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MEMORANDUM

TO: Commissioners

THROUGH: Alec Palmer, Staff Director AP

FROM: Greg J. Scott, Assistant Staff Director, Information Division GS to GJS

George Smaragdis, Deputy Assistant Staff Director for Publications, GS
Information Division

Alex Knott, Senior Writer, Information Division AK

SUBJECT: Forty Year Report

Attached for your approval by 72-hour tally vote is the final draft of the Forty Year Report. This draft brings together the chapters that were circulated for your review three weeks ago. A cover, table of contents, and graphs or charts depicting statistical information will be included in the final publication.

Should you have any questions, please contact Greg Scott (x1069), George Smaragdis (x1097) or Alex Knott (x1181). Thank you for your assistance with this project.

Attachment

Introduction

Forty years ago, Congress created the Federal Election Commission (FEC) to administer and enforce the Federal Election Campaign Act (FECA) — the statute that governs the financing of federal elections. The regulation of federal campaigns emanated from a congressional judgment that our representative form of government needed protection from the corrosive influence of unlimited and undisclosed political contributions. The laws were designed to ensure that candidates in federal elections were not — and did not appear to be — beholden to a narrow group of people. Taken together, it was hoped, the laws would sustain and promote citizen confidence and participation in the democratic process.

Guided by this desire to protect the fundamental tenets of democracy, Congress created an independent regulatory agency — the FEC — to disclose campaign finance information; to enforce the limits, prohibitions and other provisions of the election law; to interpret the FECA through the promulgation of regulations and the issuance of advisory opinions; and to administer the public funding of presidential elections.

Fulfilling that mission places the agency at the center of constitutional, philosophical and political debate. On one hand, the Commission must administer, interpret and enforce the FECA, which the Supreme Court has said serves a legitimate governmental interest. On the other hand, the Commission must remain mindful of the constitutional freedoms of speech and association, and the practical implications of its actions. The Commission, of course, does not bear this responsibility alone. Congress and the courts must also balance these competing interests.

This tension between valid governmental interests and certain constitutional guarantees frames many of the issues discussed in this report. While the report commemorates the Commission's 40th anniversary, it does not chronicle the entire 40-year period. Instead, it offers a current snapshot of

the agency, focusing on significant Commission actions of recent years.

- Chapter 1 provides an historical context for the report.
- Chapter 2 looks at the Commission's administration, enforcement, interpretation and defense of the FECA.
- Chapter 3 examines some of the key issues the Commission is currently debating or has recently resolved.
- Chapter 4 offers FEC statistics to supplement the continuing national debate on the place of party committees in the electoral process, the influence of independent organizations on the electoral process and the feasibility of public funding.

What emerges from this discussion is a portrait of an agency that has accomplished much, even as it has grappled with difficult issues whose resolution has helped define the proper balance between governmental interests and constitutionally protected political activity. The Commission's administration and enforcement of the FECA have also helped ensure the continued legitimacy of our representative form of government.

Chapter 1: Historical Context

The origins of campaign financing in the United States date back to 1791, when groups supporting and opposing Treasury Secretary Alexander Hamilton published competing newspapers designed to sway the electorate. These minimal expenditures set the tone for campaigns over the next several decades.

In the presidential election of 1832, however, the financing of campaigns changed. The Bank of the United States, whose charter-renewal was threatened by President Andrew Jackson, spent heavily to elect Senator Henry Clay, who supported renewal of the bank's charter. The bank's tactics backfired, however, when Jackson characterized it as a "money monster," and won reelection.

During the 1840s and 50s, the size of the electorate grew and so did the amount of campaign spending. Still, during the pre-Civil War period, "costs were relatively moderate, corruption ... was the exception rather than the rule, fundraising was conducted in an amateur fashion, and the alliance between economic interests and politicians, though growing, was loose and flexible."[1] By contrast, the postwar years have been called the most corrupt in U.S. history. Historian Eugene H. Roseboom describes financier Marcus A. Hanna's fundraising for President William McKinley's 1896 campaign as follows:

"For banks the [campaign finance] assessment was fixed at one quarter of one percent of their capital. Life insurance companies contributed liberally, as did nearly all the great corporations. The Standard Oil Company gave $250,000 to Hanna's war chest. The audited accounts of the national committee revealed collections of about $3,500,000."[2]

Early Reform

The drive to institute comprehensive campaign finance reform began around the turn of the century,

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[1] Thayer, *Who Shakes the Money Tree*, p. 35.

[2] CQ, Dollar Politics, p. 3.

when the muckrakers revealed the financial misdeeds of the 1896 election.[3] Their stories of corporations financing candidates' campaigns in hopes of influencing subsequent legislation prompted President Theodore Roosevelt to proclaim: "All contributions by corporations to any political committee or for any political purpose should be forbidden by law." In 1907, Congress passed the Tillman Act, which prohibited corporations and national banks from contributing money to federal campaigns. Three years later, Congress passed the first federal campaign finance disclosure legislation. Originally, the law applied only to House elections, but Congress amended the law in 1911 to cover Senate elections as well, and to set spending limits for all congressional candidates.

The Federal Corrupt Practices Act of 1925, which applied to general election activity only, strengthened disclosure requirements and increased expenditure limits. The Hatch Act of 1939 and its 1940 amendments asserted the right of Congress to regulate primary elections and included provisions limiting contributions and expenditures in congressional elections. The Taft-Hartley Act of 1947 barred both labor unions and corporations from making expenditures and contributions in federal elections.

These legislative initiatives, taken together, sought to:

- Limit contributions to ensure that wealthy individuals and special interest groups did not have a disproportionate influence on federal elections;
- Prohibit certain sources of funds for federal campaign purposes;
- Control campaign spending, which tends to fuel reliance on contributors and fundraisers; and
- Require public disclosure of campaign finances to deter abuse and to educate the electorate.

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[3] The first campaign finance law actually predates these practices. Congress passed legislation in 1867 that prohibited federal officers from soliciting Navy Yard workers for contributions.

None of these laws, however, created an institutional framework to administer and enforce the campaign finance provisions effectively. As a result, those provisions were largely ignored. The laws had other flaws as well. For example, spending limits applied only to committees active in two or more states. Further, candidates could avoid the spending limit and disclosure requirements altogether because a candidate who claimed to have no knowledge of spending on his behalf was not liable under the 1925 Act.

When Congress passed the more stringent disclosure provisions of the 1971 Federal Election Campaign Act, the shortcomings of the earlier laws became apparent. In 1968, still under the old law, House and Senate candidates reported spending $8.5 million, while in 1972, after the passage of the FECA, spending reported by congressional candidates jumped to $88.9 million.[4]

The 1971 Election Laws

The Federal Election Campaign Act of 1971 (P.L. 92-225), together with the 1971 Revenue Act (P.L. 92-178), fundamentally changed the federal campaign finance laws. The FECA, effective April 7, 1972, not only required full reporting of campaign contributions and expenditures, but also limited spending on media advertisements and limited spending from candidates' personal funds.[5] (These limits were later repealed to conform with judicial decisions.)

The FECA also provided the basic legislative framework for corporations and labor unions to establish separate segregated funds,[6] popularly referred to as PACs (political action committees). Although the Tillman Act and the

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[4] Congressional Quarterly Weekly Report, Vol. xxvii, No. 49, December 5, 1969, p. 2435; Clerk of the House, "The Annual Statistical Report of Contributions and Expenditures Made During the 1972 Election Campaigns for the U.S. House of Representatives" (1974), p. 161; Secretary of the Senate, "The Annual Statistical Report of Receipts and Expenditures Made in Connection with Elections for the U.S. Senate in 1972" [undated], p. 33.

[5] "Contribution" is defined in 52 U.S.C. 30101(8) and 11 CFR 100.51 to 100.57. "Expenditure" is defined in 52 U.S.C. 30101(9) and 11 CFR 100.110 to 100.114

[6] "Separate segregated fund" is described at 52 U.S.C. 30118(b) and 11 CFR 114.5.

Taft-Hartley Act of 1947 banned direct contributions by corporations and labor unions to influence federal elections, the FECA provided an exception whereby corporations and unions could use treasury funds to establish, operate and solicit voluntary contributions for the organization's PAC. These voluntary donations from individuals could then be used to contribute to federal campaigns.

Under the Revenue Act — the first of a series of laws designed to implement federal financing of presidential elections — citizens could check a box on their tax forms authorizing the federal government to use one of their tax dollars to finance presidential campaigns in the general election.[7] Congress implemented the program in 1973 and, by 1976, enough tax money had accumulated to fund the 1976 presidential election – the first publicly funded federal election in U.S. history.

Like its predecessors, the Federal Election Campaign Act of 1971 did not provide for a single, independent body to monitor and enforce the law. Instead, the Clerk of the House, the Secretary of the Senate and the Comptroller General of the United States, head of the General Accounting Office (GAO), monitored compliance with the FECA. The Justice Department was responsible for prosecuting violations of the law referred by the three supervisory officials. Following the 1972 elections, however, the Justice Department prosecuted few of the 7,100 cases referred to it.[8]

1974 Amendments

In 1974, following the documentation of campaign abuses in the 1972 presidential elections, a consensus emerged to create an independent body to ensure compliance with the campaign finance laws. Comprehensive amendments to the FECA

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[7] In 1966, Congress enacted a law to provide for public funding of Presidential elections, but suspended the law a year later. It would have included a taxpayers' checkoff provision similar to that later embodied in the 1971 law.

[8] Comptroller General of the United States, "Report of the Office of Federal Elections of the General Accounting Office in Administering the Federal Election Campaign Act of 1971" (February 1975). pp. 23 and 24.

(P.L. 93-443) established the Federal Election Commission, an independent agency to assume the administrative functions previously divided between congressional officers and GAO. The Commission was given jurisdiction in civil enforcement matters, authority to write regulations and responsibility for monitoring compliance with the FECA.

Additionally, the amendments transferred from GAO to the Commission the function of serving as a national clearinghouse for information on the administration of elections.

Under the 1974 amendments, the President, the Speaker of the House and the President pro tempore of the Senate each appointed two of the six voting members of the newly created Commission. The Secretary of the Senate and the Clerk of the House were designated as nonvoting, ex officio Commissioners. The first Commissioners were sworn in on April 14, 1975.

The 1974 amendments also expanded the public funding system for presidential elections. The amendments provided for partial federal funding, in the form of matching funds, for presidential primary candidates and also extended public funding to political parties to finance their presidential nominating conventions.

Complementing these provisions, Congress also enacted strict limits on both contributions to and expenditures by candidates for federal office.[9] Expenditures by other persons relative to a candidate were also limited. Another amendment relaxed the prohibition on contributions from federal government contractors. The FECA, as amended, permitted corporations and unions with federal contracts to establish and operate PACs.

Buckley v. Valeo

The constitutionality of key provisions of the 1974 amendments was immediately challenged in a lawsuit filed by Senator James L. Buckley (Conservative Party, New York) and Eugene

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[9] "Political committee" is defined in 52 U.S.C. 30101(4) and 11 CFR 100.5.

McCarthy (former Democratic Senator from Minnesota) against the Secretary of the Senate, Francis R. Valeo. The Supreme Court handed down its ruling on January 30, 1976. *Buckley v. Valeo*, 424 U.S. 1 (1976).

In its decision, the Court upheld contribution limits because they served the government's interest in safeguarding the integrity of elections by preventing even the appearance of corruption of public officials. However, the Court overturned the expenditure limits, stating: "It is clear that a primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, groups and candidates. The restrictions ... limit political expression at the core of our electoral process and of the First Amendment freedoms."[10] Acknowledging that both contribution and spending limits had First Amendment implications, the Court stated that the new law's "expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions."[11] The Court implied, however, that the expenditure limits placed on publicly funded candidates were constitutional because presidential candidates were free to disregard the limits if they chose to reject public financing; later, the Court affirmed this ruling in *Republican National Committee v. FEC*, 445 U.S. 955 (1980).

The Court also sustained other public funding provisions and upheld disclosure and recordkeeping requirements. However, the Court found that the method of appointing FEC Commissioners violated the constitutional principle of separation of powers, since Congress, not the President, appointed four of the Commissioners, who exercised executive powers.[12] As a result,

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[10] *Buckley*, 424 U.S. at 39 (citing *Williams v. Rhodes*, 393 U.S. 23, 32 (1968)).

[11] *Id.* at 23.

[12] Similarly, in its 1993 decision in *FEC v. NRA Political Victory Fund*, the U.S. Court of Appeals for the District of Columbia ruled that the presence of two congressionally appointed *ex officio* members on the Commission "violate[d] the Constitution's separation of powers." 6 F.3d 821, 822 (D.C. Cir. 1993). In compliance with the court's decision, the Commission reconstituted itself as a six-member body, comprising only the presidentially appointed Commissioners. As a precaution, the reconstituted Commission ratified all of its previous decisions to ensure uninterrupted enforcement of the FECA. The

beginning on March 22, 1976, the Commission could no longer exercise its executive powers.[13] The agency resumed full activity in May, when, under the 1976 amendments to the FECA, the Commission was reconstituted and the President appointed six Commission members, who were confirmed by the Senate.

1976 Amendments

In response to the Supreme Court's decision in *Buckley*, Congress again revised the campaign finance legislation. The new amendments, enacted on May 11, 1976, repealed the expenditure limits (except for candidates who accepted public funding) and revised the provision governing the appointment of Commissioners. The 1976 amendments also added specific contribution limits on giving to national party committees and to any other federal political committee.

Among the 1976 amendments were provisions to limit the scope of PAC fundraising by corporations and labor organizations. Preceding this curtailment of PAC solicitations, the FEC had issued an advisory opinion, AO 1975-23 (Sun Oil Co.), confirming that the 1971 law permitted a corporation to use treasury money to establish, operate and solicit contributions to a PAC. The opinion also permitted corporations and their PACs to solicit the corporation's employees as well as its stockholders. The 1976 amendments, however, put significant restrictions on PAC solicitations, specifying who could be solicited and how solicitations would be conducted. In addition, a single contribution limit was adopted for all PACs established by the same union or corporation.

1979 Amendments

Commission petitioned the Supreme Court for a *writ of certiorari* in the case, but in December 1994, the Court dismissed the Commission's petition, concluding that the agency lacked statutory authority to seek Supreme Court review on its own in cases arising under the FECA. The Court's decision left standing the appeals court ruling. (*FEC v. NRA Political Victory Fund,* 513 U.S. 88 (1994)).

[13] The Supreme Court stayed its judgment concerning Commission powers for 30 days; the stay was extended once.

Building upon the experience of the 1976 and 1978 elections, Congress made further changes in the law. The 1979 amendments to the FECA (P.L. 96-187), enacted on January 8, 1980, included provisions that simplified reporting requirements, encouraged party activity at state and local levels and increased the public funding grants for presidential nominating conventions.

Other Amendments

Throughout the 1980s and 90s and continuing to 2001, Congress adopted several amendments of limited scope, including provisions to:

- Ban honoraria for federal officeholders;
- Repeal the "grandfather clause" that had permitted some Members of Congress to convert excess campaign funds to personal use; and
- Increase funding for national nominating conventions.

In addition, Congress enacted legislation that:

- Instituted a program for electronic filing of campaign finance reports;
- Created a program for administrative fines dealing with reporting violations;
- Permitted candidates to access credit from their brokerage accounts or similar lines of credit;
- Assigned significant new administrative duties to the Commission under the National Voter Registration Act;[14] and
- Increased the tax checkoff for the Presidential Election Campaign Fund from $1 to $3.

Soft Money

In the 1996 election cycle, the major national party committees experienced significant increases in financial activity, a large portion of which was due to the dramatic increase in funds raised outside the limits and prohibitions of federal law, otherwise known as nonfederal or "soft" money. Compared to

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[14]These responsibilities were transferred to the newly created Election Assistance Commission under the Help America Vote Act of 2002.

the 1992 presidential cycle, the Republican national committees' soft money receipts more than doubled and the Democratic national committees' soft money receipts tripled, exceeding their total federal receipts for the cycle.

While these funds could not legally be spent to support or oppose federal candidates, the parties nonetheless used soft money to fund "issue ads" that portrayed their candidates more favorably than their opponents. Often, corporations and unions would themselves finance issue ads ostensibly to influence legislation, but with a fairly clear election-influencing slant.

The way soft money was raised caused at least as much concern among reformers as the way it was spent. The parties frequently asked federal candidates and officeholders to help raise large soft money donations, offering donors access to current and future federal legislators and raising concerns about potential corruption or the appearance of corruption.

The Bipartisan Campaign Reform Act

In an effort to address concerns about the effects of soft money and issue ads on the federal election process, Congress passed a comprehensive reform bill called the Bipartisan Campaign Reform Act of 2002 (BCRA). President George W. Bush signed the BCRA into law on March 27, 2002. Among other things, the law prohibited national party committees from raising or spending soft money. It also placed certain limitations on the ability of federal candidates and officeholders to raise or spend soft money.

In addition to banning soft money fundraising by and for national parties, the BCRA also restricted state and local party committees' use of nonfederal funds to pay for certain federal election activities, such as voter registration and get-out-the-vote efforts in connection with a federal election.

With respect to issue advertising, the BCRA prohibited corporations and unions from funding broadcast ads that refer to a federal candidate in

close proximity to that candidate's election (*i.e.*, within 30 days prior to the primary and 60 days prior to the general). The law required other groups not registered with the FEC to disclose their payments for these types of ads (referred to as electioneering communications), and the source of the funds used. The ads also had to include a disclaimer identifying the sponsor.

The BCRA's comprehensive reach extended to numerous aspects of the FECA in areas such as contribution limitations, party committee activity, independent spending, compliance matters, permissible use of campaign funds and contributions by minors and foreign nationals.

McConnell v. FEC

The BCRA was challenged in court within days of its passage into law. On March 27, 2002, Senator Mitch McConnell and the National Rifle Association each filed a complaint with the U.S. District Court for the District of Columbia, challenging the constitutionality of several provisions of the BCRA. The Commission and the Office of the Solicitor General of the Department of Justice, defended the BCRA. The Supreme Court handed down its ruling on December 10, 2003, upholding most of the challenged provisions of the BCRA, including its two principal features: the control of soft money and the regulation of electioneering communications. The Court found unconstitutional other BCRA provisions banning contributions from minors and requiring party committees to choose whether to make coordinated or independent expenditures on behalf of their nominees.[15]

Soft Money Ban

In upholding the soft money ban, the Court noted that the "record is replete with examples of national party committees' peddling access to

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[15] *McConnell v. FEC*, 540 U.S. 93, 106, 231 (2003).

federal candidates and officeholders in exchange for large soft-money donations."[16]

The Court also upheld the BCRA's limits on state and local party committees' use of soft money for activities affecting federal elections, finding that this provision was closely drawn to match the governmental interest of preventing corruption and the appearance of corruption.

Electioneering Communications and Express Advocacy

The electioneering communications provisions were also upheld by the Court. The plaintiffs had claimed that *Buckley v. Valeo* drew a constitutionally mandated line between express advocacy, which contains "magic words" such as "vote for" or "vote against," and the more ambiguous language of issue advocacy. The Court disagreed, finding that the express advocacy restriction was not a constitutional command: "both the concept of express advocacy and the class of magic words were born of an effort to avoid constitutional problems of vagueness and overbreadth in the statute before the *Buckley* Court."[17]

The Court rejected the plaintiffs' claims that arguments in support of the long-standing ban on express advocacy communications financed by corporations and unions cannot be applied to the larger quantity of speech captured in the definition of electioneering communication. The Court went on to say that "issue ads broadcast during the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy,"[18] adding that the "justifications for regulating express advocacy apply equally to those ads if they have an electioneering purpose, which the vast majority do."[19]

In *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), the Court narrowed application of

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[16] *McConnell*, 540 U.S. at 150.
[17] *McConnell*, 540 U.S. at 103.
[18] *Id* at 99.
[19] *Id* at 13

the ban on corporate electioneering communications to only those communications that are the "functional equivalent of express advocacy," meaning that they are "susceptible of no other reasonable interpretation other than as an appeal to vote for or against a specific candidate."[20]

Citizens United v. FEC

On January 21, 2010, the Supreme Court struck down the prohibition on corporate funding of independent expenditures and electioneering communications as a violation of the First Amendment. The Court concluded that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." *Citizens United v. FEC*, 558 U.S. 310, 357 (2010).

The decision did not affect the ban on corporate contributions to federal campaigns, nor did it alter any disclaimer or disclosure requirements. The Court determined that, although those requirements may burden the ability to speak, they impose no ceiling on campaign activities and do not prevent anyone from speaking.

Subsequent lower court decisions in *SpeechNow.org v. FEC*,[21] and *Carey v. FEC*[22] relied on the high court's opinion to declare the limits on contributions to committees financing independent expenditures unconstitutional. This led to the birth of so-called Super PACs and Hybrid PACs that fund independent expenditures using unlimited contributions, including donations from corporations and labor organizations.

Other Post-BCRA Litigation and Legislation

Other significant post-BCRA litigation struck down the so-called Millionaire's Amendment that had increased contribution limits for candidates whose opponent spent large sums of personal funds

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[20] *Id.* at 470

[21] *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

[22] *Carey v. FEC*, 791 F.Supp.2d 121 (D.D.C. 2011).

(*Davis*), invalidated some of the FEC's soft money allocation rules (*EMILY's List*) and eliminated the overall biennial limits on individual contributions to federal candidates and committees (*McCutcheon*).

Meanwhile, on Capitol Hill, a scandal involving a high-profile Washington lobbyist prompted Congress to pass the Honest Leadership and Open Government Act of 2007 (HLOGA).[23] Among other things, the HLOGA required campaigns and party committees to disclose contributions bundled by lobbyists. The law also prohibited House candidates from traveling on private jets and restricted Senate and presidential candidates' ability to do so.

In 2014, Congress passed another significant piece of campaign finance legislation that discontinued public funding for presidential nominating conventions.[24] Several months later, another new law allowed national party committees to establish separate accounts with higher contribution limits to defray expenses for presidential nominating conventions, election recounts and other legal proceedings and headquarters buildings.

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[23] The Honest Leadership and Open Government Act of 2007 (HLOGA)(P.L. 110–81, 121 Stat. 735)

[24] Gabriella Miller Kids First Research Act (P. L. No. 113-94),

Chapter 2: Administering, Interpreting, Enforcing and Defending the FECA

The Federal Election Campaign Act (FECA) governs the financing of elections for federal office. It limits the sources and amounts of funds used to support candidates for federal office, requires disclosure of campaign finance information and—in tandem with the Primary Matching Payment Act and the Presidential Election Campaign Fund Act—provides for the public funding of presidential elections.

As the agency charged with administering and enforcing the FECA, the Federal Election Commission has four major responsibilities:

- Providing disclosure of campaign finance information;
- Ensuring that candidates, committees and others comply with the limitations, prohibitions and disclosure requirements of the FECA;
- Administering the public funding of presidential elections; and
- Interpreting and defending the FECA.

This chapter highlights the Commission's stewardship of the FECA, focusing on recent improvements the agency has made in carrying out its responsibilities.

Outreach and Disclosure

For 40 years, the FEC has prided itself in providing outstanding service to the public. The commitment to serving the public is, perhaps, most evident in the agency's efforts to encourage voluntary compliance with the FECA and to facilitate public access to campaign finance data. This section demonstrates how the agency's outreach and disclosure programs serve the public.

Outreach

For political committees, outreach begins early. A committee's first contact with the FEC usually takes

place through the agency's website or its toll-free information hotline. When committees call the hotline, they receive guidance on how to comply with the law and regulations. Staff explains the requirements of the FECA and may send the committee a registration packet or direct them to the appropriate forms and publications online.

When a committee registers, the Commission assigns it an identification number and enters its information into the FEC database. Almost immediately, the committee's registration documents are made available in the Commission's Public Records Office and on the Commission's website—FEC.gov. The committee is also automatically added to the mailing list for all official notices and correspondence from the Commission, including reporting reminders sent prior to filing deadlines and failure to file notices if the committee misses a deadline.

As questions about the FECA arise, committee staff can choose from a variety of FEC services designed to help them understand the law and voluntarily comply with its provisions. (Most of these services are available not just to committees, but to anyone interested in learning about the campaign finance law.) FEC Communications Specialists answer questions about the law by phone and email, and Campaign Finance Analysts, who review the actual reports filed by committees, help committee staff with any reporting issues they may encounter. The analysts also offer guidance on how to file electronically using the Commission's "FECFile" software, which is made available to committees at no charge. Every committee that files with the FEC is assigned its own Campaign Finance Analyst in the agency's Reports Analysis Division (RAD). Committee staff can also attend campaign finance law webinars and conferences, watch instructional videos online and consult FEC publications and online FAQs that explain particular aspects of the law.

To further assist committees, the Commission posts weekly "Tips for Treasurers" both on FEC.gov and on a Real Simple Syndication

(RSS) feed. These timely tips—along with the agency's online Record newsletter—help filers stay current on all of the latest FEC news.

Committees and members of the public can also subscribe to FECMail to receive email notifications when any new information is posted on the FEC's website. Subscribers simply choose the web pages they would like to monitor and the system does the rest.

Interpreting the FECA

Rulemaking

The Commission implements the various provisions of the FECA and its amendments through its rulemaking process. With assistance from the Office of General Counsel's Policy Division, the Commission issues notices of proposed rulemaking (NPRMs), collects, reviews and analyzes comments on the NPRMs, conducts hearings and promulgates final rules with explanations and justifications.

In recent years, many of the Commission's most notable rulemakings have come in response to court decisions and have often generated significant public interest. For instance, in February 2015, the Commission received more than 32,000 written comments and heard testimony from more than 60 witnesses in response to an Advance Notice of Proposed Rulemaking (ANPRM) on whether to revise regulations in light of the Supreme Court's April 2014 decision in *McCutcheon, et al. v. FEC* that struck down the overall biennial limits on individual contributions.

The agency has encouraged this type of public engagement in the rulemaking process, often through its website. In February 2011, the Commission launched a new online rulemaking system that offers the public easy access to rulemaking documents, as well as an opportunity to submit comments online. Additionally, the Commission now offers live video streaming of its public meetings, complete with captions for the hearing impaired, so the public can watch the

Commissioners consider regulations and other policy matters.

Advisory Opinions

Advisory opinions (AOs) are official Commission responses to questions regarding the application of federal campaign finance law to specific factual situations In accordance with the FECA, the Commission responds to these requests within 60 days, or within 20 days if a candidate's committee submits the request just before an election. On its own initiative, the Commission also makes available an expedited process for handling certain time-sensitive requests that are not otherwise entitled to expedited processing under the FECA. The Commission strives to issue these advisory opinions in 30 days. An AO answers the requesting committee's question and also serves as a precedent for other committees in the same situation. As with its rulemakings, the Commission has taken steps to make the AO process more open. For instance, requesters now have the opportunity to appear during consideration of a draft opinion—either in person or by telephone—to answer Commissioners' questions regarding their request.

Disclosure

Disclosing the sources and amounts of funds used to finance federal elections is perhaps the most important of the FEC's duties. In fact, it would be virtually impossible for the Commission to effectively fulfill any of its other responsibilities without disclosure. Public disclosure of a committee's receipts and disbursements provides essential aid to the Commission's efforts to ensure that committees are complying with the FECA's contribution prohibitions and limitations. Disclosure also helps the public evaluate political committees and the candidates running for federal office, and it enables them, along with the agency, to monitor committee compliance with the election laws. Given these facts, the Commission has devoted substantial resources to providing effective access to campaign finance data.

In the FEC's Public Records Office, visitors can inspect any committee's reports, search the FEC's disclosure database and access different computer indexes as well as microfilm and paper copies of previous committee reports. The staff helps thousands of customers each year by phone, email and in person.

The amount of information available for public review has grown dramatically over the years. The Commission's Disclosure Database contains over 14 billion data elements.

To help the public navigate its expansive data sets, the FEC has introduced a variety of online tools, including interactive maps, search systems and other graphical interfaces. Among the most notable is the Candidate and Committee Viewer, which acts as a one-stop shop for all campaign finance data. The Viewer brings together committee summaries, reports and filings through a graphic interface that allows users to drill down to specific transactions.

Most recently, the Commission has partnered with 18F, a newly formed data services delivery team within the General Services Administration (GSA), to redesign the FEC's website. One goal of the redesign is to increase the public's access to and understanding of the agency's extensive data offerings. Once completed, the new user centered online platform will deliver a wealth of complex information, including current and historical campaign finance data, detailed information regarding the requirements of the campaign finance law and legal resources, such as advisory opinions issued by the Commission and information on closed enforcement matters to the Commission's diverse base of users. This multiyear effort will ensure that the FEC provides full and meaningful campaign finance data and information in a manner that meets the public's increasing expectations for data customization and ease of use.

The FEC's first new offerings as a result of its website redesign project are a publicly available application programming interface (API) to increase public access to campaign finance data and an

online tool to help filers and the general public better understand filing requirements and deadlines. The new API and online tool, created in collaboration with 18F, supplement the campaign finance data offerings developed and maintained by FEC staff.

Members of the news media may review committee reports and campaign finance data using any of the methods described above and may receive assistance from the Commission's Press Office. The staff answers reporters' questions and issues press releases summarizing campaign finance data and significant FEC actions. The Press Office also responds to thousands of calls, emails and other requests each year.

During the last several years, the Press Office has revamped its web resources to help the media easily access new campaign finance information and statistical data, and has introduced a "Weekly Digest" that summarizes the Commission's activities from the past week and highlights upcoming meetings, reporting deadlines and other items of interest.

Compliance

The agency's enforcement program also plays an important role in the FEC's overall compliance regime. Under the current law, the Commission has exclusive jurisdiction over civil enforcement. Enforcement cases are generated through complaints, referrals from other federal and state agencies, voluntary submissions from those who believe they have violated the FECA (also known as *sua sponte* submissions) and the FEC's own monitoring procedures.

With regard to the last category of cases, Campaign Finance Analysts review each report a committee files in order to ensure the accuracy of the information on the public record and to monitor the committee's compliance with the law. If the information disclosed on a report appears to be incomplete or non-compliant, the reviewing analyst sends the committee a request for additional information (RFAI). In many cases, the committee

may avoid a potential enforcement action and/or audit by responding promptly and in a way that satisfies the committee's disclosure obligations. (Most responses take the form of an amended report.) If, however, the committee does not comply, or its amended reports reveal significant violations, the matter may be referred for enforcement action.

Similarly, an enforcement action can arise from a Commission-authorized audit. Although the Commission does not have authority to conduct random audits of committees, it can audit a committee "for cause" if the reports filed by a particular committee do not meet the threshold requirements upon an affirmative vote of at least four Commissioners. See "Audits" below.

With respect to enforcement actions, the Commission continues to use an Enforcement Priority System to rank cases based on specific criteria. The most complex and legally significant enforcement matters are handled by the Enforcement Division of the Office of General Counsel (OGC). The Enforcement Division:

- Recommends to the Commission whether to find "reason to believe" the FECA has been violated, a finding that can formally initiate an investigation;
- Investigates potential violations of the FECA by, among other things, requesting, subpoenaing, and reviewing documents and interviewing and deposing witnesses; and
- Conducts settlement negotiations on behalf of the Commission, usually culminating in "conciliation agreements" with respondents. Conciliation may occur after a "reason to believe" finding if the record is sufficiently established, and it must occur after a finding of "probable cause to believe." See below.

If a case is not resolved either through conciliation or after an investigation, the Office of General Counsel may recommend to the Commission whether to find "probable cause to believe" the FECA has been violated. If the

Commission finds probable cause to believe a violation has occurred, the agency must attempt to resolve enforcement matters through conciliation. If conciliation fails, however, the Commission may sue a respondent in federal district court. Likewise, when Commission actions are challenged in court, the Commission conducts its own defensive litigation.

Enforcement Program Improvements

The Commission has taken steps to make its enforcement procedures more transparent, efficient and fair. For example, in 2007, the Commission adopted a procedure that encourages entities to self-report violations; under this program, entities may receive more lenient treatment than if the violation had come to the Commission's attention through a complaint or a referral. Also in 2007, the Commission established procedures for respondents to ask the Commission for an in-person hearing on probable cause to believe determinations. In 2009, the Commission began giving respondents in non-complaint generated matters procedural protections similar to respondents in complaint-generated matters. There are many other examples of such improvements to the enforcement program, all of which can be found on the Commission's website.

For example, the Administrative Fine Program (AFP) expedites resolution of cases involving late or nonfiled reports. Congress authorized the Commission to create the AFP 15 years ago to promote timely filing by assessing civil money penalties for committees that file reports and notices late or fail to report at all. Since then, the number of late and nonfiled reports has decreased from an average of 21 percent of reports filed late to less than 10 percent filed late. Processing these cases through the AFP has enabled the agency to use its enforcement resources more efficiently. To date, the Commission has closed more than 2,680 AFP cases and assessed over $5 million in fines.

Another program that has helped to reduce the burden on the traditional enforcement process is the FEC's Alternative Dispute Resolution (ADR)

Program. The ADR Program is designed to resolve matters more swiftly by encouraging the settlement of less-complex enforcement matters with a streamlined process that focuses on remedial measures for candidates and political committees, such as training, internal audits and hiring compliance staff. Begun in 2000 as a pilot program, the ADR Program was made permanent in 2002.

Through these innovations, the FEC has been able to close significant numbers of routine reporting violations and address other straightforward violations more expeditiously, while simultaneously making its enforcement process more efficient, transparent and fair.

Presidential Public Funding

Every presidential election since 1976 has been partially financed with public funds. While the concept of public funding dates back to the turn of the century, a statutory public funding program was not implemented until the early 1970s. As discussed in Chapter 4, fewer candidates have chosen to participate in the program in the most recent presidential elections.

Congress designed the program to correct the problems perceived in the presidential electoral process of increasing fundraising demands and costs, which could effectively disqualify candidates without access to large sums of money. To address these problems, Congress devised a program that combines public funding with limitations on contributions and expenditures. Prior to 2014, the program had three parts: Matching funds for primary candidates; Grants to sponsor political parties' presidential nominating conventions; and Grants for the general election campaigns of major party nominees and partial funding for qualified minor and new party candidates.

In 2014, Congress eliminated the convention grants and passed legislation that allows parties to establish new privately funded convention accounts. Under the remaining public funding provisions, candidates who choose to participate in the program must meet certain eligibility requirements. The

Commission determines which candidates qualify for public funds, and in what amounts. The U.S. Treasury makes the necessary payments to the candidate's committee. Later, the Commission audits all of the committees that received public funds to ensure that they used the funds properly. Based on the Commission's findings, committees may have to make repayments to the U.S. Treasury.

Audits

To ensure the proper use of public funds, federal law requires the Commission to audit each presidential campaign that receives public funds. The FECA authorizes the Commission to audit other political committees if their reports do not meet the threshold requirements for substantial compliance with the law.

Consistent with its efforts to make its processes more open, the Commission instituted a program in April 2011 that allows political committees to have a hearing before the Commission prior to the agency's adoption of a final audit report.

In August 2011, the Commission adopted a program that allows audited entities to ask the Commission to consider legal questions earlier in the audit process. Under the program, committees may now submit legal questions to the Commission after the exit conference for the audit.[25] A similar program allows the Office of General Counsel and the Office of Compliance to jointly submit novel legal questions that may arise in audits to the Commission. *See* Commission Directive 69 (effective July 1, 2010).

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[25] This program is also available to committees during the report review process. *See* Program for Requesting Consideration of Legal Questions By The Commission

Chapter 3: Key Issues Before the Commission

Throughout its 40 years as an agency, the Federal Election Commission has dealt with a myriad of issues that have required it to balance a keen sensitivity for the First Amendment right to free speech with the need to safeguard the process central to our representative form of government. All the while, the agency has sought to administer and enforce the Federal Election Campaign Act (FECA) as fairly and efficiently as possible.

This chapter summarizes some of the significant issues that have come before the Commission in recent years, and highlights key initiatives that have increased the transparency and efficiency of the agency's operations.

Corporate/Labor Communications

The extent to which the government may limit election-related communications and independent expenditures by corporations and unions has been a contentious and constitutionally significant issue. Several recent court decisions have loosened or eliminated some of the FECA's restrictions on corporate/labor activity.

Among the provisions overturned by the courts were those prohibiting corporate/labor financing of electioneering communications. Introduced as part of the Bipartisan Campaign Reform Act of 2002 (BCRA), an electioneering communication is generally defined as any broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is publicly distributed within 60 days before the general election or 30 days before a primary election.

In June 2007, the Supreme Court in *FEC v. Wisconsin Right to Life* (*WRTL*), upheld a district court ruling that found the

ban on corporate financing of electioneering communications unconstitutional "as applied" to ads that WRTL, a 501(c)(4) nonprofit corporation, intended to run before the 2004 elections. The Court found that WRTL's ads could reasonably be interpreted as something other than an appeal to vote for or against a specific federal candidate and, as such, did not constitute express advocacy or its functional equivalent. As a result, the Court found no sufficiently compelling governmental interest in applying the ban on corporation-funded electioneering communications to WRTL's ads and concluded that the electioneering communication financing restrictions were therefore unconstitutional as applied to its ads those The Commission then promulgated rules codifying the Court's "functional equivalent" test for electioneering communications financed by corporations and labor organizations.

In its early 2010 decision in *Citizens United v. FEC,* the Supreme Court struck down the ban on corporate financing of electioneering communications, as well as the prohibition on corporate independent expenditures. The Court held that the government's anti-corruption interest was not sufficient to justify these prohibitions because "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."[26] However, the Court upheld the FECA's reporting and disclaimer requirements for independent expenditures and electioneering communications.

Following the Supreme Court's decision in *Citizens United*, the FEC approved final rules that permit corporations and labor organizations to finance

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[26] *Citizens United v. FEC*, 558 U.S. 310, 357 (2010).

independent expenditures and electioneering communications.[27]

Political Committee Status

Determining which groups must disclose their activity to the FEC as political committees continues to be a topic of debate. A large number of organizations engage in some sort of political activity including lobbying and direct electoral activity. The FECA provides that a group must register with the Commission as a political committee once it has made or received contributions or expenditures aggregating in excess of $1,000 in a calendar year.[28] However, according to the interpretation of the FECA in the *Buckley v. Valeo* decision, a group or organization that is not under the control of a candidate must register as a political committee only if it engages in such spending and its major purpose is the nomination or election of federal candidates.

While the definition of political committee has long been a topic of discussion and debate, it has received additional attention since the *Citizens United* and *SpeechNow* court decisions enabled corporations, labor organizations, independent expenditure-only committees (Super PACs) and committees with non-contribution accounts (Hybrid PACs) to fund independent expenditures using unlimited contributions, including corporate and union funds. While all of these entities make independent expenditures, they are subject to differing reporting requirements. Corporations and unions must disclose their spending but do not need to register as political committees unless they meet the

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[27] While *Citizens United* dealt only with corporations making independent expenditures and electioneering communications, the statute that the Court struck down had also covered labor organizations, and so the Commission's rules apply to labor organizations as well.

[28] 52 U.S.C. 30101(4)(A).

"major purpose" test. Super PACs and Hybrid PACs are political committees and must register and report all of their receipts and disbursements.[29]

Increasing Transparency and Efficiency

The FEC is committed to fairly, efficiently and effectively administering and enforcing the FECA, promoting compliance and engaging and informing the public about campaign finance data and rules. In fulfilling its obligations, the Commission remains mindful of the First Amendment's guarantees of freedom of speech and association, and the practical implication of its actions on the political process.

The FEC protects the integrity of federal campaigns, in part, by providing transparency in how federal campaigns are financed. Transparency requires that information is not only received by the FEC, but that it is provided to the public in an easily accessible way. To make campaign finance data more readily accessible to the public on its website, the Commission provides several interactive, graphic presentations, including maps and charts, of complex data. For several years, the Commission's website has offered congressional and presidential maps that offer quick geographically based access to the amounts candidates are raising and spending. More recently, the agency introduced a Candidate and Committee Viewer that offers flexible search options

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[29] The Commission has responded to a number of advisory opinion requests regarding these new independent expenditure organizations. (Advisory Opinion 2010-09 (Club for Growth), Advisory Opinion 2010-10 (NRL PAC), Advisory Opinion 2010-11 (Commonsense Ten), Advisory Opinion 2011-12 (Majority PAC), Advisory Opinion 2011-11 (Stephen Colbert), Advisory Opinion 2011-24 (Louder Solutions, LLC), Advisory Opinion 2012-03 (ActRight), Advisory Opinion 2012-13 (Physician Hospitals of America), Advisory Opinion 2012-34 (Freedom PAC and Friends of Mike H), and Advisory Opinion 2015-04 (Collective Actions PAC).) Based on these opinions, the Commission has provided on its website registration templates for Super PACs and Hybrid PACs. The agency has also published detailed reporting guidance for Hybrid PACs.

that enable users to access data more easily. Building on these efforts, the Commission recently launched an extensive effort to redesign the FEC website to further improve the delivery of campaign finance data to the public.

Public confidence in the political process depends not only on laws and regulations to ensure transparency of campaign finance, but also on the knowledge that noncompliance may lead to enforcement proceedings. The Commission has taken steps to ensure that its enforcement and compliance programs are fair, effective and timely. Commission enforcement actions are handled primarily by the Office of General Counsel. To augment OGC's traditional enforcement role, the Commission has implemented several programs that seek to remedy alleged violations of the FECA and encourage voluntary compliance. These programs include: 1) the Alternative Dispute Resolution Program, 2) the Administrative Fine Program and 3) the Audit Program.

The Commission's Alternative Dispute Resolution Program is designed to resolve matters more swiftly by encouraging the settlement of less complex enforcement matters with a streamlined process that focuses on remedial measures for candidates and political committees, such as training, internal audits and hiring compliance staff. Violations involving the late submission of, or failure to file, certain disclosure reports are subject to the Administrative Fine Program.

The FEC performs "for cause" audits in those cases where political committees have failed to meet the threshold requirements for demonstrating substantial compliance with the FECA. The Commission has increased the transparency of its operations by making public (subject

to limited redactions) the threshold requirements approved by the Commission and used by the Reports Analysis Division and the Audit Division.

The Commission has also adopted new procedural rules to provide more clarity and opportunities for committees to respond during the audit process. For example, the Commission's procedures provide additional opportunities for audited committees to respond to potential findings, as well as more opportunities for the Commission to review audit reports prior to approval. In addition, significant changes have been made to the format of the audit reports in an effort to clarify the findings of the Audit staff and the disposition of the matter by the Commission.

In addition to its compliance-related efforts, the Commission has offered additional opportunities for public input on policy matters. Individuals who request advisory opinions may now appear—either in person or by telephone—during the Commission's consideration of its draft response to answer Commissioners' factual questions regarding the request. The Commission has also created online searchable databases of advisory opinion and rulemaking documents. The rulemaking search system also has a new mechanism for the public to comment on pending policy matters.

New Technology in Campaign Finance

Over the last several decades, information technology has radically altered how Americans obtain information and interact with their fellow citizens. The FEC has made significant strides in ensuring that the federal campaign finance law has remained relevant to the rapidly evolving technology

used by campaigns and other participants in the political process.

In April 1995, the FEC for the first time used the term "internet" in an advisory opinion.[30] Since then, the FEC has applied the FECA and Commission regulations to issues ranging from whether contributions made over the internet were eligible for federal matching payments[31] to whether committees could accept Bitcoin.[32] The Commission has issued advisory opinions about individuals contributing to committees via text messages, online electronic bill-pay services,[33] contribution aggregation websites[34] and disclaimer requirements for electronic communications.[35]

In these advisory opinions, the Commission created a framework that has helped committees to make use of advances in information technology while remaining compliant with the FECA and Commission regulations.

In 2013, the Commission published an Advance Notice of Proposed Rulemaking asking whether and how it should update its regulations to reflect changes in technology, such as the prevalence of credit- and debit-card payments and other non-paper transactions. The Commission continues to consider this issue.

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[30] Advisory Opinion 1995-09 (NewtWatch).
[31] Advisory Opinion 1999-09 (Bradley for President) and Advisory Opinion 1999-22 (Aristotle Publishing).
[32] Advisory Opinion 2014-02 (Make Your Laws PAC).
[33] Advisory Opinion 2012-22 (skimmerhat) and Advisory Opinion 2014-07 (Crowdpac).
[34] Advisory Opinion 2007-27 (ActBlue).
[35] Advisory Opinion 2011-13 (DSCC).

Chapter 4: Continuing Debate Over Campaign Finance Laws

In the years since the sweeping legislative changes enacted through the Bipartisan Campaign Reform Act of 2002 (BCRA), the focus of campaign finance regulation has largely shifted from Congress to the courts. While the Supreme Court rejected many of the initial BCRA challenges in *McConnell v. FEC*, 540 U.S. 93 (2003), subsequent challenges have altered or struck down several BCRA provisions, including the so-called "Millionaire's Amendment"[36] and elements of the electioneering communications provisions.[37]

Notwithstanding the numerous BCRA-related challenges, perhaps the most significant court decision in that last 10 years involved the longstanding ban on corporate independent expenditures. The Supreme Court's 2010 majority opinion in *Citizens United v. FEC*, 558 U.S. 310 (2010), found that ban unconstitutional. The Court's decision permits corporations and labor organizations to use treasury funds to finance independent expenditures and electioneering communications.

Soon after the *Citizens United* decision, the U.S. Court of Appeals for the District of Columbia Circuit ruled in *SpeechNow.org. v. FEC* that "contributions to groups that make only independent expenditures" cannot constitutionally be limited consistent with the holding of *Citizens United.*

These decisions have placed the role of independent spending at the center of the debate over campaign finance regulation. This chapter offers an overview of that debate, as well as a discussion of the

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[36] *Davis v. FEC*, 554 U.S. 724 (2008).

[37] *FEC v. Wisconsin Right to Life, Inc.* (2007).

decreasing relevance of public financing in presidential elections.

The Role of Independent Spending

Since the *Citizens United* and *SpeechNow* decisions, spending made independently of candidates and political party committees has expanded significantly.

Political committees that are registered with the FEC—including Super PACs—are required to file periodic disclosure reports with the Commission on an ongoing basis that disclose all of their receipts and disbursements. However, individuals and entities that do not qualify as political committees are only required to report independent expenditures and electioneering communications to the Commission once their spending exceeds certain amounts. They are not required to disclose all of their receipts and disbursements.

As the amount of independent spending has increased, debate has focused on the scope of independent expenditure and electioneering communication reporting.

In 2010, Congress debated, but did not pass, legislation that would have tightened the disclosure requirements of organizations funding independent expenditures. The Democracy Is Strengthened by Casting Light On Spending in Elections (DISCLOSE Act) passed the House of Representatives (H.R. 5175) but did not pass the Senate. The proper scope of independent expenditure and electioneering communication reporting is an on-going issue before the Commission.

In February 2015, the Commission hosted a day-long public hearing that included testimony supporting and opposing additional disclosure requirements. Subsequently, rulemaking petitions were filed by Make Your Laws PAC, Inc. and

Make Your Laws Advocacy and by Craig Holman and Public Citizen that—among other things—sought to expand disclosure requirements for independent expenditures and electioneering communications.

One of the key pillars of the BCRA was to regulate "electioneering communications," defined as cable, satellite or broadcast communications made within 30 days of a candidate's primary election or within 60 days of a candidate's general election that are targeted to the relevant electorate. Electioneering communications mention a candidate, but do not expressly advocate his or her election or defeat.

The BCRA prohibited corporations and labor organizations from making electioneering communications, but the Supreme Court removed that ban in *Citizens United*.

While the amount spent on independent expenditures has increased since *Citizens United*, spending on electioneering communications has declined. In the 2008 election cycle, nearly $151.1 million in electioneering communications were reported to the FEC. By the 2012 election cycle, disclosures of electioneering communications had declined to around $15.1 million.

The Role of Political Parties

In 2002, many argued that the BCRA's soft money ban would drastically diminish the role of the national parties. The soft money ban effectively eliminated a source of funding that amounted to approximately $500 million in 2001-2002 for the six major national party committees.

During the first post-BCRA election cycle national party committees increased their federal receipts by significant amounts over the previous election cycle. In the 2003-2004 election cycle, the Democratic

National Committee, the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee raised a combined total of $586.2 million in federal funds, while the Republican National Committee, the National Republican Senatorial Committee, and the National Republican Congressional Committee raised a combined total of $657.1 million in federal funds. By the 2011-2012 cycle, the national committees of the Democratic Party had federal receipts of approximately $620.2 million and the Republican Party had receipts of approximately $663 million.

Citizens United and the subsequent court decisions that led to the creation of Super PACs and Hybrid PACs enabled organizations to raise unlimited amounts—including corporate and labor funds—to fund independent expenditures. By contrast, political parties may only raise funds that comply with the FECA's contribution limits and source prohibitions.

Legislative changes have also affected the parties. As noted in Chapter 2 and further detailed in the next section, the 113th Congress terminated public funding for parties' presidential nominating conventions. To offset the loss of public funds, Congress passed the Consolidated and Further Continuing Appropriations Act, (P. L. 113-235, 128 Stat. 2130 (2014)), which authorized national party committees to establish separate accounts for the purpose of raising private funds for conventions. Donors to these accounts — and to similar ones for party headquarters building expenses and recount/legal expenses — may contribute up to three times the limit for the national party's regular federal account. In 2015, that amount was $100,200 per account, per year.

Congress introduced, but did not enact, other proposals to raise contribution limits for party committees and to eliminate the coordinated party expenditure limitations.

Presidential Public Funding

Every presidential election since 1976 has been financed, in part, with public funds derived from the voluntary $3 tax checkoff. Candidates who accept public funds must agree to a post-election audit and must abide by spending limits. In recent years, many candidates have chosen to forgo public funds, freeing themselves from the spending limits that come with taxpayer financing.

In the 2000 campaign, George W. Bush became the first President elected without primary matching funds since the program began. In 2004, Gov. Howard Dean and Sen. John Kerry joined President Bush in opting out of the matching funds program. In 2008, Sen. John McCain captured the Republican nomination without primary matching funds, but did accept the general election grant. His general election opponent, Barack Obama, declined both primary matching funds and the general election grant. By 2012, both President Obama and Republican nominee Gov. Mitt Romney declined to participate in the public funding program entirely.

The base spending limit for a candidate who accepted public funds in the 2012 presidential primaries was about $45.6 million, and the general election grant for major party nominees was approximately $91.2 million. By comparison, the privately funded campaigns of President Obama and Gov. Romney reported more than $1.2 billion in receipts during the 2012 presidential elections.

As recently as the 2008 presidential election cycle, the Presidential Election

Campaign Fund experienced temporary shortfalls in matching funds, requiring pro-rata payments to candidates until sufficient deposits were received. However, funding shortfalls have not occurred in recent cycles because of the overall lack of participation in the public funding program, particularly by the major party nominees.

Competing bills to eliminate or augment the public funding program have been introduced in Congress, but to date none has been enacted.

Conclusion

Over the last four decades, the Federal Election Commission has helped to protect the integrity of the federal campaign finance process by providing the public with accurate and accessible information on the financing of federal elections, and by ensuring that the campaign finance law is fairly and effectively administered and enforced.

As detailed in this report, the Commission has significantly increased the transparency and efficiency of its operations. These wide-ranging efforts have helped the agency meet its commitment to providing the public with robust access to campaign finance information, offering candidates, committees and the public timely advice and support so they can fully understand and comply with the law, and ensuring due process for those involved in enforcement actions.

The Commission has also faced challenges that have accompanied significant changes in the campaign finance law. The agency has implemented new legislation and adapted to significant judicial decisions, all while continuing to provide guidance to those seeking to comply.

Though admittedly limited in scope, this report offers at least a glimpse of some of the FEC's challenges and accomplishments over the last 40 years and offers a clear vision of the agency's place within the broad history of American elections.

Appendix 1

FEC Commissioners and Officers 1975-2015[38]

Commissioners

Joan D. Aikens April 1975 – September 1998 (reappointed May 1976, December 1981, August 1983 and October 1989).

Thomas B. Curtis April 1975 – May 1976.

Thomas E. Harris April 1975 – October 1986 (reappointed May 1976 and June 1979).

Neil O. Staebler April 1975 – October 1978 (reappointed May 1976).

Vernon W. Thomson April 1975 – June 1979; January 1981 – December 1981 (reappointed May 1976).

Robert O. Tiernan April 1975 – December 1981 (reappointed May 1976).

William L. Springer May 1976 – February 1979.

John Warren McGarry October 1978 – August 1998 (reappointed July 1983 and October 1989).

Max L. Friedersdorf February 1979 – December 1980.

Frank P. Reiche July 1979 – August 1985.

Lee Ann Elliott December 1981 – June 2000 (reappointed July 1987 and July 1994).

Danny L. McDonald December 1981 – January 2006 (reappointed in July 1987, July 1994 and July 2000).

Thomas J. Josefiak August 1985 – January 1992.

Scott E. Thomas October 1986 – January 2006 (reappointed in November 1991 and July 1998).

Trevor Potter November 1991 – October 1995.

Darryl R. Wold July 1998 – April 2002.

Karl J. Sandstrom July 1998 – December 2002.

David M. Mason July 1998 – July 2008.

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[38] Beginning and reappointment dates listed here do not necessarily reflect when Commissioners took the oath of office. Overlapping terms in office reflect delays between Senate confirmation and arrival at the Commission.

Bradley A. Smith May 2000 – August 2005.

Michael E. Toner March 2002 – March 2007.

Ellen L. Weintraub December 2002 – Present.

Hans A. von Spakovsky January 2006 – December 2007.

Robert D. Lenhard January 2006 – December 2007.

Steven T. Walther (January 2006 – December 2007) &
(June 2008 – Present).

Cynthia L. Bauerly June 2008 – February 2013.

Donald F. McGahn II June 2008 – September 2013.

Caroline C. Hunter June 2008 – Present.

Matthew S. Petersen June 2008 – Present.

Lee E. Goodman September 2013 – Present.

Ann M. Ravel September 2013 – Present.

Ex Officio Commissioners

Clerk of the House

W. Pat Jennings April 1975 – November 1975.

Edmund L. Henshaw, Jr. December 1975 – January 1983.

Benjamin U. Guthrie January 1983 – January 1987.

Donnald K. Anderson January 1987 – October 1993.

Secretary of the Senate

Francis R. Valeo April 1975 – March 1977.

Joseph Stanley Kimmitt April 1977 – January 1981.

William F. Hildenbrand January 1981 – January 1985.

Jo-Anne L. Coe January 1985 – January 1987.

Walter J. Stewart January 1987 – October 1993.

Statutory Officers

Staff Director

Orlando B. Potter May 1975 – July 1980.

B. Allen Clutter, III September 1980 – May 1983.

John C. Surina July 1983 – July 1998.

James A. Pehrkon April 1999 – December 2005.

Patrina M. Clark July 2006 – July 2008.

Robert A. Hickey February 2009 – October 2009.

D. Alec Palmer August 2011 – Present.

General Counsel

John G. Murphy, Jr. May 1975 – December 1976.

William C. Oldaker January 1977 – October 1979.

Charles N. Steele December 1979 – March 1987.

Lawrence M. Noble October 1987 – January 2001.

Lawrence H. Norton September 2001 – January 2007.

Thomasenia P. **Duncan** May 2007 – August 2010.

Anthony Herman June 2011 – July 2013.

Inspector General

Lynne A. McFarland 1990 – Present.