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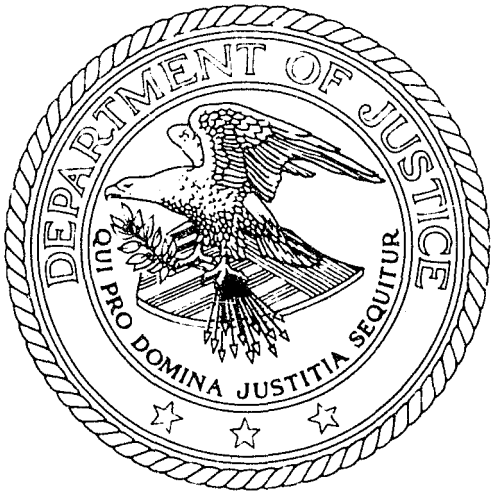

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PREFACE

This is the fourth edition of the Justice Department's election law manual. Its purpose is to present a current summary of the criminal laws dealing with the subject of elections. It also contains a statement of the policy and procedural considerations which bear on the administration of federal criminal justice in this complex and important area.

The substance and enforcement of the federal election laws are among the least understood subjects with which federal prosecutors are required to deal. It is the hope of those of us who have prepared these materials that they will shed light on the subject, and provide useful guidance to the federal prosecutor in discharging the Justice Department's law enforcement responsibilities in election matters.

The contents of this booklet 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 only the views and policy of the Criminal Division on the date of its preparation. It is subject to change without notice.

In the two years since the 1982 national elections, substantial and significant developments have taken place concerning the prosecution of election fraud cases in the federal courts. Previously unresolved questions concerning the extent to which abuse of the franchise aimed at local and state elections may be prosecuted under federal law have been answered. The potential for a federal presence in this area of law enforcement has increased. Investigative techniques have been developed and implemented which facilitate the detection and proof of vote fraud cases. At the same time, new problem areas concerning the integrity of the franchise have been identified, especially in the area of voting by noncitizens and exploitation of the franchise of mentally infirm and the socially dependent voters. It is presently accurate to represent that the federal prosecutor possesses the statutory and investigative tools through which federal jurisdiction can be asserted over most abuses of the franchise. It is our expectation that these prosecutive theories will be further refined and improved over the ensuing election cycle, so as to enable the Justice Department to efficiently and effectively fulfill its responsibility to ensure a meaningful electoral franchise for all United States citizens.

The assistance of Nancy Stewart, James Cole, and Margaret Koch of the Public Integrity Section, and of Special Agents Ernie Locker and Charles Neal of the Federal Bureau of Investigation, in the preparation of these materials is recognized and sincerely appreciated.

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CHAPTER ONE

INTRODUCTION

Overview

Primary responsibility for establishing qualifications for the franchise and conducting elections is left by the United States Constitution to the States. The Federal Government enters this field selectively, for the purpose of protecting the integrity of significant federal interests and programs, and to assure that voting rights secured by the Federal Constitution are not willfully abridged.

Federal statutes dealing with the conduct of elections, election irregularities and patronage are scattered throughout the United States Code. These criminal laws fall into four groupings:

(1) criminal statutes which relate to corruption of the franchise (18 U.S.C. 241, 242, 245, 592-594, 596-599 and 1341; 42 U.S.C. 1973i(c); 42 U.S.C. 1973i(e));

(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) campaign financing statutes, with both criminal and civil penalties (2 U.S.C. 437g, 439a, 441a, 441b, 441c, 441d, 441e, 441f, 441g, 441h, and 441i); and

(4) regulatory and disclosure statutes for federal candidates and political committees (2 U.S.C. 431-439).

The substance of these election laws is discussed in Chapter Two of this Manual. The policy and procedural considerations governing their handling by the Justice Department are contained in Chapter Three. For the purpose of this discussion, the election laws will be treated in the groupings described above, since the Department's enforcement approach differs with respect to each category. Chapter Four contains a brief summary of the procedures employed by the Justice Department on the date of the national general elections. The Appendix contains a compilation of pertinent provisions of the United States Code dealing with elections, vote fraud and political campaigns.

Enforcement of the statutes dealing with vote fraud and patronage is within the exclusive jurisdiction of the Department of Justice, and in this respect violations of these statutes are treated the same as any other federal crime.

On the other hand, the campaign financing statutes are subject to the concurrent jurisdiction of the Department of Justice and the Federal Election Commission. The Department exercises exclusive criminal jurisdiction over prosecution of violations that are aggravated with respect to the degree of criminal intent involved, and the quantitative sum of money involved. The Commission has since 1976 exercised exclusive jurisdiction over the imposition of a wide range of noncriminal remedies which were created at that time to address less aggravated infractions of the often intricate statutory requirements that govern the subject of campaign finance.

The Federal Election Campaign Act requirements dealing with reporting, recordkeeping, and the organization of political committees are similarly subject to the concurrent jurisdiction of the Department of Justice and the Federal Election Commission. However, in practice this sort of violation rarely rises to the level of criminal culpability that lends itself to redress through the criminal justice system. The Department's policy has been to defer such matters to the Commission for administrative enforcement, except in truly exceptional situations where criminal redress is required.

Many of the federal election laws have undergone profound and frequent changes since 1972, when the interests which these laws address first became matters of paramount public concern. New legal theories have been, and are continuing to be, developed and tested in an effort to assure that criminal redress is available against those who intentionally undermine the integrity of the elective franchise, which is a basic institution of democratic government. Recent innovations in the investigation of this case type have facilitated the detection of vote fraud, and have expedited the task of prosecuting those who commit election crimes.

The federal role in these matters is an important one. However, the assertion of federal jurisdiction in this area routinely involves resort to statutes that were enacted 50 to 100 years ago. It also often entails resolution of novel questions of federalism, respect for the FEC's statutory noncriminal enforcement role, and the difficult job of enforcing federal criminal laws in the setting of partisan political contests. Close coordination between United States Attorneys and the Departmental personnel who have an expertise in this field is essential to assure consistency in enforcement policy and objectives, and to avoid the appearance of undesirable interference by the federal prosecutor in political electoral processes.

Election Crimes Branch

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

The Election Crimes Branch was created in 1980, for the purpose of discharging 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, it 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. It 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 finance 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 and 1341 (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 607 inclusive; 18 U.S.C. 1913; 42 U.S.C. 1973i(c); 42 U.S.C. 1973i(e); and criminal enforcement of the Federal Election Campaign Act, 2 U.S.C. 431 through 455 inclusive.

Preclearance

All indictments, complaints, and grand jury investigations must be authorized by the Election Crimes Branch of the Public Integrity Section. Preliminary investigations may be conducted in these matters without consultation with the Department. However, full field investigations require prior Departmental clearance. *See* 9 U.S.A.M. 2.133(h) and 2.133(o).

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 724-7112.

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 at FTS 724-6963.

The preclearance requirement is intended to help, not to frustrate or administratively encumber, the development and prosecution of federal election 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 extensive experience with this procedure over the years has been a good one.

CHAPTER TWO

DESCRIPTION OF STATUTES

A. 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; they involve entirely different constitutional and federal interests, and they are handled by the Civil Rights Division.

Federal concern over 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 Yarborough*, 110 U.S. 651 (1884); *In re Coy*, 127 U.S. 731 (1888).

Many of the Enforcement Acts had broad jurisdictional predicates, permitting 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, supra*, the Supreme Court held that Congress possessed the authority under the 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. *Garcia*, 719 F.2d 99 (5th Cir. 1983); *United States* v. *Carmichael*, 685 F.2d 903 (4th Cir. 1982); *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 had been 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. Members of Congress 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); *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 (1918); 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 fraudently affecting the outcome of congressional contests.

In 1941, the Supreme Court reversed *United States* v. *Newberry*, *supra*, 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 reversal in the judicial attitude with respect to federal intervention in election matters, and it began a new period of federal activism in the field. Federal courts came 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 (1965); *Griffin* v. *Burns*, 570 F.2d 1065 (1st Cir. 1978); *Duncan* v. *Poythress*, 657 F.2d 691 (11th Cir. 1981); *Smith* v. *Cherry*, 489 F.2d 1098 (7th Cir. 1973), *cert. denied*, 417 U.S. 910. 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. *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. 1972). New criminal laws were enacted by Congress to combat false registrations, multiple voting, and vote buying which contained broad jurisdictional bases (i.e. 42 U.S.C. 1973i(c) and 1973i(e)). *United States* v. *Bowman*, 636 F.2d 1003 (5th Cir. 1981); *United States* v. *Mason*, 673 F.2d 737 (4th Cir. 1982). Finally, existing statutes such as the mail fraud law were judicially construed to be applicable to a wide variety of electoral abuse. *United States* v. *Clapps*, 632 F.2d 1148 (3d Cir. 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 fundamentally important 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. Vigilant and vigorous measures to protect the integrity of the franchise are therefore significant national priorities.

What is "Election Fraud?"

Our constitutional system of government rests on a social contract which has as its core the principle that the governed elect their governors. The mechanism through which this principle is implemented in most instances is the election. 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 elected to serve.

Over the past 200 years of our constitutional development, this electoral prc cess has been in a constant state of development and flux. In its modern form, the American franchise incorporates the following salient principles: (1) All adult citizens shall be eligible to vote; (2) all qualified voters shall be equal at the polls; (3) each qualified voter shall have the right to make a personal, informed and independent decision concerning candidate preferences, and the right to expect that other voters will exercise their franchise in the same manner; (4) qualified voters may opt not to participate in an election; (5) voter participation shall not be artificially simulated or influenced by bribery or intimidation; (6) all valid ballots shall be tabulated fairly, with equal value given to each; and (7) invalid ballots shall not be tabulated. *See generally Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Ex parte Yarborough*, 110 U.S. 651 (1884); *United States* v. *Saylor*, 322 U.S. 385 (1944); *United States* v. *Bowman*, 636 F.2d 1003 (5th Cir. 1981).

Any activity which has as its intended objective the improper interference with any of these principles by which the balloting process is conducted is capable of constituting a criminally actionable offense.

Most election fraud is quite easily recognized. Indeed, several especially noxious methods of defeating the principles stated above 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. 1984—ballots cast without the knowledge or participation of the voters involved).

On the other hand, the Criminal Division has long held the view that campaign rhetoric and tactics, as well as ethically questionable activities that focus on the campaigning rather than on the balloting process itself, are usually not properly prosecuted under federal "fraud" statutes. This policy is partially rooted in legal questions that are present in such matters. These are discussed *infra* at pp. 22 and 23. The policy is also based on the perceived inappropriateness of interjecting federal felony prosecutions into activities that can be attributed in one way or another to the give-and-take of partisan campaigning. Campaign rhetoric and alleged "dirty tricks" are prosecutable, if at all, under two provisions of the Federal Election Campaign Act (2 U.S.C. 441d and 441h) which specifically address this subject, or under 18 U.S.C. 599. The federal prosecutor should not, however, consider such matters as potentially actionable under federal "vote fraud" laws.

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 by the Constitution or laws of the United States. Violations are felonies punishable by fines up to $10,000 and/or imprisonment up to ten years, or for any term of years or for life, if death results.

The Supreme Court has long recognized that the right to vote in a primary or general election for the federal offices of Member of Congress and/or President is among the rights secured by Art. I, Sec. 2 and Sec. 4 of the Federal Constitution, which 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 corruptions 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); to impersonate qualified voters, *Crolich* v. *United States*, 196 F.2d 879 (5th Cir. 1952), *cert. denied*, 344 U.S. 830; 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, supra;* to illegally register voters and cast absentee ballots in their names, *United States* v. *Weston*, 417 F.2d 181 (4th Cir. 1969), *cert. denied*, 406 U.S. 917 (1971); *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); 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. 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); *United States* v. *Morado*, 454 F.2d 167 (5th Cir. 1972), *cert. denied*, 406 U.S. 916 (1972); 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); *United States* v. *Morado, supra*

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 fundamentally derogate the 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 at all 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, 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 (1965); *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*, 454 F.2d 167 (5th Cir. 1972), every vote fraud case reported under Section 241 either entailed a scheme directed specifically at corrupting the outcome of a federal contest, or at least involved proof that a federal contest was actually adversely affected by the fraud in question.

Reynolds v. *Sims, supra*, 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, supra.* However, in *Anderson* v. *United States, supra*, the Supreme Court was given an opportunity to address directly the reach of the federally secured franchise to nonfederal contests, and the Court refused to do so. Consequently, the use of 18 U.S.C. 241 in the area of election fraud should normally be 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.

The main exception to this general rule is where a pattern of vote fraud affecting only local 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 voting machinery provided by state law to election officials charged with the safekeeping of the poll in question. 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, 753 (1966); *United States* v. *Price*, 383 U.S. 737 (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*, 488 U.S. 297, 332 and n. 25 (1980); *Reynolds* v. *Sims*, 377 U.S. 533 (1965); *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 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 other grounds*, 417 U.S. 211 (1974); *United States* v. *Stollings*, 501 F.2d 954 (4th Cir. 1974). It has recently been used successfully to address locally directed vote fraud in Chicago.[1] Whenever a vote fraud scheme can be shown to depend for its success on the active participation of election officials, prosecution under 18 U.S.C. 241 should be considered.

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 fines up to $1,000 and/or imprisonment up to one year, or for any term of years or life, if death results.

Prosecutions under Section 242 need not demonstrate the existence of a conspiracy. However, the defendant 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 or her 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).

[1]At the time of this writing, the Seventh Circuit had this issue under advisement in a case involving the prosecution of a Chicago precinct captain and several poll officials under Section 241 for a scheme to stuff over 100 bogus ballots during the 1982 general election. *United States* v. *Olinger*, No. 83-3247, argued June 6, 1984.

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 this statute.

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 a fine up to $10,000 and/or imprisonment up to five years. (*See also* 18 U.S.C. 597.) 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 in prosecuting all matters involving corrupt disruptions 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 that may be. This statute rests on the Necessary and Proper Clause (Art. 1, sec. 8, cl. 18) as a measure to protect federal contests from exposure to the risk or potential 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. *Carmichael*, 685 F.2d 903 (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). *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." 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 protested 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 simultaneously, 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 poten-*

tial harm. United States v. *Garcia*, 719 F.2d 99 (5th Cir. 1983; *United States* v. *Carmichael*, 685 F.2d 903 (4th Cir. 1982); *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); *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 enacted to assure that the integrity of the balloting process would be secured in the setting of the expanded franchise which the 1965 Voting Rights Act sought to achieve. In fact, the original version of what eventually became Section 1973i(c) simply prohibited irregular and 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 was 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, supra*, 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 specifically listed items: name, address, and/or period of residence in the voting district. False information concerning other possible requisites to voting (such as United States citizenship, felon status, and mental competence) do not necessarily fall within the ambit of this particular clause. Such matters should be prosecuted, if at all, as mail frauds, if jurisdictional mailings are present (as is frequently the case with post card or mail registrations); as consipiracies to effect illegal voting under that clause of §1973i(c); or as citizenship offenses under 18 U.S.C. 911. *See* discussion on pages 23–24, *infra*.

In virtually all electoral districts, registration to vote in the United States is "unitary" in the sense that a single registration qualifies an 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*, 482 F.Supp. 585 (E.D. Pa. 1979). 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 at least necessary to show specifically that a federal candidate was being voted upon at the time. In such

situations, the prosecutor should also be able to demonstrate that the course of fraudulent conduct at issue was functionally sufficient to expose 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* 685 F.2d 903 (4th Cir. 1982). 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 uncoordinated acts of fraudulent registration has been considered only where such incidents represent examples of widespread systemic abuse, which jeopardizes the integrity of the voting process in a particular 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. *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 premise 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, supra. 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 had 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 an 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, supra*, involved a defendant who was convicted under this statute for paying voters to simply persuade them to go to the polls to vote in a mixed federal/state election. In *United States* v. *Garcia, supra*, 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, supra; United States* v. *Carmichael, supra;* and *United States* v. *Sayre, supra*, all involved defendants who had paid voters to cast ballots for candidates running for sheriff. In *United States* v. *Simms, supra*, the motive of the defendant was to influence votes for a state judicial post. In *United States* v. *Malmay, supra*, 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 by definition 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 given a pattern of vote-buying exposed the federal contest to the opportunity or potential for abuse or question, an offense under Section 1973i(c) is present even though it cannot be shown that the threat to the federal contest actually materialized. *See generally, United States* v. *Bowman*, 636 F.2d 1003 (5th Cir. 1981), and *United States* v. *Carmichael*, 685 F.2d 903 (4th Cir. 1981).

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 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 ENCOURAGE ILLEGAL VOTING

Section 1973i(c) specifically criminalizes conspiracies to encourage illegal voting. There have to date been no prosecutions brought under 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 such 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 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 conspiracy statute, 18 U.S.C. 371.

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 fines up to $10,000 and/or imprisonment for up to five years.

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 votes in question actually affected a federal contest. *See e.g. United States* v. *Odom,* 736 F.2d 104 (4th Cir. 1984); *United States* v. *Carmichael,* 685 F.2d 903 (4th Cir. 1982); *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. *Sayre,* 522 F.Supp. 973 (W.D. Mo. 1981); *United States* v. *Lewis,* 514 F.Supp. 169 (M.D. Pa. 1981).

Section 1973i(3) is a particularly useful prosecutive vehicle to address schemes to stuff ballot boxes, or to cast fraudulent absentee ballots. *United States* v. *Odom, supra.* 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, supra; 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 by other voters, and thereby multiply the value of his own franchise beyond the one vote accorded to him under our electoral system.

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) are generally confined to 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 law.

18 U.S.C. 1341. Mail fraud

18 U.S.C. 1341 prohibits using the United States mails to execute or further schemes to defraud. Violations are punishable by imprisonment for up to five years, and/or by fines of up to $1,000. Each mailing in the furtherance of a fraudulent scheme may serve as the basis for a separate violation of the mail fraud statute. *Pereira* v. *United States*, 347 U.S. 1 (1954); *Durland* v. *United States*, 161 U.S. 306 (1896).

This flexible criminal statute is extremely useful in the prosecution of intentional abuses of the electoral process which employ the United States mails, and which involve some indicia of deceit, trickery, or corrupt exploitation of a fiduciary trust.

It is well settled that the concept of "scheme or artifice to defraud" as used in the mail fraud law is to be accorded to broad interpretation. It embraces any sort of conduct which employs deceit, trickery, misrepresentation, material omission, or breach of the fiduciary duties of loyalty or trust. *United States* v. *Frankel*, 721 F.2d 917 (3d Cir. 1983); *United States* v. *Mandel*, 591 F.2d 1347 (4th Cir. 1979); *United States* v. *Pintar*, 630 F.2d 1270 (8th Cir. 1980); *United States* v. *Boffa*, 688 F.2d 919 (3d Cir. 1982), *cert. denied*, 103 S.Ct. 1212, and cases discussed therein. The "fraudulent" character of a given scheme is measured by nontechnical standards, and is not necessarily restricted by common law concepts of false pretenses. The law puts its imprimatur on socially accepted moral standards, and condemns conduct which fails to match the "reflection of moral uprightness, of fundamental honesty, fair play and right dealing in the general life of members of society." *United States* v. *Curry*, 681 F.2d 406 (5th Cir. 1982); *United States* v. *Pearlstein*, 576 F.2d 531 (3d Cir. 1978); *Blachly* v. *United States*, 380 F.2d 665, 671 (5th Cir. 1967); *Gregory* v. *United States*, 253 F.2d 104, 109 (5th Cir. 1958). It is equally settled that the mail fraud statute is not directed solely at schemes that have as their objectives the attainment of pecuniary gain. Schemes to interfere corruptly with the normal functioning of governmental processes, thereby depriving a body politic of the fiduciary loyalty

that is owed by public servants to those they serve, are within the ambit of the mail fraud statute. *United States* v. *Mandel, supra; United States* v. *Caldwell,* 544 F.2d 591 (4th Cir. 1976); *United States* v. *Bush,* 522 F.2d 641 (7th Cir. 1973); *United States* v. *Isaacs,* 493 F.2d 1124 (3d Cir. 1973); *United States* v. *McNeive,* 536 F.2d 1245 (8th Cir. 1978); *United States* v. *Classic,* 35 F.Supp. 457 (E.D. La. 1940).

Along these same lines, schemes to deprive an electoral body of its political right to fair and impartially conducted elections, free from dilution from the intentional casting and tabulation of false, fictitious or spurious ballots, have been held to fall within the mail fraud statute. *United States* v. *Odom,* 736 F.2d 104 (4th Cir. 1984); *United States* v. *Clapps,* 632 F.2d 1148 (3d Cir. 1984); *United States* v. *States,* 488 F.22d 761 (8th Cir. 1973), *cert. denied,* 417 U.S. 909 (1974); *United States* v. *Lewis,* 514 F.Supp. 169 (M.D. Pa. 1981). *See also* dicta in *United States* v. *Curry,* 681 F.2d 406 (5th Cir. 1982); and *United States* v. *Murr,* 681 F.2d 246 (4th Cir. 1982).[2]

The outer parameters of what the courts will accept as an actionable vote fraud "scheme" have yet to be determined. However, any activity which has as its object the illegal manipulation of the process by which ballots are cast and tabulated is an appropriate subject for consideration as a mail fraud case. Two recent appellate decisions have affirmed convictions of defendants who consciously sought to take advantage of the mental infirmities of nursing and rest home patients, where the voters involved were not given an opportunity to participate actively in marking the ballots which the defendants cast in their names. *United States* v. *Clapps, supra; United States* v. *Odom, supra.* Both of these decisions contain good analyses of the factual indicia present in a legally sufficient vote fraud scheme. In *United States* v. *Castle,* unreported (6th Cir. 1982), the use of the mail fraud statute to prosecute a scheme to buy absentee votes was approved. *See also, United States* v. *Schafer,* 726 F.2d 155 (4th Cir. 1984).

At the very least, a criminally actionable mail fraud voting scheme should involve proof that the electoral judgment of the voters involved was purposefully derogated, exploited, or ignored; or that the defendants sought to cast ballots which they knew were illegal under local law. *See United States* v. *Odom, supra; United States* v. *Lewis,* 514 F.Supp. 169 (M.D. Pa 1981). Moreover, some indicia of misrepresentation or concealment should be present and charged as part of the scheme to satisfy whatever vestiges of common law "fraud" are left in the statutory concept of "scheme." Along similar lines, in deference to the small judicial minority which remains reticent to extend the mail fraud statute to schemes which do not have either pecuniary or tangible objects,[3] it may be advisable to plead the object of a vote fraud scheme in terms of tangible things (*i.e.* obtaining ballots), or in terms of obtaining the value of the office at which the scheme is directed (*i.e.* the salary it pays and/or the power it confers).

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[2]In two recent unreported decisions, the Fifth and Sixth Circuits have also specifically adopted and approved the use of the mail fraud law to address schemes to cast illegal absentee ballots. *United States* v. *McNeely,* 660 F.2d 496, (5th Cir. 1981); *United States* v. *Castle,* No. 82-5011, decided August 12, 1982 (6th Cir.).

[3]*See e.g.* concurring opinion in *United States* v. *Curry, supra.*

Since the mail fraud statute rests jurisdictionally on Congress's power to regulate the mails, rather than on whatever authority Congress may have over the electoral process itself, a scheme to intentionally disrupt a purely local election may be reached under this statute, provided of course that the mails were used. *Badders* v. *United States*, 240 U.S. 391 (1916); *United States* v. *States, supra; United States* v. *Clapps, supra.*

The laws of most States require that the mails be used to cast, and often to apply for, absentee ballots. Thus, the mail fraud statute is particularly useful in prosecuting schemes to cast irregular absentee ballots. However, with this sort of case care should be taken to avoid, if possible, predicating substantive mail fraud counts on mailings which are both required by law, and which are not fraudulent in themselves. *Parr* v. *United States*, 363 U.S. 370 (1960); *United States* v. *Curry, supra* at 411-413. The mailing for tabulation of absentee ballots which have been manipulated, altered, obtained through vote buying, or which have otherwise been handled in violation of applicable state laws, fulfills this standard. So also does the mailing of absentee ballot applications which contain false information concerning entitlement to vote absentee, or which have been submitted as a result of voter bribery.

The Department of Justice has long followed a policy of not using the mail fraud law to prosecute allegedly erroneous or defamatory campaign literature. The mail fraud law is also not an appropriate means for asserting federal criminal jurisdiction over promises and representations made during an active political campaign which are inflated, or even those that are intentionally false. The reasons for this policy are threefold: (1) Representations and promises made by or on behalf of candidates during political campaigns are traditionally exaggerated and/or overly optimistic. Campaign rhetoric is not ordinarily imbued with the degree of reliance potential as statements made in commercial or fiduciary contexts. (2) Proof of a mail fraud case that rests on allegedly false campaign rhetoric would necessarily turn on the truth or falsity of the representations at issue. A federal felony prosecution is not an appropriate forum for the litigation or resolution of such matters. (3) The subject of campaign practices is regulated by the Federal Election Campaign Act. Violations of the FECA may be federal crimes if they are committed with the degree of specific intent required by the FECA's narrow penal sanction, 2 U.S.C. 437g(d). However, these violations are misdemeanors, not felonies; and they cover only the failure to accurately attribute political statements (2 U.S.C 441d) and intentional misrepresentation of authority to speak for a federal candidate (2 U.S.C. 441h). Accordingly, use of the mail fraud statute outside the area of tampering with the casting and tabulation of ballots is discouraged.

The mail fraud statute may also be used to prosecute schemes by purported political fundraisers to embezzle money they have solicited for stated political causes. *United States* v. *Curry*, 681 F.2d 406 (5th Cir. 1982). The *Curry* decision also can be read as holding that a scheme involving nothing more than falsely reporting campaign contributions pursuant to state or federal financial disclosure

laws may be prosecutable as mail frauds. However, at this time the Criminal Division does not encourage use of the mail fraud statute to address the subject of financial disclosure or reporting.

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 a vote for any candidate for federal 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 fines up to $1,000 and/or imprisonment up to one year. "Willful" violations are felonies punishable by fines up to $10,000 and/or 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 clearly involves moral turpitude. *See e.g. United States* v. *Blanton,* 77 F.Supp. 812 (E.D. Mo. 1984); *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). As such the Criminal Division considers all vote-buying transactions to be actionable as felonies under this law. A prosecutive decision to charge such an offense as a "non-willful" misdemeanor is therefore 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 (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 narrow 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. 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 Section 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. *United States* v. *Blockburger*, 284 U.S. 299 (1932); *Whalen* v. *United States*, 455 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 be technically distinct offenses, the Criminal Division believes that both statutes should not ordinarily be pled in the same indictment.

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 a fine of up to $1,000 and/or up to one year in prison.

Section 594 is the only federal crime dealing specifically with nonviolent voter intimidation. The prohibition against voter intimidation contained in the Voting Rights Act, 42 U.S.C. 1973i(b), has a broader scope. However, this subsection 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).

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 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 fines up to $1,000 and/or imprisonment up to one year. If injury or death results, this offense is a felony subject to fines up to $10,000 and/or imprisonment for up to 10 years.

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 elections, except when necessary "to repel armed enemies of the United States." It is a felony statute and violations are punishable by fines up to $5,000 and/or up to five years in prison.

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.

18 U.S.C. 593. Interference by armed forces

Section 593 prohibits members of the armed forces from interfering with election processes. The statute is a felony, and violations are punishable by a fine of up to $5,000 and/or imprisonment for up to five years.

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, political candidates. "Polling" is defined to include questioning which implies that an answer is compulsory. It is a misdemeanor statute, and violations are punishable by fines of up to $1,000 and/or up to one year in prison.

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 that specifically address campaign-related activity. Non-willful violations are misdemeanors, punishable by fines up to $1,000 and/or imprisonment for up to one year. Willful violations are felonies punishable by fines up to $10,000 and/or imprisonment for up to two years. The functional differences between "willful" and "non-willful" offenses is not explained in the statute.

Section 599 is a class statute that applies only to the actions of candidates for federal offices.[4]

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, *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).

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 those representing candidates for elective office, unless those activities become so egregious that they violate specific federal criminal laws (e.g. arson, theft, bribery, etc.).

As noted above, the federal mail fraud law is not 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 in the course of 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 two subsections of the Federal Election Campaign Act, 2 U.S.C. 441d and 441h.

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)

[4]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 19-20.

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 election or defeat; and the candidate at which the message is directed must be plainly mentioned. This statute does not cover anonymous literature 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 crimes 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 fines of up to the $25,000 and/or one year imprisonment.

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. *See* 2 U.S.C. 437g(d)(1)(b). This statute covers only activity directed at sabotaging the campaigns of candidates for federal office, and violations are misdemeanors subject to the same penalties as violations of Section 441d. The Criminal Division considers that Section 441h was intended by Congress to be the exclusive criminal remedy for the subject of campaign sabotage.

Alien Voting

Federal law does not require that persons be United States citizens to be eligible to vote. The qualifications which an individual must possess in order to be entitled to the franchise, and the procedures for registering voters, are matters which the Federal Constitution leaves primarily 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. Constit. Amend. XV—race; U.S. Constit. Amend. XIX—sex; U.S. Constit. Amend. XXIV—payment of poll tax; U.S. Constit. 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.

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 $1,000 fines. Convictions under Section 911 require proof that the alien was actively aware of his noncitizenship status, and that possessing such 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); *Fotle* v. *United States*, 137 F. 2d 831 (8th Cir. 1943).

In those States having citizenship requirements for voting and that allow registration by mail, the illegal registration of a noncitizen may also be prosecuted under the federal mail fraud statute, 18 U.S.C. 1341. Prosecutable mail fraud cases of this type should entail proof that the defendant was actively aware of both his noncitizenship status, and of the fact that citizenship was a prerequisite to voting in the State in question. However, it is not absolutely necessary that the registration form which the voter is required to execute call on him to clearly and affirmatively claim citizenship. It is sufficient that the alien intentionally concealed his noncitizenship status with knowledge that this information was of material significance to the registering authority.

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 *supra*, this particular statutory 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 usually do not give false names or addresses when registering, and the vast majority of them have an arguably legitimate claim to "residence" within the voting district where they seek to vote.

Alien voter cases are an exception to the general rule that federal voter 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 whatever federal interest there may be in the integrity of the balloting process.

B. PATRONAGE AND PROGRAM ABUSES

Background

Federal laws dealing with patronage find their common roots in the 1882 Pendleton Act. 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 of reprisals to 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 to all but the highest federal officers. *See e.g.* 5 U.S.C. 7323, 7324–7327 and 5 C.F.R. 733.101 *et seq.* 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 in this area. *See* 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 crimes that were added by the Hatch Act to help abolish political abuses in the administration of the 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 activity done in connection with federal elective contests. Public Law 96–187.

The record 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. Cerilli, 603 F.2d 415 (3rd Cir. 1979).

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 up to $5,000 and/or by imprisonment for up to three years.

Section 602 was originally enacted as a part of 19th Century legislation aimed at dismantling the spoils system of political patronage. As such, its legislative history reflects that it was Congress's 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. 1952), *cert. denied*, 344 U.S. 838; *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.[5] 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.

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 Branches 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

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

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 status of the person solicited at the time the transaction occurred.

The 1979 FECA also made the critical term "contribution" in Section 602 subject to the definition given it 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 incorporated in that definition. *See e.g. United States* v. *Clifford*, 409 F.Supp. 1070 (D. N.Y. 1976).

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 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 person(s) 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*, 127 F.Supp. 400 (E.D. Tenn. 1954). 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 staffers in their offices, provided there was no request for the contribution to be delivered to such a place, and provided further that the contribution was dispatched immediately to the Congressman's political committee.[6]

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.

[6]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.

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 given it 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 influencing a federal contest.

Section 607 is a felony, violations of which are punishable by imprisonment for up to three years and/or $5,000 fines.

In keeping with the serious statutory 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 have been 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, and 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.

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, violations of which are punishable by fines up to $5,000 and/or imprisonment for up to three years.

The concept of "contribution" in this statute has never been subject to an external definition, and as such 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 terminations. 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 legitimate job-related reason.

Secton 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 and 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 against being forced to give money or tangible things of value to political candidates through job-related threats or reprisals.

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 fines up to $10,000 and/or imprisonment for up to one year. (*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. *See e.g. United States* v. *Pintar, supra.*

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 legislative history accompanying Public Law 94-453 reflects a congressional intent that this patronage law not reach the interjection of passive political considerations (such as loyalty, ideology, or political support) in the hiring of governmental 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).

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 fines up to $10,000 and/or imprisonment for up to one year.

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 1270 (8th Cir. 1980), 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 other 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) in 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 the CETA program is involved.

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 fines up to $1,000 and/or up to one year in prison.

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 government 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.

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 at any election. Violations are misdemeanors punishable by fines up to $1,000 and/or imprisonment for up to one year.

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 fines up to $1,000 and/or imprisonment up to one year.

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 fines up to $1,000 and/or imprisonment for up to one year.

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

This statute prohibits any federal officer or employee, or any 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 fines up to $5,000 and/or imprisonment up to three years.

Section 603 was amended in 1980 to reach only a limited class of donation—*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.

The Hatch Act

The so-called Hatch Act prohibits all federal employees from engaging in the "active management of political campaigns," a term that 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 Office of Personnel Management) 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 constitutionally justified measures to assure the appearance and actuality 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 non-federal 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. *See* 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, 1120 Vermont Ave., N.W., Washington, D.C. 20419; FTS 653-7188.

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.

C. CAMPAIGN FINANCE STATUTES

Background

Campaign finance statutes are concerned with 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.

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 through 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 campaign funds, and between 1948 and 1972 the federal courts attempted to define the constitutional and statutory parameters of these laws. *See e.g. United States* v. *C.I.O.*, 335 U.S. 106 (1948); *United States* v. *Auto Workers*, 352 U.S. 567 (1957); and *Pipefitters* v. *United States*, 407 U.S. 385 (1972).

In 1972, the original Federal Election Campaign Act (Public Law 92-225) attempted to redraft the campaign finance statutes so as to codify the substantial body of caselaw 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 the limits on "contributions" intact.

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, with the Justice Department's role in this area being confined to financing offenses that are aggravated in both intent and in 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 (D. La. 1977).

The number and complexity of federal laws dealing with the raising and spending of campaign funds have increased by geometric proportions 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 them 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.

2 U.S.C. 441a. Limitations on contributions and expenditures

Under the FECA, the concept of "contribution" is functionally different from the concept of "expenditure." This distinction has constitutional significance in that "contributions" may be subjected to much more stringent quantitative regulation than may "expenditures." *See 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. *See* 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 by the owner of property directly on 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 exerts control over the corpus involved.

Section 441a 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 441a(a)(1)). 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 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 441a(a)(2)). In addition, individuals are also subject to an overall annual aggregate contribution limitation of $25,000 (Section 441a(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, corporation or union); however, all affiliated committees share a single contribution limit with respect to contributions they make to candidates and other committees (Section 441a(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 441a(h)).

Under the *Buckley* case, *"expenditures"* by candidates can be quantitatively limited only if the candidate involved elects to participate in a public-funding program. Selection 441a(b) imposes limits on expenditures by presidential candidates who have chosen to receive federal funds for their primary or general

election campaigns. However, the FECA does not impose limits on individual expenditures made by citizens, 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. *See generally Buckley* v. *Valeo, supra.*

Violations of this 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 affected either surreptitiously (*e.g.* through cash or conduits), or in the furtherance of some felonious, "evil" objective (*e.g.* a bribe).

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 corporation whatever 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 personal sources.

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 labor organizations, 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, supra.* Nor does it apply to nonpartisan expenditures, or to the costs of publishing statements of editorial opinion in legitimate corporate or union-owned newspapers. *United States* v. *C.I.O.*, 335 U.S. 106 (1948). The 1972 FECA involved a major attempt to codify these principles into positive statutory law, an endeavor that was a continuing theme in the 1974 FECA and 1976 FECA.

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 involved confined their activity exclusively to raising voluntary contributions from union members, corporate employees, and members of their respective families. *United States* v. *Pipefitters*, 407 U.S. 385 (1972). Subsequent FECA amendments have added a complex regulatory scheme to this relatively simple principle. Today, the timing, nature, and scope of corporation and union PAC activity are regulated in substantial detail both by the statute

itself (2 U.S.C. 441b(b)(2)(C)) 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 Department of Justice's involvement in the enforcement of this type of matter is generally confined to instances where the corporate or union funds are taken directly out of 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, supra; Cort* v. *Ash*, 422 U.S. 66 (1975); *Pipefitters* v. *United States*, 407 U.S. 385 (1972). In keeping with the first objective, the Supreme Court has distinguished this statute from an unconstitutional Massachusetts law that prohibited corporate contributions and 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 solely in connection with referenda or ballot propositions.

The constitutionality of Section 441b has been a frequently litigated issue. Today it is well established that the federal 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); *United States* v. *Boyle*, 482 F.2d 755 (D.C. Cir. 1973). Moreover, the fact that in practical application 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*, 103 S.Ct. 335 (1983).

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

This statute prohibits any person who has, or 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: sole proprietorships, partnerships, as well as corporations. It reaches gifts that are made from the "business" or "partnership" assets of such firms. However, with respect to unincorporated businesses the Federal Election Commission 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. 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 constituent 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 stockholders concerning 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. *See* 2 U.S.C. 437g(d)). Other less aggravated violations are handled administratively by the FEC.

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, 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 candidate for federal office.

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.

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 or her 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 campaign financing provisions of the Federal Election Campaign Act requires proof of "willful" intent, *i.e.* conscious defiance of the law. *See* 2 U.S.C. §437g(d) and *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 the 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 a defendant giving funds to a straw, for the purpose of having the straw complete the contribution to a federal candidate. *See e.g. United States* v. *Passodelis*, 615 F.2d 975 (3d Cir. 1980); *reh. denied*, 622 F.2d 567. Violations may also occur where the defendant 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. 1980). Under such circumstances, the motive is usually preservation of anonymity, since the donation will be reported publicly as having been made by the straw rather than by the true source. The use of straws is also frequently a means by which a single donor may give more than the contribution limits specified in 2 U.S.C. 441a allow.

Although the donor and the straw are equally liable under Section 441f, the customary approach to this type of case is to treat the straws as witnesses against the person who supplied the funds. This approach is consistent with the principal functions of the FECA: to assure public disclosure of large compaign donations, and to prevent certain types of donations which the Congress has deemed potentially damaging to the public good. It also is in keeping wtih 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.

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 receive cash in violation of this section may be prosecuted as aiders and abetters under 18 U.S.C. 2.

This limitation on giving cash differs from the contribution limitations specified in Section 441a.

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.

This statute is directed at "dirty tricks" activities, 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* discussion of "dirty tricks," *supra* at pages 27–29.

2 U.S.C. 441i. Acceptance of excessive honorariums

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 not accept honoraria which 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 or her spouse or an aide, as well as amounts paid for agent's fees or commissions.

An additional limit which prohibited receipt of honoraria aggregating over $25,000 per year was recently eliminated from Section 441i.

Section 441i applies to all persons who are employed by the federal government, not just those employed by the legislative branch. It does not apply to candidates running for Congress until they are sworn in as Members. The subject of receipt of honoraria by incumbent Members of Congress is also regulated by House and Senate rules.

The FEC has defined "honorariums" 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." 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 limits in Section 441a.

2 U.S.C. 439a. Use of surplus campaign funds

Section 439a establishes principles govering 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 or her 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; and they may be used for "any other lawful purposes." Transfers of surplus campaign funds to political committees affiliated with political parties are also exempted from the contribution limitation contained at 2 U.S.C. 441a, which would normally apply to transfers between political committees.

Over the years between 1974 (when this section first appeared in the FECA), and 1980 (when FECA was substantially revised), serious questions arose concerning whether the catchall exception allowing the use of surplus funds "for any lawful purpose" permitted candidates to convert them 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 those 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 funds for personal purposes.

2 U.S.C. 437g. Enforcement

A. CRIMINAL/CIVIL REMEDIES

Section 437g contains the machinery through which 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. This criminal liability attached regardless of the degree of criminal intent present, regardless of motive with which the would-be defendant acted, and regardless of the quantitative size of the offense. Strict criminal liability such as this was not usually an effective response to conduct that generally involved unintentional infractions of a highly complex regulatory statute. Indeed, the D.C. Circuit held that 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 for offenses of this kind. *United States* v. *Finance Committee To Re-Elect the President*, 501 F.2d 1194 (D.C. 1974). Accordingly, the Department adopted a policy in such matters which viewed criminal prosecution as appropriate only in response to campaign financing 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 a statutory answer to this enforcement problem. This legislation transferred all of the campaign financing statutes from the Criminal Code to the Federal Election Campaign Act. At the same time, an important statutory dichotomy was created between nonfeasant or 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 penalty 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 (1978); *United States* v. *Tonry*, 433 F.Supp. 620 (E.D. La. 1977); and *United States* v. *International Union of Operating Engineers*, 638 F.2d 1161 (9th Cir. 1979). 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.

Criminal violations of the FECA differ from noncriminal violations of it 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. However, the substantive provisions of the Act are largely regulatory *malum prohibitum* prohibitions and duties. As such, the existence of a statutory specific intent element requires proof either that a would-be FECA 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. AFL-CIO* v. *FEC*, 628 F.2d 97 (D.C. Cir. 1980), and *National Right to Work Committee* v. *FEC*, 716 F.2d 1401 (D.C. Cir. 1983), holding that the statutory "knowing and willful" requirement in the FECA's penalty section requires proof of "knowing conscious and deliberate flaunting of the Act." 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 might be the use of conduits to conceal the fact that corporate funds were being infused into a political campaign in violation of both 2 U.S.C. 441b and 441f.

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, where the payment is made to a campaign committee in the form of a campaign contribution.

The monetary floor for a criminal violation of the FECA is presently set at $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).

B. VENUE

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 intradistrict or isolated transactions are concerned, a recent 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 multidistrict FECA violations.

In *United States* v. *Passodelis,* 615 F.2d 975 (3d Cir. 1980), *reh denied en banc,* 622 F.2d 567, a presidential campaign fundraiser had been indicted and convicted under present 2 U.S.C. 441a and 441f 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 they "made" the prohibited donations in question, and that this concept did not encompass the donee's receipt and acceptance of the corpus of the offending transaction. Just what constituted the "making of a contribution," and precisely when or where the transaction was concluded, was not fully explained by the *Passodelis* Court.

In *United States* v. *Chestnut,* 533 F.2d 40 (2d Cir. 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 "donee" cases may be brought in the district where the donee converted them to his or her use.

C. STATUTE OF LIMITATIONS

The statute of limitations for prosecuting campaign financing violations such as those discussed in this section of the Manual is *three years.* 2 U.S.C. 455. There is, however, no statute of limitations for *civil* enforcement by the FEC.

This represents one of the few special statutes of limitation in federal criminal law enforcement, and to our knowledge it is the only one which is shorter than the customary five years. This short limitations period presents substantial problems to law enforcement in this area. *See United States* v. *Hankin,* 607 F.2d 611 (3d Cir. 1980).

D. PREEMPTION OF STATE LAWS

2 U.S.C. 453 provides that the Federal Election Campaign Act controls and supersedes inconsistent state laws insofar as the subject of campaign financing matters with respect to federal campaigns is concerned. Many States have their own laws dealing with campaign financial transactions similar to those that are covered by the FECA. In some cases, these state codes are extensive, as for example is the case with Florida. Where such local or state laws exist, Section

453 makes it clear that the do's and don'ts set forth in the FECA are to be the only rules with which a federal candidate must contend. Accordingly, for all practical purposes campaign financing matters involving candidates for federal office are exclusively matters of federal jurisdiction and concern.

D. 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 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 now 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.

2 U.S.C. 431. Definitions

This is the definitional section, applicable to the entire FECA, including the campaign financing statutes discussed in the previous section of this booklet. 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 or she has either received contributions aggregating over $5,000, has made expenditures aggregating over $5,000, or has authorized another person to do so on his or her 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" 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." They 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).[7] 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 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 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).

[7]For a discussion of the difference between a "contribution" and an "expenditure," see pp. 34, *supra*.

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 must designate a state bank or federally chartered or insured banking institution as their campaign depository. They must deposit all contributions into this depository, and make all expenditures by check drawn on this depository. Petty cash disbursements up to $100 are permitted to be made in currency. Section 432(h).

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 the committee's 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).

2 U.S.C. 434. Reporting requirements

Section 434(a) contains deadlines for the filing 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 individually submit reports to the FEC. Section 434(c).

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 parties, report all sources of their funding, and the purpose for which such funds were spent, in connection with the location and conducting of national nominating conventions.

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

This section establishes 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 of the FEC: 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 enforcement and interpretative actions.

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

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

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 on behalf of 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. Written comments may be submitted by interested parties. Both requestors and other persons in similar situations may rely on these opinions, which as such have the same practical effect as regulations.

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. 1981), *aff'd* 453 U.S. 182 (1981); *Athens Lumber Co.* v. *FEC,* 531 F.Supp. 756 (M.D. Ga. 1981); *rev.*, 689 F.2d 1006 (11th Cir. 1982);, *rev. en banc,* 718 F.2d 367 (11th Cir. 1983).

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.

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.

Enforcement

Under the present FECA, as amended in 1976 and 1979, violations of the recordkeeping, reporting, and campaign organizational provisions of the Federal Election Campaign Act are enforced through the same mechanisms as the campaign financing portions of the Act.

Nonfeasant and inadvertent violations of these disclosure and organizational requirements are subject to several overlapping layers of administrative and civil sanctions, including the administrative equivalent of mandatory injunctions and noncriminal fines. 2 U.S.C. 437g(a)-437g(c). The enforcement of these noncriminal remedies is the exclusive responsibility of the Federal Election Commission. 2 U.S.C. 437c(b)(1), 437d(e), 437d(a)(6), and 437d(a)(9).

Intentional and factually aggravated violations of the reporting and recordkeeping provisions of the FECA are subject to criminal prosecution under 2 U.S.C. 437g(d). Violations of this criminal penalty section are misdemeanors, subject to fines equal to the greater of $25,000 or 300% of the amount involved in the violation, and/or a year imprisonment. Criminal prosecutions under this penal sanction are the responsibility of the Department of Justice, and may be initiated without prior consultation with the Commission just as would be the case with other federal crimes. *United States* v. *International Union of Operating Engineers,* 638 F.2d 1161 (9th Cir. 1979); *United States* v. *Tonry,* 433 F.Supp. 630 (E.D. La. 1977); *United States* v. *Jackson,* 433 F.Supp. 239 (W.D. N.Y. 1977), *aff'd,* 586 F.2d 732 (2d Cir. 1978).

The Justice Department and the Commission have a Memorandum of Understanding concerning the handling and disposition of FECA matters arising within the broad area of concurrent jurisdiction we share under this unique

statute. This Understanding requires the Department to refer to the Commission all apparent FECA violations that come to the Department's attention as soon as the matter is closed criminally, or as soon as prosecution has been completed. The Justice Department also may not compromise the Commission's administrative remedies in plea bargains reached with potential criminal defendants. Therefore, United States Attorney personnel should take special care to incorporate a proviso concerning non-waiver of the FEC's authority into plea agreements involving defendants who may have violated the FECA.

For reasons that will be discussed more fully in Chapter Three, the Justice Department does not normally prosecute reporting or organizational FECA offenses. These inherently nonfeasant regulatory infractions are normally not suitable for redress through the federal criminal justice system, and the usual practice is to refer them to the FEC for the imposition of suitable civil or administrative criminal penalties pursuant to 2 U.S.C. 437g(a). Exceptions to this policy are made only when a reporting or organizational offense occurs in the course of a more serious pattern of felonious activity, or involves evidence that the putative defendant acted in conscious disregard of a statutory duty to a substantial degree.

CHAPTER THREE
POLICY AND PROCEDURES

A. ABUSE OF THE FRANCHISE

Background

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 derogate the integrity of a basic institution of democratic government, have made the prosecution of election fraud cases a priority area of federal law enforcement.

Election irregularities range from simple campaigning too close to the polls on one extreme, to sophisticated criminal enterprises directed at assuring the election of corrupt public officials on the other extreme. 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 actual administration of elections and the rectification of election irregularities to the States. The Federal Government enters this field deferentially, either when federal involvement is necessary to vindicate paramount federal interests, or as prosecutor of last resort to redress longstanding 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 fraud. The vast majority of these 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 a fact pattern within one of four categories of aggravation, and second upon a factoring-in of other relevant considerations.

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 involve a pattern of conduct which has as its object affecting the outcome of federal contests for U.S. Representatives, Senators, or President. Under Section 104 of the 1974 Federal Election Campaign Act (Public Law 93-443), 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 that occur in "mixed" federal-state elections, which can be shown to have impacted adversely upon the vote count of a federal contest, but which were directed principally at improperly affecting the outcome of state or local contests.

Category #3

This category includes all patterns of electoral abuse that occur in "mixed" federal-state elections, but where the fraud in question cannot be shown to have impacted adversely upon the vote count of 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, it 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). For all practical purposes, the only federal prosecutive theories presently available to reach Category #4 cases are mail fraud, and the one-person-one-vote "dilution" theory advanced in *United States* v. *Anderson,* 481 F.2d 685 (4th Cir. 1973).

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 longstanding 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 other factors 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 Department's attention fall into Categories #2 or #3, it has been necessary for the Justice 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 or instance.

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

Preclearance of Investigations and Prosecutions

Prosecution of election fraud matters is the responsibility of the United States Attorneys, as is the case with most other federal crimes.

All complaints, informations and indictments charging election fraud offenses must be approved by the Public Integrity Section prior to their presentment to a grand jury or a court. Along the same lines, grand jury process in these matters should not normally be issued without prior clearance, although authorization to use the grand jury in an election investigation will normally be given simultaneously with authorization to investigate a matter as a potential federal crime.

Seizure of Ballot Materials

Federal custody of ballot materials is normally obtained through subpoena. Except in rare cases of extreme urgency, such subpoenas must normally 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 orginals until the State's statutory need for physical custody of the election paraphernalia in question is no longer present.

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 those who broke the law after the election is over.

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.

B. PATRONAGE OFFENSES AND PROGRAM ABUSE

The federal laws dealing with politicalization of federal employment, programs, and benefits are likewise a priority area of federal law enforcement. Two 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's desire to see political considerations eliminated from the federal system. *See e.g. 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) provides 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 in the agency affected.

All indictments, informations or complaints filed under these statutory theories must be approved by the Public Integrity Section. As with election fraud matters, the purpose of this required preclearance is to assure nationwide uniformity in the enforcement of complicated laws and innovative prosecutive theories. All grand jury process directed exclusively at patronage offenses must likewise be approved by the Public Integrity Section. However, no preclearance is needed at the investigative stage of matters where non-election statutes (*e.g.* fraud, theft, extortion, *etc.*) may legitimately be involved in the same pattern of conduct with patronage matters.

C. CAMPAIGN FINANCING OFFENSES

Dual Enforcement Jurisdiction

Enforcement jurisdiction over provisions of the FECA that deal with the way campaign funds are raised and spent is split between the Department of Justice and the Federal Election Commission. The Commission has exclusive investigative and enforcement jurisdiction over noncriminal matters. 2 U.S.C. 437c(b), 437d(a)(b), and 437d(e). Criminal enforcement is the responsibility of the Justice Department, and prosecution for campaign finance crimes may be initiated without authorization or consultation with the FEC. *United States* v. *International Union of Operating Engineers*, 638 F.2d 1161 (9th Cir. 1979); *United States* v. *Tonry*, 433 F.Supp. 620 (D. La. 1977); *United States* v. *Jackson*, 433 F.Supp. 239 (W.D. N.Y. 1977), *aff'd*, 586 F.2d 832 (1978).

Difference Between Criminal and Noncriminal Violations

The FECA specifies requirements concerning the financing of political campaigns. Violations of these provisions are subject to administrative conciliation, civil fines, and where necessary civil lawsuits. All of these enforcement activities are the exclusive statutory prerogative of the Federal Election Commission. 2 U.S.C. 437d(e), 437g(a).

Most of the FECA's campaign finance requirements do not involve inherently "evil" or socially deviant activities. In this regard, the FECA is a classic example of the sort of regulatory statute, violations of which are traditionally minor crimes which require no criminal intent. *See e.g. Morissette* v. *United States*, 342 U.S. 246 (1952). Accordingly, the existence of a specific, statutory "willfulness" requirement in a law such as this has generally been interpreted by the Department as requiring proof that the offender had an active awareness

that he was doing something wrong when he committed the transgression in question. *See AFL-CIO* v. *FEC*, 628 F.2d 97 (D.C. Cir. 1980). This showing may take the form of proof that the defendant knew the law, or that he had requested an advisory opinion from the FEC which he chose to disregard. More frequently, however, such proof is found in evidence that the offender sought to cover up his conduct, or that the substantive FECA crime at issue was part of larger felonious pattern of conduct.

Departmental Prosecutive Policy

It is the policy of the Criminal Division to prosecute campaign financing crimes under the FECA's penal sanction only in cases where the offense was either commited secretly and involved a substantial sum of money, or where it was part of a larger and more aggravated crime. All other campaign finance matters are routinely referred to the Federal Election Commission for the imposition of appropriate noncriminal penalties pursuant to the Act's civil enforcement mechanisms.

Relations with the Federal Election Commission

The duality of enforcement jurisdiction over campaign financing offenses requires a close and continuing relationship between the Criminal Division and the Federal Election Commission.

The official flow of information between the Department of Justice and the Federal Election Commission is governed by a formal Memorandum of Understanding that was signed in December 1977. The Public Integrity Section is responsible for maintaining this liaison with the FEC on a case-by-case basis. The Memorandum of Understanding between the Department and the Commission demands uniformity of approach and disposition with respect to these frequently sensitive matters.

All complaints alleging violations of the campaign financing provisions of the FECA which are received by United States Attorney and Bureau personnel should be brought immediately to the attention of the Election Crimes Branch of the Public Integrity Section. United States Attorney and Bureau personnel should not send these matters directly to the Federal Election Commission or otherwise attempt to deal themselves with the Commission's enforcement staff.

In the event that an ongoing investigation in non-FECA offenses produces evidence indicating that campaign finance crimes may be involved in the pattern of conduct, the pertinent facts should be brought to the attention of the Public Integrity Section, as soon as is practical. The Memorandum of Understanding requires that in such circumstances the Department notify the Commission of the fact that it is investigating a campaign finance matter, unless such notification is prohibited by federal law (notably by Rule 6(e), Fed. R. Crim. P).

The FEC's authority over the FECA's noncriminal penalties is complete and exclusive. 2 U.S.C. 437c(b), 437d(a)(6). Under no circumstances should United

States Attorney personnel undertake to waive or limit the Commission's authority. Plea agreements entered into with defendants who have reasonable exposure for violations of the FECA should contain an express disclaimer indicating non-waiver of the FEC's residual noncriminal jurisdiction with respect to such matters.

Under no circumstances should United States Attorney personnel file charges arising under 2 U.S.C. 437g(d) without first advising and obtaining clearance from the Public Integrity Section.

Investigative Jurisdiction

Criminal investigation of FECA campaign financing matters is conducted by the Bureau. Investigations leading up to all noncriminal sanctions are conducted exclusively by the Federal Election Commission.

It is therefore important to determine at an early stage of an investigation whether or not a matter is an appropriate candidate 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.

D. REPORTING AND CAMPAIGN ORGANIZATION OFFENSES

The bulk of the Federal Election Campaign Act deals with the organization of political committees, and the public reporting of political contributions and expenditures.

These substantive provisions do not easily lend themselves to prosecution under a criminal statute such as 2 U.S.C. 437g(d) that expressly demands specific intent. As such, it is the normal policy of the Department of Justice to refer reporting and organizational offenses to the Federal Election Commission for appropriate noncriminal disposition. Exceptions to this policy are rarely made, and then only where it appears that there was a clear motive to conceal material information from the electorate or where the FECA offenses were an essential part of a felonious pattern of conduct. *See e.g. United States* v. *Finance Committee to Re-Elect the President,* 507 F.2d 1194 (D.C. Cir. 1974).

All information indicating the possibility of violations of the FECA's reporting and campaign organizational provisions should be transmitted to the Public Integrity Section, which will refer them to the Federal Election Commission to the extent that such a referral is not barred by Rule 6(e), Fed.R.Crim.P.

No criminal investigation or prosecution should be instituted involving matters presenting no federal violations other than alleged infractions of campaign reporting and organizational statutes without the express approval of the Public Integrity Section.

CHAPTER FOUR
ELECTION DAY PROCEDURES

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

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 42 U.S.C. 1983.

Under exceptional circumstances, stationary surveillance of open polling places by the Bureau may be authorized by the Assistant Attorney General for 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 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 "Election Day Officer," assuring the availability of Special Agents to investigate election-related complaints throughout the judicial district, and coordination of the on-the-scene response 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 the Election Crimes Branch, which determines, in consultation with affected United States Attorneys, which cases should be pursued through full field investigations.

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

TABLE OF CASES

APPENDIX

EXCERPTS FROM UNITED STATES CODE TITLE 2

§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 aggregrate, 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 fund raising efforts;

(B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and

(C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign commitee 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 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 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 the 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 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 Committee, 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 orgaization 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 a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

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

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their familes 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 solict 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 associations 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, it 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, 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 to 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) *Prohibited practices.* 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) *Payment of honorarium to charitable organization.* 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) *Aggregate amount received during any calendar year.* 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) *Time of acceptance of honorarium.* 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.

§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 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 (6)(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 or the District of Columbia.

(B) Any petition under subparagraph (A) shall be filed, in the case of a dismissal or 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) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this subsection or under section 437h of this title).

(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 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.

§ 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.

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.

(As amended Apr. 11, 1968, Pub.L. 90-284, Title I, § 103(a), 82 Stat. 75.)

§ 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.

(As amended Apr. 11, 1968, Pub.L. 90-284, Title I, § 103(b), 82 Stat. 75.)

§ 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 one year, or both.

(As amended Sept. 22, 1970, Pub.L. 91-405, Title II, § 204(d)(5), 84 Stat. 853.)

§ 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.

(As amended Sept. 22, 1970, Pub.L. 91-405, Title II, § 204(d)(6), 84 Stat. 853.)

§ 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.

(As amended Feb. 7, 1972, Pub.L. 92-225, Title II, § 202, 86 Stat. 9; Oct. 2, 1976, Pub.L. 94-453, § 3, 90 Stat. 1517.)

§ 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.

(As amended Oct. 2, 1976, Pub.L. 94-453, § 1, 90 Stat. 1516.)

§ 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.

(As amended Jan. 8, 1980, Pub.L. 96-187, Title II, § 201(a)(3), 93 Stat. 1367.)

References in Text. Section 301(8) of the Federal Election Campaign Act of 1971, referred to in cl. (4), is classified to section 431(8) of Title 2, U.S.C.A., The Congress.

§ 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 compen-

sation 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.

(As amended Oct. 31, 1951, c. 655 § 20(b), 65 Stat. 718; Jan. 8, 1980, Pub.L. 96-187, Title II, § 201(a)(4), 93 Stat. 1367.)

References in Text. Sections 301(8) and 302(e)(1) of the Federal Election Campaign Act of 1971, referred to in text, are classified to sections 431(8) and 432(e)(1), respectively, of Title 2, U.S.C.A. The Congress.

§ 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.

(As amended Jan. 8, 1980, Pub.L. 96-187, Title II, § 201(a)(5), 93 Stat. 1367.)

References in Text. Sections 301(8) and 302(e) of the Federal Election Campaign Act of 1971, referred to in text, are classified to sections 431(8) and 432(e), respectively, of the Title 2, U.S.C.A., The Congress.

§ 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.

(As amended May 24, 1949, c. 139 § 34, 63 Stat. 94; Aug. 12, 1970, Pub.L. 91-375, § 6(j)(11), 84 Stat. 778.)

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 Distric of Columbia, or 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.

(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.

As amended Pub.L. 94–73, Title IV, §§ 404, 409, Aug. 6, 1975, 89 Stat. 404, 405.