

CRS Report for Congress

Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress

January 14, 2008

R. Sam Garrett
Analyst in American National Government
Government and Finance Division



Prepared for Members and
Committees of Congress

Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress

Summary

This report provides an overview of major legislative and policy developments related to campaign finance during the 110th Congress. The report discusses legislative and oversight hearings and floor action during the period. It also explores major policy issues that are relevant for Congress, but have largely occurred away from Capitol Hill. As of this writing, approximately 50 bills devoted primarily to campaign finance have been introduced in the 110th Congress, but none have become law. A new lobbying and ethics law, the Honest Leadership and Open Government Act (HLOGA) contains campaign finance provisions related to “bundled” campaign contributions and campaign travel. That measure is the only campaign finance-related bill to become law during the 110th Congress.

Aside from HLOGA, the House has passed two bills containing campaign finance provisions. H.R. 2630 would restrict campaign and leadership political action committee (PAC) payments to candidate spouses. In addition, a provision in the House-passed version of an appropriations bill (H.R. 3093) would have prohibited spending Justice Department funds on criminal enforcement of the Bipartisan Campaign Reform Act (BCRA) “electioneering communication” provision. However, the language was not included in the FY2008 consolidated appropriations law (P.L. 110-161). In addition to House legislative activity, in December 2007, the Committee on House Administration held an oversight hearing on automated telephone calls (also known as “robo calls” or “auto calls”) in political campaigns. In the Senate, a bill (S. 223) requiring electronic filing of campaign disclosure reports was reported from the Rules and Administration Committee but has not received floor consideration. During the spring and summer of 2007, the committee also held hearings on coordinated party expenditures (S. 1091) and congressional public financing legislation (S. 1285).

Two non-legislative items are also particularly noteworthy. First, following a Senate impasse over four nominees to the Federal Election Commission (FEC) during the first session of the 110th Congress, the Commission now has just two sitting members. Under the Federal Election Campaign Act (FECA), that number is insufficient to approve enforcement actions, issue advisory opinions, and make other policy decisions. Additional confirmed or recess-appointed commissioners are necessary to bring the FEC to at least a four-member majority necessary to make policy decisions. Second, in November 2007, the FEC approved new rules regarding electioneering communications. Those rules were promulgated to comport with a June 2007 Supreme Court ruling (in *Federal Election Commission v. Wisconsin Right to Life, Inc.*).

This report will be updated periodically throughout the 110th Congress to reflect major events or legislative action. It supercedes CRS Report RS22732, *Campaign Finance: Developments in the 110th Congress*

Contents

Brief Historical Overview	1
A Note on the Current Policy Environment: FEC Status	1
Campaign Finance Legislation in the 110th Congress	2
Campaign Finance Provisions in HLOGA	2
Senate Activity on Other Campaign Finance Legislation	6
House Activity on Other Campaign Finance Legislation	6
Other Recent Developments	7
Electioneering Communications	7
Committee on House Administration Hearing on Automated Political Calls	9
Conclusion	10

Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress

Brief Historical Overview

Federal campaign finance law emphasizes limits on contributions, restrictions on funding sources, and public disclosure of information about campaign fundraising and spending. These goals and others are embodied in the 1971 Federal Election Campaign Act (FECA), which remains the cornerstone of the nation's campaign finance law.¹ Major FECA amendments (in 1974, 1976, and 1979) expanded the presidential public-financing system and placed limits on campaign contributions and expenditures.²

After these post-Watergate efforts to reduce the risk or appearance of corruption, campaign finance received relatively little legislative attention until the late 1990s. The Bipartisan Campaign Reform Act of 2002 — also known as “BCRA” or “McCain-Feingold” for its principal Senate sponsors — constituted the first major change to the nation's campaign finance laws since 1979.³ Among other points, BCRA banned large corporate and union donations to political parties (soft money) in federal elections and restricted certain political advertising preceding elections (electioneering communications). Much of the policy activity since that time has emphasized implementing BCRA, particularly at the FEC and in the courts.

A Note on the Current Policy Environment: FEC Status

During the first session of the 110th Congress, the Senate considered four nominations to the six-seat FEC. Amid controversy surrounding one nominee and debate over whether the nominations should be considered separately or as a group, the Senate declined to confirm or reject the nominations. As a result, the recess appointments of commissioners Robert D. Lenhard (D), Steven T. Walther (D), and Hans A. von Spakovsky (R), who had been nominated to full terms at the agency,

¹ 2 U.S.C. 431 § et seq.

² The Supreme Court struck down mandatory spending limits, except those accepted voluntarily in exchange for public campaign financing, in its 1976 *Buckley v. Valeo* decision. See CRS Report RL30669, *Campaign Finance Regulation Under the First Amendment: Buckley v. Valeo and Its Supreme Court Progeny*, by L. Paige Whitaker.

³ On BCRA, see P.L. 107-155; 116 Stat. 81. For additional information, see CRS Report RL31402, *Bipartisan Campaign Reform Act of 2002: Summary and Comparison with Previous Law*, by Joseph E. Cantor and L. Paige Whitaker. Cantor is now retired from CRS. Contact R. Sam Garrett with questions regarding Mr. Cantor's portfolio.

expired. At this time, only Commissioners David M. Mason (R) and Ellen L. Weintraub (D) remain in office. Both were previously confirmed by the Senate and may continue serving in holdover status following expired terms.

The FEC's current status is significant because, under FECA, at least four commissioners must vote affirmatively to approve, among other things, agency rules, enforcement decisions, and advisory opinions. Accordingly, although the Commission's operating status does not directly affect congressional campaign finance activity, the agency cannot officially implement or interpret past or future legislation without at least four commissioners in office.⁴

Remaining commissioners and staff continue to carry out some duties and can provide general information to the regulated community and the public. Federal campaign finance law and FEC regulations remain in effect. Additional discussion appears in another CRS product.⁵

Campaign Finance Legislation in the 110th Congress

As of this writing, approximately 50 bills affecting campaign finance have been introduced in the 110th Congress.⁶ This level of activity suggests an interest in campaign finance legislation well ahead of the 109th Congress, when 51 bills were introduced during the entire two-year period.⁷ The House has passed two bills that contain campaign finance provisions, but no bills devoted solely to campaign finance have become law during the 110th Congress. Separately, the Honest Leadership and Open Government Act (HLOGA), a new lobbying and ethics law, contains some campaign finance provisions. The following discussion provides additional details on campaign finance bills that have been the subject of hearings or floor votes during the 110th Congress.

Campaign Finance Provisions in HLOGA. S. 1, which became P.L. 110-81 on September 14, 2007, primarily addresses lobbying and ethics; but it also contains two significant campaign finance provisions: one related to bundling and another related to travel aboard private aircraft.⁸ Both have been seen as sources of potential abuse in the past. On a related note, the law also prohibits Member attendance at presidential convention events in their honor if registered lobbyists or

⁴ This assumes that at least four commissioners could reach agreement.

⁵ CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

⁶ This total is approximate because of varying ways in which "campaign finance" could be classified. The total does not include FEC appropriations bills. On that topic, see the FEC portion of CRS Report RL33998, *Financial Services and General Government (FSGG): FY2008 Appropriations*, Garrett L. Hatch, Coordinator.

⁷ CRS Report RL33836, *Campaign Finance Legislation and Activity in the 109th Congress*, by R. Sam Garrett.

⁸ See also CRS Report RL34166, *Lobby Law and Ethics Rules Changes in the 110th Congress*, by Jack Maskell. That report provides additional discussion and analysis.

“private entit[ies]” that hire lobbyists pay for the events.⁹ It also requires additional disclosure about lobbyists’ contributions (exceeding \$200) to political committees, presidential inaugural committees, and presidential libraries.¹⁰

Although the travel section took effect upon the bill’s enactment, the FEC recently adopted rules providing its interpretation of the law. HLOGA requires the FEC to promulgate regulations implementing the bundling provision within six months of enactment (which would be March 2008).¹¹ FEC rulemaking (discussed below) is required to implement the bundling and campaign travel portions of HLOGA (sections 204 and 601).

Bundling. “Bundling” refers to a campaign fundraising practice in which an intermediary — often a lobbyist — either receives contributions and passes them to a campaign or is credited with soliciting contributions that a campaign receives directly. Before HLOGA became law, although FEC regulations on “earmarked” contributions technically restricted bundling, they were viewed as largely inapplicable to designated campaign fundraisers, including certain lobbyists. In response, HLOGA requires disclosure of bundling activities by registered lobbyists. Specifically, political committees (i.e., candidate committees, PACs, etc.) must report to the FEC the name, address, and employer of each Lobbying Disclosure Act (LDA)-registered lobbyists “reasonably known” to have made at least two bundled contributions totaling more than \$15,000 during specified six-month reporting periods.¹² HLOGA only requires disclosure of bundling by registered lobbyists — not other fundraisers. Therefore, HLOGA will provide more transparency than is currently available about which lobbyists arrange certain bundled contributions. However, it does not mandate disclosure of bundled contributions that do not meet the time and monetary thresholds discussed above, or about bundling by non-lobbyists.

FEC Rulemaking. The FEC issued a notice of proposed rulemaking (NPRM) on the bundling issue on October 30, 2007.¹³ Most notably, and consistent with HLOGA, the FEC’s proposed rules would require political committees to report bundled contributions if the same source arranged or was credited with arranging two or more contributions totaling at least \$15,000 during a six-month period. (The FEC also solicited comments about an alternative quarterly reporting proposal.)¹⁴ The proposed rules would also add the term “lobbyist/registrant PACs” — those committees “established or controlled” by registered lobbyists — to existing

⁹ 121 Stat. 753; 121 Stat. 767. Exceptions exist for presidential or vice-presidential candidates.

¹⁰ 121 Stat. 743

¹¹ 121 Stat. 744-121 Stat. 745

¹² 121 Stat. 744. On LDA, see 2 U.S.C. § 1601 et seq.

¹³ Federal Election Commission, “Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants,” 72 *Federal Register* 62600, November 6, 2007. Although the Commission approved the NPRM on October 30, it was not published in the *Federal Register* until November 6, 2007.

¹⁴ *Ibid.*, pp. 62606-62607.

examples of political committees subject to FECA regulation and bundling disclosure.¹⁵

Despite some specificity, the NPRM did not address how all reporting issues would be resolved. Rather, throughout the document, the Commission posed several questions about a range of issues, such as how widely disclosure requirements should apply and how committees should determine whether contributions were bundled.¹⁶ Parts of the NPRM suggested that bundling disclosure could apply beyond lobbyists per se; the FEC asked whether Congress intended for bundling disclosure to apply only to contributions arranged by registered lobbyists (who would be known as “lobbyist/registrants”), or also to fundraising by other actors. The latter could include non-lobbyist employees at lobbying organizations or hosts of fundraisers at which bundling occurs.¹⁷ Several interested parties, including Members of Congress, submitted comments responding to the NPRM. The Commission has not yet scheduled a hearing on the issue.

HLOGA appears to require that reporting begin three months after the bundling rules are issued.¹⁸ If the Commission followed that time frame, it would adopt final rules by March 2008. Those rules would take effect by June 2008. However, as noted previously, the FEC cannot issue regulations — including the bundling rules — without four affirmative votes. If four FEC Commissioners are in place and can agree on new rules by March, the bundling rulemaking could continue as scheduled in HLOGA. If not, the Commission would be unable to approve the regulations, but could do so at a future date. This scenario would imply that bundling reports would not be filed as early in the 2008 election cycle as intended in the law, or perhaps not at all, but would begin once the FEC issued final rules.

Campaign Travel. HLOGA restricts campaign travel on private, non-commercial aircraft (e.g., charter jets). Before HLOGA became law, political committees were permitted to reimburse those providing private aircraft at the rate of first-class travel as long as commensurate first-class commercial service were available for the route flown.¹⁹ Reimbursement at non-discounted coach or charter rates was required if commensurate first-class service were unavailable on that route. Under the new law, Senators, candidates, and staff may continue to travel on private

¹⁵ Ibid.

¹⁶ Ibid., pp. 62603-6204.

¹⁷ Ibid., pp. 6202-6203.

¹⁸ Under HLOGA, bundling reporting begins “after the expiration of the 3-month period which begins on the date that the regulations required to be promulgated by the Federal Election Commission under [FEC rulemaking authority specified in FECA] become final.” 121 Stat. 746. Based on that text, it appears that reporting need not begin until three months after regulations become final, whenever that might occur. However, HLOGA appears to have intended for disclosure to begin by June 2008, which would be three months after the March 2008 rulemaking deadline specified in the law.

¹⁹ Campaigns must reimburse service-providers for travel (or other services) so that vendors do not make, or campaigns do not receive, prohibited “in-kind” contributions that are excessively expensive, come from prohibited sources, or both.

aircraft only if they reimburse the entity providing the aircraft for the “pro rata share of the fair market value” for rental or charter of a comparable aircraft, which could be well above the old first-class rate that applied to most flights. Unlike their Senate counterparts, House Members, candidates, and staff are “substantially banned” from flying aboard private, non-commercial aircraft, as the law precludes reimbursements for such flights.²⁰

FEC Rulemaking. Under rules adopted by the FEC on December 14, 2007, all Senate, presidential, and vice-presidential campaign travel must be reimbursed at the “pro-rata share” of the charter rate, regardless of the route flown.²¹ Consistent with HLOGA, political committees related to House of Representatives candidates are prohibited from making reimbursements for campaign travel aboard private aircraft, which essentially bans such travel. The “pro-rata share” reimbursement standard for Senate, presidential, and vice-presidential travel is based on the number of candidate committees (i.e., candidate campaigns) represented on a flight. If more than one candidate is represented on a flight, reimbursement would be shared among the relevant political committees. Political committees must provide reimbursement for all campaign travelers’ shares of the “normal and usual charter fare or rental charge for travel on a comparable aircraft or comparable size.”²² These requirements also apply to travel on behalf of PACs, including leadership PACs, and party committees, although candidate committees represented on the flight would be responsible for covering costs for those travelers.²³ Travel aboard government aircraft must also be reimbursed at the per-person charter rate or at the rate the government entity providing the aircraft specifies for “private travel.”²⁴ Certain exceptions exist for travel aboard aircraft owned or leased by a candidate or an immediate family member, but reimbursement for campaign travel is nonetheless required.²⁵

Before publishing the final travel rules in the *Federal Register*, the Commission must approve an “explanation and justification” (E&J) document summarizing the public comments the FEC received and the agency’s reasoning in interpreting the

²⁰ 121 Stat. 774; and CRS Report RL34166, *Lobby Law and Ethics Rules Changes in the 110th Congress*, by Jack Maskell.

²¹ The new rules have not been published in the *Federal Register*. The rules are available on the Commission’s website. See “Draft Final Rule on Campaign Travel,” FEC open meeting agenda document no. 07-94, at [<http://www.fec.gov/agenda/2007/mtgdoc07-94.pdf>], visited January 11, 2008.

²² On the quoted material see FEC, “Draft Final Rule on Campaign Travel,” p. 7.

²³ The FEC reportedly chose this arrangement out of concern that party and PAC officials providing travel reimbursement could indirectly subsidize candidate travel, which HLOGA sought to restrict (telephone consultation between Duane Pugh, Deputy Director, Congressional Affairs, FEC, and R. Sam Garrett, January 10, 2008). Conversely, under the new rules, candidates are arguably subsidizing party or PAC travel. The FEC could clarify this issue when it considers a related “explanation and justification” document, which is discussed in the text of this report.

²⁴ FEC, “Draft Final Rule on Campaign Travel,” pp. 8-9.

²⁵ *Ibid.*, pp. 9-10.

law. These documents typically provide additional information about how the Commission intends to enforce the new rules and what those rules mean in practice. Although the FEC approved final travel rules in December 2007, it did not formally consider an E&J document. That document cannot be approved without affirmative votes from at least four commissioners.

Senate Activity on Other Campaign Finance Legislation. Other than HLOGA, no campaign finance measures have passed the Senate thus far during the 110th Congress. The Rules and Administration Committee has held hearings on three bills. First, on March 28, 2007, the committee held a hearing on S. 223 (Feingold), which would require Senate campaign committees (including candidate committees and party committees) to file campaign finance disclosure reports electronically. Currently, Senate campaign committees are the only federal political committees *not* required to do so. The bill has not received floor consideration, despite attempts to bring it up by unanimous consent. Second, on April 18, 2007, the committee considered S. 1091 (Corker), which would lift existing limits on coordinated expenditures that political parties may make on behalf of candidate campaigns. S. 1091 remains in committee. Finally, on June 20, 2007, the committee held a hearing on S. 1285 (Durbin), which proposes a voluntary system to publicly finance Senate campaigns.²⁶ That bill also has not been subject to additional legislative action.

House Activity on Other Campaign Finance Legislation. The House has passed two bills (in addition to lobbying reform measures) containing campaign finance provisions. First, H.R. 3093, the House version of the FY2008 Commerce, Justice, Science, and Related Agencies appropriations bill contained an amendment sponsored by Representative Pence that would have prohibited spending funds for criminal enforcement of BCRA's electioneering communication provision (discussed below).²⁷ However, the measure was not included in companion Senate legislation or the FY2008 consolidated appropriations law.²⁸

A second House bill, H.R. 2630 (Schiff), would prohibit candidate campaign committees and leadership PACs from paying candidate spouses for campaign work. The bill would require disclosure of certain payments to other family members. It would not affect spouses working for other campaigns (e.g., as political consultants). Another provision in the bill would hold candidates personally liable for violations of the new restrictions (if they knew violations occurred). That proposal marks a departure from existing FECA requirements, which largely hold campaign

²⁶ CRS Report RS22644, *Coordinated Party Expenditures in Federal Elections: An Overview*, by R. Sam Garrett and L. Paige Whitaker; and CRS Report RL33814, *Public Financing of Congressional Elections: Background and Analysis*, by R. Sam Garrett, provide additional discussion of coordinated party expenditures and public financing of congressional elections, respectively.

²⁷ H.R. 3093 as passed by the House, Sec. 711.

²⁸ The consolidated appropriations bill is H.R. 2764, which became P.L. 110-161.

organizations and treasurers responsible for compliance.²⁹ H.R. 2630 passed the House on July 23, 2007, without a committee hearing. It has not been considered in the Senate.

Other Recent Developments

Electioneering Communications. BCRA prohibits corporate and union treasury funds from financing political advertising known as electioneering communications.³⁰ Under BCRA, electioneering communications are broadcast, cable, or satellite political advertising aired within 30 days of a primary election (or convention or caucus) or 60 days of a general election (or special or runoff election) that refers to a “clearly identified” federal candidate and is targeted to the relevant electorate.³¹ Before BCRA became law, such advertising was often viewed as thinly veiled electioneering by corporations and unions, although some observers contended that the advertising reflected sponsors’ policy positions.

On June 25, 2007, the U.S. Supreme Court issued a 5-4 decision in *Federal Election Commission v. Wisconsin Right to Life, Inc. (WRTL II)*.³² In brief, the case considered whether the electioneering communication provision prohibited the group Wisconsin Right to Life (WRTL) from paying for advertising it intended to run during the 2004 election cycle, which mentioned a Senate candidate. The Court held that the electioneering communication provision was unconstitutional as applied to the WRTL ads. Shortly thereafter, the FEC announced that it would revise its electioneering communications rules.

FEC Rulemaking. The FEC held hearings on its electioneering communications rulemaking on October 17-18, 2007.³³ The Commission approved final rules in December 2007.³⁴ Although corporate and union treasury funds are generally prohibited in federal elections, the new rules allow payments for certain electioneering communications that focus on public policy issues rather than electing

²⁹ 2 U.S.C. § 432; 434.

³⁰ 2 U.S.C. § 441b(b)(2).

³¹ See Title II of BCRA at 116 Stat. 88 and 2 U.S.C. § 434(f)(3)(A)(I).

³² For additional detail and a legal analysis of the case, see CRS Report RS22687, *The Constitutionality of Regulating Political Advertisements: An Analysis of Federal Election Commission v. Wisconsin Right to Life, Inc.*, by L. Paige Whitaker.

³³ The hearings focused on two alternative rules: one that would have allowed corporate and union-funded electioneering communications but would have maintained FEC reporting and discussion requirements, and another that would have exempted corporate and union-funded electioneering communications from FEC reporting and disclaimer requirements. On the two alternative proposals, see Federal Election Commission, “Electioneering Communications,” 72 *Federal Register* 50271, August 31, 2007. The hearings also addressed whether revisions to the electioneering communications rules required changes to the Commission’s regulations on “express advocacy,” which explicitly calls for election or defeat of federal candidates. In particular, debate focused on 11 C.F.R. 100.22(b).

³⁴ Federal Election Commission, “Electioneering Communications,” 72 *Federal Register* 50271, December 26, 2007, p. 72899.

or defeating federal candidates.³⁵ As with other electioneering communications, certain information about spending on, and donations received for, these advertisements must be reported to the FEC.³⁶ The advertisements must also contain disclaimers identifying the person or organization responsible for the electioneering communication.³⁷

The new rules also require that electioneering communications paid for with corporate or union treasury funds must meet three “safe harbor” criteria intended to ensure that the advertising is not directly aimed at electing or defeating candidates. Specifically, the advertising may not: (1) mention “any election, candidacy, political party, opposing candidate, or voting by the general public” or (2) take a position on a candidate’s “character, qualifications, or fitness for office.” Third, the advertisement must either “[focus] on a legislative, executive or judicial matter or issue,” such as urging the public or candidates to adopt a policy position, or propose “a commercial transaction” (e.g., an advertisement for a candidate’s business).³⁸

Overall, the new rules permit corporations and unions to fund issue-oriented advertising in ways that were prohibited by BCRA. For those who view issue advertising as thinly veiled electoral advocacy, the rules could be seen as a loophole that allows otherwise prohibited corporate and union money to influence elections — the same concern that motivated BCRA’s electioneering communications provision that was held unconstitutional as applied to the WRTL ads. On the other hand, the FEC’s explanatory statement accompanying the new rules suggests that even general references to elections or candidates (e.g., election dates or a party name) could void the safe harbor protection for corporate and union spending.³⁹ If the Commission reaches such a determination in future enforcement cases, electioneering communications funded by corporate or union treasury funds would have to be strictly related to public policy issues, although they could be aired during election periods.

³⁵ Under the new rules, advertising funded by corporate and union treasury funds must be “susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate,” the same standard the Court articulated in *WRTL II*. See *ibid.*, p. 72914.

³⁶ *Ibid.*, pp. 72900-72901; pp. 72911-72913. Under the rules, spending on electioneering communications that exceeds \$10,000 in a calendar year must be reported to the FEC. Donations exceeding \$1,000 to fund such advertising, received since the start of the year preceding the reporting period, must also be reported.

³⁷ *Ibid.*, pp. 72900-72901; see also 11 C.F.R. 110.11(a). The word “disclaimer” appears as a term of art in FEC regulations, although its definition in that context generally differs from the literal one. Rather than renouncing responsibility (as the literal definition of “disclaimer” implies), disclaimers required by FEC regulations generally signal that the sponsoring committee was, in fact, responsible for a communication. On the other hand, disclaimers on communications that are not authorized by principal campaign must note that candidates were not responsible for the communication.

³⁸ *Ibid.*, p. 72903; p. 72914.

³⁹ *Ibid.*, p. 72903.

Precise implications of the new rules are likely to become clearer over time, as advertisers test the rules during the 2008 election cycle and beyond and as the FEC considers future advisory opinions and enforcement cases. Additional litigation, which has been common following BCRA rulemakings, is also possible. In an apparent follow-up to *WRTL II*, attorney James Bopp, who represented WRTL, sued the FEC again in December 2007. *Citizens United v. FEC* considers whether a movie about Senator Clinton, and related advertising, can be restricted as electioneering communications.⁴⁰

Committee on House Administration Hearing on Automated Political Calls. The Committee on House Administration held an oversight hearing on automated political telephone calls (also known as “robo calls” or “auto calls”) on December 6, 2007. In addition to providing background information about automated calls practices, Members and witnesses at the hearing considered whether, or if, automated calls could be constitutionally restricted. Some Members also emphasized the value of official (franked) automated calls to arrange telephone-based town hall meetings. Several bills introduced in the 110th Congress would address automated political calls in some way, but none has been the subject of legislative action beyond committee referral.

This issue is tangentially related to campaign finance because FEC reporting and disclaimer requirements apply to most such calls. In particular, under FECA, political-committee messages from “telephone banks”⁴¹ must contain disclaimers clearly stating that the committee paid for the communication.⁴² Similarly, messages *not* authorized by candidate committees (e.g., by party committees) must clearly state such information and provide the “full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication.”⁴³ Political committees spending more than \$200 on any expense (including automated calls) must also report certain information to the FEC.⁴⁴ However, the FEC requirements do not apply to non-political committees (e.g., interest groups or 527 organizations). Separate Federal Communications Commission (FCC) requirements also apply to automated calls. Political calls are exempt from the Federal Trade Commission’s (FTC) National Do Not Call Registry.

⁴⁰ For an overview of U.S. district court activity surrounding this case, see Kenneth P. Doyle, “Court Refuses to Enjoin FEC Rules On Funding, Disclosure for Clinton Film” *Daily Report for Executives*, January 16, 2008, p. A-1. The District Court’s opinion is available at [https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2007cv2240-39]; visited January 16, 2008.

⁴¹ On the definition of “telephone banks,” see 2 U.S.C. § 431(24).

⁴² 11 C.F.R. § 110.11(b)

⁴³ *Ibid.*

⁴⁴ 11 C.F.R. § 104.3(b)(3). Reporting time frames vary by committee type. See, for example, 11 C.F.R. § 104.3(b).

Conclusion

HLOGA represents the most significant legislative development related to campaign finance during the 110th Congress. More than 50 other campaign finance bills have been introduced in the 110th Congress, but few have received major legislative attention. Other significant campaign finance developments have occurred away from Capitol Hill, particularly at the FEC and in the federal courts.

FEC activity has focused on rulemakings in response to recent congressional activity, particularly regarding HLOGA. The campaign travel rules are relatively straightforward and consistent with the new lobbying and ethics law. Those rules, however, could be clarified by an E&J statement that has yet to be considered. The bundling and electioneering communications rulemakings (the latter was undertaken in response to the Supreme Court's ruling in *WRTL II*) are more complicated and, in some cases, less clear. Although the proposed bundling rules are consistent with HLOGA's content, the many questions and regulatory alternatives posed in the NPRM suggest that the agency is still considering how to implement that section of the law. Similarly, although the Commission has already adopted final electioneering communications rules, what those rules mean in practice will depend on how the FEC decides to pursue future enforcement and advisory cases.

Overall, recent changes in campaign finance policy have been incremental, as has been the case since FECA became law in the 1970s. Congress generally did not focus on campaign finance legislation in the immediate aftermath of FECA and BCRA, perhaps because passing those laws had required substantial momentum that was difficult to replicate in the short term. That pattern could also hold following HLOGA, although most of that bill was related to lobbying and ethics rather than campaign finance. Even if Congress decides not to undertake major *legislative* activity on campaign finance in the near future, non-legislative activity is likely to keep campaign finance before the public and lawmakers. This is particularly true given the high-profile 2008 elections and heavy spending that has and will accompany those contests. As 2008 campaigns continue and pending rulemakings and advisory opinions linger, the FEC's operating status is likely to become increasingly prominent. Additional litigation will also continue its path through the federal courts. These events demonstrate that the evolution of campaign finance policy occurs not only in Congress, but also at the FEC, in the courts, in other federal agencies, and, perhaps most of all, in campaigns themselves. As long as those campaigns continue, Congress will be faced with questions about how to regulate political money.