



July 10, 2001

Policy Brief.....Campaign Finance Reform

What follows is a summary of how the major campaign finance reform proposals address the primary areas of concern for campaign finance reform. (Feingold-McCain: S. 27; Shays-Meehan: H.R. 2356; Ney-Wynn: H.R. 2360; Doolittle-DeLay: H.R. 1444) Current law is also indicated, and key definitions critical to campaign law are described at the end of the Brief.

Feingold-McCain passed the Senate on April 2, 2001. The current version of Shays-Meehan was introduced on June 28, 2001, and will likely be the base text this week. Ney-Wynn and Doolittle-DeLay were introduced on June 28, 2001 and April 4, 2001, respectively, and are both likely to be offered as substitutes on the floor.

Key Issues and Concerns

- Though the Feingold-McCain and Shays-Meehan bills have been promoted as banning soft money, both bills have a \$10,000-per-year soft money loophole (provided that it is matched with an equivalent amount of hard money) per state and local party committee to use for voter registration, get-out-the-vote drives, and other “generic” activities (which are loosely defined in Shays-Meehan as activities that promote a party but not a candidate). This was the Levin Amendment to Feingold-McCain in the Senate.
- Under the McCain, Shays, and Ney bills, federal campaign law would be triggered by, for example, public communications that simply **refer** to a candidate (and somehow promote, support, attack, or oppose the candidate) regardless of whether the communications explicitly call for the election or defeat of a candidate. In current law, only express advocacy triggers federal campaign law. In the Ney bill, however, expenditures on such communications (if broadcast via TV, cable, or satellite) must total \$50,000 in a year (among other thresholds) before federal campaign law would be triggered.
- Under the McCain and Shays bills, “coordination” would be expanded to include citizen activity pursuant to a “general understanding” with a candidate or party, *regardless* of express advocacy, and would be considered a contribution to and an expenditure by the candidate or party.

Soft Money

National party committees

Current law: Soft money allowed to be raised and spent

McCain: Soft money could *not* be solicited, received, directed, transferred, or spent

Shays: Same as McCain

Ney: Soft money could *not* be used for “federal election activities.” Soft money could be used for non-federal election activities—donations capped at \$75,000 per year.
Doolittle: No provision

State and local party committees

Current law: Soft money allowed to be raised and spent on the state portion of mixed (federal/state) activities
McCain: Soft money could not be spent for a “federal election activity.” **Allows \$10,000-per-year donations** (provided that it is matched with an equivalent amount of hard money) **per state and local committee for voter registration (4 months before a federal election), get-out-the-vote, and other “generic” activities**
Shays: Same as McCain
Ney: No provision
Doolittle: No provision

Party support for tax-exempt groups

Current law: No restrictions on parties’ abilities to support tax-exempt groups
McCain: Party committees could not raise money or give money to 501(c)(4) or 527 tax-exempt organizations
Shays: Party committees could not raise money or give money to 501(c)(4) organizations that make disbursements in connection with a federal election or to 527 organizations that are not federal political committees
Ney: No provision
Doolittle: No provision

Federal candidates/officeholders role in fundraising

Current law: No restrictions
McCain: Federal candidates/officeholders and affiliated agents and entities would be prohibited from raising soft money in connection with a federal election. This ban includes state/local candidates raising soft money for activity *referring* to a federal candidate.
Shays: Same as McCain
Ney: No provision
Doolittle: No provision

Hard Money

Individual contributions to federal candidates

Current law: \$1000 per candidate, per election, not indexed for inflation
McCain: \$2000 per candidate, per election, indexed for inflation
Shays: \$2000 per presidential and Senate candidate, per presidential and Senate election, indexed for inflation. \$1000 per House candidate, per House election, indexed for inflation
Ney: Would index current \$1000 limit for inflation (year 2001 as initial baseline)
Doolittle: Would abolish all contribution limits after 2002

Individual contributions to national party committees

Current law: \$20,000 per year to a federal account, not indexed for inflation

McCain: \$25,000 per year to a federal account, indexed for inflation
Shays: Same as McCain
Ney: \$30,000 per year to a federal account, indexed for inflation
Doolittle: Would abolish all contribution limits after 2002

Individual contributions to state party committees

Current law: \$5000 per year to a federal account, not indexed for inflation
McCain: \$10,000 per year to a federal account, not indexed for inflation
Shays: Same as McCain
Ney: \$10,000 per year to a federal account, indexed for inflation
Doolittle: Would abolish all contribution limits after 2002

Individual contributions to political action committees (PACs)

Current law: \$5000 per year, not indexed for inflation
McCain: No provision
Shays: No provision
Ney: Would index current \$5000 limit for inflation (year 2001 as initial baseline)
Doolittle: Would abolish all contribution limits after 2002

Aggregate individual contributions

Current law: A total of \$25,000 per year to federal accounts, not indexed for inflation
McCain: A total of \$37,500 per year to federal accounts, indexed for inflation
Shays: Same as McCain
Ney: A total of \$37,500 per year to federal accounts, indexed for inflation.
Contributions to national party committees would be exempt from the aggregate limit for individuals.
Doolittle: Would abolish all contribution limits after 2002

PAC contributions to candidates

Current law: \$5000 per candidate, per election, not indexed for inflation
McCain: No provision
Shays: No provision
Ney: Would index current \$5000 limit for inflation (year 2001 as initial baseline)
Doolittle: Would abolish all contribution limits after 2002

PAC contributions to national party committees

Current law: \$15,000 per year to a federal account, not indexed for inflation
McCain: No provision
Shays: No provision
Ney: \$30,000 per year to a federal account, indexed for inflation
Doolittle: Would abolish all contribution limits after 2002

PAC contributions to state party committees

Current law: \$5000 per year to a federal account, not indexed for inflation
McCain: No provision
Shays: No provision
Ney: \$10,000 per year to a federal account, indexed for inflation
Doolittle: Would abolish all contribution limits after 2002

PAC contributions to other PACs

Current law: \$5000 per year, not indexed for inflation
McCain: No provision
Shays: No provision
Ney: Would index the current \$5000 limit for inflation (year 2001 as the initial baseline)
Doolittle: Would abolish all contribution limits after 2002

National political party committee contributions to candidates

Current law: \$5000 per candidate, per election, not indexed for inflation. In an election year, national and senatorial party committees can give to Senate candidates \$17,500 combined, not indexed for inflation.
McCain: \$35,000 for Senate candidates in year of election, indexed for inflation
Shays: Same as McCain
Ney: Would index the current \$5000 limit and the special Senate limit for inflation (year 2001 as the initial baseline)
Doolittle: Would abolish all contribution limits after 2002

Candidate loans to their own campaigns

Current law: No restriction on the amount of candidate loans that can be repaid using post-election contributions.
McCain: Would limit repayment of loans to \$250,000 from post-election contributions
Shays: Same as McCain
Ney: No provision
Doolittle: No provision

Wealthy candidates

Current law: Contribution limits are the same for all candidates, regardless of how much candidates spend from their personal funds. The Supreme Court has struck down limits on spending from personal funds by candidates.
McCain: Would raise limits on individual and party contributions to Senate candidates whose opponents exceed a threshold of personal campaign funding (established using a complex formula).
Shays: Same as McCain
Ney: No provision
Doolittle: No provision

Independent Expenditures

(see definitions for “federal election activity” and “electioneering communication” in the “Definitions” section below)

Disclosure

Current law: 24-hour advance notice required for independent expenditures of \$1000 or more in the 20 days prior to an election
McCain: Would add a requirement for 48-hour advance notice of independent expenditure of \$10,000 or more in the 20 days prior to an election
Shays: Same as McCain
Ney: No provision

Doolittle: No provision

Party spending

Current law: Parties may make independent expenditures in connection with the general election of a federal candidate

McCain: Would prohibit parties from making independent expenditures for a general election candidate

Shays: Same as McCain

Ney: No provision

Doolittle: No provision

Coordination

(see definition for “coordination” in “Definitions” section below)

Party spending

Current law: Parties may make coordinated expenditures in connection with the general election of a federal candidate

McCain: Would prohibit parties from making coordinated expenditures for a general election candidate

Shays: Same as McCain

Ney: No provision

Doolittle: No provision

Electioneering communication

Current law: Expenditures (to which federal campaign law apply) made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate or agents are considered contributions to the candidates

McCain: Would treat a coordinated “electioneering communication” as a contribution to and expenditure by the candidate or party

Shays: Substantively identical to McCain

Ney: No provision

Doolittle: No provision

Issue Advocacy

(see also “Electioneering communication” in the “Definitions” section below)

Disclosure

Current law: Communications by non-political committees that avoid express advocacy do not have to disclose their expenditures to the FEC (with a possible exception for IRS Code 527 organizations)

McCain: Would require disclosure to the FEC of expenditures for electioneering communications exceeding a total of \$10,000 per year (disclosure within 24 hours of the first and each subsequent \$10,000 disbursement)

Shays: Substantively similar to McCain, but Shays would explicitly mandate disclosure of production and airing costs.

Ney: 1) For broadcast, cable, or satellite communications, disclosure to the FEC within 24 hours of each communication would be required for disbursements made

within 4 months of an election that mention a clearly identified federal candidate by name, image, or likeness.

2) For non-broadcast communications, disclosure to the FEC within 24 hours of exceeding the aggregate \$50,000 threshold would be required for disbursements made within 4 months of an election that refer to or depict a clearly identified federal candidate by name, image, or likeness and are targeted to the relevant electorate when the total on such communications is over \$50,000 in a year.

Doolittle: No provision

Labor unions and corporations

Current law: Communications by non-political committees that avoid express advocacy are generally outside the reach of FEC regulation.

McCain: Would ban the funding of electioneering communications with funds from union or certain corporate funds (a few exemptions for 501(c)4 and 527 organizations)

Shays: Substantively the same as McCain

Ney: No provision

Doolittle: No provision

FEC Disclosure and Enforcement

Reports filed and posted

Current law: All campaign reports filed electronically must be posted on the FEC website within 24 hours of receipt, and all paper reports must be available for public inspection at FEC headquarters within 48 hours of receipt

McCain: Would require all campaign reports filed with the FEC to be posted on the Internet and available for in-person inspection within 48 hours (24 hours if filed electronically)

Shays: Same as McCain

Ney: No provision

Doolittle: Would require posting on the Internet of information from reports within 24 hours of receipt

Donations close to an election

Current law: Candidate committees must notify the FEC within 24 hours of receiving contributions of \$1000 or more in the 20 days prior to an election.

McCain: No provision

Shays: No provision

Ney: No provision

Doolittle: Would require all committees to notify the FEC within 24 hours of *all* contributions received in the 90 days prior to an election

Criminal penalties

Current law: Up to one year in prison and/or a fine equally the greater of \$25,000 or 300% of the amount involved in knowing and willful violations of federal campaign law involving contributions and/or expenditures of \$2000 or more in a year. Statute of limitations is three years for criminal violations.

McCain: Would add to current law the possibility of 5 years in prison for knowing and

willful violations involving contributions and/or expenditures of \$25,000 or more in a year. Statute of limitations would be extended to 5 years for criminal violations.

Shays: Same as McCain
Ney: No provision
Doolittle: No provision

Advertising

Lowest unit rate

Current law: Broadcasters must sell air time to candidates during the last 45 days of a primary and 60 days of a general election at the lowest unit rate for the same class and amount of time for the same period

McCain: Would make TV, cable, and satellite lowest-unit-rate broadcast time non-preemptible, with rates based on a comparison to the prior 365 days and available to parties buying time on behalf of candidates. Random audits would ensure compliance.

Shays: Would make TV, cable, and satellite lowest-unit-rate broadcast time non-preemptible (for last 45/60 days of election), with rates based on a comparison to the prior 180 days and available to parties buying time for coordinated expenditures. Random audits would ensure compliance.

Ney: No provision
Doolittle: No provision

Candidate appearance in ads

Current law: No content requirements for lowest-unit-rate ads

McCain: Would require candidates who run lowest-unit-rate ads that include direct references to opponents to include a photo or image of themselves on TV and a statement of their own approval (printed on TV and spoken by candidate on radio)

Shays: Same as McCain
Ney: No provision
Doolittle: No provision

Miscellaneous

Joint fundraising committees

Current law: Political committees (including party committees) may engage in joint fundraising with other political committees (including candidate committees)

McCain: No provision

Shays: Would prohibit federal candidates' committees from forming joint fundraising committees with any party committee

Ney: No provision
Doolittle: No provision

Contributions by minors

Current law: Adults and minors are not treated differently

McCain: No provision

Shays: Would ban contributions to candidates and parties from individuals 17 years of

age and younger.
Ney: No provision
Doolittle: No provision

Severability

Current law: If any provision of the Federal Election Campaign Act or its application to any person or situation is held invalid, the validity of the remainder and its applications shall be unaffected.

McCain: If any provision of the Federal Election Campaign Act or its application to any person or situation is held unconstitutional, the validity of the remainder and its applications shall be unaffected.

Shays: Same as McCain

Ney: No provision

Doolittle: No provision

Effective date

McCain: 30 days after enactment, unless otherwise stated

Shays: 90 days after enactment, unless otherwise stated (transition rules for use of soft money already raised are provided)

Ney: With respect to elections after December 2002

Doolittle: Various dates for different provisions

Definitions

Federal election activity

Current law: Express advocacy (i.e. explicit words or activities calling for the election or defeat of a clearly identified federal candidate) triggers federal campaign law

McCain: 1) Voter registration drives 4 months before a federal election, 2) voter ID, get-out-the-vote drives, and generic activity in connection with an election in which a federal candidate is on the ballot, 3) **public communications that refer to a clearly identified federal candidate and promote, support, attack, or oppose the candidate (regardless of express advocacy)**, 4) services by a state or local party employee who spends at least a quarter of his or her paid time each month on activities in connection with a federal election

Shays: Same as McCain

Ney: 1) Voter registration drives 4 months before a federal election, except if for generic activity 2) voter ID and get-out-the-vote drives, except if for generic activity, 3) **public communications that refer to a clearly identified federal candidate and promote, support, attack, or oppose the candidate (regardless of express advocacy)**. Exempts costs of administering and soliciting funds for national party committees

Doolittle: No definition

Generic campaign activity

Current law: No definition

McCain: No definition

Shays: Activity that promotes a party but not a federal or non-federal candidate

Ney: Activity that does not mention, depict, or otherwise promote a clearly identified

federal candidate
Doolittle: No definition

Coordination

Current law: No specific definition of coordination in U.S. Code
McCain: Would define “coordinated expenditure” as a payment made in concert or cooperation with, or at the request or suggestion of, or pursuant to any particular or general understanding with a candidate or party—regardless of express advocacy
Shays: Same as McCain
Ney: No provision
Doolittle: No provision

Electioneering communication

Current law: Express advocacy (i.e. explicit words or activities calling for the election or defeat of a clearly identified federal candidate) triggers federal campaign law
McCain: **Campaign law would be triggered for broadcast, cable, or satellite ads that refer to a clearly identified candidate** within 60 days of a general election and 30 days of a primary and that reach an audience that includes voters in that election (news events, hard-money expenditures, and independent expenditures would be exempted)
Shays: Same as McCain plus additional exemptions to be set by FEC regulation
Ney: Campaign law would be triggered within 4 months of an election if a clearly identified federal candidate were mentioned, referred to, or depicted in a broadcast or non-broadcast ad (as applicable), if the “relevant electorate” were targeted, and if such communications totaled \$50,000 in a year (news stories, hard-money expenditures, payments by vendors acting on behalf of a client, and communications by a membership organization to its own members not set up primarily to influence federal elections would be exempt)
Doolittle: No provision

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