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Campaign Financing

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SUMMARY

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

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

Debate has also centered on the role of interest groups in campaign funding, especially through political action committees (PACs). But funds from that component have dropped since 1988 and, while interest groups' role still underlies the debate, PACs *per se* have been increasingly supplanted by other concerns.

Especially since the 1996 elections, concerns grew over large sums of money raised outside federal election law. Devices such as soft money and issue advocacy raised questions over current regulations' integrity and feasibility of any campaign money limits.

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

Democrats in the 101st-103rd Congresses passed bills with spending limits, benefits, and PAC and loophole curbs. The 101st and 103rd Congress bills were not reconciled; a 102nd Congress conference bill was vetoed. Reformers in the 104th Congress sought a similar measure but failed on a Senate cloture vote; House Republicans offered a bill giving parties and local citizens a greater role, which was defeated, as was a Democratic alternative.

The 105th Congress saw 135 proposed reform bills and numerous hearings. The House debated reform twice. On March 30, 1998, it considered a GOP-leadership bill and three narrower measures under suspension of rules, passing one bill to ban foreign national contributions and one to improve disclosure and enforcement and defeating the leadership bill and the Paycheck Protection Act. In response to a discharge petition drive, the House renewed consideration of the issue on May 21, in a lengthy process focused on the "freshman bipartisan bill" (H.R. 2183), 11 substitutes, and a constitutional amendment. Debate ended August 6, with passage of H.R. 2183, as revised (the Shays-Meehan bill).

On three occasions in the 105th Congress, the Senate debated the McCain-Feingold bill (the Shays-Meehan companion), each time ending in failed cloture votes: three in October 1997, and one each in February and September 1998 on a narrowed version of the bill. With the latter vote, the campaign finance issue died for the 105th Congress.

In the 106th Congress, the House passed the Shays-Meehan bill, as amended, on September 14. Senate debate on the issue began October 13 and ended October 20, following two unsuccessful cloture votes.

MOST RECENT DEVELOPMENTS

Senator Mitch McConnell and Majority Leader Trent Lott announced November 4 that the Rules and Administration Committee would hold hearings in Spring 2000 on campaign finance reform and would mark up legislation at that time: S. 1816 (Hagel-Kerrey), to limit soft money donations to national parties, increase limits on hard money contributions, and increase and expedite disclosure. (An identical bill—H.R. 3243—was offered in the House by Rep. Terry.) On November 3, the House Education and Labor Committee reported H.R. 2434 (Goodling), the Worker Paycheck Fairness Act of 1999.

BACKGROUND AND ANALYSIS

Evolution of the Current System

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

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

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

Campaign Finance Practices and Related Issues

Since the mid-1970s, the limits on contributions by individuals, political action committees (PACs), and parties, and an absence of congressional spending limits, have

governed the flow of money in congressional elections. Throughout the 1980s and much of the 1990s, the two paramount issues raised by campaign finance practices were the phenomena of, first, rising campaign costs and the large amounts of money needed for elections and, second, the substantial reliance on PACs as a source of funding. Concerns were also voiced, by political scientists and the Republican congressional minority, over a third issue: the level of electoral competition, as affected by finance practices. Finally, perceived loopholes in current law were a source of increasing debate since the mid-1980s.

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

Increased Campaign Costs

Since first being systematically compiled in the 1970s, campaign expenditures have risen substantially, even exceeding the overall rise in the cost of living. Campaign finance authority Herbert Alexander estimated that $540 million was spent on all elections in the U.S. in 1976, rising to $4 billion in 1996. Aggregate costs of House and Senate campaigns more than sextupled between 1976 and 1996, from $115.5 million to $765.3 million, while the cost of living rose by less than threefold. Preliminary 1998 data show an overall decline to $740.4 million, with Senate spending nearly the same as in 1996 but House spending notably less than 1996, due, in some measure, to an almost 20% drop in the number of candidates. Campaign costs for average winning candidates, a useful measure of the real cost of running for office, show an increase on the House side from $87,000 in 1976 to $679,000 in 1996, with a drop to $666,000 in 1998; a winning Senate race went from $609,000 in 1976 to $3.8 million in 1996, increasing to $4.5 million in 1998.

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

Not all observers view the high cost of elections with alarm. Many insist we do not spend too much on elections, and maybe that we don't spend enough. They contrast the amount spent on elections with that spent by government at all levels, noting that only a fraction of a percent is spent to choose those who make vital decisions on the spending of tax dollars. Similarly, they contrast election costs with spending on commercial advertising: the

nation's two leading commercial advertisers, Proctor & Gamble and General Motors, spent more in promoting their products in 1996 ($5 billion) than was spent on all U.S. elections that year. In such a context, these observers contend, the costs of political dialogue may not be excessive.

High election costs are seen largely as a reflection of the paramount role of media in modern elections. Increasingly high television costs and costs of fundraising in an era of contribution limits require candidates to seek a broad base of small contributors—a democratic, but time-consuming, expensive process—or to seek ever-larger contributions from small groups of wealthy contributors. It has been argued that neither wealthy candidates nor negative campaigning are new or increasing phenomena but merely that better disclosure and television's prevalence make us more aware of them. Finally, better-funded candidates do not always win, as some recent elections show.

PACs and Other Sources of Campaign Funds

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

Through the 1980s, statistics showed a significant increase in PAC importance. From 1974-1988, PACs grew in numbers from 608 to a high of 4,268, in contributions to House and Senate candidates from $12.5 million to $147.8 million (a 400% rise in constant dollars), and in relation to other sources from 15.7% of congressional campaign receipts to 33.7%. Although PACs remain a considerable force, data show a relative decline in their role since 1988: the percentage of PAC money in candidate receipts dropped to a low of 27% in 1994 (with slight rises through 1998, to 29.7%); the number of PACs dropped to 3,798 in 1998; contributions to candidates increased negligibly in constant dollar terms ($206.8 million in 1998); and, after signs that individual giving to candidates had been declining as a component (vis-a-vis PACs), some leveling off has occurred recently, with individuals providing 62% of Senate and 53% of House receipts in 1998, for example.

It should be noted that, despite the aggregate data on the relative decline of the PAC role, it provides a still considerable share in various subgroups. For example, in 1998, House candidates got 36% of their funds from PACs, and House incumbents received 42%. To critics, PACs raise troubling issues in the campaign financing debate: Are policymakers beholden to special interests for help in getting elected, impairing their ability to make policy decisions in the national interest? Are PACs overshadowing average citizens, particularly in Members' states and districts? Does the appearance of *quid pro quo* relationships between special interest givers and politician recipients, whether or not they actually exist, seriously undermine public confidence in the political system?

Defenders of PACs have long viewed them as reflecting the nation's historic pluralism, representing not a monolithic force but a wide variety of interests. Rather than overshadowing individual citizens, these observers see them merely as groups of such citizens, giving voice to many who were previously uninvolved. PACs are seen as promoting, not hindering, competition in elections, by funding challengers in the more closely contested races. In terms of influence on legislative votes, donations are seen as generally given to reward past votes and decisions rather than to alter future ones. Defenders also challenge the presumed dichotomy between *special* and *national* interest, asserting that the latter is simply the sum total of the former. PACs, they argue, offer the public clearer knowledge of how interest groups promote their agendas, particularly noteworthy in comparison with the flood of money in 1996 and 1998 that was undisclosed and unregulated.

Competitiveness in Elections

Many view the campaign finance system in terms of a general imbalance in resources between incumbents and challengers, as evidenced by a spending ratio of more than 3.5:1 in recent House and some 2:1 in recent Senate elections. (In 1998, there was a much closer ratio in the House, with an average expenditure of $643,000 for an incumbent vs. $252,000 for a challenger—a 2.6 to 1 ratio, while the average Senate incumbent's $4.7 million exceeded the average challenger's $2.9 million by 1.6 to 1.) Incumbents' generally easier access to money is seen as the real problem, not the aggregate amounts spent by all candidates.

Those concerned about competitiveness also view the PAC issue through this lens. With some 79% of PAC contributions going to incumbents in 1998, the question of PACs "buying access" with those most likely to be elected is seen as a more serious problem than the generally high amounts of PAC giving in the aggregate. But others dispute that the problem is really an incumbency one or that electoral competition should be the main goal of reform. After all, there is a fair degree of turnover in Congress (through defeats, retirements, etc.), and the system does allow changed financing patterns with sometimes unexpected results, as it did in 1994. Aggregate incumbent-challenger disparities may be less meaningful, it is noted, than those on the closer spending levels in hotly contested or open races.

Perceived Loopholes in Current Law

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

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

Soft Money. This refers to money that may indirectly influence federal elections but is raised and spent outside the purview of federal laws and would be illegal if spent directly on a federal election. The significance of soft money stems from several factors: (1) many states permit direct union and corporate contributions and individual donations in excess of $25,000

in state campaigns, all of which are prohibited in federal races; (2) under the 1979 FECA Amendments, such money may be spent by state and local parties in large or unlimited amounts on grassroots organizing and voter drives that may benefit all party candidates; and (3) publicly-funded presidential candidates may not spend privately raised money in the general election. In recent presidential elections, national parties have waged extensive efforts to raise money for their state affiliates, partly to boost the national tickets beyond what could be spent directly. In 1996, $262 million in soft money was raised by the major parties, which some saw as circumvention of the Clinton and Dole campaign limits; in 1998, the parties raised $224 million in soft money.

Independent Expenditures. The 1976 *Buckley* ruling allowed unlimited spending by individuals or groups on communications with voters to expressly support or oppose clearly identified federal candidates, made without coordination or consultation with any candidate. Independent expenditures totaled $11.1 million in 1992 and $22.4 million in 1996. These expenditures may hinder a candidate's ability to compete with both an opponent and outside groups. They may also impair a sense of accountability between a candidate and voters, and many question whether some form of unprovable coordination may often occur in such cases.

Issue Advocacy. Although federal law regulates expenditures in connection with federal elections, it uses a fairly narrow definition for what constitutes such spending, per several court rulings on First Amendment grounds. The law, as affected by court rulings, allows regulation only of communications containing express advocacy, *i.e.*, that use explicit terms urging the election or defeat of clearly identified federal candidates. By avoiding such terms, groups may promote their views and issue position in reference to particular elected officials, without triggering the disclosure and source restrictions of the FECA. Such activity, known as issue advocacy, is often perceived as having the intent of bolstering or detracting from the public image of officials who are also candidates for office. In 1996, an estimated $135 million was spent on issue advocacy; the estimate for 1998 ranged from $275-$340 million. Also, groups ranging from labor unions to the Christian Coalition promoted their policy views through voter guides, which presented candidates' views on issues in a way that some saw as helpful to some candidates and harmful to others, without meeting the standards for FECA coverage.

Policy Options

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

Just as the overriding issues have centered, at least until recently, around election costs and funding sources, the most prominent legislation long focused on controlling campaign spending, usually through such voluntary government incentives as public funding or cost-reduction benefits, and on limiting or banning PACs and generally altering the relative importance of various funding sources. Some have seen both concepts primarily in the context

of promoting electoral competition, to remedy or at least not exacerbate perceived inequities between incumbents and challengers. Increasingly since the mid-1980s, concerns over loopholes that undermine federal regulation have led to proposals to curb such practices, particularly since the 1996 elections. (Conversely, proposals have also urged less regulation, on the ground that it inherently invites circumvention.)

Campaign Spending Limits and Government Incentives or Benefits

The debate over campaign finance reform has often focused on the desirability of limiting campaign spending. To a great extent, this debate has been linked with public financing of elections. The coupling of these two controversial issues stems from *Buckley's* ban on mandatory spending limits. The ruling allowed voluntary limits, with adherence a prerequisite for subsidies. Hence the notion arose since the 1970s that spending limits must be tied to public benefits, absent a constitutional amendment.

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

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

A major challenge to spending limit supporters has been how to curb, if not eliminate, public funding from their proposals. Although spending limits may have wide public support, most evidence suggests far less support, even cynicism, for public financing. Some principal bills in recent Congresses were revised, moving from a strong public subsidy component to more cost-saving benefits (*e.g.*, reduced postal and broadcast rates), whose cost may be borne less directly, if at all, by taxpayers. Despite efforts to downplay public funding, congressional opposition to spending limits has remained strong. In the 105th Congress, the principal reform bills debated on the floor contained neither campaign spending limits nor public funds, reflecting not only the overriding concerns over soft money and issue advocacy but also the changed political climate since the 1970s.

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

Limiting PACs and Bolstering Other Sources

Until recently, most proposed bills sought, at least in part, to curb PACs' perceived influence, either directly, through prohibition or reduced limits, or indirectly, through enhancing the role of individuals and parties. Current law allows individuals to give $1,000 per candidate, per election, while most PACs—if they qualify as "multicandidate committees"—may give $5,000 per candidate, increasing their ability to assist candidates, and without an aggregate limit such as that affecting individuals.

Three chief methods of direct PAC curbs were prominent in proposals advanced through the mid-1990s: banning PAC money in federal elections; lowering the $5,000 limit; and limiting candidates' aggregate PAC receipts. These concepts were included, for example, in all of the bills that the House and Senate voted on in the 101st-104th Congresses. Although support for such proposals was fueled by a desire to reduce the perceived role of interest groups, each proposal had drawbacks, such as constitutional questions about limiting speech and association rights and the more practical concern over the 69% devaluation of the $5,000 limit by inflation since it was set in 1974.

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

Partly because of this problem, both before and after 1996, many have looked to more indirect ways to curb PACs and interest groups, such as raising limits on individual or party donations to candidates. Raising these limits has also been proposed on a contingency basis to offset such other sources as wealthy candidates spending large personal sums on their campaigns. While higher limits might counterbalance PACs and other groups and offset effects of inflation, opponents observe that few Americans can afford to give even $1,000, raising age-old concerns about "fat cat" contributors.

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

Increasing or removing party contribution and coordinated expenditure limits has also received support. Supporters say that party support can be maximized without concern about influence peddled, while strengthening party ties and facilitating effective policymaking. Opponents note that many of the prominent allegations in 1996 involved party-raised funds. Also, even with some degree of philosophical agreement on increasing the party role, current political realities present some obstacles, *i.e.*, the difference in the relative resources of the parties: the Republican national committees' federal accounts raised over $285 million in the 1998 election cycle, compared with $160 million by the Democratic committees.

Promoting Electoral Competition

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

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

Closing Perceived Loopholes in Current Law

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

Bundling. Most proposals in this area, which is seen as less an issue now than in prior years, would count contributions raised by an intermediary toward both the donor's and intermediary's limit. An agent who had reached the limit could not raise additional funds for that candidate. Proposals differ as to specific agents who could continue this practice (*e.g.*, whether to ban bundling by party committees or by all PACs).

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

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

legislative solutions have been proposals for the FEC to restrain the soft money practice through promulgating new regulations. These differences reflect, to some extent, the lack of consensus on where the soft money problem lies.

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

Issue Advocacy. Addressing this practice, a form of soft money, involves broadening the definition of federal election-related spending. A 1995 FEC regulation offered such a definition, using a "reasonable person" standard, but this was struck down by a 1st Circuit federal court in 1996; this decision was later upheld by an appeals court but is at variance with an earlier 9th Circuit ruling. The FEC has been reluctant to enforce the regulation pending further judicial or legislative action. Some recent bills (including McCain-Feingold and Shays-Meehan in the 105th Congress) have sought to codify a definition of "express advocacy" that allows a communication to be considered as a whole, in context of such external events as timing, to determine if it is election-related. Finding a definition that can withstand judicial scrutiny may be the key to bringing some of what is labeled "issue advocacy" under the FECA's regulatory framework. This has emerged since 1996 as probably the thorniest aspect of the campaign finance debate.

Legislative Action in Recent Congresses

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

With Senate control shifting to Democrats in 1986, each of the next four Congresses saw intensified activity, based on Democratic-leadership bills with voluntary spending limits combined with inducements to participation, such as public subsidies or cost-reduction benefits. In the 100th Congress, Senate Democrats were blocked by a Republican filibuster. In the 101st - 103rd Congresses, the House and Senate each passed comprehensive bills based on spending limits and public benefits; the bills were not reconciled in the 101st or 103rd, while a conference version achieved in the 102nd was vetoed by President Bush.

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

105th Congress. In the 1996 elections, press accounts focused on large sums of money raised and spent outside the purview of federal election law, while allegations mounted concerning foreign campaign money raised by the Democratic National Committee. As the

105th Congress began, reform supporters vowed major legislative efforts, but House and Senate leaders expressed priority interest in investigating the 1996 violations. [See CRS Issue Brief IB97045 for discussion of investigations and hearings on 1996 election abuses.]

In the face of leadership reluctance to schedule debate on campaign finance reform, several task forces were created to seek consensus on proposals; most notable of these was the House Freshman Bipartisan Task Force on Campaign Finance Reform, which held forums and produced H.R. 2183. Some 135 reform bills were introduced during the 105th Congress, with media attention focused from the outset on the McCain-Feingold and companion Shays-Meehan bills, initially S. 25 and H.R. 493, which were endorsed by the President in his 1997 State of the Union Address. House and Senate Democratic leaders offered bills similar to those in the 104th Congress: S. 11 and H.R. 600.

Hearings. Committees in both chambers held hearings in the 105th Congress, including:

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

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

On March 30, the Republican leadership brought four bills to the floor under suspension of the rules. Two were defeated: H.R. 3581 (Thomas), a revision of the comprehensive H.R. 3485, as reported, by 74-337; and H.R. 2609 (Schaffer),the Paycheck Protection Act, by 166-246. The other bills passed: H.R. 34 (Bereuter), to ban foreign national contributions and

expenditures in U.S. elections, by 369-43; and H.R. 3582 (White), to improve disclosure and enforcement (based on H.R. 3485), by 405-6.

The second phase of House activity developed out of reform supporters' revival of the discharge petition for H.Res. 259, a rule to allow consideration of specified Members' proposals. By April 22, 1998, the petition had over 200 signatures, out of a needed 218. In response, Speaker Gingrich announced that day that the House would reconsider the issue by May, with the freshman bipartisan H.R. 2183 as the base bill and amendments and substitutes allowed. Under H.Res. 442, reported from the Rules Committee on May 20 (H.Rept. 105-545) and passed on May 21, debate began May 22 on H.R. 2183, 11 substitute amendments, and H.J.Res. 119 (DeLay), a constitutional amendment to allow regulation of contributions and expenditures; the latter was defeated June 11 by 29-345 (and 51 "present").

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

Senate Activity. Early action came March 18, 1997, with defeat of S.J.Res. 18, the Hollings constitutional amendment to allow mandatory campaign spending limits (38-61).

McCain-Feingold sponsors vowed to seek Senate action in the fall of 1997, despite lack of Republican leadership support, announcing on September 19 a substitute bill; it deleted spending limits and benefits, focused on restricting soft money and issue advocacy and improving disclosure and enforcement, and added a required union notice to nonmembers of rights to dues rebates for political spending and a restriction on party support for wealthy candidates. Following a unanimous consent agreement to consider the bill and proposed amendments and a presidential pledge to call the Senate into special session to consider reform, the Senate began debate on the revised S. 25 on September 26. On September 29, Majority Leader Lott offered the Paycheck Protection Act as an amendment (text of S. 9, same as S. 1663). On October 7, an unsuccessful cloture vote (53-47) appeared to end debate on McCain-Feingold. A second cloture vote failed on October 8 (52-47), and a third failed on October 9 by the same margin. The Senate also failed to invoke cloture on the Lott amendment on October 7 (52-48) and October 9 (51-48). McCain-Feingold supporters continued to press the issue and, on October 30, reached agreement with the leadership for a vote on that bill and a GOP substitute by March 6, 1998.

The second Senate debate on campaign finance in the 105th Congress began February 23, 1998, focused on S. 1663 (the Lott Paycheck Protection bill), a substitute amendment (no. 1646) containing the McCain-Feingold language (from the revised bill of September 1997), and a new Snowe-Jeffords amendment (no. 1647), to modify McCain-Feingold. That

modification replaced the broader express advocacy definition with the term "electioneering communications," *i.e.*, spending on broadcast ads in the last 60 days of a general election or 30 days of a primary that refer to a federal candidate, once a group spent $10,000 in a year on such messages. Snowe-Jeffords required disclosure of such activity by any group and prohibited their financing with union and for-profit corporation funds. On February 25, the Snowe-Jeffords language was added to the McCain-Feingold amendment by voice vote.

Key votes included failed motions to table McCain-Feingold, by 48-51 and 48-50 on February 24 and 25, respectively, and Snowe-Jeffords (prior to inclusion in McCain-Feingold), by 47-50 on February 25; a cloture vote on the modified McCain-Feingold amendment, defeated by 51-48 on February 26; and a cloture motion on S. 1663, defeated by 45-54 on February 26. Senate consideration ended that day, after the two cloture attempts.

A third and final Senate debate, prompted by passage of the Shays-Meehan bill in the House, began September 9, 1998, as the modified McCain-Feingold bill was offered as amendment no. 3554 to S. 2237, the Interior appropriations bill. A cloture motion to end debate failed September 10 by a 52-48 vote, after which Senator McCain withdrew it from further consideration, ending hopes for reform in the 105th Congress.

106th Congress. Thus far, 53 reform bills (16 Senate, 37 House) have been introduced, notably including: S. 26 (McCain-Feingold), as considered in the previous Congress; S. 1593, a more narrowly-focused version thereof; S. 1816 (Hagel), a bipartisan bill to limit soft money and raise hard money contribution limits, and its companion H.R. 3243 (Terry); H.R. 417 (Shays-Meehan), a slightly revised version of the bill passed by the House in 1998; H.R. 1867 (Hutchinson), the "freshman" bill of the 105th Congress; H.R. 1922 (Doolittle), a deregulation alternative from the prior Congress favored by many Republicans; and H.R. 2668 (Thomas), proposing relatively noncontroversial changes in federal election law.

House. Speaker Hastert announced plans to consider the issue during the week of September 13. Supporters of H.R. 417 sought an earlier vote, through a discharge petition by Blue Dog and freshman Democrats, but were able to garner 202 signatures—16 short of the 218 necessary—prior to the August recess. The House Administration Committee held hearings—June 17 and 29 and July 13 and 22—and, on August 2, ordered four bills reported: one favorably—H.R. 2668 (Thomas); two without recommendation—H.R. 1867 (Hutchinson) and H.R. 1922 (Doolittle); and H.R. 417, unfavorably. On August 5, the Rules Committee agreed on a rule, allowing for consideration of Shays-Meehan (as base bill), 10 amendments, and three substitutes: texts of the other bills reported by House Administration.

The rule—H.Res. 283 (H.Rept. 106-311)—was passed by voice vote, when debate began September 14. The House passed H.R. 417 (252-177), with three perfecting amendments—two on foreign money in U.S. elections, one on reimbursement for political use of government vehicles. Six perfecting amendments were defeated, as were three substitutes (Doolittle, Hutchinson, and Thomas); one perfecting amendment was withdrawn.

On November 3, the House Education and the Workforce Committee reported H.R. 2434 (Goodling), the Worker Paycheck Fairness Act of 1999. This measure had been offered as an amendment to Shays-Meehan but was withdrawn prior to a vote on it.

Senate. The Rules and Administration Committee held a hearing March 24, on hard money contribution limits. Plans by reform supporters to force debate on some form of McCain-Feingold before the August recess were shelved after Majority Leader Lott pledged debate by mid-October. In a move to augment support, sponsors of McCain-Feingold on September 16 offered S. 1593, consisting of three sections of the more comprehensive S. 26: curbing party soft money, protecting rights of dissenting non-union members regarding political use of dues money, and raising some contribution limits. Debate on S. 1593 began on October 13. Two amendments were adopted on October 14:

- McConnell amendment 2293—to require Senators to report credible corruption information to Ethics Committee and provide for mandatory minimum bribery penalties for public officials (voice vote).
- McCain amendment 2294—to provide for disclosure of certain money expenditures of parties and to promote expedited availability of reports (77-20 vote).

Two additional amendments were offered October 15, along with cloture motions:

- Daschle amendment 2298—to substitute text nearly identical to the House-passed Shays-Meehan bill (H.R. 417).
- Reid amendment 2229 (to amendment 2298)—perfecting amendment to substitute text of S. 1593 as offered, plus McCain disclosure amendment adopted October 14.

A motion to table the Reid amendment failed October 18 by 1-92. Cloture motions on the Reid and Daschle amendments failed October 19 by 53-47 and 52-48, respectively. On October 20, the Senate voted (53-47) to table a measure allowing reconsideration of campaign reform and (52-48) to move on to other legislation. Majority Leader Lott declared the issue dead for this year, but McCain-Feingold sponsors vowed to continue their efforts.

On November 4, Senator Mitch McConnell and Majority Leader Trent Lott announced that the Rules and Administration Committee would hold hearings in the spring of 2000 on campaign finance reform and would mark up legislation at that time. The bill slated for markup is S. 1816 (Hagel-Kerrey), which would limit soft money donations to national parties, increase limits on hard money contributions, and increase and expedite disclosure.

LEGISLATION

H.R. 417 (Shays-Meehan)

Bipartisan Campaign Finance Reform Act of 1999. Broadens express advocacy definition. Bans national party and federal candidate soft money raising. Curbs state party soft money spending on federal-related activity. Tightens coordination definition. Bans parties from independent *and* coordinated expenditures on behalf of candidate. Requires greater notice of non-union members' rights to rebates of dues payments used for political purposes. Bans party coordinated expenditures for candidates not limiting personal funds to $50,000. Increases FEC disclosure and enforcement. Establishes study commission to make recommendations. Bans foreign national donations (including soft money) and fundraising

from government property. Introduced Jan. 19, 1999; jointly referred to Committees on House Administration, Education and the Workforce, Government Reform, Judiciary, Ways and Means, and Rules. Ordered reported unfavorably by House Administration Aug. 2, 1999 (H. Rept. 106-297, Pt. 1). Passed House, as amended, Sept. 14, 1999 (252-177).

- ***Perfecting amendments adopted***: (1) *Bereuter/Wicker* #6, to ban financial activity in federal elections by non-citizens or -U.S. nationals, *i.e.*, ends permanent resident alien exemption (242-181); (2) *Faleomavaega #1*, to clarify law to exempt U.S. nationals from ban on foreign national financing of U.S. elections (by voice vote), and (3) *Sweeney #21*, to require federal candidates (not in office) who use government vehicles for campaign purposes to reimburse Treasury at full cost (261-167).

- ***Perfecting amendments rejected***: (1) *Whitfield #24*, to increase limit on candidate contributions to $3,000 (127-300); (2) *Whitfield #23*, to increase aggregate annual limit to $75,000 (123-302); (3) *Doolittle #26*, to change express advocacy exemption for voter guides (189-238); (4) *Shaw/Calvert/Gallegly #5*, to require 50% in-state resident funding in congressional races (179-248); (5) *DeLay #27*, to exempt Internet communications from coverage under federal election law (160-268); (6) *Ewing #18*, to replace severability clause with non-severability (167-259).

- ***Perfecting amendment withdrawn***: *Goodling #15*, to replace *Beck* provision with prior approval by all agency shop workers for use of dues/fees for non-collective bargaining purposes.

- ***Substitute amendments rejected***:

• *Doolittle*—Citizen Legislature and Political Freedom Act. To abolish all contribution limits, repeal presidential public financing system, require electronic filing by all committees, and increase disclosure in last 90 days of election. Introduced as H.R. 1922, May 25, 1999; referred to Committee on House Administration. Ordered reported without recommendation Aug. 2, 1999 (H. Rept. 106-296, Pt. 1). Defeated as substitute Sept. 14, 1999 (117-306).

• *Huchinson-Brady-Moran (KS)*—Campaign Integrity Act of 1999. To ban national party and federal candidate soft money raising, ban inter-state party soft money transfers, require disclosure of issue advocacy spending, abolish party coordinated expenditure limits, double the individual aggregate limit, index all contribution limits prospectively, and require electronic disclosure by committees exceeding $50,000 in activity. Introduced May 19, 1999; referred to Committee on House Administration. Ordered reported without recommendation Aug. 2, 1999 (H. Rept. 106-294). Defeated as substitute Sept. 14, 1999 (99-327).

• *Thomas*—Campaign Reform and Election Integrity Act of 1999. To ban soft money and independent expenditures by foreign nationals, increase soft money disclosure, require electronic disclosure by all committees with activity of $50,000+, require 24-hour electronic disclosure and immediate Internet posting in last 90 days of election for $200+ contributions and independent expenditures,

require secondary payee disclosure, allow written responses to questions where law is clear and unambiguous and offer "safe harbor" protection, change standard to initiate action to "reason to seek additional information," create escrow account for $500+ contributions that a committee plans to return, allow administrative fine schedule for minor reporting violations. Introduced Aug. 2, 1999; referred to Committee on House Administration. Ordered reported favorably Aug. 2, 1999 (H. Rept. 106-295). Defeated as substitute Sept. 14, 1999 (173-256).

H.R. 2434 (Goodling)

Worker Paycheck Fairness Act of 1999. Requires prior approval by all agency shop workers for use of dues/fees for non-collective bargaining purposes. Introduced Jul. 1, 1999; referred to Committee on Education and the Workforce. Ordered reported Nov. 3, 1999 (25-22 vote).

S. 1593 (McCain-Feingold)

Bipartisan Campaign Reform Act of 1999. Bans soft money raising by national parties and federal candidates. Curbs state party soft money spending on "federal election activity." Requires greater notice of non-union members' rights to rebates of dues payments used for political purposes. Raises limits on individual contributions to state parties and on aggregate federal contributions per year. Introduced Sept. 16, 1999; referred to Committee on Rules and Administration. Debate began October 13 and ended October 20, following unsuccessful cloture votes on two key amendments.

S. 1816 (Hagel)

Open and Accountable Campaign Financing Act of 2000. Imposes annual limit on soft money donations to national party committees. Increases (hard money) limits on individual and PAC contributions. Requires broadcasters to make available information on election-related or public policy advertising. Increases and expedites disclosure under federal election law. Introduced Oct. 28, 1999; referred to Committee on Rules and Administration. [Identical bill offered in House—H.R. 3243 (Terry)]

FOR ADDITIONAL READING

CRS Issue Briefs

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

CRS Reports

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

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

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

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

CRS Report RL30299. *Campaign Finance Debate in the 106th Congress: Comparison of Measures Under House Consideration*, by Joseph E. Cantor.

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

CRS Report RS20073. *Campaign Finance Bills, 106th Congress: Comparison of Shays-Meehan & McCain-Feingold Proposals*, by Joseph E. Cantor.

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

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

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

CRS Report RS20355. *Comparison of Political Organizations under the Tax Code and Political Committees under Federal Election Law*, by Marie B. Morris.

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

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

CRS Report RS20133. *The Presidential Election Campaign Fund and Tax Checkoff: Background and Current Issues*, by Joseph E. Cantor.

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

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