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The Effect of the Federal Election Campaign Act Contribution and Expenditure Limitations on the Political Party Committees - A Prospect for Party Discipline

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THE EFFECT OF THE FEDERAL ELECTION CAMPAIGN ACT CONTRIBUTION AND EXPENDITURE LIMITATIONS ON THE POLITICAL PARTY COMMITTEES — A PROSPECT FOR PARTY DISCIPLINE?

Douglas J. Patton*

I. INTRODUCTION

The 1980 election process in the United States Senate and House of Representatives dramatized the attainment of another plateau in terms of political party activity by the respective Democratic and Republican entities. The growth of this party campaign finance activity on behalf of candidates for federal office has immeasurably affected congressional elections. Significantly, the important role the Federal Election Campaign Act[1] has played in this process has been largely ignored by both legal authorities and political observers. The Act, along with its accompanying legislative history, decisions by the Federal Election Commission,

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1. 2 U.S.C.A. §§ 431-455 (West 1977 & Supp. 1980) (originally enacted as Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 301, 86 Stat. 11, *as amended by* Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 201, 88 Stat. 1272; Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 101, 90 Stat. 475; and Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, § 101, 93 Stat. 1339).

and the courts in the area of political party activity, has rejuvenated the role the parties play in the federal system. At the very least, the potential exists for political party committees, with their exceptions under the Act, to reinstitute party discipline on their elected members.

The purpose of this article is to illustrate how the coalescence of congressional action, commission opinions, and judicial decisions has contributed to the evolution of political party financial activity on behalf of federal candidates. Particular attention will be focused on the legislative history of enactments concerning political party campaign activity.[2] The decisions of the Federal Election Commission, in the form of Advisory Opinions, Opinions of Counsel, and MUR actions in the area of political parties[3] will also be examined. In this regard, the scope of this article will be narrowed to the specific impact that the law pertaining to contributions and expenditures by the political party committees has had on congressional elections. Although other provisions of the Act also have carved out exceptions for the political parties, this narrative will be primarily confined to a discussion of section 441a provisions.[4]

II. STATUTORY BEGINNINGS

In the early discussions concerning campaign financing of congressional elections, special attention was given to the role of political parties. In 1973 the Senate was deliberating Senate Bill 372, a bill to amend the Federal Elections Campaign Act of 1971. Section 615(a) of the Bill had a contribution limitation of $3,000 by any person to any political committee. Section 615(c)(3) provided the exception to this section for the party committees as follows: "This subsection shall not apply to the central campaign committees or the State campaign committee of a candidate; to the national committee of a political party, or any political committee which is controlled by that national committee; the state committee

2. *See infra* notes 5-49 and accompanying text.

3. *See* 2 U.S.C.A. § 437 (West Supp. 1980) for procedures on advisory opinions. Opinions of counsel have been discontinued by the Federal Election Commission. The acronym "MUR" developed in the very early stages of the Commission to describe compliance cases. *See* 2 U.S.C.A. § 437g (West Supp. 1980) for the complete enforcement provisions.

4. Provisions of the amended FECA which expressly exclude certain activity from the definition of "contribution" include the following: Section 431(8) (B) (v) (referred to as the "slate card provision"); section 431(8) (B) (viii) (funds to defray the cost of construction of a new office facility); section 431(8) (B) (ix) (I) (legal and accounting services); section 431(8) (B) (x) (campaign materials such as pins, bumper stickers, and handbills used by volunteers on behalf of candidates); and section 431(8) (B) (xii) ("get-out-the-vote" and voter registration activities conducted by state and local committees). 2 U.S.C.A. § 431(8) (B) (West Supp. 1981).

of a political party, or any political committee which is controlled by that state committee; or to the Democratic or Republican Campaign Committees of the Senate or House of Representatives."[5] In the floor debate, Senator Stevenson of Illinois proposed an amendment which would have eliminated this exception for the parties.[6] Senator Cannon of Nevada stated in response, "If you restrict them to spending $3,000 on behalf of a candidate, you will put all of those committees out of business."[7] After lengthy floor discussion on the relative merits of political party activity, the amendment was withdrawn by Senator Stevenson.[8] Since Senate Bill 372 was never acted upon in the Senate, the Bill was referred to the House Committee on Administration. The House of Representatives, however, did not consider election legislation in that session.

Reform was again attempted in 1974 when Senate Bill 3044 became the new legislative vehicle for campaign finance.[9] In the 1974 Report accompanying this bill from the Senate Committee on Rules and Administration, the Committee recognized the important role political parties play in the financing of federal candidates. The Committee allowed private funding in the form of expenditures by the national and state parties under proposed section 614(b) of the Act.[10] The Report read in part as follows:

> The combination of substantial public financing with limits on private gifts to candidates will release large sums presently committed to individual campaigns and make them available for donation to the parties, themselves. As a result, our financially hardpressed parties will have increased resources not only to conduct party-wide election efforts but also to sustain important party operations . . . .[11]

The Report also stressed that, by playing this role, the parties

5. 119 CONG. REC. at 26314 (1973).

6. *Id.* at 26320.

7. *Id.* at 26324. (remarks of Senator Stevenson and Senator Cannon). This was a lengthy discussion and is the first recorded evidence of the exceptions being considered for national party committees in campaign financing legislation.

8. *Id.* at 26325.

9. S. 3044 was the 1974 package bill that sought to amend the FECA of 1971. The bill, among other things, provided for the public funding of primary and general federal elections, established limits on campaign expenditures, and revitalized the campaign disclosure laws. The bill also set up the Federal Election Commission. *See* S. 3044, 93d Cong., 2d Sess. (1974).

10. S. REP. No. 93-689, 93d Cong., 2d Sess. 7, *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS at 5587, 5594.

11. *Id.* at 8, U.S. CODE CONG. & AD. NEWS at 5594.

would keep the candidates responsible to the electorate.[12] The Senate Bill[13] also provided that the political party committees were subject to the $3,000 contribution limitation to each candidate for each election the same as other "persons".[14] As reported in the Senate, political party committees were not given any special status regarding contribution limitations. It is significant to note, however, that the political party committees were given an exception under the expenditure limitation provision.[15] The exception was stated as follows:

> The national committee of a political party may not make any expenditures during the calendar year in connection with the general election campaign of any candidate for Federal office who is affiliated with that party which, when added to the sum of all other expenditures made by that national committee during that year in connection with the general election campaigns of all candidates affiliated with that party, exceeds an amount equal to two cents multiplied by the voting age population of the United States.[16]

The state committees of the respective political parties were allowed an identical provision based on two cents multiplied by the voting age population of each particular state.[17] It should be remembered that Senate Bill 3044, as reported to the full Senate, contained public financing provisions for federal candidates. These exceptions[18] for the national and state committees of a political party were part of the overall financing scheme (public and private) for federal candidates.

The exceptions for national and state committees were modified, however, on the Senate floor. Senator Hathaway of Maine introduced an important amendment[19] which would

12. *Id.*

13. Proposed section 18 U.S.C. § 615.

14. S. REP. No. 93-689, 93d Cong., 2d Sess. 72, *reprinted in* [1974] U.S. CODE CONG. & AD NEWS 5587, 5596.

15. *Id.* at 70, U.S. CODE CONG. & AD. NEWS at 5605.

16. *Id.* at 71, U.S. CODE CONG. & AD. NEWS at 5623.

17. *Id.* Proposed section 18 U.S.C. § 6146. For example, in 1980 in the state of Iowa, this section would have allowed a total expenditure of $41,600 for the one Senate race and the six congressional races. These special provisions on party contributions and expenditures are currently contained in section 321 of the Title III of the Federal Election Campaign Act of 1971, Pub. L. No. 92-225 (currently codified at 2 U.S.C. § 441a (a) and 441a (d)). Prior to the enactment of the Federal Election Campaign Act Amendments of 1976, the provisions on party contributions and expenditures were contained in 18 U.S.C. section 608.

18. S. REP. No. 93-689, 93d Cong., 2nd Sess. 71, *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 5623.

19. 120 CONG. REC. 8474 (1974). This amendment, as inserted, contains essentially the same language as the present 2 U.S.C. section 441a (d) provisions. The amendment states:

establish a separate limitation on "contributions" by the national and state committees to candidates for federal office. Senator Hathaway stated on the Senate floor:

> Under the bill as it now stands, there is a certain amount which may be used by both national and State committees for candidates in general, but it does not specify amounts with respect to individual candidates. Under the bill as presented, the national committee could funnel all the money it is entitled to under its limit into the race of one candidate. The State committee could do likewise.
>
> My amendment would prevent that from happening. It would be a more equitable provision for a distribution of funds to be spent by both the national committee and the State committee.[20]

The amendment provided specific expenditure ceilings as applied to both national and state political party committees.[21] Even though Senator Hathaway used language implying "contributions" by party committees, the amendment applied only to the "expenditure" section of the Senate Bill.[22]

After the Senate agreed to the Hathaway amendment regarding separate expenditure limits for national and state party committees, Senator Brock of Tennessee attempted further exceptions to the limitations for the other national party committees. He introduced an amendment to exempt the four

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(b) (1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committees of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) hereof.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President who is affiliated with that party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with that party which exceeds —

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State where a Representative is required to run statewide, the greater of —

(i) 2 cents multiplied by the voting age population of that State, or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative in any other state, $10,000.

120 CONG. REC. 8474 (1974); *See also* 2 U.S.C.A. § 441a (d) (West 1977).

20. 120 CONG. REC. 8474 (1974).

21. *Id.*

22. *Id.*

campaign committees of the Senate and the House from the expenditure limitations of section 614(c).[23] That section provided that no person could make expenditures advocating the election or defeat of a clearly identified candidate during a calendar year which, when added to all expenditures made by the person during the year, exceeded $1,000.[24] Senator Brock's amendment would have allowed the congressional campaign committees to selectively make expenditures and contributions outside the $1,000 or $3,000 contribution limit in states and congressional districts where the particular candidate needed supplemental monies. In this situation, the candidate would still be subject to an overall expenditure limitation. Senator Brock argued that the political party committees receive their funds from a broad base,[25] and he wanted to ensure that the parties could financially support their candidates. Brock argued that this financial support is especially necessary early in the campaign because the party "is supportive in the early stages" when the candidate must have a chance to win.[26] Without a recorded vote, the amendment was agreed to by the Senate.[27]

After Senator Brock's successful amendment, futher legislative reinforcement of these campaign committees was attempted. Senator Baker (Brock's Republican colleague from the same state) introduced an amendment which would have prohibited contributions other than by individuals.[28] This amendment failed 53-36, but the colloquy was interesting:

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23. *Id.* at 9549. The committees respectively are the Democratic Senatorial Campaign Committee, Republican Senatorial Campaign Committee, Democratic National Congressional Committee, and National Republican Congressional Committee. Senators Allen, Cannon, and Brock engaged in a lengthy discussion on contributions and expenditures by political party committees at this stage. The Brock modification was Amendment No. 1102. *Id.*

24. Proposed section 18 U.S.C. § 614c. This restriction did not apply to expenditures made on behalf of a candidate under the provisions of section 614a (4).

25. 120 CONG. REC. 9551 (1974). Senator Brock argued that the danger of undue influence, which was the motivating factor behind the contribution limitation, was not as real in the situation of the House and Senate campaign committees. Brock stated that the base of support for contributions to these committees is large, and further, the average contribution is well under $100. *Id.*

26. *Id.* During the hearings held, Senator Allen asked:

> Would it be impossible as the Senator from Alabama sees it, then, for a candidate who has a legal right to spend $1 million in his campaign but, having collected only one-half that amount from private sources and from the party, could apply to one of these committees (senatorial or congressional committees) for a contribution — that is, theoretically — of half a million dollars; is that not correct?
>
> Senator Brock: I think it is.

Id. Senator Brock, however, pointed out that the average contribution to Republican Senate and House Committees was only $23.75. *Id.*

27. *Id.* It is noteworthy that in this floor dialogue there appeared to be a thin or confusing distinction between contributions to and expenditures by candidates, even at this early juncture.

28. *Id.* at 9552. Senator Baker's motive for the amendment was "to eliminate the distortive effects of special interests." *Id.* at 9553. Although Senator Baker conceded that not all contributions

> Senator Brock . . . "I would like to clarify one point, for the purpose of establishing legislative history, and that is, does the amendment inhibit the right of the Senate or House of Representatives Democratic or Republican campaign committees to support the candidate of their choice?"
> Senator Baker . . . "It would not prevent those committees, however, such as the Democratic and Republican congressional committees or campaign committees, from performing their functions."
> Senator Brock . . . "And the committees could support the candidates of their choice?"
> Senator Baker . . . "That is my intention."[29]

On April 8, 1974, Senator Clark (Democrat from Iowa) introduced an amendment which would have repealed Senator Brock's amendment.[30] Senator Clark stated that he was concerned with unlimited contributions and expenditures by the "in house" campaign committees.[31] He was especially concerned about the possibility of special interest money being funneled to the "in house" committees, which would compromise the campaign finance legislation.[32] In response, Senator Brock explained the need for his amendment: "[I]f we are going to have an effective political system, we have to have some mechanism by which the parties not only maintain themselves but also have some opportunity for internal discipline."[33] Despite Senator Brock's political party-strengthening argument, Senator Clark's amendment passed 44-35, reverting to the original bill as reported by the Senate Committee on Rules and Administration.[34] Finally, on April 11 1974, Senate Bill 3044 was passed in the Senate by a vote of 53-32, with the relevant exceptions provided for the national and state party committees, but with the limitations on the in-house

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by groups have a corruptive impact, he could conceive of no more effective means to eliminate undue influence than to ban all group contributions. *Id.* at 9554.

29. *Id.* at 9554.

30. 120 CONG. REC. 10060 (1974) (Senator Brock introduced amendment no. 1152).

31. *Id.* Senator Clark stated that the effect of the contribution exception would mean that in a Senate race in California, the contribution limit of the two senatorial campaign committees would be $2,121,450. Senator Clark argued that if amendment no. 1102 were allowed to stand, the Senate would be compromising the integrity of the campaign finance legislation. *Id.*

32. *Id.*

33. *Id.* at 10063. Senator Brock reiterated his earlier concern for the preservation of the two-party system. He reasoned that the bill, with its limitations on the in-house committees, would damage the two-party system. Brock further argued that the purpose of his amendment was not to avoid the contribution ceilings since the in-house committees would still be subject to the $3,000 contribution limit from individuals and committees. *Id.*

34. *Id.*

congressional committees still intact.[35]

In that same session, the United States House of Representatives Committee on Administration reported House Bill 16090, the counterpart of Senate Bill 3044.[36] The House Bill, as reported, contained a $5,000 contribution limitation as applied to political committees in federal elections.[37] This limitation encompassed the national and state committees of the respective parties.[38] Unlike Senate Bill 3044, however, there was no provision for expenditures by political party committees. In the Minority Report, the Republican members of the House Administration Committee urged that these national and state political parties be excluded from the definition of "political committee" for the purpose of the contribution limitations.[39] Reference was made only to the national and state committees by the minority members. No mention was made of the "in house" congressional campaign committees. Also absent from the Minority Report was any discussion of expenditures by the national or state political party committees.[40] The Majority Report intimated that the party committees would possibly try to circumvent the contribution limitations at the national, state, and local levels. The committee report, however, stressed that the decision to make contributions at each level of the party organization had to be independently exercised.[41] During the floor discussion of House Bill 16090, Congressman Bob Michel of Illinois expressed reservations about the $5,000 limit on contributions by the recognized national party organizations.[42] He strongly urged that the national party committees be excluded from the contribution limits.[43] The only other colloquy on these party provisions was voiced by the then Chairman of the House Administration Committee, Congressman Wayne Hays. He expressed opposition to an amendment offered by Congressman DuPont which would have reduced the

35. *Id.* at 10952.

36. H.R. REP. No. 93-1239, 93rd Cong., 2nd Sess. 12 (1974).

37. *Id.* at 15.

38. *Id.* Subsection (b)(2) provided that state political party organizations were not required to make contributions to a minimum of five candidates for federal office in order to be considered a political committee. *Id.*

39. *Id.* at 117.

40. *Id.* The reason neither the Republican nor Democratic members discussed the subject of expenditures could be that the issue of public financing of congressional elections was not included in H.R. 16090.

41. *Id.* at 5.

42. 120 CONG. REC. 27222 (1974) (remarks of Rep. Michel). Representative Michel referred to the national, senatorial, and congressional campaign committees in his comments. He was also Chairman of the Republican Congressional Campaign Committee that year.

43. *Id.*

contribution limitation from $5,000 to $2,500. Congressman Hays stated:

> [T]he committees (party committee) ought to have the right to contribute whatever funds they can legitimately and honestly get their hands on because I am a great believer in the two-party system.
>
> If we continue to offer amendments and to restrict the rule of the parties and the committees, then we may well find ourselves in the same situation that some of our friends in Europe are in.[44]

House Bill 16090 finally passed the House on August 8, 1974, with the $5,000 contribution limit intact.[45]

In the Senate-House Conference Report on Senate Bill 3044 (conference agreed to Senate title of the Bill), the conference adopted the $5,000 contribution limitation by party committees.[46] Another significant modification was that state party committees were not required to make contributions to at least five candidates for federal office in order to be considered political committees.[47] The conference substitute adopted the overall provisions of the Senate Bill in terms of the expenditure limitations on the party committees.[48] In the subsequent Senate floor debate on the Conference Report, Senator Kennedy expressed satisfaction with the overall spending limitation, including the provisions relating to party expenditures: "[a]s a result of these various provisions, the spending levels in the conference bill are entirely adequate."[49]

III. EARLY ADMINISTRATIVE OPINIONS

The Federal Election Campaign Act of 1974, with the political party finance provisions included, was signed by President Ford on October 15, 1974.[50] As part of the new legislation, the Federal Election Commission was established in 1975 and began to issue decisions regarding the role of political party committees in the area

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44. *Id.* at 27260.
45. *Id.* at 27513.
46. *Id.* at 27515.
47. H.R. REP. No. 93-4139, 93rd Cong., 2nd Sess. 51 (1974). If a "person" did not qualify as a "political committee" under section 608(b)(2), the contribution was limited to $1,000.
48. *Id.* at 56. *See supra* note 17. The entire limitation section on contributions and expenditures was codified at 18 U.S.C. section 608.
49. 120 CONG. REC. 34375 (1974). For example, in the state of Massachusetts the overall spending limit for the general election was $751,824. In comparison, the State of California's overall spending limit was $2,669,656. The limit for candidates of the House was $104,000.
50. Pub. L. No. 93-443, 88 Stat. 1268 (1974).

of campaign finance. In only its second advisory opinion, the Commission considered whether a subordinate committee of a state party had an expenditure limitation separate from that of the state party.[51] The Commission concluded that these subordinate committees are included within the overall state party expenditure limitation.[52] Moreover, the Commission ruled that the state committees were responsible for ensuring that the total expenditures by the entire party organization were within the limitations of the new law.[53] The state party was allowed the alternative of filing an "allocation statement."[54] The allocation statement contained an agreed upon formula that determined the expenditures for federal candidates to be allocated to local committees within the state.[55] This early opinion of the newly formed Commission accurately forecast the practicable difficulties the expenditure limit legislation would pose for the Commission, Congress, and the party committees.

The question of local party committees making contributions or expenditures on behalf of federal candidates was similarly expounded in a subsequent advisory opinion.[56] The opinion stated that a local party committee could make *contributions* to candidates under limitations separate from the state party committee, provided there was no direction or control from that respective state committee.[57] The opinion reiterated, however, that *expenditures* made by subordinate committees in federal elections were subject to the overall state party expenditure limitation.[58]

Finally, in another early decision, the Commission made an important distinction between contributions and expenditures by party committees. The Commission attempted to distinguish the actual transfer and receipt of funds by the candidates from the

51. FEC Advisory Opinion No. 1975-2, *reprinted in* [1976] 1 FED ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5108.

52. *Id.*

53. *Id.* The newly enacted legislation restricted a state party committee from spending more than $10,000 in a congressional campaign. The expenditure for a senatorial campaign could not exceed the greater of the product of two cents multiplied by the voting age population of the particular state, or $20,000. 18 U.S.C. § 608(f) (currently codified at 2 U.S.C.A. 441a (d)(West 1977)).

54. FEC Advisory Opinion No. 1975-2, *reprinted in* [1976] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5108.

55. *Id.* The procedure is relatively simple. The state and local committees first agree on a formula whereby the local committees receive a portion of the total expenditure limitation for each federal candidate. The state committee then must file a statement with the Commission describing the allocation formula and detailing other relevant information concerning the state and local committees. Once filed, the allocation statement may later be amended. *Id.*

56. FEC Advisory Opinion No. 1975-29, *reprinted in* [1976] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5129.

57. *Id.*

58. *Id.* The Commission stated that the overall expenditure limitations of 18 U.S.C. section 608(f)(3) on state committees and their subordinates would be applicable. *Id.*

making of expenditures by a party committee on behalf of a candidate. The Commission stated as follows:

> However, a direct donation of money to a candidate as in the present instance, is not the same as an expenditure in connection with the general election campaign of a candidate. In one case, the candidate acquires exclusive use of the monies in question; in the other, the state party, although it may consult with the candidate as to how to expend the funds, has control over how the monies are used.[59]

This early attempt to clarify the distinction between the two means of campaign financing was to serve as an effective backdrop for later Commission decisions.

IV. JUDICIAL, LEGISLATIVE, AND REGULATORY REFINEMENT

One year later, in *Buckley v. Valeo,*[60] the United States Supreme Court held that the Commission, as constituted, violated the separation of powers doctrine.[61] The Court temporarily barred the Commission from the exercise of its powers until properly constituted, subject to a limited stay of the Court's judgment. Although the *Buckley* Court also held the expenditure limitations on federal candidates unconstitutional, the role of the political party committees in relation to the expenditure and contribution limitations under the new Act was not discussed.[62]

During this period of suspension, the Commission issued two opinions of counsel that further supplemented the reasoning in its earlier advisory opinion concerning the contribution-expenditure distinction. In an opinion to the Minnesota Republican Party, the Commission clarified further the distinction between contributions and expenditures, reasoning that the crucial difference is one of dominion and control.[63] Under the reasoning of its earlier advisory opinion, if a state party donates directly to a candidate, the donation is considered a contribution. To the contrary, if a party spends in connection with the general election campaign of a

59. FEC Advisory Opinion 1975-120 *reprinted in* [1976] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5186.
60. 424 U.S. 1 (1976).
61. Buckley v. Valeo, 424 U.S. 1, 109-43 (1976).
62. 424 U.S. 1 (1976).
63. 1975-126 Op. Counsel FEC (1976).

candidate, it has control over how those funds are to be used; therefore, the spending constitutes an expenditure. In a similar opinion of counsel written to Congressman Michael Blouin of Iowa, the Commission stated that although the candidate's committee could consult with the national or state party committee concerning the expenditure of funds, the party committees themselves would retain ultimate control over how the monies were to be used.[64]

Because the Court in *Buckley* had placed constraints on the Commission's actions, Senate Bill 3065 was introduced on March 18, 1976, to amend the Act to conform with the Court's decision. That Bill also contained a contribution and expenditure provision that was substantially the same as provisions contained in previous legislation.[65] The attention of the Senate Rules and Administration Committee, which reported the Bill, was focused on the possible proliferation of political committees, each with a separate contribution limit. As a result, a new provision was enacted within the contribution limitations section, which would treat as a single committee all political committees established, financed, maintained, or controlled by a single person or group of persons.[66] An important exception to this provision was created, however, so that it did not apply to national, state, or local committees of political parties.[67] When Senate Bill 3065 reached the Senate floor, Senators Johnston and Stevens introduced an amendment to raise the contribution limit for the senatorial, congressional, and national committees of a political party from $5,000 per election to a combined $20,000 for all elections.[68] Senator Clark expressed opposition to this amendment, reasoning that it would encourage earmarking by contributors to candidates through the party committees.[69] In answer to Senator Clark's objection, Senator Johnston retorted:

> [A] candidate may have expenditures made on his behalf by the national committee to the extent of $20,000 and he may have spent on his behalf by the Congressional committee $15,000, assuming he has a primary, a runoff and a general election. . . . If a candidate were so lucky to

64. 1976-38 Op. Counsel FEC (1976).
65. S. REP. No. 94-677, 94th Cong., 2nd Sess. (1976).
66. 122 CONG. REC. 7191 (1976).
67. *Id.* at 7891 (remarks of Senator Cannon).
68. *Id.* at 7191, 7898 (remarks of Senator Johnston and Senator Clark). There again appears to be some confusion in the dialogue over the distinction between contributions and expenditures by these party committees.
69. *Id.* at 7191.

> get the full $40,000, and I submit that is going to be very rare indeed, what is wrong with that? Is it not better to get the money, which I submit is purified, rather than get it directly from the special interest group. . . . [70]

The Johnston-Stevens amendment passed 64-30.[71] Eventually, Senator Johnston modified his amendment, making the $20,000 limitation applicable only to Senate candidates.[72] In the companion bill in the House (H.R. 12406), the expenditure limitations as contained in the FECA of 1974 were kept intact.[73] Although language was added which stated that no person could contribute more than $1,000 to any political committee, including the party committees,[74] the $5,000 limitation on contributions by party committees to candidates was retained.[75]

A Senate-House Conference Report accompanied Senate Bill 3065. Numerous changes were made, and the result is the present campaign finance law for political parties.[76] Under this law, a person can contribute $20,000 to the political committee maintained by the national political party in any calendar year.[77] A multi-candidate political committee can contribute $15,000 to the political committees established by the national political party.[78] The Conference Report also stated that the term "political committee established or maintained by a national political party" includes the Senate and House Campaign Committees.[79] The Conference substitute also reduced the $20,000 contribution limit (Senator Johnston's amendment) for the senatorial campaign committee to $17,500.[80] The expenditure limitations imposed on

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70. *Id.* at 7192.

71. *Id.* at 7194.

72. *Id.* Senator Johnston stated that he modified his amendments because his House colleagues urged him to do so. This is ironic because according to the final bill, a House candidate could potentially receive a total of $20,000, $10,000 from each of the two national committees ($5,000 per election, primary and general), while a Senate candidate was limited to $17,500. Thus, a House candidate would enjoy a $2,500 advantage over a Senate candidate. *Id.*

73. H.R. REP. No. 94-917, 94th Cong., 2nd Sess. 69 (1976).

74. *Id.* at 67.

75. *Id.*

76. H.R. REP. No. 94-917, 94th Cong., 2nd Sess. 69, *reprinted in* [1976] U.S. Code Cong. & AD. NEWS 283. This section is currently codified at 2 U.S.C.A. § 441a (West 1977).

77. 2 U.S.C.A. § 441a (a) (1) (B) (West 1977). The committee must not be the authorized political committee of a candidate. The contribution limit applies in the aggregate during the calendar year.

78. 2 U.S.C.A. § 441a (a) (2) (B) (West 1977). A multi-candidate committee is defined as a political committee which has been registered for at least six months, has received contributions from more than fifty persons, and has made contributions to at least five candidates for federal office. *Id.* This last criterion does not apply to state political party committees. *See* 2 U.S.C.A. § 441a (a) (4) (West 1977).

79. H.R. REP. No. 94-1057, 94th Cong., 2d. Sess. 31, 58, *reprinted in* [1976] U.S. CODE CONG. & AD NEWS at 929, 973.

80. *Id.* at 59, U.S. CODE CONG. & AD. NEWS at 974. This provision is currently codified at 2 U.S.C.A. § 441a(h)(West 1977). That provision reads:

the political party committees were unaltered.[81] In the House debate of the Conference Report, an important exchange concerning political party activity by the two House committees ensued between Congressman Hays and Congressman Vander Jagt:

> Mr. Vander Jagt . . . "Finally, on this section if all committees which are involved in the transfers are national, State, district or local committees — including any subordinate committee thereof — of the same political party, then none of the limitations apply."
> Mr. Hays . . . "That is correct."
> Mr. Vander Jagt . . . "I note with great interest that the conference report states that the term 'political committee established and maintained by a national political party' includes the Senate and House campaign committees. . . . I wish the RECORD to clearly indicate that, although our respective committees are categorized as 'established and maintained by a national political party' for purposes of Sections 320(a)1(B) [sic] and 320(a)(2)(B), that is not necessarily the fact of the matter, except for the purposes of those two sections alone. . . ."
> Mr. Hays . . . "Mr. Speaker, I will say to the gentleman that I agree with him . . . ."[82]

This colloquy became very important in later deliberations by the Federal Election Commission. After passage by both Houses, this version of the Federal Election Campaign Act Amendments was signed into law by President Ford on May 11, 1976.[83] Thus, the elections of 1976 were the first in which a comprehensive campaign finance law existed.

Immediately prior to the November 1976 elections, party committee expenditures became an issue. The Democratic National Committee filed a complaint with the Commission that questioned the legality of the National Republican Congressional

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> Notwithstanding any other provision of this Act, amounts totaling not more than $17,500 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

Id.

81. H.R. REP. No. 94-1057, 94th Cong., 2d Sess. 31, 59 *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 929, 974 (currently codified at 2 U.S.C.A. § 441a(d) (West 1977)).

82. 122 CONG. REC. 12205 (1976) (remarks of Congressmen Vander Jagt and Hays).

83. Pub. L. No. 94-283, 90 Stat. 487 (1976).

Committee (NRCC) acting as an agent of the National Republican Committee (NRC) for purposes of the political party expenditure limits. At issue was whether the agent (NRCC) could be authorized by the principal to expend funds owned by the agent. The complaint created a legal and political controversy immediately prior to the election.[84] After the election, Congressman James C. Cleveland submitted a formal advisory opinion request to settle the question. The Commission issued an advisory opinion to Congressman Cleveland, which categorized the specified campaign committees (the in-house congressional campaign committees) as committees of their respective national political parties.[85] The Commission concluded that a transfer between one of the congressional campaign committees and the national committee of the same political party is a transfer between political committees of the same party; hence, such money transferred is unlimited under 2 U.S.C. section 441a(a)(4).[86] Thus, the Commission reasoned, it would be immaterial as to which committee funds were being expended under the expenditure limitation provision.[87]

A different problem arose in California when a party committee utilized the expenditure and contribution provisions to assist a candidate. This was the issue in a complaint filed against Senator Tunney of California.[88] The complaint alleged that the state party of California paid the debts of Senator Tunney's principal campaign committee after his loss in the 1976 election. A sizeable portion of the monies was paid from the proceeds of a $3,000 per couple fund-raiser held by the state party to benefit Senator Tunney after the election. The treasurer of Tunney's committee claimed that $5,000 of the amount given to retire the debt was a legal contribution[89] and $38,195 of the payment was legal within the expenditure limitations.[90] Two new questions were

84. The complaint did not meet the formal requirements under 2 U.S.C. section 437g(a)(1) and was later withdrawn by the Democratic National Committee.

85. FEC Advisory Opinion No. 1976-108, *reprinted in* [1976] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5236.

86. *Id.* 2 U.S.C.A. § 441a(a)(4) (West 1977). That provision reads: "The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, state, district, or local committees (including any subordinate committee thereof) of the same political party." *Id.* The Commission also stated that if the national committee designated an agent for the purposes of making section 441a(d) expenditures, the national committee would be required to provide the funds, since contributions by such an agent to the national committee would be limited to $20,000 or $15,000 per year. FEC Advisory Opinion No. 1976-108, *reprinted in* [1976] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5236.

87. FEC Advisory Opinion No. 1976-108, *reprinted in* [1976] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5236.

88. FEC Matter Under Review No. 377 (1977).

89. 2 U.S.C.A. § 441a(a) (West 1977).

90. 2 U.S.C.A. § 441a (d) (West 1977).

generated by this MUR. The first concerned the proper contribution limits applicable to an individual who contributes to a party committee with the knowledge that the committee will make expenditures on behalf of a particular candidate. The second questioned whether a party committee is considered to have made an "expenditure" or "contribution" under the law[91] when it pays outstanding debts of a candidate's committee. In answering the first question, the Commission avoided the conclusion that the contributions to the party committee were earmarked for the Tunney Committee.[92] Counsel for the Commission stated, in answer to the second question, that no clear-cut answer existed on the issue of whether the debt payment was an "expenditure." Commission Counsel argued that, on the one hand, paying such debts could mean that the party committee has surrendered dominion and control of the money used in payment. An opposing argument contended that, since the party committees determine which debts to actually pay, they retain control over the use of the money.[93] On February 9, 1979, the Commission, by a vote of 4-1, found no reasonable cause to believe that the two committees had violated the Act's financial limitations.[94] The Commission also instructed the Office of General Counsel to prepare regulations interpreting the definition of "expenditures" under the new law.[95]

An additional contribution limitations issue arose in the 1976 election cycle involving the Republican Congressional Boosters Club. Since 1964 the Boosters had been affiliated with the National Republican Congressional and Senatorial Committees. The Boosters' funds were contributed exclusively to Republican Congressional and Senatorial challengers, or for open seats. Prior to filing a statement terminating its affiliation with the national committees, the membership of the Boosters Executive Committee included the minority leadership of both houses of Congress. The issue before the Commission was whether the Boosters had to share contribution limitations with the other national committees because

91. 2 U.S.C.A. § 441a (West 1977).

92. FEC Matter Under Review No. 377 (1977). Under 2 U.S.C.A. section 441a (a) (8), contributions made by a person, whether made directly or indirectly for the benefit of a particular candidate, are treated as contributions to that candidate. This includes contributions that are earmarked to a candidate or otherwise given to such candidate through an intermediary.

93. FEC Matter Under Review No. 377 (1977).

94. *Id.*

95. *Id.* No regulations have been issued or prepared as of the writing of this article. The Commission was probably under the impression that it was a legislative function to clarify the ambiguity of section 441a (d). A memorandum to Vice Chairperson Aikens from Jan Baran, her executive assistant, stressed that the distinction between "contributions," "contributions in-kind," and "expenditures" as contemplated by Congress was ill-defined. The memorandum explained that section 441a had remained unaltered since Senator Hathaway's amendment in 1974. The memorandum is found in the closed file of FEC Matter Under Review No. 377 (1977).

of the alleged affiliation, or whether they had a separate $5,000 limit per election.[96] The General Counsel's recommendation to the Commission was that once committees were affiliated they could not terminate that affiliation. General Counsel also argued that there were other indicia of continuing affiliation. On March 9, 1978, the Commission voted 6-0 to close this MUR file,[97] after failing to find reasonable cause to believe that the Boosters had violated the contribution laws.[98]

During that same year in the 95th Congress, the Democratic leadership in the House attempted to reduce the party committees' increasing influence in the financing of congressional elections. As reported by the House Administration Committee, House Bill 11315 was the legislative vehicle in which language was inserted by the Democrats to restrict contributions and expenditures by the national and state committees.[99] Under the wording of that bill, the national and state party committees would each be limited to an annual $5,000 contribution to any federal candidate.[100] The expenditures under section 441a(d) would be reduced to $2,500 for the national committees, and $2,500 for the state committees.[101]

More important than the contribution and expenditure reductions was the restriction on party transfers. The Bill prohibited movement of funds between the committee of a national political party[102] and the committee of a state political party[103] if the purpose of such movement of funds was to make contributions or expenditures on behalf of federal candidates.[104] The Republicans on the House Administration Committee had harsh criticism of the changes in House Bill 11315:

> Under the guise of cutting back special interest money, the new draft demonstrates a political party's ability to support its candidate . . . . If your party organization has a little trouble raising money or is a little inefficient, or may be just plain lazy, just cut down the culpability of the other party to spend on behalf of their candidate . . . .[105]

96. *See* FEC Matter Under Review No. 306 (1976).

97. *Id.*

98. The FEC failed to find reasonable cause to believe by a 3-2 vote with one abstention. Section 437g requires four affirmative votes for a recommendation. Since 1976 the Boosters have had a separate contribution limitation apart from that of the national committees of the Republican party.

99. H. R. REP. No. 95-982, 95th Cong., 2d Sess. (1978).

100. *Id.*

101. *Id.*

102. *Id.* This included the House and Senate congressional campaign committees of such parties.

103. *Id.* This included subordinate committees of a state political party.

104. *Id.*

105. *Id.* The Republican minority members on the Committee also cited these figures to support their contention:

An important additional factor in the political consideration of this legislation was a proposed amendment for public financing of congressional elections, which was to be introduced by its bipartisan supporters. Proponents of public financing claimed that partisan differences over the changes in the limitations section of the law would jeopardize the chances of public financing. In the end, 140 Republicans, along with 69 Democrats, defeated a procedural move to bring House Bill 11315 and any amendments (including public financing) before the full House for consideration.[106]

In 1978 two other advisory opinions by the Commission contributed substantially to the importance of the party committees in the election process. Both of these decisions had particular relevance for the state political committees. In one the Commission answered four questions from the Iowa Republican State Central Committee.[107] Two of the questions involved major interpretations of the contribution and expenditure provisions. The first involved an inquiry into whether contributions to federal candidates by a state party committee and by various county committees would be considered to have been made by one political committee and thus be placed under a single contribution limit. In general, contributions by political committees financed or controlled by any person, including a parent, subsidiary, or local unit of such person, are subject to a common contribution ceiling.[108] The Commission recognized, however, the specific exception under the statute, which gives separate committee status to "a single political committee established or financed or maintained or controlled by a national committee of a political committee established or financed or maintained or controlled by a State Committee of a political

	1977 Party Receipts*		
	Gross	% over $500 contributors	Dec. 77 cash on hand
Republican	$18,500,000	12%	$8,200,000
Democrat	$ 5,600,000	47%	$ 867,000

1976 House Elections	Party Resources
Republican candidates 35 million spent	4.2%
Democratic candidates 30 million spent	12.1%

*FEC Report 1978

Id.

106. The total vote was 209-198. Some observers claimed that the procedural vote failed because of the amendment that would have been offered, which provided for partial public financing of congressional elections. At the time, there was considerable editorial comment from major newspapers regarding the advisability of reducing party committee activity. *See* Wash. Star, March 22, 1978, at ____, col. ____; Wall St. J., March 22, 1978, at 3, col. 1-2.

107. FEC Advisory Opinion No. 9, *reprinted in* [1978] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5340.

108. 2 U.S.C.A. § 441a (a) (5) (West 1977).

party . . . ."[109] The Commission interpreted the Act and legislative history to mean that the state party committees and their subordinates are presumed to have a single contribution limitation.[110] As stated in this regulation, the presumption would not apply under the following circumstances:

> (1) [T]he political committee of the party unit in question has funds from other party committees not established, financed, maintained, or controlled by that party unit; (2) the political committee of the party unit in question does not make contributions in cooperation, consultation, or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit.[111]

The Commission ruled that, based upon the factual evidence, the county committees in question had satisfied the presumption of the regulations and, therefore, were separate political committees for the purpose of the contribution limits.[112] The Iowa committee also asked whether separate expenditure limits would apply to the county level committees. The Commission followed its previous decisions by answering in the negative, stating that the expenditure provision provides only one spending limit to the entire state party organization.[113]

The Commission further broadened the role of the state party committees in an advisory opinion issued to the Kansas Republican State Committee.[114] In this opinion, the Commission held that the costs of voter registration and get-out-the-vote drives by the state party could be allocated between federal and non-federal elections like other party expenditures.[115] This decision modified and superseded earlier advisory opinion requests, which stated that no corporate/union treasury funds could be used to finance any portion of a registration or get-out-the-vote drive conducted by a political party.[116] Since many states, in addition to Kansas, allow

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109. 2 U.S.C.A. § 441a (a) (5) (B) (West 1977).
110. 11 C.F.R. § 110.3(b)(2)(ii).
111. *Id.*
112. FEC Advisory Opinion No. 9, *reprinted in* [1978] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5340. In a dissenting opinion, Commissioner Tiernan argued that the Commission had erred by selectively choosing legislative history to support its conclusion in regard to exceptions for party committees. He stated that the majority opinion has its own ambiguity and, therefore, could be construed narrowly or expansively as to its intended meaning. *Id.* (Tiernan, Comm'r, dissenting).
113. *Id.*
114. FEC Advisory Opinion No. 10, *reprinted in* [1978] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5340.
115. *Id.*
116. FEC Advisory Opinion Requests Nos. 72 & 83 (1976).

general corporate/union treasury funds for partisan purposes, the Commission held that these funds could be used to help finance the costs associated with a partisan registration and get-out-the-vote drive, as long as the committee followed the Commission's allocation formulas.[117] The Commission was unable, however, to reach a decision in a related issue in this advisory opinion. The unresolved issue was whether disbursements by the state party prior to the primary election would be subject to the contribution limits or whether they could be applied to the general election expenditure limits.[118] This question is still unresolved by the Commission.

V. EXTERNAL CHALLENGES

In 1978 there also emerged a more definite expansion of the agency relationship, which concerned the national and state committees of the political parties. In that year the National Committee for an Effective Congress (NCEC) filed a complaint with the Commission against the Larry Williams for United States Senate Committee of Montana, alleging that the National Republican Senatorial Campaign Committee (NRSC) had exceeded its expenditure limitations in the 1978 general election.[119] NCEC contended that an earlier advisory opinion prohibited NRSC from assuming the $24,580 applicable expenditure limit the state party was allowed under section 441a(d).[120] That advisory opinion, complainant urged, was applicable only to assumption by NRSC of the *national* party's expenditure limit, which was the same figure of $24,580. The Commission ruled in a 6-0 decision that neither NRSC nor the Williams Committee had violated the Act.[121] The Commission reasoned that there was no specific prohibition in the Act precluding the senatorial committee from acting as an agent of the state party in making these campaign expenditures.[122] The Commission also reasoned that, since the statute[123] allows unlimited transfers of monies between national and state party

117. FEC Advisory Opinion No. 10, *reprinted in* [1978] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5340. The possible result of this decision was to free monies previously allocated for these drives to be used for direct contributions to, and expenditures on behalf of, federal candidates. *See Id.* (Harris, Comm'r dissenting). Commissioner Harris contended that the state parties would finance the major part of the costs of these drives from corporate/union treasury funds. *Id.*

118. *Id.*

119. FEC Matter Under Review No. 780 (1978).

120. FEC Advisory Opinion No. 108, *reprinted in* [1976] 1 FED. ELEC. CAMPAIGN FINANCING GUIDE (CCH) § 5236.

121. FEC Matter Under Review No. 780 (1978).

122. *Id.*

123. 2 U.S.C.A. § 441a(a)(4) (West 1977).

committees, it was impractical to reach a contrary conclusion as to these agency agreements.[124]

In a related case, the Commission reached a similar conclusion regarding the applicability of the agency relationship between the national and state committees.[125] The General Counsel's office had argued "that the goal of coordinated party expenditures could be achieved by allowing the State Party to designate a national committee of the Party as its agent as well as by allowing the National Party to designate a State committee as its agent."[126] The General Counsel's office further stated that, because of the unlimited transfer of funds provision, prevention of such agency agreements would seem to place form over substance. Again, in this ruling the Commission could not reach a final determination of whether general election expenditures could be made prior to the primary election.[127]

In 1979 the Federal Election Campaign Act was further amended by the passage of House Bill 5010.[128] That bill modified and incorporated further exceptions for the political party committees.[129] No significant changes occurred, however, in the contribution and expenditure limitation sections of the existing act.[130]

These contribution and expenditure limits, left unchanged by the new amendments, soon received a new challenge from the Democratic Senatorial Campaign Committee (DSCC). DSCC filed a complaint with the Commission on May 9, 1980, alleging that various agency agreements, which the National Republican Senatorial Campaign Committee (NRSC) had with various Republican state committees, violated the expenditure limits.[131] DSCC argued that the agency agreements violated the plain meaning of the statute, which was designed to provide separate expenditure limits for state and local party committees absent any mention of agency.[132] DSCC did not challenge the agency

124. FEC Matter Under Review No. 820 (1978).

125. *Id.*

126. *Id.*

127. *Id.* There were two Senate races in Alabama that year because the respondent in the Commission's Matter Under Review, James Martin, was first a candidate for one seat, terminated that candidacy, and then ran for the other Senate seat. *Id.*

128. Pub. L. No. 96-187, 93 Stat. 1354 (1980).

129. H. R. REP. No. 96-422, 96th Cong., 1st Sess. 1, *reprinted in* [1979] U.S. CODE CONG. & AD. NEWS 2860. Some of the provisions that benefited the political parties included unlimited campaign materials used by volunteers on behalf of candidates, voter registration and get-out-the-vote activities on behalf of the nominees for President and Vice President, higher thresholds for reporting exempt expenditures, and an exemption for legal and accounting services. *Id.* at 6, 9-10, U.S. CODE CONG. & AD. NEWS at 2865, 2868-70.

130. *Id.* at 6-7, 10-11, U.S. CODE CONG. & AD. NEWS at 2866, 2870.

131. *See* 2 U.S.C.A. § 441a (d) (3) (West 1977).

132. *See supra* note 19.

agreements between NRSC and the Republican National Committee.[133] On July 10, the Commission voted 6-0 to dismiss the complaint.[134] On July 30, DSCC filed a petition for review in Federal District Court for the District of Columbia,[135] requesting a declaratory judgment. On August 28, the district court granted the Commission's motion for summary judgment.[136] On September 4, DSCC appealed to the United States Court of Appeals for the District of Columbia. The court of appeals reversed the district court in a 2-1 *per curiam* decision reasoning that, in the absence of statutory authorization, the agency agreements violated the expenditure provisions under section 441a(d) (3).[137] After the court of appeals ordered its mandate to issue forthwith,[138] NRSC filed a petition for rehearing and an application to recall the mandate. Both actions having been denied by the appeals court, NRSC applied to the Chief Justice of the United States Supreme Court for an order to stay enforcement of the judgment, pending disposition of NRSC's petition for a writ of certiorari. On October 17, 1980, the Chief Justice issued a temporary stay pending receipt of responses from both parties and a further order by the Chief Justice or the Supreme Court.[139] DSCC subsequently moved to vacate the temporary stay. On October 21, 1980, the motion to vacate the temporary stay was denied.[140] Certiorari was granted by the Supreme Court on March 2, 1981, and the cases were consolidated for oral arguments.[141] The issues were argued before the United States Supreme Court on October 6, 1981.[142] Pending the Supreme

133. This was because the Democratic Senatorial Campaign Committee used the identical agency arrangement for their national and senatorial committees. *See* FEC Matter Under Review 1234 (1980).

134. *Id.* In 1978 the Republican Senatorial Campaign Committee spent $2,599,290 on behalf of the Republican National Committee and several state committees which supported Republican candidates. According to the brief filed by the NRSC to the Supreme Court, however, the figure quoted was $2,770,995. *See* 1 FEC Reports on Financial Activity (1980).

135. A party aggrieved by a dismissal of a complaint filed with the Commission may petition to the United States District Court for the District of Columbia. 2 U.S.C.A. § 437g (a) (8) (A) (West Supp. 1980).

136. Democratic Senatorial Campaign Comm. v. Fed. Election Comm'n, No. 80-1903, slip op. at 3 (D.D.C. Aug. 28, 1980).

137. Democratic Senatorial Campaign Comm. v. Fed. Election Comm'n, No. 80-2074 (D.C. Cir. Oct. 9, 1980). The appellate court pointed out that $2,180,499 went to 12 closely contested elections, with $1,106,286.60 attributable to the national committee and the remaining $1,074,213.40 to various state committees under the agency agreements. The court questioned whether section 441a (a) (4) encompassed the congressional committees. The court also questioned whether these congressional committees could prove that they were subordinate to the national party committee. *See supra* note 37.

138. Democratic Senatorial Campaign Comm. v. Fed. Election Comm'n, No. 80-2074 (D.C. Cir. Oct. 9, 1980).

139. Democratic Senatorial Campaign Comm. v. Fed. Election Comm'n, A-332, Order of Chief Justice Burger.

140. Nat'l Republican Senatorial Campaign Comm. v. Democratic Senatorial Campaign Comm., 449 U.S. 938 (1980).

141. Fed. Election Comm'n v. Republican Senatorial Campaign Comm., 101 S. Ct. 1479 (1981).

142. Democratic Senatorial Campaign Comm. v. Fed. Election Comm'n, No. A-332, 80-939,

Court's ruling, the breadth of the agency agreements as applied to the expenditure restrictions has yet to be resolved.[143]

VI. CONCLUSION

The combination of legislative activity, commission opinions, and court decisions has fashioned a formidable presence by the party committees on the campaign finance scene. Party committee activity on behalf of candidates, using the mechanisms provided for in the contribution and expenditure provisions of the FECA, has in no way reached its zenith. The ability of these committees to influence the electoral process has reached proportions the initiators of campaign finance legislation could hardly have foreseen. In seven years, the increase in party committee activity under the Act has changed the electoral landscape.[144] The ability of the parties to assist potential candidates by providing them with the essential finances for their campaigns has become a reality for one party and a definite potential for the other.[145] In 1980, for example, House candidates could have obtained financial support from their respective party committees in the amount of $59,540.[146] In the

80-1129 (Sup. Ct. argued Oct. 6, 1981).

143. Democratic Senatorial Campaign Comm. v. Fed. Election Comm'n, A-332, Order of Chief Justice Burger.

144. Total party contributions and section 441a(d) expenditures:

1976* contributions		1978** contributions		1980*** contributions	
Dem.	Rep.	Dem.	Rep.	Dem.	Rep.
$2,996,739	$4,029,153	$592,999	$3,091,515	$1,140,645	$ 4,169,590
expenditures		**expenditures**		**expenditures**	
Dem.	Rep.	Dem.	Rep.	Dem.	Rep.
$ 227,565	$1,886,602	$ 68,822	$3,775,692	$4,508,689	$11,451,914
TOTAL		**TOTAL**		**TOTAL**	
Dem.	Rep.	Dem.	Rep.	Dem.	Rep.
$3,224,304	$5,915,755	$661,821	$6,867,207	$5,649,334	$15,621,504

*FEC Disclosure Series No. 4, Nat'l Party Political Comm. Receipts and Expenditures (rev. ed. 1977).

** 1 FEC Reports on Financial Activity for Party and Non-Party Comms. (April 1980) (final report based on summary tables).

***Based upon FEC unofficial records.

145. According to unofficial figures available from the 1980, 30-day post-election reports, the Republican Party committees (national and state) received in total receipts close to 160 million dollars. The Democratic Party committees received approximately 30 million dollars. In 1978 the comparative figures were 103 million dollars for the Republicans and 24 million dollars for the Democrats.

146. The breakdown is as follows: National committee, $5,000 per primary and general, $14,720 for section 441a(d) expenditures; congressional committee, $5,000 per primary and general; state committee, $5,000 per primary and general; state committee, $5,000 per primary and general, $14,720 for section 441a(d) expenditure for a total of $59,540. *See* 2 U.S.C.A. §§ 441a & 441a(c) (West 1977) (section 441a(d) expenditures determined in accordance with 6 Fed. Election Record no. 3, p. 5 (March 1980)). A Republican House candidate could receive an additional $10,000 from the Republican Boosters Club due to the decision in MUR 360, which could make the figure $69,540. FEC Matter Under Review No. 360 (1977). This figure does not include any other local party committee which can prove its independence in making contributions.

Senate races the potential is even more significant, given the combined assistance of both national and state party committees. A candidate for the Senate in Ohio in 1980 could be subject to party contribution and expenditure limits of $477,637.60, while a Senate candidate in Missouri would be entitled to $234,353.12. In the largest state, California, the figure is a substantial $997,580.00.[147] The figure for party financing will be considerably higher in 1982 due to the cost of living adjustments built into the campaign finance scheme.[148] The whole pattern of political party assistance has been altered pending future modifications or changes by the Congress, the Federal Election Commission, and the courts. It will be interesting to observe whether any of these changes occur in the future.

147. *See* 6 FEC Record 1,5 (March 1980) (state expenditure limits under section 441 (d)).

148. Interestingly, section 441a(c) allows an increase in limitations of section 441a(d) expenditures, but does not allow an increase of section 441a (a) contributions.