the classes of persons to whom communications may be made under each section and to indicate the types of communications which are permissible.

DATES: Comments must be received on or before (___ days from date of publication).

ADDRESS: Susan E. Propper, Assistant General Counsel
1325 K Street, N.W., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, (202) 523-4143.

SUPPLEMENTARY INFORMATION: On August 25, 1980, the Commission published an Advance Notice of Proposed Rulemaking which sought comments on a possible revision of 11 C.F.R. 114.4, dealing with

The Office of General Counsel has now prepared a Notice of Proposed Rulemaking for publication in the Federal Register. In addition to seeking comments on the text of the proposed regulations, the Notice requests comments in three specific areas.

First, the proposed regulations would change the titles of current 11 C.F.R. 114.3 and 114.4. Section 114.3 would be changed from "Partisan Communications" to "Communications by a Corporation or Labor Organization to its Restricted Class." Section 114.4 would be changed from "Nonpartisan Communications" to "Communications by a Corporation or Labor Organization to the General Public."

Second, the Notice requests comments regarding the potential impact of the proposed rules on organizations engaging in activity to be regulated by proposed section 114.4.

Finally, the Notice presents several issues for comment, all of which concern the extent to which the Commission needs to impose restrictions on communications under section 114.4 in order to ensure their nonpartisanship. As examples, the Notice asks whether voting records and voter guides should include a "variety of issues", whether a voting record should be permitted to cover only Congressional officeholders in a particular state, and whether distribution of such publications could be limited to the general public in a geographic area in which the sponsor normally operates.

For the purposes of this agenda document, we have indicated in the text of the proposed rules those sections which are new and have highlighted provisions to which particular attention should be paid.

II. Recommendation

The Office of General Counsel recommends that the Commission approve the attached Notice of Proposed Rulemaking.

nonpartisan communications by corporations and unions aimed at the general public. (ANPRM published at 45 Fed. Reg. 56349.)

The proposed rules being published today include revisions which would permit corporations and unions to publish and distribute to the general public several different forms of nonpartisan communications. Included are proposals to allow publication of nonpartisan registration and get-out-the-vote communications, voting records and voter guides.

A second change included in the proposed revision would change the titles of 11 C.F.R. 114.3 and 114.4 and would add explanatory subtitles to 11 C.F.R. 114.3. Thus, section 114.3 would be titled "Communications by a Corporation or Labor Organization to its Restricted Class" rather than "Partisan Communications" and section 114.4 would be titled "Communications by a Corporation or Labor Organization to its Employees and members and to the General Public". These changes would be consistent with the provisions of 2 U.S.C. § 441b, which exempt communication by a corporation or labor organization to its restricted class from the broad prohibition against corporate and union contributions and expenditures in connection with a federal election.

No major substantive changes to section 114.3 are proposed.

The Commission is now seeking comments on the text of the proposed rules. In addition, the Commission is interested in receiving comments on several issues raised by the proposed rules at 11 C.F.R. 114.4.

First, the Commission is interested in assessing the impact that the proposed regulations at 11 C.F.R 114.4 would have on organizations currently engaged in activities covered by this revision and on organizations considering undertaking such activities.

Second, if the Commission concludes that regulations in this area are warranted, what restrictions should be imposed or are needed to ensure the nonpartisanship of these communications? Since the statute, at 2 U.S.C. § 441b, contains a broad prohibition against corporate and union contributions and expenditures in connection with a federal election, communications to the general public must be nonpartisan to be permissible. The question, therefore, is what makes a communication nonpartisan? For example, should voting records and voter guides be required to include a "variety of issues"? Should a voting record be permitted which includes only Members of Congress from a particular state instead of all Members from either or both Houses of Congress? Should distribution of voting records and voter guides to the general public in

It is proposed to amend 11 C.F.R 114.3 as follows:

new titles; reorganized

§ 114.3 Communications by a Corporation or Labor Organization to its Restricted Class

new section

(a) General. A corporation may make communications to its stockholders and executive or administrative personnel and their families on any subject. A labor organization may make communications to its members and their families on any subject. A corporation or labor organization may make partisan communications to this restricted class as permitted under 11 C.F.R. 114.3(c), however, no partisan communications may be made by a corporation or labor organization to the general public. Under subsection (c), corporations and labor organizations may also choose to make the nonpartisan communications permitted under 11 C.F.R. 114.4 solely to this restricted class.

(b) Reporting Partisan Communications. Expenditures for partisan communications which expressly advocate the election or defeat of a clearly identified candidate must be reported in accordance with 11 C.F.R. 100.8(b)(4) and 104.6.

(c) Means of Making Partisan Communications. The means by which partisan communications may be made by a corporation to its stockholders and executive or administrative personnel and their families or a labor organization to its members and their families include, but are not limited to, the means set forth in 11 C.F.R. 114.3(c)(1) through (4).

a limited geographic area (such as the city in which an organization operates) be permitted?

While the proposed rules contain provisions which would permit publication of nonpartisan registration and voting communications, voting records and voter guides, the Commission has not yet determined whether all or only some of these communications will be permitted by the regulations which it ultimately adopts.

(1) Partisan Publications. Printed material of a partisan nature may be distributed by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families, provided that:

(i) The material is produced at the expense of the corporation or labor organization or the separate segregated fund of either; and

(ii) The material constitutes a communication of the views of the corporation or the labor organization, and is not simply the republication or reproduction in whole or in any part, of any broadcast, transcript or tape of any written, graphic, or other form of campaign materials prepared by the candidate, his or her campaign committees, or their authorized agents.

(2) Partisan Candidate and Party Appearances. A corporation may allow a candidate or party representative to address its stockholders and executive or administrative personnel and their families at a meeting, convention, or other regularly scheduled function of the corporation which is primarily held for other purposes.

A labor organization may allow a candidate or party representative to address its members and their families at a meeting, convention, or other regularly scheduled function of the labor organization which is primarily held for other purposes. The candidate or party representative may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation or labor organization be designated for his or her campaign or party.

(3) Partisan Phone Banks. A corporation may establish and operate phone banks to communicate with its stockholders and executive or administrative personnel and their families urging them to register and/or vote for a particular candidate or candidates, and a labor organization may establish and operate phone banks to communicate with its members and their families urging them to register and/or vote for a particular candidate or candidates.

(4) Partisan Registration and Get-Out-The-Vote Drives. A corporation may conduct registration and get-out-the-vote drives aimed at its stockholders and executive or administrative personnel and their families or a labor organization may conduct registration and get-out-the-vote drives aimed at its members and their families. Registration and get-out-the-

vote drives include providing transportation to the polls. Such drives may be partisan in that individuals may be urged to register with a particular party or to vote for a particular candidate or candidates, but assistance in registering or voting may not be withheld or refused on a partisan basis, and if transportation or other services are offered in connection with a registration or get-out-the-vote drive, such transportation or services may not be withheld or refused on a partisan basis.

It is proposed to amend 11 C.F.R. 114.4 as follows:

new title; reorganized

§ 114.4 Communications by a Corporation or Labor Organization to the General Public

new subheading (a) Nonpartisan Communications by a Corporation or Labor Organization to its Employees or its Restricted Class.

new section (1) General. All nonpartisan communications permitted under 11 C.F.R. 114.4(b), (c), and (d) may be made by a corporation solely to its stockholders and executive or administrative personnel and their families and by a labor organization solely to its members and their families. Communications which a corporation or labor organization may only make to this restricted class are found at 11 C.F.R. 114.3.

new subheading (2) Nonpartisan Candidate and Party Appearances on Corporate Premises. Corporations may permit candidates, candidates' representatives or representatives of political parties on corporate premises or at a meeting, convention, or other regularly scheduled function of the corporation which is primarily held for other purposes to address or meet stockholders, and executive or administrative personnel and their families and other employees of the corporation under the conditions set forth in 11 C.F.R. 114.4(a)(2)(i) through (v).

(i) If a candidate for the House or Senate is permitted to address or meet employees, all candidates for that seat who request to appear must be given the same opportunity to appear;

(ii) <u>If a Presidential candidate is permitted to address or meet employees, all candidates for that office who are seeking the nomination of a major party or who are on the general election ballot in enough states to win a majority of the electoral votes and who request to appear must be given the same opportunity to appear;</u>

new language

(iii) If representatives of a political party are permitted to address or meet employees, representatives of all political parties which had a candidate or candidates on the ballot in the last general election or which anticipate having a candidate or candidates on the ballot in the next general election who request to appear must be given the same opportunity to appear;

(iv) A corporation, its stockholders, executive or administrative personnel, or other employees of the corporation or its separate segregated fund shall make no effort, either

oral or written, to solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative under this section; and

(v) A corporation, its stockholders, executive or administrative personnel or other employees of the corporation or its separate segregated fund shall not, in conjunction with any candidate or party representative appearances under this section, endorse, support or oppose any candidate, group of candidates or political party.

reused title

(3) Nonpartisan Candidate and Party Appearances on Labor Organization Premises. A labor organization may permit candidates, candidates' representatives or representatives of political parties on the labor organization's premises or at a meeting, convention, or other regularly scheduled function of the labor organization which is primarily held for other purposes to address members and their families and employees of the labor organization if the conditions set forth in 11 C.F.R. 114.4(a)(2)(i) through (iii) and 11 C.F.R. 114.4(a)(3)(i) and (ii) are met.

(i) An official, member, or employee of a labor organization or its separate segregated fund shall not make any effort, either oral or written, to solicit or direct or control

contributions by members of the audience to any candidate or party representative under this section.

(ii) An official, member, or employee of a labor organization or its separate segregated fund shall not, in conjunction with any candidate's or party representative's appearance under this section, endorse, support or oppose any candidate, group of candidates or political party.

revised title

(b) Nonpartisan Communications by Corporations and Labor Organizations to the General Public.

new section

(1) General. A corporation or labor organization may make the communications described in 11 C.F.R. 114.4(b)(2) through (5) to the general public. The corporation or labor organization may include its logo or otherwise identify itself as the sponsor of the communication.

revised title
section restructured

(2) Nonpartisan Registration and Voting Communications. A corporation or labor organization may make nonpartisan registration and get-out-the-vote communications to the general public.

(i) For purposes of 11 C.F.R. 114.4(b)(2), a registration or get-out-the-vote communication will be considered nonpartisan if it meets all of the following conditions:

(A) It neither names nor depicts any particular candidates(s) or it names or depicts the names of all candidates for a particular federal office without favoring any candidate(s) over another; and

(B) It names no political party(s) except that it may include the political party affiliation of all candidates named or depicted under 11 C.F.R. 114.4(b)(2)(i)(A); and

(C) It is limited to urging acts such as voting and registering and to describing the hours and places of registration and voting, or it mentions an issue of public concern with regard to the need to register or vote without linking any candidates or political parties with a particular position on that issue; and

(D) The wording of the communication is not directed at any particular voting interest group.

(ii) A corporation or labor organization may make communications permitted under this section through posters, billboards, broadcasting media, newspapers, newsletters, brochures, or similar means of communication with the general public.

Revised title (3) Official Registration and Voting Information.

(i) A corporation or labor organization may distribute to the general public or reprint in whole and distribute to the general public any registration or

voting information, such as instructional materials, which have been produced by the official election administrators.

(ii) A corporation or labor organization may distribute official registration-by-mail forms to the general public if registration by mail is permitted by the applicable State law.

(iii) A corporation or labor organization may donate funds to State or local agencies responsible for the administration of elections to help defray the costs of printing or distributing registration or voting information and forms.

(iv) The information and forms referred to in 11 C.F.R. 114.4(b)(3)(i) through (iii) must be distributed in a nonpartisan manner, and the corporation or labor organization may not, in connection with the distribution, endorse, support, or otherwise promote registration with or voting for a particular party or candidate.

new section

(4) Voting Records. A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress. For the purpose of this section, a voting record is a publication which describes in a nonpartisan manner bills and other legislative measures acted on by Congress and which states the factual record

of each officeholder's votes on such bills and measures. The publication will be considered nonpartisan if it meets the conditions set forth in 11 C.F.R. 114.4(b)(4)(i) through (viii).

(i) The publication must include the voting records of all Members of Congress, or all Members of either House of Congress, or all Members of Congress from a particular state, who served in a particular legislative session; and

(ii) The publication must include the voting records of such Members on a variety of issues; and

(iii) The publication may not express any editorial opinion concerning the issues or legislative measures presented nor may it indicate any preference or bias regarding the qualifications for public office or the voting record of any Member(s) except that the publication may indicate how each Member of Congress voted on each legislative measure and whether that vote was in conformance with or contrary to the corporation's or labor organization's position on that measure; and

(iv) The publication may not indicate which incumbents are candidates for re-election nor may

it identify any candidates who will be opposing the incumbents in a political campaign; and

(v) The publication may not describe the views of either the Members of Congress listed in the publication or of opposing candidates on any campaign issues; and

(vi) The publication may not contain any reference to political campaigns, candidates for federal office, or elections, nor may it favor any political party over any other; and

(vii) The publication shall be made available to the general public except that the distributing organization may limit distribution to the geographic area in which it normally operates; and

(viii) Distribution of the publication shall be timed to the extent practicable to the adjournment of Congressional Sessions and not to the occurrence of federal elections.

new section (5) Voter Guides. A corporation or labor organization may prepare and distribute to the general public nonpartisan voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions. A voter guide will be considered nonpartisan if it meets the conditions set forth in 11 C.F.R. 114.4(b)(5)(i) through (vi).

no additional comment

(i) The questions posed must cover a variety of issues; and

(ii) The questions must be directed to all of the candidates for a particular seat or office, giving the candidates equal time to respond, except that in the case of Presidential and Vice Presidential candidates the questions may be directed only to those candidates seeking the nomination of a major party or to those appearing on the general election ballot in enough states to win a majority of the electoral votes; and

(iii) The voter guide must reprint, verbatim, the responses of each candidate to whom questions were sent, without any additional comment, editing, or emphasis although the sponsoring organization may impose limitations on the number of words per response when the questions are initially sent to the candidates for their comments; and

(iv) The wording of the questions presented may not suggest or favor any position on the issues covered; and

(v) The voter guide may not express any editorial opinion concerning the issues presented nor may it indicate any support for or opposition to any candidate or political party; and

(vi) The sponsor may ask each candidate to provide biographical information such as education, employment positions, offices held, and community involvement; and

(vii) The voter guide must be made available to the general public in the geographic area in which the featured candidates are running for office.

(c) Nonpartisan Registration and Get-Out-The-Vote Drives.

(I) A corporation may support nonpartisan registration and get-out-the-vote drives, as by transporting people to the polls, which are not restricted to its stockholders and executive or administrative personnel and their families, and a labor organization may support such drives which are not restricted to its members and their families if:

(i) The corporation or labor organization jointly sponsors the drives with a nonprofit organization which is exempt from federal taxation under 26 U.S.C. § 501(c)(3) or (4) and which does not support, endorse or oppose candidates or political parties; and

(ii) The activities are conducted by the tax-exempt organization; and

(iii) These services are made available without regard to the voter's political preference.

new subsection

(iv) For the purposes of 11 C.F.R. 114.4(c)(1)(ii), a corporation or labor organization which provides space on the corporation's or labor organization's premises for a table, rack or booth from which official registration or voting information is distributed to the general public, and which provides its employees or members to aid in the distribution of such materials, shall not be considered to be "conducting" a registration or voting drive.

new

(2) A corporation or labor organization may donate funds to be used for nonpartisan registration and get-out-the-vote drives to State or local agencies responsible for the administration of elections and to nonprofit organizations which are exempt from federal taxation under 26 U.S.C. § 501(c)(3) or (4) and which do not support, endorse or oppose candidates or political parties.

(3) A nonpartisan tax-exempt organization, in conducting nonpartisan registration and get-out-the-vote activities, may utilize the employees and facilities of a corporation or the employees or members and facilities of a labor organization.

new

(4) A nonprofit organization which is exempt from federal taxation under 26 U.S.C. § 501(c)(3) or (4) and which does not support, endorse

or oppose any candidates or political parties may conduct nonpartisan voter registration and get-out-the-vote activities on its own without a co-sponsor.

(5) All materials prepared for ~~distribution~~ to the general public in connection with the registration or voting drive shall include the full names of all drive sponsors.

new section

(d) Incorporated Membership Organizations, Trade Associations, Cooperatives and Corporations without Capital Stock.

(1) An incorporated membership organization, trade association, cooperative, or corporation without capital stock may make the communications permitted under 11 C.F.R. 114.4(a) to the class of persons from which it may solicit contributions to its separate segregated fund under 11 C.F.R. 114.7 and 114.8.

(2) An incorporated membership organization, trade association, cooperative or corporation without capital stock may permit candidates, candidates' representatives or representatives of political parties to address or meet members and employees of the organization on the organization's premises or at a meeting, convention, or other regularly scheduled function which is primarily held for other purposes, provided that the conditions set forth in 11 CFR 114.4(a)(2)(i) through (v) are met.

(3) An incorporated membership organization, trade association, cooperative or corporation without capital stock may make the communications permitted under 11 C.F.R. 114.4(b) and (c) to the general public.

(e) Nonpartisan Candidate Debates.

[no change]

Certification of No Effect Pursuant to 5 U.S.C. § 605(b) [Regulatory Flexibility Act]

I certify that the attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that no entity is required to make any expenditures under the proposed rules.

John Warren McGarry
Chairman
Federal Election Commission

Dated: _____

BILLING CODE: 6715-01-M