U. S. Senate Republican Policy Committee

Larry E. Craig, Chairman   Jade West, Staff Director

Legislative Notice

No. 36   March 18, 2002

H.R. 2356 – House-passed Campaign Finance Bill

Senate Calendar No. 318

H.R. 2356 passed the House of Representatives February 14, 2002; on February 27, it was read a second time and placed on the Senate Calendar under "General Orders."

NOTEWORTHY

- The Senate will proceed to the consideration of H.R. 2356 today, Monday, March 18, at 3 p.m. The Majority Leader has pledged to go to final passage before the Senate adjourns at the end of the week. There will be a cloture vote sometime during mid-week.
- The Senate passed a similar bill (S. 27) on April 2, 2001, by a vote of 59 to 41 (see RVA #64, 107th Congress, 1st Session). Twelve Republicans and 47 Democrats voted for the bill; 38 Republicans and three Democrats voted against it.
- The House passed its bill on February 14 of this year by a vote of 240 to 189; 41 Republicans, 198 Democrats, and one Independent voted for the bill; 176 Republicans, 12 Democrats, and one Independent voted against it.
- The bill is amendable, and amendments may be offered. Proponents are confident that they have the votes to defeat any amendment.
- The Senate has voted on campaign finance bills on numerous occasions over the years.
- This year, proponents of a bill are confident that they can get a bill to the President's desk, and there is a widespread belief that the President will sign a bill that is presented to him. The President will have to decide if H.R. 2356 is consistent with the principles for reform that he explicated last year (see page 8 below).

BILL PROVISIONS

SECTION-BY-SECTION SUMMARY

Sec. 1. Short title is the "Bipartisan Campaign Reform Act of 2002."

TITLE I – REDUCTION OF SPECIAL INTEREST INFLUENCE

Sec. 101. Soft money of political parties. Prohibits a national party committee, including entities directly or indirectly established, financed, maintained, or controlled by such committee or agent acting on its behalf, from soliciting, receiving, directing, transferring, or spending soft money.

In general, bans soft money spending for a "Federal election activity" by state and local party committees, including an entity directly or indirectly established, financed, maintained, or controlled by a state or local party committee (and agent acting on its behalf), or by an association or group of state or local candidates or officials.

Prohibits state/local candidates from using soft money for public communications that promote or attack a clearly identified Federal candidate, but exempts communications referring to a Federal candidate who is also a state/local candidate (but see next paragraph).

Allows state, district, or local party committees to use some funds raised under state law for an allocable share (at FEC-determined ratios) of a voter registration drive in the last 120 days of a Federal election, voter ID, get-out-the-vote activity (GOTV), and generic activity, if it: (1) does not refer to a Federal candidate; (2) does not pay for a broadcast, cable, or satellite communication (unless it refers solely to state or local candidates); (3) takes no more than $10,000 a year (or less, if state law so limits) from any person, and (4) uses only funds raised by that party committee expressly for such purposes, with no transfers from other party committees.

Prohibits funds for these accounts from being solicited, received, directed, transferred, or spent by or in the name of a national party, Federal candidate or official, or joint fund-raising activities by two or more state or local party committees.

Defines "Federal election activity" to include: (1) voter registration drives in the last 120 days of a Federal election; (2) voter identification, GOTV 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 a candidate for that office (regardless of whether they expressly advocate a vote for or against); or (4) services by a state or local party employee who spends at least 25 percent of paid time in a month on activities in connection with a Federal election.

Defines "public communications" as those made by broadcast, cable, satellite, newspaper, magazine, outdoor advertising, mass mailing (over 500 identical or substantially similar pieces mailed within 30 days of each other), or phone bank (over 500 identical or substantially similar calls made within 30 days of each other).

Defines *generic campaign activity* as one that promotes a party but not a Federal or non-Federal candidate.

State parties may spend soft money on activities that are not "Federal election activities" including: public communications referring solely to state/local candidates; contributions to state/local candidates; state, district, or local convention costs; and grassroots materials only depicting state/local candidates.

Prohibits party committees from using soft money to raise funds for use even in part on "Federal election activities" (under current law, parties may allocate costs).

Prohibits party committees or agents from raising money for, or giving or directing money to, an Internal Revenue Code §501(c) tax-exempt organization that makes disbursements in connection with a Federal (including a "Federal election activity") or a §527 tax-exempt organization (unless the §527 organization is a political committee).

Prohibits Federal candidates, officeholders, agents, or entities they directly or indirectly establish, maintain, finance, or control from raising soft money in connection with a Federal election (including any "Federal election activity") or any money from sources beyond Federal limits and prohibitions in non-Federal elections. The ban does not apply to an individual who is or was also a state or local candidate for activity allowed under state law and refers only to the state/local candidate or opponents; does not prohibit appearing, speaking, or being a featured guest at a state/local party fund-raiser.

Regardless of other soft money restrictions, allows federal candidates/officials to make: (a) unrestricted general solicitations on behalf of 501(c) organizations involved in Federal elections where solicitation doesn't specify how funds will be used, unless the organization's principal purpose is voter registration in last 120 days of Federal election, GOTV, voter ID, or generic activity where a Federal candidate is on the ballot; and (b) solicitations for 501(c) organizations involved in Federal elections specifically for such activities, or for general use by a 501(c) whose principal purpose is those activities, with solicitations only to individuals, subject to a $20,000 per donor limit.

<u>Sec. 102.</u> Increases (hard money) contribution limit for State committees of political parties from $5,000 to $10,000 per year.

<u>Sec. 103.</u> Codifies FEC regulations to require disclosure of all activity, both Federal and non-Federal. Requires disclosure of "Federal election activities" by state and local party committees and their subsidiaries and state and local candidates and officials, subject to a $5,000 threshold in aggregate activity per year. Disclosure must include all amounts raised and spent by special soft money accounts that are allowed to be used for "Federal election activities." Section 103 also ends the building fund exemption.

TITLE II – NONCANDIDATE CAMPAIGN EXPENDITURES

Subtitle A – Electioneering Communications

<u>Sec. 201</u>. Requires disclosure to FEC of disbursements for direct costs of producing and airing "electioneering communications" by any spender exceeding $10,000 annual aggregate in such disbursements, within 24 hours of the first and each subsequent $10,000 amount (counts contracts as disbursements). Defines "electioneering communication" as a broadcast, cable, or satellite advertisement that "refers" to a clearly identified Federal candidate, made within 60 days of a general election or 30 days of a primary, and, if for House or Senate elections, "is targeted to the relevant electorate" (which means it can be received by 50,000 or more persons in the state or district where the Senate or House election will occur).

Reports must include: identification of spender, custodian of books, and any entity exercising control over activity; principal place of business; identification of disbursements over $200; identification of donors of $1,000 or more; election and candidates to which communications pertain.

Exempts news events, "expenditures," "independent expenditures," and notices of debates from definition, and allows FEC leeway to add other exemptions.

Provides an alternative definition of "electioneering communication," based on *FEC v. Furgatch*, (807 F.2d 857 (9th Cir. 1987), if first definition is ruled unconstitutional.

<u>Sec. 202.</u> Defines an "electioneering communication" that is *coordinated* with a candidate, agent, or party as a contribution to, and expenditure by, the candidate or party. Treats an "electioneering communication" that is coordinated with a candidate, agent, or party as a contribution to and expenditure by candidate or party.

<u>Sec. 203.</u> Prohibits "electioneering communications" with funds from union or corporate funds, but exempts IRC §501(c)(4) or §527 tax-exempt corporations making "electioneering communications" with funds solely donated by individuals who are U.S. citizens, nationals, or permanent resident aliens (but see next section).

<u>Sec. 204.</u> Exception for IRC §501(c)(4) or §527 tax-exempt corporations does not apply if the "electioneering communication" is "targeted," *i.e.*, it was distributed from a broadcaster or cable or satellite service and is received by 50,000 or more persons in state or district where the Senate or House election is occurring.

Subtitle B – Independent and Coordinated Expenditures

<u>Sec. 211</u>. Defines independent expenditure as an expenditure by a person for a communication that expressly advocates the election or defeat of a clearly identified candidate and is not made in concert or cooperation with, or at the request or suggestion of a candidate, party, or agent.

<u>Sec. 212</u>. Adds requirement for a 48-hour notice of independent expenditures of $10,000 or more, up to 20 days before an election.

<u>Sec. 213</u>. After date of party nomination, prohibits party from making coordinated expenditures for a candidate it has made independent expenditures for and from making independent expenditures for a candidate for whom it has made coordinated expenditures.

<u>Sec. 214</u>. Directs FEC to promulgate new regulations on coordinated communications by persons other than candidates, authorized committees, or parties. Specifies that new rules will *not* require agreement or formal collaboration to establish coordination. Specifies that new rules will address issues of: (1) republication of campaign material; (2) common vendors; (3) prior employment status; and (4) substantial discussion with candidate or party. Treats expenditures by any person made in cooperation, consultation, or concert with, or at request or suggestion of, any party committee as a contribution to that party committee.

TITLE III – MISCELLANEOUS

<u>Sec. 301</u>. Codifies FEC regulations on permissible uses for campaign funds, retaining the ban on personal use.

<u>Sec. 302</u>. Bans solicitation or receipt of contributions, including soft money, *from* anyone or *by* Federal officials, while in any Federal government building used to discharge official duties.

<u>Sec. 303</u>. Bans direct or indirect contributions from such donations, in connection with any U.S. election, to a national party committee, or for any expenditure, disbursement, or independent expenditure for an "electioneering communication" (retains exemption for permanent resident aliens).

<u>Sec. 304</u>. In Senate elections, raises limits on individual and party support for a Senate candidate whose opponent exceeds designated level of personal campaign funding (threshold of

$150,000 plus 4¢ times the number of eligible voters in state). Once the "opposition personal funds amount" (personal spending of candidate minus that of opponent) exceeds the threshold by: (a) 2 to 4 times, then the limit on individual contributions to opponent is tripled; (b) 4 - 10 times, then the limit on individual contributions to opponent is raised 6-fold; (c) 10 times, then the limit on individual contributions to opponent is raised 6-fold and limits on party coordinated expenditures are lifted. Aggregate individual limit would be raised to extent of higher contribution limits; limits would be raised only to the extent of 110 percent of total "opposition personal funds amount" (see also, sec. 316).

Of amounts loaned to the campaign by the candidate, candidates can repay themselves only $250,000 from amounts raised after the election (current law contains no rule).

Sec. 305. Requires Federal candidate broadcast ads that are sold at the lowest unit rate and that include direct reference to opponents to include candidate photo or image on TV and a statement of candidate approval (printed on TV and spoken by candidate on radio).

Sec. 306. Requires the FEC to develop and provide standardized software for filing reports electronically, and requires candidates to use such software.

Sec. 307. Raises the limit on contributions to candidates from $1,000 per candidate, per election to $2,000, indexed for inflation. Also, raises the limit on contribution to national party committees from $20,000 to $25,000 per year, indexed for inflation. Raises the aggregate contribution limit from $50,000 per two-year election cycle to $95,000 per two-year cycle, and indexes it. The new limit has sub-limits of $37,500 to all candidates and $57,500 to all PACs and parties. The limit on senatorial party committee contributions to Senate candidates in an election year is raised from $17,500 to $35,000.

Sec. 308. Requires disclosure to the FEC of donations over $200 to presidential inaugural committees. Bans donations from foreign nationals.

Sec. 309. Prohibits fraudulent misrepresentation in the solicitation of campaign funds, and bans knowing and willful participation in a conspiracy to engage in such violations.

Sec. 310. Directs GAO to study and report to Congress on statistics for and effects of public funding systems in Arizona and Maine.

Sec. 311. Requires political committees to put identification on their public political advertising, including an audio statement of the candidate or sponsor in TV and radio ads. Also, in TV ads, requires a written statement of responsibility that appears in a clearly readable manner, with a reasonable degree of color contrast, for at least four seconds, and is conveyed in an unobscured, full-screen view of candidate/sponsor (or with image and voice-over).

Sec. 312. Increases criminal penalties for knowing and willful violations involving contribution/expenditure/donation amounts. For aggregates from $2,000 to $25,000 in a year, the section provides for a fine and up to one year in prison, or both; for larger amounts, larger fines and imprisonment for up to five years, or both.

Sec. 313. Extends the statute of limitations from three years to five years for criminal violations of FECA.

Sec. 314. Directs the U.S. Sentencing Commission to promulgate guidelines and make legislative or administrative recommendations for penalties for violating Federal election law. The Commission is to take into account (1) the seriousness of FECA violations; (2) enhancement for foreign nationals, large number of illegal transactions, large dollar amounts, misuse of government funds, or intent to gain benefits from the Federal government; (3) consistency with FEC regulations; (4) aggravating or mitigating circumstances; and (5) 18 USC §3553(a)(2) (relating to respect for the law, deterrence, protecting the public, etc).

Sec. 315. Increases penalties for making contributions in the name of another. For knowing and willful violations, the civil penalties are set between 300 percent of the violation amount and the greater of $50,000 or 1000 percent of the violation amount. For criminal penalties in amounts over $10,000, imposes penalties of up to two years in prison and higher fine amounts.

Sec. 316. Provides that in Senate elections, in determining the aggregated amount of expenditures from personal funds, the "gross receipts advantage" is to be taken into account, and provides a formula for calculating it (50 percent of gross receipts of candidate minus 50 percent of gross receipts of wealthy opponent, as of June 30 and December 31 of prior year) (see also section 304).

Sec. 317. Clarifies that the ban on political contributions does not apply to U.S. nationals (see also section 303).

Sec. 318. Bans contributions to candidates and parties by individuals 17 years of age and younger.

Sec. 319. Modifies the individual contribution limits for a House candidate who is running against a wealthy opponent. Once the "opposition personal funds amount" (personal spending of candidate minus that of opponent) exceeds the $350,000 threshold, then limit on individual contributions to the opponent is tripled and the limit on party coordinated expenditures for the opponent is lifted. Aggregate individual limit would be raised to extent of higher contribution limits, and limits would be raised only to extent of 100 percent of the total "opposition personal funds amount."

TITLE IV – SEVERABILITY; EFFECTIVE DATE

Sec. 401. Provides that if "any provision of the Act or its amendments, or its application to any person or circumstance, is held unconstitutional, the remainder of the Act and its amendments, and its application to any person or circumstance, shall not be affected by the holding."

Sec. 402. The effective date of the Act is Nov. 6, 2002, unless otherwise provided. Also provides a transition rule for soft money: Prior to January 1, 2003, parties may spend soft money raised before the effective date to retire outstanding debts and obligations in connection with elections held through November 5, 2002, provided that no soft money is used to repay hard money debts. Further, at no time after the effective date may national parties use soft money to defray costs of construction or for the purchase of an office building or facility.

The FEC must promulgate regulations within 90 days to carry out the provisions of Title I (related to soft money), and within 270 days to carry out other provisions of the Act.

Sec. 403. Provides that an action for declaratory or injunctive relief challenging the constitutionality of the Act shall be filed in U.S. District Court for the District of Columbia and heard by a three-judge court; a final decision shall be reviewable only by direct appeal to the U.S. Supreme Court. Both courts shall give expedited consideration to the case. Members of the Senate and House of Representatives have the right of intervention.

TITLE V – ADDITIONAL DISCLOSURE PROVISIONS

Sec. 501. Requires all reports filed with the FEC to be posted on the Internet and available for inspection within 48 hours, or 24 hours if filed electronically.

Sec. 502. Requires the FEC to maintain a central web site of all publicly available election-related reports.

Sec. 503. Requires candidates to file quarterly reports in non-election years, and national party committees to file monthly reports in all years.

Sec. 504. Requires broadcasters to maintain and make available for public inspection records of broadcast time requests by candidates or by others whose messages relate to political matters of national importance.

[This section was prepared using CRS Report for Congress No. RL31290 (Feb. 20, 2002), "Campaign Finance Bills Passed in the 107th Congress . . . ," by Joseph E. Cantor and L. Paige Whitaker. Also recommended by the same authors is, "Selected Key Differences Between McCain-Feingold and Shays-Meehan Bills, As Passed," which may be found in CRS's *Campaign Finance Reform Briefing Book*.]

ADMINISTRATION POSITION

No official Statement of Administration Policy has been received. On March 15 of last year, President Bush wrote to Senator Lott, and said:

> "As the Senate prepares to consider campaign finance reform legislation, I wanted to highlight my principles for reform. I am committed to working with the Congress to ensure that fair and balanced campaign finance reform legislation is enacted.
>
> "These principles represent my framework for assessing campaign finance reform legislation. I remain open to other ideas to meet our shared goals.
>
> "I am hopeful that, working together, we can achieve responsible campaign finance reforms."

Accompanying the letter was a document, entitled "President Bush's Reform Principles," which is available on the White House web site (http://www.whitehouse.gov/news/releases/2001/03/20010315-7.html) and which is reprinted below:

"President Bush's Reform Principles

> **"Protect Rights of Individuals to Participate in Democracy:** President Bush believes democracy is first and foremost about the rights of individuals to express their views. He supports strengthening the role of individuals in the political process by: 1) updating the limits established more than two decades ago on individual giving to candidates and national parties; and 2) protecting the rights of citizen groups to engage in issue advocacy.
>
> **"Maintain Strong Political Parties:** President Bush believes political parties play an essential role in making America's democratic system operate. He wants to maintain the strength of parties, and not weaken them. Any reform should help political parties more fully engage citizens in the political process and encourage them to express their views and to vote.
>
> **"Ban Corporate and Union Soft Money:** Corporations and unions spend millions of dollars every election cycle in unregulated 'soft' money to influence Federal elections. President Bush supports a ban on unregulated corporate and union contributions of soft money to political parties.

"Eliminate Involuntary Contributions: President Bush believes no one should be forced to support a candidate or cause against his or her will. He therefore supports two parallel reforms: 1) legislation to prohibit corporations from using treasury funds for political activity without the permission of shareholders; and 2) legislation to require unions to obtain authorization from each dues paying worker before spending those dues on activities unrelated to collective bargaining.

"Require Full and Prompt Disclosure: President Bush also believes that in an open society, the best safeguard against abuse is full disclosure. He supports full, prompt and constitutionally permissible disclosure of contributions and expenditures designed to influence the outcome of Federal elections, so voters will have complete and timely information on which to make informed decisions.

"Promote Fair, Balanced, Constitutional Approach: President Bush believes reform should not favor any one party over another or incumbents over challengers. Both corporations and unions should be prohibited from giving soft money to political parties, and both corporations and unions should have to obtain permission from their shareholders or dues-paying workers before spending treasury funds or dues on politics. President Bush supports including a non-severability provision, so if any provision of the bill is found unconstitutional, the entire bill is sent back to Congress for further adjustments and deliberations. This provision will ensure fair and balanced campaign finance reform."

COST

The Congressional Budget Office has not prepared an official estimate of costs. In the past, the chief costs have been for increased enforcement by the Federal Election Commission. As always, however, neither the proponents nor the opponents count the costs in terms of dollars, but in terms of the integrity of government or in terms of free speech and free association.

POSSIBLE AMENDMENTS

As noted above, the bill is amendable, and amendments may be offered. Proponents are confident that they have the votes to defeat any amendment.

Senators McCain and McConnell have been in discussions about a package of "technical amendments" that Senate McConnell is advocating. It has been reported that Senator McCain finds some of the proposals acceptable, and others neither acceptable nor "technical." If a "technical package" moves, it will be moved apart from H.R. 2356 itself because Senator McCain and others do not want to see the bill amended in the Senate (thereby requiring that it be returned to the House or sent to conference).

For a discussion of some of the issues that Senators McConnell and McCain are considering, see 148 *Congressional Record* S1528-30 (daily ed. March 5, 2002).

Staff contact: Lincoln Oliphant, 224-2946

[See also, RPC's "Prohibiting 'Electioneering Communications' Means Imposing Political Censorship," issued March 15, 2002.]