

Internal Environment
Chapter Two
The FEC: Statutory Authority

The Federal Election Campaign Act is not self-interpreting, self-implementing, or self-enforcing. As the reader saw in Chapter One of this dissertation, federal campaign finance law in the United States emerges from the actions of (1) the Congress and President in enacting the law as an ideal policy "norm," and (2) the federal courts system in interpreting and modifying the law. Beyond that, the public policy process requires that some institution be created and/or charged with interpreting, implementing, and enforcing the federal campaign finance law once the law has been enacted. The Federal Election Commission is that federal regulatory agency. Despite its importance, the Federal Election Commission, as a regulatory agency or regulatory "institution," has been largely ignored by political scientists.

But, what is an "institution? Marc Eisner describes an institution as, "the formal and informal rules that structure human interaction... the set of roles, rules, and decision-making procedures that define the internal workings of public organizations and the relationships among public and private organizations in the policy process."¹ In the area of federal campaign finance, the Federal Election Commission is such an institution. Through both formal and informal processes and rules, the Federal Election Commission completes its legislative charge. This chapter seeks to explain the

¹ Marc Allen Eisner, Regulatory Politics in Transition, (Baltimore: John Hopkins University Press, 1993) p. 23.

statutory requirements that the Commission is charged with administering. It will briefly outline the legislative charge that the Federal Election Commission has inherited in light of the periodic changes in the legislative policy "norm" and the federal court rulings that have caused the law to deviate from that "norm." Also included in this chapter is a discussion of soft versus hard money. In doing so, this chapter focuses attention on the formal statutory laws and rules that serve as formal rules guiding the operations of the regulatory agency.

Statutory Authority

The Federal Election Commission is presently charged with overseeing and enforcing contribution limitations and prohibitions, expenditure limitations, the Presidential Election Campaign Fund, and campaign finance disclosure programs. Contribution limitations continue to place restrictions on the amount of money individuals, political action committees, multi-party committees, and political committees associated with a political party can give. According to former FEC Commissioner Trevor Potter, the FECA defines a contribution as, "'anything of value' given to a federal candidate or committee. This encompasses not only direct financial contributions, loans, loan guarantees, and the like, but also in-kind contributions of office space, equipment, fundraising expenses, salaries paid to persons who assist a candidate, and the like."²

Individual Contributions:

² Anthony Corrado, Thomas Mann, Daniel Ortiz, Trevor Potter, and Frank Sorauf. Campaign Finance Reform: A Sourcebook. (Washington, D.C., The Brookings Institution Press, 1998), p. 5

Contributions by individuals are restricted to one thousand dollars or less per election, per candidate. Individuals are also restricted to a maximum contribution of twenty thousand dollars to national political party committees and five thousand dollars to any single political action committee. The total dollar amount that individuals may contribute toward federal elections in any given election year is twenty-five thousand dollars.

Political Action Committees Contributions:

Political action committee contribution limitations take two forms: single candidate political action committees and multi-candidate political action committees.

Present law restricts single candidate political action committees to a maximum contribution of one thousand dollars, per election, to a single candidate for federal office. Single candidate political action committees are free to contribute up to fifteen thousand dollars to the committees of a national political party. Lastly, single candidate political action committees may contribute up to five thousand dollars to any other political action committee.

To be classified as a multi-candidate political action committee, a political action committee must meet three requirements. First, the political action committee must have a minimum of fifty contributors. Second, the political action committee is required to have been in existence for a minimum of six months. Third, the political action committee must make contributions to a minimum of five candidates for federal office.

Multi-candidate political action committees may contribute up to five thousand dollars to any candidate for

federal political office. Multi-candidate political action committees may also contribute up to twenty thousand dollars to the committees of a national political party. Additionally, multi-candidate political action committees, similar to single candidate political action committees, may contribute up to five thousand dollars to other political action committees.

Leadership political action committees are treated under the same single and multi-candidate committee status. Leadership PACs are not treated under federal law as being affiliated with any specific individual or office holder. The result is that the individual who heads up or controls a multi-candidate leadership PAC may accept up to five thousand dollars from another political action committee for both the primary and general elections for their own candidate committee.³ The same individual office holder may accept another five thousand dollars for both the primary and general elections for their leadership PAC.⁴ This means that the total contributions to committees that a single individual may control could total up to twenty thousand dollars in a single election cycle.⁵ It is important to note that leadership PACs are restricted to spending no more than five thousand dollars advocating the election or defeat of a single federal candidate.⁶

Political Party Committee Contributions:

³ Ibid., p. 7.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

Political Party Committees are required to follow the same restrictions as single and multi-candidate political action committees. This means that campaign committees affiliated with a national political party are limited to a maximum contribution of either one thousand or five thousand dollars. Again, the definitions for single and multi-candidate committees, described above, serve to determine which limitation applies. Political party committees and the National Republican Senatorial Committee, the National Democratic Senatorial Committee, and any other designated national party senatorial committee may contribute \$17,500 to candidates for the United States Senate per annum.

Limitations on Candidate Personal Contributions:

Present restrictions place no limitations on the amount that a candidate may contribute to his or her own campaign committee for federal elective office. Limitations may apply, however, if the candidate accepts federal funds when campaigning for President of the United States. In these instances, a maximum contribution of fifty thousand dollars applies to the candidate, and his or her immediate family.

Prohibited Contributions:

A number of other types of contributions are prohibited or limited. First, contributions from foreign nationals are prohibited. Second, banks, unions, and corporations are prohibited from contributing more than one hundred dollars.

Limitations on Candidate Expenditures:

The Federal Election Campaign Act presently imposes few limitations on the expenditures of candidates for federal office, the direct advocacy of individuals, and the

expenditures of single and multi-candidate political action committees. Candidates for the United States House of Representatives and the United States Senate are not limited in the amount of money that they can spend advocating their candidacies. Also, individuals are free to directly advocate their views through uncoordinated independent expenditures.

Expenditure limitations exist for presidential candidates who voluntarily accept federal funds. Presidential candidates accepting federal funds are limited to a maximum aggregate expenditure of ten million dollars during the presidential primaries. The ten million dollar figure is augmented by a Cost of Living Adjustment and an allocation of twenty percent of the costs associated with fundraising. The size of this limitation rises to twenty million dollars, plus Cost of Living Adjustments, for general elections.

National and State Political Party Expenditures:

Expenditures by national and state political parties are also restricted. First, national and state political parties may spend up to ten thousand dollars, plus a cost of living adjustment, to assist any party nominee for the United States House of Representatives in states with multiple House districts.⁷ Second, national and state political parties may spend up to twenty thousand dollars, plus a cost of living adjustment, in support of their political party's nominee for the United States Senate. This same limitation applies to the expenditures of political parties on the behalf of their nominees for the House of Representatives in non-multi-district states.

⁷ A multi-district state exists when a state does not hold at large elections for the United States House of Representatives.

The Presidential Election Campaign Act:

The Presidential Election Campaign Act (PECA) requires that the Federal Election Commission administer the public funding program for presidential elections. At present, the following guidelines exist for this program's administration. First, candidates may qualify for federal primary campaign matching funds if they raise a total of five thousand dollars in a minimum of twenty states. Once a candidate has qualified, contributions of up to two hundred fifty dollars are matched on an equal basis with federal funds. The maximum primary matching funds that a candidate can receive is one half of the primary spending limitation discussed above. Second, nominees from major political parties may qualify for general election funds. The amount of general election funds a candidate can qualify for equals the nominee's spending limitation. Minor party nominees may also qualify for federal funds in an amount proportionate to the percentage of the popular general election vote that party's nominee received in the previous presidential election. In the instance in which a new party has just been established, the party can receive retroactive federal funding provided they receive five percent of the popular vote during the general election.

As was mentioned in the previous chapter, the Federal Election Commission administers a voluntary tax check-off designed to create the Presidential Election Campaign Fund (PECF). But, what role in presidential campaign fundraising has it played? And, what about the recent impact of "soft money"?

The PECF was designed to create a pool of funds for use in the public funding of presidential campaigns. The original check off contributed one dollar for an individual filing a tax return and two dollars for those filing jointly. In 1993,

these amounts were changed to three and six dollars, respectively. The reason for this change was that the fund's outflow exceeded its inflow. Participation in PEFB peaked in 1981 at 28.7% of Americans filing tax returns.⁸ By 1992, participation had dropped to 17.7% of those filing tax returns. The total revenues brought into PEFB peaked at slightly over \$41 million in 1981, and nearly reached an all time low of \$29.6 million in 1992. Additionally, while the total percentage of American taxpayers participating in PEFB has dropped, the number of participants has held relatively constant at between 22 and 23 million people.

The funds accumulating in PEFB were designed to provide the public funding of presidential candidates who agreed to a voluntary spending limit. The success of PEFB as a funding mechanism for presidential campaigns is dependent upon individuals checking off the boxes on their tax forms. PEFB provided candidates with "\$71.4 million in funds in 1976, \$101.6 million in 1980, \$132.6 million in 1984, \$176.9 million in 1988, and \$175.4 million as of April 1993.⁹

Disclosure:

Existing federal law still requires that the Federal Election Commission administer a disclosure program by which all candidates for federal office, all political action committees, and all national parties, file disclosure statements identifying contributions received and expenditures made, on a regularly scheduled basis. All contributions and expenditures of two hundred dollars or more must be reported on these disclosure statements. In addition to the amount of

⁸ Herbert Alexander and Anthony Corrado. Financing the 1992 Elections, (Armonk, New York: M.E. Sharpe, 1995), p. 11.

⁹ Ibid., p. 139.

the contribution or expenditure, the disclosure program requires the reporting of the name, address, occupation, and employer, of each contributor. As presently set out, candidates for President of the United States and for the House of Representatives file disclosure statements with the Federal Election Commission. Candidates for the United States Senate file their disclosure reports with the Secretary of the United States Senate. All disclosure reports are available through the Federal Election Commission.

Soft Money Versus Hard Money:

In Chapter One, it was shown how the federal courts have ruled that a presidential candidate can not bind his or her supporters through their own acceptance of public funds. The result has been an increase in spending outside of the "official" candidate's committee.

To better understand the nature of the spending that is going on, one needs to understand that there are two types of campaign funds, "hard money" and "soft money." "Hard money" refers to funds that are raised within the restrictions established by law. It seems that where there are contribution limits, there are nearly always methods of circumventing those limits. "Soft money" represents one such method. "Soft money" can be defined as, "money raised and spent outside the restraints of federal law and is regulated by state laws, many of which are less stringent than federal law."¹⁰

Soft money first came into use in the 1980 and 1984 Presidential campaigns, as a way around spending restrictions. Soft money's primary purposes are for party building and for get-out-the-vote efforts. Herbert Alexander and Anthony

¹⁰ Ibid., p. 110.

Corrado state that the main use of soft money is, "to allow state and local party committees to undertake such activities as registration and get-out-the-vote drives, phone banks, and the like..."¹¹ Its purpose was to supplement the public funds given to the individual campaigns, and the funds allowed to be spent by the national parties. For instance, in 1992, the candidate spending limit for candidates receiving public funding was \$55.2 million.¹² This amount, however, did not in anyway represent the total amount the two major candidates spent. In 1992, Democratic National Committee (DNC) related organizations raised \$22.1 million in soft money, while the Republican National Committee (RNC) related organizations raised \$15.6 million.¹³ Additionally, the Republicans reported \$1 million in labor related soft money contributions, while the Democrats reported \$35 million.¹⁴ When one totals these, and other, contributions together, the total funds being raised and spent become much larger than those agreed to in order to receive public funding. In 1992, the Clinton Campaign and Democratic National Committee reported having approximately \$130.1 million in funds.¹⁵ The Bush Campaign and the Republican National committee, meanwhile, had approximately \$89.9 million.¹⁶

It appears that the line between "Hard Money" and "soft money" is quite vague and blurred, to say the least. The line is based upon legal technicalities, not political realities.

¹¹ Ibid., p. 114.

¹² Ibid., p. 111.

¹³ Ibid., p. 115.

¹⁴ Ibid., p. 115.

¹⁵ Ibid., p. 115.

¹⁶ Ibid., p. 115.

The public financing of presidential campaigns is designed to limit the amount of money spent by the candidates in their quest for the presidency. Technically, the amounts spent by the two major campaigns in 1992 and 1996 were equal because they agreed to only accept the public funds. This is consistent with the court rulings in Republican National Committee v. Federal Election Commission, discussed in Chapter One. In fact, it was in this same case that the federal courts ruled that a candidate can agree not to accept private funds in exchange for accepting public funds, but that this binding commitment can not restrict the efforts of "his or her supporters outside the official campaign."¹⁷ This was the ruling that opened the door wide for soft money. What this court ruling meant was that only the official campaign was restricted when it agreed to accept the public funds. The restrictions did not extend to the national or state committees of a political party or any other organization or individual. The result was that the total amounts spent by the campaigns were technically the same, but the total amount spent to further the candidacies varied because of the role played by soft money.

State parties and national parties can raise soft money for party building activities and getting out the vote, but these activities must be separate from those of the "official campaign." The reason that soft money is exempted from limitations is that it is used to promote participation in the electoral process at more than just the federal level. Furthermore, this does not mean that the efforts can not be coordinated. This means that state and national parties are free to raise and spend unlimited amounts of money on efforts that are coordinated with the official campaigns.

¹⁷ 512 F. Supp. 495 (1980).

Furthermore, national committees can shift funds to state committees for these efforts. During the 1992 campaign, the Democratic National Committee shifted approximately \$9 million to their state and local organizations, while the Republican National Committee transferred approximately \$5 million.¹⁸ This means that a national committee can deploy resources where they feel the funds will aid party efforts best, again helping their party's nominees.

It is also possible for national parties to suggest that donors make contributions to state party organizations. For example, during the 1996 election the Clinton Campaign was pushing an anti-tobacco message. At the same time that the Clinton Campaign was bashing tobacco and refusing to accept political action committee contributions from tobacco entities, the DNC and the "official" Clinton Campaign were referring these contributions to state parties. The result was that tobacco companies were able to make donations to state parties, but the Clinton Campaign could present its anti-tobacco message. The Democrats were benefiting from both sides of the tobacco issue. And, because contribution data is spread over all fifty states, it is more difficult to total up the amount of money contributed to the Democratic Party from tobacco entities. This process can be repeated with any contributor, and any campaign or party, over any number of states.

The role of soft money in Presidential campaigns serves to circumvent the spirit and purpose of the public funding of presidential campaigns. Instead of placing the candidates for President on an equal footing through equal funding, public funding actually serves as a form of political welfare. By

¹⁸ Herbert Alexander and Anthony Corrado. Financing the 1992 Elections, (Armonk, New York: M.E. Sharpe, 1995), p. 162.

virtue of being the nominee of a major political party, that nominee's campaign is going to receive a certain level of government funding.

In some instances, however, it is possible that a candidate might not want to be bound by the fundraising limitations that come with accepting public funds. An example of this can be seen in the candidacies of now-President George W. Bush and publisher Malcolm "Steve" Forbes who both chose not to accept public funding for their primary campaigns for the 2000 Republican Party Presidential nomination. Instead, then-Governor Bush mounted an extensive fundraising effort of his own. One of the reasons for President Bush's actions appeared to be the candidacy of Forbes. Forbes possesses vast personal financial resources that he was free to spend in his quest for the nomination. Had President Bush accepted matching funds in the primary election cycle, he would have faced a fundraising limitation, and hence a limit to his campaign's spending, while Forbes would have been free to spend whatever personal financial resources he saw fit to pursue the nomination.

More often than not, it appears that candidates are willing to accept public funds. Public funding of Presidential campaigns serves to guarantee that a candidate is going to have a minimum level of campaign funds, nothing more. It does not serve to equalize the political playing field and it does not remove the role of big money from "special interests" and wealthy individuals. Clearly, the courts have issued rulings that have cut holes in campaign finance law. As Herbert Alexander and Anthony Corrado state: "[w]ith a total of almost \$90 million for or on behalf of Bush, and \$130.1 million for or on behalf of Clinton [in 1992]... it is

apparent that the candidates' spending limitations, plus those on the national party, are not effective."¹⁹

Discussion and Conclusion

Clearly, money plays an important role in politics. To some the influence of money in the political process is a "corrosive" eating away at the fabric of the American democracy; to others the role of money is simply a means of free speech protected by the First Amendment to the United States Constitution. Controlling the influence of money in the American political system is not new. This chapter discussed the specific limitations that the federal campaign finance laws have placed upon individuals, campaign committees, and others who raise and expend money in the federal campaign finance system. Included in this discussion was an examination of the role of the Presidential Election Campaign Act, and the rules governing hard versus soft money. The next chapter examines the structure of the Federal Election Commission, as a regulatory agency. Included in this chapter will be an examination of the Commission, and its Offices of the General Counsel, Staff Director, and Inspector General.

¹⁹ Ibid., p. 117.