

U.S. Department of Justice

Criminal Division

Public Integrity Section

Federal Prosecution of Election Offenses

Sixth Edition

January 1995



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Federal Prosecution of Election Offenses

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Written by

Craig C. Donsanto, Director
Election Crimes Branch
Public Integrity Section

and

Nancy S. Stewart
Senior Counsel for Policy
Public Integrity Section

Edited by

Laura A. Ingersoll
Trial Attorney
Public Integrity Section

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PREFACE

The voting process is the foundation of American democracy, and its integrity must be insured in order for our system of government to operate properly. Corruption in the voting process not only subverts the true will of the citizenry, but also destroys the confidence of those citizens in all governmental institutions. Therefore, successful investigation and prosecution of corruption in the election process must always be a federal law enforcement priority. This sixth edition of Federal Prosecution of Election Offenses is intended to assist federal prosecutors and investigators in performing this important part of their mission.¹

This edition is a substantial rework of the time-honored and well-used manual begun in 1976 by Craig C. Donsanto, Director, Election Crimes Branch, Public Integrity Section. Craig is again joined in authorship by Nancy S. Stewart, Senior Counsel for Policy. Section Trial Attorney Laura A. Ingersoll edited this edition and supervised its production.

There have been a number of significant legal developments since the previous edition of this book, which appeared in 1988, many of which have affected the way election crimes are handled. Among these are the following:

- The Fifth Circuit, followed by the Third, approved the use of federal felony statutes to prosecute aggravated violations of the campaign financing prohibitions of the Federal Election Campaign Act. United States v. Hopkins, 916 F.2d 207 (5th Cir. 1990); United States v. Curran, 20 F.3d 560 (3d Cir. 1994).
- The Supreme Court restricted application of the federal extortion statute, the Hobbs Act (18 U.S.C. § 1951), in the context of campaign contributions in return for official acts. McCormick v. United States, 500 U.S. 257 (1991).

¹ This book is intended exclusively as a reference tool for personnel employed by the Department of Justice, including United States Attorneys' Offices and the Federal Bureau of Investigation. Nothing contained herein is intended to confer substantive or procedural rights on the public generally, or on those whose activities may fall within the reach of these laws in particular. Moreover, the discussion in this book represents the views and policies of the Criminal Division on the date of its preparation, which are subject to change without notice.

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Preface

- Two appellate decisions together help define the line between legitimate voter assistance and ballot fraud. In the first case, a divided panel of the Sixth Circuit held that the federal multiple voting statute, 42 U.S.C. § 1973i(e), was unconstitutionally vague as applied to the defendant's aggressive voter "assistance" tactics. United States v. Salisbury, 983 F.2d 1369 (1993). Subsequently, the Seventh Circuit reached a contrary result in a similar ballot fraud case, affirming the defendant's conviction under section 1973i(e) for voting the ballots of others. United States v. Cole, No. 92-1880, 1994 WL 663584 (7th Cir. Nov. 28, 1994).
- The Eighth Circuit handed down a broad and favorable decision affirming ballot fraud convictions under the false election information statute, 42 U.S.C. § 1973i(c). United States v. Boards, 10 F.3d 587 (1993).
- The corrective statute which Congress enacted in 1988 to remedy the adverse effects of McNally v. United States, 483 U.S. 350 (1987) (limiting the use of the mail fraud statute, 18 U.S.C. § 1341), failed to apply to election crimes. 18 U.S.C. § 1346.
- A 1990 amendment to the Travel Act (18 U.S.C. § 1952) extended federal jurisdiction to certain election crime schemes that involve only intrastate mailings.
- In 1993, Congress passed the National Voter Registration Act, which requires the adoption of more convenient voter registration procedures throughout the country. To respond to potential abuses of these relaxed registration options, the legislation contained a new election crime statute addressing two common types of vote fraud: voter intimidation, and fraudulent registering and voting. 42 U.S.C. § 1973gg-10.
- Also in 1993, the Hatch Act Reform Amendments were enacted, which modified the fifty-year-old ban on partisan political activity by executive branch employees (former 5 U.S.C. § 7324(a)(2)). 5 U.S.C. § 7323(b)(2). Like the National Voter Registration Act, this legislation also contained a new criminal statute, 18 U.S.C. § 610, which addresses political patronage abuses involving federal employees.

These developments and others are discussed in the following pages. In addition, several new features are introduced in this edition: an Overview summarizing the key laws and policies involved in the federal prosecution

Preface

of election offenses; a section on the prosecution of voter intimidation, a subject about which little has previously been written; and a chapter on the application of the United States Sentencing Guidelines, which have generally led to the imposition of substantial penalties for election crimes.

The aim of a successful election crime prosecution is to bring to justice those who would subvert the essence of democracy: honest government, responsive to the will of the people. Election crime cases can be a challenge to prosecute, but, given the significance of the societal interests these crimes seek to corrupt, pursuing them is uniquely important. It is also professionally rewarding.

The preparation of this book has been a long-term and at times difficult project, due in part to the many new developments in the law. In addition to those named above, the assistance of Section attorneys Richard C. Pilger and Robert P. Storch is appreciated. Thanks also to Section paralegal Dana Overton and secretary Bertina Simms for their invaluable help.

Lee J. Radek, Chief
Public Integrity Section
Criminal Division
United States Department of Justice

NOTE

As this book went to press, the Cole opinion received its official citation: United States v. Cole, 41 F.3d 303 (7th Cir. 1994).

OVERVIEW

This book was written to help federal prosecutors and investigators discharge the responsibility of the United States Department of Justice to attack corruption of the election process with all available statutes and prosecutive theories. It addresses how the Department handles all forms of federal election offenses -- other than those involving civil rights, which are enforced by the Department's Civil Rights Division. This Overview summarizes the Department's policies, as well as key legal and investigative considerations, related to the investigation and prosecution of election crime.

A. INTRODUCTION

In the United States, as in other democratic societies, it is through the ballot box that the will of the people is translated into government that serves rather than oppresses. It is through elections that the government is held accountable to the people and political conflicts are channelled into peaceful resolutions. And it is through elections that power is attained and transferred.

Our constitutional system of representative government only works when the worth of honest ballots is not diluted by invalid ballots procured by corruption. As the Supreme Court stated in a case upholding federal convictions for ballot box stuffing: "Every voter in a federal . . . election, . . . whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." Anderson v. United States, 417 U.S. 211, 227 (1974). When the election process is corrupted, democracy is jeopardized. Accordingly, the effective prosecution of corruption of the election process is a significant federal law enforcement priority.

Although corrupt government may exist without election crime, where election crime exists public corruption of some form is also often present. This is so because virtually all election crime is driven by a motive to control governmental power for some corrupt purpose. Election crime cases therefore often provide effective tools for attacking other forms of public corruption. Thus, the task of the federal prosecutor and investigator is not only to vindicate the fundamental principle of fair elections by convicting those who corrupt them, but also to find the motive behind the election fraud and, where possible, to prosecute those involved in the underlying corruption.

Overview

There are several reasons why election crime prosecutions may present an easier means of obtaining convictions than do other forms of public corruption:

- Election crimes usually occur largely in public.
- Election crimes often involve many players. For example, successful voter bribery schemes require numerous voters; ballot box stuffing requires controlling all the election officials in a polling location; illegal political contributors generally require the assistance of numerous conduits to disguise the transaction.
- Election crimes tend to leave a paper trail, either in state voting documentation or in public reports filed by federal campaigns.

B. TYPES OF ELECTION CRIMES

1. Election fraud

Election fraud involves corruption of any of three processes: the obtaining and marking of ballots, the counting and certification of election results, or the registration of voters.

Most election fraud aims at ensuring that important elected positions are occupied by "friendly" candidates. It often occurs where the stakes involved in who controls public offices are great -- as is often the case where patronage positions are a major source of employment, or where illicit activities are being conducted that require protection from official scrutiny.

2. Patronage crimes

Patronage is a term used to describe the doctrine of "to the victor go the spoils." The Supreme Court has held that the firing, based on partisan considerations, of public employees who occupy non-confidential and non-policymaking positions violates the First Amendment. Moreover, an aggressive and pervasive patronage system can provide a fertile breeding ground for other forms of corruption. It is therefore important to root out aggravated patronage abuses wherever they occur.

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3. Campaign financing offenses

Most of the current federal campaign financing laws were enacted as part of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 (FECA). The FECA generally applies only to financial transactions that are intended to influence federal elections, that is, campaigns for election to the office of United States Representative, United States Senator, President, or Vice President.

The FECA contains its own criminal provision, which provides that FECA violations that are committed knowingly and willfully and involve at least \$2,000 may be prosecuted as misdemeanors. 2 U.S.C. § 437g(d). Most FECA violations do not meet the standards for criminal prosecution, and are handled noncriminally by the Federal Election Commission (FEC) under the statute's civil enforcement provision, 2 U.S.C. § 437g(a).

FECA violations will most likely warrant criminal prosecution where they involve schemes to influence a federal candidate's election by making contributions that are patently illegal, through means calculated to conceal the scheme from the FEC and the public. In recent years, general fraud laws such as 18 U.S.C. §§ 371 and 1001 have also been used successfully to address aggravated campaign financing schemes.

4. Civil rights crimes

Schemes to deprive minorities of the right to vote are federal crimes under the Voting Rights Act of 1965, as amended. 42 U.S.C. § 1973j. Discrimination based on potential voters' race, or on ethnic factors or minority language, may also be redressed under such criminal statutes as 18 U.S.C. §§ 241 and 242. These prosecutions are supervised by the Civil Rights Division.

C. FEDERAL JURISDICTION

When the federal government asserts jurisdiction over an election offense it is usually either to redress long-standing patterns of gross electoral abuse, or to gain an investigative foothold into other forms of public corruption. Election crime cases tend to be long-term prosecutive projects involving individuals having different degrees of culpability. The ultimate goal is to move up the ladder of culpability to candidates, political operatives, and others who attempted to corrupt the public office involved.

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Federal jurisdiction over election fraud is easily established in elections where a federal candidate is on the ballot. This generally occurs in what are called "mixed" elections, where federal and nonfederal candidates are running simultaneously. In such cases, the federal interest is based on the presence of a federal candidate, whose election may be tainted by the fraud.

When there is no federal candidate on the ballot, federal jurisdiction is much harder to attain. Before McNally v. United States, 483 U.S. 350 (1987), the mail fraud statute was often used to achieve federal jurisdiction over election fraud which occurred in nonfederal elections. The scheme charged was one to defraud the public of its intangible "right to fair elections." However, McNally held that intangible rights were not protected by the mail fraud statute.

The "McNally-fix" statute, 18 U.S.C. § 1346, was intended to restore federal jurisdiction to its pre-McNally scope. Under section 1346, the mail fraud statute once again applies to schemes to defraud anyone of their intangible right to "honest services." However, section 1346 did not restore mail fraud jurisdiction over local election fraud, since this type of crime does not generally involve an intent to deprive the victim class of anyone's "honest services." Thus, local election fraud may be prosecuted as mail fraud only under a salary theory, as discussed in Chapter One.

As a result, only a few statutory theories are available to address local election fraud.

D. ADVANTAGES OF FEDERAL PROSECUTION

The states' primary authority over the election process has resulted in limited federal jurisdiction over election fraud. With a few significant exceptions, federal law does not address how elections should be conducted. State law historically has regulated such important activities as the registration of voters, the qualifications for absentee voting, the type of voting equipment used to tabulate votes, the selection of election officials, and the procedures and safeguards for counting ballots.

These factors might suggest that the prosecution of election crime should be left primarily to local law enforcement. However, local law enforcement often is not equipped to prosecute election offenses. Federal law enforcement may be the only enforcement option available.

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Four characteristics of the federal criminal justice system support the federal prosecution of election crime despite the primary role of the states in most facets of election administration:

- Federal trial juries, which are drawn from a broader geographic area than are most state juries, and thus lessen the possibility of local bias.
- Federal grand juries, the secrecy requirements of which help protect the testimony of witnesses who tend to be vulnerable to manipulation and intimidation.
- Resources to handle the labor-intensive investigations generally required for successful prosecution of election crime.
- Detachment from local political forces and interests.

E. FEDERAL ROLE: PROSECUTION, NOT INTERVENTION

The principal responsibility for overseeing the election process rests with the states. With the significant exception of voting rights enforcement, the federal government plays a role secondary to that of the states in election matters.² It is the states that have authority to assure that political campaigns are waged honestly, that only qualified individuals register and vote, and that the polling process is conducted fairly.

The federal prosecutor's role in election matters, on the other hand, focuses on prosecuting individuals who commit federal crimes in connection with an election. Deterrence of future similar crimes is a natural and important objective of federal prosecution. However, this deterrence is sought by public awareness of the Department's prosecutive interest in election fraud, and through successful convictions of those who corrupt the election process -- not through interference with the process itself.

² Where election offenses are driven by animus based on race, ethnicity, or linguistic minority status, the broad protections of the 1965 Voting Rights Act and other civil rights statutes are triggered. 42 U.S.C. §§ 1971, 1973, 1973b(f), 1973aa-1a. Such matters are supervised by the Civil Rights Division.

Overview

Since the federal prosecutor's function in the area of election crimes is not primarily preventive, any criminal investigation by the Department must be conducted in a way that eliminates, or at least minimizes, the possibility that the investigation itself will become a factor in the election. With very few exceptions, no overt investigation, and no interviews with individual voters, should occur until after the election allegedly affected is over. While the Department cannot prevent a complainant from publicizing allegations, care should be taken to avoid providing the complainant with any information which might be used to affect the election process.

Finally, the federal prosecutor has no authority to send FBI agents or United States Marshals to polling places.³ Indeed, a federal statute makes it a felony for any federal official to send "armed men" to the vicinity of open polling places. 18 U.S.C. § 592. In light of these considerations, FBI practice is to require that even stationary surveillance outside open polling places be approved by the Criminal Division's Public Integrity Section.

F. EVALUATING AN ELECTION FRAUD ALLEGATION

There are often several ways to address election fraud besides prosecution. These include administrative action by election officials to correct a problem, and litigation to challenge apparent election outcomes. The Department of Justice has no role in such matters.

Determining whether an election fraud allegation warrants federal investigation and possible prosecution entails answering three basic questions:

Is criminal prosecution the appropriate remedy for the facts presented? Criminal prosecution is appropriate only when the facts demonstrate that the defendant's objective was to corrupt the process by which voters were registered, or by which ballots were obtained, cast, or counted.

³ However, in jurisdictions specially covered by the 1965 Voting Rights Act, the Justice Department does have authority to send "federal observers" to the polls, when necessary to ensure that the franchise will not be interfered with based on race, ethnic factors, or linguistic minority status. 42 U.S.C. §§ 1973d, 1973f. In jurisdictions not specially covered by the Act, the Attorney General or a private party may request such observers in a Voting Rights Act lawsuit. 42 U.S.C. § 1973a.

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Is there potential federal jurisdiction over the conduct? Answering this requires determining whether the conduct is cognizable under the limited, and generally narrow, federal criminal statutes that apply to election crimes.

Is there a need for federal prosecution? Answering this requires assessing the willingness and ability of state or local law enforcement authorities to prosecute the matter; the degree to which the matter adversely affects a federal interest; the impact of a federal prosecution on Department resources; and federalism issues raised by interjecting the federal government into activity over which the states possess broad powers.

G. INVESTIGATIVE CONSIDERATIONS IN ELECTION FRAUD CASES

When investigating election fraud, considerations absent from most criminal investigations must be kept in mind: respect for the primary role of the states in administering the voting process, an awareness of the role of the election in the governmental process, and sensitivity to the exercise of First Amendment rights in the election context. As a result, there are limitations on various investigative steps in an election fraud case.

Election-related documents should not be taken from the custody of local election administrators until the election to which they pertain has been certified and the time for contesting the election results has expired. This avoids interfering with the governmental processes affected by the election.

Another limitation affects voter interviews. Election fraud cases often depend on the testimony of individual voters whose votes were co-opted in one way or another. But voters should not be interviewed, or other voter-related investigation done, until after the election is over. Such overt investigative steps might chill legitimate voting activities. They are also likely to be perceived by voters and candidates as an intrusion into the election. Indeed, the fact of a federal criminal investigation may itself become an issue in the election.

Some election frauds implicate a voter who participates in a voting act attributed to him or her; such cases involve vote buying schemes, absentee ballot fraud, and the like. Successful prosecution of these cases inevitably requires the cooperation of either the voter or the person who attempted to corrupt or take advantage of the voter. To encourage their cooperation without fear of prosecution, and because such persons can often be considered victims of election fraud, the Justice Department has a long-

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standing practice of declining to prosecute persons whose only involvement in an election fraud scheme was permitting their votes to be co-opted.

H. EVALUATING AN FECA CRIME ALLEGATION

Violations of the FECA are not potential crimes unless they are aggravated in both monetary amount and degree of criminal intent present. To determine whether a FECA violation is sufficiently aggravated to warrant criminal investigation, the following questions should be answered:

Does the conduct violate one of the "core" prohibitions of the FECA? Assuming the provable conduct is as alleged, does it violate one of the principal prohibitions of the FECA: the prohibition against excessive contributions (2 U.S.C. § 441a), corporate and union contributions (2 U.S.C. § 441b), contributions from government contractors (2 U.S.C. § 441c), contributions from foreign nationals (2 U.S.C. § 441e), or disguised contributions through conduits (2 U.S.C. § 441f). Or, does it violate the public reporting requirements for federal campaigns (2 U.S.C. § 434)?

What was the total monetary amount involved in the violation? FECA violations are not crimes unless they involve at least \$2,000 in a calendar year. The higher the sum involved in the alleged violation is above the \$2,000 statutory minimum, the more likely the matter is to warrant prosecution.

Was the violation committed under circumstances suggesting that the conduct was knowing and willful? All prosecutive theories applicable to FECA violations -- whether charged as FECA misdemeanors or Title 18 felonies -- require proof of specific criminal intent. This is often a difficult element to satisfy. Evidence of an attempt to disguise or conceal the activity can help meet this test.

If there is likely to be proof of each of these aggravating factors, the matter should be considered for criminal investigation. If not, civil enforcement action by the FEC is the appropriate response.

I. INVESTIGATIVE CONSIDERATIONS IN CAMPAIGN FINANCING CASES

Campaign financing cases have recently come to occupy an increasingly significant portion of the investigative and prosecutive resources that the Justice Department devotes to election crime. As noted above, these cases involve aggravated violations of the FECA. All of the criminal prosecutive

Overview

theories governing FECA violations require proof that the defendant acted in conscious disregard of a known statutory duty imposed by the Act. Consequently, matters investigated as possible criminal FECA violations must fall within one or more of the FECA's core provisions.⁴

If a campaign financing offense violates one of the core prohibitions of the FECA, and is willful, aggravated in amount, and concealed from the public, the Justice Department may pursue it as a conspiracy to defraud the United States, under 18 U.S.C. § 371, or as a false statement, under 18 U.S.C. § 1001 -- both felonies. Alternatively, the offense may be prosecuted under the FECA as a misdemeanor. 2 U.S.C. § 437g(d). If these aggravating factors are not present, the matter will generally be referred to the FEC for civil enforcement action. The advantages of charging Title 18 felonies include, in addition to the applicable penalty, availability of the five-year general statute of limitations under 18 U.S.C. § 3282, instead of the three-year limitations period under the FECA, 2 U.S.C. § 455.

When investigating a criminal violation of the FECA, care must be taken not to compromise the FEC's civil and administrative jurisdiction under 2 U.S.C. § 437g(a). All plea agreements involving activities that fall within the terms of the FECA should therefore contain an express disclaimer regarding the FEC's civil enforcement authority.

J. CONSULTATION REQUIREMENTS AND RECOMMENDATIONS

Justice Department supervision over the enforcement of all statutes and prosecutive theories involving corruption of the election process is delegated to the Criminal Division's Public Integrity Section. U.S.A.M. 9-2.133(8), 9-2.133(15). In 1980, the Election Crimes Branch was created within the Section to manage this supervisory responsibility. The Branch is headed by a Director and staffed with Section prosecutors experienced in the investigation and prosecution of election crimes.

The Election Crimes Branch is available to assist United States Attorneys' Offices and FBI field offices in evaluating election crime allegations, structuring investigations, and drafting indictments and other pleadings. In addition, the Public Integrity Section can provide operational assistance in election crime investigations and trials. Section prosecutors

⁴ The principal, or core, campaign financing provisions of the FECA are listed in § 11, immediately above.

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handle election crime cases themselves when appropriate or necessary. The Election Crimes Branch also serves as the point of contact between the Department of Justice and the FEC, which share enforcement jurisdiction over aggravated federal campaign financing violations.

The Department's consultation requirements in this area are designed to ensure that investigative resources are not spent pursuing matters that have little prosecutive potential, and that national standards are maintained for federal prosecution of election crime. The requirements are also intended to help ensure that investigations are pursued in a way that respects both individual voting rights and the states' primary responsibility for administering the electoral process. Finally, consultation and approval from Department headquarters, which is geographically and to a large extent politically removed from local political concerns, tend to enhance the perception of an unbiased investigation.

United States Attorneys' Offices and FBI field offices may conduct preliminary investigations of alleged election crimes without consulting the Public Integrity Section. A preliminary investigation is limited to those investigative steps necessary to flesh out the complaint in order to determine whether a federal crime may have occurred, and, if so, whether it may warrant federal prosecution. However, consultation with the Public Integrity Section is required to:

- expand an election fraud investigation beyond a preliminary stage;
- issue a subpoena or search warrant in connection with an election crime allegation;
- present evidence in an election crime matter to a federal grand jury; or
- file criminal charges, or present an indictment to a grand jury charging election offenses.

U.S.A.M. 9-2.133. It is also recommended that the Public Integrity Section be consulted before acceptance of any preindictment plea agreement involving election crime, although such consultation is not required.

Additional considerations come into play in cases involving alleged campaign financing fraud. In these matters, consultation with the Public Integrity Section is strongly encouraged, but not required, before any

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investigation is conducted. There are both practical and policy reasons for this.

First, most FECA violations are either not crimes or do not warrant criminal prosecution. Hence, early consultation helps avoid wasting prosecutive and investigative resources on matters that are not likely to develop into successful prosecutions. United States v. Curran, 20 F.3d 560 (3d Cir. 1994), provides an example of the enforcement difficulties prosecutors face in this area.

Second, early consultation on FECA matters contributes to the overall success of the Department's prosecutive efforts in this area, by laying the foundation for reciprocal cooperation from the FEC in those FECA cases that do result in criminal charges. FECA prosecutions require FEC data and trial witnesses. They may also entail requests that the FEC defer its own enforcement efforts until the criminal investigation has ended. In addition, early contacts can help the Department meet its obligations under its Memorandum of Understanding with the FEC. (The Memorandum is reprinted at the end of Chapter Five.)

Third, consultation before beginning a criminal FECA investigation helps to ensure that the Department maintains a nationally consistent prosecutive approach in this area. This type of case often tends to be politically sensitive, and maintaining national investigative standards helps preserve the appearance of complete enforcement impartiality.

Fourth, early contacts with the Public Integrity Section help to lessen troublesome parallel enforcement difficulties, such as the creation of Jencks and Brady material, which often arise from administrative investigations into matters under criminal investigation.



PART I
ELECTION FRAUD

CHAPTER ONE

CORRUPTION OF
THE ELECTION PROCESS

A. HISTORICAL BACKGROUND

Federal concern over the integrity of the franchise has historically had two distinct points of focus. One -- to secure the general public elections that are not corrupted -- is the subject of this chapter. The other -- to ensure there is no discrimination against minorities at the ballot box -- involves entirely different constitutional and federal interests, and is supervised by the Justice Department's Civil Rights Division.

Federal interest in the integrity of the franchise was first manifested immediately after the Civil War. Between 1868 and 1870, Congress passed the Enforcement Acts, which served as the basis for federal activism in prosecuting corruption of the franchise until most of them were repealed in the 1890s. See In re Coy, 127 U.S. 731 (1888); Ex parte Yarbrough, 110 U.S. 651 (1884); Ex parte Siebold, 100 U.S. 371 (1880).

Many of the Enforcement Acts had broad jurisdictional predicates which allowed them to be applied to a wide variety of corrupt election practices as long as a federal candidate was on the ballot. In Coy, the Supreme Court held that Congress had authority under the Constitution's Necessary and Proper Clause to regulate any activity 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. United States v. Carmichael, 685 F.2d 903, 908 (4th Cir. 1982), cert. denied, 459 U.S. 1202 (1983); United States v. Mason, 673 F.2d 737, 739 (4th Cir. 1982); United States v. Malmay, 671 F.2d 869, 874-75 (5th Cir. 1982); United States v. Bowman, 636 F.2d 1003, 1001 (5th Cir. 1981).

After Reconstruction, federal activism in election matters retrenched. The repeal of most of the Enforcement Acts eliminated the statutory tools that had encouraged federal activism in election fraud matters. Two surviving provisions of these Acts, now embodied in 18 U.S.C. §§ 241 and 242, covered only intentional deprivations of rights guaranteed directly by the Constitution or federal law. The courts during this period held that the Constitution directly conferred a right to vote only for federal officers, and that conduct aimed at corrupting nonfederal contests was not prosecutable in federal courts. See United States v. Gradwell, 243 U.S. 476 (1917);

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Guinn v. United States, 238 U.S. 347 (1915). Federal attention to election fraud was further limited by case law holding that primary elections were not part of the official election 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 federal contests.

In 1941, the Supreme Court reversed direction, overturning Newberry. The Court recognized that primary elections are an integral part of the process by which candidates are elected to office. United States v. Classic, 313 U.S. 299 (1941). Classic changed the judicial attitude toward federal intervention in election matters, and ushered in a new period of federal activism. Federal courts now regard the right to vote in a fairly conducted election as a constitutionally protected feature of United States citizenship. Reynolds v. Sims, 377 U.S. 533 (1964).

In 1973, the use of section 241 to address election fraud began to expand. United States v. Anderson, 481 F.2d 685 (4th Cir. 1973), aff'd on other grounds, 417 U.S. 211 (1974). Since then, this statute has been successfully applied to prosecute certain types of local election fraud. United States v. Howard, 774 F.2d 838 (7th Cir. 1985); United States v. Olinger, 759 F.2d 1293 (7th Cir.), cert. denied, 474 U.S. 839 (1985); United States v. Stollings, 501 F.2d 954 (4th Cir. 1974); United States v. Morado, 454 F.2d 167 (5th Cir.), cert. denied, 406 U.S. 917 (1972).

The mail fraud statute, 18 U.S.C. § 1341, was used successfully for decades to reach local election fraud, under the theory that such schemes defrauded citizens of their right to fair and honest elections. United States v. Clapps, 732 F.2d 1148 (3d Cir.), cert. denied, 469 U.S. 1085 (1984); United States v. States, 488 F.2d 761 (8th Cir. 1973), cert. denied, 417 U.S. 909 (1974). However, this mail fraud theory has been barred since 1987, when the Supreme Court held that section 1341 did not apply to schemes to defraud someone of intangible rights (such as the right to honest elections). McNally v. United States, 483 U.S. 350 (1987). Congress responded to McNally the following year by enacting a provision which specifically defined section 1341 to include schemes to defraud someone of "honest services." 18 U.S.C. § 1346. Unfortunately, section 1346 did not restore use of section 1341 for most election crimes, since they do not involve the element of "honest services."

Finally, over the past twenty-five years Congress has enacted new criminal laws with broad jurisdictional bases to combat false registrations, multiple voting, and vote buying. 42 U.S.C. §§ 1973i(c), 1973i(e). Most

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recently, Congress enacted several new election crime statutes as part of broad election reform legislation dealing with voter registration (the National Voter Registration Act of 1993) and political activities (the Hatch Act Reform Amendments of 1993). 42 U.S.C. § 1973gg-10; 18 U.S.C. § 610.

B. WHAT IS ELECTION FRAUD?

1. General features

Election fraud is conduct that corrupts the process by which ballots are obtained, marked, or tabulated; the process by which election results are canvassed and certified; or the process by which voters are registered.

During the past century, Congress and the federal courts have articulated the following constitutional principles:

- All qualified citizens are eligible to vote.
- All qualified voters have the right to have their votes counted fairly and honestly.
- Invalid ballots dilute the worth of valid ballots, and therefore will not be counted.
- Every qualified voter has the right to make a personal and independent election decision.
- Qualified voters may opt not to participate in an election.
- Voting shall not be influenced by bribery or intimidation.

Any activity intended to interfere corruptly with any of these principles may be actionable as a federal crime.

Election fraud does not normally involve irregularities relating to campaign activities, the accuracy of campaign literature, the process by which a candidate obtains the withdrawal of opponents, or the failure of election officers to comply with state-mandated voting procedures.

Most election fraud is aimed at corrupting elections for local offices, which control or influence patronage. Election fraud schemes are thus often linked to such other crimes as protection of illegal activities, corruption of local governmental processes, and patronage abuses.

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Election fraud does not normally occur in jurisdictions where one political faction enjoys widespread support among the electorate, because in such a situation it is usually unnecessary or impractical to resort to election fraud in order to control local public offices. Instead, election fraud occurs most frequently where there are fairly equal political factions, and where the stakes involved in who controls public offices are weighty -- as is often the case where patronage jobs are a major source of employment, or where illicit activities are being protected from law enforcement scrutiny.

Most states have enacted detailed election codes regulating procedures for operating polling places, registering voters, verifying voters' identities, purging registration lists, issuing and handling ballots, operating voting equipment, and tabulating election results. These procedures vary among states, and violations often carry state criminal sanctions. However, violations of these procedural voting requirements are not likely to rise to the level of federal crimes. To constitute a federal crime, there must be some substantive irregularity in the voting act -- such as bribery, intimidation, or ballot forgery -- which has the potential to taint the election itself.⁵ In evaluating violations of state election laws, investigators and prosecutors should ask whether the violations suggest the existence of a scheme to corrupt the integrity of the voting process. While such things as missing seals on ballot boxes or inaccurate or incomplete voter assistance forms usually do not, in and of themselves, rise to the level of federal crime, they may signal its presence.

2. Two basic categories of election frauds

As a practical matter, election frauds fall into two categories: those in which individual voters do not participate in the fraud, and those in which they do. The investigative approach and prosecutive potential are different for each type of case.

a) Election frauds not involving the participation of voters

The first category involves cases where voters do not participate, in any way, in the voting act attributed to them. These cases include ballot box

⁵ See in this connection the new criminal statute contained in the 1993 National Voter Registration Act, discussed in §§ D.5.a and D.6, below, which makes a federal crime to submit, in connection with a federal election, ballots or registration applications known to be invalid under state law.

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stuffing, ghost voting, and "nursing home" frauds.⁶ All such matters are potential federal crimes. Proof of these crimes depends largely on evidence generated by the voting process, or on handwriting exemplars taken from persons who had access to voting equipment and thus the opportunity to misuse it. Some of the more common ways these crimes are committed include:

- Placing fictitious names on the voter rolls. This "deadwood" allows for fraudulent ballots, which can be used to stuff the ballot box.
- Casting bogus votes in the names of persons who did not vote.
- Obtaining and marking absentee ballots without the active input of the voters involved. Absentee ballots are particularly susceptible to fraudulent abuse because, by definition, they are marked and cast outside the presence of election officials.
- Falsifying vote tallies.

b) Election frauds involving the participation of voters

The second category of election frauds includes cases in which the voters do participate, at least to some extent, in the voting acts attributed to them. Common examples include:

- Vote buying schemes.
- Absentee ballot frauds.
- Voter intimidation schemes.
- Migratory-voting (or floating-voter) schemes.
- Voter "assistance" frauds, in which the wishes of the voters are ignored or not sought.

⁶ An example of a nursing home fraud is United States v. Odom, 736 F.2d 104 (4th Cir. 1984), which involved a scheme by local officials to steal and vote the absentee ballots of mentally incompetent residents of a nursing home.

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Successful prosecution of these cases usually requires the cooperation and testimony of the voters whose ballots were corrupted. This requirement presents several difficulties. An initial problem is that the voters themselves may be technically guilty of participating in the scheme. However, because these voters can often be considered victims, the Justice Department has adopted a practice of declining to prosecute them.

The second difficulty encountered in cases where voters participate is a more significant hurdle. Any participation by the voter, no matter how slight, may preclude prosecution or make its success less likely. The voter's presence alone may suggest that he or she "consented" to the defendant's conduct (marking the ballot, taking the ballot, choosing the candidates, etc.). Compare United States v. Salisbury, 983 F.2d 1369 (6th Cir. 1993) (leaving unanswered the question whether a voter who signs a ballot envelope at the defendant's instruction but is not allowed to choose the candidates has consented to having the defendant mark his or her ballot), with United States v. Cole, No. 92-1880, 1994 WL 663584 (7th Cir. Nov. 28, 1994) (finding that voters who merely signed ballots subsequently marked by the defendant were not expressing their own electoral preferences).

While the presence of the ostensible voter when another marks his or her ballot does not negate whatever crime might be occurring, it thus may increase the difficulty of proving the crime. This difficulty is compounded by the fact that those who commit this type of crime generally target vulnerable members of society, such as persons who are uneducated, socially disadvantaged, or with little means of livelihood -- precisely the type of person who is likely to be subject to manipulation or intimidation. Therefore, in cases where the voter is present when another person marks his or her ballot, the evidence must show that the defendant either procured the voter's ballot through means that were themselves corrupt (such as bribery or threats), or that the defendant marked the voter's ballot without the voter's consent or input. See United States v. Boards, 10 F.3d 587 (8th Cir. 1993); Salisbury; Cole.

C. JURISDICTIONAL SUMMARY

Under the Constitution, the states retain broad jurisdiction over the elective process. When the federal government enters the field of elections, it does so selectively, to address specific federal interests. See, for example, the 1993 National Voter Registration Act, discussed in §§ D.5.a and D.6 below. Thus, many federal election crime statutes do not apply to all elections. Several apply only to elections where federal candidates are on

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the ballot, and a few require proof that the fraud was intended to influence a federal contest or that a federal contest was affected by the fraud.

For jurisdictional purposes there are two basic types of elections: federal elections, in which the ballot includes one or more candidates running for federal office, and nonfederal elections, in which only local or state candidates are on the ballot. Federal elections in which the ballot also includes state or local candidates are also called "mixed" or federal-state elections.

Only a few federal criminal statutes apply to purely nonfederal elections, and the scope of conduct they reach is generally narrow. The principal statutes are:

18 U.S.C. §§ 241 and 242 (schemes to exploit state authority to stuff ballot boxes, in derogation of the "one person, one vote" principle);

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

18 U.S.C. § 592 ("armed men" at polls);

18 U.S.C. § 609 (coercion of voting among the military);

18 U.S.C. § 610 (coerced political activity by federal employees);

18 U.S.C. § 911 (fraudulent assertion of United States citizenship);

18 U.S.C. § 1341 (schemes involving the mails, based on the post-McNally "salary theory" of pecuniary loss); and

18 U.S.C. § 1952 (schemes to use the mails in furtherance of vote buying activities in states that treat vote buying as bribery).

The statutes listed immediately above, which apply to purely state or local elections, also apply to elections in which a federal candidate is on the ballot.

The following statutes apply to federal (including "mixed") elections, but not to purely nonfederal elections:

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- 18 U.S.C. § 594 (intimidation of voters);
- 18 U.S.C. § 597 (payments to voters to vote for a federal candidate);
- 18 U.S.C. § 608(b) (vote buying and false registration under the Uniformed and Overseas Citizens Absentee Voting Act);
- 42 U.S.C. § 1973i(c) (payments for registering or voting, fraudulent registrations, and conspiracies to encourage illegal voting);
- 42 U.S.C. § 1973i(e) (multiple voting);
- 42 U.S.C. § 1973gg-10(1) (voter intimidation); and
- 42 U.S.C. § 1973gg-10(2) (fraudulent voting or registering).

D. STATUTES

The text of the statutes discussed below is printed in Appendix C. Each statute carries, in addition to the prison term noted, fines applicable under 18 U.S.C. § 3571.

1. Conspiracy against rights: 18 U.S.C. § 241

Section 241 makes it unlawful for two or more persons to "conspire to injure, oppress, threaten, or intimidate any person in any state, territory or district in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States." Violations are punishable by imprisonment for up to ten years or, if death results, for any term of years or for life.

The Supreme Court long ago recognized that the right to vote for federal offices is among the rights secured by Article I, Sections 2 and 4, of the Constitution, and hence is protected by section 241. United States v. Classic, 313 U.S. 299 (1941); Ex parte Yarbrough, 110 U.S. 651 (1884). Although the statute was enacted just after the Civil War to address efforts to deprive the newly emancipated slaves of the basic rights of citizenship, such as the right to vote, it has been interpreted to include any effort to derogate a right which flows from the Constitution or from federal law.

Section 241 has been an important statutory tool in election crime prosecutions. Originally held to apply only to schemes to corrupt elections

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for federal office, it has recently been successfully applied to nonfederal elections as well, provided that state action was a necessary feature of the fraud. This state action requirement can be met not only by the participation of poll officials, but by the activities of persons who clothe themselves with the appearance of state authority by dressing like an authority figure, such as with uniforms, credentials, and badges. Williams v. United States, 341 U.S. 97 (1951).

Section 241 embraces conspiracies to stuff a ballot box with forged ballots, United States v. Saylor, 322 U.S. 385 (1944); United States v. Mosley, 238 U.S. 383 (1915); to impersonate qualified voters, Crolich v. United States, 196 F.2d 879 (5th Cir.), cert. denied, 344 U.S. 830 (1952); 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, Ryan v. United States, 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, Classic; to destroy absentee ballots, United States v. Townsley, 843 F.2d 1070 (8th Cir. 1988); to destroy voter registration applications, United States v. Haynes, 977 F.2d 583 (6th Cir. 1992)(table)(available at 1992 WL 296782); to illegally register voters and cast absentee ballots in their names, United States v. Weston, 417 F.2d 181 (4th Cir. 1969), cert. denied, 396 U.S. 1062 (1970); United States v. Morado, 454 F.2d 167 (5th Cir.), cert. denied, 406 U.S. 917 (1972); Fields v. United States, 228 F.2d 544 (4th Cir. 1955), cert. denied, 350 U.S. 982 (1956); and to injure, threaten, or intimidate a voter in the exercise of his right to vote, Wilkins v. United States, 376 F.2d 552 (5th Cir.), cert. denied, 389 U.S. 964 (1967). This last application is discussed at § D.5.d, below.

The election fraud conspiracy need not be successful to violate this statute. United States v. Bradberry, 517 F.2d 498 (7th Cir. 1975). Nor need there be proof of an overt act. Williams v. United States, 179 F.2d 644 (5th Cir. 1950), aff'd on other grounds, 341 U.S. 70 (1951); Morado. 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. 1956), cert. denied, 353 U.S. 910 (1957).

On the other hand, section 241 does not reach schemes to corrupt the balloting process through voter bribery, United States v. Bathgate, 246 U.S. 220 (1918), even schemes that involve poll officers to ensure that the bribed voters mark their ballots as they were paid to, United States v. McLean, 808 F.2d 1044 (4th Cir. 1987) (noting, however, that section 241 may apply

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where vote buying occurs in conjunction with other corrupt practices, such as ballot box stuffing).

Section 241 prohibits only conspiracies to interfere with rights flowing directly from the Constitution or federal statutes. This has led to considerable judicial speculation over the extent to which the Constitution protects the right to vote for candidates running for nonfederal offices. Oregon v. Mitchell, 400 U.S. 112 (1970); Reynolds v. Sims, 377 U.S. 533 (1964); Blitz v. United States, 153 U.S. 308 (1894); In re Coy, 127 U.S. 731 (1888); Ex parte Siebold, 100 U.S. 371 (1880). See also Duncan v. Poynthress, 657 F.2d 691 (5th Cir. 1981), cert. dismissed, 459 U.S. 1012 (1982). While dicta in Reynolds casts the parameters of the federally protected right to vote in extremely broad terms, in a ballot fraud case ten years later the Supreme Court specifically refused to decide whether the federally secured franchise extended to nonfederal contests. Anderson v. United States, 417 U.S. 211 (1974). Consequently, the use of section 241 in election fraud cases has generally been confined to cases where the scheme was directed at corrupting the outcome of a federal contest, or where there is proof that the fraud affected a federal contest. Voting a straight party ticket in a mixed election satisfies this requirement, United States v. Olinger, 759 F.2d 1293 (7th Cir), cert. denied, 474 U.S. 839 (1985), as does the destruction of absentee ballots which contain a federal contest. Townsley.

However, there is one type of election fraud in which the scope of the constitutionally protected right to vote is not a concern: the so-called "ballot box stuffing" frauds by election officials. Although the Constitution may not directly provide a right to vote in state or local elections, when a state adopts an electoral system for filling a public office, the Equal Protection Clause of the Fourteenth Amendment confers on all qualified voters the substantive right to participate in the electoral process equally with other qualified voters. Harris v. McRae, 448 U.S. 297 (1980); Reynolds; Gray v. Sanders, 372 U.S. 368 (1963); Baker v. Carr, 369 U.S. 186 (1962). Therefore, if the election fraud is perpetrated through the necessary participation of state agents acting under color of law, such as election officials using the access provided them under state law to forge ballots, the scheme violates the Equal Protection Clause. Hence, if the value of the electoral franchise for any sort of candidate in any sort of election (federal, state, or local) is diluted through the corrupt exploitation of state action, section 241 is violated. To date, this application of section 241 to local election fraud involving poll officials has been endorsed by the Fourth, Seventh, and Eighth Circuits. Townsley; United States v. Howard, 774 F.2d 838 (7th Cir. 1985); Olinger; United States v. Stollings, 501 F.2d 954 (4th

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Cir. 1974); United States v. Anderson, 481 F.2d 685 (4th Cir. 1973), aff'd on other grounds, 417 U.S. 211 (1974).

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

Section 242, also enacted as a post-Civil War statute, makes it 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 unless bodily injury occurs, in which case the penalty is ten years, or unless death results, in which case imprisonment may be for any term of years or for life.

Prosecutions under section 242 need not show the existence of a conspiracy. However, the defendants must have acted illegally under color of law. This element does not require that the defendant be a de jure officer or a government official; it is sufficient if he or she jointly acted with state agents in committing the offense, United States v. Price, 383 U.S. 787 (1966), or if his or her actions were made possible by the fact that they were clothed with the authority of state law, United States v. Williams, 341 U.S. 97 (1951); United States v. Classic, 313 U.S. 299 (1941).

Because a section 242 violation can be a substantive offense for election fraud conspiracies prosecutable under section 241, the cases cited in the discussion of section 241 apply to section 242.

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

Section 1973i(c) makes it unlawful, in an election in which a federal candidate is on the ballot, to knowingly and willfully (1) give false information as to name, address, or period of residence to an election official for the purpose of establishing one's eligibility to register or to vote; (2) pay, offer to pay, or accept payment for registering to vote or for voting; or (3) conspire with another person to vote illegally. Violations are punishable by imprisonment for up to five years. See also 42 U.S.C. § 1973gg-10, discussed in § D.5.a, below.

⁷ As discussed in § E.3, below, the Justice Department has a practice of not prosecuting individual voters whose only participation in an election fraud scheme was allowing their votes to be compromised.

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As a general rule, section 1973i(c) should not be used to prosecute isolated instances of illegal registration, vote buying, or fraudulent voting, because such isolated instances do not implicate federal interests sufficiently to warrant federalization of matters otherwise better left to state election administration and law enforcement. Cases prosecuted under this statute generally involve coordinated patterns of election fraud and defendants who have caused multiple fraudulent voting transactions. Prosecution of individual and uncoordinated acts should be considered only where they evidence a widespread systemic abuse which jeopardizes the integrity of the voting process in a particular locale.

a) The basis for federal jurisdiction

Congress added section 1973i(c) to the 1965 Voting Rights Act to ensure the integrity of the balloting process in the context of an expanded franchise. Congress intended that section 1973i(c) have a broad reach, and the original version of section 1973i(c) would have applied to all elections. However, because of constitutional concerns raised during congressional debate on the bill, the provision's scope was narrowed to elections including a federal contest. See United States v. Cianciulli, 482 F. Supp. 585, 613-18 (E.D. Pa. 1979) (containing a detailed discussion of this legislative history). Section 1973i(c) rests on the Necessary and Proper Clause, U.S. Const. art. I, § 8, cl. 18. United States v. Bowman, 636 F.2d 1003 (5th Cir. 1981).

Section 1973i(c) and its companion election fraud statute, 42 U.S.C. § 1973i(e) (discussed below), have been held to protect two distinct aspects of a federal election: the actual results of the election, and the integrity of the process of electing federal officials. United States v. Cole, No. 92-1880, 1994 WL 663584, slip op. 4-6 (7th Cir. Nov. 28, 1994). In Cole, the court held that federal jurisdiction is satisfied so long as single federal candidate is on the ballot -- even if the federal candidate is unopposed, because fraud in a mixed election automatically has "an impact of the integrity of the election." Cole, slip op. at 6 (emphasis in original).

Section 1973i(c) is particularly useful for two reasons. It eliminates the unresolved issue of the scope of the constitutional right to vote in matters not involving racial discrimination, and eliminates the need to prove that a given pattern of corrupt conduct had an actual impact on a federal election. It is sufficient under section 1973i(c) that a pattern of corrupt conduct took place during a mixed election; in that situation it is presumed that the fraud will expose the federal race to potential harm. Cole; United States v. Olinger, 759 F.2d 1293 (7th Cir.), cert. denied, 474 U.S. 839 (1985); United States v. Saenz, 747 F.2d 930 (5th Cir. 1984), cert. denied, 473 U.S. 906

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(1985); United States v. Garcia, 719 F.2d 99 (5th Cir. 1983); United States v. Carmichael, 685 F.2d 903 (4th Cir. 1982), cert. denied, 459 U.S. 1202 (1983); United States v. Mason, 673 F.2d 737 (4th Cir. 1982); United States v. Malmay, 671 F.2d 869 (5th Cir. 1982); United States v. Bowman, 636 F.2d 1003 (5th Cir. 1981); United States v. Sayre, 522 F. Supp. 973 (W.D. Mo. 1981); United States v. Simms, 508 F. Supp. 1179 (W.D. La. 1979).

b) False information

The "false information" provision of section 1973i(c) prohibits any person from furnishing certain false data to a voting official to establish eligibility to register or vote. The statute applies to only three types of information: name, address, and period of residence in the voting district. False information concerning other factors (such as citizenship, felon status, and mental competence) are not covered.⁸

Typically, registration to vote is "unitary," in that a single registration qualifies the applicant to cast ballots for all elections -- local, state, and federal. Thus, the jurisdictional requirement that the false information have been made to establish eligibility to vote in a federal election is satisfied automatically wherever 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); Cianciulli.

On the other hand, where the false data is furnished to poll officials for the purpose of enabling a voter to cast a ballot in a particular election (as when one voter attempts to impersonate another), it must be shown that a federal candidate was being voted upon at the time. In such situations, the evidence should show that the course of fraudulent conduct could have jeopardized the integrity of the federal race. See, e.g., In re Coy, 127 U.S. 731 (1888); Carmichael. Situations involving a voter impersonating another in order to vote for a nonfederal candidate may be inadequate to establish federal jurisdiction. See Blitz v. United States, 153 U.S. 308 (1894).

In a ballot fraud case, the Eight Circuit confirmed the broad reach of the "false information" provision of section 1973i(c). United States v.

⁸ Such matters might, however, be charged as conspiracies to encourage illegal voting under the conspiracy clause of section 1973i(c), as citizenship offenses under 18 U.S.C. § 911, or under the broader "false information" provision of the 1993 National Voter Registration Act, 42 U.S.C. § 1973gg-10. See § D.9, below.

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where vote buying occurs in conjunction with other corrupt practices, such as ballot box stuffing).

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as long as a pattern of vote buying exposes a federal election to potential corruption, even though it cannot be shown that the threat materialized.

This aspect of section 1973i(c) is directed at eliminating pecuniary considerations from the voting process. Garcia; Mason; Malmay; Bowman. The statute rests on the premises that potential voters can choose not to vote; that those who choose to vote have a right not to have the voting process diluted with ballots that have been procured through bribery; 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. Bowman. See also United States v. Blanton, 77 F. Supp. 812, 816 (E.D. Mo. 1948).

The bribe may be anything having monetary value, including cash, liquor, lottery chances, and welfare benefits such as food stamps. Garcia, 719 F.2d at 102. However, offering free rides to the polls or providing employees paid leave while they vote are not prohibited. United States v. Lewin, 467 F.2d 1132 (7th Cir. 1972). Such things are given to make it easier for people to vote, not to induce them to do so.

Section 1973i(c) does not require that the offer or payment have been made with a specific intent to influence a federal contest. See Garcia (giving food stamps to influence voters to vote for candidates running for county judge and county commissioner); United States v. Thompson, 615 F.2d 329 (5th Cir. 1980); Carmichael; Mason; Sayre (payments to influence votes for candidates running for sheriff or other local offices); Simms (payments to vote for a state judicial post); Malmay (payments to vote for school board member); United States v. Odom, 858 F.2d 664 (11th Cir. 1988) (payments for votes for a state representative); United States v. Campbell, 845 F.2d 782 (8th Cir. 1988), cert. denied, 488 U.S. 965 (1989) (payments to benefit a candidate for county judge); United States v. Daugherty, 952 F.2d 969 (8th Cir. 1991) (payments to vote for a number of local candidates). All of these cases involved mixed elections and were therefore prosecutable under section 1973i(c).

up to two years. Sections 597 and 1973i(c) are distinct offenses, since each requires proof of an element that the other does not. Whalen v. United States, 445 U.S. 684 (1980); Blockburger v. United States, 284 U.S. 299 (1932). Section 597 requires that the payment be made to influence a federal election; section 1973i(c) requires that the defendant have acted "knowingly and willfully." Section 597 is primarily useful in plea negotiations as an alternative to section 1973i(c).

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d) Conspiracy to cause illegal voting

The second clause of section 1973i(c) criminalizes conspiracies to encourage "illegal voting." The phrase "illegal voting" is not defined in the statute. On its face it encompasses unlawful conduct in connection with voting. Violations of this provision are felonies.

The "illegal voting" clause of section 1973i(c) has potential application to those who undertake to cause others to register or vote in conscious derogation of state or federal laws. Cianciulli, 482 F. Supp. at 616 (noting that this clause would prohibit "vot[ing] illegally in an improper election district"). For example, all states require voters to be United States citizens, and most states disenfranchise people who have been convicted of certain crimes, who are mentally incompetent, or who possess other disabilities which may warrant restriction of the right to vote.

This provision requires that the voter have been a participant in the conspiracy. Cases brought under this clause thus should include proof that the voter was actively aware that he or she was not eligible to vote and was registering or voting illegally. However, the statute criminalizes only the conduct of the person who encourages an ineligible voter to register or an eligible voter to vote illegally -- not the conduct of the voter.

The conspiracy provision of section 1973i(c) applies only to the statute's "illegal voting" clause. Olinger, 759 F.2d at 1298-1300. Conspiracies arising under the other clauses of section 1973i(c) (that is, those involving vote buying or fraudulent registration) should be charged under the general federal conspiracy statute, 18 U.S.C. § 371.

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

Section 1973i(e), enacted as part of the 1975 amendments to the Voting Rights Act of 1965, makes it a crime to vote "more than once" in any election in which a federal candidate is on the ballot. Violations are punishable by imprisonment for up to five years.

Like section 1973i(c), this statute finds its constitutional roots in the Necessary and Proper Clause, as a statute aimed at ensuring that corrupt electoral practices do not occur in elections where federal candidates may be affected. Also like section 1973i(c), section 1973i(e) does not require proof that the multiple voting affected the actual result of a federal contest. United States v. Cole, No. 92-1880, 1994 WL 663584 (7th Cir. Nov. 28, 1994); United States v. Lewis, 514 F. Supp. 169 (M.D. Pa. 1981); United

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States v. Cianciulli, 482 F. Supp. 585 (E.D. Pa. 1979).

Section 1973i(e) is most useful as a statutory weapon against frauds which do not involve the participation of voters in the balloting acts attributed to them. Examples of such frauds are schemes to cast ballots in the names of voters who were deceased or absent, United States v. Olinger, 759 F.2d 1293 (7th Cir.), cert. denied, 474 U.S. 839 (1985), and schemes to exploit the infirmities of the mentally handicapped by casting ballots in their names. United States v. Odom, 736 F.2d 104 (4th Cir. 1984).

Most cases prosecuted under the multiple voting statute have involved defendants who physically marked ballots outside the presence of the voters in whose names they were cast -- in other words, without the voters' participation or knowledge. The statute may also be applied successfully to schemes where the voters are present but do not participate in any way, or otherwise consent to the defendant's assistance, in the voting process. However, when the scheme involves "assisting" voters who both are present and marginally participate in the process, such as by signing a ballot document, prosecuting the case under section 1973i(e) may present difficulties.

For instance, in United States v. Salisbury, 983 F.2d 1369 (6th Cir. 1993), the defendant got voters to sign their absentee ballot forms, and then instructed them how to mark their ballots, generally without allowing them to choose the candidates -- and in some cases even to know the identity of the candidates on the ballot. In a few cases the defendant also personally marked others' ballots. The Sixth Circuit held that the concept "votes more than once" in section 1973i(e) was unconstitutionally vague as applied to these facts. Because the phrase "votes more than once" was not defined in the statute, the court found it did not clearly apply when the defendant did not physically mark another's ballot. The court further held that even if the defendant did mark another's ballot, it wasn't clear this was an act of "voting" by the defendant if the defendant got the ostensible voters to demonstrate "consent" by signing their names to the accompanying ballot forms.¹¹ 983 F.2d at 1379.

¹¹ Salisbury noted that in United States v. Hogue, 812 F.2d 1568 (11th Cir. 1987), the jury was instructed that illegal voting under section 1973i(e) included marking another person's ballot without his or her "express or implied consent," but found that, on the facts of Salisbury, the jury should also have been given definitions of "vote" and "consent." 983 F.2d at 1377.

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A year after Salisbury, the Seventh Circuit took a considerably broader approach when faced with a similar absentee ballot scheme. United States v. Cole, No. 92-1880, 1994 WL 663584 (Nov. 28, 1994).¹² In both cases, the defendants had marked absentee ballots of other persons after getting the voters to sign their ballot documents. The Seventh Circuit rejected the Sixth Circuit's contention that the term "vote" was unconstitutional vague, finding that the term was broadly and adequately defined in the Voting Rights Act itself, 42 U.S.C. § 19731(c)(1), and that this statutory definition was supported by both the dictionary and commonly understood meaning of the word. The court held that the facts established a clear violation by the defendant of the multiple voting prohibition in section 1973i(c).¹³

In addition to their conflicting holdings, the Salisbury and Cole opinions differ in their approach to so-called voter "assistance" cases. Salisbury focused on the issue of voter consent -- that is, whether the voters had, by their conduct, in some way "consented" to having the defendant mark, or help them mark, their own ballots. Cole, on the other hand, focused on whether it was the voter or the defendant who actually expressed candidate preferences.

While the approach taken in Cole is, from a prosecutor's perspective, preferable to Salisbury's, the latter's discussion of the issue of possible voter "consent" remains important, since facts suggesting the possibility of consent may weaken the evidence of fraud. Taken together, these two cases therefore suggest the following approach to voter "assistance" frauds:

- First, the use of section 1973i(e) should generally be confined to what amounts to clear "ballot theft." Examples of such cases are where the defendant marked the ballots of others without their input; where voters did not knowingly consent to the defendant's participation in their voting transactions; where the voters'

¹² After discussing the Sixth Circuit's reasoning, the Seventh Circuit stated: "Salisbury is similar to this case, but we will not follow it." Slip op. at 9. Interestingly, the Cole decision was written by a judge of the Eleventh Circuit, sitting by designation. Cole thus may have value in the Eleventh Circuit as well as the Seventh.

¹³ "Ordinary people can conclude that the absentee voters were not expressing their wills or preferences, i.e., that Cole was using the absentee voters' ballots to vote his will and preferences." Slip op. at 9 (emphasis added).

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electoral preferences were disregarded; or where the defendant marked the ballots of voters who lacked the mental capacity to vote or to consent to the defendant's activities.

- Second, jury instructions for a section 1973i(e) indictment should amplify the key term "votes more than once" in the context of the particular case, and specifically define the terms "vote," and, where appropriate, "consent" and "implied consent." See 42 U.S.C. § 19731(c)(1) (containing an extremely broad definition of "vote") and United States v. Boards, 10 F.3d 587, 589 (8th Cir. 1993) (holding that this definition encompasses applying for an absentee ballot).

Thus, while the clearest use of section 1973i(e) is to prosecute pure ballot forgery schemes, the statute can also apply to other types of schemes where voters are manipulated, misled, or otherwise deprived of their votes. See Cole, slip op. at 8-9 (witness believed the defendant was merely registering her to vote, not helping her vote). Schemes to steal the votes of the elderly, infirm, or economically disadvantaged may constitute multiple voting if there is a clear absence of meaningful voter participation. Because of their vulnerability, these persons are frequent targets of ballot schemes, and often do not even know that their ballots have been stolen or their voting choices ignored; furthermore, if they have been intimidated, they are generally reluctant to say so.

There is a significant evidentiary difference between voter intimidation and multiple voting that suggests that the multiple voting statute may often become the preferred charging statute for voter "assistance" frauds. Voter intimidation requires proof of a subjective and thus difficult element: the existence of "intimidation," intended by the defendant and felt by the victim. However, the key element in a multiple voting offense is objective: did the defendant vote the ballot of another person without consulting with or taking into account that person's electoral preferences?

In conclusion, if the facts show manipulation of what the United States Sentencing Guidelines call "vulnerable victims" for the purpose of obtaining control over the victims' ballot choices, the use of section 1973i(e) as a prosecutive theory should always be considered.

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5. Voter intimidation

Voter intimidation schemes are the functional opposite of voter bribery schemes. In the case of voter bribery, voting activity is stimulated by offering or giving something of value to individuals to induce them to vote or reward them for having voted. The goal of voter intimidation, on the other hand, is to deter or influence voting activity through threats to deprive voters of something they already have, such as jobs, government benefits, or, in extreme cases, their personal safety. Another distinction between voter bribery and intimidation is that bribery generates concrete evidence: the bribe itself (generally money). Intimidation, on the other hand, is amorphous and largely subjective in nature, and lacks such concrete evidence.

Voter intimidation is an assault against both the individual and society, warranting prompt and effective redress by the criminal justice system. Yet a number of factors make it difficult to prosecute. The intimidation is likely to be both subtle and without witnesses. Furthermore, voters who have been intimidated are not merely victims; it is their testimony that proves the crime. These voters must testify, publicly and in an adversarial proceeding, against the very person who intimidated them. Obtaining this crucial testimony can be difficult.

Voter "intimidation" in the context of a criminal statute normally requires evidence of threats, duress, economic coercion, or some other aggravating factor which tends to improperly induce conduct on the part of the victim. If such evidence is lacking, an alternative prosecutive theory may apply to the facts, such as multiple voting in violation of 42 U.S.C. § 1973i(e). Indeed, in certain cases the concepts of "intimidation" and voting "more than once" may overlap and even merge. For example, a scheme which targets the votes of persons who are mentally handicapped, unemployed, or socially disadvantaged may involve elements of both crimes. Because of their vulnerability, these persons are often easily manipulated -- without the need for inducements, threats, or duress. In such cases, the use of section 1973i(e) as a prosecutive theory should be considered. See United States v. Odom, 736 F.2d 104 (4th Cir. 1984).

The main federal criminal statutes that can apply to voter intimidation are: 18 U.S.C. §§ 241, 242, 245(b)(1)(A), 594; and the two statutes enacted in 1993, 18 U.S.C. § 610 and 42 U.S.C. § 1973gg-10(1). Each of these statutes is discussed below.

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a) Intimidation in voting and registering to vote: 42 U.S.C. § 1973gg-10(1)

In May 1993, Congress enacted the National Voter Registration Act (NVRA), 42 U.S.C. §§ 1973gg-1973gg-10. This major legislation requires states to adopt more convenient methods of registering voters for federal elections. In response to concerns that relaxing registration requirements might lead to an increase in election fraud, the NVRA also included a new election crime statute, 42 U.S.C. § 1973gg-10, which contains two subsections. The first subsection addresses voter intimidation, and is discussed here. The second addresses fraud in registering and voting; it, and the statute's history and purpose, are discussed in § D.6, below.

Section 1973gg-10(1) prohibits, in any election for federal office, any person from intimidating, threatening, or coercing a prospective registrant or voter for registering to vote, voting, or attempting to register or vote, or for urging another to register or to vote. Violators are subject to imprisonment for up to five years.

The jurisdictional element, "in any election for Federal office," for registration matters is satisfied whenever a prospective voter is intimidated in connection with the process of registering to vote, because registration to vote is unitary in all states. However, in the case of voting matters, this jurisdictional element requires that the conduct take place in a federal election or a mixed federal-state election.

b) Coercion of political activity: 18 U.S.C. § 610

Section 610 was enacted as part of the 1993 Hatch Act Reform Amendments to provide increased protection against political manipulation of federal employees in the executive branch.¹⁴ It prohibits intimidating or coercing a federal employee to induce or discourage "any political activity" by the employee. The statute went into effect February 3, 1994. Violators

¹⁴ A similar statute addresses political intimidation within the military. 18 U.S.C. § 609. It prohibits officers of the United States armed forces from misusing military authority to coerce members of the military to vote for a federal, state, or local candidate. Violations are five-year felonies. In addition, 18 U.S.C. § 593 makes it a five-year felony for a member of the military to interfere with a voter in any general or special election, and 18 U.S.C. § 596 makes it a misdemeanor to poll members of the armed forces regarding candidate preferences.

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are subject to imprisonment for up to three years. (The statute is discussed in detail in Chapter Two, which addresses patronage crimes.)

Although the class of persons covered by section 610 is limited to federal employees, the conduct covered by this new statute is broad: it reaches political activity which relates to any public office or election, whether federal, state, or local. The phrase "political activity" in section 610 expressly includes, but is not limited to, "voting or refusing to vote for any candidate or measure," "making or refusing to make any political contribution," and "working or refusing to work on behalf of any candidate."

c) Intimidation of voters: 18 U.S.C. § 594

Section 594 prohibits intimidating, threatening, or coercing anyone, or attempting to do so, for the purpose of interfering with an individual's right to vote or not vote in any election which includes a federal candidate. The statute does not apply to purely nonfederal elections or to federal primaries. Violations are one-year misdemeanors.

The operative words in section 594 are "intimidates," "threatens," and "coerces." The scienter element requires proof that the actor intended to force voters to act against their will by placing them in fear of losing something of value. The feared loss may be of something tangible, such as money or economic benefits, or intangible, such as liberty or safety.

Section 594 was enacted as part of the original 1939 Hatch Act, which aimed at prohibiting the blatant economic coercion used during the 1930s to force federal employees and recipients of federal relief benefits to perform political work and to vote for and contribute to the candidates supported by their supervisors. The congressional debates on the Hatch Act show that Congress intended section 594 to apply where persons were placed in fear of losing something of value for the purpose of extracting involuntary political activities. 84 Cong. Rec. 9596-611 (1939). Although the impetus for the passage of section 594 was Congress's concern over the use of threats of economic loss to induce political activity, the statute also applies to conduct which interferes, or attempts to interfere, with an individual's right to vote by placing him or her in fear of suffering other kinds of tangible and intangible losses. It thus criminalizes conduct intended to force prospective voters to vote against their preferences, or refrain from voting, through

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activity reasonably calculated to instill some form of fear in them.¹⁵

d) Conspiracy against rights: 18 U.S.C. § 241

Section 241 makes it a ten-year felony to "conspire to injure, oppress, threaten, or intimidate any person in any state, territory or district in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States" -- including the right to vote. The statute -- which is discussed in detail at § D.1, above -- has potential application to two forms of voter intimidation: a conspiracy to prevent persons whom the subjects knew were qualified voters from entering the polls to vote in an election where a federal candidate is on the ballot, and a scheme to misuse de facto state authority to prevent qualified voters from voting for any candidate in any election.

Section 241 has been successfully used to prosecute intimidation in connection with political activities. Wilkins v. United States, 376 F.2d 552 (5th Cir.) (en banc), cert. denied, 389 U.S. 964 (1967). Wilkins involved both violence and clear racial animus. It arose out of the shooting of a participant in the 1965 Selma-to-Montgomery voting rights march. The marchers had intended to present to the Governor of Alabama a petition for redress of grievances, including denial of their right to vote. The Fifth Circuit held that those marching to protest denial of their voting rights were exercising "an attribute of national citizenship, guaranteed by the United States," and that shooting one of the marchers therefore violated section 241. 376 F.2d at 561.

e) Deprivation of rights under color of law: 18 U.S.C. § 242

Section 242, which is discussed at § D.2, above, makes it a misdemeanor for any person to act "under color of any law, statute, ordinance, regulation, or custom," knowingly and willfully to deprive any person in a state, territory, or district of a right guaranteed by the Constitution or federal law.

¹⁵ In recent years, the civil counterparts to section 594, 42 U.S.C. §§ 1971b and 1973(b), have been used to combat nonviolent voter intimidation. See, e.g., United States v. North Carolina Republican, No. 91-161-Civ-5F (E.D.N.C., consent decree entered Feb. 27, 1992) (consent order entered against political organizations for mailing to thousands of minority voters postcards that contained false voting information and a threat of prosecution).

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For all practical purposes, this statute embodies the substantive offense for the section 241 conspiracy discussed in § D.1 and immediately above, and it therefore can apply to voter intimidation.

f) Federally protected activities: 18 U.S.C. § 245(b)(1)(A)

The Civil Rights Act of 1968 contains a broad provision that addresses violence intended to intimidate voting in any election in this country. 18 U.S.C. § 245(b)(1)(A). This provision applies without regard to the presence of racial or ethnic factors.

Section 245(b)(1)(A) makes it illegal to use or threaten to use physical force to intimidate individuals from, among other things, "voting or qualifying to vote." It reaches threats to use physical force against a victim because the victim has exercised his or her franchise, or to prevent the victim from doing so. Violations are misdemeanors if no bodily injury results, and ten-year felonies if it does; if death results, the penalty is life imprisonment.

Prosecutions under section 245 require written authorization by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or a specifically designated Assistant Attorney General, who must certify that federal prosecution of the matter is "in the public interest and necessary to secure substantial justice." Section 245(a)(1). This approval requirement was imposed in response to federalism issues which many Members of Congress believed were inherent in a statute giving the federal government prosecutive jurisdiction over what otherwise would be mere assault and battery cases. See 1968 U.S.C.C.A.N. 1837-67 (Judiciary Committee Report on H.R. 2516).

In making the required certification under section 245(b)(1)(A), the standard to be applied by the Attorney General is whether the facts of the particular matter are such that the appropriate state law enforcement authorities should, but either cannot or will not, effectively enforce the applicable state law, thereby creating an overriding need for federal intervention. 1968 U.S.C.C.A.N. 1845-48 (Judiciary Committee Report on H.R. 2516).

6. Fraudulent voting and registering to vote: 42 U.S.C. § 1973gg-10(2)

As mentioned above, Congress enacted the National Voter Registration Act of 1993 (NVRA) to ease voter registration requirements throughout the

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country. The major goal of this legislation was to promote the exercise of the franchise by replacing state voter registration requirements with more convenient registration options, such as registration by mail, when applying for a driver's license, and at various government agencies.¹⁶

The NVRA also sought to protect the integrity of the electoral process and the accuracy of the country's voter registration rolls. 42 U.S.C. §§ 1973gg(b)(3) and (4). To further this goal, a new criminal statute was enacted which specifically addressed two frequent forms of election corruption: intimidation of voters (which is discussed in § D.5.a, above) and fraudulent registration and voting. 42 U.S.C. § 1973gg-10. Violations of this statute are punishable by imprisonment for up to five years.

The NVRA's criminal statute resulted from law enforcement concerns expressed during congressional debates on the proposed law. Opponents and supporters of the NVRA alike recognized that relaxing requirements for registering to vote had the unavoidable potential to increase the occurrence of election crime by making it easier for the unscrupulous to pack registration rolls with fraudulent applications and ballots.

The constitutional basis of the NVRA is the broad power of Congress to regulate the election of federal officials. See the appellate decisions cited in §§ D.3 and 4, above, upholding the constitutionality of 42 U.S.C. §§ 1973i(c) and i(e). The statute's criminal provision reflects this federal focus, and is limited to conduct which occurs "in any election to Federal office." The phrasing of this jurisdictional element differs somewhat from the jurisdictional language used by Congress in earlier election fraud statutes, which required only that a federal candidate be on the ballot.¹⁷ Unfortunately, most election crime is aimed at winning local elections, which often do not include a federal race. Nevertheless, the new statute does increase the types of conduct reachable by federal prosecutors.

¹⁶ By the end of 1994, several states had mounted legal challenges to the NVRA on states' rights grounds.

¹⁷ The earlier statutes, 42 U.S.C. §§ 1973i(c) and (e), contain express references to each federal office (Member of the House, Member of the Senate, President, Vice President, presidential elector) and type of election (primary, general, special) providing potential federal jurisdiction. The revised language seems to have been intended as a less cumbersome rephrasing of the required federal nexus.

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a) Fraudulent registration: § 1973gg-10(2)(A)

Subsection 1973gg-10(2)(A) prohibits any person, in an election for federal office, from defrauding or attempting to defraud the residents of a state of a fair and impartially conducted election by procuring or submitting voter registration applications that the offender knows are materially false or defective under state law. The scope of the new statute is broader than that of the "false information" provision of section 1973i(c), discussed in § D.3.b, above, which is limited to false information involving only name, address, or period of residence. The statute applies to any false information that is material to a registration decision by an election official. For this reason, the provision is likely to be the statute of preference for most false registration matters.

For schemes to submit fraudulent registration applications, the statute's "federal office" jurisdictional element is automatically satisfied and hence does not present a problem. This is because registration to vote is unitary in all states, in the sense that in registering to vote an individual becomes eligible to vote in all elections, nonfederal as well as federal.

b) Fraudulent voting: § 1973gg-10(2)(B)

Subsection 1973gg-10(2)(B) prohibits any person, in an election for federal office, from defrauding or attempting to defraud the residents of a state of a fair election through casting or tabulating ballots that the offender knows are materially false or fraudulent under state law. Unlike other ballot fraud laws discussed in this chapter, the focus of this provision is not on any single type of fraud, but rather on the result of the false information: that is, whether the ballot is defective under state law. Because of the conceptual breadth of the new provision, it may become a useful alternative to general fraud statutes in reaching certain forms of election corruption.

However, the statute's jurisdictional element, "in any election for Federal office," substantially restricts its usefulness for fraudulent voting (as opposed to fraudulent registration) schemes. The statute applies only to elections which include a federal candidate. This scope is similar to that of 42 U.S.C. §§ 1973i(c) and (e), and arises from the fact that fraudulent activity aimed at any race in a mixed election has the potential to taint the integrity of the federal race.

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7. Mail fraud: 18 U.S.C. § 1341

The federal mail fraud statute, section 1341, prohibits use of the United States mails, or a private or commercial interstate carrier, to further a "scheme or artifice to defraud."¹⁸ Violations are punishable by imprisonment for up to five years.

At present, the most viable means of addressing election crime under the mail fraud statute is the "salary theory." Under this approach, the pecuniary benefits of elective office are charged as the object of the scheme.

Until McNally v. United States, 483 U.S. 350 (1987), the mail fraud statute was frequently and successfully used to attain federal jurisdiction over schemes to corrupt local elections. Because its jurisdictional basis is the broad power of Congress to regulate the mails, section 1341 was used to address corruption of the voting process in purely local or state elections. See Badders v. United States, 240 U.S. 391, 392 (1916) (overt act of putting a letter in a United States post office is a matter Congress may regulate).

Courts had broadly interpreted the "scheme to defraud" element of section 1341 to include nearly any effort to procure, cast, or tabulate ballots illegal under state law. The theory was that citizens were entitled to fair and honest elections, and a scheme to corrupt an election defrauded them of this right. United States v. Girdner, 754 F.2d 877, 880 (10th Cir. 1985)(scheme to cast votes for ineligible voters); United States v. Clapps, 732 F.2d 1148, 1152-53 (3d Cir.)(scheme to usurp absentee ballots of elderly voters), cert. denied, 469 U.S. 1085 (1984); United States v. States, 488 F.2d 761, 766 (8th Cir. 1973)(scheme to submit fraudulent absentee ballots), cert. denied, 417 U.S. 909 (1974). The mail fraud statute was even held to reach schemes to deprive the public of information required under state campaign finance disclosure statutes. United States v. Buckley, 689 F.2d 893, 897-98 (9th Cir. 1982), cert. denied, 460 U.S. 1086 (1983); United States v. Curry, 681 F.2d 406, 411 (5th Cir. 1982).

The jurisdictional mailing requirement of section 1341, moreover, posed no substantial obstacle. The Second Circuit may have adopted the most expansive position, holding in an unpublished opinion that the mail fraud statute applied to any fraudulent election practice resulting in postal delivery

¹⁸ The federal wire fraud statute, 18 U.S.C. § 1343, is essentially identical, except for its jurisdictional element, and also has potential application to election fraud schemes.

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of a certificate of election to the winning candidate. See Ingber v. Enzor, 664 F. Supp. 814, 815-16 (S.D.N.Y. 1987) (habeas opinion quoting Second Circuit's opinion on direct appeal), aff'd on other grounds, 841 F.2d 450 (2d Cir. 1988). As most states mail such notices to victorious candidates, this theory would have allowed federal jurisdiction over election fraud by victorious politicians, both federal and nonfederal.

In McNally, however, the Supreme Court substantially restricted the utility of the mail fraud statute to combat election crimes. McNally held that "scheme to defraud" does not encompass schemes to deprive the public of intangible rights, such as the rights to good government and fair elections, but is limited to schemes to deprive others of property rights.

In 1988, Congress enacted the so-called "McNally-fix" statute, 18 U.S.C. § 1346, to restore the pre-McNally scope of the mail fraud statute. Unfortunately, by its express terms, section 1346 only applies to schemes to deprive another of the "intangible right of honest services" (emphasis added). Thus, while the mail fraud statute can once again be used to prosecute such things as corruption by public servants and embezzlement by campaign officials, it does not reach schemes to deprive citizens of fair elections because such schemes do not include an intent to deprive any identifiable victim of the "honest services" of a fiduciary.

Nevertheless, McNally does not entirely foreclose use of the mail fraud statute to address election fraud. If a pecuniary interest -- such as money or salary -- is sought through the scheme, the mail fraud statute still applies. See McNally, 483 U.S. at 360 (noting that the jury was not charged on a money or property theory).

Schemes to obtain salaried positions by falsely representing one's credentials to a hiring authority remain prosecutable under the mail fraud statute after McNally. The objective of such "salary schemes" is to obtain pecuniary things by fraud; such schemes are therefore clearly within the scope of the common law concepts of fraud to which McNally sought to restrict the mail fraud statute. See United States v. Granberry, 908 F.2d 278, 280 (8th Cir. 1990)(scheme to obtain employment by falsifying application cognizable under salary theory), cert. denied, 500 U.S. 921 (1991); United States v. Doherty, 867 F.2d 47, 54-57 (1st Cir. 1989)(scheme to rig police promotion exam cognizable on salary theory); United States v. Walters, 711 F. Supp. 1435, 1442-46 (N.D. Ill. 1989) (scheme to obtain scholarships through false information), rev'd on other grounds, 913 F.2d 388 (7th Cir. 1990); United States v. Ferrara, 701 F. Supp. 39 (E.D.N.Y.)(scheme to obtain hospital salaries by falsifying medical training),

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aff'd, 868 F.2d 1268 (2d Cir. 1988); United States v. Thomas, 686 F. Supp. 1078, 1083-85 (M.D. Pa.) (scheme to rig police entrance exam), aff'd, 866 F.2d 1414 (3d Cir. 1988)(table), cert. denied, 490 U.S. 1048 (1989); United States v. Cooper, 677 F. Supp. 778, 781-82 (D. Del. 1988)(wire fraud scheme to obtain pay for person not performing work).¹⁹

This theory of post-McNally mail fraud has potential application to some election fraud schemes, since most elected offices in the United States carry with them a salary and various emoluments that have monetary value. The criterion by which candidates for elected positions are selected by the public is who obtained the most valid votes. Thus, schemes to obtain salaried elected positions through procuring and tabulating invalid ballots are capable of being charged as traditional common law frauds: that is, schemes to obtain the salary of the office in question by concealing material facts about the critical issue of which candidate received the most valid votes.

In addition, election fraud schemes can present related issues concerning the quality and value of the public officer hired thereby. The Supreme Court observed in McNally that deceit concerning the quality and value of a commodity or service remains within the scope of the mail fraud statute.

We note that as the action comes to us, there was no charge and that the jury was not required to find that the Commonwealth itself was defrauded of any money or property. It was not charged that in the absence of the alleged scheme the Commonwealth would have paid a lower premium or secured better insurance.

¹⁹ Another district court has upheld application of section 1341 to a commercial bribery scheme to pay salary to a dishonest procurement officer. United States v. Johns, 742 F. Supp. 196, 204-06, 212-13 (E.D. Pa. 1990)(collecting cases in an extended discussion of the salary theory). The Third Circuit, however, reversed Johns' mail fraud convictions with a cursory, unpublished order that held, enigmatically, that the "convictions for mail fraud must be reversed inasmuch as the evidence was insufficient, as a matter of law, to establish that appellant had defrauded his employer of money paid to him as salary." United States v. Johns, 972 F.2d 1333 (3d Cir. 1991)(table)(available at 1991 U.S. App. LEXIS 18586).

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483 U.S. at 360 (emphasis added). Election fraud schemes involve an aspect of material concealment insofar as the "value" of the services the public is paying for are concerned: the public "hired" the candidate it was falsely led to believe received the most valid votes, and consequently received services of lower value.

The "salary theory" of post-McNally mail fraud has been applied to election frauds in a few cases. Ingber v. Enzor, 841 F.2d 450 (2d Cir. 1988) (post-McNally habeas relief appropriate for pre-McNally mail fraud defendant convicted of securing election to salaried township position through illegal ballots, where reviewing court could not determine whether jury's verdict rested on "salary theory" or on alternative intangible rights theory of the case); United States v. Schermerhorn, 713 F. Supp. 88 (S.D.N.Y. 1989), *aff'd*, 906 F.2d 66 (2d Cir. 1990) (scheme to promote election of candidate for state senate by concealing his organized crime connections on state-mandated campaign financial disclosure reports); United States v. Webb, 689 F. Supp. 703 (W.D. Ky. 1988) (tax dollars paid to a public official elected by fraud are a loss to the citizens, who did not receive the benefit of the bargain). This theory of mail fraud therefore remains a viable option by which prosecutors can attain federal jurisdiction over frauds that occur in nonfederal elections which employ the mails.

8. Travel Act: 18 U.S.C. § 1952

An alternative to the mail fraud statute, for a limited group of vote buying cases, is 18 U.S.C. § 1952, known as the Travel Act. This statute prohibits interstate travel, any use of the mails, or interstate use of any other facility (such as a telephone) to further specified "unlawful activity," including bribery in violation of state or federal law. Violations are punishable by imprisonment for up to five years.

The predicate bribery under state law need not be common law bribery. The Travel Act applies as long as the conduct is classified as a "bribery" offense under applicable state law. Perrin v. United States, 444 U.S. 37 (1979). In addition, the Travel Act has been held to incorporate state crimes regardless of whether they are classified as felonies or misdemeanors. United States v. Polizzi, 500 F.2d 856, 873 (9th Cir. 1974), *cert. denied*, 419 U.S. 1120 (1975), United States v. Karigiannis, 430 F.2d 148, 150 (7th Cir.), *cert. denied*, 400 U.S. 904 (1970).

Thirty-three states, the District of Columbia, and the territory of Guam have statutes which classify vote buying as a bribery offense:

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<u>State</u>	<u>State Code Citation</u>
Alabama	Ala. Code § 17-23-3 (1987)
Arizona	Ariz. Rev. Stat. § 16-1006 (1984 & Supp. 1993)
California	Cal. Election Code § 29623 (West 1989)
Delaware	Del. Code Ann. tit. 15, § 5123 (1981)
District of Columbia	D.C. Code Ann. § 1-1318 (1992)
Florida	Fla. Stat. Ann. § 104.061 (1992)
Guam	Guam Penal Code § 53 (1970)
Idaho	Idaho Code § 18-2320 (1987)
Iowa	Iowa Code §§ 722.4, 722.6 (1993)
Kansas	Kan. Stat. Ann. § 25-2409 (1986 & Supp. 1992)
Kentucky	Ky. Rev. Stat. Ann §§ 119.205 & 506.120(1)(g) (Mitchie 1993)
Maryland	Md. Code Ann. Art. 33, § 24-2(7) (Supp. 1992)
Massachusetts	Mass. Gen. Laws Ann. ch. 56, § 32 (West 1990)
Michigan	Mich. Stat. Ann. § 6.1932(a) (Callaghan 1983)
Minnesota	Minn. Stat. Ann. Art. 12, § 211B.13 (West 1992)
Nebraska	Neb. Rev. Stat. § 32-1209 (1988)
Nevada	Nev. Rev. Stat. Ann. § 293.584 (Mitchie 1990)
New Hampshire	N.H. Rev. Stat. Ann. § 659.40 (1986)
New Jersey	N.J. Stat. Ann. § 19:34-25 (West 1989)
New Mexico	N.M. Stat. Ann. § 1-20-11 (Mitchie 1992)
Ohio	Ohio Rev. Code Ann. § 3599.01 (Anderson 1988)
Oklahoma	Okla. Stat. Ann. tit. 26, § 16-106 (West 1991)
Pennsylvania	Pa. Stat. Ann. tit. 25, § 3539 (Purdon 1963)
Rhode Island	R.I. Gen. Laws § 17-23-5 (1988)
South Carolina	S.C. Code Ann. §§ 7-25-50, 7-25-60 (Law Co-op. 1987 & Supp. 1992)
South Dakota	S.D. Codified Laws § 12-26-15 (1982)
Tennessee	Tenn. Code Ann. § 2-19-126 (1985 & Supp. 1993)
Texas	Tex. Penal Code Ann. tit. 8, § 36.02 (Vernon 1989 & Supp. 1994)
Utah	Utah Code Ann. § 20A-1-601 (Supp. 1993)
Vermont	Vt. Stat. Ann. tit. 17, § 2017 (1982)
Virginia	Va. Code Ann. § 24.2-1005 (Mitchie 1993)
Washington	Wash. Rev. Code Ann. § 29.85.060 (West 1993)
West Virginia	W. Va. Code §§ 3-9-1, 3-9-12, 3-9-13 (1990)

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Wisconsin	Wis. Stat. Ann. § 12.11 (West 1986 & Supp. 1993)
Wyoming	Wyo. Stat. Ann. § 22-26-109 (1992)

Three states -- Colorado, Hawaii, and New York -- do not clearly specify whether vote buying constitutes bribery. Colo Rev. Stat. § 1-13-720 (1980); Haw. Rev. Stat. § 19-3 (Supp 1993); N.Y. Elec. Law §§ 17-140, 17-142 (McKinney 1978 & Supp. 1994). The remaining states do not classify vote buying as bribery; in these, the Travel Act has no potential application to local vote buying schemes.

In the past, Travel Act prosecutions have customarily rested on predicate acts of interstate travel or the use of interstate facilities. Since election fraud is a local crime, interstate predicate acts are rarely present, and until recently the Travel Act has not been used to prosecute election crime. However, in United States v. Riccardelli, 794 F.2d 829 (2d Cir. 1986), the Act's mail predicate was held to be satisfied by proof of an intrastate mailing. In reaching this conclusion, the Court conducted an exhaustive analysis of the Travel Act's legislative history and Congress's authority to regulate the mails. The Sixth Circuit subsequently reached a contrary result, holding that the Travel Act's mail predicate required an interstate mailing. United States v. Barry, 888 F.2d 1092 (6th Cir. 1989).

In 1990 Congress resolved this conflict by adopting the Riccardelli holding in an amendment to the Travel Act, expressly extending federal jurisdiction to any use of the mails in furtherance of a state predicate offense.

Thus, the Travel Act should be considered to prosecute vote buying schemes in which the mails were used, in those states where vote buying is statutorily defined as bribery. This theory is one of the few available which do not require a federal candidate on the ballot.

As with the mail fraud statute, each use of the mails in the furtherance of the bribery scheme is a separate offense. United States v. Jabara, 644 F.2d 574 (6th Cir. 1981). The defendant need not actually have done the mailing, so long as it was a reasonably foreseeable consequence of his or her activities. United States v. Kelly, 395 F.2d 727 (2d Cir.), cert. denied, 393 U.S. 963 (1968). Nor need the mailing have in itself constituted the illegal activity, as long as it promoted it in some way. United States v. Bagnariol, 665 F.2d 877 (9th Cir. 1981), cert. denied, 456 U.S. 962 (1982); United States v. Barbieri, 614 F.2d 715 (10th Cir. 1980); United States v. Peskin, 527 F.2d 71 (7th Cir. 1975), cert. denied, 429 U.S. 818 (1976);

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United States v. Wechsler, 392 F.2d 344 (4th Cir.), cert. denied, 392 U.S. 932 (1968).

An unusual feature of the Travel Act is that it requires an overt act subsequent to the jurisdictional event charged in the indictment. Thus, if a Travel Act charge is predicated on a use of the mails, the government must allege and prove that the defendant or his or her agent subsequently acted to further the underlying unlawful activity. The subsequent overt act need not be unlawful in itself; this element has been generally held to be satisfied by the commission of a legal act as long as the act facilitated the unlawful activity. See, e.g., United States v. Davis, 780 F.2d 838 (10th Cir. 1985).

The Travel Act is particularly useful in voter bribery cases in nonfederal elections that involve the mailing of absentee ballot materials. Such matters usually involve a defendant who offers voters compensation for voting, followed by the voter applying for, obtaining, and ultimately casting an absentee ballot. Each voting transaction can involve as many as four separate mailings: when the absentee ballot application is sent to the voter, when the completed application is sent to the local election board, when the absentee ballot is sent to the voter, and when the voter sends the completed ballot back to the election authority for tabulation.

The mailing must be in furtherance of the scheme. Therefore, care should be taken to ensure that the voting transaction in question was corrupted by a bribe before the mailing charged. If, for example, the voter was not led to believe that he or she would be paid for voting until after applying for, and receiving, an absentee ballot package, then the only mailing affected by bribery would be the transmission of the ballot package to the election authority; the Travel Act charge would have to be predicated on this final mailing, with some other subsequent overt act charged.

9. Voting by noncitizens

Federal law does not expressly require that persons be United States citizens in order to vote. Eligibility to vote is a matter which the Constitution leaves primarily to the states. Historically, the states have regulated the substantive as well as administrative facets of the election process, including how one registers to vote and who is eligible to do so; federal requirements have generally focused on specific federal interests,

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such as protecting the integrity of the federal elective process and the exercise of fundamental rights.²⁰

In 1993, the federal role in the election process expanded substantially with the passage of the National Voter Registration Act (NVRA), which is discussed in detail at §§ D.5.a and D.6, above. This new legislation requires, among other things, that persons registering to vote in federal elections affirm that they are United States citizens. All states now require citizenship as a prerequisite for voting, in both state and federal elections. However, this requirement has not always been implemented in a clear manner. One of the goals of the NVRA is to assist in the enforcement of the citizenship requirement. The NVRA also enacted a new criminal statute, discussed immediately below, which addresses false statements to election officials regarding eligibility to vote. Also discussed below are the two other federal statutes that may be used to address voting by noncitizens: 18 U.S.C. § 911 and 42 U.S.C. § 1973i(c).

a) **Fraudulent registration and voting under the NVRA: 42 U.S.C. § 1973gg-10(2)**

The NVRA's new criminal statute reaches the knowing and willful submission to election authorities of false information which is material under state law. 42 U.S.C. § 1973gg-10(2). Because all states make citizenship a prerequisite for voting, statements by prospective voters concerning citizenship status are automatically "material" within the meaning of this new statute.

Further, the NVRA emphasizes the significance of citizenship as a condition of voting eligibility and eliminates whatever ambiguities may remain under state law regarding the need for satisfying this requirement. Registration forms under the NVRA must clearly state that citizenship is a voting prerequisite, and voters must affirm that they meet this requirement. The NVRA also provides that false statements by prospective registrants regarding citizenship status are subject to the penalty of perjury under state law. 42 U.S.C. §§ 1973gg-3(c)(2)(C), 1973gg-5(a)(6)(A)(i), 1973gg-7(b)(2).

²⁰ For example, the states are prohibited from depriving "citizens of the United States" of the franchise on account of any of the following factors: race (U.S. Const. amend. XV), gender (U.S. Const. amend. XIX), nonpayment of a poll tax (U.S. Const. amend. XXIV), age 18 or older (U.S. Const. amend. XXVI; 42 U.S.C. § 1973bb), residency longer than 30 days (42 U.S.C. § 1973aa-1), and overseas residence (42 U.S.C. § 1973ff-1).

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Therefore, any false statement concerning an applicant's citizenship status that is made on a registration form submitted to election authorities can involve a violation of this new registration fraud statute. Such violations are felonies subject to imprisonment for up to five years. See § D.6, above.

b) **Citizen of the United States: 18 U.S.C. § 911**

Section 911 prohibits the knowing and willful false assertion of United States citizenship by a noncitizen. See, e.g., United States v. Franklin, 188 F.2d 182 (7th Cir. 1951); Fotie v. United States, 137 F.2d 831 (8th Cir. 1943). Violations of section 911 are punishable by imprisonment for up to three years.

All states require United States citizenship as a prerequisite for voting. However, historically, some states have not implemented the prerequisite through voter registration forms that clearly alerted prospective registrants that only citizens may vote. Under the NVRA, all states must now make this citizenship requirement clear, and prospective registrants must sign applications under penalty of perjury attesting that they meet this requirement. Therefore, falsely attesting to citizenship in any state is now more likely to be demonstrably willful, and therefore cognizable under section 911.

c) **Conspiracy to cause illegal voting: 42 U.S.C. § 1973i(c)**

The solicitation of aliens to register or vote in violation of a state citizenship requirement may be prosecuted under the clause of 42 U.S.C. § 1973i(c) which prohibits conspiracies with voters to cause "illegal voting." This clause applies only to conspiratorial situations, and addresses only the conduct of the recruiter, not that of the noncitizen voter. The statute is discussed in detail at § D.3, above.

The clause of section 1973i(c) which prohibits providing false information to election officials does not specifically apply to voting by noncitizens because it is limited to false representations regarding name, address, or period of residence in the voting district. Noncitizen voters rarely give false names or addresses when registering, and most of them have a legitimate claim to "residence" within the district where they seek to vote.

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However, the NVRA's new criminal "false statements" statute is broader than § 1973i(c), and reaches false attestations of citizenship which are made either to register to vote,²¹ or to vote, in a federal election.

10. Troops at polls: 18 U.S.C. § 592

This statute makes it unlawful to station troops or "armed men" at the polls in a general or special election (but not a primary), except when necessary "to repel armed enemies of the United States." Violations are punishable by imprisonment for up to five years and disqualification from any federal office. Section 592 prohibits the use of official authority to order armed personnel to the polls; it does not reach the troops who actually go in response to those orders. The effect of this statute is to prohibit FBI agents from conducting investigations within the polls on election day, and United States Marshals from being stationed at open polls, since FBI agents and Marshals must be armed while on duty.

11. Campaign dirty tricks

Federal prosecution of election fraud is generally confined to corrupt manipulations of the voting process itself. Federal criminal laws are for the most part inapplicable to the tactics and rhetoric of candidates and their agents. For example, the mail fraud statute has never been used to prosecute allegedly false campaign rhetoric, because to do so would tend to chill the free exercise of speech in the rough-and-tumble context of political campaigns. Sections 241 and 242 have never been asserted to criminalize incidents not directly bearing on the balloting process itself. Section 245(b)(1)(A) reaches only incidents that entail threats or use of force.

The only federal criminal statutes specifically dealing with campaign tactics and practices are 18 U.S.C. § 599 (discussed in Chapter Two, § B.2.b), and two provisions of the FECA, 2 U.S.C. §§ 441d and 441h, which are subject to misdemeanor penalties under 2 U.S.C. § 437g(d). Section 441d requires that any literature that seeks contributions for a federal election or advocates the election or defeat of a specific federal candidate contain an attribution clause identifying the candidate, committee, or person who authorized and/or paid for the communication. Section 441h prohibits the

²¹ As discussed earlier, all states provide that only one registration is necessary to become eligible to vote in all elections, federal and state. Hence, any false statement regarding citizenship made in connection with registering will be cognizable under section 1973gg-10.

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fraudulent misrepresentation of authority to speak for a federal candidate; unlike other FECA crimes, violations of section 441h may be criminal without regard to the amount of money involved. These FECA statutes are discussed in Chapter Five.

12. Retention of federal election records: 42 U.S.C. § 1974

The voting process generates voluminous documents and records, ranging from voter registration forms and absentee ballot applications to ballots and tally reports. If election fraud occurs, these records often play an important role in the detection and prosecution of the crime.

State laws generally require that voting documents be retained for sixty to ninety days. These relatively brief periods are usually insufficient to ensure that voting records will be preserved until more subtle forms of federal civil rights abuses and election crimes have been detected.

Congress therefore included in the Civil Rights Act of 1960 legislation extending the document retention period for federal elections to twenty-two months after the election. 42 U.S.C. § 1974. Section 1974 provides that any election administrator or document custodian who willfully fails to comply with the statute is subject to imprisonment for up to one year. Under section 1974a, election officers or other persons who willfully steal, destroy, conceal, or alter federal voting records required to be retained by section 1974 are also subject to one year of imprisonment.²²

The significance of section 1974 to a federal prosecutor or investigator, however, lies not so much in its utility as a vehicle to prosecute corrupt election officials as in its protection of what may be crucial evidence of criminal activity.

Section 1974 requires that an election administrator preserve for twenty-two months "all records and papers which come into his possession

²² In 1993, Congress included a similar document retention provision in the NVRA, 42 U.S.C. § 1973gg-6(i). Unlike section 1974, however, the NVRA provision is primarily a disclosure statute, and has no criminal penalty for failure to comply with its terms. It requires that voter registration records generated under the NVRA be maintained by the states and made available to the public for two years. Except for its slightly longer retention period and disclosure requirement, the NVRA provision basically duplicates section 1974 insofar as registration records are concerned.

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relating to any application, registration, payment of poll tax, or other act requisite to voting" in an election which includes a federal candidate. The statute does not apply to local or state elections unless they take place simultaneously with balloting for federal offices.

The purpose of this federal document retention requirement is to protect the right to vote by facilitating the investigation of illegal election practices. Kennedy v. Lynd, 306 F.2d 222 (5th Cir. 1962), cert. denied, 371 U.S. 952 (1963). The statute is interpreted in keeping with this congressional objective: under section 1974, all documents that may be relevant to the detection or prosecution of federal civil rights or election crimes must be maintained if the documents were generated in connection with an election which included a federal candidate. Moreover, the proper interpretation of section 1974 requires that the original documents be maintained, even in those jurisdictions that have the capability to reduce original records to digitized replicas. This is because handwriting analysis cannot be performed on digitized reproductions of signatures.

The Justice Department interprets this law to cover voting registration records, poll lists and similar documents reflecting the identity of individuals voting at the polls, applications for absentee ballots, lists of absentee voters, envelopes in which absentee ballots are returned for tabulation, documents containing oaths of voters, documents relating to challenges to voters or to absentee ballots, tally sheets and canvass reports, records reflecting the appointment of persons to act as poll officials or poll watchers, and computer programs utilized to tabulate votes electronically. It is also the Department's view that the phrase "other act requisite to voting" in section 1974 requires the retention of the ballots themselves in jurisdictions where votes are manifested by marking a piece of paper or punching holes in a computer card.

The election process, and the documents used in this process, are for the most part established by state, not federal, law. Section 1974 does not require states to create voting records, but does require that all voting documents which are generated under state law and used in connection with any federal election be maintained for twenty-two months. Thus, surplus election documents (such as unvoted ballots) do not have to be maintained, since such unused documents do not pertain to "voting."

E. POLICY AND PROCEDURAL CONSIDERATIONS

Election-related allegations range from minor infractions, such as campaigning too close to the polls, to sophisticated criminal enterprises

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aimed at ensuring the election of corrupt public officials. Because the Constitution expressly leaves to the states primary responsibility for the conduct of elections, broad federal intervention in the election process would raise federalism concerns. Federal prosecution is warranted only when necessary to vindicate federal interests or to redress long-standing patterns of election abuse.

The Department of Justice has established a formal consultation policy for the advanced stages of election crime investigations. The purpose of this consultation policy is to assist federal prosecutors and investigators in determining what types of election crime can be pursued by federal authorities, when they should be pursued, and what proof is required for conviction. This policy and its implementation are described in the United States Attorneys Manual. U.S.A.M. 9-2.120, 9-2.133(8), 9-2.133(15).

1. Consultation requirements and recommendations

Upon receipt of an election fraud allegation, a United States Attorney's Office may, if the Office considers it warranted, request the FBI to conduct a preliminary investigation.²³ Consultation with the Public Integrity Section is not required at this initial stage.

If the results of the preliminary investigation suggest that further investigation is warranted, the United States Attorney's Office should contact the Public Integrity Section.

Specifically, consultation with the Section -- and with higher-level Department officials in the event agreement is not reached at that level -- is required for all grand jury and "full field"²⁴ investigations of election

²³ For purposes of election crime matters, a "preliminary investigation" includes those investigative steps necessary to flesh out the complaint in order to determine whether a federal crime has occurred, and, if so, whether federal prosecution of that offense is appropriate. It generally involves an FBI interview of the complainant and follow-up on investigative leads arising from the interview. See, in this connection, the FBI's Manual of Investigative Operations and Guidelines, § 56-9.2.

²⁴ In connection with election crime matters, a "full field" FBI investigation is, essentially, anything beyond a preliminary investigation or an expanded preliminary investigation. It is typically a broad-based investigation which often accompanies a grand jury investigation. Its

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fraud, as well as for all indictments, informations, and criminal complaints charging election fraud offenses. The Section is also available to provide advice and resources at any stage of an election fraud case. This consultation typically proceeds as follows:

- The results of the preliminary investigation are submitted to FBI headquarters and the Public Integrity Section, together with the recommendation of the United States Attorney's Office as to whether further investigation is warranted. At this point, if the matter has possible merit it is discussed informally between the Section and the Assistant United States Attorney responsible for the matter, and, on occasion, between the Section and the FBI.
- The Public Integrity Section may suggest that additional investigation be conducted before determining whether a full field or grand jury investigation is warranted. The Section may also request a preliminary investigation of a matter which has been declined by a United States Attorney's Office.
- If the Public Integrity Section agrees that a full field investigation and/or grand jury investigation of an election fraud allegation is warranted, a letter confirming this is usually sent by the Section to the United States Attorney, with a copy to FBI headquarters. At this stage, there is generally also a discussion of whether the United States Attorney's Office is able to make a commitment to prosecute cases which the investigation may generate, and, if not, whether the Public Integrity Section will handle the matter.
- The initiation of any grand jury process in the matter -- including the issuance of subpoenas for election documentation -- requires prior consultation with the Public Integrity Section. This consultation is often done by phone, especially if speed is considered necessary to preserve voting documentation. As a rule, the Public Integrity Section will approve use of a grand jury at the time it approves a full field investigation.
- Once this consultation has occurred, the United States Attorney's Office investigates the matter as it deems appropriate. While

purpose is to develop sufficient evidence of federal crimes to support federal charges.

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further consultation is not required until the charging stage, the Section welcomes questions regarding ongoing investigations.

- All indictments charging election fraud must be discussed with the Public Integrity Section before submission to the grand jury, as well as all informations and criminal complaints.
- While acceptance of a plea agreement does not require any consultation, this is encouraged in order to assure that the sentence agreed to is consistent with those negotiated in similar cases elsewhere. In addition, it is recommended that the Section be consulted in the case of pre-indictment pleas, although this also is not required.

2. Nonprosecution of isolated transactions

The Justice Department generally does not favor prosecution of isolated fraudulent voting transactions. This is based in part on constitutional issues that arise when federal jurisdiction is asserted in matters having only a minimal impact on the integrity of the voting process. See, e.g., Blitz v. United States, 153 U.S. 308 (1894).

To be prosecuted federally, an election fraud must usually involve a systematic and organized pattern of abuse. Exceptions are justified only in rare and limited circumstances.

3. Nonprosecution of voters

The Justice Department has a long-standing practice of not prosecuting individual voters whose only participation in an election fraud scheme was in allowing their votes to be compromised. Examples include persons who permitted their votes to be bought, or who impersonated voters at the direction of others.

This practice is based on the fact that most voters involved in election fraud are victims, not initiators or beneficiaries of the fraud, and also on investigative strategy considerations: it is usually necessary to secure the voter's cooperation in order to prove the crime.

Exceptions may occasionally be warranted, such as when a voter having substantial knowledge about the scheme commits perjury, or where the voter's involvement extends beyond merely voting, such as where a paid voter also pays other voters.

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4. Guidelines for federal investigation

A threshold question to be asked in determining whether an election fraud matter should be pursued federally is: has the alleged criminal conduct resulted in an adverse federal impact? For example, it is clear that the federal interest is much greater in matters involving an attempt to corrupt a federal election than in matters having only indirect federal impact; that the federal interest is greater in those mixed-election matters that affect a federal contest than in those that do not; and that there is little federal interest where no federal candidate is involved.

Other factors involved in determining whether an election fraud matter should be investigated federally include:

- the specificity and credibility of the allegations;
- the legal theories available to assert federal jurisdiction over the matter; and
- the capacity and willingness of state and local law enforcement authorities to conduct an adequate and impartial investigation of the matter.

5. Federal seizure of state election materials

Federal custody of election materials is normally obtained by grand jury subpoena. In taking custody of election documents, election officials should not be deprived of documents necessary to tally and recount the ballots and to certify the election results. Accordingly, copies in lieu of originals should be accepted until the state's need for the documentation expires. Originals may eventually be necessary for handwriting and other forensic analysis. See § D.12, above, regarding the federal document retention requirements.

6. Noninterference with elections

The Justice Department's goals in the area of election crime are to prosecute those who violate federal criminal law and, through such prosecutions, to deter corruption of future elections.

Except for matters involving racial discrimination, the Justice Department does not have statutory authority to prevent suspected election crime. It likewise has no role in determining which candidate won a

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particular election, or whether another election should be held because of the impact of the alleged fraud on the election. In most instances, these issues are for the candidates in an election to litigate in the courts or before their legislative bodies or election boards. Finally, although civil rights actions under 42 U.S.C. § 1983 may be brought by private citizens to redress election irregularities, the federal prosecutor has no role in such suits.

In investigating election fraud matters, the Justice Department must refrain from any conduct which has the possibility of affecting the election itself. A criminal investigation by armed, badged federal agents runs the obvious risk of chilling legitimate voting and campaign activities. Federal prosecutors and investigators should be extremely careful to not conduct overt investigations during the preelection period or while the election is underway. See Olague v. Russoniello, 797 F.2d 1511 (9th Cir. 1986) (court had jurisdiction to enjoin federal election fraud investigation focusing on foreign-born citizens who requested bilingual ballots, because investigation appeared to impinge on First Amendment rights of association and political expression). Thus, most, if not all, investigation of an alleged election crime must await the end of the election to which the allegation relates.

The Criminal Division views any voter interviews in the preelection and balloting periods -- other than interviews of a complainant and any witnesses he or she may identify -- as beyond a preliminary investigation. Accordingly, a United States Attorney's Office considering such interviews must first consult with the Public Integrity Section. U.S.A.M. 9-2.133(8). This consultation is also necessary before investigation is undertaken near the polls while voting is in progress.

It should also be kept in mind that any investigation undertaken during the final stages of a political contest may cause the investigation itself to become a campaign issue. Many, if not most, allegations during this period come from political partisans who are actively involved in the election. It is not unreasonable to assume that such complainants may be seeking to trigger a criminal investigation of an opponent just before the election.

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7. Limitations on federal poll watching

Federal agents may not be stationed at open polling places, except in cases of discrimination that are covered by the Voting Rights Act.²⁵ Ironically, the public often asks the Department to do just this.

Control of polling places is governed by state laws that regulate who is authorized to be inside a polling place. Many of these laws have criminal penalties. Most states provide that no one except voters, election administrators, and perhaps party representatives may serve as poll watchers, or even approach closer than fifty to one hundred feet from an open poll. Except in Illinois, state poll access statutes do not contemplate that federal agents serve as poll watchers or otherwise enter areas where polling is taking place.

In addition, federal law provides criminal penalties for any federal official who sends "armed men" to open polling locations. 18 U.S.C. § 592. The Department interprets section 592 as applying to FBI agents and United States Marshals, since they are required to be armed when on duty. The FBI's Manual of Investigative Operations and Guidelines, at § 56-8(6), provides that investigations in the vicinity of open polls must first be approved by the Justice Department.

²⁵ In such cases, the Civil Rights Division's Voting Section determines if there is a risk that voting by minorities will be impeded in a location specially covered by the Voting Rights Act. If so, the Voting Section will ask that the location be certified for "federal observers." Such observers are sent to view conduct at the polls and report back through the Voting Section; they have no role in the detection of election crimes not involving racial animus.

CHAPTER TWO

PATRONAGE CRIMES

A. HISTORICAL BACKGROUND

Federal jurisdiction over patronage crimes is usually attained by virtue of the federal funds involved in a government job or benefit that is used to induce or reward partisan activity by government employees. Over the past century, Congress has enacted, at roughly fifty-five-year intervals, three landmark pieces of legislation in this area.

Until the Hatch Act Reform Amendments of 1993, most federal laws dealing with patronage abuses of government personnel and programs derived from either the 1883 Pendleton Civil Service Act or the 1939 Hatch Act. The Pendleton Act aimed at dismantling the partisan "spoils system" that existed in the Executive Branch at the time; it created a merit civil service and established the Civil Service Commission to ensure nonpartisan federal employment. The Act also contained four criminal provisions designed to protect federal employees against political manipulation. These provisions -- now codified at 18 U.S.C. §§ 602, 603, 606, and 607 -- prohibit political shakedowns of federal employees, political activity in federal buildings, and politically motivated threats or reprisals against federal employees.

In 1907, President Theodore Roosevelt promulgated an executive order, known as Civil Service Rule No. 1, which prohibited most active campaigning and electioneering by merit civil servants. Over the next thirty years, the Civil Service Commission decided approximately 2,000 administrative cases involving alleged violations of this executive order, and in the process defined the scope of permissible political activities.

In 1939, the Hatch Act enacted into federal law this ban on active partisan campaigning by executive branch employees, and incorporated those Civil Service Commission rules which defined permissible and impermissible activities. Former 5 U.S.C. § 7324. The Hatch Act also provided criminal penalties for various forms of political abuses in the administration of federal law, policies, and programs; these criminal provisions are now codified at 18 U.S.C. §§ 595, 598, 600, 601, 604, and 605.

In October 1993, Congress enacted its third major piece of civil service legislation, which, to a large extent, significantly reduced the 1939 Hatch Act

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ban on political activities. 5 U.S.C. §§ 7321-7326. These 1993 Hatch Act amendments permit all federal employees in the executive branch (other than those working in specified law enforcement or national security agencies) to engage in overt partisan activity, including the solicitation of political contributions from colleagues under certain circumstances. Although the amendments included a new anti-patronage provision, their overall goal was to remove the statutory shield -- deemed no longer necessary -- which had separated partisan politics and federal employment for over half a century.

Current federal law limits patronage practices and partisan political considerations in the federal civil service and in the administration of federal laws and programs. In extreme cases, patronage abuses may constitute a conspiracy to defraud the United States in the operation of a federally funded program. See, e.g., United States v. Pintar, 630 F.2d 1270 (8th Cir. 1980); Langer v. United States, 76 F.2d 817 (8th Cir. 1935). In addition, the Supreme Court has held that the award, termination, or modification of low-level public employment based solely on political affiliation violates the First Amendment. Rutan v. Republican Party of Illinois, 495 U.S. 62 (1990); Branti v. Finkel, 445 U.S. 507 (1980); Elrod v. Burns, 427 U.S. 347 (1976).

B. STATUTES

The text of the criminal statutes discussed in this section is printed in Appendix C. Each of these statutes carries, in addition to the prison term noted, fines under 18 U.S.C. § 3571.

1. Limitations based on federal employment or workspace

a) Solicitation of political contributions: 18 U.S.C. § 602

Section 602 prohibits a Senator, Representative, candidate for Congress, officer or employee of the United States, or person 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, except as permitted under the 1993 Hatch Act amendments. The statute applies only to contributions made to influence a federal election. Violations are punishable by imprisonment for up to three years.

Section 602 has been interpreted by the courts as criminalizing aggravated forms of political "shakedowns." United States v. Wurzbach, 280 U.S. 396, 398 (1930)(statute prohibits exerting "pressure for money for

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political purpose"); Ex parte Curtis, 106 U.S. 371, 374 (1882) (statute protects federal employees against political "extractions through fear of personal loss"). See also Brehm v. United States, 196 F.2d 769 (D.C. Cir.), cert. denied, 344 U.S. 838 (1952); United States v. Burleson, 127 F. Supp. 400 (E.D. Tenn. 1954).

The Criminal Division has interpreted section 602 as not prohibiting a federal employee's solicitation of voluntary political contributions from other nonsubordinate federal employees. However, because of the potential for coercion -- express or implied -- which inheres in the supervisor-subordinate relationship, contributions solicited from a subordinate are not considered "voluntary." The 1993 Hatch Act amendments reflect this interpretation; both the criminal and civil codes, as amended, expressly prohibit the solicitation of subordinates (and, under section 603, contributions from subordinates), while allowing certain solicitations of colleagues. The 1993 law further amended sections 602 and 603 to exempt the soliciting (and contributing) activities authorized by the new civil Hatch Act provisions, 5 U.S.C. §§ 7323 and 7324.

All officers and employees of the executive, judicial, or legislative branches are within the class reached by section 602. The statute does not reach persons who are paid with federal funds that have lost their "federal" character, such as state or local government employees or persons paid under federal grants. However, 18 U.S.C. §§ 600 and 601 may cover such persons.

The Federal Election Campaign Act (FECA) Amendments of 1979 limited section 602 in two respects. First, the word "knowingly" was added to clarify that the solicitor must have been aware of the federal status of the person solicited. Second, the critical term "contribution" in section 602 was linked to the definition of this term in the FECA, at 2 U.S.C. § 431(8), which restricts the term to activities intended to influence a federal election.

b) Making political contributions: 18 U.S.C. § 603

Section 603, like section 602, reaches only political contributions made to influence federal elections. The statute prohibits any officer or employee of the United States, or a person receiving compensation for services from money derived from the United States Treasury, from giving a political contribution to any other such officer, employee, or person, or to any Senator or Representative, if the person receiving the contribution is the donor's "employer or employing authority." Although modified by the 1993 Hatch Act amendments, section 603's basic prohibition against political

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donations between subordinates and supervisors was retained. This prohibition was also added by the 1993 law to the new civil Hatch Act provision. 5 U.S.C. § 7323(a). Section 603 applies to all congressional staff and White House employees, as well as to civil service personnel. Violations are punishable by imprisonment for up to three years.

The Criminal Division and the Justice Department's Office of Legal Counsel have interpreted section 603 as prohibiting all executive branch officers and employees from contributing to the reelection campaign of an incumbent President.

c) Intimidation to secure political contributions: 18 U.S.C. § 606

Section 606 makes it unlawful for a Senator, Representative, or federal officer or employee to discharge, demote, or promote another federal officer or employee, or to threaten or promise to do so, for making or failing to make "any contribution of money or other valuable thing for any political purpose." Violations are punishable by imprisonment for up to three years.

Section 606 encompasses coerced donations of anything of value (including services) from federal employees to a candidate for any elective office -- federal, state, or local. This statute should be used in lieu of section 602 wherever a federal employee is actively threatened to provide a political contribution. See also the discussion of 18 U.S.C. § 610, immediately below.

In the Criminal Division's view, section 606 was not intended to prohibit the consideration of political factors (such as ideology) in the hiring, firing, or assignment of the small category of federal employees who perform policymaking or confidential duties for the President or Members of Congress. In the executive branch, these senior officials either hold jobs on Schedule C of the Excepted Service, which by law may be offered or terminated on the basis of such passive factors, or they hold direct presidential appointments and by statute serve at the President's pleasure. Section 606 does, however, protect all federal officials, including senior policymakers, from being forced through job-related threats or reprisals to donate to political candidates or causes.

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d) Coercion of political activity: 18 U.S.C. § 610

Section 610 is a new anti-intimidation statute enacted as part of the 1993 Hatch Act amendments to provide additional protections against political manipulation of the federal workforce.

The statute makes it a crime to intimidate, threaten, command, or coerce any employee of the executive branch in order to induce the employee to engage in or not engage in any political activity.²⁶ The statute also prohibits attempts. It applies to all elections -- federal, state, and local. Violations of section 610 are punishable by imprisonment for up to three years. The statute went into effect on February 3, 1994.

Section 610 expressly includes within the broad phrase "any political activity" any conduct which relates to voting, to contributing, or to campaigning. Specifically, section 610 provides that "any political activity" includes, but is not limited to: (1) voting or not voting for any candidate in any election; (2) making or refusing to make any political contribution; and (3) working or refusing to work on behalf of any candidate. The statute thus encompasses intimidation directed at inducing any form of significant political action.

The new statute complements 18 U.S.C. § 606, discussed immediately above, which addresses coerced political donations from employees in any of the three branches of the federal government. Section 610 covers a broader range of conduct, while section 606 protects a larger class of employees.

The inclusion of section 610 in the 1993 Hatch Act amendments was in recognition of widely held concerns, both in Congress and in federal law enforcement agencies, that any lessening of the Hatch Act's prohibition on political activities might have the unintended effect of increasing the risk of political coercion and manipulation of federal employees. See 139 Cong. Rec. H6817 (daily ed. Sept. 21, 1993).

²⁶ See also the new voter intimidation statute enacted by the 1993 National Voter Registration Act, 42 U.S.C. § 1973gg-10(1), discussed in Chapter One, § D.5.a.

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e) Place of solicitation: 18 U.S.C. § 607

Section 607 makes it unlawful for anyone to solicit or receive a contribution for a federal election in any room, area, or building where federal employees are engaged in official duties. In this respect, section 607 has the same reach as section 602. The statute also specifically forbids political solicitations on federal military reservations. Violations are punishable by imprisonment for up to three years.

Section 607 covers all three branches of the federal government. However, it specifically exempts any contribution for a Member of Congress received by the Member's congressional staff in his or her federal office, provided that there had been no request for the contribution to be delivered to the office, and provided further that the contribution is quickly forwarded to the Member's campaign committee. The prohibition covers political solicitations that are delivered by mail, as well as those made in person. United States v. Thayer, 209 U.S. 39 (1908).

Violations of section 607 require proof that the defendant was actively aware of the federal character of the place where the solicitation took place or was directed. The employment status of the parties to the solicitation is immaterial; it is the employment status of the persons who routinely occupy the area where the solicitation occurs that determines whether section 607 applies.

Prosecutable violations of section 607 may arise from solicitations that can be characterized as "shakedowns" of federal personnel. Thus, section 607 reaches solicitations by nonfederal employees, filling a void not covered by section 602, and also reaches shakedowns of congressional employees, who are not covered by the new intimidation statute, section 610.

When federal premises are leased or rented to candidates in accordance with General Services Administration regulations, the premises are not considered "federal" for the purposes of this statute. The same holds true for United States Postal Service post office boxes. Thus, 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 United States post office boxes.

Most matters that have arisen under section 607 have involved computer-generated direct mail campaigns in which solicitation letters are inadvertently sent to prohibited areas. Such matters do not warrant prosecution. Instead, the Criminal Division usually advises the person or

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entity involved of the existence of section 607, and requests that the mailing lists be purged of addresses which appear to belong to the federal government. A systematic refusal or failure to comply with formal warnings of this kind can serve as a basis for prosecution.

2. Limitations based on federal programs and benefits

a) Promise or deprivation of federal employment or other benefit for political activity: 18 U.S.C. §§ 600 and 601

Section 600 makes it unlawful for anyone to promise any employment, position, contract, or other benefit derived in whole or in part from an Act of Congress, as consideration, favor, or reward for past or future political activity, including support or opposition to any candidate or political party in any election. The statute applies to all candidates -- federal, state, and local.

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 the other person of employment or benefits made possible in whole or in part by an Act of Congress. The statute defines "contribution" as encompassing anything of value, including services. Like section 600, it applies to contributions at federal, state, and local levels.

Violations of these statutes are one-year misdemeanors.²⁷

Sections 600 and 601 are the two principal statutes available to attain federal jurisdiction over situations where corrupt public officials use government-funded jobs or programs to advance a partisan political agenda instead of to serve the public interest. Both statutes reach employment and benefits that are funded by Congress completely or partially. The statutes are not restricted to federal jobs, although section 601 specifically covers

²⁷ In 1976, Congress amended sections 600 and 601 to increase their fine limits from \$1,000 to \$10,000. However, these statutes are now governed by the fines set forth in 18 U.S.C. § 3571.

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threats to terminate federal employment.²⁸ Sections 600 and 601 thus protect a broader class of employees than the new intimidation statute, section 610, which is restricted to federal employees in the executive branch. There is no minimum amount of federal funds which must be involved in the employment or benefit on which the corrupt demand focuses.

The principal distinction between sections 600 and 601 is whether the coerced political activity is demanded as a condition precedent to obtaining a publicly funded job or benefit (section 600), or whether it occurs in the form of a threat to terminate a federal benefit or job the victim already possesses (section 601). Section 601 requires proof that the motive for the adverse job action was political and not inadequate performance or some other job-related factor; it is a lesser included offense of section 606 when the threatened employee is a federal civil servant.

As with section 606, the Criminal Division believes that sections 600 and 601 were not intended to reach the consideration of political factors in the hiring or termination of the small category of senior public employees who perform policymaking or confidential duties for elected officials of federal, state, or local governments. With respect to such employees, a degree of political loyalty may be considered a necessary aspect of competent performance. Compare Connick v. Myers, 461 U.S. 138, 148-49 (1983) (upholding dismissal of allegedly disruptive assistant district attorney), with Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990) (patronage promotions and hirings of rank-and-file public employees violate rights of speech and association), Branti v. Finkel, 445 U.S. 507, 517-19 (1980) (public employees may not be discharged based solely on their political beliefs unless party affiliation is an appropriate requirement for effective performance), and Elrod v. Burns, 427 U.S. 347, 367 (1976) (patronage dismissals of non-policymaking public employees violate First and Fourteenth Amendments).

Although sections 600 and 601 are misdemeanors, there are alternative federal felony prosecutive theories that may be applicable to conduct violating these statutes. Such theories include:

- The Travel Act, 18 U.S.C. § 1952, in states having statutes which broadly define bribery and extortion.

²⁸ Section 601 has a parallel provision in 18 U.S.C. § 665(b), which covers programs under the Comprehensive Employment and Training Act (CETA).

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- Mail fraud, 18 U.S.C. §§ 1341 and 1346, to the extent that the patronage scheme results in arbitrary government and the breach of a public official's fiduciary duty of honesty.
- Conspiracy, 18 U.S.C. § 371, to the extent that the evidence shows a conspiracy to defraud the public of the fair and impartial administration of federal grants or programs.
- Bribery concerning federally funded programs, 18 U.S.C. § 666. However, the Third Circuit has held section 666 inapplicable to a scheme to demand nonpecuniary political services from public employees. United States v. Cicco, 938 F.2d 441 (3d Cir. 1991) (Cicco I).

The Cicco case illustrates the use of alternative theories to prosecute local public officials for corrupt patronage abuses. Unfortunately, the case also illustrates the difficulties involved in prosecuting patronage crimes under current federal laws. Although the jury convicted the defendants under both section 601 and section 666, both convictions were ultimately reversed on appeal.

In Cicco, local public officials demanded political services from part-time public employees, and when the employees refused to perform the services, the employees were denied permanent employment. The patronage scheme was charged under section 601, and also under sections 666, 1341 and 1346, and 1952. All four prosecutive theories went to the jury, which convicted the defendants on the sections 601 and 666 counts. In Cicco I, the Third Circuit reversed the section 666 convictions, holding that Congress did not intend this statute to apply to the extortion of political activity rather than money. In a subsequent appeal, the Third Circuit held that section 601 does not apply if there are no express threats or specific promises made to induce political services from public employees. United States v. Cicco, 10 F.3d 980 (3d Cir. 1993) (Cicco II).

b) Promise of appointment by candidate: 18 U.S.C. § 599

This statute prohibits a candidate for federal office from promising appointments "to any public or private position or employment" in return for "support in his candidacy." It is one of the few federal criminal laws specifically addressing campaign-related activity by candidates. Willful violations are two-year felonies; nonwillful violations are misdemeanors.

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This statute has potential application where one candidate attempts to secure an opponent's withdrawal, or to elicit the opponent's endorsement, by offering the opponent a public or private job. See also 18 U.S.C. § 600, discussed immediately above. It also applies to offers of jobs to others to secure endorsements. However, section 599 does not reach offers or payments of money to secure withdrawal or endorsements. Such matters may be federally prosecuted, if the payment was not reported accurately, as a reporting violation of the FECA under 2 U.S.C. §§ 434(b) and 437g(d).

c) Interference in election by employees of federal, state, or territorial governments: 18 U.S.C. § 595

Section 595 was enacted as part of the original 1939 Hatch Act. The statute prohibits any public officer or employee, in connection with an activity financed wholly or in part 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.²⁹ Violations are one-year misdemeanors.

Section 595 applies to all public officials, whether elected or appointed, federal or nonfederal. Thus, for example, an appointed policymaking government official who bases a specific governmental decision on an intent to influence the vote for or against an identified federal candidate violates section 595.

d) Coercion by means of relief appropriations: 18 U.S.C. § 598

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

²⁹ However, such political activities must be consistent with the Hatch Act restrictions or political activity, as amended by the 1993 Hatch Act amendments. See § B.3, below.

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e) Solicitation from persons on relief: 18 U.S.C. § 604

Section 604 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. Violations are one-year misdemeanors.

f) Disclosure of names of persons on relief: 18 U.S.C. § 605

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. Violations are one-year misdemeanors.

3. Permissible political activity under the Hatch Act and its 1993 amendments: 5 U.S.C. §§ 7323 and 7324

Although the 1939 Hatch Act consisted mostly of criminal provisions, it became widely known as a result of its one civil provision, which limited active partisan politicking by executive branch employees. 5 U.S.C. § 7324(a)(2) (Repealed). This restriction on overt politicking lasted over fifty years, during which it was challenged on both constitutional and public policy grounds. The constitutional challenges were not successful. Civil Service Commission v. Letter Carriers, 413 U.S. 548 (1973); United Public Workers v. Mitchell, 330 U.S. 75 (1947). The public policy challenges were successful in part, and ultimately led to the 1993 Hatch Act Reform Amendments, which substantively changed the Hatch Act politicking restrictions.

The 1993 legislation lifted the original ban on taking "an active part in political management or in political campaigns" for most employees of the executive branch. However, it continues the ban for employees of the following law enforcement and intelligence agencies:

Federal Election Commission
Federal Bureau of Investigation
United States Secret Service
Central Intelligence Agency

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National Security Agency
Defense Intelligence Agency
Merit Systems Protection Board
Office of Special Counsel
Office of Criminal Investigation of the Internal
Revenue Service
Office of Investigative Programs of the
United States Customs Service
Office of Law Enforcement of the Bureau of
Alcohol, Tobacco, and Firearms

5 U.S.C. § 7323(b)(2)(B)(i). The ban is also retained for career members of the Senior Executive Service, 5 U.S.C. § 7323(b)(2)(B)(ii), and for employees of the Criminal Division of Department of Justice, 5 U.S.C. § 7323(b)(3).

With the foregoing exceptions, federal employees are now permitted to hold positions in political party organizations; however, they are still precluded from becoming partisan candidates in elections to public office. 5 U.S.C. § 7323(a)(3). In addition, although solicitations of the general public are still barred, the new law permits, under certain circumstances, employees who are members of an employee organization to solicit fellow members for contributions to the organization's political committee. Section 7323(a)(2). See also the interim regulations proposed by the Office of Personnel Management under the 1993 Hatch Act amendments, which were published for comment at 5 C.F.R. Part 734; 59 Fed. Reg. 48765-77 (1994).

A violation of the Hatch Act's politicking ban is not a federal crime; it is a personnel infraction. The statute is enforced by the United States Office of Special Counsel and by the Merit Systems Protection Board. 5 U.S.C. §§ 1206(e)(1)(A), 1206(g), 1207(b).

Active partisan campaigning in violation of the Hatch Act can lead to termination from federal employment, or thirty days' suspension if the Merit Systems Protection Board recommends a lesser penalty. Sections 1207(b), 7326.

The partisan activity which continues to be prohibited for employees of specifically-designated law enforcement agencies is taking "an active part in political management or in political campaigns." Both the original and amended statute expressly define this phrase to include those acts of "political campaigning" that were prohibited by the Civil Service Commission

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prior to July 19, 1940, the date the original Hatch Act went into effect. 5 U.S.C. § 7323(b)(4); former 5 U.S.C. § 7324(a)(2); 5 C.F.R. §§ 733.121, 733.122, 733.123, 733.124.

Although a subject of some unfortunate confusion, the Hatch Act ban was never intended to apply to an employee's expression of personal opinion -- whether given privately or publicly -- on political candidates and issues. This basic right to expression was recognized in the original 1939 Hatch Act, former 5 U.S.C. § 7324(a)(2). It was reaffirmed by two appellate decisions which reversed Hatch Act enforcement actions based on an employee's public expression of political opinion. Biller v. Merit Systems Protection Board, 863 F.2d 1079 (2d Cir. 1988); Blaylock v. Merit Systems Protection Board, 851 F.2d 1348 (11th Cir. 1988). Finally, the principle was restated in the 1993 Hatch Act amendments. 5 U.S.C. § 7323(c) (employees retain the right to express their opinions on political candidates and issues). Thus, employees in designated law enforcement agencies who remain covered by the Hatch Act politicking ban retain the right to express their personal political views.

All inquiries concerning possible violations of the Hatch Act politicking ban should be directed to the Office of Special Counsel, 1120 Vermont Avenue, N.W., Washington, D.C. 20419 (202/653-8971).

C. POLICY AND PROCEDURAL CONSIDERATIONS

In many cases, the Hatch Act's civil provisions, as amended in 1993, may provide sufficient sanctions for violations of the politicking restrictions applicable to federal employees. Criminal prosecution may be appropriate, however, in cases of aggravated abuses, such as political inducements or threats of retaliation directed at public servants, and attempts to subvert federal laws and programs for political ends.

United States Attorneys' Offices must consult with the Public Integrity Section before instituting grand jury proceedings, filing an information, or seeking an indictment that charges patronage crimes. U.S.A.M. 9-2.133(8). As with election fraud matters, these consultation requirements are intended to assist federal prosecutors in this area and to ensure nationwide uniformity in the enforcement of these criminal patronage statutes.

CHAPTER THREE

**STRUCTURING
ELECTION FRAUD
INVESTIGATIONS**

Most of the general principles and procedures which govern federal criminal investigations apply to the investigation of election crimes. This chapter will discuss those investigative issues and tactics which are unique to election fraud cases.

Election fraud prosecutions are usually fairly easy to present, and the Department's conviction rate has been quite good. These prosecutions have proven to be a fast and effective method to combat election corruption. Moreover, because the motive for most election fraud is to corrupt the public office sought by those committing the fraud, these cases also provide an avenue to address other serious forms of public corruption.

If properly managed, election fraud cases are generally well received by the public. Favorable public reaction is likely to generate additional investigative leads in this sensitive area of criminal law enforcement.

A. GETTING STARTED

Several basic steps underlie most successful election fraud investigations.

1. Publicize your intent to prosecute election fraud

Most complaints that lead to prosecutable election fraud cases come from participants in the political process, such as voters, candidates, campaign workers, and poll officials. However, in places where election fraud has been entrenched, there is often widespread tolerance of election abuses among local law enforcement authorities. This frequently leads to public cynicism, which must be overcome if productive complaints are to be generated. The following steps can help:

- Hold press conferences before important elections, and announce that prosecution of election fraud is a federal law enforcement priority.

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- Ensure that Assistant United States Attorneys and FBI agents are accessible to the public during and immediately after important elections by publicizing the telephone numbers through which the public can reach them.
- Contact election administrators (registrars, county and town clerks, boards of election, etc.) and enlist their support in detecting and reporting election abuses. These people are generally dedicated public servants who want to eliminate criminal election abuses. They are also the custodians of important records generated during the voting process.

2. Be aware of the importance of voting documentation

The voting process generates voluminous documentary evidence. Federal law requires that all voting documentation relating to an election which includes a federal contest be retained for at least twenty-two months after the election. 42 U.S.C. § 1974. Recent federal legislation extended this period to two years for voter registration records generated under the 1993 National Voter Registration Act. 42 U.S.C. § 1973gg-6(i). Because the federal retention periods are significantly longer than normally required by state law, it is important to contact all election administrators in the district at the beginning of a ballot fraud investigation, to be certain that they are aware of these federal requirements.

Voting documentation includes voter registration cards, absentee ballot applications, absentee ballot envelopes, tally sheets, poll lists, and ballots. These materials are particularly important to successful election crime investigations, since they contain information that helps identify fraudulent voting transactions and potential defendants. For example:

- Most states require persons seeking to vote to provide personal information to election registrars, and to furnish a handwriting specimen for comparison with the voter's signature on the registration form. These data can be used to determine the authenticity of specific voting transactions.
- In many states, voters must sign a poll list before casting their ballots on election day. The validity of a particular voting transaction can be determined by comparing a voter's poll list signature to the signature on his or her registration card. Persons responsible for casting fraudulent votes may be identified

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by comparing the poll list signatures of known fraudulent voting transactions to exemplars taken from suspects.

- States generally require voters to apply for absentee ballots in writing. They also customarily require an absentee voter to sign an oath (generally on the ballot envelope) attesting to the authenticity of the vote. These signatures can be used to identify fraudulent voting transactions, and may also help identify potential defendants.
- Election officials are generally required to maintain logs of absentee applications received and approved, and of ballots issued, returned, and challenged. Once a few fraudulent voting transactions have been identified, this information can be used to identify the subjects with whom the voters involved dealt, and to locate other voters who also dealt with the same subjects.
- Election day tally sheets normally contain the handwritten certification of the poll officials who prepared them, and in many states these officials are required to execute an oath attesting to the authenticity and accuracy of the returns. These documents may corroborate the identities of those persons with official access to the tally sheets.
- Many states require voters who ask for help in voting at the polls to execute affidavits identifying the person they wish to accompany them into the voting booth. This information can be used to identify patterns of voter intimidation and voter bribery.

3. Consider the advantages of federal prosecution

Although the states have principal responsibility for administering the election process, many state law enforcement authorities are not well equipped to act effectively against ballot fraud. State and local prosecutors should be advised of the federal interest in prosecuting election fraud, and of the following factors that favor federal prosecution of this type of case:

- Resources. Election fraud investigations usually require a fairly large manpower commitment, which the federal government is normally better able to marshal than are local law enforcement authorities.

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- Grand jury. The development of election crime cases requires an effective grand jury process through which testimony can be secured from the vulnerable witnesses who are frequently encountered in these cases, and through which necessary documentation can be secured.
- Broadly drawn venire. Election fraud is usually best tried by juries that are not drawn from the immediate location where the alleged fraud occurred. Federal venires are normally drawn from wider geographic areas than are state or local venires.
- Political detachment. State and local prosecutors are usually more closely linked to local politics than are federal prosecutors. Federal prosecution of election crime may therefore be viewed by the media and the public as more impartial.

4. Focus on areas vulnerable to election fraud

Election crime is most apt to occur in jurisdictions where there is substantial conflict among political factions, where voters are fairly equally distributed among factions, where local officials wield substantial power, and where there is a high degree of voter apathy. Jurisdictions meeting these criteria should be identified, and complaints coming from them given special attention in allocating investigative resources.

5. Develop your investigative strategy early

The typical election fraud scheme involves many levels of participants performing a variety of tasks on behalf of political operatives. For example, vote buying schemes usually have "haulers," who take voters to the polls and pay them; "lieutenants" or "bankers," who obtain and distribute the money to the haulers; "captains," who coordinate the activities of the haulers; and "checkers," who accompany the voters into the voting booth to assure that they vote "correctly."

It is important to attempt at an early stage to identify as many of the participants in the scheme as possible and to assess their relative culpability. It is also helpful to identify the likely motive behind the scheme. An investigative strategy can then be developed which targets low-level participants for the purpose of encouraging them to be witnesses against more highly placed participants in the election scheme. These less culpable participants may also provide evidence and leads regarding the illegal activity or scheme motivating the election fraud.

Structuring Election Fraud Investigations

B. THE INVESTIGATION

Election fraud investigations fall into two stages: a preliminary investigation, followed by a grand jury investigation and an FBI full field investigation. Preliminary investigations are usually initiated by the United States Attorney's Office or FBI office that received the complaint. Consultation with the Public Integrity Section is required before grand jury and FBI full field investigations are initiated. FBI participation must also be approved by FBI headquarters.

1. Preliminary investigation

A preliminary investigation typically involves interviewing the complainant, and then conducting sufficient investigation to

- identify the crime allegedly committed;
- determine whether that crime is prosecutable under federal law;
- evaluate the need for federal intervention as a function of
 - the extent to which the crime impacted adversely on a federal election,
 - the desire and capability of local law enforcement officials to handle the case, and
 - the scope and duration of the crime;
- identify persons who may have participated in the scheme; and
- identify, if possible, a few specific fraudulent voting transactions.

After the results of the preliminary investigation are reviewed by the United States Attorney's Office, they are forwarded to the Public Integrity Section and FBI headquarters, along with the United States Attorney's recommendation as to whether further investigation is warranted. At this point, the matter will usually be discussed between attorneys in the Public Integrity Section and the United States Attorney's Office handling the matter. After this consultation, a grand jury and/or full field investigation will be initiated in appropriate cases.

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2. Grand jury and FBI full field investigations

The purpose of grand jury and FBI full field investigations is to develop sufficient evidence against specific subjects to support indictments. These investigations are often time-consuming and labor intensive, and generally involve obtaining and examining many election documents. Investigative approaches for two common types of election fraud are discussed below.

C. INVESTIGATING TWO TYPES OF ELECTION FRAUD

The most frequently encountered election frauds are absentee ballot fraud and ballot box stuffing. Strategies for investigating these frauds are similar, but not identical.

1. Absentee ballot frauds

Absentee ballot frauds involve the corruption of absentee voting transactions through such means as bribery, forgery, intimidation, and voter impersonation. Investigating these frauds involves identifying specific fraudulent voting transactions, interviewing voters who were corrupted or defrauded, using these persons as witnesses to prosecute those who corrupted or defrauded them, and flipping those defendants to make cases against higher-level targets. The typical investigative approach is to:

- Subpoena relevant absentee ballot documentation. This documentation includes applications for absentee ballots; absentee ballots; envelopes in which ballots are placed (usually called a "privacy" or an "oath" envelope); outer envelopes forwarding ballots for tabulation (usually called a "mailer"); logs kept by election officials of applications issued, applications received, ballots issued, ballots returned, and ballots challenged; and the permanent voter registration cards for the voters ostensibly involved.
- Analyze election documents. Ballot applications and oath envelopes generally contain three key items which often reveal questionable voting transactions: the voter's purported signature, signatures of witnesses or notaries, and the address where the ballot package was sent. Examples of significant data are common notaries and witnesses; mismatches of voters' signatures on absentee ballot applications, ballot envelopes, or registration

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cards; and applications directed to be sent to addresses other than the voters'.

- Identify similar transactions. If the preliminary investigation identifies specific questionable voting transactions, the document analysis should be directed at identifying voting transactions having similar characteristics, such as the same handwriting, witnesses, or addresses to which absentee ballot packages were sent.
- Interview voters allegedly involved. After identifying questionable voting transactions, the voters whose names appear on the documents should be interviewed to determine whether they voted, and if so, under what circumstances (for example, whether they were paid, intimidated, or not consulted).³⁰
- Compare handwriting exemplars of subjects. Handwriting exemplars of persons suspected of forging absentee ballot documents should be obtained and compared with the handwriting on those questioned documents.
- Develop multiple witnesses. Voters involved in fraudulent voting transactions are usually poorly educated, often intimidated by defendants and courtrooms, and generally do not make strong witnesses.³¹ Successful prosecutions of this type of case normally require the testimony of several voter-witnesses against each defendant.

2. Ballot box stuffing cases

These cases involve the insertion into ballot boxes of invalid, fraudulent, or otherwise illegal ballots. All ballot box stuffing schemes necessarily involve poll officials, since access to voting documents is essential to this type of fraud and is controlled by state law. Ballot box stuffing

³⁰ It is the Department's practice not to prosecute voters who may have some criminal exposure, and instead seek their testimony against those who sought to corrupt them. See Chapter One, § E.3.

³¹ These very factors, on the other hand, demonstrate to the jury the susceptibility of these persons to manipulation, which is often important evidence in the case.

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investigations seek to identify fraudulent voting transactions and to link specific poll officials to them. The general investigative methodology is to:

- Subpoena election documents. Obtain and examine the poll lists or other documentation that voters sign when entering the polls; the registration cards for voters residing in the target precinct; any paper or punch card ballots; and any tally sheets prepared by the poll officials reporting the election results.
- Examine election documents. Examine poll lists for similar handwriting, giving special attention to names entered at times when voting activity was slow (such as mid-morning and early afternoon) and shortly before the polls closed.
- Compare voters' signatures. Signatures on the poll list should be compared with corresponding permanent registration cards to identify voters who may not have cast the ballots attributed to them.
- Take handwriting exemplars. Exemplars should be taken from each poll official having access to the ~~ballot~~ box, and then compared with questionable signatures of alleged voters.
- Interview voters. Once identified, the voters whose ballots were used in the scheme should be interviewed to determine whether they voted at the polls, and, if so, under what circumstances.
- Secure the cooperation of a poll official. If necessary (and after a complete and truthful proffer), cooperation should be sought by offering immunity or a misdemeanor plea to the first poll official who agrees to cooperate in the investigation.
- Prosecute the remaining poll officials implicated in the scheme. After the poll officials are convicted, obtain their testimony to prosecute the politicians, candidates, and others involved in the election fraud and in any related crimes.

D. A FEW CAUTIONS

Election fraud investigations raise a number of issues not normally encountered in other criminal investigations. Federal prosecutors and investigators should keep the following principles in mind:

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- Respect the integrity of the polls. All states define by statute those persons entitled to be inside the polls during an election. Most state poll access laws do not permit federal law enforcement officials access to open polling places. Asking federal investigators to enter open polls risks violating the sovereignty which the states have in this area, and may lead to confrontations among poll officials, local police, and federal agents. It also risks violating a federal statute which prohibits sending armed federal agents to the polls. 18 U.S.C. § 592.
- Noninterference with the voting process. States use many types of documentation in conducting elections (such as registration cards, voter lists, poll books, and voting machines), and in tabulating and certifying the results (such as ballots, tally sheets, and absentee voting materials). Subpoenas for such documentation must be timed so as to not deprive election officials of records which they need to tabulate votes and certify election returns.
- Nonprosecution of voters. Most election fraud schemes involve subjects who manipulate voters in an effort to corrupt their ballot choices. Where voters are involved in ballot fraud schemes, it is the Justice Department's practice to treat them as victims and to use their testimony against those who sought to corrupt or take advantage of them.
- Need for probable cause before opening sealed ballots. Absentee ballots may come into the possession of federal officials while still sealed in the envelopes bearing the names of the voters who ostensibly marked them. Also, a few states provide for some types of paper ballots to be numbered in a way that corresponds with the order of signatures on a poll list. In either situation, marked ballots can be attributed to individual voters. This is particularly useful in cases involving suspected fraud in the marking or alteration of the ballot document itself. However, since voted ballots are documents in which individuals have an expectation of privacy, sealed ballots should not be opened without satisfying the Fourth Amendment's probable cause standard. Accordingly, a search warrant should be obtained before taking investigative steps that would result in linking individual ballots to the voters who allegedly cast them. Alternatively, if the individuals whose names appear on the sealed ballot envelopes deny that they voted, these individuals

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may be asked if they are willing to open the ballot envelopes ostensibly "voted" by them.

E. CONCLUSION

Election fraud cases can be successful and uncomplicated. Success often depends on taking care to obtain the cooperation and the confidence of voters and others who were used by the defendants to subvert the election process. Indeed, maintaining the confidence of the persons victimized in one way or another in election fraud schemes is often crucial to conviction. If these persons are encouraged to view their cooperation as vital to protecting themselves and their elected government from corruption which harms their own short-term and long-term interests, they are more likely to be willing to testify regarding the corrupt activities of powerful local officials.

In addition, prosecutors and investigators should use great care to avoid the pitfalls peculiar to this type of case. Close consultation with the Public Integrity Section and its Election Crimes Branch -- although not required after grand jury or FBI full field investigations have been approved -- can help avoid those pitfalls, develop effective investigative and legal strategies, and increase the likelihood of prosecutive success.

CHAPTER FOUR

FEDERAL ELECTION DAY PROCEDURES

There is a substantial federal interest in ensuring that complaints of election abuses which are made during federal elections are reviewed carefully and promptly. This review allows the Department of Justice to determine whether the alleged facts warrant a criminal investigation, and, if so, of what nature and scope. Accordingly, the Department has established an Election Day Program for those elections in which the federal interest is greatest. These are the federal general elections which occur in November of the even-numbered years. During these elections, the entire United States House of Representatives and one-third of the United States Senate are elected, along with, every four years, the President and Vice President.

The Election Day Program is designed to coordinate Departmental responses to election-related allegations among the United States Attorneys' Offices, FBI field offices, and Justice Department prosecutors in Washington, D.C. It also alerts the public to the Department's commitment to prosecuting election fraud.

Three important principles apply to the Election Day Program.

First, as with all election crime matters, the Election Day Program emphasizes the detection, evaluation, and prosecution of crimes -- not their prevention. As a general rule, the Department has neither the responsibility nor the authority to intercede in the election process itself.

Second, except in matters involving alleged discrimination, the Justice Department does not place observers inside open polling stations, even though there may be a reasonable basis for believing that criminal activity will occur there. This practice arises in part from respect for state laws governing who may be inside open polls, and in part from 18 U.S.C. § 592, which prohibits federal officials from stationing "armed men" at places where elections are in progress.

Third, the Department has no authority to intercede on behalf of private litigants in civil election contests. Such matters are private in nature, and are customarily redressed through election contests under state law or civil rights suits under 42 U.S.C. § 1983.

Federal Election Day Procedures

The Election Day Program calls for each United States Attorney to designate one or more senior Assistant United States Attorneys to serve a two-year term as District Election Officer. These AUSAs are offered training or guidance by the Department in the area of election crime investigations and prosecutions, and they manage the district's response to election crime. The Program then proceeds as follows:

A few days before the November federal elections --

- The Justice Department issues a press release emphasizing the federal interest and role in prosecuting election crime.
- Similar press releases are then issued throughout the country by each United States Attorney. The telephone number of each AUSA serving as a District Election Officer is publicized locally, as well as the telephone numbers of the local offices of the FBI. Citizens are encouraged to bring complaints of possible election fraud to the attention of these law enforcement officials.

On election day --

- In each district, the District Election Officer receives and handles election fraud allegations.
- FBI agents are made available in each district to receive election-related complaints from all sources.
- If warranted, the District Election Officer or United States Attorney may request the FBI to interview a person who alleges that election crime has occurred. However, care must be taken to assure that the interview does not in any way affect the election itself. To avoid this potential danger, active investigation of election-related allegations does not start until the election is over.
- In Washington, prosecutors in the Criminal Division's Public Integrity Section are available as long as polls remain open, to provide advice to United States Attorneys, District Election Officers, and FBI personnel. Special attention is given to preserving evidence that might lose its integrity with the passage of time.

Federal Election Day Procedures

- Under exceptional circumstances, FBI headquarters will authorize its agents to conduct surveillance of open polling places, upon request of the Public Integrity Section. However, such surveillance must be predicated on preexisting evidence that observable illegal activities (such as vote buying) are likely to occur in the immediate vicinity of a specific poll. Visual surveillance in such instances is directed at obtaining evidence for use in subsequent prosecutions, not at preventing or terminating the illegal conduct. Such requests require particularly close review because of the risk of chilling legitimate voting activity. Therefore, requests for authorization to use visual surveillance should be addressed to the Public Integrity Section as far before the election as is feasible.

After the election --

- A United States Attorney's Office may request the FBI to conduct a preliminary investigation into election fraud allegations that the Office believes warrant further inquiry.
- The Public Integrity Section may also request a preliminary investigation into any election-related allegations.
- The results of each preliminary investigation are reviewed by attorneys in the United States Attorney's Office and in the Public Integrity Section. These offices then consult to determine which matters may warrant a grand jury and full field investigation.
- The United States Attorney's Office, with the assistance of the FBI, conducts whatever additional investigation that Office deems appropriate.
- At the conclusion of the investigation, the United States Attorney's Office discusses any proposed federal charges with the Public Integrity Section. After this consultation, the United States Attorney's Office prosecutes those charges.
- On occasion, the Public Integrity Section also investigates and prosecutes election crimes.

PART II
CAMPAIGN FINANCING FRAUD

CHAPTER FIVE

CAMPAIGN FINANCING FRAUD

A. HISTORICAL BACKGROUND

The Federal Election Campaign Act of 1971, as amended, (FECA) assembles in one place most of the federal laws which regulate the financing of federal political campaigns. Many of these provisions were originally in Title 18, and are now located in 2 U.S.C. §§ 431 through 455. In addition, in 1976 Congress supplemented the FECA by enacting two statutes which authorize public financial assistance to candidates seeking the Presidency: the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042, and the Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001-9012.

Intentional and factually aggravated violations of the FECA are crimes, subject to prosecution by the Justice Department. However, unlike other federal election crime statutes, the FECA is primarily a regulatory and disclosure law, administered and enforced by an independent federal agency, the Federal Election Commission (FEC).

Most violations of the FECA and the public financing provisions of Title 26 are handled civilly by the FEC. A campaign financing violation is generally prosecuted criminally only if it was a willful violation of a core prohibition of the FECA (see § B.1 below), involved a substantial sum of money, and resulted in the reporting of false campaign information to the FEC.

In addition, a scheme to infuse illegal sums into a federal election campaign impedes the FEC in its statutory enforcement and disclosure responsibilities. Such schemes have been successfully prosecuted as conspiracies to obstruct and impede the lawful functioning of a government agency under 18 U.S.C. § 371, and as willfully causing false information to be submitted to a federal agency under 18 U.S.C. § 1001. United States v. Hopkins, 916 F.2d 207 (5th Cir. 1990). See also United States v. Curran, 20 F.3d 560 (3d Cir. 1994).

The FECA applies only to financial activity intended to influence the nomination or election of candidates running for federal office (the Senate,

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House of Representatives, Presidency, Vice Presidency).³² It contains two basic types of provisions: campaign financing statutes, which regulate the sources and amounts of funds given or spent to influence federal elections; and campaign reporting statutes, which require disclosure by federal candidates and federal political committees of the sources and recipients of their campaign funds.³³ These types of statutes are discussed separately below.

1. Campaign financing legislation

Campaign financing statutes limit or prohibit contributions from certain sources in the interest of deterring corruption and the appearance of corruption of the election process. Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990); First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978); Buckley v. Valeo, 424 U.S. 1 (1976).

The first federal campaign financing statute was the Tillman Act of 1907, which prohibited corporations from making contributions to federal candidates. In 1925, the Corrupt Practices Act provided additional campaign limitations. Emergency legislation during World War II prohibited labor organizations from making contributions or expenditures in connection with a federal election, a ban that was later made permanent in the Taft-Hartley Act. In 1948, government contractors were added as prohibited sources of federal campaign funds. Between 1948 and 1972, the Supreme Court defined the constitutional parameters of these laws. Pipefitters Local 562 v. United States, 407 U.S. 385 (1972); United States v. Auto Workers, 352 U.S. 567 (1957); United States v. C.I.O., 335 U.S. 106 (1948).

These decisions were incorporated into the first FECA, passed in 1971. The 1974 amendments to the FECA added new limits on political contributions and expenditures. These limits were subjected to rigorous constitutional scrutiny by the Supreme Court in Buckley v. Valeo. The Court upheld the FECA's limits on contributions, but overturned its expenditure limits as unconstitutional infringements on First Amendment speech.

³² There are two exceptions to this limited application; these are discussed at §§ B.3 and B.6, below.

³³ The FECA also contained a provision limiting the receipt of honoraria, 2 U.S.C. § 441i, which was repealed in 1991. Honoraria limitations are now contained in 5 U.S.C. app. § 7.

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The constitutional defects in the 1974 FECA were corrected in the Act's 1976 amendments, which also transferred nine criminal statutes dealing with campaign financing from the criminal code (former 18 U.S.C. §§ 608 and 610-617) to the FECA (present 2 U.S.C. §§ 441a-441h). The 1976 Amendments also re-created the FEC,³⁴ which was entrusted with exclusive civil enforcement jurisdiction over FECA violations.

The 1979 amendments to the FECA increased the monetary threshold for a criminal violation, reaffirming the principle that technical and nonaggravated FECA violations should be handled by noncriminal means. 2 U.S.C. § 437g(d). Accordingly, only those FECA violations that are committed knowingly and willfully and involve at least \$2,000 are crimes. See AFL-CIO v. FEC, 628 F.2d 97 (D.C. Cir.), cert. denied, 449 U.S. 982 (1980); United States v. Tonry, 433 F. Supp. 620 (E.D. La. 1977).

2. Campaign reporting legislation

The first attempt at requiring federal candidates to disclose the identities of their campaign contributors was the 1925 Corrupt Practices Act. However, this statute was both imprecise and riddled with exceptions, and it was replaced in 1971 with the first FECA.

Until the FEC was first created in 1974, the only enforcement remedy for violations of campaign disclosure laws was criminal prosecution. However, for a variety of reasons ranging from prosecutors' unfamiliarity with the type of crime to the frequent absence of aggravating factors, few violations were pursued criminally. Despite this, several of the Watergate cases were successfully predicated on the first FECA. See, e.g., United States v. Finance Committee to Re-Elect the President, 507 F.2d 1194 (D.C. Cir. 1974).

Today the FEC enforces most FECA reporting violations by administrative sanctions and civil penalties. The Justice Department's role in enforcing the FECA's reporting requirements is confined to reporting violations which accompany aggravated violations of one of the FECA's core campaign financing prohibitions, which are discussed immediately below.

³⁴ The FEC was first created by the 1974 FECA amendments, but its composition was held unconstitutional in Buckley v. Valeo because Congress had given the FEC the powers of an agency of the executive branch but had required that some of the FEC's commissioners be appointed by Congress.

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B. STATUTES

Following are the principal FECA campaign financing and reporting statutes; the full text of these statutes is reprinted in Appendix C. Criminal violations of the FECA are one-year misdemeanors and are subject to fines under 18 U.S.C. § 3571.

1. The "core" provisions of the FECA

In general, to warrant criminal prosecution an FECA fraud must have subverted one of the FECA's principal substantive, or "core," provisions. These provisions, and the principles underlying them, are:

- Limits on contributions from persons and groups. Large political contributions lead to perceived and actual corruption of public officials. The FECA therefore puts quantitative limits on the amounts that potential contributors can give to candidates seeking federal elective office and to political committees supporting federal candidates. 2 U.S.C. § 441a(a).
- No contributions from corporations and unions. Financial political activism by unions and corporations can distort, and potentially corrupt, campaign issues. To avoid these adverse effects, and to protect minority members and shareholders from having their shared capital used for political purposes they do not support, unions and corporations may not make contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b.
- No contributions from federal contractors. Persons and firms that are signatories on contracts to provide material, equipment, services, or supplies to the United States Government, or who negotiate for such contracts, should not seek to influence federal officials through political donations. They therefore may not make contributions or expenditures to influence the election of federal candidates. 2 U.S.C. § 441c.
- No contributions from foreign nationals. The American electoral process should be shielded against improper foreign financial influence. Accordingly, persons who are not citizens of the United States or lawfully admitted for permanent residence may not contribute to any political campaign, whether at the federal, state, or local level, in this country. 2 U.S.C. § 441e.

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- No disguised contributions. To prevent circumvention of the above limits and prohibitions, and to secure the accurate public reporting of all significant campaign financial data, contributions to federal candidates that are laundered through conduits to disguise the real source of the funds are prohibited. 2 U.S.C. § 441f.
- No avoidance of the FECA's disclosure requirements. The FECA is a "sunshine" statute. It reflects Congress's belief that the public has a right to know which individuals and organizations support which federal candidates, and in what amounts, so that voters can make informed decisions at the polls. The FECA therefore requires timely and accurate reporting of all contributions over \$200 to federal candidates and committees seeking to elect federal candidates, and all expenditures over \$200 on behalf of federal candidates. 2 U.S.C. § 434.

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

Section 441a sets quantitative limits on the amounts individuals, committees, and other entities may contribute to federal candidates and political committees. It also limits campaign expenditures by party committees and presidential candidates.

A "contribution" is a gift or loan by one person or entity to another to enable the recipient to engage in political speech or activity of the recipient's choosing. 2 U.S.C. § 431(8). An "expenditure" is a disbursement made directly by the owner of the funds for political speech or activity by the owner of the funds, who determines the use of the funds. 2 U.S.C. § 431(9). An ostensible expenditure can be transformed into a contribution when the candidate being benefited has input into how the funds are spent. 2 U.S.C. § 441a(a)(7)(B).

The distinction between a contribution and an expenditure under the FECA has constitutional significance. Contributions are indirect rather than direct political speech, and as such are subject to more stringent regulation than are expenditures. Buckley v. Valeo, 424 U.S. 1, 13-59 (1976).

Section 441a contains two sets of contribution limits:

First, under section 441a(a)(1), contributions from "persons" (individuals, associations, and committees) may not exceed:

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- \$1,000 to a federal candidate per election;
- \$20,000 to a national party committee per year; or
- \$5,000 to any other political committee per year.

Second, under section 441a(a)(2), contributions from "multi-candidate political committees" (committees registered for six months with the FEC that have received contributions from over fifty persons and that support at least five federal candidates) may not exceed:

- \$5,000 to a federal candidate per election;
- \$15,000 to a national party committee per year; or
- \$5,000 to any other political committee per year.

Individuals are also subject to an overall annual contribution limit of \$25,000. Section 441a(a)(3).

These contribution limits do not apply to transfers of funds among national, state, and local party committees, or to transfers among affiliated political committees (that is, those controlled by the same person or entity). However, all affiliated committees share a single contribution limit with respect to contributions they make to candidates and political committees. Section 441a(a)(5). A separate provision permits the Republican and Democratic senatorial campaign committees, as well as the national party committees, to contribute up to a combined maximum of \$17,500 to a candidate for the Senate during the year in which he or she is standing for election. Section 441a(h).

A candidate's expenditures can constitutionally be limited only if the candidate voluntarily elects to participate in a public funding program. Buckley v. Valeo, 424 U.S. at 54-59; 2 U.S.C. § 441a(b). At present, only presidential candidates have the option of choosing to receive federal funds for their campaigns; hence, these are the only candidates who may be subject to expenditure limits. There are, moreover, no limits on expenditures by citizens made independently of the campaign organizations of the candidates being benefited thereby, or on campaign expenditures by congressional or senatorial campaigns.

To be a federal crime, a violation of section 441a must be committed knowingly and willfully, and must involve at least \$2,000. 2 U.S.C. § 437g(d). Accordingly, most of the cases prosecuted under this statute involve excessive transactions that are effected either surreptitiously (such as through the use of cash or conduits) or in the furtherance of some felonious objective (such as a bribe that is disguised as a contribution to a

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candidate). Less aggravated violations are handled civilly or administratively by the FEC.

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

Section 441b has two basic prohibitions. The statute prohibits any state-chartered corporation, or any labor organization, from making a contribution or expenditure in connection with any federal election. In addition, it prohibits a national bank or a federally chartered corporation from making a contribution or expenditure in connection with an election to federal, state, or local office.³⁵

Section 441b also 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. The statute does not restrict contributions or expenditures from the personal resources of corporate or union officials.

The heart of this statute is its ban on the use of corporate funds, and monies required as a condition for membership in a labor organization, to engage in "active electioneering" in federal campaigns. United States v. Auto Workers, 352 U.S. 567 (1957); United States v. Pipefitters Local 562, 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. Auto Workers. Nor does it apply to nonpartisan expenditures, or to the costs of publishing statements of editorial opinion in corporate or union newspapers. United States v. C.I.O., 335 U.S. 106 (1948).

In 1972, the Supreme Court held that section 441b's predecessor, 18 U.S.C. § 610, did not forbid corporations or unions from using treasury funds to establish and operate "separate segregated funds" -- now widely known as political action committees (PACs) -- provided the PACs confined their activity to raising voluntary contributions from corporate employees or union members, respectively. Pipefitters, 407 U.S. at 409. Subsequent

³⁵ This statute is one of the two FECA prohibitions that extend to nonfederal elections; the other is 2 U.S.C. § 441e, which bans contributions from foreign nationals to federal and nonfederal elections.

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FECA amendments have added a complex regulatory scheme to this relatively simple principle. Today, the timing, nature, and scope of corporate and union political activity are regulated in substantial detail by the statute itself, sections 441b(b)(2), (3), and (4), and implementing regulations promulgated by the FEC, 11 C.F.R. Part 114.

Section 441b does not apply to funds expended in connection with referenda or ballot propositions, First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978), or to a limited class of nonprofit corporations established solely to promote issues, rather than individuals, FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986).

Section 441b was designed 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. Auto Workers; Cort v. Ash, 422 U.S. 66 (1975); Pipefitters. The constitutionality of section 441b has been frequently litigated. Today it is well established that the statute's broad prohibition on corporate and union political activity conforms to the First Amendment. Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990); FEC v. National Right To Work Committee, 459 U.S. 197 (1982); Athens Lumber Co. v. FEC, 718 F.2d 363 (11th Cir. 1983), cert. denied, 465 U.S. 1092 (1984); United States v. Boyle, 482 F.2d 755 (D.C. Cir.), cert. denied, 414 U.S. 1076 (1973). The fact that the statute treats corporations and unions somewhat differently because of their fundamentally different structures and compositions has been held not to offend the Equal Protection Clause. Austin; International Association of Machinists v. FEC, 678 F.2d 1092 (D.C. Cir.), aff'd, 459 U.S. 983 (1982).

Criminal violations of the FECA must have been committed with willful intent. As a result, absent direct evidence of knowing and willful conduct, a prosecution under section 441b will most likely be successful where there is proof that funds were diverted from a corporate or union treasury and laundered on their way to politicians, or where violations of this statute are part of a larger pattern of criminal activity.

4. Contributions by government contractors:

2 U.S.C. § 441c

Section 441c prohibits any person who is a signatory to, or who is negotiating for, a contract to furnish material, equipment, services, or supplies to the United States Government, from making or promising to make a political contribution. It has been construed by the FEC to reach

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only donations made or promised for the purpose of influencing the nomination or election of candidates for federal office. 11 C.F.R. § 115.2. The statute applies to all types of businesses, including sole proprietorships, partnerships, and corporations. It reaches gifts made from such firms' business or partnership assets. With respect to partnerships, however, the FEC has determined that section 441c does not prohibit donations made from the personal assets of the partners. 11 C.F.R. § 115.4.

Section 441c applies only to business entities that have negotiated or are negotiating for a contract 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 it reach persons who provide services to third party beneficiaries under federal programs that require the signing of agreements with the federal government, such as physicians performing services for patients under Medicare. Finally, officers and stockholders of incorporated government contractors are not covered by section 441c, since the government contract is with the corporate entity, not its officers.

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

As with section 441b, the Justice Department only prosecutes aggravated and willful violations of section 441c. Less-aggravated violations are handled noncriminally by the FEC.

5. Political endorsements and solicitations:

2 U.S.C. § 441d

Section 441d requires that two types of campaign communications identify the entity responsible for the communication: communications "expressly advocating the election or defeat" of a federal candidate, and communications which solicit contributions for a federal election. The statute does not cover anonymous communications that leave to inference the identity of the particular candidate, or that do not clearly state that voters should cast ballots for or against that candidate. FEC v. Central Long Island Tax Reform Immediately Committee, 616 F.2d 45 (2d Cir. 1980). The FEC, acting pursuant to its advisory opinion authority under 2 U.S.C. § 437f, has excluded several categories of campaign advocacy (such as bumper stickers and skywriting) from the reach of this law. 11 C.F.R. § 110.11(a)(2).

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In order to be prosecuted as a crime under the FECA, activity violating section 441d must have been committed with willful intent and must have entailed the expenditure of \$2,000 or more per year. Most violations of section 441d do not warrant prosecution, and are handled administratively by the FEC.

6. Contributions by foreign nationals: 2 U.S.C. § 441e

Section 441e prohibits any foreign national from making, directly or through any other person, any contribution in connection with any federal, state, or local election.³⁶ It also prohibits any person from knowingly soliciting or accepting such a contribution. As with other campaign financing laws, section 441e violations can be prosecuted as misdemeanors under the FECA when they are committed "knowingly and willfully" and involve at least \$2,000.

"Foreign national" includes any person, other than a United States citizen, who is a "foreign principal" within the meaning of the Foreign Agents Registration Act, 22 U.S.C. § 611, and any person who is neither a citizen of the United States nor an individual lawfully admitted for permanent residence. Section 441e(b). A "foreign principal" includes a foreign government, a foreign political party, and a corporation organized under the laws of a foreign country. None of these entities may make contributions to a candidate in any election in the United States.

Through its regulations, as well as in several advisory opinions and civil enforcement cases, the FEC has addressed the application of section 441e to contributions by domestic subsidiaries of foreign corporations.³⁷ A domestic subsidiary that is chartered under the laws of any state or United States territory, and that has its principal place of business in the United States, is not a foreign principal -- even though all of its capital stock may be owned by foreign individuals or entities. The FEC has, however, concluded that section 441e prohibits contributions by a domestic subsidiary if the parent foreign corporation provides funding for the contribution, or

³⁶ As noted previously, this statute and section 441b are the only two federal campaign financing laws that reach contributions to nonfederal as well as federal elections.

³⁷ Persons who rely in good faith on an FEC advisory opinion are immune from sanctions under the FECA, including criminal prosecution. 2 U.S.C. § 437f(c)(2).

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if individual foreign nationals are involved in any way in making the contribution. In 1991, the FEC rejected proposed rulemaking to expand the scope of section 441e to include domestic subsidiaries of foreign-owned entities.

The scienter requirement, combined with the legal uncertainty concerning the reach of section 441e to contributions by foreign-owned businesses and their domestic subsidiaries, have made it difficult to bring prosecutions under this statute.

7. Conduit contributions: 2 U.S.C. § 441f

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

Section 441f is violated if a person gives funds to a straw donor, or conduit, for the purpose of having the conduit pass the funds on to a federal candidate as his or her own donation. A violation also can occur if a person reimburses a donor who has already given to a candidate, thus in effect converting the donor's contribution to his or her own. Under such circumstances, the motive is usually to preserve the original donor's anonymity, as the contribution will be reported publicly as having been made by the straw donor rather than by the true source. The use of conduits is also a means of circumventing the contribution limits in section 441a and the contribution prohibitions in sections 441b, 441c, and 441e.

The use of conduits to disguise illegal contributions to federal candidates is evidence of an intent to interfere with the accurate reporting of campaign contributions and to deliberately cause false information to be conveyed to the FEC. Such conduct violates 18 U.S.C. §§ 371 and 1001. United States v. Hopkins, 916 F.2d 207, 213-15 (5th Cir. 1990). Laundering campaign contributions through straw donors is also persuasive evidence of the FECA's willful intent element (conscious defiance of the law). 2 U.S.C. § 437g(d); AFL-CIO v. FEC, 628 F.2d 97, 98, 101 (D.C. Cir.), cert. denied, 449 U.S. 982 (1980).

Although conduits may also have criminal exposure under section 441f, the Justice Department customarily treats conduits as witnesses against the

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person who recruited them to launder the funds.³⁸ This policy also recognizes that most section 441f violations are merely means to other illegal ends, and that the conduits are merely the vehicle used by the defendant for corrupt purposes.

Conduit schemes often involve multi-district activity, and therefore the question of where a contribution is "made" or "received" within the meaning of § 441f can present complex venue questions. For a discussion of such venue issues, see United States v. Passodelis, 615 F.2d 975 (3d Cir.) (reversing, on venue grounds, conviction under 18 U.S.C. § 614 (predecessor to section 441f)), reh'g denied, 622 F.2d 567 (3d Cir. 1980) (en banc). For a discussion of the complex statute of limitations issues that also can arise in such cases, see United States v. Hankin, 607 F.2d 611 (3d Cir. 1979) (reversing section 614 conviction on statute of limitations grounds).

8. Limitation on contribution of currency: 2 U.S.C. § 441g

Section 441g makes it unlawful for any person to contribute more than \$100 in United States or foreign currency to a candidate for federal office. This limitation is cumulative, and applies to the candidate's entire campaign, including the primary and general election. The limitation differs from and is in addition to the contribution limitations in section 441a.

The statute does not directly address receiving cash for political purposes, but campaign agents who knowingly solicit or receive cash in violation of section 441g are liable as aiders and abettors under 18 U.S.C. § 2.

9. Fraudulent misrepresentation of campaign authority: 2 U.S.C. § 441h

Section 441h prohibits federal candidates and their agents from making fraudulent misrepresentations that they have authority to speak or act for another federal candidate or political party on a matter damaging to the other candidate or political party. Unlike all other FECA crimes, violations of section 441h may be prosecuted without regard to the sum of money involved. 2 U.S.C. § 437g(d)(1)(C).

³⁸ However, the conduits remain subject to FEC civil enforcement proceedings; depending on the extent of their conduct, this may result in civil penalties.

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

Section 439a regulates the use of surplus campaign funds donated to federal candidates. Under recent amendments to this statute, such funds may not be converted by any federal candidate or federal official to his or her use for any personal purpose. Such action, if committed knowingly and willfully, could be prosecuted as a misdemeanor.

As originally enacted, the statute provided that surplus campaign funds: (1) may be used to defray a federal candidate's expenses in connection with his or her duties as an elected public official; (2) may be contributed to charities; (3) may be transferred to political party committees; and (4) may be used for "any other lawful purpose." However, it was unclear whether the phrase "lawful purpose" included the use of campaign funds for personal purposes.

In 1980, Congress amended Section 439a to expressly prohibit new Members of Congress from using campaign funds for "any personal purpose." However, Members serving on January 8, 1980, when this amendment went into effect, were specifically exempted from the ban. Pub. L. 96-197, 93 Stat. 1354. This "grandfather clause" lasted until the beginning of the 103d Congress in January 1993.³⁹ Pub. L. 101-194, Title V, § 504(a), 103 Stat. 1755 (Nov. 30, 1989). Since that date, the statute has prohibited all Members of Congress, whether or not covered by the former grandfather clause, from using campaign funds to defray personal expenses. Thus, all current and future Members of Congress, as well as all other federal candidates, are now subject to the same prohibition on converting campaign funds to personal use.

11. Campaign Reporting: 2 U.S.C. § 434

The FECA's principal definitions and reporting requirements are found in 2 U.S.C. §§ 431, 432, and 434.

In brief, federal candidates and political committees supporting federal candidates are required to file with the FEC a statement of organization

³⁹ Not surprisingly, this "grandfather clause" was widely criticized by the public. See, e.g., Kevin Chaffee, Saving for a Rainy Day: How Congress Turns Leftover Campaign Cash Into 'Golden Parachutes' (The Center for Public Integrity, 1991).

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and periodic reports of campaign receipts and disbursements. 2 U.S.C. §§ 433, 434(a). These reports are made available to the public, and must identify, among other things, persons contributing over \$200 in a calendar year. Section 434(b)(3)(A). The FECA also requires that persons making independent expenditures (as distinct from contributions) in excess of \$250 to elect or defeat a federal candidate must file reports with the FEC. Section 434(c).

Certain campaign records must also be maintained, including the identity of all contributors giving in excess of \$50. Section 432(c). In addition, persons who collect, receive, or otherwise handle contributions to a federal candidate from other persons are required to forward these contributions to the candidate's campaign treasurer within ten days, along with the name and address of all persons who contributed over \$50 to the candidate. Section 432(b).

The Justice Department does not generally prosecute "pure" campaign reporting violations, unless they are part of a more pervasive pattern of criminal activities, or the circumstances otherwise reflect aggravated criminal wrongdoing. However, reporting violations are normally involved in any aggravated scheme to subvert one of the other "core" campaign financing prohibitions (listed in § B.1, above), and are useful evidence of intent to mislead the FEC and the public.

C. ENFORCEMENT

1. Three types of enforcement

Federal campaign financing violations are subject to three types of enforcement actions:

- civil enforcement proceedings brought by the FEC;
- criminal prosecution by the Justice Department as FECA misdemeanors; and
- criminal prosecution by the Department as felonies, either under Title 18 in the case of FECA violations, or under Title 26 for public financing crimes.

Criminal prosecution under the FECA can be pursued before civil and administrative remedies are exhausted. 2 U.S.C. §§ 437g(a),(d); United States v. International Union of Operating Engineers, 638 F.2d 1161

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(9th Cir. 1979), cert. denied, 444 U.S. 1077 (1980); United States v. Tonry, 433 F. Supp. 620 (E.D. La. 1977); United States v. Jackson, 433 F. Supp. 239 (W.D.N.Y. 1977), aff'd, 586 F.2d 832 (2d Cir. 1978), cert. denied, 440 U.S. 913 (1979).

Before the 1976 FECA amendments, all FECA violations were subject to prosecution under a misdemeanor provision which applied regardless of the amount of funds involved and which, on its face, required no criminal intent. 2 U.S.C. § 441 (1972 Supp.)(Repealed). In affirming convictions under the 1971 FECA's reporting provisions, one appellate court held, however, that criminal violations required proof of "knowing" conduct, that is, knowledge of operable facts. United States v. Finance Committee to Re-Elect the President, 507 F.2d 1194, 1197-98 (D.C. Cir. 1974)(finding the defendant's secret transactions "clear indicators of guilty intent").

The 1976 FECA amendments transferred all of the campaign financing statutes from Title 18 to the FECA, and created a statutory dichotomy between nonwillful violations and knowing and willful violations involving \$2,000 or more within a calendar year. The former were expressly made subject to the exclusive jurisdiction of the FEC. Section 437g(a). The latter were made subject to both civil enforcement by the FEC and criminal prosecution by the Justice Department. Sections 437g(a)(5)(B), 437g(d).

2. Civil enforcement

Most violations of the FECA are handled by the FEC through civil and administrative enforcement proceedings. Civil enforcement is clearly appropriate for FECA violations that involve small amounts of money, or that are committed openly and in obvious ignorance of the law. Civil enforcement is also useful when the proof of criminal intent is weak.

The FEC pursues these matters under the statutory scheme set forth in section 437g(a). In brief, civil penalties can be imposed through a "conciliation" process, which is roughly equivalent to an administrative guilty plea with a stipulated penalty agreed upon by the FEC and the respondent; they can also be imposed through a civil suit brought by the FEC in federal district court. Civil sanctions range from "cease and desist" agreements (in which the respondent agrees not to commit a similar violation in the future) to relatively substantial fines. The size of the civil fine depends both on the amount involved in the violation and on the degree of knowledge and intent of the respondent. Sections 437g(a)(5) and (6).

3. Prosecution as FECA misdemeanors

In order for an FECA violation to be a federal crime, two elements must be satisfied: the amount involved in the violation must involve a contribution or expenditure aggregating \$2,000 or more in a calendar year, and the violation must be committed knowingly and willfully. 2 U.S.C. § 437g(d); National Right to Work Committee v. FEC, 716 F.2d 1401 (D.C. Cir. 1983); AFL-CIO v. FEC, 628 F.2d 97 (D.C. Cir.), cert. denied, 449 U.S. 982 (1980). Such cases are generally confined to two situations.

The first is where surreptitious means, such as cash, conduits, or false documentation, are employed to conceal conduct that violates one of the core requirements of the FECA (discussed in § B.1). Such concealment is evidence of the defendant's awareness of the FECA provision being violated. An example is the use of conduits to conceal the fact that corporate funds were infused into a political campaign in violation of 2 U.S.C. § 441b.

The second is where a substantive FECA violation takes place as part of another felonious end. An example is the use of corporate funds to pay a bribe to a public official in violation of 18 U.S.C. § 201, where the bribe is made as an ostensible campaign contribution to the official's campaign committee.

As noted above, an FECA prosecution requires proof that the illegal funds involved in the activity total at least \$2,000 in a calendar year. Section 437g(d). Thus, if an individual contributed \$1,500 to a candidate (which is \$500 over the applicable contribution limit), there is no FECA crime, even if the violation was knowing and willful.

4. Felony theories for FECA prosecutions

Prosecuting aggravated campaign financing violations as Title 18 felonies offers strategic advantages. For example, such cases are governed by the general five-year criminal statute of limitations (18 U.S.C. § 3282) instead of the FECA's three-year limitations period (2 U.S.C. § 455).

The Justice Department has been successful in prosecuting as felonies aggravated schemes to violate one or more of the FECA's core campaign financing prohibitions under the federal conspiracy statute, 18 U.S.C. § 371, and the false statements statute, 18 U.S.C. § 1001. These prosecutive theories have been approved in the Third and Fifth Circuits. United States v. Curran, 20 F.3d 560 (3d Cir. 1994); United States v. Hopkins, 916 F.2d 207 (5th Cir. 1990).

While there are several advantages to using these felony theories, it is important to emphasize that their use requires proof of additional elements beyond those required by the FECA's misdemeanor provision. Proving these additional elements may be difficult in campaign financing cases. Accordingly, these theories should only be applied to aggravated FECA schemes.

The "conspiracy to defraud" approach to FECA crimes is based on Hammerschmidt v. United States, 265 U.S. 182 (1924), which held that a conspiracy to defraud the United States under section 371 includes a conspiracy "to interfere with or obstruct one of [the federal government's] lawful governmental functions by deceit, craft, or trickery, or at least by means that are dishonest." 265 U.S. at 188. See also Dennis v. United States, 384 U.S. 855, 861 (1965); Haas v. Henkel, 216 U.S. 462, 469 (1910).

This conspiracy theory, as applied to the functioning of the FEC, is as follows: The FEC, an agency of the United States, has two principal statutory duties, to enforce the FECA's campaign financing and disclosure requirements, and to provide the public with accurate information regarding the source and use of contributions to federal candidates. See, e.g., 2 U.S.C. §§ 437c, 437d. To perform these duties the FEC must receive accurate information from the candidates and political committees required to file reports. A scheme to infuse patently illegal funds into a federal campaign, such as by using conduits or other means calculated to conceal the illegal source of the contribution, thus disrupts and impedes the FEC in the performance of its statutory duties.

The application of the federal false statements statute, section 1001, to aggravated campaign financing violations follows from United States v. Hansen, 772 F.2d 940 (D.C. Cir. 1985), cert. denied, 475 U.S. 1045 (1986). Congressman Hansen had been indicted and convicted under section 1001 for filing false reports with the House Committee on Standards of Official Conduct under the 1978 Ethics in Government Act (EIGA). Like the FECA, the EIGA is essentially a disclosure statute; the EIGA applies to federal officeholders, while the FECA applies to persons seeking federal office. Also like the FECA, the EIGA has an internal penalty that provides for nonfelony sanctions. The court of appeals rejected the contention that, in enacting the EIGA, Congress had repealed by implication existing felony sanctions for false reports by public officials; the court held that the civil penalty in EIGA and the felony penalty under section 1001 "produce a natural progression in penalties," and that "those who lie on their [EIGA] forms" violate section 1001. Hansen, 772 F.2d at 945.

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As previously noted, prosecution under 2 U.S.C. § 437g(d) requires proof that the defendant was aware of the substantive FECA requirement he violated, and that he violated it notwithstanding this active awareness of wrongdoing. AFL-CIO v. FEC; National Right to Work Committee v. FEC. However, when the conduct is charged under section 371 or 1001, the proof must also show that the defendant intended to disrupt and impede the lawful functioning of the FEC (section 371), or that the defendant willfully made, or caused another to make, a false statement regarding the illegal donation to the FEC (sections 1001, 2(b)).⁴⁰ The Curran case demonstrates that satisfying these scienter requirements can prove challenging.

Curran made illegal contributions to numerous federal candidates by having his employees write, and give to him, checks made out to candidates, for which he immediately reimbursed them in cash. He was charged under sections 371, 1001, and 2(b). The Third Circuit approved the application of these prosecutive theories to Curran's conduct, but found that a new trial was required because of deficiencies in the jury instructions on the level of scienter required.⁴¹ Specifically, the court held that when a defendant who violated the FECA is charged with willfully causing false statements to the FEC under sections 1001 and 2(b), the proof must show that the defendant:

- (1) made a contribution that violated the FECA;
- (2) was aware that the FECA prohibited his conduct, but violated it nonetheless;
- (3) knew that the recipient of the illegal contribution was required to file reports with a government agency; and
- (4) intended to thwart this reporting obligation.

20 F.3d at 569.

⁴⁰ The FECA places the duty to file reports with the FEC on the treasurers of federal campaign committees, who must disclose the name, address, occupation, and employer of all persons contributing over \$200 annually. 2 U.S.C. § 434(b)(3)(A). Yet, in most cases the treasurer is not a participant in the illegal scheme. Hence these defendants are charged under 18 U.S.C. § 2(b), as "willfully causing" the false FEC report.

⁴¹ The court also remanded because it found that the jury charge erroneously defined the defendant's duty to the FEC. 20 F.3d at 569-70.

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Felony theories should only be applied to violations of the FECA's core provisions. The FECA's other provisions are largely technical, and even willful violations of them would rarely warrant criminal prosecution, let alone prosecution as felonies.

5. The anti-fraud provisions of the public financing laws

The anti-fraud provisions of the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042, and the Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001-9012, are felonies, and can be used to prosecute aggravated campaign financing schemes involving presidential campaigns.

These statutes were enacted after the Supreme Court struck down the FECA's limits on campaign expenditures by federal candidates as violative of free speech. Buckley v. Valeo, 424 U.S. 1 (1976). The statutes tie eligibility for federal funds to voluntary adherence to campaign expenditure limits by participating candidates. Presidential candidates are thus now given a choice between making unlimited campaign expenditures, or accepting public funds for their campaigns in return for agreeing to abide by campaign expenditure limits.

The "matching payment" statute applies to the presidential primary campaign. It provides that, once certain statutory qualifications are met, a presidential candidate is entitled to receive matching payments from the United States Treasury for his or her campaign, up to half of the applicable total campaign spending limit. Section 9034(b). Presidential candidates who choose to accept primary campaign matching funds are subject to the campaign expenditure limits of 2 U.S.C. § 441a(b). (The base spending limit for the 1992 presidential primaries was \$26,620,000. Sections 441a(b)(1)(A), 441a(c).)

The general election funding statute allows a candidate who has been nominated for the Presidency to receive all of his or her campaign funds from the United States Treasury. Section 9004(a)(1). Presidential candidates who choose to accept this federal grant are subject to the campaign expenditure limits in section 441a(b) and are also for the most part barred from accepting any private contributions in connection with the general election phase of their campaigns. Sections 9003, 9012. (The base spending limit for the 1992 presidential election was \$55,200,000. Section 441a(b)(1)(B).)

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Both statutes contain bookkeeping and reporting requirements, §§ 9033 and 9003, and require that each campaign receiving federal funds submit to a post-election audit by the FEC. Participating candidates must also agree to pay back all funds which the FEC determines were not used for campaign purposes, or which were spent in excess of the expenditure limit, were not matchable, or were otherwise illegal. Sections 9038 and 9007.

Each of these statutes contains its own criminal provision for, among other things, providing false information to the FEC to obtain public funds, which is punishable by imprisonment for up to five years and a fine under 18 U.S.C. § 3571. Sections 9042(c) and 9012(d).

The administration and civil enforcement of these grant programs are within the FEC's sole jurisdiction. However, since these are federal funding programs, with federal candidates as the beneficiaries, if there is evidence of an intent to defraud the FEC and these programs, criminal prosecution is warranted.

6. Schemes to divert campaign funds

In recent years, the Justice Department has prosecuted the unlawful diversion of federal campaign funds by agents of political campaigns as frauds under Title 18. While these cases have generally involved federal political committees, the theories used may also apply to the illegal diversion of state campaign funds. However, there are no reported decisions dealing with these prosecutions; to date all have been disposed of by guilty pleas.

Campaign fund diversion cases fall into three basic categories:

- a campaign agent diverts incoming contributions to a bona fide campaign to his or her personal use before the contributions are deposited;
- a campaign agent embezzles funds that have been deposited into the account of a bona fide political committee to his or her personal use, usually through fictitious invoices; and
- a fraudulent political organization is established to raise money with the intent to divert the funds to personal use.

Frequently, a combination of these scenarios may be present.

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The first two types of campaign diversions have been charged as frauds by using 18 U.S.C. § 1346, the statute passed by Congress in response to McNally v. United States, 483 U.S. 350 (1987) (holding that the mail fraud statute did not apply to schemes involving intangible rights). Under section 1346, the mail fraud statute (section 1341) and the wire fraud statute (section 1343) once again apply to schemes to defraud a victim of the intangible right to "honest services."

The gist of this type of fraud is the breach of a recognized fiduciary duty of honesty. Where a campaign agent owes such a duty of financial honesty, both to a political committee and to the candidate the committee supports, that duty is breached when the agent diverts incoming contributions, or embezzles funds in the campaign's account. If the scheme is furthered by use of the mails or interstate wires, it may be charged as mail or wire fraud. Such schemes generally involve filing inaccurate campaign reports with the FEC, which, in most cases, are sent through the mails.⁴² Examples of campaign embezzlement cases that have been brought are United States v. Bracewell, Cr. No. 91-57-N (M.D. Ala., superseding indictment filed May 9, 1991), and United States v. Karlsen, Cr. No. 89-353 (D. Az., indictment filed Oct. 18, 1989).⁴³

The third type of campaign fund diversion is normally prosecuted as a fraud under section 1341 or 1343, and is similar to a charity swindle. The victims of this type of scheme are the contributors, who gave money based on the misrepresentation that the funds would be used for political purposes, not for the personal use of a campaign agent.

7. "Bundling" of contributions

"Bundling" is a term applied to the practice of collecting numerous contributions from individuals to a particular federal candidate and then delivering these checks en masse to the candidate. This practice has the appearance, as well as the intended effect, of avoiding the FECA's

⁴² Although these matters may also present FECA reporting violations, especially when embezzled funds are disguised as legitimate campaign expenditures, they are, at bottom, theft and fraud offenses. These cases are thus more appropriately prosecuted under federal felony statutes which address aggravated property crimes.

⁴³ Copies of these indictments, to which the defendants pled guilty, can be obtained from the Public Integrity Section.

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contribution limits and prohibitions. However, absent unusual circumstances, this practice is not illegal.

When contributions are bundled, the underlying contributions are typically legal. The FECA does not address, much less prohibit, bundling, as such. However, the circumstances under which a bundling transaction occurs may indicate an intent on the part of the bundlers to achieve a result otherwise prohibited under the FECA, such as exceeding the dollar limits imposed by 2 U.S.C. § 441a, or passing the contribution back to a prohibited source, such as a corporation.⁴⁴

If a bundling case involves an intentional, organized, and widespread effort to thwart the "sunshine" objectives of the FECA, it may present a prosecutable offense. For example, the FECA requires that the identity of the "employer" of all donors of over \$200 be publicly disclosed. If a "bundler" instructs those whose contributions are being bundled to take action to prevent an accurate statement of a contributor's employer, in order to have the common source of the bundled contributions concealed from the public, the bundler has attempted to thwart one of the fundamental features of the FECA. Such a concealment scheme might be prosecutable under 18 U.S.C. § 371.

8. Prosecutive factors: dollar amount and secrecy

Most FECA violations are appropriately addressed through noncriminal sanctions, and it is the customary practice, pursuant to the Memorandum of Understanding between the Justice Department and the FEC (reprinted at the end of this chapter), for the Department to refer most matters indicating possible FECA violations to the FEC.

In determining which cases should be retained by the Department for criminal prosecution, two main factors are considered: the dollar amount involved in the illegal activity, and the level of criminal intent it reflects. While matters are considered on a case-by-case basis, the following guidelines have generally proven useful:

⁴⁴ Several significant false reporting cases were brought during the early days of the FECA, before the FEC was created. See United States v. Finance Committee to Re-elect the President, 507 F.2d 1194 (D.C. Cir. 1974) (upholding convictions for intentional failure to report a \$200,000 cash contribution to the Committee).

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- A violation of a core provision of the FECA which substantially exceeds the \$2,000 statutory floor and is accompanied by evidence of criminal intent should be considered for prosecution.⁴⁵
- Illegal activity involving less than \$10,000 should be charged as a FECA misdemeanor, absent special circumstances which would warrant felony charges.
- Illegal activity involving over \$10,000 should be considered for felony prosecution under 18 U.S.C. §§ 371 and 1001.

9. Venue for FECA offenses

The campaign financing statutes focus on the "making" and "receiving" of contributions and expenditures, and venue generally lies where a prohibited transaction was made or received. While this presents no problems in cases involving intradistrict transactions, an appeals court has interpreted "making a contribution" so narrowly that serious difficulties may be encountered in establishing a centralized venue over multi-district FECA violations. United States v. Passodelis, 615 F.2d 975 (3d Cir.), reh'g denied, 622 F.2d 567 (1980)(en banc).

In Passodelis, a campaign fundraiser had been convicted under the predecessor statutes to 2 U.S.C. §§ 441a and 441f for making excessive contributions to a presidential candidate through conduits in four states. Venue was laid in the district where the political committee to which these donations were given had its offices and bank accounts. The court of appeals held that cases against donors under the FECA had to be brought in the district where the donors "made" the prohibited donations, and that this concept did not encompass the district where the donee deposited the funds. Prosecutors facing similar fact situations should contact the Public Integrity Section to discuss potential venue problems.

In United States v. Chestnut, 533 F.2d 40 (2d Cir.), cert. denied, 429 U.S. 829 (1976), the Second Circuit held that the act of "receiving" a prohibited contribution or expenditure encompassed the donee's acceptance of it. Therefore, multi-district acceptance, or "donee," cases, may be brought in the district where the donee accepted the donation.

⁴⁵ A violation involving sums aggregating less than \$2,000 in a calendar year is not a crime. 2 U.S.C. § 437g(d). Hence, the Department has no jurisdiction over the matter.

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

10. Statute of limitations for campaign financing offenses

The statute of limitations for prosecuting campaign financing violations under the FECA's misdemeanor provision, 2 U.S.C. § 437g(d), is three years. 2 U.S.C. § 455. This short limitations period presents substantial law enforcement problems. See United States v. Hankin, 607 F.2d 611 (3d Cir. 1979) (proof that contribution was deposited within limitations period held not sufficient, where other acts related to making the contribution occurred outside the period).

In contrast, the general statute of limitations for most federal crimes is five years. 18 U.S.C. § 3282. This five-year limitations period governs the prosecution of conduct based on FECA violations which is prosecuted under 18 U.S.C. §§ 371 or § 1001. United States v. Curran, 20 F.3d 560 (3d Cir. 1994). This five-year period also applies to FECA-based crimes charged as frauds under the public financing provisions governing presidential campaigns. 26 U.S.C. §§ 9012(c), 9042(b).

D. POLICY AND PROCEDURAL CONSIDERATIONS

1. Consultation requirements and recommendations

For almost two decades, the Public Integrity Section has coordinated the Department's law enforcement efforts over campaign financing crimes. The Section has two main goals in this area: to provide prompt and accurate guidance regarding the prosecutive potential of campaign financing allegations, and to assist the United States Attorneys' Offices and the FBI in bringing effective criminal penalties to bear when warranted.

Most FECA violations either are not federal crimes, or, if they are, do not warrant criminal prosecution. Early consultation with the Public Integrity Section assists the Department, the United States Attorneys' Offices, and the FBI, by helping ensure that appropriate matters are quickly referred to the FEC without the unnecessary expenditure of Departmental resources. Such consultation also enables the Department to discharge its obligations under its Memorandum of Understanding with the FEC (reprinted at the end of this chapter). Finally, providing the FEC in a timely manner with information on closed criminal FECA matters has

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contributed significantly to the extremely helpful approach the Commission is now taking with respect to our shared enforcement responsibilities.

These considerations have led the Public Integrity Section to recommend that the Section be consulted before beginning any criminal investigation, including a preliminary investigation, of matters involving possible violations of the FECA or the public funding programs in Title 26. It is also recommended that the Section be consulted before any investigation into campaign financing activities under the felony theories discussed above, since these prosecutive theories are based on aggravated FECA violations.

As with election fraud matters, consultation with the Section is required, however, before a grand jury or full field investigation is begun, a complaint or information is filed, or an indictment is presented. U.S.A.M. 9-2.133(8).

Facts reflecting possible noncriminal FECA offenses, which are either reported to the Justice Department or generated during an investigation into other offenses, should be brought to the attention of the Public Integrity Section, which will forward them to the FEC.

2. Nonprosecution of conduits

The Justice Department has a long-standing practice of not prosecuting persons who are used as conduits to disguise another person's illegal contribution, provided that allowing their names to be used by another is the extent of their participation in the scheme.

3. Investigative jurisdiction

Criminal investigations of FECA campaign violations, as well as violations of 26 U.S.C. §§ 9012 and 9042, are conducted by the FBI. Civil investigations are conducted by the FEC. The FEC is authorized by statute to conduct a civil inquiry parallel to an active criminal investigation involving the same matter. 2 U.S.C. §§ 437d(a)(9), 437d(e).

4. Nonwaiver of the FEC's civil enforcement authority

The FEC's enforcement jurisdiction over noncriminal FECA violations cannot be compromised or waived by the Department of Justice. 2 U.S.C. §§ 437d(a)(6) and 437d(e). Accordingly, plea agreements with defendants who have possible noncriminal exposure for FECA violations must contain

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a specific disclaimer to the effect that the United States Attorney is not waiving the civil enforcement jurisdiction of the FEC, such as the following:

Nothing in this agreement waives or limits in any way the authority of the Federal Election Commission to seek civil penalties or other administrative remedies for violations of the Federal Election Campaign Act pursuant to Section 437g(a) of Title 2, United States Code.

5. Dealings with the FEC

As explained above, the FEC and Justice Department have overlapping enforcement responsibilities over willful and aggravated violations of the FECA. At the same time, the FEC is an independent agency devoted to the oversight and civil enforcement of federal election campaign laws. In addition, while the FEC's statutory charter authorizes it to draw upon the resources of other federal departments, the FEC is not required to reciprocate. 2 U.S.C. § 437c(f)(3).

Our shared jurisdiction requires the effective coordination of enforcement efforts -- which is most likely to occur where there is a cooperative attitude of mutual respect and support. Over time, the Public Integrity Section has developed good relationships with the FEC and its staff, and can help agents and prosecutors quickly obtain the information they need from the FEC. The FEC's Public Records Division has long been a helpful resource in developing election crime cases. However, because it is not required to assist criminal investigations, multiple and uncoordinated requests for assistance have the potential to jeopardize the Division's willingness to voluntarily assist the Justice Department. Therefore, the United States Attorneys' Offices and the FBI should, whenever possible, route inquiries to the FEC through the Public Integrity Section. Doing this increases the likelihood of a positive response from the Commission. It also helps to ensure that the good working relationship that has developed between the two agencies is maintained.

The Section has also had success in recent years in working with the FEC to coordinate the FEC's civil enforcement responsibilities with the Department's overlapping criminal jurisdiction. In many instances, the FEC has voluntarily delayed moving forward with its own proceedings, and has coordinated witness interviews and document demands, in order to avoid affecting an ongoing criminal investigation. It is clearly in the best interest of law enforcement that this cooperation continue. However, our future

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success in working parallel cases depends in large part on the FEC's willingness to voluntarily cooperate with the Department.

The Public Integrity Section will promptly process all requests from United States Attorneys' Offices for assistance from or cooperation with the FEC.

6. FEC officials as prosecution witnesses

The prosecution of criminal cases involving aggravated FECA violations generally requires testimony from expert witnesses and document custodians from the FEC. As the number and significance of FECA fraud cases under the Hopkins theories continues to grow, so will the Department's need for such witnesses.

Proof of a felony FECA fraud under 18 U.S.C. §§ 371 or 1001 requires proof that the filings on which the case is based were false to a point that they had the potential to mislead or disrupt the FEC's ability to discharge its statutory responsibilities. It is our experience that only a small number of senior FEC officials have the background to be effective trial witnesses. For these reasons, AUSAs seeking FEC witnesses are encouraged to contact the Public Integrity Section.

The FEC has advised that requests for FEC staff to appear as prosecution trial witnesses should be made by subpoena. This is a departure from the usual practice of relying on oral or written requests for trial testimony from federal government personnel.

In 1991, the Justice Management Division (JMD) concluded that the travel and subsistence expenses of FEC staff who testify for the prosecution at FECA-based criminal trials are to be borne by the Justice Department. Therefore, before a subpoena is served on an FEC employee to testify as a trial witness, the AUSA handling the case should prepare a JMD expert witness form (OBD 47) providing information about the case and the FEC employee's role in it. This form is then to be submitted to JMD, which will generate a financial commitment form to accompany the trial subpoena when it is served on the prospective FEC witness.

7. Memorandum of Understanding between the FEC and the Department of Justice

In 1977, the FEC and the Department of Justice entered into a Memorandum of Understanding relating to their respective law enforcement

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jurisdiction and responsibilities. 43 Fed. Reg. 5441(1978). The Department and the FEC's General Counsel's Office have begun negotiations for an updated Memorandum. For the present, however, the current Memorandum applies. Its full text follows:

Memorandum of Understanding

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

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

2) *The Commission and the Department mutually recognize that all violations of the Federal Election Campaign Act and the antifraud provisions of Chapters 95 and 96 of the Internal Revenue Code, even those committed knowingly and wilfully, may not be proper subjects for prosecution as crimes under 2 U.S.C. 441; [now § 437g(d)], 26 U.S.C. 9012 or 26 U.S.C. 9042. For the most beneficial and effective enforcement of the Federal Election Campaign Act and the antifraud provisions of Chapters 95 and 96 of the Internal Revenue Code, those knowing and wilful violations which are significant and substantial and which may be described as aggravated in the intent in which they were committed, or in the monetary amount involved should be referred by the Commission to the Department for criminal prosecution review. With this framework, numerous factors will frequently affect the determination of referrals, including the repetitive nature of the acts, the existence of a practice or pattern, prior notice, and the extent of the conduct in terms of geographic area, persons, and monetary amounts among many other proper considerations.*

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

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

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

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

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

CHAPTER SIX

STRUCTURING CAMPAIGN FINANCING FRAUD INVESTIGATIONS

A number of factors are unique to the investigation of criminal violations of the Federal Election Campaign Act. These include the dual enforcement jurisdiction of the Department of Justice and the Federal Election Commission; the Justice Department's practice of not prosecuting persons who are recruited to serve as conduits in order to disguise FECA violations; and the need for close consultation between United States Attorneys' Offices and the Criminal Division's Public Integrity Section. These factors are discussed in detail in Chapter Five.

Also discussed in Chapter Five are the principal features of campaign financing crimes: An FECA violation is a federal crime under 2 U.S.C. § 437g(d) if the amount involved in the illegal activity is at least \$2,000 in a calendar year, and if the violation is knowing and willful. In addition, aggravated campaign financing fraud may be charged as a conspiracy to obstruct and impede the lawful functioning of a governmental agency (the FEC) in violation of 18 U.S.C. § 371, and as willfully causing a false statement to a federal agency in violation of 18 U.S.C. §§ 1001 and 2.

However, most federal campaign financing violations do not warrant criminal prosecution. The Justice Department generally refers to the FEC allegations of all but the most aggravated campaign financing violations.

A criminal campaign financing fraud investigation involves:

- Initial coordination with the Public Integrity Section. Because most FECA violations are more appropriately handled by the FEC, to avoid unnecessary or unproductive use of federal resources the Public Integrity Section should be consulted before initiating any criminal investigation of a campaign financing matter. See the discussion on consultation in Chapter Five.
- Determining whether a core prohibition of the FECA was violated. If an alleged contribution violates a core campaign

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financing prohibition of the FECA,⁴⁶ criminal prosecution of the matter is more likely to be appropriate.

- Determining whether there was an effort to conceal the illegal contribution. Evidence of concealment is usually the easiest and most effective way to prove knowledge and willfulness. The most frequent means of concealing illegal contributions is to enlist the services of conduits to make ostensibly lawful contributions in their own names, with the understanding that they will be reimbursed by the true donor. Other forms of concealment are providing services directly to the candidate, United States v. Goland, 959 F.2d 1449 (9th Cir. 1992)(senatorial candidate given free television advertisements worth over \$100,000), or paying campaign invoices on behalf of the candidate's campaign, United States v. Karl, Cr. No. 88-37 (C.D. Cal., indictment filed June 9, 1988)(direct payment to campaign vendors of over \$120,000 of presidential candidate's campaign expenses; defendant pled guilty).⁴⁷
- Identifying others involved in the scheme. To locate likely conduits used to disguise the fraud, it is helpful to search the FEC's computerized data for relevant campaign information filed by federal candidates. Such a search may reveal other transactions appearing to involve similar illegal activity by the subject, may help indicate the approximate financial dimensions of the activity, and may uncover leads to be used in later stages of the investigation. Moreover, such searches may allow a quick assessment of a matter's investigative and prosecutive potential.⁴⁸
- Determining whether criminal prosecution is warranted. Finally, the facts should be evaluated to determine whether the matter should be prosecuted or referred to the FEC, and, if prosecuted, whether it should be pursued as a misdemeanor under the FECA

⁴⁶ For a discussion of the FECA's core provisions, see Chapter Five, § B.1.

⁴⁷ Copies of these indictments can be obtained from the Public Integrity Section; the Goland indictment is excerpted in Appendix B.

⁴⁸ Requests for such computer searches should be routed through the Public Integrity Section's Election Crimes Branch.

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or as a felony under the conspiracy and false statement theories approved in United States v. Hopkins, 916 F.2d 207 (5th Cir. 1990). The principal factors involved in this determination are:

- the amount of money involved in the illegal activity;
 - the degree to which the subject attempted to conceal the illegal activity;
 - whether the activity violated a core provision of the FECA; and
 - the extent to which the activity exposed a governmental process to corruption.
- Initiation of a grand jury investigation or FBI full field investigation. If criminal prosecution appears warranted, the prosecutor should request authorization to expand the investigation into FBI interviews of suspected conduits, who were identified through early investigation or through the FEC's data search as likely funnels for the illegal donation. If evidence from the conduits corroborates the existence of the scheme, a grand jury investigation should be used to obtain this testimony under oath. The Public Integrity Section must be consulted before any matter involving an FECA violation may be presented to a grand jury and before charges are filed. U.S.A.M. 9-2.133(8).
 - Nonprosecution of straw donors, or conduits. The Justice Department has a long-standing practice of not prosecuting persons whose only participation in an illegal campaign contribution scheme was allowing their names to be used to disguise another's illegal contribution. In many cases, the persons used as conduits are themselves victims: they are likely to be employees of the person behind the scheme, and their participation is often coerced.⁴⁹ Also, the amount each conduit launders is typically less than the \$2,000 monetary threshold required before an FECA violation can be a federal crime. The goal of the investigation is to obtain truthful testimony from the

⁴⁹ However, the conduits remain subject to FEC civil enforcement proceedings; depending upon the extent of their conduct, this may result in civil penalties.

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less culpable participants in the scheme, and use this information against the person who induced their participation.

- Prosecution of persons making or receiving the illegal contribution. The final stage is prosecution of the principals involved in the campaign financing fraud -- especially the actual donor of the illegal contribution. If there is evidence that the candidate benefiting from the illegal contribution, or an agent of the candidate, participated in the scheme, that person should also be prosecuted.

Finally, it is critical that the criminal enforcement process not adversely affect the FEC's civil enforcement jurisdiction. Therefore, United States Attorneys' Offices and the FBI should exercise care, when negotiating with less culpable participants, not to compromise -- or appear to compromise -- the independent authority of the FEC to impose civil penalties for FECA violations. 2 U.S.C. §§ 437g(a), 437c(b)(1), 437d(a)(6), 437d(e).

To avoid possible misunderstanding regarding the scope of the Justice Department's authority under the FECA, any plea agreement involving activities that fall within the terms of the FECA must contain an express disclaimer along the following lines:

Nothing in this agreement waives or limits in any way the authority of the Federal Election Commission to seek civil penalties or other administrative remedies for violations of the Federal Election Campaign Act pursuant to Section 437g(a) of Title 2, United States Code.

PART III

SENTENCING OF ELECTION CRIMES

CHAPTER SEVEN

SENTENCING OF ELECTION CRIMES

The application of the United States Sentencing Guidelines to election crimes has often led to the imposition of substantial penalties -- including prison terms of more than three years.⁵⁰ Guidelines sentencing of election-related offenses has thus tended to reflect the serious societal harm inflicted by this type of public corruption offense. It is therefore important that the Guidelines' provisions be taken into account from the outset in election crime matters, so that the full range of applicable sentences is available for these offenses.

This section discusses sentencing under the Guidelines for the two basic categories of election offenses: election fraud and campaign financing fraud. The first category includes conduct aimed at corrupting the election process directly, such as vote buying, ballot box stuffing, and patronage crimes. The second category involves activity which corrupts the election process in an indirect manner, by subverting the campaign financing requirements applicable to federal elections, and, thus, the statutory responsibility of the Federal Election Commission to enforce these laws.

A. ELECTION FRAUD

Only one guideline, U.S.S.G. § 2H2.1, applies by its terms to corruption of the election process, regardless of the type of scheme or the federal statutes it violates. This guideline, captioned "Obstructing an Election or Registration," is the sole guideline under the subpart titled "Political Rights." It provides three alternative base offense levels -- 18, 12, or 6 -- depending upon the nature of the conduct involved in the offense:

- (a) Base Offense Level (Apply the greatest):
 - (1) 18, if the obstruction occurred by use of force or threat of force against person(s) or property; or

⁵⁰ This discussion assumes a federal prosecutor's working knowledge of the operation of the sentencing guidelines.

Sentencing of Election Crimes

- (2) 12, if the obstruction occurred by forgery, fraud, theft, bribery, deceit, or other means, except as provided in (3) below; or
- (3) 6, if the defendant (A) solicited, demanded, accepted, or agreed to accept anything of value to vote, refrain from voting, vote for or against a particular candidate, or register to vote, (B) gave false information to establish eligibility to vote, or (C) voted more than once in a federal election.

Most forms of election fraud that warrant federal prosecution involve forgery, fraud, bribery, or deceit. Such conduct falls within subsection 2H2.1(a)(2), and calls for a beginning offense level of 12. Relevant conduct, as defined in U.S.S.G. § 1B1.3(a), should be considered in selecting the appropriate base offense level.

A recent case illustrates how these guidelines can translate into significant sentences. The defendant, a party official authorized to register voters, was convicted of violating 18 U.S.C. §§ 241 and 242 by destroying more than 150 voter registration applications. Starting with a base level of 12, she received upward adjustments of two levels for abuse of a position of trust and five levels for multiple counts, resulting in a total offense level of 19. The court imposed a sentence of thirty months' imprisonment. The court of appeals for the most part approved the guideline calculation. United States v. Haynes, 977 F.2d 583 (6th Cir. 1992)(table)(available at 1992 WL 296782)(holding that defendant's participation was minor, under U.S.S.G. § 3B1.2(b), and remanding for resentencing on an adjusted total offense level of 17).

A question may be raised under section 2H2.1 as to which level was meant to apply to ballot box stuffing and other multiple voting schemes. Such conduct obviously involves forgery, deceit, and fraud -- each of which falls under subsection (2) and calls for a base offense level of 12. However, the conduct might also be characterized as voting more than once and giving false information to establish voting eligibility, both of which are included in subsection (3) and would result in a base offense level of 6. As discussed below, the Criminal Division recommends that prosecutors take the position at sentencing that the applicable level for participation in a multiple voting scheme is 12.

It is the Criminal Division's position that section 2H2.1(a)(3) was meant to encompass only the conduct of an individual voter -- not persons

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who engage in a pattern of criminal conduct designed to induce others to relinquish control over their votes.⁵¹ This view is based on the express language of subsections 2H2.1(a)(2) and (3), as well as the nature of the conduct typically involved in such cases. For example, anyone who offers or pays a bribe to a voter clearly falls under subsection (2), while a person who solicits or accepts anything of value to vote clearly falls under subsection (3).⁵² This result is both reasonable and fair; a voter accepting money for voting is less culpable than the person bribing the voter to further his or her corrupt objective.⁵³

To date, federal judges imposing guidelines sentences for election crimes have generally agreed with the Criminal Division's reading of this guideline. In several recent election fraud prosecutions involving schemes to take the votes of others, the defendants received a base offense level of 12 or more. See, e.g., United States v. Cole, Cr. No. 91-30062 (C.D. Ill., indictment filed Aug. 21, 1991) (conviction for conspiracy in violation of 18 U.S.C. § 371 and multiple voting in violation of 42 U.S.C. § 1973i(e); sentencing range of 33 to 46 months; prison term of 46 months imposed),

⁵¹ The background commentary to section 2H2.1 states: "Alternative base offense levels cover three major ways of obstructing an election: by force, by deceptive or dishonest conduct, or by bribery." Unfortunately, this language is inconsistent with the language of the guideline itself, which divides conduct "obstructing an election" into the following categories: conduct involving (1) the use of force (base level 18); (2) the use of fraud, theft, bribery, or deceit (base level 12); or (3) a "defendant" who requested a bribe, gave a false statement to vote, or voted more than once (base level 6).

⁵² The language of subsection (3) appears to have been taken almost verbatim from the felony provisions of 42 U.S.C. § 1973i(c), with two significant omissions: it does not include the more culpable conduct of a vote buyer, or an individual who "conspires" with another to encourage that other's "illegal voting." These persons fall under subsection (2).

⁵³ This interpretation of section 2H2.1 is also consistent with the Justice Department's practice of not prosecuting individual voters who get caught up in an election fraud scheme. Such persons are generally what the guidelines call "vulnerable victims" -- often unemployed, weakened by poverty or lack of education, apathetic or careless about their right to vote, and neither seeking nor obtaining the corrupt objective sought by the scheme's perpetrators.

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aff'd, No. 92-1880, 1994 WL 663584 (7th Cir. Nov. 28, 1994). See also United States v. Partum, Cr. No. LR-92-72 (E.D. Ark., sentencing proceeding Jan. 28, 1993) (conviction for conspiracy to vote more than once and give false information to establish eligibility to vote in violation of 42 U.S.C. §§ 1973i(e) and i(c); total offense level of 12; sentence of 5 months' imprisonment and 5 months' community confinement imposed), remanded, 16 F.3d 844 (8th Cir. 1994) (sentencing on remand reduced to 5 months' probation); United States v. Salisbury, Cr. No. 2-90-197 (S.D. Ohio, sentencing proceedings Oct. 8, 1991) (conviction for multiple voting in violation of 42 U.S.C. § 1973i(e); total offense level of 14; prison term of 18 months imposed), rev'd on other grounds, 983 F.2d 1369 (6th Cir. 1993) (statute unconstitutionally vague as applied to Salisbury's conduct). Cf. United States v. Boards, Cr. No. LR-92-183 (E.D. Ark., sentencing proceeding Sept. 12, 1994) (convictions for conspiracy and substantive false information under § 1973i(c); total offense level of 8; prison term of 13 months imposed), aff'd on other grounds, 10 F.3d 587 (8th Cir. 1993).⁵⁴

The Cole case illustrates several issues prosecutors are likely to face in this area.⁵⁵ First, the defendant received a four-level increase for his role in the offense. The defendant had contended that the fifteen voters involved were victims of the conspiracy, not "participants" within the meaning of section 3B1.1. The court agreed with the government that, regardless of whether the voters were participants or outsiders, the criminal activity "was otherwise extensive" within the meaning of section 3B1.1(a). The court also found that a deputy voter registrar occupied a position of trust, requiring a two-level increase under section 3B1.3. This upward adjustment was also approved in Haynes.

Certain factors often involved in election frauds will enhance guidelines sentences:

⁵⁴ Copies of indictments, informations, and other relevant documents from these cases can be obtained from the Public Integrity Section.

⁵⁵ Cole was convicted of multiple voting and conspiracy to encourage false submissions to election officials, to pay voters, and to cast multiple votes. The judge calculated the guidelines for these offenses under section 2H2.1(a)(2). The total offense level for the election offenses was 18, which, for a defendant with no criminal history, calls for a prison term of 27 to 33 months. Because the case also involved obstruction of justice, that offense level was further increased by 2 under U.S.S.G. § 3C1.1.

Sentencing of Election Crimes

- Voters victimized in election fraud schemes are frequently elderly, illiterate, or socially or economically disadvantaged individuals who are preyed upon by unscrupulous defendants. Targeting such vulnerable victims can result in an increase of two levels under section 3A1.1.
- A defendant who occupies a leadership or supervisory role in an election fraud scheme may receive an additional two to four levels under section 3B1.1.
- A defendant who abuses a position of public or private trust (such as a public official who uses his or her office to facilitate election fraud, or a private individual who fraudulently marks and submits ballots entrusted to him or her by voters) will receive two additional offense levels under section 3B1.3. U.S.S.G. § 2H2.1, Commentary.
- Viewing individual voters as the victims, separate substantive counts under section 2H2.1 generally cannot be grouped under section 3D1.2, so that counts involving multiple voters may result in increases of up to an additional five levels.
- Obstruction, for example by perjured testimony at trial, may add increased levels under section 3C1.1 See Boards.
- If the election fraud involved "corrupting a public official," an upward departure may be warranted under Chapter 5, Part K (Departures). U.S.S.G. § 2H2.1, Application Note 1.

Thus, even for defendants without a criminal history, the Guidelines' upward adjustments generally raise the base offense level for election fraud to a point requiring the imposition of significant prison terms.

B. CAMPAIGN FINANCING FRAUD

Federal campaign financing frauds are prosecuted either as misdemeanors under the Federal Election Campaign Act or as felonies charged as conspiracies and false statements under Title 18. 2 U.S.C. § 437g(d); 18 U.S.C. §§ 371, 1001. Crimes involving the public financing provisions for presidential campaigns may also be charged under the criminal provisions of the Presidential Primary Matching Payment Account Act or the Presidential Election Campaign Fund Act. 26 U.S.C. §§ 9042,

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9012. There is no separate sentencing guideline for federal campaign financing crimes.

Criminal violations of the principal prohibitions of the FECA fall within the Fraud and Deceit guideline, section 2F1.1 (base offense level 6). This level is increased two levels for more than minimal planning, section 2F1.1(b)(2), and up to an additional four levels for having a leadership role, section 3B1.1(a). If the crime involved exploiting vulnerable victims, enhancement under section 3A1.1 will also apply. U.S.S.G. § 2F1.1, Application Note 12.

Defendants convicted of FECA misdemeanors have on occasion been sentenced to terms of imprisonment. *See, e.g., United States v. Goland*, 959 F.2d 1449 (9th Cir. 1992)(ninety days' imprisonment for making an excessive contribution in violation of 2 U.S.C. § 441a). Although *Goland* was not a Guidelines case, the sentence is significant because it indicates that courts are beginning to view campaign financing offenses as serious crimes.⁵⁶

Corporate defendants have also received substantial penalties for misdemeanor violations of the FECA. In 1990, a corporation pled guilty to funnelling approximately \$8,000 in contributions to a congressman through its executives. It was fined \$200,000, the maximum authorized under 18 U.S.C. § 3571. *United States v. Fugi Medical Systems*, Cr. No. 90-288 (S.D.N.Y., sentencing proceedings, Aug. 15, 1990). The court specifically found that the penalty provision in the FECA, 2 U.S.C. § 437g(d), which provided for a maximum fine of \$25,000 or three times the amount involved in the violation, did not limit the applicability of 18 U.S.C. § 3571.⁵⁷

⁵⁶ *Goland* involved protracted litigation with a defendant who challenged both the constitutionality of the FECA and its application (together with 18 U.S.C. §§ 371 and 1001) to what he characterized as protected First Amendment activities. After a hung jury and two interlocutory appeals, a jury convicted Goland of one FECA misdemeanor (hanging on a section 1001 count and acquitting on the remaining four counts). The conviction was upheld on appeal.

⁵⁷ In sentencing the defendant, the judge noted that he had the option of imposing a "slap of the wrist type sentence" under the FECA. The judge declined to do so, stating that the FECA was passed to "cure an evil," and that a wrist slap would not further the statutory purpose. Sentencing proceedings at 11.

Sentencing of Election Crimes

Aggravated campaign financing schemes charged as conspiracy to defraud the United States, in violation of section 371, is addressed in section 2C1.7. It carries a base offense level of 10, and has significant enhancements. For example, if the crime involved an elected official or high-level public policymaker, an eight-level increase applies. Section 2C1.7(b)(1)(B). In addition, if the defendant's conduct involved "pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government," an upward departure may be warranted. U.S.S.G. § 2C1.7, Application Note 5. Election fraud often involves at least one of these factors.

Campaign financing fraud charged as willfully causing false statements to be made to a federal agency, in violation of section 1001, falls under the Fraud and Deceit guideline, section 2F2.1 (base offense level 6, possible enhancements).

It is also possible to address some forms of election fraud under the mail fraud statute, 18 U.S.C. § 1341. The applicable guideline for post-*McNally* mail fraud is section 2C1.7 (base level 10, with possible enhancements).

C. CONCLUSION

The federal statutes available to prosecute election offenses provide significant weapons against three discrete forms of public corruption: corruption of a public official, a government program, and/or an election. Not only are these crimes serious, they are likely to be repeated. Moreover, the particular type of corruption may spread into other areas. A fraudulently elected official is likely to continue criminal conduct in office. An official bribed while in office may commit election fraud to stay in office.

The sentencing guidelines authorize significant terms of imprisonment for election offenses, and these prison terms are being imposed and affirmed by the courts. These sentences increase the usefulness of election crime statutes as a vehicle to attack various forms of public corruption. Obviously, the likelihood of a stiff prison term tends to increase both the specific and the general deterrence achieved by any criminal prosecution. In addition, where other crimes such as extortion or bribery are difficult to prove, election crime theories can provide an alternative avenue to address the corruption. Thus, federal prosecutors and agents should always consider the potential advantages of using election crime statutes when structuring a public corruption investigation.

APPENDIX A
CHARGING LANGUAGE
FOR FECA CRIMES

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CHARGING LANGUAGE
FOR FECA CRIMES

CONTRIBUTION IN EXCESS OF STATUTORY LIMIT
(2 U.S.C. §§ 441a(a) and 437g(d))

On or about the ____ day of _____, in the _____ District of _____, and elsewhere, _____, the Defendant herein, did knowingly and willfully make a contribution in excess of the contribution limitation contained in the Federal Election Campaign Act, said contribution aggregating \$2,000 or more during calendar year ____; to wit, the said Defendant did knowingly and willfully make a contribution [to _____, a federal candidate] [to the _____ Committee, a federal political committee], in the approximate amount of \$ _____, in violation of Section 441a(a) and Section 437g(d) of Title 2 of the United States Code.

CONTRIBUTION BY CORPORATION OR
CORPORATE OFFICER
(2 U.S.C. §§ 441b(a) and 437g(d))

On or about the ____ day of _____, in the _____ District of _____, and elsewhere, [_____, Inc., a corporation organized under the laws of the State of _____ and the Defendant herein] [_____, Defendant herein and an officer of _____, a corporation organized under the laws of the State of _____], did knowingly and willfully [make] [consent to] a contribution and expenditure in violation of the prohibition against corporate contributions contained in the Federal Election Campaign Act, said contribution and expenditure aggregating \$2,000 or more during calendar year ____; to wit, the said Defendant did knowingly and willfully [make] [consent to] a contribution and expenditure [to _____, a federal candidate] [to the _____ Committee, a federal political committee], in the approximate amount of \$ _____, in violation of Section 441b(a) and Section 437g(d) of Title 2 of the United States Code.

Appendix A: Charging Language for FECA Crimes

CONTRIBUTION BY UNION OR UNION OFFICER
(2 U.S.C. §§ 441b(a) and 437g(d))

On or about the ____ day of _____, in the _____ District of _____, and elsewhere, [_____, a labor organization within the meaning of Section 441b(b)(1) of Title 2 of the United States Code and the Defendant herein] [_____, the Defendant herein and an officer of _____, a labor organization within the meaning of Section 441b(b)(1) of Title 2 of the United States Code], did knowingly and willfully [make] [consent to] a contribution and expenditure in violation of prohibition against union contributions and expenditures contained in the Federal Election Campaign Act, said contribution and expenditure aggregating \$2,000 or more during calendar year ____; to wit, the said Defendant did knowingly and willfully [make] [consent to] a contribution and expenditure [to _____, a federal candidate [to _____ Committee, a federal political committee, in the approximate amount of \$_____, in violation of Section 441b(a) and Section 437g(d) of Title 2 of the United States Code.

CONTRIBUTION BY GOVERNMENT CONTRACTOR
(2 U.S.C. §§ 441c(a) and 437g(d))

On or about the ____ day of _____, in the _____ District of _____, and elsewhere, _____, a United States Government contractor within the meaning of Section 441c(a)(1) of Title 2 of the United States Code and the Defendant herein, did knowingly and willfully make a contribution in violation of prohibition against contributions from United States Government contractors contained in the Federal Election Campaign Act, said contribution aggregating \$2,000 or more during calendar year ____; to wit, the said Defendant did knowingly and willfully make a contribution [to _____, a federal candidate] [to _____ Committee], a federal political committee, in the approximate amount of \$_____, in violation of Section 441c(a) and Section 437g(d) of Title 2 of the United States Code.

Appendix A: Charging Language for FECA Crimes

CONTRIBUTION BY FOREIGN NATIONAL
(2 U.S.C. §§ 441e and 437g(d))

On or about the ____ day of _____, in the _____ District of _____, and elsewhere, _____, a foreign national within the meaning of Section 441e(b) of Title 2 of the United States Code and the Defendant herein, did knowingly and willfully make a contribution in violation of the prohibition against foreign contributions to United States elections contained in the Federal Election Commission Act, said contribution aggregating \$2,000 or more during calendar year ____; to wit, the said Defendant did knowingly and willfully make a contribution [to _____, a federal candidate] [to the _____ Committee, a federal political committee], [to _____, a state candidate] [to _____, a local candidate] in the approximate amount of \$_____, in violation of Section 441e and Section 437g(d) of Title 2 of the United States Code.

CONTRIBUTION IN NAME OF ANOTHER
(2 U.S.C. §§ 441f and 437g(d))

On or about the ____ day of _____, in the _____ District of _____, and elsewhere, _____, the Defendant herein, did knowingly and willfully make a contribution in violation of the prohibition against disguised contributions made through conduits or strawmen contained in the Federal Election Campaign Act, said contribution aggregating \$2,000 or more during calendar year ____; to wit, the said Defendant did knowingly and willfully make a contribution [to _____, a federal candidate] [to _____ Committee, a federal political committee] in the names of [persons used as conduits], in the approximate amount of \$_____, in violation of Section 441f and Section 437g(d) of Title 2 of the United States Code.

APPENDIX B

**SAMPLE ELECTION FRAUD
INDICTMENTS**

APPENDIX B

SAMPLE ELECTION FRAUD
INDICTMENTS

Reprinted here are pertinent portions of six election fraud indictments. The Public Integrity Section has copies of the full text of these indictments, as well as many others. They charge various forms of election fraud. United States Attorneys' Offices are encouraged to contact the Section for sample charging language or for help in drafting election fraud charges.

1. United States v. Howard, 774 F.2d 838 (7th Cir. 1985).

This case involved a ballot box stuffing scheme. The indictment charges violations of 18 U.S.C. § 241 (misuse of state power to dilute the vote); 18 U.S.C. § 371 (conspiracy to violate the laws of the United States); 42 U.S.C. § 1973i(e) (multiple voting); and 42 U.S.C. § 1973i(c) (false information to election administrators).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. _____
v.	)	Violation: Title 18, United
	)	States Code, Sections 2, 241,
EDWARD HOWARD, also known as	)	371 and 1341; Title 42,
"Captain Eddie" and	)	United States Code, Sections
THOMAS CUSACK	)	1973i(c) and 1973i(e)

The SPECIAL APRIL 1980 GRAND JURY charges:

COUNT ONE

1. On November 2, 1982, pursuant to the laws of the United States and of the State of Illinois, an election was held for the purpose of electing, among others, candidates for the office of Member of the United States

Appendix B: Sample Indictments (Howard)

House of Representatives from the 11th Congressional District of Illinois, in which the 44th Precinct of the 39th Ward of the City of Chicago was located, and for the offices of Governor of the State of Illinois, Chairman of the Cook County Board and other state and county offices. At this election the names of candidates for these offices were on the ballot of election in the 44th Precinct of the 39th Ward of the City of Chicago.

2. On November 2, 1982, many persons in Cook County, Illinois, and the State of Illinois were duly registered as voters and possessed the necessary requisite qualifications as provided by law to entitle them to vote in the general election on that day for the candidates referred to in paragraph one. Many of these persons duly voted for a candidate for one or more of the aforesaid federal, state and county offices, and their votes were certified and counted as part of the total number of votes cast for such candidates at said election. These votes will hereinafter be referred to as qualified votes.

3. Each of the qualified voters, then and there possessed the right and privilege guaranteed and secured by the Constitution and laws of the United States to vote at said election for a candidate for the federal office described in paragraph one and the further right and privilege to have each of their votes recorded, counted and given full effect, that is to say, that the value and effect of each of their votes and expressions of choice should not be impaired, lessened, diminished, diluted or destroyed by illegal votes falsely or fraudulently cast, counted, recorded and certified.

4. On the occasion of the November 2, 1982, general election referred to above, defendant EDWARD HOWARD was a Democratic Precinct Captain in the 44th Precinct of the 39th Ward; the polling place for said precinct was located at the Volta School, 4950 N. Avers in Chicago, Illinois.

5. On the occasion of the November 2, 1982, general election referred to above, defendant THOMAS CUSACK was an Assistant Democratic Precinct Captain in the 44th Precinct of the 39th Ward.

* * * * *

9. From on or about February 16, 1982, to on or about November 2, 1982, at Chicago, in the Northern District of Illinois, Eastern Division,

EDWARD HOWARD, also known as
"Captain Eddie", and
THOMAS CUSACK,

Appendix B: Sample Indictments (Howard)

defendants herein, did unlawfully, willfully and knowingly combine, conspire, confederate and agree with each other and with Darryl Cunningham and Charlotte Watson, named as co-conspirators but not as defendants herein, and with other persons to the Grand Jury known and unknown, to injure and oppress the aforesaid qualified voters in the free exercise and enjoyment of certain rights and privileges secured to each of them by the Constitution and laws of the United States, to wit:

- a. The right guaranteed to said qualified voters in the aforesaid election under Article One, Sections Two and Four to have their votes in the aforesaid election for the candidates of their choice for the above described federal office cast and tabulated fairly and free from dilution by ballots illegally and improperly cast.
- b. The right guaranteed to said qualified voters by and under the Equal Protection and the Due Process Clauses of the Fourteenth Amendment to have their votes in the aforesaid election cast and tabulated fairly and free from dilution by ballots illegally and improperly cast and tabulated by persons charged under Illinois law with the operation and safe-keeping of the poll for said Precinct.

10. The object of this conspiracy, among other things, was to secure the election of candidates supported by the defendants by causing judges of election to corruptly discharge their official duties in the management of the polling place for the 44th Precinct in the 39th Ward and by other means.

* * * * *

14. It was further a part of said conspiracy that on the occasion of the November 2, 1982, general election, the defendants EDWARD HOWARD and THOMAS CUSACK did cause ballots to be fraudulently and illegally cast in the names of persons who did not apply for ballots in the 44th Precinct of the 39th Ward.

* * * * *

24. It was a part of said conspiracy that said defendants would cause, permit and attempt to cause votes to be cast for candidates for said federal office on ballots in the 44th Precinct of the 39th Ward of the City of Chicago, in Cook County, Illinois, by procedures and methods in violation of the laws of the State of Illinois pertaining to voting in elections, and the defendants would permit, cause and attempt to cause fraudulent and illegal votes to be cast for candidates for said federal office on ballots in the

Appendix B: Sample Indictments (Howard)

aforesaid precinct, all with the purpose and intent that said illegal and fraudulent ballots would be counted, returned and certified as a part of the total votes cast for candidates for said election, thereby impairing, lessening, diminishing, diluting and destroying the value and effect of votes legally, properly and honestly cast for such candidates in said election, in Chicago, Illinois;

In violation of Title 18, United States Code, Section 241.

COUNT TWO

The SPECIAL APRIL 1980 GRAND JURY further charges:

1. Paragraphs one through eight of Count One are hereby realleged and incorporated herein as if fully set forth.
2. From on or about February 16, 1982, until on or about November 2, 1982, at Chicago, in the Northern District of Illinois, Eastern Division,

EDWARD HOWARD, also known as
"Captain Eddie", and
THOMAS CUSACK,

defendants herein, knowingly and willfully did combine, conspire, confederate, and agree with each other, with Darryl Cunningham and Charlotte Watson, named as co-conspirators but not as defendants herein, and with others known and unknown to this Grand Jury, to commit offenses against the United States, to wit: to vote more than once in a general election held in part for the purpose of electing a candidate for the office of Member of the United States House of Representatives, in violation of Title 42, United States Code, Section 1973i(e); and to knowingly and willfully give false information as to a voter's name for the purpose of establishing the voter's eligibility to vote in a general election held in part for the purpose of electing a candidate for the office of Member of United States House of Representatives, in violation of Title 42, United States Code, Section 1973i(c).

3. The object of this conspiracy, among other things, was to secure the election of candidates supported by the defendants by causing the corrupt discharge of the official duties of the judges of election in the management of the poll for the 44th Precinct in the 39th Ward and by other means.

* * * * *

Appendix B: Sample Indictments (Howard)

6. It was further a part of said conspiracy that said defendants EDWARD HOWARD and THOMAS CUSACK would misrepresent, conceal and hide, and cause to be misrepresented, concealed and hidden, the purpose of and the acts done in furtherance of the conspiracy.

7. In furtherance of the conspiracy and to effect the objects thereof, the defendants did commit, at the times mentioned, in the Northern District of Illinois the following:

OVERT ACTS

1. On or about March 16, 1982, in Chicago, Illinois, unindicted co-conspirator Charlotte Watson became a Republican Judge of Election and Geraldine Watson, her mother, became a Democratic Judge of Election in the 44th Precinct of the 39th Ward for the November 2, 1982, general election.

* * * * *

In violation of Title 18, United States Code, Section 371.

COUNT THREE

The SPECIAL APRIL 1980 GRAND JURY further charges:

On or about November 2, 1982, at Chicago, in the Northern District of Illinois, Eastern Division,

EDWARD HOWARD, also known as
"Captain Eddie", and
THOMAS CUSACK,

defendants herein, did vote more than once in the November 2, 1982, general election, which was held in part for the purpose of electing a candidate for the office of Member of the United States House of Representatives, in that during said election in the 44th Precinct of the 39th Ward of the City of Chicago the defendants, EDWARD HOWARD and THOMAS CUSACK, voted approximately twenty ballots as described in paragraphs 16 through 21 of Count one.

In violation of Title 42, United States Code, Section 1973i(e) and Title 18, United States Code, Section 2.

Appendix B: Sample Indictments (Carmichael)

**2. United States v. Carmichael, 685 F.2d 903 (4th Cir. 1982),
cert. denied, 459 U.S. 1202 (1983).**

This indictment charges conspiracy, under 18 U.S.C. § 371, to pay voters for voting, and substantive vote buying violations under 42 U.S.C. § 1973i(c).

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

UNITED STATES OF AMERICA	) Criminal Number 81-43
	) 18 USC § 371
v.	) 42 USC § 1973i(c)
	) 18 USC § 2
ALBERT EUGENE CARMICHAEL, JR.	) 18 USC § 1503
JOE GRADY FLOWERS and)
MAZEL J. ARNETTE)

INDICTMENT

THE GRAND JURY CHARGES:

INTRODUCTION

1. On or about June 10, 1980, in Dillon County, South Carolina, a primary election was held in part for the purpose of selecting and electing candidates for the offices of Member of the United States Senate and Member of the United States House of Representatives.
2. The voters referred to herein were registered to vote in the aforesaid election held in Dillon County, South Carolina.
3. Roy Lee was a candidate for re-election to the office of Sheriff for Dillon County in the aforesaid election.
4. In connection with the aforesaid election:
 - a. ALBERT EUGENE CARMICHAEL, JR., a South Carolina State Senator and a Defendant herein, assisted in the campaign to re-elect Roy Lee.

Appendix B: Sample Indictments (Carmichael)

b. JOE GRADY FLOWERS, an employee of the Defendant ALBERT EUGENE CARMICHAEL, JR., and a Defendant herein, assisted in the campaign to re-elect Roy Lee.

* * * * *

COUNT 1
(18 U.S.C. § 371)

5. The Grand Jury realleges the allegations contained in paragraphs one and two of this Indictment, and further alleges that:

6. Beginning on or about March 1, 1980, and continuing to on or about June 20, 1980, in Dillon County, District of South Carolina, the Defendants ALBERT EUGENE CARMICHAEL, JR., JOE GRADY FLOWERS and MAZEL ARNETTE did knowingly, willfully and unlawfully combine, conspire and agree together and with other persons known and unknown to the Grand Jury, to commit the following offenses against the United States: to knowingly and willfully pay and offer to pay voters for voting in the aforesaid election, in violation of Title 42, United States Code, Section 1973i(c).

7. The purpose or object of the conspiracy was to secure the reelection of certain individuals, including the incumbent candidate for Sheriff, Roy Lee, in connection with the aforesaid election.

8. The means by which the conspiracy was carried out included the following:

a. Organizational meetings were held for the purpose of discussing a strategy for maximizing the vote for Roy Lee in the aforesaid primary election and the need to pay voters for voting and the amount which said voters should be paid. These meetings were attended by campaign organizers (hereinafter referred to as "captains") and by citizens of the community who were active in politics (hereinafter referred to as "workers").

b. At these meetings, the captains explained to the workers the methods and procedures for casting absentee ballots, and they encouraged said workers to distribute these materials amongst persons who were registered to vote in the aforesaid South Carolina Democratic primary (hereinafter referred to as "voters").

* * * * *

Appendix B: Sample Indictments (Carmichael)

e. After said absentee ballots had been received by the voters, the workers revisited them for the purpose of accepting physical receipt of the completed absentee ballots. At this time, the workers paid \$5.00 to each voter who had cast an absentee ballot in the manner aforesaid.

f. At the aforesaid organizational meetings, the captains also instructed the workers to approach voters who had not cast absentee ballots, to encourage said voters to vote on election day, to drive said voters to the polls, and to pay said voters after they had voted.

* * * * *

OVERT ACTS

9. In furtherance of the conspiracy, and to accomplish the object thereof, the Defendants ALBERT EUGENE CARMICHAEL, JR., JOE GRADY FLOWERS and MAZEL J. ARNETTE, and their co-conspirators, performed in the District of South Carolina the following overt acts, among others:

a. During March or April 1980, the exact date to the Grand Jury being unknown, the Defendant ALBERT EUGENE CARMICHAEL, JR., and other persons known and unknown to the Grand Jury, attended a meeting at the lakehouse of Defendant CARMICHAEL and discussed the use of absentee ballots and the payment of voters in connection with the aforesaid election.

* * * * *

d. On or about June 4, 1981, Luther Nance and Jessie Nance paid Sarah Ford for voting in the aforesaid election.

* * * * *

All in violation of Title 18, United States Code, Section 371.

COUNT 2
(42 U.S.C. § 1973i(c) and 18 U.S.C. § 2)

10. The Grand Jury realleges the allegations contained in paragraphs one and two of this Indictment and further alleges that:

Appendix B: Sample Indictments (Carmichael)

11. On or about May 31, 1980, in Dillon County, District of South Carolina, the Defendants, ALBERT EUGENE CARMICHAEL, JR., JOE GRADY FLOWERS and MAZEL J. ARNETTE did knowingly and willfully pay and offer to pay, and did aid and abet and willfully cause each other to pay and offer to pay, Margaret Miller, a voter, for voting in the aforesaid election, in violation of Title 42, United States Code, Section 1973i(c), and Title 18, United States Code, Section 2.

* * * * *

Appendix B: Sample Indictments (Meekins)

3. United States v. Meekins, Cr. No. 81-175 (D.S.C., superseding information filed July 13, 1981).

This information charges a political worker with violating 18 U.S.C. § 242 by acting under color of law to deprive the public of a fair election through vote buying, and with vote buying for a federal candidate in violation of 18 U.S.C. § 597. The defendant waived indictment and pled guilty.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

UNITED STATES OF AMERICA) CRIMINAL NUMBER 81-175
)
v.) 18 U.S.C. §242, § 597 and § 2
)
LLOYD MEEKINS, JR. a/k/a)
MICKEY MEEKINS)

SUPERSEDING INFORMATION

COUNT 1

THE UNITED STATES ATTORNEY CHARGES:

On or about June 10, 1980, in Dillon County, South Carolina and within the District of South Carolina, LLOYD MEEKINS, JR., also known as Mickey Meekins, the defendant herein, would and did knowingly and willfully act under color of law, statute, ordinance, regulation and custom, and would and did aid and abet others known to the United States Attorney to act under color of law, statute, ordinance, regulation and custom, to deprive the citizens of Dillon County, South Carolina, of rights, privileges, and immunities secured by the Constitution of the United States; to wit: the right of said citizens to have their votes tabulated and counted in the 1980 Democratic Primary Election, free from dilution through paying voters, altering ballots and the tabulating of fraudulent and spurious ballots, in violation of Section 242 of Title 18, United States Code.

Appendix B: Sample Indictments (Meekins)

COUNT 2

THE UNITED STATES ATTORNEY FURTHER CHARGES:

On or about the month of May 1980, in Dillon County, South Carolina and within the District of South Carolina, the defendant, LLOYD MEEKINS, JR., also known as Mickey Meekins, did knowingly and unlawfully make and offer to make and did cause to be made and offered to be made an expenditure to Lillie McCrae to vote for a candidate in the June 10, 1980, Democratic Party Primary Election, in violation of Sections 597 and 2 of Title 18, United States Code.

Appendix B: Sample Indictments (Pintar)

4. United States v. Pintar, 630 F.2d 1270 (8th Cir. 1980).

This indictment charges, among other things, a conspiracy to defraud the United States through a scheme to hire and use employees of a state agency receiving federal funds for political purposes, in violation of 18 U.S.C. § 371, and promising and giving employment made possible with federal funds in return for political activities, in violation of 18 U.S.C. § 600.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

UNITED STATES OF AMERICA	)	<u>I N D I C T M E N T</u>
)	
Plaintiff)	
	)	18 U.S.C. § 371
v.	)	18 U.S.C. § 600
MICHAEL A. PINTAR	)	18 U.S.C. § 1341
BARBARA PINTAR)	
)	
Defendants.)	

THE GRAND JURY CHARGES:

COUNT I

At all times material to this Indictment:

1. The Upper Great Lakes Regional Commission (hereafter referred to as the Commission) was a federal agency authorized to award grants for the purpose of encouraging regional economic development in designated areas in the States of Michigan, Minnesota and Wisconsin.

2. Funds for the Upper Great Lakes Regional Commission were provided in whole or in part by periodic appropriation of the United States Congress.

3. The Commission was composed of a Federal Co-chairman and the Governors of the States of Michigan, Minnesota and Wisconsin. The Governor of the State of Minnesota employed an alternate and a staff

Appendix B: Sample Indictments (Pintar)

representative to assist in carrying out his duties as a member of the Commission.

4. MICHAEL A. PINTAR was employed as the staff representative to the Commission on behalf of the Governor of Minnesota. In this capacity he had responsibility for recommending and overseeing particular grants made by the Commission. The salary of MICHAEL A. PINTAR was paid out of federal grant money to the State of Minnesota.

5. BARBARA PINTAR was employed by the Commission as a secretary. The salary of BARBARA PINTAR was paid, in part, by federal grant money.

6. DONALD C. BOYD operated organizations which received money from the Commission. These organizations included the Southern Minnesota Small Business Development Center and the Duluth Area Economic Development Office. Said money was entrusted to Donald C. Boyd for his use in the faithful and honest administration of grant programs approved by the Commission.

7. The Minnesota Department of Economic Development was an agency of the State of Minnesota established for the purpose of encouraging economic development in the State of Minnesota. In furtherance of this function, from time to time, this agency submitted applications for grants to the Commission and received funds pursuant thereto.

OBJECT OF CONSPIRACY

From in or about May 1972 to in or about July 1977, in the District of Minnesota and elsewhere, the defendants, MICHAEL A. PINTAR and BARBARA PINTAR, did knowingly and willfully combine, conspire, confederate and agree together and with others to the Grand Jury known and unknown to defraud the United States of its right to have programs of an agency financed in whole or in part with money provided by the United States Government, namely, the Upper Great Lakes Regional Commission, administered honestly, fairly, without corruption or deceit, and free from the use of federal funds to accomplish political objectives, for personal uses, and for other purposes unrelated to legitimate Commission business.

MANNER AND MEANS

1. It was part of the conspiracy that MICHAEL A. PINTAR would travel or claim to travel to Miami, Florida, Omaha, Nebraska, and elsewhere,

Appendix B: Sample Indictments (Pintar)

at the expense of the Commission, for purposes unrelated to the legitimate business of the Commission.

* * * * *

4. It was a further part of the conspiracy that MICHAEL A. PINTAR and BARBARA PINTAR would hire and cause to be hired Shirley Baker as an employee of the Northern Minnesota Small Business Development Center.

* * * * *

7. It was a further part of the conspiracy that MICHAEL A. PINTAR and BARBARA PINTAR would direct and authorize and cause to be directed Shirley Baker, Sharon Backstrom and Ann Zweber to perform political functions unrelated to legitimate purposes of Commission grants.

8. It was a further part of the conspiracy that MICHAEL A. PINTAR and BARBARA PINTAR, during the time they were employees of the Commission and during business hours, would engage in political activities unrelated to the legitimate business or purposes of the Commission.

9. It was a further part of the conspiracy that MICHAEL A. PINTAR and BARBARA PINTAR would conceal and attempt to conceal the aforementioned facts relating to political activities.

OVERT ACTS

The Grand Jury charges that in furtherance of the aforesaid conspiracy and to accomplish the objects thereof, the conspirators, in the District of Minnesota and elsewhere, did commit the following overt acts:

* * * * *

7. In or about June 1974, BARBARA PINTAR instructed Shirley Baker to work on the Octoberfest for Congressional candidate James Oberstar.

8. In or about July 1974, MICHAEL A. PINTAR and BARBARA PINTAR instructed Shirley Baker to collect political contributions for the Senatorial campaign of Wendell Anderson.

* * * * *

Appendix B: Sample Indictments (Webb)

specifically Article 99 thereof, provided that the occupant of the office of Sheriff was to be determined by a ballot election, with the individual receiving the most valid votes cast by qualified electors from within the county in question being entitled to occupy the office, and receive the salary and fringe benefits appertaining thereto for a term of four years.

2. On November 5, 1985, a general election was held in Edmonson County, Kentucky for the purpose among others of selecting an individual to occupy the office of Sheriff of Edmonson County for the four-year term beginning on January 6, 1986. The candidates for the office of Sheriff included Jerry Prunty and Carlton Skaggs.

3. On November 12, 1985, the Edmonson County Board of Elections certified Jerry Prunty to be the winner of the aforesaid election to the position of Edmonson County Sheriff, on the basis of its determination that said Jerry Prunty had received more valid ballots than his opponent, Carlton Skaggs. On January 6, 1986, Jerry Prunty was sworn in as Sheriff of Edmonson County, Kentucky, for a four-year term.

4. During calendar year 1986, Sheriff Jerry Prunty received approximately Thirty-Three Thousand Dollars (\$33,000) from public monies as compensation for his services as the elected Sheriff of Edmonson County.

5. During the period from January 1, 1987 through June 30, 1987, Sheriff Jerry Prunty received approximately Thirty-Three Thousand Dollars (\$33,000) from public monies in compensation for his services as the elected Sheriff of Edmonson County, Kentucky.

6. At all times herein material, MORRIS WAYNE WEBB and DEBBY BUCHANAN, defendants herein, were political supporters of the candidacy of Jerry Prunty, and in that capacity worked to secure his election to the office of Sheriff in the general election held on November 5, 1985.

COUNT 1

1. The Grand Jury realleges, and incorporates by reference herein, the allegations made and the averments contained in the introduction to this indictment.

2. Beginning on or about May 15, 1985, and continuing through on or about November 20, 1985, at Edmonson County and within the Western District of Kentucky, MORRIS WAYNE WEBB and DEBBY BUCHANAN, defendants herein, would and did devise and intend to devise

Appendix B: Sample Indictments (Webb)

a scheme and artifice to defraud and for obtaining money and property from the citizens, voters and taxpayers of Edmonson County, and of the Commonwealth of Kentucky, through the making of false and fraudulent representations and pretenses, and through the concealment of material facts, concerning the validity of ballots cast for Sheriff candidate Jerry Prunty in the 1985 general election.

3. The object of this scheme and artifice to defraud was to obtain for Jerry Prunty the office of Sheriff, and the salary and expenses appertaining thereto, through the procurement, casting and tabulation of illegal ballots; and to deprive the citizens, taxpayers and voters of Edmonson County, and of the Commonwealth of Kentucky, of control over how the Commonwealth's public monies were to be allocated with respect to the salary and expenses of the occupant of the office of Sheriff of Edmonson County.

4. This scheme and artifice to defraud was executed by the defendants through the following manner, methods and means, among others:

A. It was a part of said scheme and artifice to defraud that the defendants, MORRIS WAYNE WEBB and DEBBY BUCHANAN, and others, attempted to influence the outcome of the general election in Edmonson County, Kentucky on November 5, 1985, by mailing and causing to be mailed absentee ballots which had been fraudulently obtained and voted, and which were intended to be counted and tabulated by the Edmonson County Election Commission as legitimate ballots cast in that election.

B. It was further a part of said scheme and artifice to defraud that MORRIS WAYNE WEBB did, on or about the 16th day of August 1985, travel to Indianapolis, Indiana and did procure or cause to be procured persons not residents of Edmonson County or otherwise entitled to vote therein and did procure or cause to be procured the voter registration of those persons under fraudulent pretenses as voters in Edmonson County, Kentucky and as absent voters entitled to vote in the said November 5, 1985, general election.

C. It was further a part of said scheme and artifice to defraud that the defendants did submit the aforementioned fraudulent absentee ballot applications to the Edmonson County Clerk, and did cause to be sent and delivered by the United States Postal Service absentee ballots to the aforementioned voters to addresses within Edmonson County, Kentucky, which addresses were procured by, and subject to control of defendant DEBBY BUCHANAN.

Appendix B: Sample Indictments (Webb)

D. It was further a part of said scheme and artifice to defraud that defendant MORRIS WAYNE WEBB and others did upon receiving the aforementioned absentee ballots return to Indianapolis, Indiana, on or about the 27th day of October 1985, the exact date being unknown to the Grand Jury, and did cause the said voters to sign the absentee ballot envelopes, which were to contain ballots that had not been personally, voluntarily and freely marked by said voters.

E. It was further a part of the said scheme and artifice to defraud that between on or about October 27, 1985 and November 5, 1985, the defendants would and did fraudulently mark and cause to be marked the aforementioned ballots, without the personal participation of the voters in whose name they were to be cast; that said defendants would and did insert said fraudulent absentee ballots into the ballot envelopes referred to in subparagraph "D" above; and that the said defendants would and did thereafter place said ballot envelopes in the United States Mails for transmission to the Edmonson County Court Clerk's Office.

F. It was further a part of the said scheme and artifice to defraud that the defendants herein, and others known and unknown to the Grand Jury, would and did misrepresent and conceal the false, fraudulent and spurious nature of the ballots they had procured and cast in the manner aforesaid, from the Edmonson County Board of Elections, and that they would and did thereby intend to cause the Edmonson County Board of Election to count said fraudulent and illegal ballots as though they were legal and valid ones in the 1985 General Election for Sheriff of Edmonson County, Kentucky.

G. It was further a part of the said scheme and artifice to defraud that on or about and between the 27th day of October 1985, and November 5, 1985, the exact date being unknown to the Grand Jury, in Edmonson County, Kentucky and elsewhere, MORRIS WAYNE WEBB, DEBBY BUCHANAN and others known and unknown to the Grand Jury, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, did knowingly cause to be placed in an authorized depository for mail matter an envelope containing an absentee ballot, said envelope to Dickie Sanders, Edmonson County, Clerk, Brownsville, Kentucky 42210, with a return address of Austin Garrison, 1604 Wingfield Church Road, Bowling Green, Kentucky 42101, care of John Kelly Meredith, to be sent and delivered by the United States Postal Service.

In violation of Title 18, United States Code, Sections 1341 and 2.

Appendix B: Sample Indictments (Goland)

6. United States v. Goland, 959 F.2d 1449 (9th Cir. 1992).

This case involved federal campaign financing fraud. The indictment charges conspiracy to defraud an agency of the Federal Government in violation of 18 U.S.C. § 371, willfully causing false statements to a federal agency in violation of 18 U.S.C. §§ 1001 and 2, making excessive contributions to a federal candidate in violation of 2 U.S.C. §§ 441a(a) and 437g(d), and making excessive contributions to a political committee in violation of 2 U.S.C. §§ 441a(2)(1)(c) and 437g(d).

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

February, 1989 Grand Jury

UNITED STATES OF AMERICA,	) NO. CR 88-1009(B)-RSWL
)
	) <u>SECOND SUPERSEDING</u>
Plaintiff,	) <u>I N D I C T M E N T</u>
)
v.	) [18 U.S.C. § 371: Conspiracy;
	) 18 U.S.C. § 1001: False Statement
	) to a Government Agency;
	) 18 U.S.C. § 2(b):
MICHAEL R. GOLAND,	) Causing an Act to Be Done;
	) 2 U.S.C. § 441a(a)(1)(A):
	) Making Excessive Contributions
Defendant.	) to a Federal Candidate;
	) 2 U.S.C. § 441a(a)(1)(C): Making
	) Excessive Contributions to a
	) Political Committee]

The Grand Jury Charges:

GENERAL ALLEGATIONS

A INTRODUCTION

At all times material to each count of this indictment:

1 In November, 1986 an election was held in the State of California to elect a United States Senator. The candidates for this federal office

Appendix B: Sample Indictments (Goland)

included, among others, Senator Alan Cranston, a Democrat, Rep. Ed Zschau, a Republican, and Edward B. Vallen, for the American Independent Party.

2. MICHAEL R. GOLAND, defendant herein, was the president and controlling shareholder of Balboa Construction Co., Inc.

3. Balboa Construction Co., Inc. ("Balboa Construction") was a California corporation, with offices in Woodland Hills.

4. Sander E. Habalow, unindicted co-conspirator herein, was a business associate of defendant GOLAND.

5. Michael B. Altman, unindicted co-conspirator herein, was an associate of defendant GOLAND.

6. The Committee to Elect Ed Vallen to U.S. Senate (the "Vallen Campaign Committee") was the principal campaign committee authorized to support the candidacy of Edward B. Vallen for election to the office of U.S. Senator for California in 1986, and as such was subject to the reporting provisions and the campaign financing limitations of the Federal Election Campaign Act, 2 U.S.C. § 431-455 (the "Act").

7. A political committee which either (a) is the principal campaign committee for a candidate for federal office or (b) makes expenditures in excess of \$1,000 per year to support or oppose a candidate for federal office, is required by the Act, specifically, Title 2, United States Code, § 434, to file periodic reports with the Federal Election Commission, which reports should accurately reflect the identities of all individuals and entities who contribute in excess of \$200.00 to each such political committee in any given calendar year.

8. Any person (or political committee) who makes an independent expenditure exceeding \$200 which expressly advocates the election or defeat of any candidate is also required by the Act, in particular, 2 U.S.C. § 434(c), to file a report with the FEC reflecting the identity of the person to whom such expenditure is made.

9. The Act, in particular 2 U.S.C. § 441a(a)(1)(A), prohibits and renders illegal, contributions to any federal candidate from any individual that exceed \$1,000 in connection with any given election (primary or general election). For the purpose of this limitation on campaign contributions, the Act, in particular 2 U.S.C. § 441a(a)(7) and 441a(a)(8), provides that any and all payments made by an individual to a third party, if made after consultation or coordination with a federal candidate or his campaign committee, or which are made on behalf of the candidate or his campaign committee, shall be treated as contributions to that campaign committee and reported as such.

10. The Act, in particular 2 U.S.C. § 441a(a)(1)(C), prohibits and renders illegal contributions by any given individual to a political action committee ("PAC") that exceed \$5,000 in the aggregate in any calendar year.

Appendix B: Sample Indictments (Goland)

11. The Federal Election Commission ("FEC") was and is the agency of the United States Government entrusted with responsibility for enforcement of the reporting requirements of the Act and for detection, investigation and institution of enforcement action against violations of the Act, including the provisions referred to in paragraphs 6 through 10 above. In addition, the FEC is responsible for making available to the public specific information about the amounts and sources of political contributions to federal candidates or PAC's.

COUNT ONE
[18 U.S.C. § 371]

B. OBJECTS OF THE CONSPIRACY

12. Beginning at a time unknown to the Grand Jury but approximately on or about July 1, 1986 and continuing thereafter to on or about January 12, 1987, in Los Angeles County, within the Central District of California, and elsewhere, defendant MICHAEL R. GOLAND and unindicted co-conspirators Sander E. Habalow and Michael B. Altman, and others both known and unknown to the grand jury, combined, agreed and conspired together to commit the following crimes against the United States: (1) to defraud the United States, and in particular the FEC, by impairing, impeding and defeating its lawful function and duties under the Act, in violation of Title 18, United States Code, Section 371; and (2) to knowingly and willfully make, and cause others to make, false statements to the FEC, in violation of Title 18, United States Code, Section 1001.

13. It was the plan and purpose of the conspiracy to intentionally obstruct, impair and impede the FEC in the lawful discharge of its statutory duties, namely:

- a. The duty imposed on the FEC by the Act to make available to the public accurate information concerning the identities of contributors to federal campaigns or PAC's, the identities of persons making independent expenditures expressly advocating the election or defeat of clearly identified federal candidates, and the dates and amounts of such contributions or independent expenditures; and
- b. The duty imposed on the FEC by the Act to detect violations of campaign contribution limitations or undisclosed independent expenditures, and to seek civil and administrative sanctions against individuals who make illegal campaign contributions or who fail to disclose independent expenditures.

14. It was the ultimate objective of the conspiracy to permit defendant

Appendix B: Sample Indictments (Goland)

MICHAEL R. GOLAND to make illegal campaign expenditures and contributions of approximately \$150,000 in the 1986 California Senate race without detection by the FEC or by the voting public.

C. THE MEANS OF THE CONSPIRACY

The events underlying and the means and methods used to accomplish this conspiracy were as follows:

* * * * *

17. In October, 1986 defendant GOLAND and Morrow decided to publicly promote the candidacy of American Independent Party candidate Ed Vallen, in a last-minute effort to further assist the incumbent, Senator Alan Cranston, by diverting votes from his Republican challenger, Ed Zschau. Morrow was assigned the task by GOLAND of arranging with The Committee to Elect Ed Vallen to U.S. Senate to produce \$120,000 worth of television commercials promoting Vallen's candidacy and attacking Zschau's candidacy.

18. On October 27, 1986, GOLAND caused \$120,000 to be delivered to Greenstripe Media, Inc. ("Greenstripe Media"), for purposes of producing a political television advertisement featuring and promoting the candidacy of Ed Vallen. GOLAND advanced \$90,000 through personal funds held for that purpose by unindicted co-conspirator Michael B. Altman, and sent the remaining \$30,000 to Greenstripe in funds drawn on an account of Balboa Construction.

19. In order to avoid having to report the advance to the FEC as a contribution from GOLAND to the Vallen Campaign Committee, as required by law, GOLAND then caused various persons known to the Grand Jury to be asked to make payments to a media company with the express understanding that said persons (hereafter referred to as "conduits") would be reimbursed for their "contributions".

20. Between October 31, 1986 and December 20, 1986, approximately fifty-six conduits were contacted, directly or indirectly, and induced by defendant GOLAND and those working at his request and direction, to write checks payable to Greenstripe Media. Such checks were ultimately collected and delivered to Greenstripe Media on the instructions of defendant GOLAND.

21. After the conduits wrote the "contribution" checks, they were reimbursed in full, as promised, by funds held or controlled by defendant GOLAND.

22. It was a part of the conspiracy that defendant GOLAND, with the assistance of Morrow and Gemma, would and did cause his independent

Appendix B: Sample Indictments (Goland)

expenditure campaign against candidate Zschau to appear as though it had been conducted and financed, in part, by National Pro-Life PAC, Gemma's organization, when in fact, defendant GOLAND directly or indirectly provided all of the funds used to finance these expenditures.

* * * * *

D. OVERT ACTS

25. In furtherance of the conspiracy, and to accomplish its unlawful objectives, the defendant MICHAEL R. GOLAND, unindicted co-conspirators Sander E. Habalow and Michael B. Altman, and others both known and unknown committed various overt acts in the Central District of California, and elsewhere, among which were the following:

* * * * *

- d. In or about mid-October, 1986 MICHAEL R. GOLAND directed Colleen Morrow, then an employee of Balboa Construction, to arrange for the production and airing of a television commercial featuring candidate Ed Vallen and attacking Representative Ed Zschau.
- e. In or about mid-October, 1986 MICHAEL R. GOLAND wrote the script for the television advertisement featuring candidate Ed Vallen.

* * * * *

- j. On or about October 27, 1986 MICHAEL R. GOLAND caused \$120,000, in the form of two cashier's checks neither of which revealed the identity of the true donor, to be delivered to Greenstripe Media, Inc. in payment of the advertising campaign for Ed Vallen.

* * * * *

- m. On or about October 30, 1986 MICHAEL R. GOLAND gave Lyle R. Weisman a check for \$26,000, drawn on an account of Balboa Construction, and asked Weisman to contact various conduits and obtain "contributions" to a political campaign for which Goland would provide full reimbursement.

* * * * *

Appendix B: Sample Indictments (Goland)

- r. On or about November 4, 1986 MICHAEL R. GOLAND caused the Treasurer of The Committee to Elect Ed Vallen to U.S. Senate to file a report of campaign contributions with the FEC, which report falsely attributed \$74,000 in campaign contributions made by defendant MICHAEL R. GOLAND as having been made by other individuals.

* * * * *

All in violation of Section 371 of Title 18, United States Code.

COUNT TWO
[18 U.S.C. §§ 1001 and 2(b)]

26. The Grand Jury realleges and incorporates by reference herein the allegations made in paragraphs 1 through 11 and 13 through 25 of this Indictment, and further alleges as follows:

27. On or about November 4, 1986, in Los Angeles County, within the Central District of California, defendant MICHAEL R. GOLAND knowingly and willfully caused the Treasurer for The Committee to Elect Ed Vallen of U.S. Senate to make false and fictitious statements, representations and writings to the Federal Election Commission, concerning matters within the jurisdiction of the Federal Election Commission; to wit, that an illegal contribution of approximately \$120,000 which defendant MICHAEL R. GOLAND made and caused to be made to The Committee to Elect Ed Vallen to U.S. Senate, in violation of the contribution limitations imposed by the Federal Election Campaign Act and specifically Title 2, United States Code, § 441a(a)(1)(A), had been made in part in lawful amounts by the following individuals: * * * * * Whereas, in truth and fact, as defendant then well knew, it was defendant GOLAND, not said individuals, who had contributed to the Vallen Campaign Committee. All in violation of Sections 1001 and 2(b) of Title 18, United States Code.

* * * * *

APPENDIX C
STATUTES

APPENDIX C
STATUTES

1. EXCERPTS FROM TITLE 2, UNITED STATES CODE

§ 431. Definitions

When used in this Act:

(1) The term "election" means--

- (A) a general, special, primary, or runoff election;
- (B) a convention or caucus of a political party which has authority to nominate a candidate;
- (C) a primary election held for the selection of delegates to a national nominating convention of a political party; and
- (D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

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

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

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

(4) The term "political committee" means--

- (A) any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year; or
- (B) any separate segregated fund established under the provisions of section 441b(b) of this title; or

Appendix C: Statutes (2 U.S.C. § 431)

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

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

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

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

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

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

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

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

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

(ii) the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on behalf of any single candidate does not exceed \$1,000 with respect to any single election, and on behalf of all political

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committees of a political party does not exceed \$2,000 in any calendar year;

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

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

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

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

(vii) any loan of money by a State bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan--

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

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or guarantors;

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

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

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

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

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

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

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

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

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

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

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

(xi) the payment by a candidate, for nomination or election to

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

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

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

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

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

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

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

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

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

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

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

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

Appendix C: Statutes (2 U.S.C. § 432)

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

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

* * * * *

§ 432. Organization of political committees

(a) Treasurer; vacancy; official authorizations

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

(b) Account of contributions; segregated funds

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

* * * * *

Appendix C: Statutes (2 U.S.C. § 434)

§ 434. Reporting requirements

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

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

* * * * *

(b) Contents of reports

Each report under this section shall disclose--

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

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

(A) contributions from persons other than political committees;

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

(C) contributions from political party committees;

(D) contributions from other political committees;

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

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

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

(H) all other loans;

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

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

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

(3) the identification of each--

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the

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reporting committee should so elect, together with the date and amount of any such contribution;

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

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

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

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

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

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

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

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

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

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

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

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

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

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

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

Appendix C: Statutes (2 U.S.C. § 434)

(iii) independent expenditures;

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

(v) any other disbursements; and

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

(5) the name and address of each--

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

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

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

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

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

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

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

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

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

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent

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expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

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

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

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

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

* * * * *

§ 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

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penalty of perjury and subject to the provisions of section 1001 of title 18. Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint. The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.

(2) If the Commission, upon receiving a complaint under paragraph (1) or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act or chapter 95 or chapter 96 of title 26, the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.

(3) The general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause pursuant to paragraph (4)(A)(i). With such notification, the general counsel shall include a brief stating the position of the general counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, respondent may submit a brief stating the position of such respondent on the legal and factual issues of the case, and replying to the brief of the general counsel. Such briefs shall be filed with the Secretary of the Commission and shall be considered by the Commission before proceeding under paragraph (4).

(4) (A) (i) Except as provided in clause (ii), if the Commission determines, by an affirmative vote of 4 of its members, that there is probable cause to believe that any person has committed, or is about to commit, a violation of this Act or of chapter 95 or chapter 96 of title 26, the Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved. Such attempt by the Commission to correct or prevent such violation may continue for a period of not more than 90 days. The Commission may not enter into a conciliation agreement under this clause

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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

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may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

(6) (A) If the Commission is unable to correct or prevent any violation of this Act or of chapter 95 or chapter 96 of title 26, by the methods specified in paragraph (4)(A), the Commission may, upon an affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order (including an order for a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation) in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business.

(B) In any civil action instituted by the Commission under subparagraph (A), the court may grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation, upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act or chapter 95 or chapter 96 of title 26.

(C) In any civil action for relief instituted by the Commission under subparagraph (A), if the court determines that the Commission has established that the person involved in such civil action has committed a knowing and willful violation of this Act or of chapter 95 or chapter 96 of title 26, the court may impose a civil penalty which does not exceed the greater of \$10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation.

(7) In any action brought under paragraph (5) or (6), subpoenas for witnesses who are required to attend a United States district court may run into any other district.

(8) (A) Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.

(B) Any petition under subparagraph (A) shall be filed, in the case of a dismissal of a complaint by the Commission, within 60 days after the

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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.

(10) Repealed. Pub.L. 98-620, title IV, § 402(1)(A), Nov. 8, 1984, 98 Stat. 3357.

(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 required 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) of this title, the Commission shall notify the person of such failure to file the

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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) of this title, 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) of this title may incorporate a violation of section 441c(b), 441f and 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) of this section 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

Appendix C: Statutes (2 U.S.C. § 439a, 441a)

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.

§ 439a. Use of contributed amounts for certain purposes

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in section 170(c) of title 26, or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political party; except that no such amounts may be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.^[1]

§ 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

¹ Pub. L. 101-194, Title V, § 504(a) repealed the "grandfather clause" in § 439a, exempting certain Members of Congress from this prohibition, effective January 1993.

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the aggregate, exceed \$5,000.

(2) No multicandidate political committee shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed \$15,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(3) No individual shall make contributions aggregating more than \$25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held.

* * * * *

(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

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President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

* * * * *

(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.

* * * * *

§ 441b. Contributions or expenditures by national banks, corporations, or labor organizations

(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by

Appendix C: Statutes (2 U.S.C. § 441b)

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 791(h) of title 15, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, 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

Appendix C: Statutes (2 U.S.C. § 441b)

shall be unlawful--

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of \$50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions,

Appendix C: Statutes (2 U.S.C. § 441c)

and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

§ 441c. Contributions by government contractors

(a) Prohibition

It shall be unlawful for any person--

(1) who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

Appendix C: Statutes (2 U.S.C. § 441d)

(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.

Appendix C: Statutes (2 U.S.C. §§ 441e, 441f, 441g, 441h)

(b) No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes.

§ 441e. Contributions by foreign nationals

(a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

(b) As used in this section, the term "foreign national" means--

(1) a foreign principal, as such term is defined by section 611 (b) of title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of title 8.

§ 441f. Contributions in name of another prohibited

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

§ 441g. Limitation on contribution of currency

No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

§ 441h. Fraudulent misrepresentation of campaign authority

No person who is a candidate for Federal office or an employee or agent of such a candidate shall--

(1) fraudulently misrepresent himself or any committee or

Appendix C: Statutes (2 U.S.C. §§ 453, 455)

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).

§ 453. State laws affected

The provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

§ 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.

* * * * *

Appendix C: Statutes (18 U.S.C. §§ 241, 242, 245)

2. EXCERPTS FROM TITLE 18, UNITED STATES CODE

§ 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, or District 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; . . .

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section . . . they shall be fined under this title or imprisoned for any term of years or for life, or both.

§ 242. Deprivation of rights under color of law

Whoever, under color of law, statute, ordinance, regulation, or custom, willfully subjects any person in 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 person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section . . . shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section . . . imprisoned for any term of years or for life, or both.

§ 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, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that in his judgment a

Appendix C: Statutes (18 U.S.C. § 592)

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, 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 interferes 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;

* * * * *

shall be fined under this title, or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section . . . shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section . . . shall be fined under this title or imprisoned for any term of years or for life, or both.

* * * * *

§ 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.

Appendix C: Statutes (18 U.S.C. §§ 593, 594, 595)

§ 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, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties--

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

§ 594. Intimidation of voters

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

§ 595. Interference by administrative employees of Federal, State, or Territorial Governments

Whoever, being a person employed in any administrative position by the

Appendix C: Statutes (18 U.S.C. § 596)

United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.

§ 596. Polling armed forces

Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

The word "poll" means any request for information, verbal or written, which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other person, persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form.

Appendix C: Statutes 18 U.S.C. §§ 597, 598, 599, 600)

§ 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, 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

Appendix C: Statutes (18 U.S.C. § 601)

political office, shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

§ 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of--

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State; if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined not more than \$10,000, or imprisoned not more than one year, or both.

(b) As used in this section--

(1) the term "candidate" means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term "election" means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

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

Appendix C: Statutes (18 U.S.C. §§ 602, 603)

§ 602. Solicitation of political contributions

(a) 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 under this title or imprisoned not more than 3 years, or both.

(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

§ 603. Making political contributions

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

Appendix C: Statutes (18 U.S.C. §§ 604, 605, 606, 607)

§ 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

Appendix C: Statutes (18 U.S.C. §§ 608, 609, 610)

Delegate or Resident Commissioner to, the Congress, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

§ 608. Absent uniformed services voters and overseas voters

(a) Whoever knowingly deprives or attempts to deprive any person of a right under the Uniformed and Overseas Citizens Absentee Voting Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

(b) Whoever knowingly gives false information for the purpose of establishing the eligibility of any person to register or vote under the Uniformed and Overseas Citizens Absentee Voting Act, or pays or offers to pay, or accepts payment for registering or voting under such Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

§ 609. Use of military authority to influence vote of member of Armed Forces

Whoever, being a commissioned, noncommissioned, warrant, or petty officer of an Armed Force, uses military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so, shall be fined in accordance with this title or imprisoned not more than five years, or both. Nothing in this section shall prohibit free discussion of political issues or candidates for public office.

§ 610. Coercion of political activity

It shall be unlawful for any person to intimidate, threaten, command, or coerce, or attempt to intimidate, threaten, command, or coerce, any employee of the Federal Government as defined in section 7322(1) of title 5, United States Code, to engage in, or not engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate.

Appendix C: Statutes (18 U.S.C. §§ 911, 1341, 1346)

Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

§ 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 deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier,² or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier 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. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

§ 1346. Definition of "scheme or artifice to defraud"

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

² The language encompassing private and commercial interstate carriers was added by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-332, Sept. 13, 1994, 108 Stat. 1796.

Appendix C: Statutes (18 U.S.C. § 1952)

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to--
(1) distribute the proceeds of any unlawful activity; or
(2) commit any crime of violence to further any unlawful activity;
or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(b) As used this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

3. EXCERPTS FROM TITLE 26, UNITED STATES CODE

§ 9012. Criminal penalties

(a) Excess expenses.--

(1) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a presidential election or any of his authorized committees knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004 with respect to such election. It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under section 9008(d), unless the incurring of such expenses is authorized by the Commission under section 9008(d)(3).

(2) Any person who violates paragraph (1) shall be fined not more than \$5,000, or imprisoned not more than one year or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

b) Contributions.--

(1) It shall be unlawful for an eligible candidate of a major party in a presidential election or any of his authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(c), or to defray expenses which would be qualified campaign expenses but for subparagraph (c) of section 9002(11).

(2) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a presidential election or any of his authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred with respect to such election by such eligible candidate and his authorized committees.

(3) Any person who violates paragraph (1) or (2) shall be fined not more than \$5,000, or imprisoned not more than one year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

(c) Unlawful use of payments.--

(1) It shall be unlawful for any person who received any payment under section 9006, or to whom any portion of any payment received under such section is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than--

- (A) to defray the qualified campaign expenses with respect to which such payment was made, or
- (B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(2) It shall be unlawful for the national committee of a major party or minor party which receives any payment under section 9008(b)(3) to use, or authorize the use of, such payment for any purpose other than a purpose authorized by section 9008(c).

(3) Any person who violates paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

(d) False statements, etc.--

- (1) It shall be unlawful for any person knowingly and willfully--
 - (A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this subtitle, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter; or
 - (B) to fail to furnish to the commission any records, books, or information requested by it for purposes of this chapter.

Appendix C: Statutes (26 U.S.C. § 9042)

(2) Any person who violates paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

(e) Kickbacks and illegal payments.--

(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees. It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a presidential nominating convention.

(2) Any person who violates paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees, or in connection with any expense incurred by the national committee of a major party or minor party with respect to a presidential nominating convention shall pay to the Secretary of the Treasury, for deposit in the general fund of the Treasury, an amount equal to 125 percent of the kickback or payment received.

§ 9042. Criminal penalties

(a) **Excess campaign expenses.--** Any person who violates the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both.

(b) Unlawful use of payments.--

- (1) It is unlawful for any person who received any payment under section 9037, or to whom any portion of any such payment is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than--
- (A) to defray qualified campaign expenses, or

Appendix C: Statutes (26 U.S.C. § 9042)

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(c) False statements, etc.--

(1) It is unlawful for any person knowingly and willfully--

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this chapter, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter, or

(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this chapter.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(d) Kickbacks and illegal payments.--

(1) It is unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of a candidate, or his authorized committees, who receives payments under section 9037.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of a candidate or his authorized committees shall pay to the Secretary for deposit in the matching payment account, an amount equal to 125 percent of the kickback or payment received.

4. EXCERPTS FROM TITLE 42, UNITED STATES CODE

§ 1973i. Prohibited acts

False information in registering or voting; penalties

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than \$10,000 or imprisoned not more than five years, or both: Provided, however, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

* * * * *

Voting more than once

(e)(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 1973aa-1 of this title, to the extent two ballots are not cast for an election to the same candidacy or office.

§ 1973gg-10. Criminal penalties

A person, including an election official, who in any election for Federal office--

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for--

(A) registering to vote, or voting, or attempting to register to vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register to vote; or

(C) exercising any right under this subchapter; or

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by--

(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or


(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held,

shall be fined in accordance with title 18 (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31), notwithstanding any other law), or imprisoned not more than 5 years, or both.

(Pub.L. 103-31, § 12, May 20, 1993, 107 Stat. 88.)

Effective Date

Pub.L. 103-31, § 13, May 20, 1993, 107 Stat. 89, provided that this section takes effect with respect to a State that, on May 20, 1993, has a provision in the constitution of the State that would preclude compliance with this subchapter, unless the State maintained separate Federal and State official lists of eligible voters, on the later of Jan. 1, 1996, or the date that is 120 days after the date by which, under the constitution of the State as in effect on May 20, 1993, it would be legally possible to adopt and place into effect any amendments to the constitution of the State that are necessary to permit compliance with this subchapter without requiring a special election, and with respect to a State not so described on Jan. 1, 1995.



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