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# The State of Campaign Finance Policy: Recent Developments and Issues for Congress

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## Summary

Major changes have occurred in campaign finance policy since 2002, when Congress substantially amended campaign finance law via the Bipartisan Campaign Reform Act (BCRA). The Supreme Court's 2010 ruling in *Citizens United* and a related lower-court decision, *SpeechNow.org v. FEC*, arguably represent the most fundamental changes to campaign finance law in decades. *Citizens United* lifted a previous ban on corporate (and union) independent expenditures advocating election or defeat of candidates. *SpeechNow* permitted unlimited contributions supporting such expenditures and facilitated the advent of super PACs. Although campaign finance policy remains the subject of intense debate and public interest, there have been few legislative or regulatory changes to respond to the 2010 court rulings. Thus far during the 114<sup>th</sup> Congress, only H.R. 412, which would terminate the presidential public financing program, has advanced beyond introduction.

Post-*Citizens United*, debate over disclosure and deregulation have been recurring themes in Congress and beyond. Legislation to require additional information about the flow of money among various donors, the DISCLOSE Act, passed the House during the 111<sup>th</sup> Congress and was reintroduced during subsequent Congresses (as H.R. 430 and S. 229 in the 114<sup>th</sup> Congress). Recent alternatives, which include some elements of DISCLOSE, include 113<sup>th</sup> Congress bills such as Senators Wyden and Murkowski's S. 791, or proposals that would require additional disclosure from certain 501(c) groups. The debate over whether or how additional disclosure is needed has also extended to the Federal Election Commission—and congressional oversight of the agency—and the courts.

During the same period, statutory changes eased some contribution limits. These developments, too, are affected by courts and regulatory agencies. Most recently, the Supreme Court invalidated aggregate contribution limits in April 2014 (*McCutcheon v. FEC*). Also in 2014, Congress and President Obama terminated public funding for presidential nominating conventions (P.L. 113-94). Congress responded by including language in the FY2015 omnibus appropriations law (P.L. 113-235) that increased limits for some contributions to political party committees, including for conventions. The 113<sup>th</sup> Congress also advanced legislation (which was not enacted) to curtail the presidential public financing program (H.R. 94; H.R. 95; H.R. 1994), designate campaign-spending authority after a candidate's death (H.R. 186), require Senate political committees to file campaign finance reports electronically (S. 375), and amend the Constitution to permit additional campaign finance regulation (S.J.Res. 19). It enacted bills to extend the FEC's Administrative Fine Program (P.L. 113-72) and prevent political-spending information from being required in the federal contracting process (P.L. 113-76).

This report considers these and other developments in campaign finance policy and comments on areas of potential conflict and consensus. This report emphasizes issues that appear to be most prominently before the 114<sup>th</sup> Congress. It also discusses major elements of campaign finance policy. This report will be updated occasionally to reflect major developments.

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## Introduction

Federal law has regulated money in elections for more than a century.<sup>1</sup> Concerns about limiting the potential for corruption and informing voters have been at the heart of that law and related regulations and judicial decisions. Restrictions on private money in campaigns, particularly large contributions, have been a common theme throughout the history of federal campaign finance law. The roles of corporations, unions, interest groups, and private funding from individuals have attracted consistent regulatory attention. Congress has also required that certain information about campaigns' financial transactions be made public. Collectively, three principles embodied in this regulatory tradition—limits on sources of funds, limits on contributions, and disclosure of information about these funds—constitute ongoing themes in federal campaign finance policy.

Throughout most of the 20<sup>th</sup> century, campaign finance policy was marked by broad legislation enacted sporadically. Major legislative action on campaign finance issues remains rare. Since the 1990s, however, momentum on federal campaign finance policy, including regulatory and judicial action, has arguably increased. Congress last enacted major campaign finance legislation in 2002. The Bipartisan Campaign Reform Act (BCRA) largely banned unregulated *soft money*<sup>2</sup> in federal elections and restricted funding sources for pre-election broadcast advertising known as *electioneering communications*. As BCRA was implemented, regulatory developments at the Federal Election Commission (FEC), and some court cases, stirred controversy and renewed popular and congressional attention to campaign finance issues. Since BCRA, Congress has also continued to explore legislative options and has made comparatively minor amendments to the nation's campaign finance law. The most notable recent statutory changes occurred in 2014, when Congress eliminated public financing for presidential nominating conventions and increased limits for some contributions to political parties.

Some of the most recent notable campaign finance developments beyond Congress have occurred at the Supreme Court. The 2010 *Citizens United* ruling spurred substantial legislative action

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<sup>1</sup> The 1907 Tillman Act (34 Stat. 864), which prohibited federal contributions from nationally chartered banks and corporations, is generally regarded as the first major federal campaign finance law. The 1925 Federal Corrupt Practices Act (43 Stat. 1070) was arguably the first federal statute combining multiple campaign finance provisions, particularly disclosure requirements first enacted in 1910 and 1911 (36 Stat. 822 and 37 Stat. 25). An 1867 statute barred requiring political contributions from naval yard workers (14 Stat. 489 (March 2, 1867)). This appears to be the first federal law concerning campaign finance. The Pendleton Act (22 Stat. 403), which created the civil service system is also sometimes cited as an early campaign finance measure because it banned receiving a public office in exchange for a political contributions (see 22 Stat. 404). For additional historical discussion of the evolution of campaign finance law and policy, see Anthony Corrado et al., *The New Campaign Finance Sourcebook* (Washington, DC: Brookings Institution Press, 2005), pp. 7-47. See also, for example, Kurt Hohenstein, *Coining Corruption: The Making of the American Campaign Finance System* (DeKalb, IL: Northern Illinois University Press, 2007), Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988), Robert E. Mutch, *Buying the Vote: A History of Campaign Finance Reform* (New York: Oxford University Press, 2014), Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* (Ann Arbor, MI: University of Michigan Press, 2008), pp. 43-80, and *Money and Politics*, ed. Paula Baker (University Park, PA: The Pennsylvania State University Press, 2002).

<sup>2</sup> *Soft money* is a term of art referring to funds generally believed to influence federal elections but not regulated under federal election law. Soft money stands in contrast to *hard money*. The latter is a term of art referring to funds that are generally subject to regulation under federal election law, such as restrictions on funding sources and contribution amounts. These terms are not defined in federal election law. For an overview, see, for example, David B. Magleby, "Outside Money in the 2002 Congressional Elections," in *The Last Hurrah? Soft Money and Issue Advocacy in the 2002 Congressional Elections*, ed. David B. Magleby and J. Quin Monson (Washington: Brookings Institution Press, 2004), pp. 10-13.

during the 111<sup>th</sup> Congress and continued interest during subsequent Congresses.<sup>3</sup> The ruling was, however, only the latest—albeit perhaps the most monumental—shift in federal campaign finance policy to occur in recent years. In another 2010 decision, *SpeechNow.org v. Federal Election Commission*, the U.S. Court of Appeals for the District of Columbia held that contributions to political action committees (PACs) that make only independent expenditures cannot be limited—a development that led to formation of “super PACs.”<sup>4</sup>

This report is intended to provide an accessible overview of major policy issues facing Congress. Citations to other CRS products, which provide additional information, appear where relevant. The report discusses selected litigation to demonstrate how those events have changed the campaign finance landscape and affected the policy issues that may confront Congress, but it is not a constitutional or legal analysis. As in the past, this version of the report contains both additions of new material and deletions of old material compared with previous versions.<sup>5</sup> This update emphasizes those topics that appear to be most relevant for Congress, while also providing historical background that is broadly applicable. This report will be updated occasionally as events warrant.

## Development of Modern Campaign Finance Law

### Policy Background

Dozens or hundreds of campaign finance bills have been introduced in each Congress since the 1970s. Nonetheless, major changes in campaign finance law have been rare. A generation passed between the Federal Election Campaign Act (FECA) and BCRA, the two most prominent campaign finance statutes of the past 50 years. Federal courts and the FEC played active roles in interpreting and implementing both statutes and others. Over time and in all facets of the policy process, anti-corruption themes have been consistently evident. Specifically, federal campaign finance law seeks to limit corruption or apparent corruption in the lawmaking process that might result from monetary contributions. Campaign finance law also seeks to inform voters about sources and amounts of contributions. In general, Congress has attempted to limit potential corruption and increase voter information through two major policy approaches:

- limiting sources and amounts of financial contributions and
- requiring disclosure about contributions and expenditures.

Another hallmark of the nation’s campaign finance policy concerns spending restrictions. Congress has occasionally placed restrictions on the amount candidates can spend, as it did initially through FECA. Today, as discussed later in this report, candidates and political

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<sup>3</sup> For additional discussion of activity during the 111<sup>th</sup> Congress, see CRS Report R41054, *Campaign Finance Policy After Citizens United v. Federal Election Commission: Issues and Options for Congress*, by R. Sam Garrett; and CRS Report R41264, *The DISCLOSE Act: Overview and Analysis*, by R. Sam Garrett, L. Paige Whitaker, and Erika K. Lunder.

<sup>4</sup> For additional discussion of *SpeechNow*, see CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by L. Paige Whitaker and Erika K. Lunder. On super PACs, see CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett.

<sup>5</sup> Congressional requesters may contact the author for additional information.

committees can generally spend unlimited amounts on their campaigns, as long as those funds are not coordinated with other parties or candidates.<sup>6</sup>

## **The Federal Election Campaign Act (FECA)**

Modern campaign finance law was largely shaped in the 1970s, particularly through FECA.<sup>7</sup> First enacted in 1971 and substantially amended in 1974, 1976, and 1979, FECA remains the foundation of the nation's campaign finance law.<sup>8</sup> As originally enacted, FECA subsumed previous campaign finance statutes, such as the 1925 Corrupt Practices Act, which, by the 1970s, were largely regarded as ineffective, antiquated, or both.<sup>9</sup> The 1971 FECA principally mandated reporting requirements similar to those in place today, such as quarterly disclosure of a political committee's receipts and expenditures. Subsequent amendments to FECA played a major role in shaping campaign finance policy as it is understood today. In brief:

- Among other requirements, the 1974 amendments, enacted in response to the Watergate scandal, placed contribution and spending limits on campaigns. The 1974 amendments also established the FEC.
- After the 1974 amendments were enacted, the first in a series of prominent legal challenges (most of which are beyond the scope of this report) came before the Supreme Court of the United States.<sup>10</sup> In its landmark *Buckley v. Valeo* (1976) ruling, the Court declared mandatory spending limits unconstitutional (except for publicly financed presidential candidates) and invalidated the original appointment structure for the FEC.
- Congress responded to *Buckley* through the 1976 FECA amendments, which reconstituted the FEC, established new contribution limits, and addressed various PAC and presidential public financing issues.
- The 1979 amendments simplified reporting requirements for some political committees and individuals.

To summarize, the 1970s were devoted primarily to establishing and testing limits on contributions and expenditures, creating a disclosure regime, and constructing the FEC to administer the nation's campaign finance laws.

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<sup>6</sup> *Political committees* include candidate committees, party committees, and PACs. See 52 U.S.C. §30101 (previously codified at 2 U.S.C. §431(4), as explained later in this report).

<sup>7</sup> FECA is 52 U.S.C. §30101 *et seq.* (previously codified at 2 U.S.C. §431 *et seq.*). Congress first addressed modern campaign finance issues in the 1970s through the 1971 Revenue Act, which established the presidential public financing program. The 1970s are primarily remembered, however, for enactment of and amendments to FECA. For additional discussion of presidential public financing, including an initial 1960s public financing program that was quickly repealed, see CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by R. Sam Garrett.

<sup>8</sup> On the 1971 FECA, see P.L. 92-225. On the 1974, 1976, and 1979 amendments, see P.L. 93-443, P.L. 94-283, and P.L. 96-187 respectively.

<sup>9</sup> The Corrupt Practices Act, which FECA generally supersedes, is 43 Stat. 1070.

<sup>10</sup> For additional discussion, see CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

Despite minor amendments, FECA remained essentially uninterrupted for the next 20 years. Although there were relatively narrow legislative changes to FECA and other statutes, such as the 1986 repeal<sup>11</sup> of tax credits for political contributions, much of the debate during the 1980s and early 1990s focused on the role of interest groups, especially PACs.<sup>12</sup>

## The Bipartisan Campaign Reform Act (BCRA) and Beyond

By the 1990s, attention began to shift to perceived loopholes in FECA. Two issues—soft money and issue advocacy (issue advertising)—were especially prominent. *Soft money* is a term of art referring to funds generally perceived to influence elections but not regulated by campaign finance law. At the federal level before BCRA, soft money came principally in the form of large contributions from otherwise prohibited sources, and went to party committees for “party-building” activities that indirectly supported elections. Similarly, *issue advocacy* traditionally fell outside FECA regulation because these advertisements praised or criticized a federal candidate—often by urging voters to contact the candidate—but did not explicitly call for election or defeat of the candidate (which would be *express advocacy*).

In response to these and other concerns, BCRA specified several reforms.<sup>13</sup> Among other provisions, the act banned national parties, federal candidates, and officeholders from raising soft money in federal elections; increased most contribution limits; and placed additional restrictions on pre-election issue advocacy. Specifically, the act’s *electioneering communications* provision prohibited corporations and unions from using their treasury funds to air broadcast ads referring to clearly identified federal candidates within 60 days of a general election or 30 days of a primary election or caucus.<sup>14</sup>

After Congress enacted BCRA, momentum on federal campaign finance policy issues arguably shifted to the FEC and the courts. Implementing and interpreting BCRA were especially prominent issues. Noteworthy post-BCRA events include the following:

- The Supreme Court upheld most of BCRA’s provisions in a 2003 facial challenge (*McConnell v. Federal Election Commission*).<sup>15</sup>
- Over time, the Court held aspects of BCRA unconstitutional as applied to specific circumstances. These included a 2008 ruling related to additional fundraising permitted for congressional candidates facing self-financed opponents (the “Millionaire’s Amendment,” *Davis v. Federal Election Commission*) and a 2007 ruling on the electioneering communication provision’s

<sup>11</sup> See P.L. 99-514 §112. Congress repealed a tax deduction for political contributions in 1978. See P.L. 95-600 §113.

<sup>12</sup> See, for example, Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988); and *Risky Business? PAC Decisionmaking in Congressional Elections*, ed. Robert Biersack, Clyde S. Wilcox, and Paul S. Herrnson (Armonk, NY: M.E. Sharpe, 1994).

<sup>13</sup> BCRA is P.L. 107-155; 116 Stat. 81. BCRA amended FECA, which appears at 52 U.S.C. §30101 *et seq.* (previously codified at 2 U.S.C. §431 *et seq.*) BCRA is also known as *McCain-Feingold*.

<sup>14</sup> On the definition of *electioneering communications*, see 52 U.S.C. §30104 (previously codified at 2 U.S.C. §434 (f)(3)).

<sup>15</sup> For additional discussion, see CRS Report RL32245, *Campaign Finance Law: A Legal Analysis of the Supreme Court Ruling in McConnell v. FEC*, by L. Paige Whitaker; and CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

restrictions on advertising by a 501(c)(4) advocacy organization (*Wisconsin Right to Life v. Federal Election Commission*).<sup>16</sup>

- Since 2002, the FEC has undertaken several rulemakings related to BCRA and other topics. Complicated subject matter, protracted debate among commissioners, and litigation have made some rulemakings lengthy and controversial.<sup>17</sup>
- Congress enacted some additional amendments to campaign finance law since BCRA. The 2007 Honest Leadership and Open Government Act (HLOGA) placed new disclosure requirements on lobbyists' campaign contributions (certain bundled contributions) and restricted campaign travel aboard private aircraft.<sup>18</sup> In 2014, as discussed below, Congress raised some limits for contributions to political parties.

## Major Issues: What Has Changed Post-*Citizens United* and What Has Not

The following discussion highlights those topics that appear to be enduring and significant in the current policy environment. This includes substantial changes to aggregate and party contribution limits in 2014. The discussion begins with changes directly affected by *Citizens United* because those developments most fundamentally altered the campaign finance landscape.

### What Has Changed

#### *Unlimited Corporate and Union Spending on Independent Expenditures and Electioneering Communications*

In January 2010, the Supreme Court issued a 5-4 decision in *Citizens United v. Federal Election Commission*.<sup>19</sup> In brief, the opinion invalidated FECA's prohibitions on corporate and union treasury funding of independent expenditures and electioneering communications. As a

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<sup>16</sup> For additional discussion, see CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker; CRS Report RS22920, *Campaign Finance Law and the Constitutionality of the "Millionaire's Amendment": An Analysis of Davis v. Federal Election Commission*, by L. Paige Whitaker; 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; and CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110<sup>th</sup> Congress*, by R. Sam Garrett.

<sup>17</sup> For example, rulemakings on various BCRA provisions resulted in a series of at least three lawsuits covering six years. These are the *Shays and Meehan v. Federal Election Commission* cases.

<sup>18</sup> For additional discussion, see CRS Report R40091, *Campaign Finance: Potential Legislative and Policy Issues for the 111<sup>th</sup> Congress*, by R. Sam Garrett. HLOGA is primarily an ethics and lobbying statute. For additional discussion, see, for example, CRS Report R40245, *Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and Open Government Act of 2007*, by Jacob R. Straus.

<sup>19</sup> 130 S. Ct. 876 (2010). For additional discussion, see CRS Report R41054, *Campaign Finance Policy After Citizens United v. Federal Election Commission: Issues and Options for Congress*, by R. Sam Garrett; CRS Report R41045, *The Constitutionality of Regulating Corporate Expenditures: A Brief Analysis of the Supreme Court Ruling in Citizens United v. FEC*, by L. Paige Whitaker; CRS Report R41096, *Legislative Options After Citizens United v. FEC: Constitutional and Legal Issues*, by L. Paige Whitaker et al.; and CRS Report R41264, *The DISCLOSE Act: Overview and Analysis*, by R. Sam Garrett, L. Paige Whitaker, and Erika K. Lunder.

consequence of *Citizens United*, corporations and unions are free to use their treasury funds to air political advertisements and make related purchases explicitly calling for election or defeat of federal or state candidates (*independent expenditures*) or advertisements that refer to those candidates during pre-election periods, but do not necessarily explicitly call for their election or defeat (*electioneering communications*).<sup>20</sup> Previously, such advertising would generally have had to be financed through voluntary contributions raised by PACs affiliated with unions or corporations.

**DISCLOSE Act Consideration Following *Citizens United*.** Since *Citizens United*, the House and Senate have considered various legislation designed to increase public availability of information (*disclosure*) about corporate and union spending. Particularly in the immediate aftermath of the decision, during the 111<sup>th</sup> Congress, most congressional attention responding to the ruling focused on the DISCLOSE Act (H.R. 5175; S. 3295; S. 3628). The House of Representatives passed H.R. 5175, with amendments, on June 24, 2010, by a 219-206 vote. By a 57-41 vote, the Senate declined to invoke cloture on companion bill S. 3628 on July 27, 2010.<sup>21</sup> A second cloture vote failed (59-39) on September 23, 2010.<sup>22</sup> No additional action on the bill occurred during the 111<sup>th</sup> Congress.

Three largely similar versions of the DISCLOSE Act were introduced in the 112<sup>th</sup> Congress. On March 29, 2012, the Senate Committee on Rules and Administration held a hearing on the first-introduced Senate bill, S. 2219. On July 10, 2012, Senator Whitehouse introduced a second version of the bill, S. 3369. The Senate debated a motion to proceed to the measure in July 2012 but declined (by a 53-45 vote) to invoke cloture.<sup>23</sup> Representative Van Hollen's House companion version of the DISCLOSE Act, H.R. 4010, was referred to the Committees on House Administration and Judiciary. The bill was not the subject of additional action, although Representative Van Hollen filed a discharge petition on the measure.<sup>24</sup> He re-introduced the DISCLOSE Act as H.R. 148 during the 113<sup>th</sup> Congress. In July 2014, the Senate Rules and Administration Committee held a hearing on Senate companion S. 2516. (S. 791 in the 113<sup>th</sup> Congress proposed an alternative to DISCLOSE; it did not advance beyond introduction.) The DISCLOSE Act is H.R. 430 and S. 229 in the 114<sup>th</sup> Congress.

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<sup>20</sup> *Independent expenditures* explicitly call for election or defeat of political candidates (known as *express advocacy*), may occur at any time, and are usually (but not always) broadcast advertisements. They must also be uncoordinated with the campaign in question. On the definition of *independent expenditures*, see 52 U.S.C. §30101 (previously codified at 2 U.S.C. 431 §17). As noted previously, electioneering communications refer to clearly identified candidates during pre-election periods but do not contain express advocacy.

<sup>21</sup> "DISCLOSE Act—Motion to Proceed," Senate vote 220, *Congressional Record*, daily edition, vol. 156 (July 27, 2010), p. S6285.

<sup>22</sup> "DISCLOSE Act—Motion to Proceed—Resumed," Senate vote 240, *Congressional Record*, daily edition, vol. 156 (September 23, 2010), p. S7388.

<sup>23</sup> "DISCLOSE Act—Motion to Proceed—Continued," Rollcall vote 180, *Congressional Record*, daily edition, vol. 158 (July 17, 2012), p. S5072.

<sup>24</sup> Discharge petitions with signatories are available on the Clerk of the House website. In this case, see petition no. 0004, 112<sup>th</sup> Cong., 2<sup>nd</sup> Sess., July 12, 2012, <http://clerk.house.gov/112/lrc/pd/petitions/DisPet0004.xml>.

### ***Unlimited Contributions to Independent-Expenditure-Only Political Action Committees (Super PACs)***

On March 26, 2010, the U.S. Court of Appeals for the District of Columbia held in *SpeechNow.org v. Federal Election Commission*<sup>25</sup> that contributions to PACs that make only independent expenditures—but not contributions—could not be constitutionally limited. As a result, these entities, commonly called *super PACs*, may accept previously prohibited amounts and sources of funds, including large corporate, union, or individual contributions used to advocate for election or defeat of federal candidates. Existing reporting requirements for PACs apply to super PACs, meaning that contributions and expenditures must be disclosed to the FEC. Additional discussion of super PACs appears in another CRS product.<sup>26</sup>

### ***Unlimited Contributions to Certain Nonconnected Political Action Committees (PACs)***

As the ramifications of *Citizens United* and *SpeechNow* continued to unfold, other forms of unlimited fundraising were also permitted. In October 2011, the FEC announced that, in response to an agreement reached in a case brought after *SpeechNow (Carey v. FEC)*,<sup>27</sup> the agency would permit *nonconnected* PACs—those that are unaffiliated with corporations or unions—to accept unlimited contributions for use in independent expenditures. The agency directed PACs choosing to do so to keep the independent expenditure contributions in a separate bank account from the one used to make contributions to federal candidates.<sup>28</sup> As such, nonconnected PACs that want to raise unlimited sums for independent expenditures may create a separate bank account and meet additional reporting obligations rather than forming a separate super PAC. Super PACs have, nonetheless, continued to be an important force in American politics because only some traditional PACs would qualify for the *Carey* exemption to fundraising limits.<sup>29</sup> Approximately 50 nonconnected PACs filed notice with the FEC that they planned to raise unlimited funds during the 2012 election cycle, a figure that increased to approximately 100 such groups during the 2014 cycle.<sup>30</sup>

### ***FEC Rules Implementing Parts of Citizens United***

Implementing *Citizens United* and *SpeechNow* fell to the FEC. The commission issued advisory opinions (AOs) within a few months of the rulings recognizing corporate independent

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<sup>25</sup> 599 F.3d 686 (D.C. Cir. 2010).

<sup>26</sup> See CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett; and CRS Legal Sidebar WSLG170, *The Legal and Constitutional Birth of the “Super PAC”*, by L. Paige Whitaker. On their role in presidential elections, see also CRS Report R42139, *Contemporary Developments in Presidential Elections*, by Kevin J. Coleman, R. Sam Garrett, and Thomas H. Neale.

<sup>27</sup> Civ. No. 11-259-RMC (D.D.C. 2011).

<sup>28</sup> Federal Election Commission, “FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account,” press release, October 5, 2011, <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

<sup>29</sup> In particular, the exemption only applies to nonconnected PACs (i.e., those that exist independently as PACs and are not affiliated with a parent organization, such as an interest group or labor union).

<sup>30</sup> Information for the 2012 cycle is available on the FEC website at <http://www.fec.gov/press/press2011/2012PoliticalCommitteeswithNon-ContributionAccounts.shtml>. FEC staff provided 2014-cycle figures to CRS.

expenditures and super PACs. Afterward, some corporations, unions, and other organizations began making previously prohibited expenditures or raising previously prohibited funds for electioneering communications or independent expenditures.<sup>31</sup>

Despite progress on post-*Citizens United* AOs, agreement on final rules took years. A December 2011 Notice of Proposed Rulemaking (NRPM) posing questions about what form post-*Citizens United* rules should take<sup>32</sup> remained open until late 2014, reflecting an apparent stalemate over the scope of the agency's *Citizens United* response. In October 2014, the commission approved rules essentially to remove portions of existing regulations that *Citizens United* had invalidated, such as spending prohibitions on corporate and union treasury funds.<sup>33</sup> The 2014 rules did not require additional disclosure surrounding independent spending, which some commenters had urged, but which others argued were beyond the agency's purview.<sup>34</sup>

### ***Aggregate Caps on Individual Campaign Contributions***

On April 2, 2014, the Supreme Court invalidated aggregate contribution limits in *McCutcheon v. FEC*. “Base” limits capping the amounts that donors may give to individual candidates still apply.<sup>35</sup> For 2013-2014—pre-*McCutcheon*—individual contributions could total no more than \$123,200. Of that amount, \$48,600 could go to candidates, with the remaining \$74,600 to parties and PACs. Following *McCutcheon*, individuals may contribute to as many candidates as they wish provided that they adhere to the \$2,700 per-candidate, per-election limits (\$5,400 for the entire 2016 election cycle).<sup>36</sup> Additional discussion appears in another CRS product.<sup>37</sup>

### ***Higher Contribution Limits and New Accounts for Political Party Committees***

For the first time since enacting BCRA in 2002, Congress raised the statutory limit on some campaign contributions in December 2014. Specifically, the FY2015 omnibus appropriations law, P.L. 113-235, increased contribution limits to national political party committees. Most prominently, these party committees include the Democratic National Committee (DNC),

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<sup>31</sup> Perhaps most notably, the FEC issued AOs 2010-09 (Club for Growth) and 2010-11 (Commonsense Ten), recognizing corporate independent expenditures and super PACs. For additional discussion, see CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett. AOs provide an opportunity to pose questions about how the Commission interprets the applicability of FECA or FEC regulations to a specific situation (e.g., a planned campaign expenditure). AOs apply only to the requester and within specific circumstances, but can provide general guidance for those in similar situations. See 52 U.S.C. § 30108 (previously codified at 2 U.S.C. § 437f).

<sup>32</sup> Federal Election Commission, “Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations,” 248 *Federal Register* 80803, December 27, 2011.

<sup>33</sup> Federal Election Commission, “Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations,” 79 *Federal Register* 62797, October 21, 2014.

<sup>34</sup> Some Senators filed comments calling for additional donor disclosure. See Letter from Sen. Jeanne Shaheen et al. to Commissioner Caroline Hunter, Chair, FEC, February 21, 2012. The document may be obtained from the FEC rulemaking comments search function at <http://sers.fec.gov/fosers/>.

<sup>35</sup> For additional policy discussion, as well as citations to other CRS products that cover legal issues, see CRS Report R43334, *Campaign Contribution Limits: Selected Questions About McCutcheon and Policy Issues for Congress*, by R. Sam Garrett.

<sup>36</sup> This assumes one maximum contribution of \$2,700 in the primary election and another during the general election.

<sup>37</sup> See CRS Report R43334, *Campaign Contribution Limits: Selected Questions About McCutcheon and Policy Issues for Congress*, by R. Sam Garrett.

Democratic Congressional Campaign Committee (DCCC), Democratic Senatorial Campaign Committee (DSCC), Republican National Committee (RNC), National Republican Congressional Committee (NRCC), and the National Republican Senatorial Committee (NRSC). The new law also permits these committees to establish new accounts, each with separate contribution limits, to support party conventions,<sup>38</sup> facilities, and recounts or other legal matters.

Overall political and policy implications from the new limits remain to be seen. Additional detail appears in another CRS product.<sup>39</sup> The FEC could clarify precise implications with future rulemakings or other guidance. In practice, it appears that an individual's contributions to a national party could increase from at least \$97,200 annually to at least \$777,600. For a two-year election cycle, an individual could give twice that amount, or more than \$1.5 million.<sup>40</sup> Under inflation adjustments announced in February 2015, it appears that an individual may contribute at least \$801,600 to a national party committee in 2015.<sup>41</sup> Political action committees (PACs) may also make larger contributions to parties. For multicandidate PACs—the most common type of PAC—contributions to a national party appear to have increased from \$45,000 to at least \$360,000 annually. Unlike limits for individual contributions, those for PACs are not adjusted for inflation.

### *Some Public Financing Issues*

Two notable public financing changes have occurred since 2010, although neither is directly related to *Citizens United*. Most relevant for federal campaign finance policy, P.L. 113-94, enacted in April 2014, terminated public financing for presidential nominating conventions. Barring a change in the status quo, the 2016 conventions will be the first since 1972 funded entirely with private money. Additional discussion appears in other CRS products.<sup>42</sup>

The second major development occurred in 2011 and primarily affects state-level candidates but also has implications for federal policy options. On June 27, 2011, the Supreme Court issued a 5-4 opinion in the consolidated case *Arizona Free Enterprise Club's Freedom Club PAC et al. v. Bennett* and *McComish v. Bennett*.<sup>43</sup> The decision invalidated portions of Arizona's public financing program for state-level candidates.<sup>44</sup> The majority opinion, authored by Chief Justice Roberts, held that the state's use of matching funds (also called *trigger funds*, *rescue funds*, or *escape hatch funds*) unconstitutionally burdened privately financed candidates' free speech and did not meet a compelling state interest. The decision has been most relevant for state-level public

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<sup>38</sup> As noted elsewhere in this report, only the “headquarters” committees (e.g., the DNC or RNC) could collect additional funds for conventions.

<sup>39</sup> See CRS Report R43825, *Increased Campaign Contribution Limits in the FY2015 Omnibus Appropriations Law: Frequently Asked Questions*, by R. Sam Garrett.

<sup>40</sup> The exact amount is \$1,555,200. Most amounts in this report appear to be eligible for future inflation adjustments.

<sup>41</sup> The inflation adjustments appear in Federal Election Commission, “Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold,” 80 *Federal Register* 5750, February 3, 2015.

<sup>42</sup> See CRS Report R43976, *Funding of Presidential Nominating Conventions: An Overview*, by R. Sam Garrett and Shawn Reese; CRS Report RL34630, *Federal Funding of Presidential Nominating Conventions: Overview and Policy Options*, by R. Sam Garrett and Shawn Reese; and CRS Report R41604, *Proposals to Eliminate Public Financing of Presidential Campaigns*, by R. Sam Garrett.

<sup>43</sup> 131 S.Ct. 2806 (2011). The slip opinion is available at <http://www.supremecourt.gov/opinions/10pdf/10-238.pdf>.

<sup>44</sup> For additional discussion of state-level public financing, see the “State Experiences with Public Financing” section of CRS Report RL33814, *Public Financing of Congressional Campaigns: Overview and Analysis*, by R. Sam Garrett.

financing programs, as a similar matching fund system does not operate at the federal level. However, the decision also appears to preclude rescue funds in future federal proposals to restructure the existing presidential public financing program or create a congressional public financing program.

### ***FECA Editorial Reclassification***

The Office of Law Revision Counsel, which maintains the United States Code, moved FECA and other portions of federal election law to a new Title 52 of the U.S. Code in September 2014.<sup>45</sup> Previously, FECA and most other relevant campaign finance law were housed in Title 2 of the U.S. Code. This editorial change does not affect the content of the statutes. Nonetheless, it is a major change for those who need to search or cite federal election law. Unless otherwise noted, FECA citations throughout this report have been changed to reflect the new Title 52 location.

## **What Has Not Changed**

### ***Federal Ban on Corporate and Union Treasury Contributions***

Corporations and unions are still banned from making contributions in federal elections.<sup>46</sup> PACs affiliated with, but legally separate from, those corporations and unions may contribute to candidates, parties, and other PACs. As noted elsewhere in this report, corporations and unions may use their treasury funds to make electioneering communications, independent expenditures, or both, but this spending is not considered a *contribution* under FECA.<sup>47</sup>

### ***Federal Ban on Soft Money Contributions to Political Parties***

The prohibition on using soft money in federal elections remains in effect. This includes prohibiting the pre-BCRA practice of large, generally unregulated contributions to national party committees for generic “party building” activities.

As noted elsewhere in this report, in December 2014, Congress enacted legislation, which President Obama signed (P.L. 113-235), permitting far larger contributions to political parties than had been permitted previously. These funds are not soft money, in that they are subject to contribution limits and other FECA requirements (e.g., disclosure). Nonetheless, some might contend that the spirit of the newly permissible contributions is consistent with soft money characteristics. Others contend that the increased limits allow parties to compete with newly empowered groups, such as super PACs, that are not subject to contribution limits.<sup>48</sup>

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<sup>45</sup> For background on the reclassification, see Office of Law Revision Counsel, *Editorial Reclassification*, <http://uscode.house.gov/editorialreclassification/reclassification.html>. For a table comparing old and new citations, see [http://uscode.house.gov/editorialreclassification/t52/Reclassifications\\_Title\\_52.pdf](http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.pdf).

<sup>46</sup> 52 U.S.C. § 30118 (previously codified at 2 U.S.C. §441b).

<sup>47</sup> On the definition of *contribution*, see, in particular, 52 U.S.C. §30101 and 52 U.S.C. §30118 (previously codified at 2 U.S.C. §431(8)(A) and 2 U.S.C. §441(b)(b)(2)).

<sup>48</sup> For additional discussion, see CRS Insight IN10205, *The Most Significant Statutory Change Since BCRA? Increased Limits for Contributions to Political Parties*, by R. Sam Garrett.

### ***Some Contribution Limits Remain Intact***

Pre-existing base limits on contributions to campaigns, parties, and PACs generally remain in effect.<sup>49</sup> Despite *Citizens United's* implications for independent expenditures and electioneering communications, the ruling did not affect the prohibition on corporate and union treasury contributions in federal campaigns. As noted above, *SpeechNow* permitted unlimited contributions to independent-expenditure-only PACs (*super PACs*). The FEC has not issued rules regarding super PACs per se. In July 2011 the commission issued an advisory opinion stating that federal candidates (including officeholders) and party officials could solicit funds for super PACs, but that those solicitations were subject to the limits established in FECA and discussed below. Also as noted elsewhere in this report, the FEC announced in October 2011, per an agreement reached in *Carey v. FEC*, that nonconnected PACs would be permitted to raise unlimited amounts for independent expenditures if those funds are kept in a separate bank account.

Although major contribution limits remain in place, as noted above, some party contribution limits have increased. More consequentially, post-*McCutcheon* aggregate contribution limits no longer apply. Therefore, although individuals are, for example, still prohibited from contributing more than \$2,700 per candidate, per election during the 2016 cycle, the total amount of such giving is no longer capped. **Table 1** below and the table notes provide additional information, as do other CRS products.<sup>50</sup>

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<sup>49</sup> In addition to these developments, a recent Supreme Court ruling on judicial elections may also be relevant. On April 29, 2015, the Court issued a decision in *Williams-Yulee v. Florida Bar*. The majority opinion upheld a Florida ban on personal solicitations of campaign contributions by judicial candidates. The case appears to be most relevant for state-level judicial elections. Implications for federal campaign finance policy, if any, remain to be seen. The *Williams-Yulee* slip opinion is available at [http://www.supremecourt.gov/opinions/14pdf/13-1499\\_d18e.pdf](http://www.supremecourt.gov/opinions/14pdf/13-1499_d18e.pdf).

<sup>50</sup> For additional discussion, see CRS Report R43334, *Campaign Contribution Limits: Selected Questions About McCutcheon and Policy Issues for Congress*, by R. Sam Garrett; and CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

**Table I. Major Federal Contribution Limits, 2015-2016**

See table notes below for additional information.

Contributor	Recipient			
	Principal Campaign Committee	Multicandidate Committee (most PACs, including leadership PACs)	National Party Committee (DSCC; NRCC, etc.)	State, District, Local Party Committee
Individual	\$2,700 per election*	\$5,000 per year	\$33,400 per year* <i>Additional \$100,200 limit for each special party account†*</i>	\$10,000 per year (combined limit)
Principal Campaign Committee	\$2,000 per election	\$5,000 per year	Unlimited transfers to party committees	Unlimited transfers to party committees
Multicandidate Committee (most PACs, including leadership PACs) <sup>a</sup>	\$5,000 per election	\$5,000 per year	\$15,000 per year <i>Additional \$45,000 limit for each special party account†</i>	\$5,000 per year (combined limit)
State, District, Local Party Committee	\$5,000 per election (combined limit)	\$5,000 per year (combined limit)	Unlimited transfers to party committees	Unlimited transfers to party committees
National Party Committee	\$5,000 per election	\$5,000 per year	Unlimited transfers to party committees	Unlimited transfers to party committees

**Source:** CRS adaptation from FEC, “Contribution Limits for 2015-2016 Federal Elections,” <http://www.fec.gov/info/contriblimitschart1516.pdf>.

**Notes:** The table assumes that leadership PACs would qualify for multicandidate status. The original source, noted above, includes additional information and addresses non-multicandidate PACs (which are relatively rare). The national party committee and the national party Senate committee (e.g., the DNC and DSCC or RNC and NRSC) shared a combined per-candidate limit of \$46,800, which is adjusted biennially for inflation.

\* These limits are adjusted biennially for inflation.

† As noted elsewhere in this report, national party committees may accept these contributions for separate accounts for (1) presidential nominating conventions (headquarters committees (e.g., DNC; RNC) only); (2) recounts and other legal compliance activities; and (3) party buildings. For additional discussion, see CRS Report R43825, *Increased Campaign Contribution Limits in the FY2015 Omnibus Appropriations Law: Frequently Asked Questions*, by R. Sam Garrett.

a. *Multicandidate committees* are those that have been registered with the FEC (or, for Senate committees, the Secretary of the Senate) for at least six months; have received federal contributions from more than 50 people; and (except for state parties) have made contributions to at least five federal candidates. See 11 C.F.R. §100.5(e)(3). In practice, most PACs attain this status automatically over time.

## Reporting Requirements

Other recent developments notwithstanding, disclosure requirements enacted in FECA and BCRA remain intact.<sup>51</sup> In general, political committees must regularly<sup>52</sup> file reports with the FEC<sup>53</sup> providing information about

- receipts and expenditures, particularly those exceeding an aggregate of \$200;
- the identity of those making contributions of more than \$200, or receiving more than \$200, in campaign expenditures per election cycle; and
- the purpose of expenses.

Those making independent expenditures or electioneering communications, such as party committees and PACs, have additional reporting obligations. Among other requirements:

- Independent expenditures aggregating at least \$10,000 must be reported to the FEC within 48 hours; 24-hour reports for independent expenditures of at least \$1,000 must be made during periods immediately preceding elections.<sup>54</sup>
- The existing disclosure requirements concerning electioneering communications mandate 24-hour reporting of communications aggregating at least \$10,000.<sup>55</sup> Donor information must be included for those who designated at least \$200 toward the independent expenditure, or \$1,000 for electioneering communications.<sup>56</sup>
- If 501(c) or 527<sup>57</sup> organizations make independent expenditures or electioneering communications, those activities would be reported to the FEC.<sup>58</sup>

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<sup>51</sup> This excludes requirements that were subsequently invalidated, such as reporting associated with the now-defunct Millionaire's Amendment (which required additional reporting for self-funding above certain levels and for receipt of contributions in response to such funding). For additional discussion, see CRS Report RS22920, *Campaign Finance Law and the Constitutionality of the "Millionaire's Amendment": An Analysis of Davis v. Federal Election Commission*, by L. Paige Whitaker; and CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110<sup>th</sup> Congress*, by R. Sam Garrett.

<sup>52</sup> Reporting typically occurs quarterly. Pre- and post-election reports must also be filed. Non-candidate committees may also file monthly reports. See, for example, 52 U.S.C. §30104 (previously codified at 2 U.S.C. §434) and the FEC's *Campaign Guide* series for additional discussion of reporting requirements.

<sup>53</sup> Unlike other political committees, Senate political committees (e.g., a Senator's principal campaign committee) file reports with the Secretary of the Senate, who transmits them to the FEC. See 52 U.S.C. §30102 (previously codified at 2 U.S.C. §432(g)).

<sup>54</sup> See, for example, 52 U.S.C. §30104 (previously codified at 2 U.S.C. §434(g)).

<sup>55</sup> 52 U.S.C. §30104 (previously codified at 2 U.S.C. §434(f)).

<sup>56</sup> Higher thresholds apply if the expenditures are made from a designated account. For additional summary information, see Table 1 in CRS Report R41264, *The DISCLOSE Act: Overview and Analysis*, by R. Sam Garrett, L. Paige Whitaker, and Erika K. Lunder. Donor information is reported in regularly filed financial reports rather than in independent expenditure reports.

<sup>57</sup> As the term is commonly used, 527 refers to groups registered with the Internal Revenue Service (IRS) as political organizations that seemingly intend to influence federal elections. By contrast, political committees (which include candidate committees, party committees, and political action committees) are regulated by the FEC and federal election law. There is a debate regarding which 527s are required to register with the FEC as political committees. For additional discussion, see CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by L. Paige Whitaker and Erika K. Lunder.

<sup>58</sup> For additional discussion of these groups, see CRS Report RS21716, *Political Organizations Under Section 527 of* (continued...)

# Potential Policy Considerations and Emerging Issues for Congress

## Recent Legislative Activity

Thus far during the 114<sup>th</sup> Congress, only one bill, H.R. 412, which would terminate the presidential public financing program, has advanced beyond introduction. That bill has been ordered reported by the Committee on House Administration.<sup>59</sup> As in recent Congresses, a House Democratic task force has announced that it will pursue campaign finance legislation addressing topics such as expanded disclosure requirements and a constitutional amendment to permit additional regulation of political money.<sup>60</sup>

As shown in **Table 2** below, 11 bills in the House and Senate advanced beyond introduction during the 113<sup>th</sup> Congress. In addition, the Senate Subcommittee on Crime and Terrorism held an April 9, 2013, hearing on enforcement of campaign finance law.

**Table 2. Legislation Related to Campaign Finance that Advanced Beyond Introduction, 113<sup>th</sup> Congress**

Bill Number	Short Title	Primary Sponsor	Brief Summary	Most Recent Major Action
H.R. 83	Consolidated and Further Appropriations Act, 2015	Rep. Christensen	Relevant provisions increased limits for certain contributions to political party committees; prohibited disclosure of certain political spending as a condition of the federal contracting process	Became law 12/13/2014 (P.L. 113-235)

(...continued)

*the Internal Revenue Code*, by Erika K. Lunder; CRS Report R40183, *501(c)(4)s and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, by Erika K. Lunder and L. Paige Whitaker and CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by L. Paige Whitaker and Erika K. Lunder.

<sup>59</sup> For brief additional discussion, see CRS Report R41604, *Proposals to Eliminate Public Financing of Presidential Campaigns*, by R. Sam Garrett.

<sup>60</sup> See, for example, Office of the House Democratic Leader, “Pelosi Remarks at Press Conference Unveiling the House Democrats’ Democracy Task Force,” press release, April 22, 2015, <http://www.democraticleader.gov/newsroom/pelosi-remarks-at-press-conference-unveiling-the-house-democrats-democracy-task-force/>.

Bill Number	Short Title	Primary Sponsor	Brief Summary	Most Recent Major Action
H.R. 94	—	Rep. Cole	Would have eliminated Presidential Election Campaign Fund (PECF) convention funding	Committee on House Administration markup held; bill ordered reported favorably 06/04/2013 (voice vote); reported 12/12/2013 (H.Rept. 113-291)
H.R. 95	—	Rep. Cole	Would have eliminated PECF and transferred balance to the general fund of the U.S. Treasury for use in deficit reduction	Committee on House Administration markup held; bill ordered reported favorably 06/04/2013 (voice vote); reported 12/12/2013 (H.Rept. 113-292)
H.R. 186	—	Rep. Walter Jones	Would have permitted candidate to name someone other than the campaign treasurer to disburse funds if the candidate died	Committee on House Administration hearing held, 06/25/2014
H.R. 1994	Election Assistance Commission Termination Act	Rep. Harper	Would have eliminated Election Assistance Commission and assigned specific National Voter Registration Act (NVRA) functions to the FEC	Committee on House Administration markup held; bill ordered reported favorably 06/04/2013 (voice vote); reported 12/12/2013 (H.Rept. 113-293)
H.R. 2019	Gabriella Miller Kids First Research Act	Rep. Harper	Relevant provisions of amended version eliminated PECF convention funding and converted amounts to "10-Year Pediatric Research Initiative Fund," with some amounts available to National Institutes of Health; contained health-research provisions unrelated to this report <sup>a</sup>	Became law 4/3/2014 (P.L. 113-94)

Bill Number	Short Title	Primary Sponsor	Brief Summary	Most Recent Major Action
H.R. 2786; see also H.R. 3547	Financial Services and General Government Appropriations Act, 2014; see also FY2014 Consolidated Appropriations Act	Rep. Crenshaw	FY2014 Financial Services and General Government (FSGG) bill; Title V and §735 would have prohibited reporting certain political contributions or expenditures as a condition of the government-contracting process	House Appropriations Committee reported as original measure (H.Rept. 113-172); placed on Union Calendar 07/23/2013; see also §735, H.R. 3547 (P.L. 113-76)
H.R. 3487	—	Rep. Candice Miller	Extended until 2018 FEC authority to conduct the Administrative Fine Program, and expand program coverage to include additional reporting, such as non-candidate committees and independent expenditures	Became law 12/26/2013 (P.L. 113-72)
S. 375	Senate Campaign Disclosure Parity Act	Sen. Tester	Would have required Senate political committees to file reports electronically and directly with the FEC	Senate Rules and Administration Committee markup held; reported favorably without written report 07/24/2013
S. 1371	Financial Services and General Government Appropriations Act, 2014	Sen. Tom Udall	FY2014 Financial Services and General Government (FSGG) bill; §621 would have required Senate political committees to file reports electronically and directly with the FEC	Senate Appropriations Committee reported as original measure (S.Rept. 113-80); placed on Union Calendar 07/25/2013

Bill Number	Short Title	Primary Sponsor	Brief Summary	Most Recent Major Action
S.J.Res. 19	—	Sen. Tom Udall	Proposed constitutional amendment would have permitted Congress and the states to regulate “money and in-kind equivalents with respect to Federal elections”	Subcommittee on the Constitution, Civil Rights and Human Rights markup held, amendment in the nature of a substitute ordered favorably reported (5-4 vote) 06/18/2014;  Senate Judiciary Committee hearing held  06/03/2014

**Source:** CRS analysis of bill texts.

**Notes:** The table excludes provisions in the Financial Services and General Government (FSGG) legislation regarding FEC appropriations and other provisions in the bill that might arguably be relevant, such as provisions concerning IRS training regarding political activities and requirements concerning reimbursement for political events hosted at the White House. Other measures tangentially related to campaign finance might also be relevant but are excluded from the table, which focuses on major provisions related to campaign finance issues.

- a. For additional information on health-research provisions in the bill, congressional requesters may contact CRS Analyst Judith Johnson at x77077.

## 112<sup>th</sup> Congress

No major legislation primarily affecting campaign finance policy became law during the 112<sup>th</sup> Congress. The House passed two bills, H.R. 359 and H.R. 3463 (similar to H.R. 94 and H.R. 95 respectively in the 113<sup>th</sup> Congress), that would have repealed part or all of the presidential public financing program. Language in the 2012 Senate-passed farm bill (S. 3240) also would have repealed convention financing, but it was not included in the House version of the bill.<sup>61</sup> The House also passed H.R. 406, which would have permitted candidates to name someone other than the treasurer to disburse campaign funds if the candidate died. In addition, hearings were held on *Citizens United*; to oversee the FEC; on legislation to publicly finance congressional campaigns and to abolish the EAC and transfer some functions to the FEC; and on a draft executive order that might have required additional disclosure of government contractors’ political spending. Amendments adopted during consideration of unrelated bills (H.R. 1540, H.R. 2017, H.R. 2219, H.R. 2055, and H.R. 2354)<sup>62</sup> had implications for the contracting-disclosure debate. Two bills containing restrictions on contractor disclosure became law (H.R. 1540 and H.R. 2055).<sup>63</sup>

<sup>61</sup> For additional discussion of convention financing, see CRS Report R43976, *Funding of Presidential Nominating Conventions: An Overview*, by R. Sam Garrett and Shawn Reese; and CRS Report RL34630, *Federal Funding of Presidential Nominating Conventions: Overview and Policy Options*, by R. Sam Garrett and Shawn Reese. For additional discussion of the Senate-passed farm bill, see CRS Report R42552, *The 2012 Farm Bill: A Comparison of Senate-Passed S. 3240 and the House Agriculture Committee’s H.R. 6083 with Current Law*, coordinated by Ralph M. Chite.

<sup>62</sup> See §§823, 713, 10015, 743, and 624 of the bills respectively.

<sup>63</sup> See §§823 and 743 respectively.

## Emerging or Ongoing Policy Issues in Brief

Despite some specific changes and ongoing debate about whether or how to respond to *Citizens United*, there has been relatively little legislative momentum surrounding campaign finance since the 111<sup>th</sup> Congress (2010-2011). Various issues, nonetheless, remain prominent in Congress, the courts, at the FEC, or elsewhere in the policy community. This section briefly addresses those topics not discussed above but which appear to remain actively under consideration in Congress or at administrative agencies. This section generally does not reference legislation unless a bill advanced beyond introduction. Of course, Congress, the courts, or administrative agencies might choose to consider these or other issues. This section will be updated as developments warrant.

## Regulation and Enforcement by the FEC or Through Other Areas of Policy and Law

- During the 113<sup>th</sup> Congress, FEC enforcement and transparency issues attracted attention in Congress and beyond. As noted previously, the Senate Judiciary Subcommittee on Crime and Terrorism held a 2013 hearing on enforcement of campaign finance law. In addition, in the House, the Committee on House Administration continued to request documents from the agency about its enforcement practices. Major attention to the matter appears to have begun in November 2011, when the Committee on House Administration, Subcommittee on Elections, held an FEC oversight hearing—the first in almost a decade. Negotiations between the committee and commission appear to have resulted in the ongoing effort to approve and publicly release a new FEC enforcement manual. Debate over the matter continued at the FEC, sometimes including acrimonious meetings among commissioners. Apparent disagreement continued thereafter until at least late 2014.<sup>64</sup> The issue remains pending.
- The FEC has civil responsibility for enforcing FECA. The Department of Justice (DOJ) enforces the act's criminal provisions, and the FEC may refer suspected criminal violations to DOJ.<sup>65</sup> Throughout its history, FEC enforcement has been controversial, partially because the commission's six-member structure as established in FECA sometimes produces stalemates in enforcement actions.<sup>66</sup> Some have argued that DOJ should pursue more vigorous enforcement of campaign finance law, both on its own authority and in lieu of FEC action.
- Some Members of Congress have proposed providing additional information to shareholders if the companies in which they hold stock choose to make electioneering communications or independent expenditures.<sup>67</sup> These proposals are sometimes referred to as “shareholder protection” measures, although the extent to which they would benefit shareholders or companies is subject to

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<sup>64</sup> See, for example, Kenneth P. Doyle, “Goodman Resurrects Long-Dormant Plan to Limit Enforcement Actions of FEC Staff,” *Daily Report for Executives*, December 8, 2014, pp. A-17.

<sup>65</sup> 52 U.S.C. § 30109.

<sup>66</sup> For additional discussion of the agency's structure and powers, see CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

<sup>67</sup> For additional discussion, see CRS Legal Sidebar WSLG530, *Controversy about SEC's Being Asked to Require Disclosure of Political Donations*, by Michael V. Seitzinger.

debate. In 2013, the Securities and Exchange Commission (SEC) dropped plans to consider additional corporate disclosure of political spending, although some advocates continue to urge the agency to consider the topic.<sup>68</sup>

- In July 2010, citing *Citizens United*, the SEC issued new “pay-to-play” rules—which are otherwise beyond the scope of this report—to prohibit investment advisers from seeking business from municipalities if the adviser made political contributions to elected officials responsible for awarding contracts for advisory services.<sup>69</sup> Although the rules appeared not to be targeted to federal candidates, they can implicate state-level officeholders seeking federal office. This includes, for example, governors running for President. The rules are the subject of ongoing litigation.<sup>70</sup>
- During the spring of 2011, media reports indicated that the Obama Administration was considering a draft executive order to require additional disclosure of government contractors’ political spending.<sup>71</sup> Although the executive order was never issued, the topic continues to garner attention. The House Committee on Oversight and Government Reform and Committee on Small Business held a joint hearing on the topic on May 12, 2011. Congress also moved to prohibit additional contractor disclosure. Most recently, Section 735 of the FY2015 consolidated appropriations act (P.L. 113-235) bars disclosure about certain political spending as a condition of the contracting process.

## IRS Notice of Proposed Rulemaking Concerning Certain 501(c) Entities

Politically active tax-exempt organizations, regulated primarily by the Internal Revenue Code (IRC), have been engaged in elections since at least the early 2000s. Some suggest that *Citizens United* provided clearer permission for incorporated 501(c)(4) social welfare groups and 501(c)(6) trade associations to make electioneering communications and independent expenditures. Unions, 501(c)(5)s, have long participated in campaigns, but *Citizens United* has been interpreted to permit labor organizations to use their treasury funds, like corporations, to make ECs and IEs. Amid increased interest in, and activity by, the groups post-2010, controversy has emerged about how or whether their involvement in federal elections should be regulated. Currently, because 501(c) organizations are not *political committees* as defined in FECA, they do

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<sup>68</sup> In 2012, the SEC’s contribution to the Office of Information and Regulatory Affairs (OIRA) “Unified Agenda” (formally the *Unified Agenda of Regulatory and Deregulatory Actions*) indicated that the agency was considering developing a rule requiring disclosure of certain corporate political spending. The version of the Unified Agenda published in the fall of 2013 explained that the SEC was “withdrawing” the proposal but that future action was possible. On the Unified Agenda, see <http://www.reginfo.gov/public/do/eAgendaMain>. For brief additional discussion of the proposed rule, see, for example, Kenneth P. Doyle, “Disclosure of Corporate Political Spending Left Off SEC Agenda for New Regulations,” *Daily Report for Executives*, December 3, 2013, p. A-1. See also Yin Wilczek, “Proponents File More Than 100 Proposals Calling for Political Spending Transparency,” *Daily Report for Executives*, April 14, 2015, p. EE-9.

<sup>69</sup> See Securities and Exchange Commission, “Political Contributions by Certain Investment Advisers,” *75 Federal Register* 41018-41071, July 14, 2010.

<sup>70</sup> See, for example, Jake Bernstein, “How an Obscure Federal Rule Could Be Shaking Up Presidential Politics,” *ProPublica*, August 28, 2012, <http://www.propublica.org/article/how-an-obscure-federal-rule-could-be-shaking-up-presidential-politics>; and Kenneth P. Doyle, “Judges Skeptical of Challenge to SEC Rule on Political Money From Investment Advisers,” *Daily Report for Executives*, March 24, 2015, pp. A-6.

<sup>71</sup> See, for example, Kenneth P. Doyle, “Anticipated Obama Order Would Require Disclosure of Contractors’ Political Money,” *Daily Report for Executives*, April 21, 2011, pp. A-6.

not fall under FEC or FECA requirements unless they make ECs or IEs.<sup>72</sup> Nonetheless, many such groups engage in activity that might influence campaigns. Other CRS products that focus on tax law provide additional detail, much of which is beyond the scope of this report.<sup>73</sup>

In November 2013, the Internal Revenue Service (IRS) and the Treasury Department announced a notice of proposed rulemaking (NPRM) that could significantly affect how some tax-exempt organizations engage in campaign activity. Amid controversy, that initial proposal was withdrawn, reportedly to be superseded by a new proposal.<sup>74</sup> The status of a rulemaking remains unclear, but, as of this writing, reports suggest that the agency continues to develop a proposal. Whether the IRS should continue with a rulemaking, and if so, what that rulemaking should cover, has generated sharp disagreement in Congress and among various advocacy groups.<sup>75</sup> As of this writing, the issue remains unresolved.

### **Litigation About Electioneering Communications Disclosure**

One of the most controversial elements of campaign finance disclosure concerns identifying donors to organizations that make electioneering communications and independent expenditures.<sup>76</sup> Although FECA requires that those giving more than \$200 “for the purpose of furthering” IEs must be identified in political committees’ disclosure reports filed with the FEC, the “purpose of furthering” language does not appear in the portion of FECA covering ECs. Nonetheless, FEC regulations also use the “purpose of furthering” language as a threshold for identifying donors to corporations or unions making ECs.<sup>77</sup> As a result, some contend that the EC regulations improperly permit those contributing to ECs to avoid disclosure by making unrestricted contributions (i.e., *not* “for the purpose of furthering” ECs).<sup>78</sup> On the basis of that argument and others, Representative Van Hollen sued the FEC in 2011. A series of federal district and appellate court rulings since then have been issued, and the matter remains unsettled.

In November 2014, a U.S. District Court for the District of Columbia invalidated the FEC rule for the second time, finding that the agency had exceeded its authority by narrowing disclosure requirements contrary to FECA. As CRS has noted elsewhere, “[n]ow that the [EC] regulation has been vacated, corporations and unions making electioneering communications are required to disclose donors of at least \$1,000 regardless of whether they gave with the purpose of furthering the electioneering communication. The practical impact of this ruling, however, might be small”

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<sup>72</sup> If the groups had an affiliated super PAC, the super PAC would report to the FEC as a political committee.

<sup>73</sup> See CRS Report R40183, *501(c)(4)s and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, by Erika K. Lunder and L. Paige Whitaker; CRS Report WSLG168, *501(c)(4)s and Campaign Activity: How Much Is Too Much?*, by Erika K. Lunder; and CRS Report WSLG519, *What Does the Law Say About 501(c)(4)s and Campaign Activity?*, by Erika K. Lunder.

<sup>74</sup> CRS Legal Sidebar WSLG896, *IRS Redrafting Proposed 501(c)(4) Regulations?*, by Erika K. Lunder.

<sup>75</sup> See, for example, Diane Freda, “IRS Plans for Broadening Political Activity Rules Trigger Stern Warning From Hatch,” *Daily Report for Executives*, April 14, 2015, pp. G-7.

<sup>76</sup> Previous versions of this report addressed this topic in what is now the “Major Issues: What Has Changed Post-Citizens United and What Has Not” section above. Based on recent events, this issue does not appear to be as major a policy change as the topics now included in the previous section. As with other topics addressed in this report, subsequent developments that resolve the issue—and could involve more significant policy implications—will be reflected in future updates.

<sup>77</sup> 11 C.F.R. §104.20(c)(9).

<sup>78</sup> The same argument is made concerning IE disclosure, although the absence of the “purpose of furthering” language is unique to EC provisions in FECA.

because donor disclosure can be avoided by making IEs rather than ECs.<sup>79</sup> The case remains on appeal.

## Federal Communications Commission Rules on Political Advertising Disclosure

Telecommunications law administered by the Federal Communications Commission (FCC)—a topic that is otherwise beyond the scope of this report—has implications for elements of political advertising transparency.<sup>80</sup> In BCRA, Congress required broadcasters to place information about political advertising prices and purchases in a “political file” available for public inspection.<sup>81</sup> Partially in response to *Citizens United*, in 2011 the FCC revisited rulemaking proceedings the agency began in 2007 to consider whether broadcasters should be required to make information from the political file available on the Internet rather than only through paper records at individual television stations. On April 27, 2012, the FCC approved new rules to require television broadcasters affiliated with the ABC, CBS, Fox, and NBC networks in the top 50 designated market areas (DMAs) to post political file information on the commission’s website.<sup>82</sup> These rules took effect on August 2, 2012. Stations outside the top 50 DMAs or unaffiliated with the top four networks were required to comply as of July 2014.<sup>83</sup> In February 2015, the FCC solicited comments on a notice of proposed rulemaking (NPRM) to extend the online-disclosure requirements to cable and satellite operators and broadcast radio.<sup>84</sup> As of this writing, the matter remains pending.

The requirements already adopted and under consideration arguably enhance transparency by making “ad buy” data more readily available than in the past. Broadcasters are required to post their political file information online, not to aggregate total costs or otherwise summarize advertising purchases in ways typically used by researchers and policymakers. In addition, no standard file format is required.<sup>85</sup> Consequently, drawing broad conclusions from the data is challenging.

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<sup>79</sup> See CRS Legal Sidebar WSLG1189, Campaign Finance Regulation Limiting Donor Disclosure Struck Down Again ... and Appeals Filed, by L. Paige Whitaker. That product provides additional details about the litigation.

<sup>80</sup> Previous versions of this report addressed this topic in what is now the “Major Issues: What Has Changed Post-Citizens United and What Has Not” section above. Based on recent events, this issue does not appear to be as major a policy change as the topics now included in the previous section. As with other topics addressed in this report, subsequent developments that resolve the issue—and could involve more significant policy implications—will be reflected in future updates.

<sup>81</sup> The relevant provision appears in §504 of BCRA (P.L. 107-155). Although BCRA primarily amended FECA (2 U.S.C. §431 *et seq.*), the “political file” requirement amended the 1934 Communications Act. See 47 U.S.C. §315.

<sup>82</sup> Federal Communications Commission, *Second Report and Order*, In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket No. 00-168, Washington, DC, April 27, 2012, [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0427/FCC-12-44A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0427/FCC-12-44A1.pdf). See also Federal Communications Commission, “Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,” 77 *Federal Register* 27631, May 11, 2012.

<sup>83</sup> See *ibid* and Federal Communications Commission, “Media Bureau Reminds Television Broadcasters of July 1, 2014 Online Political File Deadline,” press release, April 4, 2014, [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0404/DA-14-464A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0404/DA-14-464A1.pdf).

<sup>84</sup> Federal Communications Commission, “Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees,” 80 *Federal Register* 8031, February 13, 2015.

<sup>85</sup> In addition to the rulemaking document cited above, see, for example, Justin Elliott, “FCC-Required Political Ad Data Disclosures Won’t Be Searchable,” *ProPublica* online, April 27, 2012, [http://www.propublica.org/article/fcc-\(continued...\)](http://www.propublica.org/article/fcc-(continued...))

## Revisiting Disclosure Requirements

Historically, disclosure aimed at reducing the threat of real or apparent conflicts of interest and corruption has received bipartisan support. In fact, disclosure typically has been regarded as one of the least controversial aspects of an otherwise often-contentious debate over the nation's campaign finance policy. Disclosure, then, could yield opportunities for cooperation among members of both major parties and across both chambers. On the other hand, some recent disclosure efforts have generated controversy. Particularly since the 111<sup>th</sup> Congress consideration of the DISCLOSE Act, some lawmakers raised concerns about whether the legislation applied fairly to various kinds of organizations (e.g., corporations versus unions) and how much information those airing independent messages rather than making direct candidate contributions should be required to report to the FEC. Revised versions of the legislation, introduced in the 112<sup>th</sup>, 113<sup>th</sup>, and 114<sup>th</sup> Congresses, do not contain spending restrictions, although some observers have questioned whether required reporting could inhibit political speech.

Post-*Citizens United* legislative activity among those who favor additional disclosure has generally emphasized the DISCLOSE Act, but, as noted elsewhere in this report, some have also proposed reporting particular kinds of spending to agencies such as the IRS or the SEC. As 501(c) tax-exempt organizations' spending has received attention, measures proposing somewhat similar reporting as DISCLOSE, with additional tax implications (most of which are beyond the scope of this report) have also emerged.

Additional disclosure poses the advantage of making it easier to track the flow of political money. Disclosure, however, does not guarantee complete information, nor does it necessarily guard against all forms of potential corruption. For example, current requirements generally make it possible to identify which people or organizations were involved in a political transaction. This information promotes partial transparency, but does not, in and of itself, provide detailed information about what motivates those transactions or, in some cases, where the funds in question originated. Additional disclosure requirements from Congress, the FEC, or the IRS could provide additional clarity.

## Revisiting Contribution Limits

After *Citizens United*, one potential concern is how candidates will be able to field competitive campaigns amid potentially unlimited expenditures from super PACs, 501(c) organizations, corporations, or unions. One option for providing additional financial resources to candidates, parties, or both, would be to raise or eliminate contribution limits. However, particularly if contribution limits were eliminated, corruption concerns that motivated FECA and BCRA could reemerge. As noted previously, Congress raised limits for some contributions to political parties in 2014.

Another option, which Congress has occasionally considered in recent years, would be to raise or eliminate current limits on coordinated party expenditures.<sup>86</sup> Coordinated expenditures allow parties to buy goods or services on behalf of a campaign—in limited amounts—and to discuss

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(...continued)

required-political-ad-data-disclosures-wont-be-searchable.

<sup>86</sup> This option would not provide campaigns with additional funding per se, but it could ease the financial burden on campaigns for those purchases that parties make on the campaign's behalf.

those expenditures with the campaign.<sup>87</sup> In a post-*Citizens United* and post-*McCutcheon* environment, additional party-coordinated expenditures could provide campaigns facing increased outside advertising with additional resources to respond. Permitting parties to provide additional coordinated expenditures may also strengthen parties as institutions by increasing their relevance for candidates and the electorate. A potential drawback of this approach is that some campaigns may feel compelled to adopt party strategies at odds with the campaign's wishes to receive the benefits of coordinated expenditures.<sup>88</sup> Those concerned with the influence of money in politics may object to any attempt to increase contribution limits or coordinated party expenditures, even if those limits were raised in an effort to respond to labor- or corporate-funded advertising. Additional funding in some form, however, may be attractive to those who feel that greater resources will be necessary to compete in the modern era, or perhaps to those who support increased contribution limits as a step toward campaign deregulation.

## Revisiting Coordination Requirements

Both before and after *Citizens United*, questions have persisted about whether unlimited independent expenditures permit parties, PACs, and other groups to subsidize candidate campaigns. Such concerns first emerged in the 1980s with PAC spending. After *Citizens United*, the emergence of super PACs and increased activity by 501(c) organizations increased attention to a concept known as *coordination*. A product of FEC regulations, coordination restrictions are designed to ensure that valuable goods or services—such as polling or staff expertise—are not provided to campaigns in excess of federal contribution limits. In practice, establishing coordination is difficult. Existing regulations require satisfying a complex three-part test examining conduct, communications, and payment.<sup>89</sup> Some Members of Congress and advocacy groups have proposed that Congress specify a more precise coordination standard by enacting legislation. H.R. 425 provides the most relevant example of such legislation in the 114<sup>th</sup> Congress.

## Conclusion

Some elements of federal campaign finance policy have substantially changed in recent years; others have remained unchanged. Enactment of BCRA in 2002 marked the culmination of efforts to limit soft money in federal elections and place additional regulations on political advertising airing before elections. BCRA was an extension of efforts begun in the 1970s, with enactment of FECA, to regulate and document the flow of money in federal elections. BCRA's soft-money ban

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<sup>87</sup> Coordinated party expenditures are subject to limits based on office sought, state, and voting-age population (VAP). Exact amounts are determined by formula and updated annually by the FEC. For additional discussion, see CRS Report RS22644, *Coordinated Party Expenditures in Federal Elections: An Overview*, by R. Sam Garrett and L. Paige Whitaker; and CRS Report R41054, *Campaign Finance Policy After Citizens United v. Federal Election Commission: Issues and Options for Congress*, by R. Sam Garrett.

<sup>88</sup> The long-running debate about relationships between parties and candidates is well documented. For a brief overview, see, for example, Marjorie Randon Hershey, *Party Politics in America*, 12<sup>th</sup> ed., pp. 65-83; and Paul S. Herrnson, *Congressional Elections: Campaigning at Home and in Washington*, 4<sup>th</sup> ed., pp. 86-128.

<sup>89</sup> On coordination and the three-part regulatory test for coordination, see, respectively 52 U.S.C. §30116 (previously codified at 2 U.S.C. §441a(a)(7)(B)) and 11 C.F.R. §109.21. For additional discussion, see CRS Legal Sidebar WSLG909, *Campaign Finance Law: What is a “Coordinated Communication” versus an “Independent Expenditure”?*, by L. Paige Whitaker.

and some other provisions remain in effect; but *Citizens United*, *SpeechNow*, and other litigation since BCRA have reversed major elements of modern campaign finance law.

The changes discussed in this report suggest that the nation's campaign finance policy may be a continuing issue for Congress. Disclosure requirements, a hallmark of federal campaign finance policy, remain unchanged, but the topic has taken on new controversy. Additional information would be required to fully document the sources and rationales behind all political expenditures. For some, such disclosure would improve transparency and discourage corruption. For others, additional disclosure might be viewed with suspicion and as a potential sign of government intrusion. Particularly in recent years, tension has also developed between competing perspectives about whether disclosure limits potential corruption or stigmatizes those who might choose to support unpopular candidates or groups.

Fundraising, spending, and reporting questions have been at the forefront of recent debates in campaign finance policy, but they are not the only issues that may warrant attention. Even if no legislative changes are made, additional regulation and litigation are likely, as is the constant debate over the role of money in politics. Although some of the specifics are new, these themes discussed throughout this report have been present in campaign finance policy for decades.

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