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Campaign Financing: Highlights and Chronology of Current Federal Law

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Summary

Current law governing financial activity of federal election campaigns is based on two principal statutes: the Federal Election Campaign Act (FECA) of 1971, as amended in 1974, 1976, 1979, and 2002, and the Revenue Act of 1971. These laws were enacted to remedy a widely perceived failure of prior law — the Corrupt Practices Act of 1925 — and in response to alleged abuses over the years. This report summarizes major provisions of federal law and offers a chronology of key legislative and judicial actions.

The FECA features prohibitions on union and corporate spending, limits on individual, interest group, and political party contributions to candidates and committees involved in federal elections, and public disclosure of contributions and expenditures by participants on a regular basis. Within this framework, a dual system of finance has evolved: a presidential system, funded in large measure from public monies, with concomitant, voluntary limits on campaign expenditures; and a congressional system, funded solely by private donations and free of circumscriptions on campaign spending.

Highlights of Current Law

Contribution Limits and Prohibitions¹

Individuals. \$2,000 per candidate per election (with future indexing); \$10,000 to a state party committee; \$25,000 to a national party committee (with future indexing); \$5,000 to other committees; and an aggregate of \$95,000 per two-year election cycle [sub-limits: \$37,500 to candidates; \$57,500 to political action committees (PACs) and parties — with \$37,500 maximum to state/local PACs and parties] (with future indexing).

¹ The FECA distinguishes between *expenditures*, money spent to communicate election messages, and *contributions*, money given to others (candidates, parties, or PACs) to make expenditures for election messages. Limits apply to calendar year unless otherwise stated; for limits applied on a “per election” basis, primary, general, and runoff elections are counted separately

Political Action Committees (PACs). *Multicandidate*²: \$5,000 per candidate per election; \$15,000 to a national party committee; \$5,000 to any other committee. *Non-multicandidate*: \$2,000 per candidate, per election (with future indexing); \$25,000 to a national party committee (with future indexing); \$5,000 to any other committee.

Party Committees. \$5,000 per candidate per election (if *multicandidate*); \$5,000 to another committee. For national senatorial or national party committee, or both: \$35,000 to Senate candidate, per year of election (with future indexing).

Candidates. No contribution limits, generally, but publicly funded candidates may spend up to \$50,000 from personal or family funds. If House and Senate candidates exceed certain threshold levels of contributions from personal funds, the limits on individual contributions and party funding for their opponents are raised according to specified formulae: the House threshold is \$350,000, the Senate threshold is \$150,000 plus 4 cents times the number of eligible state voters. In applying the formula, the candidate's personal spending is offset by the funds raised by candidates in that election during the year prior to the election. Also, candidates' repayment of personal loans is limited to \$250,000, from amounts contributed after the election.

Prohibited contributions. Foreign nationals (unless permanent resident aliens, *i.e.*, green-card holders); national banks; corporations; labor unions; and more than \$100 in cash from any source or \$50 given anonymously.

Expenditure Limits

Candidates. No limits, *except* on a voluntary basis for publicly funded presidential candidates — *primaries*: nationwide limit of \$10 million plus cost of living allowance (COLA), based on 1974, plus 20% for exempt fundraising costs, and state limits of the greater of \$200,000 plus COLA or 16¢ per eligible voter plus COLA; *general elections*: \$20 million plus COLA. (National limits in 2004 were \$37.3 million plus \$7.5 million for fundraising in primaries and \$74.6 million in the general election.)

PACs. No limits on independent expenditures for communicating messages to support or oppose candidates, made without coordination or consultation with a candidate.

Parties. In addition to contributions, national and state party committees may make “coordinated expenditures” on behalf of their general election nominees, subject to limits:

- *House candidate in a multi-district state*: \$10,000 plus COLA;
- *Senate candidate or at-large House candidate*: the greater of \$20,000 plus COLA or 2¢ per eligible voter plus COLA; and
- *Presidential candidate*: 2 ¢ per eligible voter plus COLA.

In congressional races, state parties may designate the national party as spending agent, thus doubling limits. (Parties, in 2004, could spend \$37,310 in most House races; \$74,620 - \$1.9 million in Senate races — twice that for combined federal/state party

² Most PACs qualify for *multicandidate status* (have at least 50 contributors, are registered for at least six months, and, except for a state party, contribute to at least five federal candidates).

giving, and \$16.2 million in the presidential race.) Parties taking public funds for presidential conventions may spend \$4 million plus COLA (\$14.9 million in 2004).

Public Funding

Available on optional basis to presidential candidates and to political parties for presidential nominating conventions, in conjunction with spending limits (see above).

- *Primary candidates*: qualify by raising at least \$5,000 in each of 20 states in individual contributions of \$250 or less; individual contributions of \$250 or less are matched equally, up to 50% of primary spending limit.
- *General election nominees: major party* — eligible for funds equal to spending limit; *minor party* — eligible for amount proportionate to votes in prior elections vis-a-vis major party candidates; *new party* — eligible for retroactive funding if they get at least 5% of the popular vote.
- *Nominating conventions*: major parties eligible for funds, equal to their spending limit; minor parties may receive a lesser, proportionate amount.

Disclosure

Candidates and committees in federal elections must file regularly scheduled reports: presidential and House candidates and most committees with the FEC, Senate candidates with the Secretary of the Senate. All reports are available at the FEC and include aggregate levels of cash-on-hand, receipts, expenditures, transfers, loans, rebates, refund dividends, and interest (and presidential public funds); itemized identification is required on contributions and expenditures of more than \$200 per year (with name, address, occupation, and principal place of business). Committees filing with the FEC, with receipts or expenditures of more than \$50,000 in a year, must file electronically.

Federal Election Commission (FEC)

The FEC is an independent regulatory agency with six members appointed by the President, with Senate confirmation. (The law allows no more than three commissioners to be affiliated with the same political party; in practice, they have been divided equally between the major parties and appointed in consultation with party leaders in Congress.) Functions include: administration of the law's disclosure provisions and presidential public funding; civil authority to enforce the law; referral of possible criminal violations to the Justice Department; hearings and investigations; promulgation of regulations to implement the law; and issuance of advisory opinions on request to help interpret the law.

Soft Money

Under the Bipartisan Campaign Reform Act of 2002 (BCRA), national parties and federal candidates or officials, and entities they directly or indirectly establish, finance, maintain, or control, may not solicit, receive, direct, transfer, or spend funds not raised under the limits, prohibitions, and reporting requirements of federal law (*i.e.*, soft money). State and local political parties, and entities they directly or indirectly establish, finance, maintain, or control, may not spend soft money on "federal election activities." The Act's so-called Levin amendment, however, allows for some use of soft money under certain conditions for specified grassroots activities by state and local parties.

Electioneering Communications

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

Chronology of Major Statutes and Court Rulings³

Revenue Act of 1971 [P.L. 92-178].

- *Presidential Election Campaign Fund* — provided optional subsidies in general election, by 1976; major party candidates eligible for 15¢ per eligible voter, minor or new party candidates for an amount proportionate to votes in prior (or retroactively in just-concluded) election; spending limit equal to major party subsidy; funded from optional \$1 tax checkoff (\$2 on joint returns), as of 1972.
- *Tax incentives* — created credit of up to \$12.50 (\$25, joint returns) on half the value of political contributions and deduction on full value of up to \$50 (\$100, joint returns) [deductions and credits repealed, as of 1979 and 1987].

Federal Election Campaign Act (FECA) of 1971 [P.L. 92-225]. Responded to failures of prior disclosure laws and to demand for curbing rising campaign costs.

- *Disclosure* — required candidates/committees to file quarterly and pre-election reports with secretaries of state and Clerk of House (for House campaigns), Secretary of Senate (Senate campaigns), or GAO/Comptroller General (presidential); itemized receipts/expenditures of \$100 or more; contributions of \$5,000 or more reported in 48 hours; covered all phases of election;
- *Media advertising spending limits* — on federal candidates, equal to the greater of \$50,000 or 10¢ per eligible voter [repealed by 1974 Act];
- *Lowest unit rate* — allowed candidates to buy time at lowest unit rate for commercial advertisers within 45 (60) days of primary (general) election;
- *Candidate limits* — on personal/family donations: \$50,000 (President), \$35,000 (Senate), \$25,000 (House) [invalidated by *Buckley* decision].

FECA Amendments of 1974 [P.L. 93-443]. Responded to Watergate scandal.

- *Contribution limits* — *individuals*: \$1,000 per candidate per election, and \$25,000 aggregate on contributions to federal candidates and committees; *PACs and parties*: \$5,000 per candidate per election (no aggregate limit);
- *Cash contributions* — prohibited in excess of \$100;

³ FECA changes have also been made as minor provisions in other legislation: (1) P.L. 93-625 — doubled political contribution tax credit to \$25 (\$50 on joint returns) and deduction to \$100 (\$200, joint returns); (2) P.L. 95-600 — doubled maximum political tax credit to \$50 (\$100, joint returns); ended tax deduction; (3) P.L. 98-355 — raised base level of party subsidy from \$3 to \$4 million; (4) P.L. 99-514 — repealed political tax credit; (5) P.L. 101-194 — repealed exemption from ban on personal funds use, by 1993; (6) P.L. 103-66 — tripled presidential election tax checkoff (\$3; \$6, joint returns); (7) P.L. 104-79 — required House candidates to file reports directly with FEC; required FEC to facilitate electronic filing and record-keeping; (8) P.L. 105-61 — limited FEC Commissioners to one six-year term; (9) P.L. 106-58 — allowed FEC to require electronic filing, above certain level; allowed administrative fine schedule for minor disclosure violations; allowed candidate filing on election cycle, not calendar year, basis.

- *Expenditure limits* — \$10 million in presidential primaries, \$20 million in general elections; \$2 million for major party conventions; greater of \$100,000 or 8¢ per eligible voter in Senate primaries, greater of \$150,000 or 12¢ per eligible voter in general elections; \$70,000 in House primary or general elections; \$1,000 on independent expenditures; added COLAs [limits in non-publicly funded races and on independent expenditures overturned by *Buckley*];
- *Party coordinated expenditures* — allowed national parties to spend money in support of general election candidates, beyond contributions, subject to limits;
- *Public funding for presidential primaries and conventions* — see above (amount of general election public funds changed with revised spending limit);
- *Federal Election Commission* — bipartisan agency to administer laws, with six voting members (two each appointed by President, Speaker, and President pro tempore) and two ex-officio (Clerk of House and Secretary of Senate); given civil enforcement authority; criminal cases referred to Justice Department [appointment process amended by 1976 Act, a response to *Buckley* ruling].

***Buckley v. Valeo* [424 U.S. 1 (1976)].** Landmark Supreme Court decision.

- *Upheld contribution limits and disclosure requirements* as serving vital governmental interest of safeguarding integrity of electoral process by preventing possible *quid pro quo* relationships due to large contributions, without unduly curbing citizen and candidate rights to engage in debate;
- *Upheld public funding system* for presidential elections;
- *Overtured expenditure limits* as constituting undue burden on political expression, without overriding governmental interest in preventing actuality or appearance of corruption; invalidated limits on overall spending, spending of candidates' personal funds, and independent expenditures; only voluntary spending limits were upheld, such as those linked with publicly funded presidential races (on overall campaign or candidates' personal expenditures);
- *Declared FEC unconstitutionally constituted* because it exercised executive branch functions but was appointed, in part, by Congress.

FECA Amendments of 1976 [P.L. 94-283]. Primary impetus to enactment was to reconstitute the FEC, in the wake of *Buckley* ruling.

- *FEC appointments* — all members to be appointed by the President;
- *Contribution limits* — *individuals*: \$5,000 to a PAC, \$20,000 to national party; *PACs*: \$15,000 to national party; subjected all PACs sponsored by an organization to single contribution limit (non-proliferation); *parties* — \$17,500 from national/senatorial committees to general election candidates;
- *Solicitation of PAC funds* — specified rules for sponsored PACs;
- *Legal and accounting fees* — incurred in FECA compliance, exempted from spending limits of publicly-funded presidential campaigns;
- *Matching fund cutoff* — for candidates who fail to get 10% of vote in two successive primaries; to be restored if they get 20% in a later primary;
- *Independent expenditure disclosure* — for at least \$100 in activity; required 24-hour notice, if at least \$1,000 were spent, within 15 days of election;
- *Union/corporate disclosure* — internal partisan communications above \$2,000;
- *FEC enforcement* — increased authority to prosecute violations and specified penalties; gave FEC responsibility to issue advisory opinions and regulations, conduct investigations, and attempt conciliation with alleged violators of law.

FECA Amendments of 1979 [P.L. 96-187]. Impetus was to make law less burdensome to participants and to foster greater grassroots activity.

- *Unlimited state and local party spending* — allowed for get-out-the-vote and registration drives on behalf of presidential ticket, and for grassroots and volunteer activities not aimed at specific federal candidates;
- *Disclosure exemptions* — for candidates and local party committees with less than \$5,000 in financial activity in a year;
- *Disclosure itemization threshold* — increased from \$100 to \$200 in general and, for independent expenditures, from \$100 to \$250;
- *Party convention subsidy* — base level raised from \$2 to \$3 million;
- *Personal use of excess campaign funds* — banned (except current Members).

Bipartisan Campaign Reform Act of 2002 [P.L. 107-155].

- *Soft money* — banned raising and spending by national parties and federal candidates or officials and, if for “federal election activities,” spending by state and local parties, but allowed the latter to use some soft money for specified federal election activities; banned parties from raising funds for or contributing to and restricted solicitations by federal candidates/officials for tax-exempt groups involved in federal elections; ended party building fund exemption;
- *Issue advocacy* — regulated election-related issue advocacy by defining as an “electioneering communication” a political ad referring to a clearly identified federal candidate and broadcast within 30 days of a primary or 60 days of a general election; prohibited use of union and corporate treasury funds for such communications and, for those permitted to fund them, required disclosure;
- *Increased contribution limits* — *individuals*: \$2,000 per candidate per election; \$10,000 per year to state party; \$25,000 per year to national party; \$95,000 aggregate in federal contributions per two-year election cycle; *parties*: \$35,000 from national or senatorial committees to general election candidates; indexed all but state party limit for future inflation;
- *Wealthy candidates* — raised limits on conditional basis on contributions by individuals and parties to congressional candidates whose opponents exceed threshold level of personal funding of campaigns;
- *Candidate personal loans* — \$250,000 limit: repayment from campaign funds;
- *Party coordinated and independent expenditures* — prohibited party from making both for a candidate [overturned by *McConnell* decision];
- *Coordination* — required FEC to draft new, tougher regulations;
- *Candidate ads* — required candidate appearance in broadcast ads bought at lowest unit rate, if they refer to opponents;
- *Foreign nationals* — prohibited their soft money donations to national parties;
- *Solicitation in government buildings* — strengthened existing ban;
- *Contributions by minors* — banned (up to age 17) [overturned by *McConnell*].

***McConnell v. Federal Election Commission* [124 S. Ct. 619(2003)].**

- *Upheld soft money ban* applicable to national political parties;
- *Upheld electioneering communications ban* regarding use of corporate and union treasury funding;
- *Overturned ban on contributions from minors*; and
- *Overturned ban on parties making both coordinated and independent expenditures* for same candidate.