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Campaign Financing

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SUMMARY

Concerns over financing federal elections have become a seemingly perennial aspect of our political system. The most enduring issues have revolved around high campaign costs, with congressional candidates spending over $764.3 million in 1996, up 71% over 1990.

Growing election costs have fostered a sense that spending is out of control, with too much time spent raising funds and elections "bought and sold." Many see spending in line with costs of other goods and services, especially media, with high spending reflecting a desirable level of competition in elections.

Debate since the 1970s also revolved around the growing role political action committees (PACs) were playing in House and Senate campaigns. But the PAC component dropped since 1988 and has been increasingly supplanted by concerns over other issues.

Especially after the 1996 elections, concerns grew over large sums of money raised outside of federal election law. Devices such as soft money and issue advocacy raised questions over the current regulations' integrity and the feasibility of any limits on campaign money. (Another feature of 1996 was charges of illegal foreign money, which have been the subject of numerous investigations.)

The differences in perceptions of the campaign finance system are compounded by different reform approaches by the major parties. Democrats have tended to favor spending limits, usually with public benefits or funding to induce voluntary adherence. Republicans have, in general, opposed such limits and public funding, seeking instead to change the mix of funding sources and encourage competition and local resident giving.

Party differences are seen in Congress. Democrats in the 101st-103rd Congresses passed bills with spending limits, benefits, and PAC and loophole curbs. The 101st and 103rd Congress bills were not reconciled; a 102nd Congress conference bill was vetoed. In the 104th Congress, reformers sought a PAC ban and benefits to candidates who limit spending. A cloture motion on a bill failed in the Senate, and House Republicans offered a bill giving parties and local citizens a greater role; this, and a Democratic alternative, were defeated.

The 105th Congress saw 134 proposed reform bills and numerous hearings. Senate debate on a pared-down version of the McCain-Feingold bill led to three failed cloture votes in 1997. A leadership agreement led to reconsideration on February 23, 1998, but another cloture vote lost on a further-narrowed version. A third effort, September 10, 1998, also ended in a failed cloture vote.

On March 18, 1998, the House Oversight Committee reported a GOP-leadership bill. On March 30, the leadership offered four bills under suspension of rules. Two passed, to ban foreign national contributions and to improve disclosure and enforcement. Two failed, one based on the committee bill, and the Paycheck Protection Act. Reform supporters then turned to a discharge petition to bring bills to the floor, gaining over 200 of 218 needed signatures. In response, the House renewed consideration of the issue on May 21, focused on H.R. 2183, the freshman bipartisan bill, 11 substitutes, and H.J.Res. 119 (DeLay), a proposed constitutional amendment. On August 3, the House passed the Shays-Meehan substitute to H.R. 2183, and, on August 6, debate ended with passage on a 252-179 vote of H.R. 2183, as so revised.

MOST RECENT DEVELOPMENTS

A third and final attempt to pass the McCain-Feingold bill in the Senate, prompted by House passage of Shays-Meehan in August 1998, ended in much the same way as prior efforts. The bill was offered as an amendment (S.Amdt. 3554) to the Interior appropriations on September 8, but the amendment was withdrawn September 10 after a 52-48 cloture vote.

BACKGROUND AND ANALYSIS

Evolution of the Current System

Today's federal campaign finance law evolved during the 1970s out of five major statutes and a paramount Supreme Court case. That case not only affected earlier statutes, but it continues to shape the dialogue on campaign finance reform.

The 1971 Federal Election Campaign Act (FECA), as amended in 1974, 1976, and 1979, imposed limits on contributions, required disclosure of campaign receipts and expenditures, and set up the Federal Election Commission (FEC) as a central administrative and enforcement agency. The Revenue Act of 1971 inaugurated public funding of presidential general elections, with funding of primaries and nominating conventions added by the 1974 FECA Amendments. The latter also imposed certain expenditure limits, struck down by the Supreme Court's landmark *Buckley v. Valeo* ruling [424 U.S. 1 (1976)].

In the *Buckley* ruling, the Court upheld the Act's limitations on contributions as appropriate legislative tools to guard against the reality or appearance of improper influence stemming from candidates' dependence on large campaign contributions. However, *Buckley* invalidated the Act's limitations on independent expenditures, on candidate expenditures from personal funds, and on overall campaign expenditures. These provisions, the Court ruled, placed direct and substantial restrictions on the ability of candidates, citizens, and associations to engage in protected First Amendment rights. The Court saw no danger of corruption arising from large expenditures, as it did from large contributions, which alone could justify the First Amendment restrictions involved. Only voluntary limits could be sustained, perhaps in exchange for government benefits. Such a plan was specifically upheld in the existing presidential public funding system, as a contractual agreement between the government and the candidate. The Court's dichotomous ruling, allowing limits on contributions but striking down mandatory limits on expenditures, has shaped subsequent campaign finance practices and laws, as well as the debate over campaign finance reforms.

Campaign Finance Practices and Related Issues

Since the mid-1970s, the limits on contributions by individuals, political action committees (PACs), and parties, and an absence of congressional spending limits, have governed the flow of money in congressional elections. Throughout the 1980s and much of the 1990s, the two paramount issues raised by campaign finance practices were the phenomena of, first, rising campaign costs and the large amounts of money needed for elections and, second, the substantial reliance on PACs as a source of funding. Concerns

were also voiced, by political scientists and the Republican congressional minority, over a third issue: the level of electoral competition, as affected by finance practices. Finally, perceived loopholes in current law were a source of increasing debate since the mid-1980s.

Today, the debate has shifted considerably. The PAC issue has been greatly supplanted by more fundamental issues of electoral regulation, with observers finding new appreciation for the limited and disclosed nature of PAC money. Concerns over competition have abated to some extent by the Republicans' ability to gain control of Congress in 1994, despite the perceived incumbency bias in the finance system. The issue of high campaign costs and the concomitant need for vast resources continues to underlie the debate, but even this has been almost overshadowed — particularly since the 1996 elections — by concerns over the system's perceived loopholes. While these practices are (for the most part) presumably legal, they may violate the spirit of the law, and they have come to raise the basic question of whether money in elections can, let alone should, be regulated.

Increased Campaign Costs

Campaign expenditures have risen greatly since first being systematically compiled in the 1970s, even exceeding the overall increase in cost of living. Campaign finance authority Herbert Alexander estimated that $540 million was spent on all elections in the U.S. in 1976; for 1996, his estimate was $4 billion. Aggregate costs of House and Senate campaigns have more than sextupled since 1976, from $115.5 million to $764.3 million in 1996, while the cost of living went up by less than three times. Even greater than increases in aggregate campaign costs were those for average winning candidates, a useful measure of the real cost of running for office. The average cost for a winning House candidate rose from $87,000 in 1976 to $679,000 in 1996; a winning Senate race went from $609,000 to $3.8 million.

The above data are cited by many as evidence that our democratic system of government has suffered as election costs have grown to levels often considered exorbitant. Specifically, it is argued that officeholders must spend too much time raising money, at the expense of their public duties and communicating with constituents. The high cost of elections and the perception that they are "bought and sold" are seen as contributing to public cynicism about the political process. Some express concern that spiraling campaign costs has resulted in more wealthy individuals seeking office, denying opportunities for service to those lacking adequate resources or contacts. Others see a correlation between excessive, available money and the perceived increased reliance on sophisticated, often negative media advertising.

Not all observers view the high cost of elections with alarm. Many insist we do not spend too much on elections, and maybe that we don't spend enough. They contrast the amount spent on elections with that spent by government at all levels, noting that only a fraction of a percent is spent to choose those who make vital decisions on the spending of tax dollars. Similarly, they contrast election costs with spending on commercial advertising: the nation's two leading commercial advertisers, Proctor & Gamble and General Motors, spent more in promoting their products in 1996 ($5 billion) than was spent on all U.S. elections that year. In such a context, the costs of political dialogue may not be excessive.

The high costs are seen largely as a reflection of the paramount role of media in modern elections. Increasingly high television costs and costs of fundraising in an era of contribution limits require candidates to seek a broad base of small contributors — a democratic, but time-consuming, expensive process. It may be that neither wealthy candidates nor negative

campaigning are new or increasing phenomena but merely that better disclosure and television's prevalence make us more aware of them. Finally, better-funded candidates do not always win, as some recent elections show.

PACs and Other Sources of Campaign Funds

Issues stemming from rising election expenses were, for much of the past two decades, linked to substantial candidate reliance on PAC contributions. The perception that fundraising pressures might lead candidates to tailor their appeals to the most affluent and narrowly "interested" sectors raised perennial questions about the resulting quality of representation of the whole society. The role of PACs, in itself and relative to other sources, became a major issue; in retrospect, however, it appears that the issue was really about the role of interest groups and money in elections, PACs being the most visible vehicle thereof. As discussed below, the PAC issue *per se* has seemed greatly diminished by recent events.

At least through the 1980s, statistics showed a significant increase in PACs' importance. Federally registered PACs grew from 608 in 1974 to a high of 4,268 in 1988. Contributions by PACs to House and Senate candidates in this period rose from $12.5 million to $147.8 million (a 400% rise factored for inflation). Relative to other sources, PAC money constituted 15.7% of House and Senate campaign receipts in 1974, rising to 33.7% in 1988.

While PACs remain a considerable force, data show a relative decline in their role since 1988. The percentage of PAC money in candidate receipts dropped each year, to a low of 27% in 1994, with a slight rise, to 28.7%, in 1996. The number of PACs dropped to 4,079 in 1996, while the amount contributed to candidates increased negligibly in constant dollar terms ($201.1 million was contributed in 1996). Meanwhile, after signs that individual giving to candidates had been declining as a component, especially vis-a-vis PACs, some leveling off has occurred: in 1996, individuals provided 63% of Senate and 55% of House receipts.

It should be noted that, despite the aggregate data on the relative decline of the PAC role, it provides a still considerable share in various subgroups. For example, in 1996, House candidates got 33% of their funds from PACs, and House incumbents received 40%. To critics, PACs raise troubling issues in the campaign financing debate: Are policymakers beholden to special interests for help in getting elected, impairing their ability to make policy decisions in the national interest? Are PACs overshadowing average citizens, particularly in Members' states and districts? Does the appearance of *quid pro quo* relationships between special interest givers and politician recipients, whether or not they actually exist, seriously undermine public confidence in the political system?

Defenders of PACs have long viewed them as reflecting the nation's historic pluralism, representing not a monolithic force but a wide variety of interests. Rather than overshadowing individual citizens, these observers see them merely as groups of such citizens, giving voice to many who were previously uninvolved. PACs are seen as promoting, not hindering, competition in elections, by funding challengers in the more closely contested races. In terms of influence on legislative votes, donations are seen as generally given to reward past votes and decisions rather than to alter future ones. Defenders also challenge the presumed dichotomy between *special* and *national* interest, asserting that the latter is simply the sum total of the former. PACs, they argue, offer the public clearer knowledge of how interest groups promote their agendas, particularly noteworthy in comparison with the flood of money in 1996 that was undisclosed and unregulated.

Competitiveness in Elections

Many view the campaign finance system in terms of a general imbalance in resources between incumbents and challengers, as evidenced by a spending ratio of more than 3.5:1 in recent House and some 2:1 in recent Senate elections. (In 1996, there was a much closer ratio in the House, with an average incumbent expenditure of $665,000 vs. an average challenger's $262,000 — a 2.5:1 ratio, while the average Senate incumbent's $4.2 million exceeded the average challenger's $2.6 million by 1.6:1.) Incumbents' generally easier access to money is seen as the real problem, not the aggregate amounts being spent by all types of candidates.

Those concerned about competitiveness also view the PAC issue through this lens. With some 66% of PAC contributions going to incumbents in 1996, the question of PACs "buying access" with those most likely to be elected is seen as a more serious problem than the generally high amounts of PAC giving in the aggregate.

Some dispute that the problem is really an "incumbency" one or that electoral competition should be the main concern of reform. After all, there is a fair degree of turnover in Congress (through defeats, retirements, etc.), and the system does allow changed financing patterns with sometimes unexpected results, as it did in 1994. Aggregate incumbent-challenger disparities may be less meaningful, it is noted, than those on the closer spending levels in hotly contested or open races.

Perceived Loopholes in Current Law

Interest has intensified, especially since 1996, over campaign finance practices that some see as undermining the law's contribution and expenditure limits, and its disclosure requirements. Although these practices may be legal, they are seen as "loopholes" through which electoral influence is sought by spending money in ways that detract from public confidence in the system and that are beyond the scope intended by Congress. Some of the prominent practices are bundling, soft money, independent expenditures, and issue advocacy.

Bundling. This involves collecting checks for (and made payable to) a specific candidate by an intermediate agent. A PAC or party may thus raise money far in excess of what it can legally contribute and receive recognition for its endeavors by the candidate.

Soft Money. This refers to money that may indirectly influence federal elections but is raised and spent outside the purview of federal laws and would be illegal if spent directly on a federal election. The significance of soft money stems from several factors: (1) many states permit direct union and corporate contributions and individual donations in excess of $25,000 in state campaigns, all of which are prohibited in federal races; (2) under the 1979 FECA Amendments, such money may be spent by state and local parties in large or unlimited amounts on grassroots organizing and voter drives that may benefit all party candidates; and (3) publicly-funded presidential candidates may not spend privately raised money in the general election. In recent presidential elections, national parties have waged extensive efforts to raise money for their state affiliates, partly to boost the national tickets beyond what could be spent directly. In 1996, $262 million in soft money was raised by the major parties, which some saw as circumvention of the Clinton and Dole campaign limits.

Independent Expenditures. The 1976 *Buckley* ruling allowed unlimited spending by individuals or groups on communications with voters to support or oppose clearly identified

federal candidates, as long as there is no coordination or consultation with any candidate. Independent expenditures totaled $11.1 million in 1992 and $22.4 million in 1996. These expenditures may hinder a candidate's ability to compete with both an opponent and outside groups. They may also impair a sense of accountability between a candidate and voters, and many question whether some form of unprovable coordination may often occur in such cases.

Issue Advocacy. Although federal law regulates expenditures in connection with federal elections, it uses a fairly narrow definition for what constitutes such spending. The law, as affected by court rulings, allows regulation only of communications containing express advocacy, *i.e.*, that use explicit terms urging the election or defeat of clearly identified federal candidates. By avoiding such terms, groups may promote their views and issue position in reference to particular elected officials, without triggering the disclosure and source restrictions of the FECA. Such activity, known as issue advocacy, is often perceived as having the intent of bolstering or detracting from the public image of officials who are also candidates for office. In 1996, such entities as the AFL-CIO and the Democratic and Republican National Committees made prominent use of issue advocacy. Also, groups ranging from labor unions to the Christian Coalition promoted their policy views through voter guides, which presented candidates' views on issues in a way that some saw as helpful to some candidates and harmful to others, without meeting the standards for FECA coverage.

Policy Options

The policy debate over campaign finance laws proceeds from the philosophical differences over the underlying issues discussed above, as well as the more practical, logistical questions over the proposed solutions. Two primary considerations frame this debate. What changes can be made that will not raise First Amendment objections, given the Supreme Court's rulings in *Buckley* and other cases? What changes will not result in new, unforeseen, and more troublesome practices in the future? These considerations are underscored by the experience with previous amendments to FECA, such as the growth of PACs following the 1974 limits on contributions.

Just as the overriding issues have centered, at least until recently, around election costs and funding sources, the most widely discussed legislation long focused on controlling campaign spending, usually through such voluntary government incentives as public funding or cost-reduction benefits; and limiting or banning PACs and generally altering the relative importance of various funding sources. Some have seen both concepts primarily in the context of promoting electoral competition, to remedy or at least not exacerbate perceived inequities between incumbents and challengers. Concerns over loopholes that undermine federal regulation have led to proposals for curbing these practices, with a sense of urgency since widespread reports of activity in the 1996 elections. (Conversely, proposals have been made for less regulation, on the ground that regulation inherently invites circumvention.)

Campaign Spending Limits and Government Incentives or Benefits

The debate over campaign finance reform has often focused on the desirability of limiting campaign spending. To a great extent, this debate has been linked with public financing of elections. The linkage of these two controversial issues stems from *Buckley's* ban on mandatory spending limits. The ruling allowed voluntary limits, with adherence a prerequisite

for subsidies. Hence these concepts are linked to the notion since the 1970s that spending limits must be tied to public benefits, absent a constitutional amendment.

Public funding not only serves as an inducement to voluntary limits, but by limiting the role of private money, it may offer the strongest measure toward promoting the integrity of and confidence in the electoral process. Furthermore, it could promote competition in districts with safe incumbents or one-party domination. Public financing of congressional elections has been proposed in nearly every Congress since 1956 and was passed by the Senate twice in the 93rd Congress. The nation has had publicly funded presidential elections since 1976, and tax incentives for political donations were in place from 1972 to 1986.

Objections to public financing are numerous, many rooted in philosophical opposition to funding elections with taxpayer money, supporting candidates whose views are antithetical to those of many taxpayers, and adding another government program in an era of budget deficits. The practical objections raised are also serious. How can a system be devised that accounts for the different natures of districts and states, given different styles of campaigning and disparate media costs, and that is equitable to all candidates — incumbent, challenger, or open-seat, major or minor party, serious or "longshot?"

A principal challenge to supporters of spending limits has been how to curb, if not eliminate, public funding from their proposals. Although spending limits may have wide public support, most evidence suggests far less support, and even cynicism, on public financing. Some of the principal bills in recent Congresses have been revised, moving from a strong public subsidy component to more cost-saving benefits (*e.g.*, reduced postal and broadcast rates) whose cost may be borne less directly, if at all, by taxpayers. Given the current political climate, a voluntary spending limits bill with a serious chance of passage would have to be based on cost-reduction benefits, not public funding. Despite efforts to downplay public funding, congressional opposition to spending limits. has remained strong

Stemming from the spending debate are proposals to lower campaign costs, without spending limits. Proposals for free or reduced rate broadcast time have received bipartisan support. Such ideas, along with one's to reduce postal costs, seek to lessen campaign costs, and the need for money, without the possibly negative effects of arbitrary spending limits.

Limiting PACs and Bolstering Other Sources

Most proposed bills have sought, at least in part, to curb PACs' perceived influence, either directly, through prohibition or reduced limits, or indirectly, through enhancing the role of individuals and parties. Current law allows individuals to give $1,000 per candidate, per election. Committees that qualify as "multicandidate committees" (registered for six months, having at least 50 donors, and giving to at least five federal candidates) may give $5,000 per candidate). By meeting the criteria, most PACs increase their ability to assist candidates, and without an aggregate limit such as that affecting individuals.

Three chief methods of direct PAC curbs were prominent in previous proposals: banning PAC money in federal elections; lowering the $5,000 limit; and limiting candidates' aggregate PAC receipts. These concepts were included, for example, in all of the bills that the House and Senate voted on in the 101st-104th Congresses.

Each proposal has strengths and drawbacks. The PAC ban raises constitutional questions by not allowing citizens to pool resources in exercising their speech and association rights. A lower PAC limit would make PACs relatively less valuable as funding sources, but inflation has devalued the $5,000 limit by 68% since it was set in 1974, making it a less meaningful boundary between large and modest contributions. The aggregate PAC receipts limit suggests that interest groups should play an appropriate role vis-a-vis other sectors, hence a dollar or percentage limit. Apart from constitutional objections, some claim that it would lead to earlier contributions, which could help incumbents, who raise large sums early, and larger PACs, which can most easily anticipate which contests to fund.

A major caveat regarding PAC limits is that any restriction on what PACs may contribute could encourage them to shift resources toward "independent" activities, thereby raising other problems for the political system. Such forms of spending offer no accountability to the voters, as with candidate expenditures, and make it more difficult for candidates to frame the debate. Some prominent independent advertisements have been marked by negativity and invective. The prospect of more money in less accountable, perhaps less desirable, activities gives reason to carefully weigh proposed remedies.

Partly because of this problem, many have looked to more indirect ways to curb PACs, such as raising limits on individual or party donations to candidates. Raising these limits has also been proposed on a contingency basis to offset such other sources as wealthy candidates spending large personal sums on their campaigns. While higher limits might counterbalance PACs and other groups and offset effects of inflation, few Americans can afford to give even $1,000, and one must consider the possibility of re-opening the door to "fat cat" contributors.

House Republicans have pushed to boost the role of individuals in candidates' states or districts, to increase ties between Members and constituents. By requiring a majority of funds to come from the state or district (or prohibiting out-of-state funds), supporters expect to indirectly curb PACs, typically perceived as out-of-state, or Washington, influences.

Increasing (or removing) party contribution and coordinated expenditure limits has also received support, partly to offset PACs. Supporters say that party support can be maximized without concern about influence peddled (although many of the most prominent allegations in 1996 involved party-raised funds). Such support, they believe, can strengthen party ties and facilitate effective policymaking. Although there is some philosophical agreement on this point, current political realities present obstacles to an increase, much less removal, of party limits, *i.e.*, the difference in the relative abilities of the parties to help candidates. The Republican national committees' federal accounts raised over $407 million in the 1996 election cycle, compared with $210 million by the Democratic committees.

Promoting Electoral Competition

Proposals to reduce campaign costs without limits are linked to broader concerns about electoral competition. Political scientists tend to view spending limits as giving an advantage to incumbents, who begin with name recognition and perquisites of office (*e.g.*, staff, newsletters). Challengers often spend money just to build name recognition. Limits, unless high, may augment an institutional bias against challengers or unknown candidates. Conversely, public funding could help challengers to compete with well-funded incumbents.

Many of those concerned about electoral competition consequently oppose spending limits, although they are philosophically opposed to public funding. These individuals tend to favor approaches reflecting more "benign" forms of regulation, such as allowing higher limits on party contributions to challengers in early stages, or, generally, allowing greater latitude in challengers' ability to raise needed funds. At the very least, these individuals insist that changes not be made that exacerbate perceived problems.

Closing Perceived Loopholes in Current Law

Proposals have increasingly addressed perceived loopholes in the FECA, underscoring a basic philosophical difference between those who favor and oppose government regulation of campaign finances. Opponents say that regulation invites attempts at subterfuge, that interested money will always find its way into elections, and that the most one can do is see that it is disclosed. Proponents argue that while it is hard to restrict money, it is a worthwhile goal, hence one ought to periodically fine-tune the law to correct "unforeseen consequences." Proposed "remedies" stem from the latter view, *i.e.*, curtail the practices as they arise.

Bundling. Most of these proposals would count contributions raised by an intermediary toward both the donor's and intermediary's limit. An agent who had reached the limit could not raise any funds for that candidate. Proposals differ as to specific agents who could continue this practice (*e.g.*, whether to ban bundling by party committees or by all PACs).

Soft Money. This practice has provided the greatest opportunity to date for spending money beyond the extent allowed under federal law. Soft money is not well understood, which, in part, is why there are so many approaches to deal with it. Some insist the problem has been exaggerated. Because of 1991 FEC rules that national parties disclose non-federal accounts and allocate soft versus hard (federally permissible) money, we are more aware of soft money and better able to keep it from financing federal races than we were previously.

Serious differences still exist. Reformers want to curb what they view as an inherent circumvention of federal limits, while parties want to protect a source of funding that has bolstered their grassroots efforts. Proposed reforms have included: specifying a "federal election period" in which soft money cannot be spent; prohibiting the use of any soft money in mixed (federal-state) activities; prohibiting national party committees and federal candidates from raising or distributing soft money; codifying the FEC's requirements for allocation of soft versus hard money among federal, state, and local candidates; and requiring disclosure of or limitation on labor and corporate soft money (including limits on unions' political use of worker dues) and spending by tax-exempt groups. These differences reflect the lack of consensus on where the soft money problem lies.

Independent Expenditures. Short of a constitutional amendment to allow mandatory limits on campaign spending (such as the Senate debated in 1988, 1995, and 1997), most proposals aim to promote accountability. They seek to prevent indirect forms of consultation with candidates and to ensure that the public knows that these efforts are not sanctioned by candidates. Many bills have sought to tighten definitions of *independent expenditure* and *consultation* and to require more prominent disclaimers on ads. Many spending limits/ benefits bills have provided subsidies so those attacked in such ads may adequately respond.

Issue Advocacy. Addressing this practice, a form of soft money, involves broadening the definition of federal election-related spending. A 1995 FEC regulation offered such a

definition, using a "reasonable person" standard, but this was struck down by a lst Circuit federal court in 1996; this decision was later upheld by an appeals court but is at variance with an earlier 9th Circuit ruling. The FEC has been reluctant to enforce the regulation pending further judicial or legislative action. Some recent bills (including McCain-Feingold) have sought to codify a definition of "express advocacy" that allows a communication to be considered as a whole, in context of such external events as timing, to determine if it is election-related. Finding a definition that can withstand judicial scrutiny may be the key to bringing some of what is labeled "issue advocacy" under FECA's regulatory framework.

Legislative Action in Recent Congresses

Congress' consideration of campaign finance reforms has steadily increased since 1986, when the Senate passed the PAC-limiting Boren-Goldwater Amendment, marking the first campaign finance vote in either house since 1979 (no vote was taken on the underlying bill).

With Senate control shifting to Democrats in 1986, each of the next four Congresses saw intensified activity, focused on the Democratic leadership approach of voluntary spending limits combined with inducements to participation, such as public subsidies or cost-reduction benefits. In the 100th Congress, Senate Democrats were blocked by a Republican filibuster. In the 101st-103rd Congresses, the House and Senate each passed comprehensive bills based on spending limits and public benefits. The bills were not reconciled in the 101st or 103rd Congresses, but a conference version was achieved in the 102nd, only to be vetoed by President Bush. [For further discussion, see CRS Report 98-26.]

104th Congress. As the political landscape changed with the shift of party control of Congress in the 1994 elections, the campaign finance issue and prospects for reform were cast in a different light as the 104th Congress began. To the extent that reform came up, it was expected that the focus would be less on spending limits or public funding and more on decreasing the role of PACs, increasing other funding sources, and promoting competition. Early in the first session, Speaker Newt Gingrich and Senate Majority Leader Bob Dole expressed interest in the issue at an unspecified future point in Congress. Faced with such reluctance, Members sought to raise the issue in direct or indirect ways, including:

- February 14, 1995—Senators Ernest Hollings and Arlen Specter offered a constitutional amendment to allow Congress and the states to enact mandatory campaign spending limits. The proposal was tabled on a 52-45 vote;
- May 24, 1995—the Senate responded to a provision in the GOP balanced-budget plan to end the presidential public funding system by supporting an amendment to retain it, by a 56-44 vote. (Revisiting the issue on May 23, 1996, the Senate adopted by voice vote the Thompson sense of the Senate amendment, urging that the presidential tax checkoff not be changed, as outlined in the FY1996 budget resolution.); and
- July 20, 1995—the Senate put campaign reform on the agenda symbolically by accepting a Feingold sense of the Senate amendment that the 104th Congress should consider reform; it survived a motion to table (41-57). The Dole amendment then passed (91-8) to include the issue among a long list, diluting the first vote's impact.

A chance to break the stalemate emerged on June 11, 1995, when, in a New Hampshire joint appearance, President Clinton and Speaker Gingrich agreed in principle to an independent commission to recommend on campaign and lobbying reforms (modeled after the

base-closing commission). Despite some notable support, the plan never materialized. In September 1995, Senators John McCain and Russell Feingold generated some bipartisan support for their bill, S. 1219, which featured free and discount broadcast time and reduced postal rates to Senate candidates who agreed to spending limits and to raise at least 60% of individual donations from in-state residents; a doubled limit on individual donations and increased spending limit for participants whose opponents exceeded it; a PAC ban; and restrictions on soft money, bundling, and independent expenditures.

The Senate Rules and Administration Committee held hearings from February-May 1996. On April 19, sponsors of S. 1219 announced they would offer the bill as a floor amendment if the leadership did not schedule action. On June 13, Majority Leader Trent Lott scheduled floor debate on June 24, with a cloture vote the next day; on June 25, supporters fell 6 votes short of the 60 needed for cloture. Further consideration ceased.

In October 1995, House Majority Leader Dick Armey set up a task force to make reform recommendations. On November 2, the House Oversight Committee began a series of hearings, at which Speaker Gingrich proposed a bipartisan commission on political reform, with recommendations by May 1996 and congressional action by the fall. On October 31, 1995, Representatives Linda Smith, Martin Meehan, and Christopher Shays introduced H.R. 2566, a bipartisan, companion measure to the McCain-Feingold bill. On March 21, 1996, they filed a discharge motion, setting terms for bringing the bill to a vote (under H.Res. 373) despite the GOP leadership's opposition, but this effort was unsuccessful.

On May 7, 1996, Majority Leader Armey set House action on campaign finance and other reform issues for July. On May 22, Democratic leaders offered H.R. 3505, based on the House bill passed in the 103rd Congress. On July 9, Representative Bill Thomas introduced the GOP leadership bill, H.R. 3760, with in-district funding requirements; an equal PAC and individual contribution limit; retroactively indexed contribution limits; a greater role for parties; higher limits on party and individual donations to candidates with wealthy opponents; and curbs on soft money and bundling. The Committee reported the bill on July 16, on a party-line vote. The bill was replaced by the Rules Committee with H.R. 3820, combining H.R. 3760 and H.R. 3580 (the Worker Right to Know Act). H.R. 3820 was changed anew by Amendment 1366 on July 24, which, among other things, indexed contribution limits prospectively. On July 25, the House defeated H.R. 3820 (as amended) by 162-259. It also defeated the Democratic alternative (H.R. 3505, as amended) by 177-243.

105th Congress. In the 1996 elections, press accounts focused on large sums of money raised and spent outside the purview of federal election law. On a separate front, allegations mounted concerning foreign campaign money raised by the Democratic National Committee. While reform supporters vowed major legislative efforts in the 105th Congress, House and Senate leaders vowed to investigate violations of current law. Investigations and hearings into 1996 election abuses have been held by the Senate Governmental Affairs and House Government Reform and Oversight Committees. [See CRS Issue Brief 97045.]

On the reform front, activity has included task forces to seek consensus on proposals, most notably the House Freshman Bipartisan Task Force on Campaign Finance Reform, which held forums and produced H.R. 2183. Some 134 reform bills were introduced. Initially, media attention focused on the McCain-Feingold and companion Shays-Meehan bills—S. 25 and H.R. 493, endorsed by the President in his 1997 State of the Union Address. House and Senate Democratic leaders offered bills similar to those in the 104th Congress:

S. 11 and H.R. 600. Early floor action came on March 18, when the Senate defeated (38-61) S.J.Res. 18, the Hollings constitutional amendment to allow mandatory campaign spending limits. Hearings have been held in both houses on aspects of campaign reform, including:

- Senate Rules and Administration Committee—January 30, May 14, and June 25, 1997, on general reform issues and, in the latter case, on political use of union dues;
- Senate Governmental Affairs—September 23, 24, 25, and 30, on reform issues;
- Senate Judiciary Subcommittee on Constitution, Federalism, and Property Rights—February 24, 1998, on term limits and campaign finance reform;
- House Judiciary Subcommittee on the Constitution—February 27, 1997, on proposed constitutional amendments to allow mandatory campaign spending limits, and September 18, 1997, on issue advocacy;
- House Education and Workforce Subcommittee on Employer-Employee Relations—March 18, July 9, December 11, 1997, and January 21, 1998, on use of union dues;
- House Oversight Committee—October 30-31, November 6-7, 1997, February 5 and 26, and March 5,1998, on general reform issues; and
- House Government Reform and Oversight Subcommittee on Government Management, Information, and Technology — March 5, 1998, on FEC reform.

Sponsors of the McCain-Feingold bill vowed to seek Senate action in the fall, despite lack of Republican leadership support. On September 19, sponsors announced a substitute bill, deleting controversial spending limits and public benefits, to focus on restricting soft money and issue advocacy and improving disclosure and enforcement, as well as two new features: requiring union notice to nonmembers of their right to a dues rebate for political spending, and restricting party support for wealthy candidates. Following a unanimous consent agreement to consider the bill and proposed amendments and a pledge by President Clinton to call the Senate into special session, if necessary, to consider reform, the Senate began debate on the revised S. 25 on September 26. On September 29, Majority Leader Lott offered the Paycheck Protection Act as an amendment (text of S. 9—same as S. 1663).

On October 7, an unsuccessful cloture vote (53-47) appeared to end Senate debate on the McCain-Feingold bill, at least temporarily. A second cloture vote on S. 25 failed on October 8 by 52-47; a third failed on October 9 by the same margin. The Senate also failed to invoke cloture on the Lott Amendment on October 7 (52-48) and October 9 (51-48). McCain-Feingold supporters continued to press the issue, and, they reached agreement with Majority Leader Lott October 30 for a vote on that bill and a GOP substitute by March 6.

Senate debate on campaign finance legislation began February 23, focused on S. 1663 (the Lott Paycheck Protection bill), a substitute amendment (no. 1646) containing the McCain-Feingold language (from the revised bill of September 1997), and a new Snowe-Jeffords amendment (no. 1647), to modify McCain-Feingold. That modification replaced the broader express advocacy definition in McCain-Feingold with the term "electioneering communications," *i.e.*, spending on broadcast ads in the last 60 days of a general election or 30 days of a primary that refer to a federal candidate, once a group spent $10,000 in a year on such messages. Snowe-Jeffords required disclosure of such activity by any group and prohibited their financing with union and for-profit corporation funds. On February 25, the Snowe-Jeffords language was added to the McCain-Feingold amendment by voice vote.

Key votes included failed motions to table McCain-Feingold, by 48-51 and 48-50 on February 24 and 25, respectively, and Snowe-Jeffords (prior to inclusion in McCain-

Feingold), by 47-50 on February 25; a cloture vote on modified McCain-Feingold, defeated by 51-48 on February 26; and a cloture motion on S. 1663, defeated by 45-54 on February 26. Senate consideration of campaign reform ended that day, after the two cloture attempts.

House reform supporters sought to force a scheduled vote as well, beginning on October 24, 1997 with a petition to discharge various bills from committee. On November 13, the last day of the session, the Speaker and GOP leaders said the House would vote on reform legislation by March 1998. On March 18, the House Oversight Committee reported H.R. 3485, a Republican leadership bill to ban party-raised soft money, adjust contribution limits, protect dissenting workers and stockholders from political use of union and corporate money, guard against vote fraud, and require issue advocacy disclosure. House action, planned for the week of March 23, was postponed after some reformers protested their inability to offer a substitute based on the McCain-Feingold bill. On March 27, House leaders announced that campaign reform would be considered on March 30, under a suspension of the rules.

On March 30, the House Republican leadership brought four bills to the floor under suspension of the rules. Two were defeated: H.R. 3581 (Thomas)—a revision of the comprehensive H.R. 3485, as reported—lost by 74-337; and H.R. 2609 (Schaffer)—the Paycheck Protection Act—lost by 166-246. The other bills passed: H.R. 34 (Bereuter)—to ban foreign national contributions and expenditures in U.S. elections—by 369-43; and H.R. 3582 (White)—to improve disclosure and enforcement (based on H.R. 3485)—by 405-6.

Reform supporters then sought votes on measures not considered in March, using the discharge petition for H.Res. 259, a rule for consideration of specified Members' proposals; it had over 200 signatures by April 22, out of a needed 218. In response, Speaker Gingrich announced April 22 that the House would consider the issue again by May, with the freshman bipartisan H.R. 2183 as the base bill and amendments and substitutes allowed. Under H.Res. 442, reported from the Rules Committee on May 20 and passed the next day, debate began May 22 on H.R. 2183, 11 substitute amendments, and H.J.Res. 119 (DeLay), a constitutional amendment to allow regulation of contributions and expenditures. On June 11, the House defeated H.J.Res. 119 by a 29-345 vote (with 51 voting present).

Non-germane perfecting amendments were submitted to the Rules Committee, which on June 4 reported H.Res. 458 (H.Rept. 105-567), making in order 258 amendments to the 11 substitutes previously made in order, with additional germane amendments expected on the floor. On June 17, prior to passage of the second rule, the House defeated substitute no. 1—the White commission proposal. Following passage of H.Res. 458 on June 18 (by 221-189), the House began debate on substitute no. 13 (Shays/Meehan). On July 17, the House accepted a unanimous consent agreement that made in order 55 amendments to Shays-Meehan. The House passed the Shays-Meehan substitute on August 3 by 237-186, after six days of debate, adoption of 23 amendments, and the rejection of 18 others. On August 6, the House passed H.R. 2183, as modified by the text of the amended Shays-Meehan substitute. Final passage, on a vote of 252-179, followed rejection of the Doolittle and Hutchinson-Allen substitutes, by votes of 131-299 and 147-222 (with 61 "present"), respectively.

On September 9, the Senate began reconsideration of McCain-Feingold, offered as amendment no. 3554 to S. 2237, the Interior appropriations bill. A cloture motion to end debate failed September 10 by a 52-48 vote, after which Senator McCain withdrew it from further consideration. Thus hopes for reform in the 105th Congress appeared dead.

LEGISLATION

H.R. 34 (Bereuter)

Illegal Foreign Contributions Act of 1998. Bans contributions and expenditures by non-citizens in U.S. elections. Introduced Jan. 21, 1997; passed House under suspension of the rules March 30, 1998 (369-43).

H.R. 1625 (Fawell)

Worker Paycheck Fairness Act. Requires more union notice of rebate rights and prior approval by dues-paying non-members for political spending. Introduced May 15, 1997; reported, amended, by Committee on Education and Workforce Oct. 8, 1997 (H.Rept.105-397).

H.R. 2183 (Shays-Meehan)

Bipartisan Campaign Reform Act of 1998. Broadens express advocacy definition. Bans national party and federal candidate soft money raising, and curbs state party soft money spending on federal-related activity. Tightens coordination definition. Bans parties from both independent and coordinated expenditures on behalf of a candidate. Codifies *Beck* decision on political use of non-member dues. Bans party coordinated expenditures for candidates not abiding by voluntary $50,000 personal funds limit. Increases FEC disclosure and enforcement. Establishes study commission to make recommendations. Adds regulation of foreign national donations and fundraising from government property. Introduced July 17, 1997 (by Reps. Hutchinson and Allen, as the "freshman" reform bill); referred to Committee on House Oversight. Passed House Aug. 6, as amended to include Shays-Meehan substitute no. 13, as amended on floor (252-179). [Before adopting Shays-Meehan on Aug. 3 (237-186), the House rejected substitute no. 16 (White) June 17 (156-201; 68 present), no. 8 (Hutchinson-Allen) Aug. 6 (147-222; 61 present), and no. 5 (Doolittle) Aug. 6 (131-299). Seven others were not debated or not voted on: no. 1 (Bass); no. 2 (Campbell); no. 4 (Obey); no. 7 (Farr); no. 12 (Schaffer, CO); no. 14 (Snowbarger); and no. 15 (Tierney). See CRS Report 98-494 for further discussion of the substitute amendments.]

H.R. 2608 (B. Schaffer)

Paycheck Protection Act. Requires prior authorization from employees or stockholders of corporations/national banks before political use of dues, fees, or payments as condition of employment, and requires pre-authorization for union political use of dues, fees, or payments from members or non-members. Introduced Oct. 6, 1997; referred to Committee on House Oversight. Failed passage under rules suspension Mar. 30, 1998 (166-246).

H.R. 3485 (Thomas)

Campaign Reform and Election Integrity Act of 1998. See H.R. 3581, adding state party soft money curbs, deleting rules on non-profit dues use. Introduced and reported by Committee on House Oversight Mar. 18, 1998 (H.Rept. 105-457).

H.R. 3581 (Thomas)

Campaign Reform and Election Integrity Act of 1998. Bans political use of corporate/union funds against worker/shareholder wishes. Raises individual, party contribution limits. Bans soft money raising by national parties or federal candidates. Curbs state party soft money spending. Raises contribution limits in wealthy candidate races. Requires issue advocacy disclosure. Curbs vote fraud, foreign giving. Introduced Mar. 18, 1998. Considered under rules suspension Mar. 30, 1998 and failed (74-337).

H.R. 3582 (White)

Campaign Reporting and Disclosure Act of 1998. Requires electronic filing late in election (all times by large committees) and Internet posting. Requires secondary payee disclosure. Allows FEC written responses where law is unambiguous, with "safe harbor" protection. Bolsters FEC disclaimer on matters under investigation; changes standard to begin action. Introduced, brought up under rules suspension Mar. 30, 1998; passed (405-6).

H.J.Res. 119 (DeLay)

Constitutional amendment to allow reasonable regulation of expenditures/contributions to influence elections (protecting full issue discussion and effective advocacy), legislative definition of expenditures to influence elections, and no ad content regulation. Introduced May 14, 1998; referred to Judiciary Comm. Defeated June 11, 1998 (29-345; 51 present).

S. 25 (McCain-Feingold) *As revised*

Bipartisan Campaign Reform Act of 1997. Broadens express advocacy definition. Bans national party/federal candidate soft money raising. Curbs state party soft money spending on federal-related activity. Tightens coordination definition. Bans parties from both independent and coordinated expenditures on behalf of a candidate. Codifies *Beck* decision on political use of non-member dues. Bans party coordinated expenditures for candidates not abiding by voluntary $50,000 personal funds limit. Increases FEC disclosure and enforcement. Introduced Jan. 21, 1997; referred to Committee on Rules and Administration. Discharged Sept. 25, 1997; modified Sept. 29. Three failed cloture votes Oct. 7, 8, and 9, 1997. A later version—amendment 1646 (Feb. 1998), as modified by Snowe-Jeffords amendment 1647—had less express advocacy regulation: broadcast ad disclosure late in election and a ban on union or for-profit corporation funding. This modified version was offered as amendment no. 3554 on Sept. 8, 1998; cloture vote failed Sept. 10 by 52-48.

S. 1663 (Lott)

Paycheck Protection Act. See H.R. 2608. Introduced and considered Feb. 23, 1998. Cloture vote failed Feb. 26 (45-54). Referred to Committee on Rules and Administration.

S.J.Res. 18 (Hollings)

Constitutional amendment to allow limits on election expenditures and contributions. Introduced Feb. 27, 1997; placed on Senate calendar. Failed passage Mar. 18, 1997 (38-61).

FOR ADDITIONAL READING

CRS Issue Briefs

CRS Issue Brief 98025. *Campaign Finance: Constitutional and Legal Issues of Soft Money*, by L. Paige Whitaker.

CRS Issue Brief 97045. *Campaign Fundraising Controversy and Investigation*, by Kevin J. Coleman, Joseph E. Cantor, Jack Maskell, Marie B. Morris, and L. Paige Whitaker.

CRS Reports

CRS Report 97-973. *Business and Labor Spending in U.S. Elections*, by Joseph E. Cantor.

CRS Report 98-494. *Campaign Finance Debate in the House: Substitute Amendments to H.R. 2183 (105th Congress),* by Joseph E. Cantor.

CRS Report 96-689. *Campaign Finance: First Amendment Issues and Major Supreme Court Cases,* by Thomas M. Durbin.

CRS Report 97-324. *Campaign Finance Legislation in the 105th Congress,* by J.E. Cantor.

CRS Report 98-713. *Campaign Finance Legislation in the 105th Congress: Comparison of Shays-Meehan and McCain-Feingold Proposals,* by Joseph E. Cantor.

CRS Report 98-694. *Campaign Finance Legislation: Summary of the Shays-Meehan Proposal, as Passed by the House,* by Joseph E. Cantor.

CRS Report 98-26. *Campaign Finance Reform Activity in the 100th - 104th Congresses,* by Joseph E. Cantor.

CRS Report 98-282. *Campaign Finance Reform: A Legal Analysis of Issue and Express Advocacy,* by L. Paige Whitaker.

CRS Report 98-409. *Campaign Finance Reform Bills in the 105th Congress: Comparison of H.R. 2183(Hutchinson-Allen),H.R. 3526(Shays-Meehan),&Current Law,* by J.E. Cantor.

CRS Report 98-364. *Campaign Finance Reform Bills in the 105th Congress: Comparison of H.R. 3581(Thomas), H.R. 3526(Shays-Meehan),& Current Law,* by Joseph E. Cantor.

CRS Report 97-1040. *Campaign Financing: Highlights and Chronology of Current Federal Law,* by Joseph E. Cantor.

CRS Report 97-555. *The Use of Union Dues for Political Purposes: A Discussion of Agency Fee Objectors and Public Policy*, by Gail McCallion

CRS Report 97-793. *Congressional Campaign Spending: 1976-1996,* by Joseph E. Cantor.

CRS Report 97-127. *Foreign Money and American Elections: The Law and Current Issues,* by Joseph E. Cantor and L. Paige Whitaker.

CRS Report 97-680. *Free and Reduced-Rate Television Time for Political Candidates,* by Joseph E. Cantor, Denis Steven Rutkus, and Kevin B. Greely.

CRS Report 97-894. *Out-of-State Money in the Congressional Elections of 1992, 1994, and 1996: Trends and Policy Issues,* by Joseph E. Cantor.

CRS Report 97-91. *Soft and Hard Money in Contemporary Elections: What Federal Law Does and Does Not Regulate,* by Joseph E. Cantor.

CRS Report 97-618. *The Use of Union Dues for Political Purposes: A Legal Analysis,* by John Contrubis and Margaret Mikyung Lee.