CAMPAIGN FINANCE REFORMS: PAST ACCOMPLISHMENTS, FUTURE CHALLENGES

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On November 4, 1980 Ronald Reagan captured the White House in a landslide Electoral College victory, culminating a quest for the presidency that began in 1968. In that twelve-year span, the process for funding presidential and congressional campaigns had changed dramatically. To candidate Reagan in 1968, "public financing," "PACs," and "independent expenditures" had little, if any, meaning. In 1980 these terms described important factors in the presidential and congressional campaigns.

Today, ten years after the historic campaign finance reform effort began, is an appropriate time to take stock of the campaign finance laws and to consider what modifications and further improvements are needed. This article will describe fundamental changes that are needed in the congressional campaign financing system, incremental adjustments that should be made to improve the presidential campaign system, and steps which should be taken to respond to the growth in independent expenditures efforts. The article will also briefly examine the enforcement of the election statutes by the Federal Election Commission. First, however, we must look to the legislative achievements of the 1970's which represent the greatest burst of campaign finance activities in this century. Fundamental changes of an historic nature occurred in the role of money in American politics. We must examine these achievements to understand fully the campaign finance issues of the 1980's.

I

PAST ACCOMPLISHMENTS: A CAMPAIGN FINANCE RETROSPECTIVE

In the spring of 1973, Common Cause Chairman John Gardner told the Senate Commerce Committee that "there is nothing in our political system today that creates more mischief, more corruption, and more alienation and distrust on the part of the public than does our system of financing elec-

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tions."[1] This identification of campaign funding as our political Achilles' heel came at a time when the campaign financing system was shrouded in secrecy and plagued by the improper influence of large contributions. Although the Federal Corrupt Practices Act of 1925 required candidates for federal office to file contribution and expenditure reports with the Secretary of the Senate and the Clerk of the House,[2] disclosure was haphazard and sketchy, and virtually no prosecutions were brought for violations.[3] Without a requirement of full disclosure of information on campaign contributions and expenditures, citizens could only guess at the sources and amounts of funds used in congressional campaigns.

At the presidential level, the 1968 and 1972 campaigns highlighted some of the fundamental flaws in the campaign financing system. *The Washington Post* noted with chagrin that the late Hubert Humphrey "was forced to tin-cup it around the country" to raise funds in 1968. "The Democratic presidential nominee as Mendicant," the *Post* observed, "was not an especially uplifting sight."[4]

President Nixon's 1972 reelection campaign, in contrast, gave new meaning to the old phrase "an embarrassment of riches," as Nixon's war chest approached $60 million.[5] The top contributor to the President's campaign, W. Clement Stone, gave $2 million; Nixon's top ten contributors gave more than $4 million; while the top 100 contributors combined to give $14 million.[6] As a result of 1972 contributions, more than twenty-one firms were convicted of making illegal corporate contributions, often in response to solicitations from the Nixon campaign.[7] The excesses and abuses of the Nixon reelection effort helped to set off a chain of events that led to the eventual downfall of the Nixon administration.

Beginning in the early 1970's, Common Cause and other election reform groups pressed for fundamental changes in the campaign finance statutes. The reformers sought to end secrecy in campaign financing, to

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1. *Hearings on S. 372 Before the Subcomm. on Communications of the Senate Commerce Comm.*, 93rd Cong., 1st Sess. 1 (1973) (statement of John Gardner) [hereinafter cited as *Gardner Testimony*].

2. Ch. 368, § 305, 43 Stat. 1070, 1071 (codified as amended at 2 U.S.C. §§ 432-434 (1976 & Supp. IV 1980).

3. COMMON CAUSE, STALLED FROM THE START: A COMMON CAUSE STUDY OF THE FEDERAL ELECTION COMMISSION 3-4, 65-69 (1981).

4. *Fat Cat as Endangered Species*, Wash. Post, June 26, 1980, § A, at 18, col. 1.

5. CAMPAIGN FINANCE STUDY GROUP, EXPENDITURE LIMITS IN THE PRESIDENTIAL PRENOMINATION CAMPAIGN: THE 1980 EXPERIENCE 2 (1980) [hereinafter cited as EXPENDITURE LIMITS].

6. Unless otherwise noted, figures used in this article are based on analyses prepared by Common Cause of campaign finance disclosure statements. For a general discussion of the use of campaign finance data by Common Cause, see Fleischman & Greenwald, *Public Interest Litigation and Political Finance Reform*, 425 ANNALS OF THE AM. ACAD. OF POLITICAL AND SOC. SCI. 114 (1976).

7. Adamany, *PAC's and the Democratic Financing of Politics*, 22 ARIZ. L. REV. 569, 572 (1980).

limit the influence of large contributions, and to increase competition in the political process. The reform agenda called for:

—the establishment of meaningful campaign contribution and expenditure reporting requirements;

—limitations on the size of individual and group campaign contributions;

—the establishment of a system of public financing of campaigns, including candidate access to ample federal funds and limitations on spending; and

—effective enforcement of campaign finance laws by an independent agency.[8]

During the 1970's, Congress enacted a series of campaign finance statutes designed to achieve these goals. In 1971 Congress approved the first major revision of federal campaign laws in nearly half a century, the Federal Election Campaign Act (FECA), which required comprehensive disclosure of contributions to and expenditures by candidates for federal office.[9] But in 1974, Congress enacted a series of fundamental revisions to the 1971 Act.[10] The FECA amendments of 1974 reflected the national disgust with the Watergate scandal and the excesses of the 1972 presidential campaign. The amendments were also an acknowledgment that the 1971 FECA alone had failed to solve the basic problems of the campaign finance system.

The 1974 FECA amendments limited individual contributions to federal candidates to $1,000 per election, restricted political action committee (PAC) contributions to $5,000 per election, established an unprecedented system of public financing for presidential primary and general elections, extended overall expenditure limits for congressional campaigns (although no public financing system was included)[11] and set limits on independent expenditures.[12] Additionally, the new legislation created the Federal Election Commission (FEC) to administer the campaign finance laws.[13]

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8. *See, e.g., Gardner Testimony, supra* note 1, at 5.

9. Pub. L. No. 92-225, §§ 301-311, 86 Stat. 3 (1972) (amended 1974, 1976, 1980).

10. *See* FECA Amendments of 1974, Pub. L. No. 93-443, §§ 101-302, 88 Stat. 1263 (1974) (codified as amended in scattered sections of 2, 5, 18, 26, 47 U.S.C.).

11. *See infra* notes 20-22 and accompanying text. The limits established by the amendments were as follows:

- for Senate primaries, the greater of $100,000 or eight cents per eligible voter;
- for Senate general elections, the greater of $150,000 or twelve cents per eligible voter;
- for House primaries, $70,000;
- for House general elections, $70,000; and
- the Senate limits applied to House candidates who represent a whole state.

Pub. L. No. 93-443, § 101(a), 88 Stat. 1263 (1974) (repealed 1976).

12. Individual independent expenditures on behalf of a candidate were limited to $1,000 per election. *Id.*

13. *Id.* § 208(a), 88 Stat. 1263, 1279 (1974) (repealed 1976).

The law as amended was soon under legal attack. The Supreme Court, in *Buckley v. Valeo*, upheld public financing and contribution limits, struck down the congressional expenditure limits (in the absence of a public financing system) and the independent expenditure limit, and declared the composition of the FEC to be unconstitutional.[14] In response to the decision, Congress again amended the FECA. The 1976 amendments reconstituted the FEC by making the commissioners presidential appointees.[15] Further amendments in 1979 adjusted the reporting requirements and significantly expanded the role of political committees in presidential campaigns.[16]

The most significant achievement in campaign finance reform has been the creation of the public financing system for presidential elections. The country learned an important lesson from Watergate and acted to take the American presidency off the political auction block. Now presidential candidates are no longer dependent on a relatively few "fat cat" contributors and well-funded special interest groups for their campaign funds. In 1976, for example, the average individual contribution submitted for matching in the presidential primaries was approximately twenty-seven dollars.[17] The general election campaigns of the nominees of the two major parties in 1976 and 1980 were financed entirely by federal funds—the aggregation of millions of one-dollar contributions from the voluntary income tax checkoff. While criticism may still be heard about the grueling presidential primary process, there are no longer grounds for suspicion that wealthy donors or groups have been able to use campaign contributions to purchase special influence in the White House.[18]

Unfortunately, the same progress has not been made at the congressional level. Although Congress has limited individual and group contributions and has mandated strict disclosure requirements which have pierced the darkness which once surrounded campaign treasuries, the financing of congressional campaigns has not been fundamentally reformed. Campaign contributions remain a vehicle for obtaining access and influence in the United States Congress.[19]

14. 424 U.S. 1 (1976).

15. FECA Amendments of 1976, Pub. L. No. 94-283, § 101, 90 Stat. 475 (1976) (current version at 2 U.S.C. 437c(a)(1) (Supp IV 1980)). The 1974 amendments established an eight-member Federal Election Commission, with two members appointed by the President, two by the Speaker of the House, and two by the president pro-tem of the Senate. The secretary of the Senate and clerk of the House were ex officio, non-voting members. The 1976 amendments retained the ex officio members but reconstituted the rest of the FEC as a six-member commission appointed by the President and confirmed by the Senate.

16. FECA Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980) (codified at 2 U.S.C. § 432-434 (Supp IV 1980)).

17. *Hearings on H.R. 1 Before the Comm. on House Administration*, 96th Cong., 1st Sess. 8 (1979) (statement of Fred Wertheimer).

18. Cohen, *PAC Power: Why Common Cause Fears Its Impact*, in CAMPAIGNS AND ELECTIONS 13 (1980).

19. *See infra* notes 32-45 and accompanying text.

Presidential and congressional campaign finance methods thus require different degrees of reform. Comprehensive legislation must be enacted to remedy the defects in congressional campaigns. Most importantly, a system must be established to provide adequate alternative funding so that candidates need not be dependent on the contributions of special interest groups. In contrast, fundamental changes have already successfully transformed the system of financing presidential campaigns. Incremental adjustments are now necessary to respond to inflation, changes in the presidential nominating process, and new technologies. The federal election system of the 1980's must be altered to come to terms with independent expenditure efforts, and the mechanisms for enforcing federal election laws need to be reevaluated. These reforms are discussed below.

II

Future Challenges: An Agenda for the Eighties

A. Congressional Campaign Financing

In 1974, Congress made available substantial sums of money to allow presidential candidates to wage adequate primary campaigns without substantial reliance on large contributors or funding from special interests.[20] Spending in both the primary and general elections was limited.[21] At the congressional level, no such fundamental reforms were enacted. While individual and PAC contribution limits were set at $1,000 and $5,000 per election, respectively, no system for providing public funds was established.[22]

During recent elections, expenditures by congressional candidates have soared. In 1977-1978 campaigns, congressional campaign spending totaled $194.8 million—$109.6 million in House races, $85.2 million in Senate races. In the 1979-1980 campaigns, preliminary estimates place expenditures at the $300 million level.[23]

While candidates need substantial sums of money to conduct competitive races, escalating congressional campaign costs also have serious debili-

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20. *See* Pub. L. No. 93-443, § 408, 88 Stat. 1263, 1297 (1974) (current version at 26 U.S.C. §§ 9031-9042 (1976 & Supp IV 1980)).

21. *See id.* § 101(a), 88 Stat. 1263, 1264 (repealed 1976).

22. *See* 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(2)(A) (1976).

23. Mintz, *Hill Candidates' Outlays Hit $103 Million in June*, Wash. Post, Oct. 2, 1980, § A, at 8, col. 3; Smith, *Financing Campaign '80: "Would You Believe Half a Billion?"*, N.Y. Times, Nov. 23, 1980, § E, at 3, col. 1. A review of the number of candidates for Senate who have spent more than $1 million in general elections demonstrates the increasing costs of congressional campaigning. In 1980, 31 general election Senate candidates spent over $1 million in comparison to 21 in 1978, 10 in 1976, 7 in 1974, and 4 in 1972. *See* Cohen, *Big Spenders Did Better in the House Than in the Senate*, 13 Nat'l J. 379, 401 (1981); *Campaign Money Early*, 37 Cong. Q. 1539, 1541 (1979).

tating consequences for a democratic society. The candidates' ability to raise adequate funds are strained, and elective office becomes "a realistic ambition only for the very rich or for those who are willing to enter office beholden to interests and individuals who have the wherewithal" to finance a competitive campaign.[24]

In the last six years there has been an extraordinary growth in the importance of political action committees in congressional campaigns.[25] The 1974 amendments to the FECA affected the growth and giving patterns of PACs in two important ways. First, the law contained a provision—opposed by Common Cause but supported by labor and business groups[26]—that authorized government contractors to establish PACs.[27] A ban on government contractors' contributions to candidates previously prevented contractors from establishing political action committees.[28] Second, by creating public financing for presidential, but not for congressional elections, these amendments focused the attention and interest of private campaign donors on Congress.[29]

The PACs have grown dramatically. Since 1974, the number of PACs has increased from 608 to nearly 2,300. The most significant increase has been in the number of corporate PACs, which has risen from eighty-nine in 1974 to 1,106 in June of 1980.[30] Despite the increasing number of PACs, many observers agree that the PAC explosion is still in its early stages.[31]

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24. Gans, *How to Take the Big Money Out of Politics*, WASH. MONTHLY, Apr. 1979, at 40.

25. The term "political [action] committee" refers to any committee sponsored by a corporation, labor organization, trade association, or other group of persons which receives contributions or makes expenditures totalling more than $1,000 during a calendar year. FECA § 301, 2 U.S.C. § 431(4) (Supp. IV 1980). A political action committee that qualifies as a "multi-candidate political committee" under 2 U.S.C. § 441a(a)(4) (1976), may make contributions of $5,000 per election (general, primary, runoff, or special) to any candidate in a federal election. *See* FECA § 320, 2 U.S.C. § 441a(a)(2) (1976); 2 U.S.C. § 431(1) (Supp. IV 1980).

26. For a discussion of the role of Common Cause, labor, and business organizations in the passage of this amendment, *see* Wertheimer, *Commentary* in PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS 192, 200-01 (M. Malbin ed. 1980); Wertheimer, *The PAC Phenomenon in American Politics*, 22 ARIZ. L. REV. 605-06 (1980) [hereinafter cited as *PAC Phenomenon*].

27. 2 U.S.C. § 441c(b) (1976).

28. Act of June 14, 1940, ch. 640, § 5(a), 54 Stat. 772 (repealed 1976).

29. *See* Cheney, *The Law's Impact on Presidential and Congressional Election Campaigns*, in PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS 238, 245 (M. Malbin ed. 1980).

30. Garcia, *Candidates are PAC-ing It In*, COMMON CAUSE, Oct. 1980, at 13.

31. John G. Murphy, the Federal Election Commission's first general counsel, suggests that "[c]orporate PACs have only begun to exploit the opportunity provided by current legislation." Mintz, *It's November and the Corporate Money Trees are Shedding*, Wash. Post, Nov. 1, 1980, § A, at 9, col. 2. *See also* Epstein, *Business and Labor under the Federal Election Campaign Act of 1971*, in PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS 107, 138 (M. Malbin ed. 1980).

The sharp growth in the number of PACs has been accompanied by a corresponding increase in the amount of PAC money going into congressional elections.[32] PAC money in the 1978 House elections, for example, totaled $25 million, an increase of seventy percent over 1976 and an increase of more than 200 percent over the $8.4 million spent by PACs in 1974 House elections.[33] While reports filed with the FEC as of this writing do not document PAC contributions made in the closing days of the 1980 campaign—a peak period for PAC contributions[34]— the recent trend of escalating PAC involvement in congressional campaigns suggests that PAC contributions in 1980 will easily exceed previous levels of giving. In 1978, PACs gave over $40 million to congressional candidates. This year's total PAC contributions are expected to exceed $55 million.[35]

The formation and growth of PACs often parallels renewed or initial congressional interest in the corresponding policy area. Bernadette Budde, Political Educational Director for the Business Industry Political Action Committee (BIPAC) has written, "[a] clear pattern emerges when reviewing who does and who does not have a PAC — the more regulated an industry and the more obvious an industry is as a congressional target, the more likely it is to have a political action committee within the associations or within the companies which make up that industry." Budde, *Business Political Action Committees*, in PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS 9, 11 (M. Malbin ed. 1980). *See also* Budde, *The Practical Role of Corporate PAC's in the Political Process*, 22 ARIZ. L. REV. 555 (1980). Thus, in the mid-1970's, as we saw increasing federal attention turned toward energy, the number of coal, oil, and gas interests with registered PACs grew from twelve in 1974 to 110 in 1978. Similarly, utilities had no PACs in 1974 and 64 in 1978. In the 1980 elections, a newcomer among the big PAC contributors to congressional campaigns was the committee associated with the American Family Corporation, the top vendor of cancer insurance. The $194,000 which this committee had contributed to campaigns by October 15, 1980, came at a time when Congress had reportedly forbidden the release of a Federal Trade Commission report labeling such cancer coverage "a very poor buy." Mintz, *Conservative PACs Continue Late, Heavy Spending Flurry*, Wash. Post, Oct. 28, 1980, § A, at 12, col. 1; Montgomery, *Cancer Insurer Amos, Focus of Controversy, Likes to Play Hardball*, Wall St. J., Oct.17, 1980, at 1, col. 4.

32. PACs are also becoming an increasingly important factor in state elections. Adamany notes that PAC contributions in Wisconsin climbed from $362,946 in 1974 to $1,165,273 in 1978. Adamany, *supra* note 7, at 588. *See also* Lynn, *Political Action Donations Increase for State Elections*, N.Y. Times, Nov. 2, 1980, at 44, col. 1.

33. This growth has been caused, in part, by the increase in the number of PACs and, in part, by increased giving from existing PACs. The National Automobile Dealers Association PAC, for instance, increased its contributions by over 6,000% between 1974 and 1978, from $14,000 to nearly $1 million. Similarly, the National Association of Realtors PAC stepped up its contributions from $245,000 in 1974 to more than $1.1 million in 1978 and over $1.5 million in 1980. The director had been quoted as saying that this PAC's potential was just beginning. Graves, *The Power Brokers*, COMMON CAUSE, Feb. 1981, at 13-20; *PAC Phenomenon, supra* note 26, at 606-07.

34. Adamany found that 53% of 1978 congressional candidates reported receiving most union PAC contributions in the last month of the campaign, and 63% got most corporate PAC money in that period. Adamany, *supra* note 7, at 591.

35. Cohen, *Spending by PACs Reaches Double Its 1978 Pace*, 12 NAT'L. J. 1876 (1980); *PAC Spending Continues at Record Levels*, 12 NAT'L. J. 1902 (1980).

The top ten PAC contributors as of November 24, 1980 were:

Growth in both the number of PACs and volume of PAC money has resulted in an increasingly heavy reliance by candidates on special interest donors. The number of House candidates receiving over $50,000 in PAC money, for example, more than tripled from 1976 to 1978, rising from fifty-seven candidates to 176, including forty-five of the seventy-seven freshman members.[36] Seventy-eight members of the House received forty percent or more of their total contributions from PACs during the 1974 elections. The number of House members receiving similar amounts in the 1978 election rose to 136.[37] In the 1978 elections, fifteen Senate candidates received more than $200,000 in seventeen campaigns. As of September 30, 1980, seventy-one Senate candidates had received $8.9 million in PAC money, with PAC contributions of over $200,000 in seventeen campaigns. By the end of August 1980, six Senate campaigns had already eclipsed the PAC contribution record of $392,720 set by John Tower (R-Texas) in 1978.[38]

National Association of Realtors	$1,532,105
United Auto Workers	1,514,981
American Medical Association	1,348,585
National Automobile Dealers Association	1,034,875
Machinists and Aerospace Workers	836,910
AFL-CIO	791,092
American Milk Producers	778,289
United Transportation Union	724,693
National Association of Life Underwriters	637,192
Carpenters and Joiners of America	555,008

A Boom Year for PACs, COMMON CAUSE, Feb. 1981, at 12; *PACs Reported Giving $30 Million During 20 Months Throughout August,* 4 POL. PRAC. REP. 7 (1980). *See also* Light, *Democrats May Lose Edge In Contributions From PACs,* 38 CONG. Q. 3405-09 (1980).

36. Epstein, *supra* note 31, at 139.

37. *PAC Phenomenon, supra* note 26, at 607.

38. Of the six Senators who eclipsed Tower's record, five were elected. They were:

Charles Grassley (R-Iowa)	$504,809
Steve Symms (R-Idaho)	468,450
James Abdnor (R-S.D.)	457,735
Dan Quayle (R-Ind.)	438,487
Russell Long (D-La.)	407,200

Sen. Herman Talmadge of Georgia received $407,919 in a losing effort.

Campaign recruitment of PAC contributions has taken on new forms. Dragutin Stamenkovich served as Political Action Committee Director for Grassley's Iowa Senate campaign. Stamenkovich raised over $490,000 from PACs. In a new application of "Go West, young man," Stamenkovich says, "In the early morning, we start calling the East Coast PACs and we work across the country with the sun." Dionne, *On the Trail of Corporate Donations,* N.Y. Times, Oct. 8, 1980, § B, at 6, col. 1.

For a further discussion of PAC contributions to 1980 congressional campaigns see McCarthy, *Did All That Money Talk?,* Wash. Post, Nov. 15, 1980, at 19, col. 6.

PAC contributions have a special quality—they are generally given by groups that are also regularly engaged in organized lobbying efforts.[39] In other words, they are contributions with a legislative purpose. Explicit quid pro quos are rarely involved, but the process nevertheless is designed to provide access and influence—a relationship which all participants recognize.[40] These PAC dollars do have an impact on the legislative process.[41]

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39. More than half of the organizations that sponsor PACs also maintain Washington-based lobbying offices. *PAC Phenomenon, supra* note 26, at 611 n. 48.

40. Observers from every side of the PAC system recognize and acknowledge that PAC contributions are given to affect legislative decisions. Rep. Charles Vanik (D-Ohio), for instance, has noted that "[e]very campaign contribution carries some sort of lien which is an encumbrance on the legislative process." Mintz, *Voters May Be Turning Off, But PAC Faucets Are Gushing*, Wash. Post, Oct. 25, 1980, § A, at 5, col. 1. One campaign adviser has acknowledged that "the very least a contributor expects his contribution to do is to get him access the next time he has a problem he wants to take up with the officeholder." Adamany, *supra* note 7, at 572. Fred Radewagen, political participation director for the U.S. Chamber of Commerce, said, "The prevailing attitude is that PAC money should be used to facilitate access to incumbents." Hucker, *Corporate PACs Are Less Oriented Toward Republicans Than Expected*, 36 CONG. Q. 849 (1978).

Justin Dart, chairman of Dart Industries, which had one of the largest corporate PACs in 1978 and 1980, has said that dialogue with politicians "is a fine thing, but with a little money they hear you better." *Companies Organize Employees and Holders into a Political Force*, Wall St. J., Aug. 15, 1978, at 1, col. 6. Harvard's Campaign Finance Study Group has concluded that "PAC money is *interested* money. While those who run political action committees may not be successful in accomplishing their legislative designs, it is clear that they do have specific agendas for public laws." CAMPAIGN FINANCE STUDY GROUP, INSTITUTE OF POLITICS, HARVARD UNIVERSITY, AN ANALYSIS OF THE IMPACT OF THE FEDERAL ELECTION CAMPAIGN ACT 1972-1978 1-8 (1979) (final report for the Comm. on House Admin.) [hereinafter cited as IMPACT OF THE FECA]. Sorauf has written that "[w]ith respect to cash contributions, all evidence suggests that PAC's are chiefly motivated to give money by a strategy of maximizing legislative access and influence." Sorauf, *Political Parties and Political Action Committees: Two Life Cycles*, 22 ARIZ. L. REV. 445, 452 (1980). *Wall Street Journal* correspondent Miller has stated, "The bulk of the special interest contributions represents a sort of investment in the careers of incumbent Congressmen and Senators, with the aim of enhancing the influence of the financing groups . . . . Obviously this money is given to buy 'influence.'" Miller, *Congressmen Begin to Push for Campaign Kitty*, Wall St. J., Mar. 21, 1977, at 18, col. 3.

For lobbyists associated with PACs, access to members of key congressional committees, where the most critical decisions in the legislative process are often made, is most important. Not surprisingly, PAC money is often targeted to representatives who serve on committees of particular interest to a given PAC. During the 1978 and 1980 election cycles, for example, members of the House Agriculture Committee received an average of nearly four times as much money from three dairy PACs as did members of the full House. In this time period, contributions to committee members from the PACs of the Associated Milk Producers, Inc., Mid-America Dairymen, Inc., and Dairymen Inc. exceeded $353,000. *See* House Agriculture Committee Members Facing Key Vote to Limit Dairy Price Supports Received More Than $350,000 from Dairy Industry PACs in Last Two Elections, Common Cause press release (Mar. 12, 1981). Similarly, from the beginning of 1975 through mid-1978 health groups contributed over $200,000 to members of the House Commerce Committee (which has jurisdiction over health matters), and labor groups gave about $600,000 to members of the House Labor and Education Committee. In 1977-1978 alone, banking PACs gave nearly $225,000 to members of the House Committee on Banking, Finance, and Urban Affairs. Malbin, *Of Mountains and Molehills: PACs, Campaigns and Public Policy*, in

To be sure, special interest groups do not always win. Campaign contributions do not necessarily assure votes or support. Special interests, however, exercise enormous and growing power in Congress, power that is often used to paralyze the policymaking process. PACs are a key factor in the exercise of that power and in the recent and rapid growth of the "Special Interest State," where powerful private interest groups dominate public policy in their own areas, and where the prevailing attitude all too often is none-for-all and each-for-one.[42] PACs have been a major contributor to the increasing fragmentation of our political system.[43] PACs today serve to

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PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS 152, 169 (M. Malbin ed. 1980) [hereinafter cited as *Campaigns and Public Policy*].

For an analysis of PAC contributions to House and Senate committee chairmen and party leaders see COMMON CAUSE, COMMON CAUSE GUIDE TO MONEY, POWER, AND POLITICS IN THE 97TH CONGRESS (1981).

41. One example of the impact of money on legislative outcomes occurred in late 1979, when the House gutted President Carter's hospital cost containment bill by a vote of 234 to 166. 125 CONG. REC. H10,885 (daily ed. Nov. 15, 1979). The American Medical Association (AMA) was a leading opponent of the bill, a measure which the Administration estimated would save consumers $40 Billion during the next five years. 15 WEEKLY COMP. OF PRES. DOCS. 2109 (1979). A Common Cause analysis of PAC contributions showed that 202 of the 234 members of Congress voting for the AMA-backed amendment had been given a total of $1,647,897 by AMA PACs during 1976 and 1978 campaigns, with an average receipt of $8,157 per member. *See* AMA Campaign Contributions Helped Kill Hospital Cost Containment Bill, Common Cause press release (Dec. 18, 1979). Of the 50 House members with the largest AMA donations, 48 supported the AMA position. *Id.* While 122 of the members voting against the AMA-supported legislation also received AMA PAC money, their contributions averaged $2,287. *See Campaigns and Public Policy, supra* note 40, at 169.

To cite another example, in June of 1979 the House approved an amendment supported by the National Association of Realtors (NAR) to curb the Department of Housing and Urban Development's enforcement powers against fraudulent real estate developers. 125 CONG. REC. H4,213 (daily ed. June 7, 1979). An examination of the vote showed the following: (1) NAR contributed to 51 of the 77 freshman members in 1978; (2) 43 of these 51 newcomers with an average NAR contribution of $4,272, voted with NAR; and (3) of the 20 freshmen opposing NAR, 13 received no NAR PAC money. *See* More Than 1 Million in Political Contributions Pays Off in Key Legislative Victory, Common Cause press release (June 21, 1979).

This analysis not only demonstrates the influence of PAC money on the legislative process but also belies the notion that PAC money is only given to reward supporters—one would be hard pressed to argue that the contributions to freshman members had been based on established voting patterns. *PAC Phenomenon, supra* note 26, at 615. For an extended discussion of the influence of PAC contributions on congressional decisions, *see* COMMON CAUSE, HOW MONEY TALKS IN CONGRESS (1979). *See also* Anson, *The American Petroleum Institute: It's Both Stronger and Weaker Than It Seems,* COMMON CAUSE, Oct. 1980, at 25-29.

42. National policymaking is sometimes paralyzed because various special interests enjoy veto power over particular segments of a proposed solution. *See* COMMON CAUSE, THE GOVERNMENT SUBSIDY SQUEEZE (1980).

43. For a description of the fragmenting and paralyzing powers of PACs, see Roberts, *An Angry Young Congressman Criticizes Special Interest Groups,* N.Y. Times, Jan. 11, 1981, § A, at 24, col. 3; Roberts, *Mood of Outgoing Lawmaker Is Sullen,* N.Y. Times, Dec. 16, 1980, § D, at 20, col. 4.

The laser-like quality of PAC giving which focuses on single issues at the expense of broader policy considerations is exemplified by the 1980 contribution patterns of the Nasubstantially weaken an already weakened political party system. They are a major and ongoing challenge to party responsibility and party responsiveness in Congress.[44] Most importantly, PAC contributions may lead to public distrust of the political system.[45]

In the last few congressional campaigns we have also seen an increasing investment by candidates in their own campaigns. In 1976, for example, nine House candidates spent more than $100,000 of their own funds on their campaigns; three Senate candidates spent more than half a million dollars each, with John Heinz III (R-Pa.) contributing $2.6 million of his personal fortune to his campaign.[46] A candidate's own funds comprised an average of 5.6% of campaign war chests in 1974, increasing to 8.9% in 1976 and 9.2% in 1978.[47] The average personal investment of House candidates has grown from $3,480 in 1974 to $10,267 in 1978.[48] In 1978, as much as 30% of the funds available to Democrats challenging Republican incumbents, and 17% of the campaign funds of Democratic open seat contenders, came out of their own pockets.[49] The growing tendency of candidates to invest

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tional Education Association (NEA) PAC. NEA financial support in 1980, according to the *Wall Street Journal,* was pegged almost exclusively to one piece of legislation before the 96th Congress, the NEA-supported bill creating the Department of Education. The NEA PAC has contributed to the campaigns of 20 Senate incumbents, all of whom voted for the new department. NEA contributions have gone to 96 House incumbents, 94 of whom voted for the Education Department. The list of recipients ranges from ultraliberal Democrats to die-hard Republicans. Hunt, *Teachers Tie Election Cash to Single Issues,* Wall St. J., Oct. 17, 1980, at 33, col. 6.

44. Sorauf, *supra* note 40, at 455, has concluded:

> PAC money fosters the extension of personalism in campaign politics and supports the freedom of candidates from reliance on party organizations, resources, and, even at times, the party label. And at a time when the power of incumbents is great — the result both of the advantages of office and the use of government programs for the advantage of the constituency and of individual voters — the pattern of PAC support further entrenches them in office. Incumbents, then, are freer than ever from the constraints of party leadership in the legislature and in the executive branch. So, the coalition of PAC's and other contributors, of candidates and their personal organizations, and of legislators skilled in the cultivation of constituency support, serves well the legislative strategies of all the members of the coalition. All that has been lost is a place for the party and the modest ability it once had to bring legislators and executives together, however uncertainly, around coherent programs of public policy.

(Footnotes omitted). *See also* Adamany, *supra* note 7, at 597; Cohen, *PACs Are Splitting the Body Politic,* Wash. Star, Mar. 18, 1981, § A, at 15, col. 4.

45. Rep. John Anderson (R-Ill.) has testified that the PAC's "pattern of contributions, largely to incumbents, is what causes public cynicism . . . . It is becoming a system of purchasing access and the expectation of legislative favors, and it is time for a change." *Federal Financing of Congressional Elections: Hearings on H.R. 1 and Related Legislation Before the Comm. on House Administration,* 96th Cong., 1st Sess. 216 (1979).

46. Adamany, *supra* note 7, at 582.

47. IMPACT OF THE FECA, *supra* note 40, at 20. *See also Campaigns and Public Policy, supra* note 40, at 156.

48. Adamany, *supra* note 7, at 582.

49. IMPACT OF THE FECA, *supra* note 40, at 28.

their own money in their campaigns threatens to make personal wealth a prerequisite for the pursuit of public office.[50] It will also force candidates without substantial personal resources to increase their dependence on special interest group donations.

For Congress to limit PAC influence in the legislative process and come to grips with the problem of increasing reliance on personal funds in campaigns, it would have to restructure congressional campaign financing fundamentally. This would be the culmination of the election reforms begun in the 1970's and should include the proposals discussed below.

The keystone of a comprehensive revision of the congressional campaign finance system would be the enactment of a partial public financing system for congressional campaigns. Congress must act to end the existing two-track system for federal election campaigns and to establish a voluntary partial public financing system for congressional races. Several attempts to institute such reforms have been unsuccessful.[51] Public financing would magnify the importance of small individual contributors, diminish the power of PACs, curtail the advantage enjoyed by wealthy candidates, and enhance the opportunities of challengers.[52]

While various congressional campaign financing systems could be designed, a viable and comprehensive proposal should include two elements. The first is an alternative source of funding. Small private contributions to candidates who qualify (by raising a threshold amount, for example) should be matched with federal funds. This would enable candidates to raise sufficient funds without relying on PAC money, and would increase the relative importance of small individual contributors. The second element is a limit on expenditures. The presidential public financing system imposes overall expenditure ceilings for both primary and general elections and limits the use of a candidate's personal wealth in campaigns—limitations which can be

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50. *Id.* at 28, 35.

51. On August 8, 1974, the House of Representatives passed by a vote of 355 to 48 a bill providing for public financing of presidential campaigns. 120 CONG. REC. 27,513 (1974). However, by a vote of 228 to 187, the House defeated a proposal for congressional public financing. 120 CONG. REC. 27,495-96 (1974). On July 19, 1978, the House defeated, by a vote of 213 to 196, a procedural motion which would have allowed members to act on congressional public financing, 124 CONG. REC. H6982 (daily ed. July 19, 1978). On May 24, 1979, the House Administration Committee refused to report a bill to provide federal funding for House general election campaigns. 125 CONG. REC. D671 (daily ed. May 24, 1979).

In the Senate, a bill providing for congressional public financing passed on April 11, 1974 by a vote of 52 to 32. 120 CONG. REC. 10,952 (1974). On August 2, 1977, the Senate abandoned its fight for congressional public financing after supporters were unable to break a 10-day filibuster. 123 CONG. REC. 26,022-23 (1977).

52. The establishment of a public financing system for congressional elections is one of the recommendations made by the President's Commission for a National Agenda for the Eighties. *See* PRESIDENT'S COMMISSION FOR A NATIONAL AGENDA FOR THE EIGHTIES, THE ELECTORAL AND DEMOCRATIC PROCESS IN THE EIGHTIES: REPORT OF THE PANEL ON THE ELECTORAL AND DEMOCRATIC PROCESS 31-34 (1980) [hereinafter cited as PRESIDENT'S COMMISSION].

imposed, according to the Supreme Court, only in the context of a public financing system.[53] A similar approach would be appropriate for congressional races. An alternative approach to overall spending limits is to impose partial spending limits. For example, restrictions could be placed on the total amount of PAC funds, on larger individual contributions, and on the use of personal funds in campaigns.

Congress should impose new limitations on PAC contributions. By a vote of 217 to 198 the House of Representatives on October 17, 1979 voted to establish additional restrictions on PAC gifts to House candidates.[54] These restrictions were to serve as one means of curbing the power of PACs before they tightened their stranglehold on politics.[55] Sponsored by Representatives David Obey (D-Wis.) and Tom Railsback (R-Ill.), the Campaign Contribution Reform Bill[56] would have reduced the limit on PAC contributions to a House candidate from $10,000 ($5,000 in a primary, plus $5,000 in a general election) to $6,000 in an election cycle. In addition, for the first time, the proposed legislation would have placed an overall limit of $70,000 on the amount that a House candidate could receive from all PACs. Although the Obey-Railsback legislation would have affected only House races, a threatened filibuster by opponents blocked its consideration in the Senate.[57]

As part of a comprehensive revision of the congressional financing system, the 97th Congress should enact legislation which would apply new limitations on PAC giving to both House and Senate campaigns similar to those contained in the Obey-Railsback bill.[58] A reduction in the contribution limit for a single PAC is necessary to curb the growing influence of individual groups. An overall limit is needed to contain the power that all of the PACs in a particular policy area can bring to bear on an issue.[59]

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53. Buckley v. Valeo, 424 U.S. 1, 53 (1976).

54. 125 Cong. Rec. H9303-04 (daily ed. Oct. 17, 1979).

55. Rep. Tom Railsback (R-Ill.) has written, "My concern is that when the level of PAC contributions threatens to become so great, and a candidate's receipt of donations so substantial, the integrity of the process is called into question. I feel that reasonable limits should be imposed." Railsback, *Congressional Responses to Obey-Railsback*, 22 Ariz. L. Rev. 667, 668 (1980).

Epstein believes that one should consider limiting PAC contributions when they constitute more than 25% of total contributions. Epstein, *The PAC Phenomenon: An Overview*, 22 Ariz. L. Rev. 355, 371 (1980). This threshold will have been crossed in the 1980 campaign.

56. H.R. 4970, 96th Cong., 1st Sess. (1979).

57. *Senate Bottles Up a Bill to Limit Contributions in Races for House*, N.Y. Times, Feb. 15, 1980, § A, at 20, col. 3; *Will the House be PAC'd?* Wash. Post, Nov. 23, 1980, § C, at 6, col. 1.

58. A PAC limitation similar to the Obey-Railsback bill was endorsed by the President's Commission for a National Agenda for the Eighties. *See* President's Commission, *supra* note 52, at 34-55.

59. As Rep. Obey has explained:

> Those limits [on individual PAC contributions] are only a partial safeguard against undue influence because PAC giving is giving with a purpose. It is money

The individual contribution limit should be increased in response to inflation and the increasing costs of political campaigns. This increase should occur as part of a restructuring of the congressional campaign finance system. As noted above, the 1974 amendments to the FECA established a $1,000 per election limit on contributions from an individual to a federal candidate. A simple adjustment to compensate for inflation since 1974 would raise the limit to $1,500; an increase beyond this amount may be appropriate in light of the soaring costs of campaigning, which have increased at a rate greater than inflation.[60]

In considering this adjustment, Congress must heed two important factors. First, an increase in the individual contribution limit will neither expand the pool of contributors nor markedly increase the amount of money available to candidates.[61] Larger individual contributions and increased participation will be truly effective only in the context of a compre-

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> given by groups who then follow their contribution with lobbying activities on behalf of their particular interests. Frequently, however, these interests coincide, such as when an issue affects an entire industry and all of the companies and labor unions in that industry . . . . When that occurs, when a large number of groups which have made substantial contributions to members are all lobbying on the same side of an issue, the pressure generated from those aggregate contributions is enormous and warps the process. It is as if they had made a single, extremely large contribution . . . . And occasionally interest groups will attempt to maximize their combined influence by collaborating in joint lobbying efforts even though some of the groups involved do not have a strong interest in the issue at hand. . . . The result of such activities is to negate the basic purpose of contribution limits on individual PACs, and the only effective way to deal with such a problem is to put an overall limit on such contributions such as is proposed in the Campaign Contributions Reform Act of 1979.

Statement of Rep. David R. Obey, Democratic Study Group (July 26, 1979), *quoted in* Wertheimer, *supra* note 26, at 622-23 n.114.

This collaboration of PAC efforts also often bridges the theoretical gap which separates business and labor. The major battles in Congress do not always pit labor against business; instead, labor and business increasingly work hand-in-hand in pursuit of the same objectives. The fight in the 96th Congress over the deregulation of the trucking industry, for instance, found the truckers and the Teamsters united in their opposition to the legislation. Similar alliances can be seen in the general areas of defense spending and environmental regulation and more narrow issues such as cargo preference legislation or the Chrysler bailout bill. *See, e.g.*, Epstein, *supra* note 31, at 149. Adamany, *supra* note 7, at 599, suggests, "If business and labor have not yet found it convenient to marry, they sleep together often enough to threaten public (though not private) morality."

60. *See, e.g.*, *infra* notes 68-69 and accompanying text.

61. Richard Conlon, staff director of the House Democratic Study Group, has found that there were only 6,259 "big givers," individuals who gave more than $750 to congressional campaigns in 1978; he estimates that even a substantial increase in the contribution limit would not yield more than an additional $2 million for congressional candidates. Conlon, *Commentary*, in PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS 185, 191-92 (M. Malbin ed. 1980). Even the Harvard Campaign Finance Study Group, which recommended an increase of the contribution limit to $3,000, "does not anticipate that the number of individuals actually contributing $3,000 will be very large." IMPACT OF THE FECA, *supra* note 40, at 8.

hensive campaign finance reform effort. Second, Congress must recognize that large individual contributions may bring special influence and access. While PAC money is more likely to be tied to organized lobbying efforts than are individual contributions, large individual contributions can play the same role. The higher the individual limit, the greater the potential threat to the integrity of the political process.

Congress should also consider expanding the role of political parties in congressional campaigns. Many political observers believe that such participation can have a steadying and leveling effect on the political process.[62] An expanded role for political parties could facilitate the recruitment of viable candidates, provide a much-needed alternative source of campaign funds, and increase party cohesiveness and unity of purpose in Congress.

Party contributions to congressional candidates, however, have been declining. In 1972, seventeen percent of the campaign funds of House candidates came from political parties; by 1978, the proportion had fallen to 4.5%.[63] In 1978 the two parties directly contributed $6.4 million to federal candidates and spent an additional $4.8 million on their behalf. In contrast, PACs contributed $35.2 million to congressional candidates during 1977-1978.[64] Federal law now provides substantial opportunities for direct party committee contributions to congressional campaigns.[65] With expenditures for House races averaging nearly $200,000 and for Senate races often reaching $1,000,000, Congress should reexamine each of these limits.[66]

In addition to other adjustments to the campaign financing system, Congress can also explore new methods for reducing the costs of campaigning, particularly in areas which give candidates and political parties direct access to voters. A major expenditure in many congressional campaigns, for

62. Malbin, for instance, suggests that "encouraging the parties to play a greater role in financing campaigns" can serve as a counterbalance to the growth of PACs. *Campaigns and Public Policy, supra* note 40, at 184. Sorauf suggests that "[i]f political parties are to beat PAC's at their own game and recapture part of their former position in campaign politics, they must command a greater share of the money needed for campaigning than they do now." Sorauf, *supra* note 40, at 460.

63. IMPACT OF THE FECA, *supra* note 40, at 2.

64. Epstein, *The PAC Phenomenon: An Overview*, 22 ARIZ. L. REV. 361 (1980). For a discussion of party giving in 1980, see Light, *Republican Groups Dominate In Party Campaign Spending*, 38 CONG. Q. 3234 (1980).

65. *See* 2 U.S.C. § 441a (1976). National and state party committees may each contribute amounts totaling either two cents multiplied by the voting age population of the state or $20,000, whichever is greater, to campaigns for U.S. Senator or U.S. Representative elected statewide. 2 U.S.C. § 441a(d)(3)(A) (1976). National and state party committees may contribute up to $10,000 to candidates for other House seats. 2 U.S.C. § 441a(d)(3)(B) (1976). An additional $17,500 may be contributed to Senate campaigns by the Democratic or Republican senatorial campaign committee or the national committee of the two parties. 2 U.S.C. § 441a(h) (1976).

In 1980, the National Republican Senatorial Committee contributed $5,893,000 to candidates; the Democratic Senatorial Campaign Committee, in contrast, contributed only $455,000 to its candidates. Cohen, *supra* note 18, at 379, 401.

66. *See* note 23 and accompanying text *supra*.

instance, is television advertising. Television has become a significant strategic resource in virtually all Senate races and many House campaigns.[67] The costs of television time, however, have increased sixty-four percent from 1972 to 1976[68] and may have jumped another forty percent from 1978 to 1980.[69]

The increase in the use of television in campaigns is not surprising, as television has become the primary source of news for most Americans.[70] Television commercial spots have established a record of effectiveness in reaching voters. For example, a study of the use of television spot advertising in a Michigan congressional race in 1974 found that a television media campaign can

> (1) increase the electorate's level of knowledge about the candidate and his featured issue positions, (2) elevate emphasized issues and attributes higher on the voters' agenda of decisional criteria, (3) stimulate the electorate's interest in the campaign, (4) produce more positive affect toward the candidate as a person, and (5) intensify polarization of evaluations of the candidate.[71]

In 1972, as part of an effort to keep campaign costs in check and to prevent advertising price gouging by TV stations, Congress amended the Communications Act to require special rates for political advertising.[72] During the forty-five days before a primary election and in the sixty days preceding a general election, candidates are entitled to "the lowest unit charge of the station for the same class and amount of time for the same period."[73] If, for example, a TV station regularly sells thirty-second prime-time spots for $1,000, but provides a special package rate of $750 for purchases of ten or more commercials, a candidate in the period immediately before an election may be charged no more than $750, even if he or she purchases only one spot.[74] During the remainder of the calendar year,

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67. WHITE, A STUDY OF ACCESS TO TELEVISION FOR POLITICAL CANDIDATES 3 (1978).

68. IMPACT OF THE FECA, *supra* note 40, at 8.

69. Leff, *Candidates' Campaign Budgets Are Squeezed by Inflation and '74 Law's Limits on Donations*, Wall St. J., Sept. 30, 1980, at 56, col. 1.

70. D. GRABER, MASS MEDIA AND AMERICAN POLITICS 3 (1980). According to the Roper Poll, TV has been the chief news source for most Americans in every year since 1959. On a daily basis, the evening news programs on the three networks reach an average audience of 56 million individuals—up five million in the last year alone. And polls since 1961 have shown consistently that television is the news medium that most people feel is most believable.

71. Atkin & Heald, *Effects of Political Advertising,* 40 PUB. OPINION Q. 216, 228 (1976).

72. Campaign Communications Reform Act, Pub. L. No. 92-225, § 103(a)(1), 86 Stat. 4 (1972) (current version at 47 U.S.C. § 315(b) (1976 & Supp. IV 1980)).

73. 47 U.S.C. § 315(b)(1) (1976 & Supp. IV 1980).

74. FEDERAL COMMUNICATIONS COMMISSION, THE LAW OF POLITICAL BROADCASTING AND CABLECASTING: A POLITICAL PRIMER 3-4, 10 (1980).

political spots may be purchased at the rates "made for comparable use of such station by other users thereof."[75]

Congress should examine the lowest unit rate rule in the light of increasing TV advertising costs and the increasing PAC presence in campaigns. For example, Congress could consider whether it would be appropriate to amend the lowest unit charge provision to provide television advertising to political candidates at a fixed percentage, perhaps fifty percent, of the lowest unit charge.[76]

Congress could also consider reducing the cost of the postage for congressional campaigns. The cost of postage alone for a first-class mailing to every household in the average congressional district is now over $35,000.[77] To enable candidates to communicate with voters via the mails, Congress could consider special campaign mailing rates (with some limitations on the number of mailings) for use by House and Senate candidates in contacting the voting-age population during the period prior to an election. This provision, similar to the reduced rate now available to political parties,[78] would enable candidates to have their views on the issues placed in the hands of voters before election day at a reduced cost.[79]

The enactment of a comprehensive campaign finance package including a partial public financing system, a reduction in the role of PACs, an increase in individual contributions and party participation, and reductions, if possible, in costs of important modes of communication is essential if Congress is to complete the reform effort begun in the 1970's. With these steps, Congress would end the double standard which now exists for federal campaign financing and substantially lessen the special interest influence in Congress which threatens to corrupt government decision making.

B. Presidential Campaign Financing

The 1974 enactment of a public financing system for presidential elections has meant that presidential campaigns are not hamstrung by several of the factors which plague congressional campaign finance. The role of PAC

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75. 47 U.S.C. § 315(b)(2) (1976 & Supp. IV 1980).

76. For a discussion of reduced cost TV rates and the role of the media in campaigns generally, *see* F. Wertheimer & R. Huwa, Has the Tree Really Fallen: The Role of Television in American Politics (Oct. 24, 1980) (unpublished paper presented at the second annual meeting of the Assoc. for Public Policy Analysis and Management, Boston, Mass.).

Congress should also consider expanding the lowest unit rate rule to apply to bona fide political parties as well. For a discussion of this amendment, see *id.* at 31.

77. For a description of the use of the mail in one congressional campaign, see Nordlinger, *L.A. Lawmaker Tries to Mail Himself Back to Washington,* Balt. Sun, Oct. 29, 1980, § A, at 4, col. 2.

78. Postal Service Act, 39 U.S.C. § 3626(e)(1) (Supp. IV 1980).

79. *See* H.R. 1951, 96th Cong., 1st Sess. (1979); M. MACCARTHY, ELECTIONS FOR SALE 190 (1972); G. THAYER, WHO SHAKES THE MONEY TREE? 247, 295 (1973).

contributions in presidential campaigns, for instance, is negligible. PACs contributed only 1.3% of the funds collected for 1980 primaries and made no direct contributions to major party general election campaigns.[80] Contributions by the candidates themselves, within the context of a public financing system, are limited to $50,000.[81] Fundamental steps to reform the presidential campaign financing system have been taken; the role of large contributions has been drastically curtailed and alternative funds have been made available to enable candidates to wage competitive campaigns without becoming indebted to special interests.

Despite these changes, further adjustments in the presidential campaign finance system are necessary. The overall expenditure ceilings of the public financing system should be increased. The public financing system established by the 1974 FECA amendments established overall expenditure ceilings for primary and general election campaigns. While the FECA includes a provision for adjustments to these limits to reflect changes in the Consumer Price Index (CPI), this measure does not necessarily reflect the increases in actual costs of goods and services used in campaigns.[82] These costs appear to have increased at a rate greater than the general inflation rate as measured by the CPI.[83] The number of presidential nominating primaries has also increased fifty percent since 1972, the baseline year used in setting the spending limit in 1974. Primaries are a significantly more expensive method of selecting delegates than either caucuses or conventions. Congress should provide for adjustments in the overall spending limits to take account of these developments.

As was said in the discussion of congressional campaign funding, the role of political parties should be expanded. A basic error was made in the FECA amendments adopted in 1974 by not authorizing a spending role for state and local parties in the presidential general election. This error was corrected to a large extent by legislation enacted by the 96th Congress.[84] As a result, state and local parties in the 1980 presidential general election were permitted to buy unlimited quantities of buttons, bumper stickers, handbills, brochures, posters, yard signs, and the like in support of a presidential nominee. They could also conduct voter registration and get-out-the-vote drives on behalf of the presidential ticket without financial limit.[85]

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80. *See* Landouette, *PAC Gifts to Presidential Candidates Include Some Political Surprises*, 12 NAT'L J. 1309-10 (1980).

81. 26 U.S.C. § 9004(d) (1976).

82. For 1980, these adjusted limits were $14,720,000 for primaries (and other pre-convention activities) and $29,440,000 for the general election. EXPENDITURE LIMITS, *supra* note 5, at 2.

83. *Id.* at 16 and Summary.

84. *See* FECA Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980) (codified in scattered sections of 2, 5, 18, 22, 26, 42 U.S.C.).

85. This authorized expansion of party activities into unlimited registration and voter turnout campaigns serves as a significant balance to similar efforts which have traditionally

Congress should conduct a thorough analysis of the 1980 campaign and consider further ways to expand the role played by national, state, and local parties in presidential elections. Such steps should be conditioned, however, on a lowering of the limits on individual and group contributions to parties to assure that party funds represent broad-based financing. Reduced contribution levels, for example, could be accompanied by increases in the amounts national party committees are permitted to spend for their presidential nominees. Congress may also wish to expand state and local party activities by permitting these groups to engage in direct spending in support of presidential nominees, subject to state-by-state spending ceilings.

Congress should also provide equitable funding for third party and independent candidates. The system enacted in 1974 provides initial grants of funds for the presidential general election based on the percentage of votes received in preceding campaigns. In addition, the FECA also provides for the post-election reimbursement of third-party candidates who exceed the voting percentages won by their parties in the past elections, and of new party candidates who receive more than five percent of the vote.[86] In 1980, John Anderson became the first non-major party candidate to qualify for federal funds in the general election, but did not receive any public money until after the election.

Congress should amend the FECA to establish a system whereby minor party and independent candidates who qualify by raising a threshold sum would be eligible to receive matching funds during the course of the general election.[87] This system would weed out frivolous candidates but would enable serious minor- and new-party candidates to receive funds during the campaign.[88]

C. Independent Expenditures

While fundamental shortcomings in the congressional campaign financing system were apparent at the time of the passage of the 1974 FECA

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been undertaken by labor unions. For a discussion of the impact of these union efforts—and the potential for corporate voter registration and turnout activities, *see* Bolton, *Constitutional Limitations on Restricting Corporate and Union Political Speech*, 22 ARIZ. L. REV. 373 (1980); *Corporate Political Action Committees Multiply; Labor's Growth Slows*, CONG. INSIGHT, Nov. 14, 1980, at 4; Epstein, *supra* note 31 at 126, 144-46.

86. FECA Amendments of 1974, Pub. L. No. 93-443, § 404(a), (b), (c)(1), 88 Stat. 1291-92 (amending 26 U.S.C. §§ 9002-9004 (Supp. IV 1974)).

87. Such a public financing system was used in the New Jersey gubernatorial campaign of 1977 and is included as an alternative funding system in the Michigan public financing statute. *See* NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION, PUBLIC FINANCING IN NEW JERSEY (1978).

88. As an alternative, Tidmarch has proposed the creation of a federal loan program for third-party and independent candidates, with loan forgiveness linked to the number of votes received. *See* Tidmarch, *Extending Public Financing of Campaigns to Third-Party and Independent Candidates*, N.Y. Times, Aug. 21, 1980, § A, at 37, col. 1.

amendments, and the experience of the 1976 campaign highlighted the need for further adjustments to the presidential campaign financing system, the 1980 campaign has brought to the forefront an additional problem area: independent expenditures. The 1974 amendments to the FECA included a provision establishing a $1,000 limit on spending undertaken without consultation or cooperation with a candidate or a candidate's representative.[89] The purpose of this limit was to prevent violations of the Act's contribution limits under the guise of independent expenditure efforts. In the *Buckley* decision, the Supreme Court held that this provision violated first amendment rights.[90] In reaching its decision, the Court stated that independent expenditures "[do] not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions."[91]

In the 1978 campaigns, independent expenditure efforts were a relatively minor feature in the federal election landscape.[92] But in 1980, independent expenditure efforts took on a new significance. At the outset of the 1980 campaign, the National Conservative Political Action Committee (NCPAC) announced a million-dollar independent expenditure campaign against targeted incumbent Democratic senators. By early summer, $969,829 had been spent on independent expenditure efforts in Senate campaigns, with NCPAC responsible for the bulk of the spending.[93] NCPAC has already announced its tentative Senate target list for 1982 and anticipates spending more than $2 million as independent expenditures.[94]

Similarly, more than a half dozen groups announced their intention to make independent expenditures in the presidential election on behalf of Ronald Reagan. Two of these groups, Americans for Change and Americans for an Effective Presidency, initially announced spending goals totalling $40 million. Although these groups fell far short of their original goals, independent expenditure efforts on behalf of the Reagan presidential campaign by all groups during 1979 and 1980 apparently exceeded $10 million.[95]

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89. Pub. L. No. 93-443, § 101, 88 Stat. 1263 (1974) (codified at 18 U.S.C. § 608(e)(1) (1976)) (repealed 1976).

90. Buckley v. Valeo, 424 U.S. 1, 39-51 (1976). The specific provision which was struck down limited independent expenditure efforts in congressional campaigns. For a discussion of limits on independent expenditures in publicly financed campaigns, *see* notes 98-99 and accompanying text *infra*.

91. 424 U.S. at 46.

92. For House races, in the 1977-1978 election cycle, independent expenditures totaled only $143,162; in Senate races, $168,125 was spent independently. *Washington Focus*, 7 CAMPAIGN PRAC. REP. 1 (1980).

93. *Id.* NCPAC estimates spending a total of $1.2 million in independent expenditure activities in 1980 Senate campaigns. Walsh, *Conservative Unit Targets 20 Senators in '82*, Wash. Post, Nov. 12, 1980, § A, at 10, col. 1.

94. Roberts, *Anti-Liberal Group Has Eye on '82 As G.O.P. Also Begins to Organize*, N.Y. Times, Nov. 12, 1980, § A, at 27, col. 1; Walsh, *supra* note 93, at 10.

95. Records filed with the Federal Election Commission reveal the following levels of independent expenditure on behalf of the Reagan campaign during the 1978-1980 election cycle:

Independent expenditures can be a two-edged sword. They can wind up hurting the candidates they are designed to help. Heavy negative advertising can backfire, for example, and truly independent and uncoordinated expenditures can send out messages which contradict the favored candidate's own efforts. Independent expenditure efforts by PACs nevertheless are likely to be a significant feature of the political landscape of the 1980's.

While the Court held in *Buckley* that a limit on independent expenditures in congressional races is unconstitutional,[96] the validity of a limit on these efforts in publicly financed campaigns is presently being litigated in the courts.[97] Additional steps could be taken to respond to the increasing influence of these independent expenditures. First, public financing of congressional campaigns would enlarge the financial base of candidates (by matching small contributions), thereby enabling candidates to respond to the negative advertising which characterized the independent expenditure efforts of 1980. Second, proposals to reduce communications costs for federal candidates and political parties—but not for independent groups—could give congressional and presidential candidates a relative advantage over independent expenditure campaigns. Third, increasing the financial role of parties in campaigns could serve two purposes: citizens would be encouraged to give to parties rather than to independent expenditure groups, and parties would be able to mount comprehensive campaigns in support of their nominees. Fourth, the *Buckley* decision specified that

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Americans for an Effective Presidency	$1.2 million
Americans for Change	0.7 million
Fund for a Conservative Majority	1.9 million
National Conservative Political Action Committee	2.9 million
North Carolina Congressional Club	3.5 million

The North Carolina Congressional Club later reported to the FEC that it spent $4.6 million in its pro-Reagan campaign, the largest independent expenditure campaign ever mounted. N.Y. Times, Sept. 3, 1981, § A, at 17, col. 6.

96. 424 U.S. at 51.

97. On July 1, 1980, Common Cause filed a suit in federal district court against Americans for Change, a group organized to make independent expenditures on behalf of Governor Reagan. The suit was predicated on two claims: first, that an existing provision of the public financing law, 26 U.S.C. § 9012(f), unchallenged in *Buckley*, constitutionally prohibited independent expenditures by organized political committees on behalf of publicly financed candidates; and second, that regardless of this provision, the proposed expenditures were not "independent" of the Reagan campaign within the meaning of the Supreme Court's ruling. Common Cause v. Schmitt, Civ. No. 80-1609 (D.D.C. filed July 1, 1980). The FEC followed this lawsuit with one of its own, which basically reiterated the first argument. Federal Election Commission v. Americans for Change, Civ. No. 80-1754 (D.D.C. filed July 15, 1980). On August 28, both cases were dismissed. Common Cause v. Schmitt, 512 F. Supp. 489, 491 (D.D.C. 1980) (three-judge court). An equally divided Supreme Court affirmed the district court decision without issuing an opinion. 50 U.S.L.W. 4168 (U.S. Jan. 19, 1982) (O'Connor, J., not participating). Common Cause has filed a complaint with the FEC regarding the issue of "independence" on the part of the groups involved. Common Cause v. Americans for Change, complaint filed before FEC, Sept. 26, 1980.

independent expenditure activities are immune from regulation only if they are not coordinated with candidates or the agents of candidates. Efforts should be undertaken to clarify the standards to be used in assessing the independence of an expenditure campaign.[98]

D. The Federal Election Commission

At the same time that the rules for congressional and presidential campaign financing are examined, attention also must be given to the agency responsible for enforcing these important statutes, the Federal Election Commission. In examining the accomplishments and problem areas associated with the election law, the performance of the institution responsible for administering the law must be examined as well as the rules governing its activities.[99]

The FEC appears to have fulfilled its basic goals to date. Information on the finances of committees and candidates has been available, public funds for presidential candidates have been disbursed, and the bans on corporate and labor contributions seems to have been honored. Yet there have been problems, at times very serious ones, that have undermined the credibility of the Commission. For example, nominees for the Commission, although appointed by the President, with the advice and consent of the Senate, have generally been individuals with close ties to key figures in Congress. This has led to the appointment in most cases of party loyalists, a practice which can transform the bipartisan commission into a deadlocked agency.[100] Moreover, the Commission and its staff have lacked overall direction and policy-oriented administration. As a result, the FEC too frequently bogs down in detail, fails to set priorities, and moves too slowly in resolving critical problems.[101] The Harvard Campaign Finance Study Group, for example, reviewed the Commission's decision-making processes and concluded that "[t]he FEC has emphasized the small, picayune details of administering the law, while passing over larger and systematic ques-

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98. A complaint filed with the Federal Election Commission by Common Cause on September 26, 1980, included a proposed checklist to be used to determine if an independent expenditure effort was in fact separate from and uncoordinated with a campaign. Included in the checklist were:

- membership of committees and steering bodies;
- conscious parallelism of activities;
- indirect communications;
- interlocking consultants, vendors, and suppliers;
- coordinated events;
- use of candidate's name; and
- use of material provided by a candidate.

99. *See generally* COMMON CAUSE, STALLED FROM THE START, *supra* note 3.
100. *Id.* at 26-30.
101. *Id.* at 30-34, 46-49.

tions." The Harvard report also noted, however, that these shortcomings were "a natural byproduct of the FEC's relationship to the Congress."[102]

As part of a comprehensive review of federal election laws, attention must be paid to these and other aspects of the FEC which may hinder the Commission's ability to administer these statutes efficiently and effectively. Changes in both the structure and administration of the Commission may be necessary to improve the operation of the agency.

III

SUMMARY

The campaign reforms of the 1970's have done much to improve this nation's campaign financing system. Where fundamental changes have been enacted—such as the presidential public financing system—these reforms have worked extremely well. The system of funding congressional campaigns, in contrast, has not been fundamentally improved and remains, as John Gardner noted seven years ago, a source of mischief, corruption, and public alienation.[103] We must take the steps needed to change the system of funding congressional campaigns, most importantly by enacting public financing. The political process must also come to grips with the new challenge raised by independent expenditures and the ongoing challenge of effectively enforcing the election laws. It is essential that we complete the cycle of compaign finance reform begun in the 1970's if our governmental institutions are to move beyond the fragmentation that grips us today and tackle successfully the complex problems of the 1980's.

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102. IMPACT OF THE FECA, *supra* note 40, at 114-15.
103. *Gardner Testimony, supra* note 1.