

## CAMPAIGN FINANCE

CAMPAIGN FINANCE REFORM has been a major source of discussion among politicians and pundits in recent years. For the past thirty years, campaign finance has been governed by the provisions of the Federal Election Campaign Act (FECA). The most

recent bout of reforms were set in motion by Senator John McCain, who ran for the 2000 Republican presidential nomination on a platform to take elections out of the hands of the wealthy. McCain lost to Bush, who ironically used soft money in the primaries to defeat McCain. However, McCain's credibility on the issue skyrocketed. Once corporate soft-money donors at Enron, WorldCom, and Global Crossing (to name a few) became embroiled in accounting scandals and alleged criminal behavior, the possibility of corruption became too strong for Congress to ignore. Senators John McCain (R-AZ) and Russ Feingold (D-WI) co-sponsored the Bipartisan Campaign Reform Act of 2002 (BCRA) in the Senate, while Representatives Chris Shays (R-CT) and Martin Meehan (D-MA) sponsored the House version. On Valentine's Day, the bills passed, and in March 2002, President George W. Bush signed BCRA into law, which has altered the campaign finance landscape in ways we perhaps have yet to discover.

Included within BCRA was a "fast track" provision that any suits challenging the constitutionality of the reforms would be immediately placed before a U.S. District Court, and giving appellate powers to the U.S. Supreme Court. The reason for this provision was simple: to thwart the numerous lobbying groups and several high-profile elected officials who threatened to tie up BCRA in the courts for as long as they could, until they could find a judge who would kill it. No sooner did Bush sign BCRA than U.S. Senator Mitch McConnell (R-KY) and the National Rifle Association separately filed lawsuits claiming that BCRA violated free speech rights, specifically by equating financial contributions with symbolic political speech.

In May 2003, a three-judge panel of the U.S. District Court in the District of Columbia found that the BCRA restrictions on soft-money donations violated free speech rights, although the BCRA restrictions on political advertising did not. The decision was immediately appealed to the Supreme Court, which stayed the district court's decision. After oral arguments in September, the Court handed down its 5-4 decision, *McConnell v. FEC*, in December, concluding that the government's interest in preventing political-party corruption overrides the free speech rights to which the parties would otherwise be entitled. In other words, the Supreme Court very narrowly upheld the BCRA measures restricting speech both in the form of political contributions and in political advertising. There are some serious questions about whether the Court has really solved the problem of campaign finance reform, since the attempt to avoid the corruption that so often plagues a democracy necessarily means limiting the political speech necessary to sustain democracy. For now, we will investigate the compromise over campaign finance laws that the federal government has most recently struck.

## Sources of Political Contributions

To run all aspects of a campaign successfully requires a great deal of money. More than \$1.6 billion was raised by the Democratic and Republican parties through November 22, 2004, a 37 percent increase in fund-raising over the totals of the 2000 midterm election cycle. Democratic incumbents in the Senate raised an average of \$9.7 million, while Republican incumbents in the Senate raised an average of \$6.7 million. Their challengers, in contrast, raised an average of \$889,000.<sup>13</sup> As humorist Will Rogers once remarked early in the twentieth century, "Politics has got so expensive that it takes lots of money even to get beat with."

Political money is regulated by the federal government under the terms of the Federal Election Campaign Act (FECA) of 1971, first passed in 1971 and substantially strengthened by amendments several times during the 1970s. Table 14.1 summarizes some of the important provisions of this law, which limits the amounts that individuals, interest groups, and political parties can give to candidates for president, U.S. senator, and U.S. representative. The goal of all limits is the same: to prevent any single group or individual from gaining too much influence over elected officials, who naturally feel indebted to campaign contributors.

**TABLE 14.1** Contribution Limits for Congressional Candidates Before and After Bipartisan Campaign Reform Act, 2002

Contributions from	Given to Candidate (per election) <sup>a</sup>	Given to National Party (per calendar year)	Total Allowable Contributions (per calendar year)
	Before/After	Before/After	Before/After
Individual	\$1,000/\$2,000	\$20,000/\$25,000	\$25,000/\$47,500 each year per two-year cycle
Political action committee <sup>b</sup>	\$5,000/\$5,000	\$15,000/\$15,000	No limit/No Limit
Any political party committee <sup>c</sup>	\$5,000/\$10,000	No limit/No limit	No limit/No limit
All national and state party committees taken together	To House candidates: \$30,000 plus "coordinated expenditures" <sup>d</sup> To Senate candidates: \$27,500 plus "coordinated expenditures" <sup>d</sup>		

Note: The regulations under the Bipartisan Campaign Reform Act did not take effect until after the 2002 election.

<sup>a</sup>Each of the following is considered a separate election: primary (or convention), runoff, general election.

<sup>b</sup>Multicandidate PACs only. Multicandidate committees have received contributions from at least fifty persons and have given to at least five federal candidates.

<sup>c</sup>Multicandidate party committees only. Multicandidate committees have received contributions from at least fifty persons and have given to at least five federal candidates.

<sup>d</sup>Coordinated expenditures are party-paid general election campaign expenditures made in consultation and coordination with the candidate under the provisions of section 441(a)(d) of the Federal Code.

Given the cash flow required by a campaign and the legal restrictions on political money, raising the funds necessary to run a modern campaign is a monumental task. Consequently, presidential and congressional campaigns have squads of fundraisers on staff. These professionals rely on several standard sources of campaign money.

**Individual Contributions.** Individual contributions are donations from individual citizens. Citizens typically donate because they like the candidate or party or a particular stand on issues they care about, or to feel involved in the political process, or because they want access to the candidate. The maximum allowable contribution under federal law for congressional and presidential elections is \$2,000 per election to each candidate, with primary and general elections considered separately. Individuals are also limited to a total of \$47,500 in gifts to all candidates combined in each calendar year. Most candidates receive a majority of all funds directly from individuals, and most individual gifts are well below the maximum level. Finally, individuals who spend over \$10,000 to air "electioneering communication," that is, "any broadcast, cable, or satellite communication which refers to a clearly identified candidate for Federal office" that airs within sixty days of a general election or thirty days of a primary election, is now subject to a strict disclosure law. The rationale behind the last regulation is that spending any more on an ad favoring a candidate is effectively the same as a contribution to the candidate's campaign and requires the same scrutiny as other large donations.

**Political Action Committee (PAC) Contributions.** When interest groups such as labor unions, corporations, trade unions, and ideological issue groups seek to make donations to campaigns, they must do so by establishing **political action committees (PACs)**. PACs are officially recognized fund-raising organizations that are allowed by federal law to participate in federal elections. (Some states have similar requirements for state elections.) Approximately 4,000 PACs are registered with the Federal Election Commission—the governmental agency charged with administering the election laws. In 2004, PACs contributed \$294 million to Senate and House candidates, while individuals donated \$693 million. On average, PAC contributions account for 57 percent of the war chests (campaign funds) of House candidates and 67 percent of the treasuries of Senate candidates. Incumbents benefit the most from PAC money; incumbents received \$228 million, much more than the \$66 million given to challengers during the 2004 election cycle.<sup>14</sup> By making these contributions, PACs hope to secure entrée to the candidate after he or she has been elected in order to influence them on issues important to the PAC, since a candidate might reciprocate campaign donations with loyalty to the cause. Therefore, PACs give primarily to incumbents because incumbents tend to win.

### political action committee (PAC)

Federally mandated, officially registered fund-raising committee that represents interest groups in the political process.



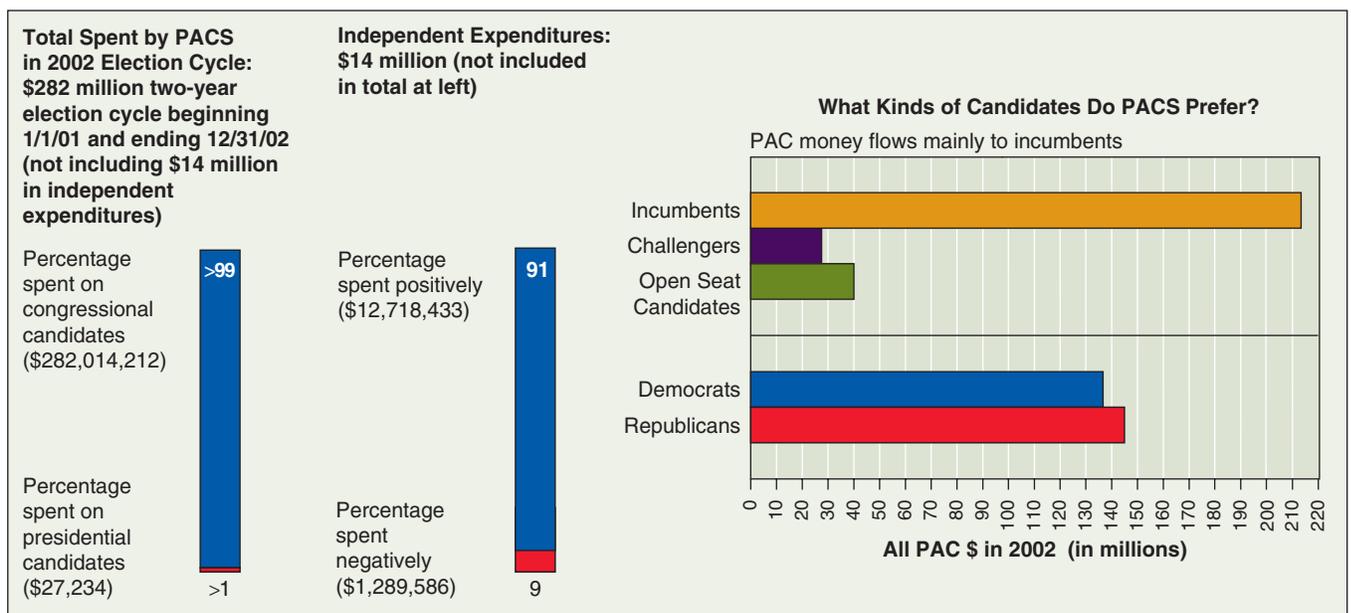
Because donations from a small number of PACs make up such a large proportion of campaign war chests, PACs have influence disproportionate to that of individuals. Studies, in fact, have shown that PACs effectively use contributions to punish legislators and affect policy, at least in the short run.<sup>15</sup> Legislators who vote contrary to the wishes of a PAC see their donations withheld, but those who are successful in legislating as the PAC wishes are rewarded with even greater donations.<sup>16</sup> (Interest groups are treated in more detail in chapter 16.)

In an attempt to control PACs, BCRA has a limit on the way PACs attempt to influence campaigns. The law strictly forbids PACs from using corporate or union funds for the electioneering communications discussed earlier. PACs can only use corporate or labor contributions for administrative costs. The purpose of the limit is to prevent corporations or unions from having an undue influence on the outcome of elections, as they have in the past, by heavily advertising toward specific audiences in the weeks leading up to elections.

**Political Party Contributions.** Candidates also receive donations from the national and state committees of the Democratic and Republican Parties. As mentioned in chapter 12, political parties can give substantial contributions to their congressional nominees. In 2004, the Republicans and the Democrats funneled over \$52 million to their standard-bearers, via direct contributions and coordinated expenditures. In competitive races, the parties may provide 15–17 percent of their candidates’ total war chests. In addition to helping elect party members, campaign contributions from political parties have another, less obvious benefit: helping to ensure party discipline in voting. One study of congressional voting behavior in the 1980s, for instance, found that those members who received a large percentage of their total campaign funds from their party voted with their party more often than they were expected to.<sup>17</sup>

**FIGURE 14.2** Expenditures by PACs in 2002 Election Cycle

Notice that PACs use a majority of their expenditures to support congressional candidates. Of independent expenditures by PACs, a majority of the money is spent positively to support candidates and only a small fraction to attack opponents in presidential campaigns. Notice that PAC spending has a slight bias toward Republican candidates and a strong bias toward incumbents. ■



Source: Federal Election Commission.



*"And, if elected, I will take the money out of politics and put it into a portfolio of high-yielding instruments."*

Photo courtesy: © The New Yorker Collection 2000 Bernard Schoenbaum from Cartoonbank.com. All Rights Reserved.

Some nations favor contributions to the party over contributions to individual campaigns. Parliamentary forms of government are much less candidate oriented and much more party oriented; therefore, the political monies raised flow to the *party coffers*. For example, in Great Britain, rather than receiving direct contributions, candidates for prime minister obtain campaign funds through party donations.

**Member-to-Candidate Contributions.** In Congress and in state legislatures, well-funded, electorally secure incumbents now often contribute campaign money to their party's needy incumbent and nonincumbent legislative candidates.<sup>18</sup> This activity began in some state legislatures (notably California), but it is now well-established at the congressional level.<sup>19</sup> Generally, members contribute to other candidates in one of

two ways. First, some members have established their own PACs—informally dubbed “leadership” PACs—through which they distribute campaign support to candidates. For example, through the 2004 general election cycle, a PAC established by then Senate Minority Leader Tom Daschle and Vermont Senator Patrick Leahy allowed them to contribute to 221 House and 19 Senate candidates. In total, their PAC spent over \$3 million in an attempt to help the Democrats win back the Senate and House.<sup>20</sup> Second, individual members can give up to \$2,000 per candidate per election and \$10,000 per candidate for each cycle: \$5,000 for the primary election and \$5,000 for the general election from a leadership PAC.

These contributions from members, whether individually or via a PAC, can add up. In 2004, the U.S. House race in South Dakota saw a tremendous influx of member-to-candidate money, with Republican challenger Larry Diedrich receiving the most, at over \$423,000. He lost the race to first-term Democratic incumbent Stephanie Herseth, who received an impressive \$293,00 of these donations.<sup>21</sup> In general, members give their contributions to the same candidates who receive the bulk of congressional campaign committee resources. Thus, member contributions at the congressional level have emerged as a major supplement to the campaign resources contributed by the party campaign committees.<sup>22</sup>

**Candidates' Personal Contributions.** Candidates and their families may donate to the campaign. The Supreme Court ruled in 1976 in *Buckley v. Valeo* that no limit could be placed on the amount of money candidates can spend from their own families' resources, since such spending is considered a First Amendment right of free speech.<sup>23</sup> For wealthy politicians, this allowance may mean personal spending in the millions. In 2004, the number of million-dollar self-contributors increased, but no one approached the level of Democratic U.S. Senate hopeful Blair Hull from Illinois. The wealthy former investment broker sank \$29 million into his campaign, but he lost in the primary election. In 2002, twenty candidates for House or Senate seats spent over \$1 million of their own money to finance their campaigns; only one of the candidates, Frank Lautenberg (D-NJ), was victorious. The man Lautenberg beat, Republican Douglas Forrester, spent \$7 million of his own money in the race. While self-financed candidates often

garner a great deal of attention, most candidates commit much less than \$100,000 in family resources to their election bids.

**Public Funds.** **Public funds** are donations from general tax revenues. Only presidential candidates (and a handful of state and local contenders) receive public funds. Under the terms of the FECA (which first established public funding of presidential campaigns), a candidate for president can become eligible to receive public funds during the nominating contest by raising at least \$5,000 in individual contributions of \$250 or less in each of twenty states. The candidate can apply for federal **matching funds**, whereby every dollar raised from individuals in amounts less than \$251 is matched by the federal treasury on a dollar-for-dollar basis. Of course, this assumes there is enough money in the Presidential Election Campaign Fund to do so. The fund is accumulated by taxpayers who designate \$3 of their taxes for this purpose each year when they send in their federal tax returns. (Only about 20 percent of taxpayers check off the appropriate box, even though participation does not increase their tax burden.) During the 2004 Democratic primaries, John Kerry and Howard Dean, like George W. Bush in 2000, both opted out of the federal matching funds, allowing them to raise considerably more money than the government would have provided.

For the general election, the two major-party presidential nominees can accept a \$75 million lump-sum payment from the federal government after the candidate accepts his or her nomination. If the candidate accepts the money, it becomes the sole source for financing the campaign. A candidate could refuse the money and be free from the spending cap the government attaches to it. John Kerry considered doing just that in order to help finance general election campaign operations. Because the Democratic convention, during which Kerry accepted his nomination, occurred five weeks before the Republican convention, Kerry actually had five weeks more than Bush during which he had to stretch out the \$75 million the government provided. Kerry first considered not accepting his party's nomination until after the Republican convention, a possibility that proved unpopular.<sup>24</sup>

A third-party candidate receives a smaller amount proportionate to his or her November vote total if that candidate gains a minimum of 5 percent of the vote. Note that in such a case, the money goes to third-party campaigns only *after* the election is over; no money is given in advance of the general election. Only two third-party candidates have qualified for public campaign funding: John B. Anderson in 1980, gaining 7 percent of the vote, and colorful Texan billionaire Ross Perot in 1992, gaining 19 percent of the vote.

**Independent Expenditures.** Because of two Supreme Court decisions,<sup>25</sup> individuals, PACs, and now political parties may spend unlimited amounts of money directly advocating the election or defeat of a candidate as long as these expenditures are not made in coordination with the candidate's campaign. For example, a group may create and run television advertisements urging voters to support or defeat a candidate. In October 2004, the Planned Parenthood Action Fund launched a three-part television ad campaign costing \$1 million, aimed at promoting the Kerry campaign among women and criticizing the Bush administration for cutting family planning programs.<sup>26</sup> However, because independent expenditure advertisements expressly advocate the election or defeat of a specific federal candidate, they must be paid for with **hard money**—that is, with money raised under the FECA guidelines (see Figure 14.3).

## The Internet

The Internet, like campaign finance reform, has the potential to alter radically the way candidates raise funds for their campaigns. After all, making an online appeal for campaign contributions costs significantly less than raising funds through expensive direct-

### public funds

Donations from the general tax revenues to the campaigns of qualifying presidential candidates.

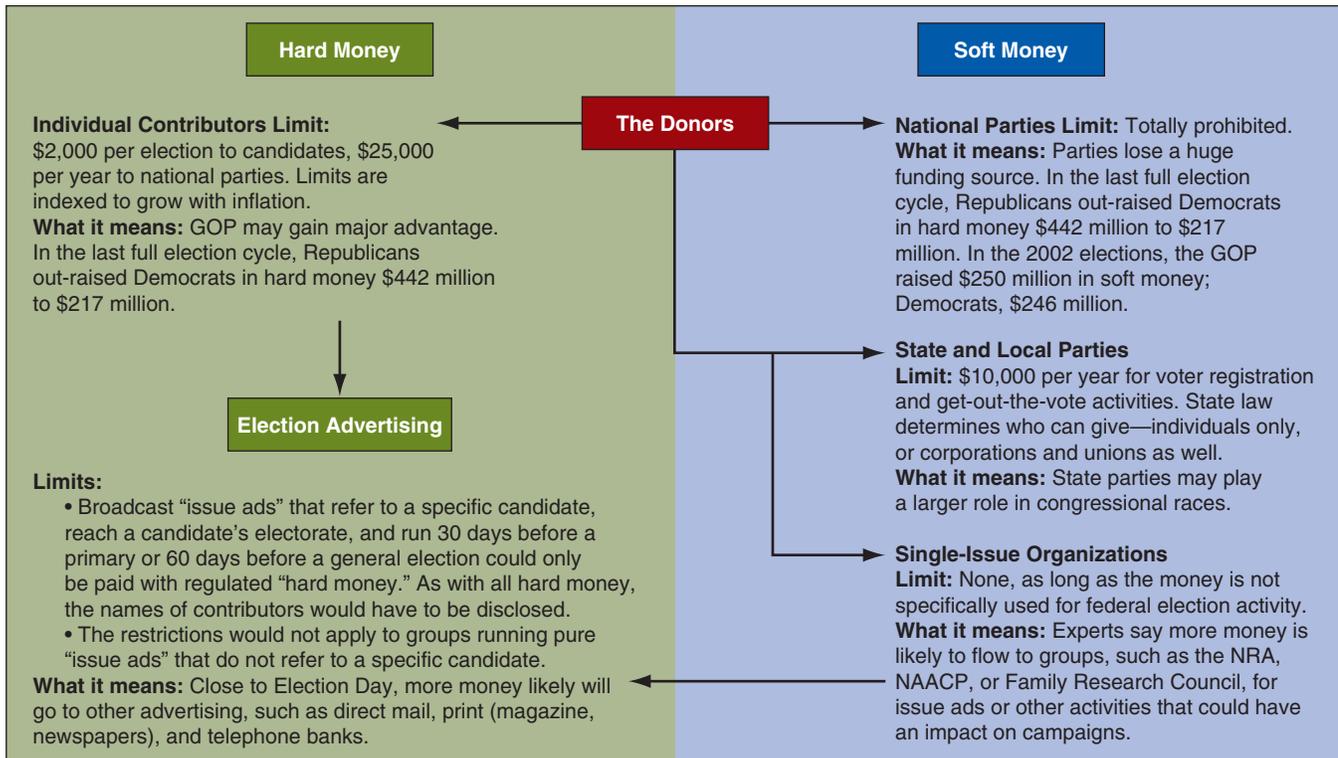
### matching funds

Donations to presidential campaigns from the federal government that are determined by the amount of private funds a qualifying candidate raises.

### hard money

Legally specified and limited contributions that are clearly regulated by the Federal Election Campaign Act and by the Federal Election Commission.

FIGURE 14.3 How the Campaign Finance Bill Alters Money Flow. ■



Source: <http://www.opensecrets.org/bigpicture/ptytots.asp?cycle=2002>.

mail campaigns or pricey fund-raising events—the standard means of attaining campaign resources. Nevertheless, the potential weaknesses of Internet fund-raising are unlikely to stop candidates from experimenting with it. Former Republican presidential candidate John McCain became the first political candidate to raise over \$1 million online in forty-eight hours after his victory in the New Hampshire primary in 2000. The Internet converted McCain's momentum into money and volunteers virtually overnight. McCain eventually took in over \$5 million online—nearly 25 percent of his total contributions.

In 2004, the Internet had an immediate impact during the Democratic primary season, and in the months of preparation that lead up to it. Former Vermont Governor Howard Dean surged to an early lead in the polls thanks in large part to a tremendously successful Internet-based fund-raising strategy. The Dean campaign used thousands of young, eager volunteers to solicit tens of thousands of small online donations that eventually totaled over \$50 million by the end of the campaign. These tactics were mimicked by candidates and party organizations on both sides, as well as PACs and special interest groups, and as a result, fund-raising records from previous years were easily surpassed.<sup>27</sup>

The Internet also promises to create headaches for the Federal Election Commission. The FEC had to rule on issues such as whether a business site link to a campaign site constitutes in-kind contribution from the business to the campaign, and whether funds raised online by presidential candidates are eligible to be matched with public funds from the Presidential Election Campaign Fund. (In the first case, the FEC ruled yes; in the second case, it ruled no.) Clearly, these issues are only the beginning of a seemingly limitless plethora of concerns regarding the Internet and campaign finance which the FEC will be asked to address. Campaign finance experts question whether the agency has the resources to regulate and monitor the newly unfolding campaign activity on the Internet.<sup>28</sup>

## Soft Money and Issue Advocacy Advertisements

**Soft money** is campaign money raised and spent by political parties for expenses such as overhead and administrative costs and for grassroots activities such as political education and GOTV efforts. In a 1978 advisory opinion, the Federal Election Commission ruled that political parties could raise these funds without regulation. Then, in 1979, Congress passed an amendment allowing parties to *spend* unlimited sums on these same activities.<sup>29</sup> In the years immediately following the rule changes, the national parties began raising five- and six-figure sums from individuals and interest groups to pay for expenses such as rent, employee salaries, and building maintenance. The national parties also began transferring large sums of soft money to state parties in order to help pay for grassroots activities (such as get-out-the-vote drives) and campaign paraphernalia (such as yard signs and bumper stickers).

However, the line separating expenditures that influence federal elections from those that do not proved to be quite blurry, and this blurriness resulted in a significant campaign finance loophole. The largest controversy came in the area of campaign advertisements. The federal courts have ruled that only campaign advertisements that use explicit words—for example, “vote for,” “vote against,” “elect,” or “support”—qualify as *express advocacy* advertisements. Political advertisements that do not use these words are considered *issue advocacy* advertisements.<sup>30</sup> The distinction here is crucial. Because express advocacy advertisements were openly intended to influence federal elections, they could only be paid for with strictly regulated hard money. Issue advocacy advertisements, on the other hand, were paid for with unregulated soft money. The parties’ response to these rules was to create issue advocacy advertisements that very much resemble express advocacy ads, for such advertisements call attention to the voting record of the candidate supported or opposed and are replete with images of the candidate. However, the parties ensured that the magic words “vote for” or “vote against” were never uttered in the advertisements, allowing them to be paid for with soft rather than hard money.

Soft-money donations are now prohibited under BCRA, and third-party issue ads, if coordinated with a federal candidate’s campaign, can now be considered campaign contributions, thus regulated by the FEC. The last election cycle for the parties to use soft money was 2001–2002, and the amount raised, nearly \$430 million for Republican and Democrats combined,<sup>31</sup> highlights why the reform seemed necessary. Republicans raised \$219 million in soft money from pharmaceutical, insurance, and energy companies. Democrats came in just under \$211 million in soft money from unions and law firms. With soft money banned, wealthy donors and interest groups now lack the privileged and potentially corrupting influence on parties and candidates. Like every other citizen, they must donate within the hard-money limits placed on individuals and PACs. With BCRA in place and supported by the courts in *McConnell v. FEC*, the reforms appear to be working. A preliminary study of the effects of BCRA on the 2004 Democratic primaries revealed that hard-money donations have increased and are increasingly used for grassroots efforts.<sup>32</sup> However, reforms usually necessitate more reform, since the correction of one problem usually creates a new one.

Post-election financial reports revealed that hard-money fund-raising and spending increased greatly during the 2004 campaign, mainly because of the increased contribution limits and the ban on soft money. While individual campaigns and PACs receive hard money as well, political party organizations account for the largest chunks of hard money, and in 2004 they used it to counter some of the impact of the new campaign finance legislation. Independent expenditures—the money spent on express advocacy advertisements without a candidate’s cooperation—jumped by \$173.3 million for the Democratic Party and \$86.5 million for the Republican Party. Overall, the hard money raised by both parties in 2004 eclipsed the combined hard-money and soft-money totals from any prior election.

The most significant unintended result of the BRCA in 2004 was the emergence of single-issue entities known as 527 political committees. These are discussed in greater detail later in this chapter, but they are essentially unregulated interest groups that focus

### soft money

The virtually unregulated money funneled by individuals and political committees through state and local parties.

on a specific cause or policy position and attempt to influence the decision of voters. Money that would have entered the system as unregulated soft money in previous election cycles ended up in the hands of these organizations, so in a sense the BCRA created a new place for soft money, rather than eliminating it completely.<sup>33</sup>

### Are PACs Good or Bad for the Process?

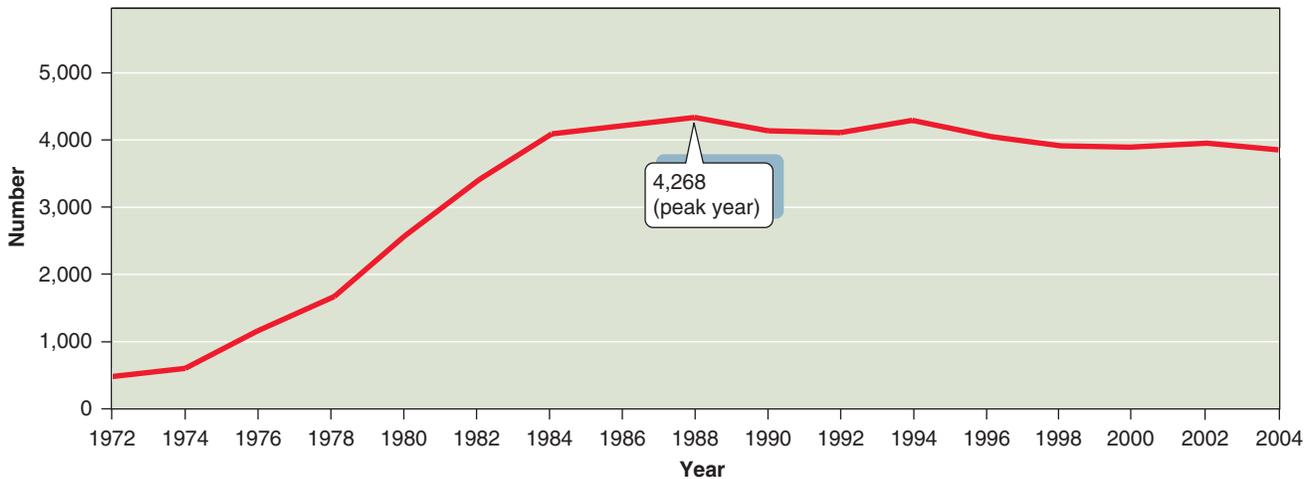
Of all the forms of campaign spending, probably the most controversial is that involving PAC money. Some observers claim that PACs are the embodiment of corrupt special interests that use campaign donations to buy the votes of legislators. Furthermore, they argue that the less affluent and minority members of our society do not enjoy equal access to these political organizations.

These charges are serious and deserve consideration. Although the media relentlessly stress the role of money in determining policy outcomes, the evidence that PACs buy votes is less than overwhelming.<sup>34</sup> Political scientists have conducted many studies to determine the impact of interest group PAC contributions on legislative voting, and the conclusions reached by these studies have varied widely.<sup>35</sup> Whereas some studies have found that PAC money affects legislators' voting behavior, other studies have uncovered no such correlation. It may be, of course, that interest group PAC money has an impact at earlier stages of the legislative process. One innovative study found that PAC money had a significant effect on legislators' participation in congressional committees on legislation important to the contributing group.<sup>36</sup> Thus, interest group PAC money may mobilize something more important than votes—the valuable time and energy of members.

Also serious is the charge that some interests are significantly better represented by the PAC system than are others. This view was put forth by a political scientist who argues that laws regulating PAC activity inherently favor PACs with parent organizations—corporate, labor, and trade PACs—over citizen-based PACs without parent organizations.<sup>37</sup> Thus, he argues that any campaign finance reform should raise substantially the limits on the amount of money an individual may contribute to a PAC—to the point where a single person could underwrite a citizen group's formation and maintenance costs.

**FIGURE 14.4** PACs

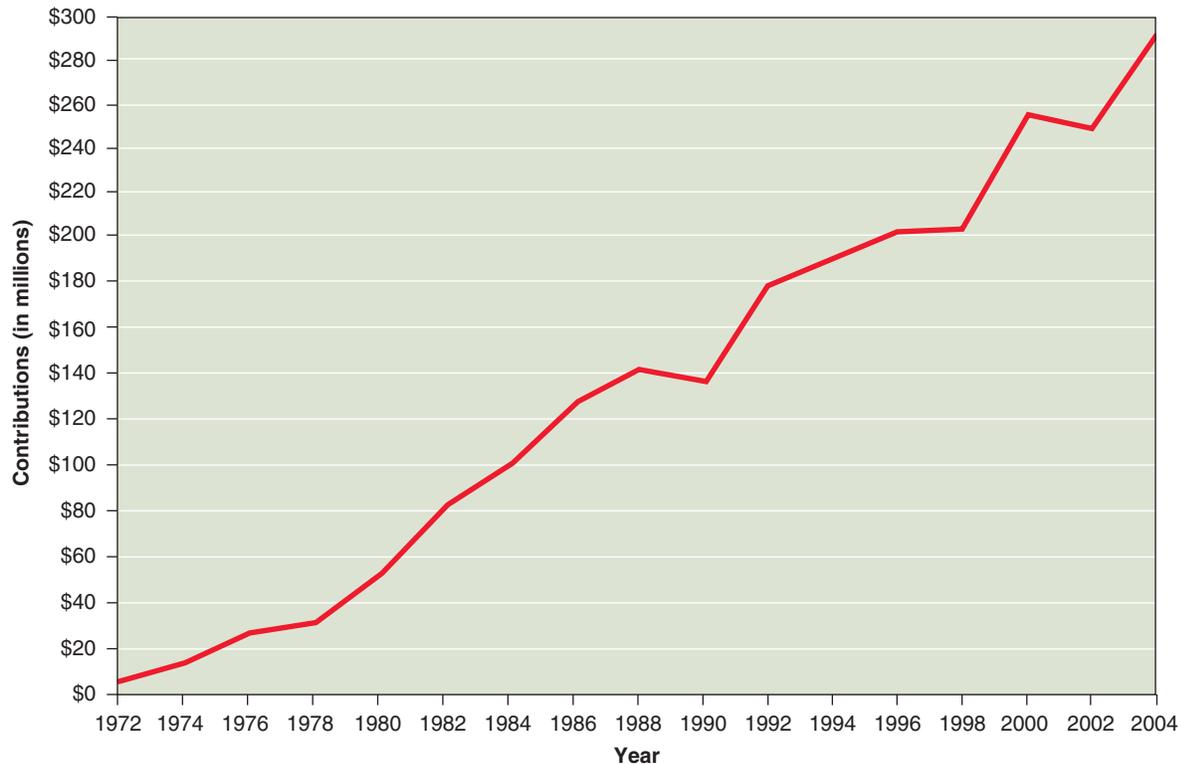
Created in the early 1970s, PACs allowed individuals to collect money and contribute to political campaigns. PACs saw explosive growth in the 1980s, but their numbers have declined in recent years, although their ability to raise money has increased. ■



Note: Numbers are as of December 31 of every other year, starting in 1972. 2002 numbers through July 1, 2002.

Source: <http://www.fec.gov/press/press2004/20040202paccount.html>.

**FIGURE 14.5** Growth in Total Contributions by PACs to House and Senate Candidates  
The growth of campaign spending by PACs has roughly paralleled the increasing number of PACs over their thirty-year history. ■



Note: Contributions are for two-year election cycles ending in years shown.

Source: Center for Responsive Politics, <http://www.opensecrets.org>.

Although a good number of PACs of all persuasions existed prior to the 1970s, it was during the 1970s—the decade of campaign reform—that the modern PAC era began. Spawned by the Watergate-inspired revisions of the campaign finance laws, PACs grew in number from 113 in 1972 to 4,268 by the late 1980s (see Figure 14.4), and their contributions to congressional candidates multiplied almost thirty-fold, from \$8.5 million in 1971 and 1972 to \$294 million in 2004 (see Figure 14.5). But, these numbers should not obscure a basic truth about the PAC system: that a very small group of PACs conducts the bulk of total PAC activity. Indeed, as political scientist Paul Herrnson observes, a mere 6 percent of all PACs contributed a full 62 percent of the total dollars given to congressional candidates by PACs during the 2001–2002 election cycle.<sup>38</sup>

Some people argue that PACs are newfangled inventions that have flooded the political system with money. Although the widespread use of the PAC structure is new, special-interest money of all types has always found its way into politics. Before the 1970s, it did so in less traceable and much more disturbing and unsavory ways, because little of the money given to candidates was regularly disclosed to public inspection. Although it is true that PACs contribute a massive sum to candidates in absolute terms, it is not clear that there is proportionately more interest group money in the system than earlier. The proportion of House and Senate campaign funds provided by PACs has certainly increased since the early 1970s, but individuals, most of whom are unaffiliated with PACs, together with the political parties still supply more than 60 percent of all the money spent by or on behalf of House candidates, 75 percent of the campaign expenditures for Senate contenders, and 85 percent of the campaign expenditures for presidential candidates. So, while the importance of PAC spending has grown, PACs clearly remain secondary as a source of election funding and therefore pose no overwhelming threat to the system's legitimacy.



## THE IMPACT OF FUNDING AND FREE AND FAIR ELECTIONS ON THE CAMPAIGN PROCESS

Few Americans would argue with the proposition that for elections to matter they must be free and fair. But, what is a “free and fair” election? Although no clear answer exists to this question, we can identify conditions that contribute to making an election free and fair. Elections are likely to be free to the extent that we find freedom of speech, freedom of association, freedom from coercion, free access to the polls, and the freedom to vote in secret. Elections are likely to be fair when elections are administered in a nonpartisan fashion, there is balanced reporting by the media, votes are counted in an open and transparent fashion, and there is equitable access to the resources needed to run a campaign.

This last point, access to campaign funds, is particularly problematic today, given the high costs of running for office. Some election observers have concluded that corruption related to the financing of parties and candidates is among the most common dangers facing democracies around the world today. The negative consequences of unequal access to campaign funds include the beliefs that only the rich can run for public office, that large contributors get preferential treatment by public officials, and that because incumbents can raise money more easily than challengers they do not have to be responsive to voters.

Many different ways exist for trying to ensure that there exists an evenhanded access to campaign funds for all parties and candidates. In some cases this involves limiting the amount of money that can be spent. New Zealand forbids parties from spending more than \$1 million plus \$20,000 per candidate nominated by the party in the three months preceding the election. Some countries try to limit the source of campaign funds. Canadian parties and candidates may accept contributions only from Canadian citizens or permanent residents—corporations and associations not doing business in Canada are not allowed to make contributions. France places limits on the size of campaign contributions and reimburses some of the costs. Individuals may not contribute more than \$5,000 to a legislative race (corporations and other organizations may not make contributions). All parties that get more than 5 percent of the vote are reimbursed the cost of the paper and printing of their official ballots, posters, and campaign circulars.

Other nations employ a combination of measures. Brazil seeks to limit the length of the election campaign and the amount of money spent, and provides reasonable

access to the media. All elections at the national, regional, and local level are held on the first Sunday in October. Election materials can be distributed only after July 5. Candidates may buy advertising space in newspapers, but radio and television airtime is free and allocated equally among the registered political parties. Limits are placed on how many candidates a party may run in an election. They may only field candidates equal to 150 percent of the positions to be filled in an election.

Japan also seeks to put multiple restrictions in place. Here a distinction is made between political activities that try to make the public aware of a party’s position on issues and political activity designed to obtain votes for a particular candidate. Door-to-door political canvassing is illegal. Campaign materials cannot be posted until six months before one’s term has expired or one day after parliament is dissolved. All candidates receive a specified amount of free advertising in newspapers. In 1996 this was five ads.

Political parties in Japan face more lenient restrictions, however. Neither candidates nor parties may advertise in the mass media until twelve days before the election. But, there is no limit on how much can be spent in these twelve days—in 1996 political parties spent an estimated \$100 million. Japanese parties are required to report all campaign contributions of more than \$500, and their recipients. Political contributions from corporations and organizations are banned. Japanese parties are eligible to obtain public funding if they have at least five members in the lower house of parliament or have received at least 2 percent of the vote in a recent national election.

To be effective, laws must be enforced. Even on paper, great variation exists. In Brazil, a court reviews compliance with campaign laws but there are no legal or financial penalties. In Japan, failure to report contributions by individuals can result in a five-year prison term and a \$10,000 fine.

### Questions

1. Which do you think is the most effective way to make an election fair: regulate the source of campaign funds, limit campaign expenditures, or require greater public disclosure of sources?
2. How does the United States compare with other countries in regard to the above criteria for having free and fair elections?

The election outlays of PACs, like the total amount expended in a single election season, seem huge. In the past, the cost of elections in the United States has been less than or approximately the same as in some other nations, measured on a per-voter basis. However, in the current era of increased spending, American elections are outpacing those of comparable nations. For example, the cost of Canada's 2004 elections is estimated at \$265 million—a significant increase from 2000, but still well below U.S. numbers. Still, the cost of all elections in the United States taken together is less than the amount many individual private corporations spend on advertising their cereals, dog food, cars, and toothpaste. These days, it is expensive to communicate, whether the message is political or commercial. The costs of television time, polling, consultants, and other items have soared over and above the inflation rate.<sup>39</sup>



## Future Campaign Finance Reform

Despite the overblown promises of campaign finance nirvana by some of those pushing the McCain-Feingold Bipartisan Campaign Reform Act, many problems remain in this complicated area of politics and constitutional law. For example, the McCain-Feingold law banned donations of “soft-money” to the political parties (as explained earlier in the chapter). Did that money disappear? Of course not! Much of it has shown up in new “527 political committees”—the number 527 comes from the provision of the Internal Revenue tax code that gives life to these committees.



The 527s exist on all sides of the political fence, though the Democrats were first to aggressively pursue them in 2004. Two of the largest Democratic committees are the Media Fund and Americans Coming Together (ACT), both run by allies of presidential nominee John Kerry and raising millions of dollars from people who desired to see President Bush defeated, such as billionaire George Soros. These committees bought TV, radio, and print advertising to sell their message, focusing on the battleground or “swing” states that were not firmly in the Bush or Kerry camps. Ohio is an excellent example: in that state, not only did the groups air thousands of media ads, but they also helped organize many thousands of volunteers who went door to door, recruiting voters and volunteers for Democratic campaigns. Even though most political observers predicted that President Bush would easily outspend Senator Kerry in the presidential contest, the Democratic 527s considerably aided the Democratic campaign. Through the end of the 2004 election, Democratic 527 groups spent \$115 million, nearly double that of their Republican counterparts, who reported \$62 million in expenditures. Groups on both sides saw large donations from wealthy individuals, including Soros, who gave \$23.7 million to Democratic organizations, and Texas developer Bob Perry, who donated \$9.6 million to Republican groups.<sup>40</sup> As fundraising records in almost every category were shattered in 2004, the campaign reform law clearly had no effect on overall spending.

It is easy to see that reformers will once again attempt to reform their reforms. The next target may well be the 527s. Their abolition is highly unlikely—and the money supporting them would simply reappear in some other form—but there is a need for greater transparency. The 527s have far less required disclosure than other forms of finance committees, and that does cry out for a legislative fix. Overall, however, the lesson of McCain-Feingold is obvious. No amount of clever legislating will rid the American system of campaign money. Interested individuals and groups will always give lots of cash. The challenge is to find a way to get that cash disclosed in a timely fashion for the press and the public. As always, disclosure and its sunshine are the ultimate check on potential misbehavior in the realm of political money.



## CAMPAIGN FINANCE: FREEDOM OF SPEECH OR LICENSE TO CORRUPT

**OVERVIEW:** Campaigns are not free. A candidate has to employ an army of staff to engage in a number of activities, from scheduling campaign stops to ordering pizza deliveries. Unless a candidate is massively wealthy, the money to pay for campaign staff and services has to come from other people, namely donors. Aside from the instrumental value of money, there is a symbolic value. Many donors believe that their contributions make a larger statement about their beliefs. The question is, therefore, whether campaign finance regulations are merely controlling the sources and use of money to prevent political corruption or are also prohibiting the right to free speech that belongs to all Americans.

Both the National Rifle Association and the American Civil Liberties Union agree that the regulation of campaign contributions amounts to a government violation of the very rights the government is supposed to protect. If organizations wish to air ads on behalf of an issue that interests them, then they should be able to do so under the First Amendment. Organizations such as Common Cause, however, say that the problem with the “money equals speech” argument is that money actually replaces speech. Too often, groups lacking funds are squeezed out of meetings with elected officials, who need the money for reelection

more than they need to hear about the complaints of constituents.

Disallowing organizations from engaging in the political process is by definition an infringement of political freedom, but perhaps it was a freedom so thoroughly abused that it had to be taken away to protect the republic. Furthermore, there is no guarantee that increasing government regulation will make the process any more democratic, just more regulated, meaning more complicated and bureaucratic. The scope of campaign finance is broad, and the implications of regulating it are far reaching.

### Arguments for Campaign Finance Reform

- **A government beholden to a small group of wealthy and mobilized interest is, by definition, an oligarchy and un-American.** With millions of dollars to spare, large organizations such as unions and corporations can control candidate agendas by demanding loyalty in exchange for donations. The result is that a candidate, once elected, represents not ordinary constituents but those who got him or her elected. This is nothing more than bribery.
- **Prohibiting large organizations from dominating the attention of elected officials creates greater grassroots**