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Campaign Finance Bills in the 107th Congress: Comparison of H.R. 380 (Shays-Meehan) with S. 27 (McCain-Feingold)

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Summary

As in the last two Congresses, campaign finance reform will be a major issue in the 107th Congress, with attention again centered on the Senate McCain-Feingold and House Shays-Meehan bills. S. 27 (Bipartisan Campaign Reform Act of 2001), introduced on January 22, 2001, will be considered by the Senate in March 2001; H.R. 380 (Bipartisan Campaign Finance Reform Act of 2001) was introduced January 31. Both bills ban the raising of soft money by national parties and the spending of it by state and local parties on federal election-related activities (as defined). But on the other key provision—issue advocacy—they differ notably. H.R. 380 offers a broad new definition of express advocacy, subjecting activity meeting that standard to all aspects of federal election law regulation. S. 27 classifies some messages as *electioneering communications*, requiring their disclosure and banning their funding by unions or for-profit corporations. This report summarizes and compares these two measures, according to various categories.¹

H.R. 380 (Shays-Meehan) & S. 27 (McCain-Feingold) Bills Compared

H.R. 380 (Shays-Meehan)	S. 27 (McCain-Feingold)
Individual Contribution Limits (Hard Money)	
To state parties: raises (from \$5,000) to \$10,000 per year	
Annual aggregate limit: raises (from \$25,000) to \$30,000 (Sec. 102)	

¹ Section numbers are noted with summaries, referring to all preceding information in that column, until the prior reference; in joint entries, the House reference is first (if not the same).

H.R. 380 (Shays-Meehan)	S. 27 (McCain-Feingold)
Candidate Role (Hard Money)	
Specifies permissible uses for and bans personal use of campaign funds (Sec. 502; 301)	
Bans party coordinated expenditures for House/Senate cand. not limiting personal/family money to \$50,000 (Sec. 401/402)	No provision
Independent Expenditures (Hard Money)	
Defines as expenditure for communication that is express advocacy and that is not a <i>coordinated activity</i> or provided in coordination with a candidate/agent/person coordinating with candidate (Sec. 201)	Defines as expenditure expressly advocating election/defeat of a clearly identified cand.; not a <i>coordinated activity</i> with candidate/agent/anyone in coord. activity with candidate/agent (Sec. 211)
Requires 48-hour notice of expenditures of \$10,000 or more, up to 20 days before election (and 24-hour notice of expenditures over \$1,000 in last 20 days, as now) (Sec. 204; 212)	
Bans party independent <i>AND</i> coordinated expenditures (both) for candidate (Sec. 205; 213)	
Bans conciliation agreements if probable cause found of knowing/willful violation of indep. expenditure disclosure (Sec. 203)	No provision
Coordinated Activity (Hard or Soft Money)	
Amends “contribution” to incl. <i>coordinated activity</i> : anything of value provided in conn. with fed. candidate’s election by anyone who coordinated with that candidate or agent in connection with election in that election cycle, whether or not express advocacy	
<p><i>Coordinated activity</i> includes payments:</p> <ul style="list-style-type: none"> (1) in cooperation, consultation, or concert with, at request or suggestion of, or pursuant to an understanding with, a candidate (or party or agent acting on behalf); (2) for production, dissemination, or republication of material prepared by candidate or agent, except for materials republished from candidate Web site at cost of under \$1,000; (3) by spender who has been employee/fundraiser/ agent of cand. in executive/policy role, in that election cycle or conferred with candidate/agent/coordinating party about campaign strategy/tactics (ads, message, resource allocation, fundraising, campaign operations); or (4) by spender who has used professional services of anyone who in that election cycle has provided such services to candidate, directly or via party, incl. polling, media, fundraising, campaign research, political advice, or direct mail (not mailhouse services) (Sec. 206; 214) 	
Declares any party expenditure for communication referring to clearly identified cand. in connection with a fed. election, regardless of whether express advocacy, to have been made in coordination with party’s cand., unless party certifies no coordination (Sec. 205; 214)	
Deems <i>coordinated activity</i> as contribution to or expenditure by candidate (Sec. 206; 214)	
Party Soft Money	
Prohibits national party committees from soliciting, receiving, directing, transferring, or spending soft money, incl. entities they directly or indirectly establish, finance, maintain, or control and an agent acting on behalf thereof	
Bans soft money spending on <i>federal election activity</i> by state/local party committees, incl. entities they establish/finance/maintain/control and their agents, or controlled by/acting for local candidates/officials (state/local candidate committees may raise/spend funds under state law, if not for fed. election activity referring to clearly identified federal candidate)	

H.R. 380 (Shays-Meehan)	S. 27 (McCain-Feingold)
Defines <i>federal election activity</i> to include: (1) voter registration drives in last 120 days of a federal election; (2) voter ID, get-out-the-vote drives, and generic activity in connection with an election in which a federal candidate is on ballot; (3) <i>public communications</i> that refer to clearly identified fed. candidate and promote, support, attack, oppose a cand. (whether or not expressly advocating vote for/against); and (4) state/local party employee salary if 25%+ of time on activity conn. with fed. election	
<i>Public communications</i> are those by broadcast, cable, satellite, newspaper, magazine, outdoor ads, mass mailing (500+ same/substantially similar pieces sent within 30 days of each other), or phone bank (500+ same/substantially similar calls within 30 days apart)	
Allows state parties to spend money on exclusively non-federal election activities	
Bans party committee soft money to raise funds for use on <i>federal election activity</i>	
Prohibits party committees/agents from raising money for, or giving to, 501(c)s or 527s	
Bans fed. candidates, officeholders, agents, or entities they establish, maintain, finance, or control from raising soft money connected with fed. election (incl. <i>federal election activity</i>) or money from sources beyond fed. limits/prohibitions in non-fed. elections (Sec. 101)	
<ul style="list-style-type: none"> • Codifies FEC regulations requiring national party soft money disclosure • Requires state/local party disclosure of <i>federal election activity</i> (Sec. 103) 	
Ends building fund exemption (Sec. 101)	
Non-Party Soft Money	
Requires unions to give reasonable notice to dues-paying non-members of rights to deny political use of funds and set up/implement objection procedures (Sec. 501; 304)	
Requires disclosure of all union/corporate exempt activity (but only internal communications re: federal candidates), once over \$50,000 (Sec. 306)	No provision
Issue Advocacy	
Defines “express advocacy” as advocating election/defeat of cand. by: (1) explicit phrases, or words/slogans that in context have no reasonable meaning but election advocacy; (2) referring to cand. in paid radio/TV ad within 60 days of election; or (3) expressing unmistakable, unambiguous election advocacy, when taken as a whole, with limited reference to external events	Defines <i>electioneering communication</i> as a broadcast, cable, or satellite ad referring to a clearly identified federal candidate, made within 60 days of a general election or 30 days of a primary, to audience that includes voters in that election
(Requires full disclosure of newly defined express advocacy under federal election law)	Requires disclosure of electioneering communications by spender once above \$10,000 total on such spending in a year

H.R. 380 (Shays-Meehan)	S. 27 (McCain-Feingold)
(Federal election law's disclosure rules would apply)	Reports to include: spender ID, custodian of books, and any controlling entity; principal place of business; ID of disbursements over \$200; ID of donors of \$1,000+ (to separate segregated fund or to organization itself); and election/candidate cited (Sec. 201)
(No union or corporate funding are permitted under federal election law)	Bans funding of electioneering messages with funds from unions or corporations, but exempts funding from 501(c)(4)s and 527s if funding is only from individuals (Sec. 203)
Exempts printed/Internet voter guides, if: (1) taken as whole, express no unambiguous cand. support (but may agree/disagree with cand. views); (2) are not coordinated with candidate/party (but allow questions/answers for guides); and (3) have no words/phrases that in context have no reasonable meaning but election advocacy (Sec. 201)	No provision
Excludes background music (not lyrics) from express advocacy determination (Sec. 202)	No provision
Amends "expenditure" to incl. payment for messages referring to clearly identified candidates, to influence federal elections (whether or not express advocacy) (Sec. 201)	Treats <i>electioneering communication</i> that is coordinated with candidate, agent, or party as contribution to/expenditure by candidate (Sec. 202)
Prohibits publicly-funded pres. candidates from coordinating soft money issue advocacy (defined) with parties (Sec. 1301)	No provision
FEC Enforcement & Disclosure	
Allows random audits of campaigns within 12 months after election (Sec. 302)	No provision
Raises civil penalties; adds automatic late filing penalties (2000 schedule taken into account); provides for equitable remedies in conciliation agreements (Sec. 505)	No provision
Expedites enforcement where clear/convincing evidence that violation has occurred, is occurring, or is about to occur	No provision
Allows FEC to refer suspected violations to Attorney General at any time (Sec. 508)	No provision
Changes standard to begin enforcement to "reason to investigate" (Sec. 509)	No provision
Raises criminal penalty on knowing/willful violation of contribution/expenditure limits to mandatory 1-10 yrs. prison (Sec. 1201)	No provision

H.R. 380 (Shays-Meehan)	S. 27 (McCain-Feingold)
Allows Justice Dept. to file criminal actions at any time, without FEC referral (Sec. 1201)	No provision
Allows candidates to institute civil actions for suspected violations in last 90 days of election; expedited court review (Sec. 512)	No provision
Sets up FEC escrow fund for \$500+ donations a committee plans to return, pending investigation (Sec. 514)	No provision
Bans candidate deposit of \$200+ donations without required itemized info. (Sec. 301)	No provision
Lowers threshold to \$50 for itemizing contributions (only name/address) (Sec. 303)	No provision
Foreign Money	
Bans direct/indirect contributions from foreign nationals (incl. soft money), their receipt or solicitation, or any promise to make such donations, in conn. with any U.S. election or to a national party committee (but retains permanent resident alien exemption) (Sec. 506; 303)	
Clarifies that ban does not apply to U.S. nationals (Sec. 517)	No provision
Ensures equal rights to give money in fed. elections, incl. via sponsored PAC (Sec. 510)	No provision
Denies willful blindness as defense against violation, if recipient should have known money was from foreign national (Sec. 506)	No provision
Mandates penalty for violation: up to 10 yrs. jail, \$1 million fine, or both (Sec. 511)	No provision
Requires House Ethics Comm. recommendation (incl. possible expulsion) re: Member convicted of violation (Sec. 1501)	No provision
Creates FEC clearinghouse for info. on political/lobbying activity by foreign principals/agents (Sec. 515)	No provision
Advertising	
Amends disclaimer requirements to make them more prominent and visible (Sec. 307)	No provision
Study Commission	
Sets up temp. commission to propose fed. campaign finance reforms, to be considered under fast-track rules (Sec. 601-608)	No provision

H.R. 380 (Shays-Meehan)	S. 27 (McCain-Feingold)
Miscellaneous	
Bans solicitation or receipt of contributions, incl. soft money, <i>by</i> federal officials and <i>from</i> anyone, in any federal government building used for official duties (Sec. 504; 302)	
Bans false representation to raise funds (Sec. 305)	No provision
Requires cand. name in authorized comm. name; bans non-cand. comm. use (Sec. 304)	No provision
Bans franked mass mail within 180 (90) days of general (primary) elec. (Sec. 503)	No provision
Bans contributions by minors (Sec. 507)	No provision
Requires up to \$1 million fine, 3 yrs. jail, or both on public fund cand. trying to evade spending limits by private funding (Sec. 513)	No provision
Requires public-funded candidates to certify no soft money raising for election (Sec. 516)	No provision
Bans White House meals/accommodations for political fundraising use (Sec. 701)	No provision
Expresses sense of Congress that “controlling legal authority” bans federal property to raise campaign funds (Sec. 801)	No provision
Bans acceptance/solicitation of anything of value to get access to Air Force or Marine 1 or 2, White House, or V.P. home (Sec. 901)	No provision
Requires natl. party to reimburse Treasury at fair market charter rate for use of Air Force 1 to raise money for party (Sec. 1001)	No provision
Requires fed. candidates (not in fed. office) using federal govt. vehicles for campaigns to reimburse Treasury at full cost (Sec. 1002)	No provision
Requires Internet disclosure of non-govt. Air Force 1 or 2 passengers (Sec. 1401)	No provision
Bans “walking around money” (Sec. 1101)	No provision
If any provision of Act or statute is held unconstitutional, the remainder of Act and statute would be unaffected (i.e., severability clause) (Sec. 1601; 401)	