

THE CAMPAIGN FINANCE REFORM ACT: A MEASURED STEP TO LIMIT THE PAC's ROLE IN CONGRESSIONAL ELECTIONS

INTRODUCTION

The first session of the 98th Congress saw more than a score of bills introduced which address congressional campaign financing. Representative David Obey (D-Wis.), a long time advocate of congressional campaign financing reform,¹ leads the bipartisan coalition sponsoring two of the more comprehensive bills.² Both bills include an aggregate limit on candidate expenditures, an aggregate limit on contributions from political action committees (PAC's),³ and free reply time for targets of independent expenditures. While the Clean Campaign Act of 1983⁴ advocates a voluntary system of mixed private and public financing, the Congressional Campaign Finance Reform Act of 1983⁵ provides for a 100% tax credit for contributions of \$100 or less made by individuals to a qualified candidate.

The need for effective control presses. Estimates for PAC candidate contributions to 1984 congressional campaigns reach \$100 million.⁶

1. In 1979, Rep. Obey, D-Wis., along with then Rep. Tom Railsback, R-Ill., sponsored the Campaign Contribution Reform Bill, H.R. 4970, 96th Cong., 1st Sess. (1979), which provided for limits on PAC contributions to congressional campaigns. The bill passed the House on October 17, 1979 by a vote of 217 to 198, 125 CONG. REC. H9303-04 (daily ed. Oct. 17, 1979), but opponents stalled it in the Senate with a threatened filibuster. Weaver, *Senate Bottles up a Bill to Limit Contributions in Races for House*, N.Y. Times, Feb. 15, 1980, at 20, col. 3.
2. Rep. Obey, D-Wis., and 71 co-sponsors introduced the Clean Campaign Act of 1983 on April 12, 1983. H.R. 2490, 98th Cong., 1st Sess., 129 CONG. REC. H1992 (daily ed. Apr. 12, 1983). Despite accumulating 58 more co-sponsors, raising the total to 130, considerable opposition to the public financing portion of that bill was certain to preclude its passage. Farney & Hunt, *Backers of Public Funding of House Races Drop Idea, Will Seek New Curbs on PAC's*, Wall St. J., Sept. 16, 1983, at 6, col. 1. Rep. Obey, with 100 co-sponsors in support, then introduced the Congressional Campaign Finance Reform Act of 1983 on November 16, 1983. H.R. 4428, 98th Cong., 1st Sess., 129 CONG. REC. H10056 (daily ed. Nov. 16, 1983) [hereinafter cited as Reform Act]. Since its introduction, 29 Congressmen have joined as co-sponsors of the Reform Act. 130 CONG. REC. H962 (daily ed. Feb. 28, 1984).
3. "Political action committee" (PAC) is the generic term for separate segregated funds set up by labor organizations, trade associations, corporations, government contractors and banks. It also encompasses political committees set up by clubs, associations, and other groups. These differing entities fall under the definition of multi-candidate political committees if they give to five or more candidates for federal election in an election cycle. 2 U.S.C. § 441a(a)(4) (1982). For the purpose of this note, "PAC's" refers to trade associations, labor organizations, and corporations, regardless of ideological basis.
4. H.R. 2490, *supra* note 2.
5. H.R. 4428, *supra* note 2.
6. *Pac's Setting Record in Gifts*, N.Y. Times, Nov. 8, 1983, at 7, col. 3. (estimate by Fred Wertheimer of Common Cause.) The 130 largest PAC's increased their contributions 80% in 1983 compared to the prior non-election year of 1981. Jackson, *PAC Funds Flowing to Congress*, Wall St. J., Feb. 23, 1984, at 50, col. 1. Wertheimer's \$100 million estimate conservatively assesses a 22% increase which would be the smallest increase in PAC contributions since 1977-1978. See 9 F.E.C. Record 5-8 (June 1983). In total, candidates spent \$343.9 million in

Charges of vote buying, access buying, influence peddling and congressional inaction accompany this steady infusion of PAC funds.⁷ This clamor destroys public confidence in the Congress and in the election process. The Congressional Campaign Finance Reform Act of 1983 constitutionally alleviates many of these apparent PAC abuses.

This note will review the legislative and judicial history of federal campaign laws, consider present PAC expenditures and contributions, examine the charges that the press and citizen groups have levelled against Congressmen, outline the provisions of the Congressional Campaign Finance Reform Act of 1983, and consider the Act's effectiveness.

LEGISLATIVE AND JUDICIAL HISTORY

Early legislation directed at campaign regulation consisted of ad hoc efforts to confront perceived abuses in the electoral system. In the last eighty years,⁸ Congress has regulated election participation of public employees,⁹ unions,¹⁰ corporations,¹¹ government contractors,¹² na-

the 1981-1982 election cycle, a 44% increase over the 1979-1980 cycle. Taylor, *Inside: FEC 82 Spending Leaps Past Old Totals*, Wash. Post, May 10, 1983, at A17, col. 2 (figures based upon Federal Election Commission records). In 1983, a non-election year, House members have already piled up \$29.5 million towards their re-election. Forty percent of those donations to House members came from PAC's. See Jackson, *supra*.

7. See section of note entitled CHARGES OF VOTE BUYING AND ACCESS BUYING, *infra* for a discussion of these charges. As the first session of the 98th Congress adjourned, various members alleged that the inability to legislate was caused by the special interest money circulating in Congress. Magnuson, *We're Unable to Act*, TIME, Nov. 28, 1983, at 18-20.

See Address by former Rep. Richard Bolling, D-Mo., Boston College O'Neill Professor of American Politics, in Newton, Mass. (Sept. 21, 1983) [hereinafter cited as Bolling Speech]. Bolling criticized the 97th Congress for the same inaction. "[T]he corruption of special interest money has infected the legislative branch, and, partly as a result, I found myself serving in the most gutless Congress I'd ever seen." *Id.* at 10.

Compare CONGRESSIONAL RESEARCH SERVICE, POLITICAL ACTION COMMITTEES: THEIR EVOLUTION AND GROWTH AND THEIR IMPLICATIONS FOR THE POLITICAL SYSTEM 166 (1982) (prepared by Joseph E. Cantor) [hereinafter cited as PAC'S EVOLUTION AND GROWTH]. Cantor writes that the paralysis is only a perception, not actual. Interest groups may not stifle Congress but instead force them to confront controversial issues.

8. The first comprehensive statute Congress enacted to regulate campaign finance was the Tillman Act of 1907, ch. 420, 34 Stat. 864, *codified by* Act of March 4, 1909, ch. 321, § 83, 35 Stat. 1103, 1103-04. The Tillman Act prohibited national banks and corporations from contributing to federal election campaigns.

In 1925, the Corrupt Practices Act replaced the Tillman Act. The prohibitions were nearly the same: to keep the banks and corporations from influencing the process through contributions. The Corrupt Practices Act was the effective act until FECA replaced it in 1971. Act of Feb. 22, 1925, ch. 368, 43 Stat. 1070, *repealed by* Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 405, 86 Stat. 3, 20 (1972).

9. The Hatch Act, passed in 1939, prohibited federal employees from participating in politics. Ch. 410, 53 Stat. 1147 (1939). It also prohibited the use of pension funds for political contributions. Congress amended the Act in 1940 to prohibit any contribution in excess of \$5,000 to any candidate for federal office. Act of July 19, 1940, ch. 640, 54 Stat. 767 (codified as amended in scattered sections of 1, 5, 18 U.S.C.).
10. As part of the Taft-Hartley Act, Congress prohibited unions from making contributions to federal candidates from the union's treasury fund. Taft-Hartley Act, ch. 120, § 304, 61 Stat. 136, 159 (1947).
11. Corrupt Practices Act, ch. 368, 43 Stat. 1070 (1925), *repealed by* Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 405, 86 Stat. 3, 20 (1972).
12. Government contractors were originally prohibited from contributing because of the impro-

tional banks¹³ and individuals.¹⁴ At one time or another Congress prohibited each of these groups from contributing to campaigns.

In 1972, Congress finally promulgated a comprehensive statute to regulate election financing. The Federal Election Campaign Act of 1971 (FECA)¹⁵ limited the total amount federal candidates could spend on media advertising,¹⁶ restricted the amount federal candidates could contribute to their own campaigns,¹⁷ and required more complete disclosure of contributions and expenditures.¹⁸ FECA strove for self-enforcement: if a candidate accepted excessive contributions from certain individuals, the contributions would become political fodder for his opponent.

The 1971 Act disregarded earlier campaign financing legislation which prohibited corporations and labor unions from contributing to candidates.¹⁹ It allowed those entities to establish separate segregated funds which could make contributions to candidates or expenditures on behalf of candidates in compliance with FECA's limitations.²⁰ Congress intended these separate segregated funds to be voluntarily-financed political groups that could represent the interests of the corporation or union, but would not be tied to the corporate or union treasuries. The separate segregated funds evolved into today's PAC's.

After FECA, one obstacle impeded PAC formation for most large corporations. Section 611 of the United States Criminal Code²¹ prohibited government contractors from making campaign contributions

priety arising when the contributor is an interested party. They had been prohibited from making contributions even through PAC's. FECA now allows government contractors to create separate segregated funds (PAC's) as any other corporation. 2 U.S.C. § 441c(b).

13. Corrupt Practices Act, ch. 368, 43 Stat. 1070 (1925), *repealed by* Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 405, 86 Stat. 3, 20 (1972).
14. Hatch Act, ch. 640, 54 Stat. 767 (1940) (codified as amended in scattered sections of 1, 5, 18 U.S.C.).
15. Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended in scattered sections of 2, 18 and 47 U.S.C.).
16. Pub. L. No. 92-225, § 104, 86 Stat. 3, 5 (1972) (codified at 47 U.S.C. § 104), *repealed by* Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 305, 88 Stat. 1263, 1278.
17. Pub. L. No. 92-225, § 203(a), 86 Stat. 3, 9 (1972) (codified at 18 U.S.C. § 608(a)), *repealed by* Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 201, 90 Stat. 475, 496. Congress repealed this section in light of *Buckley v. Valeo*, 424 U.S. 1, 51-54 (1976), which declared the limitations placed on expenditures by candidates from their own resources unconstitutional.
18. Pub. L. No. 92-225, §§ 304-307, 86 Stat. 3, 14-16 (1972), *amended by* Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 302, 88 Stat. 1263, 1289; Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 115, 90 Stat. 475, 495 (current version at 2 U.S.C. §§ 434-435 (1982)).
19. *See* Corrupt Practices Act, ch. 368, 43 Stat. 1070 (1925) (prohibition of corporate contributions); Taft-Hartley Act, ch. 120, § 304, 61 Stat. 136, 159 (1947) (prohibition of union contributions).
20. Pub. L. No. 92-225, § 205, 86 Stat. 3, 10, *repealed by* Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 201, 90 Stat. 475, 496. The 1976 Amendments recodified the separate segregated fund provisions and extended the use of such funds to membership organizations, cooperatives, and corporations without capital stock. Pub. L. No. 94-283, § 112(2), 90 Stat. 475, 490 (current version at 2 U.S.C. § 441b(b) (1982)).
21. 18 U.S.C. § 611, *repealed by* Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 201(a), 70 Stat. 475, 496.

to federal candidates. When TRW, Inc., a large government contractor, attempted to create a PAC in 1972, Common Cause²² sued and forced the firm to dismantle its PAC.²³ Although the parties settled out of court, the result held an omen for big business and labor unions with government contracts.²⁴ "So labor and business closed ranks to lobby for an amendment to end the restriction."²⁵ The combined interests succeeded in eliminating Section 611 in July 1973.²⁶

When the Watergate scandal²⁷ revealed corruption in the highest offices of the American government, Congress reacted by amending FECA.²⁸ The 1974 FECA amendments limited individual contributions to federal candidates to \$1,000 per election²⁹ and PAC contributions to \$5,000 per election.³⁰ The amendments also extended aggregate expenditure limits for congressional campaigns,³¹ limited independent expenditures to \$1,000 per election,³² and allowed government contractors to form PAC's.³³ The amendments also created the Federal Election Commission (FEC) to administer and enforce the campaign finance laws.³⁴

While Congress clamped down on election corruption, its newly-created FEC opened the campaign financing door to corporations in its *Sun Pac* advisory opinion.³⁵ When Sun Oil proposed to spend general corporate treasury funds to establish, administer and solicit voluntary contributions to its PAC,³⁶ SUNPAC, and to use general corporate treasury funds to establish and administer a "trustee plan," SUNEPA, which would channel participating employees' money from bank ac-

22. Common Cause is a Washington, D.C. based citizens' lobby group.

23. *Common Cause v. TRW, Inc.*, No. 980-72 (D.D.C. filed May 15, 1972), *dismissed* Aug. 8, 1972.

24. The AFL-CIO was concerned that the courts would categorize their manpower training programs as government contracts.

25. Green, *Political Pac-Man*, THE NEW REPUBLIC, Dec. 18, 1982, at 18.

26. The Senate rejected an amendment, S. 372, 93d Cong., 1st Sess., to the proposed Federal Election Campaign Act Amendments of 1973, S. 372, 93d Cong., 1st Sess., 119 CONG. REC. 26,613 (1973), which would have retained the provisions of 18 U.S.C. § 611 prohibiting contributions by government contractors. 119 CONG. REC. 26,297-303 (1973).

27. During the 1972 presidential election campaign, members of the Republican National Committee authorized the bugging of the Democratic Party's headquarters in the Watergate Hotel. The scandal caused a public outcry regarding corruption in politics and eventually led to the resignation of President Richard M. Nixon.

28. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, §§ 201-208, 88 Stat. 1263, 1272-1287 (codified as amended at 2 U.S.C. §§ 431-434, 437, 438 (1982)).

29. Pub. L. No. 93-443, § 101(b)(1), 88 Stat. 1263 (current version at 2 U.S.C. §§ 441a(a)(1)-a(6)(2) (1982)).

30. Pub. L. No. 93-443, § 101(b)(2), 88 Stat. 1263 (current version at 2 U.S.C. §§ 441a(1)-a(2) (1982)).

31. Pub. L. No. 93-443, § 101(c)(1)(D), 88 Stat. 1263, *repealed by* Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475.

32. Pub. L. No. 93-443, § 101(e)(1), 88 Stat. 1263, 1265, *repealed by* Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475.

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

34. Pub. L. No. 93-443, § 310(a)(1), 88 Stat. 1280, *amended by* Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475.

35. Federal Election Commission Advisory Opinion 1975-1983, 40 Fed. Reg. 56,584 (1975).

36. *Id.*

counts to candidates,³⁷ the FEC concluded that as long as Sun Oil used the funds only for the stated purposes and as long as SUNPAC and SUNEPA remained separate and segregated funds,³⁸ Sun Oil was abiding by FECA. The decision gave corporate PAC's a financial advantage over non-corporate PAC's.

Shortly after the 1974 amendments took effect, Senator William F. Buckley (R-N.Y.), along with a handful of other individuals and political groups, successfully challenged several of FECA's provisions in *Buckley v. Valeo*.³⁹ The Supreme Court in *Buckley* held that the limitations on individual⁴⁰ and PAC contributions⁴¹ and the disclosure requirements were proper means for combatting corruption or the appearance of corruption which stems from large campaign contributions.⁴² The Court struck down the limitations on aggregate campaign expenditures,⁴³ on expenditures from a candidate's personal funds,⁴⁴ and on independent expenditures.⁴⁵ The Court reasoned that campaign expenditures constituted protected first amendment speech and that the government interest in alleviating corruption or the appearance of corruption was not sufficiently compelling to warrant a limitation on this protected speech.⁴⁶ Congress amended FECA in 1976 to comply with *Buckley*.⁴⁷

PAC'S CURRENT CONTRIBUTION RECORD

In his dissent in *Buckley*, Justice White foresaw the results of the majority's decision.⁴⁸ He realized that since the Court struck down the

37. *Id.*

38. *Id.* at 56,584, 56,585.

39. *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam).

40. *Id.* at 29.

41. *Id.* at 38.

42. *Id.* at 60-84.

43. *Id.* at 58.

44. *Id.* at 54.

45. *Id.* at 51.

46. *Id.* at 55.

47. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 (codified as amended in scattered sections of 2, 26 U.S.C.). See generally SENATE RULES AND ADMINISTRATION COMMITTEE, REPORT TO ACCOMPANY S. 3605, S. REP. NO. 677, 94th Cong., 2nd Sess., reprinted in 1976 U.S. CODE CONG. & AD. NEWS 929.

48. *Buckley v. Valeo*, 424 U.S. at 257. Justice White dissented from the Court's holding that FECA's limitations on independent expenditures and on aggregate campaign expenditures violated the first amendment. He criticized the plurality because they refused to defer to Congress' practical opinion on the need for these two limitations. As to the limit on independent expenditures, Justice White reasoned that the Court had merely opened a loophole for circumvention of FECA's contribution limits which the Court simultaneously upheld. Justice White stated, "... limiting independent expenditures is essential to prevent transparent and widespread evasion of the contribution limits." *Id.* at 261-62 (White, J., concurring in part and dissenting in part). Justice White's prediction has proven accurate.

As to the limit on aggregate campaign expenditures, Justice White thought the Court should defer to Congress' judgment. He noted that the purposes for expenditure limitations are "legitimate and sufficiently substantial." *Id.* at 264. Justice White stated: the expenditure limit imposed on candidates plays its own role in lessening the chance that the contribution ceiling will be violated. Without limits on total expenditures, campaign costs will inevitably and endlessly escalate. Pressure to raise funds will con-

independent expenditure limits, it destroyed FECA's comprehensiveness and opened a loophole for PAC spending.⁴⁹ Indeed PAC's have become a major force in both campaign fundraising and in expendi-

stantly build and with it the temptation to resort in "emergencies" to those sources of large sums, who, history shows, are sufficiently confident of not being caught to risk flouting contribution limits. Congress would save the candidate from this predicament by establishing a reasonable ceiling on all candidates. This is a major consideration in favor of the limitation. It should be added that many successful candidates will also be saved from large, overhanging campaign debts which must be paid off with money raised while holding public office and at a time when they are already preparing or thinking about the next campaign. The danger to the public interest in such situations is self-evident.

Id. (emphasis added).

Justice White further noted that FECA's aggregate expenditure limit would allow candidates, both incumbents and challengers, to spend more time in non-fundraising activities. Justice White stated:

I have little doubt in addition that limiting the total that can be spent will ease the candidate's understandable obsession with fundraising, and so free him and his staff to communicate in more places and ways unconnected with the fundraising function. There is nothing objectionable—indeed it seems to me a weighty interest in favor of the provision—in the attempt to insulate the political expression of federal candidates from the influence inevitably exerted by the *endless job of raising increasingly large sums of money*. I regret that the Court has returned them all to the treadmill.

Id. at 265 (emphasis added). See Cox, *Constitutional Issues in the Regulation of the Financing of Election Campaigns*, 31 CLEV. ST. L. REV. 395 (1982). Professor Cox cites footnote 46 of the Supreme Court's opinion in *Federal Election Commission v. Bellotti*, 435 U.S. 765 (1978) to show that the Court seems ready to defer to Congress' determinations on the corruptive influences in politics. Cox, *supra*, at 407, 413. Cox states that the *Bellotti* opinion, which allowed corporations to expend money in referendums, reserved judgment as to the propriety of corporate contributions to a candidate. Cox reasons that the Court's deference in *Bellotti*, viewed in light of the opinion upholding section 441b of FECA in *Federal Election Commission v. National Right to Work Committee*, — U.S. —, 103 S. Ct. 552 (1982) shows a newfound commitment to the "policy of giving considerable weight to the congressional findings that implicitly underlie legislation regulating campaign contributions and expenditures." Cox, *supra*, at 413. In *National Right to Work*, Justice Rehnquist wrote:

[w]hile § 441b restricts the solicitation of corporations and labor unions without great financial resources, as well as those more fortunately situated, we accept Congress's judgment that it is the potential for such influence that demands regulation. Nor will we second guess a legislative determination as to the need for prophylactic measures where corruption, is the evil feared.

103 S. Ct. at 560.

49. *Buckley*, 424 U.S. at 261. (White, J., dissenting in part and concurring in part). Since FECA limited both campaign contributions and expenditures, PAC's could not act as conduits for money that the official committee could not receive. Without a limit on independent expenditures, FECA fails to achieve its basic goal, preventing money from influencing the legislative process. After *Buckley*, many races have two campaigns, the official candidate's committee which PAC's support by contributions, and an unofficial, ostensibly independent campaign that the PAC's run on the candidate's behalf.

In the past cycles, independent expenditures were more prevalent in the presidential campaigns. For example, in the 1980 presidential election \$12 million of \$14 million spent independently by PAC's went to the presidential race. Federal Election Commission, Press Release (Feb. 21, 1982). Yet, in the 1981-1982 election cycle, PAC spending increased 143% in the congressional races also. Eighty percent of the total expenditures in the 1981-1982 races were independent expenditures. See Federal Election Commission, Press Release (Mar. 22, 1983).

PAC's circumvention of the spending limits through independent expenditures negates first amendment protection instead of protecting it. PAC's, through their negative campaigns not only express their opinions, they sway others. This illustrates an inequality in speech as the individual voter has no input on an issue compared to the PAC interests. Note, *Equalizing Candidates' Opportunities For Expression*, 51 GEO. WASH. L. REV. 113 (1982). See Rembar, *For Sale: Freedom of Speech*, THE ATLANTIC, Mar. 1984, at 25, 30.

tures on behalf of candidates.⁵⁰ The following chart⁵¹ illustrates increases in PAC contributions over the last three elections cycles:

	<u>1977-78</u>	<u>1979-80</u>	<u>1981-82</u>
Aggregate Amount of Contributions (in millions of dollars)	\$35.2	\$55.2	\$87.3
Percent increase over previous year		57%	58%

Projections for the 1984 election cycle mirror the past growth.⁵² Although some argue that the total number of PAC's has levelled off,⁵³ the existing PAC's are spending more heavily.⁵⁴ Since the present laws allow for the creation of an unlimited number of PAC's,⁵⁵ and those that exist spend more, this rise in expenditures seems boundless.

Problems Caused by PAC Contributions

Political Action Committees inject money into campaigns through two means: contributions and independent expenditures. The Federal Election Campaign Act limits PAC contributions to candidates to \$5000 for the general election and \$5000 for the primary election.⁵⁶ Independent expenditures, on the other hand, have no limitation because they are constitutionally protected.⁵⁷ Yet the multiplicity of PAC's,⁵⁸

50. Top PAC figures for contributions in the 1982 election cycle were:

Top Overall—Realtors PAC	\$2,115,135
Top Corporate—Tenneco	454,150
Top Labor—UAW Community Action Program	1,623,947
Top Ideological—National PAC (pro Israel)	542,500

Clymer, *PAC Gifts to Candidates Rose 45% in Latest Cycle*, N.Y. Times, Apr. 29, 1983, § 1, at 16, col. 1.

51. Chart compiled from the following sources: Federal Election Commission, Press Release, (Feb. 21, 1982); *id.*, Apr. 24, 1980; *id.*, Mar. 7, 1982. See also Clymer, *supra* note 50.

52. See discussion *supra* note 6.

53. See generally PAC's EVOLUTION AND GROWTH, *supra* note 7, at 211-15; Federal Election Commission, Press Release, (July 28, 1983). From January 1, 1974 to July 1, 1983, the aggregate number of PAC's has increased from 608 to 3461. Between 1981 and 1983, the number increased by 560, compared to an increase of 901 from 1979 to 1981. See PAC's EVOLUTION AND GROWTH, *supra* note 7, at 55 for a detailed report on the growth of PAC's from 1972-1980. The following chart represents PAC growth by category from 1974-1983:

<u>Type</u>	<u>1974</u>	<u>1977*</u>	<u>1983</u>
Labor	201	234	380
Corporate	89	550	1467
Ideological	0	110	746

* First Year After *SunPac*, *supra* note 35.

CENTER FOR RESPONSIVE POLITICS, MONEY AND POLITICS: CAMPAIGN SPENDING OUT OF CONTROL 16 (1983).

54. See discussion *supra* note 6.

55. Under FECA, every corporate entity and union may form a PAC. The possibility also exists for an unlimited number of ideological PAC's. See generally 2 U.S.C. §§ 441b(b)(2)(C), 441c(b) (1982).

56. 2 U.S.C. § 441a(a)(2) (1982).

57. *Buckley v. Valeo*, 424 U.S. at 45.

their combination with lobbies,⁵⁹ and their contributions given as a "quid pro quo" for votes⁶⁰ create the appearance of a corrupt Congress.⁶¹ Furthermore, as increased PAC contributions drive campaign costs upward, an "arm's race" mentality develops among the candidates that forces each candidate to spend increased hours and resources on campaigning.⁶²

Similarly, independent expenditures have grown dramatically since

58. Since PAC's may only contribute a maximum of \$10,000 per election cycle to an individual candidate, the problem arises when five closely-aligned PAC's each give \$10,000. The ideological committees have been challenged because of alleged coordination among the closely-aligned PAC's. These challenges did not succeed. *Common Cause v. Schmitt*, 455 U.S. 129 (1982). Challenges against more formal associations, such as the AMA, have fared better. *California Medical Association v. FEC*, 453 U.S. 182 (1981). The multiplicity problem did not arise as a significant concern before *Buckley* because of the independent expenditure limits. See AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON ELECTION REFORM, SYMPOSIUM ON CAMPAIGN FINANCE REGULATION AMERICAN BAR ASSOCIATION COMMITTEE ON ELECTION REFORM 17 (1975) (comments of Fred Wertheimer).

59. Common Cause figures show that more than half of the organizations that sponsor PAC's also maintain Washington-based lobbying offices. Wertheimer, *The PAC Phenomenon in American Politics*, 22 ARIZ. L. REV. 603, 611 n.48 (1980).

For example, the National Educational Association (NEA) has a strong lobby to back up its contributions to candidates. Interview with Joe Standa, Officer, NEA Political Action Committee, in Washington, D.C. (Aug. 18, 1983).

60. See *infra* notes 67-86 and accompanying text. "Quid pro quo" language traces to the *Buckley* opinion where the Court wrote:

To the extent that large contributions are given to secure a political *quid pro quo* for potential officeholders, the integrity of our systems of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrates that the problem is not an illusory one.

424 U.S. at 26-27 (per curiam) (footnote omitted).

The Court dismissed the possibility of a quid pro quo for independent expenditures though. *Id.* at 45. However, Rep. Mike Synar, D-Okla., states, "[b]ut it would be naive in the extreme to ignore the quid pro quo implicit in PAC contributions. That money is given for a reason—that reason is to influence the legislative process." *Contribution Limits and Independent Expenditures: Hearings Before the Task Force on Elections, Committee on House Administration*, 97th Cong., 2d Sess. 39 (1981) [hereinafter cited as *Hearings*].

Echoing Rep. Synar is Sen. Thomas Eagleton, D-Mo., "It [PAC money] literally forces members of Congress to go around hat in hand begging for money from Washington-based special interest political action committees whose sole purpose for existing is to seek a quid pro quo." Raines, *Senators Weigh "Cures" For the PAC Addiction*, N.Y. Times, Feb. 3, 1983, § 2, at 6, col. 3. See also *Hearings, supra* at 9 (statement of former Rep. Robert Eckhardt). Rep. Thomas Downey, D-N.Y., stated, "[y]ou can't buy a Congressman for \$5,000. But you can buy his vote. It's done on a regular basis." Isaacson, *Running with the PACs*, TIME, Oct. 25, 1982, at 20. For a general summary of votes challenged by PAC critics, see *id.* at 23-25. See also *Federal Financing of Congressional Elections: Hearings on H.R. 1 and Related Legislation Before the Comm. on House Administration*, 96th Cong., 1st Sess. 216 (1979).

61. *Hearings, supra* note 60, at 2 (statement of Rep. Swift, D-Wash., Chairman, Task Force on Elections):

Indeed, suspicion about the relationship between a Member's voting behavior and the source of his campaign contributions has found its way to the floor of the House and threatens to erode the presumption of good faith upon which the legislative process rests.

It is not enough to dismiss these calculations of voting behavior as overly simplistic, for it is the appearance of corruption, as much as its actuality, that threatens us.

Id. at 2.

62. The arms race analogy permeates the PAC debate so much that Rep. Jim Leach, R-Iowa, calls the bills to control contribution limits "SALT" agreements between big business, labor, and the ideological PAC's. *Id.* at 33 (testimony of Rep. Leach, R-Iowa).

*Buckley*⁶³ and *SunPac*.⁶⁴ The independent expenditure loophole allows PAC's to expend large sums of a candidate's behalf, essentially circumventing contribution limits.⁶⁵ Moreover, the FEC's narrowly construed definition of "independent" belies any attempt to control coordination among PAC's and candidates' official committees.⁶⁶ The spending has created a furor in the popular press, on the floors of Congress, and in scholarly works. The specifics are, indeed, eyeopening.

CHARGES OF VOTE-BUYING

Corresponding to Congress' regulation of various sectors of the economy in the mid 1970's, PAC contributions increased,⁶⁷ resulting in charges of PAC vote-buying and access-buying. A few examples of these charges shed light on their general nature.

63. 424 U.S. 1.

64. Federal Election Commission Advisory Opinion 1975-1983, 40 Fed. Reg. 56,584 (1975).

65. Many of the criticisms below, although centered upon contribution abuses, may be juxtaposed with independent expenditure abuses. Courts have twice struck down the most direct limit on independent expenditures, 26 U.S.C. § 9012(f). In *Common Cause v. Schmitt*, 455 U.S. 129 (1982) the Supreme Court in a 4-4 vote (Justice O'Connor not participating) upheld the decision of the United States District Court for the District of Columbia that 26 U.S.C. § 9012(f), which limits independent expenditures on behalf of a presidential candidate to \$1,000 per cycle, was not constitutional under the reasoning the Supreme Court employed in *Buckley*. Recently, in *Democratic Party of the U.S. v. National Conservative Political Action Committee*, No. 83-2329, slip op. (E.D. Pa. Dec. 12, 1983) the United States District Court for the Eastern District of Pennsylvania held section 9012(f) unconstitutional. The court relied on *Buckley*'s prohibition against restrictions on expenditures. 52 U.S.L.W. 2370. From these cases it is clear that, in spite of Congress' findings, the Court will not adopt a prophylactic measure to control expenditures. *But cf.* *Federal Election Commission v. National Right to Work*, — U.S. —, 103 S. Ct. 552 (1982) where the Court states that it will not "second guess a legislative determination as to the need for a prophylactic measure where corruption is the evil feared." *Id.* at 560.

66. 2 U.S.C. § 431(17) (1982) defines independent expenditure as follows:
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, nor at the request or suggestion of, any candidate, any authorized committee or agent of such candidate.

Some commentators suggest that Congress should rewrite this definition and force the FEC to improve its monitoring performance in this area. For example, a complaint filed with the FEC by Common Cause on September 26, 1980, included a proposed checklist to be used to determine if an independent expenditure effort was in fact separate from and not coordinated with a campaign. Included in the checklist were: membership of committees and steering bodies; conscious parallelism of activities; indirect communications; interlocking consultants, vendors, and suppliers; coordinated events; use of candidate's name; and use of material provided by a candidate. Wertheimer & Huwa, *Campaign Finance Reforms: Past Accomplishments, Future Challenges*, 10 N.Y.U. L.REV. & SOC. CHANGE 43, 64 n.98 (1980).

67. One reason that contributions have increased so dramatically is that the corporations responded to increased government regulation of the 1970's by creating more PAC's to gain access and aid their lobby efforts to control the regulations. Bernadette Budde, Political Education Director for the Business Industry Political Action Committee (BIPAC), concurs with the above reasoning. Ms. Budde has written:

[a] clear pattern emerges when reviewing who does and who does not have a Pac—the more regulated an industry and the more obvious an industry is a congressional target, the more likely it is to have a political action committee within the association or within the companies which make up that industry.

Budde, *Business Political Action Committees*, in *PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS* 9, 11 (M. Malbin ed. 1980).

A recent example receiving popular attention involved the Avco Corporation's M-1 tank-engine contract.⁶⁸ In 1983, for the first time, the House Armed Services Committee decided, upon the insistence of Representative Addabbo (D-N.Y.), head of the House Military Appropriations Subcommittee, to solicit competitive bids for tank engines.⁶⁹ Previously Avco had made all the engines. Avco's best bid, its third, was twenty-one percent below the price the government had previously paid for Avco tanks. Still, the bid exceeded the Garret Company's first bid by \$10,000 per engine.⁷⁰ The final contract decision rested with the full House.⁷¹ Representative Addabbo (D-N.Y.), the leader of the competitive bidding movement, changed his floor vote a few weeks after receiving a \$5000 contribution from Avco's PAC.⁷² Avco also contributed heavily to other members of the committee. In addition, Avco gave certain members honoraria⁷³ for speeches at its plants and vacations to Avco conventions.⁷⁴ Representative Addabbo's defection significantly affected the floor vote while Avco's other contributions sealed

68. See Jackson, "Making Friends" *Avco Corp. Makes Judicious Gifts to U.S. Congressmen*, Wall St. J., Oct. 13, 1983, at 1, col. 6.

69. 129 CONG. REC. H5300 (daily ed. July 20, 1983) (statement of Rep. Addabbo, D-N.Y.). The subcommittee opted for competitive bidding because Avco which had supplied all previous M-1 engines plagued the Army with slow production, cost overruns, and defective engines. The Army supported the move to a second supplier for cost savings and superior defense. Jackson, *supra* note 68. See also 129 CONG. REC. H5308 (daily ed. July 20, 1983) (statement of Rep. Bates, D-Calif.). The estimated savings ranged as high as \$35 million by 1990. 129 CONG. REC. H5308 (daily ed. July 20, 1983) (statement of Rep. Bates, D-Calif.).

70. Jackson, *supra* note 68.

71. The House considered an amendment by Rep. Dicks, D-Wash., to strike out section 107 of the 1984 appropriation bill (H.R. 2969, 98th Cong., 1st Sess. (1983)) and did not allow competitive bidding on tank engines. 129 CONG. REC. H5298 (daily ed. July 20, 1983) (statement of Rep. Dicks, D-Wash.). Section 107 resulted from an earlier House decision to preclude competitive bidding after the House Subcommittee on Military Appropriations chaired by Rep. Addabbo, D-N.Y., sought the bidding. *Id.* at H5300 (statement of Rep. Addabbo, D-N.Y.).

72. Jackson, *supra* note 68. On the floor, Rep. Addabbo made the following comments,
I have been a prime mover for competition and, as a matter of fact, in our Defense Appropriations Committee we asked the Army to look at the cost of second sourcing. So it is with reluctance that I now rise to oppose this amendment because I feel that, number one, we have the M-1 tank, which is our main battle tank but it still has many problems. And, as a matter of fact, the administration has reduced the number of tanks in this year's budget.
We have a tank which goes 5 gallons to a mile—not 5 miles to a gallon but 5 gallons to a mile—so there are problems. So we do not know whether we will be buying tanks into the year 1995 and, therefore, there is going to be a limited number of engines. Until we have solved those problems, we should not be spending the money for startup costs.

129 CONG. REC. H5300 (daily ed. July 20, 1983) (statement of Rep. Addabbo, D-N.Y.).

73. Honoraria are excluded from the definition of contribution under FECA. 2 U.S.C. § 431(8)(B)(xiv) (1982).

74. Aware of the movement for competitive bidding, Avco donated heavily in 1982-1983 as the tank engine debate heated. In fact, its \$60,000 in contributions for the first nine months of 1983 were equal to its total donations in 1982, an election year. Further, it contributed \$1,000 to Rep. Nicholas Mavroules, D-Mass., the day after he voted in subcommittee to protect Avco's monopoly. Rep. Dave Daniel, D-Va., got \$2,000 for speaking at the Avco plant the day after the Army opened the competitive bidding. Rep. Bill Dickinson, D-Ala., received a \$1,000 contribution the day before the House debate on the tank engines. Rep. Dickinson is also the ranking Republican on the House Armed Services Committee. Rep. Bill Chappell, D-Fla., the second ranking member of Rep. Addabbo's committee, received

their victory.⁷⁵

Another example of alleged PAC vote-buying and access-buying occurred during the summer of 1983, when Congress considered the repeal of the mandatory bank withholding tax required by the Tax Equality and Fiscal Responsibility Act of 1981.⁷⁶ In anticipation that the repeal would make the agenda of the 98th Congress, commercial banks stepped up their contributions during the 1981-1982 election cycle.⁷⁷ The bank PAC's, through a highly-organized campaign which drew criticism from many members of Congress, succeeded in striking down the withholding tax.⁷⁸ The withholding tax constituted only one issue of many that the House Banking Committee addressed during the session. Other issues included guarantees for thrift institutions, banks' entry into traditional brokerage businesses, and whether to raise bank interest rates to compete with money markets.

\$8,000 in speaking fees and \$5,500 in campaign contributions from Avco. Jackson, *supra* note 68.

Even the Army attacked the adoption of the Avco bid. James Ambrose, the nation's second ranking civilian official, stated at a news conference on August 8th, "[t]he appearance is that it [the ban on competitive bidding] is special pleading legislation." *Id.*, at 22, col. 2.

Avco's defenders stated that the \$10,000 savings would evaporate because of start up costs. See 129 CONG. REC. H5300 (daily ed. July 20, 1982) (statement of Rep. Addabbo, D-N.Y.). However, Garrett's lowest bid included the start-up costs in its fixed price of \$341,500 per engine. Jackson, *supra* note 68, at 22, col. 1; see also 129 CONG. REC. H5300 (statement of Rep. Dicks, D-Wash.).

75. Rep. Addabbo's defection undermined the support for competitive bidding. As the original supporter switched, so did many others. Jackson, *supra* note 68, at 22, col. 1 (comments of Rep. Dicks, D-Wash.).

76. The bill that would withdraw the bank withholding tax was H.R. 2973, 98th Cong., 1st Sess., 129 CONG. REC. H2991 (daily ed. May 17, 1983). Amended by joint conference and agreed to by the House, *id.* at H5815, 16 (daily ed. July 28, 1983), and the Senate, *id.* at S11,051 (daily ed. July 28, 1983).

77. During the 1981-1982 election cycle, bank PAC's gave federal candidates over \$4.3 million. Noble, *Critics Cite Bank's Aid In Elections*, N.Y. Times, Mar. 14, 1983, § 4, at 1, col. 6. The chief House recipient, Rep. Fernand St. Germain, D-R.I., Chairman of the House Banking Committee, received \$53,150 during the cycle. Ten other Congressmen received over \$40,000 and 25 received \$20-40,000. Clymer, *Banks Speak Loudly, Carry a Big Stick*, N.Y. Times, Mar. 20, 1983, § 4, at 2, col. 3. Common Cause estimates bank PAC's gave \$5.3 million in the 1981-1982 cycle, an increase of 79% over the 1979-1980 cycle. The increased interest in the bank withholding issue prompted the rise. Common Cause, Press Release (July 29, 1983). Eighty percent of the Republicans and Democrats who sponsored H.R. 2973 reported contributions from bank PAC's. In the House, 281 members received an average of \$2,483 from Bank Pac's. In the Senate, 41 members received an average of \$7,881. *Contributions by Bankers*, N.Y. Times, Mar. 1, 1983, § 4, at 23, col. 3.

Since most Congressmen must borrow funds to meet the expenses of a political race, banks are important financiers even if they do not make direct contributions. If they refuse to make these crucial loans to a candidate (which may greatly exceed the \$5000 FECA contributions limit), they can effectively stop his campaign. *Id.* Bank loans are not contributions under FECA if they meet the requirement of a regular loan. See 2 U.S.C. § 431(8)(A)(vii) (I-III) (1982).

78. The Bank PAC's and lobbies mounted effective mass mail drives aimed at Congress by including computer-generated post cards and pre-addressed letters to Congress. The volume caused the hiring of many extra mailmen for Capitol Hill. Clymer, *supra* note 77; Noble, *supra* note 77. Rep. Rostenkowski, D-Ill., Chairman of the Ways and Means Committee, criticized the activity, "[w]e [the members of the Ways and Means Committee] are distressed that the banking industry's campaign to combine misinformation with sophisticated mass mailing techniques will become the tactical guide for others [special interests] who would gain their ends by deception." 129 CONG. REC. H2922 (daily ed. May 17, 1983) (statement of Rep. Rostenkowski, D-Ill.).

Senator Robert Dole (R-Kan.), upset by the Senate debate on the withholding issue lamented, "let the poor wait while we take care of the bankers. They have the political action committees."⁷⁹ While PAC supporters and defenders may debate the merits of Dole's comment,⁸⁰ his comment appeared widely in the press, clouding the merits of the vote with charges of corruption. The press closely tracked the bank PACs' activities during the first session of the 98th Congress.⁸¹ The articles purported to unveil the corruptive influences that accompanied the contributions. At the very least, the press reported the appearance of corruption that surrounded the votes.

Two other votes which have sparked controversy involved the Federal Trade Commission's rule which required disclosure of known defects in used cars⁸² and its rule regulating professionals under the antitrust laws.⁸³ Various studies have suggested a correlation exists between PAC receipts and these votes.⁸⁴ Correlations aside, many members of Congress clearly thought PAC money influenced other members' decisions on their votes.⁸⁵ The press relayed this alleged cor-

79. Noble, *supra* note 77.

80. Senator Kasten, R-Wis., one of the leading proponents of the repeal effort, disagreed. "People don't give political contributions based on an issue, they give contributions for access, and they give it to people with power." *Id.* Although he received few bank contributions in the 1981-1982 cycle, Sen. Kasten added that he expected to receive them in the upcoming cycle. *Id.*

81. See *Contributions by Bankers*, *supra* note 77. See also Noble, *supra* note 77; Clymer, *supra* note 77.

82. 16 C.F.R. § 455 (1982). The Senate addressed the rule in S. Con. Res. 60, 97th Cong., 1st Sess., 128 CONG. REC. 594 (daily ed. May 18, 1982). Both the House and the Senate voted against the rule. 128 CONG. REC. S5402 (daily ed. May 18, 1982); *id.* at H2883 (daily ed. May 26, 1982). This vote was the first under the two-house veto plan for FTC rules. *Id.* at S5381 (daily ed. May 18, 1982).

83. The Federal Trade Commission's proposed rule would have included the professions under the antitrust rules and regulations of 16 C.F.R. § 13 (1979).

84. Common Cause has monitored campaign spending and contributions since the early 1970's. A Common Cause study, HUWA & METZINGER, TAKE \$2,000 AND CALL ME IN THE MORNING (1983), traces the AMA's campaign contributions and expenditures over the last three election cycles. In the 1979-1980 cycle the AMA contributed \$1,872,033 to Congressmen. *Id.* at 1. In the 1981-1982 cycle, the AMA spent \$2,132,888. In addition, the AMA spent \$337,000 on independent expenditures during the last three cycles. *Id.* See also *Hearings*, *supra* note 60, at 128 (testimony of Jay Angoff, Staff Attorney, Public Citizen's Congress Watch); Bolling speech, *supra* note 7, at 6. Some members criticize PAC opponents for using tautologic reasoning when they establish correlations between contributions and votes. Some political scientists do not find this correlation between PAC contributions and congressional voting. Clymer, *Influence of Political Action Groups Disputed*, N.Y. Times, Apr. 24, 1983, § 2, at 25, col. 2. See also PAC'S EVOLUTION AND GROWTH, *supra* note 7, at 170.

85. The comments of the members show a general disgust with the PAC's and their influence. For example, Richard Bolling states, "the used car dealers opposed the rule and, with their PAC money persuaded Congress to veto it." Bolling Speech, *supra* note 7, at 6. The former Congressman adds, "[t]he only interest not represented by PAC funds in that fight were the interests of the consumers and the general public." *Id.* at 8. In response to the used-car vote, Sen. Slade Gorton, R-Wash., stated, "[t]his is one issue where I am afraid it looks like campaign contributions just have had an impact." *Hearings*, *supra* note 60, at 97 (quoted in statement of Fred Wertheimer).

The most telling comment came from Rep. Dan Glickman, D-Wash., "[y]ou can argue the merits of the used car decision one way or the other, but I recall on the floor of the House a member commented to me. 'I got a \$10,000 check from National Auto Dealers Association. I can't change my vote now.'" *Id.* at 43.

On the floor, Sen. Larry Pressler, R-S.D., sponsor of the resolution to veto the act, noted

ruption to the public.⁸⁶

Charges of Access-Buying

Political Action Committees recently have begun changing their contribution patterns. In their early years, PAC's contributed heavily to congressional committee members and incumbents.⁸⁷ In the 1982 election cycle, and in the first portion of the 1984 cycle, PAC's have altered this pattern, contributing to freshmen members on a widespread basis. In fact, during the first six months of 1983, freshmen attracted

that the "public debate [surrounding this resolution] has centered around the idea that co-sponsors of this resolution are somehow influenced by campaign contributions" Sen. Pressler did not agree with this characterization. 128 CONG. REC. S5383 (daily ed. May 8, 1982).

Rep. Synar, D-Okla., expressed his disenchantment with Congress after many votes in the second session of the 97th Congress were accompanied by high pressure PAC lobbying. "We are evolving very quickly into the best Congress money can buy. You don't buy a United States Congressman with a contribution, of course, but you do buy access, and access is the name of the game." Clymer, *PAC Money's Role in Congress Raises Suspensions*, N.Y. Times, Jan. 19, 1983, § 1, at 20, col. 4.

86. See generally Isaacson, *supra* note 60, at 20-26; *Hearings, supra* note 60, at 139. But see Lazarus, *Pac Power? They Keep on Losing*, Wash. Post, Mar. 27, 1983, § 2, at 1, col. 5.

87. PAC's target committee members to receive contributions because of their ability to sway other member's votes.

At this point I would like to make it clear that to corrupt or greatly influence outcomes in congressional committees or sub-committees usually does not require obtaining the services of many members. Congressional committees are often narrowly divided to begin with, and one or two subservient individuals may make a great difference in the outcome on very important legislation. The system is so fragile and vulnerable that real purity is essential to consistent success for the public interest.

Bolling Speech, *supra* note 7, at 4. For example, consider Rep. Addabbo's vote on the Avco bid. See Avco discussion *supra* note 68-75 and accompanying text; Isaacson, *supra* note 60.

A favored committee is the Merchant Marine & Fisheries Committee. This committee, over the last two sessions, has considered some of the most significant shipping bills of the last 50 years. A recent example is the Shipping Act of 1983. Concurrently, PAC money rolls in, making the committee the most popular for PAC contributions in the first six months of the 1984 cycle. Noble, *Political Action Group's Gifts Focus on New Areas in House*, N.Y. Times, Sept. 20, 1983, at 1, col. 1. In the second session of the 97th Congress, the Merchant Marine & Fisheries Committee passed a joint labor and management proposal that effectively allows price-fixing. In Committee, the bill passed 33 to 0, with the thirteen interested PAC's donating \$47,850 to the committee's members. Isaacson, *supra* note 60, at 24.

The committees below received the top aggregate PAC contributions in the first six months of 1983:

<u>PAC</u>	<u>Members Median PAC Receipts</u>
Merchant Marine	\$14,720
Public Works	14,587
Small Business	14,500
Energy & Commerce	12,188
Interior	11,260
House Administration	11,200
District of Columbia	10,954
Veterans	10,000
Education & Labor	9,370
Post Office & Civil Service	9,041

Noble, *supra*, at 16, cols. 2-3. See also Noble, *supra* note 77 (statements of Sen. Kasten, R-Wis.).

three times the contributions of senior members.⁸⁸

The PAC's are responding to the pressures faced by all Congressmen, especially freshmen, to raise large "war chests" to counteract those of their opponents. The pressures result from two sources: debts from past campaigns and the need to raise money for the next election. Freshmen, whose seats are traditionally unsteady, must move quickly to counteract challengers in their next race.⁸⁹ This situation prompted freshman Representative Torricelli (D-N.J.) to say:

The most disappointing part of being in Congress is the financial pressure. I'm not as good in my job as I could because I'm always worried about money. Every minute I work on campaign funds is a minute I should be using for the taxpayers.⁹⁰

Not only have PAC's shifted their contributions away from incumbents, but they have also begun to actively seek out and help retire debts of newly-elected members. Debt retirement is a Congressman's primary concern during the months immediately after his election.⁹¹ First, Congressmen often extend their personal resources to secure loans to finance their campaigns. Many Congressmen arrive in Washington in desperate financial shape.⁹² Second, an "unsafe" seat means a tough challenge ahead so the members must begin anew to raise money for their next campaign.⁹³

The appearance created when a Congressman accepts money from

88. Median contributions received by House freshmen for the first six months of 1983 were \$15,497. For all members, this median was \$5,115. Congressmen receiving the most were Rep. B. Richardson, D-N.M., \$71,000; Rep. J. Bryant, D-Tex., \$54,300; and Rep. R. Torricelli, D-N.J., \$52,400. Shribman, *House Freshmen Take the Money to Run*, N.Y. Times, Oct. 30, 1983, § 4, at 4, col. 4.

When Congress changed its committee selection procedures, freshmen found themselves on more influential committees than in the past. Traditionally members with minor influence, freshmen now have a more significant impact on legislation. As a result, contributions to freshmen have increased. See KEIM & BAYSINGER, *supra* note 67. Ironically, at their orientation freshmen members of the 98th Congress established a goal to eliminate the influence of PAC money. See Shribman, *supra*.

89. Shribman, *supra* note 88, at col. 5-6. Sen. Alan Dixon, D-Ill., agrees with this characterization of the present situation. The present events give "new meaning to the words 'running all the time.'" Even Senators who have six year terms find themselves raising money when the next election is as far as three years away. Address by Sen. Dixon to the University of Notre Dame White Scholars, at the University of Notre Dame Law School, Notre Dame, Indiana (Nov. 19, 1983). See generally *Buckley*, 424 U.S. at 257, where Justice White correctly predicted this effect on campaigns.

90. Shribman, *supra* note 88, at 4, col. 4.

91. Seventy-five freshmen had total campaign debts of \$5.3 million on Jan. 1, 1983. They managed to reduce those debts to \$3.8 million by June 30, 1983. Shribman, *supra* note 88. See, e.g., Jackson, *Making Friends, Political Contributions Give Lawyer in Capital Considerable Influence*, Wall St. J., Aug. 17, 1983, at 17, col. 1. Total debts incurred by some Congress members are staggering. Rep. Guy Vander Jagt, R-Mich., ended the 1982 election \$773,000 in the red. Thirty-five others were over \$50,000 in debt at the end of their campaigns. Wall St. J., Feb. 18, 1983, at 1, col. 4.

92. A candidate with a debt may have no alternative other than the Washington fundraiser. The home district may be dry, forcing him to Washington-based PAC's and lobbyists for financial support. The need is increased by the personal nature of the debts, such as offering a second mortgage on the candidate's home. Interview with Jim Sparling, legislative assistant to Rep. Guy Vander Jagt, R-Mich., in Washington, D.C. (Aug. 24, 1983).

93. See Shribman, *supra* note 88.

a PAC that did not support him or, in fact, supported his opponent in the past election, approaches corruption.⁹⁴ This overt post-election access-buying, although not as widely popularized as other reported PAC abuses, cuts to the heart of PAC intentions. Here, a PAC seeks a guaranteed ear, an ear not open to the common voter and obtained without the risk of supporting a losing candidate. The PAC's motives become clear when the Congressman receives his debt-retiring contributions only after the House announces his committee assignment for the next session. This influence buying derides the integrity of the Congress.

Organizations combine lobbyists with PAC contributions to effectively influence Congress. The PAC contribution opens the lobby door.⁹⁵ Since many of the highly organized associations have both lobbies and PAC's,⁹⁶ this combination has caused much controversy among congressional members.⁹⁷

These abuses have led to an increased belief that Congress is corrupted through campaign contributions. Public opinion polls show that Americans are concerned that money taints Congress.⁹⁸ Congress

94. Mr. Paul Baab of the ABA points out that since access is the ultimate goal of PAC's, debt retirement carries with it pernicious influence. Here, an elected candidate, after receiving the "proper" committee assignment, can draw quick PAC money. Mr. Baab recounts receiving an invitation to a fundraiser which contained the words "seeking assignment on the (blank) committee." Interview with Paul Baab, American Bar Association, in Washington, D.C. (Aug. 24, 1983).

95. In the words of Robert McCandles, a Washington lobbyist, "[y]ou're not going to get in the door of Congressman X, you're not going to get a full and complete hearing, unless you have attended to his most pressing interest, and that is his re-election." Jackson, *supra* note 91. Rep. Guy Vander Jagt, R-Mich., an opponent of PAC limits, agrees that most members are more likely to listen to arguments made by lobbyists whose interests gave them money. He also stated that it "invited suspicion" when candidates get more than one-third of their money from PAC's. Rep. Vander Jagt received 53% of his campaign contributions from PAC's in the 1981-1982 cycle. Clymer, *supra* note 85.

96. Professors Esmeier and Hollock, political scientists from the University of Central Florida and Hamilton College, respectively, in their address on PAC's before the Midwest Political Science Association, theorize that only the "high powered" PAC's cause the problems. Most PAC's are like small "United Way campaigns"—mom and pop groups raising minimal funds. The exceptions are the high powered PAC's with the Washington offices and lobbyists. The two reported that from 1977 to 1980 only 7% of the PAC's gave more than \$100,000. Clymer, *supra* note 84.

Many large, highly-organized PAC's, with these lobbying arms, justify their role by citing the "mom & pop" PAC's. Interview with John "Terry" Dolan, NCPAC Chairman, in Alexandria, Virginia (Aug. 18, 1983). See also discussion *supra* note 59.

97. See Wertheimer, *supra* note 59. See also *Hearings*, *supra* note 60, at 40 (testimony of Rep. Synar, D-Okla.).

98. Public opinion is extremely important in this debate. The appearance generated by the system is an important government interest upon which Congress may build regulations. See *Buckley*, 424 U.S. at 29, 38, 51, 54, 55, 58, 60-84.

See also *Hearings*, *supra* note 60, at 386 and following pages where polls are reprinted. See Rep. Beryl Anthony, D-Ark., Press Release (June 8, 1983). Rep. Anthony cites Harris polls showing an 82% public endorsement that those who contribute large amounts of campaign dollars have too much influence. *Contra*, survey by Civic Service Inc. (CSI) where only 32.5% of the people believed PAC's should not be able to contribute to elections. Civic Service Inc., *Attitudes Towards Campaign Financing*, Feb., 1983 (copies available from Civic Service, Inc., St. Louis, Mo.).

To eliminate the appearance of corruption many members have chosen ways to remove PAC funding taint. Rep. Barber Conable, R-N.Y., a member of the Ways and Means Committee since 1967, refuses any PAC contributions. Rep. Conable stated that she "chose to eliminate any appearance of undue influence resulting from large contributions from indi-

must address these concerns.⁹⁹ The Congressional Campaign Finance Reform Act of 1983 will limit the influence that special interest groups, working through PAC's, have on the legislative process.

COORDINATION OF PAC'S AND PARTICIPATION BY CONGRESSMEN IN PAC'S

Two additional PAC characteristics cause alarm: coordination among PAC's and the role of legislators in PAC's. These PAC activities must be reviewed in light of the *Buckley* Court's determination that no corruption arises from independent PAC activity because it is non-cooperative and independent.

Coordination of PAC's

The original PAC concept rests upon independence: like-minded individuals contribute their money to be donated to candidates who share their ideas. The reality differs greatly. PAC's allegedly cooperate at the directorship level and with staff members of candidates' official committees. In some cases governing board members have shared concurrent appointments to the official campaign committee and to an independent PAC.¹⁰⁰ PAC's share political vendors, direct mail consultants, strategists and advertising agencies with candidates' official campaign organizations and other PAC's.¹⁰¹ This results in dupli-

viduals or others." Roberts, *Moving to Limit the Impact of PAC's*, N.Y. Times, Aug. 16, 1983, § 1, at 20, col. 4. Rep. Mike Synar, D-Okla., refuses any out-of-state PAC money. Interview with Ms. Meg Portfino, legislative assistant to Rep. Synar, D-Okla., in Washington, D.C. (Aug. 17, 1983). Rep. Jack Kemp, R-N.Y., refuses money from any group with business before a committee upon which he serves. Rep. Dante Fascell, D-Fla., does not take PAC contributions in excess of the total amount of individual contributions he receives. *Id.*

In total, approximately thirteen percent of all Congress members control their intake of PAC money. Roberts, *supra*. Many members who support PAC limitations feel throttled by the practical politics: they need the money, and it will probably go to a challenger if they do not take it. As Rep. Al Swift, D-Wash., Chairman of the Task Force on Elections stated, "[u]ntil meaningful reform is achieved, we play by the rules of the game as they currently exist." *Id.*

99. *Hearings, supra* note 60, at 28 (testimony of Rep. Glickman, D-Kan.).

100. See Timberg, *The PAC Business*, a seven part article beginning in the *Baltimore Sun*, July 11, 1982, reprinted in *Hearings, supra* note 60, at 154-81.

Recently, President Reagan supporters have settled various charges with the FEC arising out of the 1980 presidential campaign. The charges allege violations by Citizens for the Republic (CFR) and the official 1980 Reagan election committee. President Reagan and Edwin Meese created CFR with funds left over from the official 1976 Reagan election committee to raise funds for the 1980 campaign. Meese left his position with CFR in 1979 to take a position with the official 1980 Reagan election committee, but remained as consultant for CFR. Both committees conceded various violations in 1982 and have agreed to settle the other pending case. See Gerth, *Reagan Backers Act to End '80 Case*, N.Y. Times, Feb. 17, 1984, at 9, col. 1.

See Leach, *PACs Americana*, USA Today, May 1983, (Magazine), at 11, col. 3, where Rep. Leach attacked the PAC governing board members. Rep. Leach claimed that in reality PAC decisions are made at the top of the organization with little participation by the members. This facilitates cooperation among groups, especially if the groups share common governing board members or directors.

101. See Timberg, *supra* note 100; see *infra* notes 106-107. See generally Wertheimer & Huwa, *supra* note 66.

cate campaigns: one run by the candidate and a second highly organized campaign run "independently" of the official campaign.

Since the Federal Election Campaign Act prohibits only the direct consultation or coordination by PAC members with a candidate's authorized committee members,¹⁰² informal cooperation among PAC's continues on a widespread basis. The Business Industries Political Action Committee (BIPAC), the purported "bell cow" for the business community's PAC's, makes few contributions.¹⁰³ Yet, a BIPAC contribution brings many contributions to a candidate from other business-related and trade association PAC's.¹⁰⁴ Similarly, the Chamber of Commerce coordinates contributions among its state and local affiliates.¹⁰⁵

Several ideological PAC leaders reportedly cooperate in the exchange of mailing lists, candidate selection, and general strategy.¹⁰⁶ A few influential men combined to start many of these PAC's.¹⁰⁷ The FEC sued some of these PAC's charging that their link with the official Republican Senate Election Committee and President Reagan's official election committee through common directors violated FECA.¹⁰⁸ Still, much of the coordination takes place beyond the reach of the FEC.

The recent activities of Senator Heinz (R-Pa.) are most dis-

102. 2 U.S.C. § 441a(a)(5) (1982).

103. In the 1981-1982 cycle, BIPAC made only \$202,000 in contributions. Interview with Bernadette Budde, Political Education Director for BIPAC, in Washington, D.C. (Aug. 1983).

104. *Really Independent Expenditures*, Wash. Post, May 18, 1983, at A26, col. 2; Lazarus, *supra* note 86; Interview with Randy Huwa, Common Cause specialist on election finance, in Washington, D.C. (Aug. 15, 1983). Similarly, national organizations like the AFL-CIO and the Chamber of Commerce can bring in many contributions from smaller PAC's. These groups publish lists of candidates so that like-thinking groups can concentrate their money. The Chamber of Commerce even has a video version of its preferred candidates that it distributes to local affiliates. Isaacson, *supra* note 60.

See also *Hearings*, *supra* note 60, at 30 (testimony of Rep. Glickman, D-Kan.); *id.* at 41 (testimony of Rep. Synar, D-Okla.). Although flattered by the position in which critics hold her organization, Bernadette Budde denies its wide-spread influence. She does admit that various groups, without the resources to rate candidates and research races, look to BIPAC for guidance. Interview with Bernadette Budde, Political Education Director for BIPAC, in Washington, D.C. (Aug. 24, 1983).

105. Isaacson, *supra* note 60.

106. The coordination among the ideological PAC's has been investigated and reported in a series of articles by The Baltimore Sun. See Timberg, *supra* note 100. See also *Hearings*, *supra* note 60, at 32 (testimony of Rep. Glickman, D-Kan.).

107. *Hearings*, *supra* note 60, at 35 (statement of Rep. Jim Leach, R-Iowa). See Davis, *Conservatism in America, A Small Circle of Friends*, HARPER'S, Oct. 1980, at 21, for a historical development of the New Right coalition during the election of 1980. Davis points to the role played in the development by four conservative leaders, John Dolan, Richard Viguerie, Howard Phillips, and Paul Wayrich. These men helped form the New Right coalition and coordinated many of its activities, including those of various PAC's (NCPAC, Committee for the Survival of a Free Congress, The Moral Majority, and others). Also, the article traces Viguerie's success as the fundraiser and consultant for the various groups. *Id.* at 21, 22, 24. The author alleges that weekly meetings by these men and the so-called Kingston Group, resulted in coordination of conservative plans. *Id.* at 22.

108. See Jackson, *Rep. Gus Savage's Campaign Panel Is Sued for Failing to File U.S. Disclosure Reports*, Wall St. J., Feb. 6, 1984, at 44, col. 1. The FEC is filing another coordination suit against NCPAC for its role in the 1982 campaign of former Rep. Bruce Caputo, R-N.Y., to unseat Sen. Daniel P. Moynihan, D-N.Y. *Id.*

turbing.¹⁰⁹ Heinz created his own PAC to raise money for the special election in Washington following the death of Senator Henry Jackson (D-Wash.). Concurrently, he served on the Republican Senate Election Committee and the official election committee for Republican Senate candidates.¹¹⁰ Senator Heinz also hired two staff members of the Senate Committee to help start his PAC. Applying the consultation or coordination standard in FECA to Senator Heinz's actions intimates a violation of the Act.

Much of this PAC activity occurs beyond the pale of the press so it goes unnoticed, but the appearance remains one of corruptive dealing. The independence of the "independent" committee wanes when the same governing board uses the same advertisers and mail consultants to solicit the same mailing lists and to advocate the same position. This duplication circumvents any meaningful contribution limits.

Role of Congressmen in PAC's

Senator Heinz's activities in creating his own PAC illuminate another area that smacks of impropriety. As a result of the Washington political realities, some members have more influence than others and can generate much larger campaign chests. Recently these members have begun creating PAC's to collect money and distribute it to other less-influential candidates.¹¹¹ Congress must address whether it is proper for a member to transfer his funds to another member, especially in light of charges that the members use the funds to buy favors from other members.¹¹²

The above activities technically circumvent FECA's coordination and consultation provisions. Both the multiplicity of PAC's coordinated at the directorship level and the Congressman's participation in PAC's, although technically within the statute, violate the intent of the

109. The Democratic Party challenged Sen. Heinz's activities. See *GOP Group Broke Election-Fund Law, Democrats Assert*, Wall St. J., Nov. 8, 1983, at 3, col. 4. Both the treasurer and the top political strategist of Heinz's PAC formerly held those positions for the official party committee. Jackson, *Group Formed by Sen. Heinz Aims to Pour Money into GOP Races, Exceeding Limit*, Wall St. J., Nov. 7, 1983, at 16, col. 1.

110. Heinz finally quit the official Committee because "the new group must be perceived as independent." *Sen. Heinz Quits GOP's Senatorial Committee*, Wall St. J., Nov. 17, 1983, at 3, col. 4. Even the similarity of the two committees' names drew criticism from members. *Id.*

111. Clymer, *supra* note 50. Sen. Jesse Helm's, R-N.C., National Congressional Club is perhaps the most famous Congressmen's PAC. Others include Sen. Howard Baker's, R-Tenn., Republican Majority Fund and Sen. Edward Kennedy's, D-Mass., Fund For a Democratic Majority. In response to NCPAC's excesses, Sen. Paul Tsongas, D-Mass., and Rep. Morris Udall, D-Ariz., created Independent Action, a progressive PAC, which raised money to expend independently on behalf of House Democrats. Goldman & Fineman, *The War of the Wolf PAC's*, NEWSWEEK, June 1, 1981, at 38.

112. Rep. Waxman, D-Cal., an able fundraiser, reportedly distributed over \$100,000 to various members to facilitate the extension of the Clean Air Act. Tolchein, *An Unvarnished Liberal Consolidating his Power, Working Profile: Henry A. Waxman*, N.Y. Times, Apr. 15, 1983, § 1, at 18, col. 3. In the 1982 congressional election, some Democrats "starved" as others sat upon war chests. Republicans on the other hand shifted money to needy candidates and cut their electoral losses. Fialka and Farney, *Ill-Focused Funds, Democrats Trail GOP In Ability to Direct Cash to Closest Races*, Wall St. J., Nov. 7, 1983, at 1, col. 1.

statute to insure that PAC's are independently organized groups of like-minded individuals.

INCREASED COSTS OF CAMPAIGNS

In 1982, House candidates expended an average of \$214,000.¹¹³ This figure reflects all congressional elections, even those in which the incumbent held a relatively "safe" seat. In addition, some candidates spent over a million dollars.¹¹⁴ In part, this rise in campaign spending resulted from increased reliance upon television and the rising costs of traditional campaign media.¹¹⁵ One of the most significant factors in the growth of spending appears to be the increased funds available to candidates.¹¹⁶

In the House, the rapid push for campaign funds creates a permanent election machine.¹¹⁷ Even with the Senate's six-year term, the members feel the effects of the "arms-race" mentality. The infusion of PAC money has added "new meaning to the words 'running all the time.'"¹¹⁸

The effect of increased spending and PAC contributions accentuates the need to "run all the time" among freshmen members. Many of these members raised large sums to defeat incumbents. Finding themselves in "unsafe" seats, they must accumulate large campaign "war chests" to gain re-election. Since PAC's constitute the most convenient and most available means for raising money, the freshmen of the 98th Congress failed to accomplish their pre-term goal to reduce PAC money and influence.¹¹⁹

The prospect of losing a race pressures incumbents to spend much of their time on campaign fundraising long before their next election. A well-funded incumbent will not lose an election unless he glaringly

113. In 1974 the average congressional race cost \$50,000. In 1980 the average congressional race cost \$150,000. Isaacson, *supra* note 60, at 21.

Median Expenditures on House Campaigns

	1982	1980	Percent Increase
House	\$ 214,267	\$ 145,292	48
Senate	\$1,746,230	\$1,031,227	69

Clymer, *Campaign Costs Soar as Median Spending For Senate Hits \$1.7 Million*, N.Y. Times, Apr. 3, 1983, § 1, at 20, col. 1. Interestingly, winners increased spending at a far greater rate (75%) than the losers. *Id.*

114. Clymer, *supra* note 113. The highest House expenditure was \$1.6 million, while the highest in the Senate was \$7 million.

115. *Id.* See also *Hearings, supra* note 60, at 6 (testimony of former Rep. Robert Eckhardt).

116. See *Buckley*, 424 U.S. at 265 (White J., dissenting). Rep. Beryl Anthony, D-Ark., stated, "I do believe that escalating costs can be attributed, in no small part, to the growth of PACs and the money PACs contribute to political campaigns." Rep. Beryl Anthony, Press Release, *supra* note 98. See Leach, *supra* note 100, at 10, 11.

117. *Hearings, supra* note 60, at 6 (testimony of former Rep. Robert Eckhardt). See generally *Buckley*, 424 U.S. at 265 (White, J., dissenting).

118. See Address by Sen. Dixon, *supra* note 89.

119. Shribman, *supra* note 88.

errs. If, as some observers believe, a challenger must raise over \$500,000 to make a legitimate run under the present system, an incumbent can easily insure his seat by raising an equal amount.¹²⁰ An incumbent's visibility and congressional privileges widen the funding margin. Political Action Committees favor incumbents because they are a "known" quantity.¹²¹ This favoritism cements the incumbents' relative advantage over challengers. If Congress fails to control candidates' campaign expenditures, the races will become increasingly expensive and much more time-consuming as election pressures force each candidate to raise more money.¹²²

This "scheming" detracts from a Congressman's appointed duties.¹²³ Reforms should focus on reducing the time spent campaigning so Congress can more effectively legislate. According to some, future campaign financing reforms must decrease the time spent campaigning so that Congress may function more efficiently.¹²⁴

The above paragraphs outline various pernicious aspects of PAC contributions, including the public's perception of corruption. Congress has the power to legislate to prevent corruption and the appearance of corruption. The Congressional Campaign Finance Reform Act of 1983, discussed below, offers many alternatives to alleviate PAC's pressure on Congressmen.

THE CONGRESSIONAL CAMPAIGN FINANCE REFORM ACT OF 1983

The Congressional Campaign Finance Reform Act of 1983, H.R. 4428, contains three major provisions which when taken together curtail the influence of special interest groups on the election progress, which, in turn, should curtail their influence on the legislative process. First, the Reform Act limits the aggregate amount which a candidate for the House of Representatives can receive from PAC's to \$90,000 per election cycle.¹²⁵ Second, the Reform Act provides for free reply time¹²⁶ to any candidate targeted¹²⁷ by an independent expenditure.¹²⁸ Third, the Reform Act gives an individual a 100% income tax credit for

120. Interview with Jim Sparling, senior legislative assistant for Rep. Guy Vander Jagt, R-Mich., in Washington, D.C. (Aug. 24, 1983).

121. See *supra* notes 87-89 and accompanying text.

122. *Hearings, supra* note 60, at 6.

123. Former Rep. Robert Eckhardt testified before the Task Force on Elections that, "some of them [my colleagues] spent four days a week in politicking rather than the duties they were required to do in Congress." *Id.* at 6. Not only do Congressmen spend inordinate amounts of time on their campaigns but so do the full-time staff members in most offices. Many Congressmen carry the maximum two full-time fundraisers that House rules allow. Interview with Mr. Jim Sparling, senior legislative assistant to Rep. Guy Vander Jagt, R-Mich., in Washington, D.C. (Aug. 24, 1983). See also, *Buckley*, 424 U.S. at 265 (White, J., dissenting).

124. Interview with Paul Baab, *supra* note 94.

125. Reform Act, *supra* note 2, § 7.

126. *Id.* § 10.

127. *Id.*

128. 2 U.S.C. § 431(17) (1982).

any contribution of no more than \$100 made to a qualified candidate for Congress.¹²⁹

Some of the Reform Act's various provisions apply to those candidates who voluntarily join the tax credit system, while others apply to all candidates. The provisions dealing with PAC contributions¹³⁰ and independent expenditure reply time¹³¹ apply to all candidates, regardless of their involvement in the tax credit system.¹³² The tax credit system itself contains numerous conditions with which a candidate must comply in order for the candidate's contributors to obtain the tax credit.¹³³ These conditions apply only to those who have chosen to participate in the tax credit system.¹³⁴ A closer examination of the Reform Act's three main provisions follows.

Limits on Aggregate PAC Contributions

The Reform Act focuses on limiting the influence of special interest groups, working through PAC's, on the legislative process.¹³⁵ By limiting the aggregate amount which a candidate may accept from all PAC's, the Reform Act's sponsors hope to ease the pressure which PAC's can direct to a specific issue.¹³⁶ Under the current law, even though a PAC contribution limit of \$5,000 per candidate per election

129. Reform Act, *supra* note 2, § 2.

130. *Id.* § 7.

131. *Id.* § 10.

132. The aggregate limit on PAC contributions can be imposed on all congressional candidates for it is a valid exercise of congressional power. The Supreme Court in *Buckley* upheld FECA's \$5,000 limit on PAC contributions to congressional candidates. 424 U.S. at 35-36. A \$90,000 aggregate limit on what PAC's can contribute to a candidate is merely an extension of this \$5,000 contribution limit. The corruption or appearance of corruption which the Court found sufficient to justify the \$5,000 limit is also sufficient to warrant a \$90,000 aggregate PAC contribution limit. See Wertheimer, *supra* note 59, at 619-25.

The *Buckley* Court held that FECA's limits on independent expenditures violated the first amendment. 424 U.S. at 51. Thus, Congress cannot impose a limit on independent expenditures. Congress can, however, protect independent expenditure targets by providing a target with free reply time or reduced rate postage. Rather than curtailing speech, these provisions enhance it. Consequently, the Act's provisions regarding independent expenditure reply time apply to all congressional candidates, not just those who have voluntarily joined the tax credit system.

133. Reform Act, *supra* note 2, § 3.

134. Two of these conditions are limits on aggregate campaign expenditures and on the expenditures of a candidate's personal funds. Thus, Congress cannot constitutionally impose these two restrictions on a candidate. *Buckley*, 424 U.S. at 51-58. Congress can, however, condition the availability of a tax advantage on the candidate's acceptance of these two expenditure limitations. The Reform Act offers a 100% tax credit to individual contributors of a candidate who have voluntarily joined the tax credit system. The Reform Act's sponsors hope that this tax credit will induce a majority of candidates into the tax credit system.

135. Rep. David Obey, D-Okla., Press Release (Apr. 11, 1983). Rep. Obey wrote:

What we are trying to do is equalize as much as possible the legislative playing field so that the legislative process is not warped by the combined effect of organized political contributions Particularly when a large number of groups which have made substantial contributions to members are all lobbying on the same side of an issue, "the pressure generated by all these contributors is enormous and it warps the process. It creates the politics of intimidation."

Id.

136. *Id.*

exists,¹³⁷ the number of PAC's that may align to back a specific candidate allows tremendous influence to be exerted.¹³⁸ For this reason, the Reform Act places an aggregate limit on what a candidate may accept from PAC's.¹³⁹

Specifically, the Reform Act provides that a candidate for the House of Representatives and his authorized committee shall not accept contributions aggregating more than \$90,000 in any calendar year from PAC's.¹⁴⁰ The Reform Act further provides that a contribution made in the year before the calendar year in which the election is held, is considered to be made during the calendar year in which such election is held.¹⁴¹ Thus, contributions received during "off" years, whether for a primary or a general election, will make up part of the \$90,000 aggregate. A contribution made after an election day shall be considered a contribution with respect to such election only if the contribution is used to pay obligations incurred with respect to such election.¹⁴²

Independent Expenditure Provisions

The aggregate limit on PAC contributions curbs the influence of special interest groups on the congressional decisionmaking process. A limit on PAC contributions with nothing more would only divert special interest money to other forms of political influence peddling, the most obvious of which is independent expenditures.¹⁴³ To avoid redirection of PAC pressure, the Reform Act contains provisions which make independent expenditures an unattractive choice for channelling money into the campaign process.

The Reform Act provides that any licensee¹⁴⁴ of the Federal Communications Commission which allows an independent expenditure to be made through a broadcast by its station must allow the targeted candidate the opportunity to use the same amount of time, during the same time of day, without charge.¹⁴⁵ For those independent expenditures not made through radio stations—for example, television commercials or newspaper advertisements—the Reform Act allows the targeted can-

137. 2 U.S.C. § 441a(a)(2) (1982). Thus \$5,000 may be contributed in both the primary and general elections.

138. See discussion *supra* note 55.

139. See Reform Act, *supra* note 2, § 7.

140. *Id.* FECA already provides for such an aggregation scheme. 2 U.S.C. § 441a(a)(3) (1982).

141. *Id.*

142. *Id.*

143. Independent expenditures have increased dramatically in proportion to PAC contributions. As much as 80% of PAC expenditures are independent expenditures on behalf of candidates. Federal Election Commission, Press Release (Mar. 22, 1983). John "Terry" Dolan of NCPAC confidently confirms that the money is there and will always find a place to be spent. Interview with John Dolan, Chairman of NCPAC, in Alexandria, Virginia (Aug. 21, 1983).

144. "Licensee" is defined in 47 U.S.C. § 153(c) (1976) to mean "the holder of a radio station license granted or continued in force under authority of this chapter."

145. Reform Act, *supra* note 2, § 10.

didate to use a special postage rate up to the amount of the independent expenditure against him.¹⁴⁶ Thus, the Reform Act mitigates the effect which independent expenditures can have on the legislative process.

In order to give candidates notice of the independent expenditures being spent against them, the Reform Act also requires anyone who makes independent expenditures to notify the Federal Elections Commission and the candidates involved in the particular election within forty-eight hours after such expenditures total more than \$5,000 and thereafter each time additional expenditures total \$2,500 or more.¹⁴⁷ This provision assures all targeted candidates adequate notice before election day to plan the use of the free reply time made available by the Reform Act.

Tax Credit System

The aggregate limit placed on PAC contributions diminishes a major source of campaign funds. To help replace this source, the Reform Act encourages individual contributions by giving a 100% tax credit for contributions of up to \$100.¹⁴⁸ For a candidate's contributors to receive the credit, however, a candidate must meet certain threshold requirements¹⁴⁹ and then agree to comply with several restrictions.¹⁵⁰ Additionally, the Reform Act provides significant support to candidates who have elected to qualify for the tax credit system with its attendant restrictions but whose opponents have not opted to be a part of the system.¹⁵¹

Candidates must raise a threshold amount of \$10,000 from individual contributions of \$100 or less to qualify for the tax credit system.¹⁵² Once this threshold has been met and the candidate has qualified for the election ballot,¹⁵³ the candidate may voluntarily elect to enter the tax credit system.¹⁵⁴ With this election the candidate must also agree to limit expenditures of personal funds, including immediate family members, to \$20,000¹⁵⁵ and limit total expenditures to \$240,000.¹⁵⁶

If the candidate agrees to meet the above requirements, his contrib-

146. *Id.* § 3.

147. *Id.*

148. *Id.* § 2.

149. *Id.*

150. *Id.* § 3.

151. *Id.*

152. *Id.* §§ 2, 3.

153. *Id.* § 3.

154. *Id.*

155. *Id.*

156. *Id.* § 8. Additional requirements which a participating candidate agrees to undertake include: providing contribution and expenditure records to the FEC, cooperating with the FEC in the case of an audit; keeping all contributions for which a tax credit was allowed in a separate checking account; and using the separate checking account to pay bona fide campaign expenses. *Id.* § 3.

utors receive a 100% tax credit for contributions of up to \$100.¹⁵⁷ Those contributions which make up the threshold amount do not qualify for the credit.¹⁵⁸ Thus, small individual contributors of a candidate who elects to enter the tax credit system receive an additional incentive to assist the campaign.

The most drastic provisions of the Reform Act become effective when only one of the candidates elects the tax credit system.¹⁵⁹ In such a case, the non-participating candidate would have no restrictions on overall campaign expenditures or expenditures from personal or family funds.¹⁶⁰ Rather than handicap the participating candidate, the Act removes the \$20,000 personal or family expenditure limit¹⁶¹ and the \$240,000 overall expenditure limits¹⁶² on his campaign.¹⁶³ The Act also provides that the participating candidate is entitled to mail campaign literature at a special postage rate.¹⁶⁴ The sponsors of the Act hope that the special postage rate, coupled with the increase in small individual contributions occasioned by the 100% tax credit, will induce a majority of candidates to elect the tax credit system.

CONCLUSION

The Supreme Court in *Buckley* stated that the elimination of corruption or the appearance of corruption in congressional campaigns is a legitimate government interest. In the years since the 1976 decision, examples of corruption or the appearance of corruption have been widespread. This article has examined a few questionable activities which occurred during the First Session of the 98th Congress. The press reported each of these instances to the public and some of them created a scandal.

The Congressional Campaign Finance Reform Act of 1983 attempts to curtail the influence of special interest groups, working through PAC's, on the legislative process. First, the \$90,000 aggregate limit on PAC contributions curtails candidates' reliance on PAC money. This, in turn, curtails the possibility of a quid pro quo. The void left by the PAC contribution limit should be filled by small individual contributions of \$100 or less, which are encouraged by the tax credit system. Second, the \$240,000 aggregate limit on all contributions curtails the amount of time which a candidate must spend fundraising. This, in turn, allows the incumbent to spend more time actually performing his legislative duties. The 100% tax credit system should provide individuals with sufficient incentive to make contributions so that

157. *Id.* § 2.

158. *Id.*

159. *Id.* § 3.

160. *Id.*

161. *Id.* § 3.

162. *Id.* § 8.

163. *Id.* § 3.

164. *Id.*

candidates can reach the \$240,000 limit. Third, the free reply time and special postage rate for targets of independent expenditures discourages individuals and PAC's from circumventing FECA's contribution limits. The current law is obviously inadequate because it limits a PAC to making a \$5,000 campaign contribution while allowing it to spend an unlimited amount "independently." The quantum of access which can be bought with a \$50,000 or \$100,000 independent expenditure campaign reeks of the appearance of corruption. The Reform Act's provisions regarding independent expenditures will successfully discourage such spending without infringing upon this protected speech.

On the whole, the Congressional Campaign Finance Reform Act of 1983 reduces the amount of time which a candidate must spend fundraising, lessens the escalating cost of congressional campaigns, curtails the candidate's dependency on PAC funds for campaign financing, alleviates the possibility of a quid pro quo, and finally, removes the incentive for the coordination of PAC's in making independent expenditures. Each of these effects will decrease actual corruption or the appearance of corruption in congressional campaigns. Congress should enact the Congressional Campaign Finance Reform Act to help restore public confidence in American government.

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