

CRS Issue Brief for Congress

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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, centered on the enduring issues of high campaign costs and reliance on interest groups for needed campaign funds.

Rising election costs have long fostered a sense in some quarters that spending is out of control, with too much time spent raising funds and elections “bought and sold.” Debate has also focused on the role of interest groups in campaign funding, especially through political action committees (PACs).

The differences in perceptions of the campaign finance system have long been compounded by different reform approaches of the major parties. Democrats have tended to favor more regulation, with spending limits and some form of public funding or benefits a part of their past proposals. Republicans have generally opposed such limits and public funding.

The Democratic majority 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 1996 elections marked a turning point, when the focus of the debate shifted from further restrictions on already-regulated spending and funding sources to activities largely or entirely outside federal election law regulation and disclosure requirements.

Although concerns had long been rising over soft money in federal elections, the widespread and growing use of soft money for so-called issue advocacy since 1996 has raised questions over the integrity of current regulations and the feasibility of any limits on campaign money.

In the 105th Congress, the first Congress after 1996, the House debated reform twice. First, it considered a GOP-leadership bill and three narrower measures under suspension of rules, passing a foreign national contribution ban and an FEC disclosure/enforcement bill and defeating the leadership bill and the Paycheck Protection Act. In response to a discharge petition drive, the House renewed consideration of the issue, in a lengthy process focused on the “freshman bipartisan bill,” 11 substitutes, and a constitutional amendment. Debate ended with passage of the Shays-Meehan bill. The Senate debated the companion McCain-Feingold bill three times, all ending in failed cloture votes.

In the first session of the 106th Congress, the House passed the Shays-Meehan bill, but Senate debate ended after two failed cloture votes. In the second session, Congress did agree on an aspect of campaign reform, in passing P.L. 106-230, to require disclosure by certain tax-exempt political organizations organized under section 527 of the Internal Revenue Code. Such groups exist to influence elections, but many had not been required to disclose to the Federal Election Commission.

Reform supporters in the 107th Congress vowed a renewed effort. On April 2, the Senate passed S. 27 (McCain-Feingold), as amended, following a two week debate.

MOST RECENT DEVELOPMENTS

On May 1, the House Administration Committee held the second in a series of campaign finance reform hearings, in the wake of the Senate's April passage of S. 27, the McCain-Feingold bill. Supporters of that bill and its House companion, H.R. 380 (Shays-Meehan), urged the House to pass a bill by Memorial Day. Chairman Ney predicted the Committee would report a bill to the House by the end of June, while House Majority Leader Arney has said he expected the House to act on the issue before the August recess.

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.

Since 1996, the debate has shifted considerably to a focus on the perceived loopholes in current law (a source of increasing debate since the mid-1980s). The PAC issue has been greatly supplanted by more fundamental issues of election regulation, with observers finding new appreciation for the limited, disclosed nature of PAC funds. 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 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.

Longstanding Issues: Overall Costs, Funding Sources, and Competition

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. No comparable figure exists for 2000 yet.

Aggregate costs of House and Senate campaigns increased eightfold between 1976 and 2000, from \$115.5 million to \$975.3 million, while the cost of living rose by threefold. Campaign costs for average winning candidates, a useful measure of the real cost of seeking office, show an increase in the House from \$87,000 in 1976 to \$816,000 in 2000; a winning Senate race went from \$609,000 in 1976 to \$7.0 million in 2000.

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 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 allocation of tax dollars. Similarly, they contrast costs of elections with those on commercial advertising: the nation's two leading commercial advertisers, Proctor & Gamble and General Motors, spent more to

promote their products in 1996 (\$5 billion) than was spent on all U.S. elections. 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 16% of congressional campaign receipts to 34%. While PACs remain a considerable force, data show a relative decline in their role since 1988: the percentage of PAC money in total receipts dropped to 27% in 2000; PAC numbers dropped to 3,907 in 2000; contributions to candidates rose somewhat in constant dollars (\$243.1 million in 2000); and, after individual giving had been declining as a component (*vis-a-vis* PACs), some leveling off has occurred, with individuals giving 56% of Senate and 53% of House receipts in 2000, for example.

Despite aggregate data on the relative decline of PACs, they still provide a considerable share in various subgroups. For example, in 2000, House candidates got 36% of their funds from PACs; House incumbents received 42%. To critics, PACs raise troubling issues in the campaign financing debate: Are policymakers beholden to special interests for election help, impairing their ability to make policy choices in the national interest? Do PACs overshadow 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?

PAC defenders view 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, electoral competition, by funding challengers in closely contested races. In terms of influencing legislative votes, donations are seen more as rewards for past votes than as inducements to

alter future ones. Defenders also challenge the presumed dichotomy between *special* and *national* interest, viewing the latter as simply the sum total of the former. PACs, they argue, afford clearer knowledge of how interest groups promote their agendas, particularly noteworthy in light of the flood of unregulated and undisclosed money since 1996.

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 2000, there was a much closer ratio in the House, with an average expenditure of \$774,000 for an incumbent vs. \$295,000 for a challenger—a 2.6 to 1 ratio, while the average Senate incumbent’s \$4.3 million exceeded the average challenger’s \$2.5 million by 1.8 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 75% of PAC funds going to incumbents in 2000, 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 aggregate PAC giving. 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.

Today’s Paramount Issue: 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 and FEC rulings, 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. Incomplete 2000 data show that over \$487

million in soft money was raised by the major parties, nearly double the \$262 million raised in 1996.

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, \$22.4 million in 1996, and \$25.6 million in 2000. 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, rising to between \$275 and \$340 million in 1998, and to \$509 million in 2000 (although these data do not distinguish between campaign-related and non-campaign-related communications). Also, groups ranging from labor unions to the Christian Coalition promote their policy views through voter guides, which present candidates' views on issues in a way that some see 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 centered until recently around election costs and funding sources, the most prominent legislation long focused on controlling campaign spending, usually through voluntary systems of public funding or cost-reduction benefits, and on altering the relative importance of various funding sources. Some saw 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, and particularly since the 1996 elections, concerns over perceived loopholes that undermine federal regulation have led to proposals to curb such practices. Conversely, some proposals have urged less regulation, on the ground that it inherently invites circumvention, while still other proposals have focused exclusively on improving or expanding disclosure.

Proposals on Longstanding Issues

Campaign Spending Limits and Government Incentives or Benefits. Until the late 1990s, the campaign reform debate often focused on the desirability of campaign spending limits. To a great extent, this debate was linked with public financing of elections. The coupling of these two controversial issues stemmed from *Buckley's* ban on mandatory spending limits, while allowing voluntary limits, with adherence a prerequisite for subsidies. Hence the notion arose in the 1970s that spending limits must be tied to public benefits, absent a constitutional amendment.

Public funding not only might serve 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 has passed in several Congresses. 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 the face of some cynicism toward government spending. 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 is fair 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 for public financing. In the 105th Congress, the principal reform bills debated on the floor contained neither campaign spending limits nor public funding, 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.

Changing the Balance Among Funding Sources. Until recently, most proposed bills sought, at least in part, to curb PACs' perceived influence, either directly, through a ban 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 are “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 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 and 106th Congresses contained no further 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. These increases have 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.

Support also exists for increasing or removing party contribution and coordinated expenditure limits, based on the notions that the party role can be maximized without leading to influence peddling and on strengthening party ties to facilitate 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 Republican Party committees, whose federal accounts raised over \$447 million in the 2000 election cycle, and the Democratic committees, which raised \$270 million.

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 high 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 have opposed spending limits, although they are philosophically opposed to public funding. These individuals tend to favor 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.

Proposals to Close 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. Hence, 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).

Independent Expenditures. Short of a constitutional amendment to allow mandatory limits on campaign spending (as the Senate debated in 1988, 1995, 1997, and 2000), most proposals aim to promote accountability. They have sought to prevent indirect consultation with candidates and to ensure that the public knows 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.

Soft Money. This practice has provided the greatest opportunity to date for spending money beyond the extent allowed under federal law. FEC rules that took effect in 1991 require national parties to disclose non-federal accounts and allocate soft versus hard (*i.e.*, federally permissible) money. Hence, we are more aware of soft money today and better able, at least theoretically, to keep it from financing federal races than we were previously.

Serious differences exist regarding soft money. 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 national party committees and federal candidates from raising or distributing soft money (the first two being prominent features of the recent McCain-Feingold and Shays-Meehan bills); prohibiting the use of any soft money in mixed (federal-state) activities; codifying the FEC’s requirements for allocation of soft versus hard money among federal, state, and local candidates; requiring disclosure of or limitation on spending by tax-exempt groups; and curbing or requiring disclosure of 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 soft money through promulgating new regulations. These differences reflect the lack of consensus on both the nature of and the solutions to the soft money problem, as well as the respective strategic concerns of the two major parties.

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 bills (such as the Shays-Meehan bill that passed the 105th and 106th Congresses) 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. The recent McCain-Feingold bills, incorporating language initially proposed by Senators Snowe and Jeffords, narrowed the scope of the proposed definition of what would be considered federal election-related and focused primarily on disclosure on such activity. 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 Congress

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*.]

In the 105th Congress, reform supporters succeeded in passing the Shays-Meehan bill in the House (H.R. 2183, as amended). Senate sponsors of its companion McCain-Feingold measure (S. 25, as revised) failed on three occasions to break a filibuster in opposition, however, and no vote occurred on the bill. For further discussion of 105th Congress activity, see *Campaign Finance Reform Electronic Briefing Book. 105th Congress—Summary*. [<http://www.congress.gov/brbk/html/ebcam4.html>].

In the 106th Congress, the House again passed the Shays-Meehan bill (H.R. 417). Supporters of the companion McCain-Feingold bill initially introduced S. 26, much the same bill as its final version in the 105th Congress. They later introduced a much narrower version (S. 1593), focusing largely on party soft money but dropping the issue advocacy and other provisions. This version was debated in October 1999 but failed to break a filibuster in opposition. Reform supporters succeeded, however, in enacting legislation to require disclosure by tax-exempt political organizations under Section 527 of the Internal Revenue

Code. For further discussion of 106th Congress activity, see *Campaign Finance Reform Electronic Briefing Book. 106th Congress-Summary*. [<http://www.congress.gov/brbk/html/ebcam20.html>].

107th Congress

As of May 2, 37 campaign reform bills have been introduced in the 107th Congress (26 in the House and 11 in the Senate). Three of these are new versions of 106th Congress bills and are receiving particular attention: S. 27 (McCain-Feingold bill); H.R. 380 (Shays-Meehan), the companion to McCain-Feingold; and S. 22 (Hagel-Landrieu).

Supporters of McCain-Feingold sought an early debate and vote on the issue, and, on January 26, reached an agreement with Majority Leader Lott for a two week Senate debate in mid- or late-March. On February 6, two unanimous consent agreements were approved by the Senate: the first committed the Senate to begin debating McCain-Feingold on March 19 or 26, with floor amendments allowed; the second agreement committed the Senate to consider the Hollings-Specter constitutional amendment to allow mandatory campaign spending limits, immediately following disposition of McCain-Feingold. Senate debate began March 19, and after a two-week debate, S. 27 was passed by the Senate on April 2 by a vote of 59-41. As passed, S. 27 included 22 amendments offered on the floor; 16 other amendments were rejected during the two-week debate. On March 26, the Senate debated S.J.Res. 4 and defeated it by a 40-56 vote.

The House Administration Committee began a series of hearings on campaign finance reform on March 17 in Phoenix AZ. On May 1, during the second hearing of the series, supporters of the McCain-Feingold bill and its House companion, H.R. 380 (Shays-Meehan), urged the House to pass a bill by Memorial Day. Chairman Ney predicted the Committee would report a bill to the House by the end of June. Meanwhile, House Majority Leader Armerly has said he expected the House to act on the issue before the August recess.

LEGISLATION

H.R. 380 (Shays-Meehan)

Bipartisan Campaign Finance Reform Act of 2001. Bans soft money raising by national parties and federal candidates. Curbs state party soft money spending on "federal election activity." Defines express advocacy as advocating election or defeat of a candidate by: (1) using either explicit phrases, or words or slogans that in context can have no other reasonable meaning than election advocacy; (2) referring to a candidate in a paid radio or TV broadcast ad that appears in affected state within 60 days of election; or (3) expressing unmistakable, unambiguous election advocacy, when taken as a whole and with limited reference to external events. 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 annual federal contributions. Introduced Jan. 31, 2001; jointly referred to Committees on House Administration, Education and the Workforce, Government Reform, Judiciary, Ways and Means, and Rules.

S. 27 (McCain-Feingold)

Bipartisan Campaign Reform Act of 2001. Bans soft money raising by national parties and federal candidates. Curbs state party soft money spending on “federal election activity.” Defines *electioneering communication* as a broadcast ad referring to a clearly identified federal candidate within 60 days of a general election or 30 days of a primary, to an audience that includes voters in that election. Requires disclosure of electioneering communications above \$10,000, with identification of donors of \$500 or more. Bans funding of electioneering messages with union or corporate funds (including by 501(c)(4) groups for *targeted communications*). Raises limits on individual contributions to candidates and parties and on aggregate annual federal contributions. Introduced Jan. 22, 2001; referred to Committee on Rules and Administration. Discharged from Committee and Senate debate began on March 19, 2001. Passed Senate, as amended, Apr. 2, 2001 (59-41).

Amendments Accepted

- ! *Domenici (S.Amdt. 115)* – to raise limits on contributions to Senate candidate whose opponent exceeds a designated level of personal funding in his or her campaign. Approved (70-30), March 20.
- ! *Torricelli (S.Amdt. 122)* – to make broadcast time purchased at lowest unit rate non-preemptible and to require such rates to be available to political parties buying time on behalf of candidates. Approved (70-30), March 21.
- ! *Cochran (S.Amdt. 137)*, as modified – to: (1) require all reports filed with FEC to be posted on Internet and available for inspection within 48 hours (24 if filed electronically); and (2) require FEC to maintain a central web site of all election-related reports. Approved by voice vote, March 22.
- ! *Wyden-Collins (S.Amdt. 138)* – to require candidates to appear personally in lowest unit rate broadcast ads that refer to opponents. Approved by voice vote, March 22.
- ! *Nickles-Gregg (S.Amdt. 139)* – to strike *Beck* provision in McCain-Feingold bill. Approved (99-0), March 22.
- ! *Landrieu (S.Amdt. 124)*, as modified – to require FEC to develop and provide standardized software for filing reports electronically. Approved by voice vote, March 22.
- ! *Wellstone (S.Amdt. 145)* – to remove exemption for 501(c)(4) or 527 groups’ “targeted communications” (*i.e.*, electioneering communications broadcast by TV, radio, cable, or satellite, primarily to voters of state of election). Approved (51-46), March 26.
- ! *Hagel (S.Amdt. 146 – Division 2: Subtitle B–Increased Disclosure)* – to codify FEC regulations requiring national party soft money disclosure; to require candidates to file monthly reports in election years and quarterly reports in non-election years, and require national party committees to file monthly reports in all years; to require broadcasters to maintain and make

available for public inspection, records of broadcast time requests by candidates or other entities whose message relates to political matters of national importance, including about a legally qualified candidate, a federal election, or a legislative issue of public importance. Motion to table defeated (100-0), March 27. Approved by voice vote, March 27.

- ! *Thompson, as modified (S.Amdt. 149)* – to raise limit on individual contributions to \$2,000 per candidate, per election, and to national party committees to \$25,000 per year; to raise aggregate limit on individual contributions to \$37,500 per year, to raise special limit on combined contributions to Senate candidates by national/senatorial party committees to \$35,000 in year of election; all indexed. Approved (84-16), March 28.
- ! *Schumer (S.Amdt. 153)* – to require national parties to comply, voluntarily, with coordinated expenditure limits in the event Supreme Court finds them unconstitutional, to be eligible for lowest unit broadcast rate; to allow broadcasters to not offer lowest unit rate to parties for independent expenditures. Approved (52-48), March 28.
- ! *Bingaman (S.Amdt. 157)* – to require FEC disclosure of donations to presidential inaugural committees and to prohibit such donations from foreign nationals. Offered and Approved by voice vote, March 29.
- ! *Specter (S.Amdt. 140, as modified)* – to provide alternative to definition of electioneering communication, if Snowe/Jeffords provision is ruled unconstitutional, based on Furgatch case (*i.e.*, suggestive of no plausible meaning other than an exhortation to vote for or against a candidate, regardless of whether it constitutes express advocacy); to provide that nothing in the provision alters the FEC regulation, 11 CFR 100.22(b), defining express advocacy. Approved (82-17), March 29.
- ! *Nelson (S.Amdt. 159)* – to ban fraudulent misrepresentation in the solicitation of campaign funds. Approved by voice vote, March 29.
- ! *Kerry (S.Amdt. 160)* – to direct GAO to study statistics for and the effect of public funding systems in Arizona and Maine and report to Congress within a year of enactment. Approved by voice vote, March 29.
- ! *Levin (S.Amdt 161)* – to allow state/local parties to use funds raised under state law for allocable share of voter registration drives in the last 120 days of a federal election, voter identification efforts, get-out-the-vote drives, and generic activities, provided that they do not refer to a federal candidate and that no person donates more than \$10,000 a year to a state or local party for such activities. Approved by voice vote, March 29.
- ! *Durbin (S.Amdt. 162)* – to require sponsorship identification on all election-related advertising, and to enhance the visibility of such identification in the communication. Approved by voice vote, March 29.

- ! *Thompson (S.Amdt 163)* – to increase penalties for knowing and willful violations; to change statute of limitations for election law violations from three to five years; to direct U.S. Sentencing Commission to promulgate guidelines and make recommendations regarding penalties for election law violations. Approved by voice vote, March 29.
- ! *Bond (S.Amdt. 166)* – to increase civil and criminal penalties for knowing and willful violations of ban on contributions made in the name of another. Approved by voice vote, March 30.
- ! *Hatch (S.Amdt. 167)* – to provide expedited review to the U.S. District Court for D.C. for declaratory judgment and injunctive relief; to provide direct appeal to the U.S. Supreme Court; and to provide expedited consideration by both courts. Approved by voice vote, March 30.
- ! *McCain (S.Amdt. 165)* – to replace section on coordinated activities; to define “coordinated expenditure or other disbursement” as a payment made in concert or cooperation with, or at request or suggestion of, or pursuant to any particular or general understanding with a candidate or party; to include in the definition of “contribution,” “any coordinated expenditures or other disbursements” (including non-express advocacy); to direct FEC to promulgate new regulations on this subject. Approved (57-34), March 30.
- ! *Durbin (S.Amdt 169, as modified)* – to take into account gross receipts of a candidate (as of June 30 and Dec. 30 of year before election) whose opponent exceeds recommended amount of personal fund spending on his or her campaign, before contribution limit increases are triggered. Approved by voice vote, March 30.
- ! *McCain (S.Amdt. 171)* – to make minor, technical, and conforming changes to bill, as passed. Offered and Approved by voice vote, Apr. 2, 2001.

S.J.Res. 4 (Hollings-Specter)

Proposed constitutional amendment to allow Congress and states to set reasonable limits on contributions and expenditures in support of or opposition to candidates for nomination and election to federal and state, or local office. Introduced Feb. 7, 2001; referred to Committee on the Judiciary. Debated by Senate and defeated, March 26, 2001 (40-56).

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 RS20813. *Campaign Finance Bills in the 107th Congress: Comparison of S. 22 (Hagel-Landrieu) with S. 27 (McCain-Feingold)*, by Joseph E. Cantor.

CRS Report RS20820. *Campaign Finance Bills in the 107th Congress: Comparison of H.R. 380 (Shays-Meehan) with S. 27 (McCain-Feingold)*, by Joseph E. Cantor.

CRS Report RL30939. *Campaign Finance Bills in the 107th Congress: House*, 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 RS20073. *Campaign Finance Bills, 106th Congress: Comparison of Shays-Meehan & McCain-Feingold Proposals*, by Joseph E. Cantor.

CRS Report RL30937. *Campaign Finance Legislation in the 107th Congress: Comparison of S. 27 (McCain-Feingold) as Passed by Senate, with Current Law*, by Joseph E. Cantor and L. Paige Whitaker.

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

CRS Report RS20854. *Campaign Finance Reform and Incentives to Voluntarily Limit Candidate Spending from Personal Funds: Constitutional Issues Raised by Public Subsidies and Variable Contribution Limits*, by L. Paige Whitaker.

CRS Report RS20849. *Campaign Finance Reform: Constitutional Issues Raised by Disclosure Requirements*, by L. Paige Whitaker.

CRS Report RL30669. *Campaign Finance Regulation Under the First Amendment: Buckley v. Valeo and its Supreme Court Progeny*, by L. Paige Whitaker and Christopher A. Jennings.

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

CRS Report RL30884. *Campaign Financing in the 2000 Federal Elections: Overview and Estimates of the Flow of Money*, by Joseph E. Cantor.

CRS Report RL30877. *Characteristics of and Reporting Requirements For Selected Tax-Exempt Organizations*, by Marie B. Morris.

CRS Report RL30582. *527 Organizations: How the Differences in Tax and Election Laws Permit Certain Organizations to Engage in Issue Advocacy without Public Disclosure and Proposals for Change*, 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 97-618. *The Use of Labor Union Dues for Political Purposes: A Legal Analysis*, by L. Paige Whitaker.

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