The New Campaign Finance Sourcebook

Chapter 1

Money and Politics:

A History of Federal Campaign Finance Law

Anthony Corrado

Updated September 2004

Controversy over the role of money in politics did not begin with Watergate. Nor did it start with the clamor over the high costs of campaigning that accompanied the growth of radio and television broadcasting in the postwar era. Money's influence on the political process has long been a concern, an outgrowth of our nation's continuing struggle to reconcile basic notions of political equality, such as the principle of "one person, one vote," with fundamental political liberties, such as the freedoms of speech and political association. The unequal distribution of economic resources and the participation of a relatively small minority of the citizenry in the financing of campaigns has, throughout our history, spurred concerns about the influence of wealth in the political process and the corruptive effects of campaign donations. Though public criticism of the campaign finance system has been particularly acute in recent decades, the issues raised, and the consequent demand for campaign finance reform, can be traced back to before the Civil War.

Early Legislation and the Progressive Era Reforms

In the early days of the Republic, campaign funding was rarely a source of public controversy. There were few "campaigns" in the modern sense of the term, since candidates usually "stood" for election without engaging in the types of personal politicking or direct solicitation of votes that have come to characterize modern elections.[1] Candidates typically paid any expenses incurred in a political contest out of their own pockets, or with the assistance of friends or relatives. These expenses usually entailed the costs of printing and distributing pamphlets or "treating" constituents to food and drink on election day. The nascent party organizations also provided some assistance, most commonly in the form of partisan newspapers that were owned or financed by partisan supporters.

As the nation grew and the political system matured, the issue of campaign funding became more contentious. The rise of party politics and the expansion of the franchise that accompanied the rise of Jacksonian democracy opened the political system to those who lacked the personal resources needed to seek elective office. Party organizations thus began to develop more systematic means of raising funds to support their candidates.

The development of the "spoils system," wherein the victor in an election awarded government positions to party supporters, led to the formation of "assessment" systems for raising money from government workers and party supporters. By the 1830s, party organizations were raising money from those they had placed in government jobs or other political positions by requiring them to contribute a percentage of their salaries to the party (the share that had to be paid was the "assessment"). This system of assessments became a principal means of party support, and was soon attacked by critics who claimed that it posed a threat to the "freedom of elections." Such charges encouraged some members of Congress to attempt to end the practice, which produced what are generally regarded as the first proposals to regulate campaign funding. In 1837, Representative John Bell of Tennessee, a member of the Whig Party, introduced the first bill to prohibit assessments.[2] Two years later, a House investigating committee found that the Democratic party had imposed levies on U.S. customs employees in New York City. Bell's bill, which would have made it illegal for a federal officer to "pay or advance" any money toward the "election of any public functionary, whether of the General or State Government,"[3] was submitted again, and in 1840 even reached the House floor, but the legislature took no action on the proposal. Party leaders thus continued to require political contributions from individuals who had been given a place on the government payroll.

Congress did decide to take a small step against the assessment of government workers after the Civil War. An act of March 2, 1867, which concerned naval appropriations for fiscal year 1868, included a final section that prohibited the solicitation of political contributions from government workers employed at navy yards. This section read:[4]

> And be it further enacted, That no officer or employee of the government shall require or request any workingman in any navy yard to contribute or pay any money for political purposes, nor shall any workingman be removed or discharged for political opinion; and any officer or employee of the government who shall offend against the provisions of this section shall be dismissed from the service of the United States.

This restriction, which is considered to be the first provision of federal law relating to campaign finance, had little effect on party funding. In the years following its adoption, the Republicans controlled the White House and continued to fill their campaign coffers with funds from officeholders and appointees.[5]

During the Reconstruction era, attacks on the use of patronage and the assessment of government workers increased. By 1872, liberal Republicans were expressing outrage over the corruption within President Grant's administration and began to argue for an end to assessments and for civil service reform.[6] Grant created a civil service commission, but this action was not enough to appease fellow Republicans. In 1876, Congress included a provision in the appropriations legislation for the coming fiscal year that barred government workers not appointed by the President from imposing assessments on other government workers. The law declared "that all executive officers or employees of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employee of the Government, any money or property or other thing of value for political purposes."[7] When President Hayes took office, he strengthened and extended this ban on assessments by issuing an executive order that prohibited electioneering by government officials. In addition to barring assessments on officers or subordinates for political purposes, the order stated that "no officer should be required or permitted to take part in the management of political organizations, caucuses, conventions or election campaigns." The President noted, however, that "their right to vote and to express their views on public questions, either orally or through the press, is not denied, provided it does not interfere with the discharge of their official duties."[8]

The ban on assessments and end of patronage became a permanent feature of federal employment as a result of the passage of the Pendleton Civil Service Act of 1883.[9] The law restrained the influence of the spoils system in the selection of government workers by creating a class of federal employees who had to qualify for office through competitive examinations. It also prohibited the solicitation of political contributions from these employees, thus protecting them from forced campaign assessments. The act reduced the reliance of party organizations on government employee contributions and shifted the burden of party fundraising to corporate interests, especially the industrial giants in oil, railroads, steel, and finance, which held major stakes in the direction of government policy.

Business leaders and the corporations they led were a source of campaign money before the 1880s, but after the adoption of the civil service reforms they became the principal source of funding. Money from corporations, banks, railroads, and other businesses filled party coffers, and numerous corporations were reportedly making donations to national party committees in amounts of $50,000 or more. By the turn of the century, Mark Hanna, the Republican party boss who organized the presidential campaigns of William McKinley in 1896 and 1900, had established a formal system for soliciting contributions from large, Wall Street corporations, asking each company to "pay according to its stake in the general prosperity of the country and according to its special interest in a region in which a large amount of expensive canvassing had to be done."[10] This emphasis on corporate fundraising produced the monies needed for rising campaign expenditures, which totaled at least $3 million in each of the McKinley campaigns, or more than twice the amount spent by Republican Benjamin Harrison when he won in 1888.[11]

These lavish contributions from corporate sources alarmed progressive reformers and spurred a demand for campaign finance legislation at the national level. Progressive politicians and muckraking journalists contended that wealthy donors were corrupting government processes and gaining special favors and privileges as a result of their campaign gifts. They demanded regulation to prevent such abuses. By the late 1890s, four states had passed laws to prohibit corporate contributions.[12] But in Congress this clarion call for reform went unheeded until a controversy regarding the financing of the 1904 presidential race led to the first organized movement for campaign finance reform.

In 1904, Judge Alton B. Parker, the Democratic presidential nominee, alleged that corporations were providing President Theodore Roosevelt with campaign gifts to buy influence with the administration. Parker claimed that Roosevelt was "blackmailing monopolies" to raise money for his campaign.[13] Further, Roosevelt supposedly summoned two of the country's richest men, E.H. Harriman and Harry C. Frick, to the White House and solicited their financial help with the understanding that "before I write my message (to Congress) I shall get you to come down to discuss certain governmental matters not connected with the campaign."[14]

Roosevelt denied these charges. But in investigations conducted after the election, several major companies admitted making large contributions to the Republican campaign. The most damaging evidence emerged from investigations conducted by the New York State Legislature, under the guidance of State Senator William Armstrong and committee general counsel Charles Evan Hughes, into the business practices of major New York insurance companies.[15] The investigation revealed that New York Life had made a $48,000 contribution from a "non-ledger" account to the Republican National Committee for the 1904 campaign. This revelation attracted a substantial amount of attention in national newspapers, and led to an increased demand for legislative action to address the role of corporate contributions in national elections.

Roosevelt responded to the controversy by including a call for campaign finance reform in his annual messages to Congress in 1905 and 1906. In the 1905 message, written only a month after the election, Roosevelt supported the adoption of measures to guard against corruption in federal elections and to require public disclosure of campaign contributions and expenditures. In doing so, he stated:[16]

> There is no enemy of free government more dangerous and none so insidious as the corruption of the electorate. . . . I recommend the enactment of a law directed against bribery and corruption in Federal elections. The details of such a law may be safely left to the wise direction of the Congress, but it should go as far as under the Constitution it is possible to go, and should include severe penalties against him who gives or receives a bribe intended to influence his act or opinion as an elector; and provisions for the publication not only of the expenditures for

> nominations and elections of all candidates but also of all contributions received and expenditures made by political committees.

The next year, Roosevelt repeated these ideas before offering an even stronger remedy--a ban on corporate political contributions. He declared to Congress:[17]

> All contributions by corporations to any political committee or for any political purpose should be forbidden by law. . . . Not only should both the National and the several State Legislatures forbid any office of a corporation from using the money of the corporation in or about any election, but they should also forbid such use of money in connection with any legislation save by the employment of counsel in public manner for distinctly legal services.

He continued to give verbal support to this proposal in 1907, highlighting the importance of such a law by repeating the call for a ban on corporate giving at the very start of his annual message that year.[18] But his efforts on behalf of reform did not extend much further. He did not follow up this use of the bully pulpit with a specific legislative proposal or a lobbying effort to force Congress to act.

Roosevelt, however, was not the only advocate urging congressional action. By this time, progressive reformers and journalists had been joined by a growing group of politicians who sought to reduce the influence of money in politics. There were also a number of civic organizations working for reform. The most important of these groups was the National Publicity Law Organization (NPLO), a citizens' group that was actuated by the 1904 controversy and was dedicated to lobbying for the regulation of political finance and public disclosure of political spending.

Faced with increasing public sentiment in favor of reform, Congress finally acted in 1907. At the urging of Senator Benjamin "Pitchfork Ben" Tillman of South Carolina, who had been calling for an investigation into corporate donations since 1905, the legislature considered a bill that had been introduced in an earlier Congress by Senator William Chandler, a New Hampshire Republican, to restrict corporate giving in federal elections.[19] Eager to appease advocates of reform, the Republican

Senate and House passed the proposal with little debate, but not before changing the bill so that it did not apply to state-chartered corporations active in state and local elections. The law, known as the Tillman Act, made it "unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution with any election to any political office." It also made it illegal "for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator."[20] This ban on corporate gifts to federal candidates became a cornerstone of federal campaign finance law and was reaffirmed in many subsequent statutes.

Though the Tillman Act constituted a landmark in federal law, its adoption did not quell the cries for reform. Eliminating corporate influence was only one of the ideas being advanced at this time to clean up political finance. Reducing the influence of wealthy donors was also a concern, and some reformers pushed for limits on individual donations. Still others advocated even bolder ideas. The NPLO continued to press for disclosure of party campaign receipts and expenditures so that voters could know which interests were financing which campaigns. William Bourke Cockran, a Democratic representative from New York associated with Tammany Hall, had an even more radical idea. In 1904 he suggested that the problems caused by campaign funding might be relieved if the government paid for some or all of the expenses of a presidential election.[21] This proposal for public funding was never considered by Congress. However, in his December 1907 message to Congress, President Roosevelt adopted the idea, noting that "the need for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses of each of the great national parties, an appropriation ample enough to meet the necessity for thorough organization and machinery, which requires a large expenditure of money."[22] Yet, even Roosevelt's embrace could not persuade many legislators to pursue this notion. Instead, reformers concentrated on other alternatives.

The continuing pressure for reform led to additional legislation a few years later. On the eve of the 1910 elections, the Republican majority in Congress passed a bill initiated by the NPLO that established the first requirements for the disclosure of campaign receipts and expenditures. As adopted, the Federal Corrupt Practices Act, more commonly known as the Publicity Act of 1910,[23] required party committees "operating in two or more states" to report any contributions or expenditures made in connection with campaigns for the House of Representatives. While an important step, the law required nothing more than postelection reports of the receipts and expenditures of national party committees or committees operating in two or more states. Consequently, the act only affected the national party committees and their congressional campaign committees, and it did not require any disclosure prior to an election. Such a modest measure failed to appease the more vocal advocates of reform.

In the 1910 elections the Democrats took control of the House and picked up seats in the Senate. When the new Congress convened, the Democrats sought to revise the Publicity Act to include preelection reporting. House Republicans hoped to defeat the bill by adding provisions that would be unacceptable to Southern Democrats. Since southerners favored states' rights and considered primaries the most important elections, House Republicans called for the regulation of committees operating in a single congressional district and the disclosure of primary campaign finances. Senate Republicans went even further, adopting a bill that included limits on campaign spending. But these tactics backfired; the Republican game of one-upmanship failed to defeat the bill. Instead, Congress approved a package of reforms far more extensive than those originally proposed.

The 1911 Amendments to the Publicity Act[24] improved disclosure and established the first spending limits for federal campaigns. The amendments extended disclosure in two ways. They required Senate as well as House campaigns to report receipts and expenditures. In addition, they required campaign committees to report their finances both before and after an election, in primary contests as well as general elections. The law also limited House campaign expenditures to a total of $5,000 and Senate campaign expenditures to $10,000 or the amount established by state law, whichever was less.

These spending limits quickly became controversial and were contested in court. Truman H. Newberry, a Michigan Republican who defeated Henry Ford in a fiercely contested Senate primary in 1918, was convicted of violating the spending limit in that race. His campaign committee reported spending close to $180,000 in its effort to secure the nomination, an amount almost 100 times the limit established by Michigan law. Newberry challenged the conviction, arguing that Congress had no authority to regulate primaries. Besides (the argument went), he and his codefendants had not violated the law, which applied to campaign committees, not to the candidate or individual supporters.[25]

In 1921, the Supreme Court ruled in *Newberry* v. *United States* (256 U.S. 232) that the congressional authority to regulate elections did not extend to party primaries and nomination activities, thus striking down the spending limits. This narrow interpretation of congressional authority stood until 1941, when in *United States* v. *Classic* (313 U.S. 299), the Court ruled that Congress did have the authority to regulate primaries wherever state law made them part of the election process and wherever they effectively determined the outcome of the general election. The Congress fully reasserted its authority to regulate the financing of primary campaigns in 1971, when it adopted the Federal Election Campaign Act.

The Court's decision in *Newberry* was not the only event that highlighted the inadequacy of federal regulations. Shortly after this ruling, the Teapot Dome scandal once again drew attention to the corruptive influence of large contributions. (In this case, the scandal involved gifts made by oil developers in a nonelection year to federal officials responsible for granting oil leases.) The scandal led Congress to act once again, this time passing the Federal Corrupt Practices Act of 1925, which stood as the basic legislation governing campaign finance until the 1970s.

The Federal Corrupt Practices Act of 1925[26] essentially followed the regulatory approach outlined by earlier legislation with little substantive change, except for the deletion of regulations governing primaries. The act revised the disclosure rules to account for the financial activity that led to the Teapot Dome scandal by requiring all multistate political committees (as well as House and Senate candidates) to file quarterly reports that included all contributions of $100 or more, even in nonelection years. The law also revised the spending limits. Senate campaigns would be allowed to spend up to $25,000 and House campaigns up to $5,000, unless state law called for a lower limit.

Despite these changes, an effective regulatory regime was never established. Though the law imposed clear reporting requirements, it provided for none of the publicity or enforcement mechanisms needed for meaningful disclosure. The law did not specify who would have access to the reports; it did not require that they be published; it did not even stipulate the penalties if committees failed to comply.

As a result, many candidates did not file regular reports. When they did, the information was provided in various forms. Gaining access to the information through the Clerk of the House or Secretary of the Senate was difficult, and the reports were usually maintained for only two years and then destroyed.

The spending ceilings were even less effective and were almost universally ignored. Because the limits were applicable to party committees, they were easily skirted by creating multiple committees for the same candidate or race. Each of these committees could then technically comply with the spending limit established for a particular race, while the total monies funneled into that race greatly exceeded the amount intended by the law. These multiple committees also facilitated evasion of disclosure. Donors could provide gifts of less than $100 to each committee without any reporting obligation, or give larger amounts to a variety of committees, thus obscuring the total given to any candidate.[27]

Wealthy donors also contributed monies through family members, and there were widespread reports of corporations providing bonuses to employees, who passed these funds on to candidates. Yet in the history of the 1925 act, no one was prosecuted for failing to comply with the law. Only two people--Republicans William S. Vare of Pennsylvania and Frank L. Smith of Illinois--were excluded from office for violating spending limits. And they were excluded in 1927 as a result of violations incurred in the first election in which the law was in place.[28] Over the next forty-five years, no other candidates were punished under this act.

The New Deal Era

Even though it was well known that candidates and party committees were not complying with the dictates of federal law, Congress did not return to the issue of campaign financing until the success of Franklin Roosevelt's New Deal coalition led conservative Democrats and staunch Republicans to seek additional reforms. With the approach of the 1940 election, these opponents of Roosevelt's liberal politics became increasingly concerned that the rapidly expanding federal work force that arose under the New Deal would become a permanent political force in the Democratic Party. Although the "classified" offices covered under the provisions of the 1883 Pendleton Act had been expanded over time, many of the thousands of workers added to public payrolls during the New Deal were not subject to the Act's restrictions. New Deal opponents were especially concerned about the tens of thousands of laborers hired under the Works Progress Administration, some of whom had allegedly been mobilized to assist Democratic Speaker of the House Alben Barkley of Kentucky in his hard-won reelection campaign in 1938.[29] In an attempt to minimize the political role of these public employees, Congress passed the Hatch Act of 1939, named after its sponsor, Senator Carl Hatch, a Democrat from New Mexico.[30]

The 1939 Hatch Act, which was also called the Clean Politics Act, prohibited political activity by those federal workers who were not constrained by the Pendleton Act. It also specifically prohibited the solicitation of political contributions from government relief workers. The law thus removed a major source of revenue for state and local party organizations, but it did not eliminate all of the monies raised from government workers, since it did not protect state and local government employees, who were still an important source of congressional campaign revenues.[31]

In 1940, Congress passed amendments to the Hatch Act to restrict the amount of money donated to political campaigns in another way.[32] The revisions imposed a limit of $5,000 per year on individual contributions to federal candidates or national party committees and of $3 million in a calendar year on the total amount that could be received or spent by a party committee operating in two or more states. The law also prohibited political contributions to candidates or party committees by federal contractors. Like earlier regulations, these restrictions had little effect on political giving. Donors could still contribute large sums by giving to multiple committees or by making contributions through state and local party organizations, which were not subject to the $5,000 limit. Furthermore, the party committees interpreted the $3 million spending limit to mean that the provision applied only to party committees; non-party organizations operating independently were not included.[33] This understanding of the law spurred a proliferation of independent non-party political committees, each of which claimed the right to raise and spend money in support of federal candidates. By the time of the 1940 election, both parties had exceeded the new law's limit.[34]

Another change in political finance during the New Deal era was the rise of labor unions as a major source of campaign money. Roosevelt's policies, many of which were regarded as pro-labor, encouraged union membership and led to the growth of organized labor as a political force in national politics. Unions worked to support Roosevelt in part by beginning the practice of making direct contributions to his campaigns. Union funds therefore became an important source of Democratic Party campaign money. In 1936, for example, unions contributed an estimated $770,000 to help Roosevelt's bid for reelection, including $469,000 from the United Mine Workers.[35]

In 1943, Republicans and Southern Democrats responded to mounting concerns over labor's political activities and wartime strikes by adopting the Smith-Connally Act, or War Labor Disputes Act of 1943.[36] This law, which was passed over the President's veto, was designed to reduce labor's political influence by extending the restrictions on corporate political giving adopted under the Tillman Act to labor union contributions. It prohibited labor unions from using their treasury funds to make political contributions to federal candidates. But the act was adopted as a war measure and was scheduled to expire automatically six months after the end of the war.

When the Republicans recaptured Congress in 1946, they returned to the ban on labor union contributions and made it permanent by including it among the provisions of the Taft-Hartley Act, or the Labor Management Relations Act, which was adopted on an override of President Truman's veto.[37] This prohibition against the use of labor union treasury funds as a source of candidate contributions has been a component of federal campaign finance law ever since. The Act sought to strengthen this prohibition on *contributions* by also prohibiting any *expenditures* by labor unions or corporations in connection with federal elections. In this regard, Section 304 of the Act amended the ban on corporate contributions that had been established under the Tillman Act and included in the 1925 Federal Corrupt Practices Act by making it unlawful "for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any [federal] election," including primary elections and political conventions or caucuses, as well as general elections. This provision was designed to ensure that labor unions or corporations could not circumvent the ban on contributions by simply spending money directly to support or defeat a candidate.[38]

Unions responded to the prohibition on the use of treasury funds by organizing auxiliary committees to support federal candidates. These committees, which came to be known as "political action committees" (PACs) based on the name given the original fund formed for this purpose,[39] collected monies from members apart from dues and used these funds to make contributions to candidates and finance other types of political activity, such as political education programs and voter turnout drives. The first committee of this type was formed in 1943 by the Congress of Industrial Organizations Political Action Committee (CIO-PAC). In 1944, the first year in which this union-affiliated political committee was active, more than $1.4 million was raised for use in federal elections. The committee was considered to be so influential that Republicans charged that anything done by the Roosevelt Administration had to be "cleared with Sidney," which was a reference to Sidney Hillman, the leader of the CIO.[40]

In the years after 1944, other labor unions followed the CIO model and formed PACs of their own, while the CIO-PAC became part of the powerful AFL-CIO Committee on Political Education (COPE). By 1956, seventeen national labor PACs were active in federal elections, contributing a total of $2.1 million. By 1968, the number had doubled, with 37 labor PACs spending at least $7.1 million.[41] Business organizations did not immediately adopt labor's tactics; for the most part, business PACs did not begin to emerge until the early 1960s. Among the earliest such committees were the American Medical Political Action Committee (AMPAC), which was affiliated with the American Medical Association, and the Business-Industry Political Action Committee (BIPAC), which was formed by affiliates of the National Association of Manufacturers.[42] In 1964, AMPAC spent an estimated $400,000 on federal candidates, while BIPAC spent over $200,000.[43] But the major growth in the number of PACs and their significant role in the financing of federal candidates did not occur until after the adoption of the Federal Election Campaign Act in the mid-1970s.

The more important change in campaign funding during the postwar era was a result not of adaptation to the law but of a change in the style of political campaigning. While party organizations remained an important source of revenue, campaigns became increasingly candidate-based. Candidates for federal office established their own committees and raised funds independent of party efforts. At the same time, television was becoming an essential means of political communication, which significantly increased the costs of seeking federal office. The rising costs of campaigns renewed concerns about the campaign finance system and the role of wealth in national elections. Yet despite these concerns, Congress took no action. The only serious gesture made toward reform between World War II and the Vietnam War era was President John F. Kennedy's decision to form a Commission on Campaign Costs to explore problems in the system and develop legislative proposals. The Commission's 1962 report offered a comprehensive program of reform, including such innovative ideas as a system of public matching funds for presidential candidates.[44] However, Congress was not receptive to the president's proposals, and no effort was made to resurrect these ideas after his assassination.

Congress did pass a related bill in 1966, but it never took effect. Campaign finance issues were once again in the news as a result of criticism of the Democratic "President's Club"---a group of donors, including some government contractors, who each gave $1,000 or more---and the censure of Senator Thomas Dodd (D.-Conn.) for using his political funds for personal purposes.

Under the leadership of Senator Russell Long (D.-La.), the powerful chair of the Senate Finance Committee, Congress passed the first major reform bill since 1925. Long hoped to reduce the potential influence of wealthy donors and ease the fundraising demands generated by the rising costs of elections by providing public subsidies to political parties to pay the costs of the presidential campaign. These subsidies would be appropriated from a "Presidential Election Campaign Fund," which would be financed by allowing taxpayers to use a federal tax checkoff to allocate $1 for this purpose. The proposal met with widespread criticism, but Long forced the Senate to approve the unusual measure by attaching it as a rider to the Foreign Investors Tax Act (Public Law 89-809).[45]

Long's victory was short-lived. In the spring of 1967, Senator Albert Gore, a Democrat from Tennessee, and Senator John Williams, a Republican from Delaware, sponsored an amendment to repeal the Long Act. Gore favored public financing, but claimed that the Long plan discriminated against third parties and would do little to control campaign costs, since it simply added public money to the private funds already being raised. Others simply opposed the idea of using government funds to finance campaigns or argued that a system of party subsidies would place too much power into the hands of the national party leaders.[46] Eventually, after much legislative maneuvering, Congress decided to make the Long Act inoperative by voting to postpone the checkoff until guidelines could be developed governing disbursement of any funds collected through this device.

Even if the Long Act had been implemented, it would not have addressed the major problems that had emerged in the campaign finance system. By this time, it was obvious to most observers that the reporting requirements and spending limits set forth in the Federal Corrupt Practices Act had proven wholly ineffective and needed a complete overhaul. There was also increasing concern about the rising costs of campaigns. In the 1956 elections, total campaign spending was approximately $155 million, $9.8 million of which was used for radio and television advertising. By 1968, overall spending had nearly doubled to $300 million, while media expenditures had increased by almost 500 percent to $58.9 million.[47]

This dramatic growth worried many members of Congress, who feared that they might be unable to raise the sums needed in future campaigns if costs kept escalating. Legislators also worried about competing against wealthy challengers who could use their own resources to finance expensive media-based campaigns. Democrats were particularly concerned about the rising costs, since Republicans had demonstrated greater success at raising large sums and had spent more than twice as much as the Democrats in the 1968 presidential contest.[48] Changing patterns of political finance thus sparked interest in further reform, and Congress responded by passing the Federal Election Campaign Act of 1971.

The FECA and Its Development

Federal Election Campaign Act of 1971

The Federal Election Campaign Act of 1971 was signed into law by Richard Nixon on February 7, 1972, and went into effect sixty days later.[49] The legislation sought to address problems stemming from the inadequacies of the Federal Corrupt Practices Act and cut rising costs. It therefore combined two different approaches to reform. The first part of the law established contribution limits on the amount a candidate could give to his or her own campaign and set ceilings on the amount a candidate could spend on media. The second part imposed strict public disclosure procedures on federal candidates and political committees in an effort to remedy the lack of effective disclosure under the Corrupt Practices Act.

The Federal Election Campaign Act's (FECA) major provisions limited personal contributions, established specific ceilings for media expenditures, and required full public disclosure of campaign receipts and disbursements. The act imposed ceilings on personal contributions by candidates and their immediate families of $50,000 for presidential and vice presidential candidates, $35,000 for Senate candidates, and $25,000 for House candidates. It limited the amounts federal candidates could spend on radio, television, cable television, newspapers, magazines, and automated telephone systems in any primary, runoff, special, or general election to $50,000 or $0.10 times the voting-age population of the jurisdiction covered by the election, with the limit set at the greater sum. In addition, the law declared that no more than 60 percent of a candidate's overall media spending could be devoted to radio and television advertising. These limits were to apply separately to primary and general elections and were indexed to reflect increases in the Consumer Price Index.

In the area of disclosure, the act required every candidate or political committee active in a federal campaign to file a quarterly report of receipts and expenditures. These reports were to list any contribution or expenditure of $100 or more and include the name, address, occupation, and principal place of business of the donor or recipient. During election years, additional reports had to be filed fifteen days or five days before an election, and any contribution of $5,000 or more had to be reported within forty-eight hours of its receipt. The reports were to be filed with the secretary of state of the state in which campaign activities took place and with the appropriate federal officer, as established under the act. For the latter purpose, House candidates filed with the Clerk of the House, Senate candidates with the Secretary of the Senate, and presidential candidates with the General Accounting Office. All reports had to be made available for public inspection within forty-eight hours of being received.

The 1971 FECA was based on the premise that media costs were the primary cause of rising campaign expenditures. The law may have helped to restrict media spending in the 1972 elections, but it did little to slow the surge in campaign spending. According to the best available estimate, total campaign spending continued to grow, rising from $300 million in 1968 to $425 million in 1972, with the sharpest increase in the presidential race, where general election spending alone rose from $44.2 million in 1968 to almost $104 million four years later.[50] President Richard M. Nixon spent more than twice as much in 1972 as he did in 1968. His Democratic opponent, George McGovern, spent more than four times the amount that Democrat Hubert Humphrey expended in 1968—and was still outspent by a substantial margin. These patterns suggested that more extensive expenditure limits would be needed if costs were to be brought under control. But before the new law could be tested in another election, the Watergate scandal broke and Congress decided to adopt a more comprehensive approach to regulation.

Federal Election Campaign Act Amendments of 1974

In 1974 Congress thoroughly revised federal campaign finance law in response to the pressure for reform generated by the Watergate scandal and other reports of financial abuse in the 1972 presidential campaign. Detailed investigations into the Nixon campaign revealed a substantial number of large contributions and an alarming number of improprieties, including the acceptance of illegal corporate gifts and the existence of at least three undisclosed slush funds containing millions of dollars from which monies were drawn to help finance the Watergate break-in.[51] These investigations also raised questions about money's influence in the political process. For example, the inquiries led to allegations that contributors had "bought" ambassadorial appointments, gained special legislative favors, and enjoyed other special privileges. The scandal created a national uproar, and Congress responded by completely overhauling the rules governing political finance.

The FECA Amendments of 1974 represent the most comprehensive campaign finance reform package ever adopted by Congress.[52] Although technically a set of amendments to the 1971 statute, the 1974 law left few of the original provisions intact. It strengthened the disclosure provisions of the 1971 law, established stringent limits on contributions, replaced the media spending ceilings with aggregate spending limits for all federal campaigns, and restricted party expenditures made on behalf of candidates. Moreover, it created an innovative public funding program for presidential elections and a new agency, the Federal Election Commission, to administer and enforce the law. In short, it erected a new regulatory regime.

The 1974 FECA imposed a set of strict limits on political contributions in order to equalize financial participation among donors and eliminate the potential for corruption posed by large donations. The legislation retained the 1971 caps on the amounts candidates and their immediate families could spend on their own campaigns, as well as the prohibitions contained in earlier legislation on corporate and labor union donations. It added restrictions on other sources of funding. An individual was allowed to contribute no more than $1,000 per candidate in any primary, runoff, or general election. An individual was also barred from giving more than $25,000 in annual aggregate contributions to all federal candidates or political committees. Donations by political committees--in particular the political action committees that the law sanctioned for use by labor unions and other groups --were limited to $5,000 per election for each candidate, with no aggregate limit on a PAC’s total contributions to all candidates. Independent expenditures made by individuals or groups on behalf of a federal candidate were limited to $1,000 a year, and cash donations in excess of $100 were prohibited.

The media spending ceilings established by the 1971 act were replaced with stringent limits on total campaign expenditures that were applied to all federal candidates. Under the new provisions, Senate candidates could spend no more than the greater amount of $100,000 or $0.08 times the voting-age population of the state in a primary election, and no more than the greater amount of $150,000 or $0.12 times the voting-age population in a general election. House candidates in multidistrict states were limited to total expenditures of $70,000 in each primary and general election. Those in states with a single representative were subject to the ceilings established for Senate candidates.

Presidential candidates were restricted to $10 million in a nomination campaign and $20 million in a general election. The amount they could spend in a state primary election was also limited to no more than twice the sum that a Senate candidate in that state could spend. All of these ceilings were indexed to reflect increases in the Consumer Price Index, and candidates were allowed to spend up to an additional 20 percent of the spending limit for fundraising costs. This latter provision was instituted in recognition of the added fundraising burden placed on candidates as a result of the contribution limits imposed by the act, which required that they finance their campaigns through small contributions.

The amendments also set limits on the amounts national party committees could expend on behalf of candidates. These organizations were allowed to spend no more than $10,000 per candidate in House general elections; the greater amount of $20,000 or $0.02 times the voting-age population for each candidate in Senate general elections; and $0.02 times the voting-age population (approximately $2.9 million) for their presidential candidate. The amount a party committee could spend on its national nominating convention was also restricted. Each of the major parties (defined as a party whose candidates received more than 25 percent of the popular vote in the previous election) was limited to $2 million in convention expenditures, while minor parties (defined as parties whose candidates received between 5 and 25 percent of the popular vote in the previous election) were limited to lesser amounts.

The reforms included a number of amendments designed to strengthen the disclosure and enforcement procedures of the 1971 act. The most important of these was the provision creating the Federal Election Commission (FEC), a six-member, full-time, bipartisan agency responsible for administering election laws and implementing the public financing program. This agency was empowered to receive all campaign reports, promulgate rules and regulations, make special and regular reports to Congress and the President, conduct audits and investigations, subpoena witnesses and information, and seek civil injunctions to ensure compliance with the law.

To assist the Commission in its task, the amendments tightened the FECA's disclosure and reporting requirements. All candidates were required to establish one central campaign committee through which all contributions and expenditures had to be reported. They were also required to disclose the bank depositories authorized to receive campaign funds. In election years, each committee had to file a financial report with the FEC every quarter, with additional reports ten days before and thirty days after every election, unless the committee received or spent less than $1,000 in the quarter. In non-election years, each committee had to file a year-end report of its receipts and expenditures. Furthermore, contributions of $1,000 or more received within fifteen days of an election had to be reported to the Commission within 48 hours.

The most innovative aspect of the 1974 law was the creation of an optional program of full public financing for presidential general election campaigns and a voluntary system of public matching subsidies for presidential primary campaigns. It thus brought into being the first program of public campaign finance at the national level, putting into place an idea that had been offered from time to time since the turn of the century. The subsidy was adopted to reduce the fund-raising pressures in national contests and to encourage candidates to solicit small donations from large numbers of donors, which would serve to broaden citizen financial participation in presidential campaigns and thereby reduce the potential influence of any particular donor.

Under the terms of this public funding program, major party presidential general election candidates could receive the full amount authorized by the spending limit ($20 million) if they agreed to refrain from raising any additional private money. Qualified minor party or independent candidates could receive a proportional share of the subsidy, based on the proportion of the vote they received in the prior election. New parties and minor parties could also qualify for post-election funds on the same proportional basis if their percentage of the vote in the current election entitled them to a larger subsidy than the grant generated by their vote in the previous election.

In the primary election, presidential candidates were eligible for public matching funds if they fulfilled certain fundraising requirements. To qualify, a candidate had to raise at least $5,000 in contributions of $250 or less in at least twenty states. Eligible candidates would then receive public monies on a dollar-for-dollar basis for the first $250 contributed by an individual, provided that the contribution was received after January 1 of the year before the election year. The maximum amount a candidate could receive in such payments was half of the spending limit, or $5 million under the original terms of the act. In addition, national party committees were given the option of financing their nominating conventions with public funds. Major parties could receive the entire amount authorized by the spending limit ($2 million), while minor parties were eligible for lesser amounts based on their proportion of the vote in the previous election.

Funding for this program came from a voluntary tax checkoff on federal income tax forms that was established by the Revenue Act of 1971.[53] This act, which was adopted before the 1974 FECA, revived the tax checkoff and public funding plan that had been adopted in 1966 but was never implemented. It provided a voluntary tax checkoff provision on individual federal income tax returns to allow individuals to designate $1 of their tax payments (or $2 for married couples filing jointly) to the Presidential Election Campaign Fund, a separate account maintained by the U.S. Treasury. Under the original terms of the act, the monies deposited in this account could be earmarked to a candidate of a designated party or placed in a nonpartisan general account. Major party candidates were to receive a subsidy at the rate of $0.15 per eligible voter, with minor party contenders receiving a proportionate share. To avoid a threatened veto by President Nixon, implementation of the checkoff was delayed until 1973 with the subsidies to begin in the 1976 presidential campaign. The FECA changed the terms of the subsidy payments but retained the checkoff as the funding mechanism.

The Revenue Act also provided a federal income tax credit or tax deduction for small contributions to political candidates at all levels of government and to some political committees, including those associated with national party organizations. Like the matching funds program, it was designed to promote broad-based participation in campaign financing. Initially, individuals making an eligible contribution could claim a federal income tax credit for 50 percent of their contribution, up to a maximum of $12.50 on a single return or $25 on a joint return. Alternatively, a political contributor could claim a tax deduction for the full amount of any contributions, up to a maximum of $50 on an individual return and $100 on a joint return.

These tax provisions were amended a number of times. In a 1973 amendment to legislation continuing a temporary debt ceiling, Congress made two changes in the checkoff provision to simplify its implementation and promote public participation: the option of earmarking a contribution to a specific party was repealed, and the Internal Revenue Service was directed to place the checkoff in a visible location on tax forms. The allowable tax credit for political contributions was increased to $25 on an individual return and $50 on a joint return by the Tariff Schedules Amendments of 1975,[54] and doubled again by the Revenue Act of 1978.[55] The credit was later repealed as part of the Tax Reform Act of 1986.[56] The tax deductions allowed under the law were doubled under the FECA of 1974, but were repealed under the Revenue Act of 1978.

Like its 1971 predecessor, the 1974 FECA was substantially revised before it was fully put into effect. The act's implementation was complicated initially by President Gerald Ford's delay in appointing members to the Federal Election Commission, which stalled the administration of the law. But the Supreme Court's decision in *Buckley* v. *Valeo* (see chapter 4) forced Congress to revisit some of the basic provisions of the law and adopt further changes. In particular, the Court struck down the spending limits established for House and Senate candidates and the contribution limit for independent expenditures, which substantially weakened the potential efficacy of the act. The Court ruled that spending limits were only allowable if they were accepted voluntarily as a condition for receiving public funding. It further held that limits on contributions by candidates and members of their immediate families were unconstitutional under the First Amendment, unless a candidate had accepted public funding. Finally, the decision also struck down the original method of appointing members of the FEC. Under the 1974 legislation, the President, the Speaker of the House, and the President pro tempore of the Senate each appointed two of the six commissioners. The Court ruled that this method was unconstitutional since four of the six members were appointed by Congress but exercised executive powers. As a result, the FEC was prohibited from enforcing the law or certifying public matching fund payments until it was reconstituted under a constitutional appointment process. The law therefore had to be changed to accommodate the Court's ruling before it could be applied in the 1976 election. Congress quickly responded by adopting a set of additional amendments in 1976 in the midst of the first elections conducted under the 1974 regulations.

Federal Election Campaign Act Amendments of 1976

The *Buckley* decision was handed down in January 1976. Congress had to act quickly if the campaign finance regulations adopted less than two years earlier were to have any effect on the 1976 elections. Because the 1976 election was already underway, President Ford asked for a bill that simply reconstituted the FEC. But the Congress, still in the grips of a climate of reform, decided to draft a more extensive bill that included revisions in the public financing program, contribution limits, and disclosure procedures. As a result, the bill President Ford signed into law in May 1976, which is known as the FECA Amendments of 1976,[57] did more than revise the regulations to conform to the Court's ruling.

The 1976 bill changed the method of appointing FEC Commissioners. Instead of giving the President, Speaker of the House, and President pro tempore of the Senate two appointments apiece, with a requirement that appointees be of different parties and be approved by the Senate, the new rules called for the appointment of all six members by the President, subject to Senate confirmation. This process avoided the separation of powers issue raised by the Court in *Buckley*.

The amendments improved the FEC's enforcement powers by granting the agency exclusive authority to prosecute civil violations of the law and jurisdiction over violations previously covered only in the criminal code. But, at the same time, Congress restricted the Commission's ability to act by requiring an affirmative vote of four members to issue regulations or initiate civil actions, and by limiting the Commission's advisory decisions to the specific fact situations presented in an individual advisory opinion request.

In response to the Court's ruling on contribution limits, Congress restored the $50,000 limit on contributions by presidential or vice presidential candidates or their families to their own campaigns, but only applied it to publicly funded candidates. Congress also established new contribution limits. In addition to the limits on individual gifts to candidates, ceilings were placed on the amount an individual could give to a PAC ($5,000 per year) or a national party committee ($20,000 per year) under federal law, and these contributions were included in the aggregate ceiling of $25,000 per year that was imposed on individual donors under the 1974 reforms. The amount a PAC could donate to a national party committee was set at $15,000 a year, and the Democratic and Republican Senatorial Campaign Committees each were allowed to give no more than $17,500 to a Senate candidate. The law thus folded party contributions into the scheme of contribution limits so that individuals could not circumvent the law by giving money to the parties. It also sought to reduce the opportunities to avoid the law by stipulating that all PACs created by a company or international union would be treated as a single committee for the purpose of determining compliance with contribution limits.

Since the Court struck down the 1974 law's ceiling on independent expenditures, the 1976 amendments contained a number of disclosure provisions designed to ensure the reporting of independent spending. Other important changes affected the candidate spending limits and public financing program. Congress created a minor loophole in the spending limits applied to publicly funded presidential campaigns by exempting legal and accounting expenses incurred to comply with the law. These payments, however, had to be disclosed to the FEC. Lawmakers also modified the provisions of the matching funds program to ensure that the availability of public money did not encourage a losing candidate to remain in the race. Under the new rules, a presidential candidate who received less than ten percent of the vote in two consecutive primaries in which he or she was on the ballot would be ineligible for additional matching payments. Candidates who withdrew from the race were also required to return any remaining public monies to the U.S. Treasury.

Federal Election Campaign Act Amendments of 1979

Despite its shaky start, the FECA regulatory approach was a great improvement over the patchwork of largely ineffective regulations that it replaced. The disclosure and reporting requirements enhanced public access to financial information and regulators' ability to enforce the law. The contribution ceilings eliminated the large gifts that had tainted the process in 1972. Public financing quickly gained widespread acceptance among the candidates, and small contributions became a staple of presidential campaign financing.

But the new regime was not without its critics. Candidates and political committees complained that the law's detailed reporting requirements forced them to engage in unnecessary and burdensome paperwork, which increased their administrative costs. State and local party leaders contended that the law reduced the level of spending on traditional party-building activities (such as voter registration and mobilization programs) and discouraged grass-roots volunteer efforts, because parties were limited in the amounts they could spend on behalf of candidates.

The initial experience with the FECA in 1976 thus led party leaders to call for further adjustments, and Congress responded by modifying the law once again. To ensure quick passage, Congress focused on "noncontroversial" changes, many of which eased requirements or restrictions in the law. Some provisions of the FECA Amendments of 1979[58] sought to streamline disclosure procedures and make reporting requirements less burdensome. The amendments reduced the maximum number of reports committees had to file during an election cycle, and exempted candidates who raise or spend less than $5,000 from the disclosure requirements, as well as party committees that raise less than $5,000 or spend less than $1,000 a year in federal elections or less than $5,000 on certain volunteer activities. For candidates and committees not exempt from the disclosure, the threshold amount for reportable contributions or expenditures was increased from $100 to $200. The threshold for disclosing independent expenditures was raised from $100 to $250. These changes substantially reduced the amount of information candidates and committees had to file with the FEC, which made reporting less onerous without significantly diminishing the information available on larger donations or expenditures.

To enhance the role of political parties and foster political participation, the law changed some of the rules on party spending. These revisions exempted certain types of party-related activity, such as grass-roots volunteer activities and voter registration and turnout programs, from the expenditure ceilings imposed on party spending in federal elections. The new rules allowed party committees to spend unlimited amounts on voter registration and get-out-the-vote activities, provided such activities were primarily conducted on behalf of the party's presidential nominee. These committees were also allowed to spend unlimited amounts on materials related to grass-roots or volunteer activities (such as buttons, bumper stickers, posters, and brochures), provided the funds used were not drawn from contributions designated for a particular candidate. The statute noted, however, that this exemption did not apply to any monies spent on public political advertising.

Contrary to some understandings, the 1979 law did not create “soft money,” which is the unregulated “nonfederal” funding that became a major source of controversy in the late 1980s and 1990s (see chapter 6). The amendments simply allowed party committees to use regulated or “hard” dollar contributions to fund certain narrowly defined activities without having the expenditures count against the party’s contribution limits to candidates or coordinated spending ceilings. The parties still had to abide by the law’s contribution restrictions. But the eased spending provisions gave state and local party committees an opportunity to play a much larger role in federal campaigns.

Finally, the 1979 amendments included three other noteworthy changes. First, Congress clarified some of the compliance and enforcement procedures. As part of this revision, Congress stripped the FEC of its authority to conduct random audits. The FEC had been given this authority to ensure effective enforcement of the law, and following the 1976 election the agency undertook random audits of ten percent of House and Senate candidates.[59] Those audits exposed minor inaccuracies in the reports filed by a number of incumbents, but led to no major enforcement actions. The audit findings, however, were a source of embarrassment to some officeholders, and this, combined with more general concerns about the uncertainties associated with random audits, was enough to convince Congress to reduce the FEC’s ability to conduct such investigations.

Second, the amount of the public subsidy for a presidential nominating convention was increased. Under the 1974 law, the base amount available to a party from the public funding program to pay for convention expenses was set at $2 million, plus a cost of living adjustment. The base amount was raised to $3 million in 1979. This level did not remain for long, since Congress again changed it in 1984, when it passed a bill that raised the convention subsidy to $4 million.[60]

Third, the new regulations prohibited candidates or officeholders from converting excess campaign funds for personal use, except for those members already serving in Congress on January 8, 1980. Personal use of leftover campaign funds was already prohibited by Senate rules, which disallowed personal use by both sitting and retired members. House rules applied this prohibition only to retired members. The FECA thus ensured that the same rules would be applied to all members in the future. This exemption or “grandfather clause” for those serving prior to 1980 was revised in 1989, when Congress adopted the Ethics Reform Act, which contained provisions that repealed the exemption by 1993.[61]

The Reform Debate After FECA

The 1979 FECA was the last major campaign finance bill to be passed at the federal level until the adoption of the Bipartisan Campaign Reform Act of 2002. In the two intervening decades, Congress made minor changes or modifications in the law, but did not revise statutory provisions to account for the substantial changes in political financing that occurred during this period. Candidates, parties, and political practitioners adapted to the FECA regulations in ways both intended and unintended. Many of these innovations undermined the efficacy of the law and raised questions about the FECA's ability to control the flow of political money. The response to the FECA thus kept campaign finance reform on the legislative agenda, and almost every Congress between 1986 and 2002 debated major reform plans. Yet, this legislative struggle produced little more than a lengthy stalemate on campaign finance issues, which was characterized by deep partisan disagreements over the best approach to strengthen the efficacy of the law.

The financial patterns that characterized federal elections in the decade after the initial passage of the FECA led many advocates of regulation to call for further reforms. While candidates and political organizations quickly adjusted their practices to meet the requirements of the law, the improved disclosure of campaign monies revealed a number of patterns that gave reformers cause for concern. Congressional campaign spending continued to rise, which renewed the debate about the role money plays in federal elections. Incumbents amassed resources from their broad sources of support, and outspent their challengers by substantial margins, which led some observers to question whether challengers could compete financially under the FECA restrictions and whether the rules were serving as an incumbent protection mechanism. Much of the financial advantage enjoyed by incumbents was increasingly due to the contributions and expenditures of PACs, which became an increasingly important source of campaign money. PAC funding became such a significant source of campaign money by the mid-1980s that some reformers, including Common Cause, began to advance the need for more stringent regulation of PACs as the most pressing issue in campaign finance debate.

The proliferation of PACs was one of the most notable direct consequences of the FECA. From 1974 to 1986, the number of committees registered with the FEC increased from 1,146 to 4,157, while the amounts they contributed to candidates rose from about $12.5 million to $105 million.[62] While there were many causes of this growth, the campaign finance regulations were a major factor.[63] The FECA sanctioned PACs and groups and organizations had an incentive to form PACs, since the law established a higher contribution limit for PACs than for individual donors. The FEC also encouraged PAC formation as a result of the advisory ruling it issued to Sun Oil in 1975.[64] Sun Oil Company asked the FEC if the PAC it planned to establish and other political activities it proposed would be allowable under the FECA. It also asked whether it would be legal to use corporate funds to establish, administer, and raise money for the PAC. The FEC confirmed that Sun could establish a PAC and decided that it would be legal to finance the administrative and overhead costs with corporate funds. This decision resolved the most significant ambiguities regarding corporate PACs, and hundreds of corporations, trade associations, and other groups took the guidance as an authoritative guideline for forming and administering PACs of their own.

The most notable indirect consequence of the FECA regulations was the rise of a new form of party finance, which came to be known as soft money. Soon after the FECA took effect, party organizations and, in particular, presidential campaigns, began to seek out methods of circumventing the expenditure and contribution limits that accompanied public funding. Among the tactics they pursued was the aggressive exploitation of the exemption for party-related grass-roots and party building activities. As a result of a number of FEC advisory opinions issued in the late 1970s, party committees were allowed to accept and spend monies not raised under federal contribution limits to pay administrative costs and to finance other nonfederal election-related activities.[65] Soon thereafter, similar rules were applied to national party committees, allowing them to receive and spend funds not regulated by federal law to finance the nonfederal share of their administrative costs and other activities.[66] So two separate streams of regulatory decision-making began to merge: Congress was loosening the restrictions on party spending, while simultaneously the FEC was loosening the restrictions on party fundraising. The party committees took advantage of the opportunity to raise unrestricted funds and used them to supplement the hard dollars they were spending to support federal candidates. Within a couple of election cycles, the FEC decisions and innovative party practices had led to a new approach to campaign funding and a fundamental change in the regulatory structure. This transformation occurred without congressional deliberation, public comment, or much apparent thought for the enormous consequences it would have on the effectiveness of federal campaign finance laws.

By the end of the 1980s, soft money funding had become a major component of national election financing, with both national parties spending tens of millions of soft dollars on staff salaries, overhead, voter turnout programs and other political efforts designed to affect the outcome of federal contests, especially the presidential race. Most of this money was being raised through unlimited contributions from sources such as corporations and labor unions that had long been banned from participating in federal elections. Critics argued that soft money funding violated the provisions of the FECA and charged that the FEC had failed to fulfill its responsibility to enforce the law (see chapter 9). But the FEC took no action to prohibit party committees from raising soft money, so this type of funding became a staple of federal campaigns.

In the 1990s, the national parties raised increasingly large sums of soft money. Soft money receipts rose from $86 million in 1992 to about $260 million in 1996 to more than $495 million in 2000. This steep jump was spurred in part by the parties' discovery of issue advocacy advertising, which offered another method of circumventing FECA restrictions. Beginning in the 1996 election cycle, the national party committees sponsored candidate-specific issue advertisements that were designed to promote their presidential nominees and, in subsequent elections, their House and Senate candidates. These ads, because they did not "expressly advocate" the election or defeat of a federal candidate, were not regulated under the FECA and therefore could be financed in part with soft money. Accordingly, these ads provided party committees with an effective means of supporting candidates without having to be concerned with the contribution ceilings or coordinated spending limits. Parties capitalized on this option by raising as much soft money as possible for this purpose.

These financial trends led to a consensus among policymakers that the FECA was no longer working and that fundamental reform was necessary. But there was wide disagreement as to how the problems should be fixed. Controversies regarding the desirability and potential effects of various proposals, including spending limits in House and Senate races, public subsidies at the congressional level, restrictions on PAC contributions, the elimination of soft money, regulation of issue advocacy, and even the deregulation of campaign funding led to debates that often produced more heat than light. While Congress considered different proposals, and at times achieved majorities in both houses in favor of a particular bill, partisan gridlock and irreconcilable differences between the House and Senate stymied major reform.

From time to time Congress did adopt some modifications of the campaign finance rules, but these were mostly minor adjustments that were included in bills devoted to other subjects. In addition to the 1984 increase in the amount of the public convention subsidy, the legislature repealed the tax credit as part of a tax package in 1986[67] and in 1993, tripled the amount of the presidential election fund income tax checkoff (raising it from $1 to $3 on single returns and from $2 to $6 on joint returns) as part of the Omnibus Budget Reconciliation Act.[68]

Congress also amended the reporting and disclosure provisions of the FECA in 1995 and 1999 to facilitate electronic filing of disclosure reports. In December 1995, President Clinton signed a law that required the FEC to establish the technical and regulatory framework to enable committees to file reports via computer disk or other electronic means.[69] The law sought to promote on-line access to FEC reports, a reduction in the amount of paper filing and manual processing necessitated by the disclosure system, and more efficient and cost-effective procedures for filers. In 1996, the FEC set forth rules to make electronic filing a reality, including procedures for accepting reports, amending reports, and verifying the authenticity of reports.[70] At first a voluntary program, in 2000 electronic reporting became a requirement for most of the candidates and committees registered with the FEC as a result of a provision of the Treasury and General Government Appropriations Act of 2000.[71] Adopted in 1999, the act mandated that the FEC have electronic filing requirements in effect as of January 1, 2000. Under the rules adopted by the FEC to meet the terms of the new statute, any political committee or person, with the exception of Senate candidates, is required to file disclosure reports electronically if total contributions or expenditures within a calendar year exceed, or are expected to exceed, $50,000. Committees or persons raising or spending less than this threshold sum have the option to file electronically but are not required to do so.[72] As of the 2004 election cycle, the Senate had yet to take action to apply this electronic reporting requirement to its own campaigns.

The most significant change in political finance regulations adopted prior to 2002 was an amendment to the tax code adopted in 2000 that required committees organized under Section 527 of the Internal Revenue Code to disclose their political activities. This act was a response to a new tactic in political finance that emerged in advance of the 2000 elections.

Section 527 of the tax code exempts "political organizations" from income taxes. This exemption was originally intended to cover political party committees, candidate committees, and state and federal political committees that are registered and report to the FEC. But recent changes in Internal Revenue Service (IRS) advice and court rulings in the area of issue advocacy made it possible for Section 527 groups to engage in political activity without having to register either with the FEC or state campaign finance authorities. The IRS determined that an organization may engage in activities that seek "to influence the outcome of federal elections" without being subject to FECA restrictions or disclosure requirements, provided that it does not "expressly advocate" the election or defeat of federal candidates. Moreover, because these organizations are exempt from federal taxation, they can receive gifts of more than $10,000 without being subject to the federal gift tax.[73]

Section 527 was established before issue advocacy advertising became a popular campaign strategy. This provision did not require the disclosure of an organization's contributors or expenditures, since Congress at the time assumed that they would already be disclosed to the FEC or the appropriate state agency. This gap between the Internal Revenue Code and the FECA, a gap largely created by the gray area of "issue advocacy," provided groups with a loophole in the disclosure requirements that groups rapidly began to exploit in anticipation of the 2000 election. Groups or individuals, including members of Congress, began to sponsor or establish committees under Section 527 for the express purpose of raising and spending unlimited sums on candidate-specific issue advocacy advertising or other political efforts designed to support federal candidates. In the first few months of 2000, more than a dozen such committees formed and announced their intentions to raise tens of millions of dollars in connection with federal elections. One such group, Republicans for Clean Air, gained national attention for the advertisements it broadcast against Senator John McCain in a number of presidential primaries.[74]

In an uncharacteristic move given the recent history of campaign finance reform, Congress swiftly reacted to this development and passed legislation to place disclosure requirements on Section 527 committees.[75] The law, which was signed by President Bill Clinton on July 1, 2000, imposed reporting obligations on Section 527 political organizations that are not required to report to the FEC and have annual gross receipts in excess of $25,000. All Section 527 organizations meeting this revenue threshold must file annual income tax returns similar to Form 990 filed with the IRS by unions and other organizations that are exempt under Section 501 of the tax code. In addition, these organizations must report all contributors of $200 or more during a calendar year and expenditures of more than $500 to any one source in a calendar year.

Congress did not address many of the issues raised by the advent of issue advocacy in its Section 527 reform legislation, but it did make a start by placing minimal reporting requirements on these organizations. Congress was not able to agree on other proposed changes, including the imposition of limits on contributions, the extension of disclosure to other committees organized under the tax code, or the establishment of restrictions on issue advocacy advertising. So even this regulatory change did not obviate the pressing need for more comprehensive campaign finance reform.

The Bipartisan Campaign Reform Act of 2002

History suggests that the best prospects for reform occur when a new Congress faces some major financial controversy or scandal that has taken place in a previous election. For this reason, many advocates of reform hoped that the 1996 election would prove to be a catalyst for fundamental changes in the system. That election featured a national controversy over campaign fundraising, as the

Democrats' fund-raising practices and the alleged "selling" of access to the White House made campaign finance reform a major issue in a presidential election for the first time in decades. The unprecedented financial activities of 1996, especially the jump in soft money and the advent of candidate-specific issue advertising, clearly demonstrated that the FECA's regulatory structure had essentially become meaningless and that a wholesale change in the system was sorely needed.

By the spring of 1997, Congress, the Department of Justice, and the FEC had initiated separate investigations into party fundraising practices during the 1996 election. As a result of these investigations, the Democratic National Committee (DNC) was forced to admit that it had received at least $3 million in contributions from illegal or questionable sources, which the party returned to these donors.[76] The White House also released documents that indicated that President Clinton had attended 103 "coffees klatches" with political supporters and donors, who contributed a total of more than $25 million to the Democrats in 1996. The documents further revealed that Vice President Al Gore had made a number of fundraising telephone calls from his office, seeking contributions for the DNC in amounts of $50,000 or more.[77]

Congress reacted by placing reform high on the legislative agenda, and deliberating on a number of major reform proposals. The leading plan, known as the McCain-Feingold bill for its two principal sponsors in the Senate, Republican John McCain of Arizona and Democrat Russell Feingold of Wisconsin, focused on the elimination of soft money and restrictions on the funding of candidate-specific issue advertising. A companion bill was sponsored in the House by Republican Christopher Shays of Connecticut and Democrat Martin Meehan of Massachusetts. McCain and Feingold had sponsored a bipartisan reform proposal in 1996, but the plan was defeated by a Republican-led filibuster. At the start of the 105th Congress, the outlook for reform was promising, particularly since McCain and Feingold had trimmed down the broader legislative package they had offered in the previous Congress to focus on soft money and issue advocacy advertising. But in both the 105th and 106th Congresses, their bill achieved majority support in both houses only to be defeated by a filibuster in the Senate led by Republican Mitch McConnell of Kentucky, the legislation's leading opponent.[78]

When the new Congress convened in 2001, advocates of reform pressed their cause with renewed conviction and strength. A spike in soft money fundraising, which nearly doubled from the $262 million raised in 1996 to $495 million in 2000,[79] and a surge in issue advocacy advertising in federal races, combined with McCain's unexpectedly strong bid for the 2000 Republican presidential nomination, strengthened the resolve of congressional reformers to pass the McCain-Feingold proposal. The prospects of passage were also improved by the results of the congressional elections, which produced a few additional supporters of the bill, thus narrowing the seven or eight vote margin that had upheld filibusters in previous congresses by possibly three or four votes.[80]

Under the leadership of McCain and Feingold, the Senate took action on reform legislation early in the new session. The Senate held a wide-ranging, open debate on the bill in the spring of 2001, which produced a number of amendments that were added to the original proposal. The modified proposal easily passed by a margin of 59 to 41, which represented a gain of six votes as compared to the cloture vote that failed in the previous Congress.

The bill, however, continued to face determined opposition in the House. The Republican leadership continued to advocate their alternatives and refused to bring Shays-Meehan to the floor. This deadlock was not broken until January 2002, when House advocates of the bill garnered the support needed for a successful discharge petition to force a rule for debate onto the floor of the House.[81]

The legislative effort in the House took place in a favorable political climate created by the bankruptcy of Enron Corporation, a giant energy company, and subsequent questions about the influence of the corporation's political contributions on legislative and administrative actions that benefited the company. Enron's chief officer, Kenneth Lay, was prominently identified as a supporter of President Bush, but Democrats and Republicans had accepted contributions from the company, which gave members on both sides additional incentive to embrace the cause of reform. Once the bill reached the floor, it easily passed the House, but not before a number of changes were made, including additional restrictions on the financial activities of state and local parties in federal elections.[82]

The Senate responded quickly to the House action. Democrats held majority control in the body, and with the prospects of a successful filibuster now unlikely, the major issue was whether the

Senate would accept and adopt the House version of the bill, or go to conference committee to iron out differences. Since a conference committee was viewed by reformers as a vehicle for killing the bill, McCain and Feingold pressed for adoption of the House bill as a substitute to the version of McCain-Feingold approved by the Senate in its previous session. After a few weeks of procedural wrangling, a motion to end debate on a consent agreement to move the House bill to the floor was adopted by a 68 to 32 vote, and the Senate adopted the bill, now known as the Bipartisan Campaign Reform Act (BCRA), by a 60 to 40 vote.[83] On March 27, 2002 President George W. Bush signed the bill into law with little fanfare.[84]

As soon as BCRA was adopted, its constitutionality was challenged in court. By this time, a legal challenge was widely anticipated, since Senator Mitch McConnell of Kentucky, one of the leading opponents of the law, had announced weeks before final passage in the Senate that he was preparing a legal complaint against the proposed legislation. In all, eleven separate complaints were filed against the act in the U.S. District Court for the District of Columbia, involving more than eighty plaintiffs, ranging from the Republican National Committee and California Democratic Party to the National Rifle Association, American Civil Liberties Union, and AFL-CIO. These actions challenged the constitutionality of virtually every aspect of the law.

BCRA's congressional sponsors expected a court challenge, and included in the law a provision invoking the procedural rules for federal courts that establish a process for expedited court review of statutes that Congress deems to be in need of prompt resolution. Accordingly, the District Court seated a special three-judge panel, consisting of two district court judges and a presiding circuit court judge, to conduct a trial on an expedited basis, with appeal directly to the U.S. Supreme Court.[85] To expedite review, the three-judge panel consolidated the eleven complaints into one case, *McConnell v. Federal Election Commission*, and set strict timetables for the gathering of evidence and filing of briefs. In early December 2002, the panel heard oral arguments in the case, and in May 2003 issued a 1,638 page opinion that upheld some provisions of the law, but found others to be unconstitutional or nonjusticiable.[86] This ruling, however, had no effect on the implementation of the law, which went into effect on November 6, 2002, the day after the midterm federal elections, because the District Court issued a stay of the ruling soon after it was released, pending review of the decision by the Supreme Court.

The Supreme Court quickly began its review in an effort to determine the law in advance of the 2004 elections. By the end of the summer of 2003, briefs had been submitted to the court, and in early September, the court scheduled an unusually long four hours of oral argument to consider the array of issues raised in the complicated case. Three months later, the court issued its opinion. In a ruling that surprised many observers, particularly given the divisions in the lower court ruling, the court upheld all of the major provisions of the law, albeit in some instances by the narrow margin of 5-4.[87] The court only struck down the law's prohibition on contributions by minors and a provision that would have required party committees to decide whether to make independent or coordinated expenditures in support of a candidate at the time of a candidate's nomination.

BCRA was designed to restore the regulatory structure established by the FECA by addressing the problems raised by soft money and issue advocacy advertising. But the legislative maneuvering required in passing the bill and the focus of advocates on possible methods of evading the law led to a number of other major provisions, including restrictions on fundraising by federal politicians for organized groups, increases in some contribution limits, and special provisos for candidates facing self-financed opponents. As a result, BCRA is a complex and technical statute that moves the regulation of political finance beyond the original borders established by the FECA.[88]

One of the central pillars of BCRA is a ban on soft money at the national level. The law prohibits a national party committee, including any entities directly or indirectly established, financed, maintained, or controlled by such a committee or any agent acting on a committee's behalf, from soliciting, receiving, spending, transferring, or directing to another person any funds that are not subject to federal source prohibitions, contribution limits, and reporting requirements. It also restricts fundraising and expenditures by federal officeholders or candidates, or agents acting on behalf of an officeholder or candidate. These individuals may not solicit, receive, direct, transfer, or spend funds in connection with an election for federal office, including funds for any activity defined as a federal election activity, unless the monies used for these activities conform to the limitations, prohibitions, and reporting requirements of the Act.

To discourage circumvention of these restrictions, the law also regulates fundraising by federal officeholders or candidates and national party committees for other organizations that conduct activities related to federal elections. For example, national party committees or their agents, as well as state and local party committees and their agents, are specifically barred from soliciting funds or otherwise financially supporting tax-exempt organizations that are engaged in activities, such as voter registration and mobilization programs, that are carried out "in connection with" federal elections. Similarly, national and state party committees or their agents are banned from raising soft money for certain organizations that operate under Section 527 of the Internal Revenue Code. In short, the law attempts to prevent party committees from circumventing the soft money ban and disclosure requirements by raising unregulated funds for interest groups or Section 527 committees.

In recognition of the multi-varied roles that federal elected officials or candidates often fulfill, the law does make some allowances for certain types of fundraising that might occur outside of the federal limits. It exempts from the soft money prohibition individuals who are candidates for state or local office and raising money under state law for activities that only refer to a state or local candidate. So a member of the House who is running for governor can solicit contributions for the gubernatorial campaign in excess of the amounts allowed by federal law, so long as the monies are raised in accordance with state law and used only for the gubernatorial race, not a federal contest. Federal officeholders or candidates and national party committee officials can participate in state and local party fundraising events as a speaker or featured guest, but may not solicit funds for the event that are not subject to federal contribution limits. Finally, federal elected officials and candidates may raise money from individuals (not corporations or labor unions) of up to $20,000 for certain tax-exempt charitable organizations provided that these organizations do not conduct voter registration and turnout programs as their principal purpose.

BCRA also sets forth more explicit rules regarding the types of state and local party activity that have to be financed with federally regulated funds. Most importantly, the statute closes the issue advocacy loophole by requiring that any state or local party-financed public communication that features a federal candidate and promotes, supports, attacks, or opposes a candidate for federal office must be funded with hard money. Furthermore, any voter registration drives conducted in the last 120 days of a federal election are defined as federal election activity that must be funded with hard money. As for voter identification and turnout programs, the provisions generally limit state and local parties to hard money only if they occur in an election in which a federal candidate is on the ballot. BCRA thus places greater restrictions on state and local party campaign spending than was the case under previous FEC allocation rules.

The congressional sponsors of BCRA recognized that a ban on soft money would reduce the revenues available to national party committees. To provide some partial compensation for this anticipated loss, the statute increases some contribution limits. The law increases the aggregate amount of hard money that an individual donor may contribute to candidates, parties, and PACs to $95,000 per election cycle, nearly double the FECA's aggregate ceiling of $25,000 per calendar year (the equivalent of $50,000 per election cycle). Within this aggregate limit, the statute provides a sub-limit of $57,500 every two years in aggregate contributions to parties and PACs (though no more than $37,500 of this amount may be given to entities other than national party committees). Thus, a donor who chooses to do so may contribute up to $57,500 every two years to party committees. With respect to contributions by individuals to specific party committees, the BCRA raises the annual limit on contributions to a national party committee from $20,000 to $25,000 and the allowable amount to a state party committee under federal law from $5,000 to $10,000. The law also raises the amount an individual may contribute to a federal candidate from $1,000 per election to $2,000 per election, and increases the combined amount a national party committee and senatorial committee may give to a Senate candidate to $35,000, double the $17,500 allowed by the FECA. All of these contribution ceilings, except for the $10,000 state party committee limit, are indexed for inflation. But the changes were limited to individual donations. The law made no changes in the amounts an individual may contribute to a PAC or in the sum a PAC may contribute to a party committee or another PAC.

In a marked departure from the approach followed under the FECA, the new rules ease contribution limits and party coordinated spending ceilings in certain circumstances when a candidate is facing a self-financed opponent. This aspect of the law is known as "the millionaire's provision," since it was designed to address the concerns of incumbent legislators who feared the possibility of facing a wealthy, free-spending opponent. Because the Supreme Court has ruled that candidates can spend unlimited amounts of their own money (unless they accept public funds), Congress adopted an approach that would make it easier for candidates to raise money when running against a wealthy opponent. The statute sets forth a complicated set of formulas that trigger higher contribution limits and higher levels of party support for candidates opposed by a self-funded challenger who is spending substantial amounts of personal money on his or her own campaign. In both the Senate and House, once a self-funded candidate exceeds a designated threshold of personal spending on a campaign (called the "opposition personal funds amount," which is a measure of the personal spending of a wealthy candidate minus the amount spent by an opponent), higher contribution limits are applied to the candidate who is not self-funded. The law establishes a threshold in Senate elections of $150,000 plus a sum equal to $0.04 times the state's eligible voting population; in House races, the threshold is $350,000. Once a self-funded candidate has reached 110 percent of the total "opposition personal funds amount," higher contribution limits would be triggered for his or her challenger. Depending on the amount spent by the self-funded candidate, contributions can be increased by up to six-fold in Senate races ($12,000 per donor) or up to three-fold ($6,000) in House races. In both Senate and House contests, when the highest trigger amounts of personal spending are reached, the ceilings on party coordinated expenditures are lifted for the candidate who is not self-funded.

Given the recent flood of issue advocacy advertising in federal elections, congressional reformers were especially cognizant of the need to strengthen the regulations governing this form of campaign spending. The congressional sponsors knew that a ban on soft money and greater regulations on party spending would provide a strong incentive for donors to shift their contributions to PACs or other organized political groups, which would be able to use unregulated funds for issue advocacy advertising campaigns. The other central pillar of law, complementing the soft money ban, was regulation of the funding of issue advocacy communications, particularly advertisements that featured federal candidates.

To address the problem of issue advocacy, BCRA expanded the realm of regulated political communications beyond the "magic words" doctrine that the Supreme Court suggested in *Buckley* (where the inclusion of words such as "vote for" or "elect" in communication were viewed as the trigger for regulation) to encompass advertisements that were targeted at federal candidates but did not use specific words of express advocacy. Accordingly, the law establishes a new regulatory standard for express advocacy by defining "electioneering communications," as any broadcast, cable, or satellite communications that refer to a clearly identified federal candidate, are made within 60 days of a general election or 30 days of a primary election, and are targeted to the electorate of the candidate. The law also contains an alternative standard that includes any broadcast, cable, or satellite communication that promotes or supports, or attacks or opposes a federal candidate (regardless of whether it expressly advocates a vote for or against a candidate), and is suggestive of no other plausible meaning other than an exhortation to vote for or against a candidate.

BCRA seeks to redefine the concept of express advocacy to include the types of issue ads targeted to federal candidates that have proliferated in recent election. It does so by drawing a line consisting of stated criteria that principally seek to eliminate corporate and union funding for such advertisements and by limiting regulation to television or radio advertisements. Communications that qualify as electioneering communications can still be broadcast or otherwise distributed, but they cannot be financed with corporate or labor union funds. To give further effect to this aspect of the law, BCRA calls upon the FEC to develop new regulations for determining what constitutes "coordinated activity" to ensure that organized groups and political committees do not coordinate their efforts with federal officeholders or candidates or party committees.

BCRA also requires the disclosure of the costs of such "electioneering communications" by any spender (including individuals and unincorporated associations) who exceeds $10,000 in aggregate expenditures, and disclosure of any contributions of more than $1,000. If an organization establishes a separate fund to finance electioneering communications consisting exclusively of donations from individuals, only donors to the fund need to be disclosed; if no separate fund is created, then donors to the organization generally have to be disclosed.

Even with these new provisions, BCRA leaves a number of areas of interest group electioneering unregulated. No new restrictions are placed on any interest group communications that occur outside of the 60-day or 30-day window periods; independent, non-express advocacy advertising done during the pre-window period, even if it features a federal candidate, can be financed with unregulated monies, just as was the case prior to the adoption of the BCRA. Furthermore, this expanded sphere of regulation does not include other communications, including voter guides, direct mail, Internet communications, or telephone program calling. The new law places no new restrictions on the financing of these types of communications.

Conclusion

The adoption of BCRA represents the most recent step in our nation's long history of regulating the role of money in federal elections. It will not be the last. Even before the fate of the BCRA was decided, advocates of reform noted that BCRA was an incremental step that failed to address the need for comprehensive reform of the system. In the wake of its adoption, reform groups renewed their calls for further legislation to reform the presidential public funding system, provide some sort of reduced-cost or free broadcast time to federal candidates, and restructure the FEC. These calls became more urgent in response to the initial experience under BCRA and the financing of the 2004 campaign. As soon as the FEC issued regulations to implement the new law, advocates of reform filed complaints against the agency, charging that the Commission had created new loopholes that violated BCRA's provisions, and pressed the case for the creation of a new enforcement agency. In the presidential race, both major party nominees rejected public funding during the primaries, which raised fundamental questions about the future of the presidential public funding system. The growing role of Section 527 organizations in the financing of electioneering activities and a major controversy concerning the application of federal campaign finance restrictions to these groups renewed the debate on the regulation of 527s. A new era of reform has thus begun, but like those that preceded it, it has not resolved the enduring debate concerning the role of money in American politics.

Notes to Chapter 1

[1] Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (NY: Praeger, 1988), p. xv.

[2] Robert E. Mutch, "The First Federal Campaign Finance Bills," in Paula Baker, ed., *Money and Politic$* (The Pennsylvania State University Press, 2002), p. 35. Here Mutch identifies the 1837 House bill submitted by Bell as the "first federal campaign finance bill." This revises his earlier identification of an 1839 Senate bill to prohibit assessments as "the first bill to regulate campaign financing" (*Campaigns, Congress, and Courts*, p. xvi).

[3] Cited in Mutch, *Campaigns, Congress, and Courts*, p. xvi.

[4] Cited in *Congressional Campaign Finances: History, Facts, and Controversy* (Washington, DC: Congressional Quarterly, 1992), pp. 29-30.

[5] Mutch, *Campaigns, Congress, and Courts*, p. xvi; *Congressional Campaign Finance*, p. 30; Louise Overacker, *Money in Elections* (New York: Macmillan, 1932), pp. 102-105.

[6] Paula Baker, "Campaigns and Potato Chips; or Some Causes and Consequences of Political Spending," in *Money and Politic$*, p. 18.

[7] This appropriations act was adopted by the 44th Congress on August 15, 1876. See 19 Stat. 169 (1877).

[8] Executive Order of June 22, 1877. Charles Richard Williams, ed., *The Diary and Letters of Rutherford B. Hayes, Nineteenth President of the United States* (Columbus, OH: Ohio State Archeological and Historical Society, 1922), Vol. 3, p. 438. Available at http://www.ohiohistory.org/onlinedoc/hayes/Volume03/Chapter35/EXECUTIVEJune221877.txt (viewed August 2, 2004).

[9] 22 Stat. 403 (1883).

[10] Herbert Croly, *Marcus Alonzo Hanna: His Life and Work* (New York: Macmillan, 1912), p. 325.

[11] Based on the data reported in Herbert E. Alexander, *Financing Politics* (Washington, DC: Congressional Quarterly, 1980), p. 4.

[12] In 1897, Nebraska, Missouri, Tennessee, and Florida passed bans on corporate contributions in reaction to the corporate fundraising efforts of McKinley's 1896 presidential campaign. All four states had cast their electoral votes for William Jennings Bryan. See Mutch, *Campaigns, Congress, and Courts*, p. xvii.

[13] Quoted in Jasper B. Shannon, *Money and Politics* (New York: Random House, 1959), p. 36.

[14] The quotation is from a 1904 letter from Roosevelt to Harriman cited in Ibid., pp. 35-36.

[15] New York State Legislature, *Testimony Taken Before the Joint Committee of the Senate and Assembly of the State of New York to Investigate and Examine into the Business Affairs of Life Insurance Companies Doing Business in the State of New York*. 10 volumes (Albany: New York State, 1905). See, in particular, volume 1, pp. 689-753.

[16] Theodore Roosevelt, "Fourth Annual Message," in Fred L. Israel, ed., *The State of the Union Messages of the Presidents 1790-1966*, vol. II (New York: Chelsea House, 1966), p. 2128.

[17] Theodore Roosevelt, "Fifth Annual Message," in Israel, ed., *The State of the Union Messages*, vol. III. p. 2161.

[18] Theodore Roosevelt, "Sixth Annual Message," in Ibid., p. 2194.

[19] Mutch, *Campaigns, Congress, and Courts*, pp. 5-6.

[20] 34 Stat. 864 (January 26, 1907).

[21] Mutch, *Campaigns, Congress, and Courts*, p. 35.

[22] Theodore Roosevelt, "Seventh Annual Message," in Israel, ed., *The State of the Union Messages*, vol. III, p. 2276.

[23] 36 Stat. 822 (1910).

[24] 37 Stat. 25 (1911).

[25] For background on this case, see Spencer Ervin, *Henry Ford v. Truman H. Newberry: The Famous Senate Election Contest* (New York: Richard A. Smith, 1935).

[26] 43 Stat. 1070 (1925).

[27] Overacker, *Money in Elections*, pp. 249-271; *Congressional Campaign Finances*, p.32; Mutch, *Campaigns, Congress, and Courts*, pp. 27-28.

[28] *Congressional Campaign Finances*, p.32, and Shannon, *Money and Politics*, pp. 50-51.

[29] Shannon, *Money and Politics*, p. 55.

[30] 53 Stat. 1147 (1939).

[31] Mutch, *Campaigns, Congress, and Courts*, p. 34.

[32] 54 Stat. 767 (1940).

[33] Mutch, *Campaigns, Congress and Courts*, p. 35.

[34] Louise Overacker, *Presidential Campaign Funds* (Boston: Boston University Press, 1946), p. 34.

[35] Ibid., p. 50.

[36] 57 Stat. 167 (1943).

[37] 61 Stat. 136 (1947). In overriding Truman's veto, House members cast 331 votes in support of the bill, with a majority of both parties supporting the bill. At the time, the 331 votes was the largest vote ever recorded in the House to override a veto. See Fred A. Hartley, Jr., *Our New National Labor Policy* (New York: Funk & Wagnalls Company, 1948), p. 91.

[38] Mutch, *Campaigns, Congress and Courts*, pp. 154-159.

[39] Frank J. Sorauf, "Political Action Committees," in Anthony Corrado and others, *Campaign Finance Reform: A Sourcebook* (Washington: Brookings Institution Press, 1997), p. 123.

[40] Alexander, *Financing Politics*, p. 71

[41] Joseph E. Cantor, *Political Spending by Organized Labor: Background and Current Issues*, Congressional Research Service Report for Congress, 96-484 GOV, May 29, 1996, pp. 1-2.

[42] Bernadette A. Budde, "Business Political Action Committees," in Michael J. Malbin, ed., *Parties, Interest Groups, and Campaign Finance Laws* (Washington: American Enterprise Institute, 1980), p. 10.

[43] George Thayer, *Who Shakes the Money Tree?* (New York: Simon and Schuster, 1973), p. 88.

[44] President's Commission on Campaign Costs, *Financing Presidential Campaigns* (Washington: President's Commission on Campaign Costs, 1962).

[45] Mutch, *Campaigns, Congress, and Courts*, pp. 37-39.

[46] Alexander, *Financing Politics*, p. 28.

[47] Congressional Quarterly, *Dollar Politics* (Washington: Congressional Quarterly Press, 1982), p. 8, and Alexander, *Financing Politics*, p. 11..

[48] Alexander, *Financing Politics*, p. 5. See also, Herbert E. Alexander, *Financing the 1968 Election* (Lexington, Massachusetts: Lexington Books, 1971), pp. 79-86.

[49] Public Law 92-255.

[50] Herbert E. Alexander, *Financing the 1972 Election* (Lexington, Massachusetts: Lexington Books, 1976), pp. 78 and 80.

[51] For a review of the Watergate scandal and the financial improprieties of the 1972 Nixon presidential campaign, see Alexander, *Financing the 1972 Election*, pp. 39-76.

[52] Public Law 93-443.

[53] Public Law 92-178.

[54] Public Law 93-625.

[55] Public Law 95-600.

[56] Public Law 99-514.

[57] Public Law 94-283.

[58] Public Law 96-187.

[59] The Association of the Bar of the City of New York Commission on Campaign Finance Reform, *Dollars and Democracy: A Blueprint for Campaign Finance Reform* (New York: Fordham University Press, 2000), p. 155.

[60] Public Law 98-355.

[61] Public Law 101-194.

[62] Frank J. Sorauf, *Money in American Elections* (Glenview, Illinois: Scott, Foresman and Company, 1988), pp. 78-79.

[63] Ibid., pp. 73-77.

[64] FEC, Advisory Opinion 1975-23.

[65] See FEC, Advisory Opinions 1978-10 and 1978-50.

[66] See, among others, FEC, Advisory Opinions 1979-17 and 1982-5.

[67] Public Law 99-514.

[68] Public Law 103-66.

[69] Public Law 104-79.

[70] See FEC, *Record* 22:11 (November 1996), p. 2, and 61 *Federal Register* 42371.

[71] Public Law 106-58.

[72] FEC, "Mandatory Electronic Filing Rules Published," press release, June 23, 2000, p. 1. Instead of placing themselves under the same requirements as presidential and House candidates, Senators decided to continue the practice of having Senate candidates file official reports with the Secretary of the Senate, who then sends the reports to the FEC. Senate candidates, however, are invited to file "unofficial" copies of their reports electronically with the FEC.

[73] For a discussion of Section 527 as it applies to political committees, see Milton Cerny and Frances R. Hill, "Political Organizations," *Tax Notes* April 29, 1996, p. 651, and Frances R. Hill, "Probing the Limits of Section 527 to Design a New Campaign Finance Vehicle," *The Exempt Organization Tax Review*, November 1999, p. 205.

[74] Common Cause, *Under the Radar: The Attack of "Stealth PACs" on our Nation's Elections* (Washington, D.C., 2000), and "McCain Camp Files FEC Complaint Charging "Clean Air" Ads Violate Law," *BNA Money and Politics Report*, March 7, 2000, p. 1.

[75] Public Law 106-230, 114 Stat. 477.

[76] Stephen Labaton, "Democrats Say They'll Return About $1.5 Million More in Questionable Gifts," *New York Times* (New England Edition), March 1, 1997, p. 8.

[77] David E. Rosenbaum, "White House Guests Differ Over Solicitation of Money," *New York Times*, September 17, 1997, p. A26, and Tom Squitieri, "Campaign Fund-Raising Probe Turns Focus on Go re," *USA Today*, August 28, 1997, p. 7A.

[78] For background on the legislative debate, see Diana Dwyre and Victoria A. Farrar-Myers, *Legislative Labyrinth: Congress and Campaign Finance Reform* (Washington: Congressional Quarterly Press, 2001) and Robert E. Mutch, "The Reinvigorated Reform Debate," in John C. Green, ed., *Financing the 1996 Election* (Armonk, New York: M.E.Sharpe, 1999).

[79] FEC, "FEC Reports Increase in Party Fundraising for 2000," press release, May 15, 2001.

[80] Kenneth P. Doyle, "McCain-Feingold Supporters Need Only One or Two More Votes to Break Filibuster," *BNA* (Bureau of National Affairs) *Money & Politics Report*, November 21, 2000, p. 1.

[81] Cheryl Bolen, "Petition Gains 218 Signatures, But Reform Bill Still Face Hurdles," *BNA Money & Politics Report*, January 25, 2002, p. 1. A discharge petition is a rarely successful legislative action used to force a committee to report a bill to the House floor. To be successful, a discharge petition requires the signatures of 218 members. Prior to this petition, only eleven discharge petitions had been successful since 1967.

[82] Cheryl Bolen, Nancy Ognanovich, and Kenneth P. Doyle, "Daschle Seeks to Move Quickly on House-Passed Campaign Reform Bill," *BNA Money &Politics Report*, February 15, 2002, p. 2. The bill passed by a margin of 240-189, with 198 (of 211) Democrats, 41 Republicans, and one independent voting in favor of the proposal.

[83] Karen Foerstel, "Campaign Finance Passage Ends a Political Odyssey," *Congressional Quarterly Weekly Report*, March 23, 2002, p. 799.

[84] Public Law 107-155.

[85] Anthony Corrado, Thomas E. Mann, and Trevor Potter, eds., *Inside the Campaign Finance Battle* (Washington: Brookings Institution Press, 2003), pp. 4-8.

[86] 251 F. Supp. 2d 176 (D.D.C. 2003).

[87] *McConnell v. Federal Election Commission*, 124 S. Ct. 619 (2003); 540 US ___ (2003).

[88] For a summary and background on the provisions of the BCRA, see Joseph E. Cantor and L. Paige Whitaker, *Bipartisan Campaign Reform Act of 2002: Summary and Comparison with Existing law* (Library of Congress, Congressional Research Service, 2002), and Robert F. Bauer, *Soft Money, Hard Law: A Guide to the New Campaign Finance Law* (Washington: Perkins Coie, 2002).