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# The Changing Role of Soft Money on Campaign Finance Reform. The Birth of the 527 and its Consequences.

Valerie Rose El' Ghaouti

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THE CHANGING ROLE OF SOFT MONEY ON CAMPAIGN FINANCE REFORM.  
THE BIRTH OF THE 527 AND ITS CONSEQUENCES.

by

VALERIE R. EL`GHAOUTI

Under the Direction of *Dr. Michael Binford*

ABSTRACT

In a time when record numbers of dollars are being spent on campaigns the unregulated dollars are flowing faster than ever. Hundreds of millions of dollars in independent expenditures are being used for “issue advocacy”, print and broadcast advertising, which does not expressly endorse or oppose a candidate for office. The one-time campaign finance ceiling has become the campaign finance basement. Individuals are able to give unlimited dollars to 527 organizations, which function outside of all campaign finance regulation and provide a new path for the flow of political dollars. Since the passage of the Bipartisan Campaign Reform Act, commonly known as the McCain-Feingold Act, federally regulated lobbyists and PACS are being edged out of the political dollar due to contribution limits. It is in 1996 that we witness the birth of 527 organizations and the flourishing growth of soft money spending in the campaign process.

INDEX WORDS: 527 Committees, Soft Money, Political Campaign Finance, McConnell v FEC, Campaign Spending, Plurality, Campaign Contributions, Campaign Expenditures, Bipartisan Campaign Reform Act, BCRA, McCain-Feingold Act, Political Action Committees, PACs, Dissertation, Georgia State University

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A Thesis

Presented in Partial Fulfillment of Requirements for the Degree of

Master of Arts

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*The changing role of soft money on campaign finance reform.  
The birth of the 527 and its consequences.*

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## **Introduction**

In a time when record numbers of dollars are being spent on campaigns the unregulated dollars are flowing faster than ever. Hundreds of millions of dollars in independent expenditures are being used for “issue advocacy”, print and broadcast advertising, which does not expressly endorse or oppose the nomination or election of a candidate for federal office (Slabach, 2006 pg.10), beyond the scope of regulation or limits. The one-time campaign finance ceiling has become the campaign finance basement.

“It is evident that individuals, rather than organizations are by far the most important source of campaign funds. In congressional elections, where PACS are most active, candidates raised over 3 times from individuals directly than they did from PACs. PACS themselves receive their funding from individuals (Ansolabehere, 2003 pg. 109)”.

The favors gained for individuals and corporations are not well hidden in the form of appointments and private meetings regarding regulation of their own industry (Lewis 2004) Individuals are able to give unlimited dollars to 527 organizations. 527 organizations, named after a section of the U.S. tax code established in 1975, allow any individual or group to advocate for political issues to educate the public, but are not to be used for the purpose of “express advocacy” of a candidate (Makinson 2000). 527 organizations otherwise known as ‘stealth PACS’ (Harvard Law Review, 2001), function



entirely outside of all campaign finance regulation and provide a new path for the flow of political dollars. Since the passage of the Bipartisan Campaign Reform Act (BCRA), also known as the McCain Feingold Act, federally regulated lobbyists and PACS are being edged out of the political dollar due to the contribution limits applied to their entities. It is in 1996 that we witness the birth of 527 organizations and the flourishing growth of soft money spending in the campaign process.

The purpose of this paper is to document the evolution of soft money on political campaigns. In particular, I ask: what does the increase of 527 organizations mean for elections? My hypothesis is that the 527 organizations reduce political accountability, contribute to the perception of corruption, and establish a new bias for the wealthy providing them a voice greater than their vote. It is intensifying the campaign process driving several consequences for American Democracy.

Contributions to 527s are soft money. Soft money is extremely difficult to trace or regulate. "Soft money is any money raised without respect to the source and size limitations of the Federal Election Campaign Act (Slabach, 2006 pg 9)." Hard money is a direct contribution to a political candidate that is regulated under federal law. "Hard money is the designation used for donations made to the candidate or the campaign; hard money is subject to all the restrictions of the campaign finance laws (Powell Coward 2003 pg. 224)." Soft can be raised by political parties and organizations for general purposes but not designated for a particular candidate. Historically, soft money was completely unregulated. Candidates did not have to report their 'soft money' contributions (Powell Cowart, 2003). While reporting requirements have been established there is still little to no enforcement.

## Literature

There are two schools of thought in terms of campaign finance, public-interest theory and economic theory (Abrams 1978). In terms of public interest, the position is “regulation is supplied in response to the demand of the public for the correction of inefficient or inequitable market practices (Abrams, 1978 pg. 246).” The economic school of thought is derived from the idea of rational thought, “self-interested individuals, groups, or industries seek regulation as a means of serving their own private interests (Abrams, 1978 pg. 247).” “Campaign fundraising is widely viewed as a market for public policy. Donations come from firms, associations, and individuals that seek private benefits in the form of subsidies, favorable regulations, and other policies set by the government (Ansolabehere 2003 pg.109).”

Soft money and campaign finance reform are in dire need of critical evaluation in order to determine whether they are functioning in the way they were intended. Do campaign finance laws need improvement, or should an entirely new approach be established to address 527 organizations? Soft money, which refers to any contribution that is not regulated by federal election law (Powell, 2003), has become the political party drumbeat of any election. “Soft money has become an accounting convention used by the national party organizations to raise money (Ansolabehere, 2003 pg.111).” Due to the few presidential elections that have occurred since the onset of 527 activities, the most effective method of study for this question is historical analysis of campaign finance, events, laws, court cases, and their combined consequences.

## History

To fully comprehend the present dilemma, it is vital to understand past campaign finance practices, including diverse aspects such as the laws that govern them, the court decisions that affect them, attempts at reform, the current spending levels, the groups spending the money, as well as how they are spending it. By viewing this topic through an historical lens, it may be possible to discover what the future consequences will be for campaigns, finance, and reform. Campaign finance reform has been a topic of political debate since Jackson closed the Bank of the United States in 1832 and the Bank attempted to stop him with a campaign of their own spending a record \$42,000.00. (Smith, 1991) Soft money became the big debate of campaign finance in the 1980s and the staple of national party fund raising. (Corrado Mann Ortiz Potter and Sorauf, 1991) There are constitutional questions tied to campaign finance, specifically the First and Fifth Amendments, court cases such as Buckley v. Valeo, reforms such as McCain-Feingold (BCRA), and the growth of soft money through new pathways to the same destination. The growth of campaign spending is traceable from 1972 to the present, but the new issue at hand is soft money.

The numbers have grown over time and most dramatically in the two most recent presidential elections. In the 1970s and 1980s Political Action Committees (PAC) were the big money makers of the day. A PAC is an “independent organizations, or more often, political arms of corporations, unions, or interest groups (Burns 1998 pg.238).” PACs became a most popular funding source. In the mid to late 1970’s and throughout the 1980’s the dollars flowed relatively freely through Political Action Committees. PACs making independent expenditures, “funds spent for or against a candidate by committees not

formally connected to a candidate nor subject to federal spending regulations (Burns 1998 pg.240)”, had virtually unfettered influence over the campaign, and still do.

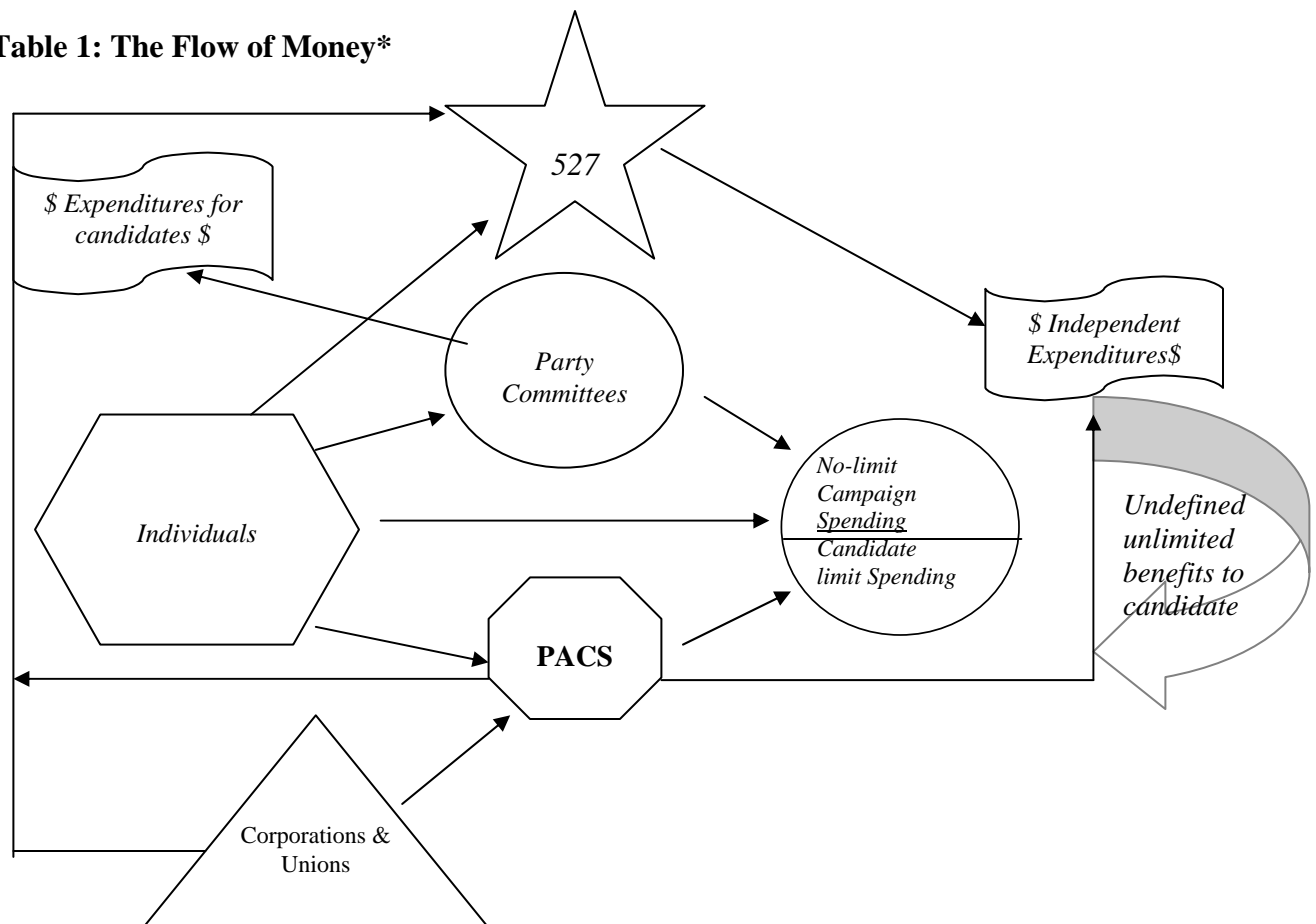
The curtailing of PAC money through contribution limits did not stem the flow of campaign funding. “Even though direct contributions by a PAC to a federal candidate are still limited to \$5000 in each election, the number of political action committees is so large that PAC contributions totaled almost \$180 million in the 1996 congressional campaigns (Burns 1998). Extraordinary fund raising and spending of PACS in 1994 did bring the issue of PAC practices into the light.

*“Soft money came to be recognized as the prime loophole in campaign finance law that the parties exploited to finance their 1996 campaigns. The parties focused on raising record amounts of soft money, then spending it on highly visible “issue ad” campaigns (Keen 1997 pg.19).”*

The 527, due to its unregulated and unlimited money raising ability, has single-handedly made the public funding for presidential elections the floor of campaign finance. “The public subsidies given to the candidates essentially served as a floor for campaign spending. The only ceiling on spending, for practical purposes, was the fund-raising capacity of parties and organized groups and their willingness to devote resources to the race at the top of the ticket (Corrado, 2000 pg.80).” Democrats jumped on the 527-organization wagon with great vigor in 1996. “In 1996 the IRS made explicit that organizations engaged in federal issue advocacy and voter guide campaigns, though unregulated by the FECA, may also file under section 527 (Harvard Law Review, 2001 p. 2200)”. The Republicans appeared to hold off on this tactic possibly thinking it would quickly become more regulated and restricted. When the silence was deafening in response to 527 activities, the Republicans joined the activities and through corporate contributions and were able to surpass their Democratic predecessors in volume and speed.

While inflation can account for some of the election spending increase it still does not explain the rapid growth in recent times. The rapid growth of soft money spending called into question where the money was coming from and what the donors expected to obtain from their contributions. The purpose of finance reform was to address questions of corruption and “clean-up” campaign finance in the post-Watergate era. The dramatic events of the Watergate case made it impossible for politicians to ignore the cry of the people. However, the 527s themselves are virtually unfettered, without regulation and are rapidly becoming the center of soft money fundraising functioning outside of campaign finance regulation. To understand this one need only look at the standard flow chart for political funding and see where the 527 appear.

**Table 1: The Flow of Money\***



\*Prior to BCRA it is important to note that there would have been lines from the PACS, Parties, and campaigns to the 527 entities.

## **FECA: Serious Campaign Finance Reform?**

American campaigns were dominated by party politics and the political “fat cats”, wealthy political contributors, throughout much of the 20<sup>th</sup> century (Sorauf, 1992 page 2). As campaigns became more candidate driven rather than party driven the flow of money diverted from the party to the candidate and their campaign (Sorauf 1992). The highly publicized corruption in Washington came to a head during the Watergate scandal. The Nixon administration pushed Congress to add amendments to FECA, but Congress eventually passed campaign finance reform with a variety of provisions.

The Federal Election Campaign Act (FECA), passed in 1971, is one of the pieces of landmark legislation in campaign finance history. FECA was born from the corruption charges and concerns of its time, but was perhaps passed too rapidly and without the consideration it deserved. Rampant corruption had changed the expectations of the people on their representatives as well as created a movement for the restriction of campaign fundraising. FECA was enhanced for a more aggressive approach to campaign finance reform in 1974 (Rosenkranz, 1998). By creating the Federal Election Commission (FEC), Congress created the appearance that finance reform was being taken seriously. Limits were established on individual contributions, as well as those from groups and even the candidate’s family. Additional reporting requirements and the establishment of a fundraising ceiling further reinforced the act. The restrictions it placed on candidates left the legislation open for challenge in the courts, which is exactly where it went. In an effort to inoculate themselves from challenge during the 1976 election Congress drove a test case through the courts (Rosenkranz 1998). Thirteen months after FECA had been enacted the Supreme Court drained FECA of much of its strength.

The enactment of the Federal Election Campaign Act prompted the landmark constitutional court case, *Buckley v. Valeo*. Because *stare decisis*, “the doctrine that once a legal issue has been settled it should be followed as precedent in future cases presenting the same question (Epstein 2004 pg,873)”, is taken very seriously it stands to be the primary blockade between the call by the people for additional campaign finance reform and its actual fruition. Thus, it is necessary to understand the limitations of FECA and the facts of this momentous case, the constitutional questions as they apply to the first and fifth amendments, and the consequences of the court’s decisions.

### **1971 Federal Election Campaign Act (Burns 1998).**

- Establishes a Federal Election Commission appointed by the president with the advice and consent of the Senate to regulate the campaign financing of candidates for president, senator, and representative
- Requires all candidates to designate one principal campaign committee to report all contributions and expenditures
- Provides for public financing of presidential general election campaigns (with funds from the tax check off) and for partial public financing (on a matching basis) of presidential nominating campaigns.
- Provides for subsidies to the two national parties for their convention expenses and to any minor party that polled 5 percent of the total vote in the previous presidential election.
- Limits spending by the candidates for presidential nomination (on a state-by-state basis and in total) and in the presidential general elections for those candidates who accept public funding.
- Limits the amounts that national parties may spend on presidential campaigns and on individual congressional and senatorial campaigns.
- Sets a limit of \$1000.00 on the amount that any individual can give to a candidate for the U.S. Senate or for the U.S. House of Representatives in the primary election, a limit of \$1000.00 per candidate in the general election, and a limit of \$5000.00 in general election for multi-candidate organizations (political action committees).

- Sets an overall limitation of \$25000.00 on the amount that any individual can donate to all candidates for federal office in an election cycle (no similar limitations applicable to political action committees).
- Sets no limit on the amount of their own money candidates can spend on their campaign.
- Sets no limit on the amount that individuals or groups can spend independently (that is, on activities not coordinated with a candidate's campaign).

(Burns, 1998 pg 325)

It is worth noting that while the FEC was established, it had little to no enforcement power. The lack of the power of enforcement suggests that it was established for the purpose of public appeasement than any regulation or enforcement. The FEC was also an excellent step toward plausible deniability for legislators. Providing almost a shield between the politician and the people allowing them to state that if they were doing anything wrong the FEC would have sanctioned them. One of the greatest political tools is plausible deniability, which is what the FEC provides to the very body that established it. Perception is reality; if the people perceive that government is taking action to clean up politics the people can believe that government is no longer corrupt.

In 2000 FECA was updated by Congress to require reporting of the source, date, and amount of money contributed to a 527. This change had little to no effect upon the activities of 527s. It may be the time lapse in reporting or the lack attention paid by the FEC to these activities that has left the activities of 527s unchanged but that is currently unverifiable. The new law also fails to address sophisticated organizations from filing as a 501(c) organization that are still currently not required to report their contributions (Harvard Law Review, 2001).

The public funding check off was an effort to not only help the candidates on a more even playing field, it also provided every tax paying citizen the opportunity to



participate in some way. It provides an easily accessible conduit to “participation” without a great deal of effort. When public funding provided a larger percentage of campaign spending, it was extremely useful balancing the game. Because the amount of money spent has increased so dramatically and the wealthy primary commonly reduces the playing field, the public funding limits are rarely if ever considered.

The spending limits were the big target in the Buckley case. With TV becoming a more powerful tool for campaigning, it seems unlikely that the judges who sat on the bench at that time could have imagined how television, cable, satellite dishes and communications overall would develop through technology. At that time, seeing money as the only way to obtain air time on television and radio but never imagining that anyone could afford to buy out an entire market, spending limits were the big issue.

### **Buckley v Valeo**

In *Buckley v. Valeo* (1976), Buckley, the plaintiff, made the argument that his first and fifth amendment rights had been violated. Establishing the argument as a matter of freedom of expression allowed Buckley to seek a judgment held to the standard of strict scrutiny requiring a compelling governmental interest to limit this freedom (Grant, 2003). His argument raised two questions that ultimately went to the U.S. Supreme Court: Was FECA constitutional? Is money speech? We see the democratic principles of free speech and public interest appear to be at odds in this case.

*“A common problem in democratic societies, though, is that value pluralism may lead to a “clash of rights” in which policy choices pit one democratic value against another (Grant 2003, Sniderman et al. 1996 pg. 453).”*

The clash of rights makes the lack a unanimous decision less surprising. The decision did establish that contribution limits were acceptable while spending limits were not. Significantly, this precedent effectively equated money to free speech or expression by limiting contributions but not spending. In other words, FECA, the court decided, limited how much any one person or organization could *give* a campaign, but it did not apply to how much any one candidate could *spend* on their campaign. “The Court did, however, recognize a legitimate legislative interest in preventing corruption or the appearance of corruption; it was on this basis alone that the Court upheld the FECA’s contribution limits (Grant 2003 pg.455).” This act established an important distinction that would open the door to future changes in campaign finance. It also established an important conundrum in terms of party funds being raised and spent in support of campaigns. The party would work for the candidate and raise its own funds for the campaign, but spend money on the campaigns to build their party strength. This begs the question, are the contributors subject to limits or are they receivers with unlimited spending ability? (Howard, 2007)

The question of whether money equals speech was the larger question in Buckley, because television and radio air time can only be bought with money. Television and radio time is the most powerful method of communication. No other means of communications are encountered by as many people at once nor do they have the imagery that television and even radio provide. It’s also unlikely that the sitting judges on the bench at that time could have foreseen the amounts of money that would be poured into the political process that could virtually buy entire markets.

This case law however makes it virtually impossible for the people to have the right to establish campaign finance laws, a political finance protocol if you will, in their democracy. Due to the powerful respect granted to standing case law prior decisions are rarely overturned. Case law based upon the rules of strict scrutiny relating to a constitutionally protected right are even less likely to be overturned. Proposing regulation specific to the 527 not in terms of campaigning but in terms of truth in advertising, or requiring documented proof of claims made in the advertising may be more beneficial. Just as it is not lawful to yell fire in a crowded theatre it may also not be lawful to mislead the voters with deception.

In the case of *Buckley v. Valeo*, a great deal of the court's decision centered on the freedom of speech issue. In terms of campaign finance, the standard argument declared that money is speech because it is necessary to buy TV air time, radio time, mailings, and any other mass communication methods. Due to the ever-increasing cost of television ads and radio time, this argument and the court's ruling seemed plausible at the time, but the court never could have imagined what would be said or how much would be spent to say it in the future.

If there were a compelling governmental interest established for the purpose of campaign finance reform it would allow the court to, in essence, overturn *Buckley*. To argue that it is not the money spent but the *time and manner* in which it is spent may provide new traction to this argument. This could be used to make it not a question of freedom of expression but an issue of equality. "...equality-based arguments are at the forefront of elite discourse on campaign finance (Grant 2003 pg.455)." The precedent set by *Buckley* is what keeps even the people from establishing new finance laws. The ruling

in Buckley will first have to be overcome before the people will be able to establish a new law without the likelihood of legal challenge and loss. It is apparent that no one case is going to topple Buckley in one fell swoop; it will take a series of cases whittling down the argument until eventually the standing case law will no longer be applicable (Rosenkranz 1998). A greater concern may turn out not to be the spending limits, but the lack of oversight of those who are not monitored or regulated at all. While the court could reverse Buckley it has proven over and over again to be highly unlikely.

Independent expenditures are “funds spent for or against a candidate by committees not formally connected to a candidate nor subject to federal spending regulations (Burns, 1998, pg240)”. Limits of independent expenditures were a key aspect of Buckley that the Supreme Court found to be unconstitutional (Burns, 1997). In 1975 the FEC followed suit approving the Sun Oil Company request to form a PAC (Cumming, 1997) opening the door to corporations as well as individuals, groups, and organizations. Special interest groups, corporations, PACs, organizations, and individuals can make independent expenditures. They have only one limitation, they are not to work in collusion with the campaign or candidate. This limitation provides them virtually unfettered influence over the election. Every person has the constitutional right to organize to influence government (Burns, 1998).

Parties also took advantage of this new category of ‘organization’ which allowed them to concentrate their fund raising and contribution in places where it would be most successful for them (Sorauf 1992). Organizations were the bi-product of 1974 FECA amendments. PACs ran with this new development and as instructed went forth and multiplied (Sorauf, 1992). “A heightened pluralism came to all of American politics, but it

came to campaign finance almost for the first time in the 1970s and 1980s (Sorauf, 1992 pg.99)”. Their pre-existing establishment as a party allowed them to rapidly establish a new flow of money for elections through tax-exempt organizations.

## **BCRA**

One of the most recent pieces of legislation established by Congress is called the Bipartisan Campaign Reform Act (BCRA). The Bipartisan Campaign Reform Act (BCRA) was sponsored in large part by Senators John McCain and Russ Feingold (Powell 2003). BCRA had been floating around Washington in some form since 1997, but wasn’t passed until Valentine’s Day 2002 (Lewis 2004). President George W. Bush signed this act into law shortly before the 2004 presidential primary.

BCRA prohibited the raising of soft money by parties (Sec 101), required state and local parties to pay for federal election activities with hard money only (Sec 323), prohibited federal candidates and officeholders from raising or spending soft money (Sec 323), prohibited corporations and unions from using soft money for electioneering communications (Sec 203), required disclosure of electioneering communications, increased contribution limits (Sec 102), required political parties spending money in a general election campaigns to choose between making coordinated expenditures on behalf of its candidate, or independent expenditures on behalf of its candidate, but not both (Sec 213), and prohibited minors from contributing to candidates or parties (Sec 318). All of these were upheld in *McConnell v FEC* except the minor contribution restriction and the coordinated expenditures requirement.

## McConnell v. FEC

Summary of the Supreme Court's decision: December 10, 2003. The Supreme Court issued a decision in *McConnell v. Federal Election Commission*, the landmark legal case challenging the constitutionality of the new McCain-Feingold campaign finance law, formally known as the Bipartisan Campaign Reform Act of 2002 ("BCRA").

[www.fecwatch.org](http://www.fecwatch.org)

BCRA was designed to address campaign finance practices, especially the proliferation of soft money, as well as the increasing amount and ferocity of issue advertising. Issue advertising can be likened to the great mana from heaven for politicians in that it allows any one person or organization to sponsor advertising based upon an issue providing the candidate complete deniability. The key to issue advertising is that it does not say "vote for" or "vote against," but it can certainly imply that a given candidate may be better or worse on an issue as opposed to another candidate. A primary concern is that these organizations are able to say virtually anything, whether true or untrue, while the candidate could reap the benefits without anyone taking responsibility for the validity of the claims made in the so called "issue ad." "Best of all for the campaign, these groups slur and slash personal reputations in full public view, conveniently allowing the candidate to feign ignorance and assume a more dignified posture of civility and decorum (Lewis 2004 pg.27)." While a party sponsored organization would have more public accountability generally the sources of funding are so obscured people would scarcely know it was tied to a party.

The practice of bundling occurs when a person pledges to accrue several checks from others for a specified amount. The fundraising practice known as "bundling" no

longer allowed in hard money fund raising has been identified as highly successful by the new money of organizational soft money (Lewis, 2004). The practice of bundling funds was at issue in the 2004 election. In the case of the 2004 election George W. Bush had a private organization called “The Pioneers” who pledged to raise \$100,000.00 each. They did this by bundling 100 \$1,000.00 checks together from various sources (Lewis 2004). The practice of bundling was not a new one, as was commonly used by PACs to skirt the issue of contribution limits. “...A PAC, for example, solicits contributions from its members made out to a particular candidate and then turns these contributions or otherwise arranges for them to be channeled to that candidate. Because the contributions technically originate with the person who signs the contribution check, the contributions involved do not count toward the \$5,000.00 limit on the amount the PAC can contribute to a candidate (Slabach, 2006 pg.175).” The question of whether the amassing of money for a candidate can lead to corrupt behaviour or behaviour that at least appears to be corrupt can be seen in the fact that George W. Bush appointed nineteen Pioneers to be ambassadors with one becoming a cabinet member (Lewis 2004).

Some would say that it is not an act of corruption to reward someone who supported you but it certainly creates the appearance of corruption perhaps taking the form of a quid pro quo agreement. Quid pro quo, of course, meaning an agreement in which something is given in return for a favor. It was, in effect, as if President Bush was saying, “if you raise one hundred thousand dollars for my election I will make you an ambassador.” It is difficult to know how many contributors were rewarded because many of the Pioneers were never identified. Whether the agreement actually existed or not is irrelevant because even the appearance of corruption erodes the democratic process. The

2002 Bipartisan Campaign Reform Act (BCRA) made no efforts to prohibit or even discourage the practice of bundling by 527s or other soft money organizations because they have no contribution limits. If this issue was worthy of being addressed by hard money legislation, it is difficult to determine why this practice is now acceptable in the alternative venue with a highly similar if not same purpose.

“The Act placed significant restrictions on the receipt and expenditure of ‘soft money’ by national political parties, banned the use of corporate and labor union treasury funds for ‘electioneering communications,’ and required disclosure of electioneering communications by any individual or entity made within 60 days of a general election or 30 days of a primary (Slabach 2006 pg.13).” Electioneering communications is “any broadcast, cable, or satellite communication” which “refers to a clearly identified candidate for Federal office” as defined by the BCRA (Slabach 2006). This was specifically targeted at so called *issue advertising*.

BCRA did increase the amount of money people as individuals would be able to contribute to the federal election to \$10,000.00 as well as their overall contribution limit to \$30,000.00. It also raised and indexed individual contribution limits. The provision for the practice of bundling by party sponsored organizations was addressed in section 323 of the act, barring the party, any member, or representative there of from collecting, accepting, or directing soft money. However, based upon the actions of the Pioneers in 2004 and the silence of the FEC it doesn't appear to have been highly effective. McCain had been working toward campaign finance reform for about 7 years, and in one fell swoop President Bush became the “reformer with results” candidate signing the act into law while at the same time telling the Republican National Committee to challenge it (Lewis 2004).



“Within weeks, the Republican National Committee became one of approximately 80 special interests suing in federal court to have the new law declared unconstitutional on the grounds that it violates free speech (Lewis 2004 pg.32).” This shows that the appearance of being pro-reform is understood in Washington to be something the people want and that it is an excellent political tool. If reform were something the American people viewed negatively, the politicians certainly would not go out of their way to appear to support it.

## Current Limits

Today the limits on spending are straightforward and available through a variety of sources. The following table was provided by [www.opensecrets.org](http://www.opensecrets.org).

**Table 2: Campaign Giving Limits**

	To any candidate committee (per election <sup>1</sup> )	To any national party committee (per year)	To any PAC, state/local party, or other political committee (per year)	Aggregate total
Individual can give:	Pre-BCRA: \$1,000	\$20,000	\$5,000	\$25,000 per year
	2004 Cycle: \$2,000, subject to aggregate limit <sup>2</sup>	\$25,000 per party committee, subject to aggregate limit	\$10,000 to each state or local party committee (Levin funds) <sup>3</sup>  \$5,000 to each PAC or other political committee, subject to aggregate limit	\$95,000 per two-year election cycle as follows: <ul style="list-style-type: none"> <li>▪ \$37,500 per cycle to candidates; and</li> <li>▪ \$57,500 per cycle to all national party committees and PACs (of which no more than \$37,500 per cycle can go to PACs)</li> </ul>
	2006 Cycle <sup>4</sup> : \$2,100, subject to aggregate limit	\$26,700 per party committee, subject to aggregate limit	\$10,000 to each state or local party committee (Levin funds)  \$5,000 to each PAC or other political committee, subject to aggregate limit	\$101,400 per two-year election cycle as follows: <ul style="list-style-type: none"> <li>▪ \$40,000 per cycle to candidates; and</li> <li>▪ \$61,400 per cycle to all national party committees and PACs (of which no more than \$40,000 per cycle can go to PACs)</li> </ul>
Multicandidate committee can give <sup>5</sup> :	Pre-BCRA: \$5,000	\$15,000	\$5,000	No limit
	BCRA: Same	Same	Same	Same
Other political committee can give:	Pre-BCRA: \$1,000	\$20,000	\$5,000	No limit
	2004 Cycle: \$2,000	\$25,000 per party committee	\$10,000 to each state or local party committee (Levin funds) <sup>3</sup>  \$5,000 to each PAC or other political committee	Same
	2006 Cycle <sup>4</sup> : \$2,100	\$26,700 per party committee	\$10,000 to each state or local party committee (Levin funds)  \$5,000 to each PAC or other political committee	Same

It is not surprising that the average American citizen rarely approaches these limits. These limits affect the corporations and the extremely wealthy that would be contributing as a form of investment. 101,400 dollars is more than five or six average American households combined take in per year. The 527 is not subject to such limits and is therefore a venue for those who want to give more than regulation may allow. This only applies to the contributions limited by FECA and BCRA not those contributed to 527s.

BCRA drove *McConnell v. FEC* to the Supreme Court on December 10<sup>th</sup>, 2003 with the purpose of challenging BCRA on constitutional grounds. *McConnell*, in reality, consisted of eleven different suits, the culmination of which became known as *McConnell v. FEC*. In a majority decision of 7-2, the court upheld the prohibition of soft money fundraising by federal officeholders and candidates, and required all state and local activity to be funded by hard money. Thus, the candidate and party were effectively barred from actively raising soft money. A significant aspect of this case was the limitation put on both corporations and unions, as the court ruled that they would not be able to raise money for the purpose of “electioneering” on behalf of any candidate.

As long as campaign finance is supposed to be regulated and the rules are written and enforced by those who it regulates, campaign finance practices will evolve faster than the regulation. *McConnell* did not challenge the increases to individual contribution limits for two possible reasons: people were not concerned that individuals could have a truly corrupting effect on the process even with the increases, and politicians saw the need for individual increases given the increase in inflation since the limits were set.

The table below summarizes the Court's decisions on the constitutionality of the major components of BCRA.

**Table 3: Supreme Court Holdings on BCRA Issues**

	<b>What BCRA does</b>	<b>Supreme Court decision</b>	<b>Impact of decision</b>
<b>National party soft money</b>	Prohibits national parties from raising or spending soft money	Prohibition upheld	National parties may not raise or spend soft money
<b>State and local party "federal election activities"</b>	Requires state & local parties to pay for federal election activities entirely with hard money or a mix of hard money and "Levin funds."	Requirement upheld	State and local parties must use hard money (or hard money and Levin funds) for federal election activities
<b>Soft money fundraising by federal candidates and officeholders</b>	Prohibits federal candidates and officeholders from raising or spending soft money, with certain exceptions.	Prohibition upheld	Federal candidates and officeholders may not raise soft money (with certain exceptions)
<b>"Sham" issue ads; Prohibitions</b>	Prohibits corporations and labor unions from using soft money to pay for "electioneering communications" -- broadcast ads that mention a federal candidate or officeholder within 30 days of a primary or 60 days of a general election and are targeted to that person's constituents (certain exceptions apply).	Prohibition upheld	Corporations and labor organizations may not use soft money to pay for electioneering communications that run within 30 days of a primary election or 60 days of a general election
<b>Sham issue ads; Disclosure</b>	Requires disclosure of "electioneering communications" (defined above) in excess of \$10,000 per year	Disclosure requirement upheld	Electioneering communications must be disclosed to the FEC
<b>Contribution limits</b>	Increases the dollar limits on contributions from individuals to candidates and political parties	Increased limits upheld	Individuals may make larger contributions to candidates and political parties (review those limits <a href="#">here</a> )
<b>Independent &amp; coordinated expenditures by political parties</b>	Requires a political party spending money in a general election campaign to choose between making coordinated expenditures on behalf of its candidate, OR independent expenditures on behalf of its candidate, but not both	"Choice of expenditure" rule declared unconstitutional	A political party may now make both coordinated expenditures and independent expenditures on behalf of its candidates in the same general election campaign
<b>Contributions by minors</b>	Prohibits minors from making contributions to candidates and political parties	Prohibition on contributions by minors declared unconstitutional	Minors may now make contributions to candidates and political parties

\*<http://www.fecwatch.org/law/court/mcconnelltable.asp>

The final two conditions of BCRA listed on the above table provide exact exemptions from any limits established in the previous conditions listed. By allowing political parties to spend both coordinated expenditures and independent expenditures and declaring it a constitutional issue, the court again demands strict scrutiny. It again makes it difficult to believe that any activity is not in collusion with the candidate and their campaign. It also leaves the door open for the perception of corruption allowing minors, not allowed to vote in an election, the ability to contribute political money. The only reason for a minor to contribute political dollars that comes to mind is that their parents are contributing in their children's names for the purpose of evading hard money contribution limits.

## **Types of Groups**

There are four types of groups established as organizations that need to be defined and understood, previously mentioned 501 (c) Groups, 527s, Non Federal Groups and PACS. These are the primary sources of soft money on political campaigns. 501(c)(3) and 501(c)(4) groups are tax-exempt organizations defined by the IRS as not for profit organizations established for the purpose of political activity. (c)(3) Organizations are established for religious, charitable, scientific or educational purposes. (c)(4) Organizations are established for the purpose of social welfare and are limited in how much political activity they may participate in (FS-2002-13).

The 527 organizations, also tax-exempt, were established for the purpose of Get Out The Vote (GOTV) activities and for issue advocacy. Their primary limitations include not using the phrases "vote for" "vote against" or "re-elect" in their campaigning and electioneering and reporting of their contributions. They can use the same commercial

that a candidate is using but omit those magic words “vote for” “vote against” or “re-elect” and they are within the rule but not the spirit of the law. They are required to report their donations to the IRS but have no limits to the size of donation they may accept. (FS-2002-13) To date the most prominent 527s such as The Swift Boat Veterans for Truth and Moveon.Org have been fined for activities outside the limitations of their organizations but none have been closed down (Lewis 2004). It is important to note that a 527 may be affiliated with other entities corporate or special interest but could just as easily be one person with a large amount of money (publicintegrity.org).

Non Federal Groups are not that different from the 527 or 501 groups, however they are limited to only non federal elections. They do not have the limitations of these other organizations. They are allowed to use negative vote for and vote against verbiage and have even less oversight. (FS-2002-13). These have not become the group de jour possibly due to their very definition making them impossible in federal elections.

PACS, also known as Political Action Committees (Thurber, 2004), “one that that doesn’t appear anywhere in the FECA, denotes a loose category of all the committees in federal campaigns other than political party committees and the official campaign committees of candidates (Sorauf, 1992)”. PACS are highly monitored because they are only allowed to raise *hard money* with contribution limits. “PACS that operate in federal elections—campaigns for the two houses of the Congress and campaigns for president—are closely regulated by the Federal Election Campaign Act of 1974 (Sorauf, 1992).” Their receipts and activities have contribution limits of one to five thousand dollars and their ability to raise funds has become progressively more inhibited. The past limitations on PACS have all but disappeared with the dawn of the 527 and the silence of the FEC.

Traditional functions of the parties, financed by soft money, are moving to the 527 groups. This begs the question, could those who would most be restricted by additional regulation be willing to enact effective regulation? Is it the very nature of those who seek office that would keep them from creating a law that would inhibit their ability to obtain the one thing that seems to drive their elect ability? History tells us that they are willing to create more legislation but not necessarily effective legislation. When the tap was turned off to candidates, it was redirected to the party, when the party began being more regulated, funds were redirected to PACS, and when the restrictions upon PACS became too intense, we witnessed the birth of the 527.

## **527**

The 527 can be established by virtually anyone who states their purpose to be issue advocacy and/or education. The ability to function largely outside the confines of a watchful eye allows them extreme flexibility with very little accountability. The first question to ask is, if a 527 is established for the purpose of political influence, why would it not be up and running all the time? There are bills and legislation being drafted, written, voted upon, and going through committee virtually all the time. Why would an organization whose goal was issue advocacy or voter education not be working all the time? Many of these 527s are established leading into a campaign and shut down as soon as the election has completed. In fact, the group Swift Boat Veterans for Truth is no longer accepting funds. They were one of the few actually fined for their activities in the 2004 election. For organizations established purely for the purpose of collecting money for the recount in 2000, there were no caps placed on donations or spending.

One of the concepts considered to be key in government is accountability, but 527s have no such requirement. It also allows the candidate a level of deniability if anything is said or done by one of these organizations that helps them but is not considered to be good form. They reap the benefit of the action without having to accept any of the responsibility.

527s have flexibility in their location and content. After John McCain won the 2000 New Hampshire primary, he was bombarded with extraordinary issue advertising in South Carolina. Thousands of phone calls were made in a push poll manner to tell the voters of South Carolina about the black baby that the McCain's have and Cindy McCain's drug addition (Lewis 2004). There were never so many issue advocacy groups in South Carolina before the 2000 primary nor so many since.

527s open shop, carry out their task of the primary or the election, and dissolve. Because they can establish and close shop so easily, this means that any one individual given the means could literally infect any given election in the country and with enough money, single handedly select the primary winners.

The key defense of these organizations is that they are issue advocacy groups who do not say "vote for" or "vote against" or "re-elect" this candidate. The ads running into the 2004 election used the faces of the candidates and placed the candidates in the center of the issue. Politics has never wanted for negative advertising but this was the dawn of a new breed of advertising that had never been seen before, within parties and across the aisle. In 2004 there was more advertising than ever, more dollars spent, more negative than ever, and with the least oversight since 1971. The FEC, designed to police and enforce campaign spending has been eerily quiet in light of recent events, unwilling to enforce any

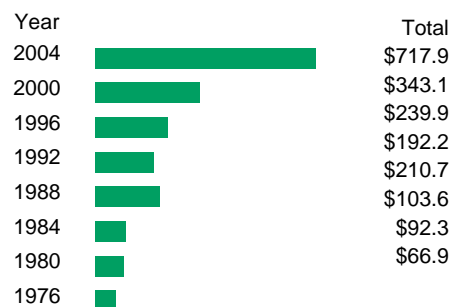


consequence to the activities. The quiet lead participants to the conclusion that their actions were acceptable, jeopardizing the democratic process at its core.

## Follow the Money

All of the following reports were found at [www.opensecrets.org](http://www.opensecrets.org). Many thanks to them for tracking the money and providing well-organized and readable information.

**Table 4: Total Spending by Presidential Candidates**



\* In millions

Numbers are not adjusted for inflation.

<http://www.opensecrets.org/presidential/index.asp?graph=spending>

**Table 5: Total Candidate spending adjusted for inflation in 2006 Dollars**

1976	\$66,900,000.00	\$242,158,499.88
1980	\$92,300,000.00	\$247,145,602.08
1984	\$103,600,000.00	\$202,178,678.27
1988	\$210,700,000.00	\$360,464,192.82
1992	\$192,200,000.00	\$274,429,399.76
1996	\$239,900,000.00	\$307,016,576.60
2000	\$343,100,000.00	\$401,726,023.30
2004	\$717,900,000.00	\$766,804,783.80

\*To calculate the present day dollars I multiplied the dollars spent in that year times the rate of inflation.

The above table reflects that candidates are currently spending more than three times what they spent just thirty years ago. More important is the sharp increase that begins in 1996 but grows by double between 2000 and 2004. Keep in mind that this is only what the candidates reported to the FEC. This does not include party spending, PAC spending, 501 (c)(3), 501 (c)(4), or 527 spending. At a time when candidate spending hit

an all time high, 527s were raising large sums of money in the name of “issue advocacy” equaling greater than half again the amount spent by the official campaigns.

While the dawn of the Internet and on line donations have increased the number of people who give small donations, the totals do not compare with the .16 percent of people who give more than \$1000.00 (Makinson 2000). There are two hundred and eighty one million people in the United States and four hundred and forty thousand of them, less than one half million people, are spending the dollars that drive these elections. Of the donors, men give more, by almost three to one (Makinson 2000)

It is no coincidence that the dollars flow in large part from New York, Los Angeles, and Washington (Makinson, 2000). This specific demographic profile shows you who are dominating the campaign process. Political fat cats today are largely coming out of Silicon Valley, Hollywood, and New York. Forming this new establishment of power that is leaning more left by companies and entities that have less to deal with in terms of pollution and oil and more to do with technology or the stock market like David Geffen and George Soros (Kotkin, 2007).

**Table 6: Receipts and Expenditures, 2003-2004, 2005 -2006**

## Receipts and Expenditures, 2003-2004

Type of Funds	All 527s*	<u>527s</u> **
Receipts:	\$599,434,832	\$433,123,686
Expenses:	\$612,988,067	\$442,999,983

## Receipts and Expenditures, 2005-2006

Type of Funds	All 527s*	<u>527s</u> **
Receipts:	\$382,179,539	\$163,995,296
Expenses:	\$426,462,086	\$203,954,566

Based on data downloaded on Wednesday, February 28, 2007. <http://www.opensecrets.org/527s/index.asp?cycle=2006>

\* To avoid double-counting, these figures do NOT include fundraising by Joint Victory Campaign 2004, a joint fundraising committee of America Coming Together and the Media Fund.

\*\* Excluding State Candidates & Parties

It is not a surprise that during off year elections, the money raised by 527s is smaller given the attention paid to the Presidential elections. This pattern is consistent with other political fund raising entities. Voter turn out is smaller during off year elections and so are the expenditures. Fewer people participate and the stakes are not perceived to be as great.

Each large contributor was able to dramatically impact how the election occurred and did so in an entirely unregulated way and gained tax exemption on the funds that they contributed that most certainly gains them access or favor of one of the most powerful people in the world. George Soros, the top contributor, is not an American citizen. While many would not consider him to be a threat to America, it shows that anyone can contribute to these organizations and influence an election. If terrorists or other world leaders were to contribute to an organization great concerns would arise. Imagine if Osama Bin Laden contributed several million dollars to one of these unregulated no contribution

limit organizations that ran “issue advertising” that blatantly showed their preference for President of the United States? Given the circumstances of the day this could be a valid concern.

The repetition of names in the top 527 contributors is an indicator that they believe they have something to gain from contributing to organizations outside of the hard money restrictions. It will be interesting to see who contributes again in the 2008 Presidential election. This will be a stronger indicator comparing two Presidential election cycle contributions rather than Presidential and off year election cycles. Unfortunately, contributor-reporting requirements were not in effect early enough to provide the 527 contributor data from 2000.

Several bills have been proposed for and against greater restriction on 527s. “During the 109th Congress, 51 bills were introduced to change the nation's campaign finance laws (Cantor, 2007 pg.1).” John McCain, Russ Feingold, and Trent Lott supported S. 271 The 527 Reform Act of 2005 introducing it for the purpose of restricting 527 organizations further. Representative Christopher Shays sponsored H.R. 513 The 527 Reform Act of 2006 for the purpose of amending FECA (1971) to clarify when organizations described in section 527 of the Internal Revenue Code of 1986 must register as political committees, and for other purposes. “The House Administration Committee reported two 527 bills with starkly different approaches: H.R. 513 — the 527 Reform Act of 2005, the counterpart to S. 1053 — and H.R.1316, which sought to address the 527 issue indirectly by loosening restrictions on funding sources permitted under federal campaign finance law (Cantor, 2007 pg.1)”.None of these amendments nor any other legislation directed at 527 organizations has been successfully passed since BCRA.

**Table 7: Top Contributors to 527 Committees, 2004 Election Cycle**

“These are the organizations that have contributed the most money to 527 groups that filed disclosure reports with the IRS. Unlimited soft money contributions to 527s may come from the treasuries of corporations and labor unions, which cannot give money directly to federal candidates and parties. “<http://www.opensecrets.org/527s/index.asp?cycle=2004>

Contributor	Total
Service Employees International Union	\$52,228,527
Joint Victory Campaign 2004*	\$37,104,391
Victory Campaign 2004	\$32,915,000
Soros Fund Management	\$23,281,000
Peter B Lewis/Progressive Corp	\$22,395,000
Golden West Financial	\$13,007,959
Shangri-La Entertainment	\$12,536,193
Perry Homes	\$8,085,199
Sustainable World Corp/Linda Pritzker	\$7,010,000
American Fed'n of St/Cnty/Munic Employees	\$5,219,035
Gateway Inc	\$5,010,000
Amerquest Capital	\$5,002,000
AG Spanos Companies	\$5,000,000
AFL-CIO	\$4,843,151
BP Capital	\$4,600,000
Sierra Club	\$4,382,899
Amway Corp	\$4,020,000
Chartwell Partners	\$4,001,000
August Capital/Andrew Rappaport	\$3,643,400
Alida Messinger Charitable Lead Trust	\$3,294,200

\* Joint Victory Campaign 2004 is a joint fund-raising committee run by America Coming Together and the Media Fund. Money raised by JVC is divided between these two beneficiaries. Combining receipts for these three groups would result in double-counting.

NOTE: This data is based on records released by the Internal Revenue Service on Wednesday, February 28, 2007. <http://www.opensecrets.org/527s/index.asp?cycle=2004>

**Table 8: Top Contributors to 527 Committees, 2006 Election Cycle**

Contributor	Total
Service Employees International Union	\$32,857,234
Perry Homes	\$9,150,000
Chartwell Partners	\$5,000,200
Operating Engineers Union	\$4,331,280
Laborers Union	\$3,515,313
Soros Fund Management	\$3,445,000
United Food & Commercial Workers Union	\$2,387,500
America Votes 2006	\$2,345,000
Sheet Metal Workers Union	\$2,075,000
Sustainable World Corp/Linda Pritzker	\$1,941,000
Peter B Lewis/Progressive Corp	\$1,624,375
John R Hunting/Philanthropist	\$1,531,000
Intl Brotherhood of Electrical Workers	\$1,385,545
National Education Assn	\$1,202,491
Gill Foundation	\$1,181,355
John Stryker Architecture	\$1,171,313
John Templeton Foundation	\$1,117,415
Media Fund	\$1,035,000
Conserving for the Future	\$1,011,400
Las Vegas Sands	\$1,000,000

NOTE: This data is based on records released by the Internal Revenue Service on Wednesday, February 28, 2007. <http://www.opensecrets.org/527s/index.asp?cycle=2004>

There is a marked difference in who contributes and how much between elections. During off year elections the contributions are smaller. Those that still contributed in this case were more from unions and corporate entities than the individuals that contribute during presidential elections.

If each of these individuals, groups, and contributors did not believe they had something to gain from this contribution they wouldn't do it. "It is a simple fact that virtually all the issues that both elites and ordinary Americans think about outside of or alongside campaigns—work and employment, free trade or protection, health care, the future of U.S. production, the cities, taxes—are critically important not only to voters, but to well-organized investor blocs, businesses, and industries. And it is another simple fact that many such groups invest massively in candidates (Ferguson, 1995 pg.8)." Given the repetition of some of these names experience did not tell them there was nothing to gain by such large contributions. In 2000 a record number of dollars were spent. In 2004 the record was not only broken, but doubled. It is not difficult to note that each of these contributors give far more than the federally mandated limits established by the FEC. This is because 527s have no contribution limit; they are issue based advocate groups.

If nothing were gained from their extraordinary expenditures they would not have done it again and increased their donations. It is important to note that many of these contributors do so for candidates on both sides of the aisle. This suggests that they don't have a stake in who wins just in gaining something from the winner. They are frequently more generous with those they believe will win to ensure greater access but it is still an act of hedging their bets.

The IRS did not release these data until 2007. The election had passed over three years previous to the release of contribution records to the public. If any concern were to be raised about the amount of money raised or spent by these organizations, what value does the concern have three years after the fact? While it provides historical data, the people could not see what was being done to the campaign process in the shade of the 1<sup>st</sup>

Amendment. The single benefit it can provide now is information to those concerned about the campaign process and its integrity. This is not just an ethical question it is a political and constitutional question that needs to be evaluated closely from each position.

## **Consequences**

Other than the historical context, constitutional questions, and the consideration of a Madisonian dilemma, what about the consequences upon the democratic process? The democratic process, vulnerable to any change, exists in a long history but delicate balance. By asking these questions it is possible to evaluate whether existing regulation is of value, whether additional regulation would be beneficial, or entirely new legislation is necessary. Campaign finance reform and soft money matters because it is at the heart of the political process. There are the considerations of how the current campaign finance process works, the candidates it leads to the primary, what obligations those candidates have if they win, and what kind of on-going obligations it establishes.

Key components of democracy are at risk such as accountability, voter participation, competitiveness, political pluralism, candidate choice, and the expectation of campaigns being free of fraud, bribery, and intimidation. These components of democracy are put at risk by the actions of unknown people with unlimited spending ability. Democratic principles such as universal suffrage, one person one vote, accountability, and pluralism are at stake. Many of these concepts were driven by landmark events in their own right. Court cases and entire eras of political change drove some of these concepts to be seen as corner stones in which the system has been established. Placing the very foundation of democracy at risk can lead to dire consequences.



Soft money was established with the goal of increased pluralism. Accountability is an established value of American democracy. The people have the ability to “throw the bums out” if they believe the elected officials are not doing their job. Soft money creates a greater barrier for the challenger, making it more difficult to ‘throw the bum out’. It also contributes to the money primary that reduces the field of choices to very few and only those backed by the wealthy. It is rare if not unheard of that individual contributions can challenge the power of the six figure checks. Already established organizations like businesses and unions with a strong base have the advantage of that base making it more difficult still for the individual contributions to compare or compete with the wealthy. If soft money jeopardizes pluralism and accountability it establishes yet another bias for the wealthy, or contributes to the perception of corruption, the question must be asked, is this in the interest of democracy? Depending upon the answer to this question it would be possible to determine what changes of the current finance methods may be a necessity. While PACs are still in play, as are parties, the rules and requirements of these entities have long been established and have limits that 527s do not have. All things being equal does the increased competitiveness outweigh the cost of voter participation, candidate choice, and expectations of a clean, fair race? “The proliferation of new non candidate spenders and new routes for covert party and candidate spending undermine the ballots ability to provide accountability (New Realities New Thinking part 9).”

They have the option of shutting down for any reason. If any issue ad produces too much negative response the 527 can be shut down, file as a new organization, and continuing similar activities. This means that not only has the path of the funds changed it

can change in the blink of an eye, making it extremely difficult to determine who is responsible for any given action.

A consequence of this active pluralism then is the more established, less diverse, and concentrated political power we see today. Party committees drove greater incumbency and incumbent support as well as a concentration of funding in races in which the party committee believed they could unseat its parties competitor, or more likely open seat races (Sorauf 1992). Corporate PACs have been less successful due to their single issue more narrow interest than incumbent and labor PACs (Sorauf, 1992) but the overall effect of organized PAC activity has taken its toll. There is an intense political stagnation and concentration of political influence for the wealthy and well connected again. The 527 is driving toward the same fate at a rapid pace.

These organizations, without regulation, will dominate the political process. They have already opened up an entirely new arena of fund raising functioning in theory independently outside of the election. The funds have been used for inaugural balls, post election recounts, and far less innocuous purchases. What political favors could this money buy? How many ambassadorships, cabinet appointments, and other benefits will be sold to the highest bidder? It may not be the days of Nixon when suit cases of cash were donated blatantly but it doesn't seem to have a significantly different effect.

A key consideration that cannot be overlooked is the fact that with the increase of money to the campaign process the elections themselves have become more competitive. The races are closer and closer within a few thousand votes amongst millions. I want to point out that there is more than one measure of competitiveness and that while this may indicate more money is needed in the political process the source and over all effects of the

source should give pause and not allow us to simply assume this one positive outcome makes it alright. Competitiveness, one of the various accepted measures of democracy, is extremely important and should not be underestimated but it is one among many. Competitiveness is necessary but not sufficient. The use of competitive elections as instruments of democracy (Powell 2000) drives campaigns and their supporters. This influx of financial activity may show that to increase awareness and competition more money is needed. The increased level of competition and marginal increase in voter participation is exciting. How to increase the financial support provided to the political process without it benefiting one candidate over another would be a worthwhile consideration.

Public funding could expand the playing field; diversifying the competition and the ideas they bring to the table. The primary process could be less inevitable. Currently the selection to choose from is less diverse because of the wealth pre-test. “The race for the White House is substantially decided *before* any actual votes are cast (Lewis, 2004 pg.6).” A legal argument could be made that the strong role that money plays could exclude otherwise viable candidates from the election process. “The wealth primary challenge draws on two distinct lines of Supreme Court cases to argue that the current campaign finance system currently acts as an exclusionary process in our elections in violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (Rosenkranz 1998 pg.128).”

An additional consideration in terms of candidate diversity is derived from the commonly understood fact that incumbents have a higher rate of re-election. They have the benefit of name recognition and frequently if they haven't done anything egregious they

will be re-elected. They already have the advantage of having a base that paid to elect them, they have a strong dependable financial base. If you add unlimited fundraising through soft money be it the office of the president for a second term or any office it makes it even more difficult for the people to see another choice.

While the consideration of a competitive race is important other democratic principles are in competition. A key court case, *Baker v Carr* led to the decision commonly referred to as the *one-man one vote* ruling. I realize they still have one vote—a vote is a vote- but it seems large contributors may have more than their vote. If each person is to have an equal vote what happens when one person is able to exert extensive influence through money? Individuals are able to independently spend money as they see fit on “issue ads” that do not promote the “vote for” “vote against” statements. This explanation means that the 527s themselves are the only editors and have no fear of backlash if the issue ad is seen as too outrageous.

Issue ads can also be framed in such a way as to intimidate or manipulate the vote. The power of political spin cannot be underestimated in the issue ad arena. Corporations like Sinclair purchased an entire hour on cable television to air a supposed documentary about the life of John Kerry. This was not issue based nor was it advertising but it was also not regulated for accuracy and had a direct influence on the vote choice of many citizens. For some citizens it was the only information they encountered about the candidate. While this was not specifically the work of an “organization” it was an independent expenditure.

Voter participation, a particularly sensitive topic, is also at stake in this new age of soft money. If the voter knows where the money came from for a given ad, they are better able to judge the source as well as the information allowing them a more complete

understanding. If the identity of the source of the information and the money used to publicize it were required to be a part of the ad it may chill some of the more sensational unconfirmed and biased information from being used. Bringing to light the actions taken by a few may have the desired effect upon their decision to carry out an act. It is apparent now that people see the political process as corrupt and that their vote does not matter.

In the last 6 presidential elections the persons who raised the most money in their primary won their primary and the person who raised the most money ultimately took office. It is arguable whether they won the popular vote given the controversy surrounding the Bush Gore race but they did ultimately take office. While other considerations must be allowed such as the electoral college, the recounts, and the litigation involved, it would be difficult to say that money did not have a strong influence in the selection of candidates to vote for as well as the ultimate swearing in to office. Money was a consideration before and during the elections and in the Bush/Gore races the recount and cost of legal representation involved additional fundraising. There was little oversight over this fundraising and even the artificial contribution limits were not adhered to.

Pluralism, allowing all citizens, interest groups, media, political parties to educate and exert influence in a competitive fashion over each other and elected representatives. If those who have the most money are able to buy more ads, spend more money, exert more influence, they can effectively silence their opposition through saturation. Any safety that would have been in place was repealed by the 104<sup>th</sup> congress in 1996 with the repeal of the Communications Act of 1934 that would have required equal airtime. This concept could be beneficial between the parties and issue advocates. It could also get the “news” out of the campaign advertising business and back into the reporting business. The news, long

considered a part of the fourth branch of government, has become a much more lucrative business since the rebirth of soft money. This takes one of the perceived non-partisan resources and throws them into the money game along with the rest. It is the perception of their legitimacy that could lend viable force to this unregulated issue advertising.

The erosion of public trust and the perception of legitimacy places democracy at risk. Congress and the courts have stated that an erosion of the belief of people cannot be accepted. If the people believe the entire process is corrupt, they cannot trust the information they receive, and the politicians are all being bought what is left of democracy? “The campaign fundraising system of America has a corruptive and corrosive effect on government...It makes people look at the system and say, what are they doing now? (Lewis 2004 pg.83)” Soft money, the political phoenix, has been reborn and threatens the political process and democracy as a whole. Understanding how soft money evolved in the past can help us understand what possible affects it can have today, and how it may evolve tomorrow. It can allow the people to make a more informed decision. Like the great experiment of the United States, growth can be achieved even through past failure.

Individuals are able to utilize 527 organizations to influence the political process in a way that previously would not have been accepted. Religious leaders, entrepreneurs and their corporations previously banned from political activity and limited contributions now have an open door to influence politics like never before. They are able to do so in the open without question and this makes them quite powerful.

Corporations and unions are not banned from contributing to 527s. This virtually reverses any effect that regulation has on political contributions and spending. These

dollars can be used to do anything from publishing in newspapers to buying television time. Does America want Wal-mart and big oil companies determining what they should or should not know about candidates for office? Does their money entitle them to a greater political voice? Under the current non-regulation of 527s that is in fact what America says they want. While freedom of speech is a guaranteed right in America, industry is regulated. American business truly began being regulated since the New Deal Era. The people are taking their grievances to the courts, their state representatives, and other elected officials. If corporations are allowed to influence government through 527s their reach to influence those who are supposed to be regulating them goes beyond freedom of speech or due process and becomes political influencing.

Other individuals and groups who were specifically excluded from the political process can use the 527 to influence policy based upon their own ideas of right and wrong rather than law. If churches contribute to the 527s to support propaganda against a woman's right to choose, the church should, for all intents and purposes, lose its tax-exempt status. The 527 provide organizations, intentionally separated from government, a political voice. One example of such activities is the energy industry and their payback for political contribution.

**Chamber:** Senate | House

**Bill Name:** Energy Policy Act of 2005

**Bill #:** Conference Report H.R. 6

**Sponsors:** Rep. Joe Barton (R-Texas)

**Latest Action:** The House on 7/28/05 passed a compromise energy bill brokered by a House-Senate conference committee by a vote of 275-156. President Bush signed the bill in August 2005.

**Money:** The energy sector contributed \$50.6 million in individual and PAC donations during the 2004 election cycle, 75 percent to Republicans. Environmental interests contributed \$1.9 million, 88 percent to Democrats

\*<http://www.opensecrets.org/payback/issue.asp?issueid=EN5&CongNo=109>

This is only one example of an industry gaining favor for a contribution. Because it

is difficult if not impossible to prove the intent to commit a crime such as this it happens frequently and is accepted in Washington. It is often thought of as a favor for a favor. gaining favor for money is by definition a quid pro quo agreement, not a favor for a favor.

Finally, it is important to note that incumbent candidates spend more time raising money for their next campaign than they do on the job they are elected to do. This is the equivalent of paying an employee to work for someone else and collect a second check. Not only does it reduce the time they spend doing the job they were elected to do it also affects how they do it. Often this takes the form of submitting bills that would favor a big donor whether they have any intention of having that bill passed, wasting the time of the people to appease the donor. Worse yet, the bills are meticulously worded for the elite few who contribute and are ultimately tailored gifts to their contributors. These items are buried in legislation to attract as little attention as possible, and make the elected official more of a representative of the few than the many.

### **So What!**

This may be a recurring theme in politics and the wealthy may always have more influence but that doesn't mean it should be accepted or promoted. If you want an even playing field make an even playing field. The independent expenditure has become more consequential in the democratic electoral process. The green elephant in the room appears to be the missing component in Thomas Holbrook's work "Campaigns, National Conditions, and U.S. Presidential Elections" soft money. Holbrook evaluates national campaigns and their effect upon elections. He reaches a conclusion that it is not the campaign but the national conditions such as economics, specifically consumer sentiment,



and presidential popularity that set the “context” of a campaign. He evaluates conventions, debates, momentum, and total number of events. He does not include dollars spent by the candidate or by organizations spending soft money. It may be that the fuel of the entire campaign process is the one thing not measured but could indicate who would be the winner in a given election. This is not to claim that his work is without merit, it is only a consideration for future research in terms of the significant variables of campaigns. Given the strong ties that soft money has established with the campaign process it should not be overlooked.

Three key concepts of democracy, integrity, accountability, and pluralism are threatened by 527s and organizations like them ie. 501(c)(3)s. Soft money brings into question the integrity of campaigns, election, and all branches of government. Historically new legislation is passed, as the cries of foul grow from the general public. Allowing soft money to function outside of the confines of campaign regulation is contributing to the perception of corruption in government. Accountability is a critical aspect of government and democracy, the ability to identify the actions of the bums to throw them out. If a voter cannot identify the actions taken to elect a president until long after they were elected it's not possible for them to make an informed decision. The perceptions of corruption are being fueled by a lack of accountability in the election process. The use of unlimited soft money for presidential elections is a threat to pluralism. The very organizations that were established for the purpose of pluralism are choking the life out of the political process making it clear to the common voter that regardless of their vote the fat cats wallet is much more powerful. If 527s and similar organizations are not reigned in the people will be sorely justified in their perception that their vote doesn't matter.

## Alternatives

An alternative to wealthy individuals, religious organizations, foreign citizens, and corporations financing of the election process is to use public financing would be to require politicians to use only the funds provided by the people through a state or national funding. This is not to say that good civic corporations and wealthy individuals couldn't continue to donate even in the historically large amounts, it would simply go into a pool for all qualified candidates rather than a specific candidate or for particular perspectives on political issues. Currently the acceptance of public funding and its limits allows a candidate to not appear as though they are buying the office, regardless of how much soft money is being spent on their behalf. Requiring *real time* public reporting of the large donations during the campaign would allow the people to know who was contributing even to soft money organizations like 527s.

It may also drive the media back to the role of reporter rather than advertiser. It would require a high level of innocence to believe this would eliminate all corruption from the campaign finance process. This recommendation would only be one step among many possible steps toward a more egalitarian process. It may also encourage excellent candidates who could not otherwise run for office to do so. Concerns over administering the funding and the argument that it's too large of a change for the system to absorb at once may need to be taken under consideration, but they should not stop campaign finance changes from progressing towards a more democratic process (Smith, 2001).

By its very definition the 527 is not subject to existing limits, thus it is able to avoid virtually all oversight of the campaign finance process and provide its contributors with a tax subsidy. This results in the people being left without any recourse. One way for

corruption to be minimized is with new regulation and limits, specifically on 527s. Regulating 527s would close the gap in regulation and provide the people hope that government is there for them. Regulation is a step that has been taken on other organizations in the past and historically what we see is the blatant ignoring of regulation or evasion driving new pathways to spending.

Daily contribution records published in the New York Times, the generally recognized periodical of record, CNN.com, Fox.com, CSPAN, and FEC.gov would provide additional sunshine, the greatest disinfectant. Large contributors may reconsider large donations to entities with no verifiable ties if their donation were more visible. Allowing people to consider the source of their information is critical in their determining its value.

Given that the first voters were all white male landowners like the founding fathers it is difficult to say that they would see a problem with how political spending is currently being carried out. The members of the Supreme Court during the Buckley case may be more surprised to see the changes that have taken place. It goes to show that with time comes change and the opportunity for evolution. In this case the cornerstones of democracy, pluralism and the perception of its legitimacy, hang in the balance of soft money spending reform. Without a change in how soft money organizations are handled there is little reason to believe that there is accountability, that the vote matters, or that those who do not have money have a voice.

## **Future Research**

Campaign finance is an issue that needs to be revisited in a more detailed investigation of the sources of political campaigns and electioneering funding and what

they may have gained from it. It is extremely difficult to believe that the only people selling their influence are Tom DeLay and Randy Cunningham. It's often that the best hiding place is in plain sight and that is exactly where the 527 issue advocacy organizations are, in plain sight. Determining just what it is that they are gaining or who may finance them may provide a clearer picture of what has happened to the campaign process and democracy in America.

Given the gravity of the consequences if nothing is done about this new found extremely powerful source of funding the face of democracy in America will be changed forever. It is obvious that change is slow especially when it is in anyway related to the legal process but it is necessary for the restoration and preservation of democracy. Money may not be the only factor in Presidential elections but it is a strong and very powerful one that cannot be left to its own devices. The legal process is intentionally slow to ensure stability but in the case of *Buckley v Valeo* the courts have not moved much beyond the original argument. "Many of the assumptions in legislative and judicial discussions are not much more sophisticated now than they were almost two decades ago, when *Buckley v Valeo* struck down several provision soft the federal Election Campaign Act and forced free speech considerations into the debate (Gais, 1999 pg.172)." The longer this is left without oversight it is clear the price will go up and democracy and the American people pay the bill.

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