LEGISLATIVE RECOMMENDATIONS -- 1984

Federal Election Commission
March 1984

LEGISLATIVE RECOMMENDATIONS -- 1984

TABLE OF CONTENTS

INTRODUCTION

The Federal Election Campaign Act requires the Commission to transmit each year to the President and Congress "any recommendations for any legislative or other action the Commission considers appropriate...." 2 U.S.C. Section 438(a)(9). The following legislative recommendations were approved by the Commission on March 1, 1984. Unless otherwise noted, each of these 19 recommendations was previously submitted to the President and Congress in 1982 and 1983.

DEFINITIONS

LEGISLATIVE RECOMMENDATIONS -- 1984

Draft Committees*

Section: 2 U.S.C. §§431(8)(A)(i), 431(9)(A)(i), 441a(a)(1) and 441b(b)

Beneficiary of Change: Candidates, Commission

Recommendation

Congress should consider the following amendments to the Act in order to prevent a proliferation of "draft" committees and to reaffirm Congressional intent that draft committees are "political committees" subject to the Act's provisions.

1. Bring Funds Raised and Spent for Undeclared but Clearly Identified Candidates Within the Act's Purview. Section 431(8)(A)(i) should be amended to include in the definition of "contribution" funds contributed by persons "for the purpose of influencing a clearly identified **individual** to seek nomination for election or election to Federal office...." Section 431(9)(A)(i) should be similarly amended to include within the definition of "expenditure" funds expended by persons on behalf of such "a clearly identified **individual.**"

2. Restrict Corporate and Labor Organization Support for Undeclared but Clearly Identified Candidates. Section 441b(b) should be revised to expressly state that corporations, labor organizations and national banks are prohibited from making contributions or expenditures "for the purpose of influencing a

*Previously submitted in 1981, 1982 and 1983.

clearly identified **individual** to seek nomination for election or election..." to Federal office.

3. Limit Contributions to Draft Committees. The law should include explicit language stating that no person shall make contributions to **any** committee (including a draft committee) established to influence the nomination or election of a clearly identified **individual** for any Federal office which, in the aggregate, exceed that person's contribution limit, per candidate, per election.

Explanation

These proposed amendments were prompted by the decisions of the U.S. Court of Appeals for the District of Columbia Circuit in FEC v. Machinists Non-Partisan Political League and FEC v. Citizens for Democratic Alternatives in 1980 and the U.S. Court of Appeals for the Eleventh Circuit in FEC v. Florida for Kennedy Committee. The District of Columbia Circuit held that the Act, as amended in 1979, regulated only the **reporting requirements** of draft committees. The Commission sought review of this decision by the Supreme Court, but the Court declined to hear the case. Similarly, the Eleventh Circuit found that "committees organized to 'draft' a person for federal office" are not "political committees" within the Commission's investigative authority. The Commission believes that the appeals court rulings create a serious imbalance in the election law and the political process because any group organized to gain grass roots support for an **undeclared** candidate can operate completely outside the strictures of the Federal Election Campaign Act. However, any group organized to support a declared candidate is subject to the Act's registration and reporting requirements and contribution limitations. Therefore, the potential exists for funneling large aggregations of money, both corporate and private, into the Federal electoral process through unlimited contributions made to draft committees that support undeclared candidates. These recommendations seek to avert that possibility.

LEGISLATIVE RECOMMENDATIONS -- 1984

Volunteer Activity*

Section: 2 U.S.C. §431(8)(B)

Beneficiary of Change: Public

Recommendation

Congress may wish to consider whether the exemption for volunteer activity, contained in 2 U.S.C. §431(8)(B)(i), was meant to include professional services donated primarily for fundraising purposes rather than for actual campaigning.

Explanation

The Act places no limit on the services that a professional may donate to a candidate. For example, a professional entertainer may participate in a concert for the benefit of a candidate without the proceeds of that concert counting toward the entertainer's contribution limitations. Similarly, an artist may create artwork for a campaign to be used for fundraising or to be disposed of as an asset of the campaign. In both cases, the "volunteer" has thereby donated goods or services the value of which greatly exceeds the amount of the contributions which that individual could otherwise make under the law.

---

*A similar recommendation was submitted in 1981, 1982 and 1983.

REGISTRATION AND REPORTING

LEGISLATIVE RECOMMENDATIONS -- 1984

Commission as Sole Point of Entry for Disclosure Documents*

Section: 2 U.S.C. §432(g)

Beneficiary of Change: Political Committees, Commission, Public

Recommendation

The Commission recommends that it be the sole point of entry for all disclosure documents filed by Federal candidates and political committees.

Explanation

A single point of entry for all disclosure documents filed by political committees would eliminate any confusion about where candidates and committees are to file their reports. It would assist committee treasurers by having one office where they would file reports, address correspondence and ask questions. At present, conflicts may arise when more than one office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry would also reduce the costs to the Federal government of maintaining three different offices, especially in the areas of personnel, equipment and data processing.

The Commission has authority to prepare and publish lists of nonfilers. It is extremely difficult to ascertain who has and who has not filed when reports may have been filed at or are in transit between two different offices. Separate points of entry also make if difficult for the Commission to track responses to compliance notices. Many responses and/or amendments may not be received by the Commission in a timely manner, even though they were sent on time by the candidate or committee. The delay in transmittal between two offices sometimes leads the Commission to believe that candidates and committees are not in compliance. A single point of entry would eliminate this confusion. If the Commission received all documents, it would transmit on a daily basis file copies to the Secretary of the Senate and the Clerk of the House, as appropriate. The Commission notes that the report of the Institute of Politics of the John F. Kennedy School of Government at Harvard University, An Analysis of the Impact of the Federal Election Campaign Act, 1972-78, prepared for the House Administration Committee, recommends that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

*Previously submitted in 1981, 1982 and 1983.

LEGISLATIVE RECOMMENDATIONS -- 1984

Waiver Authority*

Section: 2 U.S.C. §434

Beneficiary of Change: Public

Recommendation

Congress should give the Commission authority to grant general waivers or exemptions from the reporting requirements of the Act for classifications and categories of political committees.

Explanation

In cases where reporting requirements are excessive or unnecessary, it would be helpful if the Commission had authority to suspend the reporting requirements of the Act. For example, during the past election cycle, the Commission encountered several problems relating to the reporting requirements of authorized committees whose respective candidates were not on the election ballot. The Commission had to consider whether the election-year reporting requirements were fully applicable to candidate committees operating under one of the following circumstances:

- The candidate withdraws from nomination prior to having his or her name placed on the ballot.
- The candidate loses the primary and therefore is not on the general election ballot.
- The candidate is unchallenged and his or her name does not appear on the election ballot.

Moreover, a Presidential primary candidate who has triggered the $100,000 threshold but who is no longer actively seeking nomination should be able to reduce reporting from a monthly to a quarterly schedule.

In some instances, the reporting problems reflect the unique features of certain State election procedures. A waiver authority would enable the Commission to respond flexibly and fairly in these situations.

In the 1979 Amendments to the Act, Congress repealed 2 U.S.C. §436, which had provided the Commission with a limited waiver authority. There remains, however, a need for a waiver authority. It would enable the Commission to reduce needlessly burdensome disclosure requirements.

---

*Previously submitted in 1983.

LEGISLATIVE RECOMMENDATIONS -- 1984

Monthly Reporting for Congressional Candidates

Section: 2 U.S.C. §434(a)(2)

Beneficiary of Change: House and Senate Candidates

Recommendation

The principal campaign committee of a Congressional candidate should have the **option** of filing monthly reports in lieu of quarterly reports.

Explanation

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

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

LEGISLATIVE RECOMMENDATIONS -- 1984

Verifying Multicandidate Committee Status

Section: 2 U.S.C. §§438(a)(6)(C), 44la(a)(2) and 44la(a)(4)

Beneficiary of Change: Candidates, Multicandidate Political Committees, Commission

Recommendations

Congress should consider modifying those provisions of the Act relating to multicandidate committees in order to reduce the problems encountered by contributor committees in reporting their multicandidate committee status, and by candidate committees and the Commission in verifying the multicandidate committee status of contributor committees. In this regard, Congress might consider requiring political committees to notify the Commission once they have satisfied the three criteria for becoming a multicandidate committee, namely, once a political committee has been registered for not less than 6 months, has received contributions from more than 50 persons and has contributed to at least 5 candidates for Federal office.

Explanation

Under the current statute, political committees may not contribute more than $1,000 to each candidate, per election, until they qualify as a multicandidate committee, at which point they may contribute up to $5,000 per candidate, per election. To qualify for this special status, a committee must meet three standards:

-support five or more Federal candidates;
-receive contributions from more than 50 contributors; and
-have been registered as a political committee for at least six months.

The Commission is statutorily responsible for maintaining an index of committees that have qualified as multicandidate committees. The index enables recipient candidate committees to determine whether a given contributor has in fact qualified as a

multicandidate committee and therefore is entitled to contribute up to the higher limit. The Commission's Multicandidate Index, however, is not current because it depends upon information filed periodically by political committees. Committees inform the Commission that they have qualified as multicandidate committees by checking the appropriate box on their regularly scheduled report. If, however, they qualify shortly after they have filed their report, several months may elapse before they disclose their new status on the next report. With semiannual reporting in a nonelection year, for example, a committee may become a multicandidate committee in August, but the Commission's Index will not reveal this until after the January 31 report has been filed, coded and entered into the Commission's computer.

Because candidate committees cannot totally rely on the Commission's Multicandidate Index for current information, they sometimes ask the contributing committee directly whether the committee is a multicandidate committee. Contributing committees, however, are not always clear as to what it means to be a multicandidate committee. Some committees erroneously believe that they qualify as a multicandidate committee merely because they have contributed to more than one Federal candidate. They are not aware that they must have contributed to five or more Federal candidates and also have more than 50 contributors and have been registered for at least six months.

LEGISLATIVE RECOMMENDATIONS -- 1984

Insolvency of Political Committees*

Section: 2 U.S.C. §433(d)

Beneficiary of Change: Political Committees, Commission, Public

Recommendation

The Commission requests that Congress clarify its intention as to whether the Commission has a role in the determination of insolvency and liquidation of insolvent political committees. 2 U.S.C. §433(d) was amended in 1980 to read: "Nothing in this subsection may be construed to eliminate or limit the authority of the Commission to establish procedures for--(A) the determination of insolvency with respect to any political committee; (B) the orderly liquidation of an insolvent political committee, and the orderly application of its assets for the reduction of outstanding debts; and (C) the termination of an insolvent political committee after such liquidation and application of assets." The phrasing of this provision ("Nothing...may be construed to...limit") suggests that the Commission has such authority in some other provision of the Act, but the Act contains no such provision. If Congress intended the Commission to have a role in determining the insolvency of political committees and the liquidation of their assets, Congress should clarify the nature and scope of this authority.

*A similar recommendation was included in the legislative recommendations submitted to Congress and the President in 1982.

Explanation

Under 2 U.S.C. §433(d)(1), a political committee may terminate only when it certifies in writing that it will no longer receive any contributions or make any disbursements and that the committee has no outstanding debts or obligations. The FECA Amendments of 1979 added a provision to the law (2 U.S.C. §433(d)(2)) possibly permitting the Commission to establish procedures for determining insolvency with respect to political committees, as well as the orderly liquidation and termination of insolvent committees. In 1980, the Commission promulgated the "administrative termination" regulations at 11 CFR 102.4 after enactment of the 1979 Amendments, in response to 2 U.S.C. §433(d)(2). However, these procedures do not concern liquidation or application of assets of insolvent political committees.

Prior to 1980, the Commission adopted "Debt Settlement Procedures" under which the Commission reviews proposed debt settlements in order to determine whether the settlement will result in a potential violation of the Act. If it does not appear that such a violation will occur, the Commission permits the committee to cease reporting that debt once the settlement and payment are reported. The Commission believes this authority derives from 2 U.S.C. §434 and from its authority to correct and prevent violations of the Act, but it does not appear as a grant of authority beyond a review of the specific debt settlement request, to order application of committee assets.

It has been suggested that approval by the Commission of the settlement of debts owed by political committees at less than face value may lead to the circumvention of the limitations on contributions specified by 2 U.S.C. §§441a and 441b. The amounts involved are frequently substantial, and the creditors are often corporate entities. Concern has also been expressed regarding the possibility that committees could incur further debts after settling some, or that a committee could pay off one creditor at less than the dollar value owed and subsequently raise additional funds to pay off a "friendly" creditor at full value.

When clarifying the nature and scope of the Commission's authority to determine the insolvency of political committees, Congress should consider the impact on the Commission's operations. An expanded role in this area might increase the Commission's workload, thus requiring additional staff and funds.

LOCAL PARTY ACTIVITY

LEGISLATIVE RECOMMENDATIONS -- 1984

Separate §441a(d) Limit for Local Party Committees in Presidential Elections

Section: 2 U.S.C. §441a(d)

Beneficiary of Change: Local Party Committees

Recommendation*

Congress should amend the statute to provide a separate limit, under §441a(d), on expenditures made by local party committees in the Presidential elections.

Explanation

Local party committees share the State party's §441a(d) limit for Congressional elections but have no statutory role under that section for Presidential elections. The 1979 Amendments to the Act did establish certain exemptions for State and local party committees, including a provision for get-out-the-vote activity during the Presidential election. The exemptions, however, are limited to activities involving volunteers. Payments for general public political advertising do not qualify under these provisions. Therefore, under the present statute, a local party which wants to purchase a newspaper ad on behalf of the party's Presidential nominee may make such an expenditure only when authorized to do so under the national party's §441a(d) limit.

Many local committees are unaware of this restriction and make minor expenditures on behalf of the party's Presidential nominee, which are difficult for the national committee to track. It would be preferable for the local committees to have a small Presidential spending limit of their own (in addition to the Presidential spending limit given to the national party committees). This would aid national committees in administering their own 441a(d) limit for Presidential elections and avoid unnecessary compliance actions, while still ensuring that local parties do not introduce significant amounts of unreported (and possibly prohibited) funds into the Presidential election process. (It is assumed that the national committee would

---

*Commissioners McDonald and Harris filed the following dissent: The Commission's legislative recommendation of a separate §441a(d) limit for a local party committee to the Congress would further expand "party building" loopholes already carved by Congress and certain rulings of the Commission. The (footnote continued on next page)

delegate its authority with respect to spending by State party committees in Presidential elections.)

If Congress were to consider this recommendation, it would be necessary for Congress to define, with some degree of precision, "local party committee."

---

* (footnote continued)
Commission's recommendation would provide a local party with a small limit of its own in Presidential elections. This recommendation has nothing to do with the real activities of local parties. I strongly support local parties and will work for any proposal that enhances their efforts to increase participation. This recommendation will only provide a means of circumventing the Presidential expenditure limits.

Presently a local party may make expenditures for get-out-the-vote activities involving volunteers in a Presidential campaign. The action our colleagues have taken will in no way build up these local parties and will quite likely make these committees merely another paper entity, existing only in a bank account, for their national party and its Presidential nominee. Section 441a(a)(4) of the FECA allows unlimited transfers between national, State and local committees of a political party. No definition of local party exists in the statute. Each precinct could form as many paper committees to receive national money as the national party desires. If the Commission's recommendation is enacted, an unlimited number of local committees could be formed and the national party could transfer the local limit to each local entity. This process could provide unlimited funds to a Presidential candidate in whatever locale desired, completely undermining the delicate balance constructed by Congress to provide each major party candidate for President with an equal amount of public funds. Under the present system, each party has ample ability to participate in the Presidential campaign through get-out-the-vote and the national party §441a(d) limit (which is spent in local communities around the country selected by the national party). Local party headquarters are run on a ticket-wide basis and include the Presidential nominee in their efforts. Already corporate and labor funds are contributed to State and local parties to be used in a ratio of soft and hard money in the get-out-the-vote efforts in areas which are critical to the Federal candidates. Why do we need yet another loophole to give the Presidential campaigns unlimited spending power?

If the Congress enacts this proposal, it will not increase activity at the local level, it will only increase the ability to circumvent the process at the national level. This result will limit participation in Presidential campaigns rather than broaden it.

ENFORCEMENT

LEGISLATIVE RECOMMENDATIONS -- 1984

Modifying "Reason to Believe" Finding

Section: 2 U.S.C. §437g

Beneficiary of Change: Respondents, Press, Public

Recommendation

Congress should consider modifying the language pertaining to "reason to believe," contained in 2 U.S.C. §437g, in order to reduce the confusion sometimes experienced by respondents, the press and the public. One possible approach would be to change the statutory language from "the Commission finds reason to believe a violation of the Act has occurred" to "the Commission finds reason to believe a violation of the Act may have occurred." Or Congress may wish to use some other less invidious language.

Explanation

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

If the problem is, in part, one of semantics, it would be helpful to substitute words that sound less accusatory and that more accurately reflect what, in fact, the Commission is doing at this early phase of enforcement.

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

PUBLIC FINANCING

LEGISLATIVE RECOMMENDATIONS -- 1984

Repeal the State Expenditure Limitations for Publicly Financed Presidential Campaigns

Section: 2 U.S.C. §441a

Beneficiary of Change: Presidential Candidate Committees, Commission

Recommendation

The Commission recommends that the State-by-State limitations on expenditures for publicly financed Presidential primary candidates be eliminated.

Explanation

The Commission has now seen two Presidential elections under the State expenditure limitations. Based on our experience, we believe that the limitations could be removed with no material impact on the process.

Our experience has shown that the limitations have little impact on campaign spending in a given State, with the exception of Iowa and New Hampshire. In most other States, campaigns are unable or do not wish to expend an amount equal to the limitation. In effect, then, the administration of the entire program results in limiting disbursements in these two primaries alone.

If the limitations were removed, the level of disbursements in these States would obviously increase. With an increasing number of primaries vying for a campaign's limited resources, however, it would not be possible to spend very large amounts in these early primaries and still have adequate funds available for the later primaries. Thus, the overall national limit would serve as a constraint on State spending, even in the early primaries. At the same time, candidates would have broader discretion in the running of their campaigns.

Our experience has also shown that the limitations have been only partially successful in limiting expenditures in the early primary States. The use of the fundraising limitation, the compliance cost exemption, the volunteer service provisions, the unreimbursed personnel travel expense provisions, the use of a personal residence in volunteer activity exemption, and a complex series of allocation schemes have developed into an art which when skillfully practiced can partially circumvent the State limitations.

Finally, the allocation of expenditures to the States has proven a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the Commission.

Given our experience to date, we believe that this change to the Act would be of substantial benefit to all parties concerned.

LEGISLATIVE RECOMMENDATIONS -- 1984

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns

Section: 2 U.S.C. §§431(9)(A)(vi) and 441a

Beneficiary of Change: Candidates, Commission

Recommendation

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

Explanation

Campaigns that have sufficient funds to spend up to the overall limit usually allocate some of their expenditures to the fundraising category. These campaigns come close to spending the maximum permitted under both their overall limit and their special fundraising limit. Hence, by combining the two limits, Congress would not substantially alter spending amounts or patterns. For those campaigns which do not spend up to the overall expenditure limit, the separate fundraising limit is meaningless. Many smaller campaigns do not even bother to use it, except in one or two States where the expenditure limit is low, e.g., Iowa and New Hampshire. Assuming that the State limitations are eliminated or appropriately adjusted, this recommendation would have little impact on the election process.

The advantages of the recommendation, however, are substantial. They include a reduction in accounting burdens and a simplification in reporting requirements for campaigns, and a reduction in the Commission's auditing task.

---

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

EXPENDITURE LIMITS

LEGISLATIVE RECOMMENDATIONS -- 1984

Certification of Voting Age Population Figures and Cost-of-Living Adjustment*

Section: 2 U.S.C. §§441a(c) and 441a(e)

Beneficiary of Change: Secretary of Commerce, Commission, Party Committees, Candidates

Recommendation

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

Explanation

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

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

*Previously submitted in 1983.

CONTRIBUTIONS

LEGISLATIVE RECOMMENDATIONS -- 1984

Application of Contribution Limitations to Family Members*

Section: 2 U.S.C. §441a

Beneficiary of Change: Candidates, Commission

Recommendation

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

Explanation

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

Problems have arisen in enforcing the limitations where a candidate uses assets belonging to a parent. In some cases, a parent has made a substantial gift to his or her candidate-child while cautioning the candidate that this may well decrease the amount which the candidate would otherwise inherit upon the death of the parent.

The Commission recommends that Congress consider the difficulties arising from application of the contribution limitations to immediate family members.

---

*A similar recommendation was submitted in 1982 and 1983.

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

LEGISLATIVE RECOMMENDATIONS -- 1984

Foreign Nationals

Section: 2 U.S.C. §441e

Beneficiary of Change: Foreign Nationals, Candidates

Recommendation

Congress should define the extent to which foreign nationals may participate, if at all, in connection with elections to any political office.

Explanation

This question has presented problems for the Commission and candidates, particularly since the legislative history is unclear in this area.

Several issues have arisen during the Commission's administration of this provision. First, the law, as interpreted by Commission Advisory Opinions, permits an American subsidiary of a foreign registered corporation to form a separate segregated fund (SSF) provided foreign nationals neither contribute to the SSF nor control the SSF's expenditures. At the same time, the Commission has, in another Advisory Opinion, interpreted the Act to mean that a foreign national may not volunteer his services to a campaign. The standard under Section 441e bars contributions by a foreign national that are "in connection with" (rather than "for the purpose of influencing") a Federal election. It is unclear whether this distinction is intended to create a broader prohibition in the case of foreign nationals than for other activities under the Act.

Since this is a provision which relates to State and local as well as Federal elections, its clarification would aid many candidates and political committees.

LEGISLATIVE RECOMMENDATIONS -- 1984

Acceptance of Cash Contributions

Section: 2 U.S.C. §441g

Beneficiary of Change: Committees, Commission

Recommendation

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

Explanation

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

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

Secondly, the statutory text seems to suggest that the prohibition contained in §441g applies only to those contributions given to candidate committees. This language is at

apparent odds with the Commission's understanding of the Congressional purpose to prohibit any cash contributions which exceed $100 in Federal elections.

FRAUDULENT MISREPRESENTATION

LEGISLATIVE RECOMMENDATIONS -- 1984

Fraudulent Solicitation of Funds

Section: 2 U.S.C. §441h

Beneficiary of Change: Political Candidates, Parties, Contributors

Recommendation

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

Explanation

The Commission has received a number of complaints charging that substantial amounts of money were raised fraudulently by persons or committees purporting to act on behalf of candidates. Candidates have complained that contributions which people believed were going for the benefit of the candidate were diverted for other purposes. Both the candidates and the contributors were harmed by such diversion. The candidates received less money because people desirous of contributing believed they had already done so, and the contributors' funds had been misused in a manner in which they did not intend. The Commission has been unable to take any action on these matters because the statute gives it no authority in this area.

LEGISLATIVE RECOMMENDATIONS -- 1984

Fundraising Projects Operated by Unauthorized Committees*

Section: 2 U.S.C. §432(e)(4)

Beneficiary of Change: Candidates, Public

Recommendation**

Congress may wish to consider amending the statute, at 2 U.S.C. §432(e)(4), to clarify that a political committee that is not an authorized committee of any candidate may not use the name of a candidate in the name of any "project" or other fundraising activity of such committee.

Explanation

The statute now reads that a political committee that is not an authorized committee "shall not include the name of any candidate in its name [emphasis added]." In certain situations presented to the Commission the political committee in question has not included the name of any candidate in its official name as registered with the Commission, but has nonetheless carried out "projects" in support of a particular candidate using the name of the candidate in the letterhead and text of its materials. The likely result has been that recipients of communications from such political committees were led to believe that the committees were in fact authorized by the candidate whose name was used. The requirement that committees include a disclaimer regarding nonauthorization (2 U.S.C. §441d) has not proven adequate under these circumstances.

The Commission believes that the intent behind the current provision is circumvented by the foregoing practice. Accordingly, the statute should be revised to clarify that the use of the name of a candidate in the name of any "project" is also prohibited.

---

*This recommendation is being submitted for the first time.

**Commissioner Elliott filed the following dissent: I support the policy underlying this legislative recommendation and recognize the seriousness of the problem necessitating such a recommendation. However, the scope of the recommendation is far

(footnote continued on next page)

** (footnote continued)
too broad and inflexible given the traditional fundraising events, especially those held by political parties and some unauthorized political committees.

Party committees are not authorized committees and therefore would come under the general prohibitions included in the recommendation, precluding the use of a candidate's name for any activity of a party committee. Oftentimes, however, fundraising events conducted by a party committee incorporate the name of a well known member of Congress as a fundraising tool. Typically, the fundraising contributions are made in the form of checks made payable to the name of the event, e.g., "Happy Birthday, Senator Church"; "Mike's Annual Barbecue"; "Sail With Senator Sanford"; "Roast Roberts." I do not believe Congress intends to preclude the use of the candidates' names in such activities, especially when the candidate is not only aware that his/her name is being used but approves and is actively participating in the event.

I would propose that the candidate be entitled to authorize the use of his or her name for such an event or activity provided the authorization is written. Again, I recognize the seriousness and the need to address this issue; however, Congress should not exclude fundraising tools which have been traditionally used by political committees.

Further, the impact of this recommendation has not been evaluated in the context of our brand-new joint fundraising regulations.

HONORARIA

LEGISLATIVE RECOMMENDATIONS -- 1984

Technical Amendments

Section: 2 U.S.C. §§431(8)(B)(xiv) and 441i

Beneficiary of Change: Federal Officers and Employees, Officeholders, Commission

Recommendation

The Commission offers two suggestions concerning honoraria.

1. Section 441i should be placed under the Ethics in Government Act.

2. As technical amendments, Sections 441i(c) and (d), which pertain to the annual limit on receiving honoraria (now repealed), should be repealed. Additionally, 2 U.S.C. §431(8)(B)(xiv), which refers to the definition of honorarium in Section 441i, should be modified to contain the definition itself.

Explanation

Congress eliminated the $25,000 annual limit on the amount of honoraria that could be accepted, but it did not take out these two sections, which only apply to the $25,000 limit. This clarification would eliminate confusion for officeholders and thereby help the Commission in its administration of the Act.

COMMISSION INFORMATION SERVICES

LEGISLATIVE RECOMMENDATIONS -- 1984

Budget Reimbursement Fund

Section: 2 U.S.C. §438

Beneficiary of Change: Public, Commission

Recommendation

1. The Commission recommends that Congress establish a reimbursement account for the Commission so that expenses incurred in preparing copies of documents, publications and computer tapes sold to the public are recovered by the Commission. Similarly, costs awarded to the Commission in litigation (e.g., printing, but not civil penalties) and payments for Commission expenses incurred in responding to Freedom of Information Act requests should be payable to the reimbursement fund. The Commission should be able to use such reimbursements to cover its costs for these services, without fiscal year limitation, and without a reduction in the Commission's appropriation.

2. The Commission recommends that costs be recovered for FEC Clearinghouse seminars, workshops, research materials and other services, and that reimbursements be used to cover some of the costs of these activities, including costs of development, production, overhead and other related expenses.

Explanation

At the present time, copies of reports, microfilm, and computer tapes are sold to the public at the Commission's cost. However, instead of the funds being used to reimburse the Commission for its expenses in producing the materials, they are credited to the U.S. Treasury. The effect on the Commission of

selling materials is thus the same as if the materials had been given away. The Commission absorbs the entire cost. In FY 1982, in return for services and materials it offered the public, the FEC collected and transferred $61,144 in miscellaneous receipts to the Treasury. In FY 1983, the amount was $91,969, and during the first three months of FY 1984, $24,916 was transferred to the Treasury. Establishment of a reimbursement fund, into which fees for such materials would be paid, would permit this money to be applied to further dissemination of information. Note, however, that a reimbursement fund would not be applied to the distribution of FEC informational materials to candidates and registered political committees. They would continue to receive free publications that help them comply with the Federal election laws.

There is also the possibility that the Commission could recover costs of FEC Clearinghouse workshops and seminars, research materials, and reports that are now sold by the Government Printing Office and National Technical Information Service. Approximately $15,000 was collected in FY 1981 by GPO and NTIS on account of sales of Clearinghouse documents.

There should be no restriction on the use of reimbursed funds in a particular year to avoid the possibility of having funds lapse.