Order Code IB87020

Issue Brief for Congress

Campaign Financing

Updated December 30, 2002

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SUMMARY

Concerns over financing federal elections have become a seemingly perennial aspect of our political system, centered on the enduring issues of high campaign costs and reliance on interest groups for needed campaign funds.

Rising election costs have long fostered a sense in some quarters that spending is out of control, with too much time spent raising funds and elections "bought and sold." Debate has also focused on the role of interest groups in campaign funding, especially through political action committees (PACs).

Differences in perceptions of the campaign finance system have long been compounded by the major parties' different reform approaches. Democrats have tended to favor more regulation, with spending limits and some public funding or benefits a part of their past proposals. Republicans have generally opposed such limits and public funding.

Democratic majorities in the 101st-103rd Congresses passed bills with spending limits, public financing or cost-reducing benefits, PAC limits, and provisions to close perceived loopholes. The 101st and 103rd Congress bills were not reconciled; a 102nd Congress conference bill was vetoed. Supporters sought a similar bill in the 104th Congress but failed on a Senate cloture vote; the House GOP offered a bill giving parties and local citizens a greater role, but this and a Democratic bill lost.

The 1996 elections marked a turning point, when the debate's focus shifted from more restrictions on already-regulated spending and funding sources to activities largely or entirely outside federal election law regulation and disclosure requirements. Although concerns had long been rising over soft money in federal elections, the widespread and growing use of soft money for so-called issue advocacy since 1996 has raised questions over the integrity of current regulations and the feasibility of any limits on campaign money.

In the 105th Congress, the first Congress after 1996, the House debated reform twice. First, it considered a GOP-leadership bill and three narrower measures under suspension of rules, passing a foreign national contribution ban and a Federal Election Commission (FEC) disclosure/enforcement bill and defeating the leadership bill and the Paycheck Protection Act. In response to a discharge petition drive, the House renewed consideration of the issue, in a lengthy process focused on the "freshman bipartisan bill," 11 substitutes, and a constitutional amendment. Debate ended with passage of the Shays-Meehan bill. The Senate debated the companion McCain-Feingold bill three times, all ending in failed cloture votes.

In the first session of the 106th Congress, the House passed the Shays-Meehan bill, but Senate debate ended after two failed cloture votes. In the second session, Congress did agree on an aspect of campaign reform, in passing P.L. 106-230, to require disclosure by certain tax-exempt political organizations organized under section 527 of the Internal Revenue Code. Such groups exist to influence elections, but many had not been required to disclose financial activity (to the FEC or IRS).

In the 107th Congress, the Senate passed S. 27 (McCain-Feingold), as amended, on April 2, 2001. On February 14, 2002, the House passed the companion measure, H.R. 2356 (Shays-Meehan), as amended. That bill passed the Senate on March 20, 2002, and was signed into law by President Bush on March 27, 2002, as P.L. 107-155—the Bipartisan Campaign Reform Act of 2002.

MOST RECENT DEVELOPMENTS

On November 2, the President signed into law H.R. 5596 (P.L. 107-276), a bipartisan measure to reduce disclosure obligations of state and local committees and to improve IRS dissemination of federally-filed reports under the 527 disclosure law enacted in 2000. On October 8, Senators McCain and Feingold and Representatives Shays and Meehan offered bills (S.J.Res. 48 and H.J.Res. 119) to disapprove the FEC's new soft money regulations, under the Congressional Review Act.

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 has continued 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 free speech rights. The Court saw no danger of corruption arising from large expenditures, as it did from large contributions, and reasoned that corruption alone could justify the First Amendment restrictions involved. Only voluntary limits on expenditures 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.

After 1996, the debate shifted considerably to a focus on the perceived loopholes in existing law (a source of increasing debate since the mid-1980s). The PAC issue was largely supplanted by more fundamental issues of election regulation, with observers finding new appreciation for the limited, disclosed nature of PAC funds. Concerns over competition have abated since Republicans won 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 was almost overshadowed by concerns over the system's perceived loopholes. Although these practices were (largely) presumably legal, they may have violated the law's spirit, raising a basic question of whether money in elections can, let alone should, be regulated.

Enduring Issues: Overall Costs, Funding Sources, and Competition

Increased Campaign Costs. Since first being systematically compiled in the 1970s, campaign expenditures have risen substantially, even exceeding the overall rise in the cost of living. Campaign finance authority Herbert Alexander estimated that $540 million was spent on all elections in the U.S. in 1976, rising to some $3.9 billion in 2000.

Aggregate costs of House and Senate campaigns increased eightfold between 1976 and 2000, from $115.5 million to $1.007 billion, while the cost of living rose threefold. Campaign costs for average winning candidates, a useful measure of the real cost of seeking office, show an increase in the House from $87,000 in 1976 to $847,000 in 2000; a winning Senate race went from $609,000 in 1976 to $7.2 million in 2000 (not adjusted for inflation).

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 or determining election winners, 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 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 allocation of tax dollars. Similarly, they contrast costs of elections with those on commercial advertising: the nation's two leading commercial advertisers, Proctor & Gamble and General Motors, spent more to

promote their products in 1996 ($5 billion) than was spent on all U.S. elections. In such a context, these observers contend, the costs of political dialogue may not be excessive.

High election 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—or to seek ever-larger contributions from small groups of wealthy contributors. It has been argued 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, while concerns over interest group money through other channels have grown.

Through the 1980s, statistics showed a significant increase in PAC importance. From 1974 to 1988, PACs grew in numbers from 608 to a high of 4,268, in contributions to House and Senate candidates from $12.5 million to $147.8 million (a 400% rise in constant dollars), and in relation to other sources from 16% of congressional campaign receipts to 34%. While PACs remain a considerable force, data show a relative decline in their role since 1988: the percentage of PAC money in total receipts dropped to 27% in 2000; PAC numbers dropped to 3,907 in 2000; contributions to candidates rose somewhat in constant dollars ($245.4 million in 2000); and, after individual giving had been declining as a component (vis-a-vis PACs), some leveling off has occurred, with individuals giving 55% of Senate and 52% of House receipts in 2000, for example.

Despite aggregate data on the relative decline of PACs, they still provide a considerable share of election financing for various subgroups. For example, in 2000, House candidates got 35% of their funds from PACs; House incumbents received 42%. To critics, PACs raise troubling issues in the campaign financing debate: Are policymakers beholden to special interests for election help, impairing their ability to make policy choices in the national interest? Do PACs overshadow 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?

PAC defenders view 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, electoral competition, by funding challengers in closely contested races. In terms of influencing

legislative votes, donations are seen more as rewards for past votes than as inducements to alter future ones. Defenders also challenge the presumed dichotomy between *special* and *national* interest, viewing the latter as simply the sum total of the former. PACs, they argue, afford clearer knowledge of how interest groups promote their agendas, particularly noteworthy in light of the flood of unregulated and undisclosed money since 1996.

Competitiveness in Elections. Many view the campaign finance system in terms of a general imbalance in resources between incumbents and challengers, as evidenced by respective spending ratios of more than 3.5:1 and 2:1 in recent House and Senate elections. (In 2000, there was a much closer ratio in the House, with an average expenditure of $774,000 for an incumbent vs. $295,000 for a challenger—a 2.6 to 1 ratio, while the average Senate incumbent's $4.3 million exceeded the average challenger's $2.5 million by 1.8 to 1.) Incumbents' generally easier access to money is often seen as the real problem, not the aggregate amounts spent by all candidates.

Those concerned about competitiveness also view the PAC issue through this lens. With some 76% of PAC funds going to incumbents in 2000, 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 aggregate PAC giving. But others dispute that the problem is really an incumbency one or that electoral competition should be the main goal 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 the disparities in hotly contested or open races.

Today's Paramount Issue: 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 have been characterized 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 and FEC rulings, 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. The data for 2000 show that some $495 million in soft money was raised by the major parties, nearly double the $262 million raised in 1996.

Independent Expenditures. The 1976 *Buckley* ruling allowed unlimited spending by individuals or groups on communications with voters to expressly support or oppose clearly identified federal candidates, made without coordination or consultation with any candidate. Independent expenditures totaled $11.1 million in 1992, $22.4 million in 1996, and $25.6 million in 2000. These expenditures may hinder a candidate's ability to compete with an opponent and respond to the charges made by 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, per several court rulings on First Amendment grounds. 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, an estimated $135 million was spent on issue advocacy, rising to between $275 and $340 million in 1998, and to $509 million in 2000 (although these data do not distinguish between campaign-related and non-campaign-related communications). Also, groups ranging from labor unions to the Christian Coalition promote their policy views through voter guides, which present candidates' views on issues in a way that some see 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 court rulings in *Buckley* and other cases? What changes will not result in new, unforeseen, and more troublesome practices? These considerations are underscored by the experience with prior amendments to FECA, such as PAC growth after the 1974 limits on contributions.

Just as the overriding issues centered until recently around election costs and funding sources, the most prominent legislation long focused on controlling campaign spending, usually through voluntary systems of public funding or cost-reduction benefits, and on altering the relative importance of various funding sources. Some saw both concepts primarily in the context of promoting electoral competition, to remedy or at least not exacerbate perceived inequities between incumbents and challengers. Increasingly since the mid-1980s, and particularly since the 1996 elections, concerns over perceived loopholes that undermine federal regulation have led to proposals to curb such practices. Conversely, some

proposals have urged less regulation, on the ground that it inherently invites circumvention, while still other proposals have focused exclusively on improving or expanding disclosure.

Proposals on Enduring Issues

Campaign Spending Limits and Government Incentives or Benefits. Until the late 1990s, the campaign reform debate often focused on the desirability of campaign spending limits. To a great extent, this debate was linked with public financing of elections. The coupling of these two controversial issues stemmed from *Buckley's* ban on mandatory spending limits, while allowing voluntary limits, with adherence a prerequisite for subsidies. Hence the notion arose in the 1970s that spending limits must be tied to public benefits, absent a constitutional amendment.

Public funding not only might serve as an inducement to voluntary limits, but by limiting the role of private money, it is billed as the strongest measure toward promoting the integrity of and confidence in the electoral process. Furthermore, it could promote competition in districts with strong incumbents or one-party domination. Public financing of congressional elections has been proposed in nearly every Congress since 1956 and has passed in several Congresses. 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 the face of some cynicism toward government spending. The practical objections are also serious: How can a system be devised that accounts for different natures of districts and states, with different styles of campaigning and disparate media costs, and is fair to all candidates—incumbent, challenger, or open-seat, major or minor party, serious or "longshot?"

A major challenge to spending limit supporters has been how to reduce, if not eliminate, the role of public funding in their proposals. Although spending limits may have wide public support, most evidence suggests far less support for public financing. In the 105th Congress, the principal reform bills debated on the floor contained neither campaign spending limits nor public funding, reflecting not only the overriding concerns over soft money and issue advocacy but also the changed political climate since the 1970s.

Stemming from the spending limits debate have been proposals to lower campaign costs, without spending limits. Proposals for free or reduced rate broadcast time and postage have received some notable bipartisan support. Such ideas seek to reduce campaign costs and the need for money, without the possibly negative effects of arbitrary limits.

Changing the Balance Among Funding Sources. Until recently, most proposed bills sought, at least in part, to curb PACs' perceived influence, either directly, through a ban or reduced contribution limits, or indirectly, through enhancing the role of individuals and parties. Prior to enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA), individuals could give $1,000 per candidate, per election, while most PACs (if they are "multicandidate committees") could give $5,000 per candidate, increasing 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 proposals advanced through the mid-1990s: 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. Although support for such proposals was fueled by a desire to reduce the perceived role of interest groups, each proposal had drawbacks, such as constitutional questions about limiting speech and association rights and the more practical concern over devaluation of the $5,000 limit by inflation since it was set in 1974.

Yet another concern raised during that period was the potential encouragement for interest groups to shift resources to "independent" activities, which are less accountable to voters and more troublesome for candidates in framing the debate. Furthermore, independent advertisements were often marked by negativity and invective. If such prospects gave pause to lawmakers during the 1980s, the surge of financial activity outside the framework of federal election law since 1996 has largely dampened attempts to further limit PACs. The major reform bills in the 105th – 107th Congresses contained no further PAC restrictions.

Partly because of this problem, both before and after 1996, many have looked to more indirect ways to curb PACs and interest groups, such as raising limits on individual or party donations to candidates. These increases have also been proposed on a contingency basis to offset such other sources as wealthy candidates spending large personal sums on their campaigns. As enacted in 2002, BCRA provided both for higher individual contribution limits in general and provisional increases in both individual and party limits to assist candidates opposed by free-spending, wealthy opponents. While higher limits might counterbalance PACs and other groups and offset effects of inflation, opponents observed that few Americans could afford to give even $1,000, raising age-old concerns about "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.

Support also exists for increasing or removing party contribution and coordinated expenditure limits, based on the notions that the party role can be maximized without leading to influence peddling and on strengthening party ties to facilitate effective policymaking. Opponents note that many of the prominent allegations in 1996 involved party-raised funds. Also, even with some degree of philosophical agreement on increasing the party role, current political realities present some obstacles, i.e., the difference in the relative resources of the Republican Party committees, whose federal accounts raised over $447 million in the 2000 election cycle, and the Democratic committees, which raised $270 million.

Promoting Electoral Competition. Proposals to reduce campaign costs without establishing expenditure 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 high 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 have opposed spending limits, although they are philosophically opposed to public funding. These individuals tend to favor 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, in their view, exacerbate perceived problems.

Proposals to Close Perceived Loopholes in Current Law

Proposals have increasingly addressed perceived loopholes in the FECA, and indeed this area was the primary focus of recent reform efforts, culminating in enactment of BCRA in the 107th Congress. This debate underscored a basic philosophical difference between those who favored and opposed government regulation of campaign finances. Opponents said that regulation invited attempts at subterfuge, that interested money would always find its way into elections, and that the most one could do was see that it is disclosed. Proponents argued that while it was hard to restrict money, it was a worthwhile goal, hence one ought to periodically fine-tune the law to correct "unforeseen consequences." Proposed "remedies" stemmed from the latter view, *i.e.*, curtail the practices as they arise.

Bundling. Most proposals in this area, which is seen as less an issue now than in prior years, would count contributions raised by an intermediary toward both the donor's and intermediary's limit. Hence, an agent who had reached the limit could not raise additional 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).

Independent Expenditures. Short of a constitutional amendment to allow mandatory limits on campaign spending (as the Senate debated in 1988, 1995, 1997, and 2000), most proposals have aimed to promote accountability. They have sought to prevent indirect consultation with candidates and to ensure that the public knows 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.

Soft Money. This practice has provided the greatest opportunity to date for spending money beyond the extent allowed under federal law. FEC rules that took effect in 1991 require national parties to disclose non-federal accounts and allocate soft versus hard (i.e., federally permissible) money. Hence, we are more aware of soft money today and better able, at least theoretically, to keep it from financing federal races than we were previously.

Serious differences exist regarding soft money. Some have sought to curb what they view as an inherent circumvention of federal limits, while political parties tried to protect a source of funding that had bolstered their grassroots efforts. Proposed changes have included prohibiting national party committees and federal candidates from raising or distributing soft money; specifying "federal election activities" for which no soft money could be spent by state and local parties (the first two being prominent features of BCRA); codifying the FEC's requirements for allocation of soft versus hard money among federal, state, and local candidates; prohibiting the use of any soft money in mixed (federal-state) activities; requiring disclosure of or limitation on spending by tax-exempt groups; and curbing or requiring

disclosure of labor and corporate soft money (including limits on unions' political use of worker dues). Beyond legislative solutions have been proposals for the FEC to restrain soft money through promulgating new regulations. These differences reflect the lack of consensus on both the nature of and the solutions to the soft money problem, as well as the respective strategic concerns of the two major parties.

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 1st 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 was reluctant to enforce the regulation pending further judicial or legislative action. Some bills (such as the Shays-Meehan bill that passed the 105th and 106th Congresses) 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. BCRA, incorporating language initially proposed by Senators Snowe and Jeffords, narrowed the scope of the earlier-proposed definition of what would be considered federal election-related; instead, it focused on disclosure of such activities and a prohibition on the use of corporate and union treasury funds in their financing. Finding a definition that could withstand judicial scrutiny was seen as the key to bringing some of what has been labeled "issue advocacy" under the FECA's regulatory framework. This emerged after 1996 as probably the thorniest aspect of the campaign finance debate.

Legislative Action in Congress

Congress' consideration of campaign finance reform 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, based on Democratic-leadership bills with 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, while a conference version achieved in the 102nd was vetoed by President Bush.

With Republicans assuming control in the 104th Congress, neither chamber passed a reform bill. A bipartisan bill based on previous Democratic-leadership bills was blocked by filibuster in the Senate, while both Republican- and Democratic-leadership bills—with starkly different approaches—failed to pass in the House. (For further discussion, see CRS Report 98-26, *Campaign Finance Reform Activity in the 100th-104th Congresses*.)

In the 105th Congress, reform supporters succeeded in passing the Shays-Meehan bill in the House (H.R. 2183, as amended). Senate sponsors of its companion McCain-Feingold measure (S. 25, as revised) failed on three occasions to break a filibuster in opposition, however, and no vote occurred on the bill. For further discussion of 105th Congress activity, see *Campaign Finance Reform Electronic Briefing Book, 105th Congress—Summary*.

In the 106th Congress, the House again passed the Shays-Meehan bill (H.R. 417). Supporters of the companion McCain-Feingold bill initially introduced S. 26, much the same bill as its final version in the 105th Congress. They later introduced a much narrower version (S. 1593), focusing largely on party soft money but dropping the issue advocacy and other provisions. This version was debated in October 1999 but failed to break a filibuster in opposition. Reform supporters succeeded, however, in enacting legislation to require disclosure by tax-exempt political organizations under Section 527 of the Internal Revenue Code. For further discussion of 106th Congress activity, see *Campaign Finance Reform Electronic Briefing Book, 106th Congress—Summary*.

107th Congress

During the 107th Congress, 69 campaign reform bills were introduced (51 in the House and 18 in the Senate). Two of these were new versions of 106th Congress bills and were passed by their respective chambers: S. 27 (McCain-Feingold) and its companion H.R. 2356 (Shays-Meehan). The latter was enacted into law on March 27, 2002 as P.L. 107-155—the Bipartisan Campaign Reform Act of 2002 (BCRA).

1st Session. Supporters of McCain-Feingold sought an early debate and vote on the issue, and, on January 26, reached an agreement with Majority Leader Lott for a two week Senate debate in mid- or late-March. On February 6, two unanimous consent agreements were approved by the Senate: the first committed the Senate to begin debating McCain-Feingold on March 19 or 26, with floor amendments allowed; the second agreement committed the Senate to consider the Hollings-Specter constitutional amendment to allow mandatory campaign spending limits, immediately following disposition of McCain-Feingold. Senate debate began March 19, and after a two-week debate, S. 27 was passed by the Senate on April 2 by a vote of 59-41. As passed, S. 27 included 22 amendments offered on the floor; 16 other amendments were rejected during the two-week debate. On March 26, the Senate debated S.J.Res. 4 and defeated it by a 40-56 vote. On May 15, the Senate revisited the issue when it passed a Sense of the Senate resolution instructing the Secretary of the Senate to engross S. 27 and send it to the House; the vote (on S.Amdt. 477) was 61-39. On May 22, the bill was sent to the House, where it was referred to the Committees on House Administration, Energy and Commerce, and the Judiciary.

The House Administration Committee began a series of hearings on campaign finance reform on March 17 in Phoenix AZ. On May 1, during the second hearing of the series, supporters of McCain-Feingold and its House companion, H.R. 380 (Shays-Meehan), urged the House to act by Memorial Day. Chairman Ney stated the Committee would report a bill to the House by the end of June. A third hearing, on constitutional issues, was held June 14, and a fourth, on June 21, heard testimony from House Members.

On June 28, the Committee completed its hearings by taking further testimony from Members. It then proceeded to markup of H.R. 2360 (Ney-Wynn), and ordered it reported favorably to the House (H.Rept. 107-132). The bill features limits on soft money donations to national parties, disclosure of amounts spent on election-related issue advocacy, and increases in some hard money contribution limits . The Committee also ordered H.R. 2356, the modified Shays-Meehan bill, reported unfavorably (H.Rept. 107-131, pt. 1). That bill closely resembles S. 27 (McCain-Feingold), as passed by the Senate in April. Hearings were also held on June 12 by the Judiciary Subcommittee on the Constitution, on related

constitutional issues, and on June 20 by the Energy and Commerce Subcommittee on Telecommunications and the Internet, on related broadcast issues.

The House planned to consider campaign finance reform on July 12, with debate expected to focus on the Ney-Wynn and Shays-Meehan bills. However, debate failed to materialize that day, when the House rejected on a 203-228 vote the proposed rule for considering the issue. H.Res. 188, as reported from the Rules Committee that morning (H.Rept. 107-135), would have made in order H.R. 2356 (Shays-Meehan), 20 perfecting amendments (including 14 by the bill's managers), and two substitutes—Doolittle, nearly identical to H.R. 1444, and Ney-Wynn, identical to H.R. 2360.

In the wake of the defeat of the rule, the House leadership would not commit to bringing up the issue again. Supporters of Shays-Meehan then looked to a discharge petition to force reconsideration. Such a petition was filed July 19, 2001, organized by Blue Dog Democrats. If it succeeded in gaining the needed 218 signatures, the discharge petition would bring up a rule—H.Res. 203 (Turner)—making Shays-Meehan and various amendments in order for House debate.

2nd Session. On January 24, 2002, House advocates secured the last four signatures necessary for the discharge petition to force a floor vote on the bill. Under the discharge petition rule, Representatives Shays and Meehan, House Administration Committee Chairman Ney, and Majority Leader Armey would be permitted to offer substitutes, with the proposal receiving the most votes becoming the base bill, subject to amendments. Following success of the discharge petition, House leaders pledged early consideration of Shays-Meehan and alternatives.

On February 7, 2002, the House Rules Committee reported H.Res. 344 (H.Rept. 107-358), setting forth terms for debate of H.R. 2356, similar to the terms of the discharge petition. The House passed the rule on a voice vote on February 12. On February 13, the House agreed to a Shays-Meehan substitute amendment (240-191), after rejecting substitutes offered by Majority Leader Armey (179-249) and House Administration Committee Chairman Ney (53-377). The House then agreed to four perfecting amendments and rejected eight others, after which H.R. 2356, as amended, was passed on a 240-189 vote.

On February 26, 2002, H.R. 2356, as passed by the House, was received in the Senate and placed on its legislative calendar. On March 5, an attempt by Majority Leader Daschle to offer a unanimous consent agreement to bring up the bill was blocked by Senator McConnell. Senator Daschle pledged to have the Senate complete action on the measure prior to the spring recess, and, on March 13, he filed a cloture motion to allow its consideration, with a vote expected on March 15. On March 14, the Senate agreed to a unanimous consent request by Senator Daschle to cancel that cloture motion and to proceed to consideration of H.R. 2356 on March 18. Consideration began March 18, and Senator Daschle filed a cloture motion. On March 20, the Senate voted 68-32 to invoke cloture on H.R. 2356 and, later that afternoon, passed the bill by a 60-40 vote. Later that day, the House passed H.Con.Res. 361, directing the Clerk of the House to make corrections in the enrolled H.R. 2356. The Senate approved the concurrent resolution on March 22, thus clearing the Shays-Meehan bill for the President, who, on March 27, signed it into law: P.L. 107-155.

The Federal Election Commission completed the first phase of its rulemaking to implement the new law when it sent its new soft money regulations to Congress in July. These regulations have been criticized by supporters of the new Act, who announced their intentions to overturn them in Congress under the Congressional Review Act and in the courts under the Administrative Procedure Act. On October 8, Senators McCain and Feingold and Representatives Shays and Meehan offered bills (S.J.Res. 48 and H.J.Res. 119) to disapprove the FEC's new soft money regulations. Under the Congressional Review Act, Congress has 60 legislative days from the time they are received to review the rules and to disapprove them.

In a related action on March 20, the House Ways and Means Committee reported H.R. 3991, the "Taxpayer Protection and IRS Accountability Act of 2002," after including an amendment to relieve certain tax-exempt "political organizations," as defined under 26 U.S.C. § 527, that operate at the state and local levels from reporting requirements enacted by Congress in 2000. The bill was brought up in the House on April 9, under suspension of the rules, and was defeated on April 10 by a 206-219 vote. In the closing days of the 107th Congress, however, a bipartisan measure was passed and sent to the President to reduce disclosure obligations of state and local committees and to improve IRS dissemination of federally-filed reports under the 527 disclosure law. That measure, H.R. 5596 (Brady, TX), was passed without objection by the House on October 16 and by unanimous consent by the Senate on October 17 and was signed by President Bush November 2 as Public Law 107-276.

LEGISLATION

H.R. 2356 (Shays-Meehan)

Bipartisan Campaign Finance Reform Act of 2002. Bans soft money raising by national parties and federal candidates. Curbs state party soft money spending on "federal election activity." Defines *electioneering communication* as a broadcast ad referring to a clearly identified federal candidate within 60 days of a general election or 30 days of a primary, and targeted to voters in that election. Requires disclosure of electioneering communications above $10,000, with identification of donors of $1,000 or more. Bans funding of electioneering messages with union or corporate funds. Raises limits on individual contributions to parties and some candidates and on aggregate annual federal contributions. Introduced June 28, 2001; jointly referred to Committees on House Administration, Energy and Commerce, and the Judiciary. Ordered reported unfavorably by Committee on House Administration, June 28, 2001 (H.Rept. 107-131, pt. 1). Passed House, as amended, February 14, 2002 (240-189). Received in Senate and placed on legislative calendar, February 26, 2002. Cloture invoked (68-32), March 20, 2002. Passed by Senate (60-40), March 20, 2002. [H.Con.Res. 361, approved by the House and Senate, directed the Clerk of the House to make specified corrections in the engrossed version of H.R. 2356.] Signed into law by President Bush, March 27, 2002, P.L. 107-155.

H.R. 3991 (Houghton)

Taxpayer Protection and IRS Accountability Act of 2002. Includes an amendment to relieve certain tax-exempt "political organizations" defined under 26 U.S.C. §527 that operate at the state and local levels from reporting requirements enacted by Congress in

2000. Introduced March 19, 2002; referred to Committee on Ways and Means. Ordered reported as amended, March 20, 2002. Brought up in House under suspension of rules, April 9, 2002. Defeated, April 10, 2002 (206-219).

H.R. 5596 (Brady, TX)

Exempts state and local political party and candidate committees from notification and return requirements under 527 disclosure law (P.L. 106-230); exempts state and local PACs from reporting requirements under 527 disclosure law, if they are solely engaged in state and local activity, if they are required to report and itemize expenditures and contributions under state law, if those reports are made publicly available, and if no federal candidate or officeholder is significantly involved with that PAC; requires IRS to upgrade their 527 disclosure website to enhance user's ability to search data. Introduced Oct. 10, 2002; referred to Committee on Ways and Means. Discharged from Committee, considered by House, and passed without objection, Oct. 16, 2002. Passed by Senate by unanimous consent, Oct. 17, 2002. Signed into law Nov. 2, 2002, P.L. 107-276.

H.Con.Res. 361 (Ney)

To direct the Clerk of the House to make corrections in the enrolled version of H.R. 2356 (Shays-Meehan). Introduced and approved by House, March 20, 2002. Approved by the Senate, March 22, 2002.

H.J.Res. 119 (Shays-Meehan)

To overturn the FEC's soft money regulations under the Congressional Review Act. Introduced Oct. 8, 2002; referred to Committee on House Administration.

S. 27 (McCain-Feingold)

Bipartisan Campaign Reform Act of 2001. Bans soft money raising by national parties and federal candidates. Curbs state party soft money spending on "federal election activity." Defines *electioneering communication* as a broadcast ad referring to a clearly identified federal candidate within 60 days of a general election or 30 days of a primary, to an audience that includes voters in that election. Requires disclosure of electioneering communications above $10,000, with identification of donors of $1,000 or more. Bans funding of electioneering messages with union or corporate funds (including by 501(c)(4) groups for *targeted communications*). Raises limits on individual contributions to candidates and parties and on aggregate annual federal contributions. Introduced January 22, 2001; referred to Committee on Rules and Administration. Discharged from Committee and Senate debate began on March 19, 2001. Passed Senate, as amended, April 2, 2001 (59-41). Sent to House May 22; jointly referred to Committees on House Administration, Energy and Commerce, and the Judiciary.

S.J.Res. 4 (Hollings-Specter)

Proposed constitutional amendment to allow Congress and states to set reasonable limits on contributions and expenditures in support of or opposition to candidates for nomination and election to federal and state, or local office. Introduced February 7, 2001; referred to Committee on the Judiciary. Debated by Senate and defeated, March 26, 2001 (40-56).

S.J.Res. 48 (McCain-Feingold)

To overturn the FEC's soft money regulations under the Congressional Review Act. Introduced Oct. 8, 2002; referred to Committee on Rules and Administration.

FOR ADDITIONAL READING

CRS Issue Briefs

CRS Issue Brief IB98025. *Campaign Finance: Constitutional and Legal Issues of Soft Money,* by L. Paige Whitaker.

CRS Reports

CRS Report RS21176. *Application of Campaign Finance Law and Legislation to Indian Tribes,* by L. Paige Whitaker and Joseph E. Cantor.

CRS Report RL31402. *Bipartisan Campaign Reform Act of 2002: Summary and Comparison with Existing Law,* by Joseph E. Cantor and L. Paige Whitaker.

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

CRS Report RL31036, *Campaign Finance Bills in the 107th Congress: Comparison of S. 27 (McCain-Feingold), H.R. 2356 (Shays-Meehan), H.R. 2360 (Ney-Wynn), and Current Law,* by Joseph E. Cantor and L. Paige Whitaker.

CRS Report RL30939. *Campaign Finance Bills in the 107th Congress: House,* by Joseph E. Cantor.

CRS Report RL30998. *Campaign Finance Bills in the 107th Congress: Senate,* by Joseph E. Cantor.

CRS Report RS20346. *Campaign Finance Bills in the 106th Congress: Comparison of Shays-Meehan, as passed, with McCain-Feingold, as revised,* by Joseph E. Cantor.

CRS Report RL30162. *Campaign Finance Bills in the 106th Congress: House,* by Joseph E. Cantor.

CRS Report RL30166. *Campaign Finance Bills in the 106th Congress: Senate*, by Joseph E. Cantor.

CRS Report RL31290. *Campaign Finance Bills Passed in the 107th Congress: Comparison of S. 27 (McCain-Feingold), H.R. 2356 (Shays-Meehan), and Current Law*, by Joseph E. Cantor and L. Paige Whitaker.

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

CRS Report RS20854. *Campaign Finance Reform and Incentives to Voluntarily Limit Candidate Spending from Personal Funds: Constitutional Issues Raised by Public Subsidies and Variable Contribution Limits,* by L. Paige Whitaker.

CRS Report RS20849. *Campaign Finance Reform: Constitutional Issues Raised by Disclosure Requirements*, by L. Paige Whitaker.

CRS Report RL30669. *Campaign Finance Regulation Under the First Amendment: Buckley v. Valeo and its Supreme Court Progeny*, by L. Paige Whitaker and Christopher A. Jennings.

CRS Report RL30884. *Campaign Financing in the 2000 Federal Elections: Overview and Estimates of the Flow of Money*, by Joseph E. Cantor.

CRS Report RL30877. *Characteristics of and Reporting Requirements For Selected Tax-Exempt Organizations*, by Marie B. Morris.

CRS Report RL30582. *527 Organizations: How the Differences in Tax and Election Laws Permit Certain Organizations to Engage in Issue Advocacy without Public Disclosure and Proposals for Change*, by Marie B. Morris.

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 RS20133. *The Presidential Election Campaign Fund and Tax Checkoff: Background and Current 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 RL31288. *Soft Money, Allegations of Political Corruption, and Enron*, by Jack Maskell and L. Paige Whitaker.

CRS Report 97-618. *The Use of Labor Union Dues for Political Purposes: A Legal Analysis*, by L. Paige Whitaker.

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