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Money and Politics: An Examination of Federal Campaign Finance Reform Legislation and Continuing Reform Proposals

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MONEY AND POLITICS : AN EXAMINATION OF FEDERAL CAMPAIGN FINANCE REFORM LEGISLATION AND CONTINUING REFORM PROPOSALS

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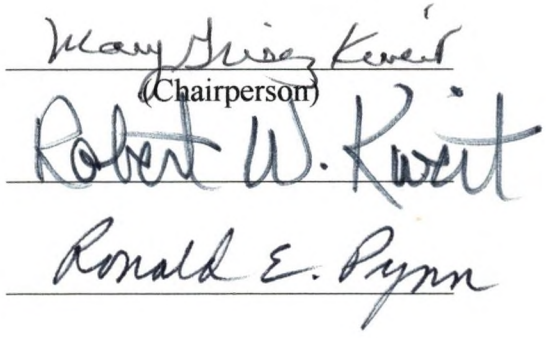

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Date 07/17/95

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To my parents, George and Margaret Waller
for their love and support

ABSTRACT

This study examines the development of modern campaign finance reform legislation and analyzes some of the major proposals for continued reform. Arguments both for and against various proposals for campaign finance reform have been advanced in the continuing debate. This study examines key elements of the major reform proposals which have continuously resurfaced in that debate.

Out of the campaign finance discussion certain central issues emerge, each of which is empirically examined in this study. Those issues are: (1) Whether or not to impose expenditure ceilings on all congressional campaigns, (2) Whether or not further restrictions, or an outright ban, on political action committees is warranted from a finding of "undue influence" on the electoral and legislative processes, and, (3) Whether the present system of private campaign finance ought to be replaced with a system of public financing for federal campaigns. This investigation explores the rationale behind each of these reform proposals in order to determine whether adoption is warranted.

In the case of spending ceilings, a regression analysis of expenditure data and election results for U.S. Senate races from 1988 through 1994 reveals that such ceilings may not accomplish their stated goal of increasing electoral competition. In as much as the regression study reveals a statistically significant positive relationship between a challenger's spending total and his/her eventual share of the vote, any proposal to amend the current private finance system which would detrimentally affect what challengers could spend might well reduce competitiveness. However, this thesis ultimately argues that such a result would not necessarily occur in a system of full public financing with concurrent expenditure limits.

As for proposals to further limit or ban political action committees, the rationale of PAC "undue influence" is examined with respect to both election results and legislative decisions. A correlation analysis (Pearson's *R*) of PAC donations and election results for 1992 and 1994 House races demonstrates a moderate linear association between PAC dollars and vote percentages yet not at a level high enough to support a charge of "undue influence." A regression analysis confirms that conclusion.

PAC donations and their effect on floor votes are analyzed with respect to two 1994 Senate votes. Crosstabs reveals no statistically significant relationship between a member's PAC donation totals and his/her floor vote on two 1994 Senate cloture motions. Other factors (i.e. party) are seen to be much more important determinants of those votes. However, many empirical studies have demonstrated a statistically significant relationship between PAC monies and votes on less visible, less controversial votes. Additionally, much empirical evidence is cited illustrative of the "unequal access" of wealthy PAC interests to the democratic electoral and policy processes.

It is argued that this inequality of access, precipitated and fostered by the current system of private campaign finance, is contrary to the constitutional and practical criteria by which any system of campaign finance ought to be judged. The current system of private campaign finance should, therefore, be replaced with a system which can be judged by those same criteria to be more desirable. Full public financing for all congressional campaigns is such a system.

CHAPTER ONE

INTRODUCTION

Campaign finance reform has been an issue which has received a great deal of both political and scholarly attention since the beginning of the 1970's "decade of campaign reform." The regulatory system of private campaign finance established by law in 1971, with adoption of the Federal Election Campaign Act (FECA), has seen several modifications and has faced numerous proposed revisions since its enactment.

Politicians of both parties, political scientists and other academicians, as well as citizen action groups like Common Cause and Public Citizen, have advocated changes in the law ranging from imposition of spending ceilings for congressional campaigns, to a further restriction on the amounts which can be donated to federal candidates by both individuals and organized political committees (PACs), to an extension of public financing for all congressional campaigns. Often the more comprehensive reform proposals have embodied variations of all of these singular proposals in a more complete "plan" of reform. While early revisions of the initial 1971 FECA met with considerable success, latter day reform proposals have been conspicuous for their lack of success.

The issues involved in campaign finance reform are issues of importance for Americans in general, and for political scientists in particular, because they go to the heart of participatory democracy. The impact of private funding sources on both electoral and public policy processes is of concern because of the inequalities of private wealth in our capitalist economy. Charges of the "undue influence" or "unequal access" of wealthy individuals and interest groups (the primary sources of

campaign funds in the current system of campaign finance) in affecting the processes of our democratic republic have provided the rationale behind most reform proposals. Indeed, it was the legitimacy of such concerns proven by the revelations of campaign finance improprieties connected to the Watergate scandal that fueled much of the 1970's drive for reform.

Public cynicism toward, and alienation from, both electoral participation and participation in the development of public policy is reflected in various polls and surveys. Such cynicism reflects a growing perception of, and resentment toward, wealthy "special interests" which are seen to dominate both elections and public policy. The extent to which this perception can be empirically verified has occupied a good deal of scholarly study.

Reformers have seized upon this expanding attitude of public cynicism for the participatory processes of our polity as "proof" that the current system of private campaign finance is in dire need of comprehensive reform in order that public efficacy and governmental legitimacy can be restored, or, at least, revived. Proposals are usually touted as "cures" for what ails the present system, and for what ails the electorate.

Asserting that wealthy individuals and interest groups have gained effective control over the electoral and policy processes, through their "undue influence" and "unequal access", calls for comprehensive reform have come from many quarters. Virtually every President and every Congress since 1970 has had to deal with the questions of campaign finance reform. The most recent plan of comprehensive reform was introduced in 1993.

On May 7, 1993, at a White House lawn ceremonial announcement, President Bill Clinton and Democratic congressional leaders unveiled the latest in a long litany of plans to revamp federal campaign finance laws. The fruits of many months of

negotiations and hours of political calculations were borne out in a bill which centered on voluntary spending limits in congressional campaigns and the provision of public funding to induce compliance with such limits. Additionally, the bill proposed that limits on amounts of contributions from political action committees (PACs) be tightened, as well as new restrictions on "soft-money" spending by the national parties. The amount of public funds which are currently made available to major-party presidential nominees, under the provisions of the 1971 Federal Election Campaign Act and its subsequent amendments of 1974, 1976, and 1979, was to be increased, according to the proposal, by $11 million for each nominee[1] ostensibly for the replacement of soft money funded party activities.

The price tag of such a plan was estimated by White House officials at $150 million per election cycle. It was expected that the price for public funding of federal congressional campaigns would be a major source of criticism of any campaign finance reform efforts involving the use of taxpayer money to finance political campaigns. Accordingly, President Clinton announced his intent to tax lobbying expenses in order to pay for the public funding provisions of the new legislation. "Lobbyists, not the American people," would pick up the tab, said Clinton in announcing the White House plan.[2]

Major elements of the Clinton Plan included the following:

- **Spending limits** for Senate general elections would range from $1.2 million to $5.5 million, depending on state populations and would be indexed for inflation after 1996. (Campaigns in states with larger populations would have the higher limits, up to $5.5 million) House limits were set at $600,000 for the general

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[1] Beth Donovan, "Clinton Offers Details of Plan; Big Test is GOP Senate Unity", Congressional Quarterly Weekly Report, May 8, 1993, v.51, n.19, p.1121(2).
[2] President Clinton quoted in Donovan, p.1121.

election (with one-third of that amount to come from federal public funds, one-third from individual contributions greater than $200, and one third from PACs) but were indexed for inflation from 1992 forward, such that, at the time of the announcement, the actual ceiling for House races was nearly $700,000 (with inflation running at a 3% rate). These limits could increase if any candidate were to face an opponent who chose not to abide by the limits and exceeded them, became the focus of substantial opposition independent expenditures, or (in the case of House members only) wins a hotly contested primary. Spending on legal and accounting fees in order to comply with the law, and some limited fund-raising expenses, were exempt from inclusion under the caps.

- **Vouchers** for candidates who complied with the spending ceilings could be used to purchase media advertising, or for printing and postage costs. Senate candidates would receive vouchers in amounts up to 25 percent of their spending limit. Broadcasters would be required, under the law, to sell discounted advertising time to all qualifying Senate candidates. House candidates would be entitled to vouchers worth up to 33 percent of the legal spending limit to pay for advertising costs.
- **PAC contributions** for all federal candidates would be further restricted under the plan. Presidential candidates could receive only $1,000 from any one PAC while Senate hopefuls could get up to $2,500 for each primary and general election campaign ($5,000 in any single election cycle). House candidates could take up to $5,000 from any single PAC for each election in a given cycle. PAC contributions for candidates in compliance with spending limits, could not total more than 33 percent of the House expenditure ceiling. Senate PAC contributions would be limited to no more than 20 percent of the legal spending limit.

- **Small donor contributions** (those under $200 for House campaigns, and $250 for Senate races) would have to comprise at least two-thirds of a House candidate's expenditures under the limit. Senate candidates would have to raise 20 percent of their indexed limit in small contributions in order to receive public funds and vouchers.
- **Lobbyists' contributions** would be prohibited to any member of Congress from anyone who lobbied that particular member, or an aide, over the previous year. Those same lobbyists could, however, make donations to party committees.
- **"Soft money"** expenditures[3] by state and national parties to influence federal elections would be prohibited under the new legislation. Instead, the plan would establish an increased threshold of individual donations to political parties from $50,000 to $60,000, and create new choices for those contributors. Under the proposal, (and within the overall legal limit) an individual could give up to $25,000 per year to federal candidates, $20,000 to a national party, and $20,000 to newly envisioned state party grass-roots funds. These grass-roots funds would be used by state parties to generate generic media spots and to coordinate party candidate campaigns.

  Presidential nominees would receive the additional $11 million in order to replace the use of soft money for grass-roots party activities.
- **Bundling** (the practice of wrapping together the contributions of many individual donors and donating them as a single contribution by a PAC, union, corporation, or lobbyist) would be forbidden. There is some leeway in the Plan to accept the

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[3] "Soft money" refers to funds raised from various sources which are not subject to the restraints of federal law and are spent on state and local party-building, get-out-the-vote, and voter registration activities not directly tied to a particular campaign but intended to affect federal elections.

possibility of allowing PACs which don't engage in congressional lobbying activities to continue to bundle contributions. [4]

- **The price-tag** for such a proposal, according to the Congressional Budget Office, is estimated at approximately $150 million for the first election (1996). Others had set the cost higher - approaching $200 million. The President's plan was to be financed by an increase in the amount of the taxpayer checkoff for federal elections currently in place from $1 to $5. Also, funds would be generated and earmarked for federal campaign financing through an end to the exemption for lobbying expenses. White House estimates indicated that the higher checkoff amount would generate $150 million per year (at current participation rates). Because the publicly funded presidential campaign requires nearly half that amount, additional revenue is needed to extend public funding to all congressional races. In order that that might be accomplished, the change in tax law ending the lobby exemption was expected to yield some $978 million in new revenues over five years.

That Clinton's plan met its demise in the 103rd Congress is not surprising given the volatility of the issues revolving around campaign finance reform efforts. The political calculations which went into the provisions of the plan and were involved in its defeat have been evidenced in the debate about campaign finance reform since the passage of the comprehensive Federal Election Campaign Act of 1971 (FECA). Concerns over the skyrocketing costs of federal campaigns and the implications of

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[4] This is seen to be a concession to House Democrats who wish to retain the possibility of such groups as EMILY's List, to continue bundling individual contributions. The President believes that EMILY's List, and others like it can continue to operate under the law by sending out information and envelopes to members who would then send their contributions directly to campaigns. See Donovan, p.1122.

those high costs in terms of the accountability of elected public officials, preceded even that Act, and have continued in its wake.

The explosive growth of political action committees (PACs) as major providers of the increasingly greater campaign funding needs of federal candidates has occurred since FECA's enactment. As PACs have acquired their role as important players in federal campaign finance, charges of "undue influence" and enhanced accessibility, as well as *quid pro quo* "vote buying" have been leveled against them. Calls for reform have included demands that PAC contributions be regulated even more than they currently are under FECA. Proposals to limit PAC contributions to a given campaign, either individually (a set limit per PAC), or in the aggregate (as a percentage of total campaign funds), have been made nearly continuously over the two decades since FECA.

Concerns over the high costs of federal campaigns for public office have precipitated demands on the part of citizen's groups (Common Cause, among others) and politicians of both parties that spending for such campaigns be capped at appropriate levels in order that competition can be enhanced. The exorbitant costs of today's campaigns have led many to believe that only the wealthy, or those with access to wealthy contributory sources, can run for federal office. The present system of campaign finance has been accused of enhancing the inequities of access to the policy process wherein only those wealthy individuals or groups with sufficient economic resources are able to gain access to the policy process. In possessing the means by which to make substantial contributions to the election coffers of incumbent and would-be legislators, wealthy groups and individuals are afforded greater access. Concerns about the amount of time taken by elected public officials to focus on campaign financial matters, rather than the public business, run concomitant with rising campaign costs. As such, many qualified individuals have

opted out of running for office and many of those who currently serve, or have served, find themselves overwhelmed with concentrating on fund-raising activities over constituent concerns or other more important public business.

Loopholes in the law and the unintended consequences of FECA's implementation caused many to advocate new reforms designed to alleviate concerns over the manner in which federal campaigns are financed. Many of the most frequently advocated reforms include some imposition of spending limits and some design of public financing for federal election campaigns. Also, they tend to include provisions for either eliminating the role of political action committees as sources of significant amounts of congressional campaign finances, or, at least, further restricting the individual or aggregate amounts which those PACs can give to campaigns. It is the intention of this paper to analyze each of these reform proposals, spending ceilings, public financing, and the role of political action committees in congressional elections, in order to arrive at a conclusion about the desirability of their adoption.

But, before examining the merits of the various proposals for campaign finance reform, and in order to understand the political climate which surrounded President Clinton's reform legislation and its subsequent defeat, it is necessary to begin with an examination of the original comprehensive campaign finance reform legislation of 1971, the Federal Election Campaign Act and the issues which surrounded its adoption. From there, the history of modern campaign finance reform efforts[5] will

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[5] For a history of late 19th and early 20th century campaign finance reform efforts as well as a comprehensive treatment of the topic of campaign finance see Herbert Alexander, Financing Politics: Money, Elections, & Political Reform, 4th ed., Washington, D.C.: Congressional Quarterly, Inc., 1992. Issues, debate and provisions of the 1971,1974, and 1976 FECA legislation are chronicled in "Campaign Financing" in Politics in America, Washington, D.C.: Congressional Quarterly, Inc., May 1979, p. 93-115. Another excellent synopsis of campaign finance history including a yearly account of post-FECA campaign finance legislative efforts and the

reveal the constancy of the issues involved (both political and practical) and the commonality of various reform proposals offered over the years. The merits of major proposals will be evaluated in light of statistical analyses of campaign finance data collected and made available to the public by the Federal Election Commission (a creation of FECA's 1976 amendments). Prospects for passage of meaningful, comprehensive campaign finance reform will be evaluated in light of partisan political positioning on the issues involved and the likelihood of voter approval. No proposal, despite its merits, is worth much if it is not politically feasible.

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political machinations surrounding the various proposals actually introduced as congressional bills, can be found in Congress and the Nation, particularly Vol.5 1977-1980, pp.943-953, Vol.7 1985-1988, pp.892-896 and Vol.8 1989-1992, pp.951-963, Washington D.C.: Congressional Quarterly, Inc., 1981, 1989, and 1993.

CHAPTER TWO

THE 1970s

The Presidential Election Campaign Fund Act

Immediately preceding passage of the Federal Election Campaign Act of 1971, Congress, on December 8, 1971, approved legislation establishing a federal fund to finance presidential election campaigns. Initially adopted as a non-germane Senate amendment to the Revenue Act of 1971, the funding plan required Congress to annually appropriate to the fund money designated by federal taxpayers as contributions to the presidential campaign fund. The plan was to go into effect with the 1976 presidential race. Taxpaying citizens first had the opportunity to participate in the plan with the filing of their 1972 federal income tax returns. Participation was voluntary, through the optional designation of $1 of an individual's federal annual income tax payment to be used by the presidential nominee of the eligible political party of choice or to go into the general campaign fund to be divided among all eligible presidential candidates.

Debate in Congress over the legislation split largely along partisan lines with Democrats arguing in favor of the bill and Republicans in opposition. The Democrats, whose party had amassed substantial debt (some $9 million) following the 1968 presidential election, argued that the proposed tax checkoff plan was necessary to open up the avenues of participation in presidential campaign finance to thousands of small contributors and to free presidential candidates from reliance on, and obligation to, wealthy "fat cat" contributors.

Republicans, whose party treasury was in much better shape, countered that the public funding scheme outlined in the legislation would inject the government bureaucracy into the business of political campaigns and was merely a device to bail the Democratic party out of its financial doldrums. Republicans also feared that the plan would help to insure the third party candidacy of George Wallace by providing crucial public funds for his campaign. A Wallace candidacy was seen as threatening President Nixon's reelection chances. President Nixon threatened to veto the bill unless its applicability were delayed until after the 1972 presidential election.

With the threat of a presidential veto hanging in the balance, Democrats accepted the Republican proposal to delay the application of the legislation, as President Nixon had demanded, and passage of the new presidential campaign finance law was assured.

Officially titled the Presidential Election Campaign Fund Act, the law included these major campaign financing provisions:[6]

- **Tax credits** of $12.50 (or $25.00 for a married couple) for political contributions to candidates for local, state, or federal office were enacted. Taxpayers could choose the alternative of a $50 deduction against income ($100 for married couples filing jointly) rather than the tax credit. These credits and deductions were designed to stimulate individual participation in the financing of political campaigns and were passed with the idea that fostering participation in the political process, even if only in the form of small individual donations, was consistent with democratic values and would lead to greater public interest in political campaigns at all levels.

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[6] PL 92-178, The Presidential Election Campaign Fund Act, 1971.

- **The Presidential Election Campaign Fund Income Tax Checkoff** allowed federal income taxpayers to designate on their 1972 returns $1 to go towards either the presidential campaign of the party of their choice or to a general fund to be divided among all eligible presidential campaigns. Participation was strictly voluntary and was to be redesignated with each yearly income tax filing after 1972.
- **Authorization** was granted for the Congress to distribute to the candidates of each major party (defined as one which received 25 percent of the votes cast in the last presidential election) amounts equal to 15 cents times the number of U.S. citizens age 18 or older. Congress also established a formula for the distribution of some public funds to minor parties whose presidential candidates had garnered 5 percent or more, but less than 25 percent, of the votes cast in the immediately preceding presidential election. Payments could be made after an election to reimburse new parties whose presidential candidates had received enough votes to meet the threshold for eligibility, or to established minor parties whose candidates received sufficient votes in the election to qualify.
- **Public financing** of the presidential election campaigns of major party candidates was to be voluntarily opted for by the candidates. Candidates who chose public financing were prohibited from accepting private campaign contributions unless their share of public funds fell below amounts to which they were entitled under the allocation formula. This scenario might occur if contributions to the Presidential Campaign Fund via the tax checkoff procedure fell short of the necessary level of participation needed to insure adequate funds to finance campaigns at 15 cents per voting age U.S. citizen.
- **Spending limits** for all presidential candidates who participated in the public financing plan would be imposed under the law. Major party candidates, and all

campaign committees authorized by a candidate to work on his/her behalf, who opted for public campaign funds were prohibited from spending more than the amount to which the campaign was entitled under the public funding formula.

- **Penalties** of $5000, or one year in prison, or both, for any candidates participating in the public funding plan, or committees operating on behalf of the candidate, which spent more than the legally permissible amount or which accepted private contributions when adequate public funds were available, were sanctioned under the law. Additionally, penalties were provided in the amounts of $10,000 or five years in prison, or both, for any unauthorized use of public campaign funds by candidates or their campaign committees. Any candidate who received or gave kickbacks or illegal payments, or engaged in fraud of any kind using public funds, or knowingly furnished false campaign finance statements to the U.S. Comptroller General, was subject to these penalties.

The tax checkoff plan got off to a slow start as few taxpayers opted to participate by designating the $1 payment to the presidential campaign fund. But, as more people became aware of the fund, and as the IRS displayed the checkoff feature more prominently on income tax forms, participation levels increased. The U.S. Internal Revenue Service reported that 23.9 percent of 1974 tax forms authorized the $1 payment to the presidential fund. By July of 1976 some 25.9 percent of tabulated 1975 tax forms designated such payments.[7]

Despite the relative lack of public enthusiasm for the new checkoff procedure, the presidential campaign fund grew at a steady pace. For the 1972 tax year, the fund received $4 million. By 1973 the total had reached $26.2 million, $31.8 million for 1974, and $33.4 million for 1975. This meant that public funds available for

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[7] "Campaign Financing", Politics In America, Washington, D.C.: Congressional Quarterly, Inc., May 1979, p.104.

disbursement to eligible presidential candidates would total $95.4 million by the start of the 1976 presidential campaign season.[8] Reports made public by the Federal Election Commission (FEC) showed that disbursements in amounts totaling $24.1 million had been made to 15 presidential candidates and $3.9 million had been given to the Democratic and Republican parties combined for expenses associated with running their national nominating conventions. President Gerald Ford and Jimmy Carter, as eligible major party nominees each received $21.8 million for their general election campaigns. By January 1979, the presidential campaign fund had amassed some $100.8 million in public funds.

The Federal Election Campaign Fund Act of 1971 and its establishment of the income tax checkoff mechanism to gather public funds for the purpose of publicly financing presidential campaigns was to usher in what has been called "the decade of campaign finance reform." The 1970's were to witness passage of numerous pieces of extensive campaign finance reform legislation.

The Federal Election Campaign Act of 1971

By 1971 the climate was ripe for consideration of new laws designed to cope with what were perceived to be outrageously high costs in federal political campaigns. Campaign spending by both parties in 1968 and 1970 reached levels unfathomed in earlier campaigns and a profusion of wealthy candidates in both parties made spending itself an issue of significance in those campaigns.

Advocates of reform sought to write a bill which could garner bi-partisan support by constructing reforms which could not be seen as favoring any one party or candidate. Once more, as was evidenced in the debate surrounding consideration of

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[8] Figures are from "Campaign Financing", p.104.

the Presidential Election Campaign Fund Act, Republicans were anxious to protect their healthy party financial assets and Democrats were just as concerned about protecting their large labor contributions. But, because of public calls for action by constituents and the commitment of various citizen interest groups such as Common Cause and the National Committee for an Effective Congress, bi-partisan support for reform measures was effectuated.

Public Law 92-225, passed by the Congress in late December 1971 and officially titled The Federal Election Campaign Act (FECA), placed limits on a candidate's personal contributions to his/her own federal campaign, required public disclosure of both receipts and expenses of those campaigns, and, for the first time, imposed some expenditure limits on candidates for the U.S. House and Senate. The Act was the first major election reform law enacted by the Congress of the United States since the antiquated, and unenforced, Federal Corrupt Practices Act of 1925.

FECA placed a maximum threshold on expenditures for media advertising by candidates for President, Vice-President, the Senate, or the House of Representatives. A spending ceiling of 10 cents per eligible voter, or $50,000, whichever was greater, was imposed for all radio, television, newspaper, magazine, billboard, and automatic telephone messaging.

Other key provisions of the law included:[9]

- **A contributions ceiling** of $50,000 by any candidate for President or Vice-President (or his/her immediate family) to his/her own campaign was imposed. Likewise, ceilings of $35,000 for senator and $25,000 for representative, were established.

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[9] PL 92-225, The Federal Election Campaign Act of 1971.

- **Registration** of all political committees which anticipated receipts in excess of $1000 during any single calendar year was required under the law. Each committee was obligated to file a statement of organization to include the names of all principal officers, the scope of its operations, the names of all candidates it supported, and any other information which might subsequently be requested under the law. The appropriate supervisory offices which were designated to receive such reports were the General Accounting Office for presidential candidates' committees, the office of the secretary of the Senate for Senate campaign committees, and the clerk of the House for committees working on behalf of candidates to the House of Representatives.
- **Prohibition of patronage** employment, or other rewards or benefits, in return for political financial support was included in the language of the bill. Any contracts between federal candidates and any government department or agency were strictly forbidden.
- **Disclosure provisions** required that each political committee, or individual candidate, must report any single expenditure greater than $100 and any expenditures which exceeded $100 in the aggregate over the course of the calendar year. Contributions to those same committees, or to the candidates themselves, in amounts exceeding $100 were required to be disclosed, to include the names and addresses of individual contributors as well as the date the donation was made. Names, addresses and occupations of any who made loans to a candidate's campaign in amounts greater than $100 were to be included in these disclosure reports. Any individual who contributed directly (other than through a political committee) to a candidate for federal office an amount greater than $100, was to report that contribution to the appropriate supervisory body. No

contribution to a candidate by one person in the name of another person was allowed.

- **Timeliness** in meeting the disclosure mandates was of the essence. Reports of contributions and expenditures were to be filed on the 10th of March, June and September of every year. In addition, reports must be submitted on the 15th and 5th days immediately preceding an election day. Any contribution which exceeded $5000 was to be reported within 48 hours of its receipt.

The presidential and congressional elections of 1972 were the first to be conducted under the new FECA law. Despite the law's provisions and prohibitions to correct what were seen to be abuses and problems inherent in previously unregulated campaigns, many new loopholes arose, as a result of the FECA legislation of 1971, which were revealed in the 1972 campaigns.

The "pass through" political contributions, which were to have been eliminated under the prohibitions of such in FECA, continued through a loophole in the law which allowed organizations such as social clubs which had not been established solely, or even incidentally, to influence elections, to use some of their dues for purposes of making contributions to candidates for public office. If such an organization were to donate an amount exceeding $1000, it was required only to report the amount and not the names of members who had paid the dues which were eventually to wind up as political contributions.

The definition of the term "candidate" in the FECA was such that persons who had not officially declared themselves as candidates for federal office, but who were for all intents and purposes acting as candidates, could raise and spend money outside of the spending ceiling for political advertising of 10 cents per eligible voter. Essentially a non-declared candidate could spend unlimited amounts so long as he remained officially "undeclared". As a result of this loophole, many candidates in

1972 made a habit of running unannounced for a long period of time so as to build up a war chest and to do groundwork advertising before actually becoming official candidates.

A loophole not addressed in the 1971 FECA legislation concerned the federal gift tax exemption given to political contributors of amounts under $3000 to a single candidate. In 1972, many individuals made donations in amounts exceeding $3000 to a single candidate and had still legally managed to avoid any federal gift tax on those contributions by making more than one donation under the $3000 limit to numerous political committees working on behalf of the same single candidate. The gift tax only applied to single contributions of more than $3000 and not to aggregate amounts to the same campaign.

While the FECA of 1971 did address the subject of loans made to candidate campaigns, by requiring that loan amounts greater than $100 be disclosed along with the names and addresses of those making the loans, it did not spell out how those loans might be paid off. As a result there was nothing in the law to prevent complete forgiveness of loan debt or a simple token payment sufficing as repayment. Reports of loan termination subsequently made public would only note that outstanding loans had been paid up and did not require that the sources of loans certify that the loans had actually been paid in full. Consequently, many contributions of substantial amounts were made as "loans" to federal campaigns in 1972.

Furthermore, although the FECA did contain a provision regulating the amounts which a candidate, or immediate family members, could contribute to his/her own campaign, the restrictions did not apply to relatives outside the immediate family. Nor did it restrict family members, or the candidate, from legally contributing the maximum allowable amount and, in addition, making a personal loan to the campaign.

What was perhaps the most serious flaw in the 1971 FECA, was its failure to provide for a capable, independent monitoring and enforcing agency. The FECA had designated the clerk of the House responsible for oversight in House races, the secretary of the Senate was charged with overseeing Senate campaigns, and the GAO was the agency responsible for presidential election campaigns. But, it was the U.S. Department of Justice which was given the authority to prosecute violations which were brought to its attention by the appropriate oversight bodies. The law required that Justice commence prosecution in any civil case involving matters brought to its attention with respect to violations of FECA, but whether or not to prosecute criminal cases was wholly within the discretion of the Department of Justice. During the 1972 campaigns, Justice reported that it had only one full-time attorney supervising enforcement of the FECA.[10]

Because the law required frequent periodic reporting of receipts and expenditures throughout any given year, many campaigns were faced with monumental bookkeeping tasks and increased costs associated with the increased complexity of those accounting tasks. Paradoxically, the FECA's attempt to reduce campaign spending by imposing ceilings on advertising expenses, and the imposition of stricter contribution disclosure requirements, created a situation in which campaigns were compelled to seek even greater contribution amounts in order to pay the increased costs of those same disclosure requirements.

The flood of reports which inundated the congressional oversight offices of the clerk of the House, the Senate secretary's office, and the comptroller general's GAO office, made close and detailed scrutiny nearly impossible. Since the Congress would not contemplate appropriation of substantial increased resources to those offices in

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[10] "Campaign Financing", p.106.

order to meet the increased oversight demands imposed on them under the law, relatively little effective oversight ability could be exercised.

1974 Federal Election Campaign Act Amendments

Efforts to amend the 1971 FECA began immediately after the conclusion of the 1972 general election. The House in 1972 saw the introduction of an amendment bill designed to repeal a provision of the 1971 legislation which prohibited campaign contributions to federal candidates from corporations and labor unions which had federal government contracts. Although that bill was passed by the House, the Senate refused even to consider it. Conversely, legislation introduced and passed in the Senate in early 1973 sought to further tighten federal laws on campaign financing but were stymied by House inaction.

It was not until the Watergate revelations of financial impropriety in the 1972 Nixon reelection campaign surfaced in detail in mid-1973, that the impetus for further campaign finance reform efforts really accelerated. Watergate became the code word for what was wrong with current campaign finance law. John Gardner of Common Cause, said of the scandal, "Watergate is not primarily a story of political espionage, or even of White House intrigue. It is a particularly malodorous chapter in the annals of campaign financing. The money paid to the Watergate conspirators before the break-in - and the money passed to them later - was money from campaign gifts."[11] Watergate epitomized the need to readdress the issues of federal campaign financing and to focus on the loopholes left open by the 1971 FECA. Congress, in response to public outcry, and in reaction to the abuses of law made by the Nixon reelection campaign, enacted a campaign reform bill of sweeping change in 1974. It

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[11] John Gardner quoted in, "Campaign Financing", p.93.

was hoped that the new law would close existing loopholes and answer the continuing questions surrounding the way in which federal campaigns were financed.

Technically, the 1974 legislation was enacted as a set of amendments to the 1971 FECA. It was, in fact, the single most comprehensive campaign finance legislation ever before, or since, passed by the Congress. Signed into law on October 15, 1974 by President Gerald Ford, the new FECA [12]established the first spending limits ever for candidates in the presidential primaries and the general election. It also instituted spending limits for House and Senate primaries as well as replacing the ceilings which were supposedly mandated by the old Federal Corrupt Practices Act of 1925. Those old limits had never been effectively enforced and had actually been repealed in the 1971 version of FECA.

Although the 1974 bill contained explicit language regarding the use of public funds to pay for presidential campaigns, by providing for optional public financing of those campaigns and by allowing for coverage of up to 45 percent of presidential primary campaigns by those same public funds, the final bill emerged from the Congress without the Senate passed extension of partial public financing to congressional campaigns. Major sections of the new bill (PL 93-443) included the provisions for the establishment of specific contribution and expenditure limits. One of the most significant provisions of the law in 1974 was the creation of an independent enforcement agency, the Federal Election Commission (FEC) to oversee compliance with contribution and expenditure limits and disclosure and to distribute allocated public funding.

Public Financing

With respect to its public financing provisions, the 1974 FECA included:

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[12] PL 93-443, The Federal Election Campaign Act Amendments of 1974.

- **Voluntary public financing** for presidential general elections - Candidates of the major parties would qualify for full public financing before the general election campaign began. Candidates from minor third parties would become eligible for proportional public financing based upon their party's past or current votes received. (Funding based on current votes would be in the form of a reimbursement for expenses incurred in the general election campaign.) If any major party candidate opted for full public financing, no private contributions from any individual or group would be permissible under the law.
- **Optional public financing** would be available to the two major parties in order to organize and manage their national nominating conventions. Third parties could qualify for proportional public financing for purposes of holding a national nominating convention, with the amount of such funding dependent on the proportion of votes received in a past or current election.
- **Matching public funds** of up to $5 million would become available for use by presidential candidates in presidential primary contests providing they had met the threshold fund-raising requirement of $100,000 raised in amounts of at least $5,000 in each of at least twenty states. Equally important, only the first $250 of private contributions from individuals would qualify for matching public funds. Only private donations made after January 1 would qualify for matching and no federal funds would be allocated before January 1 in the year of a presidential election. These matching grants would be allocated as quickly as possible among the competing candidates and the order in which the candidates qualified would be taken into consideration. The incentive to gain an early competitive edge was unmistakable. The allocation formula clearly favored front-running candidates.
- **The Presidential Election Campaign Fund** was the source of all public funds made available for public financing of all presidential election campaigns. Money

which was deposited into the fund via the income tax checkoff procedure was automatically appropriated for use in the public financing scheme.

Disclosure

Disclosure requirements were revamped in 1974 as a response to the problems arising out of the reporting mandates established in the FECA of 1971. In an effort to streamline and simplify those complex 1971 stipulations, the new bill required the following:

- **One central campaign committee** was to be established by each candidate through which all contributions and expenses on behalf of that candidate must be reported. In addition to this central committee, specific bank depositories for all campaign funds were required to be designated and disclosed.
- **Full reports** of contributions and expenditures were to be filed with the Federal Election Commission 10 days before and 30 days after every primary or general election. Reports must also be filed within 10 days of the close of each quarter unless the committee received or spent less than $1000 in that particular quarter. Comprehensive year end reports were due in all non-election years.
- **Contributions of $1000 or more** which were received within the last 15 days before a given election had to be reported to the FEC within 48 hours of their receipt.
- **Loans** to a candidate's campaign were to be considered the equivalent of contributions and a cosigner or guarantor was required for each outstanding debt in excess of $1000.
- **"Pass through" contributions** made by individuals, or organizations, in the name of another were expressly prohibited in the law.

- **Any person who spent or contributed $100 or more** other than through a political committee or a candidate must register and report such independent activity under the law.

In what was to become one of the most significant and consequential provisions of campaign finance reform efforts in the 1970s, the FECA amendments of 1974 permitted government contractors, unions, and corporations to form and maintain separate, segregated political funds for the purpose of making contributions to federal congressional campaigns. Prior to 1974, contributions by government contractors were not allowed. In essence, the 1974 law sanctioned the formation of political action committees (PACs) and extended legitimacy even to PACs formed and maintained by organizations with a vested stake in legislative, as well as electoral, outcomes.

Contribution Limits

The contributions limits established with the passage of the FECA of 1974 for both individuals and PACs were as follows:

- **Individual contributions** to a single candidate or that candidate's authorized committee(s) could not exceed $1000 per election. Individuals were also limited to a total aggregate contribution amount of $25,000 per year for all political contributions, not just those which went directly to a single candidate's campaign. In the 1974 law, there were no limits (other than the aggregate $25,000 limit) placed on amounts which persons could donate to political parties or to any other political committees (PACs) not directly related to a candidate's campaign.
- **Multi-candidate political committee**[13] **contributions** to a single candidate or that candidate's authorized political committee(s) were limited to a total of $5000

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[13] A multi-candidate political committee was defined as one which meets the following conditions: (1) has been registered under the act for six months, (2) has

per election. Unlike the aggregate limits on individual giving, there were no such limits, in the 1974 bill, on the amounts which any single political action committee could donate to multiple candidates in any given year. Additionally, PACs were not limited in the amounts which they could contribute to national political party committees or to any other political committee.

- **Contributions from organizations or political committees not qualifying as multi-candidate committees** could not exceed $1000 per election. Again, there were no limits on the amounts such organizations could give to national party, or any other, committees. Total aggregate contributions per year were also not limited.
- **Personal contributions by a candidate to his/her own campaign**, for both primaries and the general election, were capped at $50,000 for presidential candidates. House candidates were to be limited to personal contributions from their own funds of $25,000, and Senate hopefuls could not exceed $35,000 in such contributions.

Spending Ceilings

The 1974 FECA amendments also included provisions which placed ceilings on the amounts which could be spent by federal candidates in both primary and general elections. Presidential candidates could spend up to $10 million in the primaries in an effort to win the party nomination. The ceiling for general election spending was set at $20 million whether or not the candidate accepted the public financing option. Senatorial candidates were allowed to spend the greater of either 8 cents per eligible voter or $100,000 in primary elections; the greater of either 12 cents per voter or $150,000 in a general election. Candidates running in large states therefore would be

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received contributions from more than 50 persons, (3) has made contributions to five or more federal candidates.

able to spend significantly more than Senate candidates in smaller states. Candidates for the House were given a ceiling of $70,000 for each election, primary or general. An annual cost-of-living increase in spending limits for all federal candidates would be automatically triggered with a rise in annual inflation rates. An important exemption from the spending limit ceilings was that which allowed for certain costs associated with fund-raising efforts to not count against a candidate's spending limit. These exempt fund-raising costs could not exceed 20 percent of the spending limits. Additionally, legal and accounting services necessitated by the law's disclosure requirements were exempt from inclusion in a definition of expenditures which fell under the caps. So long as the accountant or lawyer was paid by his or her regular employer and did not engage in any election campaign activities, the expenditures associated with these services would not count as expenditures for purposes of remaining within the ceilings.

Independent Spending

Independent expenditures, defined in the law as expenditures "relative to a clearly identified candidate...advocating the election or defeat of a clearly identified candidate,"[14]were limited to $1000 per candidate per election. That limit applied both to individual independent spending and such spending on behalf of a candidate, but not tied to that candidate's campaign organization, made by political committees. Independent spending reports must be filed by individuals and committees which had contributed or spent over $100 in independent efforts outside of a candidate's campaign. Those reports were to be filed on the same dates that all other disclosure reports were due.

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[14] Definition is from the law PL 93-443, quoted in "Campaign Financing", p.113.

Federal Election Commission

The 1974 law established a new government commission to oversee and enforce compliance with its disclosure and contribution and expenditure ceiling provisions. The Federal Election Commission was to be composed of six Commissioners, with two each appointed by the President, the Senate, and the House. Terms were to be staggered every year and appointments were for a six-year term. Authority to prescribe regulations regarding disclosure requirements was given to the FEC, but the Commission would not have the authority to alter the provisions regarding contribution or expenditure limitations.

Any federal officeholder, federal candidate, or political committee had the right to request an advisory opinion of the FEC regarding questions of compliance. Advisory opinions issued by the FEC were to be restricted to the specific transaction or activity of the requester and would not be interpreted as having any scope of authority beyond the specific case in question. Any persons receiving an advisory opinion from the Commission and then acting in "good faith" to comply or rely on such opinion, were presumed to be in compliance with the law and, as such, not subject to any sanction under the law.

The FEC was granted "primary" civil jurisdiction authority in matters of compliance. The FEC was given the authority in the 1974 FECA to investigate any and all complaints filed with it. Those persons or committees complained against had the right to request a hearing before the Commission concerning the issue raised in the complaint. The primary means of enforcement granted to the FEC emphasized voluntary compliance as the language of the FECA encouraged the FEC to utilize "informal means of conference, conciliation, or persuasion to settle cases."[15]

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[15] Language of the law PL 93-443, in "Campaign Financing", p.114.

The FEC was, however, given the authority to commence civil action against individuals or committees not in compliance with disclosure requirements. It could either seek that action in court on its own or ask the Justice Department to seek civil judgment. In cases involving a violation of the limitations provisions for contributions or expenditures, the FEC was to refer those cases to the Justice Department for legal action. If the FEC was unable to correct a violation of disclosure requirements, that case could also be referred to Justice for redress. In all cases coming before it, the FEC was barred from making public any information concerning the case under investigation without the consent of the party being investigated.

Penalties for reporting and disclosure violations consisted of a $1000 fine, or one year in prison, or both. Convicted violators of the contribution and spending limitations faced a fine of up to $25,000, and/or one to five years in prison, or both.

Buckley v. Valeo 1976

Immediately following the enactment of the Federal Election Campaign Act Amendments of 1974, the new law was challenged in court. On January 2, 1975, plaintiffs including Sen. James L. Buckley (Cons.-R, NY), former Sen. Eugene McCarthy (D, Minn. 1959-71), the New York State Civil Liberties Union, and *Human Events* magazine, among others, filed suit to contest the law's constitutionality.

The plaintiffs argued that the new law's placement of limits on the amounts that could be contributed to, or spent on, a campaign for federal office was an unconstitutional restriction on the freedom of expression of both contributors and candidates. Because the dissemination of a candidate's message necessarily rested on an ability to buy advertising time and to otherwise purchase and procure the means by which to communicate to the general electorate during the course of a campaign, any

restriction on a candidate's receipt of contributions to be used for such information dissemination was a constitutionally proscribed restriction on free speech. Furthermore, limits on the amounts which candidates could spend to communicate with the electorate via media advertising, direct mail, handbills and pamphlets, or any other methods of expression, were, it was argued, another unconstitutional infringement on rights of political free speech.

It was also argued that the limits placed on the amounts which could be contributed by individuals to campaigns were restrictions on individual rights of free expression. Wasn't a contribution to a political campaign a form of political participation and, as such, an expression of constitutionally protected political speech?

Plaintiffs in the suit also stated their opposition to the FECA's imposition of limits on the amounts which candidates could spend on their campaigns from their own personal funds. Here too, the grounds for so arguing hinged on the constitutional protection of an individual's right of free expression. Additionally, insofar as independent spending by individuals or groups outside of a candidate's campaign organization constituted an expression of political free speech, plaintiffs argued it could not be restricted by an act of Congress. The First Amendment's constraint on Congress's lawmaking powers in areas of free speech was seen to provide adequate protection to the right of those who so desired to express themselves politically by spending independently to seek the election or defeat of any candidate running for federal office.

Buckley, et al., challenged, as well, the 1974 provisions which established a scheme of public financing for presidential campaigns. It was the plaintiffs' contention in this issue that such a scheme of public financing gave unfair advantage to the nominees of the two major parties and discriminated against minor party

candidates. Because the established legitimacy of the two major parties virtually assured the parties, and their candidates, the maximum allowable amount of public funds for campaign use; the public financing provisions, it was asserted, merely served to perpetuate the two-party dominance of American federal elections. If, on the one hand, contributions from private sources were to be limited in terms of amounts which individuals, and individual PACs, could give to any one candidate, or spend independently on his/her behalf, and amounts spent by candidates and parties were to be restricted as well, and, on the other hand, third party receipt of public funds was to be limited by a formula which allocated such monies on the basis of proportional numbers of votes received in a past or current election, the ability of third parties to amass the necessary funds to compete effectively was doubly curtailed.

The suit also challenged the appointment by Congress of some of the members of the newly created Federal Election Commission. Since the members of the FEC were empowered under the Act to exercise executive powers, appointment by Congressional officials was seen by plaintiffs to be in violation of the Constitution's separation of powers and appointments clauses. Only the President, plaintiffs argued, could constitutionally appoint members to the executive branch Federal Election Commission. Consequently, the FEC as constituted under FECA needed to be restructured in order to not violate the federal Constitution.

The U.S. Court of Appeals for the District of Columbia issued its ruling on the case deciding, despite plaintiffs' contentions, that all of the Act's provisions were to be upheld.[16] Plaintiffs appealed that judgment to the Supreme Court which handed down its ruling on the case on January 30, 1976.

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[16] *Buckley v. Valeo,* 171 U.S. App. D.C. 172, 519 F. 2d 821.

The Court's decision upheld the provisions of the 1974 FECA that:

- Set limits on contributions from individuals and political committees to candidates and their campaigns.
- Provided for public financing in presidential primary and general election campaigns.
- Required disclosure of all campaign contributions of more than $10 and expenditures, either by a candidate or on his/her behalf, greater than $100.

However, the Court decided in favor of the plaintiffs in ruling to overturn provisions of the law which limited spending in federal campaigns. The Court also struck down the manner in which members of the Federal Election Commission were selected, holding with the plaintiffs that the selection method was in violation of the separation of powers clause of the Constitution.

In the matter of spending limits the Court found for the plaintiffs and essentially accepted the argument that such spending ceilings were an unconstitutional restriction on the First Amendment guarantee of free expression. The Court stated it thusly:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.[17]

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[17] Excerpted from Supreme Court's percuriam decision in *Buckley v. Valeo,* in " The

In so ruling, the Court was essentially equating money with speech in the matter of campaign spending. But, having also ruled that the limits on contributions under the FECA of 1974 were within the bounds of constitutionality, the Court drew an important distinction between contributions and expenditures with regard to First Amendment implications. While both the restrictions on contributions and spending had similar First Amendment implications, the Court noted that the legislation's limitation on political contributions was justified for the purpose of preventing the actual, or even merely perceived, corrupting influence of large individual contributions. There was a substantial government interest served by the limitations on contributions - preventing potential and/or actual corruption. Expenditure limits, on the other hand, were seen as falling into a different category in which they were held to represent a substantial infringement on the rights of individuals, candidates, and groups independent of a particular candidate's control, to engage in political activities and to communicate political ideas.

The Court stated: "...expenditure ceilings impose significantly more severe restrictions on protected freedom of political expression and association than do its limitations on financial contributions."[18]

Ceilings imposed by the law on independent spending were held to be unconstitutional infringements of First Amendment rights of expression since, as the Court wrote: "Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation."[19] Independent

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Law: Tested and Changed," in Dollar Politics, Nancy Lammers, ed.,Washington, D.C.: Congressional Quarterly, Inc., 1982, Appendix, p.121.

[18] *Buckley v. Valeo*, 424 U.S. 1 (1976) at 20.

[19] Ibid., at 48.

spending ceilings, as for all spending limits, did not "serve any substantial government interest in stemming the reality or appearance of corruption in the electoral process,"[20] according to the Court's opinion.

In the matter of candidates' personal spending in their own campaigns which the law had limited, the Court sided with the plaintiffs and struck down any imposition of limits on how much of their own money candidates could spend on their campaigns. "The candidate, no less than any other person, has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election and the election of other candidates."[21] Although this ruling made it possible for a wealthy candidate to avoid contribution limits on how much others could contribute to the campaign by allowing him/her to finance the campaign wholly from personal funds, the Court stated that "the use of personal funds reduces the candidate's dependence on outside contributions and thereby counteracts the coercive pressures and attendant risks of abuse to which the act's contribution limitations are directed."[22]

In a unanimous ruling regarding the method of selection for members of the Federal Election Commission the Court said that the selection process violated the Constitution and that the commission could only exercise those investigatory and information-gathering powers which Congress is allowed to designate to congressional committees. Hence, the commission was powerless to carry out its administrative and enforcement responsibilities under the 1974 FECA provisions. In order to be able to fulfill those responsibilities and conform to the Constitution's

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[20] Ibid., at 49.
[21] Ibid., at 52.
[22] Ibid., at 53.

separation of powers and appointments clause, the members of the FEC would all have to be presidential appointees subject to the advice and consent of the Senate.

The Court stayed the effect of its last ruling for 30 days in order to give the Congress time to reconstitute the FEC to conform to the directives of the Court. Should the Congress not act within the allotted time, the commission would effectively cease to function. As it turned out, the Congress took much longer than thirty days to act and, in the end, Congress wrote a whole new campaign finance reform bill incorporating the Supreme Court's *Buckley* rulings. As Senator Buckley had noted following those rulings, the Court had left "a clearly unworkable set of ground rules"[23] in the area of campaign finance, and the Congress was forced to consider new campaign finance legislation for the fourth time in the 1970s.

The Federal Election Campaign Act Amendments of 1976

With the 1976 presidential race in full swing, and in the wake of the Supreme Court decision in *Buckley*, the Federal Election Commission found itself in the position of not being able to continue to disburse public funds to the candidates so long as some of its members were appointed by Congress. Since Congress was not able to complete its reorganization of the FEC selection process within the Court's allotted thirty day deadline, the Court extended its original deadline by three weeks. Even this extension, however, proved too little time for Congress to complete work on revising the 1974 law in order to achieve compliance with *Buckley*. As a consequence of this delayed congressional action, the 1976 presidential candidates did not receive the primary federal matching funds they had expected for two months after the extended deadline date of March 22.

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[23] Senator James Buckley, one of the plaintiffs in the *Buckley v. Valeo* case, quoted in "Campaign Financing", p. 109.

In the end, Congress wrote an extensive revision of the whole of campaign finance law rather than just a simple reconstitution of the FEC. The new law, enacted as a series of amendments to the original 1971 Federal Election Campaign Act, did reconstitute the Federal Election Commission as a six-member commission appointed by the President and confirmed by the Senate. The commission's authority was extended to prosecutions in civil violations of the law and it was given jurisdictional authority in matters of violation previously only covered in the criminal code. The commission's enforcement capability was enhanced as a result of this expansion of what constituted a civil violation.

The commission was to be limited to specific fact situations in its ability to issue advisory opinions. Such opinions could not be used to enunciate commission policies and could not be viewed as setting precedents for subsequent cases. Each case or complaint was to be handled strictly on the basis of the set of facts in that particular case and was not to be decided on the basis of previous opinions issued by the commission. Furthermore, the commission could initiate investigations only after it had received a properly verified complaint. Anonymous complaints were considered insufficient grounds for investigation. An affirmative vote of four of the commission's six members was required in order for the FEC to issue regulations and advisory opinions and initiate civil actions and investigations.

As had been the case in the 1974 law, the commission was required to seek resolution of complaints alleging campaign finance violations through conciliation before going public with the substance of the case in any legal action. Penalties for convicted violations were revised in the 1976 law such that an individual who knowingly committed a violation involving a contribution or expenditure in excess of $1000 was subject to a one-year jail sentence and a fine of up to $25,000 or three times the amount of the contribution or expenditure in question, whichever was

greater. Civil penalties of $5,000 fines, or an amount equal to the contribution or expenditure involved in the violation, whichever was greater, were provided for inadvertent violations. For violations knowingly committed, the fine imposed would rise to $10,000, or an amount equal to twice the amount involved in the violation, whichever was greater.

Upon signing the 1976 Amendments to FECA, President Ford appointed six new members to the Federal Election Commission and public funds once again began to go to the presidential campaign's primary candidates in May of 1976.

Included among some of the important revisions of existing campaign finance law enacted in 1976, following the Supreme Court's *Buckley* ruling in that same year, was the elimination of all language pertaining to spending ceilings for congressional campaigns. Restrictions on the amounts that candidates could spend from their own funds on their own campaigns, that were included in the 1974 law, were also eliminated in the wake of *Buckley*.

In addition to finding the expenditure ceilings, the makeup of the Federal Election Commission, and limitations on candidate personal campaign spending unconstitutional, the Supreme Court had also ruled that the 1974 law's restrictions on independent political spending were clear violations of First Amendment freedoms. Many members of Congress, and concerned citizen action groups like Common Cause, felt that this opened a potential loophole whereby group's operating as "independent" entities were, in actuality, mere extensions of a candidate's campaign designed to circumvent the law's contribution limits and/or contribution and expenditure reporting requirements. It was argued that some mechanism for assuring a group or individual's independent status, and verification of such status, needed to be included in the new law so as to prevent such circumvention of the law's intent. Accordingly, the Congress adopted a provision in the 1976 version of FECA which

required that independent committees or individuals who made independent expenditures of more than $100 advocating the election or defeat of a particular candidate swear that the spending was not made in collusion with the candidate. Many would argue that this provision had no teeth and was mere "window-dressing". But, in light of the Supreme Court's decision affirming the rights of groups and individuals to engage in this form of political free speech, it was seen as the only legally permissible step which could be taken to define any parameters around independent spending in federal campaigns.

The 1976 legislation also revised the 1974 law in the following ways:

- **Corporate fund-raising activities** were curtailed insofar as company committees were permitted to seek contributions from stockholders, executives, and administrative personnel and their families only. **Union political action committees** could solicit contributions from union members and their families only. However, twice a year, union and corporate PACs could solicit all employees for contributions by mail only. All such solicited monies were to be received by independent third parties which would record the contributions received and pass the funds on to the committees. All contributions received in this manner were to remain anonymous.
- **Expenditures by labor union, corporate, and membership PACs** of over $2,000 per election for political communications to members which advocated the election or defeat of a particular candidate were required to be reported. The costs of the means of such communication (paper, postage, etc.) were not required to be reported.
- **Records** of all contributions greater than $50 were required of all candidates and political committees.

- **Independent expenditures** of more than $1,000 made within 15 days of an election must be reported within 24 hours.
- **PAC proliferation** was restricted by requiring that all political action committees established by a corporation, union, or membership organization be treated as a single committee for purposes of receiving contributions. Contributions from all political action committees of a single company or union would be limited to $5,000 overall to any one candidate in a given election. The reasoning underlying this provision was to thwart the efforts of some organizations to form multiple PACs with a similar political contribution agenda in order to multiply the amount which could be legally given to a single candidate in any one election.
- **Spending by presidential candidates** was limited to no more than $50,000 of their own, or their family's, money if they accepted public funds in the financing of their campaigns.
- **Subsidies to presidential candidates** who had won less than ten percent of the vote in two consecutive presidential primaries would be eliminated under the new legislation.

The 1979 Amendments to the Federal Election Campaign Act

The only successful legislation dealing with campaign finance reform in the entire nearly twenty year period since passage of the 1976 Amendments to the FECA of 1971 occurred in 1979, with the passage of yet another set of amendments to the original FECA. These amendments however, were largely designed to correct non-controversial logistical problems in the original law's paperwork requirements. The 1979 legislation was designed to eliminate much of the red tape created by the original FECA's disclosure and reporting requirements and to facilitate and encourage political party activity. Complaints that the original law imposed undue hardship and

burden on candidates and political committees in the costs of money, time, and paperwork for disclosure and reporting compliance were non-partisan and widespread. Additionally, there was widespread and bi-partisan agreement that the law had the unintended consequence of stifling grass roots party-building activities and volunteerism. Accordingly, agreement between Republicans and Democrats, and between the House and the Senate, was not difficult to achieve. Passage was swift and HR 5010, PL 96-187, the Federal Election Campaign Act Amendments of 1979 were signed into law on January 8, 1980.

PL 96-187 cut from 24 to nine the maximum number of reports which a federal candidate had to file with the FEC during any two-year election cycle. The material included in such reports need not be as detailed as had previously been required. Itemization of contributions and expenditures was raised from $100 and up, to $200 and up. Candidates who raised or spent less than $5,000 in their campaigns need no longer file reports at all. In the 1978 mid-term congressional elections 70 House candidates - five of whom were eventual winners - spent less than $5,000 in their campaign efforts.[24]

Complaints from leaders in both the Democratic and Republican parties that the FECA of 1971 had undermined state and local party organizations in its restrictions on spending and fund raising activities by the parties and their campaign committees, had become loud and clear, and had caught the ear of congressional lawmakers by 1978. The 1979 legislation permitted state and local party organizations to purchase campaign materials for volunteer activities on behalf of a party's slate of candidates. The spending for such materials was not limited in any way and included spending for such items as buttons, bumper stickers, yard signs, brochures, handbills and the

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[24] Congress and the Nation, Vol. V, 1977-1980, Washington, D.C.: Congressional Quarterly, Inc., 1981, p.950.

like. All party organizations could also conduct financially unlimited voter registration drives and get-out-the-vote drives on behalf of presidential candidates. The incidental reference to, or mention of, a presidential candidate in the literature of local or state candidates was not to count as a contribution to the presidential effort as had previously been the case.

Local party groups were now only required to report financial activity if their annual spending exceeded $5,000, or if costs for non-volunteer activities exceeded $1,000. Volunteer political activity was encouraged in a provision of the law which raised from $500 to $1,000 the amount of money a person could spend for services, such as food or travel, on behalf of a candidate without having to report such expenditures.

The 1979 law sanctioned the use of state and local party "soft-money" expenditures for these activities without any consideration for the potential for abuse of such unregulated money in campaigns. The issue of "soft money" and its expanding role in political campaigns as a legal loophole for campaign contributions remains a topic of debate within the context of campaign finance reform. Reformers rightly argue that there can be no complete campaign finance reform without an examination of the uses, and potential or actual abuses of "soft money" contributions.

In addition to the provisions mentioned above, the 1979 law included the following important provisions:

- **Voter registration and get-out-the vote drives** by state and local parties on behalf of presidential candidates were authorized by the new law.
- **A candidate's campaign committee** must include the candidate's name in its title.
- **Financial records** were required to be kept by the campaign committee's treasurer for three years.

- **A "best effort" standard** was established for the FEC to determine compliance with the law. This eased the burden on committees to provide such information as the occupations of contributors, which was required under the existing law. Many candidates felt that it was unreasonable to require the filing of such information when it had not been provided to them by contributors and therefore posed particular problems in tracking down all contributors for a determination of their occupations.
- **Categories of information required on registration statements** were reduced from eleven to six. Included in the categories eliminated was one which required a political action committee to name all candidates it supported. Essentially, this meant that committees had to compose and file lists of candidates who received support even though that information had already been filed in contribution reports.
- **Names of contributors** were required to be reported if they gave $200 or more instead of $100 or more as was the case under the existing law.
- **Independent expenditures** which exceeded $250 must be reported. This represented an increase in the threshold, up from $100.
- **Sources of complaints requesting advisory opinions of the FEC** would now include any individuals who had an inquiry, rather than just the candidates, committees, and national parties as in the law as it stood in 1976.
- **FEC responses** to advisory opinion requests must be issued within sixty days instead of the "reasonable time" standard of existing law. If the request was made within the two months before an election, the FEC was required to respond within twenty days.

- **Notification of alleged violation** was to be given to any person who was the subject of a complaint by the FEC within five days of receipt of such complaint. The accused would have fifteen days in which to respond to the complaint.
- **Determination of "reason to believe" that** a violation had occurred required a vote of four of the six FEC members. An investigation would commence and the accused would be notified that an investigation was underway. Any "probable cause" determination required an affirmative vote of four FEC member votes. The obligatory informal conciliation methods for correction of violations would be mandated for at least 30, but not to exceed 90, days before civil or criminal relief could be sought.
- **Retention of** civil and criminal penalties for violations of the law which existed in current law was affirmed in the new legislation.
- **Federal funds for the national nominating conventions** of the two major parties were increased in the new law from $2 million to $3 million.

Although numerous attempts would be made to revise campaign finance law again throughout the 1980s and into the 90s, this 1979 Federal Election Campaign Act Amendments law was the last successful piece of legislation to come out of the Congress in the area of campaign finance. Legislative history would be replete with instances of proposals to extend public financing to congressional campaigns, to reduce the soaring costs of federal campaigns through the imposition of either voluntary or mandated (in conjunction with participation in some scheme of public financing) spending ceilings, and to limit the contributions of special interests or PACs. All have failed to garner the requisite support to win passage. Presidents and parties have taken different positions with respect to the various proposals for further reform. Before examining these major proposals; and before making an assessment of the likelihood of continued reform measures being enacted, it is helpful to

continue looking at some of the political history of failed legislative reform efforts. Common themes, agendas, coalitions, and results illuminate that history.

CHAPTER THREE

THE CONTINUING DRIVE FOR REFORM

Public Financing Efforts

In early 1977, following the first-ever publicly financed presidential primary and general elections, the enthusiasm for the concept of publicly financed federal campaigns was at its highest point. Proponents of extending public financing to congressional races needed only to point to the contrast between the publicly financed presidential elections of 1976 and the privately financed congressional races of that same campaign season. It was argued that there was a difference in style and demeanor between the hectic fund raising and spending preoccupations which predominated in congressional elections and the more issue-oriented, publicly financed presidential elections. Proponents posited that the provision of public funds to presidential candidates had taken the campaigns away from the potential corrupting influence of corporate, labor, or individual contributors which had previously dominated presidential election campaigns. Those who sought the presidency had been freed from the ever escalating chase for private financing which took so much of a campaign's energy, time, and other resources.

As a result of the public funding in presidential campaigns, the corporate, labor, and other special interest PAC money which had formerly been funneled into the presidential campaign, now gravitated to congressional election contests. In 1976 record amounts of such PAC funds found their way into congressional candidates' campaign coffers. Total spending, and spending by PACs in particular, continued to soar. These developments spurred increasingly loud calls from campaign finance

reformers to extend public financing to all federal elections. The argument was that spending could only be contained in the context of public financing; and if curbing the soaring costs associated with congressional campaigns was desirable, then so too was the public financing necessary to effectuate spending ceilings. The Supreme Court had ruled in *Buckley* that any spending ceilings in federal campaigns could only be imposed concurrent with public financing. Therefore, any attempt to curb spending in congressional races necessarily required some scheme of public funding.

Critics of public financing saw it as an attempt to give protection to incumbent officeholders to the disadvantage of challengers. Public financing was viewed by them as an unwarranted intrusion into the political sphere by an unwieldy government bureaucracy, which would ultimately lead to the diminution of citizen participation in the electoral process. If citizens could not participate in campaigns by providing contributions to candidates of their own choosing to whatever extent they so chose, then the most significant mode of participation in federal election campaigns, other than voting, was being restricted.

With proponents and opponents in the Congress lining up on the issue, public financing extension legislation was introduced in the Senate in early 1977.[25] As reported out of the Rules Committee on June 24, 1977, the bill would have extended public financing to Senate general elections beginning in 1978.[26] In conjunction with the provision for public financing, the bill established a spending ceiling of $250,000 plus ten cents times the state's voting age population for each Senate candidate.

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[25] S 926 - S, Rept. 95-300.

[26] This history of congressional action, and inaction, on campaign finance legislation following the rewrite of the law in the 1976 FECA Amendments is illuminated in greater detail in the series Congress and the Nation, published by Congressional Quarterly, Inc. See specifically Volumes V, VII, and VIII (appropriate pages cited supra 4).

Major party candidates would receive 25 percent of their spending ceiling in federal funding and would receive matching funds for all individual contributions of $100 or less up to the limit. Other candidates would not receive automatic grants but would become eligible for matching funds if they raised $100,000 or 10 percent of the spending limit through individual contributions of $100 or less. Candidates could spend up to, but no more than, $35,000 of their own personal funds while still remaining within the ceiling. If a candidate was going to exceed either the personal or the total spending ceiling, he/she was required to notify the FEC and all opponents in the race. Opponents would then become eligible to spend up to 62.5 percent more than the spending limits in matching funds. Monies to finance the extension of public financing to congressional general election campaigns nationwide were to come from the tax checkoff fund. Estimates were that the extension would cost approximately $20 million in public funds for each election.[27]

The public financing bill was brought before the Senate on July 23, 1977. It never came close to passage. On the first cloture vote to cut off a filibuster by Republican and conservative Southern Democrat opponents of the legislation, proponents fell 11 votes short of the necessary 60 votes. When a third cloture motion failed by eight votes, Democratic leaders in the Senate accepted an amendment to the legislation which deleted the public financing extension provisions of the bill. The remaining bill, which consisted only of certain amendments to the original public financing bill dealing with remedies to disclosure anomalies and the costs of campaign bookkeeping, passed the Senate 58-39. The House did not act on the Senate bill.

While public financing appeared dead in the Senate, the House was taking up the matter in a piece of legislation which called for partial public financing of House

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[27] These provisions of the bill S 926 are outlined in Congress and the Nation, Vol. V, 1971-1977, Washington, D.C.: Congressional Quarterly, Inc., 1981, p.946.

general election campaigns beginning in 1978's general elections. This bill would provide matching public funds of up to $25,000 for major party candidates who would agree to limit their spending to no more than $150,000. Following a candidate's raising of $10,000 in individual contributions of $100 or less, the public funds would be made available. Spending ceilings would be lifted if one candidate were to exceed the limit, and the candidate not exceeding the limit would become eligible to receive an additional matching fund amount up to $50,000.

In referring the bill to the House Administration Committee for consideration, the House leadership essentially doomed the bill. It soon became apparent that most of the committee's members were opposed to "fast track" consideration of the bill. What most clearly sealed the fate of the bill was the committee's acceptance of an amendment which would extend public financing to House primary elections as well as general elections. All Republican committee members, who were nearly unanimously opposed to the concept of public financing, and many Democrats who supported that concept, stated their intention to vote in favor of the amendment.

Knowing that an extension of public financing to all House races would raise the costs of public financing to unacceptably high levels, not to mention the headaches of administering such a plan, opponents of the bill were eager to see the committee adopt the extending amendment. Proponents of the public financing concept, knowing that the bill would not stand a chance of passage if the amendment were to be accepted in committee, argued against its adoption. Many House incumbents, Democrat and Republican, perceiving that the financing would create increased competition in their upcoming races did not want to see a public funding bill come out of committee to be voted upon on the House floor. As a result, the Chair of the committee was persuaded to drop the bill from the committee's docket and public financing died in the House as it had in the Senate.

In a series of maneuvers throughout 1978, House supporters attempted to resurrect public financing by attaching it as an amendment to other legislation dealing with lowering of limits for contributions and expenditures by parties and political action committees. In each instance in which a vote was taken to allow for the consideration of public funding of federal campaigns, it was defeated, as were attempts to consider the lowering of limits on party and PAC donations to congressional campaigns.

A coalition of a majority of Republicans and Southern Democrats, and a significant number of veteran, incumbent Northern and big-city Democrats combined to defeat public financing legislation. Republicans, long in the minority in both houses of the Congress, viewed public funding as a boon to incumbents and not in the interest of fostering real competition. Paradoxically, many incumbent Democrats thought that public financing would, in fact, foster too much competition. This same paradoxical coalition was to hold together from the late 1970s until the present whenever public financing legislation came before the Congress.

Perhaps the death knell for the idea of extending public financing - and by association and implication, voluntary spending ceilings in congressional races - was sounded in the 1979 session of Congress. Even though it enjoyed the support of President Carter, the Democratic leadership in Congress, and a host of public interest groups - chief among them Common Cause- the symbolically designated HR 1, dealing with public financing for congressional general elections, was to suffer the same fate as earlier legislative attempts. The bill was never reported out of committee. The House Administration Committee killed the bill on May 24, 1979 by voting 8-17 not to report it for floor consideration.

HR 1 had offered a voluntary plan of public financing for House general elections only. But, when the markup of the bill began in the Administration Committee,

proponents had to beat back an effort by opponents to extend the public financing to primary elections as well. In 1977, the same committee sealed the doom of public funding legislation by adopting exactly the same amendment. This time proponents prevailed and the bill remained viable, if only for a short while. Republicans on the committee tried to amend the bill by lowering the threshold for eligibility to participate in the public financing system. They felt that the existing levels constituted an incumbent protection plan and wanted to enhance the ability of non-incumbents to mount an effective challenge to incumbent officeholders. Although unsuccessful in their efforts to amend the bill, there was no trouble defeating the motion to report the bill.

Once again, the coalition that had blocked earlier public financing efforts held together. Eight of the committee's 16 Democrats joined with all nine Republicans in voting not to report the bill. Many of the Democrats who joined with Republicans to defeat the bill represented safe, one-party districts and did not want to encourage potential challengers.[28] When House leaders announced that their own whip counts showed that there was not enough support for the bill to consider other ways to bring the bill to the floor for a vote, the official death knell had sounded. The defeat of HR 1 doomed a companion bill in the Senate[29] which would have applied to Senate general elections only. The Senate Rules Committee canceled hearings it had scheduled on the bill when the House Administration Committee killed the House public financing bill.

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[28] Committee Chair Frank Thompson made a statement to that effect and it is attributed to him in Dollar Politics, Washington, D.C.: Congressional Quarterly, Inc., 1982, p. 22.

[29] S 623

PAC Spending Limits

In conjunction with efforts to extend public financing to congressional general elections, the Congress has witnessed attempts by some of its members to enact legislation which would lower the limits on contributions and expenditures by political parties and PACs. As was the case with public financing, these efforts were unsuccessful.

Beginning in 1978 legislation was introduced that would have revised downward the limits that PACs and parties could contribute to campaigns. Proponents of the effort - mostly Democrats - argued that the lowering of these limits were necessary to curb the increasing levels of party and PAC expenditures in House and Senate races. Supporters cited the proliferation of PACs - from 608 at the end of 1974 to 1,261 in October 1977 - and the rising amounts of money which both PACs and parties were spending in congressional elections as indicative of the need to put the brakes on contributions from these sources. According to Common Cause, interest group spending had risen from $12.5 million in congressional races in 1974 to $22.6 million in 1976.[30]

Spending by the parties was also rising at an equally fast pace. Democrats pointed to the four special elections which were held in 1977 as being up for auction to the highest spender. The FEC reported that, in those special elections, the Republican party gave more than $400,000 to its candidates while the Democratic party was able to donate only some $27,000 to its House candidates. The Republican candidate was victorious in three of the four special elections, winning seats which were previously held by Democrats.

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[30] Congress and the Nation, Vol. V, p.947.

A 1978 bill devised by House Administration Committee Democrats would have lowered the limits on party and PAC giving. But angry Republicans saw the attempt as a threat to their ability to wage effective campaigns against entrenched incumbent Democrats. They also viewed such limits as a blatant reaction to Republican successes in fund raising and special election victories. The limits on party contributions sought by Democratic sponsors of the bill would have reduced the amount which a party (national, state, and congressional committees combined) could give to a House candidate from $30,000 to $10,000. Just how seriously such a change would have affected House Republicans is illuminated by an analysis of party contributions to House candidates in 1976 and a compilation of 1977 party finances by the FEC revealing the following:

> In 1976, 39 percent of the Republican House candidates received more than $10,000 each from party committees. Only 11 percent of the Democratic candidates, in contrast, received at least $10,000 from party sources....In 1977, while affiliated Democratic committees raised $8 million through most of the year, Republican committees raised more than three times as much, $24.3 million. The cash on hand disparity was even greater, with Republican committees enjoying a nearly 10-1 advantage over their Democratic counterparts, $8.2 million to $867,000.[31]

Interestingly enough, Republicans were not so vocal in opposition to proposed cuts in PAC contribution limits. The proposed bill would have cut PAC contributions to $5,000 from the $10,000 per candidate in an election year ($5,000 per election - primary and general). That lack of opposition in this instance was probably due to Republican realization that PAC cuts would affect labor union giving as much as it would other PACs which traditionally supported Republican candidates. It was also

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[31] Dollar Politics, p. 21.

apparent to Republicans that PACs, in general, tended to support incumbents (and therefore, Democrats) more so than Republican challengers.

The bill obtained enough votes in committee to allow it to be reported out, but once it came to a vote on the rule to allow floor consideration, the old coalition was waiting to defeat it. Democratic leaders, knowing the vote on the rule was unlikely to go their way, offered to remove the limitations on party contributions which so incensed the Republicans. But, the partisan manner in which the bill was introduced and reported out of committee alienated and angered enough Republicans to make the offer unacceptable. In the end, the bill failed to survive a 198-209 vote to defeat the rule allowing floor consideration.

In 1979, some members of the House again sought to curb PAC contributions to House candidates. In a bill sponsored by Rep. David Obey (D., Wis.) and Rep. Tom Railsback (R., Ill.), supporters of the revision of PAC spending limits brought up the issue on its own, without tying it in with limitations on party contributions which had so polarized the House in 1978 along partisan lines.

The bill would have set aggregate limits on PAC contributions by prohibiting any House candidate from receiving such contributions totaling more than $70,000 for any given two-year election cycle. PACs would be allowed to donate $6,000 to any one candidate in a year, down from the previous $10,000 limit. Of that $6,000, no more than $5,000 could be taken by a candidate from a single PAC in any single election - primary or general.

Debate in the House on the bill centered around arguments by its supporters that PAC spending had risen precipitously in the few years since the FECA of 1971, and that such spending created an impression of, if not an actuality, *quid pro quo* arrangements of "undue influence." Opponents of the legislation again claimed that the bill was little more than an incumbent protection act. According to Dollar

Politics, published by Congressional Quarterly Inc., the facts were this: "Just under a quarter of all money given to House candidates in the 1978 general election came from PACs. While the share of PAC money in House races increased only slightly between 1976 and 1978 -from 22.4 percent to 24.8 percent - the actual amount given by all PACs to general election House candidates rose from less than $15 million to nearly $23 million."[32] Congressman Obey, the bill's main sponsor, stated that, "We have a new arms race on our hands; only the arms, instead of missiles, are campaign dollars. Whatever business does one year, labor does the next."[33]

But, Republicans saw the bill as a protection act for incumbents and an effort to make it more difficult for challengers to raise the funds necessary to mount an effective campaign. Minority leader John Rhodes said that the bill, "would reduce the ability of the challenger to raise funds in the early stages of a campaign and reduce the ability of PACs to participate in the political process."[34]

In an effort to garner Republican support, the House adopted an amendment to the bill which raised the aggregate PAC limit from the $50,000 first proposed in the original bill to $70,000 and also raised the amount which a single PAC could contribute to a candidate from an original figure of $5,000 to $6,000 for both primary and general elections combined. The adoption of that amendment was instrumental in the bill's eventual passage in the House. That becomes evident when one examines the following facts from Dollar Politics: "Nearly a third of the House elected in 1978 - 138 - received more than $50,000. But only 51 - 34 Democrats and 17 Republicans - topped the $70,000 mark."[35]

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[32] Dollar Politics, p.23.
[33] Congressman David Obey quoted in Dollar Politics, p.23.
[34] Congressman Rhodes quoted in Dollar Politics, p. 23.
[35] Dollar Politics, p.23.

The Obey-Railsback bill passed the House of Representatives by a vote of 217-198, with Democrats voting in favor of its passage by a margin of 188-74, and Republicans opposing it by a 29-124 division. This was to be a short-lived victory, however, since the bill stalled in the Senate as Republican Senators Mark Hatfield of Oregon and Gordon Humphrey of New Hampshire threatened to conduct a filibuster to prevent Senate consideration of the legislation. An inability on the part of the bill's supporters in the Senate to gather the 60 votes necessary to cut off any threatened filibuster sealed the bill's doom and it was removed from the Senate legislative calendar.

Reform Efforts 1985-1990

With the failure of Obey-Railsback, and the subsequent passage of the 1979 Amendments to FECA, the "decade of campaign finance reform" came to an end. The 1980s began with the election of a Republican president and a Republican majority in the Senate. Given their long standing opposition to campaign finance reform, it was not surprising that Republicans did not encourage the introduction of legislation to that effect. Hopeful of winning a majority in the House to add to their control of the Senate, Republicans were anxious to protect their fund-raising advantage over the Democrats and to enhance prospects for challengers in the upcoming 1982 elections. Democrats, cognizant of the fact that reform legislation faced little hope of passage in the new Congress, did not reintroduce measures to extend public financing to congressional campaigns or to revise the limits on party or PAC giving.

When, in 1986, Democrats recaptured control of the Senate, the effort to continue campaign finance reform began anew. Senator David Boren (D., OK), in early 1985, offered a non-germane amendment to Senate bill S 655, an unrelated bill which dealt

with low-level radioactive waste, which would have put caps on amounts that a candidate could take from political action committees in the aggregate or singly. Republicans countered with the introduction of an amendment by Senator Rudy Boschwitz (R., MN) which would cripple PAC contributions to party organizations, which the Democratic party relied on to a far greater extent than did Republicans. According to Federal Election Commission reports:

> In the 1984 congressional elections, national Democratic Party organizations, such as the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee, received $6.5 million in contributions from PACs, compared with $58.3 million from individuals. ...Republican organizations, including the National Republican Senatorial Committee and the National Republican Congressional Committee, received only $1.7 million from PACs, compared with $262 million from individual contributors.[36]

Boren's proposal would have limited overall PAC contributions to $100,000 for House candidates and between $175,000 and $750,000 for Senate candidates, depending on state populations. The ceiling on individual PAC contributions would be reduced from $5,000 to $3,000, while the top limit on private individual donations would increase to $1,500 from $1,000. The loophole in the law which allowed for the "bundling" of individual donations by PACs in order to circumvent the limits, was to be closed. And, in an effort to battle the effects of unregulated independent expenditures, Boren's amendment would have required that television and radio broadcasters provide free response time to candidates who were opposed by groups engaging in independent opposition campaigns.

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[36] Congress and the Nation, Vol. VII, 1985-1988, Washington, D.C.: Congressional Quarterly, Inc., 1990, p.893.

The proposal put forth by Senator Boschwitz would have prohibited all PAC contributions to the national parties. It would also have required that the parties disclose any "soft-money" contributions which were received into their coffers from corporations, unions, and any other donors, which were currently not reported. It was Boschwitz's hope that both amendments would be approved, since he assumed that Democrats would not want to act on the bill if it contained both measures. He was right.

Although both amendments were approved, the bill to which they were attached failed to meet the necessary threshold of support to move toward further consideration. Despite the fact that Republican leaders were willing to join with the Democrats to move the bill along toward passage, Boschwitz threatened to block the vote. The Senate eventually decided not to bring the bill to a definitive vote and the issues of campaign finance reform were postponed.

The unwillingness of Senators to bring the legislation on PAC contributions to a final vote reflected the touchiness of the issues surrounding "special interest" contributions. Democratic supporters of reform cited statistics showing the dramatic increases in PAC growth and spending in congressional campaigns. According to Congress and the Nation, "In 1974, PACs gave candidates for Congress a total of $12.5 million. In the 1983-84 election cycle, House and Senate candidates received $105.3 million from PACs. The total number of registered PACs - not all of which gave to congressional candidates - had grown from 608 in 1974 to 4,009 in 1984." [37] A public perception that there existed a *quid pro quo* arrangement of favorable treatment of special interest legislation in exchange for PAC campaign contributions,

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[37] Ibid., p. 892.

had made congressional legislators nervous and defensive about charges of PAC "undue influence."

The 100th Congress

The Senate of the 100th Congress of 1987-88 saw the reintroduction of campaign finance measures designed to reduce the amounts of money being spent in congressional campaigns. The bill (S 2), would have provided financial incentives for senatorial candidates to adhere to campaign spending ceilings. These ceilings were to be established on a state by state basis. Supporters saw this as necessary to reduce the skyrocketing sums being spent in senatorial campaigns. Republican opponents, as might be expected, viewed any spending limits as merely a scheme to institutionalize the Democrats as the majority congressional party.

Of course, given the Supreme Court's *Buckley* ruling, it was mandatory that any spending ceilings would have to be tied to some plan of public financing for Senate candidates who agreed to abide by spending limits. Consequently, the Democratic sponsors of S-2, chief among them Senators David Boren (D., OK) and Robert Byrd (D., WV), saw public financing as essential to any imposition of spending limits in senatorial races. Republicans, however, had always seen public financing as an unwarranted government intrusion into the electoral process.

Having been reported out of the Senate Rules and Administration Committee rather easily, the bill encountered immediate parliamentary maneuvers designed to forestall its consideration on the Senate floor. Republicans began a filibuster during floor debate on the bill which the Democratic leadership was unable to halt. Majority leader, and one of the bill's chief sponsors, Senator Byrd, failed to invoke cloture on the filibuster in seven separate attempts, falling at least seven votes short of the

required sixty votes in all attempts. The seventh cloture motion vote made Senate history: The Senate had never taken more than six cloture votes on a single issue.[38]

After three months of off-and-on debate and numerous attempts to end the Republican filibuster[39], the bill S-2 was shelved for 1987. It was to be re-introduced in a modified version in the 100th Congress' second session in 1988.

Because of the likelihood of stalemate if the bill failed to garner any significant Republican support, Boren and Byrd modified the bill by scaling back its provisions for public financing. The final version of the bill, when brought to the floor for consideration in 1988, provided financial incentives including reduced broadcast advertising and postal rates in order to entice compliance with a system of voluntary spending limits. Public funds would be allocated only to Senate candidates whose opponents did not abide by the spending limits in the bill. This was a change from the language of the bill introduced in 1987 which would have distributed public funds to all candidates who adhered to the limits. The new version of S 2 imposed limits on the amounts PACs could contribute to Senate campaigns. No Senate candidate could receive more than 30 percent of the primary spending limit set forth in the bill, from PACs. The formula meant that the maximum allowable amount of aggregate PAC donations for Senate candidates in the most populous states was $825,000.

Republicans did not like such an aggregate limit as they felt that it favored the largest and most well-organized PACs that donated early in the election cycle. PACs which could not donate early in the season would effectively be frozen out of the

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[38] Ibid., p.894.

[39] The filibuster was able to continue even though other legislation was considered because Majority Leader Byrd resorted to a parliamentary maneuver called "double-tracking" which permitted other legislation to be considered while the campaign finance bill remained pending. This fact is noted in Congress and the Nation, Vol. VII, 1990., p.894.

process. Therefore, Republicans countered with a proposal to lower the existing single PAC donation limit of $5,000 per candidate, per election, rather than establishing an aggregate limit. Republicans argued that their proposal would allow for increased participation while the Democrats' measure would restrict participation to only the largest, long-established PACs. Some Republican Senators had even begun to advance the notion of banning PACs altogether. Given the dominance of PAC contributions to incumbent Democratic legislators, many Republicans had concluded that PAC giving furthered the prospects of incumbent advantage in election campaigns. Challengers, it was pointed out, received only a small portion of PAC funds; and since it was Republican candidates who found themselves more often running as challengers rather than incumbents, PAC funds did not generally flow in their direction.

In an endeavor to break through the stalemate on the bill, Senator Byrd appointed a bi-partisan Senate task force to look into the possibility of arriving at a consensus as to what could be done about soaring campaign costs and concerns about PAC influence. But, the effort failed to make any headway as both sides maintained their positions on overall spending as non-negotiable.

Majority Leader Byrd made it clear that the bill would be fought out on the floor, and warned Republicans that any attempt to filibuster the bill would not be allowed to proceed as it had in 1987, when other business was conducted around the pending bill. If the bill's opponents wished to engage in a filibuster, Byrd would require that they be forced to hold the floor around the clock or the bill would be pushed to a vote. On February 23, 1988 the filibuster began with Republican members repeatedly calling for a quorum and then abandoning the floor. Democrats were forced to keep enough supporters present to maintain a quorum in order to conduct the Senate's business.

When the bill's supporters came up one member short of a quorum late in the evening of February 23, Byrd, using an arcane tool of Senate discipline, sought the arrest of absent senators. The Senate's sergeant-at-arms located Oregon Republican Senator Robert Packwood in his office. The senator had bolted himself in his office and refused to come out voluntarily. He was eventually persuaded to walk from his office to the Senate chambers in the Capitol but refused to enter onto the Senate floor on his own power. He was then carried by members of the sergeant-at-arms' posse feet-first onto the floor where he announced himself present, at last establishing the required 51 member quorum.[40]

The next day saw a prolonged and vitriolic debate about the tactic which Byrd had used. However, after the dust had settled, Democrats and Republicans agreed to restrict debate on the second night and to schedule a final cloture try for February 26th. On that day, following an eighth attempt to invoke cloture on S 2 - seven attempts had been made in late 1987-, the bill was pulled from floor consideration when the cloture try failed by a margin of 53-41. Fifty of fifty-two Senate Democrats voted for the cloture motion; thirty-nine of forty-two Republicans voted against invoking cloture. Campaign finance reform was dead for 1988.

The 101st Congress

In 1989 momentum for reform again built as leaders of both parties in both the House and Senate, and President George Bush vowed to press on with new campaign finance measures. Republicans offered a legislative package in the House and President Bush put forth his own plan for reform proposing what he called a

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[40] "A Senator's Arrest: Rare and Dramatic Event", in Congress and the Nation, Vol. VII, 1985-1988, p. 895.

"sweeping system of reform" for raising and spending money in congressional campaigns.[41]

The President's plan called for an elimination of corporate, union and trade association PACs as well as all PACs formed by elected officials - so-called "leadership PACs". The maximum contribution allowed for the remaining non-connected PACs was to be cut in half - down to $2,500. Bush proposed that the political parties be given an increase in the amounts which they could donate to individual congressional campaigns. His proposal would have allowed the parties to give up to two and one-half times more than they spent on congressional campaigns through coordinated expenditures. Additionally, the plan would have curtailed the incumbent's use of the franking privilege by banning unsolicited mass mailings from congressional offices.

Not surprisingly, Democrats viewed the Bush plan as plainly partisan since it was constructed in such a way as to maximize Republican party treasuries, through its emphasis on increasing the party role in congressional campaigns, while simultaneously removing the Democrats' advantage in raising money from political action committees.

The Bush plan was introduced in the Senate, as S 1727, but became bottled up in committee when it received little enthusiastic support from either party's congressional membership. The legislation died at the end of the 101st Congress.

While the Bush plan was stymied in the Senate, House Republicans introduced their own program of reform late in the first session of the 101st Congress. The House Republican package included:

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[41] Congress and the Nation, Vol. VIII, 1989-1992, Washington, D.C.: Congressional Quarterly Inc., 1993, p. 951.

- A reduction to $1,000 per election in the amount a PAC could give to a candidate. That amount would, however, be indexed for inflation.
- A prohibition on "bundling" of contributions by all corporate, trade association, or union PACs. Non-connected PACs - those formed to advance specific causes - would be allowed to continue the practice of bundling.
- Candidates would not be permitted to form their own PACs. Candidates' committees would be enjoined from donating to other committees.
- Tax credits for individual contributions to home-state candidates up to $250 would be reinstated.
- It would be required that at least half of a candidate's campaign funds be raised locally.
- All limits on party contributions and coordinated expenditures were to be eliminated, but disclosure of such spending to the FEC was to be maintained.

By the start of the second session of the 101st Congress in 1990, both congressional chambers were poised to begin a major overhaul of the federal campaign finance system.

The Senate leadership of both parties established a bi-partisan advisory panel of distinguished academics, lawyers, and party officials to review current proposals for reform and to issue recommendations as to what should be done. The panel announced its plan on March 7, 1990, which embraced "flexible spending limits - voluntary, state-by-state limits that would be reasonably high and would allow exemptions for party funds and in-state contributions. Candidates who accepted the limits would get lower postal and advertising rates, and their in-state contributors would receive tax credits for modest contributions."[42] The panel also called upon the

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[42] Ibid., p.953.

Congress to enact legislation which would mandate broadcasters to donate free time to political parties and would increase the limits on party contributions to congressional campaigns. Contributions from PACs would be disallowed once they exceeded a certain percentage of total receipts; "bundling" by corporate, union, or trade association PACs would be prohibited, as would independent spending by those same PACs; and "soft-money" contributions would have to be reported to the Federal Election Commission.

Both Democrats and Republicans praised the panel's efforts and set about to design their own reform packages. Democrats managed to get through the Senate Rules and Administration Committee (on a party line vote) a bill to reward Senate candidates who abided by state spending guidelines with discounts on postal rates and broadcast advertising. Those candidates who did not obey spending ceilings were to be penalized by a tax dollar compensation to their opponents for amounts in excess of the caps. The bill contained a provision for tax-paid television advertising, and one allowing exemptions to the spending caps for in-state fund raising. Vouchers would be provided to candidates equal to 20 percent of their general election spending ceiling to be used to buy blocks of television time. An additional amount (up to 25 per cent of the limit) over and above the established limits could be raised and spent so long as it was raised in small in-state contributions.

Republicans, meanwhile, had again renewed their opposition to any legislation which would impose spending limits. President Bush vowed to veto any legislation which came to his desk which included spending caps. Republicans wanted to re-focus the debate on the sources of contributions rather than spending . Consequently, they fashioned their proposal around an elimination of "special interest" PACs. The GOP measure would reduce to $500 the size of donations which candidates could accept from out of state sources and it would place new restrictions on unions and

other tax-exempt groups' fund raising activities. Parties would be allowed to buy large blocks of television time separate from any spending limits on monies spent on behalf of candidates. Also, Republicans charged that the Democratic plan, which would give participating candidates reduced mail rates, the lowest broadcast advertising rates, and free television time, would cost the taxpayers tens of millions of dollars in public funds.

In an effort to reach a bi-partisan consensus on the issue, Democratic leaders reached across the aisle to embrace the Republican idea of PAC elimination in Senate campaigns. But, in order to replace the money which would be lost, they added public financing to their plan for general election spending limits. Democrats also included a ban on the parties' use of soft money to fund get-out-the-vote and voter registration activities.

Both Republican and Democrat sponsored measures were introduced and the party leaders, Senators George Mitchell (D., ME) and Bob Dole (R., KS), attempted to negotiate a way to iron out differences. It soon became apparent that the two sides were too far apart on non-negotiable items and the reconciliation effort came apart.

Senate debate on the campaign finance reform legislation stretched over three days, and Republicans, realizing that there was no hope of passing their proposal, tried instead to offer it in pieces as amendments to the Democratic bill, S 137. Each amendment failed, with the exception of an amendment offered by Republican Senator Don Nickles of Oklahoma to impose tighter restrictions on incumbent use of the frank, and one offered by Senator Pete Domenici (R., NM) which limited contributions from individuals who did not live in a candidate's state to $250 per election. On August 1, 1990 the Senate passed the Democrat sponsored S 137 by a vote of 59-40. Five of the Senate's 45 Republicans voted for the bill; only one Senate Democrat voted to oppose the bill.

In its final form the bill would eliminate PACs, limit out-of-state contributions to $250, establish voluntary state-by-state spending ceilings, and offer participating campaigns low-cost mail and broadcast rates, some free television time, and additional public funds to counter opponents who exceeded the limits. Public financing would pay for the system of communication vouchers in the bill as well as the sums necessary to combat excessive opposition spending.

In the House, Democrats were engaged in intraparty disputes about the particulars of their proposal for reform. Many Democrats from urban areas feared that the proposed House spending limit of $550,000 for both primary and general elections combined would be too little once much of it was used up in a tough primary fight. In order to mollify these members, a $165,000 exception to the limit was added for candidates who had won their primaries with less than a 66.7 percent vote total and who faced major party general election competition.

For Democrats, the limitations on PAC contributions needed to be constructed in such a way as to ensure that the clout of labor union and trade association PACs which favored Democratic incumbents would be preserved. Accordingly, the House Democratic bill created a two-tier system of PAC contribution limits. PACs which took gifts of more than $240 a year from members (as did most corporate PACs which tended to donate to Republicans) would be barred from giving House candidates more than $1000 per election. Those PACs which received contributions in amounts less than $240 from members (such as labor PACs which gave almost exclusively to incumbent Democrats) would be able to contribute up to $5,000 per election- the existing limit.

House Republicans, meanwhile, were at work drafting their own package. Their bill would have limited all PAC contributions to $1,000, would have required that candidates raise at least half of their funds from within the district and would have

imposed no overall spending ceilings. Despite the fact that Republicans entertained no hope of success in seeing their proposals enacted - they were simply outnumbered by an overwhelming Democratic majority in the House - their proposal served notice to the House that the Republican position against spending limits was non-negotiable.

In the end, the House adopted the Democratic bill (HR 5400) on a vote of 255-155. Only 15 Republicans voted in favor of the bill. The conference committee to iron out the differences between the Senate and House passed bills never met in the 1990 session and campaign finance reform remained unfinished business.

CHAPTER FOUR

REFORM PROPOSALS 1991 -PRESENT

The 102nd Congress

Pressure from several sources to finish the work of campaign finance reform which had held so much promise in the last session of the previous Congress came to bear on the 102nd Congress as it opened in 1991. Common Cause, the public interest lobby organization, Ralph Nader's group Public Citizen, and the labor affiliated Citizen Action, all pushed for final reform action. Even the politically powerful American Association of Retired Persons joined the coalition to overhaul the law so as to provide for tax dollar replacement of PAC dollars.

The Keating Five investigation, and congressional hearings on the scandal, revealed that money had a very definite influence on politics. Charles Keating, Jr. had used his political fund-raising skills and strategic contributions to incumbent lawmakers to gain access to legislators in key committee assignments and to assemble some degree of clout in Washington. The hearings revealed the importance to Senators of raising large sums of money to conduct political campaigns and the degree to which at least an appearance of *quid pro quo* relationships between money and influence existed in Washington.

A bill sponsored by Oklahoma Democrat Senator David Boren was reported out of the Senate Rules and Administration Committee on March 20, 1991 which set the stage for another floor debate over campaign finance reform. The bill reported out of committee was essentially the same Senate bill which had passed in the 101st Congress in late 1990. In its consideration of S 3, the Boren measure, the Senate debate consumed seven days with numerous attempts by Republicans to amend the

bill being turned away. Republicans objected to the bill's provision for spending caps in Senate elections; once again labeling such limits as "incumbent protection" devices which would hamstring challengers who needed to outspend incumbents in order to win.

Because Democrats appeared solidly behind the spending limits idea, Republicans turned toward an attack on the bill's public financing provision. Calling such public financing "food stamps for politicians," Republicans sought to focus a wary public eye toward provision of taxpayer funds for political campaigns - something they thought the taxpaying public would balk at. The Republican point-man on this issue, Senator Mitch McConnell of Kentucky offered an amendment to the bill designed to strip it of its public financing and spending limits. The attempt was defeated on a 56-42 party line vote in which each party's leadership made it clear that the vote would be considered a measure of an individual's party loyalty.

After beating back numerous other amendment attempts by Republicans to kill public financing but leave spending limits alone (something which would have resulted in a law of dubious constitutionality given the *Buckley* ruling); to strip the national party conventions of public funds; and even to discontinue the public financing of presidential elections, the Senate passed S 3 on a party line vote, 56-42.

House action began in 1991 with a bill being written by a House Administration Committee task force. In a meeting with House Democrats prior to the bill's introduction to the floor, it became apparent that a significant number of them were reluctant to support the public financing of their reelection campaigns. Provisions in the bill would have provided up to $200,000 in public financing to House candidates. The cost was estimated to be some $75 million every two years. Forty-six conservative House Democrats signed a letter to the House Administration task force asking that the public financing provisions be dropped from the bill. They wanted,

instead, to offer 100 per cent tax credits for all individual contributions of $50 or less, contending that, although this was simply another form of public financing, it was much more politically palatable. Other House Democrats, those from rural and inner city poorer districts which lacked wealthy Democratic constituencies, objected to the bill's provision for an aggregate ceiling of $200,000 on PAC donations to House campaigns.

The bill which eventually was reported out of committee on a strict party line vote, 14-9, provided some political cover for Democrats worried about the political effects of supporting public financing by insuring that the bill on campaign finance reform did not actually raise the necessary money. That task would be left to a separate tax bill. The language of the reported bill simply stated that the money for public financing should come from limitations on the tax deduction organizations took for lobbying. Conservative Democrats also won wording in the bill which stood as code words for tax incentives for individual contributors; the bill required, "incentives for individuals to make voluntary contributions to the candidate of their choice."[43]

Following floor debate which lasted some five hours, the House approved the committee bill on a party line vote, 273-156. Only twelve conservative Democrats voted against the bill; only twenty-one Republicans were for it.

Without time left in the session to complete a conference committee resolution of the two bills S 3 and HR 3750, campaign finance reform would have to wait for completed congressional action until 1992.

The 1992 session of the 102nd Congress began with a whirlwind of activity surrounding the need to get the two campaign finance bills merged through a

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[43] Ibid., p.962.

conference committee compromise. A clear difference existed between the Senate vision of what should be done by way of reform and the vision of House members. Senators were generally less dependent on PAC money than were Representatives and therefore willing to pass the PAC ban which was in the Senate bill. House members, however, increasingly dependent on the large sums that PACs could, and did, donate to their campaigns were less than enthusiastic about the Senate bill's PAC ban. Many House Democrats openly opposed any conference report which would send back a bill which accepted that Senate language. As a consequence of this impasse between the House and Senate, conferees agreed early on that they would write a conference report which would allow each chamber to design its own rules regarding campaign financing. Hence, the House $200,000 aggregate limit on PAC donations remained for House elections. The matching fund system of public financing which the House had adopted would remain operational for House races while Senate campaigns would feature publicly financed vouchers to purchase television advertising.

Senators on the conference committee who had originally supported the Republican initiative, later incorporated into the passed Senate bill, to ban all PACs, began to fall away from that position. They offered a fallback provision which, rather than banning PAC activity in Senate campaigns, would allow PACs to contribute no more than an amount equal to 20 percent of the candidate's spending limit. Democrats had earlier advanced this as an option if the PAC ban were to be challenged in court and found to be an unconstitutional restriction on freedom of expression and association.

The conference report, S 3, which essentially adopted the rules established in both bills and applied them to each chamber accordingly, was quickly agreed to in the House on a vote of 259-165, some twenty-four votes short of the necessary two-thirds

required to override President Bush's threatened veto. The Senate approved the conference report by a vote of 58-42, eight votes shy of a veto-proof margin.

As expected President Bush vetoed the bill stating, "In addition to perpetuating the corrupting influence of special interests and the imbalance between challengers and incumbents, S 3 would limit political speech protected by the First Amendment and inevitably lead to a raid on the Treasury to pay for the act's elaborate scheme of public subsidies."[44] Campaign finance reform would have to wait until after the November elections for a determination of its viability. Democrats vowed to make Bush's "stealth veto" of S 3 an issue in the upcoming presidential campaign.

The Death of Campaign Finance Reform ? 1993-1994

With the election of Democrat Bill Clinton to the presidency in 1992, the push to enact new campaign finance reform measures appeared to have gotten over a major threshold. Unlike his predecessor, George Bush, President Bill Clinton announced his support for reform during the fall general election campaign and made it a high-priority item for his administration. Meetings between the new administration and congressional Democrats concluded with public pledges of cooperation on fashioning campaign legislation to put on the President's desk for his signature. "I might just die happy," said Senator David Boren (D., OK), a longtime advocate and sponsor of campaign finance reform.[45]

Soon afterwards, however, the old divisions within the Democratic party regarding spending limits and public financing resurfaced, leading many in the news media to

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[44] Ibid., p.963.
[45] Senator Boren quoted in Donovan, Beth. "Clinton Courts Fellow Democrats In Drive For Major Overhaul," Congressional Quarterly Weekly Report, v. 51, n.6, Feb. 6, 1993, p.250.

report on the inability of the Democrats to come together on the issues of campaign finance reform. Spending limits clearly made some incumbent Democrats uneasy. In 1992, House incumbents who had won with less than 55 percent of the vote had outspent their opponents by a margin of three to one, according to Federal Election Commission reports.[46] Proposals to limit PACs and their donations to congressional campaigns also worried some incumbent House and Senate Democrats. Political action committees had spent more than $180 million dollars in the 1992 election cycle with nearly $82.4 million of that total going to the campaign coffers of incumbent Democrats. If PAC contributions to all Democrats, incumbents and challengers, were to be considered the total PAC giving to Democrats in 1992 was some $116 million of the total $180 million - fully 64 percent of all PAC contributions went to Democratic candidates in 1992.[47]

Conservative Democrats also balked at the cost of providing public financing for federal campaigns - as much as $300 million per election cycle - in a time of budget constraints and deficits. How to sell public subsidization of congressional campaigns amidst budget cuts, and belt-tightening in government services, was a politically unpalatable question from which many incumbent Democrats shied away. The political feasibility of using public funds to finance congressional campaigns concerned many House Democrats. Rather than supporting use of public funds to finance a significant portion of federal election campaign costs, some Democrats backed the idea of providing discounted postal rates and broadcast time as a way of providing funding not nearly so visible and contentious as direct public subsidies.

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[46] Federal Election Commission press release, March 4, 1993. Also cited in Donovan, "Clinton Courts Fellow Democrats...", p.250.

[47] Figures are calculated from reports of the Federal Election Commission dated March 4, 1993, issued in the form of a public press release listing 1991-92 Financial Activity of All Senate and House Campaigns (January 1,1991 - December 31, 1992).

The Democrat's election analyst Mark Gersch told members, as they met to discuss legislative strategy for the 103rd Congress, that they could lose as many as 30 House seats in the 1994 elections[48] (prophetic, but an underestimation of some 30 seats as things turned out). This prospect made a number of Democrats wary of enacting reforms which might undermine their fund-raising advantage over challengers.

These concerns, and White House inability to put together a comprehensive package of campaign finance reform before the Senate Rules Committee began markup on campaign finance legislation, created a situation in which Senate Democrats simply approved a bill (S 3) which was identical to the one which President Bush had vetoed in 1992. That bill would have provided public funds for up to 33.3 percent of the spending limit for House candidates and 20 percent for Senate candidates. House candidates would be restricted from spending over $600,000, while such spending limits would vary for Senate candidates from $1.6 million to $8.9 million, depending on state population. The White House had indicated that it might consider proposing public funding of up to 50 percent of new general election spending limits.

The citizens lobby, Public Citizen, estimated that public financing of congressional campaigns at the 50 percent level would cost taxpayers $350 million every two years. The 1992 approach of S 3 would cost $209 million. The White House indicated that it was considering a new mechanism for funding the expanded public financing benefits by earmarking the receipts from a new tax on lobbying expenses. The Clinton administration estimated that this new tax on lobbying

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[48] Donovan, " Clinton Courts Fellow Democrats...", p.250.

(actually an elimination of the deduction which lobbying organizations could take for expenses related to lobbying activities) would bring in $978 million over five years.

The administration was also reportedly considering what to do about "soft money" in the context of reform. The issue was of considerable importance to Democrats and to President Clinton as the Clinton campaign in 1992, in conjunction with the Democratic National Committee, had raised record amounts of soft money contributions. Debate within the White House and the Democratic congressional delegation centered on how to limit soft money contributions to state and local parties while still protecting funds for grass-roots registration and get-out-the-vote activities.

But, the White House plan was not ready for unveiling by the time the Congress began its markup of new legislation and members were left to work out some proposals of their own. Senator Diane Feinstein stated that she intended to offer a floor amendment to S 3 to allow groups that do not lobby Congress to continue to bundle candidate contributions. The bill, S 3, would have outlawed the practice altogether. The amendment which Feinstein would offer was aimed at protecting EMILY's List, a non-connected issue PAC which bundled millions of dollars from member donations for issuance to Democratic women candidates who supported abortion rights, and other women's causes, in their 1992 campaigns. But concerns were raised by others that such an exemption might lead to a significant loophole in the law.

By late April of 1993, the Clinton administration was putting the finishing touches on its package of campaign finance reform. One of the areas of greatest contention in fashioning a plan which could garner the support of congressional leaders and Democratic National Party operatives was the issue of what to do about "soft money" contributions. Clearly this was an area of campaign finance which Democrats had used to their advantage in recent elections. It clearly had also become a major

loophole in existing campaign finance law as the dividing line between what constituted "hard" and "soft" contributions had become nearly invisible. Contributions for party "grass-roots" activities were not restricted and the definition of what constituted "grass roots, party building " activities had been open to expansive interpretation. Consequently, donors who would otherwise have surpassed the limits of legal direct contributions could channel vast sums of money into campaigns via the "soft-money" route. Democrats in the Senate wanted legislation which would cap aggregate individual contributions at $30,000 per year ($60,000 per two year election cycle) and would prohibit raising and spending soft money during federal general elections. The Democratic National Party Chair David Wilhelm argued for a vast increase in individual "hard money" contributions in exchange for prohibitions on soft money.

A deal being tested by the White House with congressional Democratic leaders looked like this:

> An individual could give an aggregate of $60,000 per election cycle. The Clinton proposal differs from S 3 in that it would establish separate $20,000 annual sublimits for contributions to the national party or state grass-roots campaigns, and a $20,000 two year sublimit for federal candidates.[49]

The sublimit structure would keep an individual from making maximum contributions to all three areas. Parties could still raise and spend money that exceeded federal limits if the money was transferred directly to state parties and used for state campaigns and administrative costs only. Also exempt were contributions which were targeted specifically for party building funds which supported construction costs and purchase or rent of party offices.

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[49] Beth Donovan, "Clinton Will Offer Plan Soon, But Deals Remain Up in Air," Congressional Quarterly Weekly Report, v.51, n.17, April 24, 1993, p. 1000.

The Clinton administration's campaign finance reform plan was announced on May 7, 1993. From the very beginning, it faced an uphill battle. In the Senate, five key Republicans had signed a letter, on the eve of the President's announcement, indicating their requirements for any campaign finance legislation. The letter demanded lowering of limits for PAC contributions, lower limits on out-of-state contributions, and similar rules for House and Senate campaigns. It also warned against using taxpayer money to finance federal campaigns. Three of the five signers had voted for the 1992 campaign finance bill which was vetoed by President Bush. These Republican Senators were crucial to the success of the legislation because of the likelihood that those who opposed campaign finance reform measures like those in the Clinton plan, would stage a filibuster of the bill once it reached the floor.

With 57 Democrats in the Senate, two of whom voted against the 1992 bill[50], it was crucial that Majority Leader George Mitchell pick up those five Republican votes in order to arrive at the necessary filibuster-proof majority.

Senate debate over the President's reform package was expected to be protracted, with both Democrats and Republicans planning to offer scores of amendments, and Republicans threatening to filibuster final passage. Prospects for swift action on campaign finance reform in the 103rd Congress were dim.

In the House, growing numbers of Democratic lawmakers were becoming increasingly unhappy with the public financing provisions of the legislation. Forty-seven House Democrats signed a letter to Speaker Tom Foley indicating their intention to oppose such funding. Growing House opposition to public financing was coupled with some House Democrats' uneasiness with the legislation's provision to lower the limits on PAC giving. Additionally, there was mounting concern in the

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[50] Those Senators were Richard Shelby of Alabama, and Ernest Hollings of South Carolina.

House that the Senate would adopt the language of the 1992 bill which had outlawed PAC contributions altogether. Fearing competitive challenges in the upcoming 1994 congressional mid-term elections, House Democrats were loathe to cut off the advantage in PAC fund-raising they had traditionally enjoyed.

Senate Republicans made it clear that, although they did not try to keep the legislation from coming to the floor for consideration via filibuster, they would not hesitate to block final passage if public financing provisions remained in the legislation. "If, at the end of the day, this bill still includes taxpayer funding of elections, I don't think Democrats will be able to invoke cloture," said Senator Mitch McConnell of Kentucky, the Republican floor leader on the bill.[51]

In a half-hearted effort to break the constitutional link between spending limits and public financing, established by the Supreme Court's 1976 ruling in *Buckley v. Valeo*, and thereby pick up the support of Senators and Representatives who were in favor of spending limits but who balked at the idea of using public funds to subsidize federal campaigns, the Senate accepted a sense of the Senate resolution, offered by South Carolina Democrat Senator Ernest Hollings, in favor of an constitutional amendment permitting the establishment of mandatory spending caps. The vote on the resolution produced 52 votes in favor of its adoption, 15 votes shy of what would be required to actually initiate such an amendment.

In the end, Senate Democrats and the White House understood that the only way to get the campaign finance bill out of a reluctant Senate, and hopefully into a conference with the House, assuming the House was able to pass a bill, was to gut it of its public financing provisions. In adopting an amendment which would replace substantial public funds with a new tax on the financial coffers of those congressional

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[51] Beth Donovan, "Delay, Controversey Certain As Senate Takes Up Plan," Congressional Quarterly Weekly Report, v. 51, n.21, May 22,1993, p. 1273.

campaigns not complying with spending limits (something of dubious constitutionality, sure to be challenged if enacted[52]) the stalemate in the debate over campaign finance reform was broken. But at what price?

The Senate had also insisted on including, as an amendment to the bill, an extension to House campaigns of a 1992 Senate bill provision prohibiting all contributions from PACs. This was clearly anathema to House Democrats. "We cannot pass a ban on all PAC funding," said House Majority Leader Richard Gephardt (D., MO).[53] But, it was part of the price of winning a Senate cloture vote to cut off debate on the bill and allow it to proceed to final passage. A vote on June 16, 1993 was 62-37 in favor of invoking cloture. The next day the Senate bill (S 3) was passed 60-38.

As passed, the Senate campaign finance bill would limit the amount that Senate candidates could spend on primary and general election campaigns in exchange for an exemption from the new tax on congressional campaign receipts. Further benefits of compliance with expenditure caps would be made available to candidates in their general election campaigns provided they had raised $250,000, or 5 percent of the general election spending limit, whichever was less, in contributions of $250 or less from state residents. Those benefits included postal and broadcast discounts, as well as subsidies to complying qualified candidates who faced an opponent choosing to exceed spending limits, or who were the target of opposition independent expenditures. Political action committee contributions would be eliminated and fund raising and spending by political parties in congressional campaigns would also be

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[52] See Beth Donovan, "A Constitutional Question", Congressional Quarterly Weekly Report, v.51, n.25, June 19, 1993, p.1539.
[53] Beth Donovan and Phil Kuntz, "Senate vs. House," Congressional Quarterly Weekly Report, v.51, n.25, June 19,1993, p.1533.

restricted. The Senate bill extended the PAC ban, and a ban on election year mass mailings under the congressional franking privilege, to the campaigns of House candidates. But the House would have its own bill to write.

"The notion that political action committees are some kind of an essential evil is flat-out wrong," said House Speaker Tom Foley (D., WA). "The royal road to fairness is public financing, and the fact that it is unpopular does not change its essential merit."[54] A large bloc of House Democrats were eager to include public financing in the House campaign finance reform bill being drafted by the party leadership. Yet, the Senate had had to discard it in order to pass a bill. Furthermore, many of those same Democrats in the House saw public funds as necessary to offset the increased restrictions on PAC contributions which appeared to be inevitable in any conference bill. House members would never agree to a total restriction on PACs (either in the drafting of separate House legislation or in conference), as had the Senate, but there was a resignation to the notion of some further scaling back of the PAC role in House campaigns if any campaign finance reform bill were to come out of the 103rd Congress.

The fact that the Senate legislation had already been approved by the Senate, and was awaiting separate House action on campaign finance reform in order to proceed to conference, weighed heavy in the minds of House bill drafters. Knowing that some of the important provisions of the Senate bill would not appear in any House drafted bill, the difficulty of writing legislation which would address the particular concerns of House members and yet be acceptable enough to potential Senate conferees so as not to result in conference committee gridlock, presented House leaders with a daunting task. House Majority Leader Gephardt, speaking of the demands of Senate

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[54] Ibid.

Republicans that any bill resulting from a House-Senate conference committee have the same rules for House and Senate campaigns, said, "If the Republicans in the Senate are saying that, we're not going to get a bill. We can't pass that."[55]

While House Democrats fretted about how to draft their version of campaign finance reform law, House Republicans beat them to the punch and offered a plan which was designed to accomplish two aims.[56] First, the House GOP plan was intended to make Republican challengers more competitive in election contests with Democratic incumbents. In order to effectuate that competition, Republicans proposed adoption of the Senate outright ban on political action committee contributions to all congressional campaigns. While such an outright ban was controversial within the rank and file House Republican membership, it was sold by the GOP leadership as being ripe with potential for crippling embarrassment for House Democrats. This would accomplish the second goal of the GOP plan. Knowing that they did not have the votes to enact a Republican initiative, House GOP leaders wished to announce their proposals before House Democrats in order to box those Democrats into a corner. By taking a position in favor of the PAC ban, the House GOP would isolate their Democratic counterparts as being protective of the PAC system. With the Senate having voted without dissent to add the PAC ban to its bill and, further, to extend that ban to House elections, and with House Republicans now announcing their support of that ban, House Democrats were the only group standing in the way of banning all PACs.

The question of whether or not such an outright ban of political action committees was constitutional under the First Amendment's guarantee of free association,

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[55] Ibid.

[56] Beth Donovan, "House GOP Plan Backs Ban on PAC Funds," Congressional Quarterly Weekly Report, v.51, n.42, October 23, 1993, p.2859.

presented its proponents with the problem of having to include in the bill a fallback plan should the courts decide to throw out the PAC ban. Accordingly, the House GOP leaders included the fallback provision of lowering the limit on amounts which PACs could contribute to House campaigns from the existing $5,000 limit to $1,000. The Senate passed bill (S 3) had also included such a fallback plan with respect to its PAC ban provision.

Also included in the House GOP plan was a requirement that all House candidates raise the majority of their campaign funds from individuals within their districts. Democrats countered that such a requirement would disadvantage women and minority candidates who have a harder time raising money in their districts and would discriminate against candidates who lived in districts which are predominantly inhabited by voters of another party.

Republicans featured, in their bill, a provision that would have allowed party committees to enhance the financing of challenger campaigns by contributing matching amounts to a challenger who faced an incumbent candidate who had amassed a substantial financial war chest. The provision clearly stood to benefit Republican challengers more so than Democrats since Republican party treasuries were so much better funded than Democratic ones.

Other provisions of the House Republican plan included: (1) A ban on all "soft money" funds used to influence federal elections, (2) Registered lobbyists and political action committees would not be allowed to continue bundling checks from individuals to give to candidates, (3) Contribution limits would be lifted for candidates facing wealthy opponents who spent more than $250,000 in personal funds in their own campaigns, and (4) Membership dues from labor unions could not be used for political purposes without the written permission of individual members.

House Democrats, meanwhile, were still engaged in behind-the-scenes caucus negotiations over just what to include, or omit, from their campaign finance draft bill. The difficulty of arriving at a satisfactory proposal was underscored by a participant in the talks who asked to remain anonymous stating, "An enormous number of people are not addressing the merits of the bill but their own political profiles. The process is maddening."[57]

The main issues of contention in the Democratic rank and file included the bill's price tag for its public financing provision, and whether or not to include a tax on contributions to candidates as one way to pay for federal funding. Concerns about the public cost to taxpayers of federal campaign financing prompted many House Democrats to propose sliding the public benefits available to qualifying candidates down from $200,000 to $100,000 for general election expenses. Some senior House Democrats, including caucus Chair Representative Steny Hoyer of Maryland, argued that the contributions tax was unconstitutional and should not be included in the bill. Other conservative Democrats, nevertheless, continued to press for a 35 percent tax on contributions which exceeded the spending limits, even if the tax on all contributions was excluded from consideration.

Another main issue, of course, centered on what should be done about PAC monies. Few House Democrats supported either the Senate or House GOP plan to eliminate the role of political action committees in their campaigns. But how to address the issue so it would be clear to the Senate that the House would not countenance such a ban remaining in any conference report, was more problematic. An aggregate PAC limit of $200,000 (one-third of the $600,000 spending limit),

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[57] Beth Donovan, "Democrats On Hold," Congressional Quarterly Weekly Report, v.51, n.42, October 23, 1993, p.2860.

applying to all House candidates whether or not they chose to comply with spending caps, was seen as the likely House language on the issue.

When House Democrats finally began markup on their campaign finance plan in the House Administration Committee on November 10, 1993, in the waning days of the congressional session, it was under the pall of a Republican sweep of major elections across the country. Although lacking in enthusiasm for campaign finance reform legislation passage prior to the 1994 congressional elections, House Democrats also felt that they could ill afford to look as though they were the group responsible for the obstruction of those reform efforts. Consequently, the House Administration Committee approved a Democratic version of the campaign finance bill (HR 3; H Rept. 103-375, Part 1) on a partisan 12-7 vote, finally sending a measure to the House floor for consideration. Under a massive House leadership engineered campaign, Democrats rallied to pass the bill in the House on a 255-175 largely partisan vote.

The House package included public funding, up to one-third of the spending limit of $600,000, for House candidates who chose to comply with those ceilings. Spending limits would be indexed for inflation beginning in 1993 and certain legal and administrative expenses would be exempt from inclusion under the caps. No provisions were included to increase public funds for candidates facing non-complying opponents. PAC contributions would remain capped at existing levels of $5,000 per election from any one PAC, but an aggregate limit of $200,000 (or one-third of the spending limit) was to be imposed. An additional one-third of the spending limit could be composed of contributions from individuals giving more than $200.

Unlike Senate bill S 3, the House bill, HR 3, would contain a provision whereby a candidate who had won a contested primary election by twenty percent or less would

become eligible for additional public matching funds. Both bills contained language increasing funds to candidates who faced substantial opposition independent spending. The House bill did not include any provision for funding the benefits it sought to authorize. The tax on contributions idea was dropped from the bill's final language. The Senate bill had repealed the tax exemption for campaign receipts and disallowed deductions for lobbying expenses, as a method of funding its Senate Campaign Fund. There was no inclusion of any such language specifying how revenue for the House Make Democracy Work Fund would be generated.[58] The Senate had passed legislation in which candidates choosing not to comply with spending ceilings would be subject to a new federal tax, equal to the highest corporate tax rate of 35 percent, on all campaign receipts. The House version contained no comparable provision.

With regard to bundling, House legislation corresponded to Senate bill S 3, with one significant exception: The Senate had prohibited all PACs from bundling; the House would outlaw the practice only for those PACs which were connected to corporations, labor unions, or groups which engaged in lobbying activities. PACs such as EMILY's List could continue to bundle member contributions for donation to selected candidates under the House bill's provisions.

Senate bill S 3 would require national, state, and local party committees to pay for all voter registration campaigns, get-out-the-vote drives, and campaign activity which promoted a political party rather than individual candidates (generic party activity), with "hard money" funds raised under federal guidelines. The House legislation would have permitted subordinate party committees, for instance state legislative

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[58] See "Campaign Finance Bills Compared," Congressional Quarterly Weekly Report, v.52, n.5, February 5, 1994, p.262(8) for a point by point comparison of the two bills S 3 and HR 3.

party committees, to use soft money for generic party activities. In most other important respects House and Senate language on restricting the use of soft money in federal campaigns was comparable. Both would have established new state party "grass roots" funds which could accept money raised in compliance with federal guidelines to fund generic party activities, voter registration efforts, and get out the vote drives, traditionally funded by soft money contributions. In the House bill PACs could contribute up to $15,000 to such state grass roots funds. The Senate bill contained a fallback provision, should its ban on PACs be ruled unconstitutional, allowing for the same PAC contribution to state grass roots funds.

With President Clinton committed to signing a new campaign finance bill, and with both the Senate and the House passing separate versions of campaign finance reform measures, the long road to reform of existing campaign finance law appeared to be finally arriving at its destination. It was not to be, however.

As the new congressional session began in 1994, President Clinton turned his attention to other matters, apparently convinced that the ball now lay in the court of the congressional conference committee to work out an acceptable compromise bill which he would sign. Even though the likely legislation would not much resemble the proposal which the President had announced on that sunny day in early May of 1993, Clinton was publicly committed to signing new campaign finance law. Congress only had to get it to his desk.

Democrats in the House and Senate were badly divided over the bill. Democratic party leaders spent a great deal of time and energy trying to fashion a back room compromise which could gain support in both chambers. Just as it appeared that Democratic leaders were ready to stitch together a compromise which could attract sufficient Democratic support in both chambers, it became apparent that the deal worked out amongst the Democrats could not get Republican votes. As a result, the

campaign finance bill became one of the several bills which were filibustered to death by Senate Republicans in the closing days of the 1994 regular congressional session.

Republican Senators actually filibustered the normally routine motion to request a conference with the House to iron differences between the separate versions of the campaign finance bill. The Senate usually proceeds to conference with the House on a three-part motion, each part of that motion requiring a separate vote, that , first - disagrees with the House version of the bill, second, requests a conference, and third, authorizes the appointment of conferees. Typically, each part of the motion is agreed to by unanimous consent, but is technically subject to filibuster.[59] That is what Senate Republicans, under the floor leadership of Senator Mitch McConnell of Kentucky, decided to do. "Gridlock is making a comeback," said McConnell, "The American people are begging us to stop campaign finance."[60]

The Democratic cloture motion never stood a chance against a nearly unanimous Senate GOP. On each of several separate attempts by Democrats to invoke cloture over the Republican filibuster on the motion to request a conference committee, Democrats failed to achieve the required threshold of sixty votes, never coming closer than eight votes shy of the requirement. On the fourth such vote, again failing to get the needed sixty votes, Democratic congressional leaders proclaimed the campaign finance effort dead. House Speaker Tom Foley said of the unprecedented Senate filibuster of a routine conference request motion[61], "The worst case of obstruction by filibuster by any party that I've seen in my thirty years in Congress."[62]

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[59] The procedure is outlined in Beth Donovan, "Republicans Plan Filibusters, Imperiling Senate Schedule," Congressional Quarterly Weekly Report, v.52, September 24, 1994, p.2655.

[60] Ibid.

[61] Neither the Senate historian nor the parliamentarian could recall a precedent for

It was ironic, however, that there wasn't even a bill to fight over. Democratic leaders, by the time the request for conference motion was being filed in the Senate, still had not worked out agreement amongst themselves about how to resolve the differences in how to deal with PACs which separated the two bills. Even if such agreement had been reached, congressional staff and conferees would have had to put the finishing touches on a host of preliminary agreements worked out during the previous ten-month period of negotiations. Democrats liked to point the finger of blame at Republicans for the demise of campaign finance reform, when it had become all too painfully obvious that they themselves could not seem to reach final agreement on comprehensive reform measures. Both sides, Republican and Democrat alike, were playing the issue of campaign finance reform with an eye toward the upcoming congressional elections and each side was maneuvering to maximize political mileage out of the stalemate on the bill.

Campaign finance reform was dead at the close of the 103rd Congress; and with Republicans gaining control of both houses of the 104th Congress, the prospects for reviving the corpse of campaign finance reform in the near future are practically non-existent. It is no secret that the new Republican majorities have not chosen to elevate the issues of campaign finance reform to the top of their agenda for change. For now, and for the foreseeable future, the status quo system, established with passage of the 1971 FECA and its subsequent amendments of 1974, 1976 and 1979, stands, flaws, imperfections, unintended consequences, loopholes, and all, as the law of the land.

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the type of filibuster which took place in the Senate. It was, apparently, the first time that a routine motion to go to conference had been the subject of a cloture vote in the United States Senate. This fact is noted in Beth Donovan, "Republicans Plan Filibusters...", p.2655.

[62] Quoted in "Vote Studies," Congressional Quarterly Weekly Report, v.52, December 31, 1994, p.3647.

Commonalities

When one examines the history of campaign finance reform, as has been done here, one can not help but notice the commonality of the major issues, and proposals to address those issues, which has prevailed over the years. All of the proposals, from both Democratic and Republican perspectives, dealing with campaign finance reform have focused on three major issue areas: (1) Whether or not to require candidates for federal office to abide by mandated (or optional) spending limits, (2) Whether or not the campaign financing operations of political action committees ought to be curtailed or eliminated altogether, and (3) Whether or not it is desirable, or prudent, to extend the system of public financing currently operating in presidential campaigns, to all congressional campaigns. While many other issues, such as "soft money", independent expenditures, bundling, and the like have arisen over the years, these issues are all addressed within the context of seeking answers to the larger issues of spending ceilings, public financing and political action committees.

First, the issue of skyrocketing costs for federal campaigns has led to questions about what ought to be done to control those costs. Many proposals offered to effectuate such control by requiring candidates to adhere to spending limits in their campaigns for public office. The FECA of 1971 established spending limits for presidential campaigns as a requirement for participation in the public financing plan begun with adoption of the Presidential Election Campaign Fund Act in that same year. The 1974 FECA Amendments sought to extend the concept of spending limits to congressional campaigns; but those imposed limits were ruled unconstitutional by the United States Supreme Court in its 1976 *Buckley* decision. From that day to the present, reformers have continued to press forward with calls to institute spending caps in congressional campaigns, either in conjunction with public financing, as

sanctioned by the Court's ruling in *Buckley*, or by means of a constitutional amendment overriding that ruling.

What would the effects of spending ceilings in congressional campaigns be? How would electoral competition, and the democratic process, be affected by controlling spiraling costs through mandatory (or voluntary) spending limits? These are questions which require careful study before hasty enactment leads to unintended consequences requiring even further legislative or judicial correction. Accordingly, spending limits for congressional campaigns will be examined in the light of a quantitative analysis of campaign finance data collected by the Federal Election Commission for the years 1988 through 1994. A multiple regression analysis modeled after a study undertaken by Gary Jacobson[63] will attempt to shed some light on the consequences and desirability of establishing spending limits for congressional campaigns. The extent to which candidate (both incumbents and challengers) campaign spending affects election results will be examined. Relationships between campaign expenditures and percentage of the vote received will be analyzed in order to discover any possible effects of spending on election results. If a relationship between expenditures and votes received is found to exist, then it becomes crucial to understand the implications of efforts to limit the amounts which candidates may spend in their election efforts. If spending more means more votes, then what are the consequences of limiting campaign spending? If spending more does not translate into more votes, then limitations on candidate spending will have minimal or no effect on electoral results and ought to be adopted forthwith to control exorbitant costs.

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[63] Gary Jacobson, Money In Congressional Elections, New Haven and London: Yale University Press, 1980.

Second, questions surrounding the role of political action committees in the financing of congressional campaigns continue to imply all sorts of dastardly consequences resulting from "special interest undue influence." The proliferation of PACs in congressional campaigns, both in terms of growth in the numbers of committees and in terms of amounts given to congressional candidates (in total dollars and as a percentage of total campaign receipts), reveals the extent to which PACs have become important players in the present campaign finance arena. But, what exactly do PAC contributions buy? Are charges of a *quid pro quo* arrangement of campaign money in exchange for favorable legislative treatment, substantiated by the body of work examining this issue? What would an analysis of PAC contributions to congressional campaigns reveal about their effect on election results? Could one reasonably conclude that elections can be won or lost largely on the basis of amounts of PAC dollars received? Is there any evidence to suggest that political action committees enjoy any "undue influence" either on the outcomes of congressional campaigns, or on legislative outcomes following elections? What would be the political effects of banning PACs from participating in the electoral process or curtailing the extent to which such groups can continue to operate in those processes?

In order to seek answers to these questions it is necessary to review the literature with respect to PAC legislative influence and to examine PAC contribution data in an effort to understand their relationship to election results and legislative votes. Based upon such a review, one ought to be able to enunciate a clearer understanding of the nature of PAC "influence" in the democratic process. Examining the patterns of PAC giving in congressional campaigns will serve to illuminate the potential political consequences of either an outright PAC ban or a further limiting of PAC participation in campaign financing.

Third, hand in hand with the issue of spending limits is the question of the desirability of extending public financing into congressional campaigns. Many reform proposals examined above have included just such an extension. Republican lawmakers have been vehemently opposed to using public funds to finance political campaigns, calling any such plan "food stamps for politicians." Many Democrats and citizen watchdog groups, such as Common Cause and Public Citizen, have argued in favor of using public funds to finance congressional campaigns, calling it the "surest road to fairness." Proponents point to the relative success of the system as it has applied to presidential campaigns and say that the same success could be achieved with public financing in campaigns for Congress. Opponents point to the enormous costs of taxpayer funds which would be required to finance any system of public financing, and say that it would be both unwise and imprudent to subsidize political campaigns in an era of budget cuts and deficits.

What are the costs involved in proposals to extend the public financing system to all congressional campaigns? What are the philosophical and political perspectives which are brought to bear in partisan discussions over the merits of public financing? Given those public costs, political considerations and public perceptions, what is the likelihood of seeing public financing extended to congressional campaigns? An analysis of the health of the current system of public financing for presidential elections, the Presidential Election Campaign Fund income-tax checkoff procedure, and the feasibility and constitutionality of some of the more popular proposals for financing the public funds benefits to congressional candidates, will serve to illuminate the probability of public financing in congressional campaigns being realized.

CHAPTER FIVE

SPENDING CEILINGS

After World War II, the costs of running for Congress and for the presidency rose ever higher with each successive federal election cycle. Spending in Senate races reached into the millions of dollars and contests for many House seats witnessed spending into the hundreds of thousands of dollars. As the costs associated with those campaigns and the amounts spent by all candidates for federal office soared, candidates turned to wealthy individuals, business and labor unions and other "special interest" organizations for help in securing the requisite funding. Money, and lots of it, became crucial to the successful campaign to a degree never before seen. The purported influence of large contributors, in the election process and in matters of public policy following elections, grew accordingly. But, to the extent to which candidates and their campaign organizations were not required to disclose the details, or even the actual amounts, of contributions to their election efforts, the public remained essentially "in-the-dark."

Until the 1971 FECA, the basic law which had governed the financial activities of federal campaigns, regulating spending and requiring disclosure, was the ineffective and outdated Corrupt Practices Act of 1925. The Act set a spending maximum of $25,000 for Senate campaigns and $10,000 for campaigns for the U.S. House of Representatives. It was largely ignored and there existed no governmental authority for enforcement. Candidates simply chose to report only those expenses which they wished to report, often providing little revealing information about the actual amounts and sources of campaign funds received and expenses incurred. All

candidates for the U.S. Senate reported spending only $8.5 million in 1968.[64] But, as figures filed after congressional passage of the 1971 FECA would show, this report of $8.5 million was, in all likelihood, quite inaccurate. The comprehensive disclosure requirements of the 1971 FECA, and its subsequent amendments, revealed that congressional candidates (Senate and House candidates combined) had spent approximately $90 million in 1972, $140 million in 1976, and almost $200 million in 1978.[65]

In the aftermath of Watergate, a scandal of governmental corruption in general, and money in politics in particular, the significance of money's role in the federal electoral processes became glaringly apparent. Investigations into the scandals surrounding the Watergate affair revealed specific violations of campaign contribution and spending laws, and violations of other criminal laws which were facilitated by the availability of seemingly unlimited amounts of unregulated campaign contributions. Although Congress had seen fit to begin to reform the manner in which campaign contributions were collected, reported, and spent in enacting the 1971 FECA, Watergate revelations spurred an angry public, and a worried Congress, to demand stronger campaign finance legislation. The Federal Election Campaign Act was therefore significantly expanded and strengthened in subsequent amending legislation in 1974, 1976, and 1979. It is as a result of the FECA, and its requirement of the submission to the Federal Election Commission of detailed campaign financial reports, that we now are able to see the extent to which money plays a significant role in federal congressional elections. According to Larry Sabato, the new campaign finance laws had five objectives:

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[64]"Campaign Financing", p.93.
[65] Ibid.

> (1) to reduce the impact of "big money" and the influence of large contributors; (2) to eliminate, as far as practicable, fraud and deception in campaign finance; (3) to strengthen the position of the political parties; (4) to encourage candidates to cast their financial net widely, increasing participation in campaigns by broad-based appeals rather than simply relying on the gifts of a few; and (5) to enable people from all economic levels to seek public office, minimizing the importance of personal wealth.[66]

From the evidence of congressional campaign spending in election cycles since enactment of the FECA and its amendments, the means established in the legislation to accomplish the objectives outlined above - those means being, limitations on campaign spending, public financing of federal candidates' campaigns, and full disclosure of amounts and sources of contributions and campaign expenditures - have either been weakened or eliminated. In any case, federal campaign finance laws have not lived up to original expectations.

In 1976, the United States Supreme Court, in its *Buckley* decision, had upheld the legality of spending ceilings for presidential campaigns precisely because those ceilings were imposed in conjunction with a presidential candidate's voluntary acceptance of public financing. Absent a provision for the extension of some plan of public financing to congressional campaigns, spending ceilings can not legally be imposed in congressional campaigns. However, calls for additional campaign finance reform measures have focused on getting a hold on the reins of runaway campaign costs. The costs and expenditures associated with present day congressional campaigns have continued to rise precipitously. An analysis of the

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[66] Larry Sabato. The Rise of Political Consultants, New York: Basic Books, Inc., 1981, p.276.

financial activity of all congressional campaigns from 1971 to 1992 reveals that the costs of those campaigns have increased sharply.[67]

Table 1

Congressional Campaign Expenditures 1971-1992 (in millions)

Election Cycle	Total Costs	% Increase
1971-1972	77.3	
1973-1974	88.2	14
1975-1976	115.5	31
1977-1978	194.8	69
1979-1980	239	23
1981-1982	342.4	43
1983-1984	374.1	9
1985-1986	450.9	21
1987-1988	459	2
1989-1990	446.3	-3
1991-1992	678	52

Source: Financing Politics

While Table 1 clearly shows a trend of sharply rising costs in congressional campaigns, it is interesting to note that spending in congressional campaigns actually showed a decrease in the 1990 election cycle, only to drastically rise again in 1992. The percentage increase in spending column of Table 1 reveals that congressional campaign spending has steadily increased (except for the 1990 cycle) by margins from as low as two percent in the 1987-88 cycle to highs of 69 percent in 1977-78 and 52 percent in 1991-92.

It is important to note that the increases reported in Table 1 do not take inflation rates into account. The figures in Table 1 are in actual (not constant) dollars, and if inflation rates had been taken into consideration the increases would not be so stark. While there is no question that rising inflation has contributed to the rising levels of campaign spending, it can not be said to fully account for the precipitous ascent of

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[67] Figures are from Herbert Alexander. Financing Politics: Money, Elections, and Political Reform, 4th ed., Washington D.C.: Congressional Quarterly, Inc., 1992, p.118, and Federal Election Commission press release reports dated October 31, 1989, December 10, 1991, and March 4, 1993.

overall campaign expenditures. Spending is on the rise in modern congressional campaigns, and the most recent round of congressional mid-term elections is no exception. Indeed, campaigning for Congress has increasingly become the province of the individually wealthy who can afford to take time out from their private lives to campaign for office.

Congressional campaign spending rose by 52 percent, from $446.3 million in the 1989-90 cycle to $678 million in 1992. According to a Federal Election Commission review of campaign finance reports covering financial activity from January 1, 1993 through November 28, 1994, total congressional campaign spending had risen to $693.5 million for the 1993-94 cycle.[68] This represented an increase of two percent (to November 28,1994) over the 1992 level. Of the total spending activity, expenditures by the winning House and Senate candidates for the election cycles 1975-76 through 1993-1994 (to November 28,1994) were as follows:

Table 2

Total Spending of Winning Senate and House Candidates 1975-1992

Election Cycle	Senate	House
1975-76	20.1	38
1977-78	42.3	55.6
1979-80	40	78
1981-82	68.2	114.7
1983-84	97.5	127
1985-86	104.3	154.9
1987-88	123.6	171
1989-90	115.4	179.1
1991-92	124.3	239.8
1993-94	144.2	220.7

Source: Federal Election Commission[69] (figures in millions of dollars)

Again, the trend is clearly manifest - costs are rising with each successive election cycle for both House and Senate winning candidates.

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[68] Federal Election Commission press release dated December 22, 1994.

[69] Federal Election Commission reports dated March 4,1993 and December 22,1994.

Figure 1

Total Spending By Winning House and Senate Candidates
(Ten Election Cycles 1975-1994)

(Data from Table 2 above used to generate line graphs of winner's total spending)

Examination of the line graphs in Figure 1 reveals that total spending for congressional winners has been rising with each election cycle. Except for the decrease in Senate winner's spending which occurred in the 1990 (#8) cycle (consistent with the overall trends in Table 1), Senate winners have spent increasingly more money to win their races. House winners have also spent consistently more to win election. Although the line graph of Figure 1 and the House data in Table 2 reveal a decrease in total spending for House winners in the election cycle ending in 1994 (#10), it remains to be seen if this represents a downward turn in the overall trend of spending or merely a one-time aberration.

The point illustrated here is that increasing sums of money are being spent by congressional candidates in the aggregate (winners and losers combined); and, in order to win election to Congress, candidates have felt compelled to spend ever greater sums.

To what extent does candidate spending determine the results of elections for congressional office? Has the role of money in elections grown so large that we can reliably predict who will win a given election simply by knowing who will spend

what? Does what a candidate spends have a significant effect on the percentage of vote received? Should campaign finance law be further amended to mandate ceilings on the amounts that candidates can spend in their election campaigns, whether such mandated limits require a constitutional amendment (in light of the *Buckley* ruling) or are imposed in conjunction with public financing? These are all questions which relate to current efforts to reform federal campaign finance policy. Many of the concerns of those who advocate policy revisions in campaign finance reflect a desire to impose ceilings on the amounts that can be spent in congressional races. It is argued that the rapid and steady increases in spending by candidates for federal office should not be allowed to continue unabated. The increasing expenditures associated with a run for public office, it is argued, have effectively narrowed the range of possible candidates down to only those who are either personally wealthy or are beholden to special interests through their increased reliance on interest group (PAC) monies. If this is so, then the original reform objective referred to by Dr. Sabato as "enabling people from all economic levels to seek public office, minimizing the importance of personal wealth," has been lost.

To illustrate the degree to which large fortunes have come to play an increasingly important role in today's federal elections, advocates of spending ceilings need only point to the examples of Senator Herbert Kohl of Wisconsin, who spent $6.5 million dollars of his own money to win re-election to the Senate in 1994, and Michael Huffington of California who spent an astounding $27.8 million dollars of his personal fortune on his failed bid to win a California Senate seat in 1994.[70] Huffington had spent some $5 million of his own money on his successful House bid in 1992. That all citizens are not meaningfully able to run for public office is

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[70] Figures are from Federal Election Commission public press release dated December 22, 1994.

demonstrated by the exorbitant costs of campaigns for federal office. Jamin Raskin and John Bonifaz have argued that the current regime of campaign finance has led to a situation in which elected officials are compelled to spend a significant portion of their time in office pursuing the requisite funds to finance their next election rather than using that time more productively doing the public's business. It has also created what they call the "wealth primary." This wealth primary is "...terribly costly, ...and wastes extraordinary amounts of precious time that all candidates should spend debating public issues and that incumbent officials should spend on their public responsibilities...The exorbitant costs of campaigns for federal office have placed candidacy far beyond the means not only of the poor, but also of ordinary working people."[71] Raskin and Bonifaz cite statistics from a database maintained by the Center for Responsive Politics to buttress their assertions.

> A winning campaign for the U.S. House of Representatives in 1992 cost, on average, $543,000, and the average rose to $730,000 in what can be deemed close races. Forty-three House candidates each spent more than $1 million on his or her campaign in 1992. Meanwhile, a winning campaign for the U.S. Senate cost, on average, $3.9 million. The top five Senate spenders in 1992 spent between $6 and $10 million.[72]

The authors go on to make the point that the high costs of modern congressional campaigns would be irrelevant to the openness of the electoral process if the amount of money spent bore no relation to a candidate's likelihood of electoral success. If more money did not correlate with winning elections, or did not at least provide a meaningfully competitive chance, then it could not be said that greater costs

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[71] Jamin Raskin and John Bonifaz, "The Constitutional Imperative and Practical Superiority of Democratically Financed Elections," Columbia Law Review, v.94, n.4, May 1994, p.1174.
[72] Ibid.

(spending) impeded the democratic process. But, Raskin and Bonifaz state that the candidates who spend the most money are consistently the most likely to win.

> In 388 of 435 House races in 1992, the candidate who spent the most money won. In thirty-six Senate races, thirty-one of the winners outspent their opponents, and twenty-four of them did so by a margin of two-to-one or more. It is, of course, possible that election winners tend to be fundraising champions simply because they are more popular and more people want to give them money. If this were so, money would not play a decisive role in determining the outcome of election races. But, we have found that it is the amount of campaign money received which is correlated with victory, not the number of campaign contributions - the far more likely barometer of candidate popularity. The fact is that the total amount of money raised, even if from a small number of wealthy sources, makes a crucial difference in contemporary electoral politics.[73]

In some expansive explanatory footnotes to their discussion of campaign finance and their view of the current system's perpetuation of a "wealth primary" for meaningful candidacy, Raskin and Bonifaz restate their evidence to make their argument clearer.

> To restate the figures just cited, 89% of all House winners outspent their opponents, and 86% of all Senate winners outspent their opponents (388 of 435 House races and 31 of 36 Senate races). Yet the vast majority (77%) of all money raised in House and Senate races in 1992 came from less than one percent of the nation's population in amounts of $200 or more. The support of a wealthy one percent of the population cannot serve as a fair measure of a candidate's popularity with the overall electorate. These numbers also show that the amount of money available to a candidate frequently determines the outcome of an election. The statistics indicate that a candidate who receives a higher number of contributions than her opponent but loses in the overall money chase (i.e. if many of her contributions come from small donors) will still most likely lose. The key factor is the total amount of money raised, not the total number of contributions.[74]

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[73] Ibid., p.1175-76.

[74] Footnote #49, p.1175-76, in Raskin and Bonifaz.

Spending limits proponents argue that by controlling spending in political campaigns (either in conjunction with public financing proposals, via constitutional amendment absent public financing, and/or limitations on aggregate PAC contributions to any single campaign) the electoral process can be opened up to allow greater participation for all those who wish to seek election to public office. The imposition of spending limits would provide more choice - in terms of eliminating a significant financial restriction for potential candidates - to the electorate. In short, the process would become more democratic.[75]

Republican and other critics of spending caps argue precisely the opposite, taking the position that spending ceilings would hinder rather than foster competitiveness in congressional elections. They argue that spending ceilings amount to little more than "incumbent protection" programs since it is felt that challengers must spend greater amounts than incumbents in order to overcome incumbent name recognition, and other, advantages. Therefore, any expenditure restrictions work to further the advantages of incumbency by limiting the ability of challengers to spend sufficient sums to gain the necessary degree of recognition. Rather than opening up the electoral process by fostering real competition, expenditure limits would simply and unfairly restrict meaningful challenger candidacies.

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[75] Arguments for the imposition of spending limits in conjunction with public financing and/or limits on aggregate PAC contributions are provided in Fred Wertheimer, "The PAC Phenomenon in American Politics," Arizona Law Review, v.22, n.2, 1980, p.603-26, and Candice J. Nelson and David Maglesby, "Congress and Campaign Money: The Prospects for Reform," The Brookings Review, Spring 1989, p.34-41. Jamin Raskin and John Bonifaz argue quite persuasively for limiting spending via total public financing of congressional campaigns in "The Constitutional Imperative and Practical Superiority of Democratically Financed Elections," Columbia Law Review, v.94, n.4, May 1994, p. 1160-1203.

It is, perhaps, paradoxical that some Democratic incumbents, as we have seen, have also resisted efforts to adopt reform proposals advocating spending ceilings. Those Democratic opponents have not been receptive to the idea of spending ceilings largely out of the fear of competition. They have argued within the Democratic congressional caucuses that spending ceilings would hurt their chances for re-election since they need to spend ever greater sums to combat competitive primary challenges and maintain their general election competitive edge. It is their feeling that strong primary challenges detract from their institutional incumbent advantages by calling attention to their records and by turning the issue of incumbency on its head making it a disadvantage rather than an advantage. Any imposition of spending ceilings in these circumstances, it is argued, work to hamper an incumbent's ability to combat strong challengers.

In order to responsibly address a policy of campaign finance reform which includes spending limits proposals, it is necessary to examine the effects of expenditures on election results. Does a candidate's level of spending have a significant effect on his/her eventual share of the vote? Is the evidence which Raskin and Bonifaz cite validated by more rigorous quantitative analysis of aggregate campaign finance data? Is any possible effect more significant for incumbents or challengers; and to what extent would any difference in effect between incumbents and challengers shed light on the wisdom of reform proposals advocating expenditure ceilings?

With the availability of congressional campaign expenditure figures from the Federal Election Commission, made possible by the public disclosure requirements of the FECA, political scientists have begun to examine the role of money in congressional elections (Jacobson 1980, Maisel and Cooper 1981). In his 1980 study entitled Money in Congressional Elections, political scientist Gary C. Jacobson

concluded that, "congressional elections are affected much more by what challengers spend than by what incumbents spend. The more spending by all candidates, the better challengers are likely to do."[76] His conclusions were reached through the application of a multiple regression model of analysis with the equation:

$$CV = a + b\text{-}1(\ln CEPV) + b\text{-}2(\ln IEPV) + b\text{-}3(P) + b\text{-}4(\ln VAP) + e$$

where: CV = challenger's vote percentage,
lnCEPV = natural log of the challenger's expenditures, cents per voting age individual,
lnIEPV = natural log of the incumbent's expenditures, cents per voting age individual,
lnVAP = natural log of the voting age population of the state, thousands,
P = challenger's party (1 if Democratic, 0 if Republican)[77]

The challenger's share of the vote was taken to be a function of what he/she spends, what his/her opponent (the incumbent) spends, party affiliation, and the voting age population of the state. Jacobson noted that the same equation with observations on incumbents - incumbent's vote percentage as the dependent variable - "would generate estimates which exactly mirror those derived from this model; either one would support the same substantive conclusions."[78]

Jacobson examined U.S. Senate elections in the years 1972, 1974, and 1976, and using his regression model on the campaign finance data collected for each of those years, was able to reach conclusions about the effects of campaign spending in Senate elections. He also applied the model to House campaign spending for the same periods and those results mirrored the conclusions reached for Senate campaigns. Jacobson's Senate results were as follows:

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[76] Gary C. Jacobson, Money in Congressional Elections, New Haven and London: Yale University Press, 1980, p.219.
[77] Ibid., p.43.
[78] Ibid., p.39.

Table 3*

Effects of Campaign Spending in Senate Elections 1972-76

	Regression Coefficient	t-ratio	Standardized Regression Coefficient	
1972 CV=a	16.5			
b1 lnCEPV	6.29	4.79	.88	
b2 lnIEPV	-3.98	-2.36	-.40	
b3 P	2.55	.89	.14	
b4 ln VAP	2.88	1.93	.33	
(N=25)				r2=.55
1974 CV=a	24.4			
b1 lnCEPV	3.40	2.96	.70	
b2 lnIEPV	-.14	-.06	-.02	
b3 P	8.26	5.12	.55	
b4 ln VAP	1.03	.75	.15	
(N=22)				r2=.82
1976 CV=a	-18.4			
b1 lnCEPV	7.42	5.20	.97	
b2 lnIEPV	.67	.60	.10	
b3 P	.51	.16	.02	
b4 lnVAP	5.37	3.57	.60	
(N=23)				r2=.70

*from Gary C. Jacobson, Money in Congressional Elections, p.44.

Expenditures were divided by the voting age population of the states to control for wide divergence in state population numbers. Challenger and incumbent expenditures were entered as separate variables because their coefficients were expected to be quite different. This was because it was hypothesized that money would be more important to challengers than incumbents in congressional elections. The amount spent by challengers was expected to have a greater effect on an election outcome than the amount spent by incumbents. Analysis of the data for the Senate elections examined clearly show that challenger spending had a statistically significant and greater effect on an election outcomes. Results for House elections likewise revealed a greater challenger spending effect. Jacobson chose the log form for his equation because it fit his data better than did the linear form. Jacobson indicates, however, that both the log and linear forms fit the data almost equally as

well ("...the *R squares* were identical for 1972 and 1974 with the linear form showing a better fit for 1976"[79]). The log form allows for taking into account the diminishing returns which must apply to candidate spending: no candidate can get more than 100 percent of the vote no matter how much he/she spends.

The current study attempts to apply the multiple regression model developed by Jacobson to Senate races in which there was an incumbent and a major party challenger for the election years 1988, 1990, 1992 and 1994.[80] This study differs from the Jacobson approach in that the Senate races for the indicated years are combined and examined in the aggregate, not for each individual year. Additionally, the linear form of this data is utilized rather than Jacobson's log form since the regression coefficients are more easily interpreted from the equation. Again, the hypothesis is that the amount spent by challengers has a greater impact than incumbent expenditures on the results of Senate elections that met the established criterion. Adopting the Jacobson model, with the addition of a variable for the percentage margin of victory by which the incumbent won his/her last election, and assuming a linear relationship, the following equation is arrived at:

$$CV = a + b\text{-}1\ (CEPV) + b\text{-}2\ (IEPV) + b\text{-}3\ (P) + b\text{-}4\ (VAP) + b\text{-}5\ (MV) + e$$

where: CV = challenger's percentage of the vote,
CEPV= challenger's expenditures, cents per voting age individual,
IEPV = incumbent's expenditures, cents per voting age individual,
P = challenger's party (1 if Democratic, 0 if Republican),
VAP = voting age population of the state, thousands,

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[79] Jacobson, p.40.

[80] Only those Senate races for the years examined in which there was an elected incumbent who was challenged by a major party candidate, and in which each candidate spent more than one dollar on his/her campaign, were included in the data. This criterion eliminated, for instance, the 1992 Indiana Senate race since Sen. Dan Coats was an appointed incumbent, and the 1990 Virginia Senate race because the Democratic challenger to Sen. John Warner reported spending no money on the campaign. No "open seat" races were included.

MV = incumbent's percentage margin of victory in his/her last race.

The party variable is included in the model since it is a possible indicator of partisan inequality with respect to the ability of the challenger to raise and spend money and thereby secure a greater percentage of the eventual vote. It could be hypothesized that being a Democrat has a significant effect on the eventual percentage of the vote received since there are more self-identified Democrats than Republicans in the electorate. Given the Republican advantage in terms of national party treasury funds, it may be hypothesized that party affiliation would play a significant role in a Republican candidate's ability to spend sufficient sums to realize an electoral advantage, or, at least, a competitive position, with respect to a Democratic opponent. But, since we are primarily concerned with the effects of campaign spending, this party variable serves principally as a control in this equation.

The margin of victory by which the incumbent had won a previous race for the Senate was hypothesized to be an important determinant of incumbent strength (or electoral popularity) and would therefore tend to have a detrimental effect on a challenger's ability to garner votes. The margin of victory variable is also included as an indicator (though imperfect) of an incumbent's name recognition advantage. The greater the incumbent's margin of victory in the previous race, the more a challenger would have to overcome by way of an incumbent's "popularity." If a significant relationship was found to exist between a candidate's previous margin of victory and present election outcomes, it might lend some support to the nervousness of those incumbent Democrats who faced strong competition in their last campaigns, thereby making them skittish about adopting spending ceilings in future election campaigns. The greater the margin of victory by which the incumbent had won his/her last race, the smaller the challenger's vote percentage would be expected for the current race - a negative relationship. In order to combat that incumbent advantage (should the

hypothesized relationship be validated), the argument could be made that spending caps would restrain a challenger's ability to do so. The regression equation would test these hypothesized relationships as well as that of the challenger's expenditures having the greater effect on election results (vote percentage received).

The data were collected from the following sources: (1) For the percentage of vote breakdowns of Senate election results in all years studied (1988, 1990, 1992, and 1994), the Almanac of American Politics, and Federal Election Commission press releases provided the pertinent data. (2) Likewise, expenditure totals were obtained from the same two sources. These total dollar figures, both incumbent and challenger totals for each separate race, were then divided by the voting age population of the states for the year in which the election was held, in order to arrive at the cents-per-voting-age-individual data. (3) The state voting age population numbers for the years 1988 and 1990 were gathered from The Book of the States 1992-93 Edition, while the 1992 figures were found in America Votes 20: A Handbook of Contemporary American Election Statistics. 1994's figures were obtained from estimates in the Statistical Abstract of the United States 1994, provided by the U.S. Bureau of the Census. (4) The candidate party affiliation and margins of victory variable values were obtained from relevant editions of The Almanac of American Politics.[81]

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[81]Michael Barone and Grant Ujifusa, Almanac of American Politics, 1982, 1984, 1986, 1988, 1990, 1992 and 1994 editions, Washington, D.C.: National Journal, Inc., 1983, 1985, 1987, 1989, 1991, 1993, 1995.

Federal Election Commission press releases dated October 31, 1989, December 10, 1991, March 4, 1993, and December 22, 1994.

The Book of the States 1992-93 Edition, Lexington, Ky.: Council of State Governments, 1994, p.281-282.

Elections Research Center, America Votes 20: A Handbook of Contemporary American Election Statistics, Washington, D.C.: Congressional Quarterly, Inc., 1993, p.9.

Bureau of Statistics, U.S. Dep't. of the Treasury, Statistical Abstract of the United States 1994, Washington, D.C.: Government Printing Office, 1994, p.289.

The multiple regression model, when run with the variable values collected, yielded the following equation:

$$CV = 36.9218 + .03884(CEPV) - .00290(IEPV) + .00584(P) + .0004(VAP) - .11356(MV)$$

Although some problems with the accuracy and reliability of the model for predictive purposes are apparent - the standard error of the estimate, for instance, is rather large (6.558) indicating an unacceptable predictive accuracy level of plus or minus approximately 13 percent when attempting to predict the challenger's vote percentage - the explanatory results (see Appendix 1 for multiple regression results) essentially support the hypothesis that the challenger's expenditures had a greater (and positive) effect on the percentage of the vote received than did incumbent's expenditures.

A scatterplot of the residuals versus predicted values of the dependent variable (challenger's percent of the vote) reveals the appropriate dispersion to indicate no problems with heteroscedasticity - the error terms appear to be randomly distributed and independent of one another. (See scatterplot accompanying regression results in Appendix 1). The Durbin-Watson statistic value achieved (2.075) is appropriate to insure against autocorrelation. The multiple correlation coefficient (R) value of .5565 could be seen to indicate a moderate linear relationship between the independent and dependent variables, but it does not indicate a strong linear relationship. Although there is undoubtedly a degree of multicollinearity in the independent variables, since it is readily agreed that there exist relationships between the independent variables in the model, the fact that that is expected and that it is taken into consideration when using the model to explain hypothesized relationships, is sufficient to guard against drawing too broad a conclusion as to the model's overall reliability. One fully expects that incumbent and challenger spending are related to one another. Most particularly, one would expect that incumbents faced with a

strong challenger spending campaign would feel compelled to spend greater amounts in response. Incumbent spending is seen to be reactive: it increases or decreases in response to challenger spending levels. One might also expect that Senate candidates in larger states (with greater numbers of potential voters) would spend more than candidates in smaller states. Accordingly there undoubtedly exists a relationship between the independent variables VAP (voting age population) and both CEPV and IEPV (challenger and incumbent expenditures, respectively). Since we are, however, interested strictly in the relationship between spending levels and votes received and are not attempting to extrapolate beyond that narrow focus to make definitive causal statements about what determines electoral success, concerns about the model's overall reliability are minimized. The limits of this particular model are acknowledged. As Jacobson notes regarding his findings:

> These findings...conform to theoretical expectations, but they cannot be accepted as definitive because they ignore one essential consideration...That is, money may flow to a candidate for the same reason that votes do; both variables - expenditures and votes - might be determined by a set of external factors. ...Or the relationship between expenditures and votes may be reciprocal. The expectation that a candidate will do well may bring campaign contributions. ...ordinary least squares (OLS) regressions...are inappropriate for estimating reciprocal relationships; a simultaneous equation system is required.[82]

Yet, it is important to note that Jacobson's simultaneous equations supported the conclusions reached with the OLS model.[83]

What is initially apparent from the coefficients obtained in the current study is the support evidenced for the direction of relationships which were originally

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[82] Jacobson, p.49-50.
[83] See Jacobson, Chapter 5, "The Effects of Campaign Spending: The Full Model," p.136-162.

hypothesized. The positive coefficient for the independent variable "challenger's expenditures per voter" (CEPV) lends support for the hypothesis that as a challenger's spending increases his/her percentage of the vote received also increases. The partial coefficient of .03884 for the variable CEPV with a standard error of .0082 yields a t-score value of 4.733 which is statistically significant even at the .01 level of significance. For each one-cent per voter increase in challenger spending there is a corresponding increase of better than one-third of one percent in votes received; each dollar per voter spent by the challenger corresponds to a nearly 4 percent share of the vote.

Although this may not appear to be very substantial, it must be viewed within the context of comparison to the revealed effects of incumbent spending. Incumbent spending appears to have no effect on a challenger's vote percentage, and consequently little effect on the eventual outcome in Senate races. There is clear support for the hypothesis that the level of a challenger's spending has a greater effect on the outcomes in U.S. Senate races than does spending by the incumbent. It is revealing that the incumbent's level of spending produces the expected negative coefficient, indicating that a challenger's share of the vote would decrease as the incumbent's spending rises and would be diminished by the partial coefficient factor of -.00289 which is associated with incumbent spending. But, that coefficient value is so small that the resulting t-score ratio of -.4067 approaches utter statistical insignificance. It is obvious that the amount an incumbent spends has little impact with regard to the eventual share of the vote that a challenger will receive.

Conversely, since an identical model equation which substituted incumbent's percentage of the vote (IV), for challenger's share (CV), as the dependent variable yielded the same basic results achieved when CV was dependent, it can be concluded that an incumbent's expenditures have comparatively little effect on his/her eventual

vote percentage. In fact, when an equation was run using IV as the dependent variable, and including the same independent variables used in the model with CV dependent, the results showed that the level of spending by the incumbent actually had a negative relationship to his/her share of the vote. It is also noteworthy, that in this equation, results showed, once again, that the amount spent by the challenger is the most significant factor in determining election outcomes. The challenger's spending was revealed to have a negative effect on an incumbent's share of the vote. The reverse (incumbent's spending having an effect on challenger share) was not demonstrated by the CV dependent model. (See Appendix 2 for the relevant results of the dependent incumbent vote share model.)

In both equations the party variable (P) was shown to be statistically insignificant and therefore no support for any hypotheses regarding partisan advantage was obtained. The independent variable incumbent's margin of victory in last Senate election (MV) is shown to be statistically significant at the .05 confidence interval (t-score -2.757) for the CV dependent model and consistent with the hypothesized negative relationship. In other words, a one-point increase in the incumbent's previous margin of victory will result in a corresponding decrease of the challenger's percent of the vote by the partial coefficient factor of -.11356. This would indicate that electoral popularity plays a significant role in election outcomes and would tend to lend support to the idea that challengers need to find ways to overcome a popular incumbent's recognition advantage. However, the same independent variable is not statistically significant at the .05 level in the IV dependent model, (t-score 1.911) indicating that incumbents cannot always rely on their previous popularity to give them an advantage.

Altogether, the changes in the independent variables in the regression models account for some 30 percent of the change in the dependent variable. The coefficient

of determination (R-squared) value of .31 for the CV dependent model, and .29 for the IV dependent equation, indicate that nearly 30 percent of the percentage of vote received by either an incumbent or a challenger for the Senate contests in 1988, 1990, 1992 and 1994, could be explained by the combination of independent variables in the model. In both instances, the significance of a challenger's spending was evident. The same could not be said, however, of an incumbent's campaign expenditures.

A much more sophisticated model is ultimately necessary to explain election results. A more complex model which might include a more perfect operationalization of a candidate's "recognition" factor, some measure of prior political experience, party (partisan) breakdown on the state or district level (an indicator of relative party strength), relative media market (TV advertising, etc.) costs, and other relevant variables, is undoubtedly required to explain both candidate spending levels and their relationship to electoral results. It is, likewise, indisputably true that any candidate's share of the vote can not simply be explained as a mere function of what his/her campaign spends, or other directly quantifiable factors. Some accounting for the various "intangibles" associated with a candidate's "likeability", or "electability", and other personal qualitative characteristics like integrity, sincerity, approachability, and the like, must surely be made in any effort to explain candidate electoral success. Perhaps a factor analysis, which might seek to explain candidate evaluation by an electorate in terms of party identification levels, ideological agreement, issue alignment, personal contact, participation levels and types, or consistent "exposure", could yield indices which may then be used in a more sophisticated regression model to explain either candidate vote shares, expenditure levels, or both.

It must be recognized that, although federal campaign spending has unquestionably risen over the years (recall Table 2, Figure 1), one must be careful in

interpreting too broadly from those graphic results. Inflation rates, consumer price indices, television and radio advertising rates, and the like, have also increased over the same time period. The increases in the costs for such campaign necessities as postal rates, paper and supplies, polling and professional campaign consultants, travel expenses, etc., have undoubtedly contributed to the rapidly rising costs of running for public office at any level. Increases in congressional campaign expenditures must be viewed in that context.

That notwithstanding, as the results of these regression models clearly demonstrate, congressional elections are affected much more by what challengers spend than by what incumbents spend. Money buys attention for lesser known challengers and provides them with the means for effectively communicating with an electorate to which they (challengers) are largely unknown. Any campaign finance reform proposal which calls for the imposition of spending limits ought to be examined carefully. On its surface it may appear to be an attractive proposal in its concerns over the "obscene" levels of spending in modern congressional campaigns. But, any reform which establishes spending limits without careful attention to the implications and consequences for electoral competition is shortsighted and perhaps even contrary to the professed aims of campaign finance reformers. Limits on expenditures would affect challengers much more than incumbents. In that regard, Republican critics are right. Given the results of the most recent round of congressional elections in November of 1994, past incumbent Democratic critics may see less support in these regression results for their contention that spending ceilings would damage their competitiveness *vis-a-vis* challengers, but they may seek some solace in the knowledge that such proposals did not pass when they last held congressional majority status.

Because challenger spending is a crucial element in determining his/her competitiveness, and even the eventual share of the vote, "...expenditure ceilings, in most circumstances, will favor incumbents and make it even more difficult for challengers to defeat entrenched legislators."[84] The average challenger begins a campaign at a serious disadvantage *vis-a-vis* the incumbent, in terms of name recognition and ability to raise the necessary funds to compete meaningfully. Large expenditures by challengers are usually necessary to compensate for this institutional incumbent advantage.

Political scientist Larry Sabato cautions that spending ceilings, which restrict individuals and PACs from giving directly to candidates after spending ceilings have been reached, will simply redirect monies, which would otherwise have gone to candidates, to independent spending efforts on behalf of, or in opposition to, certain campaigns.[85] With independent spending being the least accountable form of campaign contributions and expenditures, it may be wise to consider the probability that a reform with good intentions, like spending ceilings, might very well result in undesirable unintended consequences.

Sabato notes two additional concerns which must be addressed before enacting spending caps as part of any campaign finance reform. The first of these concerns the degree to which an imposition of ceilings would undermine respect for the campaign finance system. In his words:

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[84] Larry Sabato, PAC Power: Inside the World of Political Action Committees, New York: W.W. Norton & Co., 1990, p.197.
[85] Ibid.

> Inevitably, ceilings will lead to creative accounting practices and other methods that will have the effect of "stretching" the ceilings. This has already occurred at the presidential level. The effect is to undermine respect for the campaign finance system generally. Why build into the law artificial devices that almost unavoidably lead to barely legal cheating and encourage non-compliance?[86]

Secondly, Sabato argues that ceilings which have as a goal the reduction of special-interest influence on government, may actually increase the influence of already powerful groups which can make substantial campaign contributions early in the election season before any ceiling levels have been reached, thus effectively "freezing out" smaller groups which are less capital rich early in a given election cycle. Sabato concludes, "Since officeholders are especially likely to give access to those who have donated money to their election campaigns, spending ceilings may also have the unintended consequence of granting more access to the haves and less to the have-nots."[87]

To the extent that spending limits would effectively discourage competition, and therefore close-down, rather than open-up, the electoral process, they ought to be considered warily. Imposition of spending limits absent a careful and fair consideration of formulas necessary to guard against institutionalizing even further the advantages of incumbency is a bad idea. Spending ceilings, if they are to be considered at all, must be instituted in conjunction with public financing and constructed not in the interests of creating a level playing field (for leveling only serves to disadvantage challengers), but with an emphasis on establishing minimum levels of campaign financing to challengers, and in conjunction with reforms to limit the institutional advantages of incumbency (reforms such as curtailing the

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[86] Ibid.
[87] Ibid., p.198.

congressional frank) so that challengers can begin to conduct more meaningful, competitive campaigns.

Proposals to reform current campaign finance practices must be evaluated carefully with an eye toward discovering possible undesirable unintended consequences, lest the result of their adoption bring a "closing down" rather than an "opening up" of the democratic electoral processes. Despite all the good intentions which underlie proposals to impose spending limits on candidates for federal office - reduction in the skyrocketing costs of modern day campaigns, reducing the influence of "big money" contributors, making candidates and their campaigns (and elected officeholders once in office) spend more of their time debating the public's business (or doing the public's business) rather than spending that time seeking new and improved ways of raising campaign funds - imposing limits on what candidates can spend may, in fact, do more harm than good.

If the issue of rising campaign expenditures raises concerns, perhaps those concerns are more aptly connected to the sources of current private funds for modern congressional campaigns. Complaints about the levels of spending which have been attained in recent congressional campaigns are essentially complaints about the influence that large private contributions may have on the decisions of elected lawmakers. Complaints about the "undue influence" of interest group (PAC) money in congressional elections, or in congressional decision-making, are really objections to private financing. If complaints are raised about the continuation of unfettered campaign spending, that, too, is a feature of private funding. Accordingly, any investigation of campaign finance reform must examine the primary funding sources of current privately financed campaigns. Calls for an extension of public financing to congressional elections generate from a distrust of big-money influence in electoral and legislative processes. Therefore, it is necessary to identify the prevalent sources

of campaign "big-money" and to examine to what extent that money influences either election results or congressional decision making.

The next section will investigate the role of political action committees as primary sources of major donations to modern congressional campaigns. Although aggregate PAC funds are second to individual contributions in terms of actual amounts donated to congressional campaigns, the concern that those PAC funds represent concentrations of "interested money" given in expectation of some legislative reward is paramount in the minds of campaign finance reformers. The questions of whether or not *quid pro quo* relationships exist between PAC money and legislative votes, and whether or not PAC funds are crucial to electoral success, will be considered in order to reach rational conclusions as to the role of PACs in modern congressional campaigns and legislative decisions. A thorough analysis of the role of political action committees in modern congressional campaigns and legislative policy making is called for in order to determine whether PACs should be outlawed, or further limited (either in the aggregate amounts which individual candidates can accept from PACs or in the amounts which individual PACs can give to individual candidates or to all candidates), as sources for candidate finance.

CHAPTER SIX

POLITICAL ACTION COMMITTEES - WHAT DO PACS BUY?

Definitions

Before beginning an examination of political action committees, a definition is in order. Larry Sabato has stated that:

> ...a PAC is either the separate, segregated campaign fund of a sponsoring labor, business or trade organization, or the campaign fund of a group formed primarily or solely for the purpose of giving money to candidates. Party committees do not qualify as PACs; in this sense all PACs are "non-party", i.e., they are not formed by or directly connected to a political party even if all of their money is contributed to the candidates of a single party.[88]

Political action committees are often classified under the labels of the kind of organizations which generate them. Hence we see PACs referred to as (1) Corporate (business) PACs, (2) Labor PACs, (3) Trade/Membership/Health PACs, (4) Non-connected (independent) PACs, and, (5) Cooperative and Corporate Non-stock PACs (often grouped together in an "Other" category).

PACs can be grouped or categorized by a number of different identifiers. Lee Ann Elliott, a former Republican member of the Federal Election Commission, classifies all PACs into six sub-groups and four categories.[89] Group One PACs are those formed as an extension of the lobbying arm of any union, corporation, or trade association. This group constitutes the bulk of all PACs registered with the FEC in any given year. Group Two includes those PACs which have been formed as a matter

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[88] Ibid., p.7.

[89] The following classification scheme is one outlined by Elliott in "Political Action Committees: Precincts of the 80's," Arizona Law Review, 22, n.2, (1980) p.546-48.

of convenience, to deflect solicitation efforts by candidates directed at top union, corporate, or trade association executives toward political action committees formed expressly for the purpose of dealing with those solicitation efforts. This group does not often engage in a great deal of actual contribution activity. Group Three PACs are formed to support a particular piece of legislation on a specific policy issue, and are inherently temporary - they exist only so long as the legislation is being considered or until the timeliness of the issue has passed. The health care debate of 1993-94 witnessed the formation of many such PACs on all sides of the health care issue. Most have since disbanded in the wake of the failure of health care legislation in the 103rd Congress. Group Four contains those PACs which exist chiefly as symbols of prestige for executives or members of unions, corporations or trade associations. These PACs are seldom given either the necessary resources or attention from their parent organizations to be really effective political committees. They exist largely in name only. Group Five PACs have been instituted by independent citizen groups to attempt to effect a change in the ideological philosophy of the Congress. These PACs tend to have more longevity since they tend to espouse positions on many different issues, from their own unique perspectives, and tend to base their patterns of giving on a particular candidate's "rating".[90] These "non-connected" PACs have been among the fastest growing group of political action committees in recent years - second only to corporate PACs in number. Group Six is composed of PACs concerned about the electoral system and formed largely to

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[90] Many interest groups which maintain PACs as part of their lobbying effort assign scores to all congressional members (and candidates who desire to become members) based on their support for or against particular pieces of legislation in which the group has an interest. These scores are then used to determine a PAC's criteria for donations to a candidate's campaign. These "ratings" are also widely publicized so that other like-minded individuals and groups can tailor their donations and votes accordingly.

educate citizens as to the nature of the politics and to effect political participation. These PACs almost never engage in donating money to candidates for federal office.

In the same way that PACs can be classified according to their function, they can also be classified according to their patterns of giving: their "support focus."[91] Category One PACs send the bulk of their contributions to incumbents, congressional committee and subcommittee chairs, members of influential House and Senate committees, and members of both parties in leadership positions. Category One PACs tend to "play it safe" with their contributions. Category One contains the great bulk of all corporate, labor, and trade/ membership PACs. Those PACs in Category Two often become financially involved in open seat races hoping to elect someone to office whose philosophy or ideology coincides with that of the committee. Category Two PACs take greater risks with their contributions than PACs in the first category. Ideological, non-connected PACs fit this pattern of support, although any political action committees may, from time to time, focus their giving along ideological lines. Category Three PACs often support promising challengers, incumbents thought to be vulnerable, and candidates in open seat races. They take risks like PACs in Category Two, but those risks are more calculated. PACs in this category must have sufficient resources of money, time, skill and energy to devote to political campaigns in order to achieve success. Established independent PACs seem to fit in this category. Category Four political committees will support candidates who may not have a realistic chance of winning in their first election but show promise as "up-and-coming" candidates. These PACs are committed to a more long-term development of candidates and issues. They may also contribute to these promising newcomers in

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[91] Elliott, p. 548.

order to grab the attention of the incumbent forcing his/her attention back toward the home district and its particular interests.

None of these groupings or categories is mutually exclusive; and an individual PAC may exhibit a combination of motives and focuses in any given election season and may change emphasis from year to year, or even from race to race. Since not all PACs are the same in terms of size, resources, membership, internal organization and management, methods of communication and solicitation, and patterns of contributing, they can be grouped on the basis of any one, or a combination of characteristics.[92]

Any examination of political action committees must appreciate the widely divergent community of PACs. That community is not a homogenous, monolithic, coordinated entity, but, rather, a multi-varied and disparate, disjointed "stew" of competing interests. PACs do sometimes act in concert with one another to effect changes in legislation, or to attempt to affect election outcomes which they feel are in their own best interests, but the majority of PAC activity would seem to be focused in the interests of individual PACs, often in competition with one another. Political scientist Michael Parenti, however, cautions against drawing any firm conclusions as to PAC diversity and counterbalance.

> It is claimed that since PACs are so numerous and diverse, they cancel each other out. To be sure, sometimes they do conflict, and organized labor's PACs certainly represent a countervailing (albeit weaker) force against the corporate tide. But more often, rather than canceling each other out, corporate PACs move in the same direction with cumulative impact. Meanwhile, the homeless, the hungry, the unemployed, the

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[92] Frank J. Sorauf, for example, in "Political Action Committees in American Politics", in What Price PACs? , New York: The Twentieth Century Fund, 1984, identifies what he sees as: "The four ideal types of PACs - the money channelers, the quasi-parties, the issue-brokers, and the personal PACs...defined not by internal or organizational characteristics but by their external links to other political activities."

> unattended sick, the migrant workers, the small farmers - and on most issues, the ordinary citizens and consumers - have no PAC connections, certainly none with the muscle of the corporate PACs.[93]

The extent to which PACs represent and exacerbate certain inequalities in the electoral context may indicate at least an appearance of, if not "undue influence," perhaps an overrepresentation of corporate and wealthy interests *vis-a-vis* "ordinary citizens and consumers." To what degree can that claim be supported by empirical evidence? This is the central question of the effort to substantiate the rationale behind reform proposals designed either to eliminate PACs altogether, or to further limit PAC aggregate or individual donations to congressional campaigns. Accordingly, it is the focus of the next few sections.

The Purported Problem

It must be made clear at the outset, that the ultimate source of all political contributions is the individual. Whether the individual chooses to give directly to a candidate or chooses, instead, to give to a PAC or interest group, contributions represent individual political participation. In the age of the "new politics," with traditional grass-roots activities virtually non-existent, donating money to causes and candidates is, perhaps, the only readily accessible means of participation (other than voting) available to individual citizens which does not require the expenditure of a great deal of time and energy, or even money. By combining their relatively small individual contributions with hundreds or thousands of others, all for the same interest group, PAC, or candidate, American contributors implicitly recognize the "strength-in-numbers" economies of scale in political finance. Americans apparently

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[93] Michael Parenti, Democracy for the Few, 5th edition, New York: St. Martin's Press, 1988, p.217.

feel that the interest group, or PAC, armed with the contributions from thousands of individual contributors, will be able to represent their interests more effectively than would be the case if individuals had to fend for themselves in isolation.

Contributing to congressional campaigns as a form of political participation may indeed be a good thing. However, too much money coming from one source is often viewed negatively. It raises concerns that those who give much expect much in return. Although PACs are limited in what they may give to any single candidate ($5,000 per election), there is no limit on either the aggregate amounts which PACs may donate to many different candidates or on the amounts which an individual candidate may collect from many different PACs. Consequently, the concerns being raised in the current debate focus on those PACs which by virtue of their superior size, organization and resources, are presumed to exert an "undue influence" on either, or both, election outcomes and legislative decisions. Questions of "interested money" and its "undue influence" are essentially questions concerning the integrity of government and its elected officials who campaign for office backed by a system of private finance. Jeffrey Berry, author of The Interest Group Society, writes, "Maintaining the integrity of government means that we must somehow balance the need to fund campaigns, the desire to have people actively involved in elections, and the obligation to keep government from being unduly influenced by those with the most money to contribute."[94]

Maintaining the proper balance among these values is the goal of campaign finance reformers. In determining limits on how much individuals and interest groups may contribute to congressional campaigns, campaign finance reform legislation has always sought to insure a proper equilibrium in order to protect

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[94] Jeffrey Berry, The Interest Group Society, Glenview, Ill.: Scott, Foresman & Co., 1989, p.117.

governmental integrity and the integrity of elected officials. The degree to which public perception and condemnation of undue influence by interest groups has generated at least a rhetorical concern for the integrity of Congress cannot be overstated. The history of campaign finance reform efforts since the 1970s is evidence of the attention paid by members of Congress to the issue, even though no legislation has been successfully enacted since 1979. In any case, the history of modern campaign finance reform efforts outlined above indicates a continuing debate over the proper formula for attaining the balance between "the need to fund campaigns, the desire to have people actively involved in elections, and the obligation to keep government from being unduly influenced..."[95]

The major amendments to the campaign finance reform legislation of the 1970s (FECA) came about, in large measure, as a result of the revelations of campaign financial improprieties related to the Watergate scandal. Concerns today center on the growing importance of political action committees in the electoral processes. Berry summarizes the task of today's campaign finance reformers as one which must necessarily begin with an assessment and evaluation of the role of political action committees:

> Their growing importance in the electoral process is forcing Americans to confront again the classic dilemma of interest groups in a democratic society: How can the freedom of people to pursue their own interests be preserved while prohibiting any faction from abuse of that freedom? The difficulty of choosing an appropriate policy involves not only the abstract question of conflicting rights but also the problem of assessing the effect of campaign contributions. What exactly is the effect of interest group money on both election results and legislative decisions? Would-be reformers must not only try to determine the answer to these questions, but must also try to assess the

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[95] Ibid.

> future consequences of their actions - consequences that are not always easy to foresee.[96]

It is the task of those seeking to reform the present system of campaign finance by enacting new restraints on PACs to demonstrate any effects of PAC money on either election results or legislative decisions as a rationale for reform. Modern-day reformers need be reminded that it was, after all, largely as a result of the reforms in campaign finance during the 1970's "decade of campaign reform" that we experienced the "PAC decade" as well. But what were the factors which led to the proliferation of PACs in the modern campaign? Why is it said that the decade of the 1970s was the "PAC decade"?

Background

Certainly the nature of the modern political campaign, characterized by a candidate-centered "new politics" of paid political consultants, heavy reliance on modern media advertising, and technological methods of direct-mail, polling, and voter identification, both coincided with, and contributed to, the decline of the importance of grass-roots political parties as facilitators of a candidate's election. In the wake of party decline, political action committees came to the fore to effectively usurp the traditional party role. The party had been ideally suited to the kind of mass politics of an earlier day, one in which low levels of information and awareness combined with a "benefits" orientation toward voting behavior to generate the function of the political party as a "cue" upon which voters could rely to simplify their electoral decisions. With the development of the modern media (particularly television), the dawning of the new "information age", the rapid transformations of

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[96] Ibid., p.117-118.

modern technology, and an increasingly mobile society, the role of the political party as mediator and facilitator was significantly diminished. As Americans became more politically aware, through the increased ease of information access; as they became more issue-oriented rather than benefit-oriented, Americans began to vote more selectively and independently. Loyalty to parties declined in strength and their traditional function as voting cue diminished in importance.

The advent of television and technological advances which culminated in the modern computer age, virtually foreordained the death of traditional grass-roots politics. An increasingly mobile electorate began to participate less in social organizations and institutions which were associated with particular geographic or political divisions. The political party as a social institution suffered a decline in active membership as did churches, PTAs, and other civic and private institutions, as a result of an electorate not tied to a specific place. Through an evaluation of the most efficient management of limited resources, and the need to bring the campaign process up-to-date, traditional grass-roots campaign efforts were largely abandoned in favor of the new concentration of time and resources on independent professional campaign organizations, television advertising, direct mail, professional polling, and the like. Sophisticated political consultants, professional pollsters, candidate "image makers", media consultants, "spin doctors" and campaign "hired guns" were increasingly employed by candidates to fill the void in political campaigns created by party decline. This "new politics" virtually usurped the party role in congressional campaigns.

In order to compete effectively in the new politics, candidates were forced to meet the rising costs associated with the technological and professional developments of campaigns. The hiring of professional political consulting firms, the buying of television time and print media space, the need to employ expensive computer

technology to generate voter lists for direct mail campaign efforts and to stage and orchestrate campaign "photo-ops" and rallies, all required ever increasing sums of money. Parties, which used to provide those resources - via grass roots volunteer organization and effort - in a simpler, less costly time, were in no position to provide the requisite funds to finance such complex and costly new procedures. Furthermore, the amended FECA legislation limited the amounts which either individuals or PACs could donate to parties.[97] Candidates began to rely more and more on contributions from individuals and organizations sympathetic to their campaigns. Frank Sorauf, in his background paper for the Twentieth Century Fund Task Force on Political Action Committees, describes this development quite succinctly writing about party decline:

> At the same time, a new breed of experts, drawing on new knowledge and technologies, began to assume the parties' old roles in campaigns, but at the price of having to raise large sums of cash for the new non-party politics. PACs, political organizations dealing both in cash and selectivity in issues, quite easily grew and came to maturity in such a political environment.[98]

The environment of the "new politics" was pregnant with possibilities for PAC development and operation. All that remained to effectuate a major role for the political action committee was the statutory and legal sanctioning of such activity.

As the importance of ever increasing sums of money necessary for financing ever more professional campaign organizations grew, so too did the cries for campaign finance reform. Throughout the twentieth century there had been efforts to impose

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[97] Those limits allowed individuals to donate no more than $20,000 per year to a national party committee and PACs were limited to an aggregate donation of $15,000 per year to a party committee. (As of 1979 FECA Amendments)

[98] Frank Sorauf, "Political Action Committees in American Politics: An Overview," a background paper prepared for the Twentieth Century Fund Task Force on Political Action Committees, in What Price PACs?, New York: The Twentieth Century Fund, 1984, p. 76.

some sort of regulation on the contribution patterns of individual "fat cats" as well as those of corporations and labor organizations.[99] It was, however, not until the campaign finance reform proposals, legislative enactments, and legal interpretations of the 1970s that the issue of money and its role in federal elections was most directly and effectively impacted. And, it was largely as a result of those legislative and legal enactments that the seeds of explosive PAC growth were planted.

Enactment of the FECA and its amendments in the 1970s instituted limits on campaign contributions from individuals, from multi-candidate political committees, and from party committees. The FECA required periodic disclosure reports from any group which organized as a political committee for the purpose of supporting candidates for federal office and was not authorized by the candidates or a political party. It is these political committees which were specifically legitimized in the FECA legislation. The act explicitly granted the right of both labor unions and corporations to form "political committees", to administer them, and to raise funds for them. All organizational expenses for such committees were authorized to be paid out of corporate or union treasuries.

The FECA insured that the presidential campaign could now be funded at public expense, eliminating the need, at that level, for large scale private contributions from individuals or organizations. The modern congressional campaign, on the other hand, required ever increasing financial resources in a climate where there were no limitations on the amount of money which a candidate could raise and spend. With the FECA and its subsequent amendments, and in the wake of the Supreme Court and FEC rulings which further legitimized them, PACs existed as legitimate political committees authorized to make contributions either directly to candidates for federal

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[99] See Chapter 3 "The Drive for Reform", in Herbert Alexander, Financing Politics, p. 24-29, for a more extensive treatment of early reform efforts.

office, or on behalf of those candidates through independent expenditures. With their role in presidential politics essentially limited to early pre-primary activity, PACs began to concentrate the bulk of their financial activities on the congressional races. But, how did PACs come to play such a large and important role in modern congressional campaigns such that they have become the subject of a great deal of today's campaign finance reform debate?

A Turning Point - PAC Growth

Perhaps the most significant legislative development concerning PAC activity occurred with the passage of the 1974 FECA amendments. Prior to that time, government contractors were prohibited from forming political action committees and contributing to federal elections. This provision had effectively stymied businesses from forming and operating PACs because few major corporations don't do at least some business with the federal government. Labor unions had, however, long been involved in the PAC business, collecting voluntary membership donations and passing them on to labor endorsed candidates. The AFL-CIO Committee on Political Education (COPE) was the most well-known and established PAC, having been formed in July of 1943 by the Congress of Industrial Organizations "to collect and disburse the voluntary political contributions of union members."[100]

Labor was concerned that court litigation by corporations seeking to get into the PAC business would lead to an erosion of labor's ability to continue its PAC activity. Corporations were interested in forcing labor PACs to live under the same restrictions which enjoined corporate government contractors from engaging in widespread PAC activity. Corporate litigants sought a court ruling outlawing labor PAC activity on the

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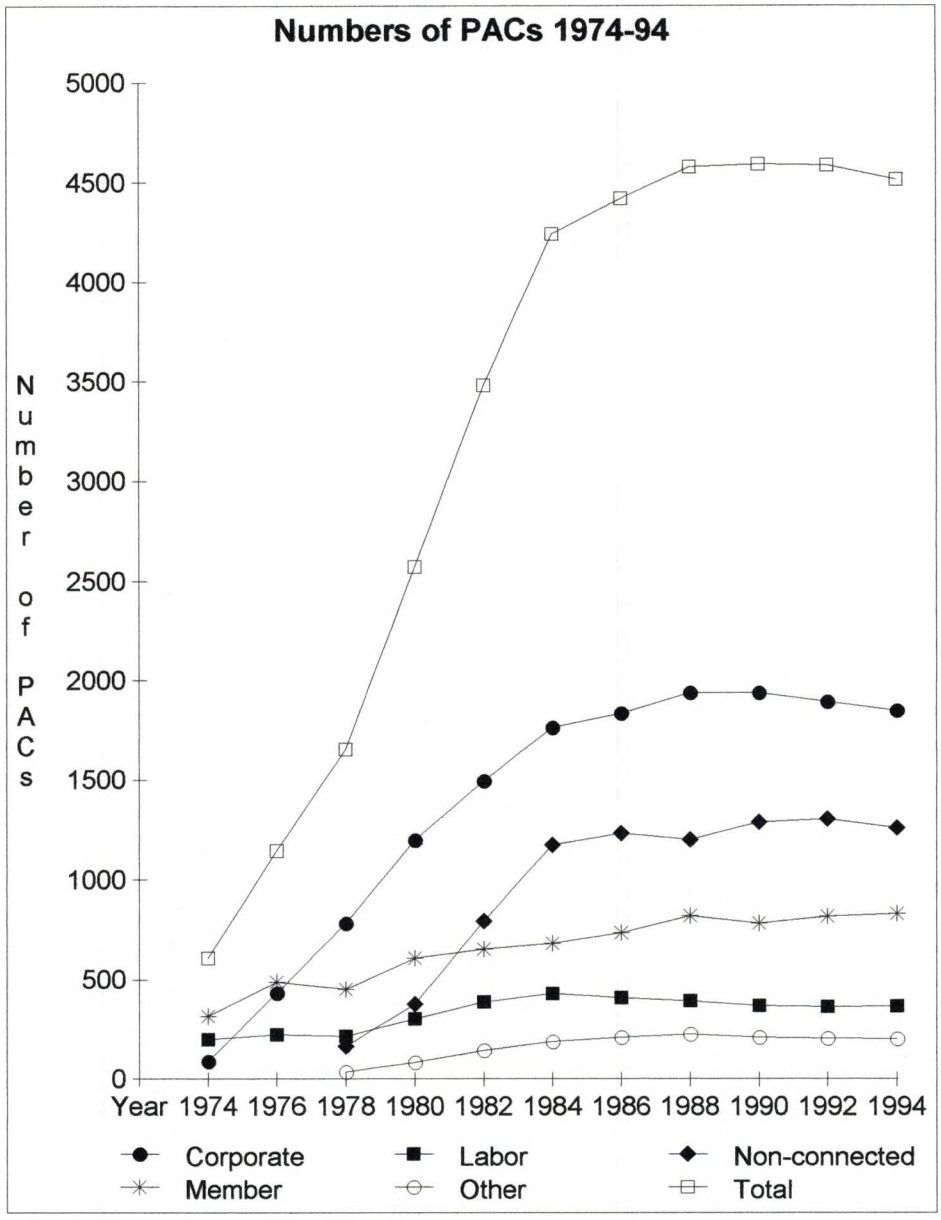
[100] Sabato, PAC Power, p.5.

grounds that labor unions were also beneficiaries of federal largesse and, therefore, ought to be enjoined, as corporations were, from operating PACs to influence federal elections. Because of their concerns, organized labor (AFL-CIO) sought modifications in the original FECA of 1971 designed to lift the prevailing ban on PAC activity by government contractors. With labor leaders believing that business would not form large numbers of PACs, and confident of sustaining their organizational lead, labor was willing to take the risk of allowing government contractors (and thereby many corporations) to begin to organize and operate political action committees. With both labor and business support, Congress adopted changes to the FECA in 1974 which, among other things, lifted the prohibition against government contractor PAC formation.

Following passage of the 1974 FECA Amendments, Sun Oil Company sought an advisory opinion from the newly formed Federal Election Commission concerning administration of its political action committee, SunPAC. The FEC ruling, handed down on November 25, 1975, declared that corporate PACs could solicit donations from stockholders and employees, and could use general corporate funds to administer both its PAC and to solicit contributions. The SunPAC ruling, in conjunction with the 1974 FECA Amendments, greatly expanded the opportunities for corporate PAC activity in the electoral process.

Labor's worst fears had been realized. Ironically, labor's support for changes in the law precipitated a sharp and sustained growth in corporate PAC activity, while labor's PAC numbers were to remain essentially at a constant level in the years following the 1974 FECA amendments. Trade membership PACs also experienced growth following the 1974 modifications. Figure 2 indicates the explosive growth of corporate activity following the Amendments and the 1975 SunPAC ruling. One can easily contrast the relative static labor PAC growth with the substantial aggregate

growth of corporate PACs and the moderate sustained growth in trade membership PACs.



Source: Federal Election Commission

Figure 2: Numbers of PACs 1974-94

Another important development pertaining to campaign finance and PACs occurred in 1976 with the Supreme Court's *Buckley* decision. It has already been pointed out how that decision ruled that FECA provisions proscribing limits on both

PAC and individual contributions were constitutional. Most important for its PAC growth implications *Buckley* held that provisions of the Act which limited "independent expenditures" were unconstitutional restrictions on free speech and association. This legal validation of spending on behalf of candidates by political groups independent of a candidate's campaign organization led to the rise of what would come to be known as "non-connected", or independent, PACs. Those PACs were formed at a rate paralleling the rise of corporate PACs.

Figure 2 illustrates the steep growth in corporate and non-connected PAC activity following the 1974 FECA Amendments, the 1975 SunPAC decision, and the *Buckley* ruling in 1976. The proliferation of political action committees in the modern congressional campaign was a direct result of - albeit most likely an unintended consequence of - the reform efforts of the 1970s. Labor's support for campaign finance revisions in 1974 quite unintentionally contributed to an environment of explosive PAC growth - most particularly corporate PAC growth - throughout the 1970s and 80s. It has been noted that "if the labor movement has suffered a worse self-inflicted political wound, it does not come readily to mind."[101]

While Figure 2 clearly delineates the expansion of PAC activity throughout the years from 1974 to the present, it also indicates a recent plateau in PAC numbers. In fact, the numbers of both corporate and aggregate PACs have seen an actual decline in recent years. Whether or not PAC growth has permanently plateaued and will show an actual sustained trend toward decline remains to be seen. This plateau may simply reflect a law of diminishing returns with respect to PAC formation and operation. Perhaps the campaign finance marketplace has reached a point of PAC saturation. Table 4 delineates, in numerical terms, the precipitous rise and recent

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[101] Mark Green, "Political PAC Man," The New Republic, December 13, 1982, p.24.

plateau of PAC growth illustrated in Figure 2. Table 4 indicates that the total number of PACs reached a high of 4590 in 1990. While growth in the 1980s was explosive (from 2571 registered committees in 1980 to 4590 by 1990 - an increase of some 56 percent) consistent declines in numbers for both corporate and non-connected PACs have led the way toward the recent aggregate PAC decline.

Table 4

Numbers of Political Action Committees by Category 1974-1994

Years	Corporate	Labor	Non-Conn	Member	Other	Total
1974	89	201		318		608
1976	433	224		489		1146
1978	784	217	165	451	36	1653
1980	1197	305	377	608	84	2571
1982	1496	389	794	655	145	3479
1984	1763	430	1175	684	191	4243
1986	1834	409	1233	735	210	4421
1988	1937	394	1200	820	227	4578
1990	1939	370	1288	783	210	4590
1992	1893	365	1303	818	206	4585
1994	1848	368	1260	833	204	4513

Source: Larry Sabato, PAC Power, p.12-13, and FEC Press Release of Sept. 19, 1994.

One should be wary of those who would use the aggregate PAC count as indicative of PAC strength because many PACs are quite small and give only modest or small amounts (far below the legal limits) to congressional candidates. According to Herbert Alexander:

> Correlating the number of PACs to productivity may be misleading. The top 100 PACs in the 1989-90 cycle contributed $74.5 million to federal candidates, or 46.7 percent of the total given by all PACs. Some 64 PACs reported at least $1 million in total receipts, while 669 raised $100,000 or more. However, 870 PACs had no dollar activity, and 1,054 spent $5,000 or less. These figures indicate that large amounts of money are handled by relatively few PACs.[102]

Recognition of their status as "small fish" may have led some PACs to close up shop.

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[102] Alexander, p.60.

Duplication of purpose and a recognition of economies of scale have also led some individual PACs to consolidate under larger umbrella PACs. Alexander notes this and other possible reasons for PAC decline:

> No clear reasons exist for why...the number of PACs has diminished. Corporate mergers and buyouts have led to the combining of some PACs. Some suggest that PACs are victims of their own unreasonable expectations or that PACs already have fulfilled their potential and that the law of diminishing returns gives some PACs, especially small ones, less incentive to stay involved in the political process. Others believe that media criticism, the so-called "PAC attack" has made sponsors and participants wary.[103]

Despite the recent decline in PAC numbers, one should not underestimate the extent to which PACs remain financially involved in federal campaigns. PACs contributed $169.5 million to federal candidates in 1993-94, an increase of 5 percent from 1992 levels of $161.9 million. By comparison, PACs contributed $55.2 million in 1979-80. For the 1994 congressional elections, Senate candidates received 16 percent of their net receipts from PACs. House candidates, however, received nearly 37 percent of their total campaign receipts from political action committees. For all Senate and House general election campaigns in 1994, PAC contributions represented 28 percent of the total $611.5 million in net receipts.

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[103] Ibid.

Table 5

Financial Activity of General Election Campaigns 1988-1994

House						
Year	#Can	Receipts	Individuals	PACs	Candidates	Loans
1988	813	$238.90	$113.2 47.4%	$98.3 41.2%	$1.3 .54%	$12.3 5.2%
1990	804	243.9	110.4 45.3%	102.9 42.2%	2.6 1.1%	11.4 4.7%
1992	851	309.8	150.5 48.6%	117.2 37.8%	6.6 2.1%	21.5 6.9%
1994	824	344.7	179.2 52%	126.7 36.8%	4.1 1.2%	22.9 6.6%
Senate						
Year	#Can	Receipts	Individuals	PACs	Candidates	Loans
1988	66	$179.60	$117.4 65.4%	$44.3 24.7%	$6.4 3.6%	$4.1 2.3%
1990	67	176.95	115.6 65.3%	40.6 22.9%	1.7 .93%	7.8 4.4%
1992	69	181.1	118.7 65.5%	44.4 24.5%	3.6 2.0%	6.5 3.6%
1994	70	263.1	154.7 58.8%	42.5 16.1%	22.5 8.5%	32.0 12.2%

Source: Federal Election Commission Press Release, December 22, 1994. (Dollar figures in millions)

Table 5 shows the percentage of candidates' net receipts represented by individual contributions, PAC dollars, candidate contributions, and candidate and other loans, for general elections for both House and Senate from 1988-1994.

Clearly, individual contributors represent the largest single source of candidate campaign funds. This is most particularly true for the Senate, comprising some 58 to 65 percent of net receipts in the last several election cycles. House figures reveal that the percentage of receipts represented by individual contributions has been significantly lower than Senate numbers, but still constitute some 50 percent of receipt totals. What is not immediately apparent, however, is the fact that although individuals contribute far more dollars to congressional candidates than PACs do, understanding who those individuals are, and how many they number, is crucial to understanding campaign finance. Herbert Alexander cites a study by Citizen Action completed in 1990 which concluded that:

> ...two-thirds of the $516 million that House and Senate candidates raised in the 1987-88 election cycle came in the form of large individual contributions- defined as gifts of $200 or more. Twenty-seven percent came in the form of gifts that were at least $500. ...The Citizen Action report also found that a great number of large individual donors gave gifts to candidates running outside their states.

> Donations were tracked by zip code, and ten - which included the wealthiest addresses in the country - accounted for 12 percent of all large contributions. The top one-hundred zip codes accounted for 25 percent of all large individual gifts. A subsequent Citizen Action study confirmed the trend by showing that, in the 1990 federal election cycle, a single Manhattan zip code (10021) contributed $3.5 million more than all the large donors in twenty-eight states.[104]

The figures in Table 5 above may show that individual contributions constitute the greatest percentage of congressional campaign receipts, but those same figures hide the fact that an extremely significant portion of those individual contribution dollars come from an extremely small percentage of wealthy contributors. Large aggregate dollar amounts do not necessarily coincide with widespread individual participation. Again, the evidence seems to point toward an "overrepresentation" of wealthy interests in the arena of campaign finance. As such, concerns about "interested money" from a few wealthy sources impacting federal elections may be justified. Insofar as the great bulk of campaign finance funds come either from wealthy PACs or wealthy individuals, concerns about the ability of those groups or individuals without great wealth to impact the electoral and legislative processes are raised. Of course, what remains to be seen is whether or not PAC funds, or individual donations, have any demonstrable effect on election outcomes in either Senate or House races. If any effect can be empirically verified it would lend support to the thesis that wealthy interest overrepresentation in campaign finance has significant consequences in determining who is ultimately elected. It might be suggested as well, that if a significant relationship between "interested" money and election or legislative outcomes can be demonstrated, elected candidates, might be beholden to the

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[104] Ibid., p.63-64.

individuals and PACs which enabled their victory and might conform their legislative behavior in order to insure reelection financial support from those same interests.

This study will examine the donation patterns of PACs and analyze any effects those PAC donations may have on either election outcomes or legislative decisions. While an examination of large individual campaign gifts might also be undertaken to determine the effects, if any, of money on election outcomes and legislative decisions, the present study examines PAC gifts both because the information on PAC activity (both individually and in the aggregate) is more readily available and because it is hypothesized that PAC donations are more easily understood in terms of their "investment" nature. In other words, PACs are seen to donate to political campaigns, not out of any particular sense of loyalty or ideological affiliation (which might be a more important motivating factor in donations from individuals) but primarily because they seek to "invest" in election outcomes and legislative decisions. But, to whom do PACs donate? Are PAC dollars spread out among many competing congressional candidates? What are some, if any, patterns of PAC giving? What do those patterns reveal about why PACs give and the nature of their "investment" quality?

PAC Donation Patterns

It is important to note that the number of individual House members receiving at least half their total campaign funds from political action committees had, up until the 1994 elections, been growing steadily. In 1978 sixty-three House members received 50 percent or more of their funds from PACs. By 1986 that number had grown to 194. But, an analysis of 1992 house races reveals that some 213 of that year's 851 candidates received 50 percent or more of total receipts from PACs, with 26 of those candidates going down to defeat at the polls. That left a total of 187

House members who had been elected having received at least 50 percent of their total campaign funds from political action committees. This number was slightly below 1986 levels. The downward trend continued in the 1994 elections with 201 House candidates getting at least 50 percent of campaign funds from PACs. Of those candidates, 33 were defeated, leaving 168 House members who had reached the 50 percent threshold.[105] While this number represents a significant reduction in House members who had received 50 percent or more of total contributions from political action committees, it is too early to tell whether or not this is a continuing trend.

PAC funds, as indicated in Table 5, play an even less important role in Senate campaigns, constituting only little more than 16 percent of 1994 aggregate Senate campaign receipts. In 1988 only eight of sixty-six Senate candidates reported receiving 50 percent or more of total receipts from PACs. By 1994, seven (out of 70) candidates for the U.S. Senate were in that category; only four of them were actually elected. It is interesting to note, however, that of the 20 Senate candidates who were "PAC millionaires" (those who took in over $1 million in PAC campaign funds), only two were unsuccessful in their quests for Senate seats in 1994.

Table 6 below outlines PAC contributions, by category, to House campaigns, by type of campaign, for the elections from 1988 to 1994. Certain patterns are readily apparent: (1) Incumbents are favored over challengers by wide margins by all PACs. (2) Non-connected PACs give more of their funds (as a percentage of their giving) to open seat races than do other PACs. (3) Corporate PACs give the greatest aggregate amount to House candidates, followed closely by Trade/Membership PACs. Labor is third in aggregate giving. (4) Labor and Non-connected PACs contribute to both

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[105] The numbers cited above were derived from FEC press releases dated March 4, 1993 (for 1992 figures) and December 22, 1994 (for 1994 figures).

challengers and open seat races more so than do other PACs. (5) Corporate PACs give proportionately less to challengers and open seat races than do any other PACs.

If these patterns are any indication of future fortunes, things certainly would seem to bode well for the GOP after the 1994 elections, at least in the House, where PAC contributions have traditionally appeared to be more substantial. Clearly, PACs have exhibited a proclivity to contribute the vast bulk of their dollars to the campaigns of incumbent national legislators. Inasmuch as the GOP has captured control of both houses of the 104th Congress following the 1994 mid-term congressional elections, it may be interesting to see if the traditional Republican proposals to outlaw all corporate, labor, and trade association PACs will be offered in the 104th congressional session now that PAC dollars will begin to flow more heavily in the direction of incumbent Republican members of Congress. If one examines the data in Table 6 above, the trend of giving to incumbents is unmistakable across the spectrum of PACs. While Table 6 deals specifically with House races, the same trend is seen for Senate races as well. The Federal Election Commission has reported that for the last election cycle of 1993-94, of the $109.9 million contributed to federal candidates through June 30th of 1994, incumbents received $91.1 million, challengers were given $5.5 million, and open seat candidates, $13.3 million.[106]

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[106] Federal Election Commission press release dated September, 19,1994 entitled "PAC Contributions Track 1992 Levels".

Table 6

PAC Contributions to House Campaigns by Type of Campaign
(through June 30 of the election year)

	Incumbents	Challengers	Open Seats	Total Contributions
Corporate				
1994	93.44%	1.86%	4.70%	$26,276,961
1992	92.18%	2.16%	5.63%	$25,462,030
1990	92.41%	1.52%	6.07%	$22,947,310
1988	96.12%	1.20%	2.67%	$19,477,934
Labor				
1994	79.43%	7.68%	12.89%	$18,551,476
1992	77.17%	8.57%	13.72%	$16,696,160
1990	79.89%	6.08%	14.03%	$16,438,363
1988	79.00%	13.64%	7.36%	$14,724,000
Non-Connected				
1994	77.53%	7.33%	15.14%	$4,974,862
1992	71.58%	9.65%	18.72%	$5,072,161
1990	72.66%	8.02%	19.33%	$4,705,750
1988	77.68%	11.28%	10.94%	$4,852,218
Trade/Membership				
1994	87.20%	3.35%	9.44%	$20,815,857
1992	85.65%	4.16%	10.17%	$20,848,112
1990	89.75%	2.09%	8.16%	$19,223,522
1988	93.75%	2.30%	3.92%	$16,029,169
Cooperatives				
1994	93.64%	1.02%	5.34%	$1,463,482
1992	95.85%	1.34%	2.81%	$1,127,305
1990	96.15%	0.78%	3.07%	$1,328,325
1988	96.83%	1.17%	2.00%	$1,032,513
Corp. w/o Stock				
1994	87.19%	4.57%	8.23%	$1,598,891
1992	87.70%	4.16%	8.14%	$1,513,800
1990	90.73%	2.30%	6.97%	$1,479,642
1988	91.45%	2.07%	6.49%	$1,228,723

Source: Federal Election Commission press release, "PAC Contributions Track 1992 Levels," September 19, 1994.

Republicans are, not surprisingly, benefiting from the GOP landslide in the 1994 mid-term elections. PACs are dramatically shifting their donations from Democrats, who used to control the Congress, to Republicans who now do. Table 7 illuminates this shift toward Republicans in post-election giving as contrasted with

overall contributions for the election cycle 1993-94. It is apparent that PACs immediately begin to align their patterns of giving with the majority party in the Congress. Table 7 lists fifteen of the top twenty PACs in order of their post-election contributions to congressional candidates. Incumbency is clearly of primary importance for PACs; whether Democrat or Republican, those in power receive the lion's share of funds.

Table 7

Post-Election PAC Giving

PAC Sponsor	Overall 1994 Total	%D	%R	Post-Election 1994 Total	%D	%R
National Rifle Association	$1.8mil	23	77	$84,892	4	96
AT&T	$1.2mil	61	39	$79,745	20	80
Nat'l. Assoc. of Life Underwriters	$1.3mil	51	49	$76,500	0	100
Nat'l. Automobile Dealers Assoc.	$2.0mil	29	71	$69,000	0	100
United Parcel Service	$2.6mil	53	47	$67,625	2	98
Amer. Acad. of Opthamology	$.77mil	64	36	$55,500	21	79
Nat'l. Beer Wholesalers Assoc.	$1.2mil	24	76	$48,500	1	99
Ameritech	$.40mil	56	44	$44,000	22	78
BellSouth	$.40mil	59	41	$39,500	18	82
Int'l. Airline Pilots Assoc.	$.96mil	89	11	$39,000	9	91
Nat'l. Assoc. Fed. Credit Unions	$.51mil	61	39	$26,500	2	98
American Bankers Assoc.	$1.3mil	48	52	$25,900	4	96
Amer. Society Anesthesiologists	$.47mil	58	42	$25,000	8	92
Northrup-Grumman Corp.	$.31mil	59	41	$24,500	18	82
American Crystal Sugar	$.58mil	67	33	$20,500	20	80

Source: Federal Election Commission, National Republican Congressional Committee.[107]

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[107] From a table published in "To the '94 Election Victors Go the Fundraising Spoils", Johnathon D. Salant and David S. Cloud, Congressional Quarterly Weekly Report, April 15, 1995, p.1058.

PAC Spending and Election Results

Whether or not PAC spending, *per se*, has any significant effect on election outcomes is difficult to verify empirically. While the earlier discussion of spending totals demonstrated a statistically significant association between a challenger's percentage of the vote received and his/her total campaign expenditures, incumbent total spending was seen to have a statistically insignificant association with incumbent's vote percentage (and was, in fact, even negatively correlated to that percentage of the vote). Certainly, spending money in the modern campaigns of the "new politics" is a necessary component of any successful election effort, whether that effort is an incumbent's or a challenger's; but the extent to which it is directly related to the outcome of any given election (measured by percentage of the vote received) is at best only minimally important for incumbents. In fact, high levels of total spending by incumbents may well signify electoral vulnerability *vis-a-vis* a well-financed strong challenger.

Since it has been noted in Tables 6 and 7 above, that the vast majority of PAC money goes to the campaign coffers of incumbent members of Congress who seek re-election, and since incumbent expenditures appear to have little effect on election outcomes, it would seem to follow that PAC dollars, as a component of incumbent spending, would logically be found to be statistically insignificant when related to an incumbent's election percentages. Any hypothesis which posited that incumbent PAC dollars and incumbent vote percentages are insignificantly related may or may not be borne out in an empirical analysis of the relationship between PAC dollars and incumbent vote percentages. What may be more revealing, however, as to the question of PAC influence on election outcomes, would be an analysis of the relationship of those PAC dollars and election percentages for all candidates -

incumbents and challengers, Republican, Democrat and independent non-major party candidates.

Accordingly, the null hypothesis of this study is: Aggregate PAC donations, as a component of a candidate's total campaign expenditures, are unrelated to that candidate's eventual percentage of the vote received. Any effort to prove or disprove the alternative research hypothesis (one often advanced by reformers seeking to further limit PAC activity) that PAC donations, in and of themselves, are significantly related to (or exert an "undue influence" on) election results necessarily begins with an empirical examination of actual PAC contribution and vote percentage data for individual candidates in various congressional election contests.

Because they receive the greater proportion of aggregate PAC monies (see Table 5 above), and because PAC dollars represent a larger share of their total expenditures, House candidates were randomly chosen from the Federal Election Commission disclosure lists for the general election campaigns of 1992 and 1994. A random sample of 356 individual House candidates (21% of the 1675 individual House candidates in 1992 and 1994 combined) and their corresponding PAC contribution totals were examined via the Pearson's *R* measure of association. The *R* value obtained - .3906 (See Appendix 3) indicates that a moderate linear relationship does, in fact, exist between PAC dollars and election results as measured by percentage of the vote received for the House candidates surveyed. This result might indicate that the null hypothesis of no relationship between PAC monies and eventual vote percentages cannot be rejected. It should be noted, however, that this correlation coefficient value lends only tepid support for the notion of either PAC "undue influence", or of any strong linear cause and effect relationship between percent of the vote received and PAC donations - both would seem to require an association *R* value of at least .50. Therefore, any attempt to predict a given candidate's eventual

percent of the vote, based solely on the knowledge of contributions to his/her campaign from political action committees, would be highly inaccurate.

In order to further evaluate the validity of such a conclusion, the House data were subjected to a regression analysis with candidate's percentage of the vote (PERCENT) as the dependent variable, and political action committee contributions (PAC$) as the independent variable. The regression coefficients obtained buttressed the conclusions reached via the correlation analysis. While the adjusted *R* square value of .15016 (*R* square = .15255) may indicate that some 15 percent of any given candidate's vote percentage may be predicted or explained by his/her PAC receipts, the model's standard error value of 15.3995 requires that one be wary of any attempt to predict vote percentages based solely upon knowledge of PAC receipts. The predictive range of plus or minus some 15 percent (a 30 percent range) is far too expansive to be considered reliable for either predictive or explanatory purposes. (See Appendix 3 for regression data)

Certainly, many other factors - among them incumbency, total spending, incumbent's previous margin of victory, constituency characteristics and issue alignment, voter turnout, etc. - must be considered in any effort to predict a candidate's eventual, or to explain a candidate's actual, vote percentage. PAC contributions appear to be but one of many possible factors relevant to election results, certainly not the primary, or even, perhaps, among the most important factors. A multiple regression analysis with percent of the vote as the dependent variable and PAC receipts as one of a number of independent variables would be necessary to get a more complete picture of what influences election results.

The results obtained in this empirical study provide no support for an hypothesis which posits that PAC donations significantly affect election results. Those who would argue that position as a rationale for reforming political action committee

campaign finance activity by claiming an inordinate level of "undue influence" of PAC money on election results are arguing against the tide of available evidence to the contrary.

The potentially more damning criticism leveled against political action committee contributions is that their purported "undue influence" extends to the realm of legislative decision making, that it is in the legislative arena of fashioning tax codes, regulatory requirements, and statutory compulsions that PAC money plays its most crucial (and purportedly sinister) role. The charge is that individual PAC money buys a member's vote on issues of importance to that PAC - a *quid pro quo* relationship of money for votes. The following section will examine whether there is empirical evidence to support such a charge. Can an empirically verifiable association between PAC donations and legislative decisions be demonstrated to support a charge of "money-for-votes" as a characteristic of political action committee "undue influence"?

PAC Money and Legislative Decisions

The previous analysis of political action committee donation patterns, and an appreciation for the important fund-raising role of PACs in modern congressional campaigns, leads one to ask the questions of why PACs give and why they give to whom they give. Are PACs acting rationally in deciding to whom they will contribute? What do they hope to achieve by being willing (or even reluctant) sponsors of particular candidates? Does the concentration of contributions to incumbents, committee chairs, House and Senate leaders of both parties, and even the occasional donations to challengers perceived as "up and comers", happen merely by chance, or is there some rationale behind those patterns of giving? Do the efforts of PACs in centering the majority of their contributions around competitive contests

rather than "safe" races (or even the fact of PAC contributions to incumbents who have no serious competition) tell us anything about the expectations of those PACs? Surely the most recent realignment of PAC donations from Democrats to Republicans following the 1994 GOP congressional takeover exhibited in Table 7 bears witness to a preference toward donating to those in power. Why would such a shift in PAC beneficiaries occur?

Because of the relative constancy of PAC contribution characteristics, and because of the assumption of PAC formation as a rational act, there is an implicit presumption that PACs expect something in return for their donations. PAC giving takes on the characteristics of an "investment". The mere fact that so many organizations have seen fit to organize and operate PACs and to "get into the game" by contributing to congressional campaigns, is testament to the importance those organizations attach to campaign contributions. Why bother to donate at all if a contribution gained nothing?

According to Fred Wertheimer, president of Common Cause, "PAC contributions have a legislative purpose. They are generally made by interest groups that have specific legislative goals and conduct organized Washington lobbying programs. In addition, they have a special 'investment' quality...".[108] That quality of PAC giving as investment can be seen in the substantial sums given to safe-seat incumbents.

> PAC money contributed to safe-seat incumbents is, by definition, not a necessity for financing their campaigns. Its investment nature is even clearer than PAC contributions to more competitive incumbents. ...When PAC givers make contributions to safe incumbents, with both the donors and recipients aware that the funds are not really needed for

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[108] Fred Wertheimer, "The PAC Phenomenon in American Politics", Arizona Law Review, 22, n.2, (1980) p.605.

> immediate re-election purposes, the contributing can only be considered of an investment nature.[109]

PAC money is seen as interested money given to candidates potentially beneficial in furthering the legislative cause or interest of the PAC. Incumbents, committee chairs, those in leadership positions, and those on committees with specific jurisdiction over an area of interest to a given PAC are recognized and rewarded by the PAC. But what exactly do those PAC campaign donations buy? Is there, in fact, a demonstrable *quid pro quo* exchange of money for votes?

Political scientists who have examined this question do not have a clear answer. The available evidence from various research models is often conflicting with regard to the *quid pro quo* issue. John R. Wright, a leading scholar on this issue has written, "Empirical evidence about the influence of PAC contributions on congressional voting is filled with ambiguity and apparent contradiction."[110] A number of studies conclude that PAC contributions have no apparent effect on congressional voting decisions, or only have a minimal and marginal effect on some, but not many, votes. Other studies done on particular pieces of legislation reveal a more substantial empirical finding of PAC money's influence.

Common Cause regularly issues "correlation studies" purporting to show that PAC contributions are directly correlated with Senate and House roll-call votes. Professor Larry Sabato explains this technique by stating:

> Common Cause has cited the defeat of President Carter's Hospital Cost Containment Act of 1977 as an example of AMPAC's influence. Of the 234 House members who voted for a crippling amendment to the act, 202 had been given $1.65 million in contributions during their 1976 and 1978 campaigns, with an average receipt of over $8,100 per member. While 122 of the members voting against the crippling

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[109] Ibid., p.610.
[110] Quoted in Berry, The Interest Group Society, p.132.

> amendment had also been given contributions, their average gift was a much lower $2,300 each.[111]

Jeffrey Berry cites an example about money donated by the National Association of Automobile Dealers:

> Prior to the 1980 elections, its [NAAD] PAC gave roughly $1 million to congressional candidates of both parties. The leading issue for the auto dealers in the next Congress was the Federal Trade Commission's consumer protection regulation for used cars. The regulation required used-car dealers to list known mechanical defects and warranty information on a window sticker. A legislative veto resolution was subsequently introduced in both houses. In the House, 186 of the 216 representatives who cosponsored the resolution to overturn the regulation had received contributions from the auto dealers in the previous three years. Sixteen members became cosponsors within ten days of receiving their contributions. The average donation members received was $2,300.[112]

Congress passed the veto resolution.

Larry Sabato wisely notes that although this type of analysis tends to seem conclusive on the surface, "there is no 'smoking gun'; a correlation does not prove causation."[113] While this is certainly true it does not explain away or completely discredit the ample findings of PAC donation and floor vote correlation. Causation need not be the only standard by which concern over PAC influence is measured. Causation is extremely difficult to prove; particularly in an area which requires some accurate knowledge of what factors weigh in the minds of those members of Congress who are called upon to decide the fate of many legislative proposals on a widely diverse number of issues. Still one need be careful in drawing too expansive a conclusion from evidence of correlation. Such a technique fails to consider a great many potentially important factors which might influence how any particular member

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[111] Sabato, PAC Power, p.132.
[112] Berry, p.132.
[113] PAC Power, p.132.

has voted. Rarely is a decision of importance made by human beings solely on the basis of one solitary factor. Sabato points this fact out rather succinctly:

> There can be many explanations for a congressman's [sic] vote for or against any given bill. His party might strongly favor or oppose a measure. The bill might positively or negatively affect his constituents in some way. The legislator's long-held beliefs might predispose him one way or the other. Or, as Common Cause and others claim, he might be thinking of PAC support for him, or his opponent, at election time.[114]

PAC Money and Floor Votes - Other Studies

A number of political scientists have begun to analyze the factors influencing floor votes through the use of much more sophisticated statistical techniques other than simple correlations and chi-square associations. Political scientist Henry Chappell conducted a study of possible causal effects of PAC contributions on seven different legislative measures and was able to demonstrate a significant positive relationship between PAC donations and the vote results in only one of the seven cases examined - a vote on the B-1 bomber appropriation and contributions from Rockwell International, the primary beneficiary of government contracts to build the controversial plane. Chappell's study did note a positive, but not significant, relationship in five other of the seven cases.[115]

Diana Yiannakis's 1983 study of votes on the windfall profits tax measure of 1979 and the Chrysler bailout bill of that same year, found little support for the assertion of PAC money's influence on roll call voting in these instances. Members of Congress

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[114] Ibid.

[115] Henry W. Chappell, Jr., "Campaign Contributions and Congressional Voting: A Simultaneous Tobit-Probit Model," Review of Economics and Statistics, v.64, (February 1982) p. 77-83.

were found to have followed their party and their own ideological leanings much more than PAC contributions.[116]

A study by Thomas Stratmann examined the possibility of a causal relationship between PAC contributions and roll call votes on the floor of the U.S. House of Representatives.[117] In the study Stratmann analyzed the relationship between ten roll call votes in the House relating to "six specific amendments to the Farm Bill [1985], the Farm Bill itself, and three votes relating to Farm Credit measures", and contributions from PACs that are "sponsored by associations from the farm sector or are associated with agricultural interest groups."[118] The issues chosen were of low visibility, not subject to the concern of numerous competing groups, and relatively non-partisan. (This is much different from the kind of partisan dynamic which quite obviously colored the climate surrounding the cloture votes analyzed above.) In contrast to earlier findings by Chappell and Yiannakis, among others, it was found that eight out of the ten coefficients estimated from Stratmann's simultaneous model indicated a significant causal relationship between PAC money and votes. Specifically, in one of the findings, although it was demonstrated that "the vote of Republican congressmen [sic] was guided by the Reagan administration's opposition to sugar price supports...the positive impact of a $1,000 sugar contribution on voting behavior more than offsets the negative impact of Republican party affiliation.

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[116] Diana Evans Yiannakis, "PAC Contributions and House Voting on Conflictual and Consensual Issues: The Windfall Profits Tax and the Chrysler Loan Guarantee," prepared for the annual meeting of the American Political Science Association, Chicago, Illinois, Sept.1-4, 1983, summarized in Sabato, PAC Power, p.133.
[117] Thomas Stratmann, "What Do Campaign Contributions Buy?: Deciphering Causal Effects of Money and Votes", Southern Economic Journal, v.57, n.3, (Jan.1991) p.606-14.
[118] Stratmann, p. 611 and 612.

Moreover, a $3,000 sugar PAC contribution maps into a yes vote with almost certainty."[119]

Stratmann concludes that "the statistically significant contributions coefficients suggest that campaign contributions are an important determinant of a congressman's voting decision in eight out of the ten votes analyzed."[120] The vote on the 1985 Farm Bill itself showed less of an impact because, Stratmann concluded, it was of higher visibility where party influence is exerted more forcefully and it becomes more subject to opposition from competing interest groups.

Another investigation by John P. Frendreis and Richard W. Waterman examining whether or not systematic linkages existed between PAC contributions and Senate votes to deregulate the trucking industry, concluded that there indeed was such linkage. The study further concluded that legislative votes were subject to the influence of PAC campaign contributions for particular kinds of issues where other possible factors of relevant influence are minimized.[121] The issue was not of great importance to party concerns, nor was it of headline-grabbing quality to the media or a wide constituency of average Americans. The linkage demonstrated in the study showed a relationship of PAC contributions to votes that was stronger than any relationship between votes and party affiliation, or constituency alignment factors and vote. It was demonstrated that the linkage was strongest for those senators whose seats were up for re-election in 1980.

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[119] Ibid., p.615.
[120] Ibid., p.618-19.
[121] John P. Frendreis and Richard W. Waterman, "PAC Contributions and Legislative Behavior: Senate Voting on Trucking Deregulation", Social Science Quarterly, v.66, (June 1985) p.401-12.

Two other studies, one by Frank L. Davis[122], and another by Alan Neustadtl[123] demonstrate the many conditions under which votes are affected by PAC contributions. Many factors must be taken into account in order to determine to what extent votes are subject to substantial (statistically significant) influence by PAC contributions. These studies posit that whether an issue is of high or low visibility has a direct bearing on whether or not campaign donations will be seen to have a significant determinative effect on a member's decision with respect to any particular issue. Additionally, the saliency of the issue at hand to constituents in a member's home district, the relative strength of organized opposition to the issue by various groups (an expanded scope of conflict), the parochial or national character of the issue, the strength and influence of party discipline and leadership, ideological and philosophical proclivities, and presidential support or non-support, all affect the extent to which a member of Congress will base his/her vote on a campaign contribution. The degree to which a *quid pro quo* - money for votes - relationship can be shown to exist, at a statistically significant level, depends on the degree to which that particular issue is visible and salient to a member's constituencies, the degree to which it is controversial or partisan, and the degree to which it is relevant or meaningful in terms of a member's ideology or philosophy. When all or most of these factors are minimized, much of the available empirical evidence points to a statistically significant causal connection between PAC contributions and voting decisions.

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[122] Frank L. Davis, "Balancing the Perspective on PAC Contributions: In Search of an Impact on Roll Calls", American Politics Quarterly, v.21, n.2, (April 1993) p.205-22.
[123] Alan Neustadtl, "Interest Group PACsmanship: An Analysis of Campaign Contributions, Issue Visibility, and Legislative Impact," Social Forces, v.69, n. 2, (Dec. 1990) p.549-64.

PAC Money and Floor Votes - An Analysis of Association

In order to get an idea of the degree to which any relationship between PAC campaign contributions and floor votes could be empirically measured, this study undertook to examine the votes of United States senators, in the final session of the 103rd Congress, on two issues which might logically seem to have particular relevance and importance to political action committees. Both the campaign finance reform cloture vote and the vote to invoke cloture in the debate over lobby reform which occurred in late 1994[124] were floor votes which, it was widely understood, were the key votes senators would cast to decide the ultimate fate of either reform effort in that session of Congress - and quite possibly for a long time.

The yea or nay votes of 91 senators (The votes on the questions by nine retiring senators were not included in the analysis since it was presumed that there would be no reason for these senators to feel compelled to consider PAC contributions in determining their votes since they were not planning on running for re-election.) on those two motions were crosstabulated with the contributions from political action committees each had received for the election year 1994. Those contributions had been collapsed into categories in order to facilitate a chi-square analysis with the lobby reform cloture vote and the campaign finance reform vote as the dependent variables in two separate crosstabulations. The chi-square values obtained for both crosstabulations revealed no statistically significant relationship between PAC donations received and votes for or against the two cloture motions. The chi-square value obtained for the crosstabulation lobby reform vote by PAC dollars was 11.244 with 9 degrees of freedom. This value was seen to be statistically insignificant at a

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[124] The vote to invoke cloture on the debate over campaign finance reform legislation took place on October 6, 1994, while the cloture vote on lobby reform was on September 30th of that year. Both cloture attempts failed by identical margins of 52-46.

level of .25932, well below the required 95 percent confidence interval. Likewise, the value of chi-square for the crosstabulation campaign finance reform vote by PAC donations (chi square = 5.11057) was also statistically insignificant at a level of .82457. Naturally, all of the chi-square based measures of association for both crosstabulations were consistent with a finding of no statistically significant association between the two variables. (See Appendix 4) It is quite obvious from these results that PAC contributions and these particular floor votes are not related in any significant way.

It was thought that in the case of these two particular votes perhaps the member's party identification would be a much more reliable predictor of a member's vote. Accordingly, the votes were crosstabulated with party identification and the resultant chi-square value and its related measures of association all revealed a high level of statistical significance and association.[125] (See Appendix 4 immediately following the data on PAC$ and these votes for the relevant data on the relationship between party and vote.)

Another possible relationship between these votes and PAC contributions was examined in this study. It was thought that perhaps one might be able to observe a significant relationship between the votes of those senators who were up for re-election in the 1994 mid-term elections and PAC contributions to their campaigns. It was posited that those senators, faced with the necessity of raising significant campaign monies from PACs and other sources, may have felt compelled to vote against the two cloture motions in order to secure favor from PACs which had lined

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[125] In all cases within this analysis the coding for senator's votes was such that a value of 1 was assigned to a yes vote, while a value of 0 indicated a no vote. Likewise, in all cases in which party identification is relevant the value of 1 was assigned to Democrats, 0 to Republicans.

up in opposition to lobby reform and campaign finance reform efforts. In this instance, however, such a relationship was not proven to be statistically significant. In fact, here again the relationship between party identification and how a particular senator voted was seen to have a great deal of statistical significance and association. But, no such relationship between PAC donations to these senators facing impending re-election races was discovered. (See Appendix 4 for the relevant values associated with this analysis.)

It is quite apparent that in the case of the two floor votes examined in this analysis, other factors were of greater import to senators than PAC donations to their campaign coffers. One could certainly not draw a conclusion that PAC donations held sway over a member's floor vote on these two issues which were of some significant concern to the future of PAC operations. No charge of a *quid pro quo* association could be supported in these instances.

Yet, is an empirically verifiable association between money and floor votes the only way to demonstrate PAC influence in the legislative process? Could PACs have influence in areas of that process other than floor votes? Many reformers cite evidence of PAC accessibility to the crucial stages of legislative development as cause for concern about real or perceived inequities of access to the policy process. PACs are seen to enjoy an inordinate access by virtue of their ability to donate vast sums to the campaigns of members of Congress. Those groups or individuals who cannot contribute find their access to crucial policy stages diminished. To what extent is this assertion verified by empirical examination? This is the question to which this study will now turn.

The Concern Over "Unequal Access"

Perhaps more directly relevant to concerns over PAC contributions is the access to legislators those contributions afford. While a *quid pro quo* of money for votes may be difficult to empirically establish, or to consistently demonstrate, there appears to be relative agreement among scholars and officeholders alike that PAC contributions do, at a minimum "open doors." That access advantage enjoyed by interest groups that can contribute large sums to the election efforts of congressional candidates and incumbent legislators causes many to have concern about the degree to which legislative questions are analyzed within parameters established by the moneyed interests. If access is unequal, it is likely that only those groups to whom the doors to members' offices are opened will be able to bend the ear of legislators when issues are up for decision. Candice Nelson and David Magleby put it this way:

> One need not argue that PAC money buys votes in order to posit that PACs have altered the way in which interest groups shape congressional behavior. No matter what they might say publicly, members of Congress are more inclined to listen to an organization that has contributed to their campaigns. On matters not directly affecting their constituents, the same members will think long and hard before voting against the interests of those PACs.[126]

While recognizing the inequalities of accessibility, Richard L. Hall and Frank W. Wayman adopt the premise of PAC rationality in the electoral and legislative arenas. PACs are seen as rational actors seeking to maximize their accessibility to legislators in order to influence issue outcomes which have the potential to affect them either beneficially or adversely. Hall and Wayman take issue, however, with the standard emphasis on attempting to predict causal relationships between PAC money and

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[126] Candice J. Nelson and David B. Magelby, "Congress and Campaign Money: The Prospects for Reform," The Brookings Review, (Spring 1989) p. 36.

floor votes.[127] They surmise that in looking for the effects of money, one should look more to the politics of committee decisions than to those of the House or Senate floor. Hall and Wayman focus on the committee level participation of particular members, not on their roll call votes. The intended effect of PAC contributions in this context is to buy a member's time and attention and thereby to mobilize bias in congressional committee decision making. According to Hall and Wayman, "...the behavior most likely to be affected is members' legislative involvement, not their votes."[128]

These authors develop a model of committee participation that permits a direct test of whether, and to what extent, PAC money can mobilize bias in committee decisions. An analysis of data regarding action from three separate House committees on three distinct pieces of legislation led the authors to conclude that PACs act in such a way as to mobilize action by committee members for or against particular proposals within the committee's deliberations and markups. A careful analysis of PAC contribution behavior led Hall and Wayman to determine further that PACs do indeed act rationally in furthering their own interests by rewarding their supporters - even those who are not in danger of losing their "safe" seats - incumbents, party leaders, and members of what the PAC sees as important committees. They are able to do so insofar as their contributions are not intended to "buy" votes directly in any sort of *quid pro quo* arrangement, but are instead "intended to accomplish something different from and more than influencing elections or buying votes."[129] Specifically, PAC money is allocated to mobilize

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[127] Richard L. Hall and Frank W. Wayman, "Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees," American Political Science Review, v.84, n.3, (Sept.1990) p. 797-820.
[128] Ibid., p.797.
[129] Ibid., p.800.

legislative support and favorable action by congressional members at the most crucial points in the legislative process (or at least to demobilize vocal and active opposition). It is at the level of the committees and subcommittees that much of the groundwork of important legislation is established. The parameters of public policy are delineated at this stage, as is the scope of both problem and goal definition of a given issue. In gaining a certain measure of influence at this stage of legislative decisions through the access that PAC contributions allow, PACs are able to secure and perhaps alter a member's pattern of legislative involvement - "the goal is not simply to purchase support but to provide incentives for supporters to act as agents...".[130]

Hall and Wayman argue for the following conclusions: (1) "...while members' voting choices are highly constrained, how they allocate their time, staff, and political capital is much more discretionary."[131] This is the essence of "agency" which PACs seek - creating the conditions wherein members see fit to use the resources of their offices to work for goals the PACs would like to see realized. (2) The member's level of involvement is something a PAC can reasonably expect to affect. Outright purchase of votes is unlikely to occur and is viewed by both PAC officials and elected officeholders as ethically reproachable. PACs do not presume to purchase the floor votes of public officials since they implicitly realize that how a member may vote on the floor, or on highly visible, salient, or partisan questions, is subject to a rigorous calculus on the part of that member of many competing factors. But the degree to which a member will choose to work in committee on behalf of, or in opposition to, a PAC interest can reasonably be affected by PAC financial support or the threat of non-support. (3) A purposive view of PACs is demonstrated such that their behavior

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[130] Ibid., p.802.
[131] Ibid.

of supporting their friends, incumbents, party leaders, and members almost certain to win re-election, is rational since it is precisely one's supporters, incumbents, party leaders, and members certain to return to the Congress that any PAC wants to mobilize in committee. Finally, (4) access is the most crucial goal of PAC contributions, for access is central to being able to stimulate agency on the part of members of Congress. Inability to secure access to members leaves a PAC unable to lobby most effectively for its position with those members at the crucial stage of committee deliberations.

That access is crucially important to gain a position of potential legislative influence is best demonstrated by the not uncommon PAC practice of donating to both candidates in a congressional race. In nine 1986 Senate races, some 500 PACs contributed to both the Democrat and the Republican candidates.[132] Sometimes PACs which have contributed to a losing candidate will then give to the winner after the election. (Recall the switch of PAC contribution patterns following the 1994 elections revealed in Table 7 above.) It is clear that these PACs care less about who wins then they do about having access. Berry states: "When gifts from PACs go to both candidates in a race, it stretches the justification for PACs as a means of facilitating participation in politics by rank-and-file citizens. Interest groups are simply using their wealth to gain advantages over those that do not give."[133]

Jeffrey Berry summarizes the facile distinction made by those (such as PAC directors) who argue that buying access is not equatable with buying influence:

> PAC directors freely acknowledge that money buys access while categorically denying that it buys influence. Dividing access and buying influence into two entirely separate phenomena is a convenient rationalization for PAC officials that absolves them from any

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[132] Berry, p.135.
[133] Ibid.

> impropriety. But, access *is* [emphasis his] a form of influence. If congressmen and their staffs favor those who contribute with greater access, that cannot help but influence their perceptions of the public policy issues before them. The conversations that legislators and staffers have with a group's lobbyists and the documents they read prepared by that organization all work to reinforce the group's message about what needs to be done. The more access a lobbyist has, the more chance he or she has to define what the policy problems are.[134]

Congressman Barney Frank, referring to members of Congress, has stated that, "We are the only human beings in the world who are expected to take thousands of dollars from perfect strangers on important matters and not be affected by it."[135] Yet, it is surely true as well that legislators and their staffs see the work they do on behalf of these groups which contribute to them as being nothing more than constituency service for a cause they care about. What is troubling, perhaps, about this apparent reasonable attention to constituency is that it is also undoubtedly true that legislators do not have the time, resources and energy to work equally as hard for all constituency groups which approach them. Consequently, it would seem to be almost inevitable that the greater amount of attention will go to those groups, which by virtue of having made a sizable campaign contribution, are better able to secure initial access and to foster member agency on behalf of their goals.

Of course the key question concerning this access process might be: What difference does it make? Does the accessibility of PAC interests at the committee stage of legislative development have undesirable implications for public policy? To help answer this question Dan Clawson, Alan Neustadtl, and Denise Scott, in their book entitled Money Talks: Corporate PACs and Political Influence, note that in a

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[134] Ibid.

[135] This statement by Rep. Barney Frank is widely quoted in the literature on the issues of campaign finance reform. Here, it is quoted from Jeffrey Berry, The Interest Group Society, p. 134.

survey of top corporate PAC officials they had conducted while researching for the book, those officials, when asked to provide an example of what it is their organizations were trying to accomplish by contributing to federal political candidates, "about 90 percent described a tax loophole they had won."[136]

Clearly, the playing field for access is not level. Not all groups or individuals have the resources of large corporate, labor, and trade association PACs and consequently, not all are equally able to get in the game. Access may be available to all, but it is available at a price which many are either unable, unwilling, or both, to pay.

As has already been noted, the influence of PAC contributions on legislative decisions has been most consistently demonstrated on issues of low visibility and little widespread public saliency. PACs understand that it is foolish to expect that a member of Congress can be persuaded, against the direct wishes of major constituent groups, party leadership, or personal ideology, among other relevant factors, to vote differently than he/she otherwise would simply because of a contribution from a single political action committee. Accordingly these access-oriented PACs have a different purpose and style. Clawson, et al., explain:

> Their aim is not to influence the member's public vote on the final piece of legislation, but rather to be sure that the bill's wording exempts their company from the bill's most costly or damaging provisions. ...the aim... is to be sure that the law has built-in loopholes that protect the company. The law may say that corporate tax rates are increased and that's what the media and the public think, but section 739, subsection J, paragraph iii, contains a hard-to-decipher phrase. No ordinary mortal can figure out what it means or to whom it applies, but the consequence is that the company doesn't pay the taxes you'd think it would. For example, the 1986 Tax "Reform" Act contained a provision limited to a single company, identified as a "corporation incorporated on June 13, 1917, which has its principal place of

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[136] Dan Clawson, Alan Neustadtl, and Denise Scott, Money Talks: Corporate PACs and Political Influence, New York: Basic Books, Inc., 1992, p.95.

> business in Bartlesville, Oklahoma." With that provision in the bill, Philips Petroleum didn't mind at all if Congress wanted to "reform" the tax laws.[137]

Although an explicit causal model for determining the degree to which the PAC contributions from Philips Petroleum to members of the tax writing committees[138] could be found directly responsible for the provisions of tax exemption which the corporation was able to effect is not available, it does not diminish concerns about "unequal access." It is the ease of access to members which is enjoyed by corporate contributors (and other big contributors) which affords them the opportunity to gain such favorable treatment. The fact that these provisions are buried in subsections of the bills and phrased in such obscure, convoluted language as to be incomprehensible to most, is tantamount to an admission of their dubious desirability within public policy. It must be fairly certain that they would face greater opposition were they to face the light of public scrutiny.

The costs associated with these tax loopholes, which are, in effect, gained through the purchase of access by campaign contributions, are extraordinarily high. Clawson et al., quote from the work of two Pulitzer prize-winning journalists, Donald L. Barlett and James B. Steele of the *Philadelphia Inquirer*, who tackled the job of uncovering the loopholes in the 1986 Tax Reform Act. Noting their distrust of the Congressional estimate of revenue loss through the tax loopholes contained within the 1986 law, put at some $10.6 billion, Clawson et al., state:

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[137] Ibid., p.91.

[138] Although many tax loopholes are written into tax laws, many others are hidden in various other pieces of legislation. If a particular measure is rejected by the tax committees, it can be slipped into a bill which deals with an entirely different subject. In this way corporate PACs are able to advantage themselves of a multiplicity of venue options; all gained through the strategic use of well-placed contributions designed to open the doors of access.

> ...this number is taken seriously only by those who still believe in the tooth fairy. Consider Barlett and Steele's estimates for the losses incurred by just one loophole:
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> "The cost of one break was originally placed by the Joint Committee at $300 million. After passage of the legislation, the figure was adjusted upward to $7 billion. That worked out to a 2,233 percent miscalculation, a mistake so large as to defy comprehension. It would be roughly akin to a family who bought a house expecting to pay $400 a month on its mortgage but who discovered, belatedly, the payments would actually be $9,332 a month."[139]
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> Or consider the cost of the special tax provision to help the Long Island Power Authority buy and shut down the Shoreham nuclear power plant. This provision was buried in what Congress referred to as a deficit reduction measure. The Joint Committee on Taxation originally said the bailout would cost $1 million, then revised that just a tad to $241 million. The true cost is estimated at $3.5 to $4 billion.[140]

Not only do the advantages achieved by corporate, and other resource rich interests affect tax policy and cost readily quantifiable amounts of potential public revenue, but, even more insidiously, these monied interests have had an undesirable effect on public perceptions about the policy process in ways which are not so easily quantified. Public distrust of "special interests" PACs and the influence of money on Congress has been reflected in numerous opinion polls. A 1985 ABC News-*Washington Post* poll found that 70 percent of Americans agreed with the statement, "Most Members of Congress care more about special interests than they care about people like you."[141] A 1985 Gallup poll revealed that fully 79 percent of Americans

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[139] Donald L. Barlett and James B. Steele, "The Great Tax Giveaway," special section of the Philadelphia Inquirer, including articles that originally appeared April 10-16 and September 25-26, 1988, p.4.

[140] Clawson, et al., p. 95-96.

[141] Cited in Candice Nelson and David Magleby, The Money Chase: Congressional

agreed that "Money is the most important factor influencing public policies."[142] It is not without some justification that Americans have come to distrust PACs and to distrust the motivations of their own elected representatives. Widespread public feelings of inefficacy, cynicism toward, and alienation from, the democratic electoral and public policy processes continues to grow in an environment of "interested money" gaining an unequal advantage in access to those processes.

PACs and Reform - Summary

While the evidence cited above may suggest the need for reform of current campaign finance practices campaign finance reform proposals either to limit the amounts which individual PACs could legally contribute, to limit the aggregate amounts which an individual candidate could receive from all PACs, or to ban PACs altogether, which rely on an assertion of PAC "undue influence" on election results as a rationale for their adoption can not be supported by empirical evidence. This study demonstrated that although the null hypothesis of no relationship between PAC money and a candidate's share of the vote could not be rejected, there was little support for any hypothesis that that PAC money had an "undue influence" on the vote percentages of those candidates examined.

However, the assertion of influence over certain legislative decisions does seem to have some grounding in empirical observation. As outlined above, the degree to which PAC contributions are seen to weigh importantly in the minds of members of Congress is directly related to the visibility and saliency of the legislative issue involved. For issues of high visibility, with a great degree of partisan, ideological, or constituency saliency, PAC contributions appear to have little direct bearing on the

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Campaign Finance Reform, Washington, D.C.: The Brookings Institution, 1990, p.75.
[142] Ibid.

way in which a member votes. This was the case with the two floor votes this study analyzed. Both the campaign finance cloture vote and the lobby reform cloture vote examined here were issues of great visibility with a high degree of partisan polarization. Party identification appeared to be a much more significant factor in determining a given member's vote than were PAC contributions.

There is, however, a significant body of scholarly work which demonstrates that on low-visibility, non-controversial (in the partisan sense), more technical issues - the kind often decided in committee rather than on the floor - PAC contributions do, indeed, play an important role in consideration of members' actions in support of the particular contributing PAC's legislative agenda.

Finally, and perhaps, most importantly, the extent to which access to members of Congress is facilitated by sizable campaign contributions - the kind which only well-financed, large PACs and wealthy individuals can give - is cause for significant concern. The more access a lobbying group has the more chance that group has to define what the parameters of a policy problem are. In a process of unequal access, in which favorable tax and other legislative treatment is gained by those with sufficient resources to donate large sums to the campaign coffers of incumbent and aspiring legislators, certain direct and indirect costs are incurred. Both the direct costs arising out of tax loopholes granted to specific interests and the indirect costs of public inefficacy and citizen alienation from electoral and policy processes seen to be dominated by "moneyed special interests", raise legitimate concerns about the role of political action committees in the democratic processes.

That said, however, it is the judgment of this author that piecemeal reform proposals of the type advocating either limitations on the size of individual PAC donations, limits on the amounts a candidate can accept from all PACs, banning PAC activity altogether, or setting federal campaign spending limits, if done without a

systemic overhaul of the current regulatory system of campaign finance cannot hope to accomplish the goals of real reform. Rather than opening up the system to allow more equitable access to legislators to facilitate greater opportunity for participation in the policy process, most piecemeal reforms would either fail to accomplish those goals or, even worse enhance rather than reduce current inequities.

With respect to each of these:

- **Limits on the size of individual PAC donations** - The intent of current campaign finance law is to limit the size of political action committee contributions to an amount that is so small that it cannot influence the behavior of legislators. Accordingly, PACs are allowed to contribute $5,000 per candidate per election - a total of $10,000 to a candidate facing both a primary and a general election. Proponents of further limiting the amounts which PACs can contribute argue that the existing limits are too high and consequently exert an "undue influence" on the behavior of members of Congress. This runs contrary to available evidence which seems to belie the importance of single PAC contributions as determinant of a member's votes on major, visible, controversial issues. Yet, smaller contributions are often enough to secure access to members in order to get the "minor" changes in legislation which would be beneficial to the PAC interests who make those contributions. Just how low would individual PAC contributions have to be set to thwart this access process? Average corporate PAC donations in 1988 were $925 to House members and $2,472 to members of the Senate.[143] Proposals to limit the size of individual PAC contributions would have to set such limits even lower than these levels if the desired goal of reducing "influence" or

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[143] Corporate PACs represent the single largest category of PACs and the group which tends to donate in larger amounts than other PACs. Figures quoted are from FEC reports on all PAC activity for the 1988 election cycle.

unequal access is to be achieved. Current proposals generally seek to reduce by half the amounts which PACs may contribute. They would seem unlikely to have any effect in reducing PAC accessibility.

- **Limits on the aggregate amounts which candidates could accept from PACs.** This restriction has been offered for congressional consideration a number of times. It passed in the House, but not the Senate in 1979. The Senate again considered it in 1986 and then passed it in 1991 as part of a campaign finance reform package eventually vetoed by President Bush. Just exactly how this would work out in practice is unclear, but it would seem probable that it would simply encourage PAC contributions early in the electoral cycle in order that those PACs could get their donations in before members had reached their limit. This would seem to favor access oriented donations by the large resource rich committees, squeezing out contributions from groups which could not contribute so early in the process. The effect would be to heighten the influence of the largest corporate, labor and trade association PACs at the expense of smaller citizen PACs. Unequal access would then be exacerbated rather than reduced.
- **A Total Ban on Corporate, Labor, and Trade-Association PACs.** It must first be noted that there are some very real constitutional problems with a direct ban on PAC contributions. In light of the Supreme Court's *Buckley* ruling, it is far from certain that any proposal to ban PACs would withstand certain legal challenge. Devoid of any other measure designed to work in conjunction with such a proposal (such as an elimination of all, or most, forms of private financing of congressional campaigns, a ban on independent spending, or soft-money contributions) a ban on corporate, labor, and trade association PAC donations to congressional candidates, is unlikely to achieve anything other than enhancing the current Republican advantage in raising money from individuals. Furthermore,

since PACs arose out of the 1970's reform efforts to reduce the influence of large private, individual contributors, any "reform" which sought to revert to a reliance on individual private sources of campaign funds fails to consider the kinds of abuses which the 70's FECA legislation sought to address. Corporations, labor unions, and trade associations would find ways to circumvent the ban on their organized PAC activity either by using the means of independent spending, soft-money contributions, or bundling of large scale individual contributions to insure continued access to members of Congress. All of these forms of financial activity are not as easily scrutinized as are legally disclosed PAC contributions. The most likely unintended consequence of a ban on PAC contributions to candidates would be less public disclosure of fund sources leading, perhaps, to the kinds of secret abuses which existed prior to 1970's reforms.

- **Spending Limits.** As with the ban on PACs, spending limits established without a concurrent plan of public financing would not stand up under legal challenge. The Supreme Court explicitly ruled in *Buckley* that such limits are unconstitutional unless tied to public financing. The only avenue open to reformers who would advance this proposal without including with it a plan of public financing for congressional campaigns, is a constitutional amendment circumventing the Court's order - something of dubious feasibility. It has already been demonstrated that spending limits without additional changes would amount to little more than an incumbent protection program. In order to overcome the distinct advantages enjoyed by incumbents (name recognition, publicly funded staffs, free postage, "newsworthiness", etc.) challengers need to spend substantial sums of money. If the costs of campaigns is restricted at a low level incumbents will be even more difficult to unseat. Competition will suffer; contrary to what reformers desire.

If true reform is to be considered it must be considered comprehensively. The only comprehensive campaign finance reform proposal which is inherently designed to enhance electoral competition, reduce unequal access to members of Congress and foster equal representation, create opportunity for more equitable participation in the policy process, and, at the same time, actually save money, is public financing of congressional campaigns. The current regulatory model of campaign finance, in which wealthy individuals and PACs can use their money any way they want so long as it is not proscribed (or regulated) by law, has not worked. Because money is so unequally distributed and can be used in so many different ways in helping to finance federal campaigns, and because the regulatory body charged with oversight - the Federal Election Commission - has been underfunded and politically organized so as to thwart real enforcement, rules are often evaded and regulators fall behind those who constantly look for new and more creative ways to circumvent the law.[144] Any new reforms must appreciate the necessity of an overhaul of the FEC to create a workable enforcement system which will protect the integrity of both current and future campaign finance laws.[145]

Dan Clawson, Alan Neustadtl, and Denise Scott have described the current regulatory model of campaign finance reform as being somewhat similar to a balloon:

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[144] Clawson, et al., cite evidence of such willfull disregard for, and FEC failure to enforce, the law by noting both the Democratic and Republican winners of the 1988 Iowa caucuses had surpassed the primary spending limits established by law. Richard Gephardt (D-Mo.), the Democratic winner, "...exceeded his spending limit by almost $500,000, and the Republican winner, Robert Dole (R-Kan.) exceeded his limit by $306,000. It was more than three years later before the FEC completed its audit of these campaigns - long after the presidential nominations were decided." Clawson, et al., p.209.

[145] See, for, instance Brooks Jackson, "Off Guard: Election Commission Set up as a Watchdog, Has Become a Pussycat," Wall Street Journal, October, 19, 1987, at A1.

> If people and PACs pump money into it, it will expand. Regulators occasionally push on the balloon to try to make it go down. With some effort they can push the balloon down in one place - but that makes it pop out farther somewhere else. If people focus only on the area of the balloon that has been pushed in, they conclude the reform has worked. However, if you get a look at the back of the balloon, it becomes evident that it has popped out even farther somewhere else. This regulatory model of campaign finance reform will not work. It leads to a multiplicative increase in regulations combined with an exponential increase in ways of avoiding the regulations. Some alternative strategy must be found.[146]

That alternative strategy might well involve public financing of congressional campaigns. The cases both for and against such a system will be made in the next, and final section of this paper. Arguments for the extension of public financing to all congressional campaigns will be analyzed in light of all of the foregoing analysis. The principle argument against public financing - its cost and what is seen to be public unwillingness to pay those costs - will be evaluated, along with other major arguments of opposition, in order to determine the effectiveness of public financing at alleviating some, or all, of the concerns outlined above, its public desirability, and its political feasibility as well.

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[146] Clawson, et al., p.196-197.

CHAPTER SEVEN

PUBLIC FINANCING OF CONGRESSIONAL CAMPAIGNS

Because most complaints about the current regulatory system of private campaign finance are centered around the sources of funds for political campaigns, public funding has been the ultimate goal of many reformers who seek to alter fundamentally the field of campaign funding sources. It is the logical conclusion of the current cycle of campaign finance reform and, perhaps, the most problematic. Even so, Fred Wertheimer of Common Cause, an early and tireless advocate of further campaign finance reform, has stated the issue thusly: "Comprehensive congressional campaign finance reform is needed to curtail the influence of special-interest money, to create a competitive electoral process, and to help restore public confidence in our political system. A new system of public campaign resources and spending limits should be established for congressional races."[147]

But, in order to reach valid conclusions as to the desirability of any comprehensive reform of current campaign finance laws involving the adoption of a system of public funding for all federal election campaigns, various arguments, both pro and con must be examined more completely. This will be the focus of this final section as an evaluation of both the present system of private campaign finance and a completely new system of full public financing is initiated. Which system is more in keeping with constitutional and practical criteria of desirability? What might some of those criteria be? These questions will be answered herein; but first the arguments.

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[147] Fred Wertheimer and Susan Weiss Manes, "Campaign Finance Reform: A Key to Restoring the Health of Our Democracy," Columbia Law Review, v.94, n.4, May 1994, p.1149.

Arguments in Opposition

The central arguments advanced by opponents of any extension of public financing into the arena of congressional campaign finance can be summarized into four general themes:

- First, any plan of public funding is essentially a plan of incumbent protection inasmuch as such plans are coupled with an expenditure ceiling. Competition would therefore be restricted, rather than enhanced, under a system of public finance. Challengers would not be able to overcome the substantial electoral advantages of incumbency since they would be precluded, under public financing schemes, from raising and spending the large sums necessary to do so. Those who make this argument point to the kind of studies, in this work and elsewhere (Jacobson), which empirically demonstrate the need for challengers to raise and spend vast sums of money to become viable, competitive candidates.
- Second, there are constitutional issues and questions of democratic principle. Some argue that public funding runs counter to the democratic principles of political liberty and participatory democracy in that it, in effect, forces people to finance candidates and campaigns which they may find repugnant, and inhibits voluntary participation in politics by destroying an important link between constituent and representative. By using taxpayer funds to finance all congressional campaigns, any plan of public finance compels indirect funding of candidates to which individual voters may be opposed. Inasmuch as the act of contributing to candidates and their campaigns constitutes a form of political participation, any plan of public financing which would eliminate or significantly reduce the ability of individuals to participate in politics through the mechanism of the campaign contribution, constrains, rather than enhances, participatory democracy.

- A third, and certainly the most often advanced argument against public funding of congressional campaigns, concerns the costs associated with such a scheme. In an era of severe budget restraints and deficits, there appears to be little appetite within the Congress or the electorate at large for an increase in government spending for political campaigns. Inasmuch as budget cuts are affecting government programs across the spectrum, widespread public and political support for targeting taxpayer funds to congressional political campaigns is highly improbable. Opponents of public financing often refer to such plans as amounting to "welfare for politicians." The use of such rhetoric, and its acceptance in the general public lexicon, is emblematic of the "politicized" nature of the issue. The costs of public financing plans, estimated at or near some $150 million per election cycle (as in Clinton's plan) to as much as $500 million per cycle, are seen as exorbitant and prohibitive.
- A final objection to public financing is that even if a plan of public funding sounds reasonable and may appear desirable, it is not the panacea for current system ills that its proponents claim. Those individuals and groups with sufficient resources, and the will to do so, will find ways to corrupt and circumvent the system. In essence, the balloon theory of campaign finance regulation, advanced by Clawson, Neustadtl and Scott, and referred to above, is legitimized by this argument. Public financing as simply another regulation of campaign finance will only result in such unintended consequences as "...a multiplicative increase in regulations combined with an exponential increase in ways of avoiding the regulations."[148]

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[148] Clawson, et al., p.139.

Each of these arguments will be examined in turn. Each will then be reviewed in light of arguments by supporters of public campaign financing in order that thoughtful conclusions about the desirability of such a system may be reached.

In light of the analysis of the effects of spending in congressional races provided in this study and elsewhere, any plan of public financing must take note of the empirical evidence which overwhelmingly points to a need for challengers to be able to raise and spend substantial sums of money in order to overcome significant incumbent advantages. Professor Gary Jacobson has analyzed the likely effects on competitiveness in election contests of public funding and has found that any plan of public funding which includes (as most such plans do) a cap on expenditures as part of its implementation, would work to the detriment of challengers.[149]

In his analysis, Jacobson adopted, as models of what a possible public financing scheme would look like, the 1977 House bill 5157, and the Senate's 1977 bill S 926, both bills which would have provided partial public financing, in the form of matching grants to candidates, had they been adopted in the 1977 congressional session. The Senate bill would have provided for the establishment of a general election spending limit of $250,000 plus 10 cents times the voting age population of the state for all Senate campaigns. Major party candidates were automatically eligible for 25 percent of this total in flat grant allocations. Contributions of up to $100 per donor would be matched by federal funds up to the set limit in each particular race. Candidates who accepted public funds would be restricted from spending more than $35,000 of their own money on their campaigns. Third party and other non-major candidates would not be eligible for the flat grant funds but could receive matching grants if they met the threshold levels of raising 10 percent of their

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[149] Jacobson, Chapter 7, "The Future of Campaign Finance Regulation: Public Funds?", p.201-226.

spending limit , or $100,000, whichever was less, from individual gifts of $100 or less. Primary elections were not covered under the proposed legislation.

House bill 5157 required that House candidates gather a minimum of $10,000 in private contributions of $100 or less in order to become eligible for matching funds. Once this initial threshold had been reached, contributions (again of $100 or less per contributor) would be matched dollar for dollar up to a total of $50,000 in public funds. Candidates who accepted the public subsidies would be bound by law not to exceed the total spending cap of $150,000, and were further limited to spending no more than $25,000 in personal funds on their campaigns. Again, primaries were not covered in the bill.

In determining both eligibility for, and levels of public funding available for, congressional candidates in the election cycles of 1972, 1974, and 1976, Jacobson assumed that the provisions for partial public financing proposed in the respective 1977 House and Senate bills had been in force for the 1972, 1974 and 1976 elections. In projecting the impact of such a public funding scheme onto the results of these elections, Jacobson adjusted the expenditure figures for each candidate according to what he/she would have spent under the public funding scheme; the expected vote was then computed using the parameters estimated for the regression equations he had established in his earlier analysis of spending effects. Noting that inflation had to be taken into account, Jacobson adjusted the spending ceilings mandated in the two bills in order to reflect comparable dollar amounts for the years examined.[150]

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[150] Jacobson notes, "The Consumer Price Index was used to deflate subsidies to comparable dollar amounts for 1972 and 1974. The 1972 and 1974 equivalents of $50,000are, in round figures, $37,000 and $44,000 respectively. Similarly, $150,000 is equal to $111,000 in 1972 dollars, $132,000 in 1974 dollars. Comparable adjustments were also made in the Senate subsidy and limit figures." p.210.

What Jacobson discovered is that had the public funding subsidies and spending limits been in effect, the limits would have been too low to allow for much chance of a challenger victory. In fact, "...inspection of individual cases shows that the spending limits are instrumental in decreasing the number of challengers predicted to win more than 50 percent of the vote. With the limits removed, the number of expected winning challengers increases sharply."[151]

Consequently, Jacobson finds little empirical support for any proposition that public funds plus spending limits would permit fairer competition for congressional seats leading him to conclude:

> To recapitulate briefly: congressional elections are affected much more by what challengers spend than by what incumbents spend. The more spending by all candidates, the better challengers are likely to do. Campaign finance reforms that get more money into the hands of challengers will enhance competition for congressional seats; reforms that make it more difficult to acquire and spend money will have the opposite effect.[152]

The argument against public funding which holds that any such plan of campaign finance would amount to little more than an incumbent protection program appears to have credibility in light of Jacobson's analysis. Any plan of public financing must consider ways to decrease the distinct advantages of incumbency if it is to be judged consistent with its stated goal of enhancing competition.

Public financing opponents also argue, on constitutional grounds, that such a system of public funding would lead to a diminution of political participation and destroy the crucial link between constituents and their representatives in Congress. Bernard Shanley, onetime Vice Chairman of the Republican National Committee,

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[151] Jacobson, p. 213.
[152] Ibid., p.219.

summed up this position early on in the debate. Testifying before a Senate committee in 1973 which was holding hearings on campaign finance reform, Shanley stated, "Federal financing of political campaigns is entirely contrary to America's basic concepts of participatory democracy and individual involvement in the political process of candidate selection and advocacy."[153] Representative Bill Frenzel, an early opponent of campaign finance reform efforts, testifying before that same committee, stated that a candidate's ability to raise and spend money was:

> ...a barometer of: (1) a candidate's popular support, (2) public approval of his [sic] record while in office, and (3) his seriousness about serving in public office...private financing functions in a manner similar to the free market. It has been one of the traditional ways of determining the popularity and attractiveness of a candidate. Popular candidates rarely have a shortage of funds, while unpopular candidates are usually unable to raise large amounts of funds.[154]

A system of public funding which denied citizens the right to fund, or to refuse to fund, the candidate(s) of their own choosing is seen as an infringement on political liberty and free speech. Even a voluntary scheme of tax checkoffs, such as that employed in the current presidential finance system, is one which "ultimately makes everyone pay to make up for the lost revenue and so to fund indirectly the campaigns of candidates they detest."[155] Certainly, it is argued, the right of free political expression involves the right to refuse to fund candidates one finds detestable. As such, it is certain that a system of public finance would face legal challenges on that basis. It is not clear how the Supreme Court would rule on such a challenge, but *Buckley* gives us some indication that a system of public finance would be ruled

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[153] U.S. Congress, Senate Committee on Rules and Administration, Subcommittee on Priveleges and Elections, Public Financing of Federal Elections, 93rd Congress, 1st session, hearings September 18-21, 1973, p.317.
[154] Ibid., p.151.
[155] Jacobson, p.203.

constitutional since the presidential public funding provisions of FECA were upheld in that decision. Nevertheless, imposition of any plan of public financing would almost certainly force a Court review of the *Buckley* decision.

Professor Larry Sabato has written, regarding public financing reform proposals: "But the weightiest opposition to this reform, and the fundamental reason why public financing will not be passed until a tidal change occurs, is the electorate's refusal to pay for it."[156] Terry Dolan, founder of the independent National Conservative Political Action Committee (NCPAC), bluntly expressed those sentiments:

> ...there is an army of fed-up taxpayers just waiting to see how you [Congress] vote on this issue. They, like me, will be morally indignant to get the names of those congressmen who will spend millions of dollars getting themselves re-elected when they cannot balance the federal budget.[157]

Evidence of public ambiguity with respect to a system of taxpayer financed campaigns is not hard to gather. A 1982 Gallup poll found that a majority of 55 percent expressed support for the statement, "It has been suggested that the federal government provide a fixed amount of money for the election campaigns of candidates for Congress, and that all private contributions from other sources be prohibited." Yet, when the Civic Service polling firm asked the following year whether respondents would "approve or disapprove of the proposal to use public funds, federal money, to pay the costs of congressional campaigns," 65 percent disapproved, with only 25 percent in favor.[158] Further evidence of public disapproval of the use of taxpayer monies to finance political campaigns is seen in

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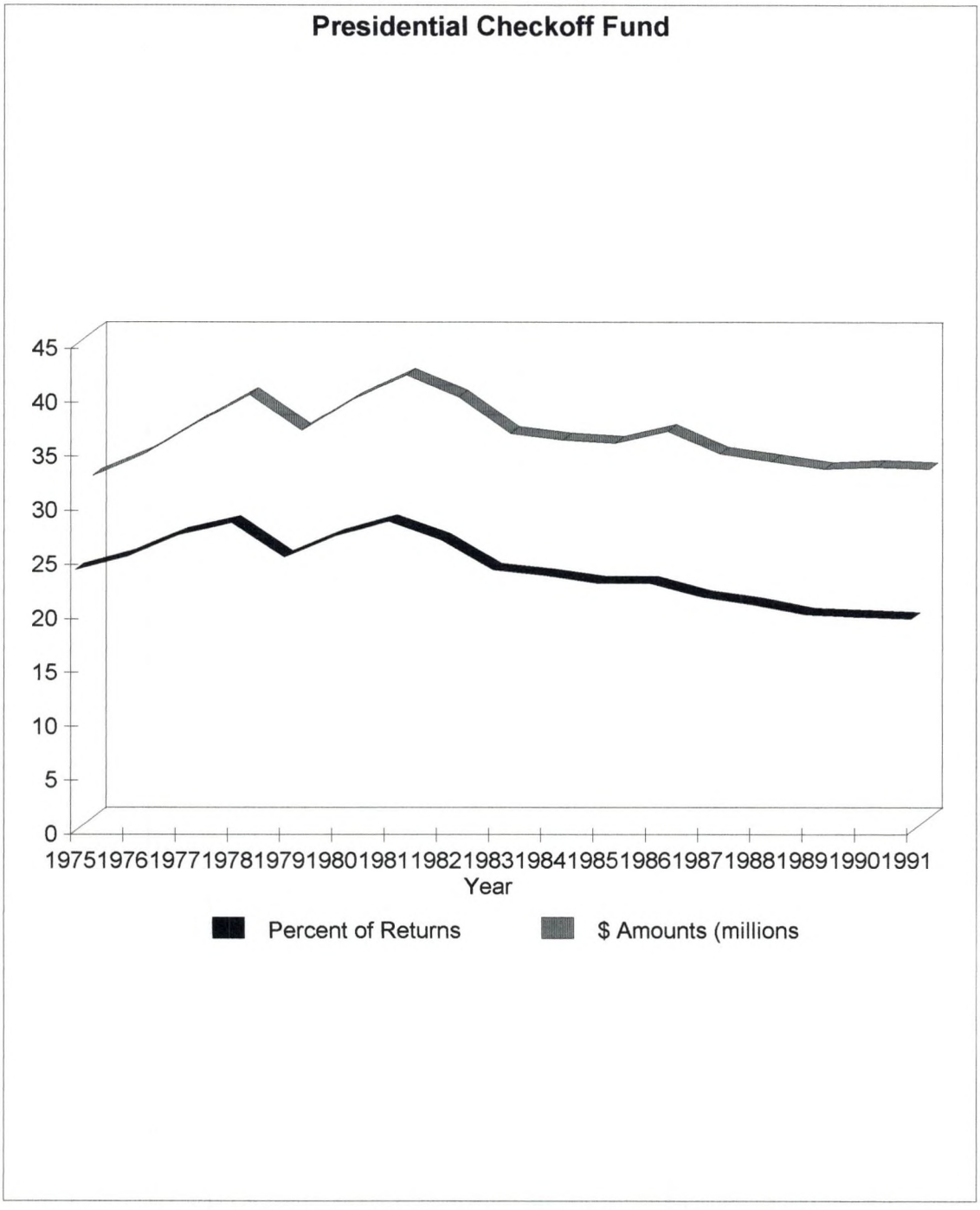
[156] Larry Sabato, PAC Power, p.178.
[157] Quoted in Sabato, p.178-179.
[158] These polls are cited in Sabato, p.179.

the falling participation rate of tax checkoffs used to fund the presidential campaign - the only existing mechanism of public financing.

Figure 3 below illustrates the decline in participation by taxpayers in the checkoff scheme used to generate the public funds for presidential campaigns authorized under FECA. The chart clearly shows a continuous decline in elective participation in the checkoff plan. The plan never has received even a 30 percent participation rate and has seen a steady decline both in terms of the percentage of tax returns with the checkoff and total dollars allocated to the presidential public funding program via that checkoff mechanism. Since many proposals which advocate public funding also propose to pay for it via the tax checkoff program, it is evident that declining participation in the limited presidential public funding plan makes its usefulness in any extension of public funding to congressional campaigns highly problematic.



Source: Financing Politics and FEC Annual Report 1991.

Figure 3 : Presidential Checkoff Fund

Furthermore, the Federal Election Commission has been warning of a funding shortfall for the presidential system since 1990. Projections are for the fund to experience a serious shortfall of between $75 and $100 million in 1996.[159] This fact has led many proponents of public financing to propose an increase in the amount of the checkoff - from the current $1 per taxpayer to $3, or even $5 - in order to generate funds required to extend public funding to all congressional campaigns. Additionally, a more aggressive program of taxpayer education about the nature and use of the fund is envisioned by those who would seek to protect its solvency. The problem of declining taxpayer checkoff participation is seen, in this view, to be one of a lack of public understanding of the way in which the checkoff system operates and the purposes of the fund. Taxpayer misunderstanding of the checkoff - that any amount checked will not increase tax owed or decrease any refund amount - is apparently widespread according to this view, and the way to health for the system is to increase awareness of that fact via an aggressive public education program. Whether such a program of public education would, in fact, increase participation in the checkoff program is open to question. Absent a guarantee that participation would increase and that the fund would be able to generate the kind of revenue necessary to fund all federal election campaigns, opponents argue that a fund which might well experience serious shortfalls, when coupled with constraints on total candidate spending, would further hamper serious challengers and decrease competitiveness.

Still, the problems of cost are not completely addressed by a discussion of the relative solvency of the presidential checkoff fund. It is clear that any system of public funding for all congressional campaigns is going to cost a substantial amount

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[159] Federal Election Commission Annual Report 1991, Washington, D.C.:Government Printing Office, 1992, p.39.

of money. Even President Clinton's plan, with which this paper began, was estimated to cost approximately $150 million per election cycle. Other plans have been projected to cost as much as $500 million - quite a hefty sum. These figures are unlikely to generate enthusiastic support either in the Congress, or in the general public, for any public financing plan. It most certainly could not be sold as a deficit reduction, cost-saving measure and it is questionable that any plan would be likely to generate a substantial increase in the numbers of taxpayer checkoff participants. In fact, given the politicized rhetoric surrounding the issue, it is much more likely to generate a significant decrease in such participation and a subsequent shortfall in available dollars if it were foisted upon a reluctant taxpaying public.

An explosion of unreported and unlimited "soft money" contributions and unregulated independent expenditures is likely to follow in the wake of public financing according to many of its opponents. Candidates relying on public funding and abiding by the expenditure limits who faced a concerted and massive independent expenditure campaign, might, in effect, be drastically outspent. Soft money contributions for party-building, get-out-the-vote and voter registration activities are largely unregulated under current law and would likely be widely abused by parties eager to retain their level of access to members of Congress and to the policy process. The practice of "bundling", in which many small individual contributions are collected and presented en masse to candidates, could easily be employed by PACs to insure a candidate's ability to reach the initial threshold of eligibility for public matching funds. Continuing abuses and creative circumvention of campaign finance law are very likely to occur even under a system of public financing. The necessity of imposing further regulations on campaign finance activity to deal with persistent abuse will inevitably lead to more government "red

tape" and bureaucracy in the view of reform opponents. In their view more reform only results in more undesirable, unintended consequences.

Larry Sabato, as long ago as 1984, in the first edition of his book PAC Power: Inside the World of Political Action Committees, pointed (perhaps prophetically) to the political difficulties standing as obstructions to passage of any plan of public financing for congressional campaigns by stating:

> But the obstacles blocking passage of this reform are substantial. As long as Republicans are in control of either house of Congress or the presidency, no such bill will be passed and signed into law since most members of the GOP are philosophically and practically (they do not need the money) opposed to the idea. With the anti-spending, antiregulatory mood prevailing on Capitol Hill and perhaps in the country at large in the deficit-filled 1980s, even a solidly Democratic Congress and administration would have great difficulty securing a public financing law.[160]

The fact of the Clinton administration's recent failure to secure passage of its public financing campaign finance reform proposal (even though that proposal was for a system of partial public financing) even while having a solid majority of Democrats in both houses underscores Sabato's observation. The most recent round of congressional elections which propelled Republicans into control of both houses of Congress may seal the fate of any comprehensive campaign finance reform involving public financing. Campaign finance reform is unlikely to be an issue on the Republican congressional agenda. Public financing of congressional campaigns is an issue of partisan polarization. So long as there is no public consensus on the issue, or a groundswell of public support for publicly funded federal campaigns, the issue is likely to remain partisan and divisive; hardly the kind of issue which might enjoy likely congressional passage.

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[160] Sabato, p.178.

Arguments in Support

Despite these and other concerns about public financing as an alternative to the present system of private campaign finance, many who study the issues involved in campaign finance reform acknowledge current system inequities. It is those inequities which precipitate the calls for comprehensive reform. Even Gary Jacobson has recognized these current system inequities noting that "privately financed campaigns give an inordinate advantage to wealthy individuals and interests, violating the democratic principle of political equality."[161] He quotes from Joel Fleishman's work "Private Money and Public Elections: Another American Dilemma" [162]: "By providing the capital needed for effective campaigning, the wealthy [both individuals and PACs] exercise political advantage. Through their influence over public policy, the wealthy are able to secure their economic advantage."[163] It is this concern over the degree to which economic inequities affect public policy and electoral processes which underlies many of the arguments advanced by proponents of public financing.

Arguments in support of public funding for all congressional campaigns come from many disparate sources. Charles McC. Mathias, the former Republican senator from Maryland, and a staunch advocate of public financing, has argued that concerns about the inequities of present-day campaign finance compel consideration of an alternative system of publicly financed federal campaigns. He writes:

> Partial public funding with realistic expenditure ceilings would enable candidates to run competitive campaigns in which private funding

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[161] Jacobson, p.202.
[162] Joel Fleishman, "Private Money and Public Elections: Another American Dilemma", Changing Campaign Techniques, ed. Louis Maisel, Sage Electoral Studies Yearbook 2, Beverly Hills: Sage Publications, 1976, pp.19-54.
[163] Joel Fleishman, quoted in Jacobson, p. 202.

> would continue to play an important but not a dominant role. A grant of public funds would free candidates from the incessant demands of fund-raising and offers the hope of shortening the seemingly endless campaign season. A system of public finance that includes a limit on the amount candidates may contribute to their own campaigns would eliminate the unfair advantage enjoyed by those with great personal wealth. And most important, public financing in congressional campaigns would restore a missing equilibrium between the sources of campaign funding and give officeholders a greater measure of freedom to address issues in the broad national interest. Such results would go a long way toward renewing public belief in the integrity of the electoral process.[164]

Elizabeth Drew, the noted political commentator and journalist, in her book Politics and Money: The New Road to Corruption, after having cited a host of anecdotal and circumstantial evidence of questionable (although, in many instances perfectly legal under current campaign finance law) campaign finance activities concludes:

> The impact of the need for money on congressional behavior has been dramatic. First, there is no question that we have a political system in which politicians' access to money is vital and, in more cases than not, decisive. ...Second, it is clear that the politicians' anxiety about having access to enough money corrodes, and even corrupts the political system. ...At the least politicians increasingly consider how their votes will affect their own - and their opponents' - ability to raise money. At worst, votes are actually traded for money. It is clear that we are at some distance from the way the democratic process is supposed to work.[165]

While there is only ambiguous empirical support for a charge of trading money for votes, the fact that it is seen to occur at all is reason enough for concern. The

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[164] Charles McC. Mathias, Jr., "Should There Be Public Financing of Congressional Campaigns?", The Annals of The American Academy of Political and Social Science, v.486, July 1986, p.71.

[165] Elizabeth Drew, Politics and Money: The New Road to Corruption, New York: MacMillan Publishing, 1983, p.146.

principle argument raised by those who support public financing is that it would restore a balance of interests in providing a more "democratic" means of campaign finance. Wealth, and the inequities of its distribution, would no longer be allowed to hold sway over either the accessibility of, the votes of, or the time and attention of, elected representatives. In eliminating (or at least significantly reducing) the need for politicians to engage a great deal of time and energy in the "money chase" in order to finance their next re-election bids, the focus will instead turn to the real issues of public business. The power of wealthy private campaign finance sources to affect electoral or policy processes in their own best interests would be subjected to a more democratic, egalitarian playing field. A guarantee of public campaign funds would give members more time to spend actually legislating and keeping in touch with constituents who may not happen to be wealthy contributors. Clawson, et al., quote from one of only two PAC directors whom they interviewed[166] who actually supported the idea of publicly financed congressional campaigns:

> I am looking to take off the back of the politician this terrible concern he has of raising money. He [sic] spends too much time raising money. He spends too much time thinking about raising money. And I think if you turn around and gave him that time back - even if he didn't use it for legislation - even if he used it to think- we'd all be better off. When I first came to Washington as a kid, Congress wasn't in from July through January. They closed up for the whole summer months. These guys went home and got to see their people and thought a lot more about what was going on, and they came back better people for it. Now they have to spend all their time raising money. They have to

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[166] In conducting the research for their book Money Talks: Corporate PACs and Political Influence, the authors interviewed key officials from every major kind of corporate PAC. Officials of some 309 corporate PACs which made the largest contributions in the period from 1957 to 1988 were included in the sample. For an explanation of the sampling method employed see Clawson, et al., p.14-17.

> spend all their time involved in enormous amounts of work that are not productive.[167]

Members of Congress themselves recognize the veracity of that statement. As former Senator Thomas Eagleton (D - MO) put it in testimony before the Senate Committee on Rules and Administration in 1983 hearings on campaign finance proposals "What has changed...is that money, always a necessary tool of waging a campaign, has now become the be-all and end-all of the political campaign. Fundraising has gone from a campaign ingredient to an all pervasive campaign obsession. Senators start raising their war chest sometimes three or four years before their reelection date." [168] Senator Robert Byrd (D- WV) states further: "To raise the money, Senators start hosting fund-raisers years before they will next be in an election. They all too often become fund-raisers first and legislators second."[169] And Senator David Boren points to the influence of money on the electoral process in noting:

> When we see the influence of money itself on the system, and we realize that more and more people are being elected not on the basis of their qualifications, not upon the strength of their character, not based upon the ideas they have to confront America's needs, but based upon which one can raise the most money, we know that something is wrong...[170]

Even Senator Robert Dole (R -KS) recognized the inequities of wealth in securing input to the policy process when he observed, "There aren't any Poor PACs or Food Stamp PACs or Nutrition PACs or Medicare PACs."[171]

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[167] Clawson, et al., p.210-211.
[168] Quoted in Mathias, p.67.
[169] Senator Robert Byrd quoted in Wertheimer and Weiss Manes, p. 1133.
[170] Quoted in Ibid., p.1134.
[171] Senator Dole quoted in Berry, p. 228.

One of the most cogent and thorough presentations of major arguments in support of public financing for all congressional elections is given by Jamin Raskin and John Bonifaz in their contribution to the Columbia Law Review Symposium on Campaign Finance Reform entitled "The Constitutional Imperative and Practical Superiority of Democratically Financed Elections."[172] In their article, Raskin and Bonifaz present compelling constitutional and practical arguments for adoption of a publicly funded system of campaign finance. In the process of making those arguments, these authors answer the criticisms raised by opponents of public financing and outline a plan of public financing consistent with what they define as the essential criteria by which either the current system of campaign finance, or any proposed publicly funded system, ought to be judged.

Raskin and Bonifaz divide their six critical criteria into those (numbering three) which are concerned with Constitutional issues of equality and democracy and those of a more practical nature (again, numbering three) - concerned with overall costs and the time and energy which public officials must devote to campaign fund-raising. These authors enunciate the critical Constitutional questions, which must be satisfactorily answered by any system of campaign finance, to be:

> First, to what extent are all citizens meaningfully able to run for office under each plan? ...Second, to what extent are all social groups fairly represented in the ranks of candidates for public office, and to what extent can all social groups exercise effective influence on the political process as a whole? ...The third constitutional criterion asks: to what extent is there meaningful democratic debate - substantive dialogue among candidates and citizens about real problems confronting society - during election campaigns, and to what extent can each person meaningfully express herself [sic] in this process?[173]

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[172] Raskin and Bonifaz, supra note 71, p.1160-1203.
[173] Raskin and Bonifaz, p. 1167-68.

Raskin and Bonifaz do not manufacture these criteria out of whole cloth but cite legal precedents which buttress and support those choices. For instance, in choosing the first constitutional criterion of meaningful candidacy being open to all citizens regardless of wealth, the authors cite the U.S. Supreme Court's 1972 decision in *Bullock v. Carter*[174] which held that a Texas filing fee system for potential candidates which required payment of a high fee was unconstitutional in that "potential office seekers lacking both personal wealth and affluent backers are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be..."[175] Raskin and Bonifaz state: "This case stands for the principle that, in the modern American constitutional democracy, wealth - or the lack of access to it - may not be used to prevent citizens from becoming meaningful candidates for public office."[176] These authors cite legal precedent from which they construct the remaining two criteria as well. While one might quibble with the interpretation which Raskin and Bonifaz give to the precedents they cite, one can not be unimpressed with the organization and logic of their arguments.

The remaining three practical criteria are as follows:

> The fourth criterion inquires into the extent to which each method controls the overall social costs of political campaigns. By social costs, we mean the amount of money that citizens pay - voluntarily or involuntarily, directly or indirectly - to support the existence of a particular system. ...The fifth criterion concerns the extent to which "frivolous" candidacies are discouraged. ...Sixth and last, how much time and energy do candidates, elected officials, and their staffs spend raising money and reporting campaign contributions and expenditures?[177]

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[174] 405 U.S. 134 (1972).
[175] Id., at 143.
[176] Raskin and Bonifaz, p.1167.
[177] Ibid., p.1168-69.

Here again, the criteria are both reasonable and relevant to the issues involved in campaign finance regulation and reform. While others may want to add additional considerations, it would seem that these six criteria certainly go a long way towards providing the basis for analyzing and judging the relative merits of both the current system of private campaign finance as well as a system of public funding. To the degree that these six criteria are satisfied by either system, that system should be judged desirable.

The following analysis of the current system of private campaign finance with respect to the six criteria established by Jamin Raskin and John Bonifaz parallels their own analysis. It is presented here as a particularly cogent example of the kind of qualitative policy analysis necessary to understand the complexities of the issues inherent in comprehensive campaign finance reform proposals involving a fundamental change in the way in which federal political campaigns ought to be financed. It is an analysis to which the current author subscribes while making no claim as to its origination in the current study.

An Analysis of Present System Desirability

Upon examination it becomes abundantly clear that the present system of private finance is found wanting with respect to both constitutional and practical needs. It is obvious to any observer that the exorbitant costs of modern day campaigns, and the inequitable distribution of personal wealth, and access to wealthy contributory sources, closes off the probability that all citizens are meaningfully able to run for congressional office. The statistics are revealing:

> A winning campaign for the U.S. House of Representatives in 1992 cost, on average, $543,000, and the average rose to $730,000 in what can be deemed close races. Forty-three House candidates each spent more than $1 million on his/her campaign in 1992. Meanwhile, a

> winning campaign for the U.S. Senate cost, on average, $3.9 million. The top five Senate spenders in 1992 spent between $6 and $10 million. ... In 388 of 435 House races in 1992, the candidate who spent the most money won. In the thirty-six Senate races, thirty-one of the winners outspent their opponents, and twenty-four of them did so by a margin of two-to-one or more.[178]

The amounts of money necessary to wage a meaningful campaign are huge, making it virtually impossible to wage such a campaign with funds raised from small contributors among the poor and working class segments of the population. Consequently candidates must either enjoy great personal wealth or offer a platform of issue positions which are consistent with the interests of those in control of the available campaign wealth. Less than one percent of the nation's population contributed seventy-seven percent of the total of all campaign funds raised in the 1992 election cycle in individual contributions of $200 or more.[179] Obviously, the real sources of funding for political campaigns for Congress are an elite group of moneyed individuals and PACs. There can be little doubt that those interests enjoy an extraordinary disproportionate influence in the crucial electoral fundraising process. It is this fundraising process which is determinative of meaningful candidacy and to the extent that it is almost entirely controlled by an elite group of wealthy interests, it is a process which inherently discriminates against the possibility that all citizens are able to meaningfully compete.

In addition, the present system is designed to close off the possibility of being able to compete meaningfully for elective office, not randomly, but to specific groups among the less affluent of society. Since the present system is not open to the likelihood of meaningful candidacy for the non-affluent, it is a logically consistent

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[178] Ibid., p.1174-75. Statistics cited are from records of the Federal Election Commission compiled by the Center for Responsive Politics.
[179] Ibid., p.1177.

conclusion that all social classes are not equally represented in the political processes. The dominance of wealthy interests in the processes of American politics is, perhaps, indicated by the growing disparities between rich and poor over the last several decades. But, an even more telling bit of evidence is found in an examination of the sources of campaign money. When one compares the financial competitiveness of sources which seek to counterbalance the influence of wealthy business and corporate interests, there is a stark contrast. "In 1990, business PAC out-gave labor PACs by a ratio of almost three to one: $109 million to $37 million. Environmental PACs gave $800,000, against the energy industry PACs' $12 million. Defense industry PACs outspent peace PACs by $7.3 million to $340,000, a ratio of 22 to 1."[180]

The exclusionary nature of the present system is also indicated by the levels of voter apathy and pessimism among the poor and working class.[181] The responsiveness of the present system to the concerns and needs of the poor and working classes is viewed by those groups quite pessimistically. The Institute for Southern Studies has reported that there is "a strong correlation between voter involvement and control of the influence of wealthy contributors. ... If political leaders want to win back voter confidence, they must make access to the ballot easier while reducing the access that lobbyists and wealthy contributors already have."[182] Presumably that access extends to the policy process as well as ballot accessibility.

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[180] Ibid., p.1180.

[181] See, for instance, Jerry T. Jennings, Bureau of the Census, U.S. Dep't. of Commerce, Pub. No. P20-466, "Current Population Reports: Voting and Registration in the Election of November 1992, (1993) p. 55-56. (reporting voting and registration by family income).

[182] Institute for Southern Studies, Press Release entitled "New Study Names 'Dismal Dozen' for Poor Voter Turnout, Poor Laws," February 4, 1993, p.1.

It is apparent, as well, that inasmuch as wealth is a prerequisite for access to legislators and to the crucial junctures of the policy process (at the subcommittee and committee level) the less affluent are disadvantaged not only in their ability to compete in the electoral arena but in their ability to influence the development of public policy. This marginalization of all but the most wealthy in the electoral and policy arenas has detrimental consequences for the breadth and quality of political debate over substantive public issues. Clearly, a system which excludes effective participation of the less affluent can not be inclusive of the broadest possible spectrum of debate and political communication in either the electoral or the policy process.

Evidence of the manner in which broad debate is subjugated in the current system of campaign finance is revealed in the preemptory accumulation of massive campaign fund war chests by incumbent officeholders which tends to discourage competition and stifle debate. Clawson, et al., state: "Increasingly, incumbents use money to win elections before voters get involved."[183] Even when challenged, well-financed candidates can saturate the airwaves and other media with attack ads and sound bites while opponents without substantial financial resources may be unable to respond. The present system's lack of free television time and the inequalities of resource distribution insure that those with the most money will dominate the debate. Raskin and Bonifaz note: "The most substantive political discussion that takes place today is probably that between candidates and the wealthy donors they must convince to contribute to their campaigns; it is only in these encounters that the financial discipline of the 'wealth primary' requires a thorough and frank exchange of views."[184]

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[183] Clawson, et al., p.8.
[184] Raskin and Bonifaz, p.1183.

Reviewing the way in which the present system of campaign finance works to exclude rather than include as many groups as possible in the democratic processes, reveals that the current system fails to adhere satisfactorily to the constitutional criteria by which the desirability of any system of campaign finance should be judged. It remains to ask how the present system fares when subjected to an analysis of more practical criteria.

The fourth criterion by which a system of campaign finance ought to be judged, according to Raskin and Bonifaz, is the social costs of the system. The current system can be seen to be flawed in this regard in several respects. In addition to the substantial direct costs associated with the current system - actual funds spent on campaigns, costs of reporting and accounting for all receipts and expenditures, as well as the costs of raising money - there are significant hidden costs which are the result of legislative actions taken by members of Congress to benefit special interest benefactors.

Part of the social cost of current campaign finance is the $693.5 million spent on congressional campaigns in the 1994 election cycle. In addition, the budget of the Federal Election Commission, put at $23.6 million in 1990, must be included in any calculation of system costs. (Even this budget is woefully inadequate to the tasks the Commission is charged to undertake. A Center for Responsive Politics study found that, "...the FEC ended 1990 with the highest number of unresolved enforcement cases in its history," 258 cases or 65 percent of its caseload.[185])

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[185] Elizabeth Hedlund, Center for Responsive Politics, "Justice Delayed, Justice Denied: The Federal Election Commission's Enforcement Record," Report #1, 1992. Cited in Raskin and Bonifaz, footnote number 89, p. 1184.

Numerous examples of special interest tax breaks can be cited to illustrate the indirect costs which are absorbed by the taxpaying general public under the current system. (Recall the examples of tax code loopholes discussed previously in this study's analysis of PAC influence in the policy arena.) Perhaps one of the best, as well as most recent, examples of special interest campaign contributions having a significant effect on overall social costs is provided by the savings and loan crisis. In what is unmistakably an instance of special interest money buying influence on legislative decisions:

> ...the persistent behind-the-scenes intervention of five Senators on behalf of Charles Keating, a campaign donor and the principal stockholder of the failed Lincoln Savings and Loan, delayed the shutdown and government takeover of that institution. That delay cost the American taxpayer at least $1.3 billion. Despite the fact that numerous savings and loan investors became rich in the 1980s with constant legislative help, Congress has left the $500 billion tab for the savings and loan bailout with the American people...[186]

An example of PAC influence in the policy arena and the "investment" nature of PAC donations, with significant implications for social costs under the present campaign finance system, is provided by Philip Stern who offers the following calculation:

> Because of the tax loopholes enacted by Congress over the years, a single company (AT&T) was able to earn nearly $25 billion in profits from 1982 through 1985 without paying one penny of taxes - in fact, the government actually paid AT&T $635 million in tax rebates. The company's tax savings totaled more than $12 billion. ...an officer or director of AT&T might calculate that on the $12.1 billion tax savings alone, the nearly $1.4 million given by the company's PAC netted a return of 867,145 percent.[187]

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[186] Raskin and Bonifaz, p.1185.

[187] From Philip M. Stern, The Best Congress Money Can Buy, New York: Pantheon,

One might also point out that there are additional opportunity costs associated with public policy issues of general welfare importance - such as health care, education, environmental concerns, etc.- which are left unresolved due to the power of the present system's private monied interests to forestall legislative progress. Private wealth dominates the public agenda and its influence on the political processes imposes indirect costs, as well as actual direct costs, onto the current system of private campaign finance.

One of the arguments which is expressed by opponents of public financing is that it would encourage (or at least not discourage) frivolous candidates for federal office. In making public funds available for all federal candidates a system of public financing would encourage candidates who had no chance of winning and who would run just to receive the public funds for which they might be eligible. By implication, the argument is that the current system does, in fact, discourage frivolous candidacies and, as such, operates in the public interest in preventing such candidates from fragmenting and "confusing"[188] the electoral process.

The problem with this argument is that it makes a facile connection between "seriousness" and the ability to raise money or between "seriousness" and private wealth. The Supreme Court has determined that a candidate's wealth or ability to raise funds was not to be considered in determining seriousness since its effect would be to "exclude legitimate as well as frivolous candidates."[189] The current system continues, however to exclude not just frivolous poor candidates but serious poor candidates as well. Raskin and Bonifaz see the current system as one in which:

1988, quoted in Clawson, et al., p.98.

[188] The United States Supreme Court's ruling in *Bullock v. Carter*, held that frivolous candidacies might "clog" the "election machinery" and cause "voter confusion". 405 U.S. 134 (1972) at 145.

[189] Id. at 146.

> The equation of money with seriousness is pervasive: when poorer candidates do try to run for office on a shoestring budget, they are routinely ignored by the media on the grounds that they cannot be "serious" candidates since they do not have enough money to compete effectively. The flip side of this problem is that the current system is ineffective at excluding frivolous candidates who happen to be personally wealthy, or friendly with those who are.[190]

Clearly money is not a suitable measure for seriousness. Those who would argue against public funding by touting the protection from a glut of frivolous candidacies that the current system provides fail to define precisely who it is they are deeming "frivolous." Furthermore, any serious plan for providing public funds to congressional candidates requires those candidates to achieve a certain threshold level of signatures before receiving ballot access and a threshold of "qualifying contributions" before receiving federal funds. In this way "frivolous" candidacies are weeded out in a much more equitable manner than under the current system.

The final practical criterion concerns the amount of time that officeholders and candidates spend under either system raising funds and concentrating on their election or reelection finances rather than devoting that time to an open and wide-ranging discussion of public issues or concentrating on actually legislating. Much has already been discussed above about the amount of time currently spent by elected officials in fund-raising activities and the effect it has on limiting their ability to devote necessary time and energy to issues of public policy. One concern about present system failure in this regard has not been addressed yet, that being the fact that members of Congress chase all over the country because, as Clawson et al., put it: "...reelection is more dependent on meetings with rich people two thousand miles

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[190] Raskin and Bonifaz, p.1186.

from home than it is on meetings with their own constituents."[191] Time spent chasing money for campaigns is time spent away from the home district and its unique constituent concerns.

> When then-Representative Thomas Daschle, D-S.D., was running for the Senate in 1986, he journeyed to Los Angeles almost as regularly as he visited Sioux Falls, the biggest city in his home state. In the two years before the election...he flew to California more than 20 times to meet with prospective contributors.[192]

The foregoing analysis clearly demonstrates the deficiencies of the present system of privately financed congressional campaigns. The current system fails to satisfy constitutional criteria and practical needs by which the desirability of any system of campaign finance ought to be judged. In the current system of private campaign finance not all citizens are meaningfully able to run for public office or to access the policy process to provide their input. The system is closed to groups without the wealth to contribute to political campaigns, to become meaningful candidates themselves, or to influence the political processes of government. In that whole sectors of the population have become effectively marginalized in the current system, the breadth and substance of debate and political communication has suffered. The private campaign fund war chests of incumbent officials further discourages competition and dialogue. The social costs of private financing, both direct and indirect, are enormous as contributing interest groups seek and receive special tax treatment, regulatory delays, and legal exemptions which end up costing taxpayers vast sums over and above the more direct costs of campaign fund raising and spending. The private campaign finance system discourages frivolous and legitimate

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[191] Clawson, et al., p. 9.
[192] Quoted from "Money and Politics: A Special Report", National Journal, v. 22, n.24, (June16,1990), p. 1448, in Clawson et al., p.9.

candidates alike; it discourages poor frivolous candidates but does not do likewise for wealthy frivolous candidates. Finally, the current regime's emphasis on fund-raising absorbs vast amounts of legislators' time and attention which could be better spent on the legitimate duties they were elected to perform. Because it is deeply flawed the campaign finance system under which federal congressional campaigns are currently conducted requires fundamental reform and replacement in order to rectify its inequities and cure its ills.

The Desirability of Public Financing of Congressional Campaigns

In contrast to the current system of private campaign financing, a system of public financing for all congressional campaigns is much more consistent with the criteria of desirability established above. A plan of total public funding for all federal elections (and, in time, quite possibly state and local elections as well) must be designed so that all citizens would be able to run for public office if they so desired. It must provide the opportunity for representatives of all social groups to serve in the ranks of public officials and to provide their input in the political dialogue of the electoral and policy processes. It must control the spiral of ever increasing direct campaign costs and allow for greater control over the hidden social costs connected to inequities of access to the policy process - opportunities for access must be equalized. A system of public financing ought to be designed so as to deter frivolous candidacies and to preserve the time and energy of elected public officials to do the work of legislating rather than fund raising.

Various plans of public financing have been offered by proponents of the idea in the debate over campaign finance reform. Many have attempted to incorporate public financing within the existing system of private campaign financing as merely a supplement to current financing mechanisms. However, it has been argued, herein

and elsewhere, that piecemeal reform efforts within the confines of the present regulatory system of private finance will not accomplish the goals of real reform. Accordingly, a comprehensive system of public financing such as that put forward by Jamin Raskin and John Bonifaz[193], or one advanced by Dan Clawson, Alan Neustadtl, and Denise Scott[194] is preferable.

A Blueprint for Public Financing

Public financing should be made available to candidates for the entire election cycle - from primary to general election. Eligibility requirements would obligate potential candidates to raise a significant number of small qualifying contributions from within his/her election district before receiving public funds.[195] Qualifying contributions would serve as a legitimate measure of a candidate's "seriousness" in that it can be seen as more indicative of the strength of his/her public support than does a simple petition signature. Eligibility would be conditioned on a candidate's pledge not to raise or spend any private money, or any personal funds, on the campaign. Once eligibility has been established, a candidate ought to receive enough public financing in order to compete effectively in the primary.

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[193] The proposal for full public financing which Raskin and Bonifaz espouse is actually one originally proposed by the Working Group on Electoral Democracy, "an association of grass roots activists and researchers who, for the past several years, have been working to catalyze a new democracy movement in the United States". See Raskin and Bonifaz, p. 1189-1201.

[194] Clawson, et al., p. 202-212.

[195] Raskin and Bonifaz propose that candidates for the House of Representatives would need to raise 1,000 five dollar contributions in order to become eligible for public funding. Senate candidates from states with only one congressional district would be required to raise 2,000 such small qualifying contributions with Senate candidates from larger states would need to raise 2,000 of these contributions from residents of the state at large plus additional qualifying funds from 250 contributors in each of the state's congressional districts.

Prior to the primary election period candidates would be permitted to raise a limited amount of private "seed" money from private individuals or groups in amounts of no more than $100 per donor.[196] These funds could only be spent on the start-up costs associated with raising the necessary qualifying contributions such as hiring of workers or recruiting volunteers. These funds could not be spent for any costs associated with the primary or general election campaigns.

Participation in the system of public financing would be strictly voluntary in order to comply with the Supreme Court decision in *Buckley*. Any and all candidates would be free to choose to opt for private financing - there would be no ban on PACs or further restrictions on amounts they may contribute; present limits on private contributions would continue - and thereby avoid the spending limits which would accompany receipt of public funds (more about these spending limits later). However, it is highly probable that most candidates would choose to participate in the public financing plan because incentives for participation would be included in the provisions of the system. Benefits of participation would include a substantial decrease in time and cost associated with private fund-raising freeing candidates to spend their time and energy actually campaigning among the voters, free media time, and additional grants of public funds to candidates who faced excess expenditures by privately financed candidates or massive independent expenditure campaigns.

These benefits are essential elements of any plan of public funding since they provide the incentives for widespread candidate participation. As Clawson, et al., point out, in such a system of public financing:

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[196] An allowable aggregate amount of such seed money might be such that House candidates could not exceed a $15,000 limit with Senate candidates allowed to raise no more than $15,000 plus an additional $2,500 from each of the state's congressional districts.

> Candidates would virtually all opt for public funding because candidates using public financing are guaranteed that they will be able to match their special-interest-financed opponents, thus undercutting most of the reason for private fundraising. Although PACs and individual donations would continue to be theoretically possible, ...candidates would not want that money because if they accepted it, they would not be eligible for public financing, and private funding would not enable them to outspend their opponents. Most candidates find fundraising a miserable process, and all find that it takes time away from campaigning. A candidate that relied on private financing would face extra obstacles but gain no advantage.[197]

All candidates who fulfilled the eligibility requirements would receive equal amounts of public financing for the primary campaign. This would include candidates from both major parties as well as any independent candidates who had met the eligibility threshold. Raskin and Bonifaz suggest that primary campaigns receive $100,000 for House candidates with Senate candidates receiving $100,000 plus an additional $50,000 for each congressional district in the state.[198] Clawson, et al., on the other hand would vary the amounts of public funds available in primary elections depending on whether or not the candidate was an incumbent. In their proposal Clawson, et al., would provide $50,000 in public funds to incumbent House members' primary campaigns while allowing non-incumbents to receive $75,000 in such funds. The same kind of variation in incumbent/non-incumbent amounts would pertain to Senate primary campaigns with the actual total amounts also varying from state to state depending on population. Clawson, et al., reason that this is more equitable since incumbents start with a significant name recognition advantage in their own party's primary and therefore do not need to spend as much as non-

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[197] Clawson, et al., p.207.
[198] See Raskin and Bonifaz, p.1192.

incumbents who do not enjoy the advantages of incumbency.[199] Primary candidates would be eligible to receive additional public funds to match any excess spending by opposition candidates who opted to finance their campaigns privately, thus limiting any possible financial advantage which might be gained by choosing private financing over public financing.

In the new system of public financing, primaries would be both a mechanism for selection of a party's candidate for the general election and a means by which third party or independent candidates could qualify for general election public financing. If an independent or third party candidate received twenty percent of the total primary vote, he/she would become eligible for full public financing in the general election. The winners of the Democratic and Republican primaries would automatically become eligible for full general election funding. Candidates of parties which had received between five and twenty percent would receive proportional general election funding. Raskin and Bonifaz suggest that the amounts available to general election candidates be $150,000 for House races and $150,000 plus $75,000 for each state congressional district for Senate candidates.[200]

Candidates who opted to receive public funding in either the primary or general election campaigns would be enjoined from spending more than the total of their publicly allocated funds. Although it has been empirically demonstrated and argued previously in this study that spending limits would hamper the competitiveness of challengers in races for congressional office, the analysis of those spending limits was done within the parameters and dynamics of private campaign finance. Professor Jacobson's analysis of possible effects of public funding on the competitiveness of 1972, 1974, and 1976 congressional races which may have occurred had public

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[199] See Clawson, et al., p.212.
[200] Raskin and Bonifaz, p.1192.

financing been in effect for those years, may or may not have been borne out in actual fact. His study necessarily fails to consider (and quantify) what effects full public financing would have on the entire dynamics of campaign spending (for incumbents and challengers alike) from the beginnings of an election cycle to its completion. In the present system the problem for challengers is that they can often not raise sufficient funds early enough in the cycle from private sources to mount a credible challenge to well financed incumbents.

Any reform of campaign finance must seek to increase the number of competitive races. Studies such as that done by Gary Jacobson have indicated that the problem of competitiveness is not overspending by incumbents but underspending by challengers. Challengers must be able to spend enough money to get their campaign exposed to voters. Indications are that challengers who are able to raise enough money under the current system to do that usually run very competitive races. The problem is, as has been illustrated earlier in this study, that private wealthy contributors tend to pattern their giving toward incumbents (recall the earlier analysis of PAC donation patterns). Incumbents have little difficulty securing private financing under the current system while challengers have a distinct comparative disadvantage in this regard under current campaign finance processes. Incumbents, and other candidates, who are able to build up early financial "war chests" under current campaign finance practices, effectively stymie meaningful competition. The evidence shows that challengers who find themselves at a drastic disadvantage with respect to fundraising and spending rarely offer real competition to well financed incumbents. Clawson, et al., cite relevant statistics in support of this argument:

> In 1988, in better than four out of five races (81.4 percent), one candidate spent more than twice as much as the other. Only 3.2 percent of these races were competitive (that is, decided by margins of ten points or less, for example 55 percent to 45 percent). In the

> remaining one out of five races the underfinanced candidate had at least half as much money as the funding leader. A much higher proportion of these races was competitive - about four out of ten (31.9 percent). if challengers have enough money to make their case, they have a chance to make the race competitive. Therefore, a reform proposal needs to ensure adequate funding for challengers.[201]

In a system of full public funding, instead of the incumbent enjoying a three to one advantage over the challenger[202], the two candidates would have equal amounts to spend. Incumbents would therefore spend less and challengers more than at present. By providing a readily accessible source of early funds for challengers to mount meaningful campaigns, and by restricting the ability of incumbents to amass preventive war chests of privately donated funds, competitiveness would surely be enhanced under a new system of publicly financed congressional campaigns.

Provisions in a new system of publicly financed campaigns which allow for candidates to receive additional public funds to match privately financed candidates' excess expenditures, or to match opposition independent expenditures, are crucial to the success of any scheme of voluntary public financing. Raskin and Bonifaz, and Clawson, et al., recognize the vital nature of such provisions; the former authors would permit publicly financed candidates to receive funds to match the excess expenditures of privately financed candidates up to 300 percent of their original amount of public funds. The same would be true for those candidates who found themselves to be the targets of independent expenditures.[203] Raskin and Bonifaz point out the value of this guarantee of matching public funds in achieving the goal of limiting the influence of private wealth in the processes of democracy by noting:

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[201] Clawson, et al., p.203.
[202] Clawson, et al., report that in 1988 the incumbents spending advantage was 3.2 to 1, while in the Senate it was 2.1 to 1. Clawson, et al., p.247, endnote #19, referred to on p.205.
[203] Raskin and Bonifaz, p.1198-99.

> Since this system would be voluntary, candidates could still choose to participate in the wealth primary [the author's euphemism for the present system] raising large amounts of money from private donors. Yet, privately financed candidates would know that while they spent time competing in the wealth primary, their publicly financed opponents would be meeting the voters and would be guaranteed an increase of up to 300 percent of their original funding, if necessary, to match the private fundraising process. Through this provision, the attractions of the wealth primary would fade, both for the privately financed candidate and for the large donors.[204]

This provision guarantees that candidates who accept public financing can not be outspent by their opponents (unless those opponents spent 300 percent more). No candidate could gain an advantage, as happens in the current system, by out-fundraising his or her opponent.

The proposal for full public funding issued by Jamin Raskin and John Bonifaz would include provisions for what they refer to as "campaign scholarships" - an additional grant of money to means-qualified poorer candidates that would "enable them to support themselves and their families while they ran for public office."[205] The rationale behind such a provision is to further open up the process to poor and working class people who otherwise would forego the chance to become a candidate, and venture out into the hustings, because of the economic hardship it would entail for themselves and their families.

Additionally, these same authors would propose mandatory participation by all publicly financed candidates in broadcast debates in order to further the goal of substantive political dialogue. The air time for these debates would be required to be

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[204] Ibid., p.1199.
[205] Ibid., p.1194. The authors would set the amount of such scholarships not to exceed $2,000 per month with an additional $500 per month for each dependent.

donated by television and radio broadcast stations as a condition of their licenses.[206] Citing a relevant Supreme Court ruling as precedent (*Wooley v. Maynard*, 430 U.S. 705, 1977), the authors state that it is likely that the Court would accept the debate requirement as an acceptable condition of receipt of public campaign funds. Their proposal would also require that broadcast stations make free media time available to candidates above and beyond that already donated for broadcasting public debates.[207] As such, the substantial sums currently spent on campaign media would be significantly reduced and candidates would be able to concentrate their spending in other critical areas.

That media advertising costs consume a significant portion of current campaign finances is indisputable. Sara Fritz and Dwight Morris, in analyzing campaign expenditures in 1990 congressional races, found that media advertising costs amounted to 22.5 percent of all expenditures in House races, while those expenses for Senate races amounted to 33.3 percent of all campaign expenditures.[208] The extent to which those costs are reduced by an extension of free media time to candidates who qualify for public funds, will provide even further incentive for candidates to join the plan, since those who might opt for private financing would have to pay for those hefty media costs from their own resources.

Regarding administration and enforcement of a system of total public financing, Raskin and Bonifaz would rest such authority in the hands of a strengthened Federal Election Commission. The FEC would have a much easier time with its enforcement duties insofar as most candidates would opt for public financing (for reasons outlined

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[206] Ibid., p.1195.
[207] See Ibid., p.1196-97 for the details of such provisions.
[208] Sara Fritz and Dwight Morris, Handbook of Campaign Spending: Money in the 1990 Congressional Races, Washington D.C.: Working Group on Electoral Democracy, 1992, p.8-9.

above), thereby alleviating much of the load of private campaign finance regulation which the Commission currently oversees, and the system of public financing itself would be so much more easily administered.

> Qualified candidates would receive not money but *credit* [italics in original] from a federal account established by the FEC. Such a credit line would help prevent misuse of the public funds allocated to each candidate. The treasurer for each campaign would be issued a special FEC credit card with which to make campaign purchases and pay bills. The law would prohibit payments by cash or check for any campaign expenses.[209]

While provision has been made for dealing with independent expenditures within the proposal for full public funding of all congressional campaigns, implementation of such a system would require that certain minor changes be made in other facets of allowable optional private financing. Foremost among those is a ban on soft money contributions by private individuals and PACs. If these loopholes were allowed to remain open, they might surely be used to undercut the limitations on public financing expenditures. PACs and wealthy individuals who found themselves on the outside of any new plan for public financing would likely seek to retain their access to, and influence within, the political system by channeling enormous contributions to existing soft money loopholes which allow unlimited contributions for "party building" activities and the like. These loopholes often serve as convenient vehicles for circumventing current contribution limitations and, absent their closure in a system of public funding, would likely become even more abused than at present.

"Bundling", should also be outlawed as it would allow for corruption of the qualifying process of eligibility for public funds by large organizations which could make a concerted effort to collect from their members the required number of small

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[209] Ibid., p.1200.

qualifying contributions and to offer them to a candidate en masse. Bundling activities by PACs, if allowed to continue, would thus serve the access interests of wealthy contributors and would lend a degree of legitimacy to a practice clearly designed to circumvent private finance contribution limitations.

Before dealing with an assessment of the public cost of such a system of public financing of all congressional campaigns, a word or two about the current tax checkoff procedure of raising public financing funds is in order. Any proposal for extension of public financing to all congressional campaigns ought not to envision that adequate funds can be obtained through this peculiar mechanism. As demonstrated above (Figure 3), experience with this system has indicated a lack of public enthusiasm for voluntary checkoff schemes. Opponents of public financing like to point to this fact as evidence of the public's disdain for the idea of public financing altogether. Yet, the question might fairly be asked if any expenditure of government funds (public taxpayer money) would engender widespread voluntary support if it were subjected to a checkoff procedure for authorization. Clawson, et al., state the point quite clearly:

> The voluntary checkoff system is extraordinary and, in our opinion, intended to subvert public financing. The wording on the tax form makes it appear that the taxpayers must pay an extra dollar, when, in fact, checking the box does not raise your taxes. *Nothing* [italics in original] else the government funds depends on voluntary checkoffs. If the B-2 relied exclusively on taxpayers voluntarily designating money, how many bombers would we build? We propose that public financing of elections be paid for the same way everything else is - out of general revenues. Let voluntary tax checkoffs be used for the savings and loan bailout.[210]

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[210] Clawson, et al., p.207.

Raskin and Bonifaz estimate the cost of their comprehensive public funding plan to be approximately $500 million per year. This would amount to an average of five dollars per taxpayer per year.[211] The levels of public financing would be indexed with inflation so the total dollar figure would fluctuate in any given year. This figure, which many might consider an extraordinarily high price to pay, must be put into proper perspective. First, it is considerably less than the $693.5 million spent by congressional candidates in the 1994 election cycle. It is also quite a bit less than the price tag for one B-2 bomber - $865 million.[212] It is not unfair to consider the cost of public financing in light of the $500 billion price tag of cleaning up the savings and loan debacle - much of which can be traced to congressional accessibility (through campaign contributions) by powerful and wealthy savings and loan PACs.

It can also be argued that a system of public financing actually saves money by making it possible to eliminate many special-interest privileges obtained through private financing accessibility to the crucial stages of policy development. We have already seen many examples of the way in which the present system ends up costing much more than the direct costs of actual campaign expenditures. Elizabeth Drew has written: "The costs are everywhere - throughout the tax code and the federal budget. They turn up in everything from the Pentagon budget to medical bills. In effect, as we go about our daily lives, buying food, gasoline, and medicine, and as we pay our taxes, we are paying for the current system of financing campaigns."[213]

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[211] For a detailed explanation of the manner in which the cost estimate was calculated see the extensive footnote #142, p.1200-1201 in Raskin and Bonifaz.
[212] Figure is from Clawson, et al., p.206.
[213] Drew, p.156.

Clawson, et al., provide one final example of present system special interest privilege which can serve to put estimates of the cost of full public funding for congressional campaigns into perspective:

> ...in 1955 corporations paid 27.3 percent of all federal taxes, but in 1989 they paid only 11.0 percent. The reduced contributions by corporations meant that individuals had to pay more. Total federal tax revenue in 1898 was $975 billion. If corporations had paid the same share of taxes in 1989 as in 1955, they would have paid an additional $159 billion, enough in that one year to provide public financing for both House and Senate general elections for more than 300 years.[214]

The costs of the current system, both direct and indirect, are enormous; the cost of extending full public funding to all congressional campaigns is small by comparison and would represent a huge savings in the not too distant future.

Analysis of the Desirability of a System of Full Public Financing

If the proposed system of public financing is submitted to the same kind of analysis, based on the same set of criteria that was used above in analyzing the desirability of the current system of private campaign funding, it is found to be markedly superior. Recalling the six criteria for judging the desirability of any system of campaign finance, the following conclusions regarding a system of full public financing are reached:

- First, a public financing system would open up the possibility that all citizens, regardless of wealth would have an opportunity to run for elective office. Rather than having to gather hundreds of thousands of dollars from special interests and wealthy individual contributors, potential candidates would need only to gather the required qualifying contributions from within their election districts.

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[214] Clawson, et al., p.206.

- Second, the "campaign scholarships" would make it doubly possible for candidates with limited personal wealth to run for public office. Because such scholarships would be based entirely on need, they would be issued only to the poorest candidates. The combination of scholarships, which alleviate the economic hardships of taking time out of work to run for public office, and elimination of the necessity of constant fundraising makes it much more likely that all social groups would be fairly represented in the ranks of candidates for public office. The current system's exclusion of political candidates without great personal wealth, the time to spend in endless fundraising activities, or access to wealthy private funding sources - along with that system's structural bias in governmental policy development would be eliminated.
- Third, a proliferation of new voices in the nation's political discussions, both in the electoral and policy processes, would inevitably result from an extension of financial campaign resources to qualifying candidates regardless of personal wealth or class status. The requirement that all publicly financed candidates participate in broadcast debates would greatly enhance the quality of substantive political dialogue. Free media time would allow for a more thoughtful presentation of candidate positions on substantive issues rather than the current system's over-reliance on the economically efficient (but nearly meaningless) "sound bites", slogans and platitudes.
- Fourth, many of the current system's direct costs would fall dramatically under public financing. Fundraising expenses would be virtually eliminated (except for the initial expenses incurred as start-up costs for gathering the required qualifying contributions). Media costs would decline in the wake of free time provisions. The hidden costs of privately subsidized elections - special interest giveaways, tax breaks, subsidies, corporate bailouts, and regulatory exemptions - can only be

addressed by eliminating the current system of campaign finance and replacing it with a system of full public funding. The $500 million per election cycle price tag seems a small price to pay when compared to the billions of dollars lost as a result of current system inequities. Serious public policy issues which are currently left unresolved because of the pervasive (and inequitable) access to the policy process enjoyed by monied interests, impose additional, not as easily quantifiable, social costs on the American public. The degree to which that policy process is opened up by eliminating the stranglehold on the means to election (money) which wealthy individual and corporate interests have, the more likely it is that those social costs can be ameliorated.

- Fifth, in terms of deterring frivolous candidacies, the qualifying contributions by which candidates become eligible for full public financing, is a much more equitable mechanism of deterrence than that which exists under the current system. The present reliance on a candidate's fundraising ability or personal wealth as an indication of seriousness is invalid and unfair. The present system only declares poor candidates to be frivolous; not so wealthy ones, regardless of "seriousness." Insofar as citizens from within a given candidate's home district would be making a determination as to that candidate's "frivolousness" through the mechanism of the numerous required small qualifying contributions, it is vastly superior to large wealthy donors (often from out of state) being allowed to make such a determination.
- Finally, a plan of full public funding would free up the time and energy of elected officials, and their staffs, away from the incessant (and in the current context indispensable) drive of fundraising and direct it toward more thoughtful consideration of the merits of particular pieces of legislation. Legislation would likely be judged, and voted on, on the basis of its merits as desirable public policy

and not any calculation (however minor) of its impact on sources of campaign funding. Candidates (incumbents and challengers alike) could spend more of their campaign hours communicating with home district voters and not talking to out of state wealthy contributors. Additionally, all of the countless hours which the present regulatory system requires be spent on recording and reporting all campaign contributions and expenditures would be saved. All campaign expenditures would be public and all would be paid for via the FEC credit card which would vastly simplify the administrative and enforcement tasks of the FEC.

In short, a system of full public financing of congressional campaigns is found to be highly desirable when judged by the standards of the constitutional and practical criteria set forth above. It is clear that the present regulatory system of private campaign finance can not be deemed preferable by any of those same criteria. Indeed, nothing short of a complete replacement of the current regulatory model of campaign finance with full public financing will satisfy these constitutional and practical demands.

The Federal Election Campaign Act and its amendments were intended to reform a campaign finance system which was seen as having been so corrupted that the integrity of America's political processes was being increasingly called into question. Watergate revelations, and other revealed instances of campaign finance scandal involving undisclosed large donations by wealthy "fat cats" were perceived as threatening the workings of democracy. What the current system of private campaign finance established by the FECA has lacked has been a commitment to a constitutional and practical design to keep the processes of democracy open and flexible rather than rigid and exclusionary.

CHAPTER EIGHT

CONCLUSION

This study began with a history of campaign finance reform efforts throughout the last two decades. That history was revealing in its illumination of the complexities of the issues involved in campaign finance reform. Yet, out of that complex of issues certain key areas of discussion and dispute became evident. The present study sought to analyze three major issues of the ongoing campaign finance reform debate which have consistently been the focus of substantive reform proposals: (1) Spending limits for federal campaigns - whether as a freestanding proposal or in conjunction with public financing plans, (2) Limitations, or an outright ban on all political action committees, and (3) Public financing of congressional campaigns, either partially or fully. Additionally, this study sought to empirically determine the impacts of the present system of private campaign finance and to examine the desirability of further comprehensive reform.

Although this study determined that spending limits, in and of themselves, might well have an adverse impact on electoral competition by undermining the needs of challengers to raise and spend large sums to effectively compete against advantaged incumbents (as critics of such a proposal contend), that finding is tempered by the realization that it has been arrived at within the context of present system private campaign finance. A replacement of the current system with a system of full public financing for all congressional campaigns would most certainly alter the fundamental dynamics of campaign spending. Incumbents would be prevented from amassing early campaign "war chests" which, under the current system, can effectively stymie meaningful challenger campaigns. In a system of full public financing, with

concomitant free media time and virtually no fundraising costs, challengers would receive and spend more than at present, while incumbents would spend less. In the context of full public financing spending limits might well enhance electoral competition rather than restrict it. In any case, no definitive answer can be had to the question of spending ceiling effects in a system of full public financing until it can be empirically assessed following implementation of such a plan.

In examining the rationale behind proposals either to further restrict, or ban altogether, political action committees, no empirical support whatsoever was found regarding a cause and effect relationship (or even a simple correlation) between PAC donations themselves and election results. While the correlation between total spending and election results may have been significant, PAC contributions as merely a part (albeit a substantial part) of total spending were found to be statistically insignificant with respect to their effect upon election results.

Yet, an ambiguity of findings with respect to any legislative *quid pro quo* exchange of money for votes is discovered when one examines various empirical studies done by political scientists and others. The current study analyzed two Senate floor votes in which the nature of the issues involved - highly visible, politically partisan, and ideologically divisive - seemed to preclude any finding of correlation or causal relationship between PAC monies and floor votes. However, the fact that, in some instances, under certain circumstances (low issue visibility, absence of partisan conflict, little saliency for constituents, etc.), a statistically significant causal relationship between PAC donations and floor votes on specific pieces of legislation has been indicated, (e.g. Frendreis and Waterman, Davis, Neustadtl) is cause for some concern. But, what may present cause for even greater concern was the degree to which PAC money, and other private wealth, opens up the doors of access to both the electoral and policy processes at critical junctures. Clearly candidates who can

amass sufficient campaign resources from wealthy private sources (their own funds or those of others) early on in the process are distinctly advantaged in accessing the electoral processes. Wealthy interest groups and their PACs enjoy the same advantages in being able to access critical junctures in the process of policy development. Those individuals or groups which by virtue of their wealth alone are afforded access to the electoral and policy processes enjoy distinct advantages of "undue access" and the possibility of exerting, if not "undue" certainly inequitable influence on the political processes. The present system's overreliance on requiring that candidates and interest groups amass enough private funding to access effectively these democratic processes is inherently anti-democratic.

This study analyzed both the current system of private campaign finance and a blueprint for full public financing of all congressional campaigns in the context of six constitutional and practical criteria, developed by Jamin Raskin and John Bonifaz, by which the desirability of any system of campaign finance ought to be judged. In each specific instance, by the standards of each criterion, the present system of private finance was found wanting and the desirability of full public financing was made evident. The costs of a system providing full public funding for all congressional campaigns were examined in the light of current system costs, both direct and indirect, those easily gathered and those well hidden, and the conclusion was reached that full public financing is preferable, even from a cost standpoint, to the present system. Full public financing of all congressional campaigns is what this study recommends as the logical and most equitable next step in comprehensive campaign finance reform.

Still, the current political rhetoric which pervades the issue of the cost of providing public subsidies for political campaigns, as well as the underlying consequences of replacing a system which provides significant advantages to

powerful wealthy interests with one which would level the playing field, threaten to undermine any real probability that full public financing could ever be enacted. Such a system would eliminate or drastically reduce the impact of special interest money, and would improve the competitiveness of federal elections. As such, it is very likely that present members of Congress, political parties, corporate interests, moneyed interest groups and wealthy individual donors would vigorously oppose its adoption. Dick Cheney, former Republican congressman from Wyoming, and President Bush's Secretary of Defense has offered a memorable remark on this point: "If you think this Congress, or any other, is going to set up a system where someone can run against them on equal terms at government expense, you're smoking something you can't buy at the corner drugstore."[215]

The partisan political machinations which have pervaded campaign finance reform proposals from the outset continue to the present day. That President Clinton's reform package went down to defeat in the final session of the 103rd Congress was not at all surprising given the political calculations and partisan posturing which has consistently occurred throughout all campaign finance reform efforts.

That the 1970s saw the last successful piece of legislation dealing substantively with how American political campaigns would be financed is testament to the uniqueness of that era. The extent to which Watergate propelled much of the most significant reform action cannot, perhaps be overestimated. While the initial FECA was passed before Watergate became an issue, the most substantive changes in campaign finance reform law were enacted in the amendments which followed in 1974, 1976 and 1979. Watergate seemed to so crystallize and simplify what was

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[215] Quoted in Clawson, et al., p.213.

wrong with American campaign finance that it became relatively easy to forge a consensus that something indeed had to be done about it. With that consensus transcending partisan political boundaries, FECA was enacted and amended in that "decade of campaign finance reform."

But, since that decade, numerous attempts to reform further the way in which American campaigns are financed have been frustrated by politics. Democrats have called for spending limits and partial public financing, in part because they may have implicitly recognized the arguments of many that such limits might amount to a form of incumbent protection from strong competitive challengers. Partial public funding would provide the financially strapped Democratic party with a way to supplement meager (in comparison to Republicans) party candidate treasuries. With their congressional majorities devastated in the 1994 elections, one might well ask if those same Democrats will be so quick to offer support for spending limits now that they have been put in the position of challengers rather than incumbents. Will public financing continue to hold Democratic support in the event that the opportunity arises in the near future to vote on its implementation? That opportunity may not soon be forthcoming as campaign finance reform seems to have evaporated from the national agenda in the wake of GOP congressional majorities.

Republicans have always been philosophically opposed to most reform efforts seeing them as just another attempt to impose government regulation on the workings of the political marketplace. They further argue that contributions to political campaigns by individuals and interest groups is a fundamental form of political participation and, as such, ought not to be either regulated or enjoined. From that perspective Republicans have traditionally viewed spending limits as amounting to incumbent protection and had, therefore, been opposed to such limits when faced with what appeared to be entrenched Democratic congressional majorities. Whether

the GOP will remain so unalterably opposed given their new majority status remains to be seen. The GOP has also been opposed to any form of public financing of congressional campaigns, in part because they didn't need the money and wished to hold on to their financial advantage under current campaign finance practice (The GOP retains a distinct fundraising advantage over the Democratic party under current private campaign finance.), and, in part because they view such public subsidies as being both fiscally irresponsible in an era of budget deficits and as simply amounting to a form of "welfare for politicians" which would engender government control of what should remain free political exercise. It is very likely, given this philosophical bent, that Republican opposition to public financing will continue.

The only proposal which Republicans in the past have supported was that which sought to ban all corporate, labor, and trade association political action committees. Perhaps the motivation to support such a PAC ban came out of a review of PAC donation patterns which heavily favored incumbent Democrats. Now that the advantages of incumbency with respect to PAC donations favors the GOP, will that opposition to PAC activity continue to hold Republican allegiance?

On June 11, 1995, President Bill Clinton, a Democrat, and the Republican Speaker of the House, Newt Gingrich, appearing jointly at a "town hall" question and answer meeting in Claremont, New Hampshire, agreed to form a blue-ribbon commission to study the issues of campaign finance reform and, presumably, to issue recommendations on what ought to be done by way of further reform. The purpose of the proposed commission forum is to attempt to study the issues devoid of partisan politics. But like Wilson's "politics and administration dichotomy" any attempt to separate politics and campaign finance reform may be naive and doomed to fail. For as Frank Sorauf, in his most recent of a number of writings on the subject of campaign finance reform has noted:

> ...the politics of campaign finance has a number of special characteristics. It is...a politics centered in a broader politics of representation and, therefore, a politics of politics. Naturally, it is a politics to which the members of Congress are enormously sensitive, for it is the politics of their reelection and political careers. It is also a politics that is almost pure populism, driven by mass fears, mass opinion, and mass voting, a politics easily inflamed whether by somber editorialists or by the demagogues of the radio talk shows. It is a politics that looks not at a member of Congress's legislative record but at personal qualities and political styles. And it is a politics complicated and heightened by the fact that the members of Congress legislate about themselves, by the fact that self-interest is central to the policies they choose.[216]

And so it is likely to continue, blue ribbon commission or not. Politics is what campaign finance reform is all about.

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[216] Frank J. Sorauf, Inside Campaign Finance: Myths and Realities, New Haven and London: Yale University Press, 1992, p.244-45.

APPENDIX 1

MULTIPLE REGRESSION - EXPENDITURES AND CHALLENGER VOTE PERCENTAGES

THE ESTIMATED REGRESSION COEFFICIENTS ARE AS FOLLOWS:

b 0 = 36.92181859
b 1 = 0.03884016
b 2 = -0.00289945
b 3 = 0.00583831
b 4 = 0.00039279
b 5 = -0.11355940

STANDARD ERROR OF ESTIMATE = 6.55844

STANDARD ERROR OF (b 0) = 2.13039	COMPUTED T 0 = 17.33099
STANDARD ERROR OF (b 1) = 0.00821	COMPUTED T 1 = 4.73325
STANDARD ERROR OF (b 2) = 0.00713	COMPUTED T 2 = -0.40673
STANDARD ERROR OF (b 3) = 1.32973	COMPUTED T 3 = 0.00439
STANDARD ERROR OF (b 4) = 0.00019	COMPUTED T 4 = 2.11640
STANDARD ERROR OF (b 5) = 0.04118	COMPUTED T 5 = -2.75731

COEFFICIENT OF DETERMINATION (R SQUARED) = 0.30967
COEFFICIENT OF MULTIPLE CORRELATION (R) = 0.55648
COEFF. OF DETERMINATION CORRECTED FOR D. F. = 0.27372

DURBIN-WATSON STATISTIC = 2.07498

ANOVA TABLE

SOURCE OF VARIATION	S.S.	D.F.	M.S.
SSR	1852.317792	5	370.463558
SSE	4129.260640	96	43.013132
SST	5981.578432	101	

F RATIO 8.6128

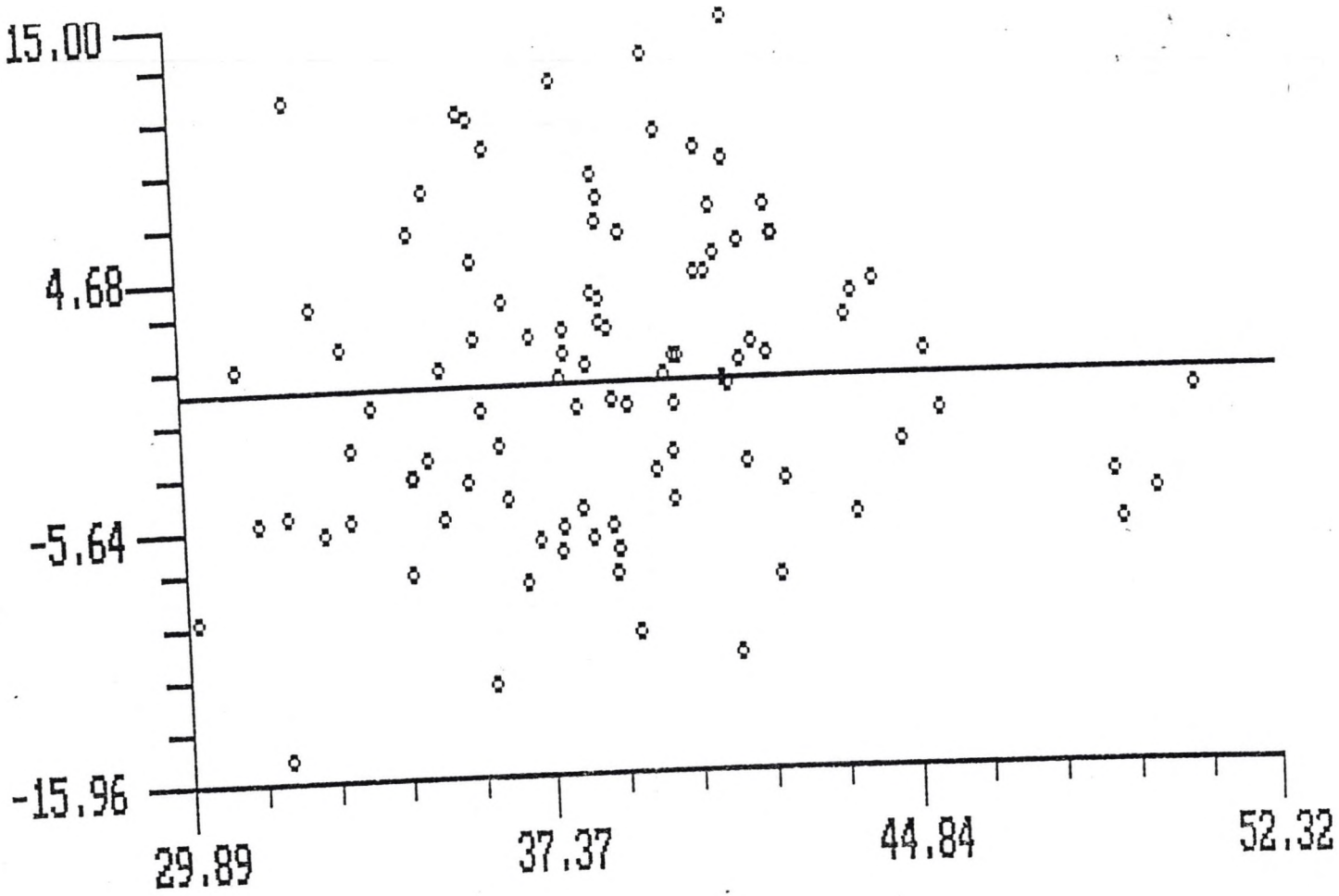

Fig. 4 Residuals v. Chall. predicted % of vote

APPENDIX 2

MULTIPLE REGRESSION - EXPENDITURES AND INCUMBENT VOTE PERCENTAGES

THE ESTIMATED REGRESSION COEFFICIENTS ARE AS FOLLOWS:

b 0 = 62.89479049
b 1 = -0.03937381
b 2 = -0.00097533
b 3 = 0.04434274
b 4 = -0.00054415
b 5 = 0.08551600

STANDARD ERROR OF ESTIMATE = 7.12529

STANDARD ERROR OF (b 0) = 2.31453 COMPUTED T 0 = 27.17395
STANDARD ERROR OF (b 1) = 0.00892 COMPUTED T 1 = -4.41655
STANDARD ERROR OF (b 2) = 0.00774 COMPUTED T 2 = -0.12593
STANDARD ERROR OF (b 3) = 1.44466 COMPUTED T 3 = 0.03069
STANDARD ERROR OF (b 4) = 0.00020 COMPUTED T 4 = -2.69873
STANDARD ERROR OF (b 5) = 0.04474 COMPUTED T 5 = 1.91121

COEFFICIENT OF DETERMINATION (R SQUARED) = 0.28643
COEFFICIENT OF MULTIPLE CORRELATION (R) = 0.53520
COEFF. OF DETERMINATION CORRECTED FOR D.F. = 0.24927

DURBIN-WATSON STATISTIC = 2.17809

ANOVA TABLE

SOURCE OF VARIATION	S.S.	D.F.	M.S.
SSR	1956.450188	5	391.290038
SSE	4873.902754	96	50.769820
SST	6830.352942	101	

F RATIO 7.7071

APPENDIX 3

CORRELATION AND REGRESSION - PAC DOLLARS AND VOTE PERCENTAGES

Correlations :	PERCENT	PAC$
PERCENT	1.0000	.3906**
PAC$	.3906**	1.0000

N of cases : 356 1-tailed significance: * - .01 ** - .001

REGRESSION

Dependent Variable... PERCENT PERCENT OF VOTE RECEIVED

Multiple R	.39058
R Square	.15255
Adjusted R Square	.15016
Standard Error	15.39954

Analysis of Variance

	DF	Sum of Squares	Mean Square
Regression	1	15112.27009	15112.27009
Residual	354	83949.67092	237.14596

F = 63.72561 Significance F = .0000

Variable	B	SE B	95% C.I. B		Beta
PAC$	3.442686E-05	4.31261E-06	2.594529E-05	4.290842E-05	.390581
(Constant)	43.162139	1.088161	41.022067	45.302212	

.....in.....

Variable	T	Sig. T
PAC$	7.983	.0000
(Constant)	39.665	.0000

APPENDIX 4

CROSSTABS - PAC DOLLARS AND CLOTURE VOTES

I. Campaign Finance Reform Cloture Vote (FINCLOT) by PAC Contributions collapsed into categories (PAC$)

CHI- SQUARE	VALUE	DF	SIGNIFICANCE
Pearson	5.11057	9	.82457
Likelihood Ratio	6.27542	9	.71207
Mantel-Haenzel test for linear association	.05373	1	.81669

Minimum Expected Frequency - 1.416
Cells with Expected Frequency < 5 - 13 of 20 (65%)

STATISTIC	VALUE	ASE1	T-VALUE	APPROX. SIGNIF.
Phi	.23963			.82457
Cramer's V	.23963			.82457
Contin. Coeff.	.23303			.82457
Lambda				
(FINCLOT dependent)	.11905	.15643	.71634	
Kendall's Tau-b	.00878	.09166	.09585	
Kendall's Tau-c	.01161	.12118	.09585	
Gamma	.01323	.13798	.09585	
Somer's D				
(FINCLOT dependent)	.00662	.06911	.09585	
Pearson's R	-.02471	.10415	-.23055	.81820
Spearman Correlation	.01016	.10602	.09479	.92470

II. Lobby Reform Cloture Vote (LOBRE) by PAC Contributions collapsed into categories (PAC$)

CHI-SQUARE	VALUE	DF	SIGNIFICANCE
Pearson	11.24446	9	.25932
Likelihood Ratio	12.61578	9	.18078
Mantel-Haenszel test for linear association	.10068	1	.75101

Minimum Expected Frequency - 1.416
Cells with Expected Frequency < 5 - 12 of 20 (60%)

STATISTIC	VALUE	ASE1	T-VALUE	APPROX. SIGNIF.
Phi	.35545			.25932
Cramer's V	.35545			.25932
Contin. Coeff.	.33492			.25932
Lambda				
(LOBRE dependent)	.26190	.12102	1.89654	
Kendall's Tau-b	.06175	.09149	.67555	
Kendall's Tau-c	.08181	.12110	.67555	
Gamma	.09184	.13581	.67555	
Somer's D				
(LOBRE dependent)	.04646	.06891	.67555	
Pearson's R	.03383	.10496	.31568	.75300
Spearman Correlation	.07153	.10590	.66886	.50536

III. Campaign Finance Reform Cloture Vote (FINCLOT) by Party Identification (PARTY)

CHI-SQUARE	VALUE	DF	SIGNIFICANCE
Pearson	63.32923	1	.00000
Likelihood Ratio	74.81355	1	.00000
Mantel-Haenszel test for linear association	62.61767	1	.00000

Minimum Expected Frequency - 18.404

STATISTIC	VALUE	ASE1	T-VALUE	APPROX. SIGNIF.
Phi	.84354			.00000
Cramer's V	.84354			.00000
Contin. Coeff.	.64478			.00000
Lambda				
(FINCLOT dependent)	.83333	.06070	6.96720	
Kendall's Tau-b	.84354	.05615	14.24516	
Kendall's Tau-c	.83575	.05867	14.24516	
Gamma	.98806	.01027	14.24516	
Somer's D				
(FINCLOT dependent)	.84872	.05520	14.24516	
Pearson's R	.84354	.05615	14.65016	.00000
Spearman Correlation	.84354	.05615	14.65016	.00000

IV. Lobby Reform Cloture Vote (LOBRE) by Party Identification (PARTY)

CHI-SQUARE	VALUE	DF	SIGNIFICANCE
Pearson	36.34606	1	.00000
Likelihood Ratio	39.26305	1	.00000
Mantel-Haenszel test for linear association	35.93768	1	.00000

Minimum Expected Frequency - 18.876

STATISTIC	VALUE	ASE1	T- VALUE	APPROX. SIGNIF.
Phi	.63905			.00000
Cramer's V	.63905			.00000
Contin. Coeff.	.53848			.00000
Lambda				
(LOBRE dependent)	.61905	.09294	4.56742	
Kendall's Tau-b	.63905	.08161	7.74297	
Kendall's Tau-c	.63477	.08198	7.74297	
Gamma	.90889	.04836	7.74297	
Somer's D				
(LOBRE dependent)	.64133	.08167	7.74297	
Pearson's R	.63905	.08161	7.74949	.00000
Spearman Correlation	.63905	.08161	7.74949	.00000

V. Cloture votes of Senators up for reelection and and their PAC contributions

Statistics	FINCLOT values	LOBRE values
Pearson	5.0744 8DF Sig.-.74959	7.8661 8DF Sig.-.44666
Phi	.48027 Sig.- .74959	.59795 Sig.-.44666
Cramer's V	.48027 Sig.-.74959	.59795 Sig.-.44666
Kendall's Tau-b	-.05241 T-value (-.2964)	-.12821 T-value (-.7039)
Kendall's Tau-c	-.06612 T-value (-.2964)	-.23481 T-value (-.7039)
Gamma	-.08163 T-value (-.2964)	-.19231 T-value (-.7039)
Pearson's R	-.17117 T = -.7769 Sig.- .4463	-.17069 T = -.7747 Sig.-.4476
Spearman Corr.	-.06019 T = -.2697 Sig.- .7902	-.14723 T = -.6657 Sig.-.5132

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