

CRS Report for Congress

Campaign Finance Debate in the House: Substitute No. 13 (Shays/Meehan) and Non-Germane Amendments

Joseph E. Cantor
Specialist in American National Government
Government Division

Summary

H. Res. 442, reported on May 20, 1998 (H.Rept. 105-545) and passed by the House May 21, made in order for consideration H.R. 2183 (Hutchinson/Allen)—the freshman bipartisan campaign reform bill—and 11 substitute amendments. The second substitute made in order was no. 13 (Shays/Meehan).¹ A subsequent rule—H.Res. 458, reported on June 4 (H.Rept. 105-567) and passed on June 18, made in order additional, pre-filed, non-germane amendments to the substitutes, with 24 of these to Shays/Meehan (and with other germane amendments anticipated). Debate on Shays/Meehan began on June 18, but a July 17 unanimous consent agreement superseded H.Res. 458 by specifying amendments that alone would be in order to Shays/Meehan. Only three of the 24 amendments under the rule came to floor votes. (Shays/Meehan, as amended, passed the House on August 3 by 237-186, followed by passage of H.R. 2183, as thus amended, on August 6 by 252-179.)² This report offers a summary of Shays/Meehan³ and the 24 non-germane amendments under H.Res. 458, arranged by category⁴ and shown with all substitutes to which each was to be offered (and any floor votes on those amendments).

Amendment No. 13 (Shays/Meehan):

¹ The 11 substitutes, in order of consideration, were: 16-White; 13-Shays; 1-Bass; 7-Farr; 14-Snowbarger; 4-Obey; 2-Campbell; 15-Tierney; 12-Schaffer (CO); 5-Doolittle; and 8-Hutchinson.

² *Congressional Record*, daily edition, vol. 144, Aug. 3, 1998, pp. H6937-H6948; and Aug. 6, 1998, pp. H7298-H7330.

³ For comparisons of the substitutes, see: U.S. Library of Congress, Congressional Research Service, *Campaign Finance Debate in the House: Substitute Amendments to H.R. 2183 (105th Congress)*, by Joseph E. Cantor, CRS Report 98-494 GOV (Washington: June 10, 1998).

⁴ The categories are: Limits/Benefits; PACs; Individuals; Parties; Candidates; In-State; Independent Expenditures; Soft Money; Issue Advocacy; Bundling; Foreign; Study Commission; FEC (Disclosure and Enforcement); Advertising; and Miscellaneous. From: U.S. Library of Congress, Congressional Research Service, *Campaign Finance Legislation in the 105th Congress*, by Joseph E. Cantor, CRS Report 97-324 GOV (Washington: Nov. 5, 1998).

Bipartisan Campaign Reform Act of 1998

Individuals. Would raise aggregate individual limit to \$30,000 per year. Would raise limit on individual contributions to state parties to \$10,000 per year.

Candidates. Would specify permissible uses and prohibit personal use of campaign funds. Would prohibit a party from making coordinated expenditures on behalf of a House general election candidate who does not abide by a voluntary limit of \$50,000 in total contributions and loans from personal and immediate family funds (in the primary or general election).

Independent Expenditures. Would define "independent expenditure" to contain express advocacy that is not coordinated with a candidate, agent, or someone coordinating with candidate. Would increase disclosure. Would ban parties from making both independent and coordinated expenditures for general election candidate. Would amend definition of "contribution" to include anything of value provided in coordination with a candidate to influence federal election, regardless of whether it contains express advocacy. Would define "provided in coordination with a candidate" to include payments made (1) in cooperation or consultation with or at the request or suggestion of a candidate; (2) using candidate-prepared materials; (3) based on information provided by a candidate's campaign for purposes of expenditure; (4) by a spender who during that election cycle has raised funds or acted in some official position for a candidate; (5) by a spender who has used the same consultants as an affected candidate during an election cycle; (6) in coordination with a candidate to influence an election regardless of whether the message contains express advocacy; (7) in communication about campaign plans; or (8) for in-kind professional services. Would render such payments or communications in coordination with a candidate as contributions or expenditures under federal law.

Soft Money. Would ban national party committees from soliciting, receiving, directing, or spending soft money. Would ban state and local party committees from spending soft money for federal election activity, including: (1) voter registration drives in last 120 days of a federal election; (2) voter identification, get-out-the-vote drives, and generic activity in connection with an election in which a federal candidate is on the ballot; and (3) communications that refer to a clearly identified federal candidate with the intent of influencing an election. Would allow state parties to spend soft money on specific activities exclusively devoted to non-federal elections. Would ban party committees from using soft money to raise funds. Would ban party committees from raising money for or giving to tax-exempt groups. Would ban federal candidates/officeholders from raising soft money for a federal election activity. Would increase party soft money disclosure requirements. Would end the building fund exemption from the "contribution" definition. Would require unions, corporations, and national banks to disclose promptly all exempt activities (but only internal communications referring to federal candidates) once the threshold level is reached. Would require unions to give reasonable notice to dues-paying non-members of rights to disallow political use of their funds (*i.e.*, codify *Beck*).

Issue Advocacy. Would define "express advocacy" communications as advocating the election or defeat of a candidate by (1) using explicit phrases or words or slogans that in context can have no reasonable meaning other than election advocacy; (2) referring to a candidate in a paid radio or TV broadcast ad that appears in the affected state within 60

days of an election (or, for the President/Vice President, within 60 days of the general election, regardless of where ad appears); or (3) expressing unmistakable, unambiguous election advocacy when taken as a whole and with limited reference to external events. Would exempt from the express advocacy definition educational voter guides and records that cover at least two candidates, contain no express advocacy, and are not coordinated with a candidate or party. Would amend the expenditure definition to include payments for communications (1) that contain express advocacy; or (2) that refer to a clearly identified candidate, in coordination with a candidate, agent, or party, for the purpose of influencing a federal election whether or not the message contains express advocacy.

Foreign. Would ban direct or indirect contributions, including soft money, by foreign nationals to a candidate, party, or committee in connection with any election (retains green card exemption).

Federal Election Commission (FEC). Would require electronic filing of disclosure reports by any committee exceeding a threshold level of financial activity. Would require FEC to post disclosure information on the Internet within 24 hours of receipt. Would prohibit candidates from depositing contributions over \$200 unless required itemized information is complete. Would allow random audits of campaigns within 12 months after an election. Would lower threshold for itemizing contributions to \$50. Would increase penalties for violations, add automatic penalties for late filing, and provide for equitable remedies in conciliation agreements. Would expedite enforcement procedures. Would allow FEC to refer suspected violations to Attorney General at any time. Would reduce standard to begin enforcement proceedings.

Advertising. Would augment ad disclaimer requirements.

Miscellaneous. Would prohibit false representation to raise funds. Would restrict non-candidate committee use of candidate names. Would ban franked mass mailings within 180 days of a Member's general election and 90 days of a Member's primary election. Would ban contributions by minors to candidates or parties. Would ban solicitation of contributions, including soft money, by federal officials from government buildings used to discharge official duties. If any part of the act or its amendments is struck down, the remainder of the act and its amendments would be unaffected.

Non-Germane Amendments ⁵

Limits/Benefits

Kaptur, no. 73. If any part of the act or its amendments is found unconstitutional, would provide for fast-track consideration by Congress of a constitutional amendment to allow Congress and the states to set reasonable limits on expenditures to support or oppose candidates for nomination or election to office. **[Amends Shays]**

⁵ H.Res. 458 would permit each amendment to be offered by the Member identified in the committee report or by that Member's designee. This report identifies amendments by number (if used in committee report) and by the Member expected to offer them (as of June 18, 1998).

Slaughter. States eight findings on the role of television in elections and their financing. States sense of the Congress that broadcasters should give meaningful amounts of free TV time to federal candidates for unedited segments of direct appeals to voters. [Amends Bass, Campbell, Obey, Doolittle, Hutchinson, Schaffer, Shays, Snowbarger, White]

Soft Money (Non-Party)

Miller (FL), no. 35. Would amend the Labor Management and Disclosure Act to change the LM-2 form so that unions must report financial activity each year to the Office of Labor and Management Standards by functional category (*e.g.*, contract negotiations, political activities, lobbying and promotional activities). [Amends Shays]

Paxon. Would amend the Labor Management and Disclosure Act to change the LM-2 form so that unions must report financial activity each year to the Office of Labor and Management Standards by functional category (*e.g.*, contract negotiations, political activities, lobbying and promotional activities), with itemization of single sources or payees of at least \$10,000. Would require posting of reports on the Internet. [Amends Bass, Campbell, Obey, Farr, Hutchinson, Shays, Tierney]

Smith (WA), no. 23. Would extend codification of *Beck* decision (in Shays-Meehan) to include union members, as well as dues-paying non-members (*i.e.*, require that union members give prior approval before dues money may be used for political purposes). [Amends Shays]

Thomas. Would prohibit political party officials from raising money for union elections or candidates (unless the party official is a union official as well). [Amends Shays]

Foreign

Kaptur, no. 71. Would prohibit contributions or expenditures by PACs of corporations whose stock is more than 50% foreign-owned or controlled or of trade associations, membership organizations, cooperatives, or corporations without capital stock whose operating fund is more than 50% supplied by foreign nationals or corporations. Would prohibit foreign nationals from involvement in decisions about election contributions or expenditures by PACs and others. Would create FEC clearinghouse of information regarding political activities of foreign principals and agents, including lobbying and electoral activities. [Amends Shays]

Traficant. Would amend House rules to make in order a highly privileged motion to expel a Member convicted of violating the ban on knowingly soliciting or receiving a foreign national's donation. [Amends all substitutes]

Study Commission

Maloney, no. 10. Would establish a temporary commission to study campaign finance issues and recommend changes, based on goals of encouraging fair and open elections, eliminating disproportionate special interest election financing, and creating greater incumbent-challenger equity; commission would comprise 12 members appointed by the President within 15 days of enactment, including three names each from lists submitted by the House Speaker and minority leader and the Senate majority and minority

leaders (one of each three selected names must be a political independent, as defined), with one of the 12 designated as chairman by the President; proposals must be approved by at least nine members, submitted (in legislative form) within 180 days of adjournment of the 105th Congress, and considered under fast-track (base-closing) rules. [Amends Bass, Campbell, Doolittle, Hutchinson, Schaffer, Shays, Snowbarger, Tierney] *Added to Shays/Meehan by a vote of 325-78 (with 1 voting "present") on June 19, 1998.*⁶

Miscellaneous

Fundraising on (or Using) Federal Property.

McInnis ⁷, no. 56. Would ban solicitation or receipt of anything of value in exchange for access to Air Force One or Two, Marine One or Two, the White House, or the Vice President's residence, with penalties of fines, up to one year in prison, or both. [Amends all substitutes]

DeLay, no. 13. States six findings with regard to Vice President Gore's fundraising from the White House in 1996, including that there was an apparent violation of federal law. States the sense of Congress that "controlling legal authority" bans the use of federal property for fundraising. [Amends Campbell, Obey, Hutchinson, Shays, Tierney]

McIntosh. Would amend the Hatch Act to ban political activities by employees of local governments and non-government entities receiving federal funds. Would ban political use of their facilities, vehicles, and equipment. [Amends all substitutes]

Salmon. Would require Internet disclosure of non-government passengers on Air Force One or Two within 30 days (or to the chairman and ranking member of the Select Committee on Intelligence if there are national security concerns). [Amends all substitutes] *Added to Shays/Meehan by a voice vote on July 30, 1998.*⁸

Wicker, no. 30. Would prohibit White House meals or accommodations in exchange for any money or anything of value to a party or candidate. [Amends Bass, Campbell, Obey, Farr, Hutchinson, Shays, Tierney] *Added to Shays/Meehan by a vote of 391-4 on July 20, 1998.*⁹

Presidential Election Public Funding System.

Doolittle, no. 74. Would terminate public funding of presidential elections, as of the end of 1998. [Amends Bass, Campbell, Farr, Hutchinson, Shays, Tierney]

Northrup, no. 28. Would convert tax checkoff from a designation of general revenues to a tax add-on, whereby the taxpayer contributes \$3 (or \$6 on a joint return) from personal funds. [Amends Bass, Campbell, Hutchinson, Shays, Tierney]

⁶ *Congressional Record*, daily edition, vol. 144, Jun. 19, 1998, pp. H4862-H4865.

⁷ Designee of Representative Cox.

⁸ *Congressional Record*, daily edition, vol. 144, Jul. 30, 1998, pp. H6790-H6791.

⁹ *Ibid.*, Jul. 20, 1998, pp. H5929.

Rights of Citizens and Voting.

Doolittle, no. 61. Would amend the Voting Rights Act to prohibit states from providing voting materials (including ballots, registration and voting instructions, etc.) in any language but English. [Amends Farr, Tierney, Shays, Obey, Hutchinson, Bass, Campbell]

Doolittle, no. 62. Would prohibit states from providing ballots for federal elections without an individual's verification of citizenship. [Amends Farr, Tierney, Shays, Obey, Hutchinson, Bass, Campbell]

Goodlatte. Would amend the National Voter Registration Act to repeal the state mail registration requirement, require social security number and proof of citizenship to register, allow states to remove voter names for change of residence according to specified criteria, allow states to require photo identification or signatures to vote, and repeal the requirement that states permit voting from a former address. [Amend all substitutes]

Paul, no. 68. States 20 findings regarding ballot access rules and rights of non-major parties. Would set ballot petition signature and time limits and would waive petition signature requirements for candidates whose party received at least 1% of the vote in the most recent presidential or senatorial general election in that state. [Amends Bass, Campbell, Farr, Obey, Shays, Tierney]

Peterson (PA). Would direct the Attorney General, in consultation with the Commissioners of Social Security and Immigration and Naturalization, to set up voter eligibility confirmation pilot programs in at least the five largest states. [Amends Bass, Campbell, Obey, Farr, Hutchinson, Shays, Tierney]

Wicker, no. 31. Would amend the National Voter Registration Act to allow states to require photo identification as a condition for receiving a federal election ballot. [Amends Bass, Campbell, Obey, Farr, Hutchinson, Shays, Tierney]

Constitutional Review.

Whitfield, no. 44. Would provide for an expedited challenge to the constitutionality of a provision of the act or its amendments by immediate convening of three-judge district court, advancement on the docket where possible, and direct appeal to the Supreme Court for expedited review. [Amends Bass, Campbell, Obey, Farr, Hutchinson, Shays, Tierney, White]

Independent Counsel.

DeLay, no. 14. States 69 findings regarding campaign fundraising practices by the President, Vice President, and Democratic National Committee in 1996. States the sense of Congress that the Attorney General should immediately appoint an independent counsel to investigate alleged criminal conduct. [Amends Campbell, Obey, Hutchinson, Shays, Tierney]