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Federal Prosecution of Election Offenses

Fifth Edition

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INDEX

PREFACE

This is the fifth edition of the Justice Department's election law manual. Its purpose, like that of its predecessors, is to present a current summary of the criminal laws dealing with the subject of elections, and to discuss the policy and procedural considerations which bear on the administration of federal criminal justice in this complex and important area.

The contents of this manual are intended exclusively to serve as a reference tool for personnel employed by the Offices, Boards and Divisions of the Justice Department, United States Attorney Offices and the Federal Bureau of Investigation. Nothing contained herein is intended to confer substantive or procedural rights on the public generally, or upon those whose activities may fall within the ambit of these laws in particular. Moreover, the discussion which follows represents the views and policy of the Criminal Division on the date of its preparation. It is subject to change without notice.

It has been four years since the fourth edition of this book was published. During this time, the ability of the Federal Government to assert federal jurisdiction over voter frauds has been complicated by two decisions which the Supreme Court handed down in 1987 that severely limit the applicability of the federal mail and wire fraud statutes (18 U.S.C. 1341 and 1343 respectively) to cases such as this. *McNally v. United States*, 483 U.S. ___, 107 S. Ct. 2875, 97 L. Ed. 2d 292; *Carpenter v. United States*, 484 U.S. ___, 108 S. Ct. 316, 98 L. Ed. 2d 275. Since the mail fraud law was the principal prosecutive vehicle by which the Federal Government obtained jurisdiction over voter frauds that took place in purely local elections, it has been necessary to develop new prosecutive theories in order to maintain an effective federal presence in this area. These will be discussed in this edition of the election manual.

The voting process, and the integrity of the ballot box, stand at the very heart of our process of government. Free elections which accord citizens a meaningful voice in their government make our political process work. Election crimes have no place in our society. They are repugnant to

the social contract on which our nation is built. It is, therefore, an important national law enforcement priority to root out corruptions of the voting process, and to bring those responsible for such crimes to swift justice. It is the earnest hope of those of us who have prepared these materials that this book will assist federal investigators and prosecutors fulfill their important responsibilities in this area.

The more we investigate and prosecute election crime offenses, the more we learn about the problem and how best to address it. Like most other fields of law enforcement, the prosecution of election crimes is a constant learning experience. Many people have made large, noteworthy contributions to this task. In this regard, I would like to particularly recognize Trial Attorney Nancy Stewart of the Public Integrity Section, and my secretary, Mary Ann Ballance, who typed the many drafts of this book and readied it for printing.

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CHAPTER ONE

INTRODUCTION

OVERVIEW

More than two centuries ago, a distinguished group of individuals met in Philadelphia to design a government for the newly independent American colonies. They had little to guide them, since nearly all governments at the time were autocracies of one form or another. What emerged from their labors was a totally novel government that rested on the revolutionary principle that the people would rule themselves. The idea that government in the United States should be an answerable to the people is the central feature of our unique concept of democracy.

The principal mechanism by which the people in the United States exercise authority over government is through the ballot box. Elections, therefore, are the core of the American form of government, and the foundation upon which our democratic tradition rests.

Elections in this country do much more than determine winners. They serve to legitimize the transfer of power; they placate losers, and thereby prevent political battles from escalating into civil strife; and they hold the victors accountable to the electorate they serve. Election crimes thus strike at the very heart of our governmental process. Left unprosecuted and undeterred, such crimes risk producing governments that are corrupt and unresponsive to the people. In extreme cases, erosion of the public's confidence in the legitimacy of the electoral process could undermine the very stability of our form of government.

The prosecution of election crimes is, therefore, a paramount priority of law enforcement agencies in a society such as ours that places so much on the integrity of the voting process. The purpose of this manual is to provide the federal prosecutor with guidance on the development and litigation of federal election-crime cases.

The United States Constitution specifically gives the States extremely broad authority to determine the qualifications of voters, and to establish and implement procedures for holding elections. U.S. Const. art. I, §2, cl. 1; art. I, 4, cl. 1; amend. XVII. Except in situations involving racial or ethnic animus, the federal role in the registration of voters and the conduct of elections is subordinate to that of the States. The federal prosecutor therefore enters election-related matters only when and where necessary to protect the integrity of significant federal interests or programs, to assure that voting rights guaranteed by the United States Constitution are not willfully abridged, and as "prosecutor of last resort" to redress long-standing patterns of abuse — to the extent that such intervention is possible under the limited constitutional and statutory authority that the Federal Government possesses in this area.

In keeping with the primary role that the States play in the elective process, every one of the 50 States, and all of the United States territories and possessions, have election codes which specify in great detail how the election process is to be administered. A majority of the States have also adopted legislation prohibiting corrupt election practices, and providing for the regulation and reporting of campaign finances.

There is no federal counterpart to this exhaustive and detailed treatment of the election process by the States. There are, however, scattered throughout the United States Code, federal statutes dealing with corruption of the franchise, criminal patronage practices, and the financing of federal campaigns. These federal criminal laws fall into four distinct groupings:

(1) Criminal statutes that relate to corruption of the franchise (18 U.S.C. 241, 242, 245, 592-594, 596-599, 608, and 609; 42 U.S.C. 1973i(c), 1973i(e); and certain prosecutive theories developed under 18 U.S.C. 911, 1341, 1343, and 1952);

(2) Criminal statutes which relate to the misuse of federal property, programs or employment for political purposes (18 U.S.C. 595, 598, and 600-607);

(3) The Federal Election Campaign Act (FECA), which regulates campaign finances for federal candidates and contains both civil and criminal penalties; and

(4) Federal grant programs which provide for the federal funding of certain federal campaigns, each of which contains anti-fraud criminal penalties (26 U.S.C. 9001-9012 and 26 U.S.C. 9031-9042).

The substance of these election laws, and the policy considerations that apply to each type of offense, are discussed in Chapters Two through Four of this book. Chapter Five discusses the practical considerations and strategies which should facilitate the detection, investigation and prosecution of the more common election crime schemes. Chapter Six summarizes the procedures which the Department of Justice employs on the date of significant federal elections, particularly the national general election held in November of even-numbered years. Finally, there are three appendices: a table of cases (Appendix A); the text of significant federal election laws (Appendix B); and several sample indictments from recent election-crime prosecutions to assist in the framing of charges (Appendix C).

Violations of federal laws dealing with corruption of the franchise, and those dealing with criminal patronage activities, are investigated by the Federal Bureau of Investigation (FBI), and prosecuted by the United States Attorneys under the supervision of the Public Integrity Section of the Criminal Division. In most respects, these forms of election crime are public corruption offenses that are handled in the same way as other similar crimes.

On the other hand, violations of the campaign financing and reporting provisions of the Federal Election Campaign Act can be either criminal offenses or administrative infractions, depending on the amount of money involved, and the degree of criminal intent with which the putative defendant acted. FECA violations which were committed negligently, or which involve only small sums of money, are usually investigated by the Federal Election Commission, and enforced through monetary penalties imposed administratively by the Commission. Criminal violations, on the other hand, are investigated by the FBI, and prosecuted by the United States Attorneys, in a manner similar to other election crimes. The dual enforcement jurisdiction which the Justice Department and the FEC share over this sort of offense requires that a decision be made at a fairly early point as to which remedy (administrative or criminal) is most appropriate to the facts of the offense involved. A formal Memorandum of Understanding exists between the Justice Department and the FEC which regulates the interrelationship between the two law enforcement agencies. This will be discussed further in Chapter Four.

The Presidential Primary Matching Payment Account Act (26 U.S.C. 9031 *et seq.*), and the Presidential Election Campaign Fund Act (26 U.S.C. 9001 *et seq.*), are federal grant programs which provide for the public financing of presidential campaigns. The two programs are administered in the first instance by the Federal Election Commission, which is charged with certifying candidate eligibility, making the payments to candidates, and conducting audits of the campaigns of participating candidates. Negligent violations of these statutes are enforced by the

FEC through civil and administrative sanctions. However, active fraud in the procurement of public funds under these programs (either by candidates, their agents, or by contributors) constitutes a fraud on the United States which can be prosecuted under any one of a number of federal felony statutes. These also will be discussed in Chapter Four.

Many of the federal election laws have undergone substantial changes since 1972, when the societal interest which these laws addresses most recently became a matter of paramount public concern. New legal theories have been, and will continue to be, developed and tested to assure that criminal redress is available against those who intentionally seek to undermine the integrity of the elective franchise. Recent innovations in the investigation of this type of case have facilitated the detection of voter fraud, and have expedited the task of bringing corrupters of the franchise to justice. However, the recent landmark decision of the Supreme Court in *McNally v. United States*, 107 S. Ct. 2845, 97 L. Ed. 2d 292 (1987) has curtailed the use of the federal mail and wire fraud laws (18 U.S.C. 1341 and 1343) in voter fraud cases. This decision has, in turn, necessitated a search for new statutes by which federal jurisdiction can be asserted over ballot frauds which take place during nonfederal elections. The issues and prosecutive obstacles created by *McNally* will be discussed in Chapter Two.

Despite the primary function which the States play in the administration of the election process, the role of the federal prosecutor in redressing long-standing patterns of election crime activity is an important one. The investigation of this sort of crime is often extremely labor intensive, and benefits from the use of investigators who are specially trained in corruption issues. Moreover, it is frequently difficult for either the prosecution or the defendant to receive a fair trial in election crime cases before juries drawn solely from the immediate community where the defendant held elective office, or was politically active. See e.g. United States v. Campbell, ___ F.2d ___ (8th Cir. April 29, 1988). The federal system is responsive to these issues. However, the assertion of federal jurisdiction in this area — particularly where ballot frauds are concerned — routinely requires recourse to statutes that were initially enacted 50 to 100 years ago. It may also involve the resolution of novel questions of federalism, respect for the FEC's administrative enforcement role, and the difficult task of enforcing criminal laws in the setting of high-profile litigation arising out of partisan election contests. Close coordination between the United States Attorneys, the FBI, and the Criminal Division personnel who have an expertise in this unique field of law enforcement is therefore essential to assure consistency in enforcement policy and objectives, and to avoid the appearance of undesirable interference by the federal prosecutor in the electoral process.

ELECTION CRIMES BRANCH

Election matters are administered on a Department-wide basis by the Election Crimes Branch, which is a component of the Public Integrity Section of the Criminal Division.

The Election Crimes Branch was created in 1980 to discharge the Criminal Division's responsibilities over the administration of the federal election laws. It is headed by a Director, and it is staffed by attorneys who possess an expertise in the policy and legal considerations involved in the preparation of criminal cases in this area.

Specifically, the Election Crimes Branch has primary responsibility for the development and implementation of Departmental policy concerning all statutes and theories of prosecution which focus upon the manner in which elections are conducted and financed. Furthermore, the Branch performs the preclearance and oversight functions described at 9 U.S.A.M. 2.133(h) and 2.133(o); it assists United States Attorney and Bureau personnel in the preparation and trial of election-related crimes; and it discharges the liaison functions between the Justice Department and the Federal Election Commission concerning campaign financing and reporting offenses under the Federal Election Campaign Act.

Federal criminal statutes that are assigned to the Election Crimes Branch include 18 U.S.C. 241, 242, 1341, and 1952 (as they relate to corruption of the franchise); 18 U.S.C. 245 (as it relates to violence within the polls); 18 U.S.C. 592 through 609; 18 U.S.C. 1913; 42 U.S.C. 1973i(c); 42 U.S.C. 1973i(e); criminal enforcement of the Federal Election Campaign Act, 2 U.S.C. 431 through 455; and the anti-fraud provisions of the presidential campaign funding programs, 26 U.S.C. 9012 and 26 U.S.C. 9042.

PRECLEARANCE

All indictments, informations, and grand jury investigations must be authorized by the Election Crimes Branch of the Public Integrity Section. Preliminary investigations may be conducted in most matters without consultation with the Department. However, full field investigations require prior Departmental clearance, as do preliminary investigations into matters involving campaign financing and reporting violations arising under the FECA. *See* 9 U.S.A.M. 2.133(h) and 2.133(o). The operation of this preclearance requirement in the setting of actual case development will be discussed in Chapters Two and Five.

Authorization of grand jury and full field investigations may be obtained telephonically in many, but not necessarily all, instances. The telephone number of the Election Crimes Branch is FTS 786-5060.

In especially complex or sensitive cases, or in instances of United States Attorney recusals, the Public Integrity Section has attorney manpower that is available to assist operationally in the preparation and/or litigation of these cases. Requests for such operational assistance should be directed to the Chief of the Public Integrity Section (FTS 786-5066).

The preclearance requirement is intended to help the development and prosecution of federal election-crime cases. Its purpose is to assure that a nationwide standard of prosecution is maintained in this sensitive law enforcement area, and to minimize the risk that federal law enforcement resources will be wasted on matters that have little or no realistic prospect of developing into prosecutable federal criminal cases. The Public Integrity Section has a great deal of experience in the investigation and prosecution of election offenses, and in assessing the merits of complaints involving this subject. The preclearance requirement has been in existence since 1954, and the Department's experience with this procedure has been a good one.

CHAPTER TWO

ABUSE OF THE FRANCHISE

BACKGROUND

Federal concern over the integrity of the franchise has had two quite distinct points of focus. One has been to assure Blacks and other racial minorities the right to vote, in the furtherance of which the Federal Government has long taken an extremely activist role. The second has been to secure to the general public elections that are run fairly and impartially, free from dilution resulting from corrupt, irregular or fraudulent practices. The discussion presented here is concerned exclusively with this second type of election abuse. Matters involving discrimination against racial minorities through the ballot box are not discussed here; these matters involve entirely different constitutional and federal interests, and they are handled by the Civil Rights Division.

Federal concern with the integrity of the franchise was first manifested immediately after the Civil War. Between 1868 and 1870, at the same time it was legislating to assure the implementation of the Fifteenth Amendment, the Congress passed a number of specific statutes dealing with various types of electoral abuse. These federal election fraud laws were known as the Enforcement Acts, and until the 1890s when most of them were repealed they served as the basis for a relatively activist federal posture in the investigation and prosecution of corruption of the franchise. *See e.g. Ex parte Siebold*, 100 U.S. 371 (1880); *Ex parte Yarbrough*, 110 U.S. 651 (1884); *In re Coy*, 127 U.S. 731 (1888).

Many of the Enforcement Acts had broad jurisdictional predicates, which permitted them to be applied to a wide variety of corrupt election practices as long as a federal candidate was on the ballot at the time these practices occurred. In *Coy*, the Supreme Court held that Congress possessed the authority under the Constitution's Necessary and Proper Clause to regulate any activity occurring during a mixed federal/state election which exposed the federal election to potential harm, whether that

harm materialized or not. *Coy* is still good law today. *See United States v. Olinger*, 759 F.2d 1273 (7th Cir.), *cert. denied*, 474 U.S. 829 (1985); *United States v. Garcia*, 719 F.2d 99 (5th Cir. 1983); *United States v. Carmichael*, 685 F.2d 903 (4th Cir. 1982), *cert. denied*, 459 U.S. 1202 (1983); *United States v. Mason*, 673 F.2d 737 (4th Cir. 1982); *United States v. Malmay*, 671 F.2d 869 (5th Cir. 1982); *United States v. Bowman*, 636 F.2d 1003 (5th Cir. 1981).

Reconstruction ended as a matter of national policy in 1878, and with it federal activism in election matters retrenched. Most of the Enforcement Acts were repealed by 1894, and with their demise the federal system lost most of the statutory tools which had made an activist federal posture in election fraud matters possible. The two provisions of these Acts which survived (present 18 U.S.C. 241 and 242) covered only intentional deprivations of rights guaranteed directly by the United States Constitution. The constitutional philosophy pursued by the courts during this period generally held that the Federal Constitution directly conferred a right to vote only for federal officers (*i.e.* Congressmen, Senators and President), and that electoral abuse aimed at corrupting nonfederal contests was not properly prosecutable in federal courts under federal statutes which remained on the books after the Enforcement Acts had been repealed. *See United States v. Gradwell*, 243 U.S. 476 (1917); *United States v. Mosley*, 238 U.S. 383 (1915); *Guinn v. United States*, 238 U.S. 347 (1915). This state of affairs was aggravated by the prevailing view that primary elections were not a constituent part of the official elective process, *United States v. Newberry*, 256 U.S. 232 (1921), and by cases like *United States v. Bathgate*, 246 U.S. 220 (1918), which read the entire subject of vote-buying out of federal criminal law, even when it was directed at throwing the outcome of congressional contests.

In 1941, the Supreme Court reversed *United States v. Newberry*, and recognized for the first time that primary elections were an integral part of the process by which candidates are elected to office. *United States v. Classic*, 313 U.S. 299 (1941). The *Classic* opinion represented a marked change in the judicial attitude with respect to federal intervention in election matters, and it began a new period of federal activism in this field. Federal courts have come to recognize that the right to vote in fairly conducted elections is a fundamental feature of United States citizenship, which as such is broadly protected by the Federal Constitution. *See Reynolds v. Sims*, 377 U.S. 533 (1964); *Griffin v. Burns*, 570 F.2d 1065 (1st Cir. 1978); *Duncan v. Poythress*, 657 F.2d 691 (11th Cir. 1981). Federal prosecutions of election fraud under 18 U.S.C. 241 and 242 increased, and these two statutes were accorded an expansive interpretation where locally directed election fraud was concerned. *United States v. Howard*, 774 F.2d 838 (7th Cir. 1986); *United States v. Olinger*, 759 F.2d 1273 (7th Cir.), *cert. denied*, 474 U.S. 829 (1985); *United States v. Anderson*, 481 F.2d 685

(4th Cir. 1973), *aff'd on other grounds*, 417 U.S. 211 (1974); *United States v. Stollings*, 501 F.2d 954 (4th Cir. 1974); *United States v. Morado*, 454 F.2d 167 (5th Cir.), *cert. denied*, 406 U.S. 917 (1972). New criminal laws which contained broad jurisdictional bases were enacted by Congress to combat false registrations, multiple voting, and vote-buying (42 U.S.C. 1973i(c) and 1973i(e)). *See United States v. Bowman*, 636 F.2d 1003 (5th Cir. 1981); and *United States v. Mason*, 673 F.2d 737 (4th Cir. 1982). Finally, existing statutes such as the mail fraud law were adjudicated applicable to a wide variety of electoral abuses. *United States v. Clapps*, 632 F.2d 1148 (3d Cir.), *cert. denied*, 469 U.S. 1085 (1984); *United States v. Odom*, 736 F.2d 104 (4th Cir. 1984); *United States v. States*, 488 F.2d 761 (8th Cir. 1973), *cert. denied*, 417 U.S. 909 (1974); *United States v. Lewis*, 514 F. Supp. 169 (M.D. Pa. 1981).

The right to vote is one of the most fundamental aspects of United States citizenship. Its free exercise through honest elections is perhaps the single aspect of democracy that most distinguishes our system of government from the totalitarian and communist ideologies which we as a people have so strongly opposed for so long. The elective franchise is the cornerstone of our democratic form of government. The Justice Department views the elimination of election fraud as a significant national priority. Vigorous measures to protect the integrity of the franchise are therefore required.

WHAT IS "ELECTION FRAUD?"

Our constitutional system of government is based to a substantial degree on the principle that the people choose their leaders. The American electoral process functions to determine winners, to confer legitimacy upon them, and to hold them accountable to the public they have been temporarily selected to serve. As succinctly stated by the Supreme Court in its landmark voting rights decision of *United States v. Classic*, 313 U.S. 299 (1941):

> From time immemorial an election to public office has been in point of substance no more and no less than the expression by qualified electors of their choice of candidates. *Id.* at 318.

Any activity which has as its intended objective the corrupt interference with the balloting process is capable of constituting a criminally actionable federal offense.

Most election fraud is quite easily recognized. Indeed, several especially noxious methods of corrupting the election process have been made the subject of specific criminal statutes. Examples include vote-

buying, multiple voting, and false registrations. Still other methods of subverting the system, such as ballot-box stuffing, destruction of ballots, falsifying tally reports and intimidating voters, fit easily within concepts of "fraud" that have been heretofore recognized as being criminally actionable under various laws in this area. However, some methods of corrupting the franchise are less obviously actionable. In assessing the criminal potential of such matters, federal prosecutors should bear in mind that the paramount feature of the democratic franchise is the free expression of "electoral will" by each voter participating in an election. Thus, any pattern of conduct which has as its intended effect the improper manipulation of the balloting process for the purpose of defeating or ignoring the "electoral will" of individual voters should be considered potentially actionable. *See e.g. United States v. Odom*, 736 F.2d 104 (4th Cir. 1984) (conscious exploitation of the mentally infirm); and *United States v. Clapps*, 732 F.2d 1148 (3d Cir.), *cert. denied*, 469 U.S. 1085 (1984) (casting ballots for voters who did not see or mark them). Of course, any scheme that involves casting ballots in the names of voters who do not personally and voluntarily participate in the voting transaction attributed to them can be considered "fraudulent," and thus potentially criminally actionable under federal law. *See United States v. Saylor*, 322 U.S. 385 (1944); *Anderson v. United States*, 417 U.S. 211 (1974); *United States v. Olinger*; *United States v. Howard*; *United States v. Clapps*; and *United States v. States*, 488 F.2d 761 (8th Cir. 1973), *cert. denied*, 417 U.S. 909 (1974).

On the other hand, the Criminal Division has long held the view that federal involvement in election fraud matters should be confined to situations where there is a conscious attempt made to corrupt the process by which voters are registered, or by which ballots are procured, cast and/or tabulated. In view of the volatile nature of election campaigns, the Criminal Division has viewed campaign-related conduct, and the give-and-take of active electioneering, as not an appropriate subject for federal criminal prosecution. The federal statutes used to prosecute election fraud generally require some intent on the part of prospective defendants to corrupt the voting process itself. Specifically, the following election activities, although ethically questionable, should *not* be considered as appropriate subjects for federal criminal prosecution:

- Campaign "dirty tricks" (except those made federal crimes under 2 U.S.C. 441d and 441h);

- "fraudulent" or inaccurate campaign rhetoric;

- improprieties in the procurement or certification of nominating petition signatures;

- campaigning too close to the polls, even when violative of state poll access statutes;

- arrangements between political operatives to secure the withdrawal of candidates, and the consolidation of political campaigns between candidates.

Similarly, most of the States have enacted election codes which describe in considerable detail the proper procedures to be followed in performing such activities as operating polling places, registering voters, verifying voters' identities, purging registration lists, issuing and handling ballots, operating voting equipment, and tabulating election results. These statutorily mandated procedures vary from State to State, and violations of them often carry state criminal sanctions. Infractions of state election procedures can also indicate the presence of federal voter fraud crimes. (For example, missing seals on ballot boxes, inaccurate or incomplete voter assistance forms, or the failure to maintain and operate voter equipment in the prescribed manner may be indicative of an aggravated scheme to corrupt the balloting process.) However, it is important for federal prosecutors to recognize that infractions of state-mandated election procedures usually do not, in and of themselves, rise to the level of federal crimes. To do so, the procedural error must have been part of a scheme to procure or cast invalid or fraudulent ballots, to denigrate the electoral will of individual voters, to bribe voters, or to otherwise fundamentally corrupt the integrity of the voting process.

STATUTES

1) 18 U.S.C. 241. Conspiracy against rights of citizens

Section 241 was originally enacted as part of the post-Civil War Reconstruction legislation. This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any citizen in the exercise of a right or privilege secured to him by the Constitution or laws of the United States. Violations are felonies punishable by imprisonment up to ten years, or for any term of years or for life, if death results, and/or by an appropriate fine imposed pursuant to 18 U.S.C. 3571.

The Supreme Court long ago recognized that the right to vote in a primary or general election for the federal offices of Congressmen, Senators and/or President is among the rights secured by Article I, Sections 2 and 4 of the Federal Constitution, and as such is protected by Section 241. *Ex parte Yarbrough*, 110 U.S. 651 (1884); *United States v. Classic*, 313 U.S. 299 (1941). Intentional disruptions of fair elections which

impact, directly or indirectly, on such federal contests violate the Federal Constitution, and thus this statute.

Section 241 has been held to embrace conspiracies to stuff a ballot box with forged ballots, *United States v. Saylor*, 322 U.S. 385 (1944); *United States v. Mosley*, 238 U.S. 383 (1915); to impersonate qualified voters, *Crolich v. United States*, 196 F.2d 879 (5th Cir. 1952), *cert. denied*, 344 U.S. 830 (1953); to alter legal ballots, *United States v. Powell*, 81 F. Supp. 288 (E.D. Mo. 1948); to fail to count votes and to alter votes counted, *United States v. Ryan*, 99 F.2d 864 (8th Cir. 1938), *cert. denied*, 306 U.S. 635 (1939); *Walker v. United States*, 93 F.2d 383 (8th Cir. 1937), *cert. denied*, 303 U.S. 644 (1938); to prevent the official count of ballots in primary elections, *United States v. Classic*; to destroy absentee ballots, *United States v. Townsley*, 843 F.2d 1070 (8th Cir. March 25, 1988); to illegally register voters and cast absentee ballots in their names, *United States v. Weston*, 417 F.2d 181 (4th Cir. 1969), *cert. denied*, 396 U.S. 1062 (1970); *United States v. Morado*, 454 F.2d 167 (5th Cir.), *cert. denied*, 406 U.S. 917 (1972); *Fields v. United States*, 228 F.2d 544 (4th Cir. 1955), *cert. denied*, 350 U.S. 982 (1956); and to injure, threaten, or intimidate a voter in the exercise of his right to vote, *Wilkins v. United States*, 376 F.2d 552 (5th Cir.), *cert. denied*, 389 U.S. 964 (1967). It has been held that Section 241 reaches vote fraud even when the fraud does not affect the actual outcome of the election, *Anderson v. United States*, 417 U.S. 211 (1974); *Morado*, and that the vote-fraud conspiracy need not be successful to violate this statute. *United States v. Bradberry*, 517 F.2d 498 (7th Cir. 1975). The courts have also held that this statute does not require proof of an overt act. *Williams v. United States*, 179 F.2d 644 (5th Cir. 1950), *aff'd on other grounds*, 341 U.S. 70 (1951); *Morado*.

On the other hand, Section 241 does *not* reach schemes to corrupt the balloting process through voter bribery. *United States v. Bathgate*, 246 U.S. 220 (1918); *United States v. McLean*, 808 F.2d 1044 (4th Cir. 1987).

Section 241 reaches conduct affecting the integrity of the federal election process as a whole, and does not require fraudulent action with respect to any particular voter. *United States v. Nathan*, 238 F.2d 401 (7th Cir.), *cert. denied*, 353 U.S. 910 (1957). The "victim" of such an offense is society as a whole, since fraudulent voting practices derogate the fundamental process under which our society's leaders are selected, legitimized, and held accountable for their actions.

The question that most frequently arises concerning the use of Section 241 in election fraud prosecutions involves its application to frauds directed at local candidates that cannot be shown to have impacted on federal contests. The problem stems from the fact that Section 241 prohibits only conspiracies to deprive people of rights actually flowing

directly from the Federal Constitution. While there is little question that the right to vote for President and Members of Congress falls within this category, over the years there has been considerable judicial speculation over the extent to which the Federal Constitution directly reaches or protects the right to vote for candidates running for nonfederal offices. *Ex parte Siebold*, 100 U.S. 371 (1880); *In re Coy*, 127 U.S. 731 (1888); *Blitz v. United States*, 153 U.S. 308 (1894); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Oregon v. Mitchell*, 400 U.S. 112 (1970); *Anderson v. United States*, 417 U.S. 211 (1974). *See also Duncan v. Poythress*, 657 F.2d 691 (11th Cir. 1981). With the exception of *United States v. Morado, supra*, and the relatively new "equal protection" cases discussed below, every vote-fraud case reported under Section 241 either entailed a scheme directed specifically at corrupting the outcome of a federal contest, or involved proof that a federal contest was indirectly affected by the fraud in question.

Reynolds v. Sims contains dicta casting the parameters of the federally protected right to vote in extremely broad terms. *See also Griffin v. Burns*, 570 F.2d 1065 (1st Cir. 1978), and *Duncan v. Poythress*. However, in *Anderson v. United States, supra*, the Supreme Court was given an opportunity to decide whether the federally secured franchise extended to nonfederal contests, but the Court specifically refused to decide the issue. Consequently, the use of 18 U.S.C. 241 in the area of election fraud has generally been confined to situations where the conduct in question not only took place during an election where federal candidates were being voted upon, but also where there is proof that a federal elective contest was at least indirectly affected by the fraud. Voting a straight party ticket in a mixed federal/nonfederal election has been held to satisfy this requirement, *United States v. Olinger*, 759 F.2d 1293 (7th Cir), *cert. denied*, 474 U.S. 829 (1985), as has the destruction of absentee ballots which contain a federal contest. *United States v. Townsley, supra.*

The main exception to this general rule is where a pattern of vote fraud that does not affect federal elections is perpetrated through the necessary participation of state agents acting under color of law. The most common example of this type of case is where a group of individuals conspires to stuff ballot boxes through utilization of the access to the voting process provided to poll judges and election officials by state law. In this regard, it is well settled that 18 U.S.C. 241 covers rights secured by all of the substantive provisions of the Federal Constitution, including those secured by the Equal Protection Clause. *United States v. Guest*, 383 U.S. 745 (1966); *United States v. Price*, 383 U.S. 787 (1966). Although the United States Constitution may not directly confer a right to vote in state elections, it is clear that when a State adopts an electoral system for filling a public office, the Equal Protection Clause confers upon all qualified voters the substantive right to participate in the electoral process equally

with other qualified voters. *Harris v. McRae*, 448 U.S. 297 (1980); *Reynolds v. Sims*; *Gray v. Sanders*, 372 U.S. 368 (1963); *Baker v. Carr*, 369 U.S. 186 (1962). Thus, where the value of the electoral franchise for *any* sort of candidate, in *any* sort of election (federal, state, or municipal), is diluted through the corrupt exploitation of state action, an offense cognizable under 18 U.S.C. 241 is present.

This theory of prosecution has been embraced by the Fourth Circuit in two cases arising out of a scheme to stuff ballot boxes in West Virginia through corrupt exploitation of poll officials. *United States v. Anderson*, 481 F.2d 685 (4th Cir. 1973), *aff'd on other grounds*, 417 U.S. 211 (1974); *United States v. Stollings*, 501 F.2d 954 (4th Cir. 1974). It has also been recently and successfully used to prosecute ballot-box stuffing in Chicago. *United States v. Olinger*, 759 F.2d 1273 (7th Cir. 1985), *cert. denied*, 474 U.S. (1986); *United States v. Howard*, 774 F.2d 828 (7th Cir. 1986).

However, this theory of prosecution cannot be used to address vote-buying schemes, even those that involve the use of poll officers to observe bribed voters marking their ballots to assure that they vote "correctly." *United States v. McLean*, 808 F.2d 1044 (4th Cir. 1987).

2) 18 U.S.C. 242. Deprivation of rights under color of law

Section 242 was also originally enacted as a post-Civil War Reconstruction statute. Under this statute, it is unlawful for anyone acting under color of law, statute, ordinance, regulation, or custom to willfully deprive a person of any right, privilege, or immunity secured or protected by the Constitution or laws of the United States. Violations are misdemeanors punishable by imprisonment up to one year, or for any term of years or life, if death results and/or by an appropriate fine under 18 U.S.C. 3571.

Prosecutions under Section 242 need not demonstrate the existence of a conspiracy. However, the defendants must have acted illegally under color of law. This element does not require that the accused be a *de jure* officer of a governmental agency. It is sufficient that an accused have jointly acted with state agents in committing the offense, *United States v. Price*, 383 U.S. 787 (1966), or that his actions were made possible by the fact that they were clothed with the authority of state law. *United States v. Classic*, 313 U.S. 299 (1941); *United States v. Williams*, 341 U.S. 97 (1951).

For most purposes relevant to election frauds, Section 242 can be considered and treated as a substantive offense for conspiracies prosecutable under Section 241. As such, the cases cited in the discussion of Section 241 are equally relevant to the application of this statute.

3) 42 U.S.C. 1973i(c). False information in, and payments for, registering or voting

Section 1973i(c) was enacted as part of the Voting Rights Act of 1965. This statute makes it unlawful, *in an election in which a federal candidate is on the ballot*: (1) to knowingly and willfully give false information as to name, address, or period of residence to an election official for the purpose of establishing one's eligibility to vote; (2) to pay, offer to pay, or accept payment for registering to vote or for voting; or (3) to conspire with another person to vote illegally. Violations are felonies, punishable by imprisonment up to five years and/or an appropriate fine under 18 U.S.C. 3571. Because of its broad jurisdictional base, Section 1973i(c) is one of the most useful federal ballot security laws on the books today. It is the statute of preference for prosecuting all matters involving corruption of the election process that occur during "mixed elections," *i.e.* those where federal and nonfederal candidates are being voted upon at the same time.

A. The basis for federal jurisdiction

Unlike laws such as 18 U.S.C. 241 and 242, 42 U.S.C. 1973i(c) does not implement rights that flow directly from the Federal Constitution. As such, its scope is not tied to the parameters of the "federal right to vote" — whatever they may be. This statute rests on the Necessary and Proper Clause (Art. 1, 8, cl. 18), as a measure to protect federal contests from exposure to the risk of corruption that is present whenever the noxious and destructive elective practices that are described therein take place at the same time as federal balloting. *In re Coy*, 127 U.S. 731 (1888); *Burroughs v. United States*, 290 U.S. 534 (1934); *Buckley v. Valeo*, 424 U.S. 1 (1976); *United States v. Saenz*, 747 F.2d 930 (5th Cir. 1984), *cert. denied*, 473 U.S. 906 (1985); *United States v. Carmichael*, 685 F.2d 903 (4th Cir. 1982), *cert. denied*, 459 U.S. 1202 (1983); *United States v. Malmay*, 671 F.2d 869 (5th Cir. 1982); *United States v. Bowman*, 636 F.2d 1003 (5th Cir. 1981). *See also United States v. Blanton*, 77 F. Supp. 812 (E.D. Mo. 1948).

The principal utility of Section 1973i(c) to the federal prosecutor is twofold. First, it eliminates from federal election-fraud cases the need to delve into arcane questions concerning the parameters of the "federal right to vote" such as usually attend prosecutions under 18 U.S.C. 241 and 242. Second, it eliminates from federal vote-fraud cases the need to prove that a given pattern of otherwise patently corrupt conduct had an actual impact on an elective contest protected directly by the "federal right to vote." It is sufficient under Section 1973i(c) that a pattern of corrupt conduct took place during a "mixed" federal/state election where both federal and nonfederal contests were being voted upon, and that the functional character of the fraud was such as to expose any of the federal races

mentioned in the statute to the *risk of potential harm*. *United States v. Saenz*, 747 F.2d 930 (5th Cir. 1984), *cert. denied*, 473 U.S. 906 (1985); *United States v. Garcia*, 719 F.2d 99 (5th Cir. 1983); *United States v. Carmichael*, 685 F.2d 903 (4th Cir. 1982), *cert. denied*, 459 U.S. 1202 (1983); *United States v. Mason*, 673 F.2d 737 (4th Cir. 1982); *United States v. Malmay*, 671 F.2d 869 (4th Cir. 1982); *United States v. Bowman*, 636 F.2d 1003 (5th Cir. 1981); *United States v. Sayre*, 522 F. Supp. 973 (W.D. Mo. 1981); *United States v. Simms*, 508 F. Supp. 1179 (W.D. La. 1979); *United States v. Cianciulli*, 482 F. Supp. 585 (E.D. Pa. 1979).

The broad reach of this statute was fully intended by the Congress that enacted it. Section 1973i(c) was added to the 1965 Voting Rights Act to assure that the integrity of the balloting process would be secured in the setting of the expanded franchise which the Voting Rights Act sought to achieve. In fact, the original version of what eventually became Section 1973i(c) simply prohibited corrupt practices during any election without regard to the extent to which the conduct might impact on federal contests. The jurisdictional predicate in the present statute, restricting its scope to mixed federal/state elections where there is a potential risk to federal balloting, was the product of constitutional concerns over the completely unrestricted statute which had been initially proposed during original congressional consideration of the Voting Rights Act. *See United States v. Cianciulli* and 1965 U.S. *Code Cong. and Admin. News* 2478 for a detailed discussion of the legislative history of this statute.

B. False registration information

The "false information" provision of Section 1973i(c) reaches any person who furnishes materially false data to a voting official to establish eligibility to register or to vote. As the statute presently reads, it is necessary that the false information relate to one of the three items that are listed in this portion of the statute: name, address, and/or period of residence in the voting district. False information concerning other possible requisites or bars to voting (such as United States citizenship, felon status, and mental competence) do not fall within the ambit of this particular clause. Such matters should be prosecuted, if at all, as conspiracies to effect illegal voting under that clause of Section 1973i(c), or as citizenship offenses under 18 U.S.C. 911. *See* discussion on pages 33-34 *infra*.

In virtually all electoral districts in the United States, registration to vote is "unitary" in the sense that a single registration qualifies the applicant to cast ballots for all contests — local, state and federal. As such, the jurisdictional requirement that the false information at issue have been made to establish eligibility to vote for one or more of the federal officers

named in the statute is satisfied automatically in all instances where a false statement is made to get one's name on the registration rolls. *United States v. Barker*, 514 F.2d 1077 (7th Cir. 1975); *United States v. Cianciulli.*

On the other hand, where the false data is furnished to poll officials for the purpose of enabling a voter to cast a ballot in a particular election (as, for instance, when one voter attempts to impersonate another voter), it is necessary to show specifically that a federal candidate was being voted upon at the time. In such situations, the prosecutor should also be prepared to demonstrate that the course of fraudulent conduct at issue was functionally sufficient to have exposed the integrity of the federal race to potential danger or question. *See e.g. In re Coy*, 127 U.S. 731 (1888); *United States v. Carmichael.* In this regard, isolated instances involving nothing more than one voter impersonating another in order to allow him to vote for a nonfederal candidate may be inadequate to establish federal jurisdiction even under a law that is as broadly cast as Section 1973i(c). *See Blitz v. United States*, 153 U.S. 308 (1894).

It is the policy of the Justice Department to avoid using Section 1973i(c) to prosecute isolated and uncoordinated instances of illegal registration and/or fraudulent voting. As a rule, cases prosecuted under the false registration clause of this statute involve coordinated *patterns* of illegal registration and fraudulent voting, and defendants who have been responsible for inducing multiple fraudulent voting transactions. Prosecution of individual and uncoordinated acts of fraudulent registration has been considered only where they represent examples of a widespread systemic abuse, which jeopardizes the integrity of the voting process in an identifiable geographic area.

C. Commercialization of the vote

Section 1973i(c) prohibits "vote-buying" in the broadest terms possible. The statutory text covers any "payment" or "offer of payment" that is made to a would-be voter "for voting," as well as payments that are made to induce unregistered individuals to get onto the electoral rolls.

This aspect of Section 1973i(c) is directed at eliminating commercial considerations from the voting process. *United States v. Bowman*, 636 F.2d 1003 (5th Cir. 1981); *United States v. Malmay*, 671 F.2d 869 (5th Cir. 1982); *United States v. Mason*, 673 F.2d 737 (4th Cir. 1982); *United States v. Garcia*, 719 F.2d 99 (5th Cir. 1983); *United States v. Sayre*, 522 F. Supp. 923 (W.D. Mo. 1981); *United States v. Simms*, 588 F. Supp. 1179 (W.D. La. 1979). The statute rests on the premises that potential voters have a legitimate option to abstain from electoral participation; that those who choose to participate have a right to be

protected from the saturation of the voting process with ballots that have been artificially stimulated through offers or gifts of things of value; and that the selection of the nation's leaders should not degenerate into a spending contest, with the victor being the candidate who can pay the most voters. *United States v. Bowman*. *See also United States v. Blanton*, 77 F. Supp. 812, 816 (E.D. Mo. 1948).

With these considerations in mind, Section 1973i(c) has been applied to any offer or gift which is made to the personal benefit of a would-be voter for the purpose of stimulating participation in the voting process. The statute applies to offers or gifts of money and liquor, to chances to win prizes given out in a lottery-type format, and to offers of welfare benefits such as food stamps. The only limiting characteristic with respect to the statutory concept of "payment" is that the medium of exchange must have some ascertainable pecuniary value. *United States v. Garcia*, 719 F.2d 99 (5th Cir. 1983). Thus, intangible values, ideological ideals, and campaign promises made by or on behalf of candidates are not the basis for vote-buying cases under Section 1973i(c). In addition, the concept of "payment" does not reach things such as rides to the polls or time off from work which are given to make it *easier* for those who have decided to vote to cast their ballots. Such "facilitation payments" are to be distinguished from gifts made personally to prospective voters for the specific purpose of stimulating or influencing the more fundamental decision to participate in an election. *See United States v. Lewin*, 467 F.2d 1132 (7th Cir. 1972).

Section 1973i(c) does *not* require that the offer or payment have been made with a specific motive or intent to influence a federal contest. Indeed, this statute does not even require that the payment be shown to have been made for the purpose of influencing *any* particular contest. For example, *United States v. Bowman* involved a defendant who was convicted under this statute for paying voters to persuade them to go to the polls to vote in a mixed federal/state election. In *United States v. Garcia* the defendant had given food stamps to voters to influence them to vote for candidates running for County Judge and County Commissioner during a Texas primary where there was only a minor federal contest on the ballot, which was of no interest to the defendants at all. *United States v. Thompson*, 615 F.2d 329 (5th Cir. 1980), *United States v. Mason*, *United States v. Carmichael*, and *United States v. Sayre* all involved defendants who had paid voters to cast ballots for candidates running for sheriff. In *United States v. Simms*, the motive of the defendant was to influence votes for a state judicial post. In *United States v. Malmay*, the defendant's motive was to influence votes for a member of the school board. *See also United States v. Blanton*, 77 F. Supp. 812 (E.D. Mo. 1948). All of these cases were considered sufficient under Section 1973i(c), since vote-buying is a pernicious election practice that exposes *all* of the contests occurring at the same time to potential corruption. As long as it can fairly be said

that a given pattern of vote-buying exposed the federal contest to the opportunity or potential for abuse, an offense under Section 1973i(c) is present, even though it cannot be shown that the threat actually materialized. *See generally United States v. Bowman* and *United States v. Carmichael.*

Section 1973i(c) *does* require that the offer or payment have been made in consideration for the performance of one or more steps incident to registering to vote or voting. United States v. Campbell, ___ F.2d ___ (8th Cir. April 29, 1988). Payments made for some other purpose, such as valid remuneration for campaign work, do not violate this statute. *See United States v. Canales*, 744 F.2d 413 (5th Cir. 1984), *cert. denied*, 473 U.S. 906 (1985).

As with the false registration aspect of Section 1973i(c), the Criminal Division has a policy against prosecuting isolated payments under this statute, as well as a policy against prosecuting voters for selling their votes. The customary commercial voting case focuses upon those who seek to stimulate electoral participation by offering or giving things of value to would-be voters, and who do so to a degree sufficient to expose the normal operation of the electoral system to risk. Isolated instances of uncoordinated vote-buying are ordinarily referred to local authorities for disposition under state law.

D. Conspiracy to effect illegal voting

Section 1973i(c) specifically criminalizes conspiracies to encourage "illegal voting." There have to date been no reported decisions interpreting or applying this clause of the statute.

The concept of "illegal voting" is not defined. Since the Federal Constitution specifically entrusts the States with the authority to establish the time, place, and manner of holding elections, most standards, rules, and criteria governing eligibility to vote derive from state and local laws. Almost all the States have statutes requiring voters to be United States citizens, and laws disfranchising people who have been convicted of certain crimes, who are mentally incompetent, or who possess other attributes warranting restriction of civil rights. The "illegal voting" clause of Section 1973i(c) has potential application to those who undertake to register or vote people in conscious derogation of those state laws.

The statute's text requires that the voter(s) involved have been part of the conspiracy charged. This means that cases brought under this clause should include proof that the voter(s) affected were actively aware that they were not eligible to vote, and that they were registering and/or voting "illegally." However, the way in which this clause is phrased contemplates that only the person encouraging an ineligible voter to register or vote is to

be charged. The "illegal voting" clause does not, in the Criminal Division's opinion, criminalize the conduct of the illegal voter himself.

The conspiracy provision contained in Section 1973i(c) applies only to the statute's "illegal voting" clause. It is the Criminal Division's position that conspiracies arising under the other clauses of Section 1973i(c) (*i.e.* those involving vote-buying or false registration information) should be charged under the general federal conspiracy statute, 18 U.S.C. 371.

4) 42 U.S.C. 1973i(e). Voting more than once

Section 1973i(e) was part of the 1975 Amendments to the Voting Rights Act of 1965. This statute makes it unlawful to "vote more than once" in connection with any general, special, or primary election in which a federal candidate is on the ballot. Violations are felonies punishable by imprisonment up to five years and/or fines applicable under 18 U.S.C. 3571.

Like 42 U.S.C. 1973i(c), this statute finds its constitutional roots as a necessary and proper congressional enactment directed at assuring that corrupt electoral practices are kept physically away from elections where federal candidates may be affected thereby. It is not necessary to prove under Section 1973i(e) that the multiple vote in question actually affected a federal contest. *See e.g. United States v. Odom*, 736 F.2d 104 (4th Cir. 1984); *United States v. Lewis*, 514 F. Supp. 169 (M.D. Pa. 1981).

Section 1973i(e) is a particularly useful prosecutive vehicle to address schemes to stuff ballot boxes, or to cast fraudulent absentee ballots. *United States v. Odom*. However, the concept of "voting more than once" is not necessarily restricted to situations where members of a criminal enterprise actually mark more than one ballot. It has been said that, like 42 U.S.C. 1973i(c), Section 1973i(e) is a broad statute, which should be accorded an "extraordinary scope and sweep," *United States v. Lewis*; *United States v. Cianciulli*, 482 F. Supp. 585 (E.D. Pa. 1979). As such, it has potential use in situations involving intimidation of voters, or where it can otherwise fairly be said that a defendant purposely sought to subvert the free exercise of electoral will of other voters, and thereby multiply the value of his own franchise beyond the one vote accorded to him under our electoral system. Nonetheless, most cases that have been prosecuted under this statute to date have involved defendants who actually marked numerous federal ballots in the same election without the active participation of the voters involved.

As with 42 U.S.C. 1973i(c), it is the Department's policy not to use this statute to prosecute isolated instances of multiple voting reflecting

little, if any, potential adverse federal impact. *See e.g. Blitz v. United States*, 153 U.S. 308 (1894). Rather, cases brought under Section 1973i(e) generally involve situations where there is an organized effort to cast multiple votes in a way that involves a systematic perversion of the elective process. Isolated multiple-voting transactions are normally deferred to local authorities for action under appropriate state laws.

5) 18 U.S.C. 597. Expenditures to influence voting

This statute prohibits making or offering to make an expenditure to any person to vote or withhold his or her vote for any candidate for elective office. It also prohibits soliciting, accepting or receiving any such expenditure. It applies to vote-buys directed at all stages of the nomination and election process. The medium or exchange used to buy the votes in question may be anything of value.

"Non-willful" violations of Section 597 are misdemeanors punishable by imprisonment up to one year and/or fines applicable under 18 U.S.C. 3571. "Willful" violations are felonies punishable by imprisonment up to two years. The legal distinction between "willful" and "non-willful" vote-buying is not explained in the statute. The judicial authority which does exist on the subject indicates that vote-buying is a noxious, destructive and corrupt activity that is clearly possessed of moral turpitude. *See e.g. United States v. Blanton*, 77 F. Supp. 812 (E.D. Mo. 1948); *see also United States v. Bowman*, 636 F.2d 1003 (5th Cir. 1981); and *United States v. Carmichael*, 685 F.2d 903 (4th Cir. 1982), *cert. denied*, 459 U.S. 1202 (1983). The Criminal Division considers all vote-buying transactions to be felonies. A prosecutive decision to charge such an offense as a "non-willful" misdemeanor is essentially a matter of leniency.

A literal reading of Section 597 is theoretically capable of reaching anything that can be characterized as an "expenditure" which is made for the purpose of affecting the voting process at any proceeding that can be characterized as an "election." This broad, and constitutionally questionable, interpretation was not always possible. Prior to 1980, Section 597 was subject to a set of general definitions (18 U.S.C. 591) that limited its scope to payments made for the specific purpose of influencing voting decisions with respect to candidates for federal office. *See United States v. Bruno*, 144 F. Supp. 593 (N.D. Ill. 1942); *United States v. Viola*, 126 F. Supp. 718 (W.D. Pa. 1955); *United States v. Foote*, 42 F. Supp. 717 (D. Del. 1942). However, these restrictive definitions were repealed through an obscure subsection of the 1979 Federal Election Campaign Act Amendments, Public Law 96-187. The repeal of this definitional section has thus for the first time left 18 U.S.C. 597 technically unencumbered by

restrictive concepts that formerly confined its scope to the federal context.

It is the position of the Criminal Division that the repeal of this definitional section was not intended by Congress to create in 18 U.S.C. 597 a vote-buying statute of virtually unlimited scope. Rather, it seems that the reason Congress repealed 18 U.S.C. 591 was out of a belief that the definitions contained therein were redundant to the definitional section governing the Federal Election Campaign Act, 2 U.S.C. 431. The House Report accompanying what eventually became Public Law 96-187 states quite plainly that after the repeal of Section 591, the substantive criminal statutes that used to be governed by it would henceforth be subject to the FECA's definitional section. *See* House Report 96-422, 96th Cong., 1st Sess. 25 (1979). The defined terms "candidate" and "expenditure" in 2 U.S.C. 431(2) and 431(9) respectively are clearly confined to a federal context. Accordingly, the Criminal Division continues to view 18 U.S.C. 597 as a narrow vote-buying law that applies only to expenditures made for the specific purpose of influencing electoral decisions with respect to federal candidates.

As such, Section 597 is most useful as a plea bargaining alternative to 42 U.S.C. 1973i(c), which as noted earlier also addresses vote-buying but is a five-year felony offense.

Although Section 597 and 42 U.S.C. 1973i(c) deal with the same basic criminal act — vote-buying — they are technically separate crimes. The fact that an offender violates by a single transaction several regulatory controls devised by Congress does not render the several regulatory controls a single unitary offense. *Gore v. United States*, 357 U.S. 386, 389 (1958). The test for determining whether two similar statutes comprise separate and distinct offenses is whether each provision requires proof of an element that the other one does not. *Blockburger v. United States*, 284 U.S. 299 (1932); *Whalen v. United States*, 445 U.S. 684 (1980). In this regard, Section 597 requires proof of two elements that Section 1973i(c) does not: that the payment in question was made for the purpose of influencing a federal election and that it in fact did influence a federal election at least indirectly. Section 1973i(c) requires proof of one element which Section 597 does not: that the defendant in question acted "knowingly and willfully," with specific intent to violate the law. However, while they are technically distinct offenses, the Criminal Division believes that both statutes should not ordinarily be pled in the same indictment.

6) 18 U.S.C. 1341 and 1343. Mail and wire fraud

The federal mail fraud statute (18 U.S.C. 1341) prohibits using the United States mails to further a "scheme or artifice to defraud." The federal wire fraud statute (18 U.S.C. 1343) prohibits use of interstate wire facilities to aid such a "scheme or artifice to defraud." Violations of these statutes are federal felonies, punishable by imprisonment up to five years and/or by applicable fines imposed under 18 U.S.C. 3571.

Until recently, both the mail and wire fraud statutes were frequently and successfully used by federal prosecutors to attain federal jurisdiction over schemes to corrupt the ballot box. The attractiveness of these two statutes was a result of several features unique to them:

• Since federal jurisdiction rested on Congress' power to regulate the mails and interstate commerce, and not on the protection of the "right to vote," mail and wire fraud cases could be easily brought to redress schemes to corrupt the balloting process in local and state elections where federal candidates were not voted upon. *See e.g. Badders v. United States*, 240 U.S. 391 (1916).

• The concept of "scheme to defraud" had been broadly interpreted by the courts to include nearly any activity that had as its object the procurement, casting and tabulation of ballots that were illegal and void under applicable state law. *See e.g. United States v. Odom*, 736 F.2d 104 (4th Cir. 1984) (scheme to exploit the mentally infirm by casting absentee ballots in the names of nursing home residents); *United States v. Girdner*, 754 F.2d 877 (10th Cir. 1985) (scheme to cast votes for voters who had been paid); *United States v. Castle*, 705 F.2d 459 (6th Cir. 1982) (same); *United States v. States*, 488 F.2d 761 (8th Cir. 1973), *cert. denied*, 417 U.S. 909 (1974) (scheme to forge ballots). In several cases, the mail fraud statute was held to be broad enough to criminalize as "frauds" schemes to deprive the public of information about campaign finance to which the public was entitled under state campaign-finance disclosure statutes. *See e.g. United States v. Curry*, 681 F.2d 104 (5th Cir. 1982); *United States v. Buckley*, 689 F.2d 893 (9th Cir. 1982), *cert. denied*, 460 U.S. 1086 (1983).

• A significant number of ballot-fraud schemes involve absentee ballots, which are usually mailed under state law. Indeed, just a few weeks before the Supreme Court eliminated the application of these statutes to voting schemes to deprive citizens of honest elections, the Second Circuit, in an unpublished opinion, held that the mail fraud statute applied to any fraudulent election practice which resulted in a *certificate of election* being mailed to the winning candidate. Since most States send such notices to electoral victors by mail, this decision meant that 18 U.S.C. 1341 had the

potential of providing a basis for the assertion of federal prosecutive jurisdiction over a large portion of the fraudulent voting activities occurring during nonfederal elections. *See Ingber v. Enzor*, 664 F. Supp. 814 (S.D.N.Y. 1987).

However, the future utility of this prosecutive theory in election crime cases has been placed in serious jeopardy by the recent Supreme Court decisions in *McNally v. United States*, 107 S. Ct. 2875, 97 L. Ed. 2d 292 (1987); and *Carpenter v. United States*, 108 S. Ct. 316, 98 L. Ed. 2d 275 (1987). These cases held that the concept of "scheme to defraud" as used in the mail and wire fraud statutes does not encompass schemes to deprive the public of "intangible rights," such as the right to good government and fair elections. Heretofore, voter fraud cases had been routinely pled as mail and wire fraud offenses involving such "intangible" rights. It is clear that voter frauds can no longer be pled in this way, at least until the mail and wire fraud statutes have been amended legislatively.

Nevertheless, the *McNally/Carpenter* cases may not entirely foreclose the continued use of these statutes in election crime cases. What is now necessary is to locate a *pecuniary* interest which is denegrated by the scheme. Voter fraud schemes usually involve a motive to secure an elected public office. Such positions usually carry with them a salary and various fringe benefits, which are in turn normally paid out of public funds. Thus, it may still be possible to plead voter fraud schemes as endeavors to attain the *salary and emoluments of the office sought* by procuring illegal and void ballots, and by misleading the vote tabulation authority concerning the legality of the ballots involved. One district court has ruled that such a theory of prosecution may not overcome *McNally*, *Ingber v. Enzor*, 664 F. Supp. 814 (S.D.N.Y. 1987), *aff'd on other grounds*, ___ F. 2d ___ (2d Cir. March 1, 1988). However, this decision arose out of a petition for *habeas corpus* relief from a conviction for defrauding the public of its intangible right to a fair and impartial election, the very sort of scheme that *McNally* held did not violate the mail fraud statute. In another case, an indictment pled specifically as a "scheme to deprive the citizens of an electoral subdivision of their right under state law to *control* through the election process how public monies are spent for the salaries of elected public officials" has been recently upheld by a district judge in Kentucky. The indictment in this case is included in Appendix C.

Moreover, at least one district court has analyzed *Ingber* and concluded that a mail fraud charge formulated *solely* as a scheme to obtain through fraudulent ballots the *salary of an elective office* survives *McNally*. *United States v. Johns*, No. 87-376 (E.D. Pa. March 28, 1988). At the time of this writing, it is not known whether this alternative way of pleading election crimes under the mail and wire fraud laws will

succeed in overcoming the hurdle imposed by the *McNally/Carpenter* decisions.

For the foreseeable future, federal prosecutors should consider using the mail and wire fraud statutes in election crime matters only as a last resort, where no other prosecutive theory potentially applies, and where the assertion of federal jurisdiction over a particular matter is considered absolutely necessary in order to redress aggravated and long-standing electoral abuses. Such matters will normally be confined to gross frauds that take place during local elections where no federal candidates are on the ballot, which entail a clear motive to improperly secure an elected position carrying a substantial statutory salary for a specific candidate, and which rely upon the United States mails for transmission of clearly illegal absentee ballots to election authorities for tabulation. *No election crime investigation of any sort — preliminary or full field — should be undertaken which is predicated solely on the mail or wire fraud statutes without the prior approval of the Public Integrity Section.*

7) 18 U.S.C. 1952. The Travel Act

One possible substitute for the mail and wire fraud statutes, in a limited group of vote fraud cases involving vote-buying, is the Travel Act, 18 U.S.C. 1952.

This statute prohibits interstate travel, and the use of the United States mails, to further any one of a number of "unlawful activities" listed in the statute. Violations of the Travel Act are federal felonies, punishable by imprisonment of up to five years, and/or by fines applicable under 18 U.S.C. 3571. Included among the Travel Act's listed predicate crimes is the offense of "bribery" under the laws of the State where the offense occurred. Vote-buying is often such a state "bribery" offense.

It is today well settled that the predicate "unlawful activity" of bribery under state law does not have to constitute the common law crime of bribery. As long as the activity in question is classified as a "bribery" offense under applicable state law, the Travel Act reaches and incorporates it. *See Perrin v. United States*, 444 U.S. 37 (1979). The Travel Act has even been held to incorporate state law offenses that are not themselves felonies. *United States v. Polizzi*, 500 F.2d 856 (9th Cir.), *cert. denied*, 419 U.S. 1120 (1974).

In the past, Travel Act cases have customarily rested on predicate acts of interstate travel or the use of interstate facilities. Since voter fraud is a uniquely localized crime, such interstate predicate acts are rarely present in such matters. Therefore, until recently the Travel Act has not

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been particularly useful in the prosecution of this type of crime. However, in a recent case, *United States v. Riccardelli*, 794 F.2d 829 (2d Cir. 1986), the Second Circuit held that the Act's mail predicate was satisfied by proof of an *intrastate* mailing. In reaching this conclusion, the Court engaged in an exhaustive analysis of the Travel Act's legislative history, and of Congress' authority to regulate the mails.

There is no question that the Second Circuit intended to bring within the Travel Act *all* uses of the mails in the furtherance of the "unlawful activities" listed in the statute. Since "bribery" is one of these offenses, the Travel Act has potential application to vote-buying schemes that rely on the mails for their execution. The Criminal Division believes that the *Riccardelli* case was correctly decided and that it will be accepted in other circuits. Accordingly, the Travel Act should be considered, when necessary and possible, to assert federal jurisdiction over vote buying schemes employing mailed absentee ballots in those States where vote-buying has been defined by the legislature as "bribery."

Two-thirds of the States have statutes which classify vote-buying as a "bribery" offense. Set forth below are these 34 States (plus the District of Columbia and the Territory of Guam) and the citation to the pertinent state statute which describes the purchase of votes as "bribery":

State	*State Code Citation*
Alabama	Ala. Code tit. 17, §23-3 (1977)
Arizona	Ariz. Rev. Stat. §16-1006 (1984)
California	Cal. Election Code §29623 (1977)
Delaware	Del. Code tit. 15, §5123 (1981)
District of Columbia	D.C. Code §1-1318 (1987)
Florida	Fla. Stat. Ann. tit. 9, §104.061 (West 1982)
Guam	Guam Penal Code §53 (1970)
Idaho	Idaho Code §18-2320 (1987)
Indiana	Ind. Code Ann. §3-1-32-35 (Burns 1986)
Iowa	Iowa Code §722.4 & §722.6 (1983)
Kansas	Kan. Stat. Ann. §25-2409 (1986)
Kentucky	Ky. Rev. Stat. §119.205 (1982)
Maryland	Md. Ann. Code Art. 33, §24-2(g) (1983)
Massachusetts	Mass. Gen. Laws Ann. ch. 56, §32 (1978)
Michigan	Mich. Stat. Ann. §6.1932(a) (1983)
Minnesota	Minn. Stat. Ann. Art. 12, § 210A.17 (West Cum. Supp. 1987-1988)
Nebraska	Neb. Rev. Stat. §32-1209 (1984)
New Hampshire	N.H. Rev. Stat. Ann. §659.40 (1986)
New Jersey	N.J. Stat. Ann. §19:34-25 (West 1964)

New Mexico	N.M. Stat. Ann. §1-20-11 (Cum. Supp. 1985)
Ohio	Ohio Rev. Code Ann. §3599.01 (Page 1972)
Oklahoma	Okla. Stat. Ann. tit. 26, §16-106 (West 1976)
Pennsylvania	Pa. Stat. Ann. tit. 25, §3539 (Purdon 1963)
Rhode Island	R.I. Gen. Laws §17-23-5 (1981)
South Carolina	S.C. Code §7-25-50 & §7-25-60 (1987)
South Dakota	S.D. Codified Laws §12-26-15 (1982)
Tennessee	Tenn. Code Ann. §2-19-126 (1985)
Texas	Tex. Penal Code Ann. tit. 8, §36.02 (Vernon 1974)
Utah	Utah Code Ann. §20-13-1 (1984)
Vermont	Vt. Stat. Ann. tit. 17, §2017 (1974)
Virginia	Va. Code §24.1-272 (1985)
Washington	Wash. Rev. Code Ann. §29.85.060 (1965)
West Virginia	W. Va. Code §3-9-12, §3-9-13, §3-9-1 (1987)
Wisconsin	Wis. Stat. Ann. §12.11 (West 1986)
Wyoming	Wyo. Stat. Ann. §22-26-109 (1977)

The vote-buying laws of three States — Colorado, Hawaii and New York — are not clear concerning whether the offense of vote-buying is a bribery crime. *See* Colo Rev. Stat. 1-13-720 (1980), Haw. Rev. Stat. 19-3 (1985), and N.Y. Elec. Law 17-140 & 17-142 (McKinney 1978). The remainder of the States have vote-buying statutes that are not classed as bribery offenses. In those States where vote-buying is not treated as a "bribery" crime, the Travel Act has no potential application.

As with the mail fraud law, each use of the mails in the furtherance of a "bribery" scheme constitutes a separate offense. *United States v. Jabara*, 644 F.2d 574 (6th Cir. 1981). The jurisdictional act does not have to have been actually done by the defendant, as long as it was a reasonably foreseeable consequence of the defendant's activities. *See e.g. United States v. Kelly*, 395 F.2d 727 (2d Cir.), *cert. denied*, 393 U.S. 963 (1968). It is also not necessary that the jurisdictional act have in itself comprised the illegal activity, as long as it promoted it in some way. *See e.g. United States v. Bagnaroil*, 665 F.2d 877 (9th Cir. 1981), *cert. denied*, 456 U.S. 962 (1982); *United States v. Barbieri*, 614 F.2d 715 (10th Cir. 1980); *United States v. Peskin*, 527 F.2d 71 (7th Cir.), *cert. denied*, 429 U.S. 818 (1975); *United States v. Wechsler*, 392 F.2d 344 (4th Cir.), *cert. denied*, 392 U.S. 932 (1968). Indeed, the legal interrelationship between the jurisdictional mailing under the Travel Act and the underlying unlawful scheme is in most instances similar to that under the mail fraud statute. Mailing absentee ballots and absentee ballot applications should

satisfy the Travel Act's nexus requirement, where voting transactions have been compromised by bribery.

An unusual feature of the Travel Act is its requirement of proof of a *subsequent overt act* following the jurisdictional event charged in the indictment. Thus, if a Travel Act charge is predicated on a use of the United States mails, the Government must allege and prove that the defendant, or someone acting on the defendant's behalf, subsequently in time did something which helped further the underlying unlawful activity (in this case voter bribery). The subsequent overt act need not be unlawful in itself. This element has been generally held to be satisfied by the commission of a legal act as long as the act facilitated the unlawful activity. *See e.g. United States v. Davis*, 780 F.2d 838 (10th Cir. 1985).

As previously noted, the Travel Act's utility in the election crime area is generally confined to vote-buying matters in nonfederal elections involving absentee ballots that are mailed. Such matters usually involve a defendant who participates in offering voters compensation for voting, followed by the voter applying for, obtaining, and ultimately casting an absentee ballot. Each voting transaction can involve as many as four separate mailings: the application for absentee ballot is often mailed to the voter, the application is often returned to the election authority by the mails, the mails are frequently used to transmit the ballot package to the voter, and the mails are usually used to return the completed ballot to the election authority for tabulation.

In view of the subsequent overt act requirement, it will usually be preferable to predicate Travel Act counts on mailings which occur *early* in the voting transaction, rather than on the transmission of the completed ballot for tabulation. In this way, it will be possible to satisfy the subsequent overt act requirement by proof that the defendant, or someone acting on the defendant's behalf, subsequently contacted the voter to supervise marking the ballot, at a time *after* the mailing charged took place. However, care should be taken to assure that the voting transaction in question has been corrupted by a bribe offer at the time the mailing charged took place. If, for example, the voter was not led to believe that he would be paid for voting until after he had applied for, and received, his absentee ballot package, the only mailing impacted by bribery would be the transmission of the ballot package to the election authority. In such a situation, it would be necessary to predicate the Travel Act charge on this final mailing, and to identify some other subsequent act to satisfy the Travel Act's overt act requirement.

8) 18 U.S.C. 608. Absent uniformed services voters and overseas voters

This is a new statute enacted in 1986 to implement provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973cc *et seq.*

Subsection (a) of Section 608 makes it a federal crime to deprive, or attempt to deprive, any person of a right guaranteed by the Uniformed and Overseas Citizens Absentee Voting Act. This is a civil rights law which is enforced by the Criminal Section of the Civil Rights Division.

Subsection (b) of Section 608 makes it a federal felony to furnish any false information to establish eligibility to vote under the Uniformed and Overseas Citizens Absentee Voting Act, or to pay or offer to pay any person for voting under this Act. Since this Act applies only to voting in elections where federal candidates are on the ballot (*i.e.* "mixed" elections), 18 U.S.C. 608(b) merely duplicates 42 U.S.C. 1973i(c), which also forbids furnishing false information or paying people to vote in mixed elections. Since the penalties for the two offenses are the same, 18 U.S.C. 608(b) should be used to addressed fraudulent registration and vote-buying that involves a voter casting a ballot pursuant to the Uniformed and Overseas Citizens Absentee Voting Act.

9) 18 U.S.C. 594. Intimidation of voters

Section 594 is a relatively narrow law which prohibits the intimidation or coercion of voters for the purpose of interfering with the right to vote for a candidate for federal office at any election held solely or in part for the purpose of selecting a federal candidate. The statute is not applicable to primaries. It is a misdemeanor, violations of which are punishable by up to one year in prison and/or a fine imposed pursuant to 18 U.S.C. 3571.

Section 594 is the only federal crime dealing specifically with non-violent voter intimidation. The prohibition against voter intimidation contained in the Voting Rights Act, 42 U.S.C. 1973i(b), has a broader scope. However, Section 1973i(b) is enforced only through civil penalties pursuant to 42 U.S.C. 1973j(d). It has no self-contained criminal penalty, nor is it covered by the Voting Rights Act's residual criminal penalty in 42 U.S.C. 1973j(c).

In appropriately aggravated situations, voter intimidation may be prosecuted under 18 U.S.C. 245(b), 18 U.S.C. 241, or possibly as multiple-voting offenses under 42 U.S.C. 1973i(e). Where something of value is

offered or given to the voter, the matter should be prosecuted under the vote-buying statutes — 42 U.S.C. 1973i(c) and 18 U.S.C. 597.

10) 18 U.S.C. 245(b)(1)(A). Federally protected activities

This statute prohibits interference by *violence or threats of violence* with the exercise of one's right to vote, to run for office, or to be a poll watcher or other election official, in any federal, state, or local election. It does not cover threats or retaliation taken against campaign workers for or because of their campaign-related activities.

Prior to commencing any prosecution under this section, the Attorney General or Deputy Attorney General must certify in writing that in his judgment prosecution by the United States is "in the public interest and necessary to secure substantial justice." Section 245(a)(1). To satisfy this statutory criteria of federal need, a matter must ordinarily involve conduct that directly interfered with the integrity of a federal election, or that entailed an assault on a federal candidate. As a general principle, acts of violence committed in the context of election campaigns are preferably prosecuted by local authorities under applicable state laws.

Violations of Section 245(b)(1)(A) are misdemeanors, punishable by imprisonment up to one year and/or the fines applicable under 18 U.S.C. 3571, if no injury occurs. If injury results, this offense is a felony punishable by imprisonment up to 10 years. If the victim dies, the defendant may be imprisoned for life.

11) 18 U.S.C. 592. Troops at polls

This statute makes it unlawful to station troops or "armed men" at the polls in a general or special election, except when necessary "to repel armed enemies of the United States." It is a felony statute and violations are punishable by up to five years in prison and/or fines imposed under 18 U.S.C. 3571.

The statute is not applicable to primaries. It has been interpreted by the Department of Justice as prohibiting special agents of the FBI from conducting investigations within the polls on election day.

12) 18 U.S.C. 593. Interference by Armed Forces

Section 593 prohibits members of the Armed Forces from interfering with any voter, or the election process, in any general or special election. The statute is a felony, and violations are punishable by imprisonment for up to five years and/or a fine applicable under 18 U.S.C. 3571.

13) 18 U.S.C. 596. Polling Armed Forces

Section 596 prohibits any person from polling any member of the armed forces with reference to his or her choice of, or vote for, either federal or non-federal candidates. "Polling" is defined to include questioning which implies that an answer is compulsory. It is a misdemeanor statute, and violations are punishable by up to one year in prison and/or an appropriate fine under 18 U.S.C. 3571.

14) 18 U.S.C. 609. Use of military authority to influence vote of member of Armed Forces

This is a new criminal statute that was enacted in 1986 to reach certain types of voter intimidation within the military.

It prohibits members of the United States Armed Forces from misusing military authority to coerce subordinate ranking members in connection with voting for any type of candidate, federal, state or local. It also prohibits military superiors from requiring subordinates to march to polling places. Violations are federal felonies punishable by imprisonment for up to five years, and/or by a fine under 18 U.S.C. 3571.

Section 609 is one of the few federal criminal laws dealing with fraudulent voting practices which specifically extends to nonfederal elections. It achieves this result because it rests on Congress' authority to regulate the conduct of the military, rather than on its authority to regulate the election process. Section 609 is also one of the few federal laws dealing with the sensitive issue of voter intimidation.

15) 18 U.S.C. 599. Promise of appointment by candidate

This statute prohibits a candidate for federal office from promising appointments to any public or private position or employment in return for "support in his candidacy." It is one of the few federal criminal laws specifically addressing campaign-related activity. Non-willful violations are misdemeanors, punishable by imprisonment for up to one year. Willful violations are felonies, punishable by imprisonment up to two years. The functional difference between "willful" and "non-willful" offenses is not explained in the statute. The penalty for both types of violations may also include a fine applicable under 18 U.S.C. 3571.

Section 599 is a class statute that applies only to the actions of candidates for federal offices.*

This statute has potential utility in situations where one candidate attempts to secure the withdrawal of an opponent by offering him a public or private *job*. (*See also* 18 U.S.C. 600, discussed *infra*.) It also applies to offers of jobs to secure political endorsements. However, Section 599 is not sufficiently broad to reach offers or payments of *money* to secure withdrawal or endorsements. Such matters are prosecutable federally, if at all, only as reporting violations of the Federal Election Campaign Act, 2 U.S.C. 434(b) and 437g(d).

16) Campaign Dirty Tricks

With rare exceptions, federal prosecutions in the "vote fraud" area are confined to corrupt manipulations of the balloting process itself. Federal criminal law enforcement generally does not intervene in the tactics, deeds, or rhetoric of candidates, or those representing candidates, unless those activities become so egregious that they violate specific federal criminal laws (*e.g.* arson, theft, bribery, *etc.*).

The federal mail fraud law was never used to prosecute allegedly false campaign rhetoric; 18 U.S.C. 241 and 242 have never been asserted to criminalize incidents not directly bearing on the balloting process itself; and 18 U.S.C. 245(b)(1)(A) reaches only incidents that entail threats or use of force. The former federal statute that for many years addressed the "willful" concealment of the sponsorship of scurrilous campaign materials, 18 U.S.C. 612, was effectively repealed by the 1976 Amendments to the Federal Election Campaign Act. The only criminal statutes presently in the United States Code specifically dealing with the subject of campaign tactics and practices are 18 U.S.C. 599, discussed above, and the following two subsections of the Federal Election Campaign Act:

2 U.S.C. 441d requires that literature "specifically advocating the election or defeat of a clearly identified candidate" (*i.e.* one running for federal office) contain an attribution clause identifying the candidate or the political committee responsible for it. The content of the material in question must expressly, and quite specifically, call for the candidate's election or defeat, and the candidate at whom the message is directed must be plainly mentioned. This statute does not cover anonymous literature

*Like 18 U.S.C. 597, Section 599 used to be governed by the definitions in 18 U.S.C. 591, through which its scope was limited to federal races. The Criminal Division does not consider that by repealing the Section 591 definitions Congress intended to broaden the scope of Section 599 to include nonfederal candidates. *See* discussion of this issue, *supra* at pages 21-22.

that leaves to inference the identity of the candidate at which its message is directed, or which does not clearly state that voters should cast ballots for or against that candidate. *Federal Election Commission v. C.L.I.T.R.I.M.*, 616 F.2d 45 (2d Cir. 1980). Moreover, the Federal Election Commission, acting pursuant to its advisory opinion authority conferred by 2 U.S.C. 437f, has excluded several categories of campaign advocacy (such as bumper stickers and buttons) from the reach of this law. To be potentially prosecutable as a crime under the FECA's limited criminal penalty, 2 U.S.C. 437g(d), activity violative of this narrow statute must have been committed with specific "willful" intent, and it must have entailed the expenditure of $2,000 or more per year in connection with the publication and distribution of the offending literature. If both of these elements are satisfied, violations of Section 441d may be punishable by one year imprisonment and/or fines applicable under 18 U.S.C. 3571.

2 U.S.C. 441h prohibits the fraudulent misrepresentation of authority to speak for a candidate running for federal office. This statute was first passed in 1976 to address the campaign "dirty tricks" in which Donald Segretti had engaged. It covers situations where a representative of one candidate is clandestinely infiltrated into the campaign of an opposing candidate for the purpose of embarrassment or campaign sabotage. As with Section 441d, violations of Section 441h are subject to the enforcement machinery contained in the Federal Election Campaign Act. However, unlike Section 441d, a violation of Section 441h may be prosecuted criminally without regard to the amount of money that was expended on the offending activity. 2 U.S.C. 437g(d)(l)(C). This statute covers only activity directed at sabotaging the campaigns of candidates for federal office. Violations are misdemeanors subject to the same penalties as violations of Section 441d. The Criminal Division believes that Section 441h was intended by Congress to be the exclusive criminal remedy for the subject of campaign sabotage.

17) Alien Voting

Federal law does not require that persons be United States citizens in order to be eligible to vote. The qualifications which an individual must possess in order to be eligible to vote, and the procedures for registering to vote, are matters which the Federal Constitution leaves to the States. Several constitutional and statutory provisions do exist which prohibit the States from exercising this power to deprive "citizens" of the franchise on account of various factors: *e.g.* U.S. Const. amend. XV - race; U.S. Const. amend. XIX - sex; U.S. Const. amend. XXIV - payment of poll tax; U.S. Const. amend. XXVI - age; 42 U.S.C. 1973aa-1 *et seq.* - residency in excess of 30 days; 42 U.S.C. 1973bb *et seq.* - age; 42 U.S.C. 1973dd-1 *et seq.* - overseas residence. However, neither the Federal Constitution, nor

any provision of federal statutory law, affirmatively requires that prospective voters be United States citizens, prohibits the States from enfranchising noncitizens, or requires voter registrars to inquire into the citizenship status of persons desiring to register to vote.

A) 18 U.S.C. 911

Most of the States have chosen to require United States citizenship as a prerequisite for voter registration. Some, but not all, of the States imposing citizenship requirements implement this prerequisite through voter registration forms that clearly alert prospective registrants of the citizenship requirement, and require registrants to affirmatively assert their citizenship. In those States having clearly implemented citizenship requirements, noncitizens who illegally register and vote may be prosecuted federally under 18 U.S.C. 911. Section 911 prohibits the knowing and false assertion of United States citizenship by an alien. Violations of this law are federal felonies, punishable by imprisonment for up to three years and/or by fines imposed pursuant to 18 U.S.C. 3571. Convictions under Section 911 require proof that the alien was actively aware of his noncitizenship status, and that possessing that knowledge he affirmatively asserted citizenship. *See e.g. United States v. Anzalone*, 197 F.2d 714 (3d Cir. 1952); *United States v. Franklin*, 188 F.2d 182 (7th Cir. 1951); *Fotie v. United States*, 137 F.2d 831 (8th Cir. 1943).

B. 42 U.S.C. 1973i(c)

The active solicitation of aliens to register or to vote in derogation of a state-imposed citizenship requirement may be prosecuted under the clause of 42 U.S.C. 1973i(c) which addresses conspiracies with voters to effect "illegal voting." Violations of this provision are five-year felonies. However, as noted in the discussion above, this particular clause of Section 1973i(c) applies only to conspiratorial situations; as such, it is not available for use against alien voters who act alone, and it addresses only the conduct of the recruiter, not that of the alien voter. The false registration clause of 42 U.S.C. 1973i(c) does not have easy application to alien-voting transactions, since it is limited to three discrete classes of false representation: name, address, or period of residence in the voting district. Alien voters rarely give false names or addresses when registering, and the vast majority of them have a legitimate claim to "residence" within the voting district where they seek to vote.

C. Isolated Incidents

Alien voter cases are an exception to the general rule that federal vote-fraud prosecutions are not usually based on isolated, illegal voting transactions. Under appropriately aggravated facts, federal prosecution of

a single uncoordinated instance of alien voting may well be justified. Such matters involve a federal interest in the integrity of the nation's citizenship laws that is separate from the federal interest in the integrity of the balloting process.

18) Jurisdictional Summary

Since the United States Constitution leaves the administration of the elective process principally to the States, many of the federal criminal statutes discussed above do not apply to all elections. Indeed, many apply only to elections where federal candidates are on the ballot, and a few of them require proof that the fraud in question either was intended to influence balloting for a federal office, or at least indirectly affected the vote count for a federal candidate.

For federal jurisdictional purposes, there are essentially three types of elections:

- "Federal" elections, where all of the candidates on the ballot are running for either Congress or the Presidency;

- "Mixed" elections, where candidates running for federal office are being voted upon simultaneously with candidates running for nonfederal offices; and

- "Local" elections, where no candidates for federal office are on the ballot, and only contests for local, municipal and/or state offices are voted upon.

There are very few federal criminal statutes that apply to voter frauds which take place during purely *"local"* elections. The main statutory tools which had allowed federal prosecutors to get involved in local election matters were the mail and wire fraud statutes. As discussed above, *McNally v. United States*, 107 S. Ct. 2875, 97 L. Ed. 2d 292 (1987), has drastically curtailed the use of these statutes to address local vote fraud. Unless and until federal legislation is enacted to expand federal prosecutive jurisdiction in local election matters where the mails or interstate facilities are used, the only statutory theories which are clearly available at present for use in such cases are 18 U.S.C. 241 and 242 (which apply to schemes to corruptly exploit state authority to stuff ballot boxes or to improperly notarize ballots in derogation of the "one-person-one-vote" principle); 18 U.S.C. 1952 (which applies to schemes to use the mails in the furtherance of vote-buying activities in those States that treat vote-buying as a "bribery" offense); 18 U.S.C. 911 (which forbids the fraudulent

assertion of United States citizenship); and 18 U.S.C. 609 (which forbids coersive voting practices within the military).

Where federal candidates appear on the ballot simultaneously with nonfederal ones, *i.e.* in *"mixed"* elections, the number of criminal statutes available to the federal prosecutor is much greater. In addition to the theories discussed in the preceding paragraph, the following statutes can be used to assert federal jurisdiction over voter frauds in "mixed" elections:

- 42 U.S.C. 1973i(c), which prohibits payments for registering or voting, fraudulent registrations, and conspiracies to cast "illegal" ballots in violation of pertinent state laws;

- 42 U.S.C. 1973i(e), which prohibits multiple voting;

- 18 U.S.C. 245(b)(1)(A), which prohibits physical threats or reprisals against candidates, voters, poll watchers and election officials; and

- 18 U.S.C. 608(b), which prohibits vote-buying and false registration under the Uniformed and Overseas Citizens Absentee Voting Act.

Finally, where it is possible to demonstrate factually that fraudulent voting activity adversely affected a "federal" election contest, the following statutory theories are available for use in addition to those discussed in the paragraphs above:

- 18 U.S.C. 597, which forbids expenditures to influence voting for federal candidates;

- 18 U.S.C. 594, which forbids intimidating voters in connection with balloting for federal officers; and

- 18 U.S.C. 241 and 242, which forbid fraudulent conduct that adversely impacts on the federal right to vote for federal officers.

19) 42 U.S.C. 1974. Retention of voting records

The voting process routinely produces literally reams of documents and records. These range from such things as registration cards to absentee ballot applications, from ballots to tally reports, from poll lists to certificates executed by voters who request assistance in voting. As will be explained more fully in Chapter Five, voting documents and records such as these usually play an important — and sometimes a critical — part in

the detection, investigation and prosecution of voter fraud offenses. It was for this reason that Congress in 1960 enacted legislation aimed at requiring election officers to retain certain records. These important document retention provisions are codified at 42 U.S.C. 1974 through 1974d, and "willful" violations of them by election officers and clerks can be prosecuted as federal misdemeanors. However, the significance of these retention provisions to the federal prosecutor lies more in their protection of important evidence than in their utility as a vehicle to prosecute corrupt election officers. The Criminal Division's experience is that most election officers eagerly cooperate and maintain voting documents that fall within the protection these provisions provide.

The relatively brief document retention periods imposed by state laws (generally 60 to 90 days) are not usually long enough to assure that necessary voting records will be preserved until more subtle forms of federal civil rights abuses and election crimes have been detected. It normally takes longer than 90 days for evidence to surface suggesting that fraudulent voting practices took place in connection with a given election, or that federally secured voting rights were violated. Accordingly, Congress passed 42 U.S.C. 1974 *et seq.* to assure that voting documentation is preserved for a sufficient period of time to permit the federal government to discharge its limited but important responsibilities in the election area.

Section 1974 states that election administrators are required to preserve *for 22 months* "all records and papers which came into (their) possession relating to an application, registration, payment of poll tax, or other act requisite to voting." This retention requirement applies only to those elections where candidates for federal offices (*i.e.* Members of Congress, and/or Presidential Elector) were voted upon. It does not apply to local or state elections, unless those elections take place simultaneously with balloting for federal offices.

Since the purpose of this law is to assist the Federal Government in discharging its law enforcement responsibilities in connection with civil rights and election crimes, its scope must be interpreted in keeping with that objective. As such, all documentation that may be relevant to the detection and/or prosecution of federal civil rights or election crimes is required to be maintained intact for the 22-month federal retention period, as long as it was generated in connection with an election which was held in whole or in part to select federal candidates.

Specifically, the Department of Justice interprets this law to cover voting registration records, poll lists and similar documents reflecting the identity of voters casting ballots at the polls, applications for absentee ballots, all envelopes in which absentee ballots are returned for tabulation,

documents containing oaths of voters, documents relating to challenges to voters or to absentee ballots, tally sheets and canvass reports, records reflecting the appointment of persons entitled to act as poll officials or poll watchers, and computer programs utilized to tabulate votes electronically. In addition, it is the Department's view that the phrase "other act requisite to voting" as it is used in Section 1974 requires the retention of the *ballots themselves*, at least in those jurisdictions where a voter's electoral preference is manifested by marking a piece of paper or punching holes in a computer card.

Failure to comply with these federal retention requirements can involve federal criminal penalties. Section 1974 provides that any election administrator or document custodian who willfully destroys federal election ballot documentation prematurely can be subjected to a fine of up to $1,000 and/or imprisonment for up to one year. Under Section 1974a, persons who are not election administrators who willfully steal, destroy, conceal, mutilate or alter federal voting documentation are subject to similar criminal penalties.

POLICY AND PROCEDURAL CONSIDERATIONS

The recent dimension of election fraud as a national problem, and the development of legal theories through which federal criminal redress may be obtained against those who commit such crimes, have made this subject a priority area of federal law enforcement.

Election irregularities range from minor infractions such as campaigning too close to the polls, to sophisticated criminal enterprises directed at assuring the election of corrupt public officials. Viewed in its entirety, the subject area is far too extensive to be thoroughly addressed through the federal criminal justice system. Moreover, the fact that the Constitution expressly leaves to the States primary responsibility for the conduct of elections raises federalism questions that make federal intervention in all but the most serious of these matters inappropriate. Accordingly, the posture which the federal prosecutor has assumed in this area over the years has been to leave primary responsibility for the conduct of elections, and correction of election irregularities, to the States. The Federal Government enters this field deferentially, and only when federal involvement is either necessary to vindicate paramount federal interests, or as prosecutor of last resort to redress long-standing patterns of egregious electoral abuse.

In this regard, the Department of Justice receives and processes literally hundreds of complaints annually involving one form or another of election abuse. The vast majority of these complaints are summarily closed

without any investigation. The most common bases for these summary closings are lack of an adequately pressing reason for federal intervention, as well as the absence of any readily ascertainable legal theory through which a federal criminal case might be brought.

Determinations concerning the appropriateness and the form of federal intervention in election matters are based first on the placement of the fact pattern within one of four categories of aggravation, and second upon a consideration of other relevant factors.

Categories of Election Fraud Matters

The four categories of election fraud matters are distinguished from one another by the degree of actual adverse federal impact that is present in a given fact situation. In descending order of importance, they are as follows:

Category #1

This category includes all election fraud matters that reflect a pattern of conduct which has as its object affecting the outcome of federal contests for Congressmen, Senators or President. Under Section 104 of the 1974 Federal Election Campaign Act (Public Law 93-443, 2 U.S.C. 455), federal laws preempt state laws in all such instances. Thus, when a case falls in this category, federal intervention is virtually mandatory.

Category #2

This category includes all patterns of electoral abuse which occur in the setting of a mixed election, which can be shown to have impacted adversely upon the outcome of a federal contest, but which were directed at improperly affecting the outcome of state or local contests.

Category #3

This category includes all patterns of electoral abuse which occur in the setting of a mixed election, but where the fraud in question cannot be shown to have impacted adversely upon a federal contest.

Category #4

This category includes all the remaining situations in which a pattern of electoral abuse occurs during an election where federal candidates were not on the ballot.

It is readily apparent that the actual federal interest is much greater in Category #1 matters than it is in Category #2 matters, and that it is greater in Category #2 matters than it is in Category #3 matters. It is also apparent that there is little, if any, federal interest or impact in

Category #4 matters. Concomitantly, the number and severity of federal criminal statutes which address matters in Categories #1 and #2 (where an actual federal impact can be demonstrated) are substantially greater than the prosecutive tools available to reach cases in Category #3 (where no actual federal impact can be shown).

The category of federal aggravation presented by a given matter is the most important consideration in determining whether federal intervention is appropriate. We intercede in all Category #1 cases. We intercede in Category #4 matters only to redress long-standing patterns of gross electoral abuse where state enforcement is not a viable prospect. Whether we intervene in Category #2 or Category #3 matters depends upon an analysis of the factors, discussed below, which color the degree of actual federal impact present.

Other Factors Bearing On Intervention In Election Abuse Matters

Since most election fraud matters which come to the Justice Department's attention fall into Categories #2 or #3, it has been necessary for the Department to develop a procedure for identifying other relevant factors, and for applying them consistently on a nationwide basis, to the election fraud complaints that we receive. This analysis involves a four-step process:

First, geographic areas are periodically identified where abuses of the franchise have been shown to present a particularly acute systemic problem. These determinations are made on the basis of the incidence of serious complaints, the societal impact flowing from the pattern of abuse, and the capacity of local or state law enforcement to address the problem. The views of the Bureau and of local United States Attorney personnel are solicited in setting priority areas.

Second, efforts are made to maximize the flow of complaints concerning election abuses to federal authorities. This is done by encouraging an activist posture on the part of the Bureau and the United States Attorneys during important federal elections, and through encouraging United States Attorney and Bureau personnel to conduct expeditious preliminary investigations in these matters with a view to developing adequately specific information concerning a pattern of conduct.

Third, an effort is made to determine whether a pattern of election abuse is functionally related to a *pattern* of local corruption, or other criminal activity in a given area.

Fourth, the local United States Attorney and Bureau personnel are consulted concerning the need for federal intervention, and the availability of United States Attorney personnel to prosecute any completed cases which might result from a federal investigation.

Seizure of Ballot Materials

Federal custody of ballot materials is normally obtained through subpoena. Except in rare cases of extreme urgency, such subpoenas must be approved beforehand by the Public Integrity Section. Subpoenas for election records which are needed to protect their integrity may be authorized telephonically.

Extreme care must be taken not to deprive local election officials of materials which state law requires they maintain in order to tally, canvass, recount, and certify election results. This objective may generally be achieved by accepting copies in lieu of originals until the State's statutory need for physical custody of the election paraphernalia in question is no longer present.

As noted previously in this chapter, 42 U.S.C. 1974 requires that ballot materials be physically maintained for at least 22 months, if the materials pertain to an election where a federal candidate was voted upon.

Timing and Objective of Election Fraud Investigations

The normal posture of the Federal Government in election fraud matters is to refrain from intervening in an ongoing elective contest in such a way that the investigation is allowed to become a campaign issue. This customarily requires that most, if not all, investigation of a matter await the conclusion of the election involved.

Except where racially motivated conduct is present, there is no statutory basis for federal lawsuits to halt alleged electoral abuse. The role of the Department of Justice in these matters has been not to interfere with ongoing elections, but rather to investigate and prosecute, after the election is over, those who broke the law.

Private suits may be brought in federal court concerning election matters under 42 U.S.C. 1983. However, the Justice Department does not intercede in such private matters.

Except insofar as racial discrimination matters are concerned, the Federal Government does not have authority to station Marshals, FBI Agents or other federal personnel at open polling places. Access to the

polls is controlled by state laws, which generally do not allow federal agents inside the polls. Moreover, the stationing of Marshals and Special Agents within polling places may violate 18 U.S.C. 592.

Preclearance

The indictment and trial of election crime cases is governed by Title 9 of the United States Attorneys Manual, Sections 2.133(h) and 2.133(o), which require that United States Attorney personnel "consult" with the appropriate Section of the Criminal Division in the preparation and prosecution of this type of case.

The investigation of election crime cases by the FBI is governed by Chapter 56 of the Bureau's "Manual of Investigative Operations and Guidelines," which requires that field Agents obtain clearance from Bureau Headquarters before conducting more than preliminary investigations in this type of case.

The following procedures govern the investigation and prosecution of matters involving election fraud:

- Upon receipt of a complaint involving election abuse, United States Attorney personnel may request the Bureau to interview the complainant(s) without Criminal Division clearance. Indeed, this is encouraged.

- United States Attorney personnel may also request the Bureau to conduct preliminary inquiries into election fraud matters without Bureau Headquarter's clearance. A preliminary inquiry in such matters usually includes those investigative steps necessary to "round out" a complaint, so as to permit a determination to be made as to whether a federal criminal offense has occurred, and if so whether that offense is an appropriate subject for federal intervention.

- The Public Integrity Section may also request that preliminary inquiries be made into matters that have been summarily declined by the United States Attorney.

- After a preliminary inquiry has been completed, its results are usually submitted both to Bureau Headquarters and to the Public Integrity Section in the form of a Letterhead Memorandum, together with the United States Attorney's recommendation as to whether or not further investigation is warranted. At this point, if the matter has possible merit as an election offense, the matter is usually discussed informally between the Election Crimes Branch, the Assistant United States Attorney with responsibility for the matter, and the Bureau.

- The Public Integrity Section may request that additional investigation, called an "expanded preliminary" inquiry, be conducted before determining whether a full field investigation is warranted.

- All full field investigations must be approved beforehand by the Public Integrity Section, and by Bureau Headquarters. This preclearance function is usually performed through a letter from the Public Integrity Section to the United States Attorney, which sets forth the statutory violations on which the investigation is to focus and provides a general framework and structure for the investigation. A copy of this authorization letter is sent to FBI Headquarters, and becomes part of the investigative file. Full field investigations will usually not be authorized in election fraud matters without a prior commitment from the United States Attorney involved to prosecute completed cases that the investigation produces.

- All grand jury subpoenas must be approved beforehand by the Public Integrity Section. Such preclearance may if necessary be obtained telephonically, especially in emergency situations where necessary to secure important voting documentation into federal custody. As a rule, the Public Integrity Section will authorize use of grand jury process at the same time that it approves a full field investigation into an election fraud matter.

- All indictments and informations charging election fraud offenses under any of the statutory theories discussed in this Chapter must be presented to and approved by the Public Integrity Section prior to submission to the grand jury.

- It is not necessary for offers of settlement or plea bargains to be approved by the Public Integrity Section. However, United States Attorney personnel are encouraged to consult with the Election Crimes Branch before agreeing to accept a guilty plea, in order to assure that the sentence agreed to is consistent with those negotiated in similar cases elsewhere in the country.

Isolated Transaction Policy

As discussed above, the Criminal Division generally does not favor the prosecution of isolated fraudulent voting transactions under federal laws dealing with electoral abuse. This policy is based partially on constitutional issues that arise when federal jurisdiction is asserted in matters that have only a minimal impact on the overall integrity of the voting process. *See e.g. Blitz v. United States*, 153 U.S. 308 (1894); *In re Coy*, 127 U.S. 731 (1884). It is also based on the inappropriateness of

dedicating federal investigative and prosecutive resources to matters that involve only minimal harm to the integrity of the ballot.

To be approved for prosecution, an election crime matter must usually demonstrate a *pattern* of abuse, involving a scheme to subvert voting transactions on a systematic and organized basis. Isolated instances of illegal voting are usually best deferred to state or local prosecutive authorities.

Like all policies, there are situations where exceptions are justified. For instance, the Criminal Division has recently approved the federal prosecution of several isolated instances of multiple voting in one State, where evidence reflected that multiple voting was an enduring and fairly widespread problem, and where the Secretary of State specifically asked for federal intervention. However, such exceptions are rare.

Non-Prosecution of Voters Policy

The Criminal Division has also followed a long-standing policy of not prosecuting individuals whose only participation in an electoral fraud scheme is that they allowed their votes to be compromised. Examples include persons who permitted their votes to be bought, who impersonated voters on the instructions of others, or who allowed someone else to mark their ballot for them. Since it is usually necessary to secure the cooperation of one party to such a fraudulent voting transaction in order to make out a sufficient criminal case, this Criminal Division policy recognizes that voters are less culpable than those who seek to compromise the franchise of others. Indeed, in many instances the voters are part of the victim class in election fraud schemes.

Exceptions to this policy exist where the voters refuse to cooperate in investigations, where they commit perjury, or where their involvement in the voter fraud scheme extends beyond merely voting (*e.g.* where a paid voter also pays other voters). Exceptions also are made for persons who fraudulently assert citizenship in violation of statutes such as 18 U.S.C. 911, which vindicates a federal interest (*i.e.* citizenship) that is separate from the integrity of the ballot box.

CHAPTER THREE

PATRONAGE AND FEDERAL PROGRAM ABUSE

BACKGROUND

Federal laws dealing with patronage find their common roots in the Pendleton Act of 1883. This landmark legislation was passed in an effort to dismantle the "spoils system" that prevailed in the country at the time. The Act created the Merit Civil Service, which initially was composed of only about 10% of the lower level clerks employed in the Executive Branch, and it established the Civil Service Commission to administer this new category of federal employment.

The Pendleton Act contained four criminal provisions that addressed aggravated forms of patronage, such as political shakedowns of federal employees, political activity in federal buildings, and politically motivated threats or reprisals against federal employees. These statutes are still with us today, and they form the base of the protection afforded to the modern civil service against political abuse.

In 1907, President Theodore Roosevelt promulgated an Executive Order which sought to define the scope of permissible political activity to be allowed to civil servants employed in the Executive Branch. The Order (known as Civil Service Rule No. 1) forbade almost all active campaigning and electioneering by merit civil servants. In the ensuing years, the Civil Service Commission decided approximately 2,000 cases involving disciplinary action taken against civil service employees for alleged violations of this Executive Order. In the process, the scope of what was, and what was not, permissible was substantially refined.

The Hatch Act of 1939 had as one of its principal purposes the codification of the body of administrative case law that had been developed piecemeal under President Roosevelt's Executive Order. This statute, and the regulations promulgated under it, set out in specific detail

the broad range of political activity that is forbidden. *See e.g.* 5 U.S.C. 7323, 7324, and 5 C.F.R. 733.101 *et seq.* These prohibitions pertain to every Executive Branch employee, except those appointed directly by the President, and confirmed by the Senate, and who perform policy formulation functions on a nationwide basis. 5 U.S.C. 7324(d)(3). Punishment for violations of the Hatch Act consists of administrative discipline, and possible termination from federal employment. The Act is enforced by the Office of Special Counsel of the United States Merit Systems Protection Board, which under the 1978 Civil Service Reform Act replaced the Civil Service Commission. 5 U.S.C. 1206(e)(1)(A), 1206(g), and 1207(b).

The broad administrative prohibitions of the Hatch Act are supplemented today by the four original sections of the Pendleton Act that deal with aggravated forms of politicalization of the federal civil service (18 U.S.C. 602, 603, 606, and 607), as well as by several new statutes that were added by the Hatch Act to help abolish political abuses in the administration of federal relief and public assistance programs, which were an outgrowth of the New Deal era. (18 U.S.C. 598, 599, 600, 601, 604, and 605.) In 1976 Congress amended two of these statutes (18 U.S.C. 600 and 601) to substantially broaden their coverage and increase the penalties for violations. Public Law 94-453. In 1980, Congress amended three others (18 U.S.C. 602, 603, and 607) to clarify their application to certain types of activity, and to restrict their reach to federal elective contests. Public Law 96-187.

It is clear today that, except with respect to a limited class of senior government officials who perform "policymaking" functions for elected public officials, patronage and partisan political considerations have no place either in federal employment or in the administration of federally funded programs. Indeed, in extreme cases violations of these patronage laws may overlap with federal conspiracy, fraud and extortion offenses. *See, e.g., United States v. Pintar,* 630 F.2d 1270 (8th Cir. 1980); *United States v. Cerilli,* 603 F.2d 415 (3d Cir. 1979); *Langer v. United States,* 76 F.2d 817 (8th Cir. 1935).

STATUTES

1) 18 U.S.C. 602. Solicitation of political contributions

Section 602 prohibits Senators, Representatives, candidates for Congress, officers and employees of the United States, and persons receiving compensation for services from money derived from the United States Treasury, from knowingly soliciting any contribution from any other such officer, employee or person. The statute applies to contributions made for the purpose of influencing federal elections only. Violations are felonies,

punishable by fines imposed pursuant to 18 U.S.C. 3571 and/or by imprisonment for up to three years.

Section 602 was originally enacted as part of 19th Century legislation aimed at dismantling the spoils system of political patronage. As such, its legislative history reflects that it was Congress' intention to criminalize only aggravated forms of involuntary political "shakedowns," and it is in these terms that the scope of Section 602 has been customarily described by the courts that have interpreted it. *See e.g. United States v. Wurzbach*, 280 U.S. 396 (1930); *Ex parte Curtis*, 106 U.S. 371 (1882); *Brehm v. United States*, 196 F.2d 769 (D.C. Cir.), *cert. denied*, 344 U.S. 838 (1952); *United States v. Burleson*, 127 F. Supp. 400 (E.D. Tenn. 1954).

It is the Criminal Division's position that this statute does not reach the solicitation of *voluntary* political contributions between federal employees.* However, it does reach any situation where factors are present in a political transaction which indicate that the contribution being solicited was less than voluntary, and that the solicited employee was consciously placed in a position where he felt obliged to make the contribution being solicited.

The scope of the class covered by Section 602 was described well in *Burleson, supra*, to include any person who is paid directly from the United States Treasury for services rendered to the Executive, Legislative, or Judicial Branch of the Federal Government. All officers and employees of the Executive Branch, and all Members, officers and employees of the Congress are within the class protected by this statute. However, the statute does not reach persons who are merely paid with federal funds that have lost their "federal" character, such as state or local government employees or persons paid under federal grants. Such persons may be covered under activity that is reached through 18 U.S.C. 600 and 601.

The 1979 Federal Election Campaign Act Amendments, Public Law 96-187, amended Section 602 by making it clear that a person being charged under it had to have been actively aware of the federal status of the person solicited.

The 1979 FECA also made the critical term "contribution" in Section 602 subject to the definition of this term in the Federal Election Campaign Act, 2 U.S.C. 431(8). This definition, in turn, is restricted to activities made for the specific purpose of influencing one or more of the federal contests

*Note that voluntary political transactions between federal personnel may be subject to the related penalties imposed by the Merit Systems Protection Board under 5 U.S.C. 7323.

incorporated in that definition. *See e.g. United States v. Clifford*, 409 F. Supp. 1070 (E.D.N.Y. 1976).

2) 18 U.S.C. 607. Place of solicitation

Section 607 makes it unlawful for anyone to solicit or receive a political contribution in any room or building where federal employees are engaged in the conduct of official duties. It also specifically forbids political solicitations on federal military reservations. The purpose of this statute is to protect the integrity of federal office space from politicalization, and to protect the federal workforce from being subjected to political demands while they are on duty.

The employment status of the parties to the solicitation is immaterial. It is the employment status of the persons who routinely occupy the area where the solicitation occurs that is important. Specifically, this statute reaches all political solicitations which are effected in any office or area where a person paid directly from the United States Treasury for services rendered to the U.S. Government is engaged in the performance of official duties. *See e.g. United States v. Burleson, supra.* In this respect, Section 607 has the same reach as Section 602.

Section 607 reaches political solicitations that are delivered by mail, as well as those that are made in person. *United States v. Thayer*, 209 U.S. 39 (1908). Areas occupied by officers and employees of the Legislative Branch are covered to the same extent as areas occupied by employees of the Executive Branch. However, this statute specifically does *not* reach contributions that are received by congressional staff in their offices, provided there was no request for the contribution to be delivered to such a place, and provided further that the contribution is dispatched quickly to the Congressman's political committee.*

When federal premises are leased or rented to candidates in accordance with GSA or military regulations, they are not considered "federal" for the purposes of this statute. The same holds true for post office boxes. Accordingly, under appropriate circumstances, political events may be held in leased or rented portions of federal premises, and political contributions may be sent to and accepted in post office boxes.

Like Section 602, Section 607 was amended by the 1979 FECA in such a way that the critical term "contribution" is now subject to the definition

*Although Members of Congress are not specifically included in this exception, the Criminal Division believes that Congress intended that Members be permitted to personally receive unsolicited contributions in their offices to the same extent as their staffs may do so.

given the term by the Federal Election Campaign Act, 2 U.S.C. 431(8). In the process, this statute has been narrowed to apply only to transactions made for the purpose of affecting the result of a federal contest.

Section 607 is a felony, violations of which are punishable by imprisonment for up to three years and/or by fines under 18 U.S.C. 3571.

In keeping with the serious character of this offense, the Criminal Division has long held the view that prosecutable violations require proof that the would-be defendant was actively aware of the federal character of the place where the offending solicitation took place, or where the offending solicitation letter was directed. Most matters that have arisen under Section 607 in the recent past have involved computer-generated direct mail campaigns in which solicitation letters are inadvertently sent to prohibited areas. Such matters do not usually present prosecutable violations of this statute. The normal response to them is for the Criminal Division to bring the matter to the attention of the offending political committee with a request that its direct mail lists be purged of addresses containing terms normally associated with the Federal Government. A systematic failure or refusal to comply with formal warnings of this kind can serve as the basis for prosecutive consideration. Prosecutable violations of this statute may also arise from solicitations that can be characterized as "shakedowns" of federal personnel. In this connection Section 607 fills a void that is not covered by Section 602 in those situations where the person doing the soliciting is not a federal employee.

3) 18 U.S.C. 606. Intimidation to secure political contributions

This statute makes it unlawful for a Senator, Representative, or federal officer or employee to discharge, promote or reduce the rank or compensation of any other federal officer or employee for making or failing to make any contribution for any political purpose. It is a felony statute, and violations are punishable by imprisonment up to three years and/or fines under 18 U.S.C. 3571.

The concept of "contribution" in this statute has never been subject to an external definition, and therefore may be accorded a common sense meaning that encompasses donations of anything of value (including services) given to any candidate for any type of elective office. This law reaches any retaliatory change in employment conditions, not just job termination. However, Section 606 does require proof that the job action in question was prompted by the victim's political-giving habits, rather than by some other reason.

Section 606 should be used in preference to Section 602 in those instances where a federal employee is actively threatened to obtain from him or her something that can be characterized as a "political contribution."

In the Criminal Division's view, this old civil service patronage law was never intended to prohibit the interjection of passive political considerations (such as loyalty, ideology or political support) into the hiring, firing or assignment of the small category of federal employees who perform policymaking or confidential duties for the President or Members of Congress. In the Executive Branch, such employees either hold jobs on Schedule "C" of the Excepted Service, which by law may be offered or terminated on the basis of such passive political considerations (5 U.S.C. 2102, 2103, 3301; Executive Order #10577, and Civil Service Rule VI as set out therein), or they hold direct presidential appointments and by statute serve at the pleasure of the President who appoints them. However, Section 606 does protect *all* federal employees from being forced to give money or tangible things of value to political candidates through job-related threats or reprisals.

4) 18 U.S.C. 600. Promise of employment or other benefit for political activity

Section 600 makes it unlawful for anyone to promise any employment or benefit derived from an Act of Congress as consideration, favor, or reward for past or future political activity, or for support or opposition to any candidate or any party in any election. Violations are misdemeanors, punishable by imprisonment up to one year and fines pursuant to 18 U.S.C. 3571. (*See also* 18 U.S.C. 599 and 18 U.S.C. 595.)

Section 600 applies to the interjection of political considerations into the award of any federal benefit or employment. *United States v. Pintar*, 630 F.2d 1270 (8th Cir. 1980). It applies to federally funded jobs, grants and benefits, as well as to federal employment itself. It reaches situations where federal benefits are held out to induce future political activity, as well as those instances where federal benefits are used as patronage rewards for past political fidelity.

In aggravated situations involving widespread patronage abuses, Section 600 violations may also entail conspiracies to defraud the United States in the administration of its federal programs, in violation of 18 U.S.C. 371. *United States v. Pintar.*

In 1976, this statute was amended together with its sister provision, 18 U.S.C. 601. Public Law 94-453. The monetary penalty for violations was

raised at that time from $1,000 to $10,000. The current financial penalty authorized by 18 U.S.C. 3571 is $25,000 for individuals and $100,000 for organizations.

It is the Criminal Division's position that this patronage law does not reach the interjection of passive political considerations (such as loyalty, ideology, or political support) into the hiring of government executives who perform policymaking or confidential duties for elected officials of federal, state or local governments. *See e.g. Elrod v. Burns*, 427 U.S. 347 (1976); *Branti v. Finkel*, 445 U.S. 507 (1980).

5) 18 U.S.C. 601. Deprivation of employment or other benefit for political contribution

Section 601 makes it unlawful for any person knowingly to cause or attempt to cause any other person to make a contribution on behalf of any candidate or political party by depriving or threatening to deprive employment or benefits made possible by an Act of Congress. The statute applies to gifts made to candidates and political parties at the federal, state or local level, and the term "contribution" embraces anything of value, including services. It is a misdemeanor statute, and violations of it are punishable by imprisonment up to one year and/or fines under 18 U.S.C. 3571.

Like Section 600, Section 601 reaches all employment and benefits that are funded by the Congress in whole or in part. The statute is not restricted to federal jobs, although threats to terminate federal employment are specifically covered by it. Section 601 offenses are lesser included crimes within 18 U.S.C. 606 where the threatened employee is a federal civil servant.

Also like Section 600, Section 601 was amended in 1976 through Public Law 94-453, in the process of which the Congress manifested an intent to bar the use of federal benefits and programs as patronage "lugs." The statute therefore reaches all attempts, whether or not successful, to extract political tribute through threats to terminate a benefit the origin of which can be traced to an Act of Congress. In aggravated cases, patterns of patronage abuse violative of Section 601 may constitute frauds on the programs adversely affected, *United States v. Pintar*, 630 F.2d (8th Cir. 1980); *Langer v. United States*, 76 F.2d 817 (8th Cir. 1935); or even extorionate conduct, *United States v. Cerilli*, 603 F.2d 415 (3d Cir. 1979).

The gist of an offense under this statute is the *threat*, and not the termination of the benefit. As with Section 606, a successful prosecution under Section 601 requires proof that the motive for the adverse job action

in question was political, rather than inadequate performance or some such job-related trait.

It is the Criminal Division's view that Section 601 was not intended to prohibit the interjection of passive political considerations (such as loyalty or ideology) into the termination of public employees who perform "policymaking" functions for elected public officials. With respect to such employees, a degree of political loyalty is a necessary aspect of competent performance. The functional distinction is explained in *Elrod v. Burns*, 427 U.S. 347 (1976), a First Amendment case defining the parameters of a public employee's associational right not to be fired because of his political affiliation. *See also Branti v. Finkel*, 445 U.S. 507 (1980).

18 U.S.C. 665(b) parallels 18 U.S.C. 601, and applies where Comprehensive Employment and Training Act (CETA) programs are involved.

6) 18 U.S.C. 595. Interference by administrative employees of federal, state or territorial governments

This statute prohibits any public officer or employee, in connection with an activity financed wholly or partially by the United States, from using his or her official authority to interfere with or affect the nomination or election of a candidate for federal office. This statute is aimed at the *misuse* of official authority. It does not prohibit normal campaign activities by federal, state or local employees that are consistent with the Hatch Act.

Section 595 is a misdemeanor statute, and violations are punishable by up to one year in prison and/or fines authorized by 18 U.S.C. 3571.

Section 595 was enacted as part of the 1939 Hatch Act. Its legislative history reflects that it was intended to reach the activities of all public officials described by its terms, whether elected or appointed, ministerial or policymaking. Thus, an appointed policymaking goverment officer who bases a specific government decision exclusively or expressly on an intent to influence the vote for or against an identified federal candidate may violate this statute.

7) 18 U.S.C. 598. Coercion by means of relief appropriations

Section 598 prohibits the use of funds appropriated by the Congress for relief or public-works projects to interfere with, restrain, or coerce any person in the exercise of his or her right to vote in any election. Violations

are misdemeanors punishable by imprisonment for up to one year and/or fines under 18 U.S.C. 3571.

8) 18 U.S.C. 604. Solicitation from persons on relief

This statute makes it unlawful for any person to solicit or receive contributions for any political purpose from any person known to be entitled to or receiving compensation, employment, or other benefits made possible by an Act of Congress appropriating funds for relief purposes. It is a misdemeanor statute and is punishable by imprisonment up to one year and/or fines under 18 U.S.C. 3571.

9) 18 U.S.C. 605. Disclosure of names of persons on relief

Section 605 prohibits the furnishing or disclosure, for any political purpose, to a candidate, committee, or campaign manager, of any list of persons receiving compensation, employment, or benefits made possible by any Act of Congress appropriating funds for relief purposes. It also makes unlawful the receipt of any such list for political purposes. It is a misdemeanor statute and is punishable by imprisonment up to one year and/or fines under 18 U.S.C. 3571.

10) 18 U.S.C. 603. Making political contributions

This statute prohibits any federal officer or employee, or person receiving compensation for services from money derived from the United States Treasury, from giving political contributions to any other such officer, employee, or person, or to any Senator or Representative in the Congress, *if the person receiving the contribution is his or her "employer or employing authority."* The statute covers contributions for federal elections only, and treats contributions to authorized political committees as tantamount to contributions to the individual who authorized the committee.

It is a felony statute, and violations are punishable by imprisonment up to three years and applicable fines under 18 U.S.C. 3571.

Section 603 was amended in 1980 to reach only a limited class of donations — *i.e.* those made to the donor's "employing authority." Its legislative history reflects a congressional intent to cover all such donations, without regard to the type of employee involved. It applies to all congressional staff, to Presidential and White House employees, as well as to ministerial civil service personnel. *See* 1979 *U.S. Code Cong. and Admin. News* 2860, 2886; Weekly Compilation of Presidential Documents

Vol. 16, No. 2. In both 1980 and 1984, when incumbent Presidents were seeking re-election, the Criminal Division took the position that Section 603, in its present form, forbade all federal Executive Branch personnel from giving contributions to the re-election campaign of the President in question.

11) The Hatch Act

The so-called "Hatch Act" prohibits all federal employees from engaging in the "active management of political campaigns." This term is defined to include all activities that were prohibited to federal personnel in 1939 when the Act became law. The former Civil Service Commission (which is now the United States Merit Systems Protection Board) has promulgated a series of regulations specifying precisely what is, and what is not, "active management of political campaigns." The Hatch Act itself is set forth at 5 U.S.C. 7324 *et seq.*, and its implementing regulations are contained in 5 C.F.R. 733.101 *et seq.*

The activities covered by this legislation include nearly all forms of active partisan campaigning. These limitations on political expression have been twice upheld by the Supreme Court as justified measures to assure the appearance and actually of impartiality in the administration of federal business. *Civil Service Commission v. Letter Carriers,* 413 U.S. 548 (1973); *United Public Workers v. Mitchell,* 330 U.S. 75 (1947).

A 1940 Amendment to the Hatch Act imposed restrictions on political activity by state and local public employees who perform activities financed with federal funds, or who administer federal programs. In 1974, most of these restrictions on political activity by nonfederal personnel were repealed. Today, such nonfederal public employees may do nearly anything politically, except misuse their offices for political ends or be candidates themselves. *See* 5 U.S.C. 1501-1508.

The Department of Justice does *not* prosecute Hatch Act offenses. They are "prosecuted" by the Office of Special Counsel, and they are "tried" before the Merit Systems Protection Board. 5 U.S.C. 1206(e)(1)(A).

Hatch Act offenses are not crimes. They are personnel infractions. Violations of these broad provisions can lead to termination from federal employment, or suspension in the event that the Merit Systems Protection Board specifically recommends a lesser penalty short of termination. 5 U.S.C. 1207(b).

All inquiries concerning the Hatch Act should be directed to the Office of Special Counsel, Merit Systems Protection Board, 1120 Vermont Ave., N.W., Washington, D.C. 20419, (202) 653-7143.

United States Attorney and Bureau personnel should be sensitive to the fact that the federal criminal laws dealing with politicalization of the federal civil service represent, in most instances, merely extremely aggravated violations of the Hatch Act and its regulations. In those instances where there is any doubt concerning whether a specific matter would be more properly disposed of administratively by the Special Counsel or through criminal prosecution by the Justice Department, the Public Integrity Section should be consulted.

POLICY CONSIDERATIONS

The federal laws dealing with politicalization of federal employment, programs, and benefits are likewise a priority area of federal law enforcement. Two relatively recent Supreme Court cases have cast strong criticism on the patronage system, and the recent amendment of two of the laws addressing this sort of abuse has left little doubt of the Congress' desire to see political considerations eliminated from the federal system. *Elrod v. Burns*, 427 U.S. 347 (1976); *Branti v. Finkel*, 455 U.S. 507 (1980); Public Law 94-453, amending 18 U.S.C. 600 and 601. In many cases, the Hatch Act (5 U.S.C. 1501-1508 and 7324-7327) is sufficient to provide appropriate administrative relief in situations where public employees become indiscreetly engaged in politics. However, in cases of gross abuse involving overt political promises or threats of political retaliation against ministerial public servants, criminal redress is both proper and necessary. The same is true for attempts to subvert federal programs for political ends.

The prosecution of these offenses is the responsibility of the United States Attorneys. Investigative jurisdiction over them rests with the Federal Bureau of Investigation, and under certain circumstances with the Inspector General of the agency affected.

All indictments, informations, and criminal complaints filed under these statutory theories must be approved by the Election Crimes Branch of the Public Integrity Section. As with election fraud matters, the purpose of this preclearance requirement is to assure nationwide uniformity in the enforcement of these complicated laws in the setting of what is often highly visible partisan campaigns. All grand jury process directed exclusively at patronage offenses must likewise be approved by the Election Crimes Branch.

CHAPTER FOUR

THE FEDERAL ELECTION CAMPAIGN ACT

The Federal Election Campaign Act (FECA), 2 U.S.C 431 through 455, was enacted in 1972. It codified in one location most of the federal laws dealing with federal campaign financing and public reporting by campaign committees. With very few exceptions, it applies only to financial activity that is intended to influence the nomination or election of candidates running for *federal office* (*i.e.* the Congress or the Presidency).

Unlike other federal election crime statutes, the FECA is primarily a regulatory law which is administered and enforced by an independent agency called the Federal Election Commission (FEC). As will be explained more fully below, federal criminal prosecution for violations of the substantive provisions contained in the FECA are the exception rather than the rule. Most infractions of the Act's *mala prohibita* duties and prohibitions are handled administratively by the FEC. Federal criminal enforcement is reserved for financially aggravated offenses, which are done with conscious awareness of wrongdoing on the part of the subject, and which result in false and fraudulent data concerning illegal campaign financing activities being furnished to the FEC under the FECA's reporting provisions.

The FECA contains two functionally different types of provisions: campaign *financing* statutes, which regulate, limit, and in some cases forbid outright certain types of financial transactions in connection with the federal elective process; and campaign *reporting* statutes, which require that candidates and political committees participating in the federal electoral process publicly disclose the sources and recipients of their funds. These two types of provisions will be discussed separately, followed by a discussion of enforcement provisions and Departmental policies common to both.

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A. CAMPAIGN FINANCING STATUTES

BACKGROUND

Campaign financing statutes regulate the manner in which campaign funds are raised and spent. Federal laws in this area have largely been confined to prohibiting certain types of financial transactions, and quantifiably limiting others, in the interest of deterring actual, as well as perceived, corruption of the electoral process and the public officials the process elects. *See e.g. Buckley v. Valeo*, 424 U.S. 1 (1976); *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

The first of these laws (the Tillman Act) was enacted in 1907, at the prompting of President Theodore Roosevelt. It prohibited corporations from making certain types of contributions to federal candidates. The list of prohibited financial activities was enlarged in 1925 by the Corrupt Practices Act. Emergency legislation enacted during World War II prohibited union participation in federal campaigns, a ban that was made permanent in the Taft-Hartley Act after the War. In 1948, government contractors were added to the list of prohibited sources of federal campaign funds, and between 1948 and 1972 the federal courts attempted to define the constitutional and statutory parameters of these laws. *United States v. C.I.O.*, 335 U.S. 106 (1948); *United States v. Auto Workers*, 352 U.S. 567 (1957); *Pipefitters v. United States*, 407 U.S. 385 (1972).

In 1972, the Congress enacted the first Federal Election Campaign Act (Public Law 92-225). This legislation attempted to redraft the campaign finance statutes so as to codify the substantial body of case law interpreting them that had been developed during the period since 1948. The 1974 Amendments to the Federal Election Campaign Act (Public Law 93-443) added a new series of quantitative limitations on political contributions and expenditures. These limitations were subjected to rigorous constitutional scrutiny by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), a leading First Amendment case which overturned most of the "expenditure" limitations as unconstitutional infringements on First Amendment rights, but left intact the limits on "contributions."

The defects in the law found in *Buckley* were corrected through the 1976 Amendments to the Federal Election Campaign Act (Public Law 94-283), which also transferred nine criminal laws dealing with campaign finance from the Criminal Code (former 18 U.S.C. 608 and 610-617) to the FECA (present 2 U.S.C. 441a-441i). In the process, non-willful violations of these laws were made subject to the new administrative enforcement machinery entrusted to the newly created Federal Election Commission,

and the Justice Department's role in this area was confined to financing offenses that were aggravated in both intent and amount. *See* 2 U.S.C. 437g(a) and 437g(d); *AFL-CIO v. FEC*, 628 F.2d 97 (D.C. Cir. 1980); *United States v. Tonry*, 433 F. Supp. 620 (W.D. La. 1977).

The number and complexity of federal laws dealing with the raising and spending of federal campaign funds have increased substantially as the Federal Election Commission has found its place in the law enforcement community and as the major constitutional issues which permeate this field have been resolved. In keeping with the complexities that these laws present, the most recent amendment to the FECA (Public Law 96-187) reaffirms the principle that technical, unintentional, or unaggravated violations of its terms should be disposed of through means other than the criminal justice system. Accordingly, the role of the Justice Department in this area is to prosecute as crimes only those violations of the Act that are committed with aggravated intent and which involve large amounts of money.

STATUTES

1) 2 U.S.C. 44la. Limitations on contributions and expenditures

Section 441a sets quantitative limits on the amount of money which can be "contributed" to federal campaigns, and which can be "expended" to influence the federal electoral process. These limits are a central feature of the FECA.

In order to understand how the quantitative limits imposed by this section operate, it is first necessary to recognize how the concept of "contribution" differs from the concept of "expenditure" under the FECA. This distinction has constitutional significance because "contributions" may be subjected to much more stringent quantitative regulation than may "expenditures." *Buckley v. Valeo*, 424 U.S. 1 (1976). A "contribution" is a gift or loan by one person or entity to another person or entity to enable the recipient to engage in political speech or activity. 2 U.S.C. 431(8). With "contributions," the recipient determines and controls the use to which the corpus of the gift is put. An "expenditure," on the other hand, is a disbursement made personally and directly by the owner of the funds for political speech or activity. 2 U.S.C. 431(9). With "expenditures," it is the person making the disbursement, not the candidate benefited or affected thereby, who controls and determines the use to which the corpus is put. An ostensible "expenditure" can be transformed into a more heavily regulated "contribution" when the

candidate being benefited either exerts control over the funds involved, or has input into how the funds should be used. 2 U.S.C. 441a(a)(7)(B).

Section 44la contains two separate sets of *contribution* limits. Contributions from "persons" (including individuals, associations, and committees) may not exceed: (a) $1,000 to a candidate per election, (b) $20,000 to a national party committee per year or (c) $5,000 to any other political committee per year. Section 44la(a)(l). Contributions from "multi-candidate political committees" (*i.e.* those registered 6 months with the FEC, that have received contributions from over 50 persons, and that support at least 5 federal candidates) may not exceed: (a) $5,000 to a candidate per election, (b) $15,000 to a national party committee per year or (c) $5,000 to any other political committee per year. Section 44la(a)(2). In addition, individuals are also subject to an overall annual aggregate contribution limitation of $25,000. Section 44la(a)(3).

The above contribution limits do not apply to transfers of funds between national, state, and local party committees. The limits also do not apply to transfers between affiliated political committees (*i.e.* those controlled by the same person or entity). However, all affiliated committees share a single contribution limit with respect to contributions they make to candidates and other committees. Section 44la(a)(5). A separate provision permits the Republican and the Democratic Senatorial Campaign Committees, as well as the national party committees, to contribute up to a combined maximum of $17,500 to any candidate for the Senate during the year in which he or she is standing for election. Section 44la(h).

Under the *Buckley* case, "expenditures" by candidates can be quantitatively limited only if the candidate involved voluntarily elects to participate in a public-funding program. Section 44la(b) therefore only imposes limits on expenditures by presidential candidates who have chosen to receive federal funds for their primary or general election campaign. However, the FECA does not impose limits on expenditures by citizens made independently of the campaign organizations of the candidates being benefited thereby, nor does the Act limit expenditures by congressional or senatorial campaigns that are not eligible for participation in a federal payment program, since under *Buckley* such transactions represent speech that is protected by the First Amendment.

Violations of the statute must have been committed in a "knowing and willful" manner in order to be criminally prosecutable under 2 U.S.C. 437g(d). Accordingly, most of the cases prosecuted under this statute involve grossly excessive transactions that are effected either surreptitiously (*e.g.* through cash or conduits), or in the furtherance of some felonious, "evil" objective (*e.g.* a bribe).

2) 2 U.S.C. 441b. Contributions or expenditures by national banks, corporations, or labor organizations

Section 441b prohibits a national bank or federally chartered corporation from making a contribution or expenditure in connection with any election to federal, state or local office. It also prohibits any state-chartered corporation, or any labor organization, from making a contribution or expenditure in connection with any federal election. Finally, Section 441b makes it unlawful for any officer of a national bank, corporation, or labor organization to consent to a prohibited contribution or expenditure; and for any candidate, political committee, or other person knowingly to accept such a contribution. Section 441b does not apply to, or restrict, the personal political activity of corporate or union officers if that activity is financed exclusively from their personal resources.

The core of this complex statute is its ban on the use of corporate treasury funds, and monies required as a condition for membership in a labor organization, to engage in "active electioneering" in federal campaigns. *United States v. Auto Workers*, 352 U.S. 567 (1957); *United States v. Pipefitters*, 434 F.2d 1116 (8th Cir. 1970), *rev'd on other grounds*, 407 U.S. 385 (1972). It does not apply to the use of such funds to finance communications on any subject between labor unions and their membership, or between corporations and their stockholders. *United States v. Auto Workers*. Nor does it apply to nonpartisan expenditures, or to the costs of publishing statements of editorial opinion in legitimate corporate- or union-owned newspapers. *See United States v. C.I.O.*, 335 U.S. 106 (1948), and 2 U.S.C. 441b(b)(2) through 441b(b)(4).

In 1972, the Supreme Court held that this statute's predecessor, 18 U.S.C. 610, did not forbid corporations or unions from using their treasury money to establish and operate affiliated "political action committees" (PACs), provided the PACs confined their activity exclusively to raising *voluntary* contributions from union members, corporate employees, and members of their respective families. *Pipefitters, supra.* Subsequent FECA amendments have added a complex regulatory scheme to this relatively simple principle. Today, the timing, nature, and scope of corporation and union political activity are regulated in substantial detail both by the statute itself (2 U.S.C. 441b(b)(2) through 441b(b)(4)) and through the regulations promulgated by the FEC under it (11 C.F.R. 114.1 *et seq.*).

In view of the fact that criminal violations of the FECA must have been committed with "willful" intent (2 U.S.C. 437g(d)), the Justice Department prosecutes Section 441b violations only when funds are diverted from the corporate or union treasury, and laundered on their way

to politicians, or where violations of this statute are part of a larger pattern of serious criminal activity.

The purposes served by this statute are to protect the integrity of the federal election system against potential corruption resulting from the influx of vast aggregates of corporate and union wealth, and to protect the interests of minority union members and corporate stockholders. *United States v. Auto Workers*; *Cort v. Ash*, 422 U.S. 66 (1975); *Pipefitters*. In keeping with the first objective, the Supreme Court has distinguished this statute from an unconstitutional Massachusetts law that prohibited corporate contributions or expenditures to influence issue-oriented ballot referenda, where the corporation's objective was not to elect a candidate to office. *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). Accordingly, although Section 441b reaches contributions and expenditures by national banks to local election contests, it does not apply to funds expended in connection with referenda or ballot propositions.

The constitutionality of Section 441b has been frequently litigated. Today it is well established that, except for a limited class of nonprofit corporations established *solely* to promote political ideas,* this statute's broad prohibition on corporate and union political activity conforms to First Amendment considerations. *FEC v. National Right To Work Committee*, 459 U.S. 197 (1982); *Athens Lumber Co. v. FEC*, 718 F.2d 383 (11th Cir. 1983), *cert. denied*, 465 U.S. 1092 (1984); *United States v. Boyle*, 482 F.2d 755 (D.C. Cir. 1973). Moreover, the fact that this statute may treat corporations and unions somewhat differently has been held not to offend the Equal Protection Clause, *International Association of Machinists v. FEC*, 678 F.2d 1092 (D.C. Cir. 1982), *aff'd*, 459 U.S. 983 (1983).

3) 2 U.S.C. 441c. Contributions by government contractors

This statute prohibits any person who has, or who is negotiating for, a contract to furnish material, equipment or supplies to the United States Government, from making or promising to make a political contribution. It has been construed by the Department of Justice and by the Federal Election Commission to reach only donations that are made or promised for the purpose of influencing the nomination or election of candidates for *federal* office. *See e.g.* 11 C.F.R. 115.2. The statute applies to all types of businesses, such as sole proprietorships, partnerships, and corporations. It reaches gifts that are made from the "business" or "partnership" assets of such firms. However, with respect to unincorporated businesses, the FEC has ruled that this statute does not prohibit donations that are made from the "personal" assets of the firm's constituent owners. 11 C.F.R. 115.4.

FEC v. Massachusetts Citizens for Life, Inc., 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986).

Officers and stockholders of incorporated government contractors are not covered by Section 441c, since the government contract is with the corporate entity and not its officers.

Section 441c applies only to business entities that have or are negotiating for a contractual relationship with an agency of the United States. Thus, the statute does not reach those who have contracts with nonfederal agencies to perform work under a federal program or grant. Nor does this statute reach businessmen or professionals who provide services to third-party beneficiaries under federal programs that necessitate the signing of agreements with the Federal Government, such as physicians performing services for patients under the Medicare program.

The same statutory exemptions that apply to Section 441b also apply to Section 441c. Thus, government contractors may make certain types of nonpartisan expenditures, may establish and administer PACs, and may communicate with their officers and stockholders on political subjects.

As with Section 441b, the role of the Justice Department in enforcing this statute is confined to instances of "willful" defiance of the statutory dictates. 2 U.S.C. 437g(d). Other less aggravated violations are handled administratively by the FEC.

4) 2 U.S.C. 441d. Publication and distribution of statements and solicitations

Section 441d requires that any political communication which is made in writing or through a broadcasting station, which (1) expressly advocates the election or defeat of a clearly identified candidate for federal office, *or* (2) solicits contributions for federal campaigns, state who paid for and authorized the communication. If such a communication is *not* authorized by any candidate, the communication must specifically state that it is *not* so authorized.

Section 441d was enacted in 1974 to replace former 18 U.S.C. 612. However, this new "attribution" statute is not as broad as the one it replaced. Section 441d does not prohibit all anonymous campaign materials (as did former 18 U.S.C. 612), but only anonymous literature or advertisements which solicit contributions or which *expressly* advocate the election or defeat of a clearly identified federal candidate.

5) 2 U.S.C. 441e. Contributions by foreign nationals

This statute prohibits any foreign national from making, directly or through any other person, any contribution in connection with any

federal, *state*, or *local* election. It also prohibits any person from knowingly soliciting or accepting such a contribution.

The term "foreign national" is defined to include any person who is a foreign principal within the meaning of the Foreign Agents Registration Act (22 U.S.C. 611), as well as anyone who is neither a citizen of the United States nor an individual lawfully admitted for permanent residence.

6) 2 U.S.C. 441f. Contributions in name of another prohibited

Section 441f makes it unlawful for any person to make a contribution in the name of another person, or for any person to knowingly permit his name to be used to make such a contribution. The statute also prohibits any person from knowingly accepting a contribution made by one person in the name of another person.

As noted earlier, criminal violations of the Federal Election Campaign Act require proof of "willful" intent, *i.e.* conscious defiance of the law. 2 U.S.C. 437g(d); *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101 (D.C. Cir. 1980). The presence of surreptitious execution of an underlying FECA financing offense through use of conduits, in a manner that violates 2 U.S.C. 441f, is one of the principal ways to demonstrate that a defendant acted with the requisite criminal state of mind.

Violations of Section 441f can arise from giving funds to a straw man, for the purpose of having the straw man complete the contribution to a federal candidate. *See e.g. United States v. Passodelis*, 615 F.2d 975 (3d Cir.), *reh. denied*, 622 F.2d 567 (1980). Violations may also occur where an individual reimburses someone who has already given to a candidate, thus converting the original donor's contribution to his own. *See e.g. United States v. Hankin*, 607 F.2d 611 (3d Cir. 1979). Under such circumstances, the motive is usually preservation of anonymity, since the donation will be reported publicly as having been made by the straw man rather than by the true source. The use of straw men is also frequently a means by which a single donor may attempt to give more than the contribution limits in 2 U.S.C. 44la allow.

Although the donor and the conduits are equally liable under Section 441f, the customary approach of the Justice Department to this type of case is to treat the conduits as witnesses against the person who supplied the funds. This approach recognizes the principal purpose of the FECA as a law designed to assure public disclosure of large campaign donations, and to prevent certain types of donations which the Congress has deemed

potentially damaging to the public good. It also is in keeping with the fact that most 441f violations are merely means to other illegal ends.

As the *Hankin* and *Passodelis* cases reflect, prosecutions under this statute can present complex venue questions.

7) 2 U.S.C. 441g. Limitation on contribution of currency

Under Section 441g it is unlawful for any person to make contributions of currency of the United States or of any foreign country to any candidate for federal office which exceed $100. The limitation is cumulative, and applies to the candidate's entire campaign for nomination and election.

The statute does not directly address receiving cash for political purposes. However, campaign agents who knowingly solicit or receive cash in violation of this section may be prosecuted as aiders and abettors under 18 U.S.C. 2.

This limitation on giving cash differs from, and is in addition to, the contribution limitations in Section 44la.

8) 2 U.S.C. 441h. Fraudulent misrepresentation of campaign authority

Section 441h prohibits any federal candidate, or any agent of a federal candidate, from fraudulently misrepresenting himself as having authority to speak or act on behalf of any other candidate or political party. This section also makes it unlawful for anyone willfully and knowingly to participate in, or conspire to participate in, any plan to misrepresent someone as acting for another candidate or party.

The statute is directed at "dirty tricks," such as the infiltration of an opponent's campaign organization for the purpose of *damaging* the opponent's campaign. Unlike most of the provisions of the FECA, Section 441h is not subject to any monetary threshold before criminal jurisdiction attaches. *See* the discussion of campaign dirty tricks, *supra* at pages 32-33.

9) 2 U.S.C. 441i. Acceptance of excessive honoraria

Section 441i imposes limitations on the amount of honoraria which may be accepted by elected or appointed officers and employees of the Federal Government. Such individuals may only accept honoraria which do not exceed $2,000 per appearance, speech, or article. The statute excludes from the limits amounts accepted for travel and subsistence

expenses for the federal official and his spouse or an aide, as well as amounts paid for agent's fees or commissions.

A separate provision which had prohibited receipt of honoraria aggregating over $25,000 per year has been eliminated from Section 441i. This subject is now governed solely by House and Senate Rules.

The FEC has defined "honorarium" to mean a payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration for an appearance, speech, or article. 11 C.F.R. 110.12(b).

Although the honorarium statute is part of the FECA, Congress has specifically exempted honoraria from the definition "contribution." 2 U.S.C. 431(8)(B)(xiv). Thus, an incumbent Congressman running for reelection may accept both a $2,000 "honorarium" and a $1,000 "contribution" from the same person without violating the contribution limit in Section 441a.

10) 2 U.S.C. 439a. Use of contributed amounts for certain purposes

Section 439a establishes principles governing the permissible use of surplus campaign funds donated to federal candidates and the political committees supporting them.

As a general rule, such surplus funds may be used to defray the expenses of the candidate in connection with the discharge of his duties as an elected public official; they may be contributed to charities entitled to tax exempt status under 26 U.S.C. 501(c); they may be transferred to political committees directly affiliated with the national, state, or local apparatus of a political party; or they may be used for "any other lawful purpose." Transfers of surplus campaign funds to political committees affiliated with political parties are also exempted from the contribution limitations contained in 2 U.S.C. 441a, which would otherwise apply to transfers between political committees. 2 U.S.C. 441a(a)(4).

Over the years between 1974 (when this section first appeared in the FECA), and 1979 (when the FECA was last revised), serious questions arose concerning whether the catchall exception allowing the use of surplus funds "for any lawful purpose" permitted candidates to convert these funds to their personal use. The 1979 FECA resolved this ambiguity by specifically providing that as a general rule the personal use of surplus funds is prohibited. However, an exception to this general prohibition exists with respect to personal conversions by Senators and Congressmen

who were Members of the 96th Congress on January 8, 1980, when the 1979 FECA became law. The amended version of Section 439a allows such incumbents to use surplus campaign funds for personal purposes.

B. REPORTING AND CAMPAIGN ORGANIZATION STATUTES

BACKGROUND

The first attempt at requiring federal candidates to disclose the identities of their campaign contributors was contained in the 1925 Corrupt Practices Act, 2 U.S.C. 241 *et seq.* While salutary in its purpose, it was so imprecise and riddled with exceptions that it could be safely honored more in the breach than in the observance.

In the interest of obtaining full financial disclosure from all contenders for federal office, the Congress in 1972 replaced the Corrupt Practices Act with the Federal Election Campaign Act, Public Law 92-225. In its original version, the FECA was largely an attempt to enact an enforceable sunshine law for federal campaigns. However, until the creation of the Federal Election Commission in 1974, the primary enforcement remedy for violations of these disclosure laws was criminal prosecution. This in turn created a situation where most technical violations went unattended for lack of prosecutive merit. Nevertheless, several "Watergate" cases were predicated on the original FECA, and through the testing of the law that ensued, it was found to be sound. *See e.g. United States v. Finance Committee to Re-Elect the President,* 507 F.2d 1194 (D.C. Cir. 1974); *United States v. National Committee For Impeachment,* 469 F.2d 1135 (2d Cir. 1972).

The 1974 FECA (Public Law 93-443) created the Federal Election Commission and gave it broad noncriminal enforcement powers to address, rectify, and where necessary administratively punish *nonfeasant* violations of this *malum prohibitum* regulatory law. These powers were further refined and expanded in the 1976 FECA (Public Law 94-283) and in the 1979 FECA (Public Law 96-187).

Today, the role of the Justice Department in the enforcement of the reporting and organizational requirements contained in the FECA is confined to prosecution of *aggravated violations involving conscious evasion of the law. See generally AFL-CIO v. FEC,* 628 F.2d 97, 100-101 (D.C. Cir. 1980). Primary responsibility for seeing that these statutory requirements are obeyed rests with the Federal Election Commission, which is equipped with appropriate remedies to deal with this type of violation. 2 U.S.C. 437g(a).

Set forth below is a brief description of the reporting and campaign organizational requirements that are contained in the FECA.

STATUTES

1) 2 U.S.C. 431. Definitions

This is the definitional section, applicable to the entire FECA, including the campaign financing statutes discussed earlier. Summarized here are several of the more important terms.

"Election" means any election, convention, or caucus held to nominate or elect a federal candidate for the House, Senate or Presidency. Section 431(1).

A "candidate" is an individual who seeks federal office. An individual is deemed to seek federal office if he has either received contributions aggregating over $5,000, has made expenditures aggregating over $5,000, or has given his consent to another person to do so on his behalf. Section 431(2).

"Federal office" means the office of President or Vice President, Senator or Representative in Congress or Delegate or Resident Commissioner to Congress. Section 431(3).

"Political committee" means any club, association, or group of persons which has received, or which anticipates receiving, contributions exceeding $1,000; or which has made, or which anticipates making, expenditures over $1,000 within a calendar year. It also includes "separate segregated funds" (*i.e.* "PACs") established by corporations and unions regardless of the amounts they receive or spend for political purposes. Section 431(4).

"Contribution" and "expenditure" are critical definitions. Virtually all of the FECA's requirements are phrased in terms of making or receiving "contributions" or "expenditures." These terms include the receipt or disbursement of virtually anything of value "for the purpose of influencing any election for federal office." Section 431(8) and Section 431(9).* These terms are subject to a number of important exceptions, such as volunteer services provided to candidates and committees, unreimbursed travel expenses incurred by volunteers, in-kind donations of homes and refreshments for fundraising purposes, news stories and editorials, legal and accounting services, nonpartisan activity to encourage

*For a discussion of the differences between a "contribution" and an "expenditure," *see* pp. 59-60, *supra.*

registration and voting, partisan activity by state and local party committees for voter registration and get-out-the-vote drives, and communications by organizations to their members on any subject.

2) 2 U.S.C. 432. Organization of political committees

All "political committees" are required to have a treasurer, who must approve all expenditures made by the committee. Section 432(a). Persons who receive contributions on behalf of a political committee must forward them to the committee's treasurer within 10 days. If the contribution is over $50, they must also supply the treasurer with the name and address of the donor. Section 432(b). The treasurer is required to maintain records of all contributions to and expenditures by the committee, including the name and address of anyone making a contribution over $50. Sections 432(c) and (d).

Candidates are required to designate a "principal campaign committee" within 15 days of attaining candidate status. They may also designate subordinate "authorized committees." Section 432(e)(1). Subordinate committees must file required information with the candidate's principal campaign committee, which is, in turn, responsible for consolidating the information thus received and reporting it to the FEC. Section 432(f). An independent committee, *i.e.* one not "authorized" by any candidate, is prohibited from using the name of any candidate in its name; an authorized committee's name must include the name of the authorizing candidate; and a political committee not affiliated with a candidate must identify in its title the connected corporation, union, or other entity which established it. Sections 432(e)(4) and (5).

All political committees subject to the FECA (*i.e.* those supporting federal candidates) must designate a state bank or federally chartered or insured banking institution as their campaign depository. They must deposit all contributions into that depository, and make all expenditures by check from that depository, except for petty cash disbursements up to $100. Section 432(h).

3) 2 U.S.C. 433. Registration of political committees

A political committee must file a statement of organization within 10 days of becoming a political committee, or within 10 days of being designated as a candidate's "authorized committee." Subordinate committees must register with the principal campaign committee of the candidate involved, which in turn must include the pertinent data on the registration statement it files with the FEC. The registration statement must list

information as to its officers, connected organizations, banks used, and the candidate authorizing the committee, if any. Sections 433(a) and (b).

A political committee which has no outstanding debts may terminate its reporting obligations by filing a statement that it will no longer receive contributions or make expenditures. Section 433(d).

4) 2 U.S.C. 434. Reporting requirements

Section 434(a) contains deadlines for the filing by candidates and committees of pre-election, post-election, quarterly, and monthly reports. Section 434(b) sets forth the actual items that must be reported. These include total cash on hand at the beginning of the reporting period, total contributions received and expenditures made during the reporting period and the calendar year, detailed information with respect to contributions and expenditures aggregating over $200 per year, and all outstanding debts owed by or to the political committee.

Persons or committees making "independent expenditures" aggregating over $250 per year (*e.g.* persons or committees who personally pay for things like advertisements in newspapers without consultation or coordination with a candidate's campaign organization) must also submit reports to the FEC. Section 434(c).

5) 2 U.S.C. 437. Reports on convention financing

Section 437 requires that committees or organizations representing a State, political subdivisions of a State, or national political party, report all sources of their funding, and the purpose for which such funds were spent, in connection with the locating and conducting of national nominating conventions.

6) 2 U.S.C. 437c. Federal Election Commission

This section established the Federal Election Commission, which is composed of six voting members appointed by the President, no more than three of whom may be affiliated with the same political party. There are also two nonvoting members: the Clerk of the House of Representatives and the Secretary of the Senate. This section also provides that the FEC shall have exclusive jurisdiction over civil enforcement of the FECA and the public financing provisions of the Internal Revenue Code. Four of the six Commissioners must approve all enforcement and interpretative actions.

7) 2 U.S.C. 437d. Powers of the Commission

Section 437d sets forth the FEC's authority to require written answers and testimony under oath; to issue subpoenas for witnesses and documents; to initiate, defend and appeal civil actions to enforce the FECA; to render advisory opinions; to develop forms and rules; to conduct investigations; and to report apparent violations to the appropriate law enforcement authorities.

8) 2 U.S.C. 437f. Advisory opinions

Section 437f contains the procedures under which the Commission issues advisory opinions concerning the FECA and the Commission's regulations. Any person may request an opinion, the FEC must respond within 60 days (or within 20 days if the request is made by a candidate within the 60-day period before an election), and the opinion must relate to a rule of law contained in the FECA or the Commission's regulations. Requests for advisory opinions are made public, and written comments may be submitted by interested parties. Both requestors and other persons in similar situations may rely on the opinion. These opinions, therefore, have the same practical effect as regulations.

9) 2 U.S.C. 437h. Judicial review

This section establishes procedures for expedited judicial review of issues involving the constitutionality of substantive provisions contained in the FECA. It does not confer standing on those wishing to raise constitutional challenges. Rather, it merely provides a procedure for expedited review of such issues in certain situations. This expedited review provision has been a source of substantial judicial confusion and litigation. *See e.g. BREADPAC v. FEC*, 455 U.S. 577 (1982); *California Medical Association v. FEC*, 641 F.2d 619 (9th Cir.), *aff'd*, 453 U.S. 182 (1981); *Athens Lumber Co. v. FEC*, 531 F.Supp. 756 (M.D. Ga. 1981), *rev'd*, 689 F.2d 1006 (11th Cir. 1981), *rev'd en banc*, 718 F.2d 363 (11th Cir. 1983), *cert. denied*, 465 U.S. 1092 (1984).

10) 2 U.S.C. 438. Administrative provisions

The administrative duties of the FEC are set forth here. They include the duty to prepare forms, publish and make available reports, develop cross-indexing systems, prescribe rules and regulations, publish lists of filers and non-filers, and conduct audits and field investigations.

11) 2 U.S.C. 439. Statements filed with State officers

This section requires that copies of all filings made pursuant to the FECA in Washington, D.C. be filed with the Secretary of State of the jurisdiction from which the candidate (or in the case of political committees, the candidate(s) supported) is standing for nomination or election. The Secretaries of State, in turn, are required to make this information available to the public locally.

C. ENFORCEMENT

2 U.S.C. 437g. Civil and Criminal Remedies

Section 437g contains the machinery through which all violations of the FECA are enforced. It applies to all violations of the Act, including both campaign financing offenses and reporting offenses.

Prior to the 1976 FECA, all violations of the Act were subject to prosecution under a strict liability misdemeanor penal provision, 2 U.S.C. 441 (1972 Supp.). This original penalty section provided no civil sanctions, only criminal ones. Moreover, this criminal liability attached regardless of the degree of criminal intent present, regardless of the motive with which the would-be defendant acted, and regardless of the quantitative amount of funds involved.

Strict criminal liability such as this was not usually a viable or equitable response to conduct that generally involved unintentional infractions of a highly complex regulatory statute. Indeed, the D.C. Circuit specifically addressed this issue, and held that the presence of First Amendment overtones in nearly all FECA violations required at least a showing of "general intent," *i.e.* knowledge of operable facts, in order to support a criminal conviction. *United States v. Finance Committee to Re-Elect the President*, 507 F.2d 1194 (D.C. 1974). The campaign finance provisions that were set forth at 18 U.S.C. 608-617 at the time presented similar problems of imposing strict criminal liability for essentially nonfeasant conduct. Accordingly, the Justice Department adopted a posture in all campaign finance and reporting matters which recognized criminal prosecution as appropriate only in response to those violations which were committed by defendants who had an active awareness that they were doing something wrong, and which entailed more than *de minimus* sums of money.

The 1976 FECA provided an appropriate answer to this enforcement problem. This legislation transferred all of the campaign finance statutes from the Criminal Code to the Federal Election Campaign Act. At the

same time, an important dichotomy was statutorily created between nonfeasant and quantitatively *de minimus* violations on the one hand, and violations committed with "knowing and willful" intent and involving relatively large sums of money on the other hand. The former were expressly made subject to the exclusive jurisdiction of the Federal Election Commission, which was in turn empowered to respond to them through administrative conciliation and civil enforcement. The latter were made subject to a limited criminal misdemeanor provision enforced by the Justice Department. The civil enforcement provisions were codified at 2 U.S.C. 437g(a), while the criminal sanction was initially codified at 2 U.S.C. 441j.

The 1979 FECA further refined the FEC's enforcement procedures, and moved the criminal enforcement provision to 2 U.S.C. 437g(d) without major substantive change. Jurisdictional questions involving the interrelationship between the two types of remedies, and in particular whether a criminal prosecution could be initiated prior to, or in the absence of, an administrative referral from the Commission, were litigated in three cases: *United States v. Jackson*, 433 F. Supp. 239 (W.D.N.Y. 1977), *aff'd*, 586 F.2d 832 (2d Cir.), cert. denied 440 U.S. 239 (1978); *United States v. Tonry*, 433 F. Supp. 620 (W.D. La. 1977); and *United States v. International Union of Operating Engineers*, 638 F.2d 1161 (9th Cir. 1979), *cert. denied*, 444 U.S. 1077 (1980). All three cases held that criminal cases grounded on the FECA's penal section are ordinary federal crimes, and that they may be prosecuted without first having been processed by the Federal Election Commission.

Today, under 2 U.S.C. 437g, criminal violations of the FECA differ from noncriminal violations principally in the degree of criminal intent involved. For an FECA offense to rise to a level that is cognizable under 2 U.S.C. 437g(d), it must have been committed with "knowing and willful" intent. The substantive provisions of the Act are largely regulatory *mala prohibita* prohibitions and duties. There is nothing inherently wrongful or "evil" about the vast majority of the conduct covered by the campaign finance laws. The existence of a statutory specific intent requirement in the setting of laws such as these therefore requires proof either that the would-be defendant had an active awareness that he was violating the law when he committed the transgression in question, or that he was otherwise acting with "evil" motive or purpose. *See e.g. Morissette v. United States*, 342 U.S. 246 (1952); *AFL-CIO v. FEC*, 628 F.2d 97 (D.C. Cir. 1980); *National Right to Work Committee v. FEC*, 716 F.2d 1401 (D.C. Cir. 1983). As a practical matter, such cases are confined to two situations:

1. Those where surreptitious means (such as cash, conduits, or false documentation) are employed to conceal conduct that itself violates one or more of the FECA's substantive requirements. In such situations, proof

exists that a defendant was actively aware he was violating one of the FECA's regulatory prohibitions or duties. An example of this first situation would be the use of conduits to conceal the fact that corporate funds were being infused into a political campaign in violation of 2 U.S.C. 44lb.

2. Those where a substantive FECA violation takes place as a means to a felonious end. An example of this second situation would be the use of corporate cash to pay a bribe to a public official in violation of 18 U.S.C. 201, where the payment is made to a campaign committee as an ostensible campaign contribution.

To be a *criminal* violation of the FECA, the funds involved in the transaction must be at least $2,000. 2 U.S.C. 437g(d). (There is no monetary floor for the imposition of noncriminal administrative penalties by the FEC pursuant to 2 U.S.C. 437g(a).) Thus, if an individual contributed $1,500 to a candidate (which is only $500 over the contribution limit), no FECA crime would exist, even if the violation was knowingly and willfully done.

Venue Over FECA Offenses

The campaign financing statutes are, for the most part, couched in terms of "making" or "receiving" contributions and expenditures. Accordingly, venue is generally determined by where a prohibited transaction was either made or received. While this may present no problems where intra-district or isolated transactions are concerned, a Third Circuit decision has read the concept of "making a contribution" so narrowly that serious difficulties may be encountered in establishing a centralized venue over multi-district FECA violations.

In *United States v. Passodelis*, 615 F.2d 975 (3d Cir.), *reh denied en banc*, 622 F.2d 567 (1980), a presidential fundraiser had been indicted and convicted under present 2 U.S.C. 44la and 44lf for contributing excessive sums of money through conduits located in four States. Venue was laid in the Middle District of Pennsylvania, where the political committee to which these donations were given had its offices and bank accounts. The Third Circuit held that prosecutions of donors under the FECA had to be brought in the District where the donors "made" the prohibited donations, and that this concept did not encompass the district where the *donee accepted receipt* of the corpus of the funds. Just what constituted the "making of a contribution," and precisely when or where the transaction was concluded, were not fully explained by the *Passodelis* Court.

In *United States v. Chestnut*, 533 F.2d 40 (2d Cir.), *cert. denied*, 429 U.S. 829 (1976), the Second Circuit held that the act of "receiving" a

prohibited contribution or expenditure encompassed the donee's acceptance of it. Therefore, multi-district acceptance, or "donee" cases, may be brought in the district where the donee accepted the donation in question.

Venue for reporting offenses lies in the district where the deficient report was prepared, dispatched, or received by the Federal Election Commission. The FEC's offices are in the District of Columbia.

Statute of Limitations for FECA Offenses

The statute of limitations for campaign finance violations is *three years*. 2 U.S.C. 455.

This represents one of the few special statutes of limitations in federal criminal law enforcement, and to our knowledge it is the only one which is shorter than the customary five years. *Cf.* 18 U.S.C. 3282. This short limitation period presents substantial problems to law enforcement in this area. *See United States v. Hankin*, 607 F.2d 611 (3d Cir. 1979).

Alternative Prosecutive Theories for FECA Offenses

The criminal penalty provided in 2 U.S.C. 437g(d) has many features that render it difficult to use in federal criminal prosecutions:

- It purports to reach only *malum in se* activity, and yet it provides for only misdemeanor sanctions.

- It is governed by a special three-year statute of limitations, which frequently expires before the often-complex investigatory process in criminal FECA cases reaches its conclusion.

- It is subject to complex and confusing venue rules.

- It requires that a monetary jurisdictional floor be satisfied, which frequently has no bearing on the criminal culpability of potential defendants.

Accordingly, it is usually worthwhile for federal prosecutors to attempt to use alternative prosecutive theories to reach FECA crimes wherever possible. This task is facilitated by the fact that most criminally prosecutable FECA offenses involve some effort on the part of the prospective defendant to conceal the illegal character of the financial activity in question, and by the fact that such concealment usually causes the recipient political committee to file inaccurate reports with the Federal Election Commission pursuant to the FECA's reporting requirements.

For example, a contributor who wishes to give an excessively large sum to a federal candidate in violation of the federal contribution limit will usually employ conduits to pose as contributors so that the transaction will appear as several small — and lawful — donations, rather than as one large and illegal one. When this takes place, the treasurer of the recipient campaign will report the transaction as several small contributions from the conduits, thus concealing from the FEC and the public the fact that a violation of the FECA's contribution limits has occurred. Since the FEC has enforcement jurisdiction over all such violations, the overall offense is capable of being characterized as a violation of the federal false statements statute, 18 U.S.C. 1001, in that the contributor willfully caused the campaign treasurer of the recipient committee to furnish false information to the FEC, and thereby impeded the Commission's enforcement jurisdiction, as well as its public disclosure responsibilities.

Such a scheme may also be capable of being characterized as a "conspiracy to defraud the United States" in violation of 18 U.S.C. 371, in that making illegal contributions to political committees, in a way that results in their illegal nature being concealed from the FEC, disrupts and impedes the FEC in its statutory task of enforcing the federal campaign financing and reporting laws. *See e.g. Haas v. Henkel*, 216 U.S. 462 (1910), and its progeny.

Schemes to infuse illegal corporate funds into federal campaigns in violation of 2 U.S.C. 441b frequently are executed by disguising the illegal disbursement as a salary, bonus or employee reimbursement expense. Where this occurs, the result is that illegal political disbursements may be claimed as tax deductable business expense items. This in turn, may have federal criminal tax consequences.

Schemes to divert union treasury funds to political purposes in violation of 2 U.S.C. 441b can entail embezzlement offenses under 29 U.S.C. 501. Along similar lines, improper political diversions of bank funds in violation of Section 441b may also involve bank embezzlement offenses under 18 U.S.C. 656. *See e.g. United States v. Barket*, 530 F.2d 181 (9th Cir. 1975), *cert. denied*, 429 U.S. 917 (1976).

Anti-Fraud Provisions of the Public Financing Laws

In appropriate cases, the anti-fraud provisions of the two federal public campaign financing laws can be used as alternatives to the FECA's narrow misdemeanor penalty to prosecute aggravated campaign financing schemes.

In 1976 Congress passed two statutes which authorized public financing for the campaigns of candidates seeking the office of President of

the United States. The Supreme Court in *Buckley v. Valeo* had just upheld the contribution limits of the 1974 Federal Election Campaign Act, but had struck down as unconstitutional the FECA's limits on campaign expenditures by federal candidates. In response to *Buckley*, Congress passed the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031-9042, and the Presidential Election Campaign Fund Act, 26 U.S.C. 9001-9012. These statutes tied eligibility for federal funds to "voluntary" adherence by participating candidates to campaign expenditure limits. This statute thus gave presidential candidates a choice between making unlimited campaign expenditures, on the one hand, or accepting public funds for their campaigns in return for agreeing to abide by expenditure limits, on the other hand.

The "matching payment" statute is applicable to *primary* elections. It provides that, once certain statutory qualifications are met, a candidate seeking nomination to the office of President is entitled to receive matching payments from the United States Treasury for his campaign, up to 50% of his total campaign expenditure limit (which under 2 U.S.C. 441a(b)(l)(A) is $10,000,000, plus annually computed price index increases). 26 U.S.C. 9034(b). Presidential candidates who chose to accept primary campaign matching funds are subject to campaign expenditure limits set out at 2 U.S.C. 441a(b).

The *general* election funding statute allows a candidate who has been nominated for the office of President to receive 100% of his campaign funds from the United States Treasury (which under 2 U.S.C. 441a(b)(l)(B) is $20,000,000, plus annual price index increases). 26 U.S.C. 9004(a)(l). Presidential candidates who choose to accept this federal grant are barred from accepting any private contributions in connection with the general election phase of their campaigns. 26 U.S.C. 9012.

Both financing statutes contain bookkeeping and reporting requirements for participating campaigns. Sections 9033 and 9003. They also provide that each campaign receiving federal funds must submit to an extensive post-election audit by the Federal Election Commission. Participating candidates must further agree to pay back all funds which the Commission determines were not used for campaign purposes, or which were spent in excess of the expenditure limit, which were unmatchable, or which were otherwise illegal. Sections 9038 and 9007.

Significantly, each of these public financing statutes contains its own criminal felony penalty for providing false information to the Commission for the purpose of obtaining public funds. Sections 9042(c) and 9012(d). The penalty in each case is a prison sentence of up to five years and/or a fine pursuant to 18 U.S.C. 3571.

The administration and civil enforcement of these grant programs are within the sole jurisdiction of the FEC. However, since these are federal funding programs, with federal candidates the beneficiaries, criminal enforcement of these statutes by the Justice Department is warranted where a specific intent to defraud the FEC is evident.

Prosecutive Policy

The Criminal Division and the Federal Election Commission have a formal Memorandum of Understanding which has been in force since 1977. This Memorandum seeks to apportion enforcement jurisdiction between the two agencies where FECA violations are concerned. This Memorandum is set out in full at the conclusion of this Chapter.

The Criminal Division considers that most FECA violations are appropriately enforced through the imposition of noncriminal sanctions imposed administratively by the FEC. It is thus the customary practice for the Department to routinely refer evidence indicating possible FECA violations to the Commission for its attention under 2 U.S.C. 437g(a), or under Chapters 95 or 96 of Title 26 of the United States Code.

Criminal prosecution for FECA violations should generally be considered only when the facts reflect the following:

- A large sum of money was expended or contributed in violation of a substantive provision of the Act; and

- Clandestine means or subterfuge were used to disguise the unlawful character of the underlying offense, thereby preventing the violation from being revealed to the FEC and the public pursuant to the FECA's reporting provisions (*e.g.* the use of cash or conduits); and

- The facts reflecting the violation were not accurately reported on FECA filings made by the recipient political committee.

Where such aggravating factors are present, efforts should be made to posture the case as a felony under one or more of the alternative "fraud" theories of prosecution summarized above. Disposition under the FECA's own criminal penalty provision (2 U.S.C. 437g(d)), which provides for misdemeanor penalties, is generally less attractive, and tactically more difficult, than presenting the matter as a "fraud" case.

Preclearance

All criminal investigations, including preliminary investigations, of the FECA and the public funding programs in Title 26, must be approved

beforehand by the Public Integrity Section. Such preclearance is necessary to assure that appropriate matters get referred to the FEC before an unwarranted criminal investigation is begun.

Likewise, *all* investigations, including preliminary investigations, into campaign financing activities under any of the alternative prosecutive theories summarized above should be approved beforehand by the Public Integrity Section.

Similarly, facts reflecting possible *noncriminal* FECA offenses, which are either brought to the attention of Justice Department personnel in the first instance, or which are generated during the course of an investigation into other criminal offenses, should be brought to the attention of the Public Integrity Section. The Memorandum of Understanding between the FEC and the Justice Department specifically provides that the Public Integrity Section is to be the Commission's point-of-contact within the Justice Department for the referral of FECA matters. In most cases, the Public Integrity Section will provide FBI and/or United States Attorney personnel with advice as to what information should be given to the Commission, and will leave the actual referral up to the Justice Department field component involved. However, it is important that all contacts with the FEC be routed through the Public Integrity Section.

Non-Waiver of the FEC's Enforcement Authority

Where FECA offenses within the potential jurisdiction of the FEC are uncovered in the course of criminal investigations into other matters, plea agreements reached with defendants who have possible exposure for FECA violations must contain a *specific disclaimer* to the effect that the United States Attorney is not waiving the enforcement jurisdiction of FEC. Such specific disclaimers are similar to those that routinely appear in plea agreements where IRS violations are, or may be, present.

The FEC's enforcement jurisdiction over noncriminal FECA violations is absolute, and it cannot be compromised or waived by the Department of Justice. *See e.g.* 2 U.S.C. 437d(a)(6) and 2 U.S.C. 437d(e).

Investigative Jurisdiction

Criminal investigations of FECA campaign financing matters, as well as violations of 26 U.S.C. 9012 and 9042, are conducted by the Bureau. Investigations leading up to all noncriminal sanctions under the FECA, and under Chapters 95 and 96 of the Internal Revenue Code, are conducted exclusively by the FEC.

It is therefore important to determine at an early stage of an investigation whether or not a matter is appropriate for criminal prosecution. If it is, the investigation is conducted by the Bureau. If it is not, the matter must be promptly referred to the Federal Election Commission.

In some cases, the FEC may choose to conduct an administrative inquiry parallel to an active criminal investigation involving the same matter. They are authorized to do so. In such situations, the FEC's charter *specifically prohibits* Commission employees from sharing the product of their investigations with anyone, including prosecutors or federal criminal investigators. *See* 2 U.S.C. 437g(a)(12).

Memorandum of Understanding Between FEC and the Criminal Division

The Memorandum of Understanding which regulates and apportions enforcement jurisdiction and duties concerning FECA violations between the Federal Election Commission and the Department of Justice was implemented in 1977. It is still in effect today. The Memorandum of Understanding reads as follows:

"The following is intended to serve as a guide for the Department of Justice (hereinafter referred to as the "Department") and the Federal Election Commission (hereinafter referred to as the "Commission") in the discharge of their respective statutory responsibilities under the Federal Election Campaign Act and Chapters 95 and 96 of the Internal Revenue Code:

"1) The Department recognizes the Federal Election Commission's exclusive jurisdiction in civil matters brought to the Commission's attention involving violations of the Federal Election Campaign Act and Chapters 95 and 96 of the Internal Revenue Code. It is agreed that Congress intended to centralize civil enforcement of the Federal Election Campaign Act in the Federal Election Commission by conferring on the Commission a broad range of powers and dispositional alternatives for handling nonwillful or unaggravated violations of these provisions.

"2) The Commission and the Department mutually recognize that all violations of the Federal Election Campaign Act and the anti-fraud provisions of Chapters 95 and 96 of the Internal Revenue Code, even those committed knowingly and willfully, may not be proper subjects for prosecution as crimes under 2 U.S.C. 437g(d), 26 U.S.C. 9012 or 26 U.S.C. 9042. For the most beneficial and effective enforcement of the Federal Election Campaign Act and the anti-fraud provisions of Chapters 95 and 96 of the Internal Revenue Code, those knowing and willful violations which are significant and substantial and which may be

described as aggravated in the intent in which they were committed, or in the monetary amount involved, should be referred by the Commission to the Department for criminal prosecutive review. With this framework, numerous factors will frequently affect the determination of referrals, including the repetitive nature of the acts, the existence of a practice or pattern, prior notice, and the extent of the conduct in terms of geographic area, persons, and monetary amounts among other proper considerations.

"3) Where the Commission discovers or learns of a probable significant and substantial violation, it will endeavor to expeditiously investigate and find whether clear and compelling evidence exists to determine probable cause to believe the violation was knowing and willful. If the determination of probable cause is made, the Commission shall refer the case to the Department promptly.

"4) Where information comes to the attention of the Department indicating a probable violation of Title 2, the Department will apprise the Commission of such information at the earliest opportunity.

"Where the Department determines that evidence of a probable violation of Title 2 amounts to a significant and substantial knowing and willful violation, the Department will continue its investigation to prosecution when appropriate and necessary to its prosecutorial duties and functions, and will endeavor to make available to the Commission evidence developed during the course of its investigation, subject to restricting law. Where the alleged violation warrants the impaneling of a grand jury, information obtained during the course of the grand jury proceedings will not be disclosed to the Commission, pursuant to Rule 6 of the Federal Rules of Criminal Procedure.

"Where the Department determines that evidence of a probable violation of Title 2 does not amount to a significant and substantial knowing and willful violation (as described in Paragraph 2 hereof), the Department will refer the matter to the Commission as promptly as possible for its consideration of the wide range of appropriate remedies available to the Commission.

"5) This Memorandum of Understanding controls only the relationship between the Commission and the Department. It is not intended to confer any procedural or substantive rights on any person in any matter before the Department, the Commission or any court or agency of Government."

CHAPTER FIVE

SUGGESTIONS FOR STRUCTURING INVESTIGATIONS

GETTING STARTED

Election crime cases are normally easy to present factually in court, and the prosecution of this type of offense has been shown to be a fast, efficient, and effective way of bringing federal law enforcement remedies to bear on government corruption problems. If they are properly managed and presented, voter fraud cases are also generally well received by the public and the media.

The discussion which follows will explain the role of the federal prosecutor in protecting the integrity of the franchise; will describe the policies which govern federal involvement in this area; and will discuss investigative strategies which can be used to detect and prove voter fraud cases.

Successful ballot-fraud investigations generally include the following basic principles:

1. *Let the public know of your intent to prosecute election fraud.* Most complaints that lead to prosecutable ballot-fraud cases come from participants in the political process — voters, candidates, campaign workers, poll officials, *etc.* However, in places where ballot fraud has been an entrenched problem, there is usually a history of toleration of voting abuses by local law enforcement authorities. This in turn frequently leads to public cynicism, which must be overcome if productive complaints are to be generated. The following things can help in this regard:

- Hold press conferences before important elections, and announce to the public that prosecution of ballot fraud is an important federal

law enforcement priority on which the Federal Government is prepared to act.

- Make Assistant United States Attorneys and Federal Bureau of Investigation agents accessible to the public during, and immediately after, important elections by publicizing the telephone numbers at which these people can be reached by the public.

- Contact election administrators (*e.g.* registrars, county and town clerks, Boards of Election, *etc.*) within your District, and enlist their help in bringing information about voting violations to your attention. These people are deeply involved in the voting process, and in most cases are dedicated public servants who wish to help eliminate criminal abuses of the process they administer. They are also the custodians of documentary records generated during the voting process, which are extremely important in identifying fraudulent voting transactions.

- Contact representatives of major political factions shortly before elections to express federal interest in ballot integrity, and to enlist the support of political party officials in bringing complaints of possible criminal irregularities in the balloting process to the attention of federal law enforcement personnel.

- Try to investigate and prosecute at least one factually simple ballot fraud case soon after an important election and be certain that this case receives wide publicity. This will demonstrate the sincerity of your resolve to prosecute voter fraud, which in turn will spark public confidence in your office's ability to act quickly and effectively in this area.

2. *Act promptly to protect the integrity of voting documentation.* The voting process generates voluminous records, ranging from registration cards and absentee ballot applications, to tally sheets, poll lists, and ballots themselves. These materials are particularly important to successful vote-fraud investigations, since they contain information that helps in identifying fraudulent voting transactions and putative defendants. For example:

- Persons registering to vote are normally required to provide detailed personal information to election registrars, and to furnish a specimen of their handwriting for comparison with the signature on the registration form. This data can be used to determine the authenticity of specific voting transactions.

- Voters appearing to vote on election day are required in many States to sign a poll list prior to casting their ballot. The *bona fides* of a

particular voting transaction can frequently be determined by comparing these poll list signatures to the voter's exemplar on his or her registration card. The identity of putative defendants responsible for casting fraudulent votes can also frequently be determined by comparing the poll list signatures of known fraudulent voting transactions to exemplars taken from suspects.

- Absentee voters are generally required to apply for absentee ballots in writing, and the absentee ballots themselves customarily require voters to subscribe to an oath (generally on the ballot envelope) which attests to the authenticity of their ballot. These signatures can be used to identify fraudulent voting transactions, and they may also help in identifying putative defendants.

- In most States, the signatures of voters on absentee ballot documentation must be notarized or witnessed by third parties. Also, the election official responsible for overseeing the absentee voting process is required in most States to maintain a log of applications received, applications approved, ballots issued, ballots returned, and ballots challenged. Once one or two fraudulent voting transactions have been identified, this information can be used to identify the subjects with whom the voters involved dealt, and to locate other voters who also dealt with the same individuals in casting their ballots.

- Tally sheets prepared at the polls normally contain the handwritten certification of the poll officials who prepared them, and in many States these officials are required to execute an oath attesting to the authenticity and accuracy of the returns. This can be a source of reliable handwriting exemplars of persons having official access to voting materials in polls where ballot-box stuffing is suspected.

- Many States require voters who request assistance in voting at the polls to execute affidavits identifying the person they wish to accompany them into the voting booth. This information can often be useful in identifying patterns of voter intimidation and voter bribery.

- Federal law, specifically 42 U.S.C. 1974, requires that all voting documentation be maintained intact, and in secure condition, for at least 22 months following elections where federal candidates are voted upon. This is a significantly longer time period than that which normally applies under state laws for the retention of documentation in nonfederal elections. It is therefore important to contact all of the election administrators in the District before beginning a ballot fraud investigation, to be certain that they are

aware of this federal retention requirement and that they comply with it.

3. *Ask for assistance from local law enforcement authorities.* The United States Constitution leaves to the States the principal responsibility for administering the clerical aspects of the elective process. However, state law enforcement machinery is not usually well equipped to act vigorously and effectively against ballot fraud. Local prosecutors and police agencies should therefore be informed of the federal interest in prosecuting election fraud cases, and of the following attributes of the federal law enforcement process that can make prosecution of this type of case in federal court particularly attractive:

- Resources — The investigation of ballot-fraud matters usually requires a fairly large manpower commitment, which the Federal Government is normally better able to marshal than local prosecutors and detective agencies.

- Grand jury — The development of ballot fraud cases demands an effective grand jury process, through which reliable testimony can be secured from the vacillating witnesses who are frequently encountered in this type of case, and through which necessary documentation can be secured.

- Broadly drawn venires — Trials of ballot fraud cases are usually best heard by juries that are not drawn from the location in which the alleged fraud occurred. Federal venires are usually drawn from much wider geographic areas than are state venires, and are therefore better suited to trying this type of case.

- Political detachment — State prosecutors are usually more closely tied to local politics than are their federal counterparts. Federal prosecution of this type of case is therefore more apt to be accepted as politically detached by the media and the public.

4. *Know the political landscape.* Ballot fraud is most apt to occur in jurisdictions where there is substantial political conflict between two or more credible political factions, where voters are fairly equally divided numerically between factions, where local elective officers wield substantial power, and where there is a high incidence of poverty or illiteracy. Political jurisdictions meeting these criteria should be identified, and complaints coming from them given special attention in allocating federal resources to ballot-fraud matters.

5. *Strategize the investigation early.* Very few people corrupt the franchise for the simple thrill of winning elections. Usually, there is a

deeper motive behind this type of crime, such as protection of illegal activity, control over patronage jobs, political corruption, *etc.*

Moreover, the typical ballot fraud scheme usually involves many types of participants, who perform a variety of tasks on behalf of identifiable political forces. For example, vote-buying schemes usually have "haulers" who take voters to the polls and pay them, "bankers" who obtain and distribute the money to the "haulers," "captains" who coordinate the activities of the "haulers" and make territorial assignments, and "checkers" who accompany the voters into the voting booth to assure that they vote "correctly."

It is important to attempt to identify the motive for electoral corruption at an early stage, to identify as many of the participants in the scheme as possible, and to assess the relative culpability of these individuals. In this way, an investigative strategy can be developed which initially targets low-level participants, for the purpose of making witnesses out of them against higher-placed participants, and ultimately to obtain an investigative inroad into the illegal activity which motivated the voter fraud.

STRUCTURING A BALLOT FRAUD INVESTIGATION

Ballot fraud investigations are generally divided into three stages: preliminary investigations, full field investigations, and indictments and trials. Preliminary investigations are usually conducted at the initiation of the United States Attorney or FBI office which received the complaint. Full field investigations, and indictments of individual subjects, require approval from the Criminal Division and from Bureau Headquarters, and are normally monitored closely by the Public Integrity Section. Trials of voter fraud cases are generally conducted by Assistant United States Attorneys.

Preliminary investigations involve the taking of a complaint, and sufficient investigation —

- To identify the type of ballot fraud present;
- To determine whether that fraud is criminally actionable under one or more of the prosecutive theories applicable to this type of activity;*

*The federal statutes used to prosecute ballot frauds are set forth in Appendix B.

- To evaluate the need for federal intervention in the matter, as a function of —

  - the extent to which the fraud impacted adversely on federal contests for the United States Senate, the United States House of Representatives, or the Presidency;

  - the capacity and desire of local law enforcement to handle the case; and

  - the scope and duration of the fraud;

- To ascertain the identity of individual suspects who may have participated in the scheme; and

- To ascertain, if possible, the identity of a few specific fraudulent voting transactions.

When the preliminary investigation has been completed, its results should be forwarded to the Public Integrity Section and to Bureau Headquarters, along with the recommendation of the United States Attorney in the District of venue as to whether further investigation is warranted. In most situations, the matter will be discussed at this point between headquarters and the field, and where appropriate a full field investigation will be approved.

Full field investigations take their direction from the type of fraud involved. Their purpose is to develop sufficient evidence against specific subjects to support criminal indictments. They are apt to be very labor intensive, and often include the procurement and examination of documents produced during the course of the electoral process. Obviously, each full field investigation is unique, being driven by the facts peculiar to each case. However, election investigations normally have some common features. Examples of full field investigative strategies for two of the most frequently encountered varieties of ballot frauds are as follows:

- *Absentee Ballot Frauds.* These schemes involve the corruption of absentee ballot voting transactions through such methods as bribery, forgery, intimidation, and/or voter impersonation. The investigation of this type of scheme involves the identification of specific fraudulent voting transactions, interviewing those voters, using the testimony of the voters who were corrupted or defrauded to make cases against those who corrupted or defrauded them, and flipping those defendants to make cases against subjects higher up in the scheme. The normal investigative methodology for this type of case entails the following steps —

(1) Subpoenas should be issued to obtain relevant absentee ballot documentation for the target elective jurisdiction. This usually includes the applications for absentee ballots; the absentee ballots themselves; the envelope(s) in which each ballot was enclosed when returned for tabulation (usually called a "privacy" or an "oath" envelope); the outer envelope(s) in which the completed ballot was returned for tabulation (usually called a "mailer"); and the log which the absentee election manager is usually required to keep of applications issued, applications received, ballots issued, ballots returned, and ballots challenged.* The voter registration cards for the voters involved should also be secured at this time.

(2) The election-related documents should be analyzed. Ballot applications and the oath envelopes generally contain three items of particular interest to investigators: the purported signatures of voters, the signatures of witnesses or notaries, and the address where the ballot package was sent to the voter. This data should be analyzed to locate specific questionable voting transactions. Examples would include situations where a common notary or witness appears on a large number of absentee ballot documents, situations where the signatures of voters on absentee ballot applications do not match their signatures on the corresponding ballot envelopes or registration cards, and situations where absentee ballot applications direct that ballot packages be mailed to addresses other than that of the voter. If one or more specific questionable voting transactions have been identified in the preliminary investigation, this document analysis should be directed at identifying voting transactions having similar characteristics (*e.g.* same handwriting, same witnesses, same address where ballot packages were sent).

(3) A sampling of the voters involved in the questioned voting transactions thus identified should be interviewed to assertain whether their ballots were impacted with fraud (*e.g.* that they were paid, that they were intimidated, that they did not vote, that they did not personally mark their ballot, *etc.*). These voters should also be questioned regarding the identity of the individual(s) with whom they dealt, and the circumstances under which they "voted."**

*This documentation must be maintained intact for 22 months when it pertains to balloting in elections where federal candidates are voted upon. 42 U.S.C. 1974.

**Departmental policy is to offer informal immunity to voters who may have been involved in the crime (*e.g.* by accepting money for their ballot), and to use their testimony to prosecute those persons who corrupted them. *See* p. 44 *supra*.

214-528 0 - 88 - 4 : QL 3

(4) Handwriting exemplars should be taken from individuals suspected of forging absentee ballot documents, and these specimens should be compared to the handwriting on those documents.

(5) The case should now be ready for the preparation of criminal cases against the individuals with whom the voters dealt. Experience in this regard is that a case having *at least four* voter-witnesses against a common defendant has a good chance of resulting in a conviction. This is because voters who are involved in fraudulent voting transactions are usually poorly educated, are easily intimidated by courtroom appearances, and generally do not make strong witnesses. (These factors, on the other hand, paint a realistic picture of voter manipulation, which is often quite effective in front of juries.) Remember that proposed indictments must be precleared by the Public Integrity Section of the Criminal Division prior to presentment to the grand jury.

(6) The defendants indicted in the first round of cases should, upon conviction or plea, be immunized and put before the grand jury to provide testimony inculpating other participants in the scheme. Those subjects should then be prosecuted.

(7) If testimony can be obtained from "insiders" within the scheme at an early stage, this should be done through offers of prosecutive leniency. This tactic can substantially shorten this type of investigation, and facilitate the identification of both target voting transactions and high-level participants.

(8) Finally, an effort should be made to ascertain the motive behind the scheme (*e.g.* protection of illegal activity, patronage, government corruption), and to use the leverage secured over defendants prosecuted for voter fraud to obtain evidence on those who may have committed other federal crimes.

- *Ballot-Box Stuffing Cases.* Stuffing cases involve the insertion into ballot boxes of invalid, fraudulent, or otherwise illegal ballots. A common feature of all stuffing cases is the involvement in the scheme of poll officials, since access to voting equipment is essential to the commission of this type of fraud, and since such access is controlled by state and local laws. The objective of ballot-box stuffing investigations is to identify the voting transactions that are fraudulent, and to tie specific poll officials to them. The investigative methodology for this case type includes the following:

(1) The poll lists or other documentation which voters sign when entering the polling place should be secured into federal custody through subpoena, as should the permanent registration cards for voters residing in the target precinct, any paper or punch card ballots, and any tally sheets which were prepared by the poll officials reporting on the electoral results.

(2) The poll lists should be examined for similar handwriting, with special attention given to names entered at times when voting activity was slow (*e.g.* during the mid-morning and early afternoon), and those entered shortly before the poll closed.

(3) A comparison should be done between signatures on the poll list of the target precinct and the corresponding permanent registration cards, to identify voters who may not have cast the ballot attributed to them.

(4) The voters identified through the foregoing process should be individually interviewed to determine if they voted personally at the poll.

(5) Handwriting exemplars should be taken from each poll official having access to the ballot box.

(6) An attempt should be made to "flip" at least one poll official. This is usually done by offering immunity or a plea to a misdemeanor to the first poll official who agrees to cooperate in the investigation.

(7) Prosecutions against the remaining poll officials implicated in the scheme should be brought.

(8) Convicted poll officials should be "flipped" to testify against politicians and candidates who benefited from their activities, or who instructed them to cast fraudulent ballots.

(9) An effort should be made to identify the ultimate motive behind the scheme, and to prosecute any federal crimes that may have resulted from it.

A FEW CAUTIONS

Ballot fraud investigations sometimes present unique issues that are not normally encountered in the course of other criminal investigations.

Federal prosecutors need to keep the following points in mind when doing this type of case:

- *Respect the integrity of the polls.* All States have defined by statute who is entitled to be present inside the polls while an election is being held. With the exception of Illinois, these poll access laws do *not* permit federal law enforcement personnel to have access to open polling places. Requesting federal investigative personnel to enter open polls risks violating the unique sovereignty which the States have over such places, and unpleasant confrontations may ensue between poll managers, local police, and federal investigative agents. Accordingly, *no* federal investigation should be conducted inside an open polling place.

- *Be careful not to interfere with the voting process.* Many types of voting documentation are needed by the States and localities to conduct elections (*e.g.* registration cards, voter lists, poll books, voting machines), or to tabulate and certify the results (*e.g.* ballots, tally sheets, absentee voting materials). Special care must be exercised to assure that subpoenas for such documentation are timed so as not to deprive election officials of documentation which they need in order to complete their statutorily imposed duty to tabulate votes and certify returns.

- *Non-prosecution of voters.* Most ballot-fraud schemes involve subjects who manipulate voters in some illegal way so as to corrupt their ballot choices. Where voters are involved in ballot-fraud schemes, it is the Justice Department's policy not to prosecute them, but rather to treat them as victims and to use their testimony against those who sought to corrupt them.

- *Search warrants to open ballots.* Sometimes ballots — particularly absentee ballots — come into the possession of federal investigators while still sealed in the enclosure envelopes bearing the name of the ostensible "voters." Also, a few States provide by statute or regulation for some types of ballots — usually paper ones — to be numbered in a way that corresponds with the order of signatures on a poll list. In either situation, ballots can be attributed to individual voters. This is a particularly useful circumstance in cases involving suspected fraud in the marking or alteration of the ballot document itself. However, since ballots are documents in which individual voters have a very real expectation of privacy, it is the Justice Department's policy not to violate ballot secrecy without satisfaction of the Fourth Amendment's "probable cause" standard. Accordingly, where ballot privacy is breached by federal personnel incident to a ballot fraud investigation, a search warrant should be

obtained prior to attributing individual ballots to the voters who allegedly cast them.

PRECLEARANCE

Remember that all indictments, informations, criminal complaints, and grand jury investigations must be authorized by the Criminal Division's Public Integrity Section. Preliminary investigations may be conducted in these matters without consultation with the Department. However, full field investigations require prior Departmental clearance. 9 U.S.A.M. 2.133(h) and 2.133(o).

Authorization of grand jury and full field investigations may be obtained by telephone in many, but not necessarily all, instances. The telephone number of the Election Crimes Branch is FTS 786-5060.

CHAPTER SIX

ELECTION DAY PROCEDURES

The Justice Department's function is to investigate and prosecute persons who violate federal law, and not to intercede in the elective process itself. *See In re Higdon*, 269 F. 150 (E.D. Mo. 1920).

Except in matters involving racial overtones, the Department of Justice lacks authority to provide observers inside open polling stations. This is so even though there may be a reasonable basis for believing that criminal activities are going to occur. The bar to federal intrusion into the polls is partially a function of state laws governing who may be inside open polls, and partially a function of 18 U.S.C. 592, which prohibits federal "armed men" inside the polls.

In addition, federal law does not provide the Justice Department with jurisdiction to intercede on behalf of private litigants in civil election contests or to enjoin ongoing irregularities. Such matters are private in nature, and they are customarily redressed through the procedures set forth in 42 U.S.C. 1983.

Under exceptional circumstances, stationary surveillance of open polling places by the Bureau may be authorized by the Public Integrity Section of the Criminal Division. However, such surveillance must be predicated on *pre-existing evidence* that observable illegal activities (such as vote-buying) are likely to occur in the immediate vicinity of a specific open poll. The visual surveillance by the Bureau in such instances is directed at amassing evidence for use in subsequent prosecutions, and not at preventing or terminating the illegal conduct which is being observed. Requests for authorization to use this exceptional investigative technique should be addressed to the Public Integrity Section as far before the election in question as is feasible.

Special procedures are employed by Departmental, Bureau and United States Attorney personnel during and immediately before each national general election. These normally include the appointment of a

senior Assistant United States Attorney in each District to serve as the "Election Day Officer," assuring the availability of Special Agents to investigate election-related complaints throughout the judicial district, and coordination of on-the-scene responses to these complaints. The name of the Election Day Officer, and the telephone number at which citizen complaints may be made during the election, should be published in the media. The Public Integrity Section also maintains a compliment of election law specialists who are on duty while the polls are open during national federal elections to authorize investigations and grand jury subpoenas, and to provide advice to the Election Day Officers. Special attention is given to preserving evidence that might lose its integrity with the passage of time.

Preliminary investigations may be authorized during the election by the Election Day Officer or other United States Attorney personnel.

The results of preliminary investigations are reviewed by both the United States Attorney's Office and the Election Crimes Branch, which determines, in consultation with the United States Attorney, which cases should be pursued through a full field investigation.

As with all election matters, the emphasis is on detection, evaluation, and prosecution rather than on prevention.

APPENDICES

APPENDIX A

TABLE OF CASES

APPENDIX B: STATUTES

EXCERPTS FROM TITLE 2 UNITED STATES CODE

Chapter 14—Federal Election Campaigns

Subchapter 1—Disclosure of Federal Campaign Funds

§ 431. Definitions

When used in this Act:

(1) The term "election" means—

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

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

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

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

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

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

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

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

(4) The term "political committee" means—

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

(B) any separate segregated fund established under the provisions of section 441b(b) of this title, or

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

(5) The term "principal campaign committee" means a political committee designated and authorized by a candidate under section 432(e)(1) of this title.

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

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

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

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

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

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

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

(ii) the use of real or personal property, including a church or community room used on a regular basis by members of a community for non-commercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or

in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;

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

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

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

(vi) any payment made or obligation incurred by a corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization.

(vii) any loan of money by a State bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, other than any overdraft made with respect

to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan—

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

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

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

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

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

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

(II) an authorized committee of a candidate or any other political committee, if the person paying for such services is the regular employer of the individual rendering such services and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26.

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 434(b) of this title by the committee receiving such services;

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

(1) such payments are not for the cost of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct

mail, or similar type of general public communication or political advertising;

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

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

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

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

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

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

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

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

(xiv) any honorarium (within the meaning of section 441i of this title).

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

(i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything value, made by any

person for the purpose of influencing any election for Federal office; and

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

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

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

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

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

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

(v) any payment made or obligation incurred by a corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization;

(vi) any costs incurred by an authorized committee or candidate in connection with the solicitation of contribu-

tions on behalf of such candidate, except that this clause shall not apply with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 441a(b), but all such costs shall be reported in accordance with section 434(b);

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

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

(II) rendered to or on behalf of a candidate or political committee if the person paying for such services is the regular employer of the individual rendering such services, and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26,

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

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

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

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

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

(ix) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of

nominees of such party for President and Vice President: *Provided,* That—

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

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

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

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

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

(11) The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

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

(13) The term "identification" means—

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

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

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

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

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

(17) The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consulta-

tion with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

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

(A) the name of the candidate involved appears;

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

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

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

§ 432. Organization of political committees

(a) *Treasurer; vacancy; official authorizations.* Every political committee shall have a treasurer. No contribution or expenditure shall be accepted or made by or on behalf of a political committee during any period in which the office of treasurer is vacant. No expenditure shall be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent.

(b) *Account of contributions; segregated funds.*

(1) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of $50, the name and address of the person making the contribution and the date of receipt.

(2) Every person who receives a contribution for a political committee which is not an authorized committee shall—

(A) if the amount of the contribution is $50 or less, forward to the treasurer such contribution no later than 30 days after receiving the contribution; and

(B) if the amount of the contribution is in excess of $50, forward to the treasurer such contribution, the name and address of the person making the contribution, and the date of receipt of the contribution, no later than 10 days after receiving the contribution.

(3) all funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual.

(c) *Recordkeeping.* The treasurer of a political committee shall keep an account of—

(1) all contributions received by or on behalf of such political committee;

(2) the name and address of any person who makes any contribution in excess of $50, together with the date any amount of such contribution by any person;

(3) the identification of any person who makes a contribution or contributions aggregating more than $200 during a calendar year, together with the date and amount of any such contribution;

(4) the identification of any political committee which makes a contribution, together with the date and amount of any such contribution; and

(5) the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or cancelled check for each disbursement in excess of $200.

(d) *Preservation of records and copies of reports.* The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

(e) *Principal and additional campaign committees; designations, status of candidate, authorized committees, etc.*

(1) Each candidate for Federal office (other than the nominee for the office of Vice President) shall designate in writing a political committee in accordance with paragraph (3) to serve as the principal campaign committee of such candidate. Such designation shall be made no later than 15 days after becoming a candidate. A candidate may designate additional political committees in accordance with paragraph (3) to serve as authorized committees of such candidate. Such designation shall be in writing and filed with the principal campaign committee of such candidate in accordance with subsection (f)(1) of this section.

(2) Any candidate described in paragraph (1) who receives a contribution, or any loan for use in connection with the campaign of such candidate for election, or makes a disbursement in connection with such campaign, shall be considered, for purposes of this Act, as having received the contribution or loan, or as having made the disbursement, as the case may be, as an agent of the authorized committee or committees of such candidate.

(3) (A) No political committee which supports or has supported more than one candidate may be designated as an authorized committee, except that—

(i) the candidate for the office of President nominated by a political party may designate the national committee of such political party as a principal campaign committee, but only if that national committee maintains separate books of account with respect to its function as a principal campaign committee; and

(ii) candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.

(B) As used in this section, the term "support" does not include a contribution by any authorized committee in amounts of $1,000 or less to an authorized committee of any other candidate.

(4) The name of each authorized committee shall include the name of the candidate who authorized such committee under paragraph (1). In the case of any political committee which is not an authorized committee, such political committee shall not include the name of any candidate in its name.

(5) The name of any separate segregated fund established pursuant to section 441b(b) shall include the name of its connected organization.

(f) *Filing with and receipt of designations, statements, and reports by principal campaign committees.*

(1) Notwithstanding any other provision of this Act, each designation, statement, or report of receipts or disbursements made by an authorized committee of a candidate shall be filed with the candidate's principal campaign committee.

(2) Each principal campaign committee shall receive all designations, statements, and reports required to be filed with it under paragraph (1) and shall compile and file such designations, statements, and reports in accordance with this Act.

(g) *Filing with and receipt of designations, statements, and reports by Clerk of House of Representatives or Secretary of Senate; forwarding to Commission; filing requirements with Commission; public inspection and preservation of designations, etc.*

(1) Designations, statements, and reports required to be filed under this Act by a candidate or by an authorized committee of a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, and by the principal campaign committee of such candidate, shall be filed with the Clerk of the House of Representatives, who shall receive such designations, statements, and reports as custodian for the Commission.

(2) Designations, statements, and reports required to be filed under this Act by a candidate for the office of Senator, and by the principal campaign committee of such candidate, shall be filed with the Secretary of the Senate, who shall receive such designations, statements, and reports, as custodian for the Commission.

(3) The Clerk of the House of Representatives and the Secretary of the Senate shall forward a copy of any designation, statement, or report filed with them under this subsection to the Commission as soon as possible (but no later than 2 working days) after receiving such designation, statement, or report.

(4) All designations, statements, and reports required to be filed under this Act, except designations, statements, and reports filed in accordance with paragraphs (1) and (2), shall be filed with the Commission.

(5) The Clerk of the House of Representatives and the Secretary of the Senate shall make the designations, statements, and reports received under this subsection available for public inspection and copying in the same manner as the Commission under section 438(a)(4), and shall preserve such designations, statements, and reports in the same manner as the Commission under section 438(a)(5).

(h) *Campaign depositories; designations, maintenance of accounts, etc.; petty cash fund for disbursements; record of disbursements.*

(1) Each political committee shall designate one or more State banks, federally chartered depository institutions, or depository institutions the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. Each political committee shall maintain at least one checking account and such other accounts as the committee determines at a depository designated by such committee. All receipts received by such committee shall be deposited in such accounts. No disbursements may be made (other than petty cash disbursements under paragraph (2)) by such committee except by check drawn on such accounts in accordance with this section.

(2) A political committee may maintain a petty cash fund for disbursements not in excess of $100 to any person in connection with a single purchase or transaction. A record of all petty cash disbursements shall be maintained in accordance with subsection (c)(5) of this section.

(i) When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or chapter 95 or chapter 96 of title 26.

§ 433. Registration of political committees

(a) *Statements of organization.* Each authorized campaign committee shall file a statement of organization no later than 10 days after designation pursuant to section 432(e)(1). Each separate segregated fund established under the provisions of section 441b(b) shall file a statement of organization no later than 10 days after establishment. All other committees shall file a statement of organization within 10 days after becoming a political committee within the meaning of section 431(4).

(b) *Contents of statements.* The statement of organization of a political committee shall include—

(1) the name, address, and type of committee;

(2) the name, address, relationship, and type of any connected organization or affiliated committee;

(3) the name, address, and position of the custodian of books and accounts of the committee;

(4) the name and address of the treasurer of the committee;

(5) if the committee is authorized by a candidate, the name, address, office sought, and party affiliation of the candidate; and

(6) a listing of all banks, safety deposit boxes, or other depositories used by the committee.

(c) *Change of information in statements.* Any change in information previously submitted in a statement of organization shall be reported in accordance with section 432(g) no later than 10 days after the date of the change.

(d) *Termination, etc., requirements and authorities.*

(1) A political committee may terminate only when such a committee files a written statement, in accordance with section 432(g), that it will no longer receive any contributions or make any disbursement and that such committee has no outstanding debts or obligations.

(2) Nothing contained 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.

§ 434. Reporting requirements

(a) *Receipts and disbursements by treasurers of political committees; filing requirements.*

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate—

(A) in any calendar year during which there is a regularly scheduled election for which such candidate is seeking election,

or nomination for election, the treasurer shall file the following reports:

(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election;

(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and

(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B) in any other calendar year the following reports shall be filed:

(i) a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31; and

(ii) a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year.

(3) If the committee is the principal campaign committee of a candidate for the office of President—

(A) in any calendar year during which a general election is held to fill such office—

(i) the treasurer shall file monthly reports if such committee has on January 1 of such year received contributions aggregating $100,000 or made expenditures aggregating $100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year; such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year;

(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a pre-election report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and

(iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and

(B) in any other calendar year, the treasurer shall file either—

(i) monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month; or

(ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either—

(A) (i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year;

(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

(iv) in any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and

shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii)) is sent by registered or certified mail, the United States postmark shall be considered the date of filing of the designation, report, or statement.

(6) (A) The principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one pre-election report for each election and one post-election report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the

setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(b) *Contents of reports.* Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and calendar year, the total amount of all receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of title 26;

(3) the identification of each—

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution:

(C) authorized committee which makes a transfer to the reporting committee;

214-528 O - 88 - 5 : QL 3

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of such receipt; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year, together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year, the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate:

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee—

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 441a(d) of this title; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 441a(b);

(5) the name and address of each—

(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;

(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6) (A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each—

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount or any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the

request or suggestion of, any candidate or any authorized committee or agent of such committee;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 441a(d) of this title, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year; and

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

(c) *Statements by other than political committees; filing; contents; indices of expenditures.*

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) of this section for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2) of this section, and shall include—

(A) the information required by subsection (b)(6)(B)(iii) of this section, indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excess of $200 to the person filing such statement which

was made for the purpose of furthering an independent expenditure.

Any independent expenditure (including those described in subsection (b)(6)(B)(iii) of ths section) aggregating $1,000 or more made after the 20th day, but more than 24 hours, before any election shall be reported within 24 hours after such independent expenditure is made. Such statement shall be filed with the Clerk, the Secretary, or the Commission and the Secretary of State and shall contain the information required by subsection (b)(6)(B)(iii) of this section indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii) of this section, made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.

§ 437. Reports on convention financing

Each committee or other organization which—

(1) represents a State, or a political subdivision thereof, or any group of persons, in dealing with officials of a national political party with respect to matters involving a convention held in such State or political subdivision to nominate a candidate for the office of President or Vice President, or

(2) represents a national political party in making arrangements for the convention of such party held to nominate a candidate for the office of President or Vice President, shall, within 60 days following the end of the convention (but not later than 20 days prior to the date on which presidential and vice-presidential electors are chosen), file with the Commission a full and complete financial statement, in such form and detail as it may prescribe, of the sources from which it derived its funds, and the purpose for which such funds were expended.

§ 437c. Federal Election Commission

(a) *Establishment; membership; term of office; vacancies; qualifications; compensation; chairman and vice chairman.*

(1) There is established a commission to be known as the Federal Election Commission. The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and 6 members appointed by the President, by and with the advice and consent of the

Senate. No more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party.

(2) (A) Members of the Commission shall serve for terms of 6 years, except that of the members first appointed—

(i) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1977:

(ii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1979, and

(iii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1981.

(B) A member of the Commission may serve on the Commission after the expiration of his or her term until his or her successor has taken office as a member of the Commission.

(C) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he or she succeeds.

(D) Any vacancy occurring in the membership of the Commission shall be filled in the same manner as in the case of the original appointment.

(3) Members shall be chosen on the basis of their experience, integrity, impartiality, and good judgment and members (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall be individuals who, at the time appointed to the Commission, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the Federal Government. Such members of the Commission shall not engage in any other business, vocation, or employment. Any individual who is engaging in any other business, vocation, or employment at the time of his or her appointment to the Commission shall terminate or liquidate such activity no later than 90 days after such appointment.

(4) Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315).

(5) The Commission shall elect a chairman and a vice chairman from among its members (other than the Secretary of the Senate and the Clerk of the House of Representatives) for a term of one year. A member may serve as chairman only once during any term of office to which such member is appointed. The chairman and the vice chairman shall not be affiliated with the same political party. The vice chairman shall act as chairman in the absence or disability of the chairman or in the event of a vacancy in such office.

(b) *Administration, enforcement, and formulation of policy; exclusive jurisdiction of civil enforcement; Congressional authorities or functions with respect to elections for Federal office.*

(1) The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act and chapter 95 and chapter 96 of title 26. The Commission shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.

(2) Nothing in this Act shall be construed to limit, restrict, or diminish any investigatory, informational, oversight, supervisory, or disciplinary authority or function of the Congress or any committee of the Congress with respect to elections for Federal office.

(c) *Voting requirements; delegation of authorities.* All decisions of the Commission with respect to the exercise of its duties and powers under the provisions of this Act shall be made by a majority vote of the members of the Commission. A member of the Commission may not delegate to any person his or her vote or any decision-making authority or duty vested in the Commission by the provisions of this Act, except that the affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph (6), (7), (8), or (9) of section 437d(a) of this title or with chapter 95 or chapter 96 of title 26.

(d) *Meetings.* The Commission shall meet at least once each month and also at the call of any member.

(e) *Rules for conduct of activities; judicial notice of seal; principal office.* The Commission shall prepare written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its principal office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

(f) *Staff director and general counsel; appointment and compensation; appointment and compensation of personnel and procurement of intermittent services by staff director; use of assistance, personnel, and facilities of Federal agencies and departments; counsel for defense of actions.*

(1) The Commission shall have a staff director and a general counsel who shall be appointed by the Commission. The staff director shall be paid at a rate not to exceed the rate of basic pay in effect for level IV of the Executive Schedule (5 U.S.C. 5315). The general counsel shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316). With the approval of the Commission, the staff director may appoint and fix the pay of such additional personnel as he or she considers desirable without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(2) With the approval of the Commission, the staff director may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual

rate of basic pay in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332).

(3) In carrying out its responsibilities under this Act, the Commission shall, to the fullest extent practicable, avail itself of the assistance, including personnel and facilities, of other agencies and departments of the United States. The heads of such agencies and departments may make available to the Commission such personnel, facilities, and other assistance, with or without reimbursement, as the Commission may request.

(4) Notwithstanding the provisions of paragraph (2), the Commission is authorized to appear in and defend against any action instituted under this Act, either—

(A) by attorneys employed in its office, or

(B) by counsel whom it may appoint, on a temporary basis as may be necessary for such purpose, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. The compensation of counsel so appointed on a temporary basis shall be paid out of any funds otherwise available to pay the compensation of employees of the Commission.

§ 437d. Powers of the Commission

(a) *Specific authorities.* The Commission has the power—

(1) to require by special or general orders, any person to submit, under oath, such written reports and answers to questions as the Commission may prescribe;

(2) to administer oaths or affirmations;

(3) to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3);

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 437g(a)(8) of this title) or appeal any civil action in the name of the Commission to enforce the provisions of this

Act and chapter 95 and chapter 96 of title 26, through its general counsel;

(7) to render advisory opinions under section 437f of this title;

(8) to develop such prescribed forms and to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of title 5, United States Code, as are necessary to carry out the provisions of this Act and chapter 95 and chapter 96 of title 26; and

(9) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

(b) *Judicial orders for compliance with subpoenas and orders of Commission; contempt of court.* Upon petition by the Commission, any United States district court within the jurisdiction of which any inquiry is being carried on may, in case of refusal to obey a subpoena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) *Civil liability for disclosure of information.* No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(d) *Concurrent transmissions to Congress or member of budget estimates, etc.; prior submission of legislative recommendations, testimony, or comments on legislation.*

(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendation, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(e) *Exclusive civil remedy for enforcement.* Except as provided in section 437g(a)(8) of this title, the power of the Commission to initiate civil actions under subsection(a)(6) of this section shall be the exclusive civil remedy for the enforcement of the provisions of this Act.

214-528 0 - 88 - 6 : QL 3

§ 437f. Advisory opinions

(a) *Requests by persons, candidates, or authorized committees; subject matter; time for response.*

(1) Not later than 60 days after the Commission receives from a person a complete written request concerning the application of this Act, chapter 95 or chapter 96 of title 26, or a rule or regulation prescribed by the Commission, with respect to a specific transaction or activity by the person, the Commission shall render a written advisory opinion relating to such transaction or activity to the person.

(2) If an advisory opinion is requested by a candidate, or any authorized committee of such candidate, during the 60-day period before any election for Federal office involving the requesting party, the Commission shall render a written advisory opinion relating to such request no later than 20 days after the Commission receives a complete written request.

(b) *Procedures applicable to initial proposal of rules or regulations, and advisory opinions.* Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section.

(c) *Persons entitled to rely upon opinions; scope of protection for good faith reliance.*

(1) Any advisory opinion rendered by the Commission under subsection (a) of this section may be relied upon by—

(A) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered; and

(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(2) Notwithstanding any other provisions of law, any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of paragraph (1) and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of title 26.

(d) *Requests made public; submission of written comments by interested public.* The Commission shall make public any requests made under subsection (a) of this section for an advisory opinion. Before rendering an advisory opinion, the Commission shall accept written comments submit-

ted by any interested party within the 10-day period following the date the request is made public.

§ 437g. Enforcement

(a) *Administrative and judicial practice and procedure.*

(1) Any person who believes a violation of this Act or of chapter 95 or chapter 96 of title 26 has occurred, may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18, United States Code. Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint. The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.

(2) If the Commission, upon receiving a complaint under paragraph (1) or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act or chapter 95 or chapter 96 of title 26, the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.

(3) The general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause pursuant to paragraph (4)(A)(i). With such notification, the general counsel shall include a brief stating the position of the general counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, respondent may submit a brief stating the position of such respondent on the legal and factual issues of the case, and replying to the brief of the general counsel. Such briefs shall be filed with the Secretary of the Commission and shall be considered by the Commission before proceeding under paragraph (4).

(4) (A) (i) Except as provided in clause (ii), if the Commission determines, by an affirmative vote of 4 of its members,

that there is probable cause to believe that any person has committed, or is about to commit, a violation of this Act or of chapter 95 or chapter 96 of title 26, the Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved. Such attempt by the Commission to correct or prevent such violation may continue for a period of not more than 90 days. The Commission may not enter into a conciliation agreement under this clause except pursuant to an affirmative vote of 4 of its members. A conciliation agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding under paragraph (5)(A).

(ii) If any determination of the Commission under clause (i) occurs during the 45-day period immediately preceding any election, then the Commission shall attempt, for a period of at least 15 days, to correct or prevent the violation involved by the methods specified in clause (i).

(B) (i) No action by the Commission or any person, and no information derived, in connection with any conciliation attempt by the Commission under subparagraph (A) may be made public by the Commission without the written consent of the respondent and the Commission.

(ii) If a conciliation agreement is agreed upon by the Commission and the respondent, the Commission shall make public any conciliation agreement signed by both the Commission and the respondent. If the Commission makes a determination that a person has not violated this Act or chapter 95 or chapter 96 of title 26, the Commission shall make public such determination.

(5) (A) If the Commission believes that a violation of this Act or of chapter 95 or chapter 96 of title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation.

(B) If the Commission believes that a knowing and willful violation of this Act or of chapter 95 or chapter 96 of title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may require that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $10,000 or an amount equal

to 200 percent of any contribution or expenditure involved in such violation.

(C) If the Commission, by an affirmative vote of 4 of its members, determines that there is probable cause to believe that a knowing and willful violation of this Act which is subject to subsection (d) of this section, or a knowing and willful violation of chapter 95 or chapter 96 of title 26, has occurred or is about to occur, it may refer such apparent violation to the Attorney General of the United States without regard to any limitations set forth in paragraph (4)(A).

(D) In any case in which a person has entered into a conciliation agreement with the Commission under paragraph (4)(A), the Commission may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

(6) (A) If the Commission is unable to correct or prevent any violation of this Act or of chapter 95 or chapter 96 of title 26, by the methods specified in paragraph (4)(A), the Commission may, upon an affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order (including an order for a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation) in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business.

(B) In any civil action instituted by the Commission under subparagraph (A), the court may grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation, upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act or chapter 95 or chapter 96 of title 26.

(C) In any civil action for relief instituted by the Commission under subparagraph (A), if the court determines that the Commission has established that the person involved in such civil action has committed a knowing and willful violation of this Act or of chapter 95 or chapter 96 of title 26, the court may impose a civil penalty which does not exceed the greater of $10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation.

(7) In any action brought under paragraph (5) or (6), subpoenas for witnesses who are required to attend a United States district court may run into any other district.

(8) (A) Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.

(B) Any petition under subparagraph (A) shall be filed, in the case of a dismissal of a complaint by the Commission, within 60 days after the date of the dismissal.

(C) In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the failure to act is contrary to law, and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint.

(9) Any judgment of a district court under this subsection may be appealed to the court of appeals, and the judgment of the court of appeals affirming or setting aside in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(10) *Repealed.*

(11) If the Commission determines after an investigation that any person has violated an order of the court entered in a proceeding brought under paragraph (6), it may petition the court for an order to hold such person in civil contempt, but if it believes the violation to be knowing and willful it may petition the court for an order to hold such person in criminal contempt.

(12) (A) Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

(B) Any member or employee of the Commission, or any other person, who violates the provisions of subparagraph (A) shall be fined not more than $2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of subparagraph (A) shall be fined not more than $5,000.

(b) *Notice to persons not filing reports prior to institution of enforcement action; publication of identity of persons and unfiled reports.* Before taking any action under subsection (a) of this section against any person who has failed to file a report required under section 434(a)(2)(A)(iii) of

this title for the calendar quarter immediately preceding the election involved, or in accordance with section 434(a)(2)(A)(i), the Commission shall notify the person of such failure to file the required reports. If a satisfactory response is not received within 4 business days after the date of notification, the Commission shall, pursuant to section 438(a)(7) of this title, publish before the election the name of the person and the report or reports such person has failed to file.

(c) *Reports by Attorney General of apparent violations.* Whenever the Commission refers an apparent violation to the Attorney General, the Attorney General shall report to the Commission any action taken by the Attorney General regarding the apparent violation. Each report shall be transmitted within 60 days after the date the Commission refers an apparent violation, and every 30 days thereafter until the final disposition of the apparent violation.

(d) *Penalties; defenses; mitigation of offenses.*

(1) (A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution or expenditure aggregating $2,000 or more during a calendar year shall be fined, or imprisoned for not more than one year, or both. The amount of this fine shall not exceed the greater of $25,000 or 300 percent of any contribution or expenditure involved in such violation.

(B) In the case of a knowing and willful violation of section 441b(b)(3), the penalties set forth in this subsection shall apply to a violation involving an amount aggregating $250 or more during a calendar year. Such violation of section 441b(b)(3) may incorporate a violation of section 441c(b), 441f or 441g of this title.

(C) In the case of a knowing and willful violation of section 441h of this title, the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of $1,000 or more is involved.

(2) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of this title 26, any defendant may evidence their lack of knowledge or intent to commit the alleged violation by introducing as evidence a conciliation agreement entered into between the defendant and the Commission under subsection (a)(4)(A) which specifically deals with the act or failure to act constituting such violation and which is still in effect.

(3) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of title 26, the court before which such action is brought shall take into account, in weighing the seriousness of the violation and in considering the appropriateness of the penalty to be imposed if the defendant is found guilty, whether—

(A) the specific act or failure to act which constitutes the violation for which the action was brought is the subject of a conciliation agreement entered into between the defendant and the Commission under subparagraph (a)(4)(A);

(B) the conciliation agreement is in effect; and

(C) the defendant is, with respect to the violation involved, in compliance with the conciliation agreement.

§ 437h. Judicial review

(a) *Actions including declaratory judgments, for construction of constitutional questions; eligible plaintiffs; certification of such questions to courts of appeals sitting en banc.* The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(b) *Appeal to Supreme Court; time for appeal.* Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) of this section shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the court of appeals.

NOTE: *Expedited Judicial Review.* Section 402(1)(B) of Pub. L. No. 98–620, effective November 11, 1984, repealed former subsection (c) of 2 U.S.C. § 437h. The deleted provision had required that the Federal appellate courts, including the United States Supreme Court, advance any matter under this section on their dockets and expedite it to the greatest extent possible. Sections 402(28) (E) and (F) also repealed similar expedited review language in 26 U.S.C. §§ 9010 and 9011.

§ 438. Administrative provisions

(a) *Duties of Commission.* The Commission shall—

(1) prescribe forms necessary to implement this Act;

(2) prepare, publish, and furnish to all persons required to file reports and statements under this Act a manual recommending uniform methods of bookkeeping and reporting;

(3) develop a filing, coding, and cross-indexing system consistent with the purposes of this Act.

(4) within 48 hours after the time of the receipt by the Commission of reports and statements filed with it, make them available for public inspection, and copying, at the expense of the

person requesting such copying, except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Clerk, Secretary, or the Commission shall exclude these lists from the public record;

(5) keep such designations, reports, and statements for a period of 10 years from the date of receipt, except that designations, reports, and statements that relate solely to candidates for the House of Representatives shall be kept for 5 years from the date of their receipt;

(6) (A) compile and maintain a cumulative index of designations, reports, and statements filed under this Act, which index shall be published at regular intervals and made available for purchase directly or by mail;

(B) compile, maintain, and revise a separate cumulative index of reports and statements filed by multicandidate committees, including in such index a list of multicandidate committees; and

(C) compile and maintain a list of multicandidate committees, which shall be revised and made available monthly;

(7) prepare and publish periodically lists of authorized committees which fail to file reports as required by this Act;

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d) of this section;

(9) transmit to the President and each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate; and

(10) serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections. The Commission may enter into contracts for the purpose of conducting studies under this paragraph. Reports or studies made under this paragraph shall be available to the public upon the payment of the cost thereof, except that copies shall be made available without cost, upon request, to agencies and branches of the Federal Government.

(b) *Audits and field investigations.* The Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. All audits and field investigations concerning the verification for, and receipt and use of, any payments

received by a candidate or committee under chapter 95 or chapter 96 of title 26 shall be given priority. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. Such thresholds for compliance shall be established by the Commission. The Commission may, upon an affirmative vote of 4 of its members, conduct an audit and field investigation of any committee which does meet the threshold requirements established by the Commission. Such audit shall be commenced within 30 days of such vote, except that any audit of an authorized committee of a candidate, under the provisions of this subsection, shall be commenced within 6 months of the election for which such committee is authorized.

(c) *Statutory provisions applicable to forms and information-gathering activities.* Any forms prescribed by the Commission under subsection (a)(1) of this section, and any information-gathering activities of the Commission under this Act, shall not be subject to the provisions of section 3512 of title 44, United States Code.

(d) *Rules, regulations, or forms; issuance, procedures applicable, etc.*

(1) Before prescribing any rule, regulation, or form under this section or any other provision of this Act, the Commission shall transmit a statement with respect to such rule, regulation, or form to the Senate and the House of Representatives, in accordance with this subsection. Such statements shall set forth the proposed rule, regulation, or form, and shall contain a detailed explanation and justification of it.

(2) If either House of the Congress does not disapprove by resolution any proposed rule or regulation submitted by the Commission under this section within 30 legislative days after the date of the receipt of such proposed rule or regulation or within 10 legislative days after the date of receipt of such proposed form, the Commission may prescribe such rule, regulation, or form.

(3) For purposes of this subsection, the term "legislative day" means, with respect to statements transmitted to the Senate, any calendar day on which the Senate is in session, and with respect to statements transmitted to the House of Representatives, any calendar day on which the House of Representatives is in session.

(4) For purposes of this subsection, the terms "rule" and "regulation" mean a provision or series of interrelated provisions stating a single, separable rule of law.

(5) (A) A motion to discharge a committee of the Senate from the consideration of a resolution relating to any such rule, regulation, or form or a motion to proceed to the consideration of such a resolution, is highly privileged and shall be decided without debate.

(B) Whenever a committee of the House of Representatives reports any resolution relating to any such form, rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and is not in order to move to reconsider the vote by which the motion is agreed to or disagreed with.

(e) *Scope of protection for good faith reliance upon rules or regulations.* Notwithstanding any other provision of law, any person who relies upon any rule or regulation prescribed by the Commission in accordance with the provisions of this section and who acts in good faith in accordance with such rule or regulation shall not, as a result of such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of title 26.

(f) *Promulgation of rules, regulations, and forms by Commission and Internal Revenue Service; report to Congress on cooperative efforts.* In prescribing such rules, regulations, and forms under this section, the Commission and the Internal Revenue Service shall consult and work together to promulgate rules, regulations, and forms which are mutually consistent. The Commission shall report to the Congress annually on the steps it has taken to comply with this subsection.

NOTE: *Voting System Study.* Section 302 of Pub. L. No. 96–187 provided that:

The Federal Election Commission, with the cooperation and assistance of the National Bureau of Standards, shall conduct a preliminary study with respect to the future development of voluntary engineering and procedural performance standards for voting systems used in the United States. The Commission shall report to the Congress the results of the study, and such report shall include recommendations, if any, for the implementation of a program of such standards (including estimates of the cost and time requirements of implementing such a program). The costs of the study shall be paid out of any funds otherwise available to defray the expenses of the Commission.

§ 439. Statements filed with State offices; "appropriate State" defined; duties of State officers

(a) (1) A copy of each report and statement required to be filed by any person under this Act shall be filed by such person with the Secretary of State (or equivalent State officer) of the appropriate State, or, if different, the officer of such State who is charged by State law with maintaining State election campaign reports. The chief

executive officer of such State shall designate any such officer and notify the Commission of any such designation.

(2) For purposes of this subsection, the term "appropriate State" means—

(A) for statements and reports in connection with the campaign for nomination for election of a candidate to the office of President or Vice President, each State in which an expenditure is made on behalf of the candidate; and

(B) for statements and reports in connection with the campaign for nomination for election, or election, of a candidate to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, the State in which the candidate seeks election; except that political committees other than authorized committees are only required to file, and Secretaries of State required to keep, that portion of the report applicable to candidates seeking election in that State.

(b) The Secretary of State (or equivalent State officer), or the officer designated under subsection (a)(1) of this section, shall—

(1) receive and maintain in an orderly manner all reports and statements required by this Act to be filed therewith;

(2) keep such reports and statements (either in original filed form or in facsimile copy by microfilm or otherwise) for 2 years after their date of receipt;

(3) make each report and statement filed therewith available as soon as practicable (but within 48 hours of receipt) for public inspection and copying during regular business hours, and permit copying of any such report or statement by hand or by duplicating machine at the request of any person, except that such copying shall be at the expense of the person making the request; and

(4) compile and maintain a current list of all reports and statements pertaining to each candidate.

§ 439a. Use of contributed amounts for certain purposes

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in section 170(c) of title 26, or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political party; except that, with respect to any individual who is not a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on January 8, 1980, no such amounts may be converted by

any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.

§ 439c. Authorization of appropriations

There are authorized to be appropriated to the Commission for the purpose of carrying out its functions under this Act, and under chapters 95 and 96 of title 26, not to exceed $5,000,000 for the fiscal year ending June 30, 1975. There are authorized to be appropriated to the Commission $6,000,000 for the fiscal year ending June 30, 1976, $1,500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and $6,000,000 for the fiscal year ending September 30, 1977, and $7,811,500 for the fiscal year ending September 30, 1978.

§ 441a. Limitations on contributions and expenditures

(a) *Dollar limits on contributions.*

(1) No person shall make contributions—

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

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

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

(2) No multicandidate political committee shall make contributions—

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

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

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

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

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

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that—

(A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fundraising efforts;

(B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and

(C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if—

(i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices;

(ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and

(iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of title 26.

In any case in which a corporation and any of its subsidiaries, branches, divisions, departments or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

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

(7) For purposes of this subsection—

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

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

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

(C) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

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

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

(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—

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

State (as certified under subsection (e) of this section), or $200,000; or

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

(2) For purposes of this subsection—

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

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

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

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

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

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

(2) For purposes of paragraph (1)—

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

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

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

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

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any

candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

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

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

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

(ii) $20,000; and

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

(e) *Certification and publication of estimated voting age population.* During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

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

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

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

mittee, or the national committee of a political party, or any combination of such committees.

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

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

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

(2) For purposes of this section and section 79*l*(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, but shall not include—

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

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

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful—

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

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

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

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

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

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

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

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a

separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

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

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

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

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

§ 441c. Contributions by government contractors

(a) *Prohibitions.* It shall be unlawful for any person—

(1) who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any

time between the commencement of negotiations for and the later of—

(A) the completion of performance under; or

(B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

(b) *Separate segregated funds.* This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation, labor organization, membership organization, cooperative, or corporation without capital stock for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 441b of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under section 441b of this title applies to a corporation, labor organization, or separate segregated fund to which this subsection applies.

(c) *"Labor organization" defined.* For purposes of this section, the term "labor organization" has the meaning given it by section 441b(b)(1) of this title.

§ 441d. Publication and distribution of statements and solicitations; charge for newspaper or magazine space

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication—

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of

the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(b) No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes.

§ 441e. Contributions by foreign nationals

(a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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

(1) a foreign principal, as such term is defined by section 611(b) of title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of title 8.

§ 441f. Contributions in name of another prohibited

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

§ 441g. Limitation on contribution of currency

No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed $100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

§ 441h. Fraudulent misrepresentation of campaign authority

No person who is a candidate for Federal office or an employee or agent of such a candidate shall—

(1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or

employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or

(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

§ 441i. Acceptance of excessive honorariums

(a) No person while an elected or appointed officer or employee of any branch of the Federal Government shall accept any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and his spouse or an aide to such person, and excluding amounts paid or incurred for any agents' fees or commissions) for any appearance, speech, or article.

(b) Any honorarium, or any part thereof, paid by or on behalf of an elected or appointed officer or employee of any branch of the Federal Government to a charitable organization shall be deemed not to be accepted for the purposes of this section.

(c) For purposes of determining the aggregate amount of honorariums received by a person during any calendar year, amounts returned to the person paying an honorarium before the close of the calendar year in which it was received shall be disregarded.

(d) For purposes of paragraph (2) of subsection (a) of this section, an honorarium shall be treated as accepted only in the year in which that honorarium is received.

§ 442. Authority to procure technical support and other services and incur travel expenses; payment of such expenses

For the purpose of carrying out his duties under the Federal Election Campaign Act of 1971, the Secretary of the Senate is authorized, from and after July 1, 1972—

(1) to procure technical support services,

(2) to procure the temporary or intermittent services of individual technicians, experts, or consultants, or organizations thereof, in the same manner and under the same conditions, to the extent applicable, as a standing committee of the Senate may procure such services under section 72a(i) of this title,

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency, and

(4) to incur official travel expenses.

Payments to carry out the provisions of this paragraph shall be made from funds included in the appropriation "Miscellaneous Items" under the heading "Contingent Expenses of the Senate" upon vouchers approved by the Secretary of the Senate. All sums received by the Secretary under

authority of the Federal Election Campaign Act of 1971 [as amended] shall be covered into the Treasury as miscellaneous receipts.

Subchapter II—General Provisions

§ 451. Extension of credit by regulated industries; regulations

The Civil Aeronautics Board, the Federal Communications Commission, and the Interstate Commerce Commission shall each promulgate, within ninety days after February 7, 1972, its own regulations with respect to the extension of credit, without security, by any person regulated by such Board or Commission to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office.

NOTE: *Section 1553(a)(7), (b) of Title 49, Transportation, provides that all functions, powers, and duties of the Civil Aeronautics Board under this section are transferred to and vested in the Secretary of Transportation, effective Jan. 1, 1985. Pub. L. No. 98–443.*

§ 452. Prohibition against use of certain Federal funds for election activities

No part of any funds appropriated to carry out the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the Community Services Administration who, in his official capacity as such an officer or employee, engages in any such activity.

§ 453. State laws affected

The provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

§ 454. Partial invalidity

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

§ 455. Period of limitations

(a) No person shall be prosecuted, tried, or punished for any violation of subchapter I of this chapter, unless the indictment is found or the information is instituted within 3 years after the date of the violation.

(b) Notwithstanding any other provision of law—

(1) the period of limitations referred to in subsection (a) of this section shall apply with respect to violations referred to in such subsection committed before, on, or after the effective date of this section; and

(2) no criminal proceeding shall be instituted against any person for any act or omission which was a violation of any provision of subchapter I of this chapter, as in effect on December 31, 1974, if such act or omission does not constitute a violation of any such provision, as amended by the Federal Election Campaign Act Amendments of 1974.

Nothing in this subsection shall affect any proceeding pending in any court of the United States on January 1, 1975.

NOTE: *Effective date of 1979 Amendment.* Section 301 of Pub. L. No. 96–187 provided that:

(a) Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1979 Amendment note set out below] *are effective upon enactment* [January 8, 1980].

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

NOTE: *Short Title of 1979 Amendment.* Section I of Pub. L. No. 96–187 provided: *That this Act* [amending sections 431, 437, 437c, 437d, 437f to 439a, 439c, 441a to 441i of this title, section 3132 of Title 5, Government Organization and Employees, sections 602, 603, and 607 of Title 18, Crimes and Criminal Procedure, section 901a of Title 22, Foreign Relations and Intercourse, section 9008 of Title 26, Internal Revenue Code, and section 5043 of Title 42, The Public Health and Welfare; repealing sections 435, 436, 437b, 437e, 439b, and 441j of this title and section 591 of title 18; and enacting provisions set out as notes under this section] *may be cited as the "Federal Election Campaign Act Amendments of 1979".*

EXCERPTS FROM TITLE 18 UNITED STATES CODE

§ 241. Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

§ 242. Deprivation of rights under color of law

Whoever, under color of law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

§ 245. Federally protected activities

(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of

responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

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—shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death

results shall be subject to imprisonment for any term of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot.

§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

§ 593. Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

§ 594. Intimidation of voters

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 595. Interference by administrative employees of Federal, State, or Territorial Governments

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.

§ 596. Polling armed forces

Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including

within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

The word "poll" means any request for information, verbal or written, which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form.

§ 597. Expenditures to influence voting

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

§ 598. Coercion by means of relief appropriations

Whoever uses any part of any appropriation made by Congress for work relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 599. Promise of appointment by candidate

Whoever, being a candidate, directly or indirectly, promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

§ 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special 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, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

§ 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of—

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State;

if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined not more than $10,000, or imprisoned not more than one year, or both.

(b) As used in this section—

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

(2) the term "election" means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a

primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

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

§ 602. Solicitation of political contributions

It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

§ 603. Making political contributions

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

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§ 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

§ 607. Place of solicitation

(a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such

contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

§ 608. Absent uniformed services voters and overseas voters

(a) Whoever knowingly deprives or attempts to deprive any person of a right under the Uniformed and Overseas Citizens Absentee Voting Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

(b) Whoever knowingly gives false information for the purpose of establishing the eligibility of any person to register or vote under the Uniformed and Overseas Citizens Absentee Voting Act, or pays or offers to pay, or accepts payment for registering or voting under such Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

§ 609. Use of military authority to influence vote of member of Armed Forces

Whoever, being a commissioned, noncommissioned, warrant, or petty officer of an Armed Force, uses military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so, shall be fined in accordance with this title or imprisoned not more than five years, or both. Nothing in this section shall prohibit free discussion of political issues or candidates for public office.

§ 911. Citizen of the United States

Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than three years, or both.

§ 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any

such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used is this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

§ 3571. Sentence of fine

(a) **In general.**—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) **Authorized fines.**—Except as otherwise provided in this chapter, the authorized fines are—

(1) *if the defendant is an individual—*

(A) for a felony, or for a misdemeanor resulting in the loss of human life, not more than $250,000;

(B) for any other *misdemeanor,* not more than $25,000; and

(C) for an infraction, not more than $1,000; and

(2) *if the defendant is an organization—*

(A) for a felony, or for a misdemeanor resulting in the loss of human life, not more than $500,000;

(B) for any other misdemeanor, not more than *$100,000;* and

(C) for an infraction, not more than $10,000.

EXCERPTS FROM TITLE 42 UNITED STATES CODE

§ 1973i. Prohibited acts—Failure or refusal to permit casting or tabulation of vote

(a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this subchapter or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

Intimidation, threats, or coercion

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title.

False information in registering or voting; penalties

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however,* That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the

Virgin Islands, Resident Commissioner of the Commonwealth of Puerto Rico.

Falsification or concealment of material facts or giving of false statements in matters within jurisdiction of examiners or hearing officers; penalties

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Voting more than once

(e)(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 1973aa–1 of this title, to the extent two ballots are not cast for an election to the same candidacy or office.

APPENDIX C

SAMPLE INDICTMENTS

Example 1: *United States v. Howard*, 774 F.2d 838 (7th Cir. 1985). This indictment charges a scheme to corrupt poll officers in Chicago to stuff ballot boxes during the 1982 general election, when both federal and nonfederal candidates were voted upon. The indictment charges violations of 18 U.S.C. 241 (Count 1) arising out of the defendants' activities to misuse state power to dilute the vote; 42 U.S.C. 1973i(c) (Count 4) arising out of the defendants' actions in impersonating voters whose votes they fraudulently cast; 42 U.S.C. 1973i(e) (Count 3) arising out of the fact that the defendants marked more than one ballot in the subject election; and 18 U.S.C. 371 (Count 2) arising out of the defendants' actions in conspiring to violate the laws of the United States.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)
	)
	)
v.	) No._____
	) Violation: Title 18, United
EDWARD HOWARD, also known as "Captain Eddie" and THOMAS CUSACK	) States Code, Sections 2, 241,) 371 and 1341; Title 42, United) States Code, Sections 1973i(c)) and 1973i(e)

The SPECIAL APRIL 1982 GRAND JURY charges:

1. On November 2, 1982, pursuant to the laws of the United States and of the State of Illinois, an election was held for the purpose of electing,

among others, candidates for the office of Member of the United States House of Representatives from the 11th Congressional District of Illinois, in which the 44th Precinct of the 39th Ward of the City of Chicago was located, and for the offices of Governor of the State of Illinois, Chairman of the Cook County Board and other state and county offices. At this election the names of candidates for these offices were on the ballot of election in the 44th Precinct of the 39th Ward of the City of Chicago.

2. On November 2, 1982, many persons in Cook County, Illinois, and the State of Illinois were duly registered as voters and possessed the necessary requisite qualifications as provided by law to entitle them to vote in the general election on that day for the candidates referred to in paragraph one. Many of these persons duly voted for a candidate for one or more of the aforesaid federal, state and county offices, and their votes were certified and counted as part of the total number of votes cast for such candidates at said election. These voters will hereinafter be referred to as qualified voters.

3. Each of the qualified voters, then and there possessed the right and privilege guaranteed and secured by the Constitution and laws of the United States to vote at said election for a candidate for the federal office described in paragraph one and the further right and privilege to have each of their votes recorded, counted and given full effect, that is to say, that the value and effect of each of their votes and expressions of choice should not be impaired, lessened, diminished, diluted or destroyed by illegal votes falsely or fraudulently cast, counted, recorded and certified.

4. On the occasion of the November 2, 1982, general election referred to above, defendant EDWARD HOWARD was a Democratic Precinct Captain in the 44th Precinct of the 39th Ward; the polling place for said precinct was located at the Volta School, 4950 N. Avers in Chicago, Illinois.

5. On the occasion of the November 2, 1982, general election referred to above, defendant THOMAS CUSACK was an Assistant Democratic Precinct Captain in the 44th Precinct of the 39th Ward.

6. On the occasion of the November 2, 1982, general election referred to above, Grace Cusack was a registered voter in the 44th Precinct of the 39th Ward.

7. On the occasion of the November 2, 1982, general election referred to above, unindicted co-conspirator Darryl Cunningham was a Democratic precinct worker in the 44th Precinct of the 39th Ward,

8. On the occasion of the November 2, 1982, general election referred to above, unindicted co-conspirators Charlotte Watson and Geraldine Watson were judges of election along with Cecilia Webster, Minnie Karch and Mary Franzen, who were also judges of election, having been selected for said position by virtue of the laws of the State of Illinois, in the 44th Precinct of the 39th Ward and had access to and control over ballots and voting paraphernalia in connection with said election.

9. From on or about February 16, 1982, to on or about November 2, 1982, at Chicago, in the Northern District of Illinois, Eastern Division,

EDWARD HOWARD, also known as
"Captain Eddie", and
THOMAS CUSACK,

defendants herein, did unlawfully, willfully and knowingly combine, conspire, confederate and agree with each other and with Darryl Cunningham and Charlotte Watson, named as co-conspirators but not as defendants herein, and with other persons to the Grand Jury known and unknown, to injure and oppress the aforesaid qualified voters in the free exercise and enjoyment of certain rights and privileges secured to each of them by the Constitution and laws of the United States, to wit:

a. The right guaranteed to said qualified voters in the aforesaid election under Article One, Sections Two and Four to have their votes in the aforesaid election for the candidates of their choice for the above described federal office cast and tabulated fairly and free from dilution by ballots illegally and improperly cast.

b. The right guaranteed to said qualified voters by and under the Equal Protection and the Due Process Clauses of the Fourteenth Amendment to have their votes in the aforesaid election cast and tabulated fairly and free from dilution by ballots illegally and improperly cast and tabulated by persons charged under Illinois law with the operation and safe-keeping of the poll for said Precinct.

10. The object of this conspiracy, among other things, was to secure the election of candidates supported by the defendants by causing judges of election to corruptly discharge their official duties in the management of the polling place for the 44th Precinct in the 39th Ward and by other means.

11. It was a part of said conspiracy that unindicted co-conspirator Charlotte Watson became a Republican Judge of Election, and Geraldine Watson, her mother, became a Democratic Judge of Election, in the 44th Precinct of the 39th Ward for the November 2, 1982, general election.

12. It was a part of said conspiracy that unindicted co-conspirator Darryl Cunningham was hired as a Democratic precinct worker in the 44th Precinct of the 39th Ward prior to said election by defendant EDWARD HOWARD.

13. It was a part of said conspiracy that unindicted co-conspirator Darryl Cunningham and one or more of the defendants, and other persons to the Grand Jury unknown, conducted a canvass of residence addresses of registered voters in the 44th Precinct of the 39th Ward of the City of Chicago to determine, among other things, which registered voters did not intend to vote on November 2, 1982.

14. It was further a part of said conspiracy that on the occasion of the November 2, 1982, general election, the defendants EDWARD

HOWARD and THOMAS CUSACK did cause ballots to be fraudulently and illegally cast in the names of persons who did not apply for ballots in the 44th Precinct of the 39th Ward.

15. It was further a part of said conspiracy that the defendant THOMAS CUSACK and his wife Grace Cusack did falsely register to vote in the 44th Precinct of the 39th Ward by falsely listing as their residence 4924 N. Avers, Chicago, Illinois.

16. It was further a part of said conspiracy that defendant EDWARD HOWARD gave unindicted co-conspirator Darryl Cunningham the name of Leonard Watson who was a registered voter in the 44th Precinct of the 39th Ward and caused unindicted co-conspirator Darryl Cunningham to fill out an application for ballot, number 054, in the name of Leonard Watson, which ballot application unindicted co-conspirator Darryl Cunningham then presented to unindicted co-conspirator Geraldine Watson, who was Leonard Watson's mother and a Democratic Judge of Election.

17. It was further a part of said conspiracy that EDWARD HOWARD and THOMAS CUSACK caused unindicted co-conspirator Darryl Cunningham to punch out the "straight 10" (that is, straight Democratic) designation of candidates on the official ballot thereby casting an illegal ballot in the name of Leonard Watson.

18. It was further a part of said conspiracy that defendants EDWARD HOWARD and THOMAS CUSACK caused unindicted co-conspirator Charlotte Watson to illegally complete applications for ballot and illegally vote, to wit:

a. During the conduct of the election, defendants EDWARD HOWARD and THOMAS CUSACK gave Charlotte Watson names of registered voters who precinct workers identified as individuals who were not expected to vote in the general election.
b. The names of said voters were delivered to Charlotte Watson on small slips of paper by defendant EDWARD HOWARD while she was acting as a Judge of Election on November 2, 1982 and Charlotte Watson placed the slips of paper in her shoe.
c. At various times during the conduct of the election, Charlotte Watson did remove the slips of paper from her shoe and did falsely sign the names of the following registered voters on the following official ballot applications and did illegally vote a straight Democratic ballot in the name of these registered voters.

Application Number	Registered Vote
152	Libby Katz
184	Kirby Spearin
185	Vickie L. Schmidt
186	Robert Schmidt
242	Grace Cusack
366	Malcolm Vice
367	Mary E. Piper

d. At or about the conclusion of the election on November 2, 1982, Charlotte Watson did remove additional small slips of paper from her shoe and did falsely sign the names of the following registered voters on the following official ballot applications and did deliver approximately seven (7) official ballots to defendants EDWARD HOWARD and THOMAS CUSACK, who removed these ballots from the voting area and then returned and caused the ballots to be fraudulently voted.

Application Number	Registered Vote
379	Nancy Lemke
380	Mercedes Almaguer
381	Tarja Anderson
382	Ae Ran Choi
383	Hyung Choi
384	Dennis Petri
385	Demetres Livaditis

19. It was further a part of said conspiracy that defendant EDWARD HOWARD did order and direct unindicted co-conspirator Darryl Cunningham to deliver to defendant EDWARD HOWARD unmarked absentee ballots which ballots had been obtained by registered voters.

20. It was further a part of said conspiracy that unindicted co-conspirator Darryl Cunningham did, pursuant to his duties as a precinct worker and at the direction of defendant EDWARD HOWARD, ask the following registered voters and others to apply for absentee ballots and did ask said registered voters to deliver to Darryl Cunningham the unmarked ballot sent through the mail to the registered voter by officials at the Chicago Board of Elections Commissioners.

Registered Voter

Darryl Cunningham
Rose Cunningham
Concetta Malone
Elsie Mitrovich
Carlito Morales
Maria Morales

21. It was further a part of said conspiracy that unindicted co-conspirator Darryl Cunningham did deliver to EDWARD HOWARD unmarked absentee ballots, which Darryl Cunningham had received pursuant to his request from the following registered voters:

Registered Voter

Darryl Cunningham
Rose Cunningham
Concetta Malone
Carlito Morales
Maria Morales

which defendant EDWARD HOWARD then voted and caused to be voted in the 44th Precinct of the 39th Ward of the City of Chicago for the November 2, 1982, general election.

22. It was further a part of the scheme and artifice to defraud that Darryl Cunningham advised to EDWARD HOWARD that a marked absentee ballot Darryl Cunningham had received pursuant to his request from Elsie Mitrovich was not voted "straight ten" (that is, straight Democratic) and defendant EDWARD HOWARD, upon being so advised, caused the ballot to be destroyed.

23. It was a further part of said conspiracy that said defendants EDWARD HOWARD and THOMAS CUSACK would misrepresent, conceal and hide, and cause to be misrepresented, concealed and hidden, the purpose of and the acts done in furtherance of the conspiracy.

24. It was a part of said conspiracy that said defendants would cause, permit and attempt to cause votes to be cast for candidates for said federal office on ballots in the 44th Precinct of the 39th Ward of the City of Chicago, in Cook County, Illinois, by procedures and methods in violation of the laws of the State of Illinois pertaining to voting in elections, and the defendants would permit, cause and attempt to cause fraudulent and illegal votes to be cast for candidates for said federal office on ballots in the aforesaid precinct, all with the purpose and intent that said illegal and fraudulent ballots would be counted, returned and certified as a part of the total votes cast for candidates for said election, thereby impairing,

lessening, diminishing, diluting and destroying the value and effect of votes legally, properly and honestly cast for such candidates in said election, in Chicago, Illinois;

In violation of Title 18, United States Code, Section 241.

COUNT TWO

The SPECIAL APRIL 1982 GRAND JURY further charges:

1. Paragraphs one through eight of Count One are hereby realleged and incorporated herein as if fully set forth.

2. From on or about February 16, 1982, until on or about November 2, 1982, at Chicago, in the Northern District of Illinois, Eastern Division,

EDWARD HOWARD, also known as
"Captain Eddie", and
THOMAS CUSACK,

defendants herein, knowingly and willfully did combine, conspire, confederate, and agree with each other, with Darryl Cunningham and Charlotte Watson, named as co-conspirators but not as defendants herein, and with others known and unknown to this Grand Jury, to commit offenses against the United States, to wit: to vote more than once in a general election held in part for the purpose of electing a candidate for the office of Member of the United States House of Representatives, in violation of Title 42, United States Code, Section 1973i(e); and to knowingly and willfully give false information as to a voter's name for the purpose of establishing the voter's eligibility to vote in a general election held in part for the purpose of electing a candidate for the office of Member of United States House of Representatives, in violation of Title 42, United States Code, Section 1973i(c).

3. The object of this conspiracy, among other things, was to secure the election of candidates supported by the defendants by causing the corrupt discharge of the official duties of the judges of election in the management of the poll for the 44th Precinct in the 39th Ward and by other means.

4. It was further a part of the conspiracy that unindicted co-conspirator Darryl Cunningham and one or more of the defendants and other persons to the Grand Jury unknown, conducted a canvass of residence addresses of registered voters in the 44th Precinct of the 39th Ward of the City of Chicago to determine, among other things, which registered voters did not intend vote on November 2, 1982.

5. It was further a part of said conspiracy that on the occasion of the November 2, 1982, general election, the defendants EDWARD HOWARD and THOMAS CUSACK did cause ballots to be cast in the names of persons who did not apply for ballots in the 44th Precinct of the 39th Ward.

6. It was further a part of said conspiracy that said defendants EDWARD HOWARD and THOMAS CUSACK would misrepresent, conceal and hide, and cause to be mispresented, concealed and hidden, the purpose of and the acts done in furtherance of the conspiracy.

7. In furtherance of the conspiracy and to effect the objects thereof, the defendants did commit, at the times mentioned, in the Northern District of Illinois the following:

OVERT ACTS

1. On or about March 16, 1982, in Chicago, Illinois, unindicted co-conspirator Charlotte Watson became a Republic Judge of Election and Geraldine Watson, her mother, became a Democratic Judge of Election in the 44th Precinct of the 39th Ward for the November 2, 1982, general election.

*****

[See paras 11-22 of Count 1]

*****

In violation of Title 18, United States Code, Section 371.

COUNT THREE

The SPECIAL APRIL 1982 GRAND JURY further charges:

On or about November 2, 1982, in Chicago, in the Northern District of Illinois, Eastern Division,

EDWARD HOWARD, also known as
"Captain Eddie", and
THOMAS CUSACK,

defendants herein, did vote more than once in the November 2, 1982 general election, which was held in part for the purpose of electing a candidate for the office of Member of the United States House of Representatives, in that during said election in the 44th Precinct of the 39th Ward of the City of Chicago the defendants, EDWARD HOWARD and THOMAS CUSACK, voted approximately twenty ballots as described in paragraphs 16 through 21 of Count One.

In violation of Title 42, United States Code, Section 1973i(e) and Title 18, United States Code, Section 2.

COUNT FOUR

The SPECIAL APRIL 1982 GRAND JURY further charges:

On or about February 16, 1982, in Chicago, in the Northern District of Illinois, Eastern Division,

THOMAS CUSACK,

defendant herein, knowingly and willfully did give and cause to be given false information as to his address in the voting district of the 44th Precinct of the 39th Ward of the City of Chicago for the purpose of establishing his eligibility to register and to vote at elections in the State of Illinois, including general and primary elections held for the purpose of selecting and electing candidates for the office of Member of the United States House of Representatives;

In violation of Title 42, United States Code, Section 1973i(c).

Example 2: *United States v. Carmichael*, 685 F.2d 903 (4th Cir. 1982), *cert. denied*, 459 U.S. 1202 (1983). This indictment charges conspiracy to pay voters for voting in violation of 18 U.S.C. 371 and 42 U.S.C. 1973i(c) (Count 1), as well as substantive violations of the vote-buying provisions of 42 U.S.C. 1973i(c) (Count 2).

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

UNITED STATES OF AMERICA	) Criminal Number 81-43
	) 18 U.S.C. §371
v.	) 42 U.S.C. 1973i(c)
	) 18 U.S.C. §2
	) 18 U.S.C. §1503
ALBERT EUGENE CARMICHAEL, JR.	)
JOE GRADY FLOWERS and MAZEL J. ARNETTE	)

INDICTMENT

THE GRAND JURY CHARGES:

INTRODUCTION

1. On or about June 10, 1980, in Dillon County, South Carolina, a primary election was held in part for the purpose of selecting and electing candidates for the offices of Member of the United States Senate and Member of the United States House of Representatives.

2. The voters referred to herein were registered to vote in the aforesaid election held in Dillon County, South Carolina.

3. Roy Lee was a candidate for re-election to the office of Sheriff for Dillon County in the aforesaid election.

4. In connection with the aforesaid election:

a. ALBERT EUGENE CARMICHAEL, JR., a South Carolina State Senator and a Defendant herein, assisted in the campaign to re-elect Roy Lee.

b. JOE GRADY FLOWERS, an employee of the Defendant ALBERT EUGENE CARMICHAEL, JR., and a Defendant herein, assisted in the campaign to re-elect Roy Lee.

e. MAZEL J. ARNETTE, Defendant herein, assisted in said campaign to re-elect Roy Lee.

d. Jessie Nance, Luther Nance, Dorothy Mae Worley and Madgaline Merchant were workers who assisted in said campaign of Roy Lee.

COUNT 1
(18 U.S.C. §371)

5. The Grand Jury realleges the allegations contained in paragraphs one and two of this Indictment, and further alleges that:

6. Beginning on or about March 1, 1980, and continuing to on or about June 20, 1980, in Dillon County, District of South Carolina, the Defendants ALBERT EUGENE CARMICHAEL, JR., JOE GRADY FLOWERS and MAZEL ARNETTE did knowingly, willfully and unlawfully combine, conspire and agree together and with other persons known and unknown to the Grand Jury, to commit the following offenses against the United States: to knowingly and willfully pay and offer to pay voters for voting in the aforesaid election, in violation of Title 42, United States Code, Section 1973i(c).

7. The purpose or object of the conspiracy was to secure the re-election of certain individuals, including the incumbent candidate for Sheriff, Roy Lee, in connection with the aforesaid election.

8. The means by which the conspiracy was carried out included the following:

a. Organizational meetings were held for the purpose of discussing a strategy for maximizing the vote for Roy Lee in the aforesaid primary election and the need to pay voters for voting and the amount which said voters should be paid. These meetings were attended by campaign organizers (hereinafter referred to as "captains") and by citizens of the community who were active in politics (hereinafter referred to as "workers").

b. At these meetings, the captains explained to the workers the methods and procedures for casting absentee ballots, and they encouraged said workers to distribute these materials amongst persons who were registered to vote in the aforesaid South Carolina Democratic primary (hereinafter referred to as "voters").

c. Acting upon the advice and encouragement thus given, the workers distributed applications for absentee ballots to voters, and they requested said voters to execute these applications.

d. The workers would then cause the applications to be transmitted to the appropriate election officials in Dillon County, who would issue absentee ballots to the voters who had requested them.

e. After said absentee ballots had been received by the voters, the workers revisited them for the purpose of accepting physical receipt of the completed absentee ballots. At this time, the workers paid $5.00 to each voter who had cast an absentee ballot in the manner aforesaid.

f. At the aforesaid organizational meetings, the captains also instructed the workers to approach voters who had not cast absentee ballots, to encourage said voters to vote on election day, to drive said voters to the polls, and to pay said voters after they had voted.

g. Acting upon the advice and instructions thus given, workers drove voters to the polls on the day of the aforesaid election, and paid said voters $5.00 each after they had voted.

h. In accordance with understandings reached at the aforesaid organizational meetings, the workers received monetary payments for each voter from whom they procured an absentee ballot as aforesaid, or whom they drove to the polls as aforesaid. These payments included reimbursement to said workers for expenditures they had made to the voters for voting.

OVERT ACTS

9. In furtherance of the conspiracy, and to accomplish the object thereof, the Defendants ALBERT EUGENE CARMICHAEL, JR., JOE GRADY FLOWERS and MAZEL J. ARNETTE, and their co-conspirators, performed in the District of South Carolina the following overt acts, among others:

a. During March or April 1980, the exact date to the Grand Jury being unknown, the Defendant ALBERT EUGENE CARMICHAEL, JR., and other persons known and unknown to the Grand Jury, attended a meeting at the lakehouse of Defendant CARMICHAEL and discussed the use of absentee ballots and the payment of voters in connection with the aforesaid election.

b. During March or April 1980, the exact date to the Grand Jury being unknown, the Defendants and other persons known and unknown to the Grand Jury attended another meeting in Lakeview at the lakehouse of ALBERT EUGENE CARMICHAEL, JR., a

Defendant herein, and discussed the use of absentee ballots and the payment of voters in connection with the aforesaid election.

c. During April or May 1980, the exact date to the Grand Jury being unknown, the Defendants and other persons attended another meeting in Lakeview at the lakehouse of ALBERT EUGENE CARMICHAEL, JR., a Defendant herein, at which meeting absentee ballot applications were distributed, and the Defendant and others discussed the amount to be paid the voters and workers in connection with the aforesaid election.

d. On or about June 4, 1980, Luther Nance and Jessie Nance paid Sarah Ford for voting in the aforesaid election.

e. On or about May 24, 1980, Dorothy May Worley paid Geraldine Ford for voting in the aforesaid election.

*****

[*etc.*]

All in violation of Title 18, United States Code, Section 371.

COUNT 2
(42 U.S.C. §1973i(c) and 18 U.S.C. §2)

10.The Grand Jury realleges the allegations contained in paragraphs one and two of this Indictment and further alleges that:

11. On or about May 31, 1980, in Dillon County, District of South Carolina, the Defendants, ALBERT EUGENE CARMICHAEL, JR., JOE GRADY FLOWERS and MAZEL J. ARNETTE did knowingly and willfully pay and offer to pay, and did aid and abet and willfully cause each other to pay and offer to pay, Margaret Miller, a voter, for voting in the aforesaid election, in violation of Title 42, United States Code, Section 1973i(c), and Title 18, United States Code, Section 2.

*****

[*etc.*]

Example 3: *United States v. Meekins.* This information charges a political worker with violating 18 U.S.C. 242 by acting under color of law and custom to deprive the public of a fair election through vote buying (Count 1), and also charges vote buying for a federal candidate in violation of 18 U.S.C. 597 (Count 2).

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

UNITED STATES OF AMERICA	) CRIMINAL NUMBER 81-175
v.	) 18 U.S.C. §242, §597 and §2
LLOYD MEEKINS, JR. a/k/a MICKEY MEEKINS	)

SUPERSEDING INFORMATION

COUNT 1

THE UNITED STATES ATTORNEY CHARGES:

On or about June 10, 1980, in Dillon County, South Carolina and within the District of South Carolina, LLOYD MEEKINS, JR., also known as Mickey Meekins, the defendant herein, would and did knowingly and willfully act under color of law, statute, ordinance, regulation and custom, and would and did aid and abet others known to the United States Attorney to act under color of law, statute, ordinance regulation and custom, to deprive the citizens of Dillon County, South Carolina, of rights, privileges and immunities secured by the Constitution of the United States, to wit: the right of said citizens to have their votes tabulated and counted in the 1980 Democratic Primary Election, free from dilution through paying voters, altering ballots and the tabulating of fraudulent and spurious ballots, in violation of Section 242 of Title 18, United States Code.

COUNT 2

THE UNITED STATES ATTORNEY FURTHER CHARGES:

On or about the month of May 1980, in Dillon County, South Carolina and within the District of South Carolina, the defendant, LLOYD MEEKINS, JR., also known as Mickey Meekins, did knowingly

and unlawfully make and offer to make and did cause to be made and offered to be made an expenditure to Lillie McCrae to vote for a candidate in the June 10, 1980, Democratic Party Primary Election, in violation of Sections 597 and 2 of Title 18, United States Code.

Example 4: *United States v. Pintar*, 630 F.2d 1270 (8th Cir. 1980). This indictment charges conspiracy to defraud the United States in violation of 18 U.S.C. 371 through a scheme to hire and use employees of a state agency receiving federal funds for political purposes, as well as promising and giving employment made possible with federal funds in return for political activities, in violation of 18 U.S.C. 600.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

UNITED STATES OF AMERICA	)
	) *I N D I C T M E N T*
	)
Plaintiff,	)
	) 18 U.S.C. §371
v.	) 18 U.S.C. §600
MICHAEL A PINTAR	)
BARBARA PINTAR	)
	)
Defendants.	)

THE GRAND JURY CHARGES:

COUNT 1

At all times material to this Indictment:

1. The Upper Great Lakes Regional Commission (hereafter referred to as the Commission) was a federal agency authorized to award grants for the purpose of encouraging regional economic development in designated areas in the States of Michigan, Minnesota and Wisconsin.

2. Funds for the Upper Great Lakes Regional Commission were provided in whole or in part by periodic appropriation of the United States Congress.

3. The Commission was composed of a Federal Co-Chairman and the Governors of the States of Michigan, Minnesota and Wisconsin. The Governor of the State of Minnesota employed an alternate and a staff representative to assist in carrying out his duties as a member of the Commission.

4. MICHAEL A. PINTAR was employed as the staff representative to the Commission on behalf of the Governor of Minnesota. In this capacity he had responsibility for recommending and overseeing particular grants made by the Commission. The salary of MICHAEL A. PINTAR was paid out of federal grant money to the State of Minnesota.

5. BARBARA PINTAR was employed by the Commission as a secretary. The salary of BARBARA PINTAR was paid, in part, by federal grant money.

6. DONALD C. BOYD operated organizations which received money from the Commission. These organizations included the Southern Minnesota Small Business Development Center and the Duluth Area Economic Development Office. Said money was entrusted to Donald C. Boyd for his use in the faithful and honest administration of grant programs approved by the Commission.

7. The Minnesota Department of Economic Development was an agency of the State of Minnesota established for the purpose of encouraging economic development in the State of Minnesota. In furtherance of this function, from time to time, this agency submitted applications for grants to the Commission and received funds pursuant thereto.

OBJECT OF CONSPIRACY

From in or about May 1972 to in or about July 1977, in the District of Minnesota and elsewhere, the defendants, MICHAEL A. PINTAR and BARBARA PINTAR, did knowingly and willfully combine, conspire, confederate and agree together with each other and with others to the Grand Jury known and unknown to defraud the United States of its right to have programs of an agency financed in whole or in part with money provided by the United States Government, namely, the Upper Great Lakes Regional Commission, administered honestly, fairly, without corruption or deceit, and free from the use of federal funds to accomplish political objectives, for personal uses, and for other purposes unrelated to legitimate Commission business.

MANNER AND MEANS

1. It was part of the conspiracy that MICHAEL A. PINTAR would travel or claim to travel to Miami, Florida, Omaha, Nebraska, and elsewhere, at the expense of the Commission, for purposes unrelated to the legitimate business of the Commission.

2. It was a further part of the conspiracy that MICHAEL A. PINTAR would recommend that grant money from the Commission be made available to the Northern Minnesota Small Business Development Center and the Duluth Area Economic Development Office.

3. It was a further part of the conspiracy that the Northern Minnesota Small Business Development Center and the Duluth Area Economic Office would receive funds either directly from the Commission or indirectly from the Commission through the Minnesota Department of Economic Development.

4. It was a further part of the conspiracy that MICHAEL A. PINTAR and BARBARA PINTAR would hire and cause to be hired

Shirley Baker as an employee of the Northern Minnesota Small Business Development Center.

5. It was a further part of the conspiracy that MICHAEL A. PINTAR and BARBARA PINTAR would hire and cause to be hired Sharon Backstrom as an employee of the Northern Minnesota Small Business Development Center.

6. It was a further part of the conspiracy that MICHAEL A. PINTAR would hire and cause to be hired Ann Zweber as an employee of the Duluth Area Economic Development Office.

7. It was a further part of the conspiracy that MICHAEL A. PINTAR and BARBARA PINTAR would direct and authorize and cause to be directed Shirley Baker, Sharon Backstrom and Ann Zweber to perform political functions unrelated to legitimate purposes of Commission grants.

8. It was a further part of the conspiracy that MICHAEL A. PINTAR and BARBARA PINTAR, during the time they were employees of the Commission and during business hours, would engage in political activities unrelated to the legitimate business or purposes of the Commission.

9. It was a further part of the conspiracy that MICHAEL A. PINTAR and BARBARA PINTAR would conceal and attempt to conceal the aforementioned facts relating to political activities.

OVERT ACTS

The Grand Jury charges that in furtherance of the aforesaid conspiracy and to accomplish the objects thereof, the conspirators, in the District of Minnesota and elsewhere, did commit the following overt acts:

1. In or about May 1972, MICHAEL A. PINTAR traveled from Duluth, Minnesota to Omaha, Nebraska.

2. In or about July 1972, MICHAEL A. PINTAR traveled from Duluth, Minnesota to Miami, Florida.

3. In or about June 1973, BARBARA PINTAR interviewed Shirley Baker.

4. In or about June 1973, MICHAEL A. PINTAR offered Shirley Baker employment.

5. In or about the summer of 1973, MICHAEL A. PINTAR and BARBARA PINTAR instructed Shirley Baker to distribute raffle tickets.

6. From in or about April 1973 to in or about April 1974, MICHAEL A. PINTAR and BARBARA PINTAR instructed Shirley Baker to type Democratic Farmer Labor Party precinct caucus lists.

7. In or about June 1974, BARBARA PINTAR instructed Shirley Baker to work on the Octoberfest for Congressional candidate James Oberstar.

8. In or about July 1974, MICHAEL A. PINTAR and BARBARA PINTAR instructed Shirley Baker to collect political contributions for the Senatorial campaign of Wendell Anderson.

9. In or about January 1975, MICHAEL A. PINTAR and BARBARA PINTAR instructed Shirley Baker to prepare invitations to a ceremony on behalf of Duluth Mayor Robert Beaudin.

10. In or about July 1975, BARBARA PINTAR offered Sharon Backstrom employment.

11. In or about August 1976, BARBARA PINTAR instructed Sharon Backstrom to address and stuff envelopes for the legislative campaign of Thomas Berkleman.

12. In or about November 1976, BARBARA PINTAR instructed Sharon Backstrom to obtain lists on names from the country welfare office.

In violation of Title 18, United States Code, Section 371.

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COUNT XIV

In or about July 1975, in the District of Minnesota, MICHAEL A. PINTAR and BARBARA PINTAR, defendants herein, directly and indirectly, promised employment, position, compensation, appointment and other benefits provided for and made possible in whole or in part by an Act of Congress to Sharon Backstrom as consideration, favor and reward for political activity, to wit: employment as a secretary to the Northern Minnesota Small Business Development Center as consideration, favor and reward for political activities to be performed by said Sharon Backstrom in connection with general elections to political office and in connection with primary elections, political conventions and caucuses held to select candidates for political office.

In violation of Title 18, United States Code, Section 600.

Example 5: *United States v. Webb*. This mail fraud indictment was returned ***after*** the decision in *McNally v. United States*, 107 S.Ct. 2875 (1987). It charges a scheme to obtain the salary and emoluments of the office of Sheriff, and to deprive the taxpayers of the affected jurisdiction of their lawful control over the allocation of public funds, through the casting of fraudulent absentee ballots. This indictment was sustained by a district judge in Louisville, Kentucky, but had not been acted upon by the Sixth Circuit at the time of this writing.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	*INDICTMENT*
	)	
MORRIS WAYNE WEBB	)	NO. 87-00005-B(M)
DEBBY BUCHANAN	)	

THE GRAND JURY CHARGES:

INTRODUCTION

1. At all times material to this Indictment:

A. The Constitution of the Commonwealth of Kentucky, and more specifically Article 99 thereof, provided that each county in the Commonwealth shall be served by a law enforcement officer known as a Sheriff.

B. The general laws of the Commonwealth of Kentucky, and more specifically KRS 64.345(1), KRS 64.528 and KRS 65.535 thereof, provided that the occupant of the office of Sheriff in each county should be paid a salary from public monies.

C. The general laws of the Commonwealth of Kentucky, and more specifically KRS 64.345(2) thereof, further provided that the occupant of the office of Sheriff in each of the several counties of the Commonwealth should be entitled to an additional Three Hundred Dollars ($300) per month from public monies in compensation for their expenses.

D. The Constitution of the Commonwealth of Kentucky, and more specifically Article 99 thereof, provided that the occupant of the office of Sheriff was to be determined by a ballot election, with the individual receiving the most valid votes cast by qualified electors from within the county in question being entitled to occupy the office, and receive the salary and fringe benefits appertaining thereto for a term of four years.

2. On November 5, 1985, a general election was held in Edmonson County, Kentucky for the purpose among others of selecting an individual to occupy the office of Sheriff of Edmonson County for the four-year term beginning on January 6, 1986. The candidates for the office of Sheriff included Jerry Prunty and Carlton Skaggs.

3. On November 12, 1985, the Edmonson County Board of Elections certified Jerry Prunty to be the winner of the aforesaid election to the position of Edmonson County Sheriff, on the basis of its determination that said Jerry Prunty had received more valid ballots than his opponent, Carlton Skaggs. On January 6, 1986, Jerry Prunty was sworn in as Sheriff of Edmonson County, Kentucky, for a four-year term.

4. During calendar year 1986, Sheriff Jerry Prunty received approximately Thirty-Three Thousand Dollars ($33,000) from public monies as compensation for his services as the elected Sheriff of Edmonson County.

5. During the period from January 1, 1987 through June 30, 1987, Sheriff Jerry Prunty received approximately $33,000 from public monies in compensation for his services as the elected Sheriff of Edmonson County, Kentucky.

6. At all times herein material, MORRIS WAYNE WEBB and DEBBY BUCHANAN, defendants herein, were political supporters of the candidacy of Jerry Prunty, and in that capacity worked to secure his election to the office of Sheriff in the general election held on November 5, 1985.

COUNT 1

1. The Grand Jury realleges, and incorporates by reference herein, the allegations made and the averments contained in the Introduction to this indictment.

2. Beginning on or about May 15, 1985, and continuing through on or about November 20, 1985, in Edmonson County and within the Western District of Kentucky, MORRIS WAYNE WEBB and DEBBY BUCHANAN, defendants herein, would and did devise and intend to devise a scheme and artifice to defraud and for obtaining money and property from the citizens, voters and taxpayers of Edmonson County, and of the Commonwealth of Kentucky, through the making of false and fraudulent representations and pretenses, and through the concealment of material facts, concerning the validity of ballots cast for Sheriff candidate Jerry Prunty in the 1985 general election.

3. The object of this scheme and artifice to defraud was to obtain for Jerry Prunty the office of Sheriff, and the salary and expenses appertaining thereto, through the procurement, casting and tabulation of illegal ballots; and to deprive the citizens, taxpayers and voters of Edmonson County, and of the Commonwealth of Kentucky, of control over how the Commonwealth's public monies were to be allocated with respect to the

salary and expenses of the occupant of the office of Sheriff of Edmonson County.

4. This scheme and artifice to defraud was executed by the defendants through the following manner, methods and means, among others:

A. It was a part of said scheme and artifice to defraud that the defendants, MORRIS WAYNE WEBB and DEBBY BUCHANAN, and others, attempted to influence the outcome of the general election in Edmonson County, Kentucky on November 5, 1985, by mailing and causing to be mailed absentee ballots which had been fraudulently obtained and voted, and which were intended to be counted and tabulated by the Edmonson County Election Commission as legitimate ballots cast in that election.

B. It was further a part of said scheme and artifice to defraud that MORRIS WAYNE WEBB did, on or about the 16th day of August 1985, travel to Indianapolis, Indiana and did procure or cause to be procured persons not residents of Edmonson County or otherwise entitled to vote therein and did procure or cause to be procured the voter registration of those persons under fraudulent pretenses as voters in Edmonson County, Kentucky and as absent voters entitled to vote in the said November 5, 1985, general election.

C. It was further a part of said scheme and artifice to defraud that the defendants did submit the aforementioned fraudulent absentee ballot applications to the Edmonson County Clerk, and did cause to be sent and delivered by the United States Postal Service absentee ballots to the aforementioned voters to addresses within Edmonson County, Kentucky, which addresses were procured by, and subject to control of defendant DEBBY BUCHANAN.

D. It was further a part of said scheme and artifice to defraud that defendant MORRIS WAYNE WEBB and others did upon receiving the aforementioned absentee ballots return to Indianapolis, Indiana, on or about the 27th day of October 1985, the exact date being unknown to the Grand Jury, and did cause the said voters to sign the absentee ballot envelopes, which were to contain ballots that had not been personally, voluntarily and freely marked by said voters.

E. It was further a part of the said scheme and artifice to defraud that between on or about October 27, 1985 and November 5, 1985, the defendants would and did fraudulently mark and cause to be marked the aforementioned ballots, without the personal participation of the voters in whose name they were to be cast; that said defendants would and did insert said fraudulent absentee ballots into the ballot envelopes referred to in subparagraph "D" above; and that the said defendants would and did thereafter place said ballot envelopes in the United States mails for transmission to the Edmonson County Court Clerk's Office.

F. It was further a part of the said scheme and artifice to defraud that the defendants herein, and others known and unknown to the Grand Jury, would and did misrepresent and conceal the false, fraudulent and

spurious nature of the ballots they had procured and cast in the manner aforesaid, from the Edmonson County Board of Elections, and that they would and did thereby intend to cause the Edmonson County Board of Elections to count said fraudulent and illegal ballots as though they were legal and valid ones in the 1985 General Election for Sheriff of Edmonson County, Kentucky.

G. It was further a part of the said scheme and artifice to defraud that on or about and between the 27th day of October 1985, and November 5, 1985, the exact date being unknown to the Grand Jury, in Edmonson County, Kentucky and elsewhere, MORRIS WAYNE WEBB, DEBBY BUCHANAN and others known and unknown to the Grand Jury, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, did knowingly cause to be placed in an authorized depository for mail matter an envelope containing an absentee ballot, said envelope to Dickie Sanders, Edmonson County, Clerk, Brownsville, Kentucky, 42210, with a return address of Austin Garrison, 1604 Wingfield Church Road, Bowling Green, Kentucky, 42101, care of John Kelly Meredith, to be sent and delivered by the United States Postal Service.

In violation of Title 18, United States Code, Sections 1341 and 2.

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[*etc.*]

U.S. GOVERNMENT PRINTING OFFICE : 1988 O - 214-528 : QL 3