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### Guide to Modern Campaign Finance

The following is the content drafted for a “Guide to Modern Campaign Finance”. The guide is designed for an online format, available at: <http://campaignfinanceguide.blogspot.com/>

The online format allows for linking back to definitions and explanations; some sections of the enclosed content assume prior knowledge and provide links to the relevant section. In text citations are provided as footnotes (except for the literature review), a requirement of the publishing software used.

### Abstract

*Money in political campaigns is an increasingly discussed topic. The regulatory framework has changed significantly in the past two cycles. In the 2008 campaign, for the first time ever, over \$1 billion was spent in the race for the White House. Campaign finance regulations set a majority of the rules of the game for political campaigns. Yet these rules are often misrepresented or misunderstood even by trained professionals.*

*This project is a guide which explains the current campaign finance policy landscape. Emphasis is placed on explaining common misconceptions and bridging the gap between the academic and popular understanding of the field.*

## Guide to Modern Campaign Finance

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## Introduction to Project

### Introduction

Campaign finance is a complicated topic. However a solid understanding of campaign finance can make analyzing political campaigns easier for observers, voters, and journalists.

A popular assumption is that campaign contributions buy influence with legislators. Many people and groups decry the connection between money and politics. Fear of corruption or undue influence, concerns regarding equity, and often times a misunderstanding of the facts drive discussions of political money. But are these claims accurate?

This project will examine existing Political Science literature on this topic. It will explain differences between the various political committees and political organizations which solicit campaign funds.

Contributions compose half of the story of campaign finance, the other half is expenditures. Many expenditures, such as television or printed mail advertisements, require disclaimers indicating which candidate or committee paid for the advertisement<sup>1</sup>. It is important to be able to properly identify the source of an expenditure to fully understand its context and purpose. Often the authorizing committee has a deliberately vague name, but disclosure and disclaimer requirements can reveal significant intelligence about the source<sup>2</sup>.

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<sup>1</sup> "Special Notes on Political Ads and Solicitations" Federal Election Commission. Web 11 Dec 2011.

<<http://www.fec.gov/pages/brochures/notices.shtml>>

<sup>2</sup> "Eye of the Tiger? Some PAC Names Pack Punch." *Roll Call*. 1 Nov. 2011. Web. 11 Dec 2011.

<[http://www.rollcall.com/issues/57\\_51/some-pac-names-pack-punch-209898-1.html](http://www.rollcall.com/issues/57_51/some-pac-names-pack-punch-209898-1.html)>

This guide considers political money to be any money that is involved in the electoral political process. Specifically, money raised and spent by candidates, on behalf of candidates, to elect or defeat candidates, and raised or spent to fund speech about political issues. This does not include money involved in other steps of the political process such as lobbying or government expenditures and contracts.

For simplicity, this guide will only cover federal campaign finance regulations. State and local regulations can and do vary. For example, some states allow unlimited contributions from individuals to candidates<sup>3</sup>. Some jurisdictions allow corporate treasury funds to be used directly for contributions. Other jurisdictions have significant public financing systems<sup>4</sup>. Focusing on federal campaigns allows this guide to cover political money in a manner applicable to all campaigns for the United States House of Representatives, United States Senate, and presidential campaigns.

## Review of the Literature and Theory

### **“Congress shall make no law...abridging the freedom of speech...”**

The First Amendment protects a right to free speech. But how does that apply to campaign finance policy?

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<sup>3</sup> "Oregon Lawmakers Push Campaign Contribution Limits." *RealClearPolitics*. 4 Mar. 2011. Web. 11 Dec. 2011. <[http://www.realclearpolitics.com/news/ap/politics/2011/Mar/04/oregon\\_lawmakers\\_push\\_campaign\\_contribution\\_limits.html](http://www.realclearpolitics.com/news/ap/politics/2011/Mar/04/oregon_lawmakers_push_campaign_contribution_limits.html)>.

<sup>4</sup> "Public Financing in the States." Common Cause. Web. 11 Dec. 2011. <<http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4773825>>.

In *Buckley v. Valeo* the Supreme Court acknowledged a connection between resources and the ability to speak (Corrado 92-93). A political campaign requires funding in order to achieve viability, without resources a campaign is unlikely to effectively speak. This is why the *Buckley* decision viewed limits on campaign expenditures as excessive and unconstitutional.

In *Money in Congressional Elections*, Jacobson finds support for this claim. His research finds that money does matter in Congressional campaigns. Further, he finds that the amount of money raised by a non-incumbent challenger is a significant indicator of the electoral result of the election. Jacobson's analysis shows that the most relevant question is not "which candidate raised more money?" but rather "does the challenger raise a sufficient amount?" (Jacobson xvi 1980). If a challenger is able to amass the resources to run a viable campaign, incumbents generally raise a similar amount (Jacobson xvii 1980). Small differences in funding do not noticeably advantage one candidate over another (Jacobson 49 1980).

From a policy perspective, this means that limits on campaign spending could effectively serve to support incumbents by limiting challengers' ability to spend enough to run a viable campaign. Given that the campaign finance laws are written by sitting members of Congress, it is important to consider unmentioned potential ramifications. It is unlikely that advocates of reigning in campaign spending would be satisfied with an alternative which strengthens incumbents against challengers.

However, *Buckley* also recognizes that corruption, or even the appearance of corruption, threatens democracy (Corrado 92). The decision allows for limits on direct contributions to political candidates in order to prevent such corruption. The Court ruled that it is not the amount

of a contribution which is protected free speech but rather the choice to give a contribution and express support of a candidate (Corrado 93).

The fear is that contributions to political candidates will persuade elected political leaders to pursue the interests of their contributors. But does this happen? Another possibility is that contributors only support candidates that are already supportive of their interests.

Bronars and Lott (345 1997) address head on the question of whether campaign contributions buy influence or whether donors find candidates they agree with. They “strongly reject the notion that campaign contributions buy politicians’ votes” (Bronars and Lott 346 1997). They expand upon the campaign finance literature by incorporating theories of legislative behavior.

Their study examines the voting patterns and contribution receipts of members of Congress who have announced their retirement. Through interviews with PAC managers they conclude that contributions to retiring lawmakers are extremely rare. Beginning with the assumption that a retiring member of Congress does not consider a vote’s impact on fundraising, the project looked for changes in voting behavior among retiring members (Bronars and Lott 323 1997).

Bronars and Lott did not find evidence that retiring members changed their voting patterns even when contribution patterns changed (Bronars and Lott 346 1997). While interest groups often stopped contributing, members continued to vote the same way they always did (Bronars and Lott 347 1997). They believe this is evidence that members of Congress do not base roll call vote decisions on contributions.

The Buckley decision complicates the debate by providing support to each school of thought. The Court both recognized that direct contributions may be corrupting but also that political spending is speech and cannot be limited unreasonably.

John Samples in *The Fallacy of Campaign Finance Reform* presents the debate over campaign finance policy as a conflict of two ideals: a Madisonian versus a Progressive vision of politics (Samples 17, 42). The Madisonian vision views freedom of speech as a natural right and is intensely skeptical of any limit on that right. The Progressive vision sees a government interest in regulating speech in order to achieve more just outcomes. Many of the opinions in the current campaign finance policy debate fit into one of these frameworks.

Samples cites several studies related to political contributions and the threat of corruption. Ansolabehere, Figueiredo, and Snyder co-authored “Why is there so little money in U.S. politics?”, an article title that may surprise readers familiar with recent media coverage of *Citizens United* and Super PACs (Samples 91). While it is true that campaign spending is at an all time high, the authors contend that if campaign contributions are investments in beneficial policy potential contributors would stand to gain by contributing even more. The fact that they have not is evidence that contributors view contributions as “consumption” not “investment”.

They examined the rates of return that industries received through favorable government policies per dollar given in political contributions. As an example, they find that the defense procurement industry received \$10,152 in additional government funding per \$1 given in contributions. Rates for other industries vary from \$79 to over \$26,000 (Samples 93); all seem incredibly higher than typical investments from traditional markets. If this is true, and contributions serve as “investments” in beneficial policy, why do only 4% of PAC contributions

reach the \$10,000 limit (Samples 92)? This study examined direct contributions to candidates, leaving room in the debate for the rapid increase in expenditure funding allowed by Super PACs. However, these studies demonstrate it is unsafe to assume contributions automatically lead to corruption.

John Wright studied the impact the tobacco industry had on tobacco related policy. He considered PAC contributions, ideology, employment in a lawmaker's district, among other factors. Wright finds that contributions "have the smallest statistical impact on voting of any of the factors considered" (Samples 95, Wright 19). Factors such as political ideology and district constituency matter far more.

The academic literature on political campaign contributions paints a much different picture than media accounts or even lawmakers themselves. After the Supreme Court's *Citizens United* decision, Time questioned whether it was "good for democracy" ("Supreme Court..."). During debate over BCRA, members of Congress decried soft money and sham issue ads, praising efforts to "control" or "reign in" the campaign finance system (Samples 3-6). Public opinion on the issue seems to overwhelmingly support reform and oppose recent developments which eased restrictions<sup>5</sup>.

This project intends to bridge the gap between the academic and popular understanding of campaign finance policy.

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<sup>5</sup> Economist/YouGov Feb. 1, 2011 poll; ABC News/Washington Post Feb. 17, 2010 poll; ABC News/Washington Post Feb. 4-8, 2010 poll; Pew Research Center Feb. 12, 2010 poll. Results in Appendix.

## Common Misconceptions

### Politicians Get Rich off of Campaign Contributors

What happens to all the money raised for political campaigns? How is it spent?

There are very strict rules regulating how campaign funds may be spent. Candidates and organizations may not use campaign funds for personal expenses. Many of these rules are not known or fully understood.

A common misconception is that politicians solicit funds for their own personal use. They do not. Political candidates do not personally become directly wealthier off of contributions from supporters.

Only expenses which exist solely because a person is a candidate for public office may be paid for with campaign funds while expenses which would exist regardless of whether the individual is a candidate cannot<sup>6</sup>. A candidate may not use campaign contributions to pay the mortgage on his or her personal residence, because that expense would exist regardless of the campaign for federal office.

### Citizens United Allows Corporations to Give Unlimited Amounts

Following the *Citizen's United* ruling, another common misconception is that corporations and unions can contribute unlimited sums to candidates. This is incorrect. Corporations and unions cannot make direct campaign contributions, of any amount, to

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<sup>6</sup> "Campaign Finance Law Quick Reference for Reporters." *Federal Election Commission*. Web. 11 Dec. 2011. <[http://www.fec.gov/press/bkgnd/bcra\\_overview.shtml](http://www.fec.gov/press/bkgnd/bcra_overview.shtml)>.

candidates<sup>7</sup>. This is a common misinterpretation of the changes which allow corporations and unions to spend unlimited amounts on independent speech which may not be coordinated with a candidate.

Recent court rulings, including the Supreme Court's decision in *Citizens United vs. FEC*, allow corporations and unions to use their treasury funds to make independent expenditures without limit. These expenditures may not be made in coordination with a political candidate or campaign. This distinction is crucial. A corporation cannot give a contribution directly to a candidate from corporate treasury funds. Corporations may establish Political Action Committees in order to make political contributions, but the PAC is a legally separate entity and is funded by voluntary contributions (not corporate profits).

The Court has decided that while limiting contributions to candidates serves a significant state interest, expenditures made independent of a candidate do not pose a risk of corruption or the appearance of corruption<sup>8</sup>. Groups which want to make independent expenditures only (and not contribute directly to candidates) may raise unlimited funds with fewer restrictions on where those funds may come from.

### **Corporations Can Give Directly to Candidates**

Much of the confusion regarding corporations contributing to candidates originates from the disclosure process and tools designed to inform citizens in addition to the public debate over

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<sup>7</sup> "How the Big Money Finds a Way In." *The New York Times*. 17 Sept. 2011. Web. 11 Dec. 2011. <<http://www.nytimes.com/2011/09/18/opinion/sunday/how-the-big-money-finds-a-way-in.html>>.

<sup>8</sup> "Citizens United v. Federal Election Commission." *Supreme Court of the United States*. 21 Jan. 2010. Web. 11 Dec. 2011. <<http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>>.

the Citizen's United decision. The FEC requires committees to disclose the name, address, occupation and employer of contributors who give over \$200 per election. Some publications and databases aggregate contribution data for employers and suggest that the employer itself contributed the money.

For example: if a campaign receives ten separate \$2,000 contributions from employees of Microsoft, a publication may list "Microsoft" as a \$20,000 contributor to the campaign<sup>9</sup>. There are two reasons why this interpretation of the facts is incorrect.

First, a corporation may not make direct contributions to a candidate. If a list includes "Microsoft" as a contributor it must mean either Microsoft's political action committee or employees of Microsoft contributing as individuals. Second, \$20,000 is larger than most entities can contribute. A PAC can usually give \$10,000 (\$5,000 per election for a primary and general election) and individuals can usually give \$5,000 (\$2,500 per election) but amounts larger than that are usually limited to coming from political parties.

The correct interpretation is that ten employees of Microsoft individually contributed. As a corporation, Microsoft cannot give directly to a candidate. It may be useful to know how individual employees of a corporation are contributing, but it is misleading to imply any sort of official endorsement or financial support.

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<sup>9</sup> "Goldman Sachs Was Top Obama Donor." *CNN*. 20 Apr. 2010. Web. 11 Dec. 2011. <[http://articles.cnn.com/2010-04-20/politics/obama.goldman.donations\\_1\\_obama-campaign-presidential-campaign-federal-election-commission-figures?\\_s=PM:POLITICS](http://articles.cnn.com/2010-04-20/politics/obama.goldman.donations_1_obama-campaign-presidential-campaign-federal-election-commission-figures?_s=PM:POLITICS)>.

## The Supreme Court's Ruling in Citizens United Is Off Base

The *Citizen's United* decision was immediately made a target by some Democrats and campaign finance reformers. President Obama decried it during his State of the Union address and congressional Democrats scrambled to propose legislation to correct perceived wrongs caused by the case<sup>10</sup>. Rhetoric surrounding discussion of the impact of the ruling often focuses on the involvement of corporate money buying influence in the political system to which a common solution is the removal of corporate funds from politics. Some criticize the Supreme Court and individual justices and those who nominated them. Others felt the Court was treating corporations as people. A common tactic was to point out that the decision allows corporations from unpopular or controversial industries (including banking, insurance, pharmaceutical and energy companies) to spend unlimited amounts on independent expenditures. However because the Court ruled on the constitutionality of the issues at hand, it is unlikely that a legislative or regulatory fix short of amending the Constitution would be able to alter the decision. A possible option within the legislative or regulatory framework is an emphasis on disclosure requirements, use of which was upheld by the Court.

The Court's decision caught many observers by surprise. Given the unique context of the challenge brought by Citizens United, it was thought the Court would strike down or limit the

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<sup>10</sup> "Democrats Struggle With Citizens United Ruling - Eliza Newlin Carney." *NationalJournal.com*. 24 Jan. 2011. Web. 11 Dec. 2011. <<http://www.nationaljournal.com/columns/rules-of-the-game/democrats-struggle-with-citizens-united-ruling-20110123>>.

electioneering communications provision of BCRA. Instead, the Court invited the parties back to reargue the case and revisited the entire issue of corporate expenditures<sup>11</sup>.

The Court's decision was foreshadowed by the arc of prior cases. *Citizen's United* essentially overturned *Austin*, establishing that discriminating between speakers based on identity (corporate or individual) is unconstitutional. The *Citizen's United* decision does not deviate from *Buckley's* distinction between contributions and expenditures in the context of corruption and what the government can regulate. *Massachusetts Citizens for Life* found that certain corporations had the right to speak as themselves, without forming a PAC as other corporations were required to do. *Wisconsin Right to Life* dramatically altered rules regarding issue ads, increasing the practical value of independent expenditures. Taken together, one can see how the Court's *Citizen's United* decision relates to prior decisions<sup>12</sup>.

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<sup>11</sup> "What Citizens United v. FEC Really Means." *Public Affairs Council*. Web. 11 Dec. 2011.

<<http://pac.org/blog/what-citizens-united-v-fec-really-means>>.

<sup>12</sup> "The Liberal Mythology of an "Activist" Court: Citizens United and Ledbetter." *Heritage Foundation*. 15 June 2010. Web. 11 Dec. 2011. <<http://www.heritage.org/research/reports/2010/06/the-liberal-mythology-of-an-activist-court-citizens-united-and-ledbetter>>.

## Types of Political Committees and Organizations<sup>13</sup>

It can be helpful to think of the word “committee” in political committee to mean not “a group of persons” but rather more as a “political bank account”. Money in political committees is regulated by the FEC; any money moving in or out of a political committee is disclosed. But a political committee is not a literal bank account. Political committees establish deposit accounts at traditional banks and disclose where those accounts are to the FEC. The activity in those accounts then must be reported to the FEC. Political organizations register with the IRS, not the FEC.

### Candidate Campaign Committee

An account used directly by a political candidate (“Candidate Guide” p.5). When a candidate receives a contribution, it is deposited into a bank account controlled by the candidate’s campaign committee. The campaign pays for expenses with funds from the candidate campaign committee. Typically, these include staff salaries, consulting fees, media purchases, office space, and incidental expenses. A campaign committee for an elected legislator may be used to fund campaign related travel and other expenses that cannot be paid for with official Congressional funds.

All contributions to candidate committees are disclosed to the FEC. The FEC itemizes all contributors who give over \$200 to a candidate committee each cycle, publicizing the

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<sup>13</sup> "Political Candidate Guide." *Federal Election Committee*. Web. 11 Dec. 2011.

<<http://www.fec.gov/pdf/candgui.pdf>>.

contributors name, address, employer, and occupation (“Candidate Guide” p.63). All disbursements made by the candidate committee are disclosed to the FEC and itemized in quarterly reports, including a description of the expenditure.

A principal campaign committee is the entity used by a political candidate to facilitate run for Federal office. It is the committee authorized by a candidate to collect and disburse funds to promote that candidate’s election.

A candidate committee must contain the name of the candidate it supports within its name. Typically these committees have a name such as “Smith for Congress” or “Friends of Smith” (“Candidate Guide” p. 9)

A candidate campaign committee is controlled by its registered Treasurer<sup>14</sup>. The Treasurer is responsible for all interaction between the committee and the FEC, and the committee may not undertake financial transactions without a treasurer. Under federal law, the Treasurer is not personally liable for any debts incurred by the committee.

Candidate campaign committees register and file disclosure reports with the FEC. Contributions to these committees are limited and donors are disclosed. The limit for the 2012 election cycle is \$2500 per election from an individual and \$5000 per election from a PAC<sup>15</sup>.

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<sup>14</sup> "Committee Treasurers Brochure." *Federal Election Commission*. Jan. 2011. Web. 11 Dec. 2011.

<<http://www.fec.gov/pages/brochures/treas.shtml>>.

<sup>15</sup> "Contribution Limits Chart 2011-12." *Federal Election Commission*. Web. 11 Dec. 2011.

<<http://www.fec.gov/pages/brochures/contriblimits.shtml>>.

These committees may not accept contributions from corporations, labor unions, or national banks.

A candidate must register a principal campaign committee within 15 days of becoming a candidate, under the definition determined by the FEC. Within ten days of being designated as a candidate's principal campaign committee, the committee must file a statement of organization ("Candidate Guide" p.5).

Money raised by a principal campaign committee for political purposes is exempt from income taxes. Income from sources not related to the committee's primary purpose are not, such as investment income<sup>16</sup>.

### **Political Action Committee**

The phrase "political action committee" (PAC) is not found in the law governing campaign finance, but PACs are a crucial element of political money. Officially, they are known as "separate segregated funds (SSF)" in FECA<sup>17</sup>. PACs allow many groups to legally raise, contribute, and spend "political money".

A political committee makes contributions to political candidates or makes expenditures on behalf of political candidates or issues. PACs are often used by corporations, labor unions, and interest groups in order to receive contributions from stakeholders interested in advancing

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<sup>16</sup> "Taxable Income - Political Organizations." *Internal Revenue Service*. 20 July 2011. Web. 11 Dec. 2011.

<<http://www.irs.gov/charities/political/article/0,,id=96351,00.html>>.

<sup>17</sup> "Quick Answers - PAC." *Federal Election Commission*. Web. 11 Dec. 2011.

<[http://www.fec.gov/ans/answers\\_pac.shtml](http://www.fec.gov/ans/answers_pac.shtml)>.

the PAC's mission. Because a PAC is a legally separate entity and may only be funded by voluntary contributions, entities that cannot contribute directly to candidates often create PACs to do so.

PACs are legally separate entities from their affiliate organization (if they have one)<sup>18</sup>. If a political candidate accepts a contribution from "General Electric PAC" it is incorrect to say the contribution is from "General Electric", although occasionally publications do not recognize this distinction.

A corporation, like General Electric, may not directly contribute to a candidate from their general treasury. They must organize a PAC, collect voluntary contributions from individuals eligible to contribute to their PAC, and then contribute from the PAC to a candidate. This was not affected by the decision in *Citizens United*, which allowed corporations to fund independent expenditures with treasury funds.

### Connected PAC

A connected PAC is a political committee that is affiliated with a corporation, labor union, trade group or health organization. The affiliated corporate entity is allowed to provide resources to the PAC such as office space, letterhead, or administrative expenses which would otherwise have been prohibited as a corporate contribution<sup>19</sup>.

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<sup>18</sup> "SSFs and Nonconnected PACs." *Federal Election Commission*. Web. 11 Dec. 2011.

<<http://www.fec.gov/pages/brochures/ssfvnonconnected.shtml>>.

<sup>19</sup> Ibid.

This is advantageous because the PAC does not have to pay for these administrative expenses using regulated funds raised for the purposes of advancing the PAC's mission. The regulated funds can be preserved in their entirety for contributions to candidates or electioneering expenditures. However, connected PACs are only able to solicit contributions from members of their "restricted class". For corporations, the restricted class is typically executives and shareholders while for unions the restricted class is members of the union<sup>20</sup>.

### Non-Connected PAC

A non-connected PAC is a political committee that is not affiliated with a corporate entity. Often these PACs have an ideological mission. Leadership PACs of members of Congress are non-connected PACs. Unlike connected PACs, non-connected PACs must cover all expenses with regulated funds. Any monetary support or thing of value given to a non-connected PAC is considered a contribution<sup>21</sup>.

These PACs may solicit funds from any eligible individual (who isn't otherwise prohibited from making political contributions). Unlike a connected PAC, they are not limited to soliciting members, executives, and shareholders; non-connected PACs may solicit funds from any individual eligible to contribute to federal political committees<sup>22</sup>. However, anything of value provided to a non-connected PAC counts as a contribution. A corporation (barred from

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<sup>20</sup> "Corporations and Labor Organizations." *Federal Election Committee*. Jan. 2007. Web. 11 Dec. 2011. <<http://www.fec.gov/pdf/colagui.pdf>>.

<sup>21</sup> "SSFs and Nonconnected PACs."

<sup>22</sup> Ibid.

making direct contributions) may not contribute to a non-connected PAC from treasury funds or by providing anything of value.

### Leadership PAC

Some members of Congress maintain a “Leadership PAC”. These committees have become an established part of the campaign finance framework. Leadership PACs are unconnected PACs.

Leadership PACs are used by members to raise funds and contribute to other members of Congress or congressional candidates. Traditionally, members of the House and Senate leadership maintained these PACs in order to demonstrate their ability to assist other members and increase their stature within their political party<sup>23</sup>.

Leadership PACs are controlled by candidates or officeholders, but are not authorized committees of that candidate or affiliated with the candidate’s principal campaign committee<sup>24</sup>. This means that a Leadership PAC does not share a limit with a candidate’s primary account: a candidate may raise \$2500 per election for his or her campaign committee and \$5000 per calendar year for his or her Leadership PAC.

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<sup>23</sup> "Leadership PACs: Background." *OpenSecrets*. Oct. 2010. Web. 11 Dec. 2011.

<<http://www.opensecrets.org/industries/background.php?cycle=2012>>.

<sup>24</sup> "Leadership PACs and Sponsors." *Federal Election Commission*. Web. 11 Dec. 2011.

<<http://www.fec.gov/finance/disclosure/leadership.shtml>>.

A member of Congress can make contributions to other congressional candidates from his or her campaign committee. However, when BCRA indexed contribution limits to inflation it excluded the candidate-to-candidate limits. Therefore a candidate may only contribute \$2000 per election to a candidate. A Leadership PAC may contribute \$5000 per election to a candidate.

A Leadership PAC cannot directly support the campaign of its affiliated candidate. However, Leadership PACs can be used to provide indirect support by paying for things such as travel and consulting expenses or polling. Member of Congress often use Leadership PAC funds to pay for travel or expenses that cannot be covered by their official congressional funds<sup>25</sup>.

### **“Super PAC” or Independent Expenditure PAC**

An independent expenditure PAC (Super PAC) exclusively makes independent expenditures in support of or opposition to political candidates and issues. A Super PAC cannot make direct candidate contributions. Because of the Supreme Court’s ruling in *Citizen’s United vs. FEC*, Super PACs can accept unlimited contributions, including from corporation and union treasury funds. A Super PAC cannot coordinate with a candidate; this includes discussing content, timing, or placement of a potential public communication<sup>26</sup>.

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<sup>25</sup> "Leadership PACs: Background." *OpenSecrets*. Oct. 2010. Web. 11 Dec. 2011.

<<http://www.opensecrets.org/industries/background.php?cycle=2012>>.

<sup>26</sup> "Super PACs: All the Speech Money Can Buy - Yahoo! News." *Yahoo! News*. The Week, 9 Dec. 2011. Web. 11 Dec. 2011. <<http://news.yahoo.com/super-pacs-speech-money-buy-100700242.html>>.

## Super PACs: Unanswered Questions

Super PACs have taken on a significant role in the 2012 presidential campaign. However, the FEC has yet to fully incorporate Super PACs into the regulatory framework<sup>27</sup>. Forms to register a Super PAC do not exist; they must use the tradition PAC registration form and submit a supplemental letter explaining that they intend to seek unlimited contributions and not make direct contributions.

The current rules leave some questions unanswered and provide troubling solutions to other problems. Some Super PACs have made explicitly clear their intention to solely support one particular candidate. Often they are created by or employ staff members closely associated with that candidate.

The Court in *Citizens United* intended that unlimited contributions for independent expenditures only would occur without coordination. But what if the Super PAC does not need to coordinate with a candidate/candidate campaign committee because it has retained former campaign staff, familiar with a candidate's polling and upcoming campaign strategy<sup>28</sup>?

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<sup>27</sup> "FEC Seeks to Clarify Rules for Super PAC : Roll Call Politics." *Roll Call*. 24 June 2011. Web. 11 Dec. 2011. <[http://www.rollcall.com/news/fec\\_seeks\\_to\\_clarify\\_rules\\_for\\_super\\_pac-206774-1.html](http://www.rollcall.com/news/fec_seeks_to_clarify_rules_for_super_pac-206774-1.html)>.

<sup>28</sup> "Perry's Super PAC Keeps Its Distance From Him." *The New York Times*. 21 Oct. 2011. Web. 11 Dec. 2011. <<http://www.nytimes.com/2011/10/21/us/ross-ramsey-rick-perry-and-the-power-of-super-pacs.html>>.

The FEC has prepared some guidelines regarding Super PACs but campaign practitioners still disagree over their meaning<sup>29</sup>. Increased legislative or regulatory focus in this area is likely to occur.

### **What can Political Action Committees Do?**

A political action committee (PAC) may give direct contributions to candidates. PACs solicit contributions from interested individuals. Individuals may contribute a maximum of \$5,000 per calendar year to a PAC. Connected PACs are limited to soliciting members of their restricted class. Corporations and unions may not make contributions to a PAC from treasury funds; however they may absorb the administrative expenses related to running the PAC. These absorbed administrative expenses do not constitute a contribution or expenditure.

A PAC may also make expenditures in support or opposition to a political candidate or a political issue. A PAC may conduct political research through polling, produce and distribute a television advertisement, send a mailer or other campaign activity. Publicly distributed materials must contain the correct disclosure statement indicating the political committee which funded the material or advertisement.

Since the *Citizens United vs. FEC* Supreme Court ruling and subsequent rulings from the FEC, PACs which intend to only make Independent Expenditures may solicit unlimited contributions from individuals, corporations, and unions. Because these PACs are only allowed

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<sup>29</sup> "Influence Industry: New Ad Shows Cozy Ties between Super PACs and Candidates - The Washington Post." *The Washington Post*. 16 Nov. 2011. Web. 10 Dec. 2011. <[http://www.washingtonpost.com/politics/influence-industry-new-ad-shows-cozy-ties-between-super-pacs-and-candidates/2011/11/15/gIQAxHdSN\\_story.html](http://www.washingtonpost.com/politics/influence-industry-new-ad-shows-cozy-ties-between-super-pacs-and-candidates/2011/11/15/gIQAxHdSN_story.html)>.

to make independent expenditures, and never make contributions, they may accept unlimited contributions.

## Tradeoffs

There are tradeoffs associated with each type of PAC.

Connected PACs can devote 100% of their funds to making contributions to candidates. But they can only solicit (and accept) contributions from individuals with a "connection" to the PAC (executives, employees, shareholders, members). But they are allowed to use funds from the connected organization to cover expenses such as legal fees, office space, and supplies- which would typically come from the PACs funds.

Non-connected PACs may accept funds from anyone (who isn't otherwise prohibited from contributing to political committees). However, they must pay for all expenses (including legal fees, office space, and supplies) from PAC funds. This effectively means that contributions to non-connected PACs do not go 100% to candidate contributions; some funds are used for operational expenses.

Super PACs (Independent Expenditure Only PACs) can accept unlimited contributions from individuals, corporations, and unions. But they may not contribute directly to political candidates; they may only fund Independent Expenditures.

## 501's

501(c) groups do not have to disclose donors' identities. These organizations are primarily regulated by the I.R.S. Unlike the FEC, the IRS' mission is not to oversee political

activity. Their capacity and motivation to regulate the political activity of these non-profit corporations has been called into question by campaign finance reformers.

501(c) groups file disclosure reports less often than FEC regulated political committees. Unlike campaign committees which file quarterly and some PACs which file monthly, non-profit corporations are required to file with the IRS when their taxes would be due: many waiting up to a year after beginning their activity.

### **501c3 - Religious, Educational, Charitable, and Other Qualified Organizations**

A 501(c)(3) organization is prohibited from political campaign activity. These entities may not make campaign contributions or speak in favor or against candidates for public office. The closest that these tax-exempt organizations may get to political activity is through non-partisan voter education efforts, such as public forums or voter education guides. Contributions to these groups are tax deductible. These groups are often extremely careful if ever interacting with political candidates so as to not risk losing their tax exempt status.

### **501c4 - Civic Leagues, Social Welfare Organizations, and Local Associations of Employees**

501(c)(4) organizations defined as “social welfare” organizations. A 501(c)(4) may not be primarily engaged in political activity. A commonly held legal interpretation is that these organizations must spend at least 51% of their activity on non-political activity. However this interpretation has been disputed. Political activity does not include general advocacy to influence public opinion or lobbying to influence legislative activity.

Contributions to a 501(c)(4) are not disclosed. Donors to 501(c)(4)s remain anonymous. These organizations file with the IRS. Donations to these organizations are not tax deductible. Donations may be subject to gift tax.

501(c)(4)s are controversial because they may accept unlimited contributions from both individuals and corporations (including unions), do not have to disclose who contributes, and report their overall income and expenses on an annual basis set by the IRS<sup>30</sup>. The IRS timeline for reporting is much longer than a political campaign cycle. It is possible for all of a 501(c)(4)'s political activity to be disclosed after the election has already occurred.

501(c)(4)s can also contribute to Super PACs. This allows individuals, corporations, and unions to contribute unlimited amounts to a 501(c)(4) without disclosure, which can then contribute to a Super PAC. The 501(c)(4)'s contribution to the Super PAC will be disclosed, but it may be unclear where the funds originally came from.

### **501c5 - Labor, Agricultural, and Horticultural Organizations**

Labor Unions are organized as 501c5's. These organizations are allowed to organize and operate a union, organize employee committees within a business, conduct animal and plant research, and promote farm clubs. Similar to a 501(c)(4), these groups may not primarily be engaged in political activity. Most establish a Political Action committee or other entity to conduct political activity.

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<sup>30</sup> "A Guide to Political Donations." *The New York Times*. Sept. 2011. Web. 11 Dec. 2011.

<<http://www.nytimes.com/interactive/2011/10/17/us/politics/a-guide-to-political-donations.html?hp>>.

### **501c6 - Business Leagues, Chambers of Commerce, Real Estate Boards, etc.**

Trade associations (example: American Bar Association, American Medical Association, etc) are made of members with a common business interest. They may advertise their respective industries and spend unlimited amounts on lobbying. Business leagues may conduct political activity, but expenditures may be subject to tax (527f). Most c6 organizations establish Political Action Committees or other tax advantaged entities to conduct political activity.

### **527**

527 organizations are named after Section 527 of the Internal Revenue Code. Section 527 exempts political committees from tax, except on investments. Candidate committees and political action committees are organized under Section 527 for tax purposes, but also register with the FEC. 527's report only to the IRS, not the FEC. The FEC has ruled that the commission lacks jurisdiction unless the entity directly advocates for the election or defeat of a candidate.

They must disclose donors' identities. The 527 designation was created specifically for organizations which intend to engage in political activity. 527s must disclose their contributions and expenditures, including the identity of their contributors.

There is no limit to how much money an individual may contribute to a 527 and no restrictions on who may contribute.

527s may not engage in express advocacy or coordinate with a candidate's campaign. The most common use for 527s is as entities to fund issue advocacy. Examples of 527 groups include the Swiftboat Veterans for Truth as well as both the Republican and Democratic Governors Associations.

Use of 527s has declined since the Supreme Court's 2010 decision in *Speechnow.org v. FEC*, which created Super PACs. Super PACs have all the beneficial features of a 527 but can also directly advocate for or against a candidate.

## Concepts

### Electioneering Communication

A concept found in BCRA. Definition created to allow Congress to regulate "sham issue ads". Rendered practically irrelevant by Wisconsin Right to Life (WRTL) decision.

An Electioneering Communications (EC) is a broadcast advertisement (television or radio) which refers to a clearly identified federal candidate, is broadcast before an election (30 days before a primary or 60 days before a general) which includes that candidate, and is targeted to the relevant electorate<sup>31</sup>.

### Issue Advertisement

An issue advertisement is an advertisement which avoids explicitly calling for the election or defeat of a federal candidate<sup>32</sup>. A common strategy is for an issue ad to suggest viewers "call their representative" with a message about an issue. Issue ads were common

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<sup>31</sup> "Electioneering Communications Brochure." *Federal Election Commission*. Jan. 2010. Web. 11 Dec. 2011. <<http://www.fec.gov/pages/brochures/electioneering.shtml>>.

<sup>32</sup> "Campaign Finance Law Quick Reference for Reporters." *Federal Election Commission*. Web. 11 Dec. 2011. <[http://www.fec.gov/press/bkgnd/bcra\\_overview.shtml](http://www.fec.gov/press/bkgnd/bcra_overview.shtml)>.

because they could be funded with soft money (including money from corporate and union treasuries, which are prohibited from making direct contributions)<sup>33</sup>.

BCRA sought to curb the influence of issue ads funded with soft money. The limits placed by BCRA were upheld by *McConnell v. FEC* but overturned later in *Wisconsin Right to Life v. FEC*.

### **Express Advocacy**

Express advocacy is political speech which “expressly advocates” for the election or defeat of a federal candidate. A footnote in the *Buckley* decision lists the following “magic words” which imply an advertisement is express advocacy: "vote for," "elect," "support", "cast your ballot for", "Smith for Congress", "vote against", "defeat", "reject", or any variations thereof.

### **Independent Expenditure**

An independent expenditure (IE) is made without coordination and authorization of a political candidate. The Supreme Court has ruled that because IEs are made without a candidate’s prior approval and cannot be requested by candidates, they do not pose a threat of corruption. This logic has led the Court and FEC to remove limits on contributions (both amount and source limits) to committees which only make independent expenditures. It also allows some organizations, such as corporations and unions, to make IEs when they previously had been prohibited.

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<sup>33</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005.

Independent expenditures are express advocacy by definition. They explicitly call for the election or defeat of a clearly identified candidate. Independent expenditures must disclose that they are not authorized by any candidate.

## Soft Money

Prior to BCRA, political party committees could accept unlimited contributions outside the purview of the FEC provided the funds were used for “party building activities”. These activities were defined to include things such as physical buildings, “Get Out the Vote” projects or voter registration efforts. Soft money could not be used to directly support federal candidates.

Soft money could come from individuals, corporations, unions, and organizations. Because soft money fell outside the purview there were no “contribution” limits on the amount or source<sup>34</sup>.

Soft money was controversial because it can be incredibly difficult to distinguish between money used for supporting federal candidates and party building activity. A voter registration drive or buttons that say “Vote Democratic” could be funded with soft money in the district of a highly competitive congressional race, benefiting that district’s candidate without using express advocacy or scarce hard money.

Modern references to soft money may refer to Super PACs and 501(c)(4)s which can accept unlimited contributions from individuals, corporations, and unions but cannot contribute directly to candidates.

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<sup>34</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005.

## Hard Money

Hard money is political money that is regulated by the FEC. Direct contributions to and from candidates, parties, and PACs are made with hard money. Contributors of hard money are disclosed to the FEC, which publishes the name, address, occupation, and employer for contributors who give over \$200 to a particular political committee. The term is primarily used to differentiate from soft money.

## Disclaimers

Public communications funded by political committees are required to feature a disclaimer indicating the name of the committee that funded the communication<sup>35</sup>. Outside groups and individuals funding a public communication are required to include a disclaimer if the communication is express advocacy.

A message funded by a candidate campaign committee must indicate which committee paid for the communication. (Example: “Paid for by the Smith for Congress Committee”)

A message authorized by a candidate (coordinated), but not funded by the candidate’s campaign committee, must acknowledge the candidate’s authorization and indicate who funded the message. (Example: “Paid for by the XYZ State Political Party and authorized by the Smith for Congress Committee”)

A message not authorized by a candidate (independent) must indicate which group funded the communication, provide the group’s address, telephone number or website address

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<sup>35</sup> "Quick Answers-General Questions." *Federal Election Commission*. Web. 11 Dec. 2011.

<[http://www.fec.gov/ans/answers\\_general.shtml](http://www.fec.gov/ans/answers_general.shtml)>.

and acknowledge that no candidate authorized the communication. (Example: “Paid for by XYZ PAC ([www.XYZ-PAC.com](http://www.XYZ-PAC.com)) and not authorized by any candidate or candidate’s committee”)

Disclaimers on print materials must be placed in a printed box and be clearly readable. It must appear on the front page of single sided documents and billboards. For formats no larger than 24 inches by 36 inches, size 12 type size is considered clearly readable.

Radio advertisements must contain the name of the political committee or person responsible for the communication. (Example: XYZ is responsible for the content of this advertising)

Television advertisements must contain “a "full-screen view of a representative of the political committee or other person making the statement," or a "voice-over" by the representative.”

## Coordination

Coordination occurs when multiple political committees share resources or information<sup>36</sup>. Often times this involves a political party providing something of value to a candidate, such as commissioning a poll or sharing office space. However coordinated expenditures are subject to limits.

A candidate can explicitly request coordinated funding from a political party. The candidate can suggest how, why, where and when the money is spent. This differs from organizations which conduct independent expenditures on behalf of a candidate. Independent

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<sup>36</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005.

expenditures cannot be coordinated: a candidate may not discuss strategy or tactics with an organization conducting independent expenditures or share resources such as polling data.

## **How Can a Political Candidate Receive Contributions?**

If you want to raise money for political office, the current regulatory framework necessitates having a large number of supporters. Limits on direct campaign contributes prevent a single or small number of contributors from providing the resources necessary to stage a competitive federal campaign.

### **Individuals, PACs, and Parties**

Political candidates receive most contributions from eligible individuals, political action committees, and political parties<sup>37</sup>. A political candidate may not accept a direct contribution from a corporation, labor union, or national bank. The various types of 501(c) organizations are incorporated entities and therefore cannot make direct contributions because of the ban of direct corporate contributions.

For the 2012 election, an individual may contribute up to \$2,500 per election to a political candidate. A multicandidate political action committee may contribute up to \$5,000 per election to a political candidate. A candidate campaign committee may contribute \$2,000 per election to other campaign committees.

National Party Committees may contribute \$43,100 per election to Senatorial candidates. This limit is shared between a national senatorial committee (the DSCC and NRSC) and the

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<sup>37</sup> "Contribution Limits Chart 2011-12." *Federal Election Commission*. Web. 11 Dec. 2011.

<<http://www.fec.gov/pages/brochures/contriblimits.shtml>>.

national party committee (the DNC and RNC). The combined contributions from the DSCC and DNC to Democratic senatorial candidates cannot exceed \$43,100.

National Party Committees may contribute \$5,000 per election to House candidates and \$5,000 per election to Presidential candidates. State Party Committees may contribute \$5000 per election to Senate, House, and Presidential candidates from federal funds.

Individuals are also subject to a biennial aggregate limit. For the 2011-2012 election cycle, an individual may not contribute more than \$117,000 to federal political committees. Of that limit, a maximum of \$46,200 may be given to candidates and a maximum of \$70,800 may be given to parties and PACs. No more than \$46,200 may be given to committees which are not national party committees (typically PACs).

This limit does not apply to contributions to Super PACs (Independent Expenditure Only PACs), 527s, 501(c)(4)s, or any committee not regulated by the FEC.

### **Other Possible Contributors**

There are some other entities which may make political contributions.

### **Partnerships**

A contribution from a partnership counts against the partnerships limit and against the limits of the partners the contribution is attributed to<sup>38</sup>.

As an example, imagine “Sample Firm Partnership” a partnership with two partners, Mr. Smith and Mr. Jones. The partnership contributes \$5,000 to Candidate Thomas running for the

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<sup>38</sup> "Partnerships." *Federal Election Commission*. Feb. 2011. Web. 11 Dec. 2011.

<[http://www.fec.gov/pages/brochures/partnership\\_brochure.pdf](http://www.fec.gov/pages/brochures/partnership_brochure.pdf)>.

U.S. House (\$2,500 for the primary and \$2500 for the general election, assume no runoff election). The partners indicate that they want the contribution designated equally between them.

Sample Firm Partnership has now reached the maximum it can contribute to Candidate Thomas, of \$2,500 for the primary and \$2,500 for the general election. Of that contribution, half is attributed to Mr. Smith and half to Mr. Jones.

Therefore, each partner is only at half the legal limit. Either or both partners may make a personal contribution to Candidate Thomas of up to \$5,000. They cannot contribute using funds from the partnership, but may do so with personal funds. A contribution from partnership funds must be authorized by the partner the contribution is attributed to. Therefore, a partnership cannot be used as a loophole to increase the amount that an individual is allowed to contribute to a political candidate.

There have been FEC Advisory Opinions allowing partnerships to pay for incidental expenses for managing political contributions from a partnership without the partnership becoming a political committee. This is similar to the exemption allowed corporate connected PACs. However, any contributions made by a partnership to a non-connected PAC (including contributions made in kind of office space, legal fees and other operating expenses) count as a contribution to the PAC and must be allocated to partners.

This limit is set by BCRA and can be adjusted for inflation each campaign cycle.

## Tribes

An incorporated tribe is subject to any limits or prohibitions applicable to corporations in federal elections<sup>39</sup>. Unincorporated tribes follow the individual contribution limits, with the exception of the aggregate cycle limit. A tribe is not subject to the biennial contribution limit, currently at \$117,000. This means a tribe can contribute to an unlimited number of candidates and political committees, within the per committee contribution amount limits.

Unlike a partnership, a contribution from a tribe does not have to be attributed to individual members of the tribe. Therefore it is possible for every individual members of a tribe to contribute \$2,500 per election in addition to the unincorporated tribe itself.

## Joint Fundraising Committees

A joint fundraising committee may be established to raise funds for two or more political committees<sup>40</sup>. The funds raised by a joint fundraising committee are distributed by a predetermined formula to the relevant committees.

For instance, a House candidate may establish a joint fundraising committee with their state's Senate candidate. Contributions raise by the joint committee can then be split between the House and Senate candidates.

This can be done for convenience. With a joint fundraising committee, a contributor may give one large contribution to one committee in support of many committees. Campaigns may

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<sup>39</sup> "Advisory on Indian Tribes." *Federal Election Commission*. 2 Feb. 2006. Web. 11 Dec. 2011.

<<http://www.fec.gov/press/press2006/20060202Tribenotice.htm>>.

<sup>40</sup> "Appendix B - Joint Fundraising." *Federal Election Commission*. Web. 11 Dec. 2011.

<<http://www.fec.gov/info/PartyGuide/AppendixB.htm>>.

suggest an individual make a contribution in an amount greater than the maximum to any one committee, by utilizing a joint fundraising committee.

The campaign store at [www.BarackObama.com](http://www.BarackObama.com) processes purchases as payments to “Obama Victory Fund 2012”<sup>41</sup>. This is a joint fundraising committee which allocates the first \$5000 from an individual to Obama for America (President Obama’s principal campaign committee) with \$2500 designed for each the primary and the general election. The next \$30,800 is designated as a contribution to the Democratic National Committee. Contributors are allowed to change their allocation or the joint committee may alter the allocation to comply with contribution limits. Another potential strategy would be for members of Congress to form joint fundraising committees which allocate funds between campaign committees and leadership PACs.

## **How can an individual contribute political money?**

There are many ways that an individual can contribute money to influence the political process.

## **Who Is Eligible to Contribute?**

Most American citizens are eligible to contribute to political committees<sup>42</sup>. Government contractors and foreign nationals are not eligible to contribute to political committees. The contractor prohibition does not apply to employees of or PACs affiliated with businesses with government contracts. Minors may contribute with money that is their own, under their control.

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<sup>41</sup> <https://store.barackobama.com/checkout/onepage/> accessed 12/10/2011.

<sup>42</sup> "Prohibited Contributions." *Federal Election Commission*. Web. 11 Dec. 2011.

<<http://www.fec.gov/pages/citn0003.htm>>.

Contributions may not be made in another's name. Cash contributions from an individual may not exceed \$100.

### **Contribution to Candidate**

An individual may make a direct contribution to a federal candidate. These contributions are limited to \$2,500 per election for the 2012 election<sup>43</sup>. Most candidates will have a primary and a general election; therefore an individual can usually contribute up to \$5,000 to a federal candidate. If the candidate is participating in a runoff election, an individual can contribute an additional \$2,500.

A direct contribution to a candidate will be disclosed to the FEC. When the individual's total contributions to the candidate for the cycle exceed \$200, the individual's name, address, occupation and employer will be publicly disclosed in the candidate's next quarterly FEC filing.

### **Contribution to PAC**

An individual may contribute up to \$5,000 per calendar year to a PAC<sup>44</sup>. This limit applies to connected PACs and non-connected PACs, including leadership PACs.

A contribution to a PAC will be disclosed to the FEC. When the individual's total contributions to the PAC for the calendar year exceed \$200, the individual's name, address, occupation and employer will be publicly disclosed in the PAC's next FEC filing which may be monthly or semiannually.

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<sup>43</sup> "Contribution Limits Chart 2011-12." *Federal Election Commission*. Web. 11 Dec. 2011.

<<http://www.fec.gov/pages/brochures/contriblimits.shtml>>.

<sup>44</sup> Ibid

## Contribution to Party

An individual may contribute \$30,800 to a party committee's federal account, such as the DNC/RNC, DCCC/NRCC, and DSCC/NRSC<sup>45</sup>.

A contribution to a party committee will be disclosed to the FEC. When the individual's total contributions to the party committee for the cycle exceed \$200, the individual's name, address, occupation and employer will be publicly disclosed in the party committee's next FEC filing which may be monthly or semiannually.

## Biennial Limit

Individuals have an aggregate biennial contribution limit<sup>46</sup>. Total contributions to all political committees during the 2011-2012 election cycle must not exceed \$117,000. That limit is then subdivided: contributions to candidate committees may not exceed \$46,200 and contributions to non-national party committees (PACs) may not exceed \$46,200. The aggregate limit is indexed for inflation and adjusts in odd numbered years.

The biennial limit only covers political committees registered with the FEC. Contributions to non-profits and 527s do not count against the limit. Contributions to Super PACs do not count against the aggregate limit because Super PACs cannot use the money for direct contributions.

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<sup>45</sup> Ibid

<sup>46</sup> "Contribution Limits Chart 2011-12." *Federal Election Commission*. Web. 11 Dec. 2011.

<<http://www.fec.gov/pages/brochures/contriblimits.shtml>>.

Biennial limits can become complicated when contributing to candidates outside of the 2 year period of their election. This occasionally occurs with Senatorial candidates. An individual who contributes in calendar year 2012 to a Senate candidate with a 2014 election must count the contribution against the 2011-2012 biennial limit. Occasionally candidates have to refund contributions to contributors who exceed the biennial limit.

### **Contribution to a 501(c)(4)**

An individual may contribute unlimited amounts to a 501(c)(4). This contribution does not require the individual's identity to be publically disclosed<sup>47</sup>.

### **Contribution to a Super PAC (Independent Expenditure Only PAC)**

An individual may contribute unlimited amounts to a "Super PAC" or Independent Expenditure Only PAC. The individual's identity would be disclosed in public filings with the FEC.<sup>48</sup>

### **Contribution to a Section 527 Organization**

An individual may contribute unlimited amounts to a Section 527 organization (commonly referred to as a "527"). The individual's identity would be disclosed in public filings with the IRS.

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<sup>47</sup> "I.R.S. Moves to Tax Gifts to Groups Active in Politics." *The New York Times*. 12 May 2011. Web. 11 Dec. 2011. <<http://www.nytimes.com/2011/05/13/business/13gift.html>>.

<sup>48</sup> "A Guide to the Current Rules for Federal Elections." *Campaign Legal Center*. Web. 11 Dec. 2011. <[http://www.campaignlegalcenter.org/index.php?option=com\\_content](http://www.campaignlegalcenter.org/index.php?option=com_content)>.

## Strategy for Contributing as an Individual

An individual considering making political contributions should consider his or her goals and motivation for the contribution<sup>49</sup>.

A direct contribution to a candidate gives the candidate complete control over use of the funds. Often a campaign's viability is judged by the media and political insiders based on fundraising strength, so these contributions may have a greater impact on the election dollar for dollar. These contributions are publicly disclosed and limited to \$2,500 per election. The contribution limit can "inflate" the value of direct contributions, because a candidate must collect contributions from many sources rather than a few heavy backers.

A direct contribution to a candidate makes most sense for an individual seeking to contribute \$5,000 or less per election cycle. The individual must be willing to publicly disclose their name, address, occupation and employer.

A contribution to a PAC allows an individual to show support for an issue, cause, or affiliated organization. An individual may wish to contribute to the PAC of his or her employer or union, or an ideological PAC which supports political positions the individual favors. Some members of Congress have established Leadership PACs which they use to assist other candidates from their party or fund political activity such as travel and staff.

A contribution to a PAC makes sense for individuals seeking to contribute \$5,000 or less per year to a general political goal rather than a specific political candidate. The individual must

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<sup>49</sup> "A Guide to Political Donations." *The New York Times*. Sept. 2011. Web. 11 Dec. 2011.

<<http://www.nytimes.com/interactive/2011/10/17/us/politics/a-guide-to-political-donations.html?hp>>.

be willing to publicly disclose their identity. The PAC may then use the funds to contribute to candidates or fund independent expenditures to influence elections. A PAC may not coordinate with a political candidate (a Leadership PAC may not spent money on its member's campaign).

Individuals who want to contribute more than \$5,000 to a PAC or candidate should consider Super PACs, 501(c)(4)s, and 527s.

An individual may contribute unlimited amounts to either a Super PAC or a 501(c)(4). A Super PAC requires disclosure of the contributor's identity, while a 501(c)(4) may disclose but is not required to do so (choosing not to disclose subjects the c4 to tax).

An individual can contribute unlimited amounts to a 527, which must disclose the contributor's identity. However, 501(c)(4)s have replaced 527s in practice because he Citizen's United decision allowed corporations (such as a 501(c)(4)) to make independent expenditures. The most significant difference between 501(c)(4)s and 527s is the disclosure requirement associate with 527s. Donors who wish to remain anonymous can contribute via 501(c)(4)s, while donors who wish to be associated with a contribution can do so through Super PACs.

## **How Can a Corporation or Union Use Treasury Funds?**

### **No Contributions to Candidates or Political Action Committees**

The Tillman Act and Taft-Hartley forbid corporations and unions respectively from making direct contributions from treasury funds<sup>50</sup>. Corporations and unions may form connected

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<sup>50</sup> "Appendix 4: Brief History." *Federal Election Commission Home Page*. Web. 11 Dec. 2011.

<<http://www.fec.gov/info/appfour.htm>>.

political action committees and solicit voluntary contributions from members, employees, and shareholders and then make direct contributions from the PAC<sup>51</sup>.

### **Contribution to a Super PAC**

A corporation or union may contribute unlimited treasury funds to a “Super PAC” which can only make independent expenditures. Contributions to Super PACs are disclosed to the FEC and made available to the public.

### **Contribution to a 501(c)(4)**

A corporation or union may contribute unlimited treasury funds to a 501(c)(4) organization. The contribution to the 501(c)(4) is not required to be disclosed.

### **Contribution to a 527**

A corporation or union may contribute unlimited treasury funds to a section 527 organization. The contribution is disclosed to the IRS and made publicly available.

### **Contribution Strategies for Corporations or Unions**

A corporation or union may want to use treasury funds for political activity. While they may have a PAC which can raise hard money to be used for direct contributions to candidates or independent expenditures, PAC funds must be raised from voluntary contributions from members, employees, and shareholders. This makes hard money scarce.

Only hard money may be directly contributed to candidates. Strategically, it may make most sense for a corporation or union to use PAC dollars to give direct contributions and use

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<sup>51</sup> "Corporations and Labor Organizations." *Federal Election Committee*. Jan. 2007. Web. 11 Dec. 2011.

<<http://www.fec.gov/pdf/colagui.pdf>>.

treasury dollars to fund independent expenditures. These independent expenditures can be funded either directly or through a Super PAC, 501(c)(4) or 527.

## Major Court Cases

### *Buckley v. Valeo*

The ruling in *Buckley* upheld a federal law (FECA) which set limits on campaign contributions, but overturned a portion of the law which set limits on campaign expenditures<sup>52</sup>. The court ruled that expenditures of money in order to influence politics are a type of constitutionally protected free speech<sup>53</sup>. The Court equated the resources required for a political campaign (money) with the ability to speak freely.

*Buckley* emphasized that the government has a compelling interest to regulate money in politics in order to prevent “corruption or the appearance of corruption”. Following this logic, the court overturned provisions of FECA which set limits on how much money political committees could expend, because spending money that has already been raised does not create a risk of corruption. Differentiating between expenditures and contributions is a key concept in campaign finance public policy and occurs in future court decisions as well. Limits on campaign and independent expenditures were overturned.

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<sup>52</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005.

Print. p. 92-95

<sup>53</sup> "Buckley v. Valeo." *FEC Litigation Center*. Web. 11 Dec. 2011.

<[http://www.fec.gov/law/litigation/424\\_US\\_1.pdf](http://www.fec.gov/law/litigation/424_US_1.pdf)>.

The court also overturned provisions which set limits to how much money a candidate may contribute to his or her own campaign. The Court reasoned that a political candidate cannot be corrupted by their own money. This reinforces the framework that the regulatory focus, to protect free speech rights, should be on preventing corruption, not limiting the amount of money raised or spent.

The court disagreed with arguments favoring equity in political campaign spending when it overturned limits on expenditures. It reasoned that campaign committees which had received legitimate contributions should be allowed to use that money on legal forms of campaign activity without limit. Setting maximums on the amount of money expended was a violation of a candidate's first amendment rights. The Buckley decision recognizes the crucial role of financial resources in the ability to “speak”.

The decision also allowed limits on individual contributions, reporting and disclosure of contributions, and a public financing system for the presidential nominating contest and election. The Court struck down a process for appointing commissioners to the Federal Election Commission which gave leaders in Congress the direct ability to make appointments. This was ruled to violate the appointments clause of the Constitution and the principle of separation of powers. Congress amended the system to require the president to formally make the appointments, but political custom has informally allowed congressional leaders essentially final say over nominations to the FEC.

The Buckley decision includes a footnote which lists several words and phrases which define whether a political advertisement is express advocacy. Referred to as “magic words” they included phrases such as: vote for, elect, support, cast your ballot for, for Congress, vote against,

defeat, and reject. Advertisements containing those phrases were defined as express advocacy and must be funded with hard money.

### *Austin vs. Michigan Chamber of Commerce*

The Court ruled that a state law banning the use of corporate treasury funds in political campaigns did not violate the 1<sup>st</sup> or 14<sup>th</sup> Amendments<sup>54</sup>. Corporations would still be allowed to speak through a separate segregated fund (a PAC) and the state had a legitimate interest in limiting corporate wealth from “unfairly influencing elections”. The court suggested that the accumulation of wealth within a corporation did not necessarily reflect public support for ideas the corporation may want to espouse in the political arena. These vast amounts of wealth could distort the political process in a way not correlated with public support of particular issues. Unlike individuals who choose to contribute to a political group which intends to spend money to influence an election, those who send money to a corporation may not necessarily support the corporation’s political aims.

This decision was overturned by *Citizen's United vs. FEC*. The key difference is that in *Austin*, the Court considered the identity of a potential speaker (in this case, a corporation) relevant in deciding whether the speech would be allowed or not.

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<sup>54</sup> "FEC Litigation - Court Case Abstracts - A." *Federal Election Commission*. Web. 11 Dec. 2011.

<[http://www.fec.gov/law/litigation\\_CCA\\_A.shtml](http://www.fec.gov/law/litigation_CCA_A.shtml)>.

### *McConnell vs. FEC*

Then Senate Majority Whip Mitchell McConnell brought suit against the FEC challenging the constitutionality of BCRA<sup>55</sup>. Because of the upcoming federal election cycle, this challenge was expedited and combined with suits from many groups ranging from the California Democratic Party to the National Rifle Association. The suit was a “facial challenge”, doubting the constitutional validity of BCRA without waiting for the application of the law to prove it infringed on protected rights.

The challenge to BCRA focused on the ban on “soft money” for national parties. The case also questioned whether regulation of the source, content, or timing of political communications was constitutional. BCRA also created the concept of “electioneering communications”, which the plaintiffs argued was already addressed by the *Buckley* decision.

The Court upheld BCRA almost in its entirety. The Court ruled that the ban on soft money contributions minimally affected free speech rights. The government’s interest in preventing corruption and the appearance of corruption justified regulating contributions. Corporations and unions would be allowed to fund electioneering communications from PACs but not from treasury funds. The Court agreed with BCRA’s implication that electioneering communications functionally serve as candidate campaign advertisements even if they avoid express advocacy.

Portions of this decision were later overturned by *FEC v. Wisconsin Right to Life, Inc.*

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<sup>55</sup> "FEC Litigation - Court Case Abstracts - M." *Federal Election Commission*. Web. 11 Dec. 2011.

<[http://www.fec.gov/law/litigation\\_CCA\\_M.shtml](http://www.fec.gov/law/litigation_CCA_M.shtml)>.

### *Massachusetts Citizens for Life, Inc. vs. FEC*

Massachusetts Citizens for Life (MCFL) was a non-profit corporation which advocated its views of opposition to abortion<sup>56</sup>. MCFL wanted to use treasury funds (of a non-profit corporation) in order to endorse candidates in published voter guides. FECA would have allowed MCFL to create a separate segregated fund (PAC) but the group wanted to speak as itself without creating a legally separate entity.

In *MCFL* the Court found that the prohibition on direct expenditures posed a significant burden on MCFL's exercise of its First Amendment rights. It was unconstitutional to prevent MCFL from speaking because the group chose to exist as a corporation. The Court overturned the ban on independent expenditures made by a very specific type of nonprofit corporation, as defined by a three part test. The nonprofit corporation must: be formed for the express purpose of promoting political ideas and not engaging in business activities, have no shareholders, not be established by a business or union or accept contributions from such entities.

Allowing groups, even corporations, to speak as themselves without forming separate entities is important in later cases. This ruling created the "MCFL exemption" for non-profit corporations, allowing them to spend on independent expenditures. However the class of nonprofit corporations which fits the Court's 3 part test was admittedly small at the time.

### *Federal Election Commission vs. Wisconsin Right to Life, Inc.*

Wisconsin Right to Life (WRTL), a nonprofit corporation, challenged BCRA's electioneering communication provision as applied (unlike the facial challenge brought by

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<sup>56</sup> "FEC Litigation - Court Case Abstracts - M." *Federal Election Commission*. Web. 11 Dec. 2011.

<[http://www.fec.gov/law/litigation\\_CCA\\_M.shtml](http://www.fec.gov/law/litigation_CCA_M.shtml)>.

McConnell)<sup>57</sup>. WRTL wanted to run issue ads near the general election using corporate funds. The Court's ruled in favor of WRTL and changed the standard for electioneering communications.

Previously, advertisements were considered express advocacy if they contained "magic words" such as "vote for Smith" or "oppose candidate Smith". In *WRTL* the Court ruled that if a possible reasonable interpretation of an advertisement is that it is an issue ad, it was eligible for an exception from the electioneering communication provisions of BCRA.

The *WRTL* decision modified BCRA by ruling that if there is no other reasonable interpretation for the advertisement other than an encouragement to vote for or against a federal candidate, it fits the definition of an electioneering communication. However, if there is another reasonable interpretation the communication in question is not an electioneering communication and the electioneering communication restrictions do not apply. This decision makes it very simple to avoid those restrictions, by designing an advertisement which could potentially be interpreted as an issue ad rather than express advocacy.

The decision in effect shifts the burden from the speaker to the government. Previously, the speaker had to prove that an advertisement was not express advocacy. Under *WRTL*, the government must prove that an advertisement can only be interpreted as express advocacy. Practically, this change served to undermine the electioneering communication concept by making it relatively simple to avoid.

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<sup>57</sup> "Federal Election Commission v. Wisconsin Right to Life." *Supreme Court of the United States*. 25 June 2007. Web. 11 Dec. 2011. <<http://www.supremecourt.gov/opinions/06pdf/06-969.pdf>>.

## *Citizens United vs. FEC*

The Supreme Court ruled that political spending is a form of constitutionally protected free speech, limiting the government's ability to restrict spending by corporations<sup>58</sup>. The Court decided that independent expenditures made by corporations do not pose a threat of corruption or the appearance of corruption. This decision allows corporations (and labor unions per an FEC advisory opinion) to make independent expenditures, without limit. This decision relies on the distinction between contributions and expenditures. The Court drew this distinction in the Buckley decision. Corporations and unions are still barred from contributing directly to candidates and committees who contribute to candidates and foreign corporations remain banned from both contributions and expenditures. The decision upheld requirements for disclosure of contributions and expenditures.

This decision overturned the Court's ruling in *Austin*. The identity of the speaker (in this case, a corporation) is not a proper factor to consider when regulating speech.

## **Campaign Finance Legislation**

### **Federal Election Campaign Act**

The Federal Election Campaign Act (FECA) created the Federal Election Commission and increased the disclosure of campaign contributions<sup>59</sup>. FECA was first passed in 1971 and

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<sup>58</sup> "Citizens United v. Federal Election Commission." *Supreme Court of the United States*. 21 Jan. 2010. Web. 11 Dec. 2011. <<http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>>.

<sup>59</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005. Print. p. 20-22

signed into law in 1972. It has been amended many times, including significant amendments following Watergate in 1974 and after the Supreme Court's *Buckley v. Valeo* ruling in 1976.

FECA created public disclosure requirements for both federal candidates and political committees. These entities would be required to disclose their contributions and expenditures on a quarterly basis, multiple times during an election cycle.

FECA provided for Political Action Committees, referred to as separate segregated funds in the law. This allowed for corporations and unions to create legally separate entities to participate in politics, activity previously banned by the Tillman Act and the Taft-Hartley Act.

FECA also set limits on the size of both campaign contributions and expenditures. FECA limited contributions from individuals to \$1000 per election. Expenditures were limited based on a formula that considered the number of potential voters in the candidate's jurisdiction.

### 1974 Amendments

FECA was first amended in 1974<sup>60</sup>. These amendments created the Federal Election Commission to administrate campaign finance regulations. The Commission would be composed of 6 commissioners, two appointed by the President, Speaker of the House, and President pro tempore of the Senate. The Secretary of the Senate and Clerk of the House would also be nonvoting members of the Commission.

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<sup>60</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005.

The 1974 amendments also provided for the public financing system used in the presidential election. Matching funds would be provided to primary candidates and funds would be provided to political parties in order to pay for the national nominating conventions.

### 1976 Amendments

In 1976 Congress quickly moved to amend FECA in response to the Supreme Court's *Buckley v. Valeo* decision<sup>61</sup>. The Court struck down the Act's limits on campaign expenditures and method of appointing commissioners to the FEC. Congress responded by removing expenditure limits and requiring the president to nominate FEC Commissioners. The 1976 amendments also limited how connected PACs could solicit funds.

### 1979 Amendments

In 1979 amendments simplified the disclosure process, expanded the role of political parties at the State and local level, and increased the public funding available for Presidential nominating conventions<sup>62</sup>.

The next major amendments to FECA came in the landmark Bipartisan Campaign Reform Act of 2002.

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<sup>61</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005. Print. p. 27

<sup>62</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005. Print. p. 28-29

## Bipartisan Campaign Reform Act

The Bipartisan Campaign Reform Act (BCRA) was a response to several criticisms of the then current state of campaign finance regulation. BCRA amended the Federal Election Campaign Act<sup>63</sup>.

BCRA banned the use of soft money by political parties. Previously, political parties raised money that was not regulated by FECA for party building activity not directly related to advocacy on behalf of a federal candidate. Because these funds were not regulated under FECA, there were no contribution or source limits.

Soft money had also been used to fund Issue Advocacy Ads. Issue advocacy ads were typically television advertisements which spoke about a political issue without advocating specifically for the election or defeat of a particular candidate. In practice, many of these ads appeared to be advocating the election or defeat of a candidate without specifically saying so.

To prevent Issue Advocacy Ads from influencing elections with soft money or other funds from outside of campaign finance regulation, BCRA created a definition for “electioneering communications”.

An Electioneering Communications (EC) refers to a clearly identified federal candidate, is broadcast before an election (within 30 days of a primary or 60 days of a general) which includes that candidate, and is targeted to the relevant electorate. That law clarifies that if there is

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<sup>63</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005.

no other reasonable interpretation for the advertisement other than an encouragement to vote for or against a federal candidate, it fits the definition of an electioneering communication.

### **Tillman Act of 1907**

The Tillman Act prohibited corporations and national banks from contributing money to political campaigns<sup>64</sup>.

President Roosevelt called for the ban during an address to Congress. Roosevelt's opponents had criticized his acceptance of corporate campaign contributions<sup>65</sup>.

The law reads:

**"An Act to prohibit corporations from making money contributions in connection with political elections.** Be it enacted, that it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator."<sup>66</sup>

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<sup>64</sup> "Appendix 4: Brief History." *Federal Election Commission Home Page*. Web. 11 Dec. 2011.

<<http://www.fec.gov/info/appfour.htm>>.

<sup>65</sup> Corrado, Anthony. *The New Campaign Finance Sourcebook*. Washington, D.C.: Brookings Institution, 2005.

Print. p. 10

<sup>66</sup> 34 Stat. 864, 18 U.S.C. Sec 610

The Tillman Act still applies today. Corporations cannot contribute directly to candidates or PACs. However, a corporation may contribute to a Super PAC, 501(c)(4) or other entity which does not make direct contributions. Because the funds are not used for direct contributions they do not violate the Tillman Act.

### **Federal Corrupt Practices Act**

The Federal Corrupt Practices Act was enacted in 1910<sup>67</sup>. It expanded upon the Tillman Act's ban on corporate contributions.

The FCPA created spending limits for general election campaigns for the House of Representatives. It required political parties to disclose campaign spending following the election. In 1911 it was amended to include Senate campaigns and primary elections, as well as requiring candidates to file disclosure reports in addition to parties. House campaign expenditures were not to exceed \$5,000 and Senate expenditures were limited to \$10,000 (unless state law established lower limits, in which case the lowest limit applied).

Regulations relating to party primaries and nominations were struck down by the Supreme Court. The ruling in *Newberry v. U.S.* argued that Congress could not regulate party practices.

In 1925 the FCPA was amended to include multi-state parties and set disclosure requirements to occur quarterly rather than after the election. It required that contributions above \$100 be disclosed. Senate campaign spending limits were increased to \$25,000.

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<sup>67</sup> "Appendix 4: Brief History." *Federal Election Commission Home Page*. Web. 11 Dec. 2011.

<<http://www.fec.gov/info/appfour.htm>>.

In practice, the FCPA fell short of achieving its goals but many of the ideas are present in modern campaign finance regulation. The FCPA did not establish a method for reporting or disclosing reports to the public and did not include penalties for violations or failing to comply. A commonly used loophole was for a single candidate to create multiple campaign committees and receive contributions to each one. Congress was responsible for enforcement and typically did not take action.

The FCPA is worth noting because of the similar concepts in place today. Contributions above a threshold are itemized, contributions and expenditures are disclosed, and disclosure reports are filed quarterly and prior to elections. The Federal Election Commission exists as an independent enforcement agency. There is a standardized process for filing disclosure reports, including electronic reporting made publically available.

The FCPA was formally repealed on April 8, 1972 with the passage of the Federal Election Campaign Act of 1971.

## **Public Financing**

### *Presidential Public Financing System*

The 1971 and 1974 FECA Amendments created a system for public financing of the presidential campaign<sup>68</sup>. The system grants matching funds in the primary and provides a grant for the general election.

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<sup>68</sup> "Public Funding of Presidential Elections Brochure." *Federal Election Commission*. Web. 11 Dec. 2011.

<<http://www.fec.gov/pages/brochures/pubfund.shtml>>.

## Primary

In the presidential primary, the system matches contributions from individuals up to \$250 for eligible candidates. Candidates must demonstrate viability by raising at least \$5,000 in 20 states. The \$250 match is for the first \$250 an individual contributes to each candidate; if an individual contributes \$250 ten times to one candidate, only the first contribution will be matched. Public financing participants must abide by state and overall spending limits set by a formula (dependent on the voting age population of each state). Candidates accepting matching funds may only contribute \$50,000 to their own campaign from personal funds.

## General

In the general election, major party nominees receive a public grant to cover most general election expenses. In 2008, the general election spending limit was \$84.1 million. Candidates accepting the general election grant cannot accept private contributions (from individuals, PACs or other sources) for most campaign expenses. Public financing participants may create a separate committee for legal and accounting expenses. These committees may receive private contributions and expenditures from these committees do not count against the expenditure limit.

In the *Buckley v. Valeo* decision, the Supreme Court allowed limits on expenditures and additional restrictions on candidate's speech rights if made in a voluntary exchange for a benefit. Candidates may opt out of the presidential public financing system, allowing them to collect private contributions and to make unlimited expenditures.

## Conventions

The system also provides a grant to major political parties for their nominating conventions. In 2008, each major party received \$16.3 million.

## Funding

Funding for the program comes from voluntary contributions made by taxpayers via a tax checkoff. Taxpayers who elect to contribute to the fund have \$3 of their tax placed into the Presidential Election Campaign Fund. This choice does not raise or lower the amount a taxpayer owes.

## Federal Election Commission

The Federal Election Commission was created in 1975 as part of that year's amendments to FECA<sup>69</sup>. The FEC administers federal campaign finance laws.

As described on its website:

“The duties of the FEC, which is an independent regulatory agency, are to disclose campaign finance information, to enforce the provisions of the law such as the limits and prohibitions on contributions, and to oversee the public funding of Presidential elections.”<sup>70</sup>

The FEC receives and publishes the campaign finance filing reports provided by political committees. Most reports are available electronically on the Commission's website.

The FEC is a 6 member commission. By law, no more than 3 members may belong to the same political party. Four votes are required for the commission to decide definitively in favor or

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<sup>69</sup> "About the FEC." *Federal Election Commission*. Web. 11 Dec. 2011. <<http://www.fec.gov/about.shtml>>.

<sup>70</sup> "FEC Mission and History." *Federal Election Commission*. Web. 11 Dec. 2011. <<http://fec.gov/info/mssion.shtml>>.

against most of the commission's activity (enforcement actions, advisory opinions, revision of forms).

The FEC also receives Advisory Opinion Requests (AORs) from interested parties (political committees and organizations involved in campaign finance policy)<sup>71</sup>. Generally, a political committee will submit an AOR which describes an activity the committee would like to do, but the legality of the action is not clear. The FEC will consider the facts of the case and may issue an Advisory Opinion stating how the Commission interprets the action.

For example, a connected Political Action Committee affiliated with a law firm might choose to submit an advisory opinion request asking the FEC if the PAC is allowed to solicit contributions from independent contract attorneys who have been retained by the firm to perform work. The PAC may feel it is unclear whether these attorneys fall outside the class of individuals allowed to make contributions to a connected PAC.

If the FEC issues an Advisory Opinion deciding the activity is allowed and the PAC behaves exactly as described, the FEC will not take an enforcement action against the PAC for following the terms of the opinion.

The FEC takes civil enforcement actions against violations of campaign finance law. Criminal violations are the purview of the Department of Justice. Violations involving 501(c) organizations are investigated by the Internal Revenue Service.

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<sup>71</sup> "Advisory Opinions Brochure." *Federal Election Commission*. Sept. 2004. Web. 11 Dec. 2011.

<<http://www.fec.gov/pages/brochures/ao.shtml>>.

## Appendices

### Appendix A: Campaign Finance Public Opinion Polling

Polling the Nations Export

<http://poll.orspub.com.proxyau.wrlc.org/export.php?action=Print+the+fi...>

#### Records from Polling the Nations

##### **CAMPAIGN FINANCING**

**Question:** How important an issue is campaign finance reform to you?

**Source:** Economist/ YouGov

**Date:** Feb. 1, 2011

**Results:**

very/ somewhat important	68%
not very important/ unimportant	32

Field Date - Jan 29-Feb 1, 2011

**Universe:** Country: United States

**Method:** online

**Sample Size:** 1000

**Contact Information:** YouGov Polimetrix

285 Hamilton Avenue

Suite 200

Palo Alto, CA 94301

(650) 462-8000

fax (650) 462-8422

##### **CAMPAIGN FINANCING**

**Question:** Do you support or oppose the recent ruling by the Supreme Court that says corporations and unions can spend as much money as they want to help political candidates win elections? Do you feel that way strongly or somewhat?

**Source:** ABC News/ Washington Post

**Date:** Feb. 17, 2010

**Results:**

support strongly	6%
support somewhat	11
oppose somewhat	15
oppose strongly	65
no opinion	2

Field Date - Feb 4-8, 2010

**Universe:** Country: United States

**Method:** telephone; landline and cell-only

**Sample Size:** 1,004

**Copyright Info:** Reproduced with permission. The Washington Post-ABC News.

**Contact Information:** ABC News Polling Unit

7 West 66th Street, 7th Floor

New York, NY 10023

(212) 456-4934

**CAMPAIGN FINANCING**

**Question:** Would you support or oppose an effort by Congress to reinstate limits on corporate and union spending on election campaigns? Do you feel that way strongly or somewhat?

**Source:** ABC News/ Washington Post

**Date:** Feb. 17, 2010

**Results:**

support strongly	52%
support somewhat	20
oppose somewhat	9
oppose strongly	14
no opinion	4

Field Date - Feb 4-8, 2010

**Universe:** Country: United States

**Method:** telephone; landline and cell-only

**Sample Size:** 1,004

**Copyright Info:** Reproduced with permission. The Washington Post-ABC News.

**Contact Information:** ABC News Polling Unit

7 West 66th Street, 7th Floor

New York, NY 10023

(212) 456-4934

**CAMPAIGN FINANCING**

**Question:** Do you approve or disapprove of the Supreme Court's decision that allows corporations to spend on behalf of candidates in elections?

**Source:** Pew Research Center

**Date:** Feb. 12, 2010

**Results:**

approve	17%
disapprove	68
don't know/ refused	15

Field Date - Feb 3-9, 2010

**Universe:** Country: United States

**Method:** telephone

**Sample Size:** 1,383

**Copyright Info:** The Pew Research Center for the People and the Press

**Additional Information:** Both landlines (n=1,024) and cell phones (n=359 including 132 who had no landline) were used.

**Contact Information:** Pew Research Center for the People and the Press

1615 L Street, NW

Suite 700

Washington, DC 20036

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