



LEAGUE OF WOMEN VOTERS OF MAINE

Brief History of Campaign Finance Reform in the United States By the LWVME PAC Study Committee:

Ruth Benedikt
Martha Dickinson
Polly Ferguson

Ann Luther
Susan Mayer
Sarah Walton

Democracies must have a democratic means of electing political leaders – election by a majority of ordinary people. All too often, throughout our nation’s history, big money has had the loudest voice in informing and educating the electorate about their political choices. We have a long legal history of efforts to balance the importance of the individual vote against the power of concentrated wealth to disproportionately influence elections. We struggle with reforms that strive to balance the constitutional protections of individual rights and free speech against the corrupting influence of big money in politics. The purpose of this paper is to give a brief history of campaign finance reform in the United States as a context for our study of the possible need to regulate Political Action Committees (PACs)¹ in Maine. Conclusions drawn from a study of national campaigns may not necessarily apply to the situation in Maine.

Early History

In the beginning of our republic, campaign finance was not a controversial issue. People running for office did not campaign in the modern sense, expenses were relatively modest, and candidates paid expenses largely out of their own pocket.

But as the nation grew and the franchise expanded (religious, property ownership, and tax requirements were all eliminated in the early- to mid-nineteen century), the political system opened up to people who might not have the personal resources to run for office. Party politics became more important, and parties developed a system of fundraising called the “spoils system” under which incumbents awarded government positions to supporters and then collected political contributions from those workers to support their party.

Passage of the Pendleton Civil Service Act of 1883 ended the spoils systems. After that, corporate interests became the principal source of campaign funding.²

A Narrative History since 1900

In his 1904 bid for the Presidency, Theodore Roosevelt was charged with accepting corrupting campaign gifts from corporations and wealthy individuals. After the election, he called for legislation to prevent corporations from making contributions to campaigns for federal office and to require public disclosure of contributions and expenditures. In

¹ See Appendix II, Glossary, for a definition of “PAC” and other terms in this paper.

² Anthony Corrado, “Money and Politics: A History of Federal Campaign Finance Law,” *The New Campaign Finance Sourcebook*, Brookings Institution Press (2005) pp. 8-10.

Brief History of Campaign Finance Reform

1907, Congress passed the Tillman Act, which banned corporations and interstate banks from making direct donations to candidates for federal office. The Tillman Act did not apply to state-chartered corporations active in state and local elections.³ To circumvent this law, corporations gave bonuses to employees with the understanding that they, in turn, would donate this sum to the “company-endorsed” candidate. By so doing, corporations created a loophole for themselves that gave them greater access to the candidates and a new tax benefit by deducting the bonus as an “employee benefit.”

During the next sixty years, the federal government passed many laws that required the disclosure of contributions and the filing of reports, but they were generally weak and ineffective. The Smith-Connally Act of 1943, which was passed over President Franklin D. Roosevelt’s veto, made contributions from unions to federal candidates for election illegal. That same year, the Congress of Industrial Organizations (CIO) decided to help FDR’s re-election campaign by establishing a separate, segregated fund to which union members could contribute directly on a voluntary basis. The funds were obtained not from the treasuries of the unions involved but from their members or employees, thereby evading the federal law that prohibited direct contributions from unions or corporations. This strategy was successful and marked the beginning of Political Action Committees (PACs) and the introduction of “soft money.”

The Smith-Connally Act was designed to expire six months after the end of World War II. In 1947, the Taft-Hartley Act, passed over Truman’s veto, made permanent the ban on contributions by unions to federal political campaigns.

It was nearly 25 years before campaign finance reform again became a dominant issue in American politics with the passage of the Federal Election Campaign Act (FECA) in 1971. In that bill, Congress increased the requirements for disclosure of contributions and expenditures for federal campaigns and placed legal limits on campaign contributions. However, without a central administrative authority, the law was difficult to enforce. After reports of significant financial abuse in the 1972 presidential election, Congress amended FECA in 1974. Individual donations to candidate campaigns – also known as “hard money” – were capped at \$1,000 per election, and PAC donations to campaigns were capped at \$5,000. The 1974 amendments instituted spending limits -- \$10 million in a primary and \$20 million in a general election – and public financing options for presidential elections. The amended FECA also established the Federal Elections Commission (FEC).

The Supreme Court’s 1976 decision on *Buckley v. Valeo*, which challenged FECA, declared that both contribution and expenditure limits restricted certain First Amendment Rights to free speech and assembly. The Court also said that reasonable contribution limits could be justified by the equally important need of the government to protect the integrity of the electoral system from real or apparent corruption arising from donations to or activity coordinated with candidates. Thus FECA’s \$1,000 individual contribution limit per candidate per election was upheld. The Court determined that the same reasoning was not applicable to spending limits, as it found no inherent corruption from large

³ Corrado, p. 12.

Brief History of Campaign Finance Reform

expenditures of money by candidates or outside groups. The Court did away with prior limits on expenditures by a campaign committee, a candidate from personal funds, or an independent group appealing directly to voters. The Court sanctioned only voluntary limits such as the presidential public funding system. The decision played a commanding role in shaping the impact of the law and later reform efforts. As a result, *Buckley v. Valeo* became the standard for the development of state and local campaign finance law.

In 1985, the Supreme Court, in *FEC v. NCPAC* (National Conservative Political Action Committee), ruled that there should be no limits on a PAC's spending on behalf of a candidate provided that the expenditure is made without any cooperation or collaboration with a candidate.⁴ The Court also drew a distinction between contributions to candidates, which are open to corruption, and contributions to independent organizations in support of candidates, like PACs, which are less susceptible.

In 2000, *Nixon v. Shrink Missouri Government PAC*, the Supreme Court held that, in accordance with their *Buckley v. Valeo* decision, the analysis that upheld federal limits on campaign contributions also applied to state limits on campaign contributions to state offices. Justice Stevens, in his concurrence, wrote, "Money is property; it is not speech."⁵

By 2002, the landscape had changed. "Soft money"⁶ fundraising had nearly doubled over the last two presidential elections, from \$262 million in 1996 to \$495 million in 2000, and the latest federal election had seen a surge in issue advocacy.⁷ The Bipartisan Campaign Reform Act of 2002 (BCRA), also known as McCain-Feingold, further amended FECA. BCRA closed soft money loopholes by prohibiting national political party committees from raising or spending any funds not subject to federal limits, even for state and local races or issue discussion. BCRA addressed the issue advocacy loophole by defining as "electioneering communications" broadcast ads that name a federal candidate within 30 days of a primary or caucus or 60 days of a general election. The Act also prohibited any such ads paid for by a corporation (including non-profit issue organizations such as Right to Life or the Environmental Defense Fund) or paid for by an unincorporated entity using any corporate or union funds.⁸ The Supreme Court, in the 2003 case of *McConnell v. FEC*, upheld BCRA almost entirely.⁹

In December 2006, the FEC settled with three 527 groups found to have violated federal law by failing to register as "political committees" and abide by contribution limits, source prohibitions, and disclosure requirements during the 2004 election cycle. Swift Boat Veterans for Truth was fined \$299,500; the League of Conservation Voters was fined \$180,000; and MoveOn.org was fined \$150,000. In February 2007, the Progress for

⁴The Oyez Project, *Federal Election Commission v. NCPAC* (visited March 12, 2008) <http://www.oyez.org/cases/1980-1989/1984/1984_83_1032/>.

⁵*Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000).

⁶ See Appendix II, Glossary.

⁷ Corrado, pp. 36-37.

⁸ Bipartisan Campaign Reform Act of 2002, H.R. 2356, 107th Cong. .

⁹ *McConnell v. FEC*, 540 U.S. 93 (2003). .

Brief History of Campaign Finance Reform

America Voter Fund was fined \$750,000.¹⁰

However, a June 2007 ruling by the Supreme Court weakened a key aspect of BCRA. In *FEC v. Wisconsin Right to Life, Inc. (WRTL II)*, the Supreme Court held that BCRA's limitations on broadcast ads mentioning a candidate within 30 days of a primary or caucus or 60 days of a general election are unconstitutional for ads that could reasonably be interpreted other than as an appeal to vote for or against a specific candidate. Some election law experts believe the new exception will render BCRA's "electioneering communication" provisions meaningless, while others believe the new exception is quite narrow.¹¹ A Brennan Center for Justice memo, analyzing the impact of WRTL II on state law, says that this case did not overturn BCRA, does not affect disclosure requirements, and is of limited scope.¹²

Then in June 2008, the U.S. Supreme Court struck down an additional provision of BCRA. The so-called "Millionaire's Amendment" to BCRA raised the contribution limits for federal candidates facing a high-spending, self-financing opponent. In *Davis v. FEC*, the U.S. Supreme Court held that these provisions violate the First Amendment. The majority of the court justices found that "[w]hile BCRA does not impose a cap on a candidate's expenditure of personal funds, it imposes an unprecedented penalty on any candidate who robustly exercises that First Amendment right, requiring him to choose between the right to engage in unfettered political speech and subjection to discriminatory fundraising limitations. . . . The burden is not justified by any governmental interest in eliminating corruption or the perception of corruption."¹³

It remains to be seen what effect these recent rulings will have on the implementation of BCRA and what these rulings portend for the inclination of the new Supreme Court toward campaign finance reform more generally.

The Internet

The Internet has played an increasingly significant role in political communications. The number of small donations, particularly related to presidential campaigns, has escalated; many people volunteer online for campaign work. In 2002, the FEC ruled that political communication on the Internet was not subject to campaign finance regulation. A federal court later ruled that there must be some exceptions.¹⁴ After much public debate, on March 27, 2007, the FEC ruled unanimously that the political activity of individuals on the Internet should remain unregulated by campaign finance law while paid political

¹⁰ Federal Election Commission press releases, December 13, 2006 (visited December 8, 2008) <<http://www.fec.gov/press/press2006/20061213murs.html>> and February 28, 2007 (visited December 8, 2008) <<http://www.fec.gov/press/press2007/20070228MUR.html>>.

¹¹ *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 127 (2007).

¹² The Brennan Center for Justice, "The Impact of *FEC v. WRTL II* on State Regulation," February 2008 (visited March 21, 2008) <http://www.brennancenter.org/content/resource/the_impact_of_fec_v_wrtl_ii_on_state_regulation/>.

¹³ *Davis v. SEC*, No. 07-320 U.S (2008).

¹⁴ Trevor Potter and Kirk L. Jowers, "Election Law and the Internet," *The New Campaign Finance Sourcebook*, 2005.

Brief History of Campaign Finance Reform

advertisements on someone else's website would be regulated.¹⁵ In the future, as political communications via the Internet increasingly replace television advertising and punditry, giving more influence to individual citizens and their organizations, campaign finance law may need to change as well.

Federal PACs Today

Contributions to federal PACs have been limited since FECA in 1974 and amended by BRCA in 2002. However, the term PAC is narrowly defined under federal law to include only those organizations whose major purpose is to nominate or elect a candidate. The specific limits are varied and depend on whether the PAC is a multicandidate or a single candidate PAC, whether it is affiliated with a union or corporation, or whether it is associated with a member of Congress.¹⁶ The Supreme Court has upheld limits on contributions to federal PACs as a means of preventing donors from circumventing the limits on contributions to candidates.¹⁷ It is controversial whether PACs which do not make contributions to candidates, but make only independent expenditures, may be subjected to contribution limits.¹⁸

An organization whose major purpose is NOT the nomination or election of a candidate is completely unregulated by FECA and BCRA. This includes organizations reporting to the IRS as section 527 political organizations.

In any case, independent expenditures made by PACs – those that are intended to influence a candidate election but that are made without coordination with the candidate or the candidate's campaign – are not limited at all since *Buckley v. Valeo*. Independent expenditures by PACs must be publicly disclosed through the FEC.¹⁹

Corporations, Unions, and PACs

Corporations and unions have been banned from contributing directly to federal candidates since the Tillman Act of 1904 and the Taft Hartley Act of 1947. But corporations and unions may establish and pay the administrative and fundraising costs of PACs and may urge their members, employees, and stockholders to contribute to those PACs. Neither corporations nor unions may use their treasury to finance electioneering communications close to an election – they must use their PACs for this purpose. Both corporate and union PACs are controversial to this day.

Fundraising by corporate executives remains a major source of funds for federal

¹⁵ Ellen L. Weintraub, "On Adoption of Final Rules Affecting Certain Internet Communications," FEC, March 27, 2007 (visited April 8, 2008) <http://www.fec.gov/members/weintraub/nprm/statement20060327_b.pdf>.

¹⁶ Trevor Potter, "The Current State of Campaign Finance Law," *The New Campaign Finance Sourcebook*, Brookings Institution Press (2005), pp. 50-52.

¹⁷ Deborah Goldberg, *Writing Reform*, Brennan Center for Justice (2008 Revised Edition), p. IV-2. *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 199 (1981).

¹⁸ Goldberg, p. IV-6.

¹⁹ Potter, p. 54.

Brief History of Campaign Finance Reform

candidates.²⁰ Corporations also donate to campaigns indirectly through 501(c)(6) organizations such as the U. S. Chamber of Commerce and through 501(c)(4) organizations such as the National Rifle Association and the Sierra Club.

In his book *Supercapitalism*, Robert Reich asserts, “the basic problem is the dominance of corporate lawyers, lobbyists and public relations professionals over the entire political process and the corporate money that engulfs the system on a day to day basis, making it almost impossible for citizen voices to be heard. Not only do campaign contributions have to be strictly limited but also corporate expenditures on lobbying and public relations intended to influence outcomes”.²¹ Reich has found that “the largest single source of potential campaign money has been found in corporate PACs, corporate executives and corporate lobbyists who bundle contributions from executives and their business associates.”²²

While corporations have long been recognized as “legal persons” for limited purposes such as lawsuits, property rights and contracts, the full meaning of corporate personhood has been a subject of debate.²³ A main argument against the application of campaign finance reform law to corporations is that such law violates their rights to free speech as guaranteed in the First Amendment. Others argue that corporations should have no legal standing as persons and thus no right to political speech. Since corporations command vastly more resources than any natural person, giving corporations free rein to contribute to campaign advertising ensures that the corporate point of view may overwhelm the voice of ordinary citizens.²⁴

Attempts to restrict political spending by corporations have often been met with balancing calls to restrict political spending by unions. In *McConnell v. FEC*, the Supreme Court for the first time explicitly approved the equal treatment of unions and corporations under campaign finance law, despite the fact that union members provide the funds for union political campaigns through their dues, while corporate funds are from a legally constructed corporate “person.”²⁵

Those who favor restricting unions’ political spending argue that while members may pay dues to the union, they may not all agree with the political choices and candidate endorsements made by their leaders. They argue that unless members are given a way of authorizing or restricting the use of their dues for political purposes, unions should not be allowed to commandeer those dues against the will of their members. Union leaders argue back that their leaders are elected by their members to act on their behalf – a form of representative governance. Plus, they argue, corporate shareholders don’t get a say on

²⁰ Potter, 74.

²¹ Robert Reich, *Supercapitalism*, New York: Alfred A. Knopf (2007), 211.

²² Reich, 133.

²³ “Debating Corporate Rights,” *NOW on PBS*, February 18, 2005 (visited March 16, 2008) <<http://www.pbs.org/now/politics/corprightsdebate.html>>.

²⁴ “Corporations and Free Speech,” *Multinational Monitor Magazine*, Editorial, May 1998, (visited March 16, 2008) <<http://www.multinationalmonitor.org/mmm1998/98may/editorial.html>>.

²⁵ Potter, p. 72.

Brief History of Campaign Finance Reform

corporate political spending.²⁶

But fundraising by corporate executives remains a rich source of political funds. The Center for Responsive Politics²⁷ provides much information culled from the FEC on the current and past campaign contributions for individual candidates for federal office.²⁸ According to the Center, most Congressional campaigns in both parties receive the vast majority of their PAC contributions from business interests. Democratic candidates receive more money from labor interests than do Republicans, but once a candidate is in office, “the proportion of business dollars tends to rise, even for Democrats, as members get their committee assignments and begin tapping the industries they oversee for campaign contributions.”²⁹

Meanwhile, according to Reich, union membership and strength have declined. As of 2006, less than 8% of American workers belonged to a labor union.³⁰

Arguments For and Against PACs

Some argue that PACs strengthen representative government by bringing together people with common interests to work toward common goals. They encourage citizens to become involved in the governmental process and to do more than vote. PAC disclosure requirements provide transparency and enable the public to make more informed choices.

Some observers believe that PACs are a factor in the diminishing strength of American political parties. Additionally, PAC giving seems to be influenced by disclosure requirements and incumbency. Since donations are made public, donors are more likely to contribute to PACs supporting the candidate in office than to risk offending her/him. It may be more difficult for challengers to benefit from PAC money.

PACs are often seen as intent upon attacking opponents instead of focusing on the positive accomplishments of their own candidates. For example, in 1988, the National Security PAC spent 8.2 million dollars attacking Michael Dukakis with the infamous Willie Horton ads.³¹

Some candidates are concerned that the vast amount of money being spent by outside organizations on their behalf, and without their knowledge, is in fact detrimental to their campaigns. An article in the *Portland Press Herald* on November 13, 2007, highlights this concern:

The Portland Growth Coalition, a political action committee formed by members of

²⁶ Potter, p. 73.

²⁷ Center for Responsive Politics (visited March 19, 2008) <<http://www.opensecrets.org>>.

²⁸ Federal Election Commission (visited March 19, 2008) <<http://www.fec.gov/>>.

²⁹ Center for Responsive Politics, “Business, Labor, Ideological Split” (visited March 19, 2008) <<http://www.opensecrets.org/politicians/bli.asp>>.

³⁰ Reich, 80.

³¹ Center for Responsive Politics, “Independent Expenditures,” (visited March 16, 2008) <http://www.opensecrets.org/pubs/law_bagtricks/loop4.asp>.

Brief History of Campaign Finance Reform

Portland's business community, is endorsing John Anton (for City Council) and paid more than \$800 to have stickers emblazoned with his name stuck on newspapers, finance reports showed. The League of Young Voters spent nearly \$3,000 on mailings and phone banks. In past local races, candidates could count on canvassing and donations from the political arms of unions and trade organizations, with \$250 being the maximum allowable. But this year's race has highlighted a new and controversial kind of political player willing to throw thousands of dollars into the ring by orchestrating advertising campaigns independent of the candidates they support. Even Anton has ambivalent feelings about PACs. While he appreciates that PACs are running campaigns in his support, he refuses to take personal contributions from them. He stated, "With a PAC, you don't know who it is."

History of Campaign Finance Reform in Maine

In Maine, as elsewhere, calls for campaign finance reform arose as increasing amounts of money were spent in political races. In 1961, Maine required candidates for statewide office to file reports listing contributors who gave \$50 or more and to itemize expenses of \$100 or more.³²

By 1982, several changes had been made to Maine's election laws, including limits on contributions to political campaigns. An individual was allowed to contribute a maximum \$1,000 per candidate per election and a cumulative total of \$25,000 to all candidates in a calendar year. Corporations, associations, PACs, and other groups were limited to \$5,000 per candidate per election, with no limit on number of candidates.³³

Early attempts to combine limits on contributions with public financing of state elections were narrowly focused and largely unsuccessful.³⁴ A 1989 proposal applied only to the race for Governor where costs in 1986 were six times higher than they had been just eight years earlier. The measure failed to pass the Legislature and was also defeated at referendum.

Eventually it was realized that efforts at reform should include campaigns for the Legislature as well as for the Governor's office, since the amount of money spent on all statewide elections was rising rapidly. A 1993 proposal failed. Three years later, in 1996, after the Legislature again failed to pass legislation, a citizens' initiative known as the Maine Clean Election Act (MCEA) passed at referendum by a margin of 56.2 percent to 43.8 percent.³⁵ The MCEA created a voluntary program of full public funding for

³² Maine State Public Law, Chapter 360, Sections 167-177 (1961).

³³ Maine Revised Statutes Annotated, Volume II, Titles 20 to 21, 1965 to 1982, Supplementary Pamphlet.

³⁴ For a good review of this period see, "Legislative History of the Maine Clean Elections Act," two volumes, compiled by the Maine State Law and Legislative Reference Library.

³⁵ Maine Commission on Governmental Ethics and Election Practices, "2007 Report on the Maine Clean Election Act" (visited March 23, 2008)

<http://mainegov-images.informe.org/ethics/pdf/publications/2007_study_report.pdf>. Of special interest is Section 1, Chapter 6, "Spending by PACs and Political Parties."

Brief History of Campaign Finance Reform

candidates for the Legislature and the office of Governor. (See our “PAC Basics” paper for details on MCEA.)³⁶

In 2000, the MCEA was affirmed by the United States Court of Appeals for the First Circuit in the case of *Daggett v. Commission on Governmental Ethics & Election Practices*. This was an important case with ramifications for reform efforts in other states. The court concluded that “contribution limits for House and Senate candidates in Maine are constitutional and matching funds corresponding to independent expenditures are independently constitutional aspects of Maine's public financing scheme... Maine's public funding scheme for candidates seeking state office, embodied principally in the Maine Clean Election Act, does not violate the First Amendment rights of candidates or campaign contributors.”³⁷

Laws governing PACs were not changed in 1996. Although PACs had been required to list contributors and itemize expenditures since 1983, no limits were placed on amounts that could be contributed to a PAC from any source.³⁸

In 2003, the Government Accountability Office (GAO), as mandated by BCRA, issued a study of the effectiveness of the Clean Election Laws in Maine and Arizona. The GAO study presented a very useful statistical analysis and concluded that it was too early to judge how well the goals of these public financing programs had been met.³⁹

In early 2007, the Maine Commission on Governmental Ethics and Election Practices published its *2007 Study Report: Has Public Funding Improved Maine Elections?* The report notes several areas in which the MCEA is having a positive impact on Maine elections, including: encouraging first-time candidates to run; creating a level playing field between challengers and incumbents; controlling growth in campaign spending; and reducing the total private contributions to candidates. At the same time, the report notes that overall spending by PACs and political parties has increased during the period when the MCEA has been in effect.⁴⁰

PACs in Maine

Rules about PACs in Maine derive from Maine election law, Title 21A, Chapter 13, Subchapter 4⁴¹ and are administered by the Ethics Commission.⁴² PACs may not make

³⁶ League of Women Voters of Maine, “PAC Basics,” March 2008 (visited March 23, 2008) <http://www.lwvme.org/files/PAC_Basics.pdf>.

³⁷ *Daggett v. Commission on Governmental Ethics & Election Practices*, 205 F.3d 445 (1st Cir. 2000). See also, U. S. Case No. 99-2243 (visited March 27, 2008) <<http://www.ca1.uscourts.gov/>>.

³⁸ Maine State Public Law, Chapter 365 (1983).

³⁹ United States General Accounting Office, “Campaign Finance Reform: Early Experiences of Two States that Offer Full Public Funding for Political Candidates,” GAO-03-453, May 2003 (visited March 5, 2008) <<http://www.gao.gov/new.items/d03453.pdf>>.

⁴⁰ Maine Commission on Governmental Ethics and Election Practices, , 1-2.

⁴¹ Maine Commission on Governmental Ethics and Election Practices, *Laws and Rules Administered by the Ethics Commission*, “Reports by Political Action Committees, Subchapter IV” (visited March 5, 2008) <http://mainegov-images.informe.org/ethics/pdf/campaign_finance_law_subch4.pdf>.

Brief History of Campaign Finance Reform

aggregate contributions of more than \$500 in any election for a gubernatorial candidate, or \$250 in any election for any other candidate. This limit is consistent with contribution limits to traditionally financed candidates from any other source. Any PAC that makes aggregate expenditures in excess of \$50 to any one or more candidates, committees, or campaigns in Maine must keep records as required by the Ethics Commission. Additional details are available on the Maine Ethics Commission website.⁴³

Large donations to PACs established to influence the 2006 governor's race in Maine drew criticism, as reported in the *Portland Press Herald*. During the campaign, the largest single donation came from RECAF, Inc., of Utah, which gave \$250,000 to a Republican PAC in Maine in support of Chandler Woodcock's campaign. Several other corporations also gave large sums to this Republican PAC. On the Democratic side, national educational associations and labor unions made big contributions to a Democratic PAC, getting around the cap on contributions to Baldacci's privately financed re-election campaign.⁴⁴ More data is available in our "PACs Basics" paper.⁴⁵

PACs in Other States

Many states currently regulate contributions to political action committees. Some states have dollar limits on contributions from individuals to PACs; some also have limits on the dollar amount one PAC may give to another PAC. Some states limit or prohibit PAC contributions from corporations and/or labor unions.⁴⁶

The Brennan Center for Justice has recently published studies of campaign finance regulation in several mid-western states including Minnesota, Wisconsin, Michigan, Ohio and Illinois.⁴⁷ In general, every state is badly in need of reform measures. Many laws that originated in the 1970s have fallen into disuse. Existing laws are ineffective and filled with loopholes that permit special interests to funnel unlimited amounts of money to political parties, legislative caucuses, and PACs. The laws' enforcement mechanisms are weak and penalties for violations are so low that they pose no barrier. "In 2006, political parties, unions, and business-backed groups spent \$7 million to influence the outcome of the [Minnesota] gubernatorial race - outspending the two main candidates," said Suzanne Novak, Deputy Director of the Democracy Program at the Brennan Center.⁴⁸

⁴² For a definition of PACs in Maine, see the League of Women Voters briefing paper, "Candidate PACs: Maine State Law and Enforcement," (visited December 7, 2008) <http://www.lwvme.org/files/Maine_State_Law_Enforcement.pdf>.

⁴³ Maine Commission on Governmental Ethics and Election Practices, note above.

⁴⁴ Kevin Wack, "PAC donations from Utah raise doubts in Maine," *Portland Press Herald*, May 6, 2007 (visited March 19, 2008) <<http://pressherald.maine.com/news/state/070506newdonor.html>>.

⁴⁵ League of Women Voters of Maine.

⁴⁶ League of Women Voters of Maine, "State Limits on Contributions to PACs," (visited December 8, 2008) <http://www.lwvme.org/files/State_Limits_on_Contributions_to_PACs.pdf> and National Conference of State Legislators, "Limits on Contributions to PACs," (visited December 8, 2008) <http://www.ncsl.org/print/legismgt/limits_PACs.pdf>.

⁴⁷ The Brennan Center for Justice, "Campaign Finance Reform," (visited March 5, 2008) <http://www.brennancenter.org/content/section/category/campaign_finance_reform>.

⁴⁸ The Brennan Center for Justice, "Report from NYU's Brennan Center Finds Minnesota's Campaign Finance Laws Lacking, Urges Reforms," Press Release, April 25, 2007 (visited March 27, 2008)

Brief History of Campaign Finance Reform

In striking contrast, Connecticut's legislature passed a bold campaign reform bill in 2005, combining restrictions on special interest groups with full public financing.⁴⁹ Lobbyists, state contractors and prospective state contractors are prohibited from making contributions to candidate committees for legislative and statewide offices, candidate-affiliated political action committees (PACs) and party committees. It further closes business PAC contribution loopholes and makes contribution limits for business and labor PACs equal. Because the public funding portion of the bill sets higher qualification thresholds for minor parties and independent candidates, the Connecticut law is being contested in the courts by the Green Party and the American Civil Liberties Union as unfairly discriminatory against minority and third parties and as in violation of the First and Fourteenth Amendments.⁵⁰ The Brennan Center has entered a motion to dismiss the case which, as of October 6, 2008, is pending.⁵¹

Summary

The history of campaign finance reform documents an ongoing effort to craft laws and rules that limit the opportunities for wealthy donors to exercise disproportionate influence on the political process while protecting important rights, particularly free speech rights, of all citizens. Laws have evolved to limit the dollar amounts of contributions and to require full disclosure of financial transactions. In Maine, unlike most states, contributions to PACs are not limited in either amount or source. Campaign finance laws in Maine limit all donors, including PACs, in the amount of their contributions to candidates, and full disclosure is required.

Questions Going Forward

Do large contributions to PACs exert undue influence on Maine politics? If so, should the dollar amount of such contributions be limited by law? Is this particularly a problem when large donations come from organizations and individuals outside the state of Maine? Should PAC regulation in Maine be changed in other ways? These important questions must be answered to insure that Maine government serves the interests of Maine people.

http://www.brennancenter.org/content/resource/report_from_nyus_brennan_center_finds_minnesotas_campaign_finance_laws_lack/.

⁴⁹ 2005 Conn. Acts, An Act Concerning Comprehensive Campaign Finance Reform for State-Wide and Constitutional General Assembly Offices (December 7, 2005).

⁵⁰ The Brennan Center for Justice, "Case 3:06-cv-01030-SRU Document 17 Filed 09/29/2006" (visited March 5, 2008) <http://brennan.3cdn.net/b4ba9cbfee47b4517a_wbm6b9058.pdf>.

⁵¹ The Brennan Center for Justice, "The Green Party of Connecticut v. Jerry Garfield," (visited October 16, 2008) <http://www.brennancenter.org/content/resource/green_party_of_connecticut_v_jeffrey_garfield_et_al/>.

Brief History of Campaign Finance Reform

Appendices

Appendix I. Key Sources

The Brennan Center for Justice at NYU School of Law at www.brennancenter.org has a section on Campaign Finance and a paper, *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, as well as reports of studies done on various states.

The Brookings Institution website on Campaign Finance at www.brookings.edu

The Center for Responsive Politics at www.opensecrets.org

The League of Women Voters on Campaign Finance Reform at www.lwv.org

The League of Women Voters of Maine's PAC Study page at www.lwvme.org/pac_study.html

The Maine Commission on Governmental Ethics and Election Practices at maine.gov/ethics

The New Campaign Finance Sourcebook, Anthony Corrado, Thomas E. Mann, Daniel R. Ortiz, and Trevor Potter, 2005, The Brookings Institution

The Oyez Project at www.oyez.org archives Supreme Court cases.

Wikipedia at www.wikipedia.org has excellent articles on campaign finance reform law and related Supreme cases with footnotes to external legal sources. While Wikipedia is not a primary source, we found it a helpful introduction to complex legal matters and guide to primary sources. Wikipedia's conclusions can readily be checked with primary sources.

Appendix II. Glossary

501(c) A nonprofit organization that is generally exempt from federal taxation. “501(c)” refers to the section of federal tax code that regulates nonprofit corporations. Wikipedia lists twenty-seven types of 501(c) organizations⁵². 501(c)(4), (c)(5), and (c)(6) organizations have similar status as regards political activity. They may lobby and “may engage in political campaigns on behalf of or in opposition to candidates for public office provided that such intervention does not constitute the organization's primary activity.”⁵³ They may not make direct expenditures to a political candidate or cause. On the other hand, under Maine law, any organization that raises or spends more than \$5,000 in a candidate or ballot issue campaign must register as a PAC or a ballot issue committee.

501(c)(4) A civic league or organization whose purposes are charitable, educational or recreational. Examples are League of Women Voters, AARP, National Rifle Association, and Moveon.org Civic Action. A 501(c)(4) can raise and spend unlimited amounts of money from individuals during a federal electoral campaign without any disclosure, as long as it can argue that it is more concerned with the promotion of an issue than the election of a candidate.⁵⁴

501(c)(5) A labor, agricultural, or horticultural organization.

501(c)(6) A business league or trade organization, such as the Chamber of Commerce.

527 A tax-exempt group formed to circumvent regulation by the Federal Election Commission (FEC). 527's have been around since 1974 when section 527 of the Internal Revenue Code (IRC) exempted political organizations from federal income tax.⁵⁵ Because 527 organizations do not directly advocate the election or defeat of any candidate for federal office, they avoid regulation by the FEC. The line between issue advocacy and candidate advocacy is the source of heated debate and litigation. Many 527s raise money to spend on issue advocacy and voter mobilization outside of the federal restrictions on PACs.⁵⁶ Some 527s, such as the Republican Governors Association and the Democratic Governors

⁵² 26 U.S.C. § 501(c).

⁵³ John Francis Reilly and Barbara A. Braig Allen, “Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations,” Internal Revenue Service, page L-2 (visited April 1, 2008) <<http://www.irs.gov/pub/irs-tege/eotopicl03.pdf>>.

⁵⁴ Jim Rutenberg and David D. Kirkpatrick, “A New Channel for Soft Money Appears in Race,” *New York Times*, November 12, 2007 (visited April 6, 2008) <http://www.nytimes.com/2007/11/12/us/politics/12spend.html?_r=1&hp&oref=slogin>.

⁵⁵ 26 U.S.C. § 527.

⁵⁶ “527s and the Soft Money Loophole,” *NOW on PBS*, August 27, 2004 (visited April 1, 2008). Read the transcript at <<http://www.pbs.org/now/politics/527s.html>>.

Brief History of Campaign Finance Reform

Association, are involved in elections in state governments.⁵⁷ If so, they may be required to register as state PACs under state law.

Aggregate limit Maximum combined amount (or percentage) of money that a candidate can accept from a single contributor, individual or PAC. “Aggregate limit” can also refer to the maximum amount a single contributor can donate to all candidates or PACs. For example, a \$10,000 aggregate limit on PAC contributions would mean that a single contributor could make one \$10,000 donation to one PAC or ten \$1,000 donations to ten PACs.

Ballot Issue A ‘yes or no’ question that appears on the ballot in many state and local elections. Also referred to as a ‘referendum.’

Ballot Issue Committee In Maine, an organization whose major purpose is not to influence candidate or ballot issue campaigns but that receives contributions or make expenditures in excess of \$5,000 to influence a ballot issue is now required to register as a ballot issue committee.

BCRA Bipartisan Campaign Reform Act of 2002, also known as the McCain-Feingold Bill, intended to close two huge loopholes in federal campaign finance law: “soft money” and “sham issue advocacy.”⁵⁸

Buckley v. Valeo A key Supreme Court ruling (1976) in campaign finance reform recognized not only that campaign finance regulation is a free speech/first amendment issue but also that corruption of the political process by campaign contributions must be considered. The Court upheld a limit on contributions from individuals of \$1,000 per candidate per election and said, “preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances.” *Buckley* upheld a \$5,000 per election limit on contributions to candidates from “multi-candidate political committees.”⁵⁹

Bundling A term used to describe the process of an entity, sometimes called a “conduit,” gathering donations from many different individuals and presenting a bundle of many individual checks to a campaign. Emily’s List⁶⁰ is an example.

Caucus A conference of members of a legislative group, most commonly a political party, to decide on policies or strategies. More specifically, it is often used to refer to the entire membership in a given party in one house or the other of the

⁵⁷ Center for Responsive Politics (visited April 1, 2008) <<http://www.opensecrets.org/527s/527cands.asp?cycle=2004>>.

⁵⁸ Deborah Goldberg (editor), *Writing Reform: A Guide to Drafting State and Local Campaign Finance Laws*, Brennan Center for Justice at NYU School of Law, I-14, 2004. (visited April 1, 2008) <http://www.brennancenter.org/content/resource/writing_reform_a_guide_to_drafting_state_local_campaign_finance_laws_2004_r/>.

⁵⁹ *Buckley v. Valeo*, 424 U.S. 1 (1976).

⁶⁰ EMILY’s List (visited April 1, 2008) <<http://www.emilyslist.org>>.

Brief History of Campaign Finance Reform

legislature: Senate Republicans, Senate Democrats, House Democrats, and House Republicans.

Cloture rule The U. S. Senate requires 60 (3/5 of 100) senators to vote to close debate on an issue and to end a filibuster. The Senate cloture rule has lots of other aspects and an interesting history.⁶¹ In the Maine State Legislature, cloture refers to the deadline for submitting requests for bills to be considered during a legislative session.

Express Advocacy A type of communication that advocates the election or defeat of a particular candidate or candidates. Express advocacy is usually distinguished from issue advocacy, which has no reference to a political candidate.⁶²

FEC Federal Election Commission, established in 1974 to deal with campaign finance legislation, especially FECA.

FEC v. Wisconsin Right to Life, Inc. Supreme Court ruling in 2007 that issue ads may not be banned during the months preceding a primary or general election.^{63 64}

FECA Federal Election Campaign Act passed in 1971 and amended in '74, '76, and '79. FECA regulated both campaign contributions and spending.

First Amendment (of U. S. Constitution) “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Hard money Donations to a candidate’s campaign committee directly from individuals and PACs. Law limits these donations. Compare with “Soft money.”

Independent expenditure Money spent to advance the election campaign of a candidate, without that candidate’s knowledge, that does not come from the candidate or from the candidate’s campaign. Such money can pay for ads attacking the favored candidate’s opponent, for example, even if the favored candidate is running with public funds. FECA of 1974 placed limits on

⁶¹ Christopher M. Davis, “Invoking Cloture in the Senate,” for the Congressional Research Service and the Library of Congress, updated June 4, 2007 (visited March 29, 2008) <<http://www.senate.gov/reference/resources/pdf/98-425.pdf>>.

⁶² The Campaign Legal Center, “Express Advocacy,” (visited April 2, 2008) <<http://www.campaignfinanceguide.org/f-expressadv.html>>.

⁶³ Supreme Court of the United States Syllabus (visited March 29, 2008) <<http://www.supremecourtus.gov/opinions/06pdf/06-969.pdf>>.

⁶⁴ *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007).

Brief History of Campaign Finance Reform

independent expenditures, but these limits were declared invalid as unconstitutional (free speech) in the *Buckley v. Valeo* ruling of 1976.⁶⁵

Major Purpose PAC In Maine, a major purpose PAC is an organization whose major purpose is influencing candidate or ballot issue elections and that spends more than \$1,500 in a calendar year to do so. (See also “Non-major Purpose PAC.”)

McConnell v. FEC Supreme Court ruling (2003) that affirmed BCRA almost entirely and clarified the meaning of corruption. The Court said, “Just as troubling to a functioning democracy as classic quid pro quo corruption is the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder. Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize. The best means of prevention is to identify and to remove the temptation.”⁶⁶

MCEA Maine Clean Election Act, the 1996 citizen-initiated law that created a voluntary program of full public funding for candidates for the Legislature and the office of Governor.⁶⁷

Multi-Candidate PAC As used in *Buckley*, a PAC with 50 or more contributors to five or more candidates. Under federal law, small PACs are subject to the contribution limits applicable to individuals, whereas PACs that have numerous financial supporters and give to multiple candidates are permitted to make larger contributions.⁶⁸

Nixon v. Shrink Missouri Government PAC Supreme Court ruling (2000) on a case challenging the constitutionality of \$1,075 limits on contributions to statewide candidates in Missouri. The court ruled that the principles that upheld federal limits on campaign contributions (as set by *Buckley*) also applied to state limits on campaign contributions to state offices. In his concurrence in this case, Justice Stevens wrote, “Money is property; it is not speech.”⁶⁹

⁶⁵ *Buckley v. Valeo*, 424 U.S. 1 (1976). See also Alan Greenblatt, “Campaign Finance: That Clean All Over Feeling,” *Governing Magazine*, July 2002, for a critique of Maine’s Clean Election Law in this regard (visited March 29, 2008) <<http://www.governing.com/archive/2002/jul/campaign.txt>>.

⁶⁶ *McConnell v. FEC*. See also Findlaw (visited March 29, 2008) <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=540&page=93>>.

⁶⁷ Me. Rev. Stat. Ann. 21-A § 1121 (2008). Available at <<http://janus.state.me.us/legis/statutes/21-A/title21-Ach14sec0.html>>.

⁶⁸ Goldberg, III-18 and *The Campaign Finance Guide*, (visited March 29, 2008) <<http://www.campaignfinanceguide.org/f-multiPAC.html>>.

⁶⁹ *Nixon v. Shrink Missouri Government PAC*, *supra* note 4.

Brief History of Campaign Finance Reform

Non-major Purpose PAC In Maine, an organization whose purpose is not to influence candidate elections may still qualify as a PAC if it spends more than \$5,000 in a calendar year to do so. (See also Major Purpose PAC.)

PAC Political Action Committee. Federal and state laws may define PACs differently. FECA defines a PAC as a group that takes in or spends \$1,000 or more in order to influence a federal election or legislation. MoveOn.org Political Action is a federal PAC, while MoveOn.org Civic Action is a 501(c)(4). Under Maine law, there are three types of PAC with different thresholds of for registering: Segregated Fund PACs, Major Purpose PACs, and Non-major Purpose PACs.

Rebuttable Presumption An assumption (in a court of law) taken to be true unless someone comes forward to contest it and prove otherwise. It can be used to effectively reverse the presumption of innocence in criminal cases. In campaign finance law, advertising close to an election that names or depicts a candidate is presumed to be electioneering unless rebutted.

Seed money Candidates attempting to qualify for public funds under the Maine Clean Election Act are permitted to raise limited private money in amounts up to \$100 per contributor early in their campaign to cover campaign expenses during the qualifying period.

Separate Segregated Fund A fund maintained by a 501(c) organization for political expenditures under Internal Revenue Code 527. The segregation of dues money for political campaign expenditures is a separate segregated fund under some state statutes.⁷⁰ Segregated funds are required to register as PACs in Maine if they spend more than \$1,500 over any period of time.

Sham issue advocacy Allows advertisers to escape regulation as long as their ads do not “expressly advocate” the election or defeat of a federal candidate. Much soft money has been used for sham issue ads beginning in the 1996 election cycle.⁷¹

Soft money Money, or anything of value, that is given or spent for federal election purposes outside of federal contribution limits, source restrictions, and disclosure requirements.⁷² In most cases, this is money spent by organizations (such as 527 groups) which do not “expressly advocate” the election or defeat of a candidate. Formerly, soft money also allowed corporations, trade unions, and wealthy individuals to escape limitations on candidate contributions by giving to national political parties. The money was then by funneled through the parties to federal election related activities, in violation of the intent of FECA. This kind

⁷⁰ Reilly and Allen, L-13.

⁷¹ Thomas E. Mann, “Suppressing Political Speech?” Brookings Institution, July 9, 2007 (visited March 29, 2008) <http://www.brookings.edu/opinions/2007/0709_campaignfinance_mann_opp08.aspx>.

⁷² “Soft Money,” *The Campaign Finance Guide* (visited March 29, 2008) <<http://www.campaignfinanceguide.org/f-softmoney.html>>.

Brief History of Campaign Finance Reform

of soft money is banned under BCRA.⁷³ In Maine, soft money refers to money spent for state election purposes outside of state contribution limits, source restrictions, and disclosure requirements.

⁷³Bipartisan Campaign Reform Act of 2002.

Brief History of Campaign Finance Reform

Appendix III. Timeline of Legislation and Supreme Court Rulings Related to Federal Campaign Finance Reform 1900 to 2007

- 1907** Tillman Act made it illegal for any national bank, or any corporation organized under any laws of Congress, to make a money contribution in connection with an election to any political office. It had weak enforcement provisions and did not apply to state-chartered corporations in state and local elections.
- 1910** Federal Corrupt Practices Act (FCPA) as amended in 1911 and 1925 remained the primary law regulating campaign finance in federal elections until it was repealed by FECA in 1971.
- 1939** Hatch Act prohibited federal employees from engaging in partisan political activities.
- 1943** Smith-Connally Act prohibited unions from contributing directly to federal political campaigns, in the context of limiting labor union rights, especially the right to strike, during wartime.
- 1943** CIO (Congress of Industrial Organizations, a federation of labor unions), in response to the Smith-Connally Act, formed the first PAC to collect money from union members and contribute to FDR's reelection campaign.
- 1947** Taft Hartley Act strengthened and made permanent the ban on contributions to federal candidates from unions, corporations and interstate banks.
- 1971** Federal Election Campaign Act (FECA) increased disclosure of federal campaign contributions.
- 1974** FECA amended to add a \$5000 limit on PAC contributions to candidates and establish the Federal Elections Commission (FEC).
- 1974** Section 527 of IRS code exempted political organizations from federal income taxes and gave "527" organizations a way to avoid FECA rules.
- 1976** *Buckley v. Valeo* Supreme Court ruling affirmed most of the amended FECA.
- 1976** FECA amended in response to *Buckley v. Valeo*.
- 1979** FECA amended to allow parties to spend unlimited amounts of hard money on activities like increasing voter turnout and registration.
- 1985** *FEC v. NCPAC (National Conservative Political Action Committee)* Supreme Court decided that there should be no limits on a PAC's spending on behalf of a candidate, if said expenditure is made without any cooperation or collaboration with a candidate.

Brief History of Campaign Finance Reform

1996 McCain-Feingold–Thompson Bill failed. It would have banned direct contributions from PACs.

2000 *Nixon v. Shrink Missouri Government PAC*. Supreme Court ruled that the principle that federal limits on campaign contributions also applied to state limits on campaign contributions to state offices.

2002 Bipartisan Campaign Reform Act (BCRA) a. k. a. “McCain-Feingold” further amended FECA to close soft money and sham issue advocacy loopholes.

2003 *McConnell v. FEC*. Supreme Court affirmed BCRA almost entirely.

2007 *FEC v. Wisconsin Right to Life, Inc.* Supreme Court held that BCRA’s restriction on issue ads in the months preceding elections is unconstitutional.⁷⁴