

## 5. The Bipartisan Campaign Reform Act and Congressional Elections

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The Bipartisan Campaign Reform Act (BCRA) of 2002, sometimes referred to as the McCain - Feingold Act, for its Senate sponsors, or the Shays - Meehan Act, for its sponsors in the House, was the first major piece of campaign finance reform legislation to become law in more than two decades. The politics of its passage by Congress and its implementation involves many of the recurring themes in American politics: a clash of deep-seated values, a system of regulations desperately in need of an overhaul, a legislative journey marked by high levels of partisanship and hyperactive interest group activity, one or more scandals to serve as catalysts, and reliance on the Supreme Court to act as the ultimate arbiter of the law. In this chapter I analyze these aspects of the BCRA and speculate about the law's impact on the conduct of congressional elections, primarily elections for the House.

### A Clash of Values

Elections are the hallmark of a democracy. The principle of one person, one vote, suggests that citizens should have equal opportunity to influence government. The tenet that elections must involve a free exchange of opinions implies that individuals should be able to discuss candidates, political parties, and issues. Few scholars or citizens would quibble with these statements. Where individuals disagree is about the role of money in elections.

Underlying arguments about the proper role of money in politics are two fundamental values that are often in tension: liberty and equality. Those who emphasize equality typically prefer to limit the role of campaign contributions and spending in elections, maintaining that the private financing of elections gives individuals and groups that commit large sums to electoral politics disproportionate influence over election outcomes. These donors also enjoy greater political access than do other citizens, which helps them gain influence in the policymaking process.<sup>1</sup> Some critics believe that large contributions create relationships that give the appearance of corruption, border on bribery, and may on occasion involve both.

Those who emphasize liberty generally argue that individuals and groups that contribute or spend money in elections are simply using those funds to give voice to their opinions and the interests they represent. They consider the flow of campaign money to be part of a larger marketplace of ideas and believe that inequalities in campaign resources among candidates, parties, and other groups are a reflection of the intensity of their political support. Advocates of private

financing also point out that the money for campaigning must come from somewhere and making contributions is part of a broader pattern of civic involvement.

### The BCRA's Predecessors

A host of laws governed federal elections before passage of the BCRA.<sup>2</sup> The earliest laws focused on eliminating the extortion of contributions from those employed by, or holding contracts with, the federal government; severing the links between campaign contributions and government regulations and contracts; limiting the influence of money in elections generally; and opening political campaign financing to public scrutiny. Nevertheless, the laws were laced with loopholes that allowed for easy evasion by candidates, parties, individuals, and interest groups. Moreover, because those charged with enforcing them had neither the political motivation nor the resources to do so, some politicians and donors felt free to commit brazen violations.

Despite some attention-grabbing examples of corruption reported by the press, only limited progress was made toward controlling the flow of campaign money during most of the twentieth century. Commissions were formed, bills introduced, and proclamations made. However, ideological disagreements over the proper role of money in politics, political leaders' desire to gain partisan advantage, and the self-interest of individual members of the House and Senate and the party committees and interest groups that supported them made it difficult for significant campaign finance reform to survive the legislative process.

### The Federal Election Campaign Act of 1974

The passage of the Federal Election Campaign Act (FECA) of 1974 followed the public furor that arose as a result of the Watergate scandal.<sup>3</sup> The investigation following the break-in at Democratic Party headquarters in Washington's Watergate Hotel revealed that President Nixon's Committee to Re-elect the President accepted illegal contributions, gave ambassadorships and other political appointments to large donors, granted favors to businesses that made large campaign contributions, and used a slush fund to finance the break-in itself and other illegal activities.

The 1974 reform had several objectives, including reducing candidates' and parties' dependence on large contributions; increasing candidates' and parties' incentives to raise large sums in small donations; diminishing the political influence of businesses, unions, and other interest groups; decreasing the costs of running for federal office; bringing transparency to the financing of elections; and eliminating corruption. It created contribution limits for candidates, individuals, parties, and interest groups, and it prohibited contributions from the treasuries of corporations, unions, trade associations, and other groups. The resultant campaign finance system was funded solely with money that originated as limited contributions from individual donors. The new law instituted spending limits for all fed-

eral campaigns and created opportunities for candidates for president to fund their primary campaigns with a mix of private and federal funds and their general election campaigns entirely with public money. The law included rigorous reporting requirements for all federal campaign finance activity and created the independent Federal Election Commission (FEC) to administer its provisions.

Shortly after the FECA went into effect it was challenged in court. In January 1976 the Supreme Court ruled in *Buckley v. Valeo* that the provisions of the law limiting candidates' contributions to their own campaigns, limiting spending by candidates' campaign committees, and prohibiting others from spending independently of a campaign were in violation of constitutionally protected free speech rights. The Court also ruled that the method used to appoint members to the FEC was unconstitutional. Congress responded by amending the FECA in 1976, eliminating those aspects of the law that were found to violate the Constitution.<sup>4</sup>

An important aspect of the Court's ruling, found in a footnote to the opinion, narrowed the regulation of political expenditures in federal elections to only those activities that "expressly advocate" the election or defeat of a candidate. This later resulted in what came to be known as the "magic words" test, which limited the regulation of campaign spending to communications that included words such as "vote for," "elect," or "defeat." It laid the foundation for the parties and interest groups to sponsor non-federally funded, election - related communications, often referred to as "issue advocacy advertising."

A third set of amendments to the FECA, passed in 1979, simplified reporting requirements and made it possible for state and local parties to spend unlimited amounts on grassroots campaign activities without its counting toward the federal limits. Around the same time that Congress was enacting these amendments, the FEC issued regulatory decisions allowing parties to raise unregulated, nonfederal funds (often referred to as "soft money") and use the money to pay for a portion of their administrative costs and voter identification and mobilization efforts. The FECA of 1974, its amendments, and associated Court rulings and regulatory decisions were extremely successful for the first twenty years of their existence.

## Adaptation to the FECA

After the FECA was enacted, political parties, interest groups, individual donors, and congressional candidates learned to operate within its confines. National party organizations improved their operations, raising large sums of money in small and medium-sized contributions, redistributing some funds to federal candidates, and helping state party committees improve their organizational structures, fund - raising activities, and campaign assistance programs.<sup>5</sup> The Republicans responded particularly well, raising more money, and providing more campaign support to candidates than did the Democrats.<sup>6</sup> The parties' congressional and senatorial campaign committees — the Democratic Congressional

Campaign Committee (DCCC), the Democratic Senatorial Campaign Committee (DSCC), the National Republican Congressional Committee (NRCC), and the National Republican Senatorial Campaign Committee (NRSC)—became expert in identifying the close races that would benefit most from party contributions and services. They disseminated information designed to encourage political action committees, or PACs, and individual donors to support the candidates in those races.<sup>7</sup> These organizations encouraged members of Congress and congressional retirees to redistribute funds they raised to help those same candidates. The Democratic National Committee (DNC) and Republican National Committee (RNC) also aired campaign ads designed to set a national political agenda. Party organizations located in Washington, D.C., and in many states helped organize voter identification and mobilization efforts, often referred to as "coordinated campaigns," to help candidates and party committees. Although party organizations accounted for only a small amount of the financial resources of candidates in major - party contested races —approximately \$10.4 million for those competing for the House and \$14.25 million for Senate candidates, or 2 percent of the respective totals, during the 2002 elections—the parties' influence on congressional elections extends well beyond their monetary contributions.<sup>8</sup>

Early adaptations to the law by interest groups involved the formation of PACs, which raise money from individuals and contribute the funds to candidates, party committees, and other groups. PACs became the major electoral arm of most interest groups. By 1988 their number had reached 4,832. Then, their ranks dipped slightly and stabilized. PACs contributed approximately \$164.2 million to House candidates and \$53.3 million to Senate candidates in major -party contested elections in 2002, accounting for roughly 34 percent and 18 percent of these candidates' total resources. A few PACs provided political expertise in the form of in - kind contributions of polls, media, or other campaign services to candidates, giving the PACs a measure of influence over the conduct of a candidate's campaign.

A small number of PACs made independent expenditures designed to directly inject information into the campaign agenda that could help or harm one of the candidates. A handful of so called "lead PACs" distributed information about candidates, their issue stances, and the competitiveness of their races for the purpose of influencing the decisions of the leaders of like - minded PACs. Others, most notably EMILY's List, championing pro - choice Democratic women candidates, practiced "bundling," or collecting checks made out to designated candidates from the PAC's members and then packaging (in a bundle) and delivering them to each candidate. All of these activities fell within the guidelines established by the FECA.<sup>9</sup> Other interest group activities involved providing candidates with endorsements, advocating that organization members support specific candidates, conducting and publicizing research on individual candidates, and organizing campaign volunteers and other grassroots activities to help candidates.

Limited by the FECA in the amounts they could directly contribute, some individuals sought to increase their influence by forming PACs, hosting fund-

raising events, bundling contributions, and adopting some of the other techniques that political organizations used. Some also made contributions in the names of family members, including children not yet old enough to vote. During the 2002 elections, individuals accounted for \$237.1 million, or 48 percent, of the resources collected by candidates in major-party contested House races and \$174.9 million, or 60 percent, of the resources collected by their counterparts in Senate elections.

Candidates also learned how to operate within the confines of the FECA's regulatory regime. Those who adapted best understood that to win an election they needed to wage a campaign for resources that focused on raising small and moderate-sized contributions from many donors. They assembled campaign organizations comprising professional fund-raising consultants and other political operatives whose reputations assured potential donors that the candidate was running a serious campaign. This was especially important to challengers, who because of their long odds of success need to make the case that their candidacies were viable, and to candidates for open seats, who generally need to raise large sums because their races tend to be among the most competitive.<sup>10</sup>

## The Demise of the FECA

Many donors and recipients of political contributions also sought ways to influence federal elections outside of the FECA. Some continued to challenge aspects of the law to test their constitutionality and to see whether the FEC or the Department of Justice would prosecute violators. These efforts are consistent with those of other individuals and groups whose activities are subject to government regulation. They weakened the regulatory regime the FECA had established, and in the minds of many they created a need for further reform.<sup>11</sup>

Political parties were among the most aggressive organizations in finding ways to spend money outside the confines of the law. Following the FEC's decision allowing party committees to raise and spend soft money to finance administrative and electioneering activities, party organizations in Washington began to step up their soft money-raising efforts, often funneling what they raised to states where there were competitive contests and that could legally accept the funds. By the 1996 elections, party soft money fund raising had begun to skyrocket. New spending opportunities were the primary impetus for the change. Several courts had ruled that political communications that did not expressly advocate the election or defeat of individual federal candidates were not subject to the FECA. The rulings opened a major breach in the regulatory system, freeing political parties and interest groups to spend virtually unlimited amounts of soft money on issue advocacy advertising to influence federal elections.

The parties' response was to raise record amounts of soft, or unregulated, money and blanket the airwaves. The parties' soft money receipts roughly tripled between the 1992 and 1996 elections, and they almost doubled between 1996 and 2000.<sup>12</sup> The Democrats were particularly aggressive in taking advantage of the soft money option, using these funds to substantially reduce the Republicans'

fund-raising advantage. The increases in spending in midterm elections were not quite as large as those in presidential election years, but they also were impressive.

Most soft money was raised by party organizations in Washington and distributed to the states, where state party leaders were instructed, sometimes in great detail, how to spend it. This enabled the national parties to capitalize on the fund-raising ability of the president, cabinet officials, congressional leaders, and other powerful individuals and to impose a national strategy on state party committees. The parties spent soft money on highly organized "independent," "parallel," and "coordinated" campaigns designed to set a national campaign agenda or to influence agendas, issues, and candidate images in individual House, Senate, and presidential campaigns. These campaigns involved teams of pollsters, issue researchers, media consultants, grassroots organizers, and direct-mail and telemarketing experts hired to carry out party-sponsored activity to influence specific contests."

The independent campaigns involved what the FEC categorizes as "independent expenditures," including radio, television, and direct-mail communications that expressly call for the election or defeat of a federal candidate. Because these expenditures must be made with hard money and without a candidate's prior knowledge or approval, they became less popular following the introduction of issue advocacy advertisements. The parties spent a mere \$3.6 million on these in the 2002 election."

Parallel campaigns are similar to independent campaigns in that they are designed to influence competitive contests, require substantial organization and planning, and involve communications that flow directly from party committees to voters. However, they were partially financed with soft money, did not expressly advocate a candidate's election or defeat, and were not fully subject to federal reporting requirements, making it impossible to determine exactly how much the parties spent in connection with individual congressional races. It is estimated that parties spent \$101 million on the television advertising component of their parallel campaigns in 2002.<sup>15</sup>

Coordinated campaigns involve traditional grassroots campaigning enhanced by innovations in voter targeting, communications, and mobilization. Party committees used a combination of hard and soft money to register voters, print and distribute leaflets, and organize door-to-door visits and other grassroots activities. During the 2002 elections some party committees used the Internet as an organizing and fund-raising tool for their coordinated campaigns. Although it is difficult to estimate the amounts party committees spent on coordinated campaigns in 2002, the national-to-state-party financial transfers suggest a figure of about \$95 million.<sup>16</sup>

Interest groups also learned to navigate outside the FECA. Some called on prominent politicians to help them raise funds that they used to carry out their own independent, parallel, and coordinated campaigns. Several created so-called 527 committees, tax-exempt organizations (in some cases merely separate bank accounts) named after the portion of the Internal Revenue Code that defines

them. These organizations consisted of teams of interest group leaders and consultants who raised and spent nonfederal funds on candidate-centered campaign communications consisting of nonexpress advocacy. A small number of interest groups coalesced behind new groups to which they gave innocuous names. This enabled the groups to spend large amounts of money to influence the outcomes of individual elections without revealing to voters the actual sources of that money. For example, during the 2002 elections many of the nation's major pharmaceutical companies joined behind the name "United Seniors Association" to spend \$8.7 million on nonexpress television advertising in support of Republican candidates who favored the companies' interests. The name "United Seniors" gave the ads more credibility and influence than they would have received had they been attributed to a list of large drug companies.<sup>17</sup>

In addition to helping party committees and allied interest groups raise money for their independent, parallel, and coordinated campaigns, current and retired members of Congress formed their own 527 committees and used them to carry out similar campaigns. In 2002, the top 125 such organizations spent more than \$73.5 million on various political activities.<sup>18</sup> Prior to the commencement of the 2002 elections, and certainly by the elections' end, it was apparent to most political observers that the FECA's regulatory system had become as much loophole as law.

## The Enactment of the BCRA

The enactment of the BCRA bore similarities to the histories of other pieces of campaign finance reform legislation in that public perception of corruption was necessary but not sufficient for its passage. For members of Congress to pass campaign finance legislation that has the potential to affect their political careers and livelihoods, the public must be galvanized and clamoring for reform. Scandal is often needed for that to happen. In addition, legislators often must take extraordinary measures to build the broad based coalitions required to overcome the obstacles that other members of the House and Senate routinely erect to prevent reform proposals from becoming law. They also need to craft a bill that the president will be willing to sign." These political ingredients aligned in just the right way to make the enactment of the BCRA possible.

### Public Perceptions of Corruption

Just as media reports had raised misgivings about the role of money in politics in the past, they raised them prior to the enactment of the BCRA. Public opinion research revealed that substantial majorities considered large political contributions and political fund raising a major source of corruption. The public was particularly troubled by large, soft money donations and believed that restrictions should be placed on the amounts that corporations and unions may contribute to political campaigns.<sup>20</sup> Considerable numbers of Americans also were

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found to believe that members of Congress sometimes cast their votes based on what big contributors to their party want and that the will of big contributors takes precedence over the views of constituents.<sup>21</sup> Further research indicated that sizable percentages of the public considered campaign finance reform a high - priority issue.<sup>22</sup>

Political candidates and congressional donors were just as critical of the campaign finance system as the public. When asked what they thought about the campaign finance system, 82 percent of the public agreed that it was broken and needed to be replaced or that it had some problems and needed to be changed. Almost 80 percent of individuals who made significant contributions (\$200 or more) to congressional candidates agreed with this position, as did a similar number of Democratic and Republican candidates who ran for Congress in 2000. Minuscule numbers of citizens, donors, and candidates believed that the law was fine and should not be changed.<sup>23</sup>

### Insurmountable Obstacles?

Despite public sentiment in favor, passing campaign finance reform legislation is always a major challenge because the members of Congress whose votes are necessary to enact it will be regulated by it. These legislators consider themselves experts on electoral politics, and each possesses a keen understanding of the provisions of the election system that work to his or her individual advantage or disadvantage. Party and interest group leaders also know which aspects of the benefit their organizations. All of these stakeholders are predisposed to speculate on how different reform packages could affect their ability to participate in elections and influence the policymaking process.

Given the nature of public opinion on the subject, members of Congress, congressional candidates, and party leaders routinely portray themselves as reformers while advocating changes that reflect their own self-interest. Most incumbents are preoccupied with protecting elements of the system that benefit them, and most challengers are just as vocal about reforming away those advantages. Most Republicans prefer high contribution limits or none at all because such would enable them to take advantage of their superior fund-raising prowess and larger donor base. Democrats are typically more favorably disposed toward public funding for campaigns and free media time and postage, which would reduce the impact of the Republicans' financial advantages. More Democrats than Republicans have been inclined toward eliminating nonfederal money and party and interest group issue advocacy ads, despite the fact Democrats, not Republicans, have relied more heavily on those resources.<sup>24</sup>

Members of Congress's two chambers also have differing points of view, reflecting differences between running in a House district and in a statewide Senate campaign. Variations in legislators' opinions about reform also derive from the demands that fund raising makes on different types of candidates. Women, African Americans, ethnic minorities, and members of other traditionally



underrepresented groups, who depend on national donor networks, have preferences that differ from those of most white male candidates. Candidates' opinions about campaign reform further vary according to the nature of their constituencies. Candidates from wealthy, urban seats tend to have fund-raising opportunities, spending needs, and views on reform that are different from those of candidates from poor, rural states or districts. Of course, not all differences are grounded in personal or partisan advantage. Philosophical principles are also important. As noted earlier, Republicans tend to favor marketplace approaches, and Democrats generally prefer regulatory measures accompanied by public subsidies.

Finally, many legislators, and others, are skeptical about the government's ability to regulate the flow of political money. Some believe in what has been referred to as the "hydraulic theory," which maintains that money, like water, will flow through other channels or find new ones if an existing route is closed. They believe that any campaign finance reform will have only a limited effect at best. Others have embraced what might be called the "principle of inadequate results." They contend that a reform law that fails to accomplish all of its supporters' goals is not worth enacting. Still others base their skepticism on the well-established "law of unintended consequences," which holds that once a reform is passed, the unexpected is bound to happen.

Skepticism, difference of opinion, and the complexity of the issue have historically made it difficult for legislators to find the common ground needed to pass meaningful campaign reform. The sometimes-inflammatory rhetoric of reform groups occasionally widens the gaps between members of Congress. Nevertheless, between 1979 and 2002 House members and senators of both parties introduced an estimated nine hundred campaign finance bills.<sup>25</sup> Some of these were sincere attempts to improve the campaign finance system. Others were less sincere: Legislators who knew their bills would never be adopted introduced them to provide political cover for themselves rather than to actually enact reform.

Some progress was made prior to the enactment of BCRA. In 1992, Congress actually succeeded in passing a reform measure whose major feature was its potential to even the playing field among congressional candidates. The bill used a combination of public-matching funds and other incentives to encourage candidates to abide by voluntary spending limits, including voluntary limits on funds raised from PACs. However, despite the bill's success in Congress, it was vetoed by President George H. W. Bush and died when the Senate was unable to muster the two-thirds majority needed to override the veto.<sup>26</sup>

Undeterred by the failure of the 1992 bill, reformers continued to press their case. A number of developments strengthened their position. Growing soft money expenditures and issue advocacy advertising increased concern about the role of money in politics among the public, political contributors, reform groups, legislators, and politicians. Media coverage of White House sleepovers; weekend getaways for wealthy donors and federal politicians; and private policy briefings for donors featuring high-ranking administration officials and congressional

leaders added a whiff of scandal to a system that the public already believed favored special interests over ordinary citizens.

Leading reformers also made a tactical decision to scale back their goals. Previous reform efforts, such as the one in 1992, focused on the introduction of public funding, communications subsidies, or other measures designed to restructure the financing of federal elections. Sens. John McCain, R - Ariz., and Russell Feingold, D -Wis., and Reps. Christopher Shays, R- Conn., and Martin Meehan, D -Mass., sought instead to restore those FECA regulations that had been overwhelmed by loopholes. Led by these champions, reformers both in and out of Congress became more skillful at bipartisan coalition building and the use of unorthodox approaches to lawmaking.<sup>27</sup> A combination of resourceful insider lobbying, grassroots mobilization, and sympathetic media coverage enabled the sponsors of the BCRA to achieve a modicum of success in advancing their goal in the 105th and 106th Congresses.<sup>28</sup> During both, the bill's House sponsors were able to pass precursors to the BCRA over the opposition of the Republican leaders who controlled the House. The bill's Senate sponsors were less successful, as the bill twice fell victim to filibusters.

### The Politics of Passage

The dynamics of the 107th Congress were different in some important respects from those of the two that preceded it. First, although the Republicans maintained procedural control over the House and won the White House, the Democrats gained control over the Senate when Sen. Jim Jeffords of Vermont quit the Republican Party to become an independent. Second, the turnover associated with the 2000 elections led to a small but important increase in the number of pro - reform members of Congress. Third, McCain's unexpected success in raising the profile of campaign finance reform in the Republican presidential nominating contest emboldened reformers. Fourth, the Enron scandal put names and faces to questions about the influence of corporate contributions on government regulatory decisions. It led some legislators to conclude that a vote for the BCRA was a good vehicle for showing their willingness to take action against corporate abuses.<sup>29</sup>

The sequencing of events was one of the most important differences between reform efforts in the 107th and preceding Congresses. In both the 105th and 106th Congresses the House passed a reform package first, with a significant number of those voting yea anticipating that the Senate would later vote it down. In the 107th Congress the order was reversed. Once the Senate had passed the BCRA it was up to the House to determine the bill's fate because President George W. Bush had previously announced that if given the opportunity to do so, he would sign a campaign finance reform bill into law. This left representatives who had previously voted for reform, but did not actually want it to go into effect, in an awkward position. They could cast their votes consistently in support of the bill and live with the consequences of the new law, or they could reverse their

position, deny the bill passage, and look like hypocrites. Legislators undoubtedly felt considerable constituent pressure to support the BCRA. Those who had previously voted for it probably felt the most pressure, because reversing positions would give a challenger the opportunity to hold them politically accountable for flip-flopping on a highly salient vote.

Partisan pressure also was high. Most Republicans, led by the GOP House leadership, opposed the legislation, and the leadership would not have brought it to a vote if the bill's supporters had not garnered sufficient backing for a discharge petition to force it to the floor. House Democrats and their leaders generally supported reform. The positions taken by each party's legislative majority in the House, as well as the Senate, are somewhat ironic. The Republican Party organizations' prowess in fund raising gave them a tremendous advantage in collecting hard money, and the BCRA's ban on soft money and restrictions on interest group issue advocacy have the potential to be more harmful to the Democrats and their allies. Indeed, the Democratic Party organizations' failure to build a broad individual donor base meant that the only place in which they had competed with the GOP in fund raising was in the realm of soft money. However, as noted above, both ideology and pragmatism often influence how members of Congress vote. In the case of the BCRA, members of both parties seemed predisposed to vote in accordance with their philosophical beliefs. Some Democratic lawmakers also probably voted for the reform to please some of their core voters, whereas some Republicans perceived opposing the bill as a way to shore up their electoral base.

Congressional debate over the bill was heated. Backers of the BCRA argued that it would help improve the legitimacy of the federal government. Meehan argued, "Ending the soft money system will go a long way towards restoring public confidence in the decisions our government makes . . . it will cut the ties between million dollar contributions and the legislators who write the laws that govern our nation."<sup>30</sup> Shays agreed, maintaining, "Our legislation bans soft money, insists that sham 'issue ads' are covered under campaign law, and gives the FEC the teeth necessary to enforce that law."<sup>31</sup>

Many of the BCRA's opponents argued that the bill threatened to trample on free speech rights. In the words of then House majority whip Tom DeLay, R-Texas, "The central issues in this debate are the preservation of a vibrant freedom of speech and full political participation. I am fighting . . . to defend these core constitutional freedoms."<sup>32</sup> Speaker Dennis Hastert, R-Ill., declared the clash over the BCRA "Armageddon?"

Ultimately, Republican congressional leaders lost the battle over the BCRA. The House voted to pass a slightly different version of the bill than the Senate had passed. Senate sponsors McCain and Feingold successfully pressed their colleagues to accept the House version as a substitute for the version the Senate had previously adopted. On March 27, 2002, President George W. Bush signed the BCRA into law.

### Major Provisions of the BCRA

The reform bill that the second President Bush signed was far more modest in its goals than the one that the first President Bush vetoed. The BCRA mainly sought to close some of the loopholes that had undermined portions of the FECA, rather than to revamp the campaign finance system. Most of the law seeks to prevent political parties and interest groups from circumventing federal contribution and expenditure limits and avoiding federal disclosure requirements. It also aims to reduce corruption and the appearance of corruption associated with federal candidates' raising huge unregulated donations from wealthy interests for political parties.

The act has three major components: a ban on soft money, increased contribution limits, and restrictions on issue advocacy advertising.<sup>34</sup> The provisions prohibit national party organizations, such as the DNC, DCCC, DSCC, RNC, NRCC, and NRSC, or any entity they establish or control from raising, spending, or transferring funds that are not subject to federal regulation. Similar provisions apply to federal officeholders and their agents. The law requires national, state, and local parties to use only federal funds for all electioneering communications featuring a federal candidate. The act's definition of such communications is more inclusive than the "magic words" test that was previously used. Under the BCRA any broadcast, cable, or satellite television or broadcast radio ad that mentions a federal candidate, is targeted at their voting electorate, and is aired within thirty days of a primary or sixty days of the general election is considered an electioneering communication. The BCRA also requires that all voter registration drives conducted during the last 120 days of a federal election that mention a federal candidate be financed with federal funds.

The law's increased hard money contribution limits were designed to partially compensate for the loss of party soft money. Among other things, the law raises from \$1,000 to \$2,000 the amount an individual can contribute to a congressional candidate in each phase of the election (primary, general, and runoff, see Table 5 - 1). It raises from \$50,000 to \$95,000 the ceiling for aggregate biennial contributions to federal candidates, party committees, and political action committees and sets some constraints on how those funds can be allocated. Other aspects of the law concern coordinated expenditures on behalf of candidates, over which candidates have significant influence, and other expenditures, which are made with less or no candidate involvement (see Table 5 -2).

The BCRA's provisions for issue advocacy advertising are designed to bring under federal regulation broadcast communications intended to affect the outcomes of congressional or presidential elections. The act's limits on broadcast electioneering communications create a "federal spending period" in which only regulated, hard money can be used to finance campaign ads designed to expressly influence federal elections. Issue advocacy broadcasts made prior to this federal spending period could still be financed with unregulated, outside money during the 2004 elections.

Table 5-1 Federal Contribution Limits to Congressional Candidates and Political Parties

Donors or Spenders	House Candidates	Senate Candidates	National Party Committees	State Party Committees' Federal Accounts	Federal PACs
Individuals	\$2,000	\$2,000	\$25,000 per year	\$10,000 per year	\$5,000 per year
National party committees	\$15,000	\$35,000	Unlimited transfers to other party committees	Unlimited transfers to other party committees	\$5,000 per year
State party committees' federal accounts	\$5,000	\$5,000	Unlimited transfers to other party committees	Unlimited transfers to other party committees	\$5,000 per year
Federal PACs	\$5,000	\$5,000 per year	\$15,000 per year	\$5,000 per year	\$5,000 per year
Corporations and unions	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Section 527 committees	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
501 (c)(4)s and 501 (c)(6)s and nonprofit social welfare organizations	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited

*Source:* Adapted from Federal Election Commission, "Contribution Limits" ([www.fec.gov/pages/brochures/contrib.htm](http://www.fec.gov/pages/brochures/contrib.htm)) and Campaign Legal Center, "The Campaign Finance Guide" (Washington, D.C., 2004).

*Notes:* Individuals may give a contribution of \$2,000 in each phase of the election (primary, general, and runoff). They are limited to a biennial contribution of \$95,000 (\$37,500 to all federal candidates and \$57,500 to all party committees and PACs). The limits for individual contributions to candidates, national party committees, the biennial individual limit, and the national party committee limit for contributions to Senate candidates are indexed for inflation. In the event the millionaire's amendment is triggered, the limits for individual contributions increase. The parties' national, congressional, and senatorial campaign committees are considered separate committees when making contributions to House candidates, so they can contribute up to \$5,000 each, for a total of \$15,000.

Table 5-2 Federal Spending Limits in Congressional Elections

	Coordinated Expenditures on Behalf of Candidates		Other Expenditures		
	House Candidates	Senate Candidates	Independent Expenditures	Electioneering Communications	"Levin" Accounts
Individuals	Considered a contribution	Considered a contribution	Unlimited	Unlimited	Whatever state law permits, up to \$10,000
National party committees	\$10,000	\$20,000 or \$.02 times a state's voting age population, whichever is greater	Unlimited	Unlimited	Prohibited
State party committees' federal accounts	\$ 10,000	\$20,000 or \$.02 times a state's voting age population, whichever is greater	Unlimited	Unlimited	Prohibited
Federal PACs	Considered a contribution	Considered a contribution	Unlimited	Unlimited	Whatever state law permits, up to \$10,000
Corporations and unions	Prohibited	Prohibited	Prohibited	Prohibited	Whatever state law permits, up to \$10,000
Section 527 committees	Prohibited	Prohibited	Prohibited if committee is incorporated	Prohibited if committee is incorporated. If not incorporated, unlimited	Whatever state law permits, up to \$10,000
501 (c)(4)s, 501 (c)(6)s, and nonprofit social welfare organizations	Prohibited	Prohibited	Prohibited except for qualifying 501(c)(4) and nonprofit social welfare organizations	Prohibited except for qualifying 501(c)(4) and nonprofit social welfare organizations	\$10,000 if permitted by state law

*Source:* Adapted from Federal Election Commission, "Contribution Limits" ([www.fec.gov/pages/brochures/contrib.htm](http://www.fec.gov/pages/brochures/contrib.htm)) and Campaign Legal Center, "The Campaign Finance Guide" (Washington, D.C., 2004).

*Notes:* The limits for coordinated expenditures in House and Senate elections are indexed for inflation. The limit for House elections in 2004 was \$37,310 each for all national party committees and for state party committees, except for states with only one representative, in which case the limit was \$74,620. The limit for Senate elections in 2004 ranged from \$74,620 for all national party committees and for state party committees for the smallest states to \$1,994,846 for all national party committees and for state party committees in California. In the event the millionaire's provision is triggered, the limits for coordinated expenditures in both House and Senate elections increase.

Additional parts of the law were intended to allow party committees to make either limited coordinated expenditures on behalf of federal candidates or unlimited independent expenditures, but not both. The so-called millionaire's provision of the law uses a complicated formula to raise the limits for individual contributions and for party coordinated expenditures when a self-funded House candidate contributes more than \$350,000 to his or her own campaign, or a self-funded Senate candidate contributes \$150,000 plus an amount equal to four cents times the state's eligible voting population. Another provision bars minors aged seventeen and younger, who cannot legally vote, from making contributions. A final aspect of the law, the so-called "stand by your ad" provision, requires candidates to state in their television and radio ads that they approve the message.

### The Supreme Court Rules on the BCRA

Just as the FECA of 1974 faced stiff legal challenges, so did the BCRA. Indeed, reform opponents began preparing to mount such challenges while the bill was still being debated in the Senate. Leading the charge was Sen. Mitch McConnell, R-Ky., who while still filibustering against the reform, pledged that if the bill became law he would be the lead plaintiff.<sup>35</sup> Among the dozens of others who joined the cause to overturn the law were the RNC, House Speaker Hastert, the California Democratic and Republican Parties, the Cato Institute, the American Civil Liberties Union (ACLU), the AFL-CIO, the National Rifle Association, and eight state attorneys general. These plaintiffs maintain that the law's ban on issue advocacy advertising and restrictions on party financial activity are unconstitutional violations of free speech rights. The National Voting Rights Institute, the U.S. Public Interest Research Group (associated with consumer advocate and presidential candidate Ralph Nader), and some other voter groups joined the suit for a different reason, claiming its increased contribution limits were unconstitutional because they favor the wealthy. Writing in defense of the law were the Committee on Economic Development (comprising many of the nation's business leaders), almost every living former member of the ACLU leadership, and twenty-one state attorneys general.<sup>36</sup> Numerous political scientists and other academics also played roles in the suit, providing testimony and advice to plaintiffs on both sides.<sup>37</sup>

In addition to the legal wrangling that was destined to find its way to the U.S. Supreme Court, the BCRA encountered another set of challenges when the FEC began drafting the regulations for administering the law. The BCRA was not warmly received by some members of the commission. This was not surprising, given that two commissioners—Bradley Smith and Chairman David Mason—made speeches and released statements challenging the bill during the congressional debate. "Some of the FEC's rules weakened provisions of the law designed to prevent soft money from influencing federal campaigns. McCain, Feingold, Shays, and Meehan considered the rule allowing federal candidates to be involved in state party soft money fund-raising events

particularly troubling. They responded to it by filing a legal challenge and drafting a congressional resolution to overturn the regulations under the Congressional Review Act.<sup>39</sup>

On May 2, 2003, a special three - judge panel of the U.S. District Court for the District of Columbia handed down a 1,638 -page verdict in *McConnell v.* The judges were sharply divided on many issues. The verdict upheld most of the BCRA's main provisions, but the parties to the suit and most others viewed it as little more than a fact-finding mission because of their belief that the Supreme Court would chart its own route on this important case. Perhaps in recognition of this the lower court judges issued a stay of their own ruling, leaving the provisions of the original BCRA in effect pending review by the Supreme Court.

The Supreme Court's ruling on the BCRA was no less divided than that of the special three - judge panel. On December 10, 2003, the Court handed down a five- to four decision upholding most of the BCRA's major provisions. Perhaps the most noteworthy provision of the law overturned was one that required the parties to choose at the time of the nomination whether to make coordinated expenditures or unlimited independent expenditures. An important aspect of this provision is that once the decision was made it would bind an entire party organization, including national, state, and local committees. Hence, it would prohibit a party's national committee from making coordinated expenditures on behalf of a federal candidate if a state party committee made an independent expenditure on behalf of that same candidate (and vice versa). The Court ruled the provision unconstitutional, indicating that party committees could make both coordinated and independent expenditures in one election. The Supreme Court also overturned the prohibition against contributions by minors. It declined to rule on challenges to the millionaire's provision, the increased limits for hard money, and the regulations governing coordination among different political committees, stating that the plaintiffs lacked standing on most of these issues because no party had yet suffered injury.

### Speculations about the BCRA's Impact

Speculation about the impact of any new law is difficult. Speculations about the impact of the new campaign finance law are particularly challenging because these laws are being probed for weaknesses by some of the nation's best political and legal talent. Moreover, one should expect the act's short - term effects to differ from its medium- range effects because it will take time for candidates and individuals and groups that raise, contribute, and spend campaign money to adapt to the new regulations. History also suggests the act's long- range effects will differ from its short- and medium- range effects. Decisions by FEC commissioners and federal judges will probably reshape the BCRA just as they reshaped the FECA and the campaign finance statutes that preceded it. Nevertheless, some informed speculation about the act's immediate impact is possible, even before the FEC has released complete figures for the financing of the 2004 elections.



## Congressional Candidates

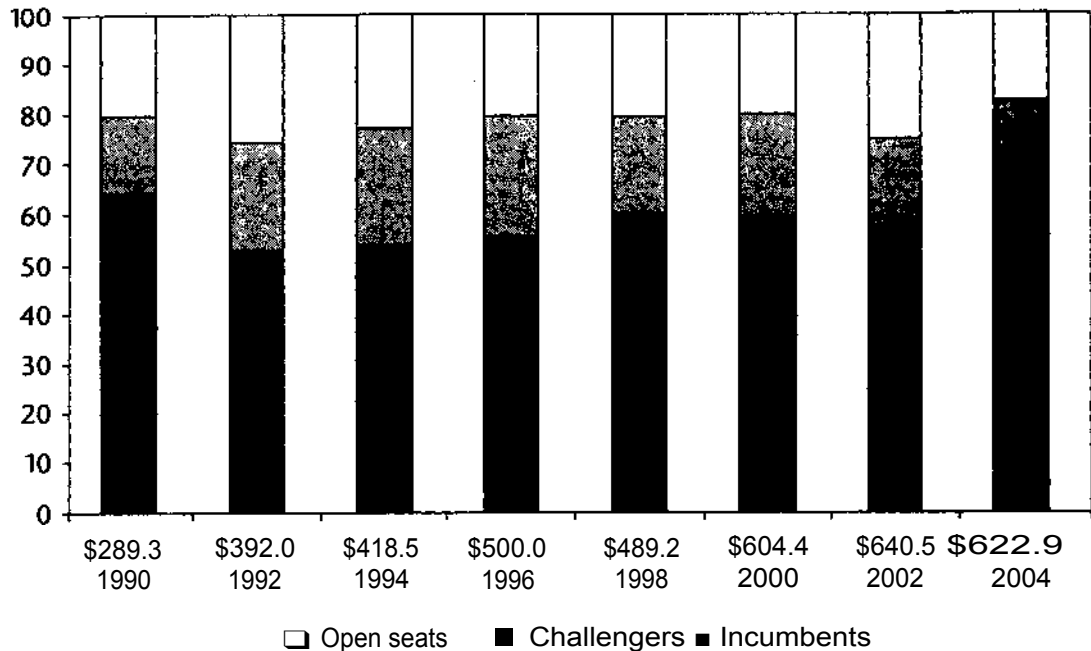
One of the immediate effects of the BCRA was to inspire a major jump in the fund - raising activity of congressional candidates. It is doubtful that this was one of the reformers' goals, but it is not surprising given that most politicians tend to be cautious and like to protect themselves from the impact of change. House general election candidates raised 16 percent more money in the 2004 election cycle than they did in the 2002 cycle.<sup>41</sup> Senate general election candidates increased their take by 27 percent, but that jump can be attributed in part to the fact that some of the largest states, including New York and California, did not have Senate elections in 2002 but had them in 2004.<sup>42</sup>

Altering the balance of fund - raising power among congressional incumbents, challengers, and open - seat candidates also was not one of the reformers' goals. Yet many opponents of the act argued that raising the ceilings for individual contributions could work to the advantage of incumbents. They predicted that incumbents would use their positions in Congress to leverage contributions of \$4,000 (for both their primary and general election campaigns) instead of \$2,000 from donors seeking access to the legislative process. Many proponents of the law argued that by enabling challengers and open - seat candidates to raise larger contributions from their intense followers the act would work to the nonincumbents' advantage. Figures from the 2004 elections suggest that the act's opponents were correct: House incumbents raised more than 66 percent of all of the funds contributed in those elections, as compared to the approximately 60 percent or less they had raised in the last six elections (see Figure 5 -1). Differences in the sizes, populations, and traditions of the fifty states and the fact that only a third of all Senate seats are up for election in a given year make trends related to Senate elections more difficult to interpret. Nevertheless, the 2004 Senate elections also support the contention that the BCRA worked to the advantage of incumbents, who raised roughly 36 percent of the money raised by candidates for the upper chamber, a substantially greater proportion than incumbents had raised in recent previous elections and considerably more than the 15 percent raised by their challenger opponents.<sup>43</sup>

Republican House candidates appear to be faring somewhat better under the BCRA than the Democrats. During the 2004 elections the Republicans raised 57 percent of the total campaign funds raised by major- party candidates; Democrats raised 43 percent (see Figure 5 -2). It is more challenging to assess the impact of the BCRA on the fund raising of Democratic and Republican Senate candidates. Among the incumbent senators running for reelection in 2004 were Barbara Boxer, D - Calif., Charles Schumer, D - N.Y., and Democratic leader Tom Daschle, D - S.D. Their prodigious fund - raising skills contributed to a 51 percent to 49 percent Democratic fund - raising advantage during the first twenty- two months of the 2004 election season. Blair Hull, a candidate for the Democratic nomination to the Senate from Illinois, also significantly contributed to the Democrats' advantage in receipts by self-financing his campaign to the tune of

Figure 5-1 The Impact of BCRA on House Incumbent, Challenger, and Open-Seat Candidates' Receipts

Percentages of receipts



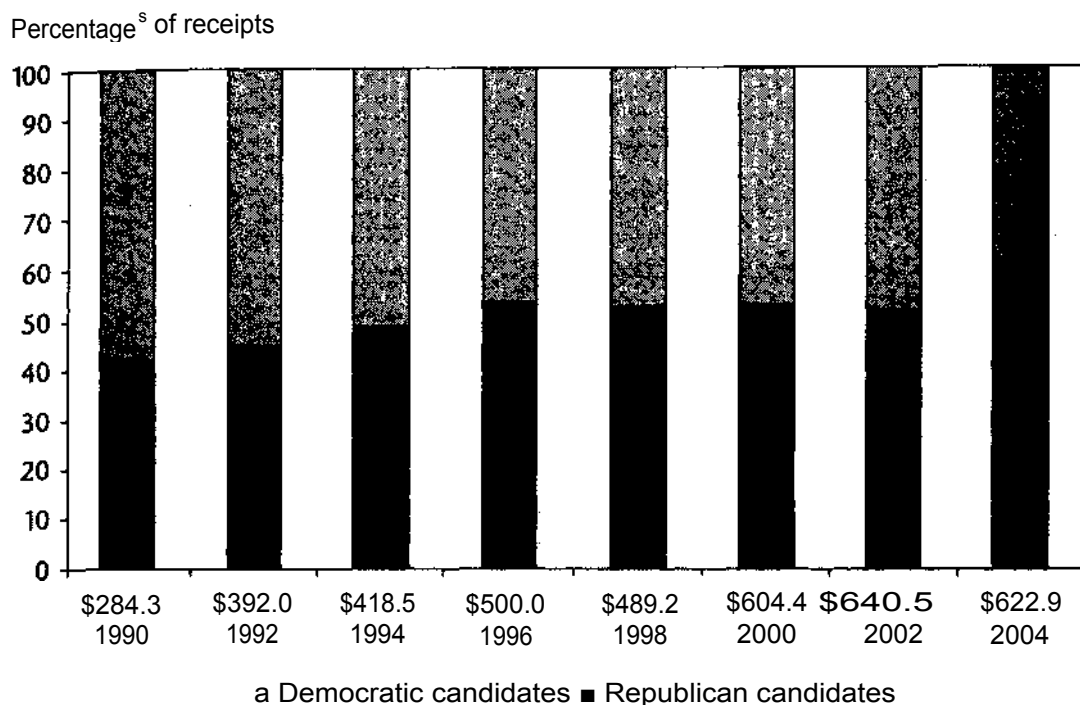
Source: Compiled from Federal Election Commission data.

Notes: Figures are in millions of dollars. Figures for the 2004 cycle are preliminary and only include contributions made from January 1, 2003, through October 13, 2004.

almost \$29 million. Given that the mix of Senate seats up for election will not be the same in 2006 and that the Republicans will enjoy an enlarged majority prior to that race, Senate Democrats may lose the razor - thin advantage they enjoyed in early 2004.

The BCRA also appears to have accelerated a trend toward greater reliance on large contributions from individuals. Contributions of between \$750 and \$1,000 accounted for less than 30 percent of all donations made by individuals in 1990 (see Figure 5 -3). Then they increased steadily, until they amounted to almost half in 2002. The figures for the 2004 elections suggest that such contributions will comprise a considerably larger portion of all individual contributions in the future. Roughly 27 percent of all individual contributions were in the \$750-\$1,000 range, and another 29 percent were between \$1,001 and \$2,000. Not surprisingly, a pattern of increasing reliance on large contributions also was present for the Senate. Preliminary (and somewhat incomplete) figures indicate that Senate candidates raised approximately 28 percent of their individual contributions in amounts of \$750 to \$1,000 and another 38 percent in amounts of more than \$1,000.<sup>44</sup> The fact that some House and Senate candidates contributed enough to their own campaigns to trigger the millionaire's provision

Figur<sup>e</sup> 5-2 The Impact of BCRA on House Democratic and Republican Candidates' Receipts



Source: Compiled from Federal Election Commission data.

Notes: Figures are in millions of dollars. Figures for the 2004 cycle are preliminary and only include contributions made from January 1, 2003, through October 13, 2004.

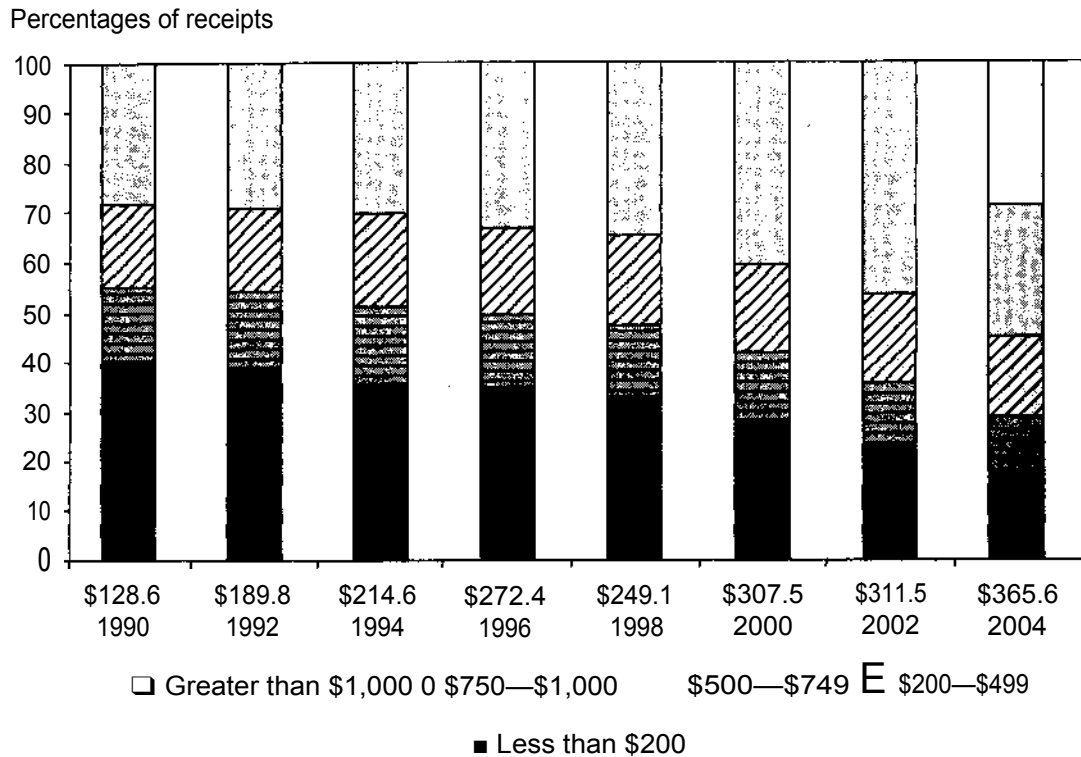
enabled their opponents to collect contributions of more than \$4,000 from some individual donors.

The early evidence suggests only small differences in the partisan distribution of individual contributions to congressional candidates. Republican candidates for the House raised almost 28 percent of their individual contributions in amounts of \$750—\$1,000 and another 30 percent in sums greater than \$1,000. House Democrats were only slightly less dependent on large individual contributions, raising roughly 26 percent in amounts of \$750—\$1,000 and another 28 percent in amounts of \$1,000 or more. Preliminary figures indicate that there were no substantial differences in the amounts Republican and Democratic Senate candidates raised in large individual contributions in 2004.<sup>45</sup>

### Party Organizations

Following the BCRA's enactment numerous party leaders complained that it would virtually eliminate the parties' roles in congressional elections. The act's ban on soft money clearly has reduced the parties' influence in elections, but the claim that it would leave the parties irrelevant is hyperbole. Although congressional

Figure 5-3 The Impact of BCRA on Individual Contributions to House Candidates



Source: Compiled from Federal Election Commission data.

Notes: Figures are in millions of dollars and do not include third-party candidates. Figures for the 2004 cycle are preliminary and only include contributions made from January 1, 2003, through October 13, 2004.

elections will probably become somewhat more candidate centered as a result of the act, the parties undoubtedly will find ways to play influential roles.

In fact, formal party organizations began preparing to adapt to the BCRA as soon as it was enacted. They entered a new phase of party building that centers on expanding their donor networks to include more individuals who give small and medium - sized contributions; on advising candidates about how to participate in the new campaign finance system; and on instructing state and local party leaders how to further develop their organizations' institutional capacities, fund raising, and campaign service programs without violating the law. These developments parallel those that took place shortly after passage of the FECA.<sup>46</sup>

As noted earlier, during the elections leading up to the BCRA most party soft money was raised by party organizations located in the nation's capital and transferred to, and spent by, state and local party committees. That national party money often came with strings that reduced the autonomy of state party organizations. In many cases the national parties gave state party committees detailed directives on the services they were to use the money to purchase, the vendors

they were to purchase from, and the congressional candidates who were to benefit. The new prohibitions against national party soft money fund raising, soft money transfers to state parties, and soft money fund - raising assistance for state parties can be expected to weaken the national parties' abilities to impose a strategy on their state affiliates. As a result, state parties should become somewhat more financially independent and autonomous and perhaps less involved in congressional election campaigns.

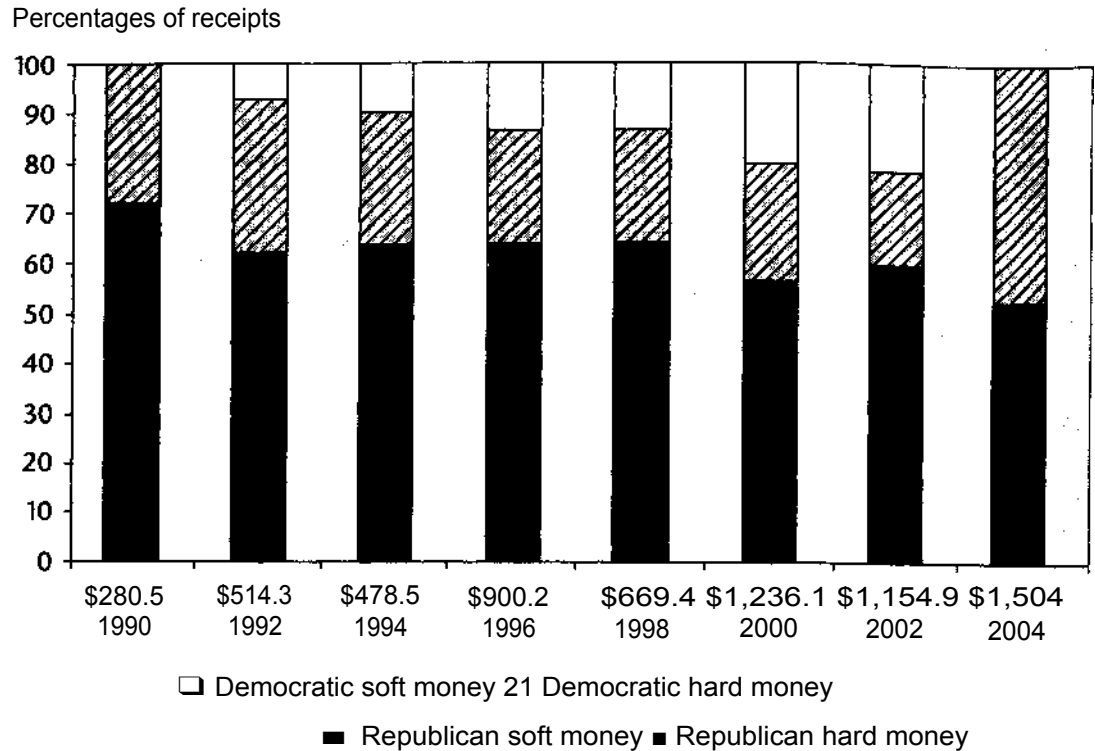
This does not mean that party organizations will lose their roles in congressional elections. The Democratic and Republican congressional and senatorial campaign committees, for example, have continued to carry out tasks that are important to congressional campaigns. They remain important sources of campaign contributions, coordinated expenditures, and independent expenditures. They also recruit candidates and provide them with assistance in campaign management, fund raising, and the other aspects of campaigning that require technical expertise, in - depth research, and connections with the political consultants who possess the knowledge and skills needed to run a contemporary congressional campaign. The congressional and senatorial campaign committees also continue to have a hand in coordinating the contributions and campaign efforts of wealthy interest groups and individuals.<sup>47</sup>

The prohibitions against party soft money and issue advocacy advertising can be expected to alter parties' campaign communications in close elections. They can be expected to substitute coordinated and independent expenditures for issue ads in competitive House and Senate races, particularly those races where a self- funded candidate triggers the BCRA's millionaire's provision. Preliminary figures for 2004 indicate that the parties spent about \$100 million, roughly thirty- one times more than was spent in the previous election." Both parties expended substantial sums on television, radio, direct mail, and other forms of advertising expressly calling for the election or defeat of selected House and Senate candidates.

Political commentators voiced somewhat divergent expectations about which party committees would benefit most from the soft money ban. A few argued that the fact that the Democrats provided the vast majority of congressional votes cast in support of the BCRA suggested the reform would work to that party's advantage. However, most predicted that the Republicans' long- established hard - money fund - raising advantage would combine with the Democrats' traditional dependence on soft money to work to the GOP's advantage.

The evidence provided by the last seven election cycles is not so clear cut. During the 1990 election season, before national party organizations began raising substantial sums of soft money, Republican party committees raised 72 percent of all party money reported to the FEC (see Figure 5 - 4). During the 1990s the amount of soft money the parties raised and spent continued to grow. By relying heavily on those funds the Democrats were able to make significant steps toward reducing the gap between themselves and the Republicans.

Figure 5-4 The Impact of BCRA on Party Fund Raising



Source: Compiled from Federal Election Commission data.

Notes: Figures are in millions of dollars and represent the combination of federal and non-federal receipts. The FEC did not start keeping records of nonfederal receipts until the 1992 election. The 1990 and 2004 figures are for federal money only. The 2004 figures only include receipts from January 1, 2003, through November 22, 2004.

The figures for the 2004 elections suggest that the BCRA's ban on national party soft money fund raising and strict limitations on state and local party soft money fund raising did not undermine the parties, as they both raised record funds. The Democratic Party committees raised approximately 47 percent of both parties' total dollars, which is a slightly larger proportion of the total party funding than they had collected in either 2000 and 2002. The figures for 2004 demonstrate that the Democrats' much-touted push to improve their direct-mail, telemarketing, and Internet fund raising has helped them substitute hard dollars for soft dollars and move closer to parity with the Republicans, at least in the short term. That Democratic Party committees will be able to reach full parity with their Republican counterparts remains unlikely, given the Republicans' ability to re-elect President Bush to the White House and increase their congressional majorities in 2004.

Another party activity that may increase in importance as a result of the BCRA is party-connected campaigning, which includes fund raising and spend-

ing by partisan individuals and groups that often act in concert with the formal party apparatus and work to advance some of its goals. Contributions from the leadership PACs and the campaign accounts of members of Congress and congressional retirees constitute an important set of party-connected activities. During the first eighteen months of the 2004 elections these sources accounted for \$26.1 million in contributions to congressional candidates." This figure constitutes a significant sum, and it was important because the vast majority of this money was spent in competitive House and Senate contests where it had the potential to have the greatest impact on the outcomes.

Some party-connected campaign activities involve outside groups. As noted above, members of Congress and congressional retirees used a variety of organizations, including 527 and 501(c) committees, to spend tens of millions of dollars to influence the 2002 congressional elections. The BCRA prohibits such activities, but its prohibitions against soft money fund raising and spending do not apply to party allies that are neither running for federal office nor working for a formal party organization. Several such allies have formed groups to spend nonfederal money to influence congressional elections. One pro-Republican group is the Leadership Forum. Run by former House member Bill Paxon, R-N.Y., and Susan Hirschmann, former chief of staff to House Majority Leader Tom DeLay, this group's goal is to raise contributions of \$25,000 or more from an advisory board of donor-fund raisers and spend the money to help GOP candidates.<sup>50</sup> Another is the National Committee for a Responsible Senate (NCRS), which has strong connections to the NRSC and is incorporated as a 501(c)(6) organization, the tax designation used by most trade associations. Among the Democratic-leaning groups is the Democratic Senate Majority Political Action Committee, headed by Monica Dixon, a former aide to Al Gore and a former executive director of the House Democratic Caucus. This organization has a federal PAC to make contributions to congressional candidates and uses a separate account to finance political advertisements, presumably during the nonfederal spending period.<sup>52</sup> Another Democratic-leaning group, America Votes, is a 527 committee directed by Cecile Richards, a former aide to Democratic House leader Nancy Pelosi. This organization sought to raise \$3 millions in 2004 to coordinate various outside groups allied with the Democratic Party." Numerous other organizations were more focused on the 2004 presidential election, but the efforts of the Democratic-leaning Media Fund, run by Harold Ickes, President Clinton's former deputy chief of staff, and the Republican-oriented Progress for America, run by Chris LaCivita, a former NRSC political director, will be felt in congressional and other elections.<sup>54</sup> The FEC's rule-making activities have the potential to limit these organizations' activities, but the groups' arrival on the political scene demonstrates that party allies already have begun to explore ways to raise and spend nonfederal money to influence congressional elections.

## Interest Groups

One of the major targets of the BCRA's sponsors was interest groups. One of the key rationales for banning party soft money was to shut down an avenue that some groups used to gain access to public officials and some public officials used to pressure groups for large contributions. The prohibitions against using unregulated funds to finance issue advocacy ads during the preprimary and pre-general election federal spending periods also were intended to decrease the influence of interest groups. A chief goal of the BCRA was to direct more interest group activity through federally regulated PACs. The act provides incentives for those groups that already have PACs to strengthen them and for others to create new ones. It also encourages PAC managers to expand their PACs' donor bases; to collect, bundle, and deliver checks from their donors to specific candidates; to televise independent expenditure ads during the federal spending period; and to contribute hard money to party committees. There is systematic evidence indicating that PACs are increasing their fund-raising efforts and receipts: Early figures suggest that PAC fund raising was up by about one-fourth during the 2004 election cycle. Anecdotal evidence suggests that some PACs and other organizations are preparing to devote greater attention to bundling campaign contributions and to making increased independent expenditures." Preliminary figures demonstrate that by mid-October 2004, PACs made at least \$8.8 million in independent expenditures in connection with congressional elections. Most of these expenditures were made by nonconnected, trade, and labor PACs. Such expenditures are consistent with these organizations' strategies that aim to influence the composition of Congress and in some cases also to secure access to powerful members. Corporate PACs rarely make independent expenditures because such expenditures can be counterproductive when the goal is to enable an organization's lobbyists to gain access in order to influence policy. Independent expenditures can backfire, provoking the anger of members of Congress.<sup>56</sup>

Some interest groups have responded to the BCRA by using existing organizations or forming new ones to raise and spend unregulated campaign funds. Among those that are working to help Democrats are America Coming Together, a 527 committee headed by Ellen Malcom, president of EMILY's List, and Steven Rosenthal, former political director of the AFL-CIO. The group intended to spend \$94 million in 2004 for voter education and get-out-the-vote drives in competitive states.<sup>57</sup> Among those seeking to help Republicans is the Club for Growth, a 527 committee that spends money in congressional primaries and general elections to support pro-free market Republicans."

Finally, the BCRA has the potential to influence the balance of power within the interest group community. Because business PACs, including those sponsored by corporations, trade associations, and cooperatives, raise substantially more money than labor PACs—about \$442 million compared with \$168 million in 2004—business interests will probably continue to hold a significant edge in contributions to congressional candidates. Moreover, business interests are in a better position than organized labor to increase their influence through bundling.



Business PACs outnumbered labor PACs by 2,563 to 303 in 2004. Business PAC contributions are collected through personal solicitations, direct mail, and many other approaches that rely on deliberate decisions on the part of donors, whereas labor PAC contributions are collected using automatic payroll deductions from which members must take deliberate steps to withdraw their contributions. Business PACs also have wealthier donors who are used to supporting a variety of organizations and groups. These contrasts suggest that business PACs would be in a better position to ask their donors to write checks to specific candidates than would labor PACs. However, labor organizations and progressive groups have formed more 527 committees and raised more money with them than have business groups. Depending on the regulations written by the FEC, labor-backed organizations will probably spend more unregulated money than business groups. Labor also will probably be able to continue to outpace business interests in the provision of campaign volunteers.

### Individual Donors

Few members of the public contribute to political campaigns. Roughly 7 percent of all voters claim to have made a contribution to any candidate for public office, and only 0.2 percent donated \$200 or more to a congressional candidate." The average individual contribution is less than \$75, and the top 1 percent of all individual donors account for roughly 10 percent of all individual

individual contributions may broaden the base of congressional donors, but the law's increased contribution limits probably will have a greater impact on individuals who are in a position to make large contributions. As a result, one can anticipate that the law will result in fewer donors accounting for a larger share of all individual contributions.

### Conclusion

The Bipartisan Campaign Reform Act is one of many reforms enacted over the course of United States history to address concerns about the role of money in the political process. Despite the fact that the law's goals were modest, it sparked intense debate in Congress and among the general public. Proponents of reform raised issues concerned with the corrupting effects of money in politics and notions of equality. Opponents charged that the law's prohibitions against large soft money expenditures and issue advocacy ads would deprive individuals of some of their liberties and violate free speech rights. Pragmatic concerns about the impact the law would have on individual politicians and their party's election prospects also influenced the votes of members of Congress. Despite the difficulties that reform bills encounter in the legislative process and in the judiciary, the BCRA was finally enacted in 2002 and survived a Supreme Court challenge almost completely intact.

The act's major provisions ban party soft money, raise contribution limits, and place new restrictions on the airing of issue advocacy advertisements.

Whether these and the act's other provisions succeed in reducing corruption, real and perceived, is an open question. However, the early evidence suggests that the BCRA has had an immediate impact on various aspects of the financing of congressional elections. The law has encouraged congressional candidates to rely more on large individual contributions than they had previously. It has reduced the opportunities political parties have to spend money to influence congressional races. Moreover, it has stimulated partisan interest group leaders to raise and spend more non-federally regulated political funds through 527 committees and other organizations.

It also is important to recognize the things that the BCRA probably will not accomplish either in the short term or the long run. The act will probably not do away with the tremendous fund-raising and reelection advantages that congressional incumbents enjoy. It will not prevent the wealthiest and best organized segments of society from having more influence in elections and greater access to officeholders than ordinary citizens. It is too much to expect the BCRA or any other law to eradicate Americans' overall distrust of the role of money in politics and their ambivalence about politics more generally. Any groundswell of support for the political system or massive increase in voter turnout or any other form of citizen participation also is beyond the scope of the new law. Further changes in the campaign finance system, the redistricting process, the laws governing voting and voter registration, and other aspects of the larger political, economic, and sociological environment in which elections are conducted would be needed to bring about those changes. Nevertheless, the enactment of the BCRA was a positive step in addressing some of the shortcomings in congressional elections.

## Notes

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1. Laura Langbein, "Money and Access: Some Empirical Evidence," *Journal of Politics* 48 (1986): 1052-1062; Richard Hall and Frank Wayman, "Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees," *American*
2. See Herbert E. Alexander, *Financing Politics* (Washington, D.C.: CQPress, 1984), 23-31. Much of this section is drawn from Paul S. Herrnson, "The Money Maze: Financing Congressional Elections," in *Congress Reconsidered*, 7th ed., ed. Lawrence C. Dodd and Bruce I. Oppenheimer (Washington, D.C.: CQPress, 2001), 97-123.
3. An earlier reform, the FECA of 1971 made some modest changes in the law, but it had little impact on the financing of congressional elections.
4. *Buckley v. Valeo*, 424 U.S. 1 (1976).
5. Cornelius P. Cotter and John F. Bibby, "Institutional Development of Parties and the Thesis of Party Decline," *Political Science Quarterly* 95 (1980): 1-27.
6. Paul S. Herrnson, *Party Campaigning in the 1980s* (Cambridge: Harvard University Press, 1988).

7. Ibid.; and Paul Herrnson, *Congressional Elections: Campaigning at Home and in Washington*, 4th ed. (Washington, D.C.: CQPress, 2004), 90-128.
8. These figures include party contributions to and coordinated expenditures on behalf of candidates. Herrnson, *Congressional Elections*, 103-105, 115-121.
9. Ibid., 129-152.
10. Ibid., 176, 183; and Paul Herrnson, "Campaign Professionalism and Fundraising in Congressional Elections," *Journal of Politics* 54 (1992): 859-870.
11. Frank J. Sorauf, *Inside Campaign Finance* (New Haven: Yale University Press), 27-28.
12. Federal Election Commission, press release, May 15, 2001.
13. Herrnson, *Congressional Elections*, 115-121.
14. Federal Election Commission, press release, March 20, 2003.
15. Ken Goldstein and Joel Rivlin, "Political Advertising in the 2002 Elections," unpublished manuscript.
16. Herrnson, *Congressional Elections*, 119-121.
17. David B. Magleby and J. Quinn Monson, *Campaign 2002: The Perfect Storm* (Provo, Utah: Center for the Study of Elections and Democracy, 2003).
18. Herrnson, *Congressional Elections*, 121-122.
19. It is a major challenge to assemble a large enough legislative coalition to pass a campaign finance reform bill over a presidential veto.
20. Robert Y. Shapiro, "Public Attitudes toward Campaign Finance Practice and Reform," in *Inside the Campaign Finance Battle*, ed. Anthony Corrado, Thomas E. Mann, and Trevor Potter (Washington, D.C.: Brookings Institution Press, 2003), 259-265.
21. Mark Mellman and Richard Wirthlin, "Public Views of Party Soft Money," in *Inside the Campaign Finance Battle*, 266-267.
22. Shapiro, "Public Attitudes toward Campaign Finance Practice and Reform."
23. Herrnson, *Congressional Elections*, 285.
24. Ibid., 282-283.
25. Colton Campbell, Congressional Research Service, personal communication, February 29, 2004.
26. Helen Dewar, "Campaign Overhaul Bill Passed," *Washington Post*, May 1, 1992, A1; Tim Curran, "Dead Again: Senate Fails to Override Bush Veto of Campaign Finance Bill," *Washington Post*, May 14, 1992.
27. On these approaches, see Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Procedures in the US. Congress*, 2nd ed. (Washington: D.C.: CQPress, 2000).
28. On the passage of the Bipartisan Reform Act in the House, see Diana Dwyre and Victoria A. Farrar-Myers, *Legislative Labyrinth: Congress and Campaign Finance Reform* (Washington, D.C.: CQPress, 2001); on unorthodox lawmaking, see Barbara Sinclair, *Unorthodox Lawmaking*.
29. Anthony Corrado, "Money and Politics," in *The New Campaign Finance Sourcebook*, ed. Anthony Corrado, Thomas Mann, Daniel Ortiz, and Trevor Potter (Washington, D.C.: Brookings Institution Press, 2003).
30. Rep. Martin Meehan, "Time to Kick the Soft Money Habit," February 28, 2002, [www.house.gov/apps/list/press/ma05\\_meehan/NRCFR0pEd022802.html](http://www.house.gov/apps/list/press/ma05_meehan/NRCFR0pEd022802.html).
31. Rep. Christopher Shays, "Shays' Statement on the Successful Discharge Petition for the Bipartisan Campaign Reform Act," press release, January 24, 2002, [www.house.gov/shays/news/2002/january/jan24.htm](http://www.house.gov/shays/news/2002/january/jan24.htm).
32. Majority Whip Tom DeLay, "Bill Jeopardizes Freedom," Tuesday, April 3, 2001, [www.majoritywhip.gov/News.asp?FormMode.SingleOpEds](http://www.majoritywhip.gov/News.asp?FormMode.SingleOpEds).
33. Dana Milbank, "Tactics and Theatrics Color Decision Day," *Washington Post*, February 14, 2002.
34. For a more detailed review of the BCRA, see Corrado et al., *The New Campaign Finance Sourcebook*.

35. Adam Clymer, "Foes of Campaign Finance Bill Plot Legal Attack," *New York Times*, February 17, 2002.
  36. Helen Dewar, "Lawsuits Challenge New Campaign Law," *Washington Post*, May 8, 2003.
  37. Corrado et al., *Inside the Campaign Finance Battle*.
  38. Amy Keller, "Debate Rocks FEC," *Roll Call*, March 4, 2002; Helen Dewar, "FEC Rules on 'Soft Money' Challenged," *Washington Post*, October 9, 2002.
  39. Dewar, "FEC Rules"; quotation is from Thomas B. Edsall, "FEC to Allow 'Soft Money' Exceptions," *Washington Post*, June 21, 2002.
  40. For some useful commentaries on the ruling, see Thomas E. Mann, "A District Court Panel Rules on Campaign Finance," May 5, 2003; Roger Witten, Seth Waxman, Randolph Moss, and Fred Wertheimer, "Summary of *McConnell v. FEC* Decision"; and the other summaries available at [www.campaignlegalcenter.org](http://www.campaignlegalcenter.org).
  41. Unless otherwise indicated figures for 2004 are for data collected between January 1, 2003 and October 13, 2004.
  42. These figures are for receipts collected between January 1, 2003 and September 30, 2004.
  43. These figures are for receipts collected between January 1, 2003 and September 30, 2004.
  44. These figures are for receipts collected between January 1, 2003 and June 30, 2004.
  45. These figures are for receipts collected between January 1, 2003 and June 30, 2004.
  46. See, for example, Herrnson, *Party Campaigning*.
  47. For more information on these activities, see Herrnson, *Congressional Elections*, 90-128.
  48. Spending figures for party coordinated expenditures were not available at press time.
  49. Figures provided by the Center for Responsive Politics.
  50. Eliza Newlin Carney, Peter H. Stone, and James A. Barnes, "New Rules of the Game," *National Journal*, December 20, 2003, 3800; Paul H. Stone, "A Catalog of Key Groups," *National Journal*, December 20, 2003, 3803.
  51. Paul Kane, "NRSC or NCRS," *Roll Call*, November 25, 2002.
  52. *Ibid.*
  53. Carney, Stone, and Barnes, "New Rules of the Game"; Stone, "A Catalog of Key Groups."
  54. *Ibid.*
  55. *Ibid.*
  56. The figures are for independent expenditures made between January 1, 2003, and October 13, 2004.
  57. Carney, Stone, and Barnes, "New Rules of the Game." See also Stone, "A Catalog of Key Groups."
  58. See [www.clubforgrowth.org/](http://www.clubforgrowth.org/).
  59. The 7 percent figure is from the *2002 National Election Study* (Ann Arbor: University of Michigan, Center for Political Studies, 2002); the other figure is from the Center for Responsive Politics, [www.opensecrets.org](http://www.opensecrets.org).
  60. Peter L. Francia, John C. Green, Paul S. Herrnson, Lynda W. Powell, and Clyde Wilcox, *The Financiers of Congressional Elections: Investors, Ideologues, and Intimates* (New York: Columbia University Press, 2003).
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