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The State of Campaign Finance Policy: Recent Developments and Issues for Congress

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Summary

Major changes have occurred in campaign finance policy since 2002, when Congress substantially amended campaign finance law via the Bipartisan Campaign Reform Act (BCRA). The Supreme Court's 2010 ruling in *Citizens United* and a related lower-court decision, *SpeechNow.org v. FEC*, arguably represent the most fundamental changes to campaign finance law in decades. *Citizens United* lifted a previous ban on corporate (and union) independent expenditures advocating election or defeat of candidates. *SpeechNow* permitted unlimited contributions supporting such expenditures and facilitated the advent of super PACs. Although campaign finance policy remains the subject of intense debate and public interest, there have been few recent major legislative or regulatory changes. In activity related to campaign finance policy, provisions in recent appropriations laws have prohibited some additional reporting requirements surrounding contributions and expenditures. Enacted 115th Congress legislation containing these provisions includes FY2018 consolidated appropriations law P.L. 115-141. Also through the appropriations process, the 115th Congress enacted legislation (P.L. 115-244) amending the Federal Election Campaign Act (FECA) to require electronic filing of Senate campaign finance reports.

The above actions notwithstanding, the 115th Congress has not enacted major changes to campaign finance law, and there have been no major regulatory changes during the same period. The Committee on House Administration ordered reported a bill (H.R. 133) that would terminate the Presidential Election Campaign Fund. In addition, in some congressional legislative hearings, some Members of Congress have raised questions about whether prohibited foreign funds could have influenced the 2016 and 2018 elections, and required the FEC to issue a report on its enforcement of the FECA ban on such funds.

Post-*Citizens United*, debate over disclosure and deregulation have been recurring themes in Congress and beyond. Legislation to require additional information about the flow of money among various donors, the DISCLOSE Act, passed the House during the 111th Congress and was reintroduced during subsequent Congresses. Congress also has considered alternatives, which include some elements of DISCLOSE, or proposals that would require additional disclosure from certain 501(c) groups. The debate over whether or how additional disclosure is needed has also extended to the Federal Election Commission—and congressional oversight of the agency—and the courts.

During the same period, statutory and judicial changes eased some contribution limits and affected the presidential public financing program. Most consequentially, the Supreme Court invalidated aggregate contribution limits in April 2014 (*McCutcheon v. FEC*). Also in 2014, Congress and President Obama terminated public funding for presidential nominating conventions (P.L. 113-94). Congress responded to these events by including language in the FY2015 omnibus appropriations law (P.L. 113-235) that increased limits for some contributions to political party committees, including for conventions.

This report considers these and other developments in campaign finance policy and comments on areas of potential conflict and consensus. This report emphasizes issues that have been most prominent in recent Congresses. It also discusses major elements of campaign finance policy. This report will be updated occasionally to reflect major developments.

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Introduction

Federal law has regulated money in elections for more than a century.[1] Concerns about limiting the potential for corruption and informing voters have been at the heart of that law and related regulations and judicial decisions. Restrictions on private money in campaigns, particularly large contributions, have been a common theme throughout the history of federal campaign finance law. The roles of corporations, unions, interest groups, and private funding from individuals have attracted consistent regulatory attention. Congress has also required that certain information about campaigns' financial transactions be made public. Collectively, three principles embodied in this regulatory tradition—limits on sources of funds, limits on contributions, and disclosure of information about these funds—constitute ongoing themes in federal campaign finance policy.

Throughout most of the 20th century, campaign finance policy was marked by broad legislation enacted sporadically. Major legislative action on campaign finance issues remains rare. Since the 1990s, however, momentum on federal campaign finance policy, including regulatory and judicial action, has arguably increased. Congress last enacted major campaign finance legislation in 2002. The Bipartisan Campaign Reform Act (BCRA) largely banned unregulated *soft money*[2] in federal elections and restricted funding sources for pre-election broadcast advertising known as *electioneering communications*. As BCRA was implemented, regulatory developments at the Federal Election Commission[3] (FEC), and some court cases, stirred controversy and renewed popular and congressional attention to campaign finance issues. Since BCRA, Congress has also continued to explore legislative options and has made comparatively minor amendments to the nation's campaign finance law. The most notable recent statutory changes occurred in 2014, when

[1] The 1907 Tillman Act (34 Stat. 864), which prohibited federal contributions from nationally chartered banks and corporations, is generally regarded as the first major federal campaign finance law. Congress extended those restrictions to unions temporarily in 1943 and, permanently, in 1947, with the Smith-Connolly (57 Stat. 163; 57 Stat. 167) and Taft-Hartley Acts (61 Stat. 136; 61 Stat. 159) respectively. The 1925 Federal Corrupt Practices Act (43 Stat. 1070) was arguably the first federal statute combining multiple campaign finance provisions, particularly disclosure requirements first enacted in 1910 and 1911 (36 Stat. 822 and 37 Stat. 25). An 1867 statute barred requiring political contributions from naval yard workers (14 Stat. 489 (March 2, 1867)). This appears to be the first federal law concerning campaign finance. The Pendleton Act (22 Stat. 403), which created the civil service system is also sometimes cited as an early campaign finance measure because it banned receiving a public office in exchange for a political contributions (see 22 Stat. 404). For additional historical discussion of the evolution of campaign finance law and policy, see Anthony Corrado et al., *The New Campaign Finance Sourcebook* (Washington, DC: Brookings Institution Press, 2005), pp. 7-47. See also, for example, Kurt Hohenstein, *Coining Corruption: The Making of the American Campaign Finance System* (DeKalb, IL: Northern Illinois University Press, 2007), Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988), Robert E. Mutch, *Buying the Vote: A History of Campaign Finance Reform* (New York: Oxford University Press, 2014), Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* (Ann Arbor, MI: University of Michigan Press, 2008), pp. 43-80, and *Money and Politic$*, ed. Paula Baker (University Park, PA: The Pennsylvania State University Press, 2002). On the federal role in campaigns versus elections, see CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

[2] *Soft money* is a term of art referring to funds generally believed to influence federal elections but not regulated under federal election law. Soft money stands in contrast to *hard money*. The latter is a term of art referring to funds that are generally subject to regulation under federal election law, such as restrictions on funding sources and contribution amounts. These terms are not defined in federal election law. For an overview, see, for example, David B. Magleby, "Outside Money in the 2002 Congressional Elections," in *The Last Hurrah? Soft Money and Issue Advocacy in the 2002 Congressional Elections*, ed. David B. Magleby and J. Quin Monson (Washington: Brookings Institution Press, 2004), pp. 10-13.

[3] For additional discussion of the FEC, see CRS Report R44318, *The Federal Election Commission: Overview and Selected Issues for Congress*, by R. Sam Garrett; and CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett.

Congress eliminated public financing for presidential nominating conventions and increased limits for some contributions to political parties.

Some of the most recent notable campaign finance developments beyond Congress have occurred at the Supreme Court. The 2010 *Citizens United* ruling spurred substantial legislative action during the 111th Congress and continued interest during subsequent Congresses.[4] The ruling was, however, only the latest—albeit perhaps the most monumental—shift in federal campaign finance policy to occur in recent years. In another 2010 decision, *SpeechNow.org v. Federal Election Commission*, the U.S. Court of Appeals for the District of Columbia held that contributions to political action committees (PACs) that make only independent expenditures cannot be limited—a development that led to formation of "super PACs."

This report is intended to provide an accessible overview of major policy issues facing Congress. Citations to other CRS products, which provide additional information, appear where relevant. The report discusses selected litigation to demonstrate how those events have changed the campaign finance landscape and affected the policy issues that may confront Congress, but it is not a constitutional or legal analysis. As in the past, this version of the report contains both additions of new material and deletions of old material compared with previous versions.[5] This update emphasizes those topics that appear to be most relevant for Congress, while also providing historical background that is broadly applicable. This report will be updated occasionally as events warrant.

Development of Modern Campaign Finance Law

Policy Background

Dozens or hundreds of campaign finance bills have been introduced in each Congress since the 1970s. Nonetheless, major changes in campaign finance law have been rare. A generation passed between the Federal Election Campaign Act (FECA) and BCRA, the two most prominent campaign finance statutes of the past 50 years. Federal courts and the FEC played active roles in interpreting and implementing both statutes and others. Over time and in all facets of the policy process, anti-corruption themes have been consistently evident. Specifically, federal campaign finance law seeks to limit corruption or apparent corruption in the lawmaking process that might result from monetary contributions. Campaign finance law also seeks to inform voters about sources and amounts of contributions. In general, Congress has attempted to limit potential corruption and increase voter information through two major policy approaches:

- limiting sources and amounts of financial contributions, and
- requiring disclosure about contributions and expenditures.

Another hallmark of the nation's campaign finance policy concerns spending restrictions. Congress has occasionally placed restrictions on the amount candidates can spend, as it did initially through FECA. Today, candidates and political committees can generally spend

[4] For additional discussion of activity during the 111th Congress, see CRS Report R41054, *Campaign Finance Policy After Citizens United v. Federal Election Commission: Issues and Options for Congress*, by R. Sam Garrett; and CRS Report R41264, *The DISCLOSE Act: Overview and Analysis*, by R. Sam Garrett, L. Paige Whitaker, and Erika K. Lunder.

[5] Congressional requesters may contact the author for additional information.

unlimited amounts on their campaigns, as long as those funds are not coordinated with other parties or candidates.[6]

The Federal Election Campaign Act (FECA)

Modern campaign finance law was largely shaped in the 1970s, particularly through FECA.[7] First enacted in 1971 and substantially amended in 1974, 1976, and 1979, FECA remains the foundation of the nation's campaign finance law.[8] As originally enacted, FECA subsumed previous campaign finance statutes, such as the 1925 Corrupt Practices Act, which, by the 1970s, were largely regarded as ineffective, antiquated, or both.[9] The 1971 FECA principally mandated reporting requirements similar to those in place today, such as quarterly disclosure of a political committee's receipts and expenditures. Subsequent amendments to FECA played a major role in shaping campaign finance policy as it is understood today. In brief

- Among other requirements, the 1974 amendments, enacted in response to the Watergate scandal, placed contribution and spending limits on campaigns. The 1974 amendments also established the FEC.
- After the 1974 amendments were enacted, the first in a series of prominent legal challenges (most of which are beyond the scope of this report) came before the Supreme Court of the United States.[10] In its landmark *Buckley v. Valeo* (1976) ruling, the Court declared mandatory spending limits unconstitutional (except for publicly financed presidential candidates) and invalidated the original appointment structure for the FEC.
- Congress responded to *Buckley* through the 1976 FECA amendments, which reconstituted the FEC, established new contribution limits, and addressed various PAC and presidential public financing issues.
- The 1979 amendments simplified reporting requirements for some political committees and individuals.

To summarize, the 1970s were devoted primarily to establishing and testing limits on contributions and expenditures, creating a disclosure regime, and constructing the FEC to administer the nation's campaign finance laws.

Despite minor amendments, FECA remained essentially uninterrupted for the next 20 years. Although there were relatively narrow legislative changes to FECA and other statutes, such as the

[6] *Political committees* include candidate committees, party committees, and PACs. See 52 U.S.C. §30101 (previously codified at 2 U.S.C. §431(4), as explained later in this report).

[7] FECA is 52 U.S.C. §30101 *et seq*. (previously codified at 2 U.S.C. §431 *et seq*). Congress first addressed modern campaign finance issues in the 1970s through the 1971 Revenue Act, which established the presidential public financing program. The 1970s are primarily remembered, however, for enactment of and amendments to FECA. For additional discussion of presidential public financing, including an initial 1960s public financing program that was quickly repealed, see CRS Report RL34534, *Public Financing of Presidential Campaigns: Overview and Analysis*, by R. Sam Garrett.

[8] On the 1971 FECA, see P.L. 92-225. On the 1974, 1976, and 1979 amendments, see P.L. 93-443, P.L. 94-283, and P.L. 96-187 respectively.

[9] The Corrupt Practices Act, which FECA generally supersedes, is 43 Stat. 1070.

[10] For additional discussion, see CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

1986 repeal[11] of tax credits for political contributions, much of the debate during the 1980s and early 1990s focused on the role of interest groups, especially PACs.[12]

The Bipartisan Campaign Reform Act (BCRA) and Beyond

By the 1990s, attention began to shift to perceived loopholes in FECA. Two issues—soft money and issue advocacy (issue advertising)—were especially prominent. *Soft money* is a term of art referring to funds generally perceived to influence elections but not regulated by campaign finance law. At the federal level before BCRA, soft money came principally in the form of large contributions from otherwise prohibited sources, and went to party committees for "party-building" activities that indirectly supported elections. Similarly, *issue advocacy* traditionally fell outside FECA regulation because these advertisements praised or criticized a federal candidate—often by urging voters to contact the candidate—but did not explicitly call for election or defeat of the candidate (which would be *express advocacy*).

In response to these and other concerns, BCRA specified several reforms.[13] Among other provisions, the act banned national parties, federal candidates, and officeholders from raising soft money in federal elections; increased most contribution limits; and placed additional restrictions on pre-election issue advocacy. Specifically, the act's *electioneering communications* provision prohibited corporations and unions from using their treasury funds to air broadcast ads referring to clearly identified federal candidates within 60 days of a general election or 30 days of a primary election or caucus.[14]

After Congress enacted BCRA, momentum on federal campaign finance policy issues arguably shifted to the FEC and the courts. Implementing and interpreting BCRA were especially prominent issues. Noteworthy post-BCRA events include the following:

- The Supreme Court upheld most of BCRA's provisions in a 2003 facial challenge (*McConnell v. Federal Election Commission*).[15]
- Over time, the Court held aspects of BCRA unconstitutional as applied to specific circumstances. These included a 2008 ruling related to additional fundraising permitted for congressional candidates facing self-financed opponents (the "Millionaire's Amendment," *Davis v. Federal Election Commission*) and a 2007 ruling on the electioneering communication provision's restrictions on advertising by a 501(c)(4) advocacy organization (*Wisconsin Right to Life v. Federal Election Commission*).[16]

[11] See P.L. 99-514 §112. Congress repealed a tax deduction for political contributions in 1978. See P.L. 95-600 §113.

[12] See, for example, Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988); and *Risky Business? PAC Decisionmaking in Congressional Elections*, ed. Robert Biersack, Clyde S. Wilcox, and Paul S. Herrnson (Armonk, NY: M.E. Sharpe, 1994).

[13] BCRA is P.L. 107-155; 116 Stat. 81. BCRA amended FECA, which appears at 52 U.S.C. §30101 *et seq*. (previously codified at 2 U.S.C. §431 *et seq*.) BCRA is also known as *McCain-Feingold*.

[14] On the definition of *electioneering communications*, see 52 U.S.C. §30104 (previously codified at 2 U.S.C. §434 (f)(3)).

[15] For additional discussion, see CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

[16] For additional discussion, see CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker; and CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress*, by R. Sam Garrett.

- Since 2002, the FEC has undertaken several rulemakings related to BCRA and other topics. Complicated subject matter, protracted debate among commissioners, and litigation have made some rulemakings lengthy and controversial.[17]
- Congress enacted some additional amendments to campaign finance law since BCRA. The 2007 Honest Leadership and Open Government Act (HLOGA) placed new disclosure requirements on lobbyists' campaign contributions (certain bundled contributions) and restricted campaign travel aboard private aircraft.[18] In 2014, as discussed below, Congress raised some limits for contributions to political parties.

Major Issues: What Has Changed Post-*Citizens United* and What Has Not

The following discussion highlights those topics that appear to be enduring and significant in the current policy environment. The discussion begins with changes directly affected by *Citizens United* because those developments most fundamentally altered the campaign finance landscape.

What Has Changed

Unlimited Corporate and Union Spending on Independent Expenditures and Electioneering Communications

In January 2010, the Supreme Court issued a 5-4 decision in *Citizens United v. Federal Election Commission*.[19] In brief, the opinion invalidated FECA's prohibitions on corporate and union treasury funding of independent expenditures and electioneering communications. As a consequence of *Citizens United*, corporations and unions are free to use their treasury funds to air political advertisements and make related purchases explicitly calling for election or defeat of federal or state candidates (*independent expenditures*) or advertisements that refer to those candidates during pre-election periods, but do not necessarily explicitly call for their election or defeat (*electioneering communications*).[20] Previously, such advertising would generally have had to be financed through voluntary contributions raised by PACs affiliated with unions or corporations.

DISCLOSE Act Consideration Following Citizens United. Since *Citizens United*, the House and Senate have considered various legislation designed to increase public availability of information

[17] For example, rulemakings on various BCRA provisions resulted in a series of at least three lawsuits covering six years. These are the *Shays and Meehan v. Federal Election Commission* cases.

[18] For additional discussion, see CRS Report R40091, *Campaign Finance: Potential Legislative and Policy Issues for the 111th Congress*, by R. Sam Garrett. HLOGA is primarily an ethics and lobbying statute. For additional discussion, see, for example, CRS Report R40245, *Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and Open Government Act of 2007*, by Jacob R. Straus.

[19] 130 S. Ct. 876 (2010). For additional discussion, see, for example, CRS Report R45320, *Campaign Finance Law: An Analysis of Key Issues, Recent Developments, and Constitutional Considerations for Legislation*, by L. Paige Whitaker.

[20] *Independent expenditures* explicitly call for election or defeat of political candidates (known as *express advocacy*), may occur at any time, and are usually (but not always) broadcast advertisements. They must also be uncoordinated with the campaign in question. On the definition of *independent expenditures*, see 52 U.S.C. §30101 (previously codified at 2 U.S.C. 431 §17). As noted previously, electioneering communications refer to clearly identified candidates during pre-election periods but do not contain express advocacy.

(*disclosure*) about corporate and union spending. Particularly in the immediate aftermath of the decision, during the 111th Congress, most congressional attention responding to the ruling focused on the DISCLOSE Act (H.R. 5175; S. 3295; S. 3628). The House of Representatives passed H.R. 5175, with amendments, on June 24, 2010, by a 219-206 vote. By a 57-41 vote, the Senate declined to invoke cloture on companion bill S. 3628 on July 27, 2010.[21] A second cloture vote failed (59-39) on September 23, 2010.[22] No additional action on the bill occurred during the 111th Congress.

This period during the 111th Congress marked the most substantial legislative progress that the DISCLOSE Act has made to date. Versions of the bill were introduced in both chambers in subsequent Congresses, but none advanced to floor consideration in either chamber. In the 112th Congress, the Senate debated a motion to proceed to the measure in July 2012 but declined (by a 53-45 vote) to invoke cloture. In the 113th Congress, the Senate Rules and Administration Committee held a hearing on a version of the bill, S. 2516. The 114th and 115th Congresses considered the DISCLOSE Act again, but no substantial legislative activity occurred.

Unlimited Contributions to Independent-Expenditure-Only Political Action Committees (Super PACs)

On March 26, 2010, the U.S. Court of Appeals for the District of Columbia held in *SpeechNow.org v. Federal Election Commission*[23] that contributions to PACs that make only independent expenditures—but not contributions—could not be constitutionally limited. As a result, these entities, commonly called *super PACs*, may accept previously prohibited amounts and sources of funds, including large corporate, union, or individual contributions used to advocate for election or defeat of federal candidates. Existing reporting requirements for PACs apply to super PACs, meaning that contributions and expenditures must be disclosed to the FEC. Additional discussion of super PACs appears in another CRS product.[24]

Unlimited Contributions to Certain Nonconnected Political Action Committees (PACs)

As the ramifications of *Citizens United* and *SpeechNow* continued to unfold, other forms of unlimited fundraising were also permitted. In October 2011, the FEC announced that, in response to an agreement reached in a case brought after *SpeechNow* (*Carey v. FEC*),[25] the agency would permit *nonconnected* PACs—those that are unaffiliated with corporations or unions—to accept unlimited contributions for use in independent expenditures. The agency directed PACs choosing to do so to keep the independent expenditure contributions in a separate bank account from the one used to make contributions to federal candidates.[26] As such, nonconnected PACs that want to raise unlimited sums for independent expenditures may create a separate bank account and meet

[21] "DISCLOSE Act—Motion to Proceed," Senate vote 220, *Congressional Record*, daily edition, vol. 156 (July 27, 2010), p. S6285.

[22] "DISCLOSE Act—Motion to Proceed—Resumed," Senate vote 240, *Congressional Record*, daily edition, vol. 156 (September 23, 2010), p. S7388.

[23] 599 F.3d 686 (D.C. Cir. 2010).

[24] See CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett.

[25] Civ. No. 11-259-RMC (D.D.C. 2011).

[26] Federal Election Commission, "FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account," press release, October 5, 2011, http://www.fec.gov/press/Press2011/20111006postcarey.shtml.

additional reporting obligations rather than forming a separate super PAC. Super PACs have, nonetheless, continued to be an important force in American politics because only some traditional PACs would qualify for the *Carey* exemption to fundraising limits.[27]

FEC Rules Implementing Parts of Citizens United

Implementing *Citizens United* and *SpeechNow* fell to the FEC. The commission issued advisory opinions (AOs) within a few months of the rulings recognizing corporate independent expenditures and super PACs. Afterward, some corporations, unions, and other organizations began making previously prohibited expenditures or raising previously prohibited funds for electioneering communications or independent expenditures.[28]

Despite progress on post-*Citizens United* AOs, agreement on final rules took years. A December 2011 Notice of Proposed Rulemaking (NRPM) posing questions about what form post-*Citizens United* rules should take[29] remained open until late 2014, reflecting an apparent stalemate over the scope of the agency's *Citizens United* response. In October 2014, the commission approved rules essentially to remove portions of existing regulations that *Citizens United* had invalidated, such as spending prohibitions on corporate and union treasury funds.[30] The 2014 rules did not require additional disclosure surrounding independent spending, which some commenters had urged, but which others argued was beyond the agency's purview.[31]

Aggregate Caps on Individual Campaign Contributions

On April 2, 2014, the Supreme Court invalidated aggregate contribution limits in *McCutcheon v. FEC*. "Base" limits capping the amounts that donors may give to individual candidates still apply.[32] For 2013-2014—pre-*McCutcheon*—individual contributions could total no more than $123,200. Of that amount, $48,600 could go to candidates, with the remaining $74,600 to parties and PACs. Following *McCutcheon*, individuals may contribute to as many candidates as they wish provided that they adhere to the base contribution limits (e.g., $2,700 per-candidate, per-election for the 2018 election cycle).[33] Additional discussion appears in another CRS product.[34]

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[27] In particular, the exemption only applies to nonconnected PACs (i.e., those that exist independently as PACs and are not affiliated with a parent organization, such as an interest group or labor union).

[28] Perhaps most notably, the FEC issued AOs 2010-09 (Club for Growth) and 2010-11 (Commonsense Ten), recognizing corporate independent expenditures and super PACs. For additional discussion, see CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett. AOs provide an opportunity to pose questions about how the commission interprets the applicability of FECA or FEC regulations to a specific situation (e.g., a planned campaign expenditure). AOs apply only to the requester and within specific circumstances, but can provide general guidance for those in similar situations. See 52 U.S.C. §30108 (previously codified at 2 U.S.C. §437f).

[29] Federal Election Commission, "Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations," 248 *Federal Register* 80803, December 27, 2011.

[30] Federal Election Commission, "Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations," 79 *Federal Register* 62797, October 21, 2014.

[31] Some Senators filed comments calling for additional donor disclosure. See Letter from Sen. Jeanne Shaheen et al. to Commissioner Caroline Hunter, Chair, FEC, February 21, 2012. The document may be obtained from the FEC rulemaking comments search function at http://sers.fec.gov/fosers/.

[32] For additional policy discussion, as well as citations to other CRS products that cover legal issues, see CRS Report R43334, *Campaign Contribution Limits: Selected Questions About McCutcheon and Policy Issues for Congress*, by R. Sam Garrett.

[33] This assumes one maximum contribution of $2,700 in the primary election and another during the general election.

[34] See CRS Report R43334, *Campaign Contribution Limits: Selected Questions About McCutcheon and Policy Issues*

Higher Contribution Limits and New Accounts for Political Party Committees

For the first time since enacting BCRA in 2002, Congress raised the statutory limit on some campaign contributions in December 2014. Specifically, the FY2015 omnibus appropriations law, P.L. 113-235, increased contribution limits to national political party committees.[35] Most prominently, these party committees include the Democratic National Committee (DNC), Democratic Congressional Campaign Committee (DCCC), Democratic Senatorial Campaign Committee (DSCC), Republican National Committee (RNC), National Republican Congressional Committee (NRCC), and the National Republican Senatorial Committee (NRSC). The new law also permits these committees to establish new accounts, each with separate contribution limits, to support party conventions,[36] facilities, and recounts or other legal matters.

Under inflation adjustments announced in February 2017, individuals could contribute at least $813,600 to a national party committee annually in 2017-2018.[37] Political action committees (PACs) may also make larger contributions to parties. For multicandidate PACs—the most common type of PAC—contributions to a national party increased from $45,000 to at least $360,000 annually. Unlike limits for individual contributions, those for PACs are not adjusted for inflation. Additional detail appears in another CRS product.[38]

Some Public Financing Issues

Two notable public financing changes have occurred since 2010, although neither is directly related to *Citizens United.* Most relevant for federal campaign finance policy, P.L. 113-94, enacted in April 2014, terminated public financing for presidential nominating conventions.[39] The 2016 conventions were the first since 1972 funded entirely with private money. Additional discussion appears in other CRS products.[40]

The second major development occurred in 2011 and primarily affects state-level candidates but also has implications for federal policy options. On June 27, 2011, the Supreme Court issued a 5-4 opinion in the consolidated case *Arizona Free Enterprise Club's Freedom Club PAC et al. v. Bennett* and *McComish v. Bennett*.[41] The decision invalidated portions of Arizona's public financing program for state-level candidates.[42] The majority opinion, authored by Chief Justice Roberts, held that the state's use of matching funds (also called *trigger funds, rescue funds*, or

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for Congress, by R. Sam Garrett.

[35] See P.L. 113-235; 128 Stat. 2130; and, especially, 128 Stat. 2772.

[36] As noted elsewhere in this report, only the "headquarters" committees (e.g., the DNC or RNC) could collect additional funds for conventions.

[37] CRS calculated this figure from individual-account adjustments that appear in Federal Election Commission, "Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold," 82 *Federal Register* 10904, February 16, 2017.

[38] See CRS Report R43825, *Increased Campaign Contribution Limits in the FY2015 Omnibus Appropriations Law: Frequently Asked Questions*, by R. Sam Garrett.

[39] 128 Stat. 1085.

[40] See CRS Report R43976, *Funding of Presidential Nominating Conventions: An Overview*, by R. Sam Garrett and Shawn Reese; CRS Report RL34630, *Federal Funding of Presidential Nominating Conventions: Overview and Policy Options*, by R. Sam Garrett and Shawn Reese; and CRS Report R41604, *Proposals to Eliminate Public Financing of Presidential Campaigns*, by R. Sam Garrett.

[41] 131 S.Ct. 2806 (2011). The slip opinion is available at http://www.supremecourt.gov/opinions/10pdf/10-238.pdf.

[42] For additional discussion of state-level public financing, see the "State Experiences with Public Financing" section of CRS Report RL33814, *Public Financing of Congressional Campaigns: Overview and Analysis*, by R. Sam Garrett.

escape hatch funds) unconstitutionally burdened privately financed candidates' free speech and did not meet a compelling state interest. The decision has been most relevant for state-level public financing programs, as a similar matching fund system does not operate at the federal level. However, the decision also appears to preclude rescue funds in future federal proposals to restructure the existing presidential public financing program or create a congressional public financing program.

FECA Editorial Reclassification

The Office of Law Revision Counsel, which maintains the *U.S. Code*, moved FECA and other portions of federal election law to a new Title 52 of the *U.S. Code* in September 2014.[43] Previously, FECA and most other relevant campaign finance law were housed in Title 2 of the *U.S. Code*. This editorial change does not affect the content of the statutes. Nonetheless, it is a major change for those who need to search or cite federal election law. Unless otherwise noted, FECA citations throughout this report have been changed to reflect the new Title 52 location.

Electronic Filing of Senate Campaign Finance Reports

Congress amended FECA in an FY2019 appropriations bill to require Senate political committees to file their campaign finance reports electronically. H.R. 5895 (P.L. 115-244) amends FECA to change the place of filing for Senate campaign finance reports from the Secretary of the Senate to the FEC.[44] The text does not require electronic filing per se. However, per FECA, all political committee reports filed with the commission (except for political committees with less than $50,000 of annual activity) must be filed electronically. Therefore, changing the place of filing to the FEC changes both the place and method of filing.

What Has Not Changed

Federal Ban on Corporate and Union Treasury Contributions

Corporations and unions are still banned from making contributions in federal elections.[45] PACs affiliated with, but legally separate from, those corporations and unions may contribute to candidates, parties, and other PACs. As noted elsewhere in this report, corporations and unions may use their treasury funds to make electioneering communications, independent expenditures, or both, but this spending is not considered a *contribution* under FECA.[46]

Federal Ban on Soft Money Contributions to Political Parties

The prohibition on using soft money in federal elections remains in effect. This includes prohibiting the pre-BCRA practice of large, generally unregulated contributions to national party committees for generic "party building" activities.

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[43] For background on the reclassification, see Office of Law Revision Counsel, *Editorial Reclassification*, http://uscode.house.gov/editorialreclassification/reclassification.html. For a table comparing old and new citations, see http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.pdf.

[44] See Division B, §102. For additional discussion, see CRS Insight IN10970, *Electronic Filing of Senate Campaign Finance Reports*, by R. Sam Garrett.

[45] 52 U.S.C. §30118 (previously codified at 2 U.S.C. §441b).

[46] On the definition of *contribution*, see, in particular, 52 U.S.C. §30101 and 52 U.S.C. §30118 (previously codified at 2 U.S.C. §431(8)(A) and 2 U.S.C. §441(b)(b)(2)).

As noted elsewhere in this report, in December 2014, Congress enacted legislation, which President Obama signed (P.L. 113-235), permitting far larger contributions to political parties than had been permitted previously. These funds are not soft money, in that they are subject to contribution limits and other FECA requirements (e.g., disclosure). Nonetheless, some might contend that the spirit of these contributions resembles soft money. Others contend that the increased limits allow parties to compete with newly empowered groups, such as super PACs, that are not subject to contribution limits.

Some Contribution Limits Remain Intact

Pre-existing base limits on contributions to campaigns, parties, and PACs generally remain in effect. Despite *Citizens United's* implications for independent expenditures and electioneering communications, the ruling did not affect the prohibition on corporate and union treasury contributions in federal campaigns. As noted above, *SpeechNow* permitted unlimited contributions to independent-expenditure-only PACs (*super PACs)*. The FEC has not issued rules regarding super PACs per se. In July 2011 the commission issued an advisory opinion stating that federal candidates (including officeholders) and party officials could solicit funds for super PACs, but that those solicitations were subject to the limits established in FECA and discussed below. Also as noted elsewhere in this report, the FEC announced in October 2011, per an agreement reached in *Carey v. FEC*, that nonconnected PACs would be permitted to raise unlimited amounts for independent expenditures if those funds are kept in a separate bank account.

Although major contribution limits remain in place, as noted above, some party contribution limits have increased. More consequentially, post-*McCutcheon* aggregate contribution limits no longer apply. Therefore, although individuals were, for example, still prohibited from contributing more than $2,700 per candidate, per election during the 2018 cycle, the total amount of such giving is no longer capped.[47] **Table 1** below and the table notes provide additional information, as do other CRS products.[48] The FEC announced 2018-cycle limits in February 2017.[49]

[47] Statutory inflation adjustments as administered by the FEC, based on Department of Labor data, did not increase the individual contribution limit, which was $2,700 per candidate, per election during 2016-2018 as well. The inflation adjustments are codified at 52 U.S.C. §30116(c).

[48] For additional discussion, see CRS Report R43334, *Campaign Contribution Limits: Selected Questions About McCutcheon and Policy Issues for Congress*, by R. Sam Garrett; and CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

[49] Federal Election Commission, "FEC Announces 2017-2018 Campaign Cycle Contribution Limits," press release, February 2, 2017, https://www.fec.gov/updates/fec-announces-2017-2018-campaign-cycle-contribution-limits/.

Table 1. Major Federal Contribution Limits, 2017-2018

(See table notes below for additional information.)

	Recipient			
Contributor	**Principal Campaign Committee**	**Multicandidate Committee (most PACs, including leadership PACs)**	**National Party Committee (DSCC; NRCC, etc.)**	**State, District, Local Party Committee**
Individual	$2,700 per election*	$5,000 per year	$33,900 per year* *Additional $101,700 limit for each special party account*†*	$10,000 per year (combined limit)
Principal Campaign Committee	$2,000 per election	$5,000 per year	Unlimited transfers to party committees	Unlimited transfers to party committees
Multicandidate Committee (most PACs, including leadership PACs)[a]	$5,000 per election	$5,000 per year	$15,000 per year *Additional $45,000 limit for each special party account*†	$5,000 per year (combined limit)
State, District, Local Party Committee	$5,000 per election (combined limit)	$5,000 per year (combined limit)	Unlimited transfers to party committees	Unlimited transfers to party committees
National Party Committee	$5,000 per election	$5,000 per year	Unlimited transfers to party committees	Unlimited transfers to party committees

Source: CRS adaptation from FEC, "Contribution Limits for 2017-2018 Federal Elections," https://transition.fec.gov/info/contriblimitschart1718.pdf.

Notes: The table assumes that leadership PACs would qualify for multicandidate status. The original source, noted above, includes additional information and addresses non-multicandidate PACs (which are relatively rare). The national party committee and the national party Senate committee (e.g., the DNC and DSCC or RNC and NRSC) share a combined 2017-2018 per-candidate limit of $47,400 per six-year cycle. This limit is adjusted biennially for inflation.

* These limits are adjusted biennially for inflation.

† As noted elsewhere in this report, national party committees may accept these contributions for separate accounts for (1) presidential nominating conventions (headquarters committees (e.g., DNC; RNC) only); (2) recounts and other legal compliance activities; and (3) party buildings. For additional discussion, see CRS Report R43825, *Increased Campaign Contribution Limits in the FY2015 Omnibus Appropriations Law: Frequently Asked Questions*, by R. Sam Garrett.

a. *Multicandidate committees* are those that have been registered with the FEC for at least six months; have received federal contributions from more than 50 people; and (except for state parties) have made contributions to at least five federal candidates. See 11 C.F.R. §100.5(e)(3). In practice, most PACs attain this status automatically over time.

Reporting Requirements

Other recent developments notwithstanding, disclosure requirements enacted in FECA and BCRA remain intact.[50] In general, political committees must regularly[51] file reports with the FEC providing information about

- receipts and expenditures, particularly those exceeding an aggregate of $200;
- the identity of those making contributions of more than $200, or receiving more than $200, in campaign expenditures per election cycle; and
- the purpose of expenses.

Those making independent expenditures or electioneering communications, such as party committees and PACs, have additional reporting obligations. Among other requirements

- Independent expenditures aggregating at least $10,000 must be reported to the FEC within 48 hours; 24-hour reports for independent expenditures of at least $1,000 must be made during periods immediately preceding elections.[52]
- The existing disclosure requirements concerning electioneering communications mandate 24-hour reporting of communications aggregating at least $10,000.[53] Donor information must be included for those who designated at least $200 toward the independent expenditure, or $1,000 for electioneering communications.[54]
- If 501(c) or 527[55] organizations make independent expenditures or electioneering communications, those activities would be reported to the FEC.

[50] This excludes requirements that were subsequently invalidated, such as reporting associated with the now-defunct Millionaire's Amendment (which required additional reporting for self-funding above certain levels and for receipt of contributions in response to such funding).

[51] Reporting typically occurs quarterly. Pre- and post-election reports must also be filed. Non-candidate committees may also file monthly reports. See, for example, 52 U.S.C. §30104 (previously codified at 2 U.S.C. §434) and the FEC's *Campaign Guide* series for additional discussion of reporting requirements.

[52] See, for example, 52 U.S.C. §30104 (previously codified at 2 U.S.C. §434(g)).

[53] 52 U.S.C. §30104 (previously codified at 2 U.S.C. §434(f)).

[54] Higher thresholds apply if the expenditures are made from a designated account. For additional summary information, see Table 1 in CRS Report R41264, *The DISCLOSE Act: Overview and Analysis*, by R. Sam Garrett, L. Paige Whitaker, and Erika K. Lunder. Donor information is reported in regularly filed financial reports rather than in independent expenditure reports.

[55] As the term is commonly used, *527* refers to groups registered with the Internal Revenue Service (IRS) as political organizations that seemingly intend to influence federal elections. By contrast, political committees (which include candidate committees, party committees, and political action committees) are regulated by the FEC and federal election law. There is a debate regarding which 527s are required to register with the FEC as political committees.

Potential Policy Considerations and Emerging Issues for Congress

Recent Legislative Activity

115th Congress

As explained in the "What Has Changed" section of this report, the 115th Congress changed the filing format for Senate political committees. The 115th Congress has not otherwise substantially altered campaign finance law. As with other recent Congresses, provisions in enacted appropriations measures (including the electronic-filing provision) also affected campaign finance policy or law. Congress also held related oversight hearings. Additional detail appears below.

- On February 7, 2017, the Committee on House Administration ordered H.R. 133 reported favorably. The bill would terminate the presidential public financing program. Remaining amounts in the Presidential Election Campaign Fund (PECF) would be transferred to a pediatric research[56] fund to which previously eliminated party-convention funds were transferred under P.L. 113-94, and to the general fund of the U.S. Treasury for deficit reduction. Additional information appears in another CRS product.[57]
- Also on February 7, 2017, the Committee on House Administration ordered H.R. 634 reported favorably. The bill would terminate the Election Assistance Commission and transfer some election administration functions back to the Federal Election Commission (FEC).
- In addition to providing appropriations for the Federal Election Commission, the language contained in consolidated appropriations legislation enacted during the 115th Congress (see, for example, P.L. 115-31; P.L. 115-141) continued the prohibition on requiring reporting certain political contributions or expenditures as a condition of the government-contracting process, and on requiring campaign finance disclosure to the Securities and Exchange Commission.[58]
- As of this writing, four of six commissioners remain at the Federal Election Commission. One nomination occurred during the 115th Congress.[59]
- The 115th Congress occasionally addressed issues related to campaign finance in legislative or oversight hearings. In particular, these included attention to foreign influence in U.S. elections and disclaimers in online communications.

The 114th Congress enacted no major changes to campaign finance law.

[56] Health care research issues and details of the pediatric research fund are beyond the scope of this report.

[57] See CRS Report R41604, *Proposals to Eliminate Public Financing of Presidential Campaigns*, by R. Sam Garrett.

[58] See Sec. 735 and Sec. 635, respectively, P.L. 115-31.

[59] For additional discussion, see CRS Report R45160, *Federal Election Commission: Membership and Policymaking Quorum, In Brief*, by R. Sam Garrett.

Foreign Money in U.S. Elections

The possibility of foreign money affecting U.S. campaigns emerged as a component of some congressional hearings and agency activity beginning in the summer and fall of 2016. FECA prohibits foreign nationals from making contributions, or giving other things of value, or making expenditures in U.S. federal, state, or local elections.[60] Some Members of Congress and Federal Election Commissioners have raised questions about whether prohibited foreign funds could have influenced recent elections, whether additional legislative or regulatory safeguards are necessary to protect future elections, or both. Some Members of Congress also raised the issue at various oversight hearings.[61]

In September 2018, the FEC reported to congressional appropriators about the agency's enforcement of the FECA ban on foreign funds. Congress required the report in joint explanatory language accompanying the FY2018 Financial Services and General Government portion of the omnibus appropriations law (H.R. 1625; P.L. 115-141). The report summarized commission processes for identifying possible foreign funds and enforcing the existing FECA ban; it did not propose additional action.[62]

FEC Advisory Opinions on Funding for Certain Security and Child Care Expenses

FECA prohibits "personal use" of campaign funds. In practice, this means that campaigns may not use funds to pay for expenses that would exist without the campaign (the "irrespective test"). Recently, through advisory opinions (AOs), the FEC has permitted using campaign funds for two instances that might otherwise be considered prohibited personal use. These are (1) using campaign funds for certain security expenses; and (2) using campaign funds for certain child care expenses.

- After the June 14, 2017, attack[63] on several Members of Congress, staff, and U.S. Capitol Police officers in Alexandria, Virginia, House Sergeant at Arms Paul Irving wrote to the FEC requesting guidance about the permissibility of using campaign funds to pay for residential security systems.[64] The FEC treated the letter as an AO request.

[60] 52 U.S.C. §30121(a)(1).

[61] For example, a June 26, 2018, Judiciary Committee, Subcommittee on Crime and Terrorism, hearing included discussions of at least two bills (S. 1989; S. 2939) that addressed potential foreign influence in U.S. elections, in addition to other topics.

[62] See Federal Election Commission, "FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition," September 18, 2018, https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf. Democratic Commissioner Ellen Weintraub wrote to congressional appropriators offering alternative views about the report. See Letter from Ellen L. Weintraub, Vice Chair, Federal Election Commission, to Congressional Appropriations Committees, September 28, 2018, https://www.fec.gov/documents/896/2018-09-28-ELW-Approps-Committees-reply.pdf.

[63] For additional discussion, see CRS Insight IN10719, *Violence Against Members of Congress and Their Staff: A Brief Overview*, by R. Eric Petersen (available to congressional clients upon request); and CRS Report R41609, *Violence Against Members of Congress and Their Staff: Selected Examples and Congressional Responses*, by R. Eric Petersen and Jennifer E. Manning.

[64] Letter from Paul D. Irving, Sergeant at Arms, U.S. House of Representatives, to Steven T. Walther, Chairman, Federal Election Commission, June 21, 2017. The letter is attached to July 13, 2017, open-meeting Agenda Document No. 17-29-A, https://www.fec.gov/updates/july-13-2017-open-meeting/.

- On July 13, 2017, citing similar previous requests and specific threat information and recommendations from the Capitol Police and Sergeant at Arms, the FEC approved the request. As a result, Members of Congress may use campaign funds for installing, upgrading, or monitoring residential security systems in circumstances similar to those addressed in the AO. These systems must be "non-structural" and may not be primarily intended to increase the home's value.[65]
- The FEC also recently has determined that the FECA ban on corporate contributions does not prohibit campaigns from accepting certain information technology (IT) services. In August 2018, Microsoft asked the FEC whether it could provide free enhanced security services to "election-sensitive users" of its Office 365 e-mail service, and other services without making a prohibited corporate in-kind contribution. In its request, Microsoft stated that these security services would be available to federal, state, and local campaigns, as well as parties, vendors, and "think-tank" organizations involved in campaigns. The commission determined that Microsoft's proposal was permissible because the company "would be providing [enhanced security] services based on commercial and not political considerations, in the ordinary course of its business, and not merely for promotional consideration or to generate goodwill."[66]
- In May 2018, the FEC granted New York congressional candidate Liuba Grechen Shirley's request to use campaign funds to pay for certain child care expenses.[67] The commission based its decision on a related 1995 AO request (1995-42) and the agency's determination that the child care the candidate required resulted directly from her candidacy. Several Members of Congress urged the FEC to grant the request.

Regulation and Enforcement by the FEC or Through Other Areas of Policy and Law

- In recent Congresses, FEC enforcement and transparency issues attracted attention in Congress and beyond. Legislation to restructure the agency has been introduced in several recent Congresses. (Additional information appears in other CRS products.[68]) The Senate Judiciary Subcommittee on Crime and Terrorism held a 2013 hearing on enforcement of campaign finance law. In addition, in the House, the Committee on House Administration continued to request documents from the agency about its enforcement practices. Major attention to the matter appears to have begun in November 2011, when the Committee on House Administration, Subcommittee on Elections, held an FEC oversight hearing—the first in almost a decade. Negotiations between the committee and commission appear to have resulted in the ongoing effort to approve and publicly release a

[65] The approved version is July 13, 2017, open-meeting Agenda Document No. 17-32-D, https://www.fec.gov/updates/july-13-2017-open-meeting/. Members of Congress should consult with a campaign attorney, the FEC, or both regarding individual compliance guidance.

[66] The approved version is AO 2018-11, p. 3, https://www.fec.gov/files/legal/aos/2018-11/2018-11.pdf. Members of Congress should consult with a campaign attorney, the FEC, or both regarding individual compliance guidance.

[67] AO 2018-06.

[68] For additional discussion of the FEC, see CRS Report R44318, *The Federal Election Commission: Overview and Selected Issues for Congress*, by R. Sam Garrett; and CRS Report R44319, *The Federal Election Commission: Enforcement Process and Selected Issues for Congress*, by R. Sam Garrett.

new FEC enforcement manual. Debate over the matter continued at the FEC, sometimes including acrimonious meetings among commissioners. The issue remains unresolved.

- In addition to oversight of the agency itself, the Senate may consider nominations to the agency. As of this writing, four of six commissioners remain in office. One nomination was pending during the 115th Congress.[69]
- The FEC has civil responsibility for enforcing FECA. The Department of Justice (DOJ) enforces the act's criminal provisions, and the FEC may refer suspected criminal violations to DOJ.[70] Throughout its history, FEC enforcement has been controversial, partially because the commission's six-member structure as established in FECA sometimes produces stalemates in enforcement actions.[71] Some have argued that DOJ should pursue more vigorous enforcement of campaign finance law, both on its own authority and in lieu of FEC action.
- Some Members of Congress have proposed requiring companies to provide additional information to shareholders if the companies choose to make electioneering communications or independent expenditures. These proposals are sometimes referred to as "shareholder protection" measures, although the extent to which they would benefit shareholders or companies is subject to debate. In 2013, the Securities and Exchange Commission (SEC) dropped plans to consider additional corporate disclosure of political spending, although some advocates continue to urge the agency to consider the topic.[72] Since then, some advocates of additional campaign finance regulation have continued to urge the SEC to take regulatory action to require campaign-related disclosure. As noted previously, Congress has prohibited requiring additional disclosure to the FEC, through some recent appropriations measures.
- In July 2010, citing *Citizens United*, the SEC issued new "pay-to-play" rules—which are otherwise beyond the scope of this report—to prohibit investment advisers from seeking business from municipalities if the adviser made political contributions to elected officials responsible for awarding contracts for advisory services.[73] Although the rules appeared not to be targeted to federal candidates, they can implicate state-level officeholders seeking federal office. This includes,

[69] For additional discussion, see CRS Report R45160, *Federal Election Commission: Membership and Policymaking Quorum, In Brief*, by R. Sam Garrett.

[70] 52 U.S.C. §30109.

[71] For additional discussion of the agency's structure and powers, see CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

[72] In 2012, the SEC's contribution to the Office of Information and Regulatory Affairs (OIRA) "Unified Agenda" (formally the *Unified Agenda of Regulatory and Deregulatory Actions*) indicated that the agency was considering developing a rule requiring disclosure of certain corporate political spending. The version of the Unified Agenda published in the fall of 2013 explained that the SEC was "withdrawing" the proposal but that future action was possible. On the Unified Agenda, see http://www.reginfo.gov/public/do/eAgendaMain. For brief additional discussion of the proposed rule, see, for example, Kenneth P. Doyle, "Disclosure of Corporate Political Spending Left Off SEC Agenda for New Regulations," *Daily Report for Executives*, December 3, 2013, p. A-1. See also Yin Wilczek, "Proponents File More Than 100 Proposals Calling for Political Spending Transparency," *Daily Report for Executives*, April 14, 2015, p. EE-9.

[73] See Securities and Exchange Commission, "Political Contributions by Certain Investment Advisers," 75 *Federal Register* 41018-41071, July 14, 2010.

for example, governors running for President. The rules have been controversial in some cases and were the subject of litigation.[74]

- During the spring of 2011, media reports indicated that the Obama Administration was considering a draft executive order to require additional disclosure of government contractors' political spending.[75] Although the executive order was never issued, the topic continues to garner attention. The House Committee on Oversight and Government Reform and Committee on Small Business held a joint hearing on the topic on May 12, 2011. Through recent appropriations bills, including those enacted during the 115th Congress, Congress also prohibited requiring additional contractor disclosure.

IRS Notice of Proposed Rulemaking Concerning Certain 501(c) Entities

Politically active tax-exempt organizations, regulated primarily by the Internal Revenue Code (IRC), have been engaged in elections since at least the early 2000s. Some suggest that *Citizens United* provided clearer permission for incorporated 501(c)(4) social welfare groups and 501(c)(6) trade associations to make electioneering communications and independent expenditures. Unions, 501(c)(5)s, have long participated in campaigns, but *Citizens United* has been interpreted to permit labor organizations to use their treasury funds, like corporations, to make ECs and IEs. Amid increased interest in, and activity by, the groups post-2010, controversy has emerged about how or whether their involvement in federal elections should be regulated. Currently, because 501(c) organizations are not *political committees* as defined in FECA, they do not fall under FEC or FECA requirements unless they make ECs or IEs.[76] Nonetheless, many such groups engage in activity that might influence campaigns. Other CRS products that focus on tax law provide additional detail, much of which is beyond the scope of this report.[77]

In November 2013, the Internal Revenue Service (IRS) and the Department of the Treasury announced a notice of proposed rulemaking (NPRM) that could significantly affect how some tax-exempt organizations engage in campaign activity. Amid controversy, that initial proposal was withdrawn, apparently to be superseded by a new proposal. The status of a rulemaking remains unclear, but, as of this writing, reports suggest that the agency continues to develop a proposal. Whether the IRS should continue with a rulemaking, and if so, what that rulemaking should cover, has generated sharp disagreement in Congress and among various advocacy groups.[78] As of this writing, the issue remains unresolved.

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[74] See, for example, Jake Bernstein, "How an Obscure Federal Rule Could Be Shaking Up Presidential Politics," *ProPublica*, August 28, 2012, http://www.propublica.org/article/how-an-obscure-federal-rule-could-be-shaking-up-presidential-politics; and Kenneth P. Doyle, "Judges Skeptical of Challenge to SEC Rule on Political Money From Investment Advisers," *Daily Report for Executives*, March 24, 2015, pp. A-6. This report does not include a detailed discussion of this topic, including subsequent updates unless they appear to substantially affect federal campaign finance policy.

[75] See, for example, Kenneth P. Doyle, "Anticipated Obama Order Would Require Disclosure of Contractors' Political Money," *Daily Report for Executives*, April 21, 2011, pp. A-6.

[76] If the groups had an affiliated super PAC, the super PAC would report to the FEC as a political committee.

[77] See, for example, CRS In Focus IF11005, *Donor Disclosure: 501(c) Groups and Campaign Spending*, by R. Sam Garrett.

[78] See, for example, Diane Freda, "IRS Plans for Broadening Political Activity Rules Trigger Stern Warning From Hatch," *Daily Report for Executives*, April 14, 2015, pp. G-7.

Litigation About Donor Disclosure in Independent Spending

One of the most controversial elements of campaign finance disclosure concerns identifying donors to organizations that make electioneering communications and independent expenditures.[79] Although FECA requires that those giving more than $200 "for the purpose of furthering" IEs must be identified in political committees' disclosure reports filed with the FEC, the "purpose of furthering" language does not appear in the portion of FECA covering ECs. Nonetheless, FEC regulations also use the "purpose of furthering" language as a threshold for identifying donors to corporations or unions making ECs.[80] As a result, some contend that the EC regulations improperly permit those contributing to ECs to avoid disclosure by making unrestricted contributions (i.e., *not* "for the purpose of furthering" ECs).[81] On the basis of that argument and others, then-Representative Van Hollen sued the FEC in 2011. A series of federal district and appellate court rulings occurred thereafter. In January 2016, the U.S. Court of Appeals for the D.C. Circuit upheld the FEC rules.[82]

Another recent case, *CREW v. FEC*, considers the "purpose of furthering" donor-disclosure standard for IEs rather than ECs.[83] In November 2012, Citizens for Responsibility and Ethics in Washington (CREW), which identifies itself as a "watchdog" group, filed a complaint with the FEC, alleging, among other things, that 501(c)(4) group Crossroads GPS failed to disclose its donors as required under FECA and agency regulations. In November 2015, FEC commissioners deadlocked on whether Crossroads GPS had violated commission regulations and FECA (Matter Under Review 6696). CREW then sued the commission for, among other things, allegedly failing to enforce disclosure requirements.

In August 2018, Chief Judge Beryl A. Howell, of the U.S. District Court for the District of Columbia, ruled in CREW's favor. After the court ruling took effect on September 18, 2018, certain groups that previously did not disclose some of their donors to the FEC now must do so. The FEC issued filing guidance on October 4, 2018, but another rulemaking is expected, which could change reporting requirements. Campaign practitioners offer differing interpretations of the new reporting requirements and suggest that additional litigation could occur.

Federal Communications Commission Rules on Political Advertising Disclosure

Telecommunications law administered by the Federal Communications Commission (FCC)—a topic that is otherwise beyond the scope of this report—has implications for elements of political

[79] Previous versions of this report addressed this topic in what is now the "Major Issues: What Has Changed Post-Citizens United and What Has Not" section above. Based on recent events, this issue does not appear to be as major a policy change as the topics now included in the previous section. As with other topics addressed in this report, subsequent developments that resolve the issue—and could involve more significant policy implications—will be reflected in future updates.

[80] 11 C.F.R. §104.20(c)(9).

[81] The same argument is made concerning IE disclosure, although the absence of the "purpose of furthering" language is unique to EC provisions in FECA.

[82] For additional discussion, CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

[83] For additional discussion, see CRS In Focus IF11005, *Donor Disclosure: 501(c) Groups and Campaign Spending*, by R. Sam Garrett; and CRS Report R45320, *Campaign Finance Law: An Analysis of Key Issues, Recent Developments, and Constitutional Considerations for Legislation*, by L. Paige Whitaker.

advertising transparency.[84] In BCRA, Congress required broadcasters to place information about political advertising prices and purchases in a "political file" available for public inspection.[85] Partially in response to *Citizens United*, in 2011 the FCC revisited rulemaking proceedings the agency began in 2007 to consider whether broadcasters should be required to make information from the political file available on the internet rather than only through paper records at individual television stations. On April 27, 2012, the FCC approved new rules to require television broadcasters affiliated with the ABC, CBS, Fox, and NBC networks in the top 50 designated market areas (DMAs) to post political file information on the commission's website.[86] These rules took effect on August 2, 2012. Stations outside the top 50 DMAs or unaffiliated with the top four networks were required to comply as of July 2014.[87] In February 2016, the FCC extended the online-disclosure requirements to cable and satellite operators and broadcast radio.[88]

These requirements arguably enhance transparency by making "ad buy" data more readily available than in the past. Broadcasters are required to post their political file information online, not to aggregate total costs or otherwise summarize advertising purchases in ways typically used by researchers and policymakers. In addition, no standard file format is required.[89] Consequently, drawing broad conclusions from the data is challenging.

Revisiting Disclosure Requirements

Historically, disclosure aimed at reducing the threat of real or apparent conflicts of interest and corruption has received bipartisan support. In fact, disclosure typically has been regarded as one of the least controversial aspects of an otherwise often-contentious debate over the nation's campaign finance policy. Disclosure, then, could yield opportunities for cooperation among Members of both major parties and across both chambers. On the other hand, some recent disclosure efforts have generated controversy. Particularly since the 111th Congress consideration of the DISCLOSE Act, some lawmakers raised concerns about whether the legislation applied fairly to various kinds of organizations (e.g., corporations versus unions) and how much information those airing independent messages rather than making direct candidate contributions should be required to report to the FEC. Revised versions of the legislation, introduced in

[84] Previous versions of this report addressed this topic in what is now the "Major Issues: What Has Changed Post-Citizens United and What Has Not" section above. Based on recent events, this issue does not appear to be as major a policy change as the topics now included in the previous section. As with other topics addressed in this report, subsequent developments that resolve the issue—and could involve more significant policy implications—will be reflected in future updates.

[85] The relevant provision appears in §504 of BCRA (P.L. 107-155). Although BCRA primarily amended FECA (2 U.S.C. §431 *et seq.*), the "political file" requirement amended the 1934 Communications Act. See 47 U.S.C. §315.

[86] Federal Communications Commission, *Second Report and Order*, In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket No. 00-168, Washington, DC, April 27, 2012, http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0427/FCC-12-44A1.pdf. See also Federal Communications Commission, "Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations," 77 *Federal Register* 27631, May 11, 2012.

[87] See ibid and Federal Communications Commission, "Media Bureau Reminds Television Broadcasters of July 1, 2014 Online Political File Deadline," press release, April 4, 2014, http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0404/DA-14-464A1.pdf.

[88] See Federal Communications Commission, "Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees," 81 *Federal Register* 10105, February 29, 2016; and Federal Communications Commission, "Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees," 80 *Federal Register* 8031, February 13, 2015.

[89] In addition to the rulemaking document cited above, see, for example, Justin Elliott, "FCC-Required Political Ad Data Disclosures Won't Be Searchable," *ProPublica* online, April 27, 2012, http://www.propublica.org/article/fcc-required-political-ad-data-disclosures-wont-be-searchable.

subsequent Congresses, did not contain spending restrictions, although some observers have questioned whether required reporting could inhibit political speech.

Post-*Citizens United* legislative activity among those who favor additional disclosure has generally emphasized the DISCLOSE Act, but, as noted elsewhere in this report, some have also proposed reporting particular kinds of spending to agencies such as the IRS or the SEC. As 501(c) tax-exempt organizations' spending has received attention, measures proposing somewhat similar reporting as DISCLOSE, with additional tax implications (most of which are beyond the scope of this report) have also emerged. As noted previously, litigation and FEC rulemakings in the past decade have also considered the applicability of the "purpose of furthering" donor-disclosure standard for ECs and IEs.

Additional disclosure poses the advantage of making it easier to track the flow of political money. Disclosure, however, does not guarantee complete information, nor does it necessarily guard against all forms of potential corruption. For example, current requirements generally make it possible to identify which people or organizations were involved in a political transaction. This information promotes partial transparency, but does not, in and of itself, provide detailed information about what motivates those transactions or, in some cases, where the funds in question originated. Additional disclosure requirements from Congress, the FEC, or the IRS could provide additional clarity.

Disclosure and Disclaimers in Online and Digital Communications

Disclosure and the related topic of disclaimers (referring to statements of attribution in political advertising) in online advertising have been especially prominent topics in recent years. In particular, after the *Citizens United* decision, and reports of foreign interference in the 2016 elections using social media, renewed interest in online advertising appeared in Congress and at the FEC. In 2011, the FEC announced an Advanced Notice of Proposed Rulemaking (ANPRM) to receive comments on whether it should update its rules concerning internet disclaimers, but the agency did not advance new rules. In 2016, the FEC announced that it was reopening the comment period on the 2011 ANPRM. It again reopened the comment period in October 2017. Several Members of Congress filed comments. On November 16, 2017, the FEC voted to draft revised internet-disclaimer rules (a notice of proposed rulemaking) for paid advertising. The commission may consider adopting those revised rules in the future.[90]

Congress has not enacted legislation focused specifically on online campaign activity, although elements of existing statute and FEC rules address internet communications. In October 2017, the Honest Ads Act (H.R. 4077; S. 1989) was introduced to amend the Federal Election Campaign Act (FECA; 52 U.S.C. §§30101-30145) to further regulate some online ads. On October 24, 2018, the House Subcommittee on Information Technology, Committee on Oversight and Government Reform, held a hearing that addressed disclaimers and disclosures surrounding online political advertising generally.

Revisiting Contribution Limits

After *Citizens United*, one potential concern is how candidates will be able to field competitive campaigns amid unlimited expenditures from super PACs, 501(c) organizations, corporations, or unions. One option for providing additional financial resources to candidates, parties, or both, would be to raise or eliminate contribution limits. However, particularly if contribution limits

[90] For brief additional discussion, see CRS In Focus IF10758, *Online Political Advertising: Disclaimers and Policy Issues*, by R. Sam Garrett.

were eliminated, corruption concerns that motivated FECA and BCRA could reemerge. As noted previously, Congress raised limits for some contributions to political parties in 2014.

Another option, which Congress has occasionally considered in recent years, would be to raise or eliminate current limits on coordinated party expenditures.[91] Coordinated expenditures allow parties to buy goods or services on behalf of a campaign—in limited amounts—and to discuss those expenditures with the campaign.[92] In a post-*Citizens United* and post-*McCutcheon* environment, additional party-coordinated expenditures could provide campaigns facing increased outside advertising with additional resources to respond. Permitting parties to provide additional coordinated expenditures may also strengthen parties as institutions by increasing their relevance for candidates and the electorate. A potential drawback of this approach is that some campaigns may feel compelled to adopt party strategies at odds with the campaign's wishes to receive the benefits of coordinated expenditures.[93] Those concerned with the influence of money in politics may object to any attempt to increase contribution limits or coordinated party expenditures, even if those limits were raised in an effort to respond to labor- or corporate-funded advertising. Additional funding in some form, however, may be attractive to those who feel that greater resources will be necessary to compete in the modern era, or perhaps to those who support increased contribution limits as a step toward campaign deregulation. A version of the FY2016 FSGG bill (S. 1910) reported in the Senate would have amended FECA to permit parties to make unlimited coordinated expenditures on behalf of their candidates if the candidate did not control or direct such spending. That provision, however, was not included in the FY2016 consolidated appropriations law (P.L. 114-113; H.R. 2029).

Revisiting Coordination Requirements

Both before and after *Citizens United*, questions have persisted about whether unlimited independent expenditures permit parties, PACs, and other groups to subsidize candidate campaigns. Such concerns first emerged in the 1980s with PAC spending. After *Citizens United*, the emergence of super PACs and increased activity by 501(c) organizations increased attention to a concept known as *coordination*. A product of FEC regulations, coordination restrictions are designed to ensure that valuable goods or services—such as polling or staff expertise—are not provided to campaigns in excess of federal contribution limits. In practice, establishing coordination is difficult. Existing regulations require satisfying a complex three-part test examining conduct, communications, and payment.[94] Some Members of Congress and advocacy groups have proposed that Congress specify a more precise coordination standard by enacting legislation.

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[91] This option would not provide campaigns with additional funding per se, but it could ease the financial burden on campaigns for those purchases that parties make on the campaign's behalf.

[92] Coordinated party expenditures are subject to limits based on office sought, state, and voting-age population (VAP). Exact amounts are determined by formula and updated annually by the FEC. For additional discussion, see CRS Report RS22644, *Coordinated Party Expenditures in Federal Elections: An Overview*, by R. Sam Garrett and L. Paige Whitaker; and CRS Report R41054, *Campaign Finance Policy After Citizens United v. Federal Election Commission: Issues and Options for Congress*, by R. Sam Garrett.

[93] The long-running debate about relationships between parties and candidates is well documented. For a brief overview, see, for example, Marjorie Randon Hershey, *Party Politics in America*, 12th ed., pp. 65-83; and Paul S. Herrnson, *Congressional Elections: Campaigning at Home and in Washington*, 4th ed., pp. 86-128.

[94] On coordination and the three-part regulatory test for coordination, see, respectively 52 U.S.C. §30116 (previously codified at 2 U.S.C. §441a(a)(7)(B)) and 11 C.F.R. §109.21. See also CRS Report R45320, *Campaign Finance Law: An Analysis of Key Issues, Recent Developments, and Constitutional Considerations for Legislation*, by L. Paige Whitaker.

Conclusion

Some elements of federal campaign finance policy have substantially changed in recent years; others have remained unchanged. Enactment of BCRA in 2002 marked the culmination of efforts to limit soft money in federal elections and place additional regulations on political advertising airing before elections. BCRA was an extension of efforts begun in the 1970s, with enactment of FECA, to regulate and document the flow of money in federal elections. BCRA's soft-money ban and some other provisions remain in effect; but *Citizens United*, *SpeechNow*, and other litigation since BCRA have reversed major elements of modern campaign finance law.

The changes discussed in this report suggest that the nation's campaign finance policy may be a continuing issue for Congress. Disclosure requirements, a hallmark of federal campaign finance policy, remain unchanged, but the topic has taken on new controversy. Additional information would be required to fully document the sources and rationales behind all political expenditures. For some, such disclosure would improve transparency and discourage corruption. For others, additional disclosure might be viewed with suspicion and as a potential sign of government intrusion. Particularly in recent years, tension has also developed between competing perspectives about whether disclosure limits potential corruption or stigmatizes those who might choose to support unpopular candidates or groups.

Fundraising, spending, and reporting questions have been at the forefront of recent debates in campaign finance policy, but they are not the only issues that may warrant attention. Even if no legislative changes are made, additional regulation and litigation are likely, as is the constant debate over the role of money in politics. Although some of the specifics are new, these themes discussed throughout this report have been present in campaign finance policy for decades.

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