Shays v. FEC, Civ. No. 04-1597 (EGS)
&
Bush-Cheney '04, Inc. v. FEC, Civ. No. 04-1612 (EGS)

FEC Exhibit E

In Support of Motion for Summary Judgment
Deposit of Repayments
Section: 26 U.S.C. §9007(d)

Recommendation: Congress should revise the law to state that: All payments received by the Secretary of the Treasury under subsection (b) shall be deposited by him or her in the Presidential Election Campaign Fund established by section 9006(a).

Explanation: This change would allow the Fund to recapture monies raised by convention-related committees of national major and minor parties, as well as by general election grant recipients. Currently, the Fund recaptures only repayments made by primary matching fund recipients.

Contributions and Expenditures
Contributions and Expenditures to Influence Federal and Non-Federal Elections (1989)
Section: 2 U.S.C. §§441 and 434

Recommendation: Congress may wish to consider whether new legislation is needed to monitor political committees that engage in activities that influence both federal and nonfederal elections.

Explanation: The law requires that all funds spent to influence federal elections come from sources that are permissible under the limitations and prohibitions of the Act. Problems arise with the application of this provision when committees engage in activities that support both federal and nonfederal candidates. In this regard, the Commission has attempted to clarify the rules on allocating disbursements between federal and nonfederal election activity. (The Commission issued a Notice of Proposed Rulemaking and conducted hearings.)

The District Court for the District of Columbia, in Common Cause v. FEC, confirmed the Commission's long-standing view that allocation is the appropriate way to reconcile its mandate (to monitor excessive and prohibited funds) and the limits on its jurisdiction (to regulate money influencing federal elections—but not state or local). In recent hearings, the Commission acknowledged that the allocation issue had been "clouded by allegations that the campaigns of both Presidential candidates raised large amounts of so-called soft money." In light of this public concern, Congress may wish to reevaluate the Commission's role in regulating political committees that support both federal and nonfederal candidates.

Nonprofit Corporations (1989)
Section: 2 U.S.C. §441b

Recommendation: In light of the decision of the U.S. Supreme Court in Federal Election Commission v. Massachusetts Citizens for Life, Inc. (MCFL), Congress may wish to amend the provision prohibiting corporate and labor spending in connection with federal elections in order to incorporate the Court's decision.

Explanation: In the Court's decision of December 15, 1996, the Court held that the Act's prohibition on corporate political expenditures was unconstitutional as applied to independent expenditures made by a narrowly defined type of nonprofit corporation. Since that time, the Commission has published a notice of proposed rulemaking and has conducted hearings on whether regulatory changes are needed as a result of the Court's decision. Congress may wish to consider whether statutory changes are required as well.

The Court found that certain nonprofit corporations were not subject to the prohibitions of 2 U.S.C. §441b. The Court determined, however, that these nonprofit corporations had to disclose some aspect of their financial activity—in particular, inde-