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

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

Differences in perceptions of the campaign finance system were compounded by the major parties' different approaches. Democrats tended to favor more regulation, with spending limits and public funding or benefits a part of past proposals. Republicans generally opposed such limits and public funding.

The 1996 elections marked a turning point in the debate's focus, as it shifted from whether to further restrict already-regulated spending and funding sources to addressing activities largely or entirely outside federal election law regulation and disclosure requirements. While concerns had long been rising over soft money in federal elections, its widespread and growing use for so-called issue advocacy since 1996 raised questions over the integrity of existing regulations and the feasibility of any limits at all.

Following 1996, reform supporters offered legislation whose primary goals were to prohibit use of soft money in ways that could affect federal elections and to bring election-related issue advocacy communications under federal regulation. In both the 105th and 106th Congresses, the House passed the Shays-Meehan bill, but the Senate failed to invoke cloture to allow a vote on the companion McCain-Feingold bill.

The 106th Congress did, however, 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 financial activity (to the FEC or IRS).

In the 107th Congress, the Senate passed McCain-Feingold, as amended, and the House passed the companion Shays-Meehan bill), as amended. The Senate then passed the House bill, which was signed into law by President Bush as the Bipartisan Campaign Reform Act of 2002 — BCRA (P.L. 107-155), constituting the first major change to the nation's campaign finance laws since 1979.

The 108th Congress found the political community adjusting to the law that took effect in November 2002 but whose constitutionality was not upheld until the Supreme Court's *McConnell v. FEC* ruling in December 2003. Supporters vowed to continue their efforts through such initiatives as replacing the FEC with a new enforcement agency, providing candidates and parties with broadcast discounts, and reforming the presidential public funding system.

In the wake of the 2004 elections, when some $500 million was raised and spent by 527 organizations outside of federal election law regulation, many have called for the 109th Congress to examine the role of 527 groups in federal elections.

MOST RECENT DEVELOPMENTS

In the wake of the 2004 elections, when some $500 million was raised and spent by 527 organizations outside of federal election law regulation, many have called for the 109th Congress to examine the role of 527 groups in federal elections. Supporters of the Bipartisan Campaign Reform Act of 2002 introduced legislation toward the end of the 108th Congress to apply federal election law regulation to such groups involved in federal election-related activities.

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 has continued 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 free speech rights. The Court saw no danger of corruption arising from large expenditures, as it did from large contributions, and reasoned that corruption alone could justify the First Amendment restrictions involved. Only voluntary limits on expenditures 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.

In 2002, Congress enacted the Bipartisan Campaign Reform Act (BCRA) of 2002 (popularly known as McCain-Feingold or Shays-Meehan, for its Senate and House sponsors). This statute made the most significant changes in the FECA since the 1970s, featuring higher contribution limits, a ban on the raising of soft money by political parties and federal candidates, and a restriction on broadcast ads by outside groups in the closing days of an

election. BCRA's constitutionality was challenged in court but, in a decision that surprised many observers, was essentially upheld by the Supreme Court in its December 10, 2003 ruling in *McConnell v. FEC*.

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.

After 1996, the debate shifted considerably to a focus on the perceived loopholes in existing law (a source of increasing debate since the mid-1980s). The PAC issue was largely 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 was almost overshadowed by concerns over the system's perceived loopholes. Although these practices were (largely) presumably legal, they may have violated the law's spirit, raising a basic question of whether money in elections can, let alone should, be regulated.

Enduring 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 some $3.9 billion in 2000. Early indications are that spending in 2004 greatly exceeded that level.

Aggregate costs of House and Senate campaigns increased eightfold between 1976 and 2000, from $115.5 million to $1.007 billion, while the cost of living rose threefold; the 2002 elections, however, recorded a drop in overall spending, to $936 million 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 $891,000 in 2002; a winning Senate race went from $609,000 in 1976 to $4.9 million in 2002 (not adjusted for inflation).

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 to 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 30% in 2002; PAC numbers dropped to 4,040 in 2004; contributions to candidates rose to $274.3 million in 2002; and, after individual giving had been declining as a component (vis-a-vis PACs), some leveling off has occurred, with individuals giving 65% of Senate and 49% of House receipts in 2002, for example.

Despite aggregate data on the relative decline of PACs, they still provide a considerable share of election financing for various subgroups. For example, in 2002, House candidates got 36% of their funds from PACs; House incumbents received 44%. 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 respective spending ratios of more than 3.5:1 and 2:1 in recent House and Senate elections. In 2002, there was a closer ratio in the House, with an average expenditure of $848,000 for an incumbent vs. $261,000 for a challenger — a 3.2 to 1 ratio, while the average Senate incumbent's $4.5 million exceeded the average challenger's $2.9 million by 1.6 to 1. Incumbents' generally easier access to money is often 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 73% of PAC funds going to incumbents in 2002, 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 the disparities in hotly contested or open races.

Today's Paramount Issues: Perceived Loopholes in Current Law

Interest has intensified, especially since 1996, over campaign finance practices that have been seen by some as undermining the law's contribution and expenditure limits and its disclosure requirements. Although these are practices that may be legal, they have been characterized 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 have been bundling, soft money, independent expenditures, issue advocacy, and, most recently, election-related activities by groups operating under section 527 of the Internal Revenue Code.

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 term generally is used to refer 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, prior to enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA), stemmed 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 could be spent by state and local parties in large or unlimited amounts on grassroots organizing and voter drives that could benefit all party candidates; and (3) publicly-funded presidential candidates may not spend privately raised money in the general election. In recent presidential elections through 2000, national parties waged extensive efforts to raise money for their state affiliates, partly to boost the national tickets beyond what could be spent directly. The data for 2000 showed that some $495 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 an opponent and respond to the charges made by 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 has generally used a fairly narrow definition for what constitutes such spending. Prevailing judicial interpretation of Supreme Court precedent, both before and arguably since BCRA, has created a conundrum by permitting regulation of only those communications containing express advocacy, that is, communications containing explicit terms urging the election or defeat of clearly identified federal candidates. By avoiding such terms, groups arguably can 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 widely 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.

527 Political Organizations. In the years leading up to enactment of BCRA and in the wake of its major provisions being upheld by the Supreme Court in December 2003, attention has been increasingly focused on activity by interest groups operating outside the regulatory framework of federal election law. Of particular interest has been groups

operating under section 527 of the Internal Revenue Code, which provides tax-exempt status to organizations it defines as political. In 2000, some groups engaged in election-related issue advocacy aroused controversy when it was revealed that they were operating under section 527 of the IRC while not being regulated under the FECA. At that time, BCRA was still under consideration, and Congress was enmeshed in the thorny issue of regulating activity that was not express advocacy. Rather than short-circuit that debate and begin yet another on the also complicated issue of differing definitions of *political organization* under the IRC and *political committee* under the FECA, Congress addressed the issue by simply requiring disclosure to the IRS by groups with tax-exempt 527 status.

In 2002, Title II of BCRA addressed the express advocacy issue, but only with regard to broadcast advertisements in the period just prior to federal elections. BCRA was silent regarding interest groups' involvement in such other election-related activities as public communications through non-broadcast methods, broadcasts prior to the last 30 days before a primary or 60 days before a general election, voter identification, and get-out-the-vote and registration drives. These activities loom particularly large in the wake of BCRA's prohibition on national political party use of non-federally-permissible funds (i.e., soft money) to pay for voter mobilization activities. With some $500 million reported as being raised and spent in the 2004 elections by groups with section 527 status, public attention has now shifted to these new patterns of electioneering, raising questions as to whether requiring disclosure to the IRS is sufficient.

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 Enduring 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 reduce, if not eliminate, the role of public funding in 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 the late 1990s, most proposed bills sought, at least in part, to curb PACs' perceived influence, either directly, through a ban or reduced contribution limits, or indirectly, through enhancing the role of individuals and parties. Prior to enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA), individuals could give $1,000 per candidate, per election, while most PACs (if they are "multicandidate committees") could 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 — 107th 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. As enacted in 2002, BCRA provided both for higher individual contribution limits in general and provisional increases in both individual and party limits to assist candidates opposed by free-spending, wealthy opponents. While higher limits might counterbalance PACs and other groups and offset effects of inflation, opponents observed that few Americans could 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.

Promoting Electoral Competition. Proposals to reduce campaign costs without establishing expenditure 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.

Congressional Efforts to Close Perceived Loopholes in Federal Election Law

Proposals have increasingly addressed perceived loopholes in the FECA, and indeed this area was the primary focus of recent reform efforts, culminating in enactment of BCRA in the 107th Congress. This debate underscored a basic philosophical difference between those who favored and opposed government regulation of campaign finances. Opponents said that regulation invited attempts at subterfuge, that interested money would always find its way into elections, and that the most one could do was see that it is disclosed. Proponents argued that while it was hard to restrict money, it was a worthwhile goal, hence one ought to periodically fine-tune the law to correct "unforeseen consequences." Proposed "remedies" stemmed from the latter view, i.e., curtail the practices as they arise.

Bundling. Most proposals in this area, which has been 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, 2000, and 2001), most proposals have aimed 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 issue was one of the key issues addressed by BCRA. Title I provided that national parties and federal candidates or officials, and entities they directly or indirectly establish, finance, maintain, or control, may not solicit, receive, direct, transfer, or spend funds not raised under the limits, prohibitions, and reporting requirements of federal law (i.e., soft money). State and local political parties, and entities they directly or indirectly establish, finance, maintain, or control, may not spend soft money on "federal election activities." The act's so-called Levin amendment, however, allowed for some use of soft money under certain conditions for specified grassroots activities by state and local parties.

Issue Advocacy. The other key issue addressed by BCRA pertained to issue advocacy. The challenge to Congress in addressing this practice, a form of soft money, involved broadening the definition of what constituted federal election-related spending. A 1995 FEC regulation had 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 was at variance with an earlier 9th Circuit ruling. The FEC was reluctant to enforce the regulation pending further judicial or legislative action. Earlier versions of what became BCRA (the Shays-Meehan bill, as passed in the 105th and 106th Congresses) sought to codify a definition of "express advocacy" that allowed a communication to be considered as a whole, in context of such external events as timing, to determine if it was election-related. In the final analysis, however, BCRA adopted a narrower approach, in large measure to enhance its chances of withstanding judicial scrutiny,

by incorporating into Title II language initially proposed by Senators Snowe and Jeffords. This title regulates election-related issue advocacy by creating a new term in federal election law, *electioneering communications* — political advertisements that refer to clearly identified federal candidates, broadcast within 30 days of a primary or 60 days of a general election. Generally, they may not be funded from union or corporate treasuries, and disbursements of over $10,000 and donors of $1,000 or more must be disclosed.

527 Activity. Efforts to address the activity of 527 political organizations that is outside the regulatory framework of federal election law are underway on several fronts: in the courts, the FEC, and in Congress. Thus far, one legislative proposal has emerged measure to apply federal election law regulation to such groups involved in federal election-related activities, offered near the end of the 108th Congress by BCRA sponsors as the 527 Reform Act of 2004 (H.R. 5127 and S. 2828). That measure would add to the definition of *political committee* that its major purpose be the nomination or election of one or more candidates and declare that political organizations under section 527 of Internal Revenue Code have the major purpose of influencing elections unless they have annual receipts of less than $25,000 or are exclusively devoted to non-federal elections (or are state or local party committees). Those exemptions would not apply if the 527 spends money for public communications that promote, support, attack, or oppose a clearly identified federal candidate in that election cycle. Sponsors have indicated their intentions to offer the measure early in the 109th Congress as well.

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.

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.

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.

In the 107th Congress, the long stalemate over campaign finance reform was broken when Congress enacted the Bipartisan Campaign Reform Act of 2002 (BCRA). The Senate passed S. 27 (McCain-Feingold) on April 2, 2001 by a vote of 59-41, following a two-week debate which added 22 amendments on the floor and rejected 16 others. The Senate also defeated S.J.Res. 4 (Hollings-Specter), a constitutional amendment to allow mandatory campaign spending limits, by a 40-56 vote on March 26, 2001. While Senate passage marked a major breakthrough, the measure appeared to be stalled in the House in 2001, when the House rejected (by 203-228) the proposed rule for consideration on July 12. Supporters of Shays-Meehan filed a discharge petition to force reconsideration and, on January 24, 2002, secured the last four needed signatures. On February 13, 2002, the House passed H.R. 2356 (Shays-Meehan) by a 240-189 vote, after including four perfecting amendments and rejecting two substitute and eight perfecting amendments. On March 20, the Senate passed H.R. 2356 by a 60-40 vote, and President Bush signed the measure into law on March 27, as P.L. 107-155. In a related action, Congress enacted P.L. 107-276, to relieve 527 tax-exempt political organizations that operate at the state and local levels from reporting requirements enacted by Congress in 2000 and to improve IRS dissemination of federally-filed reports under that law.

108th Congress

As the 108th Congress began, the political community was adjusting to the new law that took effect on November 6, 2002, while carefully watching the courts for their rulings on the new Act's constitutionality. Supporters of that act are continuing their efforts in this Congress through such initiatives as replacing the Federal Election Commission with a new enforcement agency, providing political candidates and parties with broadcast time for free or at reduced rates, and reforming the public funding system in presidential elections. In all, 30 bills were introduced in the 108th Congress (21 in the House and nine in the Senate) to further change the nation's campaign finance laws.

On May 2, 2003, the U.S. District Court for the District of Columbia issued its opinion in McConnell v. FEC (Civ. No. 02-582). The three-judge panel struck down the blanket prohibition on the raising of soft money by national parties and the use of soft money by state and local parties, but retained the ban only for public communications that mention clearly identified federal candidates. The panel also retained the prohibition on the raising of soft money by federal candidates and officials. Regarding electioneering communications, the panel struck down the regulation of all broadcast ads that refer to a clearly identified federal candidate in the last 30 days of a primary or 60 days of a general election, but upheld a portion of the secondary definition of electioneering communication, thus allowing regulation of advertisements that support or oppose federal candidates, regardless of when they are disseminated.

On May 19, 2003, the District Court issued a stay to its May 2 ruling, thus keeping the Bipartisan Campaign Reform Act of 2002 in effect as enacted, pending review by the Supreme Court, which held oral arguments on September 8, 2003. On December 10, 2003, the Supreme Court, in *McConnell v. FEC*, upheld the constitutionality of key provisions of BCRA, dealing with soft money and electioneering communications.

The House Administration Committee has begun an examination of the role of tax-exempt 527 political organizations since enactment of the Bipartisan Campaign Reform Act of 2002. On November 20, 2003, the Committee authorized its Chairman to issue subpoenas to compel testimony from several groups that had declined to testify in its scheduled hearing that day. On May 20, 2004, the Committee held an oversight hearing on the FEC and the 527 rulemaking process. That hearing was prompted by the agency's May 13 postponement of a decision on a proposed regulation to redefine "political committee" in a way that would include activity by many 527 groups currently in operation. The 527 issue was also addressed on March 10 at a hearing by the Senate Rules and Administration Committee, which, on July 14, also held an oversight hearing on the FEC. On September 22, 2004, supporters of BCRA introduced legislation (H.R. 5127 and S. 2828) to apply federal election law regulation to such groups involved in federal election-related activities.

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 RL31402. *Bipartisan Campaign Reform Act of 2002: Summary and Comparison with Previous Law*, by Joseph E. Cantor and L. Paige Whitaker.

CRS Report RS21511. *Campaign Finance: Brief Overview of McConnell v. FEC*, by L. Paige Whitaker.

CRS Report RS21693. *Campaign Finance Law: The Supreme Court Upholds Key Provisions of BCRA in McConnell v. FEC*, by L. Paige Whitaker.

CRS Report RL32650. *Campaign Finance Legislation in the 108th Congress*, 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 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 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 RS21725. *IRS Guidelines for Political Advocacy by Exempt 501(c) Organizations: Revenue Ruling 2004-6*, by Erika Lunder.

CRS Report RS21716. *Political Organizations Under Section 527 of the Internal Revenue Code*, by Erika Lunder.

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.