

PAC's: CONGRESS ON THE AUCTION BLOCK

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INTRODUCTION

Jesse Unruh, a veteran California politician, once observed that money is "the mother's milk of politics."¹ Throughout the history of the American political process money has often been the key to electoral success. The well-financed campaign is frequently the successful campaign.

An important chapter in the development of American democracy involves the use of campaign money—how it is obtained and how attempts have been made to limit its influence. This development has involved the balancing of a candidate's funding needs with the necessity of maintaining the integrity of the electoral system. Just as candidates always need money, there are always people ready to channel funds to campaigns through various means. When the amount contributed or the means of contribution threaten to undermine the integrity of the electoral process, reform becomes necessary.

This article will examine the rise and proliferation of political action committees (PAC's) as a means of contributing to and attempting to influence federal election campaigns. First, it will trace the historical development of PAC's. Second, it will review legislative efforts to control the activities of PAC's and the challenges to these legislative efforts in the United States Supreme Court. Third, it will examine the impact of PAC's on the representative process. Fourth, it will analyze pending legislative initiatives to curb the influence of PAC's. Last, it will propose the formation of a bipartisan commission to develop concrete legislative recommendations to deal with the PAC problem.

BACKGROUND

In the nineteenth century, campaign funds were exacted from politically-appointed federal employees. This practice was ended by the Civil Service Reform Act of 1883.² The flow of millions of corporate dollars into Presidential campaigns resulted in enactment of the Tillman Act of 1907, which prohibited direct corporate contributions.³

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1. Wright, *Politics and the Constitution: Is Money Speech?* 85 YALE L.J. 1001, 1004 (1976) (statement of Jesse Unruh, Former Speaker of the California Assembly and presently California State Treasurer).

2. Act of Jan. 16, 1883, ch. 27, 22 Stat. 403 (1883).

3. Act of Jan. 26, 1907, ch. 420, 34 Stat. 864 (1907).

Similarly, the explosion in political spending by labor unions in the 1930's culminated in the War Labor Disputes Act of 1943, which prohibited political contributions by labor unions.⁴ More recently, the estimated \$30 million contributed legally and illegally to the Nixon Presidential campaign⁵ provided the impetus for the Federal Election Campaign Act Amendments of 1974.⁶ This Act imposed overall limitations on campaign contributions and expenditures, provided for public funding of Presidential election campaigns, and established the Federal Election Commission (FEC).⁷

Today, the focus of debate has shifted away from Presidential politics. With the advent of public financing of Presidential campaigns,⁸ Congress has become the target of large sums of campaign money.⁹ In recent years, drastic changes have occurred in the financing of congressional elections. Tremendous sums of money have been raised and spent. In 1982, United States House of Representative and Senate candidates spent \$343 million campaigning for office, an increase of nearly five hundred percent over 1974 expenditures.¹⁰ The expensive technology of today's campaigns multiplies the political impact of money and underscores the political consequences of conducting a campaign with insufficient funds.¹¹ Thus, multi-million-dollar Senate campaigns leave candidates with little option other than the unstinting pursuit of campaign contributions.

Paralleling the growth in congressional campaign spending, and certainly adding to it, is the increasing dominance of political action committees in supplying campaign funds. PAC's have swelled in numbers and influence. In 1974, 608 PAC's existed.¹² By 1983, the number had grown to 3,371.¹³ The level of PAC contributions to candidates for federal office rose from \$8.5 million in 1972 to over \$83.1 million in 1982.¹⁴ PAC's are fast becoming the backbone of congressional campaign financing. If the current trend continues, they will soon be the major source of congressional campaign funds. In 1982, PAC contribu-

4. Pub. L. No. 89, ch. 144, 57 Stat. 163 (1943), *repealed by* Act of June 25, 1948, ch. 645, 62 Stat. 862.

5. See H. ALEXANDER, *FINANCING POLITICS: MONEY, ELECTIONS AND POLITICAL REFORM* 140-42 (3d ed. 1984).

6. Pub. L. No. 93-443, 88 Stat. 1263 (1974).

7. Pub. L. No. 93-443, §§ 103, 201, 88 Stat. 1263, 1272-75 (1974) (codified as amended at 2 U.S.C. §§ 441a-b (1982)).

8. See FENN, *MONEY AND POLITICS: CAMPAIGN SPENDING OUT OF CONTROL I* (1983) (monograph prepared for Center for Responsive Politics).

9. See CONGRESSIONAL RESEARCH SERVICE, *POLITICAL ACTION COMMITTEES: THEIR EVOLUTION AND GROWTH AND THEIR IMPLICATIONS FOR THE POLITICAL SYSTEM* 55 (1982) (prepared by Joseph E. Cantor) [hereinafter cited as *PAC's EVOLUTION AND GROWTH*]. See also *Contribution Limitations and Independent Expenditures: Hearings Before the Task Force on Elections of the House Comm. on House Administration*, 97th Cong., 2d Sess. 287 (1982).

10. See FENN, *supra* note 8, at 1, 6.

11. *Id.* at 1.

12. *Id.* at 16.

13. *Id.*

14. *Id.*

tions already represented 31.5% of the campaign funds spent by winning House and Senate candidates.¹⁵

In a very short time and in a seemingly happen-stance fashion, PAC's have emerged as a major factor in the electoral process. This phenomenon raises significant questions relating to both the electoral and the legislative processes. Can a candidate fund a congressional campaign without soliciting PAC contributions? Are PAC's a way for like-minded citizens to maximize their impact on the political process or, rather, are they a means of political influence for corporations and labor unions which are prohibited by law from contributing directly to federal campaigns? Are PAC's inimical to the concept of individual participation and political equality? In the public perception, is a Congress elected with PAC money a Congress that answers to the special rather than the public interest? Is there a *quid pro quo* with congressional issues being decided on the basis of PAC contributions? These questions strike at the very heart of representative democracy, in which one person's vote is supposed to equal the next person's vote. PAC's raise the prospect that the integrity of the political process itself may be compromised.

In little more than a decade, political action committees have risen from a minor, almost inconsequential factor in American politics to such stature as to raise concerns that the individual citizen is being excluded from the political process. Congress has been characterized as being bought and sold by PAC contributions. The *Wall Street Journal* described the 98th Congress as follows:

The new Congress is a scandal waiting to happen. It's a scandal because seldom has a Congress assembled that is so blatantly beholden to interest groups pushing for special legislative favors. And you can be sure that many of those favors will be granted.

For, quite legally, an array of special interest groups, both business and labor, has bought enormous influence in Congress through the campaign contributions of their political action groups.¹⁶

Many members of Congress and political commentators have questioned how PAC's emerged as such a significant political force, the implications of their continued growth, and whether steps should be taken to limit their influence.

LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL DECISIONS CONTRIBUTING TO PAC DEVELOPMENT

The Emergence of Political Action Committees

Political action committees emerged in the 1940's as a response by

15. See Federal Election Commission, *FEC Releases Data on 1982-82 Congressional Spending* (press release) (May 2, 1983).

16. Jackson, *The Problem with PACs*, Wall St. J., Feb. 17, 1982, at 30, col. 4.

organized labor¹⁷ to the War Labor Disputes Act of 1943.¹⁸ That Act, commonly known as the Smith-Connelly Act, prohibited labor organizations from contributing to the campaigns of candidates for federal office.¹⁹ In 1947, after the Smith-Connelly Act expired, the Labor Management Relations Acts commonly known as the Taft-Hartley Act²⁰ was signed into law. The Taft-Hartley Act banned contributions to federal election campaigns by corporations, national banks, and labor organizations.²¹ In addition, the Act extended the contribution prohibition to include primaries as well as general elections.²² Until the passage of the Federal Election Campaign Act of 1971,²³ the Taft-Hartley Act stood as the principal law governing the political activities of corporations and labor unions.

In an attempt to minimize the impact of the Smith-Connelly restrictions, the Congress of Industrial Organizations (CIO)²⁴ created the Congress of Industrial Organizations Political Action Committee (CIO-PAC) in July, 1943.²⁵ In so doing, the CIO pioneered the use of a separate, segregated fund as a means of circumventing the campaign contribution restrictions placed on organized labor and corporations by Federal law.²⁶

Initially, the CIO-PAC gathered donations for political activities from union affiliates,²⁷ with much of the money coming from dues collected at the local level.²⁸ However, after the nominating conventions of 1944, the CIO-PAC turned to a new form of fundraising. It began to solicit voluntary contributions from union members through its "A Buck for Roosevelt Drive."²⁹ The union also established the National Citizens for Political Action Committee (NC-PAC) to collect funds from individuals outside of labor's ranks who were sympathetic to la-

17. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 23.

18. Pub. L. No. 89, ch. 144, 57 Stat. 163 (1943) *repealed by* Act of June 25, 1948, ch. 645, 62 Stat. 862. Similar prohibitions had been placed upon corporate contributions in 1907 by the Tillman Act, *supra* note 3, and were extended by section 313 of the Federal Corrupt Practices Act of 1925, Pub. L. No. 68-506, ch. 368, § 313, 43 Stat. 1070, 1074 (codified at 2 U.S.C. § 251 (1940)), *repealed by* Act of June 25, 1948, ch. 645, § 21, 62 Stat. 862 (codified at 2 U.S.C. § 441b(a) (1982)).

19. Pub. L. No. 89, ch. 144, § 9, 57 Stat. 163, 167 (1943) *repealed by* Act of June 25, 1948, ch. 645, §§ 21, 38, 62 Stat. 862.

20. Pub. L. No. 101, ch. 120, § 304, 61 Stat. 136, 159 (1947) (originally codified at 18 U.S.C. § 610 (1947)), *repealed by* Act of May 11, 1976, Pub. L. No. 94-283, tit. II, § 201(a), 90 Stat. 496.

21. *Id.*

22. *Id.*

23. Pub. L. No. 92-225, 86 Stat. 3 (1972) (originally codified at 18 U.S.C. § 610 (1971)), *as amended by* Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980) (codified as amended at 2 U.S.C. §§ 431-56 (1982)).

24. The CIO was an association of industrial labor unions active from 1938 until 1955, when it merged with the American Federation of Labor (AFL). See also discussion of AFL, *infra* note 35.

25. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 23.

26. *Id.*

27. *Id.*

28. *Id.*

29. See OVERACKER, PRESIDENTIAL CAMPAIGN FUNDS 57-59 (1946).

bor's causes.³⁰ Although the relationship between the CIO and its PAC's was close, the union carefully ensured that its PAC's were technically separate from the union itself.³¹ CIO officers did not serve as directors of PAC's; PAC treasuries were separated from union accounts; and contributions were used to offset the administrative costs of PAC's.³² The CIO contended that, as independent entities supported by voluntary contributions, its PAC's were not subject to the restrictions of the Smith-Connelly Act, which focused on the use of union treasury funds to support federal political campaigns.³³

Other unions followed the CIO-PAC example and established their own separate, segregated funds to foster political activity.³⁴ In 1947, the American Federation of Labor (AFL)³⁵ created its Labor League.³⁶ In 1955, when the AFL and the CIO merged, their PAC's joined together as the Committee on Political Education (COPE).³⁷ COPE quickly became the major source of political donations from organized labor, although several other labor organizations were also involved in political activity. In 1956, seventeen national labor political action committees were active, and 155 state or local union affiliates had their own committees.³⁸ By 1968, the number of national labor political action committees had risen to thirty-seven.³⁹

Although prohibitions against corporate political contributions existed thirty-six years before such prohibitions applied to labor organizations,⁴⁰ corporations lagged behind unions in using separate, segregated funds as vehicles to contribute to federal political campaigns. Rather, corporations used alternative methods to affect the political process. Contributions previously made by the corporation were now made by individual corporate officials and their families.⁴¹ Political contributions were also laundered through trade associations, public relations firms, corporate attorneys, and other close corporate ties.⁴² In addition, corporations frequently gave candidates in kind contributions, including the use of office space, equipment, and

30. *Id.*

31. *Id.* at 59.

32. *Id.* at 60-61.

33. *Id.*

34. *Id.*

35. The AFL was an association of industrial labor unions founded in 1881 as the "Federation of Organized Trades and Labor Unions of the United States and Canada," and reorganized in 1886 as the AFL. The AFL as a separate entity was dissolved in 1955 when it merged with the Congress of Industrial Organizations (CIO), to form a new labor federation, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).

36. See OVERACKER, *supra* note 29, at 57-58.

37. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 24.

38. *Id.* at 25.

39. *Id.* In 1956, the seventeen national labor PAC's disbursed some \$2.1 million. In 1968, however, the thirty-seven national labor PAC's disbursed over three times that amount, \$7.1 million. *Id.*

40. See *supra* note 3 and accompanying text.

41. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 25.

42. *Id.* at 30.

transportation.⁴³

The American Medical Political Action Committee (AMPAC), founded in 1961 by the American Medical Association, was the first major PAC in the business and professional sector.⁴⁴ It was followed in August, 1963, by the Business-Industry Political Action Committee (BIPAC), established by the National Association of Manufacturers.⁴⁵ However, it was not until Congress approved the use of separate, segregated funds as a proper method of corporate contributions that corporations became significantly involved with PAC's.⁴⁶

Pipefitters Local Union No. 562 v. United States

Despite the proliferation of separate, segregated PAC funds among labor organizations and corporations, the use of such funds remained controversial. Many of the questions regarding their legality were raised in *Pipefitters Local Union No. 562 v. United States*,⁴⁷ argued before the United States Supreme Court in January, 1972. The *Pipefitters* case involved a government challenge to the propriety of a separate union fund maintained for political purposes.⁴⁸ Although the fund at issue was supported from 1963 through 1968 by union member donations, the government challenged the true voluntariness of the donations because they had been solicited at job sites.⁴⁹ Of greater importance, the Justice Department questioned the administrative structure of the union's political action committee. Under the PAC's then-existing structure, its activities were closely administered by the union, whose officers served as PAC directors and made decisions regarding the disposition of PAC funds.⁵⁰ In addition, the PAC's operating expenses were paid in part from union dues.⁵¹ The government contended that the close connection between the union and the PAC was impermissible, arguing that the PAC functioned as the alter ego of the union and thereby fell within the prohibitions of 18 U.S.C. § 610 (formerly section 304 of the Taft-Hartley Act).⁵² The government further argued that the payment of PAC administrative costs through union dues was an indirect use of dues for political purposes and therefore unlawful.⁵³

While the *Pipefitters* case was still pending, Congress passed the

43. *Id.* at 32.

44. *Id.*

45. *Id.* at 32-33.

46. During the 1964 elections, BIPAC spent \$203,283 and AMPAC spent \$405,052 (as compared with the \$988,810 spent that year by COPE). In 1968, BIPAC and AMPAC together spent only \$5,300 less than COPE. Furthermore, while there were only 33 business and professional political action committees registered in 1968, by 1972 there were 200 such committees. See Epstein, *An Irony of Electoral Reform*, 3 REG. 35 (1979).

47. 407 U.S. 385 (1972).

48. *Id.* at 388.

49. *Id.* at 392.

50. *Id.* at 388-94.

51. *Id.* at 393.

52. *Id.* at 413. See also *supra* notes 21, 24, and accompanying text.

53. *Id.* at 389-90.

Federal Election Campaign Act of 1971,⁵⁴ a law aimed principally at reducing the amount of money spent in federal election campaigns and eliminating campaign abuses through contribution disclosure. As the legislation⁵⁵ was being considered in the U.S. House of Representatives, an amendment, sponsored by Representative Orvall Hansen (R-Idaho), was added to clarify permissible union and corporate political activities.⁵⁶ This amendment permitted the use of union and corporate funds for voter education programs, get-out-the-vote drives, and significantly, for the establishment, administration, and solicitation of contributions for separate, segregated funds.⁵⁷ Moreover, specific language was included to ensure that contributions made to such funds would be truly voluntary.⁵⁸ Representative Hansen viewed the voluntariness requirement as removing such contributions from the Taft-Hartley Act's proscription.⁵⁹

Although no one challenged Representative Hansen's characterization of separate, segregated funds as permissible under the Taft-Hartley Act, it appears that the amendment was suggested by labor organizations, anxious to obtain approval of the fundraising device under attack before the Supreme Court in the *Pipefitters* case.⁶⁰

Congressional approval of the Hansen amendment played a promi-

54. Pub. L. No. 92-225, 86 Stat. 3 (1972) (originally codified at 18 U.S.C. § 610 (1971)), as amended by Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980) (codified as amended at 2 U.S.C. §§ 431-456 (1982)).

55. H.R. 11060, 92d Cong., 1st Sess., 117 CONG. REC. 43379-81 (1971).

56. 117 CONG. REC. 43417, 43422 (1971).

57. Pub. L. No. 92-225, tit. II, § 202, 86 Stat. 3, 10 (1972).

58. *Id.*

59. 117 CONG. REC. 43379-81 (1971). Representative Hansen, speaking in support of his amendment, indicated that it was merely a codification of the way section 610 had been interpreted and a clarification of the existing law's ambiguity. In discussing the portion of his amendment dealing with separate, segregated funds, he explained that the underlying purposes of the Taft-Hartley restrictions were twofold: (1) to protect the political process from the aggregate wealth of union and corporate treasuries; and (2) to ensure that shareholders and union members were not forced to financially support political views that they did not share. *Id.* at 43381. These purposes, he said, did not require that corporations and unions be totally excluded from political activity, but only that funds spent for political purposes come from voluntary contributions. *Id.* To support his position, he quoted from Senator Taft's explanation of section 610 during the debate of the 1947 Act:

If [union members or stockholders] are asked to contribute directly . . . to the support of a labor [or management] political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters. But the prohibition is against labor unions using their members' dues for political purposes . . . and perhaps in violation of the wishes of many of its stockholders.

Id. (quoting 93 CONG. REC. 6440 (1947)). Since his amendment required that contributions be voluntary, in Representative Hansen's view it did not violate the spirit of the Taft-Hartley Act.

Interestingly, members of the House did not appear to recognize the significance of this portion of the Hansen amendment. Concerned about the ability of organized labor to mobilize voters, opponents spoke against the provisions allowing unions to operate voter education and get-out-the-vote drives. *Id.* at 43383-43386. No opposition, however, was expressed to the provision giving unions and corporations access to the political process through the use of separate segregated funds. *Id.* at 43379-91.

60. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 38-39; Epstein, *An Irony of Electoral Reform*, 3 REG. 35 (1979).

ment part in the Supreme Court's interpretation of 18 U.S.C. § 610.⁶¹ While acknowledging that passage of the FECA of 1971 did not conclusively establish congressional intent in passing the 1947 Act (which was binding in this case), the Court felt that it could "throw a cross light" on the earlier act.⁶² After reviewing the Taft-Hartley Act's legislative history, the Court concluded that Congress' intent was to allow unions and corporations a voice in the political process through separate, segregated funds, as long as the funds were supported through voluntary contributions.⁶³ In addition, the Court found that Congress' failure in the 1947 Act to specifically require a PAC's functional independence from union control permitted union dominance over the operation of its political fund.⁶⁴ The Court confirmed its interpretation of the Taft-Hartley Act by referring to the Hansen amendment's express language and the accompanying House debates.⁶⁵

Thus, the Federal Election Campaign Act of 1971 and the Supreme Court's decision in *Pipefitters Local Union No. 562 v. United States* expressly recognized political action committees as a vehicle for union and corporate campaign contributions in federal elections, and the 1970's proved to be a time of burgeoning growth for the newly-approved political device.⁶⁶

While Congress did not foresee the prominent role PAC's would later play in federal elections, Justice Powell's dissent in the *Pipefitters* case forewarned of the potential influence of political action committees:

The opinion of the Court provides a blueprint for compliance with § 610, as now construed, which will be welcomed by every corporation and union which wishes to take advantage of a heretofore unrecognized opportunity to influence elections in this country⁶⁷

. . . .

. . . [It] goes a long way toward returning unions and corporations to an unregulated status with respect to political contributions. This opening of the door to extensive corporate and union influence on the

61. The Court held that "§ 610 does not apply to union contributions and expenditures from political funds financed in some sense by the voluntary donations of employees." 407 U.S. at 409. The Court confirmed its conclusion by noting Congress' approval of the Hansen amendment. *Id.* at 410.

62. 407 U.S. at 412.

63. *Id.* at 409.

64. *Id.* at 414-15.

65. *Id.* at 410-12, 422-27. Although the Hansen amendment had been presented as a codification of existing law, the Court found that on one point the law had at least arguably been changed. The Court found some support in the legislative history of the Taft-Hartley Act for the government's argument that the administrative costs of political action committees could not be covered from union dues but must be paid for by voluntary contributions. *Id.* at 429. The Hansen amendment expressly permitted union funds to be used for such expenses. The Court concluded that the 1947 Act governed in this situation, *id.* at 433, but because this particular issue was not essential for a resolution of the case, the Court did not reach a final conclusion as to whether the union's financial support of its PAC had been improper. *Id.* at 440.

66. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 55-56.

67. 407 U.S. at 448-49.

elective and legislative processes must be viewed with genuine concern. This seems to me to be a regressive step as contrasted with the numerous legislative and judicial actions in recent years designed to assure that elections are indeed free and representative.⁶⁸

The Federal Election Campaign Act Amendments of 1974

The Federal Election Campaign Act Amendments of 1974 (FECA of 1974)⁶⁹ were enacted in the wake of campaign abuses revealed during the Watergate scandal.⁷⁰ In an effort to limit the influence of special interest groups and large contributors, limitations were imposed on campaign contributions and independent expenditures.⁷¹ In addition, the Act provided public financing for Presidential elections and created the Federal Election Commission to ensure compliance with the new law.⁷² Ironically, the Act encouraged PAC development and strengthened their role in the electoral process. Two provisions led to this result.

First, the Act authorized the establishment of separate, segregated funds by government contractors.⁷³ Prior to 1971, government contractors were prohibited from contributing directly to political campaigns.⁷⁴ The FECA of 1971 extended that ban to include indirect contributions.⁷⁵ Because PAC contributions could be viewed as emanating indirectly from a company's corporate treasury, many government contractors were hesitant about forming PAC's.⁷⁶ However, the 1974 Act made it clear that Congress had not intended to preclude government contractors from utilizing this political tool.⁷⁷

Second, section 101(a) of the Act imposed a \$5,000 ceiling on campaign contributions made by political committees to a federal election candidate.⁷⁸ Contributions by all other individuals and organizations

68. *Id.* at 448-50.

69. Pub. L. No. 93-443, 88 Stat. 1263 (1974) (codified as amended at 2 U.S.C. §§ 431-455, 5 U.S.C. §§ 1501-1503, 18 U.S.C. §§ 591, 608, 611, 613-617, 26 U.S.C. §§ 276, 6012, 9002-9012, 9031-9042, 47 U.S.C. § 315 (1976 & Supp. 1981)).

70. See 120 CONG. REC. 8465 (1974), in which Senator Charles McC. Mathias, Jr., R-Md., expressed his regret that this legislation was necessary in part because of "the sordid realities of the Watergate experience which has so shaken the confidence of Americans in their political institution and leaders."

71. Pub. L. No. 93-443, § 103, 88 Stat. 1263, 1272 (1974) (codified at 2 U.S.C. § 441b (1982)).

72. Pub. L. No. 93-443, § 201, 88 Stat. 1272-75 (1974) (codified at 2 U.S.C. § 441a (1982)).

73. Pub. L. No. 93-443, § 103, 88 Stat. 1263, 1272 (1974) (codified at 2 U.S.C. § 441c(b) (1982)).

74. Act of June 25, 1948, ch. 645, § 1, 62 Stat. 683, 723-24 (codified at 18 U.S.C. § 610), *amended by* Act of May 24, 1949, ch. 139, § 10, 63 Stat. 89, 90; Act of Oct. 31, 1951, ch. 655, § 20(c), 65 Stat. 718.

75. Pub. L. No. 92-225, § 205, 86 Stat. 1, 10 (1972).

76. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 42.

77. Pub. L. No. 93-443, 88 Stat. 1263 (1974) (codified as amended at 2 U.S.C. § 441a(a)(1) (1982)).

78. For purposes of the contribution limitation, a political committee was defined as a committee registered with the Federal Election Commission for at least six months, receiving contributions from more than fifty people, and making contributions to five or more federal candidates. Pub. L. No. 93-443, § 101(b)(2), 88 Stat. 1263 (1974) (codified as amended at 2 U.S.C. § 441a(a)(2)(A) (1982)).

were limited to \$1,000 per election.⁷⁹ In addition, an annual aggregate campaign contribution ceiling of \$25,000 was placed upon those covered by the \$1,000 limitation.⁸⁰

Although the \$5,000 ceiling was in accord with the Act's purpose, the distinction drawn between political committees and individuals greatly strengthened the role of political action committees in the electoral process by making them a more convenient source of funding for candidates. The FECA of 1974 allowed committees to donate five times more than individuals, thereby making any single PAC a potentially more substantial contributor than any one individual. In addition, Congress' failure to impose an annual aggregate limit on PAC contributions allowed political action committees to exert more influence in elections. While a wealthy individual could not make political contributions in excess of \$25,000, a PAC could continue to do so as long as it had money.

The basis for the distinction which Congress made between individuals and PAC's was logically a simple one. Because PAC's represent a large number of contributors, they should be allowed to contribute more than individuals.⁸¹ While Senate bill 3044 (S. 3044) (the Senate precursor of the FECA of 1974)⁸² originally placed the same limit on all contributions without regard to source, an amendment was added to the bill which raised the ceiling on political committee contributions to \$6,000.⁸³ Debate on the Hathaway amendment is illustrative of the varying views taken of political action committees.⁸⁴

Proponents of the amendment focused debate on PAC's which have an ideological character.⁸⁵ They argued that PAC's are a valuable political tool because they allow individuals who otherwise could afford to contribute only a few dollars to participate more significantly in affecting federal elections.⁸⁶ In their view, limiting contributions by

79. Pub. L. No. 93-443, § 101(b)(2), 88 Stat. 1263 (1974) (codified as amended at 2 U.S.C. § 441a(a)(1)(A) (1982)).

80. Pub. L. No. 93-443, § 101(b)(3), 88 Stat. 1263 (1974) (codified as amended at 2 U.S.C. § 441a(a)(3) (1982)).

81. 120 CONG. REC. 8770, 8776-79 (1974).

82. S. 3044, 93d Cong., 2d Sess., 120 CONG. REC. 3707 (1974). Senate bill 3044 was originally introduced in the Senate by Senator Howard W. Cannon, D-Nev. *Id.* Senator Howard M. Metzenbaum, D-Ohio, was later added as a co-sponsor. The bill was the subject of much debate during this session of Congress, and a number of reports were prepared, including: S. REP. NO. 93-689, 93d Cong., 2d Sess. (1974); S. REP. NO. 93-1237, 93d Cong., 2d Sess. (1974); and H.R. REP. NO. 93-1438, 93d Cong., 2d Sess. (1974).

83. 120 CONG. REC. 8776 (1974). This amendment, number 1082, proposed by Senator William D. Hathaway, D-Me., was debated, *id.* at 8776-79, and agreed upon. *Id.* at 8779.

84. *Id.* at 8776-79 (1974).

85. *Id.* During their debate, the Senators discussed the effect of the Hathaway amendment on the National Committee for an Effective Congress, the American Conservative Union, the Americans for Conservative Action, and the Right to Work Organization. *Id.* at 8776-77.

86. *Id.* For example, Senator Walter D. Huddleston, D-Ky., stated that the Hathaway amendment, "would be a contribution to those who like to participate and like to know their views are being felt by joining an organization, knowing that the organization might have some impact . . . on the outcome of a race in which they are interested because they support a candidate." *Id.* at 8779.

these organizations would promote the dominance of the electoral process by the wealthy.⁸⁷

Opponents of the Hathaway amendment focused on the influence wielded by the large political action committees of unions and corporations.⁸⁸ They argued that the amendment was contrary to the basic goal of the legislation, which was to limit the role of wealthy special interests—whether individuals or organizations—in the political process. Opponents argued that the bill should be drafted so as to encourage individual participation in elections and they feared that such involvement would be discouraged if PAC's were allowed to make greater contributions.⁸⁹ Furthermore, they argued that such organizations were not a necessary element of our electoral system.⁹⁰

In response to the argument that political action committees represented the interest of small contributors, Senator Robert Griffin (R-Mich.), an outspoken opponent of the Hathaway amendment, reminded the Senate that people, not organizations, are represented in Congress.⁹¹ Senator Griffin believed that by contributing to a political organization rather than to a candidate or political party, a person had, in a sense, "delegated an important element of his own citizenship responsibility."⁹² Senator Griffin argued strongly that the national interest would be endangered by allowing organizations to contribute more than individuals.⁹³

Senator Griffin's concerns were echoed by Senator Howard Baker (R-Tenn.) when Senator Baker introduced an amendment prohibiting all organizations except political parties from making campaign contributions.⁹⁴ While Senator Baker supported the amendment's efforts to limit such contributions, he believed that more expansive legislation was needed.⁹⁵ Senator Baker was convinced that the most effective means of eliminating what he termed the "distortive influence of special interests" would be a complete ban on group contributions.⁹⁶ Not

87. *Id.* at 8776-80.

88. *See, e.g., id.* at 8777, in which Senator Robert Griffin, R-Mich., refers to "special interest groups—organizations that collect and distribute campaign money for business, labor, farm and other special interest groups—including the infamous milk funds"

89. *Id.* at 8777-78. Senator Griffin maintained that "the basic question is . . . whether the citizenship responsibility should be delegated by individual citizens to special interest groups."
Id. at 8778.

90. *Id.* at 8777-78.

91. *See id.* at 8777. Senator Griffin reemphasized an earlier point that "special interest groups do not vote; people vote."

92. *Id.* at 8777-78.

93. *Id.* at 8777.

94. 120 CONG. REC. 9551-52 (1974). Senator Baker's amendment, number 1126, read as follows: Notwithstanding the provisions of sections 615 and 616, no person other than an individual may make a contribution. Violation of the provisions of this section is punishable by a fine of not more than \$5,000 imprisonment for not more than five years, or both.

Id. at 9552.

95. *Id.*

96. *Id.* Senator Baker stated that he could "conceive of no more effective way to eliminate the distortive influence of special interests than by banning group contributions altogether." *Id.*

surprisingly, given the Senate's earlier approval of the Hathaway amendment, the Senate refused to ban PAC contributions entirely.⁹⁷

Some House members shared the objections to political action committees raised in the Senate.⁹⁸ House bill 16090,⁹⁹ reported by the House Administration Committee, contained the \$1,000/\$5,000 limitation included in the final version of the Senate bill, S. 3044.¹⁰⁰ A number of minority members of the committee expressed vigorous opposition to the distinction in the committee report:

If campaign contributions have ever been used for leverage in the political system, then surely the political action funds of special interest groups top the list for influencing political officials. If we are truly to reform the political system, then special interest campaign money should be outlawed.¹⁰¹

However, House members generally did not share this negative view of political action committees. One amendment prohibiting organizations from making political contributions was defeated in the House Administration Committee;¹⁰² another amendment reducing the ceiling from \$5,000 to \$2,500 was defeated by the full House.¹⁰³

The SUN-PAC Advisory Opinion

Following enactment of the FECA of 1974, the newly-created Federal Election Commission issued an advisory opinion dramatically increasing corporate interest in political action committees.¹⁰⁴ The Sun Oil Company requested permission from the FEC to expend funds to solicit employee and stockholder contributions for its political action committee, SUN-PAC.¹⁰⁵ In Advisory Opinion 1975-23, issued December 3, 1975, the FEC approved Sun Oil's request.¹⁰⁶ The opinion established several precedents which encouraged corporate PAC development. First, the decision permitted solicitation by Sun Oil of contributions from employees as well as stockholders.¹⁰⁷ The FECA of 1971 had permitted solicitation by corporations only of their shareholders.¹⁰⁸ Second, the opinion permitted Sun Oil to solicit contributions through

97. *Id.* at 9555. The Senate voted against Senator Baker's amendment by a margin of 53 to 36.

98. *See generally* 120 CONG. REC. 27220-66 (1974), for an account of the House debate on H.R. 16090, which was the House version of the FECA of 1974.

99. H.R. 16090, 93d Cong., 2d Sess., 120 CONG. REC. 25038 (1974).

100. 120 CONG. REC. at 27221, 27242. "Contributions by a person to a candidate for Federal office would be limited to \$1,000 per election applied separately to primary and general elections. Contributions by multi-candidate committees would be limited to \$5,000 per election." *Id.* at 27242.

101. H.R. REP. NO. 1239, 93 Cong., 2d Sess. 118 (1974).

102. *Id.*

103. 120 CONG. REC. 27259-60 (1974).

104. Sun Oil Company, Inc., Federal Election Commission, Advisory Opinion 1975-23, 40 Fed. Reg. 56584 (1975) [hereinafter cited as Advisory Opinion]. *See also* PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 45-46.

105. *See* Advisory Opinion, *supra* note 104, at 56584.

106. *Id.*

107. *Id.* at 56585.

108. *Id.*

a payroll deduction plan.¹⁰⁹ Labor unions had previously been prohibited from using this fundraising device by the Taft-Hartley Act.¹¹⁰ Last, the opinion authorized the establishment of multiple political funds with separate contribution limits.¹¹¹

As a result of the SUN-PAC decision, corporations rushed to form political action committees. In the thirteen months following the SUN-PAC decision, the number of corporate PAC's almost tripled.¹¹² The number of registered PAC's overall increased from 722 to 1,146, an increase of almost sixty percent.¹¹³

Buckley v. Valeo

On November 30, 1976, the Supreme Court handed down its decision in *Buckley v. Valeo*.¹¹⁴ The Court held that the expenditure ceilings of the FECA of 1974 were unconstitutional because they imposed "substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate."¹¹⁵ In doing so, the Court invalidated one of the central reforms around which the FECA of 1974 had been structured.¹¹⁶ Specifically, the Court held that the limitation on independent expenditures (expenditures made in support of or in opposition to a candidate without the approval of the candidate or his campaign committee) was an impermissible infringement upon the right of free speech.¹¹⁷ The Court's decision was premised upon its view that political expenditures are the equivalent of speech.¹¹⁸ While the Court upheld Congress' ability to limit contributions to protect the integrity of the representative process, it believed that elected officials would not feel a sense of obligation to those making independent expenditures.¹¹⁹ Consequently, it found the limitation upon those expenditures to be an unacceptable intrusion on first amendment rights.¹²⁰ In distinguishing the limitation on contributions from independent expenditures, the Court found that the contribution limita-

109. *Id.*

110. Pub. L. No. 101, ch. 120, § 304, 61 Stat. 136, 159 (1947) (originally codified at 18 U.S.C. § 610 (1947), repealed by Act of May 11, 1976, Pub. L. No. 94-283, tit. II, § 201(a), 90 Stat. 496).

111. See Advisory Opinion, *supra* note 104, at 56585.

112. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 56. The tables presented here indicate that from December 31, 1975 through December 31, 1976 the number of corporate PAC's increased from 139 to 433.

113. *Id.* at 56-57.

114. 424 U.S. 1 (1976) (per curiam).

115. *Id.* at 58-59.

116. See *supra* note 71 and accompanying text.

117. *Id.* at 47-49.

118. *Id.* at 39. The Court stated that "[i]t is clear that a primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, groups, and candidates." *Id.* See also Wright, *Politics and the Constitution: Is Money Speech?* 85 YALE L.J. 1001, 1005 (1976).

119. 424 U.S. at 72. See also Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?* 82 COLUM. L. REV. 609, 625-31 (1982).

120. 424 U.S. at 39-51.

tion did not present as great a bar to political expression because of the numerous alternatives for political giving.¹²¹ Significantly, the Court alluded to political action committees as one alternative.¹²²

The effect of the Court's decision on independent expenditures is to allow political organizations which desire to make contributions in excess of the FECA restrictions to do so. Statistics indicate that PAC's have generally been hesitant in making independent expenditures, perhaps because candidates have not welcomed such efforts on their behalf.¹²³ Nevertheless, some of the ideological PAC's that have emerged in recent years have made significant independent expenditures.¹²⁴ It is uncertain, however, how popular this campaign tool will become in future elections.

The Federal Election Campaign Act Amendments of 1976

The Supreme Court's decision in *Buckley v. Valeo* forced Congress to reconsider the issue of election reform again in 1975. In addition to invalidating the expenditure ceilings of the 1974 Act, the Supreme Court held in *Buckley* that the structure of the Federal Election Commission, which then consisted of congressional appointees, violated the doctrine of separation of powers¹²⁵ and the appointments clause¹²⁶ of the United States Constitution. The Federal Election Campaign Act Amendments of 1976 (FECA of 1976)¹²⁷ was an attempt to restructure the Commission and redraft the 1974 Act before the 1976 Presidential election.¹²⁸

The 1976 Act was primarily a response to the SUN-PAC and *Buckley* opinions and emphasized restoring the balance between union and corporate PAC's. By 1976, PAC's were firmly established as a means of political activity.¹²⁹ Although one unsuccessful effort was again made in the Senate to ban group contributions entirely,¹³⁰ congressional debate no longer focused on the relative merits of individual and

121. *Id.* at 22-35.

122. *Id.* at 35. Specifically, the Court stated that "Section 608(b)(2) permits certain committees, designated as 'political committees,' to contribute up to \$5000 to any candidate with respect to any election for federal office." *Id.*

123. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 180. In 1980, about \$14 million was spent independently by PAC's, which amounts to about 12% of all PAC spending in that year. *Id.*

124. *Id.*

125. 424 U.S. at 143. The Court discussed the application of the separation of power doctrine in *Buckley* at 120-24.

126. *Id.* at 143. The Court discussed the application of the appointments clause in *Buckley* at 124-37.

127. Pub. L. No. 94-283, 90 Stat. 475 (1976).

128. See *Court Decision Forces New Campaign Law*, CONG. Q. ALMANAC 459 (1976).

129. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 74, 77, and 78. In 1976, PAC contributions to congressional candidates in the general election amounted to \$20.5 million, which represented almost 20% of all contributions given to those candidates in that year. *Id.* at 74.

130. In 1976, Senator Chiles introduced an amendment during consideration of Senate bill 3065. It was not accepted by his colleagues. See 122 CONG. REC. 7181, 7189 (1976).

group participation in the political process as it had in 1974.¹³¹

The 1976 Act contained numerous reforms which directly effected the operation and development of PAC's. First, campaign finance laws were recodified by moving the relevant sections of Title 18 of the United States Code to Title 2.¹³² Section 610,¹³³ dealing with corporate and union contributors, became section 441b;¹³⁴ section 611,¹³⁵ dealing with government contractor contributions, became section 441c.¹³⁶

Organizations which had been designated as political committees in the 1974 Act were called "multi-candidate political committees" in the new Act,¹³⁷ and limitations were imposed upon contributions to national political parties and political committees.¹³⁸ Multi-candidate political committees were permitted to contribute \$5,000 to a candidate or his campaign committee;¹³⁹ \$15,000 to a national party committee;¹⁴⁰ and \$5,000 to other political committees.¹⁴¹ Individuals and political committees not meeting the definition of a multi-candidate political committee were limited to contributing \$1,000 to candidates and their campaign committees;¹⁴² \$20,000 to national parties;¹⁴³ and \$5,000 to other political committees.¹⁴⁴ Individuals remained the only group subject to the \$25,000 aggregate ceiling.¹⁴⁵

In response to labor opposition to the FEC's advisory opinion on SUN-PAC,¹⁴⁶ Congress prohibited corporations from making more than two written solicitations for political contributions from employees.¹⁴⁷ More specifically, Congress allowed corporate PAC's to solicit contributions only from the corporation's stockholders, executive personnel, and their families.¹⁴⁸ Labor organizations were restricted to soliciting contributions from members and their families.¹⁴⁹ However, the 1976 Act did provide that twice each year, business and labor committees could solicit from each other's pool.¹⁵⁰

In addition, the Act permitted labor organizations to use the same

131. See 122 CONG. REC. 7182, 7189 (1976).

132. 2 U.S.C. § 431 (1982).

133. Act of June 25, 1948, ch. 645, § 1, 62 Stat. 723 (originally codified at 2 U.S.C. § 610 (1976)), *repealed by* Act of May 11, 1976, Pub. L. No. 94-283, tit. II, § 201(a), 90 Stat. 496.

134. 2 U.S.C. § 441b (1982).

135. Act of June 25, 1948, ch. 645, § 1, 62 Stat. 724 (originally codified at 2 U.S.C. § 611 (1976)) *repealed by* Act of May 11, 1976, Pub. L. No. 94-283, tit. II, § 201(a), 90 Stat. 496.

136. 2 U.S.C. § 441c (1982).

137. *Id.* § 441a(a)(2) (1982).

138. *Id.*

139. *Id.* § 441a(a)(2)(A) (1982).

140. *Id.* § 441a(a)(2)(B) (1982).

141. *Id.* § 441a(a)(2)(C) (1982).

142. *Id.* § 441a(a)(1)(A) (1982).

143. *Id.* § 441a(a)(1)(B) (1982).

144. *Id.* § 441a(a)(1)(C) (1982).

145. *Id.* § 441a(a)(3) (1982).

146. See Advisory Opinion, *supra* note 104, at 56584-88.

147. 2 U.S.C. § 441b(b)(4)(A) (1982).

148. *Id.*

149. *Id.*

150. *Id.* § 441b(b)(4)(B) (1982).

fundraising techniques available to corporations and required corporations to make such systems available to unions at cost.¹⁵¹ Thus, payroll deductions were made available to unions and businesses alike.¹⁵² Acquisition of this convenient fundraising technique was viewed by labor organizations as a great benefit.

The FECA of 1976 provided a further incentive for PAC development by expressly authorizing the establishment of separate, segregated funds by trade associations, membership organizations, and other groups.¹⁵³ However, at the same time, Congress significantly restricted PAC development by prohibiting the establishment of multiple PAC's within a single organization. The antiproliferation section provided that multiple PAC's established by corporations or labor unions through subsidiaries, branches, departments, or local units would be treated as a single, separate, segregated fund under federal election law.¹⁵⁴

Lastly, the 1976 Act addressed the problem of independent expenditures. Although *Buckley* clearly prevented Congress from restricting such expenditures, Congress tightened the definition of independent expenditure in the 1976 Act to prevent any collusion between those parties making independent expenditures and the candidate.¹⁵⁵ The Act defined independent expenditure as:

an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate or any authorized committee or agent of such candidate and which is not made in concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of the candidate.¹⁵⁶

In addition, the Act required that all independent expenditures exceeding \$100 of currency be reported to the Federal Election Commission and that a statement be filed affirming that the expenditure was not made in collusion with the candidate.¹⁵⁷ The \$100 threshold requirement was later increased to \$250.¹⁵⁸

IMPACT OF POLITICAL ACTION COMMITTEES ON REPRESENTATIVE GOVERNMENT

Although the exact impact that PAC money has had on the legislative process is indeterminable, the degree of influence clearly is substantial and growing. If by no other measure, the substantial media

151. *Id.* § 441b(b)(4)-(b)(6) (1982).

152. *Id.*

153. *Id.* § 441b(b)(4)(B)-(4)(D) (1982).

154. *Id.* § 441a(a)(5) (1982).

155. *Id.* § 431(17) (1982).

156. *Id.*

157. *Id.* § 441g (1982).

158. Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, § 104, 93 Stat. 1339, 1354 (1980) (to be codified at 2 U.S.C. § 431).

attention devoted to PAC's indicates a new and significant trend.¹⁵⁹

Senator William Proxmire (D-Wis.) underscored the basic rationale of PAC's, observing that: "PAC money is not free; it has strings attached."¹⁶⁰ These strings are pulled and votes are delivered. While certainly no member of Congress would link a vote on a particular matter to a political contribution, commentators have observed that the massive amount of money pumped into recent campaigns has impacted significantly on the political process.¹⁶¹ Brooks Jackson, a political commentator, illustrated the effect:

Associated Milk Producers, Inc. [AMPI], a dairy-farmer cooperative with just 33,000 members, controls one of the richest of all PACs. AMPI gave \$1.1 million this election and then issued a news release saying 92% of the candidates it backed were elected. "The great majority of U.S. congressional districts have no significant milk production," AMPI said. But "dairy farmers have proved that they can have substantial impact nationwide on the decision-making process."¹⁶²

PAC's often function collectively, with one interest group sponsoring several PAC's. Frequently, only a particular piece of legislation or vote is the PAC's priority goal.¹⁶³ Tens of thousands of dollars may go to one member of Congress who knows only too well the groups' aims.¹⁶⁴ Most importantly, PAC's frequently effect their desired result.¹⁶⁵ Political commentator Elizabeth Drew has concluded that "[t]he processes by which Congress is supposed to function have been distorted if not overwhelmed by the role of money."¹⁶⁶

Less clear but equally troubling is the effect of the flood of dollars on individual participation in the political process. In one sense, PAC's are based on the belief that people should participate in the political process as a group and not as individuals. Succinctly, the expanding influence of PAC's effectively threatens to lock individual citizens out of the political process. Some fear that the very notion of representative democracy, that one person's vote equals the next person's vote, is challenged by a system fostering financial contributions and resultant political influence.¹⁶⁷ The nation's path toward achieving the "one

159. See generally Isaacson, *Running with the PACs*, TIME, Oct. 25, 1982, at 20; Drew, *Politics and Money*, THE NEW YORKER, Dec. 6, 1982, at 54; Dec. 13, 1982, at 57; Clymer, *Will Congress Pass the Buck on Campaign Financing?*, N.Y. Times, Feb. 20, 1983, at E3, col. 4; Miller, *The Pernicious Influence of PACs on Congress*, Wall St. J., Feb. 17, 1983, at 30, col. 3; Wright, *Big Bucks in Politics: Sin Against the Constitution*, Wash. Post, Oct. 31, 1982, at C1, col. 1; and *PAC Politics*, Christian Sci. Monitor, Oct. 8, 1982, at 24, col. 1.

160. *Campaign Finance Reform Proposals of 1983: Hearings on The Federal Election Campaign Act of 1971, As Amended and on Various Measures to Amend the Act Before the Senate Comm. on Rules and Admin.*, 98th Cong., 1st Sess. 46 (1983) (statement of Sen. William Proxmire, D-Wis.) [hereinafter cited as *Campaign Finance Hearings*].

161. See Jackson, *The Problem with PACs*, Wall St. J., Nov. 17, 1982, at 30, col. 4.

162. *Id.*

163. See Drew, *supra* note 159, Dec. 6, 1982, at 131.

164. *Id.*

165. *Id.* at 54.

166. *Id.*

167. See *PAC Politics*, *supra* note 159, at 24, col. 1.

man, one vote" ideal has been long and difficult. A political process dominated by PAC's may well negate that ideal.

Judge J. Skelly Wright of the United States Court of Appeals for the Circuit of the District of Columbia has been a leading voice in sounding the alarm. Judge Wright points to those individuals whose voices are drowned out by money's polluting effect on election campaigns.¹⁶⁸ Judge Wright urges government regulation of the influence of money, "so that the wealthiest voices may not dominate the debate by the strength of their dollars rather than their ideas."¹⁶⁹

PAC's wealthy voices are indeed beginning to dominate. Elizabeth Drew warns what is at stake:

The public knows that something is wrong. As the public cynicism gets deeper, the political system gets worse. Until the problem of money is dealt with, the system will not get better. We have allowed the basic idea of our democratic process—representative government—to slip away. The only question is whether we are serious about trying to retrieve it.¹⁷⁰

From their inception, PAC's have faced opposition. However, the 1982 elections raised new alarms over money's role. There is growing disquiet among Senators and Representatives regarding the unceasing quest for campaign funds and the role of PAC's in meeting that demand.¹⁷¹ The impact on the legislative process is clearly recognized. In the cloakrooms there is worry about the *quid pro quo* often implied in PAC contributions when specific votes or detailed questionnaires regarding legislative stances are prerequisites of support. Certainly, influence-buying is not new to Congress. However, many people feel that Congress and the courts have facilitated and legitimized political influence-buying by PAC's.¹⁷²

In January, 1983, the Senate Rules Committee opened hearings on the subject of campaign finance.¹⁷³ These hearings highlighted some of the more important concerns. Senator Thomas Eagleton (D-Mo.) stated his view that:

[T]he current system of financing congressional elections is a national scandal. It virtually forces Members of Congress to go around hat in hand, begging for money from Washington-based special interest groups, political action committees whose sole purpose for existing is to seek a quid pro quo. . . . We see the degrading spectacle of elected representatives completing detailed questionnaires on their positions on special interest issues, knowing that the monetary reward of PAC support depends on the correct answers.¹⁷⁴

168. See Wright, *supra* note 159, at C1, col. 1.

169. Wright, *supra* note 119, at 638.

170. Drew, *supra* note 159, Dec. 13, 1982, at 111.

171. See Drew, *supra* note 159, Dec. 6, 1982, at 55.

172. *Id.* at 60.

173. See *Campaign Finance Hearings*, *supra* note 160.

174. *Id.* at 49 (statement of Sen. Thomas F. Eagleton, D-Mo.).

Senator William Proxmire (D-Wis.), pointing to the increasing dominance of PAC's, noted, "I do object to the steady, relentless, election-after-election increase in both the volume of PAC special interest contributions, and the proportion they represent of all contributions. . . . [T]he public interest is losing out."¹⁷⁵

In addition, Senate Rules Committee Chairman Charles McC. Mathias (R-Md.) raised the issue of public confidence in the Congress, stating:

Almost as bad as the potential for inequity and corruption in the current system of campaign finance is the general perception of undue influence. The latest Harris poll shows that 84 percent of Americans . . . believe that "those who contribute large sums of money have too much influence over the government." Now, I have no doubt that this cynicism contributes to our terrible state of voter apathy, apathy to the extent that over half of the eligible voters do not bother to turn out for congressional elections.¹⁷⁶

A survey undertaken in the spring of 1983 by the Center for Responsive Politics indicates substantial congressional dissatisfaction with campaign financing.¹⁷⁷ Responses from over 140 members of Congress clearly demonstrate a strong sentiment in favor of limiting total campaign expenditures and the political influence of PAC's.¹⁷⁸

LEGISLATIVE INITIATIVES TO CURB THE INFLUENCE OF PAC'S

Since 1977, numerous bills aimed at limiting the role of PAC's in the political process have been introduced.¹⁷⁹ The most successful was

175. *Id.* at 46 (statement of Sen. William Proxmire, D-Wis.).

176. *Id.* at 3 (statement of Sen. Charles McC. Mathias, Jr., R-Md.).

177. See Fenn, *supra* note 8, at 30.

178. *Id.* The Center for Responsive Politics conducted a study entitled *Campaign Finance Survey of Members of Congress*. Its findings include the following:

- 1) Are the current campaign laws basically satisfactory or do they need to be changed?
 21% satisfactory 76% change needed 3% no opinion
- 2) What is your view of enhancing the influence of political parties by increasing the amount they can contribute to House and Senate races?
 66% favor 28% oppose 6% no opinion
- 3) What is your view of attempts to limit total PAC contributions to candidates?
 66% favor 31% oppose 3% no opinion
- 4) What is your view of attempts to set a cap on campaign expenditures?
 59% favor 39% oppose 3% no opinion
- 5) What is your view of raising the limits on what individuals can give to candidates?
 58% favor 36% oppose 6% no opinion
- 6) What is your view of some form of federal financing of congressional elections?
 51% favor 43% oppose 6% no opinion
- 7) What is your view of attempts to provide free and equal time to candidates that are the targets of independent expenditure campaigns?
 60% favor 29% oppose 11% no opinion

179. Bills introduced since 1977 to limit the role of PAC's in the political process include the following: in the 95th Congress, H.R. 6132, 95th Cong., 1st Sess., 123 CONG. REC. 10833

introduced in the House as an amendment to Senate bill 832,¹⁸⁰ the FEC authorization bill of 1979. The amendment, known as the Obey-Railsback amendment,¹⁸¹ would have combined the primary and general election contribution ceilings and limited PAC contributions to \$6,000 per candidate. It would also have placed a ceiling of \$70,000 on the amount that a candidate could accept from multi-candidate committees.¹⁸² While the House of Representatives adopted the amendment, it was not considered by the Senate because of a threatened filibuster.¹⁸³ Consequently, it did not become law.

Proposed legislation to limit PAC's can be divided into four major categories: (1) bills seeking to reduce the influence of individual PAC's; (2) bills seeking to reduce candidate dependence on PAC's; (3) bills seeking to increase the influence of political parties and individuals; and (4) bills seeking public financing of all federal elections.¹⁸⁴

Bills which would limit the influence of individual PAC's would do so by reducing the amount of allowable PAC contributions to individual candidates, or by banning PAC contributions entirely.¹⁸⁵ However, the *Buckley* decision calls attention to the constitutional problems with this approach.

In *Buckley*,¹⁸⁶ the Supreme Court upheld contribution limitations but indicated that severe contribution restrictions would be problematic: "Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective

(1977); H.R. 7005, 95th Cong., 1st Sess., 123 CONG. REC. 13980 (1977); H.R. 7585, 95th Cong., 1st Sess., 123 CONG. REC. 17359 (1977); H.R. 7966, 95th Cong., 1st Sess., 123 CONG. REC. 20320 (1977); H.R. 8092, 95th Cong., 1st Sess., 123 CONG. REC. 21429 (1977); and H.R. 11315, 95th Cong., 2d Sess., 124 CONG. REC. 5732 (1978); in the 96th Congress, S. 714, 96th Cong., 1st Sess., 125 CONG. REC. 5697 (1979); H.R. 4768, 96th Cong., 1st Sess., 125 CONG. REC. 18392 (1979); H.R. 5081, 96th Cong., 1st Sess., 125 CONG. REC. 22228 (1979); S. 1700, 96th Cong., 1st Sess., 125 CONG. REC. 22632 (1979); and H.R. 4970, 96th Cong., 1st Sess., 125 CONG. REC. 20980 (1979) (this bill was the Campaign Contributions Reform Act of 1979, also known as the Obey-Railsback amendment); in the 97th Congress, S. 9, 97th Cong., 1st Sess., 127 CONG. REC. S10 (daily ed. Jan. 5, 1981); H.R. 9070, 97th Cong., 1st Sess., 127 CONG. REC. H4111 (daily ed. July 8, 1981); H.R. 5450, 97th Cong., 2d Sess., 128 CONG. REC. H200 (daily ed. Feb. 3, 1982); and H.R. 6047, 97th Cong., 2d Sess., 128 CONG. REC. H1405 (daily ed. April 1, 1982).

180. S. 832, 96th Cong., 1st Sess., 125 CONG. REC. 28,644 (1979).

181. H.R. 4970, *supra* note 179.

182. The Obey-Railsback amendment as introduced set contribution limitations of \$5,000 on the amount that a PAC could contribute to a candidate and \$50,000 on the amount that a candidate could accept from a PAC. 125 CONG. REC. 28,644 (1979). Representative Thompson (D-N.J.) introduced an amendment raising those limitations to \$6,000 and \$70,000, respectively. *Id.* at 28,645. The Thompson amendment was adopted. *Id.* at 28,652. The Obey-Railsback amendment, as amended by Representative Thompson, was adopted by the full House. *Id.* at 28,659.

183. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 195.

184. *Id.* at 195, 196.

185. See H.R. 640, 98th Cong., 1st Sess., 129 CONG. REC. H95 (daily ed. Jan. 6, 1983); H.R. 4157, 98th Cong., 1st Sess., 129 CONG. REC. H8378 (daily ed. Oct. 19, 1983).

186. 424 U.S. 1 (1976).

advocacy.”¹⁸⁷

Since enactment of the 1974 limitations, inflation has reduced the significance of a \$5,000 contribution. Therefore, any reduction of that ceiling might conflict with the Court’s warning. Certainly, a total ban on PAC contributions would evoke a constitutional challenge.¹⁸⁸

Critics of legislation which would lower the contribution ceiling have also noted that increased contribution restrictions might provide a catalyst for more independent expenditures,¹⁸⁹ thereby compounding further the current difficulties with campaigns for federal office.¹⁹⁰

Several bills have been introduced to reduce candidate dependence on PAC’s by imposing a ceiling on the aggregate amount a candidate may accept from PAC’s during an election.¹⁹¹ It has been suggested that here, too, *Buckley* raises a constitutional question.¹⁹² In *Buckley*, the Supreme Court upheld the ceiling on the amount an individual source could contribute, recognizing the potentially corrosive influence of large contributions.¹⁹³ The Court held that Congress’ imposition of contribution limitations for the purpose of avoiding the possibility or appearance of impropriety was justified.¹⁹⁴ A ceiling on the total amount a candidate could accept from PAC’s would not further this end beyond current law for it would not affect the size of contributions. In addition, the limitation might be viewed as limiting a candidate’s campaign coffers and thus limiting campaign expenditures, a policy which the Supreme Court specifically disallowed in *Buckley*.¹⁹⁵

A second constitutional question might arise after a candidate had reached the ceiling, since he could accept no additional PAC contributions. Individual PAC members’ first amendment association rights might potentially be usurped.¹⁹⁶ Opponents argue that from a practical standpoint such reform would aid incumbents by inhibiting challengers from raising the money necessary to conduct a successful campaign.¹⁹⁷

The third method suggested for reducing the influence of PAC’s is to increase and strengthen the role of individuals and political parties.¹⁹⁸ Legislation has been introduced that would increase the

187. *Id.* at 21.

188. See PAC’S EVOLUTION AND GROWTH, *supra* note 9, at 198.

189. *Id.* at 54.

190. *Id.* at 55-56.

191. S. 2283, 98th Cong., 2d Sess., 130 CONG. REC. S 1225 (daily ed. Feb. 9, 1984); S. 1433, 98th Cong., 1st Sess., 129 CONG. REC. S7924 (daily ed. June 8, 1983); and H.R. 2490, 98th Cong., 1st Sess., 129 CONG. REC. H1992 (daily ed. April 12, 1983).

192. See *supra* notes 115, 117, 118, and accompanying text. See also Letter from John E. Nowak, Professor of Law, University of Illinois, College of Law, to Rep. Guy Vander Jagt, R-Mich. (reprinted in 125 CONG. REC. 26228 (1979)).

193. 424 U.S. at 26.

194. *Id.*

195. See *supra* note 192 and accompanying text, and source cited therein.

196. See J. NOWAK, CONSTITUTIONAL RAMIFICATIONS OF THE OBEY-RAILSBACK BILL, 125 CONG. REC. 26229 (1979).

197. See PAC’S EVOLUTION AND GROWTH, *supra* note 9, at 200.

198. *Id.* at 202.

amount that individuals could donate to federal election campaigns.¹⁹⁹ Bills which would increase the aggregate contribution restrictions imposed on individuals from \$25,000 to \$30,000,²⁰⁰ \$40,000,²⁰¹ or \$50,000²⁰² have also been introduced. However, such suggestions are problematic in that the vast majority of individuals contribute less than the current \$1,000 ceiling.²⁰³ Therefore, only a few wealthy contributors would likely take advantage of the higher ceiling. Because the 1974 election reforms were largely aimed at reducing the role of these individuals in the electoral process, an increased contribution limitation could undermine the benefits of the FECA of 1974. While some increase in individual contribution restrictions could be made without violating the purpose of the FECA, the line must be carefully drawn to ensure that the balance is not tipped too far.

Those people seeking to encourage more individual participation have also suggested increased tax credits for political contributions.²⁰⁴ Currently, individuals can receive a fifty percent tax credit for political contributions up to a maximum credit of fifty dollars.²⁰⁵ Commentators have suggested that small contributors be given a one hundred percent credit.²⁰⁶ While these suggestions would confer greater benefits on small contributors than increased contribution ceilings, only four percent of the nation's taxpayers presently take advantage of the credit.²⁰⁷ Therefore, it is questionable whether an increased credit would encourage additional campaign contributions.

A tax credit for individual contributions to political parties has also been proposed.²⁰⁸ It is thought that contributors would seek tax benefits by contributing to parties rather than through PAC's.²⁰⁹ The strength of this suggestion lies in the fact that elected officials would likely support legislation designed to enhance the role of political parties. However, such reform would likely encounter opposition from those individuals concerned about a candidate's ability to challenge incumbents, and from those concerned about the parties' relative wealth.

The last suggestion offered to curb PAC influence is to publicly finance federal election campaigns.²¹⁰ Proponents see this as the most effective way to eliminate the role of special interest groups. They

199. See S. 732, 98th Cong., 1st Sess., 129 CONG. REC. S2432 (daily ed. March 9, 1983).

200. S. 1185, 98th Cong., 1st Sess., 129 CONG. REC. S5749 (daily ed. May 2, 1983).

201. S. 1851, 97th Cong., 1st Sess., 127 CONG. REC. S13476 (daily ed. Nov. 16, 1981).

202. S. 1899, 97th Cong., 1st Sess., 127 CONG. REC. S14303 (daily ed. Dec. 2, 1981).

203. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 204.

204. See H.R. 2833, 98th Cong., 1st Sess., 129 CONG. REC. H2510 (daily ed. Apr. 28, 1983); H.R. 2976, 98th Cong., 1st Sess., 129 CONG. REC. H2859 (daily ed. May 11, 1983).

205. 26 U.S.C. §§ 41(a)-(b)(1), 218(a)-(b)(1) (1979).

206. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 206.

207. *Id.*

208. See H.R. 3737, 98th Cong., 1st Sess., 129 CONG. REC. H6349 (daily ed. Aug. 2, 1983).

209. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 206-07.

210. See S. 85, 98th Cong., 1st Sess., 129 CONG. REC. S91 (daily ed. Jan. 26, 1983); S. 151, 98th Cong., 1st Sess., 129 CONG. REC. S93 (daily ed. Jan. 26, 1983); and H.R. 3812, 98th Cong., 1st Sess., 129 CONG. REC. H6606 (daily ed. Aug. 4, 1983).

point to the apparent success of publicly-funded presidential races.²¹¹ However, this concept is the most radical and, therefore, the most controversial of the proposals. Public financing legislation has been introduced without success in nearly every Congress since 1956.²¹² Opponents urge that campaigns should be based upon the interest and activities of individuals, not government support.²¹³ A more significant objection raised by opponents is the potential cost of publicly-financed federal elections.²¹⁴

Various proposals addressing campaign finance reform have been introduced in each of the past three Congresses.²¹⁵ Whether the present Congress will act affirmatively on reform legislation is uncertain. While there has been no public outcry, the issue of campaign money is a significant factor in the public's eroding confidence in Congress.²¹⁶ The press has been awakened to the issue and increased coverage is likely as the tide of money advances with each election cycle. The combination of congressional worry, media attention, and public concern could provide the ingredients to prompt reform. The current climate is most aptly described as a general consensus that things are out of hand and action must be taken.

While concerns and worries are very real and will likely continue, campaign finance reform remains a formidable task. Reform efforts will continue to face the obstacles of constitutional restraints, partisan maneuvering, and the political survival instincts of every member of Congress. Past congressional debate in this area makes clear the paramount concerns over which party will gain or lose from campaign reform and whether incumbents or challengers will receive some new advantage.²¹⁷

One further difficulty is the genuine lack of consensus concerning the appropriate path for reform. No one approach has engendered much enthusiasm, and there is a concern that anything Congress might do may aggravate an already bad situation.

Passing corrective legislation remains possible. However, barring a singular event such as the Watergate scandal, the impetus to spur enactment of a comprehensive reform package or public financing is not on the horizon. The first session of the 98th Congress began with significant rumblings but ended with little talk of reform. At present, political campaigns are well underway, competition for campaign dollars is fierce, and the inclination is to shelve this difficult problem until the next Congress.

211. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 208.

212. *Id.* at 207-08. The first bill that proposed public funding of federal elections, Senate bill 3242, was introduced in 1956. S. 3242, 84th Cong., 2d Sess., 102 CONG. REC. 2831 (1956).

213. See PAC'S EVOLUTION AND GROWTH, *supra* note 9, at 209.

214. *Id.*

215. *Id.* at 185-220.

216. *Id.* at 165.

217. *Id.* at 200.

If the 98th Congress is not to pass the buck, the best approach may lie in legislation aimed at capitalizing on the mood for reform yet recognizing the complex issues involved and the need to build a consensus. At this point, Congress seems unprepared to pass public financing legislation, to set campaign spending limits, or to prohibit PAC's entirely. However, it might conceivably recognize that political action committees represent a problem and initiate a process to address that problem.

A MECHANISM OF REFORM

If Congress recognizes that PAC's threaten the electoral and legislative processes and that their influence should be curbed, the stage will be set for reform. A short-term, bipartisan commission, statutorily created and with specific tasks, could provide the mechanism to develop concrete legislative recommendations. In essence, this approach would be a half loaf now and a half later. Such legislation would involve two steps. First, it would publicly record Congress' support of a limit on the role of political action committees in financing federal elections. Second, it would establish a commission as an instrument aimed at fully examining the campaign finance issue and recommending the most appropriate means for achieving Congress' goals.

Admittedly, in the legislative vernacular, authorization of a commission or study is the equivalent of avoiding the issue. However, in notable instances, commissions have proven to be useful and fruitful. Rather than avoiding action, commissions can be the means of accomplishing a task that stymies normal congressional processes. The recent experience with the National Commission on Social Security Reform underscores the potential usefulness of this approach.²¹⁸ Another example is the Commission on Federal Paperwork.²¹⁹ Both commissions

218. The Commission on Social Security Reform made recommendations to Congress which resulted in the Social Security Amendments of 1983, Pub. L. No. 98-21, 97 Stat. 65 (1983). Formed by President Reagan in December of 1981, the bipartisan panel of 15 congressional and noncongressional members proposed a plan to insure short- and long-term solvency of the Social Security system. The House bill as passed drew extensively from the Commission's recommendations. The bill sought to increase revenue in the system while reducing growth in benefits. President Reagan signed the bill into law on April 20, 1983.

219. The Commission on Federal Paperwork, established on October 3, 1975, offered over 770 recommendations to President Carter and to the U.S. Congress to eliminate unnecessary federal paperwork which, if adopted, would save an estimated \$10 billion within one year. As the Commission neared completion of its report, the President, the Congress, and various government agencies had already adopted almost half of the 770 recommendations, saving an estimated \$3.5 billion. The Final Summary Report was issued on October 3, 1977. See COMMISSION ON FEDERAL PAPERWORK, A REPORT OF THE COMMISSION ON FEDERAL PAPERWORK, FINAL SUMMARY REPORT (October 3, 1977). The report attributed the federal paperwork glut to government insensitivity and poor planning. It recommended simplifying of language used, shortening of regulations, freer flow of information, and creation of a cabinet-level department to deal with the problem. See generally Act of Dec. 27, 1974, Pub. L. No. 93-556, 88 Stat. 1789 (codified at 44 U.S.C. §§ 3501-3512 (1976)). See also *Panel Scores Glut of Paperwork, Suggests Ways to Save \$10 Billion*, N.Y. Times, Oct. 5, 1977, at A20, col. 2.

laid the groundwork for major statutory changes.²²⁰

CONCLUSION

Few issues directly and personally concern members of Congress more than campaign finance. Difficulties always arise where the players are the ones rewriting the "rules of the game." Moreover, many parties have a vested interest in the status quo. However, all of us have a vested interest in the integrity of the institution. If Congress collectively decides that the influence of money, through the vehicle of political action committees, is undermining its role as the people's representative, action should be taken. The legislation outlined above is only a modest and initial step. But, at this juncture, it may represent one of the few alternatives to inaction.

220. See discussion *supra* notes 218, 219, and accompanying text.