



# Campaign Finance: Potential Legislative and Policy Issues for the 111<sup>th</sup> Congress

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## Summary

Drawing from recent legislative and campaign activities, this report discusses selected campaign finance policy issues that may receive attention during the 111<sup>th</sup> Congress. Questions about the health of the presidential public financing system were especially prominent during the 2008 election cycle. The cycle also witnessed new or expanded techniques for raising and spending money, such as bundling, joint fundraising committees, and hybrid advertising. Remaining issues from the 110<sup>th</sup> Congress, such as electronic filing of Senate campaign finance reports, may also receive renewed scrutiny. Other issues, such as 527 organizations and the Federal Election Commission, may also be addressed.

Some of the issues discussed in this report have only recently received substantial attention. Others have been long-running sources of controversy. All appear likely to remain prominent policy issues. Whether Congress decides to pursue these or other campaign finance issues, common questions about the role of money in politics, transparency, and the need for additional regulation are likely to shape the debate.

This report will be updated throughout the 111<sup>th</sup> Congress as events warrant.

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## Introduction

This report provides an overview of selected campaign finance policy issues that have received recent legislative attention, or have otherwise been prominent, and which could receive attention during the 111<sup>th</sup> Congress. Specifically, the report discusses seven issues: (1) bundling; (2) electronic filing of Senate campaign finance reports; (3) the Federal Election Commission (FEC); (4) hybrid political advertising; (5) joint fundraising committees; (6) public financing of presidential campaigns; and (7) 527 organizations. The report includes a brief overview of each issue followed by a discussion of recent legislation (if any) and policy considerations. Recent legislative or regulatory activity, developments during the 2008 election cycle, or a combination of all those factors suggest that each issue will remain a topic of debate during the 111<sup>th</sup> Congress. This report is not intended to provide an exhaustive discussion of each topic. In some cases (noted throughout the report) other CRS products provide additional detail.

The topics addressed in this report are typically considered separately, suggesting targeted legislation if Congress chooses to revisit the issues. However, the 111<sup>th</sup> Congress could also consider broad legislation addressing one or more campaign finance issues. However Congress decides to proceed, the debate will likely be shaped by questions of: (1) amounts and sources of money; (2) transparency; and (3) scope of regulation. As the final section of this report discusses, these factors unify the seemingly disparate policy issues discussed in the report and are common themes in the debate over campaign finance policy.

## Campaign Finance Activity in the 110<sup>th</sup> Congress: A Brief Review

During the 110<sup>th</sup> Congress, approximately 50 legislative measures affecting federal campaign finance policy were introduced. Two became law.<sup>1</sup> Most significantly, the Honest Leadership and Open Government Act (HLOGA; P.L. 110-81) restricted campaign travel aboard private aircraft and required political committees to report additional information to the FEC about certain contributions bundled by lobbyists. In addition, late in the second session of the 110<sup>th</sup> Congress, the FEC's Administrative Fine Program, which had been scheduled to expire, was extended until 2013 (P.L. 110-433).

Other issues received hearings or floor votes but did *not* become law. These included:

- House *passage* of legislation affecting campaign payments to candidate families (H.R. 2630, Schiff); disbursement of campaign funds by non-treasurers (H.R. 3032, Jones (NC)); and funding for certain criminal enforcement of the Bipartisan Campaign Reform Act (H.R. 3093, the relevant provision was an amendment sponsored by Representative Pence);
- A Committee on House Administration, Subcommittee on Elections, *hearing* on automated political telephone calls;<sup>2</sup>

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<sup>1</sup> See CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110<sup>th</sup> Congress*, by R. Sam Garrett.

<sup>2</sup> This was an oversight hearing, although various bills on the topic were introduced. See CRS Report RL34361, *Automated Political Telephone Calls ("Robo Calls") in Federal Campaigns: Overview and Policy Options*, by R. Sam Garrett and Kathleen Ann Ruane.

- Senate Rules and Administration Committee *hearings* on public financing of congressional campaigns (S. 1285, Durbin); coordinated party expenditures (S. 1091, Corker); electronic filing of Senate campaign finance reports (S. 223, Feingold); FEC nominations; and automated political telephone calls (S. 2624, Feinstein).

## Emerging Campaign Finance Policy Issues

Some of the issues considered during the 110<sup>th</sup> Congress may be addressed again during the 111<sup>th</sup> Congress. Others became prominent during recent election cycles, especially 2008. The following discussion provides additional detail about selected issues that may continue to be on the legislative or oversight agenda.

### Bundling

Bundling is a fundraising practice in which an intermediary either receives contributions and passes them on to a campaign or is credited with soliciting contributions that go directly to a campaign. Lobbyists often serve as bundlers. Bundling has been prominent in recent years both because of the additional disclosure required in HLOGA and because of the role bundling played in the 2008 presidential elections.<sup>3</sup>

Bundling opponents contend the practice allows individuals to circumvent the Federal Election Campaign Act (FECA)<sup>4</sup> by delivering larger contributions than they could on their own, even though those contributions are funded by multiple sources.<sup>5</sup> Critics also point to anecdotal evidence suggesting that some contributions routed through bundlers might have been coerced or come from impermissible sources.<sup>6</sup> Nonetheless, bundling is not prohibited by FECA or FEC regulations; it is also a common fundraising practice.

At least two bundling issues could face the 111<sup>th</sup> Congress. First, Congress may wish to monitor ongoing implementation of the HLOGA bundling provisions. Second, existing requirements are either easily circumvented or do not cover some common bundling activities, which raises the question of whether additional regulation is needed.<sup>7</sup>

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<sup>3</sup> See, for example, Brody Mullins and Ianthe Jeanne Dugan, “Mega-Bundlers Up Financing Ante,” *Wall Street Journal*, November 5, 2008, p. A4.

<sup>4</sup> FECA is 2 U.S.C. § 431 *et seq.*

<sup>5</sup> See, for example, “In Costly Election’s Wake, Give us Real Campaign Reform,” *Santa Fe New Mexican*, November 9, 2008, p. B2.

<sup>6</sup> See, for example, “Baleful Bundlers,” *New York Times*, August 11, 2008, p. A16.

<sup>7</sup> The FEC adopted bundling rules on December 18, 2008. The draft rule as adopted by the FEC appears on the agency website at <http://www.fec.gov/agenda/2008/mtgdoc08-48.pdf>. Those rules cannot be finalized until the Commission approves an accompanying explanation and justification document. Implementation also requires publication of the rules and the E&J in the *Federal Register*.

## ***Policy Considerations***

If Congress chooses to revisit bundling policy, two perspectives could be relevant. The first emphasizes reporting *information* about bundling. The second emphasizes further regulating bundling *practices*.

From the reporting (disclosure) perspective, a key question is whether campaigns should continue to be permitted to provide information only about bundling by registered lobbyists (or organizations employing lobbyists). If so, existing requirements could be sufficient, provided that Congress is satisfied with the reporting criteria established in HLOGA (i.e., disclosure of two or more bundled contributions during a six-month period totaling at least \$15,000).<sup>8</sup> On the other hand, Congress may wish to increase transparency about bundling overall, including by non-lobbyists. A relatively straightforward way to do so could be to extend the existing disclosure requirements to cover bundling by anyone, regardless of profession.<sup>9</sup> During the 110<sup>th</sup> Congress, S. 2030 (Obama) essentially proposed such an approach; the bill did not advance beyond committee referral.<sup>10</sup>

Even with additional reporting requirements, however, bundling is likely to continue. If Congress adopted the view that bundling should be discouraged or reduced, additional regulation could be necessary. For example, limits could be applied to the amount or number of contributions arranged by a single bundler. Bundling could also be banned altogether. Depending on specifics, however, a ban could prohibit even basic fundraising involving multiple contributors.

For those who believe that bundling circumvents FECA, additional restrictions or disclosure requirements could enhance transparency, limit the prevalence of bundling, or both. On the other hand, those restrictions could increase compliance burdens for the regulated community. Finally, those who view bundling as an efficient and effective fundraising practice may object to further regulation.

## **Electronic Filing of Senate Campaign Finance Reports**

Unlike all other federal political committees (except those raising or spending less than \$50,000 annually), Senate campaign committees, party committees, and political action committees (PACs) are not required to file campaign finance reports electronically.<sup>11</sup> Senate reports are also unique because they are filed with the Secretary of the Senate rather than directly with the FEC. In the 110<sup>th</sup> Congress, the Senate Committee on Rules and Administration reported S. 223 (Feingold), which would have extended electronic filing to Senate reports. The bill was never considered on the Senate floor, despite attempts to bring it up under unanimous consent. Despite the lack of success in the 110<sup>th</sup> Congress, electronic filing remains a widely popular policy proposal.

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<sup>8</sup> 2 U.S.C. § 434(I).

<sup>9</sup> An alternative approach could be to strengthen existing restrictions on conduits and earmarked contributions. See 2 U.S.C. § 441a(a)(8). Although those requirements appear to require that bundled contributions count against the bundler's personal contribution limit, they can be easily avoided by designating bundlers as campaign fundraisers.

<sup>10</sup> Four other bills introduced in the 110<sup>th</sup> Congress—H.R. 776 (Meehan), S. 436 (Feingold), H.R. 4294 (Price, NC), and S. 2412 (Feingold)—also contained bundling provisions. Many of these provisions were eventually enacted in HLOGA (after some of the four bills cited above had been drafted and introduced).

<sup>11</sup> 11 C.F.R. §104.18(a).

## ***Policy Considerations***

Two major policy questions surround electronic filing. Both are straightforward. First, should Senate campaign finance reports be filed electronically? Second, if so, where should those reports be filed?

The primary arguments in favor of electronic filing concern efficiency and expense. Currently, a contractor converts the paper reports filed with the Secretary into electronic format. The FEC then makes the reports publicly available on the Internet. The conversion process can take weeks or months at a reported cost of \$250,000 annually.<sup>12</sup> As a result, House campaign finance data filed electronically (and directly with the FEC) are routinely available well before Senate data. Various Members of Congress, campaign finance groups, and media organizations have supported electronic filing. Both the FEC and the Secretary of the Senate have stated publicly that their offices are, or can be, prepared to administer electronic filing.<sup>13</sup>

Electronic filing could eliminate the conversion process and make public disclosure of the data much faster. Electronic filing could, therefore, improve transparency and reduce costs. Requiring electronic filing of Senate reports would also place the same filing responsibilities on Senate committees that currently exist for House candidate committees, party committees, and PACs. As a result, uniform filing standards would apply to all political committees.

There is little, if any, notable opposition to electronic filing itself. However, some Members have called for addressing other campaign finance disclosure issues alongside electronic filing. For example, attempts in the 110<sup>th</sup> Congress to bring up S. 223 were unsuccessful amid a dispute over whether the bill would be amended to require groups filing ethics complaints to disclose their donors.<sup>14</sup> Similarly, at a March 2007 Senate Rules and Administration Committee hearing on S. 223, Senator Stevens emphasized the need to also consider disclosure requirements for 527 organizations.

Filing location has been a secondary issue of debate. Senate reports are currently filed with the Secretary of the Senate rather than with the FEC. Bypassing filing with the Secretary of the Senate could make reports more readily accessible to the public and could reduce delay or costs associated with transmitting the reports to the FEC. If campaign finance reports are considered Senate documents, however, some may object to their being filed with the FEC. During the 110<sup>th</sup> Congress, Senator Feinstein reported at a markup of S. 223 that Senator Byrd raised concerns about the possibility of filing directly with the FEC because he viewed filing with the Secretary as a matter of Senate prerogative.<sup>15</sup>

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<sup>12</sup> Statement of Sen. Dianne Feinstein in "Senate Rules and Administration Committee Holds Markup of S 223, the Senate Campaign Disclosure Parity Act," *Congressional Quarterly* congressional transcript, Mar. 28, 2007, p. 1. See also Dan Morain, "Senators move donor disclosures at a snail's pace," *Los Angeles Times*, Feb. 3, 2007, p. A12.

<sup>13</sup> "Senate Rules and Administration Committee Holds Hearing on Campaign Finance Disclosure," CQ transcript, March 14, 2007.

<sup>14</sup> For example, see the exchange between Senators Ensign and Feinstein at "Unanimous Consent Request—S. 223." Remarks in the Senate. *Congressional Record*, daily edition, vol. 153 (September 24, 2007), p. 11997.

<sup>15</sup> See the exchange between Senators Feinstein and Stevens, during which Senator Byrd's position was referenced, in "Senate Rules and Administration Committee Holds Markup of S. 223, the Senate Campaign Disclosure Parity Act," CQ transcript, March 28, 2008, at <http://www.cq.com/display.do?dockey=/cqonline/prod/data/docs/html/transcripts/congressional/110/congressionaltranscripts110-000002482580.html@committees&metapub=CQ-CONGTRANSCRIPTS&searchIndex=0&seqNum=1625>.

## **Federal Election Commission Issues**

The 1974 FECA amendments established the FEC, which enforces civil compliance with campaign finance law.<sup>16</sup> The Commission also facilitates disclosure of federal campaign finance data and administers the presidential public financing program.<sup>17</sup> Six presidentially appointed Commissioners lead the agency; the Senate may confirm or reject nominations to the FEC.<sup>18</sup>

The 110<sup>th</sup> Congress enacted one bill affecting the agency's functioning, P.L. 110-433, which President George W. Bush signed in October 2008, extended authority for the FEC's Administrative Fine Program (AFP) until 2013. (The program had been set to expire at the end of 2008.) The AFP sets standard penalties for routine financial-reporting violations and requires fewer resources than the Commission's full enforcement process.

## ***Policy Considerations***

The most immediate issues facing FEC operations concern funding. The Commission is currently operating under a continuing resolution, which has the effect of freezing agency funding at the \$59.2 million appropriated for FY2008.<sup>19</sup> Steven T. Walther, the agency's 2009 chairman, has expressed concern that maintaining existing funding levels inhibit the Commission's ability to pay approximately \$1.9 million in staff salary increases a \$900,000 rent increase. Walther recently noted that, as a consequence, the Commission cannot expand its services and will constrict some others.<sup>20</sup> An appropriation of \$63.6 million, which would presumably address the FEC's current financial constraints, was recommended in the President's budget for FY2009; the House and Senate Appropriations Committees also recommended that amount.

Beyond appropriations, Congress could choose to undertake legislative or oversight action related to the agency. The Senate may also be asked to consider FEC nominations during the 111<sup>th</sup> Congress. Perhaps the most fundamental policy question surrounding the FEC is the status of the agency itself. Questions about the Commission's structure and effectiveness (particularly regarding enforcement) have long been a topic of debate.<sup>21</sup> In the 110<sup>th</sup> Congress, for example, two similar bills (H.R. 421 (Meehan) and S. 478 (McCain)) would have replaced the FEC with a proposed Federal Election Administration (FEA).<sup>22</sup> Major provisions of those bills would have established a three-member governing body with enhanced enforcement powers. Neither bill advanced beyond committee referral. Similar proposals may reemerge during the 111<sup>th</sup> Congress.

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<sup>16</sup> For the 1974 amendments, see P.L. 93-443; 88 Stat. 1263.

<sup>17</sup> The Treasury Department and IRS also have administrative responsibilities for presidential public financing.

<sup>18</sup> No more than three of the six commissioners may be affiliated with the same political party. See 2 U.S.C. § 437c(a)(1).

<sup>19</sup> For additional discussion, see the FEC portion of CRS Report RL34523, *Financial Services and General Government (FSGG): FY2009 Appropriations*, by Garrett Hatch.

<sup>20</sup> Steven T. Walther, "Message From the Chairman," *Federal Election Commission Record*, vol. 35, no. 1 (January 2009), p. 1. See especially p. 13 of the article.

<sup>21</sup> See, for example, Meredith McGehee and Susan Gershon, "Let's Scratch Out the FEC," *Legal Times* (July 21, 2008), p. 52. For an FEC perspective on its enforcement activities, see Federal Election Commission, *Federal Election Commission Annual Report 2006*, June 30, 2007, at <http://www.fec.gov/pdf/ar06.pdf>. This is the most recent publicly available version of the annual report.

<sup>22</sup> Some public financing bills also propose to revamp certain aspects of the FEC. See CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by R. Sam Garrett, for additional discussion.

Nonetheless, FEC reform has not been the subject of sustained legislative activity during recent Congresses.

Other FEC issues would not necessarily warrant legislative action, but could be relevant for oversight or appropriations matters. In particular, Congress may wish to monitor the agency as the FEC continues to recover from a six-month loss of its policymaking quorum. Between January and June 2008, only two Commissioners remained in office due to a nominations dispute.<sup>23</sup> As a result, the Commission was unable to approve (among other things) agency rules and enforcement actions. Additional nominees were confirmed in June 2008, bringing the agency back to full policymaking strength. The Commission continues to work through a backlog of enforcement cases.<sup>24</sup> Several rulemakings also remain pending. In particular, the Commission has yet to finalize the HLOGA bundling and travel regulations.

Commission enforcement and operations could also be of interest to Congress. In January 2009, the FEC held two days of hearings on those topics. At these wide-ranging sessions, a variety of election lawyers and interest-group representatives both praised and criticized the FEC's operations and transparency. The FEC's internal examination of the hearings is ongoing. Policy or regulatory changes are possible.

Finally, nominations to the FEC, subject to Senate advice and consent, are possible during the 111<sup>th</sup> Congress. In April 2009, the terms of two Commissioners will expire. The term of a third Commissioner has already expired. However, as discussed below, this does not necessarily mean that additional nominations will occur.

As **Table 1** shows, the term<sup>25</sup> of Commissioner Ellen Weintraub expired in 2007.<sup>26</sup> She remains at the agency in holdover status. The terms of Commissioners Donald McGahn and Steven Walther will expire on April 30, 2009. The President may make additional nominations to fill these seats or the incumbents may remain in office in holdover status. A Commissioner may remain in office after the expiration of his or term unless or until: (1) the President nominates, and the Senate confirms, a replacement; or (2) the President, as conditions permit, makes a recess appointment to the position.<sup>27</sup>

**Table 1. Current Members of the Federal Election Commission**

Commissioner	Term Expires	Date Confirmed	Party Affiliation
Cynthia L. Bauerly	04/30/2011	06/24/2008	Democrat
Caroline C. Hunter	04/30/2013	06/24/2008	Republican
Donald F. McGahn	04/30/2009	06/24/2008	Republican
Matthew S. Petersen	04/30/2011	06/24/2008	Republican

<sup>23</sup> For additional discussion, see CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

<sup>24</sup> See, for example, Kenneth P. Doyle, "FEC Drops Presidential Campaign Cases Amid Deep Backlog of Enforcement Matters," *Daily Report for Executives*, December 8, 2008, p. A8.

<sup>25</sup> Commissioners may serve only a single six-year term. See 2 U.S.C. § 437c(2)(A).

<sup>26</sup> CRS analyst Henry Hogue provided consultations on this section.

<sup>27</sup> For additional discussion of recess-appointment powers, see CRS Report RL33009, *Recess Appointments: A Legal Overview*, by T. J. Halstead.

Commissioner	Term Expires	Date Confirmed	Party Affiliation
Steven T. Walther	04/30/2009	06/24/2008	Democrat
Ellen L. Weintraub	04/30/2007 (remains in holdover status)	03/12/2003	Democrat

**Source:** Legislative Information System nominations database. CRS added party affiliation based on various media accounts.

## Hybrid Advertising

Hybrid advertising references a clearly identified candidate and makes generic references to other candidates of a political party (e.g., “John Doe and our Democratic team”).<sup>28</sup> Hybrid ads are of potential legislative concern because of a cost-sharing practice associated with the ads. With traditional advertising, the sponsoring entity typically covers all costs. With hybrid advertising, the party and the candidate’s campaign committee share costs. An FEC rulemaking on the issue has been open since May 2007.<sup>29</sup>

## Policy Considerations

The controversy over hybrid advertising concerns whether the method of paying for those advertisements undermines FECA. Those calling for additional regulation of hybrid ads have suggested that cost-sharing represents a “loophole” that permits parties to improperly subsidize campaign spending.<sup>30</sup> This is particularly noteworthy for publicly financed presidential campaigns, which must agree to limit their spending as a condition of receiving public funds. Cost-sharing might also be viewed as way of circumventing limits on coordinated party expenditures.<sup>31</sup> Those who object to current cost-sharing practices allege that shared costs primarily benefit only the named candidate yet allow that candidate’s campaign committee to pay for only a portion (e.g., 50%) of the advertising. Some groups have urged the FEC to adopt regulations attributing 100% of the cost to the named candidate.<sup>32</sup>

If Congress determines that additional regulation of hybrid advertising is necessary, it could wait for the FEC’s ongoing rulemaking to proceed. However, it is unclear if or when the agency will issue new rules. Alternatively, Congress could legislate particular cost-sharing requirements.

<sup>28</sup> The John Doe example appears in Myles Martin, “Hearing on Proposed Rules on Hybrid Ads,” *Federal Election Commission Record*, vol. 33, no. 9 (September 2007), p. 3.

<sup>29</sup> Federal Election Commission, “Hybrid Communications,” 72 *Federal Register* 26569, May 10, 2007.

<sup>30</sup> Brennan Center et al., “Statement of Reform Groups Announcing Government Integrity Reform Agenda for the 111<sup>th</sup> Congress,” press release, November 6, 2008, at

[http://www.democracy21.org/index.asp?Type=B\\_PR&SEC={91FCB139-CC82-4DDD-AE4E-3A81E6427C7F}&DE={2FE0F2D2-AEB4-4407-AC92-E268C87FF568}](http://www.democracy21.org/index.asp?Type=B_PR&SEC={91FCB139-CC82-4DDD-AE4E-3A81E6427C7F}&DE={2FE0F2D2-AEB4-4407-AC92-E268C87FF568}).

<sup>31</sup> Through coordinated expenditures, parties may (notwithstanding other provisions in the law regulating contributions to campaigns) buy goods or services on behalf of a campaign, subject to limits. For additional discussion, see CRS Report RS22644, *Coordinated Party Expenditures in Federal Elections: An Overview*, by R. Sam Garrett and L. Paige Whitaker.

<sup>32</sup> Campaign Legal Center and Democracy 21, comments on NPRM 2007-10, submitted to the Federal Election Commission, June 11, 2007, at [http://www.fec.gov/pdf/nprm/hybrid/CLC\\_Democracy\\_21.pdf](http://www.fec.gov/pdf/nprm/hybrid/CLC_Democracy_21.pdf).

Doing so could close the arguable loophole surrounding hybrid ads, but would also involve legislating in a technical area more typically left to the FEC.<sup>33</sup>

Congress could also choose to make no changes if it determines that hybrid ads do not circumvent FECA or that additional regulation is unnecessary. Those opposed to additional restrictions suggest that existing FEC regulations provide sufficient guidance on various cost-sharing arrangements, including hybrid advertising. Additional restrictions, including legislation, could also minimize parties' flexibility to allocate costs according to individual circumstances. That flexibility was a central concern for various party representatives who testified at a July 2007 FEC hearing.<sup>34</sup> Finally, cost-sharing associated with hybrid ads could also be viewed as the continuation of a long tradition of various contacts between parties and campaigns during campaigns.<sup>35</sup> Therefore, some may fear that additional restrictions on hybrid advertising could threaten the relationship between parties and candidates.

## Joint Fundraising Committees

Joint fundraising committees were particularly active in the 2008 presidential race, but also supported House and Senate contests.<sup>36</sup> Joint committees are of potential legislative concern because some observers contend that they facilitate large contributions that would otherwise be impermissible under FECA.

FECA limits contributions from individuals as shown in **Table 2**. In 2007-2008, individuals could contribute no more than \$4,600 to a candidate campaign (\$2,300 for the primary campaign and another \$2,300 for the general-election campaign).<sup>37</sup> As shows, individuals could also donate up to \$28,500 annually to national party committees and up to \$10,000 annually to state or local party committees.

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<sup>33</sup> See, for example, Bob Bauer, "Hybrid Ads and Public Financing Reform," *moresoftmoneyhardlaw* blog posting at [http://www.moresoftmoneyhardlaw.com/moresoftmoneyhardlaw/updates/political\\_parties.html?AID=1370](http://www.moresoftmoneyhardlaw.com/moresoftmoneyhardlaw/updates/political_parties.html?AID=1370), November 11, 2008.

<sup>34</sup> See Federal Election Commission, "Public Hearing on Hybrid Communications," hearing transcript, July 11, 2007, at [http://www.fec.gov/pdf/nprm/hybrid/hybrid\\_hearing\\_transcript\\_071107.pdf](http://www.fec.gov/pdf/nprm/hybrid/hybrid_hearing_transcript_071107.pdf); and Myles Martin, "Hearing on Proposed Rules on Hybrid Ads." Recent attention to hybrid advertising has focused on broadcast communications. However, the concept can also be relevant for other forms of communications.

<sup>35</sup> See, for example, the comments of David Mason, then Vice Chairman of the FEC, in "Public Hearing on Hybrid Communications," pp. 7-11.

<sup>36</sup> See, for example, Brody Mullins, "Georgia Runoff Exposes Gaps in Campaign Finance Law," *Wall Street Journal*, November 19, 2008, p. A3.

<sup>37</sup> The text refers to contributions to *privately* financed candidates. Contributions to *publicly* financed presidential candidates (there is no public financing option for congressional campaigns) are limited to \$2,300 in the primary election; additional fundraising for the general election is not permitted. Candidates may also accept additional contributions for separate legal and accounting funds. See 11 C.F.R. § 9003.3. These funds are known as "general election legal and accounting compliance funds" (GELAC). For an overview of GELAC funds see Anthony Corrado, "Public Funding of Presidential Campaigns," in Anthony Corrado, Thomas E. Mann, Daniel R. Ortiz, and Trevor Potter, eds. *The New Campaign Finance Sourcebook* (Washington: Brookings Institution Press, 2005), pp. 195-197. For additional discussion of presidential public financing generally, see CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by R. Sam Garrett.

**Table 2. Individual Contribution Limits for the 2007-2008 Election Cycle**

To candidate committees	To national party committees	To district, state, and local party committees	To other political committees (e.g., PACs)	Special Limits
\$2,300 <sup>Error!</sup> Reference source not found.  per candidate, per election	\$28,500 <sup>Error!</sup> Reference source not found.  per calendar year	\$10,000  per calendar year (combined limit)	\$5,000 per calendar year	\$108,200 <sup>Error!</sup> Reference source not found. aggregate biennial limit <sup>b</sup>

**Source:** Adapted by CRS from Federal Election Commission, "Contribution Limits 2007-08," at <http://www.fec.gov/pages/brochures/contriblimits.shtml>.

- a. These contribution limits are adjusted for inflation in odd-numbered years. Adjustments for the 2010 election cycle are expected to be released in early 2009.
- b. Of the \$108,200 aggregate, no more than \$42,700 may be contributed to candidate committees. No more than \$65,500 may be contributed to PACs and parties.

During the 2008 cycle, joint fundraising committees affiliated with the Democratic and Republican presidential campaigns collected contributions that exceeded the limits discussed above. In some cases, the committees (often called "victory funds") reportedly received contributions of \$70,000 or more from a single source.<sup>38</sup> Joint committees then distributed those contributions, in permissible amounts (i.e., consistent with the individual contribution limits), to *other* political committees. Recipients included each party's presidential campaign, their legal and accounting compliance committees, national party committees, and party committees in targeted states.

### Policy Considerations

As Congress considers whether or how to restrict joint fundraising committees, a key question is whether the House and Senate believe joint committees circumvent FECA. Some joint committees represent an "extra" way to support candidates above the individual contribution limits. A coalition of interest groups has urged the 111<sup>th</sup> Congress to ban joint fundraising committees.<sup>39</sup>

If Congress chooses to restrict joint committees, at least four options exist.<sup>40</sup> First, joint committees could be prohibited. Second, candidate participation in joint fundraising could be restricted. Third, Congress could restrict joint committees' abilities to transfer funds to other

<sup>38</sup> See Matthew S.L. Cate, "Multiple pots let political donors give big," *Arkansas Democrat Gazette*, October 26, 2008, p. 1; Karen E. Crummy, "Campaign Loophole," *Denver Post*, October 24, 2008, p. A1; and Elizabeth Holmes, "New McCain Fund Gets Around Donation Limits," "Washington Wire" Blog, *Wall Street Journal* online, April 12, 2008, at <http://blogs.wsj.com/washwire/2008/04/19/new-mccain-fund-gets-around-donation-limits/>; and Matthew Most, "McCain Able to Skirt Limits of Federal Financing," *Washington Post*, September 17, 2008, p. A4. Large contributions also appear in publicly available disclosure reports filed with the FEC.

<sup>39</sup> Seven groups issued a November 2008 statement containing a shared agenda for the 111<sup>th</sup> Congress. See Brennan Center et al., "Statement of Reform Groups Announcing Government Integrity Reform Agenda for the 111<sup>th</sup> Congress."

<sup>40</sup> Some of the options discussed here have been proposed by "reform" campaign finance groups. See, for example, David Arkush and Craig Holman, "Campaign Finance 'Reformers' Open the Floodgates," *Roll Call*, June 5, 2008, at [http://www.rollcall.com/issues/53\\_147/guest/25640-1.html](http://www.rollcall.com/issues/53_147/guest/25640-1.html).

recipients.<sup>41</sup> Fourth, FECA or FEC regulations on coordination could be amended to encompass joint fundraising. If joint fundraising committees were prohibited or restricted, those who wanted to support more than one political committee would have to contribute directly to those committees, within the limits established in FECA. Applying the coordination restrictions to joint committees could limit the amount of permissible transfers among committees. Any of these options could make it more difficult for individuals to make contributions to a single source in the hopes of benefitting multiple recipients.

Conversely, Congress could choose to maintain the status quo if it determines that joint committees do not violate the spirit of FECA. In turn, this conclusion depends on whether one believes that joint committees are a backdoor method of supporting individual candidates or whether joint committees support a variety of party-building activities, as existing FECA provisions and FEC regulations appear to assume. Some also contend that joint committees represent an efficient way to funnel large aggregate contributions, in permissible amounts, to targeted states and political committees. No legislative action is necessary to maintain the status quo.

## **Public Financing of Presidential Campaigns** <sup>42</sup>

Perhaps the most prominent campaign finance issue during the 2008 election cycle was the status of the presidential<sup>43</sup> public financing system. Even before the 2008 campaigns began in earnest, the cycle was widely perceived as the last in which the current public financing system could survive without major reform. The program suffers from low taxpayer participation, resulting in funding shortfalls during recent elections.<sup>44</sup> As the program's financial resources and public participation generally declined in recent elections, so did participation by major candidates.

In 2008, eight candidates received PECF matching funds during the primaries. Senator McCain, the Republican nominee, received public funds during the general-election campaign. Senator Obama, the Democratic nominee, became the first major-party nominee since the program's inception to completely decline public funds. Some observers have suggested that Senator Obama's decision to opt out of public financing, combined with the other challenges discussed above, marks the death knell of the program. Others contend that the public financing program can work well again if reformed.

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<sup>41</sup> This approach could be accomplished either by restricting transfers outright, or by amending relevant law or FEC regulations concerning coordinated expenditures. Coordinated party expenditures are subject to limits based on office sought, state, and voting-age population (VAP). Exact amounts are determined by formula. (See 2 U.S.C. § 441a(d)(3).) For additional discussion, see CRS Report RS22644, *Coordinated Party Expenditures in Federal Elections: An Overview*, by R. Sam Garrett and L. Paige Whitaker.

<sup>42</sup> For a detailed discussion of the presidential public financing program, see CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by R. Sam Garrett. Some of the material in this section is adapted from that report.

<sup>43</sup> On the related topic of proposed public financing for congressional campaigns, see CRS Report RL33814, *Public Financing of Congressional Campaigns: Overview and Analysis*, by R. Sam Garrett.

<sup>44</sup> The Presidential Election Campaign Fund (PECF) is funded solely by voluntary "checkoff" designations on individual income tax returns.

## Policy Considerations

Until the 2000 election, the public financing program was the major funding source in presidential campaigns, particularly for the general election. Nonetheless, as noted above, public financing has become less appealing to candidates in recent elections. Other developments, such as joint fundraising committees allegedly threaten the program's intended emphasis on limiting private fundraising in exchange for public funds.

Maintaining the status quo would leave the public financing program unchanged. If that approach is taken, however, there is widespread agreement that the most competitive candidates will continue to forego public funds. As a result, the program could be in danger of providing funding only for those candidates with a limited chance of success.

As the preceding discussion suggests, a fundamental policy question is what role—if any—Congress wants public financing to play in presidential campaigns. If that role is to be a prominent one, there is broad agreement that the program needs to be at least partially revamped. Making the program more attractive to competitive candidates, particularly through increased spending limits, is a major focus of several reform proposals. Such efforts will not come without costs. An infusion of funds, through an increased checkoff designation,<sup>45</sup> other revenue sources, increased taxpayer participation, or a combination of all three, would likely be necessary. Public financing can also be controversial along ideological lines, which suggests that strong political will and coalition-building will be necessary if changes to the program are to be enacted.

In the aftermath of the 2008 election cycle, the related issue of small contributions has also been a prominent topic of debate. Although publicly financed *general-election* candidates must agree to forgo private fundraising for their campaigns, public financing is designed to supplement small, private contributions during the *primary* campaign. Currently, the Presidential Election Campaign Fund (PECF) provides a 100% match of individual primary contributions up to \$250. Providing additional matching funds have been a major component of recent reform proposals.

Thus far no presidential public financing legislation has been introduced in the 111<sup>th</sup> Congress.<sup>46</sup> During the 110<sup>th</sup> Congress, four bills (H.R. 776 (Meehan); H.R. 4294 (Price, NC); S. 436 (Feingold), and S. 2412 (Feingold)) that proposed to restructure the PECF would have matched small contributions at 400% or 500% rather than the current 100%. In addition, the maximum matching contribution would have been lowered to \$200 from the current \$250.

Increasing the match rate from the current 100% to 400% or 500% could increase the effect of small contributions. It could also provide substantially greater resources to publicly financed candidates. However, this approach assumes that sufficient funds would be available in the PECF to cover the additional match. In fact, sufficient funds have been unavailable during portions of recent election cycles.<sup>47</sup> Nonetheless, proposals to reform the public financing program typically include revisions to funding mechanisms.

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<sup>45</sup> Currently, individual taxpayers may designate \$3 to the fund; married couples filing jointly may designate \$6.

<sup>46</sup> One bill (H.R. 158; Obey) has been introduced on the related topic of congressional public financing. See CRS Report RL33814, *Public Financing of Congressional Campaigns: Overview and Analysis*, by R. Sam Garrett for additional discussion.

<sup>47</sup> See CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by R. Sam Garrett.

Congress could also renew the focus on small contributions by permitting publicly financed campaigns to spend larger (or unlimited) amounts of funds raised through small contributions. This approach might or might not include matching funds. The effect could be to encourage candidates to focus their efforts on small contributions, while still providing government assistance for some campaign needs.

However, focusing on small contributions would not necessarily contain campaign costs (another program goal), particularly for those candidates who were able to raise and spend virtually unlimited amounts. In fact, if spending limits were eliminated, public financing could become an additional, but potentially unnecessary, funding source for those already able to raise substantial private funds.

Finally, public financing could be repealed. This approach would largely or entirely (depending on specifics) eliminate taxpayer funds in presidential campaigns. In the 110<sup>th</sup> Congress, two bills (H.R. 72 (Bartlett); H.R. 484 (Doolittle)) would have repealed parts of the program or the entire program. Neither bill advanced beyond committee referral.

## **527 Organizations**

FECA focuses largely on political committees, which include candidate committees, party committees, and PACs.<sup>48</sup> In recent years, so-called “527” organizations have shaped some elections even though they are not typically considered to be political committees.<sup>49</sup> America Coming Together and Swift Boat Veterans for Truth, for example, were prominent (and controversial) in 2004.

Much of the concern surrounding 527s has involved the argument that millions of dollars from these organizations affect federal elections without necessarily being regulated by FECA.<sup>50</sup> The precise nature of 527s’ financial impact is open to debate, as various research organizations and interest groups classify individual groups’ activities differently and rely on different data.<sup>51</sup>

Nonetheless, and despite differing data and interpretations of those data, research has consistently shown decreased activity among 527s during the 2008 cycle compared with the 2004 cycle. **Table 3** displays financial summaries from two prominent sources, CQ MoneyLine (a commercial

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<sup>48</sup> On the definition of political committees, see 2 U.S.C. § 431(4). See also 26 U.S.C. § 9002(9) and 26 U.S.C. § 9032(8).

<sup>49</sup> If Congress chooses to revisit 527s, it may also encounter questions related to organizations regulated under Section 501(c) of the IRC. There is some evidence that 501(c)(4) organizations are also becoming active in federal campaigns. See, for example, Campaign Finance Institute, “Outside Soft Money Groups Approaching \$400 Million in Targeted Spending in 2008 Election,” press release, October 31, 2008, at <http://www.cfinst.org/pr/prRelease.aspx?ReleaseID=214>. See also CRS Report RL33377, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, by Erika Lunder.

<sup>50</sup> For additional discussion, see CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by L. Paige Whitaker and Erika Lunder; and CRS Report RL33888, *Section 527 Political Organizations: Background and Issues for Federal Election and Tax Laws*, by R. Sam Garrett, Erika Lunder, and L. Paige Whitaker. Political committees are considered 527s for tax purposes, but not all 527s are considered political committees for federal-election purposes.

<sup>51</sup> For example, differences frequently occur when classifying 527s’ party affiliations, activities related to federal elections versus non-federal elections, and transfers among different entities.

tracking service) and the Center for Responsive Politics (CRP).<sup>52</sup> Both sources show that 527s' receipts and expenditures during the 2008 cycle were far below those of the 2004 cycle.<sup>53</sup>

**Table 3. Receipts and Expenditures of 527 Organizations, 2004 and 2008 Election Cycles**

	2003-2004	2007-2008	Change from 2003-2004—2007-2008
Receipts for All Groups (CQ MoneyLine)	\$683,327,356	\$423,272,445	-38.1%
Receipts for All Groups (CRP)	\$599,202,432	\$450,280,305	-24.9%
Expenditures for All Groups (CQ MoneyLine)	\$694,675,254	\$381,928,234	-45.0%
Expenditures for All Groups (CRP)	\$611,723,836	\$399,122,933	-34.8%

**Sources:** Total receipts and expenditure data appear in the CQ MoneyLine database at <http://moneyline.cq.com/pml/irs527s-receipt-ranked.do?pageIndex=0&electionCycleId=15> for 2007-2008; and <http://moneyline.cq.com/pml/irs527s-receipt-ranked.do?pageIndex=0&electionCycleId=13> for 2003-2004; and the Center for Responsive Politics at <http://www.opensecrets.org/527s/index.php>. CRS calculated the percent change column.

**Notes:** The data include non-federal activity. Some transfers are excluded. Data were accessed in December 2008.

## Policy Considerations

The 527 issue can be considered from both financial and regulatory perspectives.<sup>54</sup> Financially, 527s remain a significant force surrounding some targeted races.<sup>55</sup> 527s also continue to command substantial financial resources overall. Nonetheless, 527s' decreased financial activity suggests that the issue might not receive as much policy attention as 527s have in recent years.

Even with decreased financial activity, however, the matter of regulating 527s continues to be controversial. Indeed, the major policy question surrounding 527s is whether all such organizations should be regulated as political committees under FECA.<sup>56</sup> Thus far, the FEC has made case-by-case determinations of whether 527s' activities required them to register as political

<sup>52</sup> Both are prominent and frequently used sources of campaign finance data. Other sources, however, may offer different data or interpretation.

<sup>53</sup> In interpreting the data, it is important to note that overall fundraising and spending are not necessarily a proxy for involvement or influence in federal elections. The variance in the data shown in **Table 3** also underscore that the precise nature of 527s' activities is sometimes unclear.

<sup>54</sup> Litigation has also occurred on the 527 issue. That topic is beyond the scope of this report.

<sup>55</sup> See, for example, Campaign Finance Institute, "Outside Soft Money Groups Approaching \$400 Million in Targeted Spending in 2008 Election."

<sup>56</sup> For additional discussion, see CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by L. Paige Whitaker and Erika Lunder; and CRS Report RL33888, *Section 527 Political Organizations: Background and Issues for Federal Election and Tax Laws*, by R. Sam Garrett, Erika Lunder, and L. Paige Whitaker. Political committees are considered 527s for tax purposes, but not all 527s are considered political committees for federal-election purposes.

committees. Particularly after the 2004 elections, the FEC assessed major fines against some 527s for failing to register as political committees. However, because fines were not assessed until well after the election and represented a small portion of the organizations' operating budgets, some critics contended that the penalties and current regulation of 527s were insufficient.<sup>57</sup> Controversy over FEC enforcement regarding 527s continues today.<sup>58</sup>

Against this backdrop, some have suggested that all 527s should be required to register with the FEC as political committees. In the 110<sup>th</sup> Congress, H.R. 420 (Meehan) and S. 463 (McCain) would have amended FECA to treat 527s as political committees, with some exceptions. Requiring 527s to register as political committees would make those organizations subject to contribution limits and other requirements in FECA, just as all political committees are today. Those advocating additional regulation of 527s generally suggest that these groups' activities clearly influence federal elections and, therefore, should be captured by FECA. Others, however, contend that placing additional regulations on 527s is unnecessary and could stifle the groups' political speech.<sup>59</sup>

## Overarching Policy Concerns and Concluding Comments

A record-breaking \$5 billion is believed to have been spent during the 2008 federal elections.<sup>60</sup> The pace and amount of fundraising in the presidential campaign has been of particular concern to some interest groups and members of the media.<sup>61</sup> The campaigns of just two presidential candidates, John McCain and Barack Obama, spent a combined \$860.3 million during the 2008 election cycle.<sup>62</sup> For some, the 2008 figures suggest that the campaign finance system is in need of significant reform. Others contend that the primary focus should not be on the amount of money in politics, but on the way in which that money is regulated. For many, existing regulation is already too cumbersome.

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<sup>57</sup> See, for example, Democracy 21, "Democracy 21 and Campaign Legal Center Statement on FEC Finding that The Media Fund Illegally Spent Over \$50 Million in 2004 Election," press release, November 19, 2007, at [http://www.democracy21.org/index.asp?Type=B\\_PR&SEC={7248831A-87CA-4C2D-B873-60C64918C920}&DE={52D51D31-06C3-46FA-A0AA-23DFF3E7A7EA}](http://www.democracy21.org/index.asp?Type=B_PR&SEC={7248831A-87CA-4C2D-B873-60C64918C920}&DE={52D51D31-06C3-46FA-A0AA-23DFF3E7A7EA}).

<sup>58</sup> See, for example, Kenneth P. Doyle, "FEC Set to Consider Rule on 'Bundling'; Drops Case Against Chamber 527 Group," *Daily Report for Executives*, December 17, 2008, p. A7.

<sup>59</sup> For additional discussion, see CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by L. Paige Whitaker and Erika Lunder; and CRS Report RL33888, *Section 527 Political Organizations: Background and Issues for Federal Election and Tax Laws*, by R. Sam Garrett, Erika Lunder, and L. Paige Whitaker. Political committees are considered 527s for tax purposes, but not all 527s are considered political committees for federal-election purposes.

<sup>60</sup> See Center for Responsive Politics, "U.S. Election Will Cost \$5.3 Billion, Center for Responsive Politics Predicts," press release, October 22, 2008, at <http://www.opensecrets.org/news/2008/10/us-election-will-cost-53-billi.html>; and Kenneth P. Doyle, "Campaign 2008: First \$5 Billion Federal Election Campaign Prompts Questions on Possible New Reforms," *Daily Report for Executives*, November 5, 2008, p. C1. Data for the entire cycle are not yet available in some cases, but the \$5 billion figure appears likely to be confirmed. CRS analysis of Center for Responsive Politics data shows that party committees and candidate committees alone spent approximately \$4.5 billion. The CRP data are available at <http://www.opensecrets.org/overview/index.php> and <http://www.opensecrets.org/parties/index.php>.

<sup>61</sup> See, for example, "Campaign Finance: A victim of President-elect Obama's Success," *Washington Post*, December 15, 2008, p. A20.

<sup>62</sup> These figures, which reflect November 2008 FEC filings, do not include related spending, such as GELAC funds or party expenditures. CRS aggregated the \$860.3 million figure from candidate summaries on the FEC website at <http://query.nictusa.com/cgi-bin/cancomsrs/>.

The 2008 election cycle will undoubtedly inform deliberations about how, if at all, to examine campaign finance policy during the 111<sup>th</sup> Congress. Some of the issues discussed in this report are relatively recent developments that are closely tied to the 2008 elections. Others have been prominent for several election cycles and have received congressional attention in the past.

All the issues discussed in this report are essentially technical questions about how to regulate a particular facet of campaigns. Reaching consensus on these points can be difficult. There are, however, common themes that tend to organize the debate over campaign finance policy. Even when Members of Congress disagree about particular approaches, these themes can serve as useful starting points for considering policy options and debate.

## **Amounts and Sources of Money**

Whether there is “too much” money in American elections is a hotly debated topic. For some, the billions of dollars involved in federal campaigns signal potential corruption. The “money chase” of campaigns also allegedly prevents candidates and officeholders from concentrating on serving their constituents.<sup>63</sup> Others counter that fundraising is an important test of a candidate’s political viability and that the amount of money spent on American elections is far less than the amount spent on consumer goods.<sup>64</sup> It is unlikely that this ideologically charged debate will be resolved in the foreseeable future.

Even if the debate over *amounts* money is not resolved, *sources* of funds could be ripe for legislation or oversight. The debate over 527s demonstrates that some entities’ financial activities remain contentious. Similarly, the debate over public financing can be viewed as an attempt to steer candidates toward lower campaign spending with incentives (or requirements) to limit private fundraising. Bundling, hybrid advertising, and joint fundraising also raise policy questions about whether these funding sources should be further regulated.<sup>65</sup>

## **Transparency**

Transparency is typically accomplished through disclosure. Most of that information is then made publicly available. The details of which activities should be disclosed, and in which amounts, are sometimes controversial, but disclosure is generally accepted as a hallmark of campaign finance policy.

The debate over electronic filing of Senate campaign finance reports has the most obvious connections to transparency. For some, the current form of paper filing is wasteful and causes unnecessary delay in providing information to the public. For others, broader disclosure concerns should also be addressed if Senate electronic filing is reconsidered. Senate prerogative may also be a concern.

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<sup>63</sup> The “money chase” analogy appears in David B. Magleby and Candice J. Nelson, *The Money Chase: Congressional Campaign Finance Reform* (Washington: Brookings Institution Press, 1990).

<sup>64</sup> On the latter point, see, for example, George F. Will, “Call Him John the Careless,” *Washington Post*, October 23, 2008, p. A23. On anti-regulatory arguments generally, see John Samples, *The Fallacy of Campaign Finance Reform* (Chicago: University of Chicago Press, 2006).

<sup>65</sup> Regulating political money may also raise constitutional questions, a topic that is beyond the scope of this report. For an overview, see CRS Report RL30669, *Campaign Finance Regulation Under the First Amendment: Buckley v. Valeo and Its Supreme Court Progeny*, by L. Paige Whitaker.

Other recent issues may also be considered from a transparency perspective. In particular, new disclosure requirements related to bundling—enacted in the 110<sup>th</sup> Congress and potentially subject to expansion or revision during the 111<sup>th</sup> Congress—represent an effort to provide more information about how some large contributions are raised. On the other hand, those efforts may cause an additional compliance burden or inhibit some donors from participating (at least as they otherwise would).

## **Scope of Regulation**

Perhaps the most fundamental questions in campaign finance policy is which behaviors should be subject to FECA or FEC regulations, and to what extent. As Congress decides how or whether to address campaign finance issues in the 111<sup>th</sup> Congress, these questions are again likely to be at the forefront of debate. All the policy issues addressed in this report could involve placing new requirements on members of the regulated community.

Among the issues discussed in this report, debate has essentially focused on whether bundling, electronic filing, hybrid advertising, joint fundraising, recent developments in presidential public financing, and 527s undermine various requirements in FECA. More generally, the FEC itself may be reevaluated if Congress determines that its structure or effectiveness is insufficient for current needs. If Congress decides to address these or other campaign finance issues, a key question will be whether they are to be considered alone or jointly. All the issues discussed in this report could be self-contained. Some of the issues are also interactive. This is particularly true for presidential campaign financing, which has clear connections to public financing, bundling, hybrid advertising, and joint fundraising.

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