"Show Me the Money! An Examination of Presidential Campaign Finance Law"

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In the movies during 1996, it was "Show Me The Money!"[1] The same can be said about the world of politics. This paper is about presidential campaign finance law in the United States. Its goal is to understand both the legal and practical issues surrounding presidential campaign finance law in the United States. The discussion will take place in five sections. The first section of this paper will discuss the major campaign finance laws enacted by the United States Congress since 1971. Specifically, this section of the paper will include an examination of the Federal Election Campaign Act (FECA) enacted in 1971, the Presidential Campaign Fund Act (PCFA) enacted in 1972, the 1974 amendments to FECA, and further amendments occurring in 1979, 1984, 1986, and 1993. The second section will examine a number of legal issues relating to these acts. A total of five court cases will be examined. The third section seeks to examine the roles played by the Presidential Election Campaign Fund (PECF) and soft money. This section of the paper will include an examination of the 1996 presidential election. The fourth section will look at reforms that have been proposed in recent years. The last section reaches a number of conclusions about campaign finance reform.

This paper will reach several conclusions. First, the United States Supreme Court has left the door open for reconsidering issues relating to independent expenditure contributions. It is possible that a new appeal, based upon gross abuse of influence by independent expenditure organizations, could be heard by the Court. Second, it is possible that successful arguments could be made for drawing a distinction with regard to

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[1] From the movie, "Jerry Maguire."

contributions to independent expenditure committees and direct independent expenditures. This distinction could be made on free speech grounds with direct independent expenditures amounting to a direct exercise of free speech and contributions to independent committees being treated to a lesser degree of free speech. The distinction being made because a contributor does not necessarily control the message, i.e. the "speech," of the independent expenditure organization in same way as they would through a direct expenditure.

Federal Campaign Finance Law

The Federal Election Campaign Act was enacted in 1971.[2] This Act was mainly designed to replace the Federal Corrupt Practices Act of 1925.[3] That Act had primarily been aimed at members of the United States House of Representatives and the United States Senate. By 1971, it had become clear that additional reforms in the area of campaign finance were necessary. The Federal Election Campaign Act accomplished a number of these reforms. First, it established limitations on the size of campaign contributions that campaign committees and independent organizations could give to candidates for office and electoral committees. All contributions were made subject to strict reporting requirements. Second, it provided the opportunity for presidential candidates to accept public funding in the general election. This was done through the creation of the Presidential Election Campaign Fund (PECF). The implementation of PECF was later accomplished under Title VIII of the Internal Revenue Code through the enactment of the Presidential Election Campaign Act of 1971.[4] According to this act, major party candidates were to receive fifteen cents for each member of the voting age population. Minor party

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[2] Public Law 92-225.

[3] William G. Bernhardt. Oklahoma Law Review, Winter 1986., Vol. 39, pg. 730.

[4] Public Law 92-178.

candidates were to receive an amount based upon the proportion of the vote they received. This program was funded through the creation of a check off on federal tax forms amounting to one dollar for individuals or two dollars for joint tax returns. Public funding became an option for presidential candidates beginning in 1976. Third, FECA legalized the use of political action committees (PACs) and independent expenditure committees. Lastly, FECA set contribution limits for individuals and political action committees for the House, Senate, and Presidential campaigns. Contributions over $5,000 were to be reported within forty-eight hours of receipt. Additionally, limitations were placed on media spending and contributions by candidates for President and Vice-President, and their immediate families.

FECA was amended in 1974 following the Watergate Scandal that rocked the Nixon Administration.[5] The amendments imposed tighter limitations on campaign contributions and prohibited cash contributions over $100. Individuals were limited to contributions of $1,000 per election and a total of $25,000 per year for all federal candidates and campaign related committees. A limitation of $5,000 was placed on contributions coming from a political action committee or party committee. Other limitations, including on the expenditures made by Presidential candidates and political parties were also imposed.

In 1975, the Tariff Schedules Amendments[6] provided for the tax deductibility of up to $100 for individuals filing tax returns and up to $200 for those filing joint tax returns. Additionally, a tax credit for campaign contributions was established at $25 for individuals and $50 for those filing jointly.

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[5] Public Law 93-443.

[6] Public Law 93-625.

FECA was amended again in 1976.[7] These amendments mainly consisted of establishing additional contribution limitations. Individuals were limited to giving a maximum of $5,000 to a political action committee and a maximum of $20,000 to a national committee of a political party. Additionally, political action committees were limited by the act to contributing a maximum of $15,000 to the national committee of a political party. A number of additional clauses addressed issues, such as the cutting off of public matching funding for Presidential candidates when a party's percentage of the vote dropped to below 10% for two straight presidential elections and the procedures for conducting investigations of potential violations.

Other minor changes in FECA occur in 1979,[8] 1984,[9] 1986,[10] and 1993.[11] The 1979 amendments amount to a slight streamlining of the FECA process. Reporting requirements were reduced for party organizations raising or spending less than $5,000 per year. Additionally, the disclosure requirement was changed from contributions of $100 to $200. Furthermore, state and local party organizations were freed from spending limitations on get-out-the-vote and voter registration drives. The 1984 amendments increased the amount of public funding for national party presidential nominating conventions from $3 million to $4 million, and indexed future increases to inflation. In 1986, FECA provisions making political campaign contributions tax deductible were repealed. Lastly, the Omnibus Budget Reconciliation Act of 1993 increased the amount of the check off in the Presidential Election Campaign Act to $3 for individuals filing tax returns and $6 for those filing joint tax returns.

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[7] Public Law 94-283.

[8] Public Law 96-187.

[9] Public Law 98-355.

[10] Public Law 99-514.

[11] Public Law 103-66.

Five Court Cases

The first major challenge to the Federal Election Campaign Act occurred in 1974 with Buckley v. Valeo (424 U.S. 1, 1976). In Buckley, Senator James L. Buckley, former Senator Eugene McCarthy and ten others challenged many of the provisions of Subtitle H of the Internal Revenue Code of 1954, as amended in 1974. These were the major provisions of the federal campaign finance law dealing with limitations on campaign funding, independent expenditures, and campaign expenditures. Their main contention was that the limitations imposed by Subtitle H of the above act violated the Constitutionally guaranteed right to free speech, invidiously discriminated against those covered under the act, and that the system was biased in favor of major party candidates. In Buckley, the Court sustained the challenge from the plaintiffs with regard to contributions made directly to campaign committees. The Court found that the limitations did not constitute a direct violation of free speech because the contributor was not "speaking" it was the campaign committee that did the "speaking." In essence, the speaker was once removed from the donor; therefore, this amounted only to indirect free speech. Writing in the Harvard Journal of Legislation, Anne V. Simonett writes, "[t]he limitations imposed were held to be an incidental restriction on the First Amendment of the contributor, and were justified by the government's interest in preventing the corruption or appearance of corruption that large contributions impact to the electoral process."[12] The Court explicitly states in Buckley that, "[t]o the extent that large contributions are given to secure a political quid pro quo from current and potential office-holders, the integrity of our system of representative democracy is undermined."[13] The Court did, however, find that the limitations on campaign expenditures constituted an unconstitutional restraint of the speech of the spender. The Court states, "[t]he Act's

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[12] Anne V. Simonett, Harvard Journal on Legislation, Summer 1981, Vol. 18, pg. 681.

[13] 424 U.S. at 26-27.

constraints on the ability of independent associations and candidate campaign organizations to expend resources on political expression 'is simultaneously an interference with the freedom of [their] adherents.'"[14] Therefore, the Court found that while contributions to campaign committees could be limited, the spending by these committees could not be because they amounted to "direct political expression"[15] The Court further ruled that expenditures between committees that were coordinated would be treated as "contributions." Independent contributions, however, were not deemed contributions because they were independent in their nature. The Court says that, "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as quid pro quo for improper commitments from the candidate."[16] What actually constituted "coordinated" appears to have been left open to debate. On the issue of public funding of Presidential campaigns, the court ruled that this portion of the Act was constitutional. The court also found that the act did not invidiously discriminate.

The Buckley decision is significant for two reasons. First, the Court, for the first time, makes the distinction between a direct contribution given to and spent by the campaign of a particular candidate and money given to and spent by an "independent" committee. The Court finds that the above distinction provides a basis for determining the degree of free speech protection required. In the first instance, the contribution amounts to a direct expression of speech. In the second instance, the Court finds that the contribution to an independent committee amounts only to an indirect expression of free speech. The second major result of Buckley is the lifting of all limitations on spending by independent

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[14] 424 U.S. at 22.

[15] 424 U.S. at 22.

[16] 424 U.S. at 47.

committees. Independent expenditures, if they were not coordinated, were not restricted, but who was to say what was coordinated and what was not.

In Republican National Committee v. Federal Election Commission, (487 F. Supp. 280, 1980), the basic claim is that the constitutional rights of the Republican Party have been violated by the Presidential Election Campaign Fund Act. This case was brought in the United States District Court for the Southern District of New York. The main section of the Act that is at issue in this case is 26 U.S.C. §9006. This section requires political parties to certify that they will not incur expenses beyond the amount of public funding they are given and that they will not accept private contributions for their party nominee's campaign. The district court ruled against the Republican National Committee. In doing so, the court upheld the funding of Presidential elections with public funds. Further, the court upheld the requirement for candidates to certify that they would not spend more than they were allocated and that they would not accept private contributions. The district court's reasoning was that the act of agreeing to accept public funding of one's campaign was voluntary. A candidate did not have to accept public funding for their campaign. One last point in this case is worth noting. The court found that the voluntary acceptance of public funds for a Presidential Campaign did not "bind his or her supporters outside the official campaign."[17] The United States Supreme Court affirmed the district court ruling on April 14, 1980.[18] The significance of this case lies in the fact that the public funding of presidential campaigns was found to be legal.

The issue of independent expenditures again reaches the Court in the cases of Common Cause v. Schmitt and Federal Election Commission v. American's for Change. These two cases were consolidated into a single case and heard by the United States District Court for the District of Columbia. (512 F. Supp. 489, 1980). At issue was whether

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[17] 512 F. Supp. 495 (1980).

[18] 445 U.S. 955 (1980)

a candidate accepting public funding binds his supporters when they act independently. Specifically, the Federal Election Commission and Common Cause brought suits claiming that by accepting public funding, Ronald Reagan's 1980 Presidential campaign had bound his supporters to contribution limits of $1,000 toward his election. The 1980 Reagan Presidential Campaign received approximately $30 million in public campaign funds.[19] The court ruled that the answer was no. The court found that the, "$1000 ceiling imposed on independent expenditures of political committees was an expenditure restriction directly limiting political speech and could not be justified by [the] government's compelling interest in fighting electoral corruption; thus, [the] expenditure ceiling was facially unconstitutional."[20] Second, the court found that it lacked jurisdiction to consider whether Ronald Reagan's 1980 Presidential campaign had illegally coordinated the expenditures of the independent committee. Third, the court found that it was not a violation of the Presidential Election Campaign Fund Act for the political committee to coordinate with the Presidential candidate. On this point, the court states that the, "claim that defendant political committees were illegally coordinated with presidential candidate did not violate sections of Act applicable to presidential candidates who receive federal funding and are required to limit their own expenditures and forgo private contributions."[21] On appeal, the United States Supreme Court affirmed the judgment of the district court.[22] This case is significant not only because it made unlimited independent campaign expenditures to aid the election of a candidate for president legal, but because it also made it legal to coordinate these expenditures with a presidential campaign.

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[19] 512 F. Supp. 490 (1980).

[20] 512 F. Supp. 489 (1980).

[21] 512 F. Supp. 489 (1980).

[22] 455 U.S. 1266 (1981).

Then, last June, the Supreme Court issued a ruling in Colorado Republican Federal Campaign Committee Et Al. v. Federal Election Commission (Slip Opinion: No. 95-489). This case stems from the Colorado Republican Federal Campaign Committee's buying radio advertisements attacking a prospective Democratic nominee, prior to the completion of the nomination process. The Federal Election Commission brought suit challenging the Republican effort as a violation of the party limitations imposed under the "Party Expenditure Provision" of the 1971 Federal Election Campaign Act. The Republican committee challenged the spending limitations on the basis that they amounted to a denial of First Amendment protections. A district court ruled in the favor of the Republican committee, but this ruling was overturned by the Court of Appeals. The district court had taken a narrow interpretation of First Amendment protections and the FECA act. The Court of Appeals took a wider interpretation of both the issues related to the expenditures and the First Amendment protections.

This case was then appealed to the United States Supreme Court. In a very divided ruling, the Court's plurality of three justices (Justices Breyer, O'Connor, and Souter) ruled that the FECA restrictions could not be applied to a political party when the party acted in a non-coordinated manner. The Court found that the Republican committee's actions amounted to an independent expenditure. As such, the expenditures could not be limited without violating the protections guaranteed in the First Amendment of the Constitution. In affect, what the justices had done was to cut an even larger hole in federal campaign finance law. When applied to the presidential campaigns, this meant that state party committees could spend unlimited amounts of funds, as long as those funds were not coordinated with the presidential campaign.

What is really interesting about this case is that in two separate opinions, a total of four justices (Justices Thomas, Scalia, Rehnquist, and Kennedy) appeared to be willing to eliminate all campaign spending limits on political parties.

The five court cases that have been analyzed above present several stark realities within the American political system. First, the Congress and the President can enact laws on any issue, but they can be, and often are, challenged in our court system. Second, Congress enacted campaign finance reform in 1971 and amended it six times from 1972 to 1993, but understanding the impact of these changes in the law requires more than just reading the law. What do the changes in law and the court rulings really mean?

Soft Money and the PECF

The section of this paper will examine issues related to presidential campaign fundraising and the rise of "soft money." First, it will examine the role of the Presidential Election Campaign Fund (PECF) in presidential campaign expenditures. Second, it will examine the growth of "soft money" in presidential campaigns from the 1980s to present.

In the first portion of this paper, I discussed the creation of the voluntary tax checkoff system for creation of the Presidential Election Campaign Fund. But, what role in presidential campaign fundraising has it played? 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 rationale for this change was that the fund's outflows exceeded its inflows. Participation in PECF peaked in 1981 at 28.7% of Americans filing tax returns.[23] By 1992, participation had dropped to 17.7% of those filing tax returns. The total revenues brought into PECF 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 PECF has dropped, the number of participants has held relatively constant at between 22 and 23 million people.

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[23] Financing the 1992 Election, pg. 11.

The funds accumulating in PECF were designed to provide the public funding of presidential candidates who agreed to a voluntary spending limit. The success of PECF as a funding mechanism for presidential campaigns is dependent upon individuals checking off the boxes on their tax forms. PECF 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."[24]

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. However, it seems that where there are contribution limits, there are nearly always methods of circumventing those limits through the use of soft money or by some other means. "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."[25] Soft money first came into use in the 1980 and 1984 presidential campaigns, as a way around spending restrictions. Soft money's primary purpose is for party building and get out the vote efforts. Herbert Alexander and Anthony 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..."[26] 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 spending limit for presidential candidates receiving public funding was $55.2 million.[27] This amount, however, did not in anyway represent the total amount the two major candidates spent. In 1992, the Democratic National Committee related organizations (DNC) raised $22.1 million in soft

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[24] Financing the 1992 Election, pg. 139.

[25] Financing the 1992 Election, pg. 110.

[26] Financing the 1992 Election, pg. 114.

[27] Financing the 1992 Election, pg. 111.

money, while the Republican National Committee related organizations raised $15.6 million.[28] Additionally, the Republicans reported $1 million in labor related soft money contributions, while the Democrats reported $35 million.[29] 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.[30] The Bush Campaign and the Republican National committee, meanwhile, had approximately $89.9 million.[31]

It appears that the line of use between "Hard Money" and "soft money" is quite vague. It is blurred to say the least. The line is based upon legal technicalities, not political realities. 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 ruling in Republican National Committee v. Federal Election Commission, discussed above. In fact, it is in this same case that the Court 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."[32] This was the ruling that opened the door wide open for soft money. What it 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

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[28] Financing the 1992 Election, pg. 115.

[29] Financing the 1992 Election, pg. 115.

[30] Financing the 1992 Election, pg. 115.

[31] Financing the 1992 Election, pg. 115.

[32] 512 F. Supp. 495 (1980).

that the total amounts spent by each campaign was 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 not just the federal level. Furthermore, this does not mean that the efforts can not be coordinated. This, too, was a part of the Court's ruling in Republican National Committee v. Federal Election Commission. State and national parties are free to raise and spend unlimited amounts on efforts that are coordinated with the official campaigns. 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.[33] The result is that a national committee can deploy resources where it feels the funds will best help party efforts, again helping its party nominees.

It is also possible that national parties can suggest that donors make contributions to state party organizations. Because the reporting requirements in many states are not as stringent as federal requirements, it is possible for funds to be shifted from the federal to state level and go virtually unnoticed. 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 made donations to state parties, but the Clinton campaign could present its anti-tobacco message. The Democrats benefited from both sides of the tobacco issue. And, because

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[33] Financing the 1992 Elections, pg. 162.

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 virtue of being a major party candidate, a candidate's campaign is going to receive a certain level of government funding. After all, why would a candidate not agree to bind his campaign to not accepting private contributions in exchange for accepting millions in public funds, especially if independent committees and national or state parties are going to raise and spend unlimited amounts of soft money on their behalf. The public funding 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 large holes in our nation's campaign finance laws. 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... it is apparent that the candidates' spending limitations, plus those on the national party, are not effective."[34]

An Example: The 1996 Presidential Election

Clearly, 1996 was the year of "Show Me The [Soft] Money!" It was not just the year of "Jerry Maguire," but the year that the 1974 political campaign reform laws finally broke down. The strict limitations that had been imposed on presidential candidates in order to reduce the influence of the wealthy and corporate interests were largely circumvented. The court rulings in the years since the Act's implementation had so

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[34] Financing the 1992 Election, pg. 117.

weakened the law that it was practically meaningless, save the technical limitations and bookkeeping requirements it had imposed upon political participants.

In 1996, the FECA provided that each of the major political party candidates' campaigns receive $61.8 million in funding. Ross Perot's campaign received a little over $29 million in public funding.[35] The two national parties were allowed to spend an additional $12.3 million in coordination with the major campaigns.[36] But, these amounts of public funding appear to have been not nearly enough. Total fundraising by the Republican and Democratic National Committees totaled over $880 million.[37]

The system appears to have broken down under the weight of independent expenditures, soft money, the channeling of funds from national to state party committees, and other ploys designed to make use of legal technicalities.

In 1996, independent organizations utilized their ability to raise and spend unlimited amounts of soft money. These independent campaigns were outside the limitations imposed by the FECA, as amended. As we saw in the discussion of the Buckley case, above, expenditures by independent expenditure committees can not be regulated without violating First Amendment protections.

National and state political parties actively raised soft money in the 1996 campaign cycle. Republicans raised more than $141 million in soft money, while Democrats raised another $122.3 million in soft money.[38] A large portion of the soft money raised by national committees was transferred to state committees because state committees operated under less stringent regulations. An example of the importance of these transfers can be seen in Republican National Committee "issue ads." If the RNC paid for an issue ad, up to 35%

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[35] The Election of 1996, pg. 150.

[36] The Election of 1996, pg. 151.

[37] The Election of 1996, pg. 151.

[38] The Election of 1996, pgs. 151-2.

of the cost of the ad could be paid for with soft money. If a state party organization paid for the "issue ad," then soft money could pay for between 50 and 78% of the ad's cost.[39] The DNC transferred $53.9 million to state party organizations.[40] And, the RNC transferred $47.8 million.[41] It is more cost effective for the national committee to transfer the funds to the state party organizations because of the less stringent restrictions. Furthermore, in some instances, it may be more desirable for soft money contributions to be made directly to a state party organization. This is supported by some of the Democratic efforts to channel the more controversial contributions from tobacco interests to the state party organizations. On the state level, the funds are not as readily traceable and the spending requirements are more lax.

Soft money also found a new use in 1996 through these "issue ads." The Republican National Committee and the Democratic National Committees began running "issue ads" that promoted the ideas of their party and candidates without naming the candidates or asking for a vote. The ads served to inform the voters as to current policy issues, such as taxes, the budget, and welfare. Since these "issue ads" did not advocate a certain candidate, they were not limited by the candidate spending limits. And, they were funded with millions of dollars in unrestricted soft money contributions. This served to reinvigorate the role previously played by corporations and the wealthy in American politics.

Another approach to circumventing the law utilized during the 1996 presidential election involves the transfer of funds from one campaign account to another. The campaign of Senator Phil Gramm, a candidate in the Republican primaries, utilized this approach. The law allows candidates to transfer funds from one federal campaign account to another. This

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[39] Toward the Millennium: The Elections of 1996, pg. 245.

[40] The Election of 1996, pgs. 153.

[41] The Election of 1996, pgs. 153.

allowed Senator Gramm to transfer funds from his Senate campaign committees into his presidential campaign committee. Another aspect of the law allows him to solicit funds for the new committee from the same people giving contributions to the committees he transferred the funds from. Therefore, Senator Gramm could solicit funds from the same people, multiple times.[42]

The establishment of campaign committees is not new. What seems to be new is Jack Kemp's reason for establishing a campaign committee in order to campaign for the Republican Vice Presidential nomination. Kemp had already been named by Dole, but had not officially been named the Vice Presidential nominee by the Republican Convention. Since Senator Dole could not spend additional funds because he had reached a spending ceiling, Kemp established his committee. As a condition of agreeing to grant him public funding, Senator Dole could not exceed the $37.09 million limit set for candidates seeking a presidential nomination. Since Dole was out of money, this allowed Kemp to pay for expenses, such as campaign signs, and the like. The result was that people who had made contributions to Dole's campaign committee could give to Kemp's committee because they were not the same committee. It did not matter that Dole and Kemp were already announced as being running mates.

The 1996 campaign also saw a few unusual occurrences. Vice President Al Gore raised $140,000 from a group of monks in a Buddest Temple. The catches were that it is illegal to solicit funds on a religious site and the monks had taken vows of poverty.

Foreign money also appears to have played a role in the election. It seems that the DNC received large sums of money from Asian donors. The problem is that the true sources of some of these funds appear to be uncertain. As a result, the DNC is trying to return millions of dollars. Justice Department investigations and Congressional hearings are

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[42] Toward the Millennium: The Elections of 1996, pg. 231.

ongoing into this matter. More recently, attention has started to focus on some Republican contributions from foreign entities.

Lastly, it is unclear what, if anything, will come from the Vice President's apparent admission that he made campaign solicitation telephone calls while on government property. This appears to have been illegal, but, to date, the Attorney General appears unwilling to actively pursue any criminal charges.

REFORMS

It is evident that the laws governing presidential campaign finances do not serve to limit the role of money in politics. Between the courts and others, the laws have become full of exceptions and holes large enough to drive the proverbial Brinks armored truck through. The campaign finance laws need to be altered if they are to work. This section of the paper will examine some of the major reform proposals that have been offered since 1986.

In 1986, Senators David Boren and Barry Goldwater sought to place fundraising restrictions on the total amount of political action committee money that a Member of Congress could receive. The measure did not receive action.

Following the 1986 elections, Senator Boren and Majority Leader Byrd introduced legislation to provide for the partial public funding for Senate elections, the elimination of the bundling of political action committee contributions, and increased disclosure for soft money contributions. The measure failed because Republicans opposed the public funding aspects of the measure.

In 1987, Senator Ernest Hollings proposed an amendment to the United States Constitution. The purpose of the amendment was to allow, "mandatory spending limits without the public funding trigger."[43] Senator Hollings had observed that the only way the Court was willing to allow mandatory spending limits was if one voluntarily agreed to them in

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[43] Financing the 1992 Election, pg. 256.

exchange for public funding. The basis of this ruling had been the First Amendment's guarantee of free speech. Therefore, in order to get around the Court's ruling in Buckley v. Valeo, the Constitution would have to be amended. This measure failed to receive enough votes to avoid cloture, thus it never came up for a vote.

By 1989, President Bush was making his own proposals for campaign finance reform. He proposed a plan to limit political action committees, while expanding the ability of party committees to raise funds by removing restraints. The proposal did not receive support from the Democratic majority in Congress because, at the time, the Democrats received more money from political action committees than Republicans received. Additionally, the Democrats did not want to lift the restraints on contributions to party committees because Republican received more funds through these committees than the Democrats received.

Between 1990 and 1992, Senator Boren's reform bill resurfaced in a modified form. The new bill contained provisions for, "[p]ostal and broadcast advertising discounts and 100 percent tax credits for in-state individual contributors, up to a certain level... PAC money was only lightly discouraged..."[44] Similar to previous reform efforts, this bill met stiff opposition. Democratic leaders were displeased with the PAC limitations and Republican were presumably displeased because of the public funding aspects. Additionally, Senators from small states felt at a disadvantage because they had a greater reliance on funds raised outside their states, thus the tax credit for in-state contributors did not benefit them. The two parties were unable to find an acceptable compromise. In fact, the two parties started introducing measures that they knew the other party would not find acceptable. The Democrats were pushing measures containing stricter PAC restrictions, but without limiting labor contributions. They also were back advocating the public funding of campaigns. For the Democrats, their risk was minimal because if their measures passed

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[44] Financing the 1992 Election, pg. 257.

the Congress, then they would most likely be vetoed by President Bush. The Republicans, meanwhile, were pushing for the elimination of PAC contributions. The Republican's could push their measures because they were not going to get Democratic support. Therefore, both parties in Congress could claim that they were for campaign finance reform, but in reality nothing was going to change.

In 1993, President Clinton sought to initiate campaign finance reforms, but failed in this effort. The President wanted to reform the role played by political action committees. He also wanted to expand the public funding of campaigns. The primary reason that these reforms failed was opposition by Speaker of the House Tom Foley and the Chairman of the Democratic National Committee. Both the Speaker and Chairman of the DNC did not want to see cutbacks in the roles played by PACS. Many Democratic Members of the House of Representatives, as well as the DNC, were greatly reliant upon PAC contributions. In the end, Speaker Foley was unable to find the votes necessary to pass the reform measures in the House of Representatives.

During the present session of Congress, a number of proposals to reform campaign financing have been offered. Some favor mandatory limitations through the enactment of a Constitutional Amendment; others give direct public subsidies to campaigns, as well as subsidies for broadcast media, and postal discounts; or reform PACs. Some of these measures would prohibit PAC contributions and expenditures, and lower the amounts PACs can contribute to candidates or parties. Other measures are designed to raise PAC contributions to parties, while prohibiting leadership PACs. Additional reform proposals would require that a certain portion of a candidate's funds be raised from within the candidate's home state. Still other proposals attempt to address issues related to independent expenditures. Several of these measures would define technical terms, such as "coordination with candidates" or "advocacy." Proposals also exist to totally prohibit independent expenditures, or just their use by political parties. This sampling represents just a portion of the legislation that has been introduced to reform the campaign finance

system in the 105th Congress. Obviously, any measure regarding PACs, independent expenditures, coordination with candidates, or changes in the role of parties and campaign finances, that becomes law would affect a presidential candidate. It would almost certainly be subject to legal challenges.

Conclusions

The problem with these "reforms" is that much of this proposed legislation, even if enacted, is not likely to reform the system. Only the rules, not the system, will change if new campaign finance legislation is enacted. PAC efforts will continue if they are not substantially hindered by new regulations. Due to the Court ruling in Buckley, independent expenditures are not going to be legislated away. Further, the role of political parties may change. But so what? If a restriction is imposed in one area, there is almost always another means for funneling the money to a desired objective.

The reality is also that neither party is likely to give the other party what is needed in order to achieve a compromise. Republicans want to limit contributions from organized labor and the bundling of contributions from groups such as EMILY's list. The Democrats, on the other hand, seem to want to have some aspect of publicly funded campaigns. Both parties appear to have missed the point of the court rulings. Or have they? The courts have said that contributions that are given to someone who speaks for an individual can be limited. This is why PACs and campaigns can have contribution limits. In effect, the contribution amounts to an indirect exercise of free speech. It seems unlikely that the Congress will be able to outlaw contributions from organizations such as labor. Labor, like any other organization, is entitled to exercise its free speech. It can speak indirectly through a PAC or it can speak directly through an independent expenditure on the behalf of a presidential candidate. Eliminating the PAC will not eliminate the financial influence of labor. Increasing limitations on PACs will likely encourage organizations and corporations to shift more into independent expenditures than they have in the past. The same can be said

about contributions from corporations and other organizations. The method of contribution and speech will change, but the influence will be the same. Herbert Alexander and Anthony Corrado sum this view up when they state: "[w]hen freedom of speech and association are guaranteed, restricting money at any point in the campaign process results in new channels being carved, through which moneyed individuals and groups seek to bring their influence to bear on campaigns and officeholders."[45]

Even President Clinton missed the mark with his 1993 proposals. The President proposed changing the law to prevent soft money from playing a role in federal campaigns, proposed changing contribution limits, and the like. But, what would this accomplish? Banning soft money on the federal level only means that state parties coordinate soft money contributions to the benefit of federal candidates, including the president. Changing contribution limits does not really accomplish anything because corporations, wealthy individuals, and others, can make unlimited soft money contributions to state party committees. They can also make unlimited independent expenditures.

So what does this tell us? It says that perhaps Senator Hollings was correct when he proposed an amendment to the United States Constitution. Senator Hollings recognized that the Court, in the Buckley case, had made contributions a form of "free speech." Direct free speech can not be limited because it is protected by the First Amendment of the Constitution. Therefore, the only way to over-ride the Court's ruling in Buckley is to amend the Constitution. In truth, this is not likely to happen. The Constitution and the Bill of Rights are revered in our nation. A number of the original states might not have come into the nation if it had not been for the guarantee that a Bill of Rights would be created.

The reality, however, is that for political reasons, neither the Democrats nor the Republicans have a strong incentive to change the process. Furthermore, since changes in the rules governing contributions are not likely to originate with an amendment to the

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[45] Financing the 1992 Election, pg. 117.

Constitution, the changes will not have a substantial effect. Without altering the Court's numerous rulings, it will take an amendment to the Constitution to limit independent expenditures and the use of soft money. Therefore, limiting candidate contributions, party fundraising, and PAC expenditures, is not likely to reform the system of campaign finance surrounding presidential and other elections.

It is true that the time has come to reform our nation's campaign finance laws as they pertain to presidential elections. It does not make any sense for the federal government to be giving public funds to political parties when they are going to indirectly raise private funds. Herbert Alexander and Anthony Corrado are correct when they state, "[w]hen monies spent on both major conventions and the general election are twice as much as envisioned by spending limits, the time is at hand to reapprise the effectiveness of the law."[46]

One of the problems with revising existing laws that are not being followed or circumvented is that there is no guarantee that the new laws will be followed, and not circumvented. Revising the laws may have no effect. Where there is a strategic benefit from utilizing a "technicality" to skirt the law, it will be used.

Another solution may be to go back to the Court. If it were possible to show that large independent expenditures were designed to impact the political process in a manner that was detrimental to our nation's political process, then perhaps the Court would reconsider a portion of it's ruling in Buckley. If this were to occur, it might not be necessary to amend the Constitution to limit the influence of unlimited money coming from independent expenditures.

It also might be possible for someone to bring a case to the Court which challenged the independence of independent expenditures. If an individual is giving money to an organization that is making an independent expenditure, then the Court might find that this

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[46] Financing the 1992 Election, pg. 117.

amounts to an indirect free speech. This speech could then be subject to restrictions. On the other hand, the Court is not likely to limit direct independent expenditures because they amount to a direct expression of free speech. As such, any prior restriction would be subject to the strict scrutiny standard. It is upon this standard that four justices of the Supreme Court have said limiting direct expenditures does not stand up.

The issues surrounding presidential campaign finances are complex. This paper has attempted to explain how the laws, court rulings, and practical politics interact on this policy issue. Presidential elections are about the power to govern a government with a trillion dollar budget. It is not surprising that candidates, parties, and other interests will go to great lengths to assure their ability to impact the organization, prioritization, and distribution of these resources and policy objectives. The presidency represents a point of control in our governmental process. And, the presidential election represents the fight for this control. As Anthony Corrado has written: "[c]andidates as strategic actors are always looking for ways to maximize the resources available to their campaigns and gain a competitive advantage over their opponents."[47] It is this competition that forces aspiring politicians to adapt within the ever changing environment of presidential campaign finance law.

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[47] In Pursuit of the White House: How We Choose Our Nominees, pg. 247.

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