# COMMENTARIES

# The Future of Election Reform

*By* HERBERT E. ALEXANDER*

## Introduction

Election reform is at a crossroads. A priority issue in the Watergate-dominated 1970's, reform has lost a good deal of its luster, accented by the 1980 election and the elements of deregulation and counterreform it brought to Washington. Following the 1980 election, the policies that characterized the reform movement[1]—limitations on contributions and campaign expenditures, public funding of presidential campaigns, and establishment of the Federal Election Commission (FEC)—were attacked by counterreformers in Congress, the media and the executive branch. Only the portions of the Federal Election Campaign Act (FECA)[2] providing for comprehensive and timely disclosure of political funds were reasonably safe from anti-regulatory attack. The role of the reformer during most of the Ninety-seventh Congress was largely defensive. Further aspects of the reformers' agenda that had once seemed possible to enact—aggregate limits on contributions federal candidates can receive from political action committees (PACs) and public funding of congressional elections—appeared to be farther away than ever.

---

* Director, Citizens' Research Foundation, University of Southern California. B.A., 1949, University of North Carolina; M.A., 1951, University of Connecticut; Ph.D., 1958, Yale University.

1. For discussions of these reforms, see generally H. ALEXANDER, FINANCING THE 1972 ELECTION (1976); H. ALEXANDER, FINANCING THE 1976 ELECTION (1979); H. ALEXANDER, FINANCING THE 1980 ELECTION (1983); and H. ALEXANDER & B. HAGGERTY, THE FEDERAL ELECTION CAMPAIGN ACT: AFTER A DECADE OF REFORM (1981).

2. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972); Revenue Act of 1971, Pub. L. No. 92-178, 85 Stat. 497; Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263; Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475; Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980).

Counterreform took shape in the form of efforts to reduce the extent of government regulation of the electoral process, to lighten the burdens the law imposed on candidates and political committees by reducing paperwork, to raise contribution limits or to repeal them entirely, and to restrict some of the powers of the FEC or abolish it altogether. A regulatory rollback has been attempted in Congress,[3] in the courts,[4] and within the regulatory structure itself.[5] But by the 1982 midterm elections, there appeared to be new interest in aspects of reform, spawned by a number of media reports that brought to the public's attention the increasing cost of campaigns and the growing importance of political action committees in federal elections.

Indeed, growth in the number of PACs[6] and in the amounts of money raised and spent on federal election campaigns continued during the 1981-82 election cycle. Data available through the end of 1982 indicate increases of approximately fifty percent over the 1979-80 cycle in both PAC expenditures and in PAC contributions to congressional candidates.[7] In the 1979-80 election cycle, PACs raised and spent more money and contributed more to federal candidates than in the two previous election cycles combined.[8] Although these increases occurred un-

3. Legislation seeking to weaken the FECA introduced in the 97th Congress included S. 1080, 97th Cong., 1st Sess, authored by Sen. Paul Laxalt (R-Nev.), which would severely curtail the FEC's authority to interpret federal election law; S. 1899, authored by Sen. Arlen Specter (R-Pa.), which sought to reduce the FEC to a part-time agency; H.R. 2604 and H.R. 986, authored by Rep. Larry McDonald (D-Ga.), which sought to abolish the FEC. Another bill to do away with the agency was slated to be introduced in the 98th Congress by Sen. Roger Jepson (R-Iowa).

4. Two cases of long duration that could restrict federal election law are Bread Political Action Comm. v. FEC, 678 F.2d 46 (7th Cir. 1982), in which plaintiff seeks to overturn the restrictions placed upon trade associations in soliciting funds for their PACs, and Athens Lumber Co. v. FEC, 718 F.2d 363 (11th Cir. 1983), which focuses on whether the restriction placed upon corporate contributions to federal candidates should be overturned.

5. The most notable example involved an advisory opinion request made to the FEC by Rexnord, Inc., which asked if it could legally pay for an advertisement in a general circulation newspaper carrying the message "Please Register to Vote." In AO 1979-48, the FEC replied that while Rexnord's PAC could legally pay for the ad, the corporation itself could not. Rexnord, however, pressed the matter, and in AO 1980-20 the commission reversed itself by ruling that the action was permissible.

6. The explosive growth of PACs had been recorded by a number of sources, including the FEC. *See, e.g.*, Fed. Election Comm'n, *PACs Increase in Number*, Press Release (Jan. 14, 1983) (the total number of PACs registered with the FEC rose to 3,371 at the end of 1982 from 608 in 1974). For an impartial long-range analysis of PAC growth, see J. CANTOR, POLITICAL ACTION COMMITTEES: THEIR EVOLUTION AND GROWTH AND THEIR IMPLICATIONS FOR THE POLITICAL SYSTEM (Congressional Research Service, 1982).

7. *See* Fed. Election Comm'n, *FEC Publishes Final 1981-82 PAC Study*, Press Release (Nov. 29, 1983).

8. *See* Fed. Election Comm'n, *FEC Releases Final PAC Report for 1979-80 Election Cycle*, Press Release (Feb. 21, 1982).

evenly, rises have occurred in every category of PAC operation: ideological, single-issue, corporate, trade, labor, health, and membership.[9]

Although it is difficult to predict which election law proposals, if any, will find success in the Ninety-eighth Congress, it is possible to define the broad contours of future election law by reviewing the parameters set down by the United States Supreme Court when it has dealt with election laws. Within these confines, political reality affects the legislative outlook.

## I. Principal Cases Governing Election Reform

### A. *Buckley v. Valeo*

The high water mark of federal election reform was the enactment of the 1974 Amendments to the FECA, passed by Congress under the cloud of Watergate and signed into law by President Ford on October 15, 1974.[10] Among other things, the amendments provided for the following:

(1) a six-member, full time bipartisan Federal Election Commission with the President, Speaker of the House, and President Pro Tem of the Senate each appointing two members of different parties, all subject to confirmation by Congress;[11]

(2) limits on individual contributions to federal candidates of $1,000 for each primary, run-off or general election and of $25,000 total per calendar year;[12]

(3) limits on contributions by political committees and party organizations of $5,000 per election;[13]

(4) contribution limits on candidates or their families of $50,000 for presidential candidates, $35,000 for Senate, candidates, and $25,000 for House candidates;[14]

(5) limits on independent expenditures for a candidate of $1,000;[15]

9. *Id.* at 3.

10. Pub. L. No. 93-443, 88 Stat. 1263. For a complete legislative history of the 1974 FECA Amendments, see FEDERAL ELECTION COMM'N LEGISLATIVE HISTORY OF FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974 (1977).

11. 2 U.S.C. § 437c(a) (1974).

12. 18 U.S.C. § 608(b)(3) (1974).

13. 18 U.S.C. § 608(v)(2) (1974).

14. 18 U.S.C. § 608(a)(1)(A)-(C) (1974).

15. 18 U.S.C. § 608(e)(2)(B) (1974).

(6) limits on expenditures by presidential prenomination candidates of $10 million in the prenomination period and $20 million during the general election period under a formula by which candidates receive public matching funds during the primary period and major party candidates receive public block grants during the general election;[16]

(7) a subsidy of up to two million dollars for the presidential nominating conventions of the major parties;[17]

(8) expenditure limits on Senate and House candidates;[18]

(9) full disclosure of all contributors of more than one hundred dollars and a record of the names and addresses of all contributors of more than ten dollars.[19]

Various provisions drew immediate protest from a broad cross section of persons who felt the amendments, however well-intentioned, created a chilling effect on free speech and citizen participation. An unusual provision of the law authorized any eligible voter to contest the constitutionality of any provision of the law and permitted the challenge to be certified directly to the Federal Court of Appeals, which was obliged to expedite the case.[20]

In *Buckley v. Valeo*,[21] the Supreme Court sought to balance the First Amendment rights of free speech and free association against the power of the Congress to enact laws designed to protect the integrity of federal elections. The central question posed by Justice Stewart during oral argument was whether money is speech.[22] The Court reasoned:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the

16. 18 U.S.C. § 608(c)(1)(A)-(B) (1974).

17. 26 U.S.C. § 9008(d) (1974).

18. 18 U.S.C. § 608(c)(C)-(E) (1974).

19. 2 U.S.C. § 432(c)(2), 434(b)(2) (1974).

20. 2 U.S.C. § 437h (1974).

21. 424 U.S. 1 (1976) (per curiam). In pertinent part, the suit attacked the FECA's limits on contributions and expenditures, disclosure provisions, public financing, and limitations on independent political activity.

Plaintiffs included both liberals and conservatives, individuals and organizations; among them were Senator James Buckley (R-N.Y.), Eugene J. McCarthy, a former Democratic senator from Minnesota, and Stewart R. Mott, a large contributor. Defendants included Secretary of the Senate Francis R. Valeo, the Attorney General, the FEC, the Clerk of the House, and three reform groups: Common Cause, the Center for Public Financing of Elections, and the League of Women Voters.

22. 424 U.S. at 16. *See also* Wright, *Politics and the Constitution: Is Money Speech?*, 85 YALE L.J. 1001 (1976) (critique of the Supreme Court's treatment of *Buckley v. Valeo*).

> audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.[23]

With that determined, it was only a short step for the Court to find the expenditure limitations of the Act to be a substantial, rather than merely theoretical, restraint on the quantity and diversity of political speech. The Court thus gave broad First Amendment protection to spending by individuals or groups for political messages intended to become part of the public interchange of political ideas. The Court held unconstitutional FECA limits on candidates' spending on their own behalf, total campaign spending, and independent expenditures made by individuals or groups advocating the election or defeat of a candidate for federal office.[24] The Court allowed some room for regulation by ruling that overall candidate expenditure limits were permissible under an optional public funding program: candidates who accepted the public funds for their campaigns could be obligated to accept expenditure limits as a condition of the grants.[25] The Court also ruled that expenditures coordinated with a candidate or campaign receive less than full First Amendment protection and may be subject to regulation.[26]

On one hand, the Court acknowledged the right of Congress to regulate federal elections and recognized the FECA's express purpose of preventing corruption or the appearance of corruption as a legitimate governmental interest.[27] The Court concluded that the limits on individual and group contributions to campaigns presented only a marginal restriction on free speech, and so upheld those provisions of the Act.[28] On the other hand, the Court did not agree that the law's secondary purpose—to equalize candidates' financial resources—was compelling enough to warrant a restriction on free speech.[29]

---

23. 424 U.S. at 19. The Supreme Court's analysis differed significantly from that of the District of Columbia Court of Appeals. Accordingly, the Supreme Court reversed many important provisions of the FECA that had been considered and upheld by the Circuit Court. For a discussion on how the two approaches diverged and how their conclusions differed, see Shockley, *Money in Politics: Judicial Roadblocks to Campaign Finance Reform*, 10 HASTINGS CONST. L.Q. 679, 690-91 (1983).

24. 424 U.S. at 51.

25. *Id.* at 107-08; *see also id.* at 57 n.65.

26. *Id.* at 48; *see also id.* at 47 n.53.

27. *Id.* at 27-28.

28. *Id.* at 28-29.

29. *Id.* at 48-49. Proponents of this argument contended that some speech had to be restricted in order to enhance the opportunity for expression by opposing groups.

## Table 1

## Provisions of the FECA Upheld and Struck Down in *Buckley v. Valeo*

| Upheld | Struck Down |
|---|---|
| $1,000 personal contribution limit | $1,000 limit on independent expenditures |
| $5,000 limit on PAC contributions | Limits on money candidates can put into their own campaigns: $50,000, President or Vice President;[a] $35,000, Senate; $25,000, House |
| Provisions for in-kind contributions | |
| $25,000 aggregate annual personal contribution ceiling | Aggregate limits on campaign expenditures: $20 million, presidential; $150,000 or 12 cents per eligible voter (whichever is greater), Senate; $70,000, House |
| Presidential matching fund and general election public finance provisions | |
| $5,000 limitation on party committee contributions | Aggregate limits on primary campaign expenditures: $10 million, presidential; $100,000 or 8 cents per eligible voter (whichever is greater), Senate; $70,000, House |
| Partial disclosure of contributions in excess of $10 and full disclosure of contributions of more than $100 to candidates, PACs and party committees | $2 million expenditure limitation on major party conventions |
| Disclosure of independent expenditures in excess of $100 | |
| Existence of the Federal Election Commission | Appointment procedure for Federal Election Commission commissioners |

[a] Reinstated for Presdiential and Vice Presidential candidates only by the FECA Amendments of 1976.

In sum, the financial provisions of the Act were upheld if they were found to prevent corruption or the appearance of corruption, and rejected if they merely sought to equalize resources (See Table 1). The Court also upheld the disclosure provisions of the Act as a deterrence

to actual corruption or the appearance of corruption.[30] The Court's decision in *Buckley* has shaped succeeding election law cases and regulation at the federal, state, and local levels.[31]

Also called into question in *Buckley* was the existence of the FEC. The appellants argued that the procedure for selecting the agency's commissioners was unconstitutional.[32] They claimed that since the FEC was given broad rulemaking and enforcement powers, Congress could not, under the doctrine of separation of powers, vest in itself the authority of appointment.[33] The Constitution states that

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.[34]

The appellants argued that the Commission's regulatory and enforcement powers made it an independent agency of the type that is normally under the authority of "Officers of the United States," and therefore the commissioners should be appointed by the President, with confirmation by the Senate.[35] The Court agreed with this strict inter-

30. *Id.* at 67.

31. *See, e.g.*, Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981); First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978); California Medical Ass'n v. FEC, 641 F.2d 619 (9th Cir. 1980).

32. Provisions of the FECA affected were 2 U.S.C. § 437c(a)(1)(A)-(C) (1974). 424 U.S. at 118-19. According to the provisions of the 1974 Amendments, the FEC was to have eight commissioners. The Secretary of the Senate and the Clerk of the House were non-voting ex officio members. Two members were appointed by the President Pro Tempore of the Senate "upon the recommendations of the majority leader of the Senate and the minority leader of the Senate." *Id.* at 113 (quoting 2 U.S.C. § 437c(a)(1)(A) (1974)). Two other members were appointed by the Speaker of the House, again upon the recommendations of its majority and minority leaders. *Id.* The final two members were appointed by the President. *Id.* Each of the six voting members was subject to confirmation by the majority of both houses of Congress and each of the three appointing authorities were forbidden from selecting both of their appointees from the same party. *Id.* Congress justified this unusual process by noting the unique role of the FEC as a body which regulated federal elections. 424 U.S. at 109.

33. 424 U.S. at 120-21.

34. U.S. CONST. art. II, § 2, cl. 2.

35. 424 U.S. at 118-19. The appellees argued that the Appointments Clause should be interpreted to include the inherent power of Congress to appoint its own officers to perform functions necessary to it as an institution. *Id.* at 127. They argued that the legislative authority conferred upon Congress in art. I, § 4, to regulate "the Times, Places and Manner of Holding Elections for Senators and Representatives," is augmented by art. I, § 5, which states that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members." 424 U.S. at 133.

pretation of the Appointments Clause.[36] It granted past acts of the FEC de facto validity and gave a thirty-day stay in which Congress could reconstitute the FEC without the damaging effects of an abrupt cessation of activities.[37]

### B. *First National Bank of Boston v. Bellotti*

At issue in *First National Bank of Boston v. Bellotti*,[38] was a Massachusetts General Law prohibiting campaign expenditures by corporations in ballot elections, except for those elections in which the outcome would materially affect the corporations' property, business or assets.[39] The Supreme Court focused not on the First Amendment rights of corporations, but upon the rights of society at large to hear political messages.[40] Writing for the majority, Justice Powell ruled that political messages deserve the full protection of the First Amendment. Noting that political speech is "indispensable to decisionmaking in a democracy," Powell concluded, "[t]he inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source, whether corporation, association, union, or individual."[41]

Several rules pertaining to the constitutional underpinnings of future political campaign reform may be distilled from the Court's decisions in *Buckley* and *Bellotti*:

---

36. *Id.* at 125.

37. *Id.* at 142-43. Although the Court required appointment of all members of the commission by the President within the 30-day stay period, the actual reconstitution of the FEC by the Congress took 111 days. When Congress failed to act within the 30-day period, a delay of an additional 20 days was granted by the Court. Congress again failed to act; the FEC consequently lost its executive authority, including the power to enforce election law and certify payments of matching funds to candidates then seeking their party's presidential nomination. The 1976 Amendments to the FECA reconstituted the FEC in accordance with the standards applied by the Supreme Court: the President appointed the FEC members who then were confirmed by the Senate. FECA Amendments of 1976, *supra* note 10, (codified as 2 U.S.C. § 437c(a)(1) (1982)).

38. 435 U.S. 765 (1978).

39. The statute at issue was MASS. GEN. LAWS ANN. ch. 55, § 8 (West 1975), which prohibited corporations from making contributions or expenditures "for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation."

40. 435 U.S. at 775-76. The majority approached the issue as follows: "The Constitution often protects interests broader than those of the party seeking their vindication. The First Amendment, in particular, serves significant societal interests. The proper question therefore is not whether corporations 'have' First Amendment rights and, if so, whether they are coextensive with those of natural persons. Instead, the question must be whether [the Massachusetts statute] abridges expression that the First Amendment was meant to protect." *Id.* at 776.

41. *Id.* at 777.

(1) reform that seeks to prevent corruption or the appearance of corruption may justify a marginal infringement on free speech;

(2) reform that primarily seeks to equalize campaign resources cannot infringe free speech rights; however, campaign expenditure limits can be linked to acceptance of optional public funding;

(3) political messages, in and of themselves, are valued and protected in a democratic polity; regulations that restrict political messages infringe upon society in general and will be subjected to the utmost scrutiny. The right to hear messages and the right to have one's messages heard are separate First Amendment rights in addition to the right to speak.

### C. Post-*Buckley* Cases Challenging the Constitutionality of FECA Provisions

#### *1.* California Medical Association v. FEC

An investigation led the FEC to believe that the California Medical Association (CMA) had violated the FECA by making both direct and in-kind contributions to California Medical PAC (CALPAC), its political action committee, in excess of the $5,000 legal limit.[42] Anticipating an FEC enforcement action, the two medical groups filed suit against the commission in the Ninth Circuit Court of Appeals.[43] The medical groups argued that the ceiling on contributions to multicandidate political committees by "persons" unduly infringed upon their First Amendment rights of free speech and association because the limit restricted the CMA's ability to engage in political speech through its PAC.[44] CMA also asserted that the money, materials, and services it gave to CALPAC were intended to be used in the same way in which corporate and union treasury money can be used to administer a PAC.[45] The medical organization argued that if the statute did not give CMA the right to make the same kind of expenditures permitted to corporations and labor organizations, then the law violated the group's

42. The $5,000 contribution ceiling is set forth in 2 U.S.C. § 441a(a)(1)(C) (1976). The in-kind contributions were in the form of administrative and support services. The FEC contended that the total value of the contributions was approximately $97,000 in 1976, $104,000 in 1977, and $136,000 in 1978. Mann, *$5,000 Limit on Political Gifts Upheld*, L.A. Times, June 27, 1981, at 3, col. 3.

43. California Medical Ass'n v. FEC, 641 F.2d 619 (9th Cir. 1980). The case was heard before the Court of Appeals sitting *en banc* per 2 U.S.C. § 437h(a)(1976), which requires that all questions concerning the constitutionality of the FECA be heard by such a court.

44. 641 F.2d at 623.

45. *Id.* at 629. Corporations and unions are authorized by 2 U.S.C. § 441(b)(2)(C) (1976) to use their treasury money to administer a PAC without the constraint of the contribution limitations.

constitutional rights of freedom of association and equal protection.[46]

In *California Medical Association v. FEC (CMA v. FEC)*[47] both the Court of Appeals[48] and the Supreme Court rejected the medical group's constitutional challenges. A plurality of the Court relied on *Buckley* to uphold the constitutionality of contribution limits based on the need to prevent corruption or the appearance of corruption.[49] A majority of the Court held that Congress could establish different rules for unincorporated associations, labor unions, and corporations without violating the Equal Protection Clause.[50] The Court reasoned that each organization has a different structure and purpose; therefore, each requires a different form of regulation in order to protect the integrity of the electoral process.[51]

*2.* Mott v. Federal Election Commission

In late 1979, a politically incongruous coalition of individuals and groups began to file a series of lawsuits challenging FECA limits on contributions.[52] In *Mott v. Federal Election Commission*,[53] the plaintiffs sought to strike down all limits on contributions to persons or groups making independent expenditures. They contended that by regulating the amount of money that may be contributed to groups making independent expenditures, the FEC had ignored the Court's holding in *Buckley* that direct restraints on independent political activity are unconstitutional.[54]

---

46. 641 F.2d at 629.

47. 453 U.S. 182 (1981).

48. 641 F.2d at 623.

49. 453 U.S. at 194-95 (citing *Buckley*, 424 U.S. at 23-38).

50. 453 U.S. at 200-01.

51. *Id.* at 201.

52. Office of former Senator Eugene J. McCarthy, Left/Right Coalition Launches New Legal Assault on Campaign Act, Press Release, Dec. 17, 1979. In a formal statement the coalition members noted that although they often disagreed with each other on major political issues, they believed the FECA reduces "the amount of debate, information and ideas available to the voting public." *Id.* at 4. The statement was signed by five individuals—James Buckley, Gordon Humphrey, Eugene McCarthy, Stewart Mott and Rhonda Stahlman—and by seven organizations—the Citizens' Party, the Committee for a Constitutional Presidency, the Conservative Victory Fund, the Libertarian Party, the National Conservative PAC, the Ripon Society and Young Americans for Freedom.

53. 494 F. Supp. 131 (D.C. 1980).

54. 494 F. Supp. at 135-36. Plaintiff Stewart Mott planned "to join other like-minded individuals" in an independent promotion of their views on the 1980 presidential campaign. *Id.* at 133. Mott was concerned that their activities would lead the FEC to consider them a political committee subject to all legal restrictions governing PACs. *Id.* at 133, 135. The complaint was dismissed as to Mott due to a ripeness problem and because he had not first sought an advisory opinion from the FEC asking whether the joint activity he wished to

The district court disagreed, reasoning that money transferred to the National Conservative Political Action Committee (NCPAC) to enable the Committee to speak receives less constitutional protection than direct expenditures.[55] Noting the concern of Congress that the PACs would become the means for avoiding the limits on direct contributions to candidates, the district court concluded that *Buckley* and the Ninth Circuit's *CMA* opinion put the contribution limitations beyond challenge.[56]

*3.* Republican National Committee v. FEC

The 1974 FECA Amendments gave major party presidential nominees the option of receiving a flat sum of money from the government to conduct their campaigns on the condition that they not accept or spend funds from any other source.[57] The Republican National Committee (RNC) filed suit, charging that it was unconstitutional to require presidential candidates who accept public funding for their general election campaigns to adhere to a spending ceiling.[58]

The GOP challenge was based primarily on the finding in *Buckley* that limits on campaign spending substantially and directly restricted the ability of candidates, citizens and associations to engage in protected political expression.[59] The RNC claimed that the restriction violated its members' First Amendment rights of freedom of speech and freedom of association, as well as their Fifth Amendment right to due process, by restricting the amount a candidate could spend while engaging in political speech, by limiting the amount a candidate's supporters could spend in grassroots activity, and by preventing a candidate's supporters from demonstrating their support by contributing to his or her campaign.[60] Furthermore, the Republicans claimed that the spending limit imposed as a condition of accepting public

undertake would require him and his like-minded associates to register as a PAC. *Id.* at 135.

Plaintiff Rhonda Stahlman sought to donate more than $5,000 to the National Conservative Political Action Committee (NCPAC) to support its independent expenditure programs without having the contribution count against the overall limit on contributions of $25,000. *Id.* at 133.

55. 494 F. Supp. at 137.

56. *Id.* (citing CMA v. FEC, 641 F.2d 619 (1980), *aff'd*, 453 U.S. 182 (1981)).

57. 2 U.S.C. § 441a(b)(1)(B) (1974); *see also* 26 U.S.C. § 9004(a) (1974).

58. Republican Nat'l Comm. v. FEC, 487 F. Supp. 280 (S.D.N.Y.), *aff'd*, 445 U.S. 955 (1980).

59. 487 F. Supp. at 286; *See Buckley*, 424 U.S. at 19-21.

60. 487 F. Supp. at 286-87.

funds gives the incumbent a considerable advantage over challengers.[61] The RNC also contended that the presidential election system is skewed permanently in favor of Democratic presidential candidates, who have historically won the support of organized labor.[62] The Republicans requested that federal subsidies be maintained at the level specified in the FECA and that both parties be allowed to spend all they could raise in small contributions.[63]

In a unanimous decision, the Second Circuit, meeting *en banc*, rejected the RNC's contentions and upheld the constitutionality of the spending limit.[64] The circuit court adopted the findings and conclusions of a three-judge district court which reasoned that public funding promotes rather than inhibits freedom of speech because it frees candidates from the burden of fundraising; as a result candidates can concentrate on communicating their stands on public issues and are freed from dependence on large private contributions.[65] The district court added that the statutory scheme respects First Amendment rights because it allows a candidate's supporters to express support by donations of personal services and through independent expenditures.[66] The district court found that the conditional spending limit does not dispro-

61. *Id.* at 287. The RNC maintained that by holding office the incumbent engages in activities that influence the outcome of an election but that are not affected by the spending limit: a President is able to attract media attention simply by conducting the nation's business; an incumbent's programs are based on research and expertise provided by the executive branch staff at no cost to the incumbent's re-election campaign. *Id.*

62. *Id.* at 287-88. According to the Republicans, the terms of the FECA give special privileges to organized labor, including the right to spend unlimited amounts of general treasury funds on political communications to union members and their families. *Id.* at 288. In 1976, unions spent about $11 million on such communications for Jimmy Carter, whereas corporations spent only a fraction of that amount for President Ford. *Id.* at 294-95.

63. *Id.* at 292. The RNC reasoned that this remedy would allow the Republican party to collect the funds needed to offset the Democrats' advantages of incumbency and the FECA provisions favoring labor unions. *Id.* at 287-89.

64. RNC v. FEC, 616 F.2d 1, 2 (2d Cir.), *aff'd*, 445 U.S. 955 (1980) (per curiam). The U.S. District Court for the Southern District of New York heard the RNC's suit concurrently with the Second Circuit. This unusual procedural posture was the result of overlapping provisions in the FECA assigning jurisdiction. Title 2 U.S.C. § 437h(a) (1978) requires that all constitutionality challenges to the FECA are to be certified by a single-judge district court to the Court of Appeals sitting *en banc*. *See* RNC v. FEC, 461 F. Supp. 570, 575-76 (S.D.N.Y. 1978) *aff'd* 445 U.S. 955 (1980) (per curiam). Title 26 U.S.C. § 9011(b) (1954) authorizes a three-judge federal district court to "implement and construe" any provision of the Presidential Election Campaign Fund Act, ch. 95, subtit. H of the Internal Revenue Code of 1954, 26 U.S.C. §§ 9001-9013. *See* RNC v. FEC, 487 F. Supp. 281, 282 (S.D.N.Y. 1980). The three-judge panel dismissed the causes of action presented by the RNC. *Id.* at 289. The Second Circuit responded to the questions certified by the single-judge district court by adopting the reasoning of the three-judge district court. 616 F.2d at 2.

65. 616 F.2d at 2; 487 F. Supp. at 283-84.

66. 487 F. Supp. at 284.

portionately favor an incumbent President.[67] The district court also ruled that the advantages the FECA granted to unions were balanced by similar advantages granted to corporations.[68]

### D. Post-*Bellotti* Cases Expanding Corporations' First Amendment Rights

In *Consolidated Edison v. Public Service Commission*,[69] the Supreme Court held that a New York statute preventing utilities from including inserts advocating nuclear power in customers' monthly bills violated the First Amendment. Writing for the majority, Justice Powell rejected the argument that the "captive audience" of utility users needed to be protected by regulation from corporate messages. "Where a single speaker communicates to many listeners, the First Amendment does not permit the government to prohibit speech as intrusive unless the 'captive' audience cannot avoid objectionable speech."[70] Powell concluded that those receiving their bills could avoid the message of the inserts by averting their eyes.[71]

In *Citizens Against Rent Control v. City of Berkeley*,[72] the Supreme Court further broadened the First Amendment protection afforded corporations. The Court held invalid a Berkeley, California municipal ordinance limiting to $250 corporate contributions to ballot issue committees. In affirming *Bellotti*, Chief Justice Warren Burger wrote that a key reason for overturning the ordinance was that it imposed limitations on individual expenditures, and thus was a restraint on the right of association.[73]

To the three principles shaping future campaign reform flowing from the *Buckley* and *Bellotti* decisions,[74] can be added a fourth criterion: the speech of corporations and groups may be no more restricted than that of individuals under the First Amendment, provided that cor-

67. *Id.* at 303-04. The court pointed out that in the previous election, the incumbent, President Ford, was defeated. *Id.*

68. *Id.* at 305-06. The court thus assumed that if labor unions are considered to be affiliated with the Democratic Party, then corporations should be aligned with the Republicans. The court also noted that organized labor support of Democratic candidates is not automatic, and that President Carter was not especially popular with organized labor. *Id.*

69. 447 U.S. 530, 532 (1980).

70. *Id.* at 541-42.

71. *Id.* at 542.

72. 454 U.S. 290 (1981).

73. *Id.* at 296. For a more extensive discussion of *Citizens Against Rent Control*, see Note, *Independent Expenditures: Can Survey Research Establish a Link to Declining Citizen Confidence in Government?*, 10 HASTINGS CONST. L.Q. 763 (1983).

74. *See supra* text, following note 41.

ruption or the appearance of corruption is not a major factor. These four criteria outline the legal parameters within which future election reform may develop. The task for reformers is to draft legislation channeling money into structures that respect the right of association under conditions that reduce the possibility of corruption or the appearance of corruption.

## II. Party Reform to Effect Election Reform

Reformers continue to seek election legislation to address the following concerns: reducing the strength of PACs; equalizing campaign resources among rich and poor candidates, as well as among incumbents and challengers; encouraging participation and contributions from broader constituencies; countering the imbalances caused by special interest politics; and facilitating the mobilization of effective congressional majorities in order to enact public policies. These concerns can be addressed without infringing on the legal restrictions imposed by *Buckley, Bellotti*, and their progeny through the reinvigoration of political parties.

The Republican Party has demonstrated strong signs of revitalization through the development of a solid financial base and by engaging in a variety of activities to assist and recruit candidates.[75] In the aftermath of the 1980 election, in which the Democrats lost thirty-four seats in the House, relinquished control of the Senate for the first time since 1954, and lost the presidency, the Democratic National Committee has shown that it is beginning the process of renewal.[76]

While the leadership of the Republican National Committee and the Democratic National Committee have sown the seeds of party renewal, the Supreme Court has provided fertile ground in which the parties may grow. In *Cousins v. Wigoda*,[77] the Supreme Court held that the rules of a national political party prevail over conflicting state laws regulating the seating of delegates at political conventions. The Court

75. For a description of the revival of the Republican Party, see Adamany, *Political Finance and the American Political Parties*, 10 HASTINGS CONST. L.Q. 497, 537-40 (1983).

76. *Id.* at 540-41.

77. 419 U.S. 477, 489-90 (1975). During the 1972 Democratic convention an Illinois delegation headed by Chicago Mayor Richard J. Daley was accused of violating a party rule forbidding slate-making. The Daley forces obtained a state court order barring their removal based on a statute preventing replacement of delegates elected in conformity with Illinois law. The court order was ignored, and a delegation favoring George McGovern was seated after winning a credentials fight on the convention floor. After the convention, Daley's lawyers pressed for contempt citations against the McGovern backers, but were thwarted by a stay order from the Supreme Court. O'Brien v. Brown, 409 U.S. 1 (1972).

reasoned that there was no compelling governmental interest which justified such an intrusion into the associational rights of the party members.[78] This decision is significant because it strengthens parties by allowing them freedom to structure and discipline their organizations without state interference.

The national parties were also aided by the Supreme Court's ruling in *Democratic Party of the United States v. La Follette*.[79] The Court held that the state interest in preserving the integrity of the electoral process by keeping secret a voter's party affiliation was not sufficiently compelling to warrant interference with the national party requirement of a "closed primary."[80] The majority ruled that neither a state nor a court may constitutionally substitute its own judgment for that of a political party in determining the makeup of the state's delegation to the party's national convention.[81]

The Supreme Court's decisions in *Cousins* and *La Follette* offer the parties the latitude they need to determine when presidential primaries should be conducted, whether they should be statewide or regional, and whether delegate selection should return to the caucus system. Although these decisions seem to have opened the door for a reform movement led by the national parties, such optimism should be tempered by a degree of caution, as both cases dealt with national party conventions and not with other aspects of party autonomy or power. The extent of the parties' permissible autonomy probably would be delineated by litigation over the validity of reforms strengthening parties, if such legislation were enacted.

Several proposals have been made to help reestablish parties so that they can perform their historic tasks of mediating between individuals, organized groups and government, facilitating the construction of effective congressional majorities, and promoting coherent public policy.[82] These proposals are of two types. The first type applies to presi-

78. 419 U.S. at 489-90.

79. 450 U.S. 107 (1981), *rev'g* 93 Wis. 2d 473, 287 N.W.2d 519.

80. 450 U.S. at 124-26. The Wisconsin presidential primary had been "open" since 1903—voters could cross party lines and cast their ballots for any candidate. The rules of the Democratic Party allow only those voters willing to publicly identify themselves as Democrats to participate in the delegate selection process. *Id.* at 127.

81. *Id.* at 123-24.

82. For a discussion of the role of political parties in democracies, see Adamany, *supra* note 75, at 500-05.

Several factors have contributed to the decline of political parties in recent decades: the replacement of party-controlled patronage by civil service, the ascendance of the mass media as a means of reaching voters, a more highly educated electorate, and the democratization of the presidential nominating process. *See generally* Adamany, *supra* note 75, at 506-

dential campaigns only, and follows from the Supreme Court's protection of the integrity of national political parties in *Cousins* and *La Follette*. This class of proposals focuses on reform within the parties themselves. For example, the Democratic Party's Hunt Commission recommended that the national conventions become more deliberative bodies, and that more party officials and officeholders be selected as convention delegates. The purpose of these recommendations is to give the party leadership greater control over the selection of its presidential nominee.[83]

The second type of proposal seeks reform by making the following changes in the Federal Election Campaign Act: eliminate or substantially increase limits on party committee spending on behalf of candidates; eliminate or substantially increase limits on contributions to parties and on what parties may contribute to candidate committees; extend to national party committees the permission state and local party committees have to spend unlimited amounts on grassroots activity on behalf of presidential candidates;[84] exempt legal, accounting and administration expenses by parties from the FECA definitions of "contribution" and "expenditure"; and provide a tax credit for small contributors to political parties.

The goal of the second class of proposals is to provide parties with more money. Greater financial resources would strengthen parties in several ways. Party funding would be an incentive for candidates to support party programs. It might also wean candidates from PAC contributions and thus diminish the fragmentation associated with special interest politics.

These changes also would allow parties to assist candidates through provision of services and modern campaign technology. Parties can provide economies of scale by pooling computer, polling, and other campaign services for party candidates. Such party assistance would diminish the dependence candidates have on PAC contributions and would reduce the need for private campaign consultants.

In every society that has free elections, someone must foot the bill. Sources of funds other than parties have been necessary because parties have been unable to supply enough financial assistance. When candi-

15. In the wake of party decline, American politics has become excessively candidate-oriented: candidates offer themselves to the electorate, build their own media and organizational campaigns, and raise their own money. After conducting their own campaigns, candidates may feel little gratitude to their parties once elected.

83. For a discussion of the Hunt Commission and its recommendations, see H. ALEXANDER, FINANCING THE 1980 ELECTION 456 (1983).

84. *See* 2 U.S.C. § 431(a)(B)(iv), (viii), (ix) (1976) (amended 1979).

dates are unable to adequately finance a campaign from their constituents, they seek funds from PACs, lobbyists, and out-of-state sympathizers, or they use their personal resources.[85] By increasing the ability of the parties to obtain funding, the traditional functions of parties will be restored, and the degenerative effects caused by PAC and interest group financing will be diminished.

## III. The Proper Role of PACs in Election Law Reform

American politics is shifting from neighborhood precincts to socio-economic bases representing common ideologies.[86] People give to a PAC because they share its ideas and concerns, and they seek to elect candidates with congenial views. This method of funding tends to nationalize politics because it directs candidates to national issues and away from the provincial interests of a state or district.[87] To the degree that public policy is formulated in Washington rather than in state and local communities, a trend toward nationalization of campaign fundraising is inevitable. As government has expanded and increased its role in the economy and in social issues, affected interest groups have become more active in politics. In general, the greater the impact of decisions made by the federal government, the more people are likely to be interested in politics and in organizing PACs.

The campaign reform laws of the 1970's sought to curtail the influence of interest groups. Ironically, those laws led to an institutionalization of the influence they sought to prevent. By imposing contribution limitations, the 1974 FECA Amendments eliminated the key role of the large donor. The effective fundraiser became crucial as candidates were forced to broaden their financial bases. Individuals who had access to networks of contributors from other campaigns or who possessed mailing lists to be prospected for potential donors became critically important because they could raise a large amount of money

85. A recent phenomenon is the development of personal PACs by presidential candidates and party leaders. These PACs contribute their funds to candidates favored by persons sponsoring the PAC. Personal PACs might hinder party growth by focusing attention on the person behind the PAC rather than on that person's party affiliation. More importantly, these PACs inevitably will compete with the parties for funds. For a discussion of these PACs, see H. ALEXANDER, MONEY, ELECTIONS, AND POLITICAL REFORM 116-18, 193-94 (3d ed. 1984).

86. A lengthy discussion of this process can be found in Alexander, *The Case for PACs*, Public Affairs Council Monograph (1983).

87. This nationalizing effect that PACs have on campaign finance has prompted some proposals to localize fundraising for congressional campaigns. *See, e.g.*, MacGiehan, *Congressional Campaign Financing: The Debate Over PAC Influence* (Feb., 1981) (self-published article).

through many contributions. But such "elite solicitors" are few and direct mail solicitation of campaign funds is expensive.

PACs filled much of the void. Sponsored by corporations, unions, or membership groups with political interests, these committees share two characteristics important for effective fundraising: access to aggregates of like-minded people and an internal means of communication. PACs began to collect numerous small contributions, aggregate them, and make contributions in larger, more meaningful amounts—all at no cost to the preferred candidates.

There can be no doubt that PACs have become a major force in the financing of political campaigns at the federal level. The adjusted expenditures of all PACs rose from $19.2 million in 1972 to more than $190 million in 1982.[88] Contributions to congressional candidates during the same period increased from about $8.5 million to $83.1 million[89]—a nearly ten-fold increase in ten years and approximately 50% since 1980.[90] One source reported that PACs contributed almost 28% of the total congressional candidate receipts in 1982, an increase of approximately 20% from 1980.[91] The proportions were higher in 1980 for general election candidates compared with all congressional candidates: Senate candidates received 20.7% and House candidates 28.9% of their contributions from PACs.[92] Congressional incumbents in 1980 received slightly more than 30% of their contributions from PACs,

88. For example, according to the American Society of Association Executives, there were 2,666 trade associations and professional societies with offices in the metropolitan Washington area at the beginning of 1983, an increase of 65% since 1971. In the same period, the number of such offices in New York declined 15%, to 2,568, and stayed about the same in Chicago, with 868. *See* Pear, *Richard Schweiker's New Employer*, N.Y. Times, Jan. 14, 1983, at A16, col. 4.

89. The original Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972), largely sought to rein in the power of special interests by increasing the amount of financial disclosure. Political committees anticipating receipts of more than $1,000 during a calendar year were required to file a statement of organization, report contributions and expenditures of $100 or more, and required that any large contribution ($5,000 or more) be reported within 48 hours after its receipt. *See* §§ 303, 304, 305 of the original legislation. The Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263, influenced by the large sums contributed by individuals and corporations to President Nixon's re-election campaign, included various contribution and expenditure limits. *See supra* notes 10-20 and accompanying text.

90. Section 101(b)(3) of the 1974 legislation provided that no individual could make contributions aggregating $25,000 in a calendar year. Section 101(b)(1) limited individuals to contributions of $1,000 to federal candidates in any election (primary, general, runoff, or special).

91. *28% of Campaign Funds Came From PACs*, PACs & LOBBIES 1 (Jan. 19, 1983).

92. J. CANTOR, *supra* note 6, at 77-78.

while challengers received 19.9%.[93] Even more significantly, those elected to the House in 1980 received 42.8% of their campaign funds from PACs.[94] House candidates defeated in primaries received just 9.9% of their receipts from PACs.[95]

For many years critics of large contributions—whether their source be individuals or PACs—have proposed the extension of public financing to congressional campaigns. Efforts to enact such legislation in the current climate of fiscal conservatism are unlikely to succeed. Other critics seek to diminish the influence of PACs by lowering the amount a PAC may contribute to a candidate and limiting the total amount a candidate may receive from all PACs. One such measure, the Obey-Railsback bill, would have limited the maximum PAC contribution to House candidates to $3,000 per election and confined House candidates to $70,000 in PAC contributions over a two-year election cycle.[96]

Legislation designed to restrict PAC contributions would be counterproductive in the face of rising campaign costs and the unlikely prospect that the budget conscious Ninety-eighth Congress would enact legislation providing for alternative sources of funds. The burden of such legislation would fall most heavily on challengers, who need large campaign budgets to make themselves and their positions known, and on candidates facing wealthy opponents spending personal funds on their own campaigns. The labor and liberal committees would be the PACs most hurt by legislation limiting PAC contributions. There are more business PACs than labor PACs and more conservative PACs than liberal PACs.[97] To overcome the numerical advantage enjoyed by their opposition, labor and liberal PACs would have to give larger average contributions. Furthermore, legislation restricting PAC contributions could significantly suppress the level of political speech in the closing days of a highly competitive election. If one or more of the candidates already has accepted and spent the total amount permitted, he or she would be unable to make additional expenditures to respond

93. *Id.*; *see FEC Releases Final PAC Report for 1979-80 Election Cycle*, *supra* note 8, at 3. When primary election challengers are included the figure drops to 15.7%. J. CANTOR, *supra* note 6, at 77-78.

94. Roeder, *PACs Americana* at D-1 (Sunshine Services Corp., 1982).

95. J. CANTOR, *supra* note 6, at 77-78.

96. H.R. 4970, 96th Cong., 2d Sess. (1980). This bill was passed by the House but the Senate failed to act, and the bill died in the 96th Congress. For a discussion of the Obey-Railsback bill, see H. ALEXANDER, *supra* note 83, at 26-30.

97. As of the end of 1983, some 1,536 corporate PACs were registered with the FEC, as opposed to 378 labor PACs. *See* Fed. Election Comm'n, *FEC Releases New PAC Figures*, Press Release 1 (Jan. 20, 1984).

to late developing issues. This problem could easily be exploited, or perhaps created, at a critical juncture in a campaign by ideological and single-issue independent expenditure committees.

Legislation which imposes aggregate limits on the amount of money that congressional candidates can accept from PACs raises constitutional questions of a different order from those implicated by either contribution or expenditure limits. Such limits are, in effect, aggregate receipt limits. Candidates would be forced to pick and choose among proffered contributions to stay under the ceiling. Those unable to contribute once the candidate's limit had been reached might have their First Amendment rights of freedom of speech and association denied. The overall limitation would do little to prevent corruption or the appearance of corruption.[98] This restriction would not be a marginal infringement on free speech because the rights of those who wish to contribute to their preferred candidate would be completely eliminated. In addition, if a candidate ran out of funds and was unable to address late developing issues, such a law would infringe on the right of society in general to hear political messages.

A better means of offsetting the influence of PACs would be to increase the $1,000 annual individual contribution limit to $5,000 and to repeal the annual $25,000 overall contribution limit for individuals. This approach would counterbalance PAC contributions, reduce pressure on candidates to solicit PAC donations, and compensate for the effects of inflation upon the ability of individuals to participate financially in federal campaigns. The right of interest groups to organize to influence the political process also would be respected. Finally, raising the contribution limits for individuals would make independent expenditure committees less attractive to contributors because they could provide greater direct support for the candidates of their choice.

Other indirect means of regulating special interest groups—whether they be operating as PACs or otherwise—also exist and should be preferred to tighter limits on giving. Legislation requiring meaningful disclosure of lobbying should be enacted, including better means of monitoring and publicizing lobbying efforts. With proper regulation, civic organizations could be permitted to lobby for legislation under restraints similar to those that govern corporations, labor unions, and trade associations.[99] Extensive monitoring of lobbying undoubtedly would be expensive. Less secrecy and a more open decisionmaking

98. See *supra* text following note 41 for a discussion of *Buckley* and the rules distilled from the *Buckley* and *Bellotti* decisions.

99. *See* 2 U.S.C. § 441b (1974).

process in both the Executive and Legislative branches would enable civic organizations to participate more fully and effectively in the decisionmaking process. A good first step would be to better publicize governmental studies, regulatory agency rulings, and the date and location of hearings.

Other means of indirectly restraining special interests without undue campaign restrictions are as follows: (1) broaden conflict of interest laws as applied to government representatives; (2) minimize special interest representation on regulatory commissions; (3) restrict the movement of special interest representatives into government positions and of government employees into related jobs in the private sector; (4) make government procurement procedures more objective and subject to greater scrutiny, particularly those government contracts employing professionals such as consulting engineers and architects.

## Conclusion

Ours is a pluralistic society in which every conceivable interest has a right to organize and, once organized, to establish its own means of seeking political influence. PACs represent an outgrowth of these rights. What is needed are more broadly based groups to which candidates can turn for the support they currently receive from narrowly focused PACs.

Political parties have wide support and could act as intermediaries between organized groups—whether special interest, public interest or national interest—and policymakers. Political parties once served as mediators and the revival of the Republican Party in the 1980 elections indicates they can be strengthened to do so again. Parties could be reinvigorated without altering the FECA by internal party reform under the auspices of recent Supreme Court decisions dealing with national party conventions.[100]

The decline of parties is largely a story of missed opportunities.[101]

100. *See supra* notes 77-83 and accompanying text. The Republican National Committee recently produced a report containing many suggestions for strengthening party structures and discipline. *See* Peterson, *Republicans Look at the Future and See High Technology and Tight Discipline*, Wash. Post, July 2, 1981, at A7, col. 1. The Hunt Commission of the Democratic National Committee also has suggested a number of intraparty changes. *See supra* note 83 and accompanying text. The Democratic National Committee has accepted a number of the Commission's recommendations, including the new delegate rules providing for a larger role for the party leadership, a shortened primary calendar, and the reinstatement of "loophole" primaries in which states may award delegates on a winner-take-all basis.

101. In the many years that the Democratic Party controlled Congress, and occasionally the White House, the party never built stable financial constituencies. Instead, the Demo-

In part, however, party decline is a consequence of election reform gone awry. Reform laws intended to increase citizen participation in election campaigns and to decrease special interest influence have served mainly to reinforce candidate-centered politics. The 1974 Amendments to the FECA imposed limitations on the amount of money national and state party organizations could contribute to federal election campaigns[102] and established an annual limit on the amount an individual could contribute to the national committee of a political party.[103] The limits on party contributions per federal candidate are linked to in-kind expenditure limits on behalf of a federal candidate.[104] Independent expenditures by PACs are not limited to a candidate; therefore, PACs can contribute more in the aggregate to a given candidate than can the party on whose ticket the candidate runs.

A goal of future campaign reform should be to renew the major political parties.[105] One step toward this end would be the elimination of individual contribution limits to parties and the amounts parties may contribute to candidates. An appealing aspect of this step is that there would be no additional cost to the government.

Looking at 1984 and beyond, parties must work more closely with candidates. The FECA has isolated candidates from their parties by requiring disclosure of cost allocation when candidates join with each other or with the party in campaign rallies or other joint activities.[106] The purpose of party politics is to bring people together, not to separate them.[107]

Currently, most candidates are not dependent on parties for their campaign financing. Candidates raise their funds themselves, often re-

---

crats depended on labor support, large contributors, and the power of incumbency. The Republican Party, particularly in the years of the Nixon presidency, has existed largely to serve the needs of the party's presidential candidate, while problems faced by the party at other levels suffered from inattention.

102. 18 U.S.C. § 608(f)(1), (2), (3) (1974). Some limits on state and local party committees subsequently were lifted for presidential campaigns by the 1979 Amendments to the FECA. *See* 2 U.S.C. § 431(a)(B)(iv), (viii), (ix) (1976) (amended 1979).

103. 18 U.S.C. § 608(e)(1).

104. 2 U.S.C. § 441(a)(d).

105. Efforts to strengthen the parties are certain to encounter opposition from PACs because candidates would need fewer direct PAC contributions and because PACs appear to have assumed some of the traditional functions of parties.

106. 2 U.S.C. § 434(b).

107. In *Buckley v. Valeo*, the Supreme Court grappled with the stifling effect of the FECA disclosure provisions upon contributions to minor parties. The Court noted that minor parties may need to be released from the requirements if they can show "a reasonable probability that the compelled disclosure . . . will subject them to threats, harrassment or reprisals." 424 U.S. at 74. Such a showing was made in Brown v. Socialist Workers Party, 459 U.S. 87 (1982).

lying on contributions from PACs. This gives PACs direct access to successful candidates without the mediation of a party to accommodate the conflicting claims of all the individuals and groups seeking to influence public policy. As a result, resolution of the national interest becomes difficult, if not impossible.

Strong political parties are integral to the formation of coherent public policy. Modern parties can be based on democratic principles: open discussion of issues presented from an interested perspective, but seeking to accommodate conflicting concerns. Strong parties would represent competing views of the public interest, worked out through bargaining dynamics encompassing the party structure and the full breadth of its component societal groupings.

There is danger if groups in a pluralistic society are overly restricted in their political activity. Therefore, legislation should be directed toward strengthening parties without restricting interest groups. The First Amendment guarantees the right of association. Furthermore, individuals take cues from political groups with which they identify. Hence, there is a strong case for the continued existence of PACs as aggregations of like-minded people whose political power is enhanced by combining forces. Political parties should not seek legislation to undermine interest groups. To be vigorous, competitive, and to be successful in coalition-building, the parties should draw on the dynamics of interest group activity. In pluralism there is indeed strength in numbers. Parties are designed to aggregate the diffused interests that the wide range of PACs represent. Parties can and should work to seek consensus among the diverse interests that PACs embody.