AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# FEDERAL PROPERTY CAMPAIGN FUNDRAISING REFORM ACT OF 2000

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY
## HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

**H.R. 4845**

JULY 20, 2000

**Serial No. 111**

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
67–331 WASHINGTON : 2000

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

COMMITTEE ON THE JUDICIARY

HENRY J. HYDE, Illinois, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin
BILL McCOLLUM, Florida
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
CHARLES T. CANADY, Florida
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
ASA HUTCHINSON, Arkansas
EDWARD A. PEASE, Indiana
CHRIS CANNON, Utah
JAMES E. ROGAN, California
LINDSEY O. GRAHAM, South Carolina
MARY BONO, California
SPENCER BACHUS, Alabama
JOE SCARBOROUGH, Florida
DAVID VITTER, Louisiana

JOHN CONYERS, JR., Michigan
BARNEY FRANK, Massachusetts
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
STEVEN R. ROTHMAN, New Jersey
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York

THOMAS E. MOONEY, SR., *General Counsel-Chief of Staff*
JULIAN EPSTEIN, *Minority Chief Counsel and Staff Director*

# CONTENTS

## HEARING DATE


Page

July 20, 2000 ..... 1


## TEXT OF BILL


H.R. 4845 ..... 1


## OPENING STATEMENT


Hyde, Hon. Henry J., a Representative in Congress From the State of Illinois, and chairman, Committee on the Judiciary ..... 1


## WITNESSES


Keeney, John C., Deputy Assistant Attorney General, Criminal Division, United States Department of Justice, Washington, DC ..... 6


## LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING


Hyde, Hon. Henry J., a Representative in Congress From the State of Illinois, and chairman, Committee on the Judiciary: Prepared statement ..... 3

Keeney, John C., Deputy Assistant Attorney General, Criminal Division, United States Department of Justice, Washington, DC: Prepared statement 8

# FEDERAL PROPERTY CAMPAIGN FUNDRAISING REFORM ACT OF 2000

**THURSDAY, JULY 20, 2000**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The committee met, pursuant to notice, at 2:43 p.m., in Room 2141, Rayburn House Office Building, Hon. Henry J. Hyde (chairman of the committee) presiding.

Members Present: Representatives Henry J. Hyde, Howard Coble, Charles T. Canady, Steve Chabot, Asa Hutchinson, Edward A. Pease, John Conyers, Jr., Sheila Jackson Lee, Martin T. Meehan, and Steven R. Rothman.

Staff Present: Thomas E. Mooney, Sr., general counsel-chief of staff; Jon Dudas, deputy general counsel-staff director; Will Moschella, chief oversight counsel; Kirsti Garlock, counsel; Steve Pinkos, counsel; Amy Rutkowski, staff assistant; and Samuel F. Stratman, communications director.

## OPENING STATEMENT OF CHAIRMAN HYDE

Mr. HYDE. The committee will come to order. Today, the committee holds a hearing on H.R. 4845, the Federal Property Campaign Fundraising Reform Act, which I introduced along with several colleagues on the committee, including Mr. Canady, Mr. Hutchinson, Mr. Chabot, and Mr. Sensenbrenner.

As is evident from the title of H.R. 4845, this legislation is intended to reform the criminal rules which govern the raising of campaign contributions by someone on Federal property. H.R. 4845 would prohibit the solicitation of hard and soft money in, to, or from Federal property; ban campaign solicitations made on Federal property by any means, including the telephone; ban solicitations made on Federal property for funds that are meant to influence State and local elections and ballot measures, such as initiatives and referenda; and clarify that campaign fundraising is prohibited at all times, including after hours, under these circumstances.

[The bill, H.R. 4845, follows:]

106TH CONGRESS
2D SESSION

## H. R. 4845

To amend title 18, United States Code, with respect to the prohibition against political fundraising activities in Federal buildings.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2000

Mr. HYDE (for himself, Mr. CANADY of Florida, Mr. HUTCHINSON, Mr. GILMAN, Mr. WOLF, Mr. HANSEN, Mr. CHABOT, Mr. METCALF, Mr. SHAYS, and Mr. CASTLE) introduced the following bill; which was referred to the Committee on the Judiciary

---

# A BILL

To amend title 18, United States Code, with respect to the prohibition against political fundraising activities in Federal buildings.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federal Property Campaign Fundraising Reform Act of 2000".

**SEC. 2. FEDERAL FUNDRAISING REFORM.**

(a) IN GENERAL.—Section 607(a) of title 18, United States Code, is amended—

(1) by striking "to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in" and inserting "in, to, or from";

(2) by striking "occupied in" and inserting "used for"; and

(3) by striking the period at the end of the first sentence and inserting "to solicit or receive by any means any contribution".

(b) CONTRIBUTION DEFINED.—Section 607 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(c) In this section, the term 'contribution' means—

"(1) any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971; and

"(2) any other gift, subscription, loan, advance, or deposit of money or anything of value (other than any item described in any clause of section 301(8)(B) of the Federal Election Campaign Act of 1971) which is made by any person—

"(A) for the purpose of influencing any election for State or local office,

"(B) for any Federal, State, district, or local political party, political committee of a political party, or subordinate party or committee thereof,

"(C) for any political committee or connected organization (as defined in section 301 of the Federal Election Campaign Act of 1971), or

"(D) for any person expending funds for the purpose of influencing (directly or indirectly) through advertising, polling, or other means any election for Federal, State, or local office or any ballot initiative.".

(c) EXCEPTION.—Section 607(b) of title 18, United States Code, is amended by inserting "or Executive Office of the President" after "Congress".

**SEC. 3. APPLICATION OF CONTRIBUTION DEFINITION TO PROHIBITION AGAINST CONTRIBUTIONS BY FEDERAL EMPLOYEES TO EMPLOYERS.**

Section 603(a) of title 18, United States Code, is amended by striking "within the meaning of section 301(8) of the Federal Election Campaign Act of 1971" and inserting "(as defined in section 607(c))".

○

Mr. HYDE. I introduced this legislation because politicians should not be conducting their campaigns from Federal office space. Recently, Representative Jim Hansen, the former chairman of the House Ethics Committee, gave me a copy of a letter from the Justice Department which explained why, in their opinion, soft money was not currently covered by the Federal fundraising property ban. The Justice Department's understanding of the law is not the same as Representative Hansen's.

In a March 2, 2000, memorandum to all Members of the House, the House Committee on Standards of Official Conduct described their understanding of the prohibition as follows. The general rule on solicitation, briefly stated, is that Members and staff may not solicit political contributions in or from House offices, and this general prohibition applies no matter how the solicitation is made, in person, over the telephone, or through the mail, and no matter the nature of the contribution solicited—hard money, soft money, or contributions for a State or local campaign. I should note that Representative Hansen has cosponsored my legislation because this common-sense, good-government legislation addresses this and other problems with the current law.

Another reason I introduced this legislation is because this committee has pored over thousands of pages of documents from the Justice Department pertinent to its campaign finance investigation. And after studying various legal opinions and legislative proposals, we have determined that current law needs a little more work. In fact, there are several deficiencies with the current law in addition to the soft money issue.

I can't emphasize too strongly this is not a partisan issue, and I look forward to working with my friends on both sides of the aisle on this legislation. I appreciate very much the hard work and thought put into this legislation by the Justice Department. My staff and the Department have worked closely on this, and I really appreciate the constructive comments and cooperative working relationship.

There is a time and a place for campaign fundraising, but a Federal office should never be that place. H.R. 4845 will protect the integrity of the Federal workplace by reemphasizing the general principle that Federal facilities should not be used for partisan activities, such as campaign fundraising.

With that, I turn to Mr. Conyers for his opening statement.

[The prepared statement of Mr. Hyde follows:]

PREPARED STATEMENT OF HON. HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

Today the Committee holds a hearing on H.R., 4845, the "Federal Property Campaign Fundraising Reform Act," which I introduced along with several colleagues on the Committee, including Mr. Canady, Mr. Hutchinson, Mr. Chabot, and Mr. Sensenbrenner. As is evident from the title of H.R. 4845, this legislation is intended to reform the criminal rules which govern the raising of campaign contributions by someone on federal property.

H.R. 4845 would:

- prohibit the solicitation of hard and soft money in, to, or from federal property;
- ban campaign solicitations made on federal property by any means, including the telephone;
- ban solicitations made on federal property for funds that are meant to influence state and local elections and ballot measures such as initiatives and referenda; and
- clarify that campaign fundraising is prohibited at all times, including after hours.

I introduced this legislation because politicians should not be conducting their campaigns from federal office space. Recently, Rep. Jim Hansen, the former Chairman of the House Ethics Committee, gave me a copy of a letter from the Justice Department which explained why, in their opinion, soft money was not currently

covered by the federal fundraising property ban. The Justice Department's understanding of the law is not the same as Rep. Hansen's.

In a March 2, 2000, memorandum to all Members of the House, the House Committee on Standards of Official Conduct described their understanding of the prohibition as follows:

The general rule on *solicitation*, briefly stated, is that members and staff may not solicit political contributions in or from House offices, and this general prohibition applies no matter how the solicitation is made (in person, over the telephone, or through the mail), and no matter the nature of the contribution solicited (hard money, soft money, or contributions for a state or local campaign).

I should note that Representative Hansen has cosponsored my legislation because this common sense, good-government legislation addresses this and other problems with the current law.

Another reason I introduced this legislation is because this Committee has poured over thousands of pages of documents from the Department of Justice pertinent to its campaign finance investigation and after studying various legal opinions and legislative proposals, we have determined that current law needs a little more work. In fact, there are several deficiencies with the current law in addition to the soft money issue.

This is not a partisan issue, and I look forward to working with my friends on both sides of the isle on this legislation. I also appreciate the hard work and thought put into this legislation by the Justice Department. My staff and the Department have worked closely on this, and I appreciate the constructive comments and cooperative working relationship.

There is a time and a place for campaign fundraising, but a federal office should never be that place. H.R. 4845 will protect the integrity of the federal work place by reemphasizing the general principle that federal facilities should not be used for partisan activities such as campaign fundraising.

With that, I now turn to Mr. Conyers for his opening statement.

Mr. CONYERS. I am sorry that I was late, Chairman Hyde and members, and I will retrieve the earlier part of your statement.

I dare say that all of us, including the chairman and the vast majority of the American public, believe that an overhaul of our campaign finance laws is long overdue. Each year, our institution loses considerable public credibility due to the perception that we permit what amounts to legalized bribery by allowing powerful PACs to influence our votes with hefty campaign contributions. This year, the major political parties may raise and spend over $4 billion on commercializing democracy.

Senator McCain recently concluded that, "Special interests' unlimited campaign contributions were a key ingredient in the pork stew that is choking the American people." The Senator himself pointed out that banks and security interests gave $14 million and won $38 billion in tax breaks. The oil industry has given over $22 million in soft money, and the congressional leadership attempted to provide them with an $800 million tax credit last year.

Now, does anyone really doubt that the purchase power of the gun manufacturers who try to bottle up gun safety legislation, or the insurance industry which wants to kill the patient's bill of rights and prescription drug benefits, are innocent of any proper motive?

Now, no one is opposed to changing the somewhat obscure Pendleton Act, but a bill that fixes the peripheral Pendleton Act abuses does nothing else to reform our campaign finance system. It is like going to the hospital emergency room with third-degree burns and having a doctor wrap your twisted ankle in an Ace bandage.

So that is why I can't help but be a little cautious, bordering on skepticism about this hearing today. Whether a fundraising call is placed from the Capitol, the White House, the Republican National

Committee or the Democratic National Committee, or a 7-Eleven parking lot, we all know the effect is the same. Donors often give money with the expectation that they will get access and action that most Americans don't.

Now, there is no question that there may be abuses on both sides. For instance, in 1997, the National Republican Senatorial Committee and the National Republican Congressional Committee offered $100,000 contributors a long list of special benefits that included breakfasts and lunches with GOP congressional leadership. In 1995, a Republican Senate-House dinner invitation promised direct access to Republican leadership and congressional offices.

Any legislation that amends Pendleton must and should attempt also to address the selling of access to public buildings, as well, and I will shortly propose that. But there is a much bigger issue, Mr. Chairman. It is the congressionally-sanctioned, but nevertheless obscene purchasing of influence of the current system that the American people want to change, not the modality or the venue in which it is raised.

So today it is a little Nero-type fiddling while Washington burns, as the Majority Whip of the House crudely calls for lifting limits on campaign contributions and for putting an end once and for all to campaign finance reform. But do you know what? I will support your proposal if you support my addition to it.

In addition to banning all fundraising solicitations from Federal buildings, I propose to prohibit the solicitation of soft money from anyone who has an interest in pending legislation. And if the Chair can support that, then I will support your Pendleton provision. And if you could only just announce your support for the willingness to work on the addition to this legislation, I would be inclined to support the measure before us.

So I make these comments in good faith and in an orderly process, and I hope that there can be some joinder of the two views that have been presented here this morning. Thank you very much.

Mr. HYDE. I thank you, Mr. Conyers, and let me say I agree with you, there are lots of things wrong with the way campaigns are conducted in America today. We can't cure them all, but we can cure some of them. We ought to try to cure what we can.

It seems to me that the taxpayers who buy these buildings, all of the Federal buildings, and maintain the Federal property, are entitled not to have them exploited for partisan political purposes. I don't care what party or for what end. Federal Government buildings ought to stick to the business of governing and not fundraising, and that is the only reason this bill exists.

I read the Attorney General's statement in response to a request for an independent counsel, and I was taken by the distinctions between soft money and hard money, and the *Thayer* case and other things that exist in the law that make the present law ineffective and possibly justify using Federal telephones and Federal offices to raise money, soft or hard. I just think it is wrong, and I would like to do this much, anyway, while we try to cure the entire problem. So, that is why we are here. I am telling you, when that phone rings and you pick it up and they say "this is the White House calling," that makes a difference, or even "this is Congress calling." It shouldn't be done.

Let us proceed. We are fortunate to have Mr. John C. Keeney with us today. He has served as a Deputy Assistant Attorney General in the Department of Justice Criminal Division since 1973. Mr. Keeney graduated from the University of Scranton with a bachelor of science degree, and the Dickinson School of Law. He received his LL.M. from George Washington University School of Law in 1953 and joined the Justice Department in 1951, after serving in the United States Army Air Corps as a navigator.

Prior to serving in his present capacity Deputy Assistant Attorney General, Mr. Keeney served as the head of the Smith Act Unit of the Internal Security Division, the Deputy Chief of the Organized Crime and Racketeering Section of the Criminal Division, the Chief of the Fraud Section of the Criminal Division, and the Acting Assistant Attorney General for extended periods of time.

Mr. Keeney also served as the Justice Department's representative in negotiations on the Treaty on Mutual Assistance in Criminal Matters with Switzerland. Mr. Keeney is a member of the Pennsylvania and the District of Columbia bars, is married, and has five children.

Mr. Keeney, we appreciate your being here today and look forward to your testimony on H.R. 4845.

**STATEMENT OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC**

Mr. KEENEY. Mr. Chairman, just let me begin by saying it is always a very great pleasure to appear before Congressman Hyde because you treat the Department of Justice and all the witnesses with such great respect and deference, and we really appreciate it.

I also appreciate the efforts that you have made and your staff have made in working with us on this legislation. Your staff has done a great job on this legislation. And I might say at the inception we largely support it. We have some comments to make that would make some modifications in it, but, in general, we are in support of the legislation and we think it is good legislation.

This legislation, Mr. Chairman, would clarify certain issues with respect to the coverage of section 607, a criminal statute that prohibits political fundraising in Federal offices. To the extent that the statute as it is written does not conform to the present will of Congress, we, of course, support congressional efforts to clarify the law. Criminal statutes should be clear and unambiguous.

Section 607 is an old criminal law enacted in 1882 to protect Federal employees from being coerced to make political contributions while at work. It originally prohibited the solicitation of all political contributions in areas that were occupied by Federal employees in the performance of official duties.

However, a 1979 amendment to this law narrowed its reach only to contributions, as that term is defined in the Federal Election Campaign Act. That definition, in turn, covers only contributions to Federal candidates; that is, candidates for Congress, the Senate, the Presidency and the Vice-Presidency, so-called hard money.

In its present form, section 607 therefore does not reach the solicitation or receipt of other political contributions or soft money. The proposed legislation remedies this by providing a broader defi-

nition of the term "contribution" that reaches the solicitation or receipt of all forms of political donations.

In addition, section 607 now applies only to the solicitation and receipt of political contributions, "In any room or building occupied in the discharge of official duties." Given this definition, it is unclear whether the prohibition in the statute applies to communications such as telephone calls that originate in the Federal workplace but are received outside.

Since a section 607 offense is dependent on the location where an act of solicitation or receipt takes place, this ambiguity should be resolved. The proposed legislation accomplishes that result by replacing the ambiguous word "in" with the broader phrase "in, to, or from," and would make fundraising telephone calls or computer messages sent from the Federal workplace a crime.

Another ambiguity concerns the application of section 607 to areas that are used for both official business and unofficial activities, such as some of the mixed-purpose rooms within the White House, certain function rooms within legislative branch buildings, and government-owned residences on diplomatic and military posts.

It has been the Department's interpretation that section 607 only applies to such areas if they are actually being used for Federal work at the time of the solicitation or receipt of the contribution. The proposed legislation would change this interpretation by replacing the phrase "occupied in" the performance of "official duties" with the broader term "used for" the performance of official duties.

This new statutory formulation would bring within section 607 all Federal areas, regardless of whether they were actually being occupied by Federal personnel on official duty at the time a political solicitation or receipt occurred. However, in that process, it extends section 607 to Government residences, such as those located on diplomatic and military posts, and to multi-function rooms located within Federal areas.

Congress should consider whether this is its intention. Prohibiting fundraising in residential or leased space presents substantial first amendment issues, and we question whether Congress intends to accomplish that result. You might consider returning to the original language, "occupied in," or some variation thereof to minimize the constitutional concerns.

Also, the constitutional issues which I mention in my formal statement can be addressed through an articulation of a sufficient governmental interest that is carefully phrased. Those interests could include prohibiting use of Government properties in campaign functions, or more precisely, separate the governmental workplace from campaign activities. This interest is somewhat different from the original purpose of the Pendleton, and it is more like the purposes that underlie the Hatch Act.

Mr. Chairman, this is the area where we had the most difficulty, and I think the committee is going to have the most difficulty in articulating just exactly what is to be covered that can be constitutionally covered. We are very happy to work with you to try to see if we can't come to a resolution in this area. I think it is always going to be a problem, but we can try our best to minimize it.

Finally, allow me to make three additional comments concerning this bill. First, 18 U.S.C. 607(b) currently excludes from section 607 the receipt in a congressional office of unsolicited political contributions, provided they are promptly forwarded to the Member's political committee. H.R. 4845 would extend this exception to the Executive Office of the President. We believe this is an appropriate change to the statute.

Second, H.R. 4845 would amend section 603, a statute that prohibits Federal personnel from giving political contributions to their employer or their employing authority. Like section 607, section 603 is currently limited to hard money contributions, and the amendment would expand its coverage to soft money contributions as well. We support that provision.

However, many potential violations of this statute occur because the employee who makes the contribution is actually put under pressure from his or her superior, a situation that hardly warrants criminal penalties. Thus, Congress might wish to consider making the fact that an employee succumbed to pressure when making a contribution to his employer or employing authority an affirmative defense to a section 603 charge.

Finally, Mr. Chairman, we believe that Congress may wish to explore providing a more flexible penalty scheme for violations of sections 603 and 607. Both offenses are now felonies. Some violations of these sections clearly warrant punishment. However, the current felony provisions are far too severe for much of the broad spectrum of conduct these statutes address.

As a result, the Department has a policy of pursuing such matters only in cases presenting aggravated circumstances, such as coercion. From a law enforcement perspective, Mr. Chairman, it would be beneficial if Congress provided misdemeanor and civil sanctions, such as those already available under the Hatch Act for most violations of section 607, as a substitute for, or as an alternative to the felony penalties that currently are the only remedy available for violation of these two statutes.

To repeat, Mr. Chairman, we generally support the bill. We think it is a good bill. We expressed some reservations with some aspects of it. We would like to work with the committee staff to resolve the problems we have with it and hopefully come out with a better bill.

Thank you.

[The prepared statement of Mr. Keeney follows:]

PREPARED STATEMENT OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Good afternoon. My name is John C. Keeney, and I am a Deputy Assistant Attorney General for the Criminal Division. I appear before you this morning to testify concerning H.R. 4845, the "Federal Property Campaign Fund-raising Reform Act of 2000."

The present bill addresses two areas in which Section 607 may fail to cover political fund raising practices in the federal workspace: 1) solicitations within federal areas of soft money, and 2) solicitations accomplished by telephone from areas covered by the statute to areas that are not.

APPLICATION OF SECTION 607 TO SOFT MONEY

Section 607 is an old criminal law that was enacted in 1882 to protect federal employees from being coerced to make political contributions while at work. It originally prohibited the solicitation of all political contributions in areas that were occupied by federal employees in the performance of official duties. In its original form

this statute reached the solicitation or receipt of all types of political donations in such areas regardless of the type of candidate the solicitation or receipt was intended to benefit. It applies to both Legislative branch and Executive branch workplaces.

However, a 1979 amendment to this law confined its reach only to the solicitation and receipt of "contributions" as that term is defined in Section 301(8) of the Federal Election Campaign Act (FECA). That definition, in turn, covers only contributions intended solely to influence the nomination or election of federal candidates; that is, candidates for Congress, the Senate, the Presidency and the Vice Presidency—or so-called "hard money." In its present form, Section 607 therefore does not reach the solicitation or receipt of contributions intended to influence non-federal elections, or other partisan political objectives that do not involve an intent to influence specific federal elective contests. For example, the present law prohibits the solicitation within federal workspace of hard money contributions to federal campaign committees, but it does not cover the solicitation in federal workspace of donations to campaign committees supporting solely candidates for state or local offices, or to the "soft money" accounts of political parties.

The purpose underlying Section 607 focuses on the federal character of the location where a political solicitation occurs, not on the purpose for which the funds are being raised. The use of federal workspace to solicit or receive soft money donations intended for non-federal elections or for the soft money accounts of political parties raises similar concerns to that caused by the solicitation of hard money to benefit specific federal candidates. Nevertheless, the specific incorporation of the FECA's definition of "contribution" into Section 607 requires the statute to be read to apply only to the solicitation or receipt of hard money from federal areas.

The proposed legislation remedies this situation. Specifically, the legislation deletes the statute's present specific reference to the Federal Election Campaign Act's definition of "contribution" (Section 2(a)), and replaces it with a broader definition of the term "contribution" that reaches the solicitation or receipt of all forms of political donations (Section 2(b)). This new broad definition of "contribution" would be added to Section 607 as subsection "(c)" thereof, and thus it will henceforth specifically govern the reach of Section 607. This new definition includes all donations that represent "contributions" as defined in FECA Section 301(8) that are intended to influence federal elections, as the present law does. However, it also covers the solicitation or receipt within protected areas of donations intended to influence State and local elections; those made to Federal, State and local subdivisions of political parties; those made to any political committee that is required to register and report under FECA; and those made to any person for the purpose in influencing, directly or indirectly, any Federal, State or local election, or any ballot proposition. In short, it would cover soft money.

APPLICATION OF SECTION 607 TO TELEPHONE SOLICITATIONS

18 U.S.C. § 607 presently applies only to the solicitation and receipt of covered contributions "in any room or building occupied in the discharge of official duties" by individuals who are officers or employees of the United States.

In this particular context, the word "in" is ambiguous, yet it defines the critical location where the offense described by this statute occurs. Since a Section 607 offense is directly dependent on the location where an act of "solicitation" or "receipt" takes place, this ambiguity should be resolved.

For example, the Supreme Court has held that a solicitation that is sent by mail from a private area to an area protected by Section 607 presents a solicitation "in" the protected area, since the communication containing the solicitation is read in the protected area and thereby completes the act of solicitation there. *United States* v. *Thayer*, 209 U.S. 39 (1908). However, the application of Section 607 to the reverse situation is uncertain; i.e. a request for funds that originates in a protected area that is directed to and received in a private area. As a result, it is not clear whether Section 607 applies, for example, to telephone calls soliciting money that originated from protected areas but were directed to and received in private residences. This ambiguity in a criminal statute merits clarification.

Another issue concerns the application of section 607 to areas that might be used for both official business and unofficial activities. Section 607 currently applies to "any room or building occupied in the discharge of official duties. . . ." The Office of Legal Counsel opined in 1979 that this language does not reach certain rooms in the White House that cannot be classified as either personal or official. *See* The President-Interpretation of 18 U.S.C. § 603 as Applicable to Activities in the White House, 3 Op. Att'y Gen. 31, 43 (1979) (discussing criteria for determining whether room was used for official purposes so as to bring it within section 607). If, by re-

placing "occupied in" with "used for," Congress intends to extend the reach of section 607 to include such rooms, such an extension would raise constitutional concerns.[1]

The phrase "used for" is vague and potentially capacious. First, the phrase "used for" does not specify how significant, frequent or prolonged any such "use[ ] for the discharge of official duties" must be in order to trigger coverage of the statute; arguably, a single and momentary use of a room for official duties would qualify. Second, the phrase does not specify any temporal nexus to the solicitation or receipt; arguably, it might include a room that was used for official duties long ago. Third, because there may be no visible sign that a room has been or is sometimes being "used for" (rather than "occupied in") the discharge of official duties, a covered official may have no easy basis for discerning whether a particular room is off-limits for fundraising activities.

Given this vagueness and potential breadth of the prohibition on certain fundraising activities in "any room or building used for the discharge of official duties," this provision raises serious constitutional concerns under the First and Fifth Amendments. The First Amendment requires "'precision of regulation.'" *Buckley* v. *Valeo*, 424 U.S. 1, 41 (1976) (quoting *NAACP* v. *Button*, 371 U.S. 415, 438 (1963)). Moreover, "Due Process requires that a criminal statute provide adequate notice to a person of ordinary intelligence that his contemplated conduct is illegal," *id.* at 77, and "[w]here First Amendment rights are involved, an even greater degree of specificity is required," *id.* (internal quotations cite omitted).

This constitutional concern is particularly acute with respect to the provision's application to the President. Because of the nature of his office, the President cannot easily designate specific rooms in a building to be ones that will not be "used for" the discharge of official duties, since he may be required at any time and place to exercise such duties. For example, if the President went into a "private room" in the White House residence to write a fundraising letter and is interrupted by an aide calling upon him to make an immediate official decision, the room would arguably thereby become "used for" the discharge of official duties, and the President's letter-writing would thus subject him to criminal penalties. Because the President must be prepared to discharge official duties wherever he is at all times, this threat of criminal sanction would severely chill his constitutionally protected fundraising activities.

The proposed legislation replaces the word "in" with the broader terms "in, to or from," and replaces the terms "occupied in the discharge of official duties" with the broader terms "used for the discharge of official duties." This new statutory formulation would bring within the prohibition and protection of Section 607 solicitations that originate from protected areas but are directed to and received within private areas. With respect to telephone calls made from a protected area, we note that covering such solicitations would not serve the purpose of the Pendleton Act of removing from the federal workplace any coercion to make political contributions. Because the limitation in the bill would limit First Amendment protected activity, and would not serve the purpose of the Pendleton Act, the provision might be subject to constitutional challenge absent an articulation of a sufficient governmental interest at stake.

MISCELLANEOUS ISSUES

Finally, allow me to make three additional comments concerning this bill:

First, 18 U.S.C. § 607(b) currently addresses the situation where an unsolicited political contribution is received within an office of a United States Senator or a Member of the House of Representatives. The current law provides that the inadvertent receipt of unsolicited contributions in Legislative Branch office space does not result in a violation of Section 607, provided the contribution was not solicited in a protected area and provided further that it is transferred to the appropriate authorized campaign committee of the Senator or Member within seven days. However, the current law does not extend the same treatment for unsolicited contributions received within the Executive Office of the President (EOP). Thus, under the present law, a technical violation of Section 607 could arise were a staff assistant in the EOP to open an unsolicited envelope from a citizen which turned out to contain a contribution check.

The proposed legislation (Section 2(c)) addresses this issue by adding the EOP to the areas protected by 18 U.S.C. § 607(b). Under the amendment, the situation I have just described would not give rise to a Section 607 offense provided the con-

[1] Moreover, such an extension also would apply to areas in Legislative Branch buildings that have mixed uses.

tribution was not solicited "in to or from" a protected area, and provided further that the check was transmitted to an authorized campaign committee within seven days.

Second, 18 U.S.C. § 603 prohibits any person who is an employee of a Department or Agency of the United States or a person who receives salary or compensation for services from monies derived from the United States Treasury from making "any contribution within the meaning of Section 301(8) of the Federal election Campaign Act" to any other such person, or to any Member of Congress or United States Senator, if the person receiving the contribution is the donor's "employer or employing authority," and the contribution would also violate the civil prohibitions of the Hatch Act. Like Section 607, Section 603 has its roots in 1882 legislation directed at shielding federal personnel from being forced to make involuntary political contributions. However, the express incorporation into Section 603 of the FECA's definition of the focal term "contribution" limits the reach of this statute to hard money donations that are intended to influence the nomination or the election of candidates to federal offices. Thus, this statute does not cover political donations by otherwise covered federal employees to their "employers or employing authority" if the donation was intended to influence a State or local election, a referendum issue, or if it was made to the soft money account of a political party.

The proposed legislation (Section 3) addresses this situation by substituting the new special definition of the focal term "contribution" that is to govern 18 U.S.C. § 607 for the words "contribution" as defined in Section 301(8) of the Federal Election Campaign Act as they presently appear in Section 603. This new definition covers all forms of political transactions, and is not limited to those intended to influence federal elections. The addition of this definition does, however, create some ambiguities—by covering party committees, does it prohibit employees from giving to the party of their superior because the party may at some time contribute to their superior's campaign? Or does it just prohibit employees from giving to the party in response to a solicitation from their superior? Or is it only intended to prohibit contributions to a superior's campaign committee? The language needs to be clarified to address these ambiguities.

Finally, we believe that Congress may wish to consider providing a more flexible penalty scheme for violations of 18 U.S.C. §§ 603 and 607. Many potential violations of these sections clearly warrant severe punishment; however, the current felony provisions are far too severe for much of the remainder of the broad spectrum of conduct these statutes address. As a result, the Department has a policy of pursuing such matters only in cases presenting aggravated circumstances, such as coercion. From a law enforcement perspective, it would be beneficial if Congress provided misdemeanor and civil sanctions as substitutes for, or as alternatives to, the felony penalties that currently are the only remedy available for violations of these two statutes.

For example, the solicitation of political contributions in federal areas by most Executive Branch personnel is presently covered by the Hatch Act, 5 U.S.C. §§ 7323 and 7234, and such solicitations are subject to personnel sanctions enforced by the Office of the Special Counsel. While felony penalties under Section 607 may be appropriate for solicitations that are knowingly made in federal areas and that are either coercive in nature or disruptive to the conduct of official business, where the offense is merely that a solicitation occurred in a federal area, misdemeanor penalties, or administrative sanctions, appear to us, from a law enforcement perspective, as more appropriate to the offense. Moreover, Section 607—both in its current form and as amended by H.R. 4845—does not differentiate between solicitations that are knowingly made in federal areas from those that are made in federal areas by mistake or through direct mail. We believe that such inadvertent, "unknowing" violations would be more appropriately enforced through non-criminal remedies than through felony sanctions. With respect to Section 603, we do not believe that federal employees who give political contributions involuntarily to their employer or their employing authority as a result of job-induced pressure should be subjected to felony penalties; indeed, such coercion should constitute an affirmative defense. Other indiscreet contributions between subordinates and superiors can, we believe, be appropriately handled either through 5 U.S.C. § 7323 of the Hatch Act, or through misdemeanor penalties.

In sum, from a law enforcement perspective both Section 607 and 603 would benefit from a broader range of sanctions than currently govern both statutes. We would be pleased to work with the Committee to draft language that accomplishes this objective

I would now be pleased to answer any questions.

Mr. COBLE. [Presiding.] Thank you, Mr. Keeney. Thank you for your testimony. Chairman Hyde was called away, but he will return imminently.

Mr. Keeney, does the administration support a change in section 607 that makes it clear that campaign solicitations from a Federal office to private areas should be prohibited?

Mr. KEENEY. Yes.

Mr. COBLE. When I say Federal office, I mean Federal building generally.

Mr. KEENEY. Yes.

Mr. COBLE. They are supportive of that?

Mr. KEENEY. Yes. There is some question as to what Federal offices should be—well, Federal offices, certainly, but the only problem we have in this area is when we are dealing with so-called mixed-use offices, like ceremonial rooms and things like that, and certainly residential areas of the President and Vice President and of diplomats and other people. That is where our problem is.

Mr. COBLE. Mr. Keeney, your written testimony states that section 607 be clarified to cover telephone calls from Federal property to private property.

Mr. KEENEY. Yes, sir.

Mr. COBLE. Your testimony furthermore acknowledges that H.R. 4845 addresses this problem, but it then states that, "Because the limitation in the bill would limit first amendment-protected activity and would not serve the purpose of the Pendleton Act, the provision might be subject to constitutional challenge."

Now, since many agree that telephone campaign solicitations from Federal property to a third party on private party should be covered by section 607, do you have any suggestions, Mr. Keeney, that might assure us that the amended statute is not subject to constitutional challenge?

Mr. KEENEY. Yes. The one suggestion I have is that the Congress prepare a legislative history that indicates a clear and recognizable congressional interest in proscribing this sort of activity. And we also have a suggestion with respect to going back to the original language of the bill, which might be more helpful in avoiding a constitutional problem.

Mr. COBLE. Is it the Department's position, Mr. Keeney, that current language in section 607 is sufficient to prohibit after-hours fundraising?

Mr. KEENEY. Yes. That is our interpretation of it, yes, sir.

Mr. COBLE. All right, sir, I thank you.

Mr. KEENEY. And the proposed bill; that would be our interpretation of the proposal, too.

Mr. COBLE. I thank you, sir.

The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Well, this matter has just come to us recently. Just as a rule, Mr. Keeney, isn't it a greater concern in campaign fundraising what it buys rather than where the influence comes from, you know, in terms of a place, a situs?

Mr. KEENEY. Well, the nature of the influence is awfully important, but the concern here is the misuse of Government property, Government facilities, for a non-governmental purpose, namely a political purpose.

Mr. CONYERS. Now, have you had an opportunity to compare this proposal to the part of the Shays-Meehan bill Pendleton Act repair? In other words, something has been proposed along these lines already.

Mr. KEENEY. Yes, sir, I have looked at it, not in any great depth, Mr. Conyers. But from our standpoint, the present bill is preferable on the section 603 and the section 607 aspect.

Mr. CONYERS. And are you able to form a reason for why that is?

Mr. KEENEY. Well, you have got me at a disadvantage here, Mr. Conyers. I didn't go into the Meehan bill that much, but all of our people who looked at it came to the conclusion that the present bill is better. And I had a very superficial look and reached the same conclusions. The objective of both is highly desirable. We just think, from a technical standpoint, the present bill is better.

Mr. CONYERS. Well, unlike the Shays-Meehan bill, this measure excludes from the definition of contribution all kinds of in-kind contributions which are excluded from the definition of contribution in the Federal Election Campaign Act. But it seems to me that these kinds of in-kind contributions should not be solicited from or to a Federal office either when they are sought in connection with an election.

Would you agree with that?

Mr. KEENEY. I am not so sure I agree that in-kind solicitations from a Federal building are not covered here. In some situations it depends upon the nature of it, whether it is a de minimis contribution request or one that is an exception under the Federal Election Campaign Act.

Mr. CONYERS. Well, you are not sure if they are covered, but you think they are?

Mr. KEENEY. I would say they are, yes.

Mr. CONYERS. Oh, you say they are?

Mr. KEENEY. I would say they are, in appropriate situations, yes, if the amount is beyond what is allowed in the exception in the Federal Election Campaign Act.

Mr. CONYERS. So that under this proposal before us, a call for a donation or of campaign literature from the office is as violative as making a telephone solicitation for funds?

Mr. KEENEY. It can be, unless it comes within one of the exceptions of the FECA, or Federal Elections Campaign Act, and it might on a de minimis basis.

Mr. CONYERS. Well, let's take what is happening today in Washington, on the Hill. In today's *Washington Post*, the Republican Whip of the House is set to argue that we should end any limits on contributions. Do you think we would see more or less public corruption if we adopted this proposal?

Mr. KEENEY. Public corruption in the sense that the contributions lead to improper——

Mr. CONYERS. Undue influence.

Mr. KEENEY. I am afraid I am not the best one to comment on that, Mr. Conyers.

Mr. CONYERS. Well, if there were even more money injected into the political process, would we see more possible corruption or less?

Mr. KEENEY. Well, money, and particularly money in large amounts, creates problems. And to the extent that the amount of money is increased, it is probably more problems, but that is about all—I am really not the one to comment on that, Mr. Conyers.

Mr. CONYERS. Okay. Is it your experience that the vast majority of public corruption cases involve small contributions from individuals or large contributions from powerful interests?

Mr. KEENEY. Well, they run the gamut, Mr. Conyers, from relatively small contributions which merely get you over the threshold, to very substantial contributions by very wealthy people. But we do run the gamut on them.

Mr. CONYERS. You don't believe that it is the larger contributions injected into the political process that are more corrupting?

Mr. KEENEY. Well, as I said, I don't think I am the best one to comment on that, but I think it is a truism that the more money that is around, the more problems there can be.

Mr. CONYERS. Well, I will stop there, Mr. Chairman. There are other members.

Thank you, Mr. Keeney.

Mr. HYDE. The gentleman from Virginia, Mr. Scott—I am sorry; we can go over here.

Mr. Coble?

Mr. COBLE. I have questioned.

Mr. HYDE. You have questioned.

Mr. Canady?

Mr. CANADY. Thank you, Mr. Chairman. I want to begin by thanking Mr. Hyde for his leadership on this issue. I think this is something that is important for the committee to address.

I will echo what Mr. Hyde said about the cooperation of the Department. We appreciate the work that the Department has done in helping formulate this legislation.

Mr. KEENEY. It has been very reciprocal, Mr. Canady.

Mr. CANADY. There is an issue that I have raised previously in some other contexts, and you may not be aware of this, but the House Ethics Committee has instructed Members of the House most recently in a memorandum to Members dated March 2 of this year that, "The rules and standards enforced by this committee," being the House Committee on Official Standards, "do not prohibit Members from soliciting or receiving contributions from other Members in the House buildings. Long ago, the House took the position that Member-to-Member solicitation is permissible, notwithstanding the criminal statutes that generally bar political solicitations in Federal buildings. This committee had reiterated that position. . ."

They go on to make some points about things that Members shouldn't do, and then finally they say, "Finally, it should be noted that the Justice Department has responsibility for enforcing the criminal statutes in this area, which is now codified in 18 U.S.C. section 607," which we have been discussing. "However, as far as the committee is aware, the Department's ascent to the position of the House on Member solicitation and receipt of contributions from other Members, as set forth above, has never been sought."

I would just be interested in your comment on the position that the House committee has taken on this. When I read the law, I saw

no basis for an exception for Member-to-Member solicitation. I have always found that to be rather strange advice coming from the Ethics Committee. I don't mean that as a criticism of the committee, but I have just been puzzled by that advice.

Do you know of any basis in the law under which Members who solicit other Members for contributions in the House buildings would not be subject to the application of 18 U.S.C. section 607?

Mr. KEENEY. Facially, I don't see any, but I haven't focused on that and I would have to consult with my colleagues as to whether anybody has a different view with respect to that. It is an unusual situation, Member-to-Member. But I think you are right that on its face the statute would appear to cover it.

Mr. CANADY. Let me ask at least one other question here, just a hypothetical. Assume this scenario: a federally elected official, such as a Member of Congress, and his scheduler work to arrange a function at a local Veterans of Foreign Wars event in the August proceeding a November election. The purpose of the event will be for the Member of Congress to discuss pending legislation and to ask the attendees for their support in the upcoming election. The VFW will expend a modest sum on invitations and refreshments, and will for incidental expenses such as custodial services and utilities.

Under current law, would the Member of Congress and his or her staff who is arranging this hypothetical event be committing any crime? And if you would further comment on how this bill would affect that situation and how the Shays-Meehan would affect this particular situation.

Mr. KEENEY. Well, I think Shay-Meehan might cover it, but again I am deferring. We have Mr. Meehan here, I think, who can answer that much better than I can.

But under this bill, it would come within the exception for community groups. It would also come, as it is phrased, under the exception for rather de minimis contributions, less than $1,000, so no violation under the present bill.

Mr. MEEHAN. Would the gentleman yield?

Mr. CANADY. I will be happy to yield to Mr. Meehan.

Mr. MEEHAN. Under the Shays-Meehan bill, that would be permissible as well, because under the Shays-Meehan bill it is only if you were to call a church and say, I want you to give me a room because we are going to have a fundraiser, at which time I am going to solicit funds in order to run for my reelection campaign. That would be prohibited by the Shays-Meehan bill, but not the example that you gave.

Mr. CANADY. Thank you, Mr. Keeney. I appreciate your input. I yield back the balance of my time.

Mr. HYDE. Thank you. You used it up.

The gentleman from Virginia.

Mr. SCOTT. Would the gentleman from Florida yield?

Mr. HYDE. Well——

Mr. SCOTT. Well, would you receive a question? It was your example that you would go to the program and then hit people up for contributions while you are there?

Mr. CANADY. My example didn't have anything to do with me. My example was what someone else might do, but the hypothetical

did not involve a solicitation of contributions at the meeting. It instead involved a request for support from the people attending the meeting.

Mr. SCOTT. Mr. Keeney, would solicitation of support and solicitation of cash contributions be different?

Mr. KEENEY. I would say so, yes.

Mr. SCOTT. I am going to ask you some things about what the present law is and what would happen under the bill. Under present law and under the bill, are contributions for a State campaign—if I am trying to raise money for a candidate for the Virginia State Senate, is that covered by present law, or would it be covered by the bill?

Mr. KEENEY. It is not covered by the present law and it would be covered by the bill.

Mr. SCOTT. It would be covered by the bill?

Mr. KEENEY. It would, yes.

Mr. SCOTT. If someone calls me in my office and I return the call and it turned out to be a financial fundraising type situation, how is that to be dealt with?

Mr. KEENEY. If someone calls you—you are going to have to spell that out a little bit more for me, Mr. Scott.

Mr. SCOTT. Well, the bill changes the site of the solicitation from—it is almost ridiculous. You can call from the State office and end up somewhere else. You want to change it to an office. Should that be included? If I am raising money, I can't call someone at their office in a Federal office.

Mr. KEENEY. Well, the present bill—now, I understand what you are getting at. If the contact was inappropriate and would be illegal, it would be sufficient that the call was initiated and came into the office rather than out. The present bill covers it both ways, and the present law only covers when the solicitation comes in and is made on a phone call into the Government building.

Mr. SCOTT. How does cell phone technology get mixed into this? Somebody calls me on my cell phone or I am calling them on their cell phone, not knowing where they are. How does that get mixed into this?

Mr. KEENEY. Well, you are the Congressman, so we have got the situs, we have got a governmental building. So under the bill that we are considering now, it doesn't matter where the other person was.

Mr. SCOTT. Well, if I am in my office——

Mr. HYDE. Would the gentleman yield?

Mr. SCOTT. I yield.

Mr. HYDE. There is a case called the *Thayer* case that said when you write a letter from the Federal congressional office and it goes to somebody in Albany, New York, the solicitation occurs in Albany, not in the Federal building. We tried to change that so that where you initiate the request for funds is a Federal place and is proscribed.

Mr. SCOTT. So if I am talking about arranging a fundraiser and we are discussing raising funds or soliciting a contribution and someone calls me back on my cell phone and I am in my office, I should, of course, terminate that conversation and tell them I need

to be in a more appropriate place to continue the conversation. Is that right?

Mr. KEENEY. That is right.

Mr. SCOTT. How does all of this affect what the Republican or Democratic congressional campaign committees do in Federal buildings if we are discussing the upcoming election?

Mr. KEENEY. I am sorry, Mr. Scott. Can you repeat that?

Mr. SCOTT. Are there limitations on what Democratic or Republican congressional campaign committee activities can be discussed in hearing rooms or office buildings and Members-only meetings?

Mr. KEENEY. Well, if you are talking about them being on Federal premises, yes, it is covered. It doesn't matter. They don't have to be a public official, and that is our interpretation of the statute. It is the locus of the call that creates the problem.

Mr. SCOTT. How much prosecution are you doing under present law? Have you prosecuted anybody under the present law?

Mr. KEENEY. Yes. I can't list them right now. Yes.

Mr. SCOTT. You mentioned the fact that it might be a little easier to enforce if these weren't felonies, if they were misdemeanors or civil fines.

Mr. KEENEY. Yes, sir.

Mr. SCOTT. Does that suggest that the FEC ought to be doing the enforcement rather than the Department of Justice?

Mr. KEENEY. No, sir, no. Mr. Scott, what we are recommending there is give us options. And as I think I pointed out in my statement, some conduct is egregious; it should be a felony. Other conduct is much less egregious; it should be a misdemeanor. A third type of conduct is rather minimal, and that should be subject to civil sanctions.

We have had this experience about 10 or 12 years ago that Congress amended the conflict of interest laws to give us just that, and it has worked extremely well. Many cases that we would have to decline because they were not sufficiently aggravated to warrant a felony we were able to work out either as a misdemeanor or as a civil disposition. I think it is good law enforcement, and I strongly recommend that you give us that authority.

Mr. SCOTT. Well, these are essentially political decisions that will be made in the context of one administration in the middle of a political campaign if it is done by the Department of Justice. Doesn't it make more sense to have the FEC, which is by its charter politically-neutral and a more appropriate agency?

Mr. KEENEY. I think the Department of Justice is a neutral agency as far as enforcement of the law, Mr. Scott. I can't agree with you on that.

Mr. SCOTT. On that point, Mr. Chairman, I will yield back the balance of my time.

Mr. HYDE. The gentleman's time has expired.

The gentlelady from Texas.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I thank you for holding this hearing, in light of the fact that some of my constituents are in the room, the Elliotts. I know that they find this enormously fascinating that we are talking about the integrity of Government and maintaining that integrity so that we can do the people's work.

Let me thank you for your testimony and raise sort of a follow-up to Mr. Scott's question. Maybe succinctly, if you can say, what does this pending legislation allow you to do that you cannot do right now?

Mr. KEENEY. Well, for one thing we could prosecute soft money contributions. We can prosecute solicitation of contributions with respect to State elections and with respect to State committees.

Ms. JACKSON LEE. Can you prosecute in-kind donations, such as bank loans and requests for donations of campaign literature and other non-monetary contributions?

Mr. KEENEY. On bank loans——

Ms. JACKSON LEE. In the context of campaigns.

Mr. KEENEY. The bank loan would be given as a contribution with low interest because of its——

Ms. JACKSON LEE. It would be considered in-kind.

Mr. KEENEY. Conceivably, that could be a violation, yes.

Ms. JACKSON LEE. But it is unclear?

Mr. KEENEY. Well, it is unclear. I think we would have to narrow down the facts, exactly what was promised and what was to be given, what the in-kind was to be. We would have to tie that down, but theoretically it could be a violation.

Ms. JACKSON LEE. One of the reasons I am interested in Mr. Conyers' legislation is I think it provides more clarity. It specifically notes in-kind contributions, if we are here to talk about real campaign finance reform, which I assume is what we are intending to do.

What I would like to do is I would note that we did not have a hearing on the Meehan bill that was offered on the floor. I don't believe we had a hearing in this committee, although we have a companion bill, McCain-Feingold, in the Senate.

I would like to yield to Mr. Meehan to tell me what he sees in this legislation that is not in the campaign finance reform legislation that he has proposed that is really comprehensive on this issue. If he could just narrowly tell me what we are reviewing here and how that distinguishes from a vehicle that drew a lot of support around the issue of comprehensive campaign finance reform, I yield to the gentleman for his response.

Mr. MEEHAN. If the gentlelady would yield, what is really missing is a ban on soft money. It is one thing to say that a person—and it is nice that we are clarifying the law that a person can't from a Government building call and solicit a $500,000 check from someone. That should be illegal, and I think all of us agree on both sides of the aisle.

But how is it less corrupting to have the person walk 50 paces outside, get a cell phone, and make the same solicitation to the same person of $500,000 for a soft money contribution? The fact is there is nothing in here that bans soft money which has had a corrupting influence on the presidential elections over the last decade or so. So I would say that that clearly is missing.

Ms. JACKSON LEE. I thank the gentleman. My concern and the reason why I pose the question is because I think we on the Judiciary Committee should be concerned with the largeness of the issue. And no reflection on the witness, but we are now looking at a narrow potential which sometimes occurs out of inadvertence.

Mr. HYDE. Would the gentlelady yield?

Ms. JACKSON LEE. I would be happy to yield to the chairman. Let me just finish my sentence. I would be happy to yield. It sometimes occurs out of inadvertence, so whether we are getting a sledge hammer to kill a fly. But I would yield to the gentleman from Illinois.

Mr. HYDE. I thank the gentlelady for yielding, and I suggest to her we would be delighted if we could expand our jurisdiction. That is not within our jurisdiction. We have jurisdiction over section 607, but the other broad-ranging matters the gentlelady is talking about which would make an ideal campaign reform bill are unfortunately not our jurisdiction.

Ms. JACKSON LEE. I do appreciate the constraints with which we operate, Mr. Chairman. I would have liked to have had the campaign finance reform bill before us with additional witnesses. I am not reflecting negatively on the witness, but I thank you for that clarification.

Let me just finish my questioning. Again, I will look to study this legislation further. That is what hearings are for. I am concerned that there is the possibility of the inadvertence that occurs, either Mr. Scott's example of a mobile phone or some other—I imagine there is a bit of humor about inadvertence, but in any event what in this legislation allows the Justice Department to appropriately prosecute and then not when violations have seemingly not been made or been made inadvertently?

Mr. KEENEY. If they are made inadvertently, that would be a big factor in concluding that prosecution was not appropriate. But if we had the misdemeanor and the civil provisions, the inadvertent call might be treated as a civil matter more appropriately, if it is worthy of any prosecution.

Ms. JACKSON LEE. Do you think you have the precise tools to be able to make that assessment?

Mr. KEENEY. Well, yes, and we would like very much—again, I am making this pitch to give us the broad alternatives so that we can more effectively enforce the law and bring with appropriate sanctions violations that should be addressed.

Ms. JACKSON LEE. Although we have narrow constraints, I still think we beg the question of the $500,000 contribution of soft money that does so much to undermine a lot of what we are trying to do all over the Nation in terms of electoral politics.

In any event, I thank the witness and I thank the chairman for this hearing.

Mr. HYDE. I thank the gentlelady, and again I wish our jurisdiction would permit us to be as wide-ranging as the gentlelady would like.

Ms. JACKSON LEE. I thank the chairman.

Mr. HYDE. I just have one question, Mr. Meehan, if you will indulge me.

In the July 14 issue of *Roll Call*, a writer named Jim Mills, in an article called "Blowing Smoke," raised concern that this bill we are talking about today could outlaw all campaign fundraisers in Washington, DC. He did indicate he didn't actually read the bill, but he wrote this: "Washington is considered a Federal city. In a sense, can't the entire city be considered Federal property? I'm not

just talking about the Washington Monument or the Lincoln Memorial. I'm talking Tortilla Coast, the Monocle. I'm talking the Capitol Grill, I'm talking the Capitol Hill Club, I'm talking La Colline, I'm talking the American Trucking Association and just about any other association that happens to be located in the Federal city."

Now, Mr. Keeney, does he have a point? Would H.R. 4845 affect fundraising in any of these establishments where one might throw a fundraiser merely because they are in Washington, DC?

Mr. KEENEY. No, sir. That was a tongue-in-cheek comment, and that would not be a violation, not a violation of these statutes.

Mr. HYDE. I am greatly relieved.

Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman. That is what happens when reporters or anybody else doesn't read legislation and then wants to comment about it, I guess.

I want to thank you and commend you on your interest on the issue of campaign finance fundraising. Campaign finance reform has been one of my priorities since I came to the Congress. Chris Shays and I have worked in the House and the Senate with Republicans and Democrats to enact legislation which addresses the most serious abuses in our current campaign finance system, most importantly the ability of labor unions, corporations, and wealthy individuals to give unlimited soft money contributions to a political party.

I was interested to hear Mr. Keeney talk about the differences between this bill and the Shays-Meehan bill. Presumably, there is a problem with the Shays-Meehan legislation from the Justice Department's perspective because the legislation seeks to also tie in anything of value in connection with a campaign.

Is it the Department's position that I from my office should be able to call a church in my hometown and get a room to be used for free for one of my fundraising events and set up a fundraising event?

Mr. KEENEY. Call from your office here to your home to get a——

Mr. MEEHAN. Call to a church in my hometown and ask for——

Mr. KEENEY. You are soliciting a contribution, in effect, in kind.

Mr. MEEHAN. Well, I am asking to use a room to set up a fundraiser.

Mr. KEENEY. You are not asking that the room be provided free?

Mr. MEEHAN. Well, let's say that they provide the room for free, but I want to get the room set up.

Mr. KEENEY. Well, the fact that you are hiring a room for a fundraiser I don't think could be a violation. But the fact that you are getting it for free—if you are soliciting it for free, I would have a little problem with it.

Mr. MEEHAN. Well, is it the Department's position that I from my office should be able to make phone calls to recruit volunteers for my reelection campaign?

Mr. KEENEY. Yes, yes that is right.

Mr. MEEHAN. I should be?

Mr. KEENEY. Should be; you should be, yes, because that is one of the exceptions under FECA.

Mr. MEEHAN. So the Justice Department's position is that Members of Congress should be able to call from their offices and recruit campaign volunteers for their reelection campaign?

Mr. KEENEY. Yes.

Mr. MEEHAN. That is great, okay. I disagree with that position, and I think it opens up all kinds of problems if you allow Members of Congress to be calling volunteers.

Mr. KEENEY. Mr. Meehan, let me get back to you.

Mr. MEEHAN. That is why the language is in the Shays-Meehan bill.

Mr. KEENEY. If I change my mind, I will get back to you with a letter, all right?

Mr. MEEHAN. Okay. We have passed twice over the last 3 years campaign finance reform that would do precisely what the chairman and the members of this committee want to do. Unfortunately, despite the best efforts of Democratic leadership and Senator John McCain over in the Senate, our bill has been stalled by an ongoing Senate filibuster.

This bill that passed twice in the House not only bans soft money, but cracked down on sham issue ads and also dealt head-on with the issue that we are focusing on today. Section 504 of the bill that passed the House this session made it clear that the Pendleton Act covered solicitations for soft money as well as hard money. It prohibited fundraising solicitations by Federal employees while in any room or building occupied in the discharge of official duties, which is intended to address the *Thayer* issue.

It does not repeal the existing exemptions from the definition of the term "contribution" in the Federal Campaign Act. Contrary to what I read yesterday on page 12 of the information sent out, it does not prevent the President, Vice President, Members of Congress, their schedulers, or other staff from communicating with a church or community group regarding any event in which a church spends an amount less than $1,000 for invitations, food, and beverages. It doesn't prevent that.

So I urge members of the committee and the Justice Department, as well, to review the language of section 105 in the Shays-Meehan bill. It doesn't apply to just any communication. It applies to solicitations of money of anything of value in connection with a Federal, State, or local election while the Federal employee making the solicitation is in a Government office.

Now, the Shays-Meehan language would stop the President, Vice President, or Members of Congress while in a Government office from contacting a church to ask that a room be used for a campaign fundraising event. And I don't see this as problematic at all. I think that should be the law.

Moreover, unlike the bill before us today, the Shays-Meehan bill would prevent a Federal office-holder while in a Government office from soliciting such things as volunteer campaign services, unreimbursed payments for election-related travel expenses, and food or beverage for a campaign event at below normal comparable charge.

I am sure we can quibble for hours about the differences between the Pendleton provisions of the Shays-Meehan bill and the bill before us, but as we all know, that really isn't the issue here today. Nobody voted for or against the Shays-Meehan bill because of per-

ceived inadequacies in the Pendleton language. It is fairly obvious the interest that this committee has in this now.

I think we all can agree that soliciting $500,000 in soft money contributions from a Government office shouldn't be allowed and should be condemned. I and a majority of the House also happen to believe that soliciting this same $500,000 contribution after walking 50 yards outside a Government office and switching to a cell phone doesn't convert the convert from deserving of prohibition to some sort of exalted form of first amendment expression incapable of being regulated. Neither solicitation or resulting contributions should be permitted.

Mr. HYDE. Would my friend yield for just a second?

Mr. MEEHAN. I would, Mr. Chairman.

Mr. HYDE. Of course, I agree with what you are saying, but the purpose of this—and it is narrow; I concede that. But the purpose is not to abuse taxpayers who pay for these buildings and pay for the Federal property. If you are going to solicit whatever you are going to solicit to help your campaign, do it on your own dime, don't do it on the taxpayer's dime. That is all we are trying to do here.

Mr. MEEHAN. I would agree with that, Mr. Chairman, but the point that I am making is that it doesn't make it any different or any less a corruptible act to have somebody walk outside. We all can agree that the soft money loophole, which presumably was the reason why the law was unclear—it is nice that we are clarifying the law so that it is clear now, so that we don't have to spend millions of dollars on a hearing to determine what the law is in this matter.

I am simply pointing out that in the wake of the Watergate scandal, the 1974 Election Campaign Act imposed limits on individuals intended to influence elections. It build on a 1907 law prohibiting corporations from making campaign contributions from their treasuries, and a 1947 law applying that same prohibition to labor unions.

Soft money represents the unraveling of these three laws. And due to the soft money loophole, corporations, wealthy individuals, and labor unions with business before this Congress can make hundreds of thousands in contributions to the parties. This money then goes to pay for advertisements that promote or attack candidates, and it is at an all-time high.

As this loophole developed out of the 1974 law, presumably the FEC let this happen. Presumably, the Justice Department over a period of time didn't step in, but this where the outrage is in the campaign finance system. And where is the effort of every single member of this committee to sway seven votes in the Senate? We could have a real campaign finance reform bill.

It is nice that we are doing this bill, but the fact is the reason that the American people are calling for some kind of sweeping reform is the soft money that is raised anywhere in our society. This was a loophole in the law that has grown out of other laws. Inasmuch as we are going to get this swiftly to the House Floor, I hope that we can get seven members of the United States Senate to block that filibuster. We have got a majority in the other body that

supports real campaign finance reform that would deal with all of these issues.

I thank you, Mr. Chairman, and yield back the balance of my time, if there is any left.

Mr. HYDE. Well, I thank the gentleman, and I just want to point out we unfortunately have no jurisdiction over a soft money ban. Mr. Shays, I am happy to say, is a cosponsor of our modest little bill, and I would like Mr. Meehan on, as well as Mr. Conyers and anybody else.

We believe there may be a drafting error in the Shays-Meehan bill which would reduce the potential fine under section 607 from $250,000 for an individual to $5,000. It seems clear that to trump the general fine provision in section 3571 of title 18, a law setting forth an offense less than that set forth in section 3571 must override that section by specific reference. However, the fine provision in H.R. 417 creates some doubt and would provide ammunition for defense counsel to argue that Congress intended the lower fine to prevail in section 607 cases.

So my question is, Mr. Keeney, do you agree that, at a minimum, the fine provision in the Shays-Meehan bill should be eliminated because it is a drafting error, and at a maximum it may cause undue confusion and a judge may find that the lower fine was intended to prevail in section 607 cases?

Mr. KEENEY. I agree it should be dropped.

Mr. MEEHAN. Would the chairman yield?

Mr. HYDE. Sure.

Mr. MEEHAN. If we make that correction, will you vote for the campaign finance reform, the Shays-Meehan bill?

Mr. HYDE. I think I did vote for it, Mr. Meehan, although I have a problem with eliminating soft money in lieu of the non-treatment of contributions-in-kind. Organized labor, God bless them, support the Democratic Party about 99 percent of the time. That is wonderful, that is America, and I am all for it. I wish I had more of it. I have some of it. But the Republicans have the business community, which plays both sides of the street. They don't put all their eggs in one basket.

And so our counter-weight to these enormously valuable bodies that are put into the precincts, work the malls, work the telephone banks, work the doors—our only answer to that is some soft money to have some ads.

Mr. MEEHAN. How much soft money?

Mr. HYDE. Well, it should be disclosed, and then you run an ad and say look who is trying to buy the 15th district.

Mr. MEEHAN. But labor unions would be treated with regard to soft money and sham issue ads just as corporations would be treated under the bill. One of the reasons why it has had Republican support in the House is because it treats both sides fairly.

Mr. HYDE. If we could put a valuation on the contributions-in-kind and treat them as money, that might be one solution. What you are doing is valiant and noble. I just have a very uncomfortable feeling that the first amendment is in jeopardy, and the first amendment can be a pain in the neck, as we both know.

Mr. CONYERS. Would the chairman yield?

Mr. HYDE. Sure.

Mr. CONYERS. I have another point to make, but I can't help but put in the record that if you can raise undisclosed millions of dollars, you can hire all the people you want, all the bodies that it can buy.

But my main point at this time is that we have in this committee, on the basis of excellent staff research, all the jurisdiction we need to ban the corrupting influence of soft money by amending the bribery statute, as I have proposed in an alternative that I would like to schedule a hearing on.

Mr. HYDE. My staff tells me otherwise. Maybe we will have a confab on that and see. I would love to have broader jurisdiction, if possible.

Mr. CONYERS. But your staff couldn't have told you that we don't have jurisdiction over the bribery statute.

Mr. HYDE. No. We do have jurisdiction.

Mr. CONYERS. That is what I thought.

Mr. HYDE. Well, okay. It is a bit of a stretch, but we are used to stretching.

Mr. MEEHAN. That sounds like a great idea.

Mr. Chairman, can I ask one last question?

Mr. HYDE. Yes.

Mr. MEEHAN. Since we need to amend this Pendleton Act, would you agree that the act was confusing and perhaps there wasn't any prohibition against raising soft money in a Government building?

Mr. HYDE. That is what the Justice Department said, and they had citations, a very learned memorandum. But I don't think that was the intent of the law. I kind of agree with our House Ethics Committee's interpretation, which was both soft and hard money should not be solicited from a Federal building.

Mr. MEEHAN. But the House Ethics Committee doesn't have jurisdiction over the President and Vice President.

Mr. HYDE. No. I know.

Mr. MEEHAN. So under this particular act, I think it is pretty clear that there was no jurisdiction on soft money. I commend you for bringing this forward. Wouldn't you agree that this would clarify the law so that there would be some kind of clear, let's say controlling legal authority on this? Aren't you clarifying this?

Mr. HYDE. I certainly like the phrase "controlling legal authority."

Mr. MEEHAN. Well, there was none before, but now this legislation prevents any confusion. But you would have to admit that there was confusion.

Mr. HYDE. Yes, I will admit to a constant state of confusion.

Mr. CONYERS. If the chairman would yield, we didn't mean you. We meant interpretation of the law. I thought that this measure was brought forward because you were attempting to clear up an ambiguity or confusion that existed.

Mr. HYDE. Yes, that is right, exactly right.

Mr. MEEHAN. In the law.

Mr. CONYERS. Yes, in the law.

Mr. HYDE. Yes.

Mr. CONYERS. All right.

Mr. HYDE. I want to make it perfectly clear you don't use Federal buildings and Federal facilities and Federal phones or Federal premises to raise anything of a campaign nature, soft or hard.

Mr. MEEHAN. Because it was unclear before this?

Mr. HYDE. Yes, yes, sure. That is why we are trying to clarify.

Mr. Keeney, you have been wonderful and you have been long-suffering and you have been instructive. May we submit questions to you in writing?

Mr. KEENEY. You certainly may, sir.

Mr. HYDE. Very well.

If no one has any other contributions, the committee will stand adjourned.

[Whereupon, at 3:51 p.m., the committee was adjourned.]

○