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Campaign Financing: Highlights and Chronology of Current Federal Law

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Summary

Current law governing financial activity of campaigns for federal office is based on two principal statutes: the Federal Election Campaign Act (FECA) of 1971, as amended in 1974, 1976, and 1979, and the Revenue Act of 1971. These laws were enacted to remedy widely perceived shortcomings of existing law, the Corrupt Practices Act of 1925, and in response to reports of campaign finance abuses over the years, culminating in the 1972-1974 Watergate scandal. This report provides a summary of major provisions of federal law and a chronology of key legislative and judicial actions.¹

The FECA features prohibitions on union and corporate contributions and limits on individual, interest group, and political party contributions to candidates and committees involved in federal elections. These candidates and committees are required to disclose contributions and expenditures on a regular basis for public examination.

Within this framework, a dual system of finance has evolved: a presidential system, funded in large measure from public monies, with concomitant, voluntary limits on campaign expenditures; and a congressional system, funded solely by private donations and free of circumscriptions on campaign spending.

The Federal Election Commission (FEC) is an independent agency that has served since 1975 to collect and make available to the public the financial reports filed by candidates and committees, supervise the presidential public funding system, and enforce federal law through civil authority. The FEC promulgates regulations to implement the law and writes advisory opinions to interpret the law in specific instances.

¹ The FECA mandates use of federally regulated money, known as *hard money*, in federal elections; by definition, it does not apply to so-called *soft money* activities that may indirectly affect federal races. This report examines only hard money regulations. For a discussion of these terms and their relevance, see: U.S. Library of Congress, Congressional Research Service, *Soft and Hard Money in Contemporary Elections: What Federal Law Does and Does Not Regulate*, by Joseph E. Cantor, CRS Report 97-91 GOV (Washington: Jan. 10, 1997).

Highlights of Current Law²

Contribution Prohibitions and Limits³

Individuals. \$1,000 per candidate per election; \$20,000 to a national party committee; \$5,000 to other political committees; \$25,000 aggregate on all contributions.

Political Action Committees (PACs). *If multicandidate*⁴: \$5,000 per candidate per election; \$15,000 to a national party committee; \$5,000 to any other political committee.

Other Political Committees. *Non-multicandidate*: \$1,000 per candidate per election; \$20,000 to a national party committee; \$5,000 to any other political committee.

Party Committees. \$1,000 or \$5,000 per candidate per election (depending upon multicandidate status); \$5,000 to any other political committee. For national senatorial or national party committee, or both: \$17,500 to Senate candidate, per year of election.

Candidates. No limits on candidate contributions to own campaign, *except* if taking public funding (presidential elections) – \$50,000 in personal or immediate family funds.

Prohibited contributions. Foreign nationals (non-green-card holders); national banks; corporations; labor unions; more than \$100 in cash or \$50 given anonymously.

Expenditure Limits

Candidates. No spending limits, *except* on a voluntary basis for publicly funded presidential candidates: *in primaries* – nationwide limit of \$10 million plus cost of living allowance (COLA), based on 1974, plus 20% for exempt fundraising costs, and state limits of the greater of \$200,000 plus COLA or 16¢ per eligible voter plus COLA; and *in general elections* – \$20 million plus COLA. (National limits in 1996 were: \$30.9 million plus \$6.2 million for fundraising in primaries and \$61.8 million in the general election.)

PACs. No limits on independent expenditures for communicating messages to support or oppose candidates, made without coordination or consultation with a candidate.

Parties. In addition to contributions, national and state party committees may make expenditures on behalf of their general election nominees, subject to limits, as follows:

- *House candidate in a multi-district state* – \$10,000 plus COLA;

² The FECA distinguishes between *expenditures*, wherein money is spent to communicate election messages, and *contributions*, wherein money and authority to spend it is given to others (candidates, parties, or PACs) to make expenditures, in turn, on election communications.

³ Limits apply to calendar year unless otherwise stated; for limits applied on a “per election” basis, primary, general, and runoff elections are counted separately.

⁴ Most PACs qualify for *multicandidate status* (have at least 50 contributors, are registered for at least six months, and, except for a state party, contribute to at least five federal candidates).

- *Senate candidate or at-large House candidate* – the greater of \$20,000 plus COLA or 2¢ per eligible voter plus COLA;
- *Presidential candidate* – 2¢ per eligible voter plus COLA;

(In 1996, the parties could spend \$30,910 in most House races, from \$61,820 to \$1.4 million in Senate races, and twice that for combined giving; the parties could spend \$12.0 million in the presidential race.) In House and Senate races, state parties may designate the national committee as its expenditure agent, in effect doubling these limits.

Parties taking public funds to finance presidential nominating conventions may spend \$4 million plus COLA. (In 1996, this amounted to \$12.4 million.)

Public Funding

Available on optional basis to presidential candidates and to political parties for presidential nominating conventions, in conjunction with spending limits (see above).

- *Primary candidates* – qualify by raising at least \$5,000 in each of 20 states in individual contributions of \$250 or less; individual contributions of \$250 or less are matched equally with federal money, up to 50% of the primary spending limit.
- *General election nominees – major party*: eligible for public funds equal to their spending limit; *minor party*: eligible for an amount proportionate to the vote received vis-a-vis major party candidates in prior elections; *new party* – eligible for retroactive funding if they receive at least 5% of the popular vote.
- *Nominating conventions* – major parties eligible for public funds, equal to their spending limit; minor parties may receive a lesser, proportionate amount.

Disclosure

All federal candidates and political committees operating in federal elections must file regularly scheduled reports; presidential and House candidates and most political committees file with the FEC; Senate candidates must file with the Secretary of the Senate. All reports are available at the FEC. Reports include aggregate levels of cash on hand, receipts, expenditures, transfers, loans, rebates, refund dividends, and interest (and, for presidential candidates, public funds); itemized identification must be provided on contributions received and expenditures made of more than \$200 per year (identifying name, address, occupation, and principal place of business of donor or recipient).

Federal Election Commission

The FEC is an independent regulatory agency with six voting members appointed by the President and confirmed by the Senate. Functions include: administration of disclosure provisions of the law and presidential public funding program; civil authority to enforce the law's provisions; referral of possible criminal violations to the Justice Department; conducting hearings and investigations; writing regulations implementing the law; and issuing advisory opinions on request to help interpret the law.

Chronology

This section lists the principal statutes and court decisions governing today's federal campaign finance practices, including a brief summary of the major provisions of each and some notation as to any subsequent repeal.

Revenue Act of 1971 [P.L. 92-178].

- *Presidential Election Campaign Fund* – set up to provide optional subsidies to presidential general election candidates, as of 1976; major party candidates were eligible for 15¢ per eligible voter; minor or new party candidates were eligible for an amount proportionate to the vote in the previous (or retroactively in the just concluded) election; candidates were to abide by expenditure limit, equal to major party candidate subsidy; program was to be funded through an optional \$1 checkoff on federal tax returns (\$2 on joint returns), beginning with 1972.
- *Tax incentives* – created tax credit of up to \$12.50 (\$25 on joint returns) on half the value of annual political contributions and an alternative tax deduction of up to \$50 (\$100 on joint returns) on the full value of contributions [tax deductions and credits later repealed, as of 1979 and 1987, respectively].

Federal Election Campaign Act (FECA) of 1971 [P.L. 92-225]. Responded to failures of disclosure under earlier laws and to demand for curbing rising campaign costs.

- *Disclosure* – required candidates and political committees to file reports on a quarterly basis (plus two pre-election reports) with the secretary of (the respective) state and with the Clerk of the House (in connection with House campaigns), Secretary of the Senate (Senate campaigns), and Comptroller General/GAO (presidential campaigns); reports were to include itemized information on receipts and expenditures of \$100 or more; contributions of \$5,000 or more were to be reported within 48 hours; disclosure to cover all phases of election;
- *Media advertising spending limits* – imposed on federal candidates, equal to the greater of \$50,000 or 10¢ per eligible voter in jurisdiction [repealed by 1974 Act];
- *Lowest unit rate* – required broadcasters to sell time to candidates at lowest rate for commercial advertisers, within 45 days of primary and 60 days of general election;
- *Candidate limits* – on personal/family donations: \$50,000 (President, Vice President), \$35,000 (Senate), \$25,000 (House) [invalidated by *Buckley* decision].

FECA Amendments of 1974 [P.L. 93-443]. Enacted in response to the Watergate scandal of 1972-1974.

- *Contribution limits* – \$1,000 per candidate per election and \$25,000 aggregate on all contributions to federal candidates and committees for individuals; \$5,000 per candidate per election for PACs and party committees (with no aggregate limit);
- *Cash contributions* – prohibited in excess of \$100;
- *Expenditure limits* – \$10 million for presidential primary candidates and \$20 million for presidential general election candidates; \$2 million for major party conventions; the greater of \$100,000 or 8¢ per eligible voter for Senate primary candidates, and the greater of \$150,000 or 12¢ per eligible voter for Senate general election candidates; \$70,000 for House primary or general election candidates; \$1,000 limit on independent expenditures by groups for or against candidates; all limits to be

adjusted by COLAs [limits on spending in non-publicly funded elections and on independent expenditure overturned by *Buckley* decision];

- *Party coordinated expenditures* – allowed national parties to support general election candidates, beyond contributions, subject to limits (as listed in summary);
- *Public funding for presidential primaries and nominating conventions* – as set forth in summary above (amount of public funds for general election candidates changed in accordance with revised spending limit);
- *Federal Election Commission* – set up full-time, bipartisan agency to administer campaign finance laws, with six voting members (two each appointed by President, Speaker of the House, and President pro tempore of Senate) and two ex-officio members (Clerk of the House and Secretary of the Senate); FEC given civil enforcement authority, with criminal cases referred to the Justice Department [FEC appointment process amended by 1976 Act, in response to *Buckley* ruling].

Tariff Schedules Amendments, 1975 [P.L. 93-625].

- Doubled maximum political contribution tax credit to \$25 (\$50 on joint returns) and tax deduction to \$100 (\$200 on joint returns) [repealed by 1978 Revenue Act];

***Buckley v. Valeo* [424 U.S. 1 (1976)].** Landmark Supreme Court decision:

- *Upheld contribution limits and disclosure requirements* as serving the basic vital governmental interest of safeguarding integrity of electoral process by preventing possible *quid pro quo* relationships arising from large contributions, without unduly curbing citizens' and candidates' right to engage in political debate;
- *Upheld public funding system* for presidential elections;
- *Overturned expenditure limits* as, unlike contribution limits, constituting an undue burden on political expression, without a comparable overriding governmental interest in preventing the actuality or appearance of corruption; invalidated limits were those on overall campaign spending, spending of candidates' personal funds, and independent expenditures by individuals or groups; only voluntary spending limits were upheld, such as those linked with publicly funded presidential races (on overall campaign or candidates' personal expenditures);
- *Declared FEC unconstitutionally constituted* because it exercised executive branch functions but was appointed, in part, by Congress.

FECA Amendments of 1976 [P.L. 94-283]. Primary impetus to enactment was to reconstitute the FEC, in the wake of *Buckley* ruling:

- *FEC appointments* – all members to be appointed by the President;
- *Additional contribution limits – individuals*: \$5,000 to a PAC, \$20,000 to a national party committee; *PACs*: \$15,000 to a national party committee; subjected all PACs sponsored by same organization to a single contribution limit (non-proliferation provision); *party committees* – \$17,500 from national party senatorial committees to general election candidates;
- *Solicitation of PAC funds* – specified rules for PACs associated with unions, corporations, and trade associations;
- *Legal and accounting fees* – incurred in complying with FECA were to be exempted from spending limits of publicly-funded presidential campaigns;
- *Matching fund cutoff* – for candidates who fail to receive 10% of the vote in two successive primaries; to be restored if they receive 20% in a later primary;
- *Independent expenditure disclosure* – required if at least \$100, or to be disclosed within 24 hours, if at least \$1,000 and spent within 15 days of an election;

- *Union/corporate disclosure* – of internal partisan communications of over \$2,000;
- *FEC enforcement* – increased authority to prosecute violations of law; specified penalties for violations; outlined FEC responsibilities in issuing advisory opinions and regulations, conducting investigations, and attempting conciliation with alleged violators of law before seeking prosecution.

Revenue Act of 1978 [P.L. 95-600].

- Doubled maximum political tax credit to \$50 (\$100 on joint returns); eliminated tax deduction [repealed by Tax Reform Act of 1986].

Federal Election Campaign Act Amendments of 1979 [P.L. 96-187]. Impetus for passage was to make FECA requirements less burdensome to candidates, committees, and citizens and foster greater grassroots role for volunteers and state and local parties.

- *Unlimited state and local party spending* – allowed for get-out-the-vote and registration drives on behalf of the presidential ticket, and for grassroots and volunteer campaign activities not aimed at specific federal candidates;
- *Disclosure exemptions* – for candidates and local party committees with less than \$5,000 in financial activity in a year;
- *Disclosure itemization threshold* – increased from \$100 to \$200 in general and, for independent expenditures, from \$100 to \$250;
- *Party convention subsidy* – base level raised from \$2 to \$3 million plus COLA;
- *Excess campaign funds* – prohibited personal use by federal candidates, except for funds held by Members at time of enactment.

Nominating Conventions, 1984 [P.L. 98-355].

- Raised base level of party subsidy from \$3 to \$4 million plus COLA.

Tax Reform Act of 1986 [P.L. 99-514].

- Repealed political contribution tax credits.

Ethics Reform Act of 1989 [P.L. 101-194].

- Repealed exemption from ban on personal use of excess campaign funds, by 1993.

Omnibus Budget Reconciliation Act of 1993 [P.L. 103-66].

- Tripled Presidential Election Campaign Fund tax checkoff (\$3; \$6 on joint returns).

FECA, 1995 Amendment [P.L. 104-79].

- Required House candidates to file disclosure reports directly with FEC;
- Required FEC to facilitate electronic filing and record-keeping.

***Colorado Republican Federal Campaign Committee v. FEC* [116 S.Ct. 2309 (1996)].** Supreme Court decision:

- Allowed political parties, as well as PACs and individuals, to make independent expenditures, subject to no spending limits, in federal elections.