Chapter 7

Public Funding of Presidential Campaigns

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In 1974, Congress created a voluntary system of public funding for presidential campaigns as part of the Federal Election Campaign Act (FECA). This system, adopted in response to the Watergate scandal, was designed to reduce the risk of corruption in the political process by offering candidates public funding as an alternative to private contributions, and providing national party committees with public funds to finance presidential nominating conventions. The law sought to reduce the role of money in presidential politics by linking public subsidies to caps on campaign spending. It also sought to expand the participation of small donors in the financing of presidential campaigns by offering public incentives to enhance the value of small contributions. At the time of its adoption, public funding was heralded as the most innovative change in federal campaign finance law in American history. It remains so to this day.

The public funding system provides taxpayer-funded support to candidates or national party committees in each stage of the presidential selection process. In the prenomination or primary period, a candidate can qualify for public matching funds on a dollar-for-dollar basis on individual contributions of small amounts of up to $250. A national party committee can receive a publicly funded grant that provides a specified sum of money to be used to pay the costs of a national nominating convention. In the general election, presidential nominees of the major parties can receive a publicly funded grant that provides full funding equal to the amount that a candidate is permitted to spend under the law's expenditure ceiling. Non-major party nominees or independent candidates may qualify for a prorated convention or general election grant based on their share of the presidential general election vote.

Public funding has been widely accepted by presidential candidates since its implementation in 1976. Almost all of the major contenders who have sought the Oval Office, whether Democrat or Republican, have used public funds to help finance their campaigns. Every major party presidential nominee has chosen public funding in the general election, and both major parties have used public resources to help pay for their national nominating conventions. However, a growing number of candidates in recent elections have begun to question the benefits of public funding, particularly in the primaries. The Bipartisan Campaign Reform Act of 2002 (BCRA) made no changes in the public funding program, so the law has not been revised in more than thirty years. It has not been amended to accommodate changes that have taken place in the nomination process and the rapidly growing financial demands associated with the front-loading of the presidential primary calendar.[1] Consequently, candidates have found it increasingly difficult to conform to the public funding rules—particularly the now outdated caps on spending attached to the acceptance of public funds—and still meet the financial and strategic imperatives of a presidential campaign.

The strategic problems created by the current rules are encouraging candidates, especially those most likely to win a party's nomination, to rethink the value of public funding. In 2000, then-Governor George W. Bush became the first major party candidate to win the presidential nomination without accepting public funds during the primaries. In 2004, both of the major party nominees, President George W. Bush and Senator John Kerry, opted out of public funding during the primaries, as did former Governor Howard Dean, the putative Democratic frontrunner prior to the voting in Iowa. These decisions suggest that candidates no longer regard the basic tradeoff at the core of the current system—public money in exchange for accepting spending limits—to be a desirable or worthwhile exchange. They highlight the challenges facing the system and the need for major reform.

Although no significant statutory changes have been adopted since 1974, the regulations governing public financing have been modified in a variety of ways, and often with major effects. The regulations are complex, in part due to the tripartite nature of the public funding program, which establishes different types of subsidies for primary and general elections, and separate rules for party conventions. This chapter reviews the diverse provisions of the presidential public funding program, and discusses related aspects of presidential campaign finance.

Financing Public Financing

In the eight presidential elections from 1976 through 2004, presidential candidates and party committees received more than $1.3 billion in public funds.[2] Candidates seeking a party's nomination have received about $342 million, national party committees, $152 million, and general election contenders, $839 million. Republicans and Democrats alike have participated in the program, with a greater number of Democrats qualifying for public funds largely due to the greater number of contested Democratic nominations during this period. In total, Democratic candidates and their national party committee have received $646 million in public support, as compared to $628 million for Republican candidates and their national party committee. Relatively few of the non-major party challengers have qualified for public funds. Those who have received a total of only $60 million. More than $42 million of this total consists of the subsidies given to the Reform Party and its nominee in 1996 and 2000 as a result of the support garnered by Ross Perot in the 1992 and 1996 elections. When the Reform Party is excluded, only about one percent of the total public monies have been distributed to non-major party candidates.

The financing for the public funding program comes from a voluntary tax checkoff option on individual federal income tax forms. This checkoff allows taxpayers to designate a deposit to the Presidential Election Campaign Fund (PECF), a separate account administered by the Department of the Treasury, from which all public funding disbursements are made. Under the original terms of this program, an individual tax filer was allowed to designate $1 to the PECF, or $2 if filing jointly. In 1993, in response to concerns about the financial solvency of the PECF, Congress increased the amount of the checkoff to account for inflation, setting it at $3 for an individual or $6 for a joint filer.[3] The exercise of the checkoff does not affect the amount of an individual's tax liability or tax refund; it is simply a means of directing the Treasury Department to allocate a specific amount from general revenues to the PECF. However, the Treasury Department only deposits funds from tax filers with a tax liability. If a tax filer designates a checkoff contribution on his or her tax form but does not have a tax liability, a deposit is not made into the PECF.

Funds deposited into the PECF are used to pay for all three components of the presidential public funding system: primary matching funds, party nominating convention subsidies, and presidential general election grants. No other general treasury funds besides those designated through the checkoff may be used to cover the costs of these benefits. If the available funding is insufficient to meet these costs, the law requires the Department of Treasury to allocate funds in a priority order, with first priority given to the conventions, second priority to the general election, and third priority to the primaries. In 1991, the Treasury Department, anticipating a shortfall in the monies needed to finance the costs of the 1992 election, adopted revised rules on public funding disbursements that specify how these priorities are to be carried out, even if there is no projected shortfall in the PECF.[4] Under these regulations, Treasury sets aside the amount of money needed for the conventions and general election grants by January 1 of the election year. The remaining balance in the PECF and any additional deposits received during the election year are then made available for matching fund payments to primary candidates. If the funds available in the PECF are inadequate to cover the amount of matching subsidies accrued by the candidates, then each candidate receives a partial payment, with the balance owed a candidate paid when sufficient funding becomes available. The amount of the partial payment is based on a percentage determined by the FEC, which is derived by dividing the total amount of money available in the PECF at the end of each month by the total amount of matching funds requested by all qualified candidates. The difference between the amount a candidate has earned in matching funds and the amount a candidate is actually paid is then carried over to the next month and paid as funding becomes available.[5]

The tax checkoff has always provided enough money to meet the needs of the public funding program. But in recent elections the system has barely managed to remain solvent, and often failed to meet all obligations on a timely basis. This financial strain is the result of a combination of declining checkoff revenue and rising costs. Checkoff participation rates and revenue have experienced a steady decline since reaching a peak in 1981. From 1981 to 1993, the percentage of individual tax returns that designated a checkoff contribution fell from 28.7 percent to 18.9 percent, while annual revenues declined from $41 million to $28 million. After the adoption of the $3 checkoff, the participation rate dropped to 14.5 percent, continuing to slide to about 11 percent in 2002, with annual deposits falling from $71 million to about $62 million.[6]

Consequently, beginning in 1992, PECF deposits have barely kept pace with the rising costs of public funding (payments generally increase in each election cycle, since the convention and general election grants are indexed for inflation). In 1996, there was not enough money in the PECF to cover the January matching fund payments, so each candidate received 60 percent of the amount due.[7] In 2000, candidates did not receive the full amount of matching money they had accrued until the end of the primary process.[8] In 2004, even though the demand for public funds was down sharply because the leading candidates did not accept matching funds, those who did participate received only 46 cents on the dollar in the February payment.[9] In these instances, however, candidates did not have to continue campaigning without access to the monies they were owed; instead they typically pledged the public monies yet due as collateral to secure bank loans for equivalent sums, a practice that is allowed by the FEC. Even so, the fact that candidates have had to resort to loans to gain access to the public money they have earned indicates the financial problems inherent in the current checkoff system. Had all of the candidates chosen to accept public funds in the 2004 election cycle, the PECF might not have been able to make full payment until well after the end of the presidential nomination contests.

Financing Primary Campaigns

Candidates who accept public funds are subject to the same financial disclosure requirements and contribution limits as those applied to other federal candidates. A candidate must disclose all receipts and expenditures of $200 or more, and file reports electronically with the FEC. In the elections prior to 2004, a candidate could accept $1,000 per election from an individual and $5,000 per election from a PAC. BCRA increased the individual limit to $2,000 per election and indexed it for inflation. The 2004 election was thus the first presidential campaign conducted under the new limit. In 2004, a candidate could also receive a contribution of up to $1,000 per election from the campaign committee of another federal candidate. After the election, a provision included in an omnibus appropriations bill changed this limit, increasing it to $2,000.[10] This higher limit will be operative in the 2008 presidential election.

Eligibility for Funding

To be eligible to receive public funds, a candidate must accept a number of financial restrictions in addition to those imposed on all federal candidates. A candidate must agree to limit personal contributions to his or her own campaign to a maximum of $50,000. (A candidate who does not accept public funds may give any amount of money to his or her own campaign, so long as it comes from his or her personal resources or share of assets held jointly with a spouse.) A candidate must also raise $5,000 in contributions of $250 or less in twenty states for a total of at least $100,000 to qualify for funding, and agree to abide by spending limits. Finally, all publicly funded candidates must agree to a post-campaign financial audit, which is conducted by the FEC.

Once these eligibility requirements are met, a candidate may receive public funds on a $1-to-$1 basis on the first $250 contributed by an individual donor. Only individual contributions received after January 1 of the year before the election are eligible for matching; donations from PACs or other political committees are not. Prior to the 2000 election cycle, contributions had to be made by check or money in order to be matched. In 1999, the FEC modified this rule to allow public matching of qualified contributions made by credit or debit card, including those made over the Internet.[11]

The first matching fund payments are made on January 1 of the election year, with payments made monthly thereafter.[12] The law caps the total amount of public money a candidate may receive to a sum equal to one-half of the law's base primary spending limit. In the 2004 election, the maximum amount of public matching money a candidate could receive was $18.7 milllion.[13] Since 1976, the only candidate to draw the maximum amount allowed in an election cycle was President Ronald Reagan in 1984.

To ensure that the availability of public money does not serve to prolong the candidacies of challengers who are unlikely to win, the law sets forth thresholds for continued eligibility. The 1976 FECA amendments included a provision that calls for the termination of a candidate's eligibility within 30 days of a candidate's failure to receive at least 10 percent of the vote in two consecutive primaries.[14] This rule only applies to a candidate's performance in a primary election; states that hold caucuses as a means of presidential selection are not included. A candidate whose public funding has been terminated in accordance with this provision may restore eligibility by gaining 20 percent of the vote in a subsequent primary.[15]

The 10 percent rule does not affect a candidate's initial qualification for public funding once the voting in state primaries has begun. A candidate may fulfill the eligibility requirements—specifically the fundraising requirement of at least $5,000 from small contributions in at least twenty states—after failing to receive 10 percent of the vote in consecutive primaries and still be certified to receive public funds. In 1992, Larry Agran, a candidate for the Democratic nomination, did not qualify for public funding until mid-May of the election year, yet still was able to receive some matching funds.[16]

The FEC has interpreted this rule to mean two consecutive primaries in which a candidate is entered on the ballot, rather than two consecutive primaries as determined by the delegate selection calendar. A candidate can therefore exclude particular primaries from this requirement and continue to be eligible for funding despite poor showings in a number of primaries.[17] For example, in 1992, Lenora Fulani, a New Alliance Party candidate, informed the FEC that she would seek the presidential nomination under the banner of a number of different parties in selected states. In this way, she retained eligibility for matching funds despite failing to capture 10 percent of the vote in the early primaries and failing to appear on the ballot in a number of states.[18] Similarly, in 2004, Ralph Nader, who ran as an independent candidate in the general election, informed the FEC that he was seeking the presidential nomination of the Populist Party and other third party nominations, and was able to receive matching payments after initially qualifying for public funding at the end of May.[19]

The FEC has also established rules for candidates who compete in parties, such as the Natural Law Party or Green Party, that do not hold state primaries or caucuses as part of their selection process. As with all presidential hopefuls, these aspirants must fulfill the basic eligibility requirements of the matching funds program. They must also be seeking the nomination of a party that is qualified as a "political party" under FEC regulations, which generally means that the party has some record of political activity and has a procedure for holding an election for nomination to the office of President or Vice President.[20] However, because these non-major party contenders do not compete in primaries and are typically unopposed for their respective parties' nomination, they are not subject to the 10 percent eligibility rule; they therefore may continue to accrue matching funds throughout their formal prenomination campaign period. In 1992, John Hagelin, who sought the Natural Law Party's presidential nomination did not fulfill the eligibility requirements for matching fund certification until October, but the FEC approved a matching fund payment to his campaign, since the party's national nominating convention was not held until early October.[21] In the case of a candidate who seeks the nomination of a party that does not use a national nominating convention to make its choice, or seeks the nomination of a number of parties, one or more of which may use a convention, the FEC has ruled that the eligibility period for accruing matching funds ends on whichever date is earlier of the date that candidate is nominated by a party convention or the last day of the last national convention held by a major party during the election year.[22]

After a candidate has stopped actively campaigning for a party's nomination, he or she may continue to accrue a limited amount of public funding to retire campaign debts or pay the costs incurred in "winding down" a campaign.[23] The amount of public money, when combined with the private donations received to pay off these expenses, may not exceed the amount of a campaign's debt or obligations. For this purpose, a candidate may submit qualified contributions for public matching until late February or early March of the year following the election. But only contributions deposited into a campaign's account by December 31 of the election year are eligible for matching.[24]

Spending Limits

In the primaries, publicly funded candidates must agree to abide by aggregate and state-by-state ceilings. The aggregate ceiling, which determines the total amount a candidate may spend, was set in 1974 at a "base limit" of $10 million, plus an additional 20 percent for fundraising costs, with an adjustment for inflation. This fundraising "exemption" from the base limit was adopted in recognition of the higher costs that would be incurred to raise funds from small contributions, as required by the contribution limits established by the FECA. In 1976, the base limit was $10.9 million, plus $2.2 million for fundraising costs, for a total aggregate limit of $13.1 million. By 2004, the base limit had grown to $37.3 million, plus $7.4 million for fundraising costs, for a total of $44.7 million.

Any monies spent to pay legal and accounting costs incurred to comply with the law are exempt from expenditure limits. Under the FEC's initial interpretation of the law, there was no specific limit on the amount a publicly funded candidate could spend on compliance. In 2000, the Commission modified the rules and decided to limit compliance funding to 15 percent of the base spending limit while a candidate is actively campaigning. Once a campaign is over, and a candidate's operation is closing down and going through the audit process, all salary and overhead costs may be considered exempt compliance spending that does not count against any spending ceiling.[25] In 2004, this guideline allowed a publicly funded candidate to spend an additional $5.6 million on compliance, bringing the effective aggregate ceiling to $50.3 million.

The law also places limits on the amount a publicly funded primary candidate may spend in each state. These ceilings were established to level the playing field among candidates in particular state contests. The amount that may be spent in each state is based on a formula in the 1974 FECA that allows a candidate to spend the higher amount of 16 cents times a state's voting-age-population, plus adjustments for inflation, or a minimum of $200,000, adjusted for inflation. In 2004, these state limits ranged from a minimum of $746,200 in low population states, including New Hampshire, to $15.6 million in California.[26]

In practice, the state limits have had relatively little effect on campaign spending. They have been a factor in candidate spending decisions primarily in the key early contests in Iowa, New Hampshire, and South Carolina.[27] Almost since the time of the law's adoption, candidates have sought to circumvent these limits or reduce their effects by taking advantage of technical provisions in the law or FEC administrative rulings that permit campaigns to exempt certain expenditures from state limits. For example, throughout the 1980s, candidates often established pre-candidacy PACs or other political organizations to facilitate early campaigning without having to allocate expenses against state spending limits. Campaigns also developed complicated accounting mechanisms for allocating expenditures targeted at Iowa or New Hampshire to neighboring states or the national headquarters, as permitted by FEC rules. These allocations exempted substantial amounts of money from the state limits, including funds spent on fundraising expenses, media expenditures, and personnel and overhead.[28]

Following the 1988 election, the FEC noted that the state limits had little effect on campaign spending, and recommended that Congress abolish the ceilings because they had proven to be "a significant accounting burden for campaigns and an equally difficult audit and enforcement task."[29] But Congress took no action on the recommendation. In 1991, the FEC adopted revised regulations that liberalized and streamlined the state limits, minimizing their importance.[30] Under the new rules, a candidate's expenses are allocable to a state limit only if they fall within one of five specific categories: media expenses, mass mailings conducted within 28 days of an election, overhead expenses, special telephone programs, and public opinion polls. The rules also allow a campaign to treat up to 50 percent of the expenses allocable to a state as exempt fundraising costs, thereby excluding them from a state's ceiling.[31] The rules thus permit a candidate to spend substantially more in a state than the amount suggested by the state limit.

Unlike the state limits, the aggregate expenditure ceiling has had a major effect on the conduct of primary campaigns. Because the ceiling is only adjusted for inflation, rather than the changing costs and dynamics of the presidential selection process, this ceiling has proven to be increasingly inadequate. Consequently, it has become a major strategic concern of presidential hopefuls. Since 1980, most of the prospective nominees of the major parties have had to cut back significantly on anticipated expenditures or otherwise restrict campaigning in an effort to adhere to the requirements of the aggregate limit. And the point in the selection process at which the spending limit has become a major concern for candidates has been arriving earlier and earlier in the process. In the late 1980s, the prospective nominees tended to come within reach of the limit (factoring in forward costs to get through the nominating convention) by early June or late May. By 1996 and 2000, candidates were constrained by mid-April or late March. In 2000, defeated Democrat Bill Bradley and defeated Republican John McCain essentially reached the spending limit before the end of March.

The aggregate ceiling has been particularly problematic for a challenger who wins a hard-fought nomination contest and faces a prospective general election opponent who captured his party's nomination without opposition or with relative ease. In this scenario, the nominee who ran in a competitive race faces a prospective opponent who still has a substantial amount of money left to spend before the conventions. For example, in 1996, Republican Robert Dole captured the presidential nomination, but did so in a tough race in which he faced, among others, Steve Forbes, who did not accept public funds and spent tens of millions of his own dollars on his presidential campaign. Dole essentially reached the spending cap by the end of April. His prospective general election opponent, President Bill Clinton, who was renominated without challenge, had $20 million left to spend under the cap.[32] Dole thus faced a significant strategic disadvantage, and his predicament was one of the principal factors that led Republican George W. Bush to forgo public funding and spending limits in the 2000 Republican primary campaign.

Thus, in 2000, then-Vice President Al Gore won the Democratic nomination but was in a similar position to that of Dole four years earlier. By the time Gore had emerged as the Democratic nominee, he had relatively little money left to spend under the cap throughout the summer months. Bush, however, faced no spending limit and raised an additional $20 million after he wrapped up the nomination to spend against Gore.[33] Gore's predicament was a factor in leading Howard Dean and John Kerry to forgo public funding in the primaries in 2004.

In advance of the 2000 primaries, the FEC took some steps to address the financial problem created by the inadequate spending ceiling and the widening gap between the effective end of the nominating process and the party conventions. The Commission eased some of the restrictions on certain types of spending to give candidates and party committees more financial flexibility between June 1 of the election year and the date of a party's convention. During this period, a candidate who accepts public funding may allocate salary and overhead expenditures equal to no more than 15 percent of the base primary spending limit against the general election spending ceiling. In this way a prospective general election challenger may begin spending money to prepare for the general election without having to count these disbursements against the primary expenditure cap. But these disbursements are counted against the general election cap, if the candidate accepts public funding in the general election.[34] The Commission also revised its rules on party coordinated expenditures, expressly granting party committees the option of making coordinated expenditures on behalf of a presidential candidate before that candidate is formally nominated. Any amounts spent in this manner are subject to the party's coordinated spending limit, whether or not the candidate with whom they are coordinated receives the party's nomination.[35]

These regulatory changes had no significant effect on the financial activity in primary campaigns. Instead of starting to spend money against general election limits, candidates in 2000 relied on party soft money expenditures, specifically candidate-specific issue advertisements that were exempt from limits, to carry their campaign. Now, after the adoption of BCRA, party committees are no longer allowed to use soft money to support their presidential standard-bearer, but they are able to rely on party independent expenditures, which can be made without limit (see Chapter 6). Yet this option leaves the decision-making regarding expenditures and strategies in the hands of the party, rather than the candidate, since the party is not allowed to coordinate with a candidate when spending money independently on his or her behalf. Consequently, candidates consider the option of refusing matching funds and thereby avoiding primary spending ceilings to be a preferable alternative. This is likely to remain the preferred option until the public funding statute is revised to establish a more realistic aggregate spending limit.

Financing Presidential Nominating Conventions

As part of the presidential public funding program, national party committees have the option of accepting a publicly funded grant to pay for the costs of their presidential nominating conventions. A party that accepts this subsidy may not spend more than the amount provided by the grant. The amount was originally set in 1974 at $2 million, plus adjustments for inflation, with the base amount subsequently increased to $3 million in 1979 and $4 million in 1984. With adjustments for inflation, the amount available in 2004 to each of the major parties (defined in the law as a party whose presidential nominee received at least 25 percent of the vote in the previous presidential election, which means in practical terms, the Democrats and the Republicans) was $14.9 million.[36]

A non-major party, defined as a party whose presidential nominee received at least 5 percent of the presidential vote in the previous election but not more than 25 percent of the presidential vote, may qualify for a proportional share of the total convention grant if the party's nominee received at least 5 percent of the vote. The proportion is based on the share of the vote a party's nominee received as compared to the average vote received by the major party candidates. In 2004, no party other than the Democrats or Republicans qualified for convention funding. In 2000, however, the Reform Party received a convention grant of $2.5 million, based on Ross Perot's performance in the 1996 presidential race.[37] The major parties each received a convention grant of $13.5 million that year.[38] A non-major party that receives a partial convention subsidy may raise additional funds up to the total amount of the public grant awarded to each major party committee, so long as the contributions received are allowable under federal contribution limits.

The public grant was intended to cover all of a party's costs in connection with a national nominating convention. But soon after the public financing system was put into place, the FEC allowed cities hosting presidential conventions to establish nonprofit convention "host committees" or "municipal funds" that could raise and spend money to finance activities associated with a presidential convention. These committees were treated as separate entities from the party convention committees. Specifically, the FEC ruled that payments made by state or local governments to provide facilities and services to the national committee of a political party in connection with a party's national nominating convention do not constitute prohibited contributions to the national party, so long as the payments to any vendors represent fair market value.[39] The Commission further permitted separate "host committees" to raise and spend funds, including contributions from businesses and other donors with a commercial interest in convention activities, for use in "promoting the convention city and its commerce."[40] These contributions, however, according to a 1980 FEC administrative ruling, could only come from local retail businesses within a convention city and should be limited to an amount "proportionate to the commercial return reasonably expected by the business, corporation or agency during the life of the convention."[41]

The Commission allowed these committees to use their funds to finance a wide array of convention-related costs that might have otherwise been the responsibility of the party convention committee. These included expenditures for the redesign and construction of convention hall facilities, lighting and electrical work, communication and audio systems, convention transportation services, and security services.[42] The Commission also allowed businesses to provide discounted sale or lease of products to national party convention committees, so long as the discounts or price reductions constituted a transaction that would occur in "the ordinary course of business" and be offered at non-political events, not just national party conventions.[43]

Originally, only local businesses, unions, organizations, and individuals were permitted to make contributions to convention host committees. But in 1994 and 2003 the FEC revised its regulations, eventually ending this requirement. The revised regulations permit a business to provide goods or services to a party convention committee in exchange for promotional consideration, provided that doing so is a practice in the ordinary course of business.[44] In recognition of the complex structures of many business and labor organizations, the FEC in 1994 loosened the definition of "local businesses" allowed to contribute to host committees to include branch offices, local dealers, and affiliates of state or national business or labor organizations. In 2003, the FEC did away with the local retail proviso on contributions altogether, noting that the "restriction no longer served a meaningful purpose because the disbursements that host committees and municipal funds are permitted to make are consistent with the narrow purpose of promoting commerce in the convention city."[45] So contributors to host committees are no longer required to have a local presence and the amounts donated are no longer tied to a business's expectation of an economic return from convention activity. The 2003 regulations further noted that while BCRA's provisions, particularly the ban on soft money, applies to national party convention committees, the law does not "significantly alter current rules governing the financing of national conventions."[46] Accordingly, convention committees may still receive in-kind donations of goods and services from host committees and municipal funds to cover certain convention expenses as specified in the regulations.

Since 1992, the role of host committees and municipal funds in the financing of nominating conventions has grown dramatically, reaching a point where the private donations raised by these entities greatly exceed the amount provided to the national party committees by the public grant. In 2004, for example, the convention host committees established in New York City for the Republican National Convention and Boston for the Democratic National Convention raised a combined $138 million in private contributions, which was more than four times the amount of public money given to the two party convention committees.[47] Host committee funding has thus become a matter of significant controversy, particularly because these entities may accept contributions from corporations or other donors that would be considered illegal soft money donations if given to the party committees. Some observers therefore contend that host committees facilitate circumvention of BCRA's ban on soft money, and argue that the rules should be reformed to impose more stringent limits on host committee finances.[48]

Financing the General Election

Presidential general election candidates can choose to receive a public grant that provides full funding for a campaign. The amount of the grant is based on a formula established in the 1974 FECA that sets the general election spending limit at $20 million, plus adjustments for inflation. By 2004, the amount of the grant had grown to $74.6 million. A candidate who does not accept public financing in the primaries may choose public financing in the general election, so long as that candidate meets the qualifying requirements and conditions. To be eligible, a candidate must be the presidential nominee of a major party or non-major party that qualifies for funding under the terms set out in the law. A candidate also must agree to: raise no additional private contributions for general election campaigning (with the exception of monies to finance general election legal and accounting compliance costs); abide by the general election spending limit; spend no more than $50,000 from personal funds (including any expenditures by either the presidential or vice presidential nominee); and be audited after the election.

The limits established by the public funding program apply jointly to the presidential and vice presidential nominees on a party ticket. The nominees run in a unified campaign, which is subject to a single spending limit, and both are prohibited from raising private contributions for their campaign committee in the general election. Thus, a vice presidential candidate is generally not allowed to raise monies separately from the presidential candidate. Prior to the 2000 election cycle, a person selected by a presidential nominee-apparent to serve as a vice presidential running mate could raise funds prior to the nominating convention to finance convention expenses. However, after the 1996 conventions, the FEC changed its regulations to limit such activity.[49]

A major party nominee, defined in the law as the nominee of a party that received at least 25 percent of the vote in the previous presidential election, is eligible to receive the full amount provided by the public funding grant. A non-major party nominee or independent candidate is eligible for a proportionate share of the grant, if the party or candidate received at least 5 percent of the presidential vote in the previous election. The amount of funding provided by the proportionate subsidy is based on the share of the vote the party or candidate received in the previous election, as compared to the average vote received by the major parties. Thus, in 1996, Reform Party nominee Ross Perot received $29.1 million in general election public funding, slightly less than half the amount given to each of the major party nominees that year ($68.1 million), based on the share of the vote he received in the 1992 presidential race, which was slightly less than half of the average vote received by the Democratic and Republican nominees. Similarly, in 2000, Reform Party nominee Patrick Buchanan received $12.6 million in public funding, based on the share of the vote received by Perot in 1996. A non-major party candidate who receives a proportionate subsidy is not limited to spending the amount provided by the grant. A candidate may also raise private contributions, subject to federal contribution limits of $2,000 per individual donor and $5,000 per PAC, to make up the difference between the amount of the public subsidy granted and the overall general election spending limit applied to publicly funded major party candidates.

The rules also allow new parties or candidates who did not compete in the previous presidential election to qualify for post-election funding. As in the case of other non-major party candidates, these contenders may receive a proportionate share of the general election grant, so long as the presidential nominee receives at least 5 percent of the national vote. In 1980, John Anderson, a candidate in the Republican primaries who ran in the general election as the nominee of the National Unity Party, garnered more than 5 percent of the vote in the presidential race and, after the election, was given $4.2 million in public money (as compared to the total grant that year of $29.4 million) to help defray the costs incurred by his campaign. If the National Unity Party had remained active and selected a nominee in 1984, it would have been eligible for a proportionate public grant in advance of the election.

To qualify for public funding, a non-major party candidate must, in addition to meeting the general requirements imposed on all candidates, be certified to appear on the general election ballot as a party's presidential nominee in 10 or more states. This provision was important in resolving competing claims to the public entitlement available to the Reform Party nominee in 2000. Ross Perot, whose 8.4 percent of the vote in the 1996 presidential race had earned the Reform Party an opportunity to receive $12.6 million in general election public funding, did not run again in 2000. Patrick Buchanan, a former Republican, and John Hagelin, the Natural Law Party's presidential nominee in 1992 and 1996, sought the Reform Party mantle, and continued to vie for the nomination after a factious Reform Party convention failed to produce a consensus on the choice of a nominee. Buchanan and Hagelin each submitted formal requests to the FEC asking to be certified as the Reform Party nominee eligible for the public subsidy, and each submitted a list of certified ballot positions in more than 10 states.[50]

While the rules require a candidate to be on the ballot in at least 10 states, they do not specify the action to be taken when two candidates meet this minimum qualification and claim to be the nominee of the same party. The FEC therefore had to resolve the competing claims. The

Commission's task was complicated by the complexities arising from ballot access laws, since Buchanan was listed as the Reform Party nominee in some states, Hagelin in other states, and in yet others, state officials were awaiting the FEC's ruling to complete the Reform Party ballot line. Hagelin was also listed on the ballot in some states as an independent. The FEC ultimately determined that Buchanan had met the law's eligibility requirements, since he was officially listed as the Reform Party candidate in 12 states, while Hagelin was listed this way in only 3 states. The commission thus awarded the grant to Buchanan without resolving the issue of which of the two was the "legitimate" party nominee and without establishing guidelines as to the procedure to be used in the future if two candidates meet the minimum qualification requirement.[51]

GELAC Funds

Publicly funded candidates are allowed to raise private contributions exempt from the fundraising prohibition and expenditure limits to finance general election legal and accounting compliance costs (GELAC). To do so, a candidate must establish a separate GELAC fund, which is a special account maintained exclusively to pay for compliance costs. All donations to a GELAC fund are governed by federal contribution limits and prohibitions (e.g., an individual may give no more than $2,000).

The law allows candidates to establish a GELAC fund in order to facilitate compliance with the law and ensure that regulatory requirements do not impose an undue burden on the use of limited public campaign funds. The basic purpose of a GELAC fund is to finance legal and accounting expenses, pay the costs of raising GELAC monies, cover winding down expenses (such as the maintenance of a campaign office and small staff to handle such post-election tasks as the filing of disclosure reports and management of the audit process), and provide for any repayments of public funds imposed by the FEC for violations of the public funding regulations.

Over time, the FEC has adopted regulations that have expanded the definition of compliance activity and the purposes for which GELAC funds may be used.[52] For example, the regulations permit a campaign to pay 10 percent of payroll expenses, including payroll taxes, as well as 10 percent of the overhead for national and state campaign headquarters from GELAC monies on the assumption that this portion of salary and overhead are related to compliance activities. The overhead expenses that qualify under this provision include rent, utilities, office equipment, furniture, supplies, and all telephone charges except for those related to special uses such as voter registration and get-out-the-vote efforts. A candidate may also use GELAC funds to reimburse up to 50 percent of the costs associated with computer services, including rental and maintenance of computer equipment, nonstaff data entry services, and related supplies.

A candidate may set up a GELAC fund before becoming the official party nominee. Some candidates have therefore established GELAC funds early in the selection process, at times as early as a year before the general election.[53] This practice allows a campaign to raise GELAC funds throughout the primary process, coterminous with the fundraising activity taking place during the primaries. More important, it provides a campaign with the opportunity to redesignate excess contributions (amounts above an individual donor's contribution limit) or excess monies not needed for primary campaigning (such as monies remaining after reaching the spending limit) to the GELAC fund for use in the general election.[54] Such early fundraising raises a number of potential problems. The raising and spending of GELAC funds prior to the convention increases the difficulty of ensuring that GELAC monies are not being improperly used to finance primary campaign expenditures or facilitate spending beyond the amount specified by the expenditure limit. In addition, if a candidate loses the primary race and does not become the party's presidential nominee, the regulations require that all monies in the GELAC account must be refunded to donors within 60 days. However, the amounts needed to meet this requirement are not always readily available, since some of the monies have already been spent for fundraising and other costs.

In recent election cycles, the FEC has modified its regulations to address the problems posed by GELAC funding. The Commission continued to allow a primary contender to establish a GELAC fund, but imposed new restrictions on GELAC fundraising. In advance of the 2000 election, the FEC established June 1 of the election year as the threshold date for GELAC fundraising.[55] Before June 1 of an election year, a GELAC account may be established, but a candidate may only deposit primary election contributions that exceed the amount a donor is allowed to give and that have been properly redesignated to the GELAC account into the GELAC fund. A candidate may not begin to solicit contributions for a GELAC account prior to June 1. After this date, general GELAC fundraising may commence. In advance of the 2004 election, the FEC altered the timetable slightly, pushing the fundraising threshold date back to April 1 of the election year, in recognition of the earlier start of the presidential selection process (i.e., the earlier scheduling of a number of state primaries).[56] This fundraising timetable was based on the notion that, in usual circumstances, a party's prospective nominee will have been determined by this date, so it is unlikely that a candidate will have to refund the GELAC monies raised. At the same time, this date was assumed to give a prospective nominee the time needed to raise the sums required to cover compliance expenses. The new rules also permit a candidate to use any GELAC funds unneeded for general-election-related expenses to pay a primary committee's winding down costs, and to pay any required repayments to the U.S. Treasury for violations of the law committed during the primary campaign.[57]

Party Support

Party committees are an important source of funding in presidential elections. Under the provisions of the FECA and FEC regulations, party committees may spend funds in coordination with a presidential candidate or independent of a candidate, provided that the monies are raised in accordance with federal contribution limits and source prohibitions.

A national party committee may spend a limited amount of money in coordination with its presidential nominee. The amount that may be spent is based on a formula established by the FECA, which permits 2 cents ($0.02) times the national voting-age-population with adjustments for inflation. In 2004, the Democratic National Committee and Republican National Committee could each spend up to $16.2 million on behalf of their presidential candidate.[58] Prior to the 2000 election, party committees were only permitted to make coordinated expenditures in connection with the general election after a party had formally chosen a presidential nominee. In 1999, the FEC revised this rule to allow a party committee to make coordinated expenditures on behalf of a candidate before he or she was nominated, with the proviso that all such prenomination expenditures would be subject to the coordinated spending limit, even if made on behalf of a candidate who did not receive the party's nomination.[59]

Party committees may also spend unlimited amounts of money independently in support of a presidential candidate. Such expenditures were specifically prohibited before the 2004 election cycle.[60] Even after the Supreme Court's ruling in *Colorado I*,[61] which recognized the right of parties to make independent expenditures, the law was not clear as to whether independent expenditures were permissible in the case of publicly funded presidential candidates.[62] BCRA recognized the right of parties to make independent expenditures and the regulations adopted by the FEC in implementing BCRA clarified the law and permitted party independent expenditures in presidential races (see Chapter 6). Consequently, the 2004 election was the first presidential contest since the adoption of the FECA in which parties spent money independently to *expressly* advocate the election of their candidates. (In 1996 and 2000, the parties supported their candidates by sponsoring soft money-funded "issue ads" to promote their candidates.) In all, the national party committees reported independent expenditures totaling more than $138 million in the presidential general election, with the Democrats reporting $120 million and the Republicans, $18 million.[63]

Independent spending was not the only new form of direct party support in the 2004 presidential race. In addition to coordinated and independent expenditures, the party committees also engaged in another, much more innovative form of spending. Undertaken first by the Republicans, this new form of financing involved campaign advertisements jointly funded by the presidential campaign and national party committee in an "allocated" or "hybrid" manner. The initial advertisements financed in this way featured President Bush and included generic party messages discussing the party's agenda or message, as well as mention of the Republican "leaders in Congress."[64] The Republicans contended that such ads, which combined a message of support for the President with a generic party message, could be partly allocated to generic party spending that did not count against the party's coordinated spending limit or constitute a contribution to the publicly funded presidential nominee. The party therefore chose to emphasize hybrid expenditures over independent expenditures.

At the time these ads were initiated, neither the party nor the candidate submitted an advisory opinion request to the FEC seeking guidance as to whether this practice was permissible under federal law. Not to be outdone, the Democrats and John Kerry soon followed suit, broadcasting hybrid advertisements of their own financed jointly by the candidate and the Democratic party. [65] This hybrid financing approach allowed the presidential campaigns to exercise more control over the content of an ad than did the party independent expenditure approach. It thus allowed the presidential campaigns to stretch their limited public funding and, in effect, spend significantly more than they could have in public funds and coordinated expenditures alone. Whether the FEC will respond to this practice and adopt regulations to restrict it, or at least set guidelines for the financing of such communications, is one of the key questions to emerge from the financing of the 2004 general election campaign.

Recount Funding

The 2000 Florida recount controversy raised the issue of recount funding for the first time in a presidential race. The issue, however, was not new; the FEC had previously considered the rules for recount funding in federal elections in contested congressional races,[66] and approved regulations for the financing of recounts and election challenges.

A federal candidate may use campaign funds to finance a recount. A candidate may also establish a separate bank account or separate "recount fund" for this purpose. Such a fund is a separate legal entity from a candidate's authorized campaign committee that is solely used for financing the costs incurred in connection with a recount or other election challenges. The rules do not define a recount as an attempt to "influence" a federal election, so the monies raised and spent on a recount are considered exempt from certain federal campaign finance restrictions. Any money spent by a publicly funded presidential candidate on a recount or legal challenge does not count against the general election expenditure limit, and any monies raised for recount purposes do not constitute violations of the prohibition on general election fundraising.

Contributions made to recount funds are not included in the legal definition of "contributions" under current FEC regulations, so donations to such funds are not subject to federal contribution limits. An individual or PAC may therefore make unlimited recount contributions. The regulations do, however, prohibit corporate or labor union contributions, as well as gifts from foreign nationals.[67] In 2000, the Bush campaign established a separate account to finance recount activities, and imposed a voluntary limit on contributions of no more than $5,000 per donor. The Gore campaign established a separate recount fund, the Gore/Lieberman Recount Committee, under Section 527 of the Internal Revenue Code, and placed no limit on contributions. The Bush campaign raised approximately $14 million, while the Gore committee raised $3.7 million.[68]

In 2004, with a recount or legal challenges to the election results looming as a possibility, the FEC was again asked to issue guidance on recount funding. The FEC responded to an advisory opinion request from the Kerry campaign that asked whether GELAC funds could be used to pay for any recount expenses that might arise. The FEC determined that GELAC funds could be used for this purpose.[69] The Commission's opinion did not have to address the issue of whether, in the aftermath of BCRA, unlimited individual or PAC contributions could still be used to finance recount activities. This issue came to the fore as a result of separate advisory opinion requests submitted in October by the U.S. Senate campaign of Representative George Nethercutt, a Republican from the state of Washington, and the Washington State Republican

Party.[70] In response to the filing of these requests, the congressional sponsors of BCRA and other campaign finance reform advocates filed comments contending that recounts should be seen as connected to an election and thus subject to BCRA's ban on the use of soft money in federal elections. Others noted that recounts are not elections under federal campaign finance law, so any funds received and spent in connection with a recount are not funds received or spent in connection with the election. They further noted that the FEC did not revise its rule permitting unlimited recount contributions by individuals or PACs when it revised its regulations to implement BCRA.[71] The two pending requests were withdrawn before the Commission issued a ruling on the matter. Thus, the regulations still permit unlimited contributions for this purpose. It is likely, however, that the FEC will be asked to revisit this issue in a future election cycle.

Conclusion

Public financing has been a major source of campaign monies in every presidential election since the program was first implemented in the 1976 campaign. Since then, the basic framework of the public funding system has not been revised, and the system is in dire jeopardy. In 2004, public funding played a smaller role in the financing of the presidential campaign than in any previous election cycle since 1976. Public funding now constitutes a small share of the monies spent to stage a national convention. The law's primary expenditure limits can no longer accommodate the levels of spending required by presidential candidates to meet the financial demands of the nominating process. As a result, the leading candidates are deciding to opt out of the system. At the same time, candidates and parties are continuing to find new ways to circumvent the general election spending limits. These practices, combined with the questionable sustainability of the funding provided by the tax checkoff mechanism, raise serious questions about the future integrity and efficacy of the program. The presidential public funding system has thus become a focal point for future campaign finance reform efforts (see Chapter 11).

Notes

[1] For a discussion of front-loading and its effects on the presidential nomination process, see William G. Mayer and Andrew E. Busch, *The Front-Loading Problem in Presidential Nominations* (Washington: Brookings Institution Press, 2004).

[2] The dollar amounts in this paragraph are based on data reported by the FEC for each election cycle.

[3] The increase in the amount of the checkoff was passed as a provision in the Omnibus Budget Reconciliation Act, P.L. 103-66.

[4] The Department of Treasury adopted these regulations on May 10, 1991, and the FEC passed conforming regulations on July 18, 1991. See 56 *Federal Register* 91 (May 10, 1991), pp. 21596-21600. For a discussion of the rules, see FEC, *Record* 17:7 (July 1991), pp. 1-3.

[5] For example, if on January 1 of an election year there is only $10 million available in the PECF after setting aside the monies needed to finance the party convention subsidies and the general election grants, and the candidates seeking the party nominations have been certified to receive matching fund payments totaling $20 million, each candidate would receive 50 percent of the amount of matching funds requested, or fifty cents on the dollar. If a candidate had been certified to receive $3 million in matching payments, that candidate would receive $1.5 million. The remaining obligation would carry over to the next month. So in February, the candidates would be eligible to receive the $10 million owed from the previous month, plus any additional matching funds they had earned in the month of January. If the new deposits received by the PECF from tax forms being filed in the election year provided enough money to cover the total cost of the obligation and new submissions, the candidates would then be paid in full. If not, the payments would again be pro-rated and the carryover procedure repeated.

[6] Congressional Research Service, *The Presidential Election Campaign Fund and Tax Checkoff: Background and Current Issues*, March 2000. Updated with data available from the FEC for 2000 and 2002.

[7] FEC, "Insufficient Public Funds Still Predicted for 2000 Election," *Record* 24:7 (July 1998), p. 5.

[8] FEC, "FEC Approves Matching Funds for 2000 Presidential Candidates," press release, December 22, 1999. This release noted that there were "insufficient funds" to pay the amounts requested and stated that "Treasury will calculate a reduced amount for each campaign." This statement was included on every monthly FEC press release on matching funds until July 31, 2000.

[9] FEC, "FEC Approves Matching Funds for 2004 Presidential Candidates," press release, January 30, 2004.

[10] This change to 2 U.S.C. §439(a) was included in Division H, Title V, Section 532 of the Consolidated Appropriations Act of 2005 (H.R. 4818) that was passed by Congress in November of 2004. See Kenneth P. Doyle, "Officials Can Give Federal Campaign Funds to State, Local Race Under New Measure," *BNA Money and Politics Report*, November 23, 2004, and Paul Kane, "Change Restores Federal Money for State Bids," *Roll Call*, November 29, 2004.

[11] The FEC first decided to permit credit card contributions in response to an advisory opinion request issued to the Bradley for President committee in 1999. See FEC, Advisory Opinion 1999-9. The FEC then approved new rules on July 30, 1999, which were applied retroactively to contributions made on or before January 1, 1999. FEC, *Record*, 25:7 (July 1991), p. 4.

[12] Matching fund payments were made on a twice a month basis during the election year until 1992, when the payment schedule was changed to once a month as part of the regulations adopted by the Treasury Department and FEC to address concerns about a potential revenue shortfall. See note 4 above.

[13] FEC, "Background: Presidential Election Campaign Fund." Available at http://www.fec.gov/press/bkgnd/fund.shtml (viewed December 23, 2004).

[14] 26 U.S.C. §9033(c) and 11 C.F.R. §9033.5.

[15] 11 C.F.R. §9033.8.

[16] Anthony Corrado, *Paying for Presidents* (New York: Twentieth Century Fund Press, 1993), pp. 46-47.

[17] 11 C.F.R. §9033.5(b).

[18] Letter to John McGarry, Chair, FEC, from Gary Sinewski, General Counsel, Fulani for President, December 12, 1991. A copy of this letter is on file at the FEC.

[19] FEC, "Nader Ninth Presidential Candidate Declared Eligible for Primary Matching Funds in 2004 Race," press release, May 28, 2004. As of November 30, 2004, Nader had received $865,424 in matching funds. FEC, "FEC Approves Matching Funds for 2004 Presidential Candidates," press release, December 1, 2004.

[20] 11 C.F.R. §9033.2(b)(1).

[21] Corrado, *Paying for Presidents*, p. 47.

[22] FEC, Advisory Opinion 2000-18.
[23] 26 U.S.C. §9033(c) and 11 C.F.R. §9033.5.
[24] FEC, *Public Funding of Presidential Elections*, August 1996. Available at http://www.fec.gov/pages/brochures/pubfund.shtml (viewed December 23, 2004).
[25] These rules on compliance funding were approved by the FEC on September 2, 1999. See FEC, *Record* 25: 10 (October 1999), p. 3.
[26] The state primary spending limits are available at http://www.fec.gov/pages/brochures/pubfund_limits_2004.shtml (viewed December 23, 2004).
[27] Corrado, *Paying for Presidents*, pp. 55-57.
[28] Ibid. pp. 53-54.
[29] FEC, *Annual Report 1992*, p. 51.
[30] 56 *Federal Register* 91 (July 29, 1991), pp. 35896-35950, and FEC, *Record* 17:9 (September 1991), pp. 2-5.
[31] FEC, *The Presidential Public Funding Program*, April 1993, p. 14.
[32] For a discussion of the financing of the 1996 presidential nomination campaign, see Anthony Corrado, "Financing the 1996 Elections," in Gerald M. Pomper, et al., *The Election of 1996* (Chatham, New Jersey: Chatham House Publishers, 1997), pp. 136-150, and Wesley Joe and Clyde Wilcox, "Financing the 1996 Presidential Nominations: The Last Regulated Campaign?" in John C. Green, ed., *Financing the 1996 Election* (Armonk, New York: M.E. Sharpe, 1999), pp. 37-61.
[33] Anthony Corrado, "Financing the 2000 Elections," in Gerald M. Pomper, et al., *The Election of 2000* (New York: Chatham House Publishers, 2001), pp. 97-105.
[34] FEC, *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing* (Washington, July 1979; revised April 2000), pp. iv-v.
[35] This revision was adopted by the FEC on July 29, 1999. See FEC, *Record* 25:9 (September 1999), p. 12, and 11 C.F.R. §110.7(d).
[36] FEC, "FEC Approves Matching Funds for 2004 Presidential Candidates," press release, March 31, 2004. The FEC initially certified convention payments of $14.6 million to each party, which was increased to $14.9 million when the cost-of-living adjustment for 2004 was added.
[37] FEC, "Reform Party to Receive Additional Funds for Nominating Convention," press release, May 25, 2000.
[38] FEC, "Republican and Democratic Parties to Receive Additional Funds for Party Nominating Conventions," press release, March 28, 2000.
[39] FEC, Advisory Opinion 1975-1.
[40] FEC, Advisory Opinion 1980-120.
[41] Ibid.
[42] FEC, Advisory Opinions 1982-27 and 1983-29.
[43] FEC, Advisory Opinion 1988-25.
[44] 59 *Federal Register* 124 (June 29, 1994), p. 33616, and FEC, Advisory Opinion 1996-17.
[45] FEC, *Record* 29:9 (September 2003), p. 2.
[46] Ibid.
[47] Figure is based on the sums reported by the convention host committees in their public disclosure reports.
[48] See, among others, Campaign Finance Institute, *The $100 Million Exemption: Soft Money and the 2004 National Party Conventions* (Washington, July 2004).
[49] 11 C.F.R. §9035.3. A vice presidential candidate may raise funds to pay the costs of attending the convention, including costs incurred by family members and staff; legal and accounting costs associated with the background checks required in the selection process; and fundraising expenses.
[50] Kenneth P. Doyle, "Buchanan, Hagelin Submit Rival Requests to FEC for $12.6 Million in Federal Funding," *BNA Money and Politics Report*, August 16, 2000, p. 1.
[51] Kenneth P. Doyle, "FEC Staff Says Buchanan's Ballot Status Entitles Him to Reform Party's $12.6 Million," *BNA Money and Politics Report*, September 11, 2000, p. 1, and FEC, "FEC Certifies General Election Public Funds for Buchanan-Foster Ticket," press release, September 14, 2000.
[52] 11 C.F.R. §9003.3(a)(2).
[53] For example, in the 1992 election cycle, President George Bush established a GELAC account for his reelection campaign in October of 1991.
[54] The regulations include procedures that allow candidates to redesignate contributions from one account to another, or for the purpose of one election (e.g., a primary) to another (e.g., a general election). For example, a contribution

may be redesignated if the amount exceeds the applicable contribution limit or if the contributor approves the transfer from one election account to another in writing. See 11 C.F.R. §110.1.

[55] 64 *Federal Register* 176 (September 13, 1999), pp. 49355-49365, and 64 *Federal Register* 218 (November 12, 1999), p. 61475.

[56] FEC, *Record* 29:9 (September 2003), pp. 2-3.

[57] Ibid., p. 3.

[58] FEC, *Record* 30:3 (March 2004), p. 15. The coordinated expenditures made by a party in support of a presidential ticket do not have to be made by the national party committee. The national party committee can make such expenditures through a designated agent, such as a state or local party committee [11 C.F.R. §110.7(a)(4)]. In practice, the coordinated expenditures in presidential races have usually been made by the national party committees, specifically the Democratic National Committee and the Republican National Committee.

[59] FEC, *Record* 25:9 (September 1999), p. 12, and 11 C.F.R. §110.7(d).

[60] See 11 C.F.R. §110.7(a)(5)[2000 edition].

[61] *Colorado Republican Federal Campaign Committee et al. v. Federal Election Commission*, 518 U.S. 604 (1996).

[62] Michael J. Malbin, "Political Parties Under the Post-*McConnell* Bipartisan Campaign Reform Act," *Election Law Journal* 3:2 (2004), p. 185.

[63] Based on FEC data as of December 7, 2004.

[64] Liz Sidoti, "Bush Team Orchestrates Larger Ad Campaign," Associated Press news release, September 22, 2004.

[65] Liz Sidoti, "Kerry Campaign, DNC to Run Joint Ads," Associated Press news release, September 24, 2004, and "Campaign Briefing: The Advertising Campaign," *New York Times*, September 25, 2004, p. A7.

[66] FEC Advisory Opinions 1978-92 and 1998-26.

[67] 11 C.F.R. §100.91.

[68] Anthony Corrado, "Financing the 2000 Presidential General Election," in David B. Magleby, ed., *Financing the 2000 Election* (Washington: Brookings Institution Press, 2002), pp. 100-101, and Sharon Theimer, "FEC OKs Unlimited Donations for Recounts," Associated Press news release, October 28, 2004.

[69] FEC, Advisory Opinion 2004-35.

[70] FEC, Advisory Opinion Requests 2004-38 and 2004-39. See also, Kenneth P. Doyle, "FEC to Take Up GOP Request to Rule Whether Soft Money Can Fund Recount," *BNA Money and Politics Report*, October 19, 2004.

[71] Kenneth P. Doyle, "FEC Commissioners Eye Competing Rulings on Whether Soft Money Allowed in Recount," *BNA Money and Politics Report*, October 27, 2004.