



Financing American elections

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The US Congress examined the issue of election finance reform every year from 1987 to 1994 as public criticism of the spiralling costs of campaigning and the role of money and special interests in American elections increased. In the run-up to the 1994 elections President Clinton and his Democratic allies suffered a major defeat as Republicans in the US Senate blocked the latest attempt at reform.

The arguments in the debate over campaign finance reform reflect not only basic differences of political philosophy about the role of government in this area but also partisan advantage and the personal interest of incumbent legislators and other candidates. However, the terms of the debate are set by the enduring nature of the United States constitution itself, the basic freedoms established in the First Amendment and the Supreme Court's interpretation of how to balance the right of free speech with the need to protect the integrity of the electoral system.

Elections and First Amendment freedoms

Unrestricted political debate and discussion of public issues and the qualifications of candidates for office are at the heart of the First Amendment. For free speech to be effective in modern elections the candidate's message has to be amplified by the use of costly advertising and publicity through the mass media, thus creating a direct link between political speech and money. On the other hand, the need to safeguard the electoral system from corruption and the improper use of money to influence the result requires some degree of regulation; the dilemma is how to do this without infringing the First Amendment rights of either candidates or citizens.

Campaign finance since Watergate

Traditionally American elections were financed by private donations — large and small — to a candidate's campaign or by the politician combining such contributions with his or her own personal resources. Following the Watergate revelations of illegal undisclosed contributions, Congress passed the Federal Election Campaign Act of 1974, the most sweeping reform ever enacted. The major components of the bill included limits on contributions and spending by

congressional candidates, a system of public financing through taxpayer funding coupled with spending and contribution limits for presidential campaigns, and the establishment of the Federal Election Commission (FEC) to enforce the new law. A challenge to the constitutionality of the Act led to the Supreme Court upholding some parts of the law and overturning others in the case of *Buckley v. Valeo* in 1976. These decisions, although criticised as an untidy set of compromises, provide the framework within which any new proposals for reform have to be designed.

In summary, the Supreme Court ruled that it was unconstitutional:

- to impose mandatory spending limits on campaigns, as these would impinge on the candidate's ability to communicate freely with the voters and high spending levels in themselves did not have potential for corruption
- to prohibit unlimited personal spending by candidates on their own behalf. Such limits would be an infringement of First Amendment rights and the Court believed that a candidate could not corrupt himself; indeed, such use of personal funds reduces his dependence on outside contributions and the attendant risks of abuse
- to ban independent campaigns for or against candidates as a clear violation of the First Amendment

At the same time the Justices allowed:

- voluntary spending limits as a condition for receiving public funding, as well as finding that public financing of presidential elections was permissible and did not favour established parties over new parties or incumbents over challengers
- disclosure requirements of contributions and campaign expenditure (since 1979 of \$200 or more)
- limits on contributions from individuals or political committees, finding that these did not significantly undermine freedom of speech and recognising the



Financing American elections

dangers of unlimited donations giving some people undue influence in the democratic process. Individuals may give up to \$1,000 to a candidate for each election with an overall contribution limit of \$25,000 a year. Political action committees may give \$5,000 to a campaign, but there is no aggregate annual limit. These figures have not been index-linked and remain the same as when they were set 20 years ago. Primary and general election campaigns are regarded as separate elections for the purpose of contribution limits.

Presidential elections

Since the mid-1970s the scope of public financing available has led presidential candidates to accept money from the taxpayer. In 1992 Ross Perot spent over \$60 million of his own resources and did not receive public funding. Other candidates by doing so are obliged to comply with the 'voluntary' spending limits laid down.

Candidates in the nominations stage of the process raise money from private contributions in order to qualify for matching public funds. This condition was included so that only serious contenders on a national basis could receive taxpayers' money.

The levels of funding necessary to run a viable campaign for the party's nomination are increasing and the decision to bring the important California primary forward from June to 26 March in 1996 means that in the next presidential campaign the primary season will be effectively compressed into a mere 7 weeks, during which time over 70% of the delegates to the national conventions will have been chosen. Candidates are thought to have to raise a minimum of \$20 million before the process begins as they can no longer rely on an early victory in Iowa or New Hampshire to generate funds, because there will not be time.

Potential Republican candidates, Dan Quayle, Jack Kemp and Dick Cheney, have announced that they will not run in 1996: the problem of raising such large amounts of money is thought to be a key factor in their decisions.

Soft money

In the general election the parties' candidates receive substantial public funding for their campaigns; in 1992 Bill Clinton and George Bush both were given \$55 million and their parties were limited to spending \$10.3 million directly on the presidential election.

However, these contribution limits are routinely circumvented by fund-raising for party committees — so-called 'soft money'.

In 1979 Congress had passed legislation designed to help parties revive grass-roots activities, such as registration drives and 'get out the vote' efforts, by allowing them to raise and spend money for general political campaigning outside the limits on federal funding. Since 1980 parties have used this 'soft money' as a way of supporting their presidential candidates. In 1992 the Federal Election Commission reported that the Democratic National Committee had spent \$30 million and the Republican National Committee \$36 million in addition to the \$10.3 million in regulated funds that they were permitted to use in the presidential election, and these figures do not include the sums raised and spent at state and local level.

With some donations as high as \$100,000, critics argue that this type of spending has allowed the return of 'fat cat' contributions from wealthy individual and corporate supporters and is a way of bypassing the intentions of the 1974 Act. One well-publicised example was that of Pamela Harriman who gave \$73,400 to Democratic candidates and party committees in 1992, \$30,000 of it in 'soft money'; after the election Bill Clinton appointed her as US Ambassador to France. However, some observers believe that 'soft money' spending has developed because the federal expenditure limits are too low and they also argue that reinvigorating party organisations is good for democracy.

Political action committees (PACs) mostly contribute on behalf of pressure groups to congressional campaigns where no public funding is available but they can and do influence presidential elections. In presidential primaries, where a candidate has almost reached the official spending limit, PAC funding can be important. A presidential candidate may also set up his own 'leadership PAC' to prepare the groundwork for his campaign and avoid legally limited expenditure before a formal announcement of his candidacy. PACs may also make 'independent expenditures' to promote or seek to defeat a candidate, if the money is spent without consultation or co-operation with the candidate or his campaign.

Ronald Reagan benefited considerably from such spending by conservative PACs, and in 1988 the notorious Willie Horton commercial suggesting that Democratic candidate Michael Dukakis was 'soft on crime' was funded by National Security PAC, a group that was technically independent of the Bush



Financing American elections

campaign. Independent expenditures have been criticised as they have often concentrated on negative advertising.

Congressional elections

As a result of the Buckley decision there are no overall statutory limits to the amount congressional candidates can spend on their campaigns and as public funding has not been available there are no 'voluntary' limits either. Candidates are therefore able to raise and spend as much as they require to run a winning campaign or as much as they can persuade contributors to give them.

A wealthy candidate can spend his or her own money without limits, although, as Michael Huffington's 1994 Senate campaign in California demonstrates, this does not guarantee success; having used over \$28 million to subsidise his campaign, the Republican candidate still went down to defeat to incumbent Dianne Feinstein.

There has been concern at the spiralling costs of congressional campaigns and the increasing gap in funding available to incumbent members and challengers. This, it is argued, has been a major factor in explaining the very high success rate of incumbents and it has reduced the competitiveness of elections, depriving the voters of real choice.

In 1974 the average House incumbent spent \$56,500 and the average challenger \$40,000 — a gap of \$16,500; in 1992 the average incumbent had campaign expenditure of \$580,000 and the average challenger \$180,000 — a gap of \$400,000. However, it

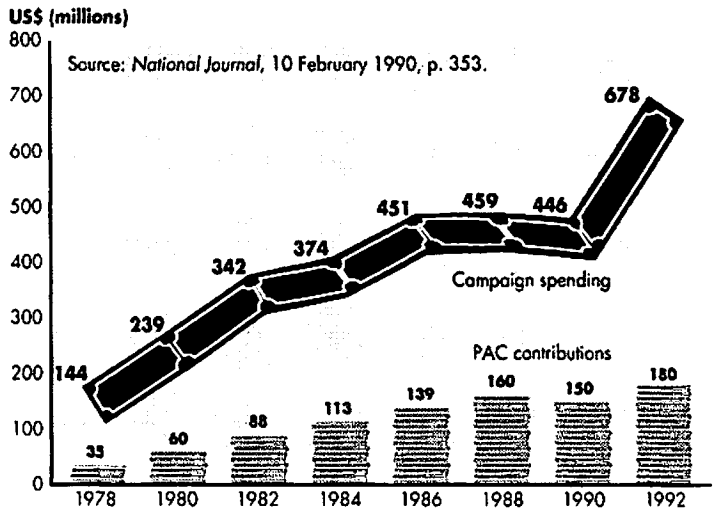


Figure 1 Congressional campaign spending, 1978-92

is important to note that in 1994 when there was a strong national swing against the Democrats many of the party's incumbents who lost their seats had massively outspent their Republican opponents. Challengers do not necessarily have to match the incumbent's expenditure but they need to spend at least \$100,000 to be competitive. Overall congressional campaign spending rose sharply in 1992 to a total of \$678 million after relatively slow growth in the 1980s (Figure 1).

Congressional candidates draw money from individual supporters, political party sources such as congressional campaign committees and from political action committees. In recent years there has been increasing focus on the role played by PACs. As their numbers have grown (Figure 2) and the amounts donated have risen substantially, so has concern about

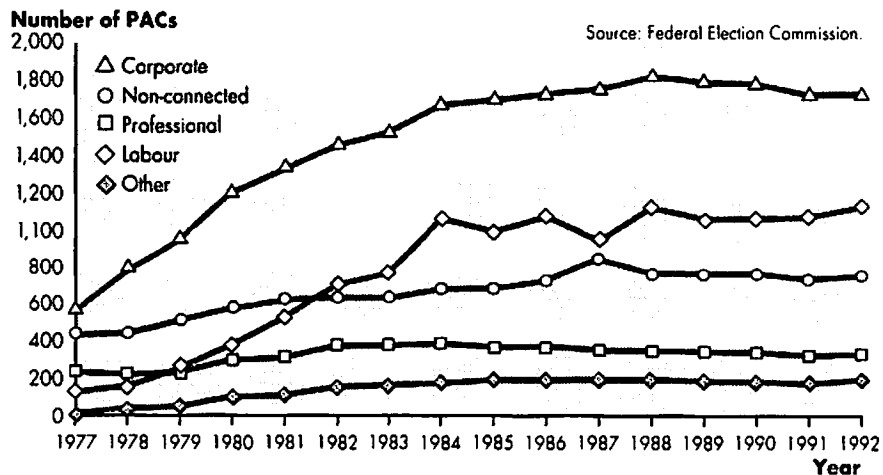


Figure 2 Growth of PACs, 1977-92



Financing American elections

the influence of special interests on the electoral and legislative processes. PACs are organisations that have been established with the specific purpose of channelling funds from pressure groups to candidates for public office. Having been legitimised by a Supreme Court ruling in 1975, the election law favours PACs over individual donations because there are no legal limits on the aggregate amounts they can give to candidates in any one year.

The influence of PACs

By the early 1990s there were 4,094 PACs registered with the FEC, of which 1,738 were set up by business corporations, 338 by trade unions, 742 by professional and trade associations and 1,083 by ideological and single issue groups. In 1993–94 there were 4,618 PACs giving a total of \$189 million and in many years PACs have raised twice as much as both political parties combined. Winning candidates for the House of Representatives received almost half of their funds from PACs while successful Senate candidates, who have larger and more diverse constituencies and more potential individual donors, obtained approximately one quarter of their finances from this source. Of all the campaign money spent by House candidates in 1992, about 36% came from PACs.

Taken as a whole, PAC contributions have tended to favour Democratic candidates over Republicans by a margin of two to one. In 1990, for example, trade unions gave 92% of their donations to Democrats; ideological PACs 68% to Democrats, 32% to Republicans, while business PACs split their support almost evenly between the two parties. Whereas one might expect business to favour the Republicans, the explanation for this pattern of donations lies in the fact that, until the 1994 elections, the Democrats were in control of both houses of Congress; they therefore held the important levers of power in the legislature, particularly the committee chairmanships. Most business PACs have taken a pragmatic approach and have been principally concerned with obtaining access to key decision-makers. They have given heavily to Democratic incumbents not because they necessarily wanted them to win, although in many cases they were comfortable with and had established links with important Democratic legislators, but because they expected them to win. Now that the Republicans have a majority in both houses the pattern of business PAC donations can be expected to reflect this new political fact of life.

Critics of PACs therefore argue that these donations are given with an eye on influencing the legislative

process after the election and come with strings attached. They also argue that incumbent members have an in-built and unfair advantage because PAC and individual donations go heavily to sitting members and this makes the position of challengers difficult, if not impossible, in many races. For example, in the 1990s over 75% of PAC donations have gone to incumbents. The availability of such funding has pushed up the overall expenditure on campaigns and allowed incumbents to build up political machines and substantial war-chests of funds that deter challengers from running. Some PACs have also bypassed the \$5,000 limit on gifts by 'bundling' a large number of individual donations from supporters which together make up a much bigger contribution.

Defenders of PACs say that they are unfairly criticised for problems best attributed to the campaign finance system as a whole. They point out that the average PAC donation in 1992 was \$1,600 and that, as candidates have to seek contributions from a wide range of organisations, as well as individuals, they do not become dependent on particular sources of funding. Public disclosure of donations and limits on the size of contributions can be seen as preventing corruption. What is more, political scientists such as Lany Sabato have argued that the evidence of PACs exerting undue influence on elections and the legislative process is weak; often members of Congress vote the way particular PACs want not because they have received a donation to their campaign funds but because that is what their constituents or their parties want them to do.

Campaign finance reform

A number of scandals where legislators were shown to have acted improperly on behalf of campaign contributors fuelled public concern and increased the momentum for reform in the 1990s. However, the two parties have been highly suspicious that particular reform proposals were aimed at securing partisan advantage. What is more, the Democratic majority in Congress was divided on the issue, with a diversity of views and interests, particularly between members of the two chambers. Some Democrats only supported reform proposals reluctantly and were relieved when they failed.

President Bush announced a reform package in 1989, but Democrats in Congress failed to act on it; in 1990 both houses passed their own measures but they differed on key issues and the proposals died in conference committee; in 1992 Democrats managed to agree a compromise bill but, as expected, President



Financing American elections

Bush vetoed it. With Bill Clinton in the White House the way seemed clear in the 103rd Congress (1993–94) for campaign reform, and both the President and the Democratic leadership on Capitol Hill claimed it would be a legislative priority.

The key political factors in understanding the debate on this issue are:

- The Democratic majority saw the major problem as being the increasing costs of campaigns. They therefore wanted to impose overall limits on all campaigns, with public financing being the incentive to persuade candidates to comply with 'voluntary' limits, on the basis that mandatory limits would be unconstitutional.
- Democrats in the House, who rely more heavily on PAC funding, have been far less willing to place restrictions on this source of finance than their Senate colleagues.
- The Republicans have opposed spending limits on campaigns on the basis that it would place challengers at a disadvantage because they need to spend more to become known to the electorate. This is despite the fact that incumbents nearly always spend more money than their challengers. Republicans oppose public financing on principle and believe taxpayers should not have to foot the bill for campaigns, characterising it as 'food-stamps for politicians'. Some Democrats also became nervous of supporting public funding as the issue of federal budget deficit loomed large in the 1990s and polls showed voters did not back it.
- The Republicans have proposed limiting or banning PAC funding, which they see as having principally helped their Democratic opponents.

The Clinton proposals

President Clinton announced his proposals for reform in May 1993. There were to be spending limits of \$600,000 for House races and between \$1.2 million and \$5.5 million for Senate elections, depending on the size of the state. Candidates who complied with the limits would receive federal communications vouchers to help pay for advertising, printing costs and postage, up to 25% of the spending cap for Senate and 33% for House candidates. The proposals also included provision to prevent the flow of 'soft money' to political parties. Candidates for the Senate could accept no more than 20% of the spending limit from PACs, with no more than \$2,500 from any one PAC. House candidates could accept no more than \$200,000 (one third of the limit) from PACs and the maximum amount from any one PAC would remain

at \$5,000. PACs would be limited to \$1,000 contributions in presidential campaigns and 'bundling' would be banned. The cost of public financing (around \$200 million) would be paid for by an increase in the taxpayer check-off fund and by ending the tax exemption on lobbying expenses that pressure groups enjoy.

The Senate version of the bill scaled down the public financing scheme so that such funding would be available only to candidates who complied with the spending limit but whose opponents exceeded it. The Senate introduced a controversial 35% tax on campaign receipts for those rejecting spending limits and imposed a total ban on all PAC contributions directly to candidates. The House version of the legislation passed in November 1993 more closely resembled the Clinton proposals.

Continuing obstruction

Because of continuing disagreement between the two houses and the pressure of other legislation no further action was taken for almost a year. When the Democratic leaders eventually agreed a compromise in September 1994, including a \$3,000 limit for PAC donations to any one campaign, it came too late. Republicans in both houses had decided on a strategy of obstructing any legislation for which the Democrats might claim credit in the November elections. They argued that the bill was partisan, pro-incumbent and unconstitutional. Senate Republicans managed to filibuster successfully against the bill and won the support of six Democrats objecting to the public funding provisions when the vote to break the filibuster was taken. Although the Democrats sought to blame the Republicans for the bill's failure, the major factors in its defeat were the inability of the congressional leadership to reach a compromise and the lack of public lobbying by Clinton for his proposals. Campaign finance reform did not feature in the 'Contract with America' election manifesto put forward by House Republicans: they clearly do not see it as a priority as far as restoring public confidence in Congress is concerned.

In a surprise move, during a televised debate in June 1995, President Clinton and Speaker Gingrich agreed to establish an independent commission of experts to recommend reforms on campaign finance in order to break the log jam on the issue. However, there was considerable scepticism in political circles as to whether such a panel would actually come about.

If Republicans do eventually submit proposals for change they are likely to be no more than modest tinkering with the current system. With their new



Financing American elections

majority status in both houses they are certain to benefit more from PAC funding and this is likely to temper their previous enthusiasm for limiting this source of campaign finance.

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