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Divider Title: **Spending Limits**

TITLE I—CONTROL OF CONGRESSIONAL CAMPAIGN SPENDING

Subtitle A—[Reserved]

Subtitle B—Expenditure Limitations, Contribution Limitations, and Voter Communication Vouchers for Eligible House of Representatives Candidates

SEC. 121. PROVISIONS APPLICABLE TO ELIGIBLE HOUSE OF REPRESENTATIVES CANDIDATES.

(a) IN GENERAL.—The Federal Election Campaign Act of 1971 is amended by adding at the end the following new title:

"TITLE VI—EXPENDITURE LIMITATIONS, CONTRIBUTION LIMITATIONS, AND VOTER COMMUNICATION VOUCHERS FOR ELIGIBLE HOUSE OF REPRESENTATIVES CANDIDATES

"SEC. 601. EXPENDITURE LIMITATIONS.

"(a) IN GENERAL.—An eligible House of Representatives candidate may not, in an election cycle, make expenditures aggregating more than $600,000.

"(b) RUNOFF ELECTION AND SPECIAL ELECTION AMOUNTS.—

"(1) RUNOFF ELECTION AMOUNT.—If an eligible House of Representatives candidate is a candidate in a runoff election, the candidate may make additional expenditures aggregating not more than $200,000 in the election cycle.

"(2) SPECIAL ELECTION AMOUNT.—An eligible House of Representatives candidate who is a candidate in a special election may make expenditures aggregating not more than $600,000 with respect to the special election.

"(c) CLOSELY CONTESTED PRIMARY.—If, as determined by the Commission, an eligible House of Representatives candidate in a contested primary election wins that primary election by a margin of 20 percentage points or less, the candidate may make additional expenditures aggregating not more than $200,000 in the election cycle.

"(d) NONPARTICIPATING OPPONENT PROVISIONS.—

"(1) LIMITATION EXCEPTION.—The limitations imposed by subsections (a) and (b) do not apply in the case of an eligible House of Representatives candidate if any other general election candidate seeking nomination or election to that office—

"(A) is not an eligible House of Representatives candidate; and

"(B) receives contributions or makes expenditures in excess of 25 percent of the limitation under subsection (a).

"(2) CONTINUED ELIGIBILITY AND ADDITIONAL MATCHING FUNDS.—An eligible House of Representatives candidate referred to in paragraph (1)—

"(A) shall continue to be eligible for all benefits under this title; and

"(B) shall receive voter communication vouchers under section 604.

"(3) REPORTING REQUIREMENT.—A candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress—

"(A) who is not an eligible House of Representatives candidate; and

"(B) who makes contributions in excess of $50,000 of personal funds of the candidate and members of the candidate's immediate family to the authorized committee of the candidate or receives contributions or makes expenditures in excess of 25 percent of the limitation under subsection (a);

shall report that the threshold has been reached to the Clerk of the House of Representatives not later than 48 hours after reaching the threshold. The Clerk shall transmit a report received under this paragraph to the Commission as soon as possible (but no later than 4 working hours of the Commission) after such receipt, and the Commission shall transmit a copy to each other candidate for election to the same office within 48 hours of receipt.

"(e) EXEMPTION FOR LEGAL COSTS AND TAXES.—Any costs incurred by an eligible House of Representatives candidate or his or her authorized committee, or a Federal officeholder, for legal services or Federal, State, or local income and payroll taxes with respect to a candidate's authorized committees, or to comply with section 606, shall not be considered in the computation of amounts subject to limitation under this section.

"(f) EXEMPTION FOR ACCOUNTING OR FUNDRAISING COSTS.—

"(1) Any costs incurred by an eligible House of Representatives candidate or his or her authorized committee in connection with the solicitation of contributions on behalf of such candidate or for accounting services to ensure compliance with this Act shall not be considered in the computation of amounts sub-

ject to limitation under subsection (a) to the extent that the aggregate of such costs does not exceed 10 percent of the limitation under subsection (a).

"(2) An amount equal to 10 percent of salaries and overhead expenditures of an eligible House of Representatives candidate's campaign headquarters and offices shall not be considered in the computation of amounts subject to limitation under this section. Any amount excluded under this paragraph shall be applied against the accounting or fundraising expenditure exemption under paragraph (1).

"(g) CIVIL PENALTIES.—

"(1) LOW AMOUNT OF EXCESS EXPENDITURES.—Any eligible House of Representatives candidate who makes expenditures that exceed a limitation under subsection (a) or subsection (b) by 2.5 percent or less shall pay to the Commission an amount equal to the amount of the excess expenditures.

"(2) MEDIUM AMOUNT OF EXCESS EXPENDITURES.—Any eligible House of Representatives candidate who makes expenditures that exceed a limitation under subsection (a) or subsection (b) by more than 2.5 percent and less than 5 percent shall pay to the Commission an amount equal to three times the amount of the excess expenditures.

"(3) LARGE AMOUNT OF EXCESS EXPENDITURES.—Any eligible House of Representatives candidate who makes expenditures that exceed a limitation under subsection (a) or subsection (b) by 5 percent or more shall pay to the Commission an amount equal to three times the amount of the excess expenditures plus a civil penalty in an amount determined by the Commission.

"(h) INDEXING.—The dollar amounts specified in subsections (a), (b), and (c) shall be adjusted at the beginning of each calendar year based on the increase in the price index determined under section 315(c), except that, for the purposes of such adjustment, the base period shall be calendar year 1992.

"(i) The limitations of this section do not apply in the case of any recall action held pursuant to State law.

"SEC. 602. CONTRIBUTION LIMITATIONS.

"(a) PERSONAL CONTRIBUTIONS.—An eligible House of Representatives candidate may not, with respect to an election cycle, make contributions or loans to his or her own campaign totaling more than $50,000 from the personal funds of the candidate. The amount that the candidate may accept from persons referred to in section 315(i)(2) shall be reduced by the amount of contributions made under the

tives candidate in a contested primary election wins that primary election by a margin of 20 percentage points or less, the candidate shall be eligible to receive matching vouchers totaling not more than $66,600, in addition to any other amount received under this section. The amount available under the preceding sentence is subject to the matching requirements of this section.

"(f) INDEPENDENT EXPENDITURE PROVISION.—If, with respect to a general election involving an eligible House of Representatives candidate, independent expenditures totaling $10,000 are made against the eligible House of Representatives candidate or in favor of another candidate, the eligible House of Representatives candidate shall be entitled, in addition to any amount received under subsection (a), to voter communication vouchers equal to the amount of such independent expenditures, and expenditures may be made from such vouchers without regard to the limitations in section 601.

"(g) PROHIBITION OF CONVERSION TO PERSONAL USE.—An eligible candidate who receives voter communication vouchers under this section may not convert any amount to personal use or make any payments, directly or indirectly, to such candidate or to any members of the immediate family of the candidate.

"(h) INDEXING.—The dollar amount specified in subsections (a) and (e) (other than the amount taken into account per individual) shall be adjusted at the beginning of the calendar year based on the increase in the price index determined under section 315(c), except that, for the purposes of such adjustment, the base period shall be calendar year 1992.

"(i) USE OF VOTER COMMUNICATION VOUCHERS.—Voter communication vouchers shall be used by an eligible House of Representatives candidate—

"(1) to purchase broadcast time during the general election period in the same manner as other broadcast time may be purchased by the candidate;

"(2) to purchase print advertisements during the general election period;

"(3) to purchase voter contact campaign materials (brochures, bumper stickers, handbills, pins, posters, and yard signs) used during the general election period; or

"(4) to pay for postage expenses incurred during the general election period.

"(j) UNEXPENDED VOUCHERS.—Any amount of voter communication vouchers received by an eligible House candidate under this title and not expended on or before the date of the general election shall be repaid within 60 days

of subsection (d)(1) and section 502(b)(3), the base period shall be calendar year 1996.

"SEC. 502. LIMITATIONS ON EXPENDITURES.

"(a) LIMITATION ON USE OF PERSONAL FUNDS.—(1) The aggregate amount of expenditures which may be made during an election cycle by an eligible Senate candidate or such candidate's authorized committees from the sources described in paragraph (2) shall not exceed $25,000.

"(2) A source is described in this paragraph if it is—

"(A) personal funds of the candidate and members of the candidate's immediate family; or

"(B) personal debt incurred by the candidate and members of the candidate's immediate family.

"(b) GENERAL ELECTION EXPENDITURE LIMIT.—(1) Except as otherwise provided in this title, the aggregate amount of expenditures for a general election by an eligible Senate candidate and the candidate's authorized committees shall not exceed the lesser of—

"(A) $5,500,000; or

"(B) the greater of—

"(i) $1,200,000; or

"(ii) $400,000; plus

"(I) 30 cents multiplied by the voting age population not in excess of 4,000,000; and

"(II) 25 cents multiplied by the voting age population in excess of 4,000,000.

"(2) In the case of an eligible Senate candidate in a State which has no more than 1 transmitter for a commercial Very High Frequency (VHF) television station licensed to operate in that State, paragraph (1)(B)(ii) shall be applied by substituting—

"(A) '80 cents' for '30 cents' in subclause (I); and

"(B) '70 cents' for '25 cents' in subclause (II).

"(3) The amount otherwise determined under paragraph (1) for any calendar year shall be increased by the same percentage as the percentage increase for such calendar year under section 501(f) (relating to indexing).

"(c) LEGAL AND ACCOUNTING COMPLIANCE FUND.—(1) The limitation under subsection (b) shall not apply to qualified legal and accounting expenditures made by a candidate or the candidate's authorized committees or a Federal officeholder from a legal and accounting compliance fund meeting the requirements of paragraph (2).

"(2) A legal and accounting compliance fund meets the requirements of this paragraph if—

"(vi) will cooperate in the case of any audit and examination by the Commission under section 505 and will pay any amounts required to be paid under that section; and

"(vii) will meet the closed captioning requirements of section 509; and

"(E) the candidate intends to make use of the benefits provided under section 503.

"(2) The certification under paragraph (1) shall be filed not later than 7 days after the earlier of—

"(A) the date the candidate qualifies for the general election ballot under State law; or

"(B) if, under State law, a primary or runoff election to qualify for the general election ballot occurs after September 1, the date the candidate wins the primary or runoff election.

"(d) PRIMARY AND RUNOFF EXPENDITURE LIMITS.—(1) The requirements of this subsection are met if:

"(A) The candidate or the candidate's authorized committees did not make expenditures for the primary election in excess of the lesser of—

"(i) 67 percent of the general election expenditure limit under section 502(b); or

"(ii) $2,750,000.

"(B) The candidate and the candidate's authorized committees did not make expenditures for any runoff election in excess of 20 percent of the general election expenditure limit under section 502(b).

"(2) The limitations under subparagraphs (A) and (B) of paragraph (1) with respect to any candidate shall be increased by the aggregate amount of independent expenditures in opposition to, or on behalf of any opponent of, such candidate during the primary or runoff election period, whichever is applicable, which are required to be reported to the Secretary of the Senate or to the Commission with respect to such period under section 304.

"(3)(A) If the contributions received by the candidate or the candidate's authorized committees for the primary election or runoff election exceed the expenditures for either such election, such excess contributions shall be treated as contributions for the general election and expenditures for the general election may be made from such excess contributions.

"(B) Subparagraph (A) shall not apply to the extent that such treatment of excess contributions—

"(i) would result in the violation of any limitation under section 315; or "(ii) would cause the aggregate contributions received for the general election to exceed the limits under subsection (c)(1)(D)(iii).

"(e) THRESHOLD CONTRIBUTION REQUIREMENTS.—(1) The requirements of this subsection are met if the candidate and the candidate's authorized committees have received allowable contributions during the applicable period in an amount at least equal to 5 percent of the general election expenditure limit under section 502(b).

"(2) For purposes of this section and subsections (b) and (c) of section 503—

"(A) The term 'allowable contributions' means contributions which are made as gifts of money by an individual pursuant to a written instrument identifying such individual as the contributor.

"(B) The term 'allowable contributions' shall not include—

"(i) contributions made directly or indirectly through an intermediary or conduit which are treated as made by such intermediary or conduit under section 315(a)(8)(B);

"(ii) contributions from any individual during the applicable period to the extent such contributions exceed $250; or "(iii) contributions from individuals residing outside the candidate's State.

Clauses (ii) and (iii) shall not apply for purposes of section 503(b).

"(3) For purposes of this subsection and subsections (b) and (c) of section 503, the term 'applicable period' means—

"(A) the period beginning on January 1 of the calendar year preceding the calendar year of the general election involved and ending on—

"(i) the date on which the certification under subsection (c) is filed by the candidate; or

"(ii) for purposes of subsections (b) and (c) of section 503, the date of such general election; or

"(B) in the case of a special election for the office of United States Senator, the period beginning on the date the vacancy in such office occurs and ending on the date of the general election involved.

"(f) INDEXING.—The $2,750,000 amount under subsection (d)(1) shall be increased as of the beginning of each calendar year based on the increase in the price index determined under section 315(c), except that, for purposes riod in excess of the threshold contribution requirement under section 501(e).

"(ii) 50 percent of the general election expenditure limit applicable to the eligible Senate candidate under section 502(b).

"(iii) The excess described in paragraph (1).

"(c) INDEPENDENT EXPENDITURE AMOUNT.—For purposes of subsection (a)(3)(B), the amount determined under this subsection is the total amount of independent expenditures made, or obligated to be made, during the general election period by 1 or more persons in opposition to, or on behalf of an opponent of, an eligible Senate candidate which are required to be reported by such persons under section 304(c) with respect to the general election period and are certified by the Commission under section 304(c).

"(d) WAIVER OF EXPENDITURE AND CONTRIBUTION LIMITS.—(1)(A) An eligible Senate candidate who receives payments under subsection (a)(3) may make expenditures from such payments to defray expenditures for the general election without regard to the general election expenditure limit under section 502(b).

"(B) In the case of an eligible Senate candidate who is not a major party candidate, the general election expenditure limit under section 502(b) with respect to such candidate shall be increased by the amount (if any) by which the excess described in subsection (b)(1) exceeds the amount determined under subsection (b)(2)(B) with respect to such candidate.

"(2)(A) An eligible Senate candidate who receives benefits under this section may make expenditures for the general election without regard to clause (i) of section 501(c)(1)(D) or subsection (a) or (b) of section 502 if any one of the eligible Senate candidate's opponents who is not an eligible Senate candidate either raises aggregate contributions, or makes or becomes obligated to make aggregate expenditures, for the general election that exceed 200 percent of the general election expenditure limit applicable to the eligible Senate candidate under section 502(b).

"(B) The amount of the expenditures which may be made by reason of subparagraph (A) shall not exceed 100 percent of the general election expenditure limit under section 502(b).

"(3)(A) A candidate who receives benefits under this section may receive contributions for the general election without regard to clause (iii) of section 501(c)(1)(D) if—

"(i) a major party candidate in the same general election is not an eligible Senate candidate; or

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"(2) used for costs incurred under section 601(e) and (f) shall not be considered in the computation of amounts subject to limitation.

"(m) INDEXING.—The dollar amounts specified in section 315(i) shall be adjusted at the beginning of the calendar year based on the increase in the price index determined under section 315(c), except that, for the purposes of such adjustment, the base period shall be calendar year 1992.

"(n) TRANSFER PROVISION.—The limitations imposed by section 315(i) apply without regard to amounts transferred from previous election cycles or other authorized committees of the same candidate. Candidates shall not be required to seek the redesignation of contributions in order to transfer such contributions to a later election cycle.".

TITLE III—INDEPENDENT EXPENDITURES

SEC. 301. CLARIFICATION OF DEFINITIONS RELATING TO INDEPENDENT EXPENDITURES.

(a) INDEPENDENT EXPENDITURE DEFINITION AMENDMENT.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by striking paragraphs (17) and (18) and inserting the following:

public inspection and copying in the same manner as the Commission under section 311(a)(4), and shall preserve such reports and filings in the same manner as the Commission under section 311(a)(5).

"(g) DEFINITIONS.—For purposes of this section, any term used in this section which is used in title V shall have the same meaning as when used in title V.".

SEC. 104. DISCLOSURE BY NONELIGIBLE CANDIDATES.

Section 318 of FECA (2 U.S.C. 441d), as amended by section 134, is amended by adding at the end thereof the following:

"(f) If a broadcast, cablecast, or other communication is paid for or authorized by a candidate in the general election for the office of United States Senator who is not an eligible Senate candidate, or the authorized committee of such candidate, such communication shall contain the following sentence: 'This candidate has not agreed to voluntary campaign spending limits.'.".

SEC. 105. EXCESS CAMPAIGN FUNDS OF SENATE CANDIDATES.

Section 313 of FECA (2 U.S.C. 439a) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Amounts"; and

(2) by adding at the end the following new subsection:

"(b) RETURN OF EXCESS CAMPAIGN FUNDS.—(1) Except as provided in paragraph (2), and notwithstanding subsection (a), if a candidate for the Senate has amounts in excess of amounts necessary to defray campaign expenditures for any election cycle, including any fines or penalties relating thereto, such candidate shall, not later than 1 year after the date of the general election for such cycle, expend such excess in the manner described in subsection (a) or transfer it to the Senate Election Campaign Fund established under section 510.

"(2) Paragraph (1) shall not apply to any amounts—

"(A) transferred to a legal and accounting compliance fund established under section 502(c); or

"(B) transferred for use in the next election cycle to the extent such amounts do not exceed 20 percent of the sum of the primary election expenditure limit under section 501(d)(1)(A) and the general election expenditure limit under section 502(b) for the election cycle from which the amounts are being transferred.".

SEC. 106. RESTRICTIONS ON USE OF CAMPAIGN FUNDS.

(a) RESTRICTIONS ON USE OF CAMPAIGN FUNDS.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

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"(3) LARGE AMOUNT OF EXCESS EXPENDITURES.—Any eligible House of Representatives candidate who makes expenditures that exceed a limitation under subsection (a) or subsection (b) by 5 percent or more shall pay to the Commission an amount equal to three times the amount of the excess expenditures plus a civil penalty in an amount determined by the Commission.

"(h) INDEXING.—The dollar amounts specified in subsections (a), (b), and (c) shall be adjusted at the beginning of each calendar year based on the increase in the price index determined under section 315(c), except that, for the purposes of such adjustment, the base period shall be calendar year 1992.

"(i) The limitations of this section do not apply in the case of any recall action held pursuant to State law.

"SEC. 602. CONTRIBUTION LIMITATIONS.

"(a) PERSONAL CONTRIBUTIONS.—An eligible House of Representatives candidate may not, with respect to an election cycle, make contributions or loans to his or her own campaign totaling more than $50,000 from the personal funds of the candidate. The amount that the candidate may accept from persons referred to in section 315(i)(2) shall be reduced by the amount of contributions made under the

"(iii) contributions from individuals residing outside the candidate's State.

Clauses (ii) and (iii) shall not apply for purposes of section 503(b).

"(3) For purposes of this subsection and subsections (b) and (c) of section 503, the term 'applicable period' means—

"(A) the period beginning on January 1 of the calendar year preceding the calendar year of the general election involved and ending on—

"(i) the date on which the certification under subsection (c) is filed by the candidate; or

"(ii) for purposes of subsections (b) and (c) of section 503, the date of such general election; or

"(B) in the case of a special election for the office of United States Senator, the period beginning on the date the vacancy in such office occurs and ending on the date of the general election involved.

"(f) INDEXING.—The $2,750,000 amount under subsection (d)(1) shall be increased as of the beginning of each calendar year based on the increase in the price index determined under section 315(c), except that, for purposes

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of subsection (d)(1) and section 502(b)(3), the base period shall be calendar year 1996.

"SEC. 502. LIMITATIONS ON EXPENDITURES.

"(a) LIMITATION ON USE OF PERSONAL FUNDS.—(1) The aggregate amount of expenditures which may be made during an election cycle by an eligible Senate candidate or such candidate's authorized committees from the sources described in paragraph (2) shall not exceed $25,000.

"(2) A source is described in this paragraph if it is—

"(A) personal funds of the candidate and members of the candidate's immediate family; or

"(B) personal debt incurred by the candidate and members of the candidate's immediate family.

"(b) GENERAL ELECTION EXPENDITURE LIMIT.—(1) Except as otherwise provided in this title, the aggregate amount of expenditures for a general election by an eligible Senate candidate and the candidate's authorized committees shall not exceed the lesser of—

"(A) $5,500,000; or

"(B) the greater of—

"(i) $1,200,000; or

"(ii) $400,000; plus

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of the election, except that a reasonable amount may be retained for a period not exceeding 120 days after the date of the general election for the liquidation of obligations to pay expenditures for the general election incurred during the general election period. At the end of the 120-day period, any unexpended vouchers received under this title shall be promptly repaid.

"SEC. 605. CLOSED CAPTIONING REQUIREMENT FOR TELEVISION COMMERCIALS OF ELIGIBLE HOUSE OF REPRESENTATIVES CANDIDATES.

"No eligible House of Representatives candidate may receive amounts under section 604 unless such candidate has certified to the Federal Election Commission that any television commercial prepared or distributed by the candidate will be prepared in a manner that contains, is accompanied by, or otherwise readily permits closed captioning of the oral content of the commercial to be broadcast by way of line 21 of the vertical blanking interval, or by way of comparable successor technologies.

"SEC. 606. EXAMINATION AND AUDITS; REPAYMENTS.

"(a) GENERAL ELECTION.—After each general election, the Commission shall conduct an examination and audit of the campaign accounts of 5 percent of the eligible House of Representatives candidates, as designated by the Commission through the use of an appropriate statistical

method of random selection, to determine whether such candidates have complied with the conditions of eligibility and other requirements of this title. No other factors shall be considered in carrying out such an examination and audit. The Commission shall conduct an examination and audit of the accounts of all candidates from a congressional district where any eligible candidate is selected for examination and audit.

"(b) SPECIAL ELECTION.—After each special election, the Commission shall conduct an examination and audit of the campaign accounts of all eligible candidates in the election to determine whether the candidates have complied with the conditions of eligibility and other requirements of this title.

"(c) AFFIRMATIVE VOTE.—The Commission may conduct an examination and audit of the campaign accounts of any eligible House of Representatives candidate in a general election if the Commission, by an affirmative vote of 4 members, determines that there exists reason to believe whether such candidate may have violated any provision of this title.

"(d) PAYMENTS.—If the Commission determines that any amount of a payment to a candidate under this title was in excess of the aggregate payments to which such candidate was entitled, the Commission shall so notify the can-

"other order" and inserting ", including an order for a civil penalty which—

"(i) is not less than all contributions and expenditures involved in the violation; and

"(ii) does not exceed the greater of $10,000 or 200 percent of all contributions and expenditures involved in the violation,

upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1986.".

(3) Section 309(a)(6)(C) of FECA (29 U.S.C. 437g(6)(C)) is amended by striking "a civil penalty" and all that follows and inserting "a civil penalty which—

"(i) is not less than 200 percent of all contributions and expenditures involved in the violation; and

"(ii) does not exceed the greater of $20,000 or 250 percent of all contributions and expenditures involved in the violation.".

SEC. 605. AUDITS.

(a) RANDOM AUDITS.—Section 311(b) of FECA (2 U.S.C. 438(b)) is amended—

(1) by inserting "(1)" before "The Commission"; and

(2) by adding at the end the following new paragraph:

"(2) Notwithstanding paragraph (1), the Commission may from time to time conduct random audits and investigations to ensure voluntary compliance with this Act. The subjects of such audits and investigations shall be selected on the basis of criteria established by vote of at least 4 members of the Commission to ensure impartiality in the selection process. This paragraph does not apply to an authorized committee of a candidate for President or Vice President subject to audit under section 9007 or 9038 of the Internal Revenue Code of 1986 or to an authorized committee of an eligible Senate candidate subject to audit under section 505(a).".

(b) EXTENSION OF PERIOD DURING WHICH CAMPAIGN AUDITS MAY BE BEGUN.—Section 311(b) of FECA (2 U.S.C. 438(b)) is amended by striking "6 months" and inserting "12 months".

SEC. 606. PROHIBITION OF FALSE REPRESENTATION TO SOLICIT CONTRIBUTIONS.

Section 322 of FECA (2 U.S.C. 441h) is amended—

(1) by inserting after "SEC. 322." the following: "(a)"; and

(2) by adding at the end the following:

impede his ability to protect that interest," movants' interest was being adequately protected and intervention thus would be disallowed. Republican Nat. Committee v. Federal Election Commission, D.C.N.Y.1978, 461 F.Supp. 570, certiorari question answered 616 F.2d 1, affirmed 100 S.Ct. 1639, 445 U.S. 955, 64 L.Ed.2d 231.

17. Motion to dismiss

Given the importance of the issues raised in the present case, a suit by the Republican National Committee, and others, challenging those portions of federal law which condition the receipt of federal campaign funds by presidential candidates upon compliance with campaign expenditure limits and forbearance from raising contributions to defray campaign expenses, and given the clear congressional commitment to expedited review, it would make much more sense to allow the court of appeals to consider all questions at once; accordingly, defendants' motion to dismiss, arguing that plaintiffs' various constitutional objections were rejected by the Supreme Court in Buckley and that no proper "case or controversy" was presented, would be denied without prejudice. Republican Nat. Committee v. Federal Election Commission, D.C.N.Y.1978, 461 F.Supp. 570, certiorari question answered 616 F.2d 1, affirmed 100 S.Ct. 1639, 445 U.S. 955, 64 L.Ed.2d 231.

18. Findings

Fact that Commission had interpreted this chapter in such a manner that the political arm of the AFL-CIO and individual union political action committees would be treated as separate entities for purposes of limits on campaign contributions would not preclude a finding that some candidate who received contributions from both organizations which exceeded a total of $5,000 knowingly accepted excessive contributions because the two organizations were, in fact, controlled or maintained by the same group of persons, thus making them one political action committee for purposes of this chapter. Walther v. Federal Election Commission, D.C.D.C. 1979, 468 F.Supp. 1235.

19. Declaratory judgment

Although judicial review provisions of this section governing declaratory judgment actions and enforcement proceedings are not blueprints for efficient litigation, those provisions do not preclude use of declaratory judgment actions to litigate constitutional challenges to this chapter that have been or might have been raised as defenses to ongoing or contemplated Commission enforcement proceedings. California Medical Ass'n v. Federal Election Commission, Cal.1981, 101 S.Ct. 2712, 453 U.S. 182, 69 L.Ed.2d 567.

20. Remand

Under this section setting forth special procedure for review of constitutional questions by certification to court of appeals, court of appeals, even assuming it could properly appoint its own master to make report of proposed findings, remanded record to district court to identify constitutional issues in complaint, take necessary evidence, make factual findings and certify constitutional questions arising. Buckley v. Valeo, 1975, 519 F.2d 817, 171 U.S.App.D.C. 168, on remand 401 F.Supp. 1235.

21. Supreme Court review

Actions brought under provisions of this section governing declaratory judgment actions and enforcement proceedings by Commission may proceed in district court at same time, and, therefore, after district court certified questions to court of appeals regarding constitutionality of section 441a of this title prohibiting individuals of unincorporated associations from contributing more than $5,000 per calendar year to any multicandidate political committee, Supreme Court had jurisdiction over appeal from court of appeals, even though enforcement proceeding was pending in district court. California Medical Ass'n v. Federal Election Commission, Cal. 1981, 101 S.Ct. 2712, 453 U.S. 182, 69 L.Ed.2d 567.

§ 438. Administrative provisions

(a) Duties of Commission

The Commission shall—

(1) prescribe forms necessary to implement this Act;

(2) prepare, publish, and furnish to all persons required to file reports and statements under this Act a manual recommending uniform methods of bookkeeping and reporting;

(3) develop a filing, coding, and cross-indexing system consistent with the purposes of this Act;

(4) within 48 hours after the time of the receipt by the Commission of reports and statements filed with it, make them available for public inspection, and copying, at the expense of the person requesting such copying, except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Clerk, Secretary, or the Commission shall exclude these lists from the public record;

(5) keep such designations, reports, and statements for a period of 10 years from the date of receipt, except that designations, reports, and statements that relate solely to candidates for the House of Representatives shall be kept for 5 years from the date of their receipt;

(6) (A) compile and maintain a cumulative index of designations, reports, and statements filed under this Act, which index shall be published at regular intervals and made available for purchase directly or by mail;

(B) compile, maintain, and revise a separate cumulative index of reports and statements filed by multi-candidate committees, including in such index a list of multi-candidate committees; and

(C) compile and maintain a list of multi-candidate committees, which shall be revised and made available monthly;

(7) prepare and publish periodically lists of authorized committees which fail to file reports as required by this Act;

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d) of this section;

(9) transmit to the President and to each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate; and

(10) serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections. The Commission may enter into contracts for the purpose of conducting studies under this paragraph. Reports or studies made under this paragraph shall be available to the public upon the payment of the cost thereof, except that copies shall be made available without cost, upon request, to agencies and branches of the Federal Government.

(b) Audits and field investigations

The Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. All audits and field investigations concerning the verification for, and under chapter 95 or chapter 96 of Title 26 shall be given priority. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. Such thresholds for compliance shall be established by the Commission. The Commission may, upon an affirmative vote of 4 of its members, conduct an audit and field investigation of any committee which does meet the threshold requirements established by the Commission. Such audit shall be commenced within 30 days of such vote, except that any audit of an authorized committee of a candidate, under the provisions of this subsection, shall be commenced within 6 months of the election for which such committee is authorized.

(c) Statutory provisions applicable to forms and information-gathering activities

Any forms prescribed by the Commission under subsection (a)(1) of this section, and any information-gathering activities of the Commission under this Act, shall not be subject to the provisions of section 3512 of Title 44.

(d) Rules, regulations, or forms; issuance, procedures applicable, etc.

(1) Before prescribing any rule, regulation, or form under this section or any other provision of this Act, the Commission shall transmit a statement with respect to such rule, regulation, or form to the Senate and the House of Representatives, in accordance with this subsection. Such statement shall set forth the proposed rule, regulation, or form, and shall contain a detailed explanation and justification of it.

(2) If either House of the Congress does not disapprove by resolution any proposed rule or regulation submitted by the Commission under this section within 30 legislative days after the date of the receipt of such proposed rule or regulation or within 10 legislative days after the date of receipt of such proposed form, the Commission may prescribe such rule, regulation, or form.

(3) For purposes of this subsection, the term "legislative day" means, with respect to statements transmitted to the Senate, any calendar day on which the Senate is in session, and with respect to statements transmitted to the House of Representatives, any calendar day on which the House of Representatives is in session.

(4) For purposes of this subsection, the terms "rule" and "regulation" mean a provision or series of interrelated provisions stating a single, separable rule of law.

(5)(A) A motion to discharge a committee of the Senate from the consideration of a resolution relating to any such rule, regulation, or form or a motion to proceed to the consideration of such a resolution, is highly privileged and shall be decided without debate.

(B) Whenever a committee of the House of Representatives reports any resolution relating to any such form, rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and is not in order to move to reconsider the vote by which the motion is agreed to or disagreed with.

(e) Scope of protection for good faith reliance upon rules or regulations

Notwithstanding any other provision of law, any person who relies upon any rule or regulation prescribed by the Commission in accordance with the provisions of this section and who acts in good faith in accordance with such rule or regulation shall not, as a result of such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of Title 26.

(f) Promulgation of rules, regulations, and forms by Commission and Internal Revenue Service; report to Congress on cooperative efforts

In prescribing such rules, regulations, and forms under this section, the Commission and the Internal Revenue Service shall consult and work together to promulgate rules, regulations, and forms which are mutually consistent. The Commission shall report to the Congress annually on the steps it has taken to comply with this subsection.

(Pub.L. 92–225, Title III, § 311, formerly § 308, Feb. 7, 1972, 86 Stat. 16, renumbered § 316 and amended Pub.L. 93–443, Title II, §§ 208(a), (c)(8)–(10), 209(a)(1), (b), Oct. 15, 1974, 88 Stat. 1279, 1286, 1287, renumbered § 315 and amended Pub.L. 94–283, Title I, §§ 105, 110, May 11, 1976, 90 Stat. 481, 486, renumbered § 311 and amended Pub.L. 96–187, Title I, §§ 105(4), 109, Jan. 8, 1980, 93 Stat. 1354, 1362.)

Unconstitutionality of Legislative Veto Provisions

The provisions of section 1254(c)(2) of Title 8, Aliens and Nationality, which authorize a House of Congress, by resolution, to invalidate an action of the Executive Branch, were declared unconstitutional in Immigration and Naturalization Service v. Chadha, 1983, 103 S.Ct. 2764, 462 U.S. 919, 77 L.Ed.2d 317. See similar provisions in subsec. (d)(2) of this section.

Historical Note

References in Text. This Act, referred to in text, is the Federal Election Campaign Act of 1971, as amended, as defined by section 431 of this title.

Section 3512 of Title 44, referred to in subsec. (c), which related to requirements for the collection of information by independent Federal regulatory agencies, was a part of chapter 35 of Title 44, Public Printing and Documents. Chapter 35 was amended generally by the Paperwork Reduction Act of 1980 (Pub.L. 96–511). See sections 3506 and 3513 of Title 44 for provisions similar to those appearing in former section 3512.

1980 Amendment. Subsec. (a). Pub.L. 96–187, § 109, substituted in introductory clause "The Commission shall" for "It shall be the duty of the Commission".

Subsec. (a)(1). Pub.L. 96–187, § 109, substituted "prescribe forms necessary to implement this Act" for "to develop and furnish to the person required by the provisions of this Act prescribed forms for the making of the reports and statements required to be filed

Subsec. (a)(2). Pub.L. 96–187, § 109, substituted "prepare, publish, and furnish to all persons required to file reports and statements under this Act" for "to prepare, publish, and furnish to the person required to file such reports and statements".

Subsec. (a)(3). Pub.L. 96–187, § 109, struck out "to" preceding "develop" and substituted "consistent with the purposes of this Act" for "consonant with the purposes of this subchapter".

Subsec. (a)(4). Pub.L. 96–187, § 109, substituted provisions making available for inspection and copying reports and statements within 48 hours after receipt and prohibiting the sale or use of any information for soliciting contributions or for commercial purposes other than using names and addresses of any political committee and allowing a political committee to submit 10 pseudonyms on each report to protect against illegal use of names and addresses of contributors, such lists to be excluded from the public record, for provisions making available for public

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Divider Title: **Fundraising / Acc'ting** *shall report that the threshold has been reached to the Clerk of the House of Representatives not later than 48 hours after reaching the threshold. The Clerk shall transmit a report received under this paragraph to the Commission as soon as possible (but no later than 4 working hours of the Commission) after such receipt, and the Commission shall transmit a copy to each other candidate for election to the same office within 48 hours of receipt.*

"(e) EXEMPTION FOR LEGAL COSTS AND TAXES.—Any costs incurred by an eligible House of Representatives candidate or his or her authorized committee, or a Federal officeholder, for legal services or Federal, State, or local income and payroll taxes with respect to a candidate's authorized committees, or to comply with section 606, shall not be considered in the computation of amounts subject to limitation under this section.

"(f) EXEMPTION FOR ACCOUNTING OR FUNDRAISING COSTS.—

"(1) Any costs incurred by an eligible House of Representatives candidate or his or her authorized committee in connection with the solicitation of contributions on behalf of such candidate or for accounting services to ensure compliance with this Act shall not be considered in the computation of amounts sub-

ject to limitation under subsection (a) to the extent that the aggregate of such costs does not exceed 10 percent of the limitation under subsection (a).

"(2) An amount equal to 10 percent of salaries and overhead expenditures of an eligible House of Representatives candidate's campaign headquarters and offices shall not be considered in the computation of amounts subject to limitation under this section. Any amount excluded under this paragraph shall be applied against the accounting or fundraising expenditure exemption under paragraph (1).

"(g) CIVIL PENALTIES.—

"(1) LOW AMOUNT OF EXCESS EXPENDITURES.—Any eligible House of Representatives candidate who makes expenditures that exceed a limitation under subsection (a) or subsection (b) by 2.5 percent or less shall pay to the Commission an amount equal to the amount of the excess expenditures.

"(2) MEDIUM AMOUNT OF EXCESS EXPENDITURES.—Any eligible House of Representatives candidate who makes expenditures that exceed a limitation under subsection (a) or subsection (b) by more than 2.5 percent and less than 5 percent shall pay to the Commission an amount equal to three times the amount of the excess expenditures.

"(I) 30 cents multiplied by the voting age population not in excess of 4,000,000; and

"(II) 25 cents multiplied by the voting age population in excess of 4,000,000.

"(2) In the case of an eligible Senate candidate in a State which has no more than 1 transmitter for a commercial Very High Frequency (VHF) television station licensed to operate in that State, paragraph (1)(B)(ii) shall be applied by substituting—

"(A) '80 cents' for '30 cents' in subclause (I); and

"(B) '70 cents' for '25 cents' in subclause (II).

"(3) The amount otherwise determined under paragraph (1) for any calendar year shall be increased by the same percentage as the percentage increase for such calendar year under section 501(f) (relating to indexing).

"(c) LEGAL AND ACCOUNTING COMPLIANCE FUND.—(1) The limitation under subsection (b) shall not apply to qualified legal and accounting expenditures made by a candidate or the candidate's authorized committees or a Federal officeholder from a legal and accounting compliance fund meeting the requirements of paragraph (2).

"(2) A legal and accounting compliance fund meets the requirements of this paragraph if—

"(A) the fund is established with respect to qualified legal and accounting expenditures incurred with respect to a particular general election;

"(B) the only amounts transferred to the fund are amounts received in accordance with the limitations, prohibitions, and reporting requirements of this Act;

"(C) the aggregate amounts transferred to, and expenditures made from, the fund with respect to the election cycle do not exceed the sum of—

"(i) the lesser of—

"(I) 15 percent of the general election expenditure limit under subsection (b) for the general election for which the fund was established; or

"(II) $300,000; plus

"(ii) the amount determined under paragraph (4); and

"(D) no funds received by the candidate pursuant to section 503(a)(3) may be transferred to the fund.

"(3) For purposes of this subsection, the term 'qualified legal and accounting expenditures' means the following:

Copy 13

"(A) Any expenditures for costs of legal and accounting services provided in connection with—

"(i) any administrative or court proceeding initiated pursuant to this Act for the general election for which the legal and accounting fund was established; or

"(ii) the preparation of any documents or reports required by this Act or the Commission.

"(B) Any expenditures for legal and accounting services provided in connection with the general election for which the legal and accounting compliance fund was established to ensure compliance with this Act with respect to the election cycle for such general election.

"(4)(A) If, after a general election, a candidate determines that the qualified legal and accounting expenditures will exceed the limitation under paragraph (2)(C)(i), the candidate may petition the Commission by filing with the Secretary of the Senate a request for an increase in such limitation. The Commission shall authorize an increase in such limitation in the amount (if any) by which the Commission determines the qualified legal and accounting expenditures exceed such limitation. Such determination shall be subject to judicial review under section 506.

"(B) Except as provided in section 315, any contribution received or expenditure made pursuant to this paragraph shall not be taken into account for any contribution or expenditure limit applicable to the candidate under this title.

"(5) Any funds in a legal and accounting compliance fund shall be treated for purposes of this Act as a separate segregated fund, except that any portion of the fund not used to pay qualified legal and accounting expenditures, and not transferred to a legal and accounting compliance fund for the election cycle for the next general election, shall be treated in the same manner as other campaign funds for purposes of section 313(b).

"(d) PAYMENT OF TAXES ON EARNINGS.—The limitation under subsection (b) shall not apply to any expenditure for Federal, State, or local income taxes on the earnings of a candidate's authorized committees.

"(e) CERTAIN EXPENSES.—In the case of an eligible Senate candidate who holds a Federal office, the limitation under subsection (b) shall not apply to ordinary and necessary expenses of travel of such individual and the individual's spouse and children between Washington, D.C. and the individual's State in connection with the individual's activities as a holder of Federal office.

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Divider Title: **Disincentives**

ing a detailed explanation and justification of such rule or regulation.

"SEC. 509. CLOSED CAPTIONING REQUIREMENT FOR TELEVISION COMMERCIALS OF ELIGIBLE SENATE CANDIDATES.

"No eligible Senate candidate may receive amounts under section 503(a)(3) under section 503(a)(4) unless such candidate has certified that any television commercial prepared or distributed by the candidate will be prepared in a manner that contains, is accompanied by, or otherwise readily permits closed captioning of the oral content of the commercial to be broadcast by way of line 21 of the vertical blanking interval, or by way of comparable successor technologies.

"SEC. 510. SENATE ELECTION CAMPAIGN FUND.

"(a) ESTABLISHMENT OF CAMPAIGN FUND.—(1) There is hereby established on the books of the Treasury of the United States a special fund to be known as the Senate Election Campaign Fund (hereafter in this section referred to as 'the Fund').

"(2) There are hereby appropriated to the Fund the following amounts:

"(A) Amounts received in the Treasury which are equivalent to the increase in Federal revenues by reason of the repeal of the exempt function income exclusion under section 527 of the Internal Revenue Code of 1986 for authorized committees, and the graduated rates under such section for the principal campaign committee, of any candidate who does not abide by the campaign expenditure limits under this title, but only to the extent such amounts do not exceed the amount certified by the Commission as necessary to carry out the purposes of this title.

"(B) Amounts received in the Treasury which are equivalent to the increase in Federal revenues by reason of the disallowance of deductions for lobbying expenditures, but only to the extent such amounts do not exceed the amount certified by the Commission under subparagraph (A) reduced by amounts appropriated to the Fund under subparagraph (A).

"(C) Amounts transferred to the Fund under any provision of this Act.

"(D) Amounts credited to the Fund under paragraph (3).

"(3) The Secretary of the Treasury shall transfer amounts to, and manage, the Fund in the manner provided under subchapter B of chapter 98 of the Internal Revenue Code of 1986.

"(4) Amounts in the Fund shall, subject to the availability of appropriations, be available only for the purposes of—

"(A) providing benefits under this title; and

"(B) making expenditures in connection with the administration of the Fund.

"(5) The Secretary shall maintain such accounts in the Fund as may be required by this title or which the Secretary determines to be necessary to carry out the provisions of this title.

"(b) PAYMENTS UPON CERTIFICATION.—Upon receipt of a certification from the Commission under section 504, except as provided in subsection (c), the Secretary shall, subject to the availability of appropriations, promptly pay the amount certified by the Commission to the candidate out of the Fund.

"(c) REDUCTIONS IN PAYMENTS IF FUNDS INSUFFICIENT.—(1) If, at the time of a certification by the Commission under section 504 for payment to an eligible candidate, the Secretary determines that the monies in the Fund are not, or may not be, sufficient to satisfy the full entitlement of all eligible candidates, the Secretary shall withhold from the amount of such payment or voucher such amount as the Secretary determines to be necessary to assure that each eligible candidate will receive the same pro rata share of such candidate's full entitlement.

"(2) Amounts withheld under paragraph (1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay all, or a portion thereof, to all eligible candidates from whom amounts have been withheld, except that if only a portion is to be paid, it shall be paid in such manner that each eligible candidate receives an equal pro rata share of such portion.

"(3)(A) Not later than December 31 of any calendar year preceding a calendar year in which there is a regularly scheduled general election, the Secretary, after consultation with the Commission, shall make an estimate of—

"(i) the amount of monies in the Fund which will be available to make payments required by this title in the succeeding calendar year; and

"(ii) the amount of expenditures which will be required under this title in such calendar year.

"(B) If the Secretary determines that there will be insufficient monies in the Fund to make the expenditures required by this title for any calendar year, the Secretary shall notify each candidate on January 1 of such calendar year (or, if later, the date on which an individual becomes a candidate) of the amount which the Secretary estimates will be the pro rata reduction in each eligible candidate's payments under this subsection. Such notice shall be by registered mail.

"(C) The amount of the eligible candidate's contribution limit under section 501(c)(1)(D)(iii) shall be increased by the amount of the estimated pro rata reduction.

"(4) The Secretary shall notify the Commission and each eligible candidate by registered mail of any actual reduction in the amount of any payment by reason of this subsection. If the amount of the reduction exceeds the amount estimated under paragraph (3), the candidate's contribution limit under section 501(c)(1)(D)(iii) shall be increased by the amount of such excess.".

(b) EFFECTIVE DATES.—(1) Except as provided in this subsection, the amendment made by subsection (a) shall apply to elections occurring after December 31, 1994.

(2) For purposes of any expenditure or contribution limit imposed by the amendment made by subsection (a)—

(A) no expenditure made before January 1, 1994, shall be taken into account, except that there shall be taken into account any such expenditure for goods or services to be provided after such date; and

(B) all cash, cash items, and Government securities on hand as of January 1, 1994, shall be taken into account in determining whether the contribution limit is met, except that there shall not be taken into account amounts used during the 60-day period beginning on January 1, 1994, to pay for expenditures which were incurred (but unpaid) before such date.

(c) EFFECT OF INVALIDITY ON OTHER PROVISIONS OF ACT.—If section 501, 502, or 503 of title V of FECA (as added by this section), or any part thereof, is held to be invalid, all provisions of, and amendments made by, this Act shall be treated as invalid.

SEC. 102. BAN ON ACTIVITIES OF POLITICAL ACTION COMMITTEES IN FEDERAL ELECTIONS.

(a) IN GENERAL.—Title III of FECA (2 U.S.C. 431 et seq.), as amended by section 404, is amended by adding at the end thereof the following new section:

"BAN ON FEDERAL ELECTION ACTIVITIES BY POLITICAL ACTION COMMITTEES

"SEC. 327. (a) Notwithstanding any other provision of this Act, no person other than an individual or a political committee may make contributions, solicit or receive contributions, or make expenditures for the purpose of influencing an election for Federal office.

"(b) In the case of individuals who are executive or administrative personnel of an employer—

"(1) no contributions may be made by such individuals—

public inspection and copying in the same manner as the Commission under section 311(a)(4), and shall preserve such reports and filings in the same manner as the Commission under section 311(a)(5).

"(g) DEFINITIONS.—For purposes of this section, any term used in this section which is used in title V shall have the same meaning as when used in title V.".

SEC. 104. DISCLOSURE BY NONELIGIBLE CANDIDATES.

Section 318 of FECA (2 U.S.C. 441d), as amended by section 134, is amended by adding at the end thereof the following:

"(f) If a broadcast, cablecast, or other communication is paid for or authorized by a candidate in the general election for the office of United States Senator who is not an eligible Senate candidate, or the authorized committee of such candidate, such communication shall contain the following sentence: 'This candidate has not agreed to voluntary campaign spending limits.'.".

SEC. 105. EXCESS CAMPAIGN FUNDS OF SENATE CANDIDATES.

Section 313 of FECA (2 U.S.C. 439a) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Amounts"; and

(2) by adding at the end the following new subsection:

zation, cooperative, or corporation without capital stock for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 441b of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under section 441b of this title applies to a corporation, labor organization, or separate segregated fund to which this subsection applies.

(c) "Labor organization" defined

For purposes of this section, the term "labor organization" has the meaning given it by section 441b(b)(1) of this title.

(Pub.L. 92–225, Title III, § 317, formerly § 322, as added Pub.L. 94–283, Title I, § 112(2), May 11, 1976, 90 Stat. 492, renumbered Pub.L. 96–187, Title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354.)

Historical Note

References in Text. Section 441b of this title, referred to in subsecs. (b) and (c), read in the original "section 321" meaning section 321 of Pub.L. 92–225 which is classified to section 441g of this title. In view of the renumbering of section 321 as section 316 by section 105(5) of Pub.L. 96–187, the reference has been translated as reading "section 316" to reflect the probable intent of Congress.

Legislative History. For legislative history and purpose of Pub.L. 94–283, see 1976 U.S. Code Cong. and Adm.News, p. 929.

Cross References

Penalties for violation of this section, see section 437g of this title.

§ 441d. Publication and distribution of statements and solicitations; charge for newspaper or magazine space

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication—

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or [1]

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee; [1]

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(b) No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with such candidate's

campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes.

(Pub.L. 92–225, Title III, § 318, formerly § 323, as added Pub.L. 94–283, Title I, § 112(2), May 11, 1976, 90 Stat. 493, renumbered and amended Pub.L. 96–187, Title I, §§ 105(5), 111, Jan. 8, 1980, 93 Stat. 1354, 1365.)

[1] So in original. The word "or" probably should appear at the end of par. (2).

Historical Note

1980 Amendment. Subsec. (a). Pub.L. 96–187, § 111, designated existing provisions as subsec. (a), and in revising the text, provided for solicitation of contributions, prescribed three categories of communications: (1) paid for and authorized by the candidate, (2) paid for by others but authorized by the candidate, and (3) not authorized by the candidate for prior two categories where (1) authorized and (2) not authorized by the candidate; deleted requirement for statement in accordance with regulations of Commission and in a conspicuous manner; and deleted from the communication not authorized by the candidate statement of name of affiliated or connected organization required to be disclosed under section 433(b)(2) of this title.

Subsec. (b). Pub.L. 96–187, § 111, added subsec. (b).

Effective Date of 1980 Amendment. Amendment by Pub.L. 96–187 effective Jan. 8, 1980, see section 301(a) of Pub.L. 96–187, set out as an Effective Date of 1980 Amendment note under section 431 of this title.

Legislative History. For legislative history and purpose of Pub.L. 94–283, see 1976 U.S. Code Cong. and Adm.News, p. 929. See, also, Pub.L. 96–187, 1979 U.S.Code Cong. and Adm.News, p. 2860.

Code of Federal Regulations

Contributions and expenditures, limitations and prohibitions upon, see 11 CFR 110.1 et seq.
Independent expenditures, see 11 CFR 109.1 et seq.

Notes of Decisions

1. Constitutionality

Former section 612 of Title 18 which required writings or other statements to contain the names of the persons responsible for the publication or distribution thereof did not violate U.S.C.A. Const.Amend. 1 guarantees of free speech and press where said section was limited in its application to statements relating to or concerning a candidate for federal elective office. U.S. v. Insco, D.C.Fla. 1973, 365 F.Supp. 1308.

Former section 612 of Title 18, which prohibited willful publication and distribution of pamphlets concerning candidate for Senate without disclosing name of persons responsible for publication and distribution did not violate U.S.C.A. Const.Amend. 1, and such section was not unconstitutional as to former, whose operations were subject to government regulation and who published pamphlet about senatorial candidate, because of mere possibility of reprisal. U.S. v. Scott, D.C.N.D.1961, 195 F.Supp. 440.

2. Fraud or misrepresentation

Though fraud or misrepresentation was not an element of the offense of distributing without an attribution clause a statement concerning a candidate for Congress, and though the Department of Justice had never prosecuted for failure to include such a clause on a bumper sticker, the Department could have used former section 612 of Title 18 as a vehicle for prosecution because of the element of alleged misrepresentation in that the bumper stickers were allegedly distributed by the opponent of the candidate whose name appeared thereon, and prosecution under such circumstances did not render the application of former section 612 of Title 18 in the instant case void for vagueness on basis of prior custom and usage. U.S. v. Insco, D.C. Fla.1973, 365 F.Supp. 1308.

3. Writings within section

Although bulletin prepared by organization calling for limit on government spending reported voting record of Congressman as well as his photograph and chart of his votes characterized as "for" and "against" government spending such did not fall within reporting, disclosure and identification requirement of this section and section 434 of this title where it did not refer to any election, to

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Divider Title: **Benefits**

"SEC. 604. VOTER COMMUNICATION VOUCHERS.

"(a) IN GENERAL.—An eligible House of Representatives candidate shall be entitled to receive, with respect to the general election, an amount of voter communication vouchers equal to the amount of contributions from individuals received by the candidate, but not more than $200,000, with not more than $200 to be taken into account per individual.

"(b) SPECIFIC REQUIREMENTS.—A candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress may receive voter communication vouchers under subsection (a) only if the candidate—

"(1) in an election cycle, has received 10 percent of the limit specified in section 601(a) in contributions from individuals, with not more than $200 to be taken into account per individual;

"(2) qualifies for the general election ballot;

"(3) has an opponent on the general election ballot; and

"(4) files a declaration of participation in which the candidate agrees to—

"(A) comply with the limitations under sections 601 and 315(i);

"(B) cooperate in the case of any audit by the Commission by furnishing such campaign

records and other information as the Commission may require; and

"(C) comply with any repayment requirement under section 606.

"(c) WRITTEN INSTRUMENT REQUIREMENT.—No contribution in any form other than a gift of money made by a written instrument or a certification by the committee making the request that identifies the individual making the contribution by full name and address may be used as a basis for any matching payment under this section.

"(d) CERTIFICATION AND PAYMENT.—

"(1) CERTIFICATION.—Except as provided in paragraphs (2), (3), and (4) not later than 5 days after receiving a request for payment, the Commission shall certify for payment the amount requested under this section. The request by an eligible candidate to receive voter communications vouchers under this section shall contain—

"(A) such information and be made in accordance with such procedures as the Commission may provide by regulation; and

"(B) a verification signed by the candidate and the treasurer of the principal campaign committee of such candidate stating that the information furnished in support of the request, to

the best of their knowledge, is correct and fully satisfies the requirements of this title.

"(2) PAYMENTS.—The initial payment of voter communication vouchers under subsection (a) to an eligible candidate shall be an amount equal to at least 10 percent of the limit specified in section 601(a). All payments shall be—

"(A) made not later than 48 hours after certification under paragraph (1); and

"(B) subject to proportional reduction in the case of insufficient funds.

"(3) PARTIAL CERTIFICATION.—If the Commission determines that any portion of a request does not meet the requirements for certification, the Commission shall withhold the certification for that portion only and inform the candidate as to how the candidate may correct the request.

"(4) CERTIFICATION WITHHELD.—The Commission may withhold certification if it determines that a candidate who is otherwise eligible has engaged in a pattern of activity indicating that the promises in the candidate's statement of participation cannot be relied upon.

"(e) CLOSELY CONTESTED PRIMARY.—If, as determined by the Commission, an eligible House of Representa-

tives candidate in a contested primary election wins that primary election by a margin of 20 percentage points or less, the candidate shall be eligible to receive matching vouchers totaling not more than $66,600, in addition to any other amount received under this section. The amount available under the preceding sentence is subject to the matching requirements of this section.

"(f) INDEPENDENT EXPENDITURE PROVISION.—If, with respect to a general election involving an eligible House of Representatives candidate, independent expenditures totaling $10,000 are made against the eligible House of Representatives candidate or in favor of another candidate, the eligible House of Representatives candidate shall be entitled, in addition to any amount received under subsection (a), to voter communication vouchers equal to the amount of such independent expenditures, and expenditures may be made from such vouchers without regard to the limitations in section 601.

"(g) PROHIBITION OF CONVERSION TO PERSONAL USE.—An eligible candidate who receives voter communication vouchers under this section may not convert any amount to personal use or make any payments, directly or indirectly, to such candidate or to any members of the immediate family of the candidate.

"(h) INDEXING.—The dollar amount specified in subsections (a) and (e) (other than the amount taken into account per individual) shall be adjusted at the beginning of the calendar year based on the increase in the price index determined under section 315(c), except that, for the purposes of such adjustment, the base period shall be calendar year 1992.

"(i) USE OF VOTER COMMUNICATION VOUCHERS.—Voter communication vouchers shall be used by an eligible House of Representatives candidate—

"(1) to purchase broadcast time during the general election period in the same manner as other broadcast time may be purchased by the candidate;

"(2) to purchase print advertisements during the general election period;

"(3) to purchase voter contact campaign materials (brochures, bumper stickers, handbills, pins, posters, and yard signs) used during the general election period; or

"(4) to pay for postage expenses incurred during the general election period.

"(j) UNEXPENDED VOUCHERS.—Any amount of voter communication vouchers received by an eligible House candidate under this title and not expended on or before the date of the general election shall be repaid within 60 days

of the election, except that a reasonable amount may be retained for a period not exceeding 120 days after the date of the general election for the liquidation of obligations to pay expenditures for the general election incurred during the general election period. At the end of the 120-day period, any unexpended vouchers received under this title shall be promptly repaid.

"SEC. 605. CLOSED CAPTIONING REQUIREMENT FOR TELEVISION COMMERCIALS OF ELIGIBLE HOUSE OF REPRESENTATIVES CANDIDATES.

"No eligible House of Representatives candidate may receive amounts under section 604 unless such candidate has certified to the Federal Election Commission that any television commercial prepared or distributed by the candidate will be prepared in a manner that contains, is accompanied by, or otherwise readily permits closed captioning of the oral content of the commercial to be broadcast by way of line 21 of the vertical blanking interval, or by way of comparable successor technologies.

"SEC. 606. EXAMINATION AND AUDITS; REPAYMENTS.

"(a) GENERAL ELECTION.—After each general election, the Commission shall conduct an examination and audit of the campaign accounts of 5 percent of the eligible House of Representatives candidates, as designated by the Commission through the use of an appropriate statistical

"(b) RUNOFF ELECTION AND SPECIAL ELECTION AMOUNTS.—

"(1) RUNOFF ELECTION AMOUNT.—If an eligible House of Representatives candidate is a candidate in a runoff election, the candidate may make additional expenditures aggregating not more than $200,000 in the election cycle.

"(2) SPECIAL ELECTION AMOUNT.—An eligible House of Representatives candidate who is a candidate in a special election may make expenditures aggregating not more than $600,000 with respect to the special election.

"(c) CLOSELY CONTESTED PRIMARY.—If, as determined by the Commission, an eligible House of Representatives candidate in a contested primary election wins that primary election by a margin of 20 percentage points or less, the candidate may make additional expenditures aggregating not more than $200,000 in the election cycle.

"(d) NONPARTICIPATING OPPONENT PROVISIONS.—

"(1) LIMITATION EXCEPTION.—The limitations imposed by subsections (a) and (b) do not apply in the case of an eligible House of Representatives candidate if any other general election candidate seeking nomination or election to that office—

"(A) is not an eligible House of Representatives candidate; and

"(B) receives contributions or makes expenditures in excess of 25 percent of the limitation under subsection (a).

"(2) CONTINUED ELIGIBILITY AND ADDITIONAL MATCHING FUNDS.—An eligible House of Representatives candidate referred to in paragraph (1)—

"(A) shall continue to be eligible for all benefits under this title; and

"(B) shall receive voter communication vouchers under section 604.

"(3) REPORTING REQUIREMENT.—A candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress—

"(A) who is not an eligible House of Representatives candidate; and

"(B) who makes contributions in excess of $50,000 of personal funds of the candidate and members of the candidate's immediate family to the authorized committee of the candidate or receives contributions or makes expenditures in excess of 25 percent of the limitation under subsection (a);

propriate provision of the Federal Election Campaign Act of 1971.

TITLE X—HOUSE OF REPRESENTATIVES CAMPAIGN ELECTION FUNDING AND RELATED MATTERS

SEC. 1001. MAKE DEMOCRACY WORK ELECTION FUND.

The Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by section 121, is further amended by adding at the end the following new title:

"TITLE VII—MAKE DEMOCRACY WORK ELECTION FUND

"SEC. 701. ESTABLISHMENT AND OPERATION OF THE FUND.

"(a) IN GENERAL.—There is hereby established on the books of the Treasury of the United States a special fund to be known as the Make Democracy Work Election Fund (hereinafter in this title referred to as the 'Fund'). The amounts designated for the Fund shall remain available without fiscal limitation for purposes of providing benefits under title VI and making expenditures for the administration of the Fund. The Secretary shall maintain such accounts in the Fund as may be required by this title or which the Secretary determines to be necessary to carry out the provisions of this title.

"(B) The authority granted under subparagraph (A) includes the power to appeal from, and petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which the Commission appears pursuant to the authority provided in this section.".

SEC. 702. FEDERAL ELECTION COMMISSION PUBLIC SERVICE ANNOUNCEMENTS.

Title III of Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by sections 403 and 610, is further amended by inserting after section 324 the following new section:

"SEC. 325. PUBLIC SERVICE ANNOUNCEMENTS.

"(a) In General.—Beginning on January 15, and continuing through April 15 of each year, the Federal Election Commission shall carry out a program, utilizing broadcast announcements and other appropriate means, to inform the public of the existence and purpose of the Make Democracy Work Election Fund and the role that individual citizens can play in the election process by voluntarily contributing to the Fund. The Commission shall seek to broadcast such announcements during prime time viewing hours in 30-second advertising segments equivalent to 200 gross rating points per network per week. The Commission shall attempt to ensure that the maximum number of tax-

payers shall be exposed to these announcements. The Federal Election Commission shall attempt to utilize a variety of communications media, including television, cable, and radio networks, and individual television, cable, and radio stations, to provide similar announcements.

"(b) GROSS RATING POINT.—The term 'gross rating point' is a measure of the total gross weight delivered. It is the sum of the ratings for individual programs. Since a household rating period is 1 percent of the coverage base, 200 gross rating points means 2 messages a week per average household.".

SEC. 703. AUTHORITY TO SEEK INJUNCTION.

Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)) is amended—

(1) by adding at the end the following new paragraph:

"(13)(A) If, at any time in a proceeding described in paragraph (1), (2), (3), or (4), the Commission believes that—

"(i) there is a substantial likelihood that a violation of this Act or of chapter 95 or chapter 96 of the Internal Revenue Code of 1986 is occurring or is about to occur;

addressed in the ruling below, accept jurisdiction over, advance on the docket, and expedite the appeal to the greatest extent possible.

SEC. 1104. REGULATIONS.

The Federal Election Commission shall prescribe any regulations required to carry out the provisions of this Act within 12 months after the effective date of this Act.

SEC. 1105. BUDGET NEUTRALITY.

The provisions of this Act (other than this section) shall not be effective and shall not be considered to be an estimate required under the procedures specified in section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 until the enactment of revenue legislation effectuating section 701 of the Federal Election Campaign Act of 1971.

lations shall apply to all contributions possessed by an individual at the time of implementation of this section.

Subtitle B—General Provisions

SEC. 131. BROADCAST RATES AND PREEMPTION.

(a) BROADCAST RATES.—Section 315(b) of the Communications Act of 1934 (47 U.S.C. 315(b)) is amended—

(1) in paragraph (1)—

(A) by striking "forty-five" and inserting "30"; and

(B) by striking "lowest unit charge of the station for the same class and amount of time for the same period" and inserting "lowest charge of the station for the same amount of time for the same period on the same date"; and

(2) by adding at the end the following new sentence:

"In the case of an eligible Senate candidate (as defined in section 301(19) of the Federal Election Campaign Act of 1971), the charges for the use of a television broadcasting station during the 60-day period referred to in paragraph (1) shall not exceed 50 percent of the lowest charge described in paragraph (1), except that this sentence shall not apply to broadcasts which are to be paid by vouchers

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which are received under section 503(c)(4) by reason of the independent expenditure amount.".

(b) PREEMPTION; ACCESS.—Section 315 of such Act (47 U.S.C. 315) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting immediately after subsection (b) the following new subsection:

"(c)(1) Except as provided in paragraph (2), a licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for public office who has purchased and paid for such use pursuant to the provisions of subsection (b)(1).

"(2) If a program to be broadcast by a broadcasting station is preempted because of circumstances beyond the control of the broadcasting station, any candidate advertising spot scheduled to be broadcast during that program may also be preempted.".

(c) REVOCATION OF LICENSE FOR FAILURE TO PERMIT ACCESS.—Section 312(a)(7) of such Act (47 U.S.C. 312(a)(7)) is amended—

(1) by striking "or repeated";

(2) by inserting "or cable system" after "broadcasting station"; and

(3) by striking "his candidacy" and inserting "his or her candidacy, under the same terms, conditions, and business practices as apply to its most favored advertiser".

SEC. 132. EXTENSION OF REDUCED THIRD-CLASS MAILING RATES TO ELIGIBLE SENATE CANDIDATES.

Section 3626(e) of title 39, United States Code, is amended—

(1) in paragraph (2)(A)—

(A) by striking "and the National" and inserting "the National"; and

(B) by striking "Committee;" and inserting "Committee, and, subject to paragraph (3), the principal campaign committee of an eligible Senate candidate;";

(2) in paragraph (2)(B), by striking "and" after the semicolon;

(3) in paragraph (2)(C), by striking the period and inserting "; and";

(4) by adding after paragraph (2)(C) the following new subparagraph:

"(D) the terms 'eligible Senate candidate' and 'principal campaign committee' have the meanings given those terms in section 301 of the Federal Election Campaign Act of 1971."; and

(5) by adding after paragraph (2) the following new paragraph:

"(3) The rate made available under this subsection with respect to an eligible Senate candidate shall apply only to—

"(A) the general election period (as defined in section 301 of the Federal Election Campaign Act of 1971); and

"(B) that number of pieces of mail equal to 2 times the number of individuals in the voting age population (as certified under section 315(e) of such Act) of the State.".

SEC. 133. REPORTING REQUIREMENTS FOR CERTAIN INDEPENDENT EXPENDITURES.

(a) IN GENERAL.—Section 304 of FECA (2 U.S.C. 434) is amended by adding at the end the following new subsection:

"(d) TIME FOR REPORTING CERTAIN EXPENDITURES.—(1) Any person making independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before any election shall file a report of such expenditures within 24 hours after such expenditures are made.

"(2) Any person making independent expenditures aggregating $10,000 or more at any time up to and in-

"(f) EXPENDITURES.—For purposes of this title, the term 'expenditure' has the meaning given such term by section 301(9), except that in determining any expenditures made by, or on behalf of, a candidate or a candidate's authorized committees, section 301(9)(B) shall be applied without regard to clause (ii) thereof.

"SEC. 503. BENEFITS ELIGIBLE CANDIDATE ENTITLED TO RECEIVE.

"(a) IN GENERAL.—An eligible Senate candidate shall be entitled to—

"(1) the broadcast media rates provided under section 315(b) of the Communications Act of 1934;

"(2) the mailing rates provided in section 3626(e) of title 39, United States Code; and

"(3) payments from the Senate Election Campaign fund in an amount equal to—

"(A) the excess expenditure amount determined under subsection (b); and

"(B) the independent expenditure amount determined under subsection (c).

"(b) EXCESS EXPENDITURE AMOUNT.—(1) For purposes of subsection (a)(3)(A), except as provided in section 510(d), the amount determined under this subsection is, in the case of an eligible Senate candidate who has an opponent in the general election who receives contributions, or makes (or obligates to make) expenditures, for such election in excess of the general election expenditure limit under section 502(b), the excess expenditure amount.

"(2) For purposes of paragraph (1), the excess expenditure amount is the amount determined as follows:

"(A) In the case of a major party candidate, an amount equal to the sum of—

"(i) if the excess described in paragraph (1) is less than 133⅓ percent of the general election expenditure limit under section 502(b), an amount equal to one-third of such limit applicable to the eligible Senate candidate for the election; plus

"(ii) if such excess equals or exceeds 133⅓ percent but is less than 166⅔ percent of such limit, an amount equal to one-third of such limit; plus

"(iii) if such excess equals or exceeds 166⅔ percent of such limit, an amount equal to one-third of such limit.

"(B) In the case of an eligible Senate candidate who is not a major party candidate, an amount equal to the least of the following:

"(i) The allowable contributions of the eligible Senate candidate during the applicable pe-

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riod in excess of the threshold contribution requirement under section 501(e).

"(ii) 50 percent of the general election expenditure limit applicable to the eligible Senate candidate under section 502(b).

"(iii) The excess described in paragraph (1).

"(c) INDEPENDENT EXPENDITURE AMOUNT.—For purposes of subsection (a)(3)(B), the amount determined under this subsection is the total amount of independent expenditures made, or obligated to be made, during the general election period by 1 or more persons in opposition to, or on behalf of an opponent of, an eligible Senate candidate which are required to be reported by such persons under section 304(c) with respect to the general election period and are certified by the Commission under section 304(c).

"(d) WAIVER OF EXPENDITURE AND CONTRIBUTION LIMITS.—(1)(A) An eligible Senate candidate who receives payments under subsection (a)(3) may make expenditures from such payments to defray expenditures for the general election without regard to the general election expenditure limit under section 502(b).

"(B) In the case of an eligible Senate candidate who is not a major party candidate, the general election expenditure limit under section 502(b) with respect to such candidate shall be increased by the amount (if any) by which the excess described in subsection (b)(1) exceeds the amount determined under subsection (b)(2)(B) with respect to such candidate.

"(2)(A) An eligible Senate candidate who receives benefits under this section may make expenditures for the general election without regard to clause (i) of section 501(c)(1)(D) or subsection (a) or (b) of section 502 if any one of the eligible Senate candidate's opponents who is not an eligible Senate candidate either raises aggregate contributions, or makes or becomes obligated to make aggregate expenditures, for the general election that exceed 200 percent of the general election expenditure limit applicable to the eligible Senate candidate under section 502(b).

"(B) The amount of the expenditures which may be made by reason of subparagraph (A) shall not exceed 100 percent of the general election expenditure limit under section 502(b).

"(3)(A) A candidate who receives benefits under this section may receive contributions for the general election without regard to clause (iii) of section 501(c)(1)(D) if—

"(i) a major party candidate in the same general election is not an eligible Senate candidate; or "(ii) any other candidate in the same general election who is not an eligible Senate candidate raises aggregate contributions, or makes or becomes obligated to make aggregate expenditures, for the general election that exceed 75 percent of the general election expenditure limit applicable to such other candidate under section 502(b).

"(B) The amount of contributions which may be received by reason of subparagraph (A) shall not exceed 100 percent of the general election expenditure limit under section 502(b).

"(e) USE OF PAYMENTS.—Payments received by a candidate under subsection (a)(3) shall be used to defray expenditures incurred with respect to the general election period for the candidate. Such payments shall not be used—

"(1) except as provided in paragraph (4), to make any payments, directly or indirectly, to such candidate or to any member of the immediate family of such candidate;

"(2) to make any expenditure other than expenditures to further the general election of such candidate;

ing a detailed explanation and justification of such rule or regulation.

"SEC. 509. CLOSED CAPTIONING REQUIREMENT FOR TELEVISION COMMERCIALS OF ELIGIBLE SENATE CANDIDATES.

"No eligible Senate candidate may receive amounts under section 503(a)(3) under section 503(a)(4) unless such candidate has certified that any television commercial prepared or distributed by the candidate will be prepared in a manner that contains, is accompanied by, or otherwise readily permits closed captioning of the oral content of the commercial to be broadcast by way of line 21 of the vertical blanking interval, or by way of comparable successor technologies.

"SEC. 510. SENATE ELECTION CAMPAIGN FUND.

"(a) ESTABLISHMENT OF CAMPAIGN FUND.—(1) There is hereby established on the books of the Treasury of the United States a special fund to be known as the Senate Election Campaign Fund (hereafter in this section referred to as 'the Fund').

"(2) There are hereby appropriated to the Fund the following amounts:

"(A) Amounts received in the Treasury which are equivalent to the increase in Federal revenues by reason of the repeal of the exempt function income exclusion under section 527 of the Internal Revenue Code of 1986 for authorized committees, and the graduated rates under such section for the principal campaign committee, of any candidate who does not abide by the campaign expenditure limits under this title, but only to the extent such amounts do not exceed the amount certified by the Commission as necessary to carry out the purposes of this title.

"(B) Amounts received in the Treasury which are equivalent to the increase in Federal revenues by reason of the disallowance of deductions for lobbying expenditures, but only to the extent such amounts do not exceed the amount certified by the Commission under subparagraph (A) reduced by amounts appropriated to the Fund under subparagraph (A).

"(C) Amounts transferred to the Fund under any provision of this Act.

"(D) Amounts credited to the Fund under paragraph (3).

"(3) The Secretary of the Treasury shall transfer amounts to, and manage, the Fund in the manner provided under subchapter B of chapter 98 of the Internal Revenue Code of 1986.

"(4) Amounts in the Fund shall, subject to the availability of appropriations, be available only for the purposes of—

"(A) providing benefits under this title; and

"(B) making expenditures in connection with the administration of the Fund.

"(5) The Secretary shall maintain such accounts in the Fund as may be required by this title or which the Secretary determines to be necessary to carry out the provisions of this title.

"(b) PAYMENTS UPON CERTIFICATION.—Upon receipt of a certification from the Commission under section 504, except as provided in subsection (c), the Secretary shall, subject to the availability of appropriations, promptly pay the amount certified by the Commission to the candidate out of the Fund.

"(c) REDUCTIONS IN PAYMENTS IF FUNDS INSUFFICIENT.—(1) If, at the time of a certification by the Commission under section 504 for payment to an eligible candidate, the Secretary determines that the monies in the Fund are not, or may not be, sufficient to satisfy the full entitlement of all eligible candidates, the Secretary shall withhold from the amount of such payment or voucher such amount as the Secretary determines to be necessary to assure that each eligible candidate will receive the same pro rata share of such candidate's full entitlement.

"(2) Amounts withheld under paragraph (1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay all, or a portion thereof, to all eligible candidates from whom amounts have been withheld, except that if only a portion is to be paid, it shall be paid in such manner that each eligible candidate receives an equal pro rata share of such portion.

"(3)(A) Not later than December 31 of any calendar year preceding a calendar year in which there is a regularly scheduled general election, the Secretary, after consultation with the Commission, shall make an estimate of—

"(i) the amount of monies in the Fund which will be available to make payments required by this title in the succeeding calendar year; and

"(ii) the amount of expenditures which will be required under this title in such calendar year.

"(B) If the Secretary determines that there will be insufficient monies in the Fund to make the expenditures required by this title for any calendar year, the Secretary shall notify each candidate on January 1 of such calendar year (or, if later, the date on which an individual becomes a candidate) of the amount which the Secretary estimates will be the pro rata reduction in each eligible candidate's payments under this subsection. Such notice shall be by registered mail.

"(C) The amount of the eligible candidate's contribution limit under section 501(c)(1)(D)(iii) shall be increased by the amount of the estimated pro rata reduction.

"(4) The Secretary shall notify the Commission and each eligible candidate by registered mail of any actual reduction in the amount of any payment by reason of this subsection. If the amount of the reduction exceeds the amount estimated under paragraph (3), the candidate's contribution limit under section 501(c)(1)(D)(iii) shall be increased by the amount of such excess.".

(b) EFFECTIVE DATES.—(1) Except as provided in this subsection, the amendment made by subsection (a) shall apply to elections occurring after December 31, 1994.

(2) For purposes of any expenditure or contribution limit imposed by the amendment made by subsection (a)—

(A) no expenditure made before January 1, 1994, shall be taken into account, except that there shall be taken into account any such expenditure for goods or services to be provided after such date; and

(B) all cash, cash items, and Government securities on hand as of January 1, 1994, shall be taken into account in determining whether the contribution limit is met, except that there shall not be taken into account amounts used during the 60-day period beginning on January 1, 1994, to pay for expenditures which were incurred (but unpaid) before such date.

(c) EFFECT OF INVALIDITY ON OTHER PROVISIONS OF ACT.—If section 501, 502, or 503 of title V of FECA (as added by this section), or any part thereof, is held to be invalid, all provisions of, and amendments made by, this Act shall be treated as invalid.

SEC. 102. BAN ON ACTIVITIES OF POLITICAL ACTION COMMITTEES IN FEDERAL ELECTIONS.

(a) IN GENERAL.—Title III of FECA (2 U.S.C. 431 et seq.), as amended by section 404, is amended by adding at the end thereof the following new section:

"BAN ON FEDERAL ELECTION ACTIVITIES BY POLITICAL ACTION COMMITTEES

"SEC. 327. (a) Notwithstanding any other provision of this Act, no person other than an individual or a political committee may make contributions, solicit or receive contributions, or make expenditures for the purpose of influencing an election for Federal office.

"(b) In the case of individuals who are executive or administrative personnel of an employer—

"(1) no contributions may be made by such individuals—

SEC. 802. BUDGET NEUTRALITY.

(a) DELAYED EFFECTIVENESS.—The provisions of this Act (other than this section) shall not be effective until the Director of the Office of Management and Budget certifies that the estimated costs under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 have been offset by the enactment of legislation effectuating this Act.

(b) FUNDING.—Legislation effectuating this Act shall not provide for general revenue increases, reduce expenditures for any existing Federal program, or increase the Federal budget deficit, but should be funded by disallowing the Federal income tax deduction for expenses paid or incurred for lobbying the Federal Government and by repealing the tax exemption under section 527 of the Internal Revenue Code of 1986 for the exempt function income of the campaign committees of a candidate who exceeds the voluntary Federal campaign spending limits (whether or not the candidate agreed to the limits).

(c) CLARIFICATION OF RELATIONSHIP TO POTENTIAL RECONCILIATION ACT PROVISIONS.—The amount of increased revenue to the United States that is determined to be attributable to the disallowance of a deduction from income tax for lobbying expenses made by any law shall be paid into the general fund of the Treasury, to reduce the deficit and, to the extent provided by law, shall be used to reduce the role of special interests in congressional elections by funding the provision of benefits to candidates to encourage their agreement to campaign expenditure limits.

SEC. 803. SEVERABILITY.

Except as provided in section 101(c), if any provision of this Act (including any amendment made by this Act), or the application of any such provision to any person or circumstance, is held invalid, the validity of any other provision of this Act, or the application of such provision to other persons and circumstances, shall not be affected thereby.

SEC. 804. EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.

(a) DIRECT APPEAL TO SUPREME COURT.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory order or final judgment, decree, or order issued by any court ruling on the constitutionality of any provision of this Act or amendment made by this Act.

(b) ACCEPTANCE AND EXPEDITION.—The Supreme Court shall, if it has not previously ruled on the question addressed in the ruling below, accept jurisdiction over, advance on the docket, and expedite the appeal to the greatest extent possible.

be ineligible to receive benefits under this chapter on and after the date of the conviction.".

SEC. 710. PROHIBITION OF CONTRIBUTIONS TO PRESIDENTIAL CANDIDATES WHO RECEIVE PUBLIC FUNDING IN THE GENERAL ELECTION CAMPAIGN.

Section 315 of FECA (2 U.S.C. 441a), as amended by section 402, is amended by adding at the end the following new subsection:

"(o) Except to the extent permitted under sections 9003 (b)(2) and (c)(2) of the Internal Revenue Code of 1986, no person shall make a contribution to a candidate who has become eligible to receive benefits under chapter 95 of such Code by making a certification described in section 9003 (b) and (c) of such Code.".

SEC. 711. APPLICATION OF INCREASED REVENUES TO REDUCE THE DEFICIT.

(a) DEFICIT REDUCTION.—The amount of increased revenue to the United States that is determined to be attributable to the disallowance of a deduction from income tax for lobbying expenses made by any law shall be paid into the general fund of the Treasury, to reduce the deficit and, to the extent provided by law, shall be used to reduce the role of special interests in congressional elections by funding the provision of benefits to candidates to encourage their agreement to campaign expenditure limits.

SEC. 712. SENSE OF THE SENATE THAT CONGRESS SHOULD ADOPT A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION THAT WOULD EMPOWER CONGRESS AND THE STATES TO SET REASONABLE LIMITS ON CAMPAIGN EXPENDITURES.

It is the sense of the Senate that Congress should adopt a joint resolution proposing an amendment to the Constitution that would—

(1) empower Congress to set reasonable limits on campaign expenditures by, in support of, or in opposition to any candidate in any primary, general, or other election for Federal office; and

(2) empower the States to set reasonable limits on campaign expenditures by, in support of, or in opposition to any candidate in any primary, general, or other election for State or local office.

SEC. 713. SENSE OF THE SENATE.

It is the sense of the Senate that every employee in the executive or legislative branch of the Federal Government shall follow appropriate officially prescribed procedures in contacts and dealings with the Federal Bureau of Investigation and the Internal Revenue Servce.

public inspection and copying in the same manner as the Commission under section 311(a)(4), and shall preserve such reports and filings in the same manner as the Commission under section 311(a)(5).

"(g) DEFINITIONS.—For purposes of this section, any term used in this section which is used in title V shall have the same meaning as when used in title V.".

SEC. 104. DISCLOSURE BY NONELIGIBLE CANDIDATES.

Section 318 of FECA (2 U.S.C. 441d), as amended by section 134, is amended by adding at the end thereof the following:

"(f) If a broadcast, cablecast, or other communication is paid for or authorized by a candidate in the general election for the office of United States Senator who is not an eligible Senate candidate, or the authorized committee of such candidate, such communication shall contain the following sentence: 'This candidate has not agreed to voluntary campaign spending limits.'.".

SEC. 105. EXCESS CAMPAIGN FUNDS OF SENATE CANDIDATES.

Section 313 of FECA (2 U.S.C. 439a) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Amounts"; and

(2) by adding at the end the following new subsection:

"(b) RETURN OF EXCESS CAMPAIGN FUNDS.—(1) Except as provided in paragraph (2), and notwithstanding subsection (a), if a candidate for the Senate has amounts in excess of amounts necessary to defray campaign expenditures for any election cycle, including any fines or penalties relating thereto, such candidate shall, not later than 1 year after the date of the general election for such cycle, expend such excess in the manner described in subsection (a) or transfer it to the Senate Election Campaign Fund established under section 510.

"(2) Paragraph (1) shall not apply to any amounts—

"(A) transferred to a legal and accounting compliance fund established under section 502(c); or

"(B) transferred for use in the next election cycle to the extent such amounts do not exceed 20 percent of the sum of the primary election expenditure limit under section 501(d)(1)(A) and the general election expenditure limit under section 502(b) for the election cycle from which the amounts are being transferred.".

SEC. 106. RESTRICTIONS ON USE OF CAMPAIGN FUNDS.

(a) RESTRICTIONS ON USE OF CAMPAIGN FUNDS.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

COVER STORY

Senate Passes Campaign Finance By Gutting Public Funding

Candidates would get money if opponent overspent; tax on those who break cap would pay the cost

Senate Democrats, with the help of seven Republicans, passed a sweeping overhaul of federal campaign finance laws 60-38. But to wrench the bill out of the reluctant chamber, Democrats were forced to abandon a longtime tenet of Democratic reform and a cornerstone of President Clinton's plan: substantial public funding of congressional campaigns.

Senate Democrats also were compelled to accept a number of amendments — notably one on May 26 that explicitly extended the prohibition on political action committee (PAC) contributions to the House — that are anathema to House Democrats. *(House reaction, p. 1540)*

Such was the price of winning a 62-37 vote June 16 to choke off debate on the bill, S 3. With GOP swing voters saying the PAC ban must survive in the final bill, coming up with a conference report may prove even more difficult than winning Senate passage. *(Cloture, vote 154, p. 1614; passage, vote 158, p. 1616)*

The compromises and questions about the bill's future cast a pall over the Democratic victory celebration. Senate Majority Leader George J. Mitchell, D-Maine, hailed the measure as a "victory for the American people" and said it retained "the essence of reform" — spending limits on Senate campaigns ranging from $1.2 million to $5.5 million. But even many of his Democratic colleagues sounded more relieved that the tedious three-week debate had ended than thrilled by the outcome. *(Bill highlights, p. 1536)*

"It's incremental reform," said Bill Bradley, D-N.J., a leading advocate for public funding.

"It's a great leap sideways," said Paul Wellstone, D-Minn.

On the amendment that broke the logjam — one that replaced substantial public funds with a new tax on campaigns that do not comply with spending limits — four Democrats, besieged by colleagues who said their support was essential to end a filibuster, changed their votes after initially voting no. Carol Moseley-Braun, D-Ill., was one. "It might have hurt my campaign," she explained later, referring to her upset of an incumbent in 1992. But while the June 16 vote was still in progress and the outcome in question, they switched, and the amendment passed 52-47. *(Vote 153, p. 1614)*

Republicans argue that the amendment marked a fundamental and unconstitutional shift away from using the carrot of public funding to get candidates to comply with spending limits, upheld by the Supreme Court in 1976, to the stick of taxation. *(Constitutional questions, p. 1539)*

But for Clinton and congressional Democrats, passage of even a watered-down bill marked progress on an issue they have proclaimed a high priority after weeks of delays on his agenda.

At a news conference a few hours after the bill passed, Clinton called it "a vast advance over the present law in breaking the back of special interest domination of politics and elections." *(Text, p. 1604)*

Death of Public Funding?

In furious floor negotiations in the final 48 hours of debate, Democrats saw to it that the group of swing Republicans who had outlined nine demands to break the filibuster got just enough of what they asked for to box them into voting yes on cloture. But that is not to say any in the group came away satisfied with either the bill or the process, which painfully pitted them against party colleagues who believe the bill favors Democrats and incumbents. *(Key Republicans, p. 1534)*

"I've never been beaten on so in my life," said James M. Jeffords, R-

By Beth Donovan

R. MICHAEL JENKINS

Senate leaders hail June 16 votes.

BOXSCORE

Bill: S 3 — Campaign finance.

Latest action: Senate passed bill 60-38 on June 17.

Next likely action: House markup (not scheduled).

Background: Senate removed most public financing for congressional campaigns, adopted tax on campaigns that do not comply with spending limits.

Reference: Senate action, Weekly Report, pp. 1455, 1338, 1273; Clinton proposals, p. 1121.

GOP Mavericks

Seven Republican senators voted to end debate on S 3 (vote 154) and for passage (vote 158):

John H. Chafee, R.I.
William S. Cohen, Maine
Dave Durenberger, Minn.
James M. Jeffords, Vt.
Nancy Landon Kassebaum, Kan.
John McCain, Ariz.
Larry Pressler, S.D.

Vt., one of the seven to break ranks on the key votes. "I'm glad it's over."

"I'm still not thrilled with the bill," said John McCain, R-Ariz., adding that he and others supported it because "in the end, the status quo was generally believed to be unacceptable."

Many lawmakers privately wondered whether a bill that eliminates PAC contributions and bars senators from raising money out-of-state in the first four years of their term without providing much public money could achieve one of its prime goals: reducing the amount of time senators and candidates spend fundraising. Many foresee the opposite result, a fear echoed in the House.

"Just how are we supposed to raise money?" asked a House leadership aide when told of the deal.

But few hold out any hope of reinstating the public funds that were originally intended to replace "special interest" money. If little else was clear as the bill headed to the House, where Speaker Thomas S. Foley, D-Wash., said his goal of a floor vote by the August recess might slip, the Senate action seemed to sound the death knell for public financing.

"I don't think we'll see public funding returned to this bill," said Sen. John Kerry, D-Mass., who offered an unsuccessful amendment to increase public funds to 90 percent of the spending limit. "The outlook for it is pretty dim."

Even Common Cause, the citizens' group that for more than two decades has trumpeted public funds as "clean campaign money," gave up on the idea for now. In a move that was pivotal for passage but which deeply divided the group from others supporting the bill, Common Cause urged senators to vote for stripping most public funds as the only way to salvage the bill.

"We're in a stronger position if this bill goes forward than if it doesn't," said Fred Wertheimer, president of Common Cause.

The Deal

For the first three weeks of the debate, Democrats held fast to public funding. Rather than cede ground to the Republicans, they repeatedly complained of a "Republican filibuster." To underscore the point, Democrats forced two cloture votes, separated by four days but just 15 minutes of debate, when they knew full well both would be soundly defeated. The first attempt went down June 10 on a 53-41 vote, the second June 15 on a 52-45 vote. In neither instance did a single Republican member cross the line. *(Vote 146, Weekly Report, p. 1518; vote 147, p. 1614)*

At the same time, it became quietly but eminently clear that many Democratic senators were anxious about hitting taxpayers with an estimated $200 million tab for congressional campaigns under the original bill, which provided public funds equal to 25 percent of the spending limit. (The Congressional Budget Office estimated that the postal subsidies in the final bill would cost $12 million per election cycle; no cost estimate was available for the full measure.)

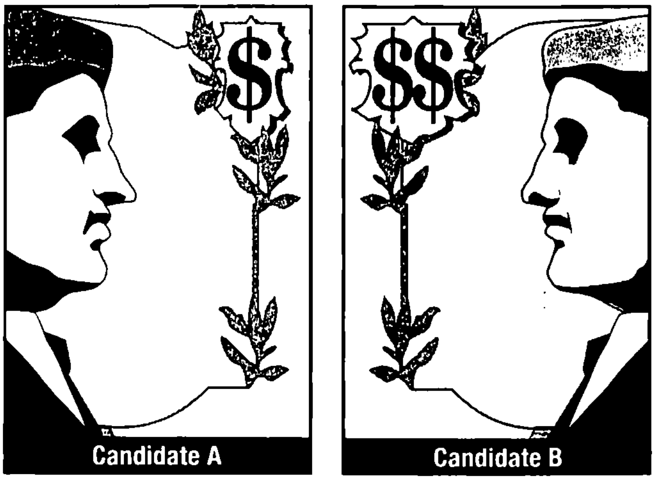
Joseph I. Lieberman, D-Conn., said that he had changed his view on the issue since he supported it in 1992. Carl Levin, D-Mich., joined Jim Exon of Nebraska, one of the two Democrats to vote against cloture, on a plan to forgo public funding until a candidate complying with spending limits was confronted with an opponent breaking them.

Offstage, Democratic senators whispered that past supporters including Bob Kerrey, Neb., John D. Rockefeller IV, W. Va., and others were telling them of growing reservations. Bargaining with the GOP then became essential not only to win Republican votes for cloture but to keep the Democrats on board.

The final deal was worked out among Mitchell, David L. Boren, D-Okla., the lead sponsor of the bill, Exon and the five Republicans. It was a complicated merger of Exon's back-up funding idea with a tax on campaign receipts, sponsored by Dave Durenberger, R-Minn., and originally

New Arithmetic for Campaigns

Here is how a theoretical Senate general-election race would work if one candidate complied with the spending limits in S 3 and the other did not.



Eligibility

Candidate A	Candidate B
Candidate A agrees to abide by spending limits and wins the primary. He or she informs the Federal Election Commission (FEC) after raising 5 percent of the state's limit in contributions of $250 or less from state residents.	Candidate B does not agree to abide by spending limits. He or she has to report to the FEC as spending approaches the state's limit.

Benefits and Penalties

Candidate A	Candidate B
Candidate A gets to make two discounted mailings to every voting-age resident and can buy broadcast ads at half-price within 60 days of the election.	Candidate B must pay tax at the highest corporate rate (now 34 percent) on all campaign receipts.

As Spending Escalates

Candidate A	Candidate B
Once Candidate B has spent more than the spending limit, Candidate A gets federally funded vouchers to help pay for ads and mail.	The taxes on Candidate B's campaign help pay for the vouchers given to Candidate A.

MARILYN GATES-DAVIS

Campaigns Over Proposed Limits

Below are proposed limits on how much each candidate could spend on a Senate campaign (including both primary and general elections) under S 3, passed by the Senate on June 17, according to the Rules Committee. In the center is the largest amount spent in the most recent Senate election cycle by a candidate, according to reports of the Federal Election Commission. Campaigns that exceeded the proposed spending limit are highlighted.

State	Proposed Limit	Amount Spent	Candidate, Election
Alabama	$ 2,201,060	$ 2,451,191	Richard C. Shelby, D, 1992
Alaska	2,004,000	1,663,865	Frank H. Murkowski, R, 1992
Arizona	2,063,285	3,481,915	John McCain, R, 1992
Arkansas	2,004,000	1,878,472	Dale Bumpers, D, 1992
California	8,250,000	10,368,600	Barbara Boxer, D, 1992
Colorado	2,004,000	2,215,791	Terry Considine, R, 1992
Connecticut	2,004,000	4,122,268	Christopher J. Dodd, D, 1992
Delaware	2,004,000	1,888,146	Joseph R. Biden Jr., D, 1990
Florida	5,336,485	2,979,552	Bob Graham, D, 1992
Georgia	3,069,043	4,894,620	Wyche Fowler Jr., D, 1992
Hawaii	2,004,000	2,971,128	Daniel K. Inouye, D, 1992
Idaho	2,004,000	1,305,338	Dirk Kempthorne, R, 1992
Illinois	4,593,335	6,594,570	Carol Moseley-Braun, D, 1992
Indiana	2,755,500	3,802,077	Daniel R. Coats, R, 1992
Iowa	2,004,000	2,322,262	Charles E. Grassley, R, 1992
Kansas	2,004,000	1,990,098	Bob Dole, R, 1992
Kentucky	2,066,291	2,076,069	Wendell H. Ford, D, 1992
Louisiana	2,195,549	1,446,199	John B. Breaux, D, 1992
Maine	2,004,000	1,630,894	Neil Rolde, D, 1990
Maryland	2,512,682	3,161,104	Barbara A. Mikulski, D, 1992
Massachusetts	2,928,345	6,234,887	John Kerry, D, 1990
Michigan	3,894,440	6,930,262	Carl Levin, D, 1990
Minnesota	2,308,274	6,222,333	Rudy Boschwitz, R, 1990
Mississippi	2,004,000	567,446	Thad Cochran, R, 1990
Missouri	2,593,343	4,577,895	Christopher S. Bond, R, 1992
Montana	2,004,000	2,409,262	Max Baucus, D, 1990
Nebraska	2,004,000	2,350,326	Jim Exon, D, 1990
Nevada	2,004,000	2,725,713	Harry Reid, D, 1992
New Hampshire	2,004,000	875,675	Judd Gregg, R, 1992
New Jersey	7,698,200	9,563,942	Bill Bradley, D, 1990
New Mexico	2,004,000	1,925,057	Pete V. Domenici, R, 1990
New York	6,720,498	9,175,533	Alfonse M. D'Amato, R, 1992
North Carolina	3,164,650	2,952,102	Lauch Faircloth, R, 1992
North Dakota	2,004,000	1,124,512	Byron L. Dorgan, D, 1992
Ohio	4,424,248	3,999,271	John Glenn, D, 1992
Oklahoma	2,004,000	3,316,336	Don Nickles, R, 1992
Oregon	2,004,000	6,078,359	Bob Packwood, R, 1992
Pennsylvania	4,828,388	8,854,815	Arlen Specter, R, 1992
Rhode Island	2,004,000	2,350,128	Claiborne Pell, D, 1990
South Carolina	2,004,000	3,642,045	Ernest F. Hollings, D, 1992
South Dakota	2,004,000	2,878,375	Tom Daschle, D, 1992
Tennessee	2,560,277	1,630,919	Al Gore, D, 1990
Texas	6,255,820	9,799,104	Phil Gramm, R, 1990
Utah	2,004,000	4,034,241	Robert F. Bennett, R, 1992
Vermont	2,004,000	950,331	Patrick J. Leahy, D, 1992
Virginia	3,012,263	1,155,530	John W. Warner, R, 1990
Washington	2,562,281	2,504,777	Rod Chandler, R, 1992
West Virginia	2,004,000	2,650,320	John D. Rockefeller IV, D, 1990
Wisconsin	2,510,177	5,427,163	Bob Kasten, R, 1992
Wyoming	2,004,000	1,000,462	Alan K. Simpson, R, 1990

Highlights of Campaign Finance Bill . . .

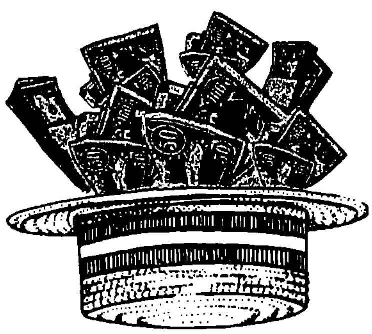
The campaign finance bill (S 3) approved by the Senate on June 17 would limit the amount Senate candidates could spend on general and primary elections in exchange for certain benefits including an exemption from a new tax on congressional campaign receipts. It would also eliminate political action committee (PAC) contributions and restrict fundraising and spending by political parties. The Senate extended the PAC ban and a ban on election-year mass mail by members of Congress to the House, but other provisions affecting House campaigns will be added later by the House. *(Passage, p. 1533)*

The bill would take effect immediately upon enactment. Following are highlights.

Senate Spending Limits

- **State limits.** The optional spending limit would vary from $1.2 million to $5.5 million in the general election, depending on state population. The primary limit would be 67 percent of the general-election limit or $2.75 million, whichever was less. The limits would be indexed for population and inflation beginning in 1995. *(State limits, p. 1535)*
- **Exemptions.** Spending for legal and accounting services to comply with federal campaign laws would be exempt for up to 15 percent of spending limits or $300,000 per election cycle, whichever is less.

Contribution Limits



- **In-state contributions.** Senate candidates would be permitted to raise or accept contributions only from in-state residents except in the two-year cycle that contains the election.
- **PAC ban.** PACs would be prohibited from contributing to any federal campaign — House, Senate or presidential. If the Supreme Court struck down the ban, PACs would be limited to contributing $1,000 per campaign per election cycle; no campaign could receive aggregate PAC contributions in excess of 20 percent of the spending limit.
- **Lobbyists.** Lobbyists would be prohibited from making or soliciting contributions to a candidate for a one-year period from the date of contact with a federal officeholder, official or staff assistant. Contributors would be prohibited from lobbying for one year.
- **Personal funding.** A complying candidate could give no more than $25,000 to the campaign.
- **Children's contributions.** Children under the age of 18 could not contribute to campaigns.

Incentives and Disincentives

Participating candidates would be exempt from a new federal tax on campaign receipts. The tax rate would equal the highest corporate tax rate, now 34 percent, and would be imposed on non-complying candidates.

To be eligible for further benefits, a complying candidate would have to win the primary and raise $250,000 or 5 percent of the general-election spending limit, whichever is less, in contributions of $250 or less from state residents.

The candidate would receive the following benefits:

- **Broadcast discounts.** A 50 percent discount off the lowest unit rate for broadcast advertising during the 60 days before the general election.
- **Postal discounts.** A discounted postal rate equal to the nonprofit bulk rate for up to two pieces of mail to each voting-age resident in the state.
- **Offsetting vouchers.** If the candidate faced an opponent who exceeded the spending limit, the participating campaign would have its limits lifted in increments up to 100 percent of the limit. In addition, it would receive, in increments of a third of the limit, federal vouchers for mail and broadcast ads up to the state spending limit.
- **Independent expenditures.** If a complying candidate was adversely affected by an independent campaign that spent more than $10,000, he or she would become eligible for federal communications vouchers equal to the expenditure, with no limit on the maximum. Independent campaigns would be required to notify the Federal Election Commission (FEC) within 48 hours of obligating to spend money, within 24 hours in the last 20 days of an election.

Party Soft Money

The bill would require all generic party activities at all times by all party committees to be paid for with funds raised under federal guidelines, so-called hard money. This would severely restrict the role of "soft money" — money raised outside federal guidelines for activities such

proposed by Democratic lawyer Robert F. Bauer in February.

Lifting an existing tax exemption for campaigns, the amendment would impose the highest corporate tax rate (now 34 percent and likely to rise in the deficit-reduction bill currently under Senate consideration) on them unless the candidate agreed to comply with spending limits. The revenue would go into a fund to provide federal communication vouchers worth up to 100 percent of the spending limit for any complying candidate who faced an opponent who exceeded the limit. If that money were insufficient, the fund could be supplemented with money from the Treasury, which sponsors said could be counted as money raised by ending the current deduction for lobbying expenses, part of the deficit-reduction bill. *(Deficit bill, p. 1542)*

Twisting Democratic Arms

Before Democrats would allow a vote on the Durenberger-Exon deal, they turned back an amendment that would have stripped all public funding and spending limits. Sponsored by

. . . As Passed by the Senate on June 17

as voter registration drives — in federal campaigns.

Any party activity that promotes a federal candidate, including get-out-the-vote drives and voter registration, would have to be paid for with hard money.

In presidential election years, even get-out-the-vote activities exclusively for state and local candidates would have to be paid for with hard dollars.

National committees could raise soft money only to supplement party building funds, to buy or rent office space, and to transfer to state parties for state purposes.

State parties would be permitted to use soft money for certain administrative costs, state level activities including polling, building funds and, in odd-numbered years, voter-list maintenance.

- **Fundraising.** Federal candidates and officeholders would be prohibited from raising soft money.
- **Individual contribution limits.** The bill would raise the limit on what an individual could give to candidates, parties and political committees to $60,000 per two-year election cycle from the current $50,000 limit. Individuals could make annual contributions of up to $25,000 to candidates, $20,000 to national parties and $20,000 to state party federal accounts for a new grass-roots fund.
- **State grass-roots funds.** New state party grass-roots funds would be established; they could be used only to pay for generic party activities.

Non-Party Soft Money

The bill would enhance disclosure of political activity by independent and member organizations, including labor unions. Such organizations currently are not subject to any fundraising restrictions.

These organizations would have to notify the FEC of expenditures of $2,000 or more 48 hours before disbursement. In the last 14 days of an election, seven days' notice would be required.

The bill would enable political parties to respond to such campaigns if they are targeted at a party or slate of candidates. Parties could spend an equal amount from newly established "response funds."

FEC Compliance and Enforcement

- **Injunctions.** The bill would enable a majority of the six FEC commissioners to go to federal court to seek an injunction against a violation.
- **Donor identification.** Candidates could not spend money unless all required information (name, address, occupation, employer) on the donor were provided.
- **Computerized disclosure.** The FEC would be directed to develop a system for computerized disclosure for political committees.

Bundling

The bill would prohibit bundling of campaign contributions by all PACs, trade associations, lobbyists, corporate or union officers and employees and agents thereof. In bundling, the organizations solicit campaign contributions from individuals and pass them on to the candidate.

The bill would prohibit those individuals and organizations from "directly or indirectly" arranging contributions.

Presidential Campaigns

- **State fundraising.** To qualify for federal matching funds in the primaries, presidential candidates would have to raise $15,000 from 26 states, rather than $5,000 from 20 states in current law.
- **Grass-roots funds.** Candidates who agreed to comply with spending limits would receive additional federal funds for use in grass-roots campaigns. The sum would be equal to 2 cents per voting-age person or $11 million in 1996, though it would go up after that.
- **Debates.** Candidates accepting public funds would be required to participate in three debates; vice presidential candidates would have to participate in one.
- **Aggregate Limits.** In the primary, candidates would be bound only by aggregate spending and fundraising limits rather than the state-by-state limits in current law.

Miscellaneous

- **Franked mail.** Franked mass mail would be prohibited in any year the officeholder appeared on the ballot.
- **Broadcast disclosure.** All political advertisements would be required to include the candidate's photgraph and an audio statement by the candidate when possible stating that the sponsoring candidate approved the advertisement.

Non-complying candidates would be required to state in their broadcast communications: "This candidate has not agreed to voluntary campaign limits."

- **Personal use of funds.** Campaign funds could not be spent for personal uses such as home mortgage payments, clothes, country club memberships and vacations.

Richard C. Shelby of Alabama, the only Democrat to vote against the final cloture motion, and Mitch McConnell of Kentucky, the Republican point man on campaign finance, it was killed June 16 on a 53-44 vote. *(Vote 148, p. 1614)*

Democrats are divided over many issues in addition to public funding, but spending limits are a unifying idea. They contend limits are essential to holding down the amount of time senators spend raising funds, and say limits will keep challengers from being overwhelmed by well-financed incumbents.

"It's like location, location, location" in real estate value, said Levin. "Limits, limits, limits."

Building on a perception that a stalemate would look bad for Congress and Clinton, Mitchell made direct, personal appeals to many reluctant senators. He had publicly resisted compromise on public funding until the last minute, but now portrayed the vote on Durenberger-Exon as essential to passage.

"There simply was not majority support for the [broader] system," he said.

A History of Spending Limits

The Watergate scandal surrounding the presidential election of 1972 spawned efforts to limit spending on congressional campaigns, building on a 1971 law providing partial public funding for presidential campaigns. Legislation enacted in 1974 limited for the first time what congressional candidates could spend on their campaigns, but within two years, the Supreme Court declared mandatory limits unconstitutional. Since then, Congress has been struggling over whether and how to hold down spending on congressional races. *(Passage, p. 1533)*

1974

Congress enacted the Federal Election Campaign Act Amendments (PL 93-443) that imposed for the first time mandatory campaign spending limits for congressional candidates. Members debated whether to extend public financing to House and Senate races, but the conference committee dropped the idea.

Under the law, Senate candidates were limited to spending 8 cents per eligible voter (with a $100,000 minimum) for primary elections and 12 cents per voter ($150,000 minimum) for the general election. For House campaigns, the limit was $70,000 for the primary and general election. *(1974 Almanac, p. 611)*

1976

On Jan. 30, nine months before Election Day, the Supreme Court struck down the new campaign spending limits. In *Buckley v. Valeo* the court ruled that the mandatory campaign spending limits unconstitutionally abridged candidates' First Amendment rights to free expression. The court reasoned that mandatory spending caps impinge on a candidate's ability to communicate freely and forcefully to voters. However, the court allowed voluntary spending limits as a condition for receiving public funding. *(Weekly Report, p. 432)*

On May 11 legislation was enacted providing federal funds to the 1976 presidential candidates who spent no more than $50,000 of their own or their family's money. But congressional spending limits were not addressed. *(1976 Almanac, p. 459)*

1977


Carter

President Jimmy Carter, the first president elected with the help of public funds, introduced legislation in March to revamp the electoral system, including an extension of public funds to congressional candidates who complied with spending limits. But in Congress, Republicans were nearly unanimous in opposition, and Democrats were divided. A bill to establish public financing in Senate general elections fell victim to a filibuster in August and was blocked by the House Administration Committee in October. *(1978 Almanac, p. 769)*

1978

House backers failed in two parliamentary maneuvers to attach a public financing proposal to campaign finance bills.

1979

The House Administration Committee in May rejected legislation to provide partial federal funding of House general election contests. A bill to limit contributions from political action committees (PACs) passed the House but died in a Senate filibuster. *(1979 Almanac, pp. 551, 556)*

1985

The Senate took an inconclusive test vote on a proposal by Sen. David L. Boren, D-Okla., to limit PAC contributions. *(1985 Almanac, p. 33)*

1986

The Senate approved proposals to limit PAC contributions to candidates and political parties, but the bill did not come to a final vote. *(1986 Almanac, p. 42)*

1987

The Democrats, in control of the Senate for the first time in six years, proposed legislation setting overall campaign spending specified on a state-by-state basis, with public funds provided as an incentive to comply. Republicans were bitterly opposed. The Senate made seven unsuccessful attempts to end debate on the issue over the course of three months. *(1987 Almanac, p. 33)*

1988

In late February of the next session debate on the legislation got so heated and protracted with parliamentary maneuvers that Majority Leader Robert C. Byrd, D-W.Va., exercised an almost obsolete power to have absent members arrested and brought to the floor. The bill died after a record-breaking eighth unsuccessful cloture vote. *(1988 Almanac, p.41)*

1990

President George Bush promised to veto any legislation with spending limits and public financing. Democrats were able to get each chamber to pass a bill with spending limits, but they could not reconcile their two plans. The House bill included incentives for complying with the limits but not public funding. The Senate bill included public funding. *(1990 Almanac, p. 59)*

1991

Congress essentially replayed the 1990 scenario, with each chamber passing its own bill. Reconciling the two versions was left to the second session of the Congress. *(1991 Almanac, p. 13)*

1992

A conference report was agreed on in April. It set up a two-tiered system, with separate rules for each chamber's campaigns. The House set a $600,000 limit for its campaigns; the Senate set state-by-state limits ranging from $636,500 to $8.9 million. Senate candidates who complied would receive vouchers worth 20 percent of the spending limit for TV time and broadcasting and postage discounts, but the bill included no mechanism for raising the funds to pay for these benefits.

Both chambers approved the conference report in April. Bush vetoed the measure May 9, calling it "a taxpayer-financed incumbent protection plan." The Senate fell nine votes short of overriding May 13. *(1992 Almanac, p. 63)*

—*Ilyse J. Veron*

A Constitutional Question


McConnell

To establish congressional campaign spending limits as "voluntary" — a constitutional imperative — Senate Democrats approved a deal that calls for a new tax on campaigns that do not comply with the limits. But they did so without determining whether the tax was constitutional.

After repeated questioning by reporters, Majority Leader George J. Mitchell, D-Maine, a former federal judge, said June 17 only that he had not studied the issue, but one way or the other, "that provision is severable."

Republicans, by contrast, did not mince words: "It's DOA in the court," said Sen. Mitch McConnell, Ky., the Republican leader against the campaign finance bill (S 3) passed by the Senate on June 17. *(Passage, p. 1533)*

In its 1976 decision *Buckley v. Valeo*, the Supreme Court ruled that campaign spending in a mass media age amounted to free speech and thus could not be infringed on. The court found limits tolerable only when they are voluntary as it approved a system of public-funding incentives for presidential campaigns. *(Background, Weekly Report p. 431)*

Senate Democrats sought a way to preserve spending limits while backing away from the 25 percent public funding level set in the original bill. They found it in the proposal to repeal an existing tax exemption for campaigns that reject limits.

Supporters of the concept argue that Congress has broad tax authority that is used to encourage or discourage a variety of behaviors. Further, they say, in *Taxation with Representation of Washington v. Regan* (1983), the court ruled that Congress can exempt organizations from taxes as long as the guidelines for exemption do not depend on the content of their activities.

"Government has a lot of power to impose taxes under its constitutional taxing power," says Thomas M. Durbin, a legislative attorney with the Congressional Research Service (CRS). In mid-March, long before legislative language was prepared, CRS prepared a paper finding the concept could be crafted without constitutional problems.

To Democrats, the bill meets constitutional muster because it does not discriminate against any political party and it does not affect the content of political speech.

Opponents of the plan sharply differ.

"If there was a tax on people who wanted to worship on Saturday instead of Sunday, everyone would recognize that as unconstitutional," says Robert Peck of the American Civil Liberties Union. "This doesn't differ."

Peck argues that in *Grosjean v. American Press Company* (1936), the court found unconstitutional a Louisiana tax on large newspapers that printed advertisements on grounds that the press can be taxed on gross revenues, like any business, but not on its content. Opponents also point to *Speiser v. Randall* (1958), in which the court rejected a tax exemption for those who took a loyalty oath.

Another legal question involves whether the new tax is punishment for those who reject limits or the continued exemption is instead a benefit for those who accept them. And the answer is much like whether a glass is half full or half empty. The amendment would modify an exemption in Section 527 of the Internal Revenue Service Code that now applies to all campaigns.

Even if the court finds the tax punitive, it could still find that there is a compelling state interest for an infringement on a First Amendment right. The court in *Buckley* found corruption or the appearance of corruption to be the only reason to tread on political spending.

The current court is untested on all of these issues.

—*Beth Donovan*

In drafting the compromise amendment, Mitchell invited Kerry in. His role as a public funding stalwart sent an important signal to other liberals, and he successfully argued to retain Treasury funding for the bill if the tax revenues were inadequate or struck down by the courts. Kerry also backed an increase in the discounted mail allowance from one piece per voter to two.

The White House quietly signaled that the deal was acceptable. "It's important that the process not break down on the Senate floor," said a White House aide two hours before the vote. "I don't see a scenario in which we pull the bill down and improve it later."

According to several senators and observers, Common Cause's endorsement was as important as Clinton's.

"The turning point was the support of Common Cause," said a source close to Democratic leaders. "Once they knew they wouldn't be hammered from the left and the right, it broke open."

But if the group's backing was critical to passage, it infuriated others who see public funds early in the campaign as essential to leveling the playing field for challengers. The benefits for complying candidates — including a mailing discount for two letters per voter, a 50 percent broadcast discount and backup funds in the event of an independent campaign or a big-spending opponent — appeared a pittance to some, particularly because they do not come until after a primary.

"Another letter that no one's going to read — that's no help to a challenger," said Joseph R. Biden Jr., D-Del., of the deal he reluctantly supported.

"It's incumbent protection masquerading as reform," said Gene Karpinski, executive director of U.S. Public Interest Research Group, an organization that backed public funding to the end.

Republican Votes for Cloture

If the process stretched Democratic alliances, it splintered Republicans. Led by McConnell, Republican stalwarts argue vociferously that spending limits lock in the advantages of incumbency for Democrats. They

Senate vs. House

Over the past decade, the Senate has always had an easier time passing campaign finance legislation than the House, and the Senate bill has always set the high-water mark for reformist groups such as Common Cause.

There is nothing to suggest that this year will be different. In fact, with a Democratic president eager to sign a bill, the contretemps in the House could escalate as members realize their actions could soon govern their campaigns. Beyond congratulating their Senate colleagues for doing something by passing S 3, House Democrats had few kind words for the Senate bill. *(Senate action, p. 1533)*

"I think what the Senate produced is really abysmal," said Rep. Vic Fazio, Calif., who chairs the Democratic Congressional Campaign Committee. "What's left is a shambles. They've capitulated to the minority."

An Unexpected Alliance

The same factions that tried to buck the Senate compromise — members who oppose all public funds and those who want more — are stronger and better organized in the House.

Although only 20 House Democrats opposed the bill that was vetoed in 1992, opponents of public financing, led by Glen Browder, D-Ala., have increased their numbers with deficit angst high and a tax bill pending. Their strength persuaded Mike Synar, D-Okla., long a stalwart for public funds, to release June 18 a bipartisan bill that strips all public funding. Browder did not endorse that bill because it also eliminated spending limits. *(Synar, Weekly Report, p. 1339; previous action, 1992 Almanac, p. 63)*

A large bloc of Democrats demand public funding. In addition to those who see public money as "clean money," many members say it is essential to offset proposed restrictions on fundraising such as political action committee (PAC) limits that affect House members more than senators.

Synar

"We cannot pass a ban on all PAC funding," said House Majority Leader Richard A. Gephardt, D-Mo.

In its way stands a coalition composed of senior members who easily reel in PAC dollars and minority, female and rural members who are dependent on PACs. They have support in high places.

"The notion that political action committees are some kind of an essential evil is flat-out wrong," House Speaker Thomas S. Foley, D-Wash., said June 18. "The royal road to fairness is public financing, and the fact that it is unpopular does not change its essential merit," he added.

House leaders say they expect their bill, which has not been introduced yet, to differ substantially from the Senate on a variety of issues, including contribution bundling and "soft," or unregulated, money as well as PACs. And Gephardt said of demands from across the Capitol that the final bill have identical rules for House and Senate campaigns: "If the Republicans in the Senate are saying that, we're not going to get a bill. We can't pass that."

—Beth Donovan and Phil Kuntz

also say tight new restrictions on party spending will undermine the GOP's ability to defend itself against unregulated, unlimited spending by labor unions in behalf of Democrats.

"It's very emotional," said Jeffords of his discussions with fellow Republicans. "You've got people who feel their lives are threatened, who believe it means the end of the Republican Party."

On an ideological plane, any public funding of congressional campaigns is a misuse of taxpayer dollars to many Republicans, who dub it "food stamps for politicians."

Even for several of the Republicans who were working toward a compromise with Democrats, the relatively small amount of public money left in the bill was a problem.

"It's like saying I'm a little bit pregnant," said McCain of the deal. He and William S. Cohen, R-Maine, voted against the Durenberger-Exon amendment but supported the final votes to end debate and pass the bill.

Along the way, six of the seven Republicans who voted for the bill got their amendments included. McCain got language added to restrict the personal use of campaign funds; Jeffords won support for added disclosure of labor spending; John H. Chafee, R.I., won on an amendment to restrict out-of-state fundraising to the final two years of a Senate term; Larry Pressler, S.D., strengthened the PAC ban; and Cohen stripped language designed to strengthen the Federal Election Commission in a way Republicans feared would be partisan.

But until the last moment, it was not at all clear that there would be 60 votes to end debate — without which Mitchell had said the bill would die at the end of the week.

Cohen reportedly extracted a last-minute pledge to eliminate the FEC language — "Why do you think we went along with it?" asked a Democratic leadership aide — and McCain, by several accounts, had indicated to Republican leaders that he would not cast the decisive vote. In the end, Democrats had two votes to spare.

The renegade Republicans were also cut some slack because of a divide among their brethren. Some Republicans believed that the best course of action was to kill the bill in the Senate; others preferred to let House Democrats or a conference committee do it in.

"I think maybe with the help of House Democrats and the Democratic cloakroom cheering the Republicans on, this bill can be defeated," said Senate Republican leader Bob Dole of Kansas moments after the bill passed.

In the end, senators in both parties seemed simply to want to move on to other matters. And with voters, editorial writers and Ross Perot clamoring for reform, passage seemed the only way to keep the issue from shadowing them for months and perhaps years.

"I supported it as the best we can do," said Moseley-Braun. ■

Georgia, North Carolina and Texas. Yet Republicans will have only three Southern Democratic targets next year: Virginia's Charles S. Robb and the two Tennessee seats held by Jim Sasser and Harlan Mathews.

Instead, most of the seats at risk are in Frost Belt states — rimming the Great Lakes or bordering Canada. Clinton does not seem inherently unpopular in this region. All but four of the Democratic senators running in 1994 represent states that Clinton carried, and two of the exceptions — Nebraska's Bob Kerrey and North Dakota's Kent Conrad — start their re-election campaigns as strong favorites.

A number of Democratic incumbents also represent states that — for whatever reason — have not elected a Republican senator in more than two decades.

Massachusetts (Kennedy), Michigan (Riegle), Nebraska (Kerrey) and New Jersey (Frank R. Lautenberg) have not elected a GOP senator since 1972. In Hawaii (Daniel K. Akaka) and Ohio (Howard M. Metzenbaum), the Republican drought extends back to 1970. In Byrd's West Virginia, the GOP has not won a Senate race since 1956.

Reform and Perot

Several big question marks hang over the 1994 Senate picture. One is the scope of any new campaign finance legislation. Another is Ross Perot.

The campaign finance bill passed by the Senate in June makes basic changes in the way senators would have to finance their next campaign. Even if a final version delayed implementation until 1996, senators up in 1994 would be challenged to abide by the new ground rules.

The Senate-passed version calls for voluntary state spending limits and a ban on political action committee (PAC) contributions. A spending cap could significantly affect the Senate ambitions of a well-heeled aspirant such as Republican Rep. Michael Huffington of California. A PAC ban could hurt Democrats in general because in the past they have been more dependent on PAC money. The measure faces an uncertain future in the House.

As for Perot, his effect on the 1994 Senate contests depends on the angle at which he is viewed. Gramm voices confidence that on balance Perot would help Republican candidates because his supporters would mainly be casting "anti-incumbent votes."

> **"We're seeing a number of states where incumbency is the problem regardless of party label, and it doesn't have anything to do with who is in the White House."**
>
> —Don Foley, DSCC executive director

Republican consultant Eddie Mahe, though, fears "a raft of third-party candidates waving their United We Stand America credentials and pulling 6, 8, 10 percent of the vote" that a number of GOP candidates might need for victory.

Democratic strategists are unsure whether Perot will play much of a role in the 1994 Senate races, given his low-key involvement in the Texas special election that featured an eleventh-hour endorsement of Republican Kay Bailey Hutchison. "His impact will be noticeable but less significant than when he himself is the candidate," says Graham.

Lingering Uncertainty

Strategists of both parties, though, agree that the electorate in 1994 is apt to be at least as volatile as in 1992. In that regard, next year's Senate races could end up being a lot like those in 1978, the last midterm election season during which Democrats controlled both Congress and the White House.

Then, Democrats lost a net of three Senate seats (dropping from 61 to 58), but that modest number obscured the fact that a quiet revolution had taken place.

Republicans picked up eight seats from the Democrats. Democrats grabbed five seats from the Republicans. In all, three senators were beaten in primaries, seven lost in the general election, and 10 retired, resulting in the largest freshman class since 1946.

Democratic consultant Geoffrey Garin believes that the current political climate could be even more volatile this time.

"I can't recall a time when public opinion was as much a moving target as right now," he says. "I'm happy the elections are in November of 1994" and not July 1993. ■

REDISTRICTING

Maine Court Issues Remap Plan

The initial process of congressional redistricting for the 1990s came to a quiet close June 29, when the Supreme Judicial Court of Maine issued a new and non-controversial map for the state's two House districts.

The new map will be in effect for the 1994 House campaign; all other multi-district states had new maps in place for the 1992 elections. Maine is the only state that defers redistricting until after the first election that follows the decennial reapportionment of House seats.

The enactment of the Maine plan does not necessarily set all the House districts in place for the rest of the decade. Several states are measuring the impact of the U.S. Supreme Court ruling June 28 in the case of *Shaw v. Reno*, in which the constitutionality of "bizarrely" shaped districts designed to increase minority representation was questioned. *(Weekly Report, p. 1761)*

Maine's new districts, however, have regular contours and few minority-group residents and are unlikely to face serious legal challenges.

The map changes the existing districts only slightly. According to the 1990 census, the 1st District had 45,044 more residents than did the 2nd District, requiring the shift of about half that many people to balance the populations. *(District descriptions, p. 1827)*

That was accomplished by reuniting Waldo County, which had been split between the districts under the previous map, within the 2nd, and by moving five small towns in Kennebec County from the 1st to the 2nd.

The swapped territory is mainly rural and Republican-leaning, so 1st District Democratic Rep. Thomas H. Andrews had no qualms about donating it to the 2nd, currently represented by Republican Olympia J. Snowe.

Although there were few hitches in redrawing the House map, it was packaged with state House and Senate redistricting plans that caused rancor among state legislators whose constituencies were being redrawn. When the Legislature's efforts to pass the package ended in stalemate, the job fell to the state Supreme Court. ■

By Bob Benenson

northern spotted owl, Clinton promised $1.2 billion in economic assistance over the next five years to offset the jobs that would be lost. To meet that goal, the formula used to determine how much counties will receive from federal timber sales will be changed.

Conferees also dropped a House provision that sought to raise $10 million in fiscal 1994 by imposing a surcharge for the water used by farmers and other irrigators.

—Laura Michaelis and Catalina Camia

Banking

Only technical changes were required to complete the House and Senate Banking committees' contributions to the bill.

The committees had earlier agreed to a $3.1 billion deficit-reduction package that would:

- Produce $750 million in savings from a "depositor preference" law that would pay depositors ahead of other creditors when the assets of failed banks and thrifts are liquidated.
- Raise about $730 million through Government National Mortgage Association (Ginnie Mae) guarantee fees on a new type of mortgage-backed security called real estate mortgage investment conduits, or REMICs.
- Gain about $1 billion in savings by allowing the Department of Housing and Urban Development access to IRS income data to eliminate or cut the benefits of those found to be ineligible for housing programs.
- Save $416 million through faster amortization of upfront Federal Housing Administration mortgage insurance premiums.
- Tap the Federal Reserve's surplus fund for $213 million in fiscal 1997-98.

—Andrew Taylor

Campaign Finance

Presidential checkoff: Majority Leader George J. Mitchell, D-Maine, included language in the Senate bill to raise the taxpayer checkoff for the presidential campaign fund from $1 to $3. This was necessary to ensure that the fund did not run out of money before the 1996 campaign and had to be done in time to get on the 1993 tax return.

House conferees went along with the Senate provision, though they balked at a conference proposal to index the checkoff for inflation.

The checkoff was established by the 1974 campaign finance bill, and 1976 presidential candidates were the first to benefit. The law allowed taxpayers to divert $1 of their tax bill to the fund from general revenues.

Lobbying expenses: The bill would disallow businesses from deducting expenses incurred by lobbying elected officials or senior government personnel, or by engaging in political activity in behalf of any candidate, campaign, referendum or legislative matter. It also would prohibit businesses from deducting membership dues that are used for lobbying.

The campaign finance bill passed by the Senate envisions a share of the funds raised by this provision being used to pay for limited public financing of congressional campaigns. To accomplish that, offsetting revenues would have to be generated.

—Beth Donovan

Commerce

Radio spectrum. When President Clinton and Congress embraced former President George Bush's plan to auction radio licenses to the highest bidder, broadcasters were assured they would be exempt from paying for their use of the airwaves.

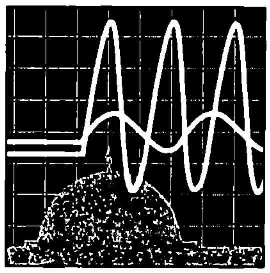
Indeed, the public broadcast portion of the spectrum remain exempt from auctions in the reconciliation agreement. But in a last-minute deal struck the week of Aug. 2, conferees slapped television and radio stations and all other licensees with new user fees intended to raise an average of $100 million annually for the Federal Communications Commission (FCC).

House Energy and Commerce Chairman John D. Dingell, D-Mich., has long wanted to make users of the airwaves foot most of the FCC's $130 million annual budget. Users currently pay fees only for services rendered, such as license renewals or permission to put up a new tower.

In the commerce subconference on the reconciliation, Dingell got Senate Commerce Chairman Ernest F. Hollings, D-S.C., to drop his past opposition to the fees.

As a result, a VHF television station in a major market would have to pay $18,000 annually to the FCC or lose its license. A small FM radio station, by contrast, would pay $600. One satellite would cost up to $90,000.

The overall auction proposal overturns the current policy of handing out radio licenses free through lottery or merit review. It was largely uncontroversial, except for a discrepancy over how much revenue it would raise. *(Weekly Report, p. 2044)*



The Congressional Budget Office has estimated that competitive bidding of licenses would raise $7.2 billion over five years. But the Budget committees in Congress and Clinton's Office of Management and Budget — under pressure to maximize the bill's deficit-reduction targets — argued that the auctions probably would raise as much as $10 billion.

Only holders of radio licenses who sell access to the airwaves, such as cellular phone companies, will be required to bid for the right to hold a license.

The bill also would launch the new "personal communications services" (PCS) industry by making room on the airwaves for new wireless communications devices such as laptop computers and pocket-sized telephones.

It would order the FCC to transfer 200 megahertz of radio spectrum from government use to pave the way for PCS entrepreneurs. The bill also sets the regulatory landscape for PCS by making new wireless services subject to a nationwide set of rules and treating them as "common carriers" like today's telephone companies.

States would largely lose their powers to set rates for wireless services. Sen. Richard H. Bryan, D-Nev., won language to allow 19 states that currently set rates for cellular services to retain those rights, though they must apply to the FCC within a year to show why they should be allowed to continue doing so.

Conferees dropped from the proposal a Senate bid to assure that more than 1,000 land-based telephone compa-

PROVISIONS

Campaign Finance Provisions

During three weeks of floor action, the Senate rewrote its proposal to overhaul the laws that govern financing of congressional (and to some degree presidential) campaigns. The bill (S 3) that passed 60-38 on June 17 was significantly changed from the one that the Senate Rules Committee approved March 18. The earlier version (S Rept 103-41) was almost identical to the measure cleared by Congress in 1992 but vetoed by President George Bush. *(1992 Almanac, p. 63)*

Initial versions of the legislation would have delayed its effective date to the 1996 elections. The current measure would take effect on enactment except where otherwise noted; several major provisions have a delay. *(Story, p. 2215)*

Following are the provisions of S 3 as passed by the Senate.

Senate Campaigns

• **Eligibility.** To qualify for a federal tax exemption on campaign receipts, a candidate would have to file a federal declaration stating that he or she would comply with numerous federal mandates, including:

(1) Spending limits in the primary, runoff and general elections;

(2) Federal contribution limits, including a prohibition on contributions from political action committee (PAC) contributions; and

(3) A $25,000 limit on personal expenditures and loans.

After the primary, to qualify for limited federal aid and broadcast and postal discounts, a candidate would have to win a place on the general-election ballot and face an opponent there. A candidate would then file a declaration stating that he or she:

(1) Did not exceed primary or runoff spending limits;

(2) Will comply with the federal limits on spending, contributions and other mandates during the general-election period;

(3) Has raised 5 percent of the general-election spending limit (up to a maximum of $250,000) in contributions of $250 or less from in-state residents during the current election cycle.

Spending Limits

• **Limits.** Optional spending limits for Senate candidates would vary according to state population. The limit would range from a high of $8.25 million for a candidate in California to $2 million in small states.

• **General election.** The general-election spending limit would not exceed $5.5 million or fall below $1.2 million. Within those parameters, spending levels would be set by the following formula: 30 cents multiplied by the voting age population up to 4 million people; and 25 cents multiplied by the voting age population over 4 million.

In New Jersey or any other state that has no more than one VHF television station, the formula would be: 80 cents multiplied by the voting age population up to 4 million; 70 cents for each voting age person above that.

The formulas would be indexed for inflation beginning in 1997.

• **Primary election.** The primary spending limit would be 67 percent of the general-election limit or no more than $2.75 million. In states that require a runoff, when no candidate receives an absolute majority in the general election, the limit for the runoff would be 20 percent of the general-election limit.

• **Exceptions.** The spending limits would rise in the following circumstances:

Free-spending opponent. If an eligible candidate faced an opponent who raised, spent or obligated to spend funds in excess of the spending limit, the spending limit would rise in increments of one-third up to 100 percent of the limit. An eligible candidate could begin raising money above the spending limit immediately upon learning that he or she would face a non-complying major-party candidate.

Independent expenditures. If an eligible candidate faced an adversarial independent campaign that spent $10,000 or more, his or her spending limit would rise dollar for dollar with no maximum.

• **Exemptions.** Certain disbursements would not count against the spending limits:

Compliance funds. Spending for legal and accounting services to comply with federal campaign laws would be exempt from federal limits up to 15 percent of the aggregate state spending limit with a maximum of $300,000 per election cycle.

Contributions to a compliance fund would count against campaign contribution limits for individuals.

After the general election, a candidate could petition the Federal Election Commission to spend additional funds if needed to comply with federal election laws.

Travel to Washington, D.C. Expenses incurred by an officeholder or an eligible candidate and his or her spouse and children for travel between Washington, D.C., and a candidate's home state would be exempt from spending limits.

Benefits

• **Tax exemption.** Under current law, campaign committees are exempt from paying taxes on receipts from contributions to political committees. That exemption would be repealed and a new exemption would be established for campaigns that agree to comply with the provisions of this bill. Campaigns that did not agree to comply with spending limits and other federal mandates would be required to pay the highest federal corporate tax (now 34 percent) on all receipts.

• **Postage.** In the general election, eligible candidates would be permitted to send up to two pieces of mail to each voting age resident at a rate equal to the nonprofit bulk rate, the lowest mail cost (currently 11.1 cents apiece).

• **Broadcast discounts.** Television broadcasters would be required to sell advertising time to eligible candidates at 50 percent of the lowest unit rate for comparable time. Political advertisements could not be pre-empted by the broadcaster.

The discounts would apply during the 60 days before a general election. They would not apply to ads purchased with federal funds to counter an independent expenditure.

• **Public funding.** In the general election, candidates would be provided with federal funds in the following circumstances:

Free-spending opponent. If an eligible candidate faced a non-complying opponent, the eligible candidate would receive federal funds in increments of one-third of the spending limit (up to 100 percent) as an opponent raised, spent or obligated to spend funds above the general-election limit.

Independent expenditure. If a complying candidate were adversely affected by an independent campaign that spent more than $10,000, he or she would become eligible for federal funds equal to the expenditure, with no limit on the maximum.

• **Funding offset.** Benefits would be paid from a new Senate Campaign Fund that would receive money generated by the repeal of the tax exemption for campaigns and the disallowance of deductions for lobbying expenses. If those sources did not appear likely to generate sufficient revenues, candidates would be notified by Jan. 1 of an election year that federal benefits may prorated.

By Beth Donovan

The fund would receive funds only as necessary to pay for benefits.

Contribution Limits

- **In-state contributions.** Complying Senate candidates would be permitted to raise or accept funds only from residents of their home state except in the two-year cycle that contains their election.
- **PAC ban.** PACs would be prohibited from contributing to any federal campaign beginning Jan. 1, 1995. All PAC money raised before Jan. 1, 1994, could be spent by an eligible candidate; opponents of candidates who raised PAC money prior to that date could raise PAC money up to the amount received by the candidate after then.

If the U.S. Supreme Court were to strike down the ban, PACs would be limited to contributing $1,000 per campaign per election (primary and general); no campaign could receive PAC contributions in excess of 20 percent of the spending limit or $825,000, whichever is less. The latter figure would be indexed for inflation annually beginning in 1997. The amount an individual could contribute to a PAC would drop to $1,000 from $5,000.

(These provisions would also apply to House and presidential campaigns.)

- **Lobbyists.** Lobbyists would be prohibited from making contributions to or soliciting them for a candidate for a one-year period from the date of contact with the federal officeholder, official or staff assistant. Contributors would be prohibited from lobbying the recipient of their contributions for one year after making a contribution.

(These provisions would be extended to House and presidential campaigns.)

- **Personal funds.** A complying candidate could not contribute or lend his or her campaign more than $25,000 during an election cycle. Candidates would be prohibited from raising money to pay off a personal loan after the election.

FEC, Enforcement and Penalties

- **Filing.** All reports would have to be filed with the Secretary of the Senate and transmitted to the Federal Election Commission (FEC) within four working hours.
- **Election week.** Any report or notice required by any activity in the final seven days of an election would have to be made within 24 hours.
- **Federal, state and local officeholders.** Anyone who held elective office and spent money from a non-Senate campaign treasury to promote his or her image or name recognition or for any other purpose in an election cycle in which he or she becomes a Senate candidate would be required to disclose that spending within two days of becoming a candidate. The FEC would make a decision as to whether the spending should be counted against Senate campaign spending limits.
- **Audits.** The FEC would be directed to audit every campaign that received benefits under the bill and to conduct random audits throughout an election cycle.
- **Excess spending.** Penalties would be assessed and criminal charges could be pressed against any candidate who received benefits under this bill and was found to have exceeded the spending limit in the primary, runoff or general election.

Civil penalties. A candidate who exceeded the limit by 2.5 percent or less would pay a penalty equal to the excess expenditure; a candidate who exceeded the limit by more than 2.5 percent but less than 5 percent would pay a penalty equal to three times the excess expenditure; a candidate who exceeded the limit by more than 5 percent would pay a penalty equal to three times the excess expenditure and, if it were found to have been a willful violation, would have to repay the government for all benefits provided under the bill.

Criminal penalties. A candidate, treasurer, campaign manager or other senior campaign official who knowingly violated the act could be tried for aiding and abetting a federal crime.

- **Judicial review.** Any action by the FEC in carrying out this bill could be appealed to the U.S. Court of Appeals for the District of Columbia, which would be directed to give it expedited handling.
- **Injunctions.** The bill would enable a majority of the FEC's six commissioners to seek injunctive relief in federal court for any violation of federal election law.
- **Donor identification.** No candidate would be permitted to spend a contribution unless all information on the donor currently required (name, address, occupation and employer) were provided.
- **Computerized disclosure.** The FEC would be directed to develop a system for computerized disclosure for political committees.

Non-Complying Candidates

- **Tax liability.** Non-complying candidates would be subject to a new federal tax equal to the highest corporate rate (now 34 percent) on all campaign receipts, including contributions from a candidate to his or her own campaign.
- **Expenditure disclosure.** In addition to routine FEC filings currently required, in the general election, non-complying candidates would have to notify the government within two business days of raising, spending or obligating to spend funds in excess of 75 percent of the spending limit. Additional disclosures would be required within two business days when the candidate raised, spent or obligated funds in excess of 85 percent, 95 percent, 100 percent, 133 percent, 166 percent and 200 percent of the spending limit. The reports would have to detail all funds raised and spent and be provided to the opponent within two business days.
- **Disclaimer.** All advertisements would be required to include the following disclaimer: "This candidate has not agreed to voluntary campaign spending limits."

Soft Money

"Soft money" is the term used to describe money raised under state laws and then spent to influence federal elections — for instance, on a state party phone bank or get-out-the-vote drive. Because federal campaign finance laws are generally stricter than state laws, it is easier to raise large donations from wealthy interests under state law. In recent years, presidential campaigns in particular have raised large amounts of soft money to circumvent restrictions on presidential campaign spending. *(Soft money, Weekly Report, p. 1195)*

The bill seeks to bring under federal guidelines all contributions to local, state and federal party committees that would be used to influence a federal election.

- **Generic party activity.** The bill would require all voter registration and generic party activity — campaign activity that promotes a political party rather than any particular federal candidate — to be paid for with funds raised under federal guidelines, so-called hard money.
- **Promoting federal candidates.** Any party activity by a national, state or local party committee that promotes a federal candidate would have to be paid for with hard money, even if state candidates were also promoted. Any other activity that would "significantly affect" a federal election would also have to be paid for with hard money.
- **Presidential election years.** In presidential election years, all get-out-the-vote activity, even that designed exclusively for state and local candidates, would have to be paid for with hard money.
- **National party committees.** National party committees could raise soft money only to supplement party building funds used to buy or rent office space and to transfer to state and local parties for non-federal functions.

National party committees could transfer hard money to state party grass-roots funds for generic party activity and to other state party federal accounts.

- **State party committees.** State party committees would be permitted to raise and spend soft money for certain administrative and overhead costs and party activities including meetings, conventions, polling, building funds and, in odd-numbered years, voter-list maintenance.
- **Grass-roots funds.** New state party grass-roots funds would

be established and would accept only money raised in compliance with federal guidelines. Individuals could contribute up to $20,000 per year. Generic party activities would be funded by the grass-roots accounts.

• **Fundraising.** Federal candidates and officeholders would be prohibited from raising soft money. Costs associated with raising hard money would have to be paid for with hard money, even if soft money was also raised at the event.

Non-Party Soft Money

The bill would enhance disclosure of political activity and internal political communications by independent and member organizations, including labor unions, and would provide candidates and parties with the means to respond to adversarial activity. Such organizations are subject to very limited disclosure under current law.

• **Disclosure.** Such groups would have to disclose 48 hours in advance any expenditures on political activities adding up to $2,000 or more. In the final 14 days of an election, seven days' advance notice would be required. The reports would be made available to the affected candidates and parties within 48 hours.

• **Party response funds.** National parties would be permitted to set up new response funds to counter such expenditures against the party or any of its federal candidates. Each fund could receive individual contributions of up to $7,500 per year, money that would be exempt from other individual contribution limits.

If a group spent more than $10,000 communicating with its members about an election, an adversely affected party committee could transfer an equal amount to a state grass-roots fund for the state party to counter political activity against it. Funds would be transferred directly to candidate committees if a candidate was detrimentally affected by an independent campaign; the money would not count against a candidate's spending limit.

Bundling

When an organization or individual raises money for a candidate, usually from associates, group members or employees, and then forwards the checks together to the candidate, or otherwise makes known their common bond, the practice is known as "bundling." The individual or organization is known legally as a conduit or intermediary, and under current law must disclose these activities only under limited circumstances.

Bundling is the fundraising technique that enabled EMILY's List, an independent group, to contribute more than $6 million to Democratic women candidates in 1992. It was also a practice widely used by savings and loan operator Charles H. Keating Jr. to raise money for the Keating Five senators from his employees and family.

• **Prohibitions.** The bill would prohibit the following from serving as conduits or intermediaries: all PACs, trade associations, lobbyists, partnerships, foreign agents, and corporate and union officers, employees and agents. The bill would also prohibit those individuals and organizations from "directly or indirectly" arranging for contributions to be made to a candidate or party in excess of their own individual spending limit.

• **Authorized fundraisers.** The bill specifically lists five categories of individuals who would not be considered conduits or intermediaries: federal candidates, authorized campaign employees, paid professional fundraisers, spouses and volunteers hosting a house party, provided the volunteer is not barred from bundling. The exemptions would not cover activities such as those conducted by EMILY's List, which controls a PAC.

The bill specifically says that the prohibition on bundling would not apply to federal candidates and officeholders who might raise money for other federal candidates.

The bill also states that bona fide joint fundraising events by two or more candidates or party committees would be permitted.

Independent Expenditures

The bill would define independent expenditures as spending for an advertisement or communication that, as a whole, expresses support for or opposition to an eligible candidate and is made without the participation or cooperation of any candidate or campaign.

• **Prohibitions.** The measure would specifically prohibit independent expenditures by party committees, their officers, employees and consultants they employ.

The bill would preclude virtually all contact between candidates, campaigns, party committees and their consultants and any individual or group making an independent expenditure.

• **Broadcasters.** An independent campaigner would have to notify a broadcaster of an intent to purchase advertising time. The station in turn would have to inform the other candidates, who would be permitted to purchase time to respond immediately afterward.

• **Federal and state disclosure.** Independent campaigners would by required to notify federal and state officials within 48 hours of obligating to make expenditures aggregating more than $1,000, within 24 hours in the final 20 days of an election. Additional disclosures would be required each time obligations or expenditures aggregating $10,000 were made in the same election.

The intent to spend an aggregate of more than $5,000 in the final 20 days would have to be disclosed at least 20 days before the election.

All reports would be transmitted to the affected complying candidate within 48 hours, within 24 hours in the final 20 days.

• **Disclaimer.** A television, radio or print advertisement run by an independent campaign would have to carry notification of the sponsor in clear language and readable type.

• **Most nonprofits exempt.** Nonprofit organizations that conduct advertising campaigns exclusively to promote political ideas would be exempt.

Presidential Campaigns

• **State fundraising.** To qualify for federal matching funds in the primaries, presidential candidates would have to raise $15,000 from 26 states, rather than $5,000 from 20 states as provided in current law.

• **Grass-roots funds.** Candidates who agreed to comply with spending limits would receive additional federal funds for use in grass-roots campaigns. The sum would be equal to 2 cents per voting age person, indexed for inflation beginning in 1997. For the 1996 election, the sum is estimated to be $11 million per candidate.

• **Debates.** Candidates accepting public funds would be required to participate in three debates; vice presidential candidates would have to participate in one.

• **Aggregated primary spending limit.** In the primaries, candidates would be bound only by aggregate spending and fundraising limits rather than the state-by-state limits in current law.

Other Restrictions

• **Individual contribution limits.** The bill would raise the limit on what an individual could give to candidates, parties and political committees to $60,000 per two-year election cycle from the current $50,000 limit. Within that two-year limit, individuals could make annual contributions of up to $25,000 to candidate committees, $20,000 to national parties, $20,000 to state party grass-roots funds and $5,000 to other state party federal accounts.

Individual contributions to national party response funds of up to $7,500 per year would be exempt from all such limits.

• **Leadership PACs.** Federal candidates and officeholders would be barred from controlling any political committee other than their own campaign committee, party committee or a joint fundraising committee.

• **Executives and administrative personnel.** Such individuals could not make contributions to candidates, parties or political committees under the direction, control or influence of their employer. Contributions from such officials that met that standard could not aggregate more than $5,000 to a candidate or $20,000 to a party or political committee. The bill does not specify who would be responsible for enforcing the provision.

- **Contributions by minors.** No one under the age of 18 could contribute funds to a federal campaign.
- **Candidate fundraising.** Federal candidates would be prohibited from raising funds for any tax-exempt organization if a significant portion of its mission was voter registration or get-out-the-vote campaigns. A federal candidate or officeholder also would be prohibited from raising funds for other candidates or party committees, state or federal, unless the money was in amounts and from sources permitted by federal law.
- **Intimidation barred.** The bill would prohibit any person from forcing an individual to make a contribution by using or threatening physical force, job discrimination or financial reprisals.
- **Cash contributions.** Candidates would be barred from receiving cash contributions aggregating more than $100 from an individual.
- **Polling data.** A contribution of polling data would be valued at a fair market rate — with no more than 1 percent depreciation per day from the day the poll was completed.

Miscellaneous

- **Advertising disclosure.** All federal candidates would have to state clearly their responsibility for their campaign ads. The bill would set minimum standards for doing so in print, on radio and on television. For example, the candidate's image would have to appear on the television screen for at least four seconds.
- **Negative mail campaigns.** A candidate, a campaign or any other individual or group that places in the U.S. mail any communication to the general public that directly or indirectly refers to a candidate, by name or inference, must file a copy of the communication with the FEC by noon on the day it is mailed.
- **Broadcast endorsements.** A broadcast station that endorses a candidate for federal office in an editorial would be required to notify all other candidates in the election of the date and time of the broadcast and provide them with a taped or printed copy of the editorial and a reasonable opportunity to reply. Such notification would be required within 24 hours of the broadcast if it was made more than three days before an election; if it was within 72 hours of an election, advance notice would be required.
- **Personal use.** Campaign contributions could not be used for any "inherently personal purpose," specifically including clothes, home mortgage payments, country club memberships and vacations.
- **Excess campaign funds.** Unspent funds in a campaign treasury up to 20 percent of the spending limit could be rolled over within a year of the election to fund the candidate's next election. Other unspent federal funds would have to be returned to the U.S. Treasury at the end of the election cycle. Unspent legal and accounting funds could be rolled over to the next election cycle.
- **Mass mail ban.** Senators and House members would be prohibited from sending franked mass mail in any calendar year in which they would appear on the ballot.
- **Inflation.** All spending limits would be indexed for inflation beginning in 1997.
- **Telephone voting for the disabled.** The FEC would be directed to conduct a feasibility study on whether a system could be established to enable disabled persons to vote by telephone.
- **Closed caption ads.** Complying candidates would be required to provide closed captioning for the hearing-impaired of all TV advertising.
- **Constitutional amendment.** The bill says that it is the sense of the Senate that an amendment to allow mandatory campaign spending limits be considered.
- **FBI, IRS contact.** The bill states that it is the sense of the Senate that federal employees should follow official procedures in contacts and dealings with the FBI and the IRS.
- **Expedited review.** An appeal of any court ruling addressing the constitutionality of the act could be taken directly to the Supreme Court, which would be directed to expedite its review.
- **Severability.** If any part of the provisions establishing a system of spending limits and benefits (with the exception of the tax benefit) were struck down in court, the entire bill would be invalid. All other provisions would be severable. ■

Spending Limits

Below are proposed limits on how much each candidate could spend on a Senate campaign (including both primary and general elections) under S 3, passed by the Senate on June 17, according to the Rules Committee.

State	Proposed Limits
Alabama	$ 2,201,060
Alaska	2,004,000
Arizona	2,063,285
Arkansas	2,004,000
California	8,250,000
Colorado	2,004,000
Connecticut	2,004,000
Delaware	2,004,000
Florida	5,336,485
Georgia	3,069,043
Hawaii	2,004,000
Idaho	2,004,000
Illinois	4,593,335
Indiana	2,755,500
Iowa	2,004,000
Kansas	2,004,000
Kentucky	2,066,291
Louisiana	2,195,549
Maine	2,004,000
Maryland	2,512,682
Massachusetts	2,928,345
Michigan	3,894,440
Minnesota	2,308,274
Mississippi	2,004,000
Missouri	2,593,343
Montana	2,004,000
Nebraska	2,004,000
Nevada	2,004,000
New Hampshire	2,004,000
New Jersey	7,698,200
New Mexico	2,004,000
New York	6,720,498
North Carolina	3,164,650
North Dakota	2,004,000
Ohio	4,424,248
Oklahoma	2,004,000
Oregon	2,004,000
Pennsylvania	4,828,388
Rhode Island	2,004,000
South Carolina	2,004,000
South Dakota	2,004,00
Tennessee	2,560,277
Texas	6,255,820
Utah	2,004,000
Vermont	2,004,000
Virginia	3,012,263
Washington	2,562,281
West Virginia	2,004,000
Wisconsin	2,510,177
Wyoming	2,004,000

COVER STORY

Constitutional Doubts Bedevil Hasty Campaign Finance Bill

Some scholars say compromise measure violates rights to free speech and free association

By Beth Donovan

Stitched together during three weeks of floor debate, the campaign finance bill that the Senate approved June 17 is a pastiche of deals and compromises. Each provision, each amendment was crafted with an eye toward securing 60 votes to break a threatened filibuster.

Senate Democrats wound up with 62 votes for cloture, but they also ended up with a bill that is vague and inconsistent on numerous technical issues. More ominously, a variety of election lawyers say key provisions of the bill are patently unconstitutional.

"This thing needs a doctor," says Kenneth A. Gross, a lawyer who has studied the bill for Democratic clients. Whom does he suggest? The Michigan doctor who developed assisted suicide: "Dr. Kevorkian."

On campaign finance, the First Amendment restricts legislative deal-making. Trade-offs — and even policy objectives — that make political sense often run afoul of constitutional rights to free speech and free association.

Setting aside partisan reactions to the bill (S 3 — S Rept 103-41), lawyers, academic observers and political operatives are debating an unwieldy list of questions about the bill's intent and its constitutionality. *(Provisions, p. 2239)*

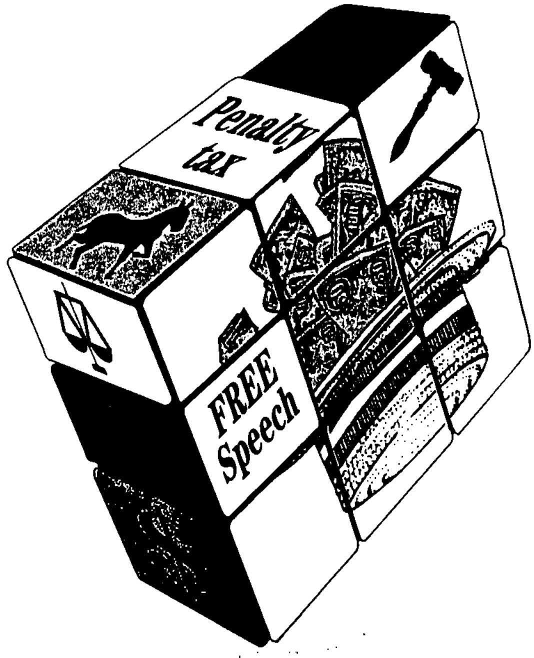
The most contentious debate centers on the deal that led to passage: replacing public funding for candidates who comply with spending limits with a tax on those who do not. To supporters, it is a fair application of Congress' right to tax. To critics, the tax is a blatant infringement on free speech.

And that is just the first of a long list of constitutional questions:

- Do bans on political action committee (PAC) contributions and bundling of contributions take away individual rights of association?
- Does a prohibition on lobbyists' contacting members within a year of making political contributions force them to choose between their right to petition government for redress of grievances and their right of free speech?
- Does providing federal funds to counter an independent campaign encroach on the constitutionally protected right to run such a campaign?

"The Senate bill is unconstitutional in so many places that it could tie up the courts for years — years," says Al Swift, D-Wash., who chairs the House Administration Subcommittee on Elections.

Legislation is expected to be introduced in the House in September, and Democratic supporters are optimistic that the chamber can complete action by year's end. But the measure is not expected to look much like the Senate bill. *(House, p. 2216)*



MARILYN GATES-DAVIS

Process Over Content

Senators were aware of these problems when they passed the bill. Hours afterward, Senate Majority Leader George J. Mitchell, D-Maine, was asked repeatedly to defend the controversial tax provision. The former federal judge said only, "That provision is severable" — meaning that if it were declared unconstitutional, the rest of the legislation would be unaffected.

"I don't believe that kind of tax approach, that kind of penalty approach, will be part of a realistic campaign finance bill," says Fred Wertheimer of the public interest lobbying group Common Cause, whose nod in favor of the amendment was critical to its passage. "But I don't know if that's a judgment for Congress or the courts."

These comments highlight a quiet strategy of Democratic floor leaders: They accepted as many amendments as needed to win votes, knowing they would be dropped, cleaned up or vitiated in conference with the House or later in the courts.

For example, Senate Democrats accepted without debate a controversial amendment by James M. Jeffords, Vt., that aimed to disclose political spending by membership organizations, notably unions and groups such as the National Rifle Association, and to provide funds to counter the spending. Jeffords was one of five Republicans who had pledged to help break a filibuster if certain demands were met, and he eventually did vote to do so.

Many Democrats say privately that the amendment is patently unconstitutional because the government cannot regulate the internal communications of private groups. Senators and staff report that it will be dropped without debate in conference.

"They were very disingenuous in accepting many of the Republican

House's Daunting Task

House Democrats are expected to start drafting campaign finance legislation in September with the aim of passing it by the end of the year. But that is not to say anyone has much idea what the final bill will look like.

Majority Leader Richard A. Gephardt, D-Mo., had a series of meetings in the spring to sound out Democrats on the issue. While there was ample dissent over public funding of congressional campaigns, there was enough support to enable Gephardt and House Speaker Thomas S. Foley, D-Wash., to sign on to a plan by President Clinton that called for spending limits and one-third public funding. *(Weekly Report, p. 1199)*

Gephardt

But that idea looks dead. Having just passed a substantial tax increase in the reconciliation bill and watched the Senate kill most public funding in its bill, members are not about to ask taxpayers to pony up for House campaigns.

"Only the hopelessly naive think there's any chance to pass public financing," says Rep. Al Swift, D-Wash.

The resistance to public funding is matched by an insistence that political action committee (PAC) contributions be retained for House campaigns. But from there, just about the only other issue bringing House Democrats together is their anger at what they perceive as political posturing by the Senate.

Swift

House members complain that in the past the Senate has approached campaign finance secure in the knowledge that anything they pass would either die in the House, be redrawn in conference or killed by veto — leaving the Senate free from blame and new campaign restraints.

House Democrats don't want to take the blame this year for delaying "reform." While they point to the difficulty of writing one set of rules for all districts — urban, rural, suburban, minority and female candidates all have special situations, they say — House Democrats maintain they will do what the Senate could not: pass a bill they can live with.

"Let me say this about the Senate bill," says Sam Gejdenson, D-Conn., a leadership point man on the issue. "I will be insisting that the Senate get everything it voted for. My position in conference will be that not a word will change in the Senate bill."

The Major Players

When the House returns in September, the process will start anew, and the following key players each bring their own agenda to the table:

- **Gephardt.** Emersed in the details and politics of campaign finance, he will bring his well-known listening and negotiating skills to bear. Insiders predict a number of skull sessions in his office before a bill is brought out.
- **Gejdenson.** Gejdenson says he is sticking with the plan approved by the House in 1992 and given a seal of approval in the Clinton plan: a $600,000 spending limit, with no more than one-third of that total coming from political action committees. Another one-third would come in public subsidies.

Gejdenson

- **David R. Obey, D-Wis.** Obey is reported to be developing a plan that would retain the one-third/one-third formula. But rather than fund the program with general revenues, he proposes that taxpayers be given the option of paying as much as $10 more in taxes to help fund federal campaigns; a share of that money would be used to educate the public about the benefits of public financing.
- **Swift.** Chairman of the House Administration Subcommittee on Elections, Swift is working on a plan that would provide postal and broadcast discounts to candidates who agree to comply with spending limits; if their opponent broke the cap, the complying candidates could keep the benefits and spend freely. Swift also would tolerate a PAC limit as high as 50 percent of the spending ceiling.
- **Glen Browder, D-Ala.** The leader of conservative Democrats who oppose public funding, Browder says he remains committed to spending limits. Even before the Senate adopted a new tax on non-complying candidates, Browder was studying the idea.
- **Mike Synar, D-Okla.** A longtime supporter of public funding, Synar has abandoned hope for it and for spending limits. He has teamed up with several Republicans for a bill that would place a $1,000 limit on PAC contributions and prohibit the use of money raised outside of federal election law on federal campaigns.
- **John Lewis, D-Ga.** The chief deputy whip represented the Congressional Black Caucus position in the early Gephardt meetings. With many members running in poor and working-class districts, the caucus is concerned that PAC restrictions and possible limits on out-of-state fundraising would disproportionately hurt minority candidates. The caucus is also concerned that a Senate ban on candidates raising money for groups that register voters — a ban prompted by the Keating Five scandal — would keep them from working with civil rights groups.
- **Democratic Women's Caucus.** Democratic women are interested in protecting EMILY's List from provisions designed to clamp down on bundling. Because they have fewer $1,000 donors than their male counterparts, some women are concerned that, like the black caucus, the PAC limits will hit them too hard.

—Beth Donovan

amendments," says Steve Stockmeyer, who heads a business PAC association.

The Senate also voted 85-7 for an amendment by John McCain, Ariz., to make the bill effective immediately rather than waiting until the 1996 election cycle. McCain, another GOP defector, says a drafting technicality left intact the clause "except as otherwise provided" — which exempts the PAC ban, public funding and thus spending limits from applying to the next election.

Executive Ambiguity

Add to this political expediency the imprecision that accompanies any bill drafted on scratch pads on the floor, and even many experts are left unsure about precisely what the Senate did and intended to do.

"The question is what's real and what's not real," says Ellen Miller, executive director of the Center for Responsive Politics, a nonprofit group monitoring campaign spending.

One provision that has lawyers around town working overtime aims to restrict the participation of corporate personnel. A Democratic leadership aide says the bill would prohibit corporate executives or administrative personnel from contributing an aggregate of more than $5,000 to a candidate under the direction, influence or control of the donor's employer.

Interest groups say this interpretation would reverse decades of law barring direct corporate contributions.

"It legitimizes corporate contributions," says Donna Edwards of Public Citizen.

Many lawyers, however, say the language means even contributions made for personal reasons would be subject to the corporate aggregate — so that an individual would be prohibited from giving to a friend running for Congress if colleagues had contributed up to the corporate ceiling.

"I've been quizzed on this by clients," says Gross. "I can't set a standard for them. Its vagueness creates a constitutional problem."

First-Time Tax

No provision is generating more discussion than the proposed tax on candidates who reject spending limits.

Hastily brought up in a late and pivotal amendment by Sen. Dave Durenberger, R-Minn., it was forced on supporters of expenditure limits because they lacked the votes to impose caps by the one route sanctioned by the Supreme Court: providing public funding as an incentive to voluntary compliance. *(First Amendment issues, Weekly Report, p. 431)*

Historically, the money political committees raise from contributors has not been taxed. The Senate report accompanying a 1975 law formalizing the exemption (PL 93-625, S Rept 93-1357) notes that the Internal Revenue Service did not require political committees even to file tax returns before 1973, when the IRS ruled that they should pay taxes on interest and dividends.

The 1975 law added Section 527 to the tax code; it exempts political committees from taxes on contributions. The report says Congress elected to treat most political entities "as tax exempt organizations since political activity . . . is not a trade or business which is appropriately subject to tax." *(Background, 1974 Almanac, p. 201)*

JOHN BLODGETT

"I assumed it was a drafting error when I first read it. I'm still mystified."

—Donna Edwards, Public Citizen

That sentiment evaporated in the heat of floor debate in 1993.

The Senate bill depends on repeal of the exemption except for campaigns that comply with limits. The tax would be pegged to the highest corporate rate, now 34 percent, and be imposed on all contributions, from the first dollar a campaign receives.

Foes, led by Republican Mitch McConnell, Ky., in the Senate and the ACLU outside, cry foul. They argue that the tax offers no new benefits for compliance with spending limits and instead imposes a punishment on those who opt out of the system.

"It's hard to think of this as voluntary when if you don't play, one-third of your receipts are taken by the IRS," says Roy Schotland, a Georgetown law professor.

In legal briefs, critics equate the candidate's signature on a pledge to comply with spending limits to a loyalty oath, which the Supreme Court said cannot be a condition of tax exemption in *Speiser v. Randall* (1958).

Many Democrats privately concede doubts about the provision's constitutionality, but say the debate is spirited and complex enough to be worth taking to court.

Supporters argue that Congress has broad taxing authority that is often used to encourage or discourage various behaviors. They point to the 1983 Supreme Court decision in *Taxation with Representation of Washington v. Regan*, in which the court upheld Congress' right to provide tax exemptions if the guidelines for determining whether an organization would be exempt did not depend on the content of its activities. The gross receipts tax, they say, does not discriminate against any political party, and it does not affect the content of a candidate's speech or campaign.

Strategic Severability

The tax provisions, as Mitchell says, are severable: A bill section says if any single provision were struck down by the court it would not threaten the remainder. Despite that language, several other key provisions would not be so easily jettisoned.

As with the effective date, the severability clause includes a pivotal exception — one buried 106 pages earlier, stating that if any part of the eligibility, spending limits or benefits sections is struck down "this act shall be treated as invalid."

"I assumed it was a drafting error when I first read it," says Edwards. "I'm still mystified."

According to the leadership aide, the language is not a mistake: "We're saying if the basis of this bill is unconstitutional, we start all over again."

One provision with potential to bring the bill down concerns independent campaigns. The bill provides federal funds — dollar for dollar — to offset any independent campaign waged against a complying candidate.

To supporters of the language, it is just practical politics: Candidates will not agree to spending limits unless they are protected against an onslaught from outside. But to critics, the government subsidies would effectively neuter independent campaigns, which the Supreme Court in *Buckley v. Valeo* said were entitled to First Amendment protection.

"The Supreme Court has said there is an absolute right for citizens to engage in independent campaigns," says Robert Peck of the ACLU. "The government can't infringe on that."

Another question that could threaten the bill is whether the limited direct public subsidy the Senate approved is constitutional. In lieu of giving tax dollars to all candidates who limit spending, the bill provides federal money only when a candidate faces a challenger who exceeds the limit. Critics argue that it is punitive because public money is provided on the basis of an opponent's action rather than any commitment or action by the complying candidate.

Questions of whether a provision is a penalty or an incentive are woven throughout the debate. But both sides agree that a disclaimer requiring a candidate who does not comply with spending limits to say so in all political advertisements — which the bill does — is probably unconstitutional.

"It's forced speech," says Peck.

"Is that still in there?" asked the leadership aide. "I thought we got rid of it."

Back Down on Bundling

The Senate's ban on PAC participation is widely thought to be vulnerable to constitutional scrutiny. The argument against the PAC ban is simple: that it violates the right of free association. The complaint is so persuasive that bill drafters included a fallback plan to limit PAC participation if the Supreme Court strikes down the ban.

"I don't expect the PAC ban to stand," says Wertheimer.

The sweeping ban on bundling included in the Senate bill raises similar freedom-of-association issues, and Senate leaders reportedly have given private assurances to interested groups that they will step back from their current position.

Used by the fundraising group EMILY's List to funnel more than $6 million to Democratic women candidates in 1992, bundling is the practice of soliciting contributions from an interested group of individuals for a candidate and letting the candidate know of the connection between the checks.

The Senate bill prohibits lobbyists and all PACs, corporations and unions, and their agents, from bundling. Supporters say they are closing a loophole that lets these groups circumvent federal restrictions — in the case of EMILY's List, the $5,000 limit on PAC contributions.

Critics level not only the broad constitutional argument against the provision, they also point to technical problems. They contend that the prohibition on "arranging" to have contributions made is too vague: When does a friendly suggestion turn to an arrangement?

R. MICHAEL JENKINS

"The question is what's real and what's not real."

—Ellen Miller,
executive director,
Center for Responsive Politics

"Its ambiguity raises a constitutional flag," says Gross.

Some also see a difference between banning bundling for corporations (which have been prohibited from making direct contributions to candidates since 1907) and banning grassroots groups from the practice.

That argument is likely to provide a constitutional out for EMILY's List, a popular group among Democrats. The leadership aide said Senate Democrats were looking at language to allow nonconnected PACs (those not underwritten by corporations, labor unions or trade associations) that do not lobby Congress to bundle — a formula that would protect EMILY's List.

Lobbyists and Other Issues

The Senate bill, House leaders and President Clinton embrace the idea of banning lobbyists from making contributions for one year after contacting an elected official, officer or staff member. The Senate bill also inverts the proposition: no lobbying contact for a year after signing a check to an elected official or candidate.

The appeal is obvious: To ensure that the lines between legislative interests and campaign contributions are firmly drawn and to demonstrate to voters a commitment to locking special interests out of the process.

The potential legal problems are more subtle. First, many lawyers say, is the problem that comes with requiring an individual to give up free speech rights in order to petition the government for redress of grievances.

Supporters of the prohibition say registered lobbyists are not ordinary citizens seeking redress, but paid professionals. They contend that the one-year time limit will enable the provision to stand because it is for a short period. But critics point to a 1976 Supreme Court decision in *Elrod v. Burns* in which the court said, "The loss of First Amendment freedoms for even minimal periods of time unquestionably constitutes irreparable injury."

The Senate ban on taking out-of-state contributions during the first four years of a Senate term poses a similar question: Does it temporarily deny individuals their freedom of speech? Proposed as a floor amendment, its appeal is clear: Senators should be beholden only to their constituents, not activists in Hollywood or Orange County, Calif.

Again, supporters see the time limit as a protection, but critics ask about the rights of District of Columbia residents, who have no senator; about the rights of Republicans in Democratic-dominated states and vice versa; and about the interest of every American in senators with seats on powerful committees.

Few questions raised by the bill have clear-cut answers. Where the bill is unclear, the problems compound. While the Supreme Court could fill in some gaps with legislative history — something Justice Antonin Scalia, for one, objects to — the history is spare.

But any bill that affects political activity would raise tough questions, because it is the type of speech the First Congress had in mind when it wrote the Bill of Rights.

"What's the First Amendment for?" asks Schotland. "To protect nude dancers?" ■

CAMPAIGN FINANCE

FEC Draft Rules Take Aim At Personal Spending

Lawmakers may not protest in public, but private pressure is expected

Campaign funds must be used to fund campaigns, not to support the personal lives of candidates. That's the gist of new regulations proposed by the Federal Election Commission on Aug. 30.

The regulations would crack down on practices that enable members of Congress and their campaign opponents to pay for their mortgages, clothes, golf outings, meals and even their own funerals with campaign contributions. Some payments would be off-limits; others would be more closely scrutinized under the proposal.

Personal use of campaign funds is prohibited by statute and by House and Senate rules. But the FEC often deadlocks on what constitutes personal use, and congressional rules contain significant loopholes. House rules permit members to finance nearly any activity that can be defined as "political" with campaign contributions. Senate rules allow members to supplement "official" expenses from campaign accounts.

Already, interest groups are stepping up public pressure on the FEC to implement its proposal and to dissuade Congress from interfering. On Sept. 2, Ralph Nader released a survey of "perks" financed with campaign money, public funds and lobbyist favors that he said enhanced the lifestyles of House members.

Several campaign professionals and Capitol Hill staff members, pointing to the potential for scandal in the ongoing investigation of Illinois Democratic Rep. Dan Rostenkowski's finances, said members are unlikely to criticize the draft openly either during the written comment period, which ends Sept. 29, or during the public hearing expected in 1994.

But they predicted a campaign of phone calls from members of Congress to the six FEC commissioners to soften the regulations. Four of the commissioners need to vote for any rule change.

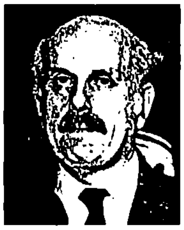
"Oh, they're concerned, but who's going to testify?" said one campaign finance lawyer who asked not to be identified. "A phone call from a well-placed congressman or senator can make a difference."

By Beth Donovan

Goodbye, Grandfather Clause

The FEC said new rules were necessary in light of the expiration of the so-called grandfather clause, which allowed veteran members of the House to convert their campaign treasuries to personal use after leaving office.

"For years, members of Congress have been living off campaign money. This goes a long way toward stopping it."



—Fred Wertheimer,
president, Common Cause

Congress voted in 1989 (PL 101-194) to end the practice at the start of the 103rd Congress. *(1989 Almanac, p. 51)*

The draft says any spending that "would exist regardless of an individual's election to Congress" should be considered personal. Acceptable expenses would be limited to those directly incurred as a result of a candidacy.

The draft includes a "non-exhaustive" list of expenses that automatically would be considered personal: mortgage payments, rent or utilities on any building not leased by the campaign committee, and loans or lease payments on vehicles not owned or leased by the committee. Living expenses, including those for food, child support, health care, insurance and clothing, would be off-limits. Funeral, cremation and burial expenses also would be barred.

Payment of salary to a candidate, which was allowed because the FEC deadlocked on the issue in 1992, would be deemed personal.

The draft suggests that other expenses would be considered suspect when the FEC evaluated them to determine if they were for legitimate campaign purposes or for personal use: fees, gratuities or membership dues to a tennis, health or country club and its employees, as well as greens fees, court fees, and payments to caddies and other professionals who provide services at a club.

On several matters, the draft outlines alternatives that the commission is considering. On the issue of campaigns employing a member of a candidate's family, one option is to permit payment for any "bona fide services at fair market value." The other would require past professional experience by the family member.

The draft also includes alternatives for payments on the use of a candidate's property. One option would reverse current policy and prohibit campaigns from renting any property owned by the candidate, whether home or commercial. The other alternative would allow such rentals at "fair market value."

The FEC seeks comments on how it might address two sensitive issues: entertainment and legal defense.

Vacations and meals that involve discussion of politics and sporting and cultural events that are coupled with fundraising now are acceptable expenses. The FEC is asking whether it should try to sort legitimate campaign activities from private entertainment.

The draft also solicits comments on campaign committees' paying for legal representation on matters unrelated to election law. In advisory opinions, the FEC has said that such expenses are not campaign expenditures, but because congressional rules permit broad use of campaign money for legal defense, the FEC has not acted to stop the practice. In the draft, the FEC says only that the issue "raises the question" of personal use.

Many lawyers suggest that all of these issues would be better resolved by passing a law rather than depending on administrative rules. But despite a Senate vote for a prohibition on personal use of campaign funds during consideration of its campaign finance bill this year, interest groups believe the FEC's efforts are the most realistic bet to crack down on suspected abuses.

"For years, members of Congress have been living off campaign money. This goes a long way toward stopping it," said Fred Wertheimer, president of Common Cause. ■

CAMPAIGN FINANCE

Black Caucus: PAC Funds A Must for Minorities

If political action committees are just moneyed special interests, why then is the Congressional Black Caucus — a group that represents some of the most disadvantaged Americans — suddenly leading the charge to defend PACs?

"If your district is poor, you're not wealthy and you're excluded from affluent circles, it's hard to raise money."

—Rep. Eva Clayton, D-N.C.

"The whole rationale for having PACs was to enable small contributors to have an influence. What is wrong with that?"

—Rep. Melvin Watt, D-N.C.

Because they have to; because they can — that's the opinion of many African-American House members and academics who have watched this year's debate evolve.

President Clinton urged Congress to curb "the power and influence of political action committees"; the Senate passed a bill in June that would get rid of them altogether. But PACs are a key source of funds for House races, and Democratic leaders are ready to fight to retain their $5,000 PAC checks.

This position — which delayed for weeks the formulation of a Democratic campaign finance proposal this spring — puts House leaders in a defensive mode. Now, as they gear up for the expected high-profile October debate, senior, white Democrats are all too happy to step back and let the newly fortified black caucus put its populist spin on the fight for PACs.

Black members say they must defend PACs because minority candidates face demographic and societal obstacles to fundraising. PACs, they say, empower their voters and provide minority candidates with one of the few available sources of money.

Districts represented by blacks are disproportionately poor, and not many constituents can afford to contribute more than a few dollars to political campaigns. Outside their districts, African-Americans often lack the elite school and boardroom contacts that form lucrative fundraising networks for many white candidates.

"We just don't have the resources," says Rep. Eva Clayton, a first-term Democrat who represents the district with the lowest per capita income in North Carolina. "If your district is poor, you're not wealthy and you're excluded from affluent circles, it's hard to raise money."

By Beth Donovan

Politically, black members can afford to defend PACs because their constituents care far more about bread-and-butter economic issues than political reform. Moreover, members say, it is just common sense to their voters that the only way to counter wealthy interests is to gather many small contributions in PAC pots.

"The enormous fear of PAC money is rooted in white, Protestant, puritanical traditions," says Frank A. Sorauf, a political scientist at the University of Minnesota. "The minority community is just not as easily played upon with PAC bashing."

It has long been clear that House Democrats would not go along with a stiff ban on PACs. But the potential impact on minority districts, scarcely mentioned a year ago, is now the raison d'être for PAC backers in the House Democratic Caucus.

First-Time Players

Congress has been debating campaign finance for more than a decade, but this is the first time that the black caucus has played a prominent role. A task force headed by first-term Rep. Corrine Brown, D-Fla., was set up just before the August recess to address concerns about the potential for restricting PACs. Now, as the group begins its work, its concern has spilled over to many other aspects of Democratic plans. *(Other provisions, p. 2524)*

The freshmen, who make up nearly half of the 38 House Democrats in the black caucus, pushed the issue of minority candidate reliance on PAC money to the fore. Proposals to restrict fundraising got their attention because of the relative poverty of their districts: the nine poorest districts represented by African-Americans (based on average per capita income) are held by first-term members. Add to that the difficulty all newcomers have in attracting campaign contributions, and the black freshmen have two strikes against them in fundraising.

They got the attention of Speaker Thomas S. Foley, D-Wash., at a meeting of the entire Class of 1992 in February. According to several participants, many blacks, along with women and Hispanic members, told the Speaker that strict new limits on PACs would disproportionately hurt them and, perhaps most significantly, that they were not afraid to publicly fight for PACs.

Then in March, when freshman Democrats met to put the final touches on a much advertised "reform" plan, a late push to include a PAC ban was quashed after Rep. Melvin Watt, D-N.C., stood up and said he could not support a plan that would have hurt his last campaign and that of many other African-American candidates.

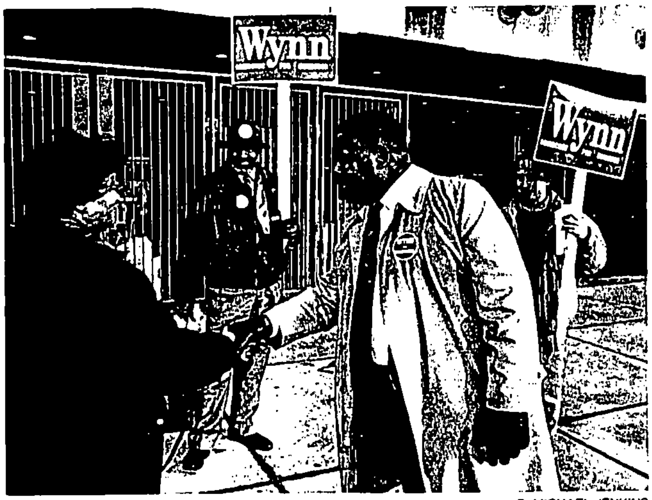
For Watt, and others in the freshman class, the attention this stance draws in Washington is uncomfortable. Watt says the issue is not important to his district, and he finds it

Protecting Minority Candidates

The Congressional Black Caucus jumped into the campaign finance debate for the first time this year to protect political action committee (PAC) contributions they say they need to run decent campaigns. Now that they are involved, minority members are finding several other provisions from past bills that they say were written without an eye to minority candidates or districts.

The caucus intends to change that.

"We don't need to go back to a time when rich white men in blue suits controlled the House," says Rep. Corrine Brown, D-Fla., who is heading a new black caucus task force on campaign finance. *(Caucus, p. 2523)*



R. MICHAEL JENKINS

The Senate campaign finance bill offers few benefits to candidates who comply with spending limits in primaries. But in many majority-minority districts, those are the close races. In 1992, Rep. Albert R. Wynn, D-Md., won the primary with 28 percent of the vote, then got 75 percent in the general election.

In addition to PACs, minority members are expected to focus on a number of issues:

• **Primary benefits.** The bill (S 3) the Senate passed this year offered benefits principally to general-election candidates to induce compliance. But in black-majority districts, almost all of the competition takes place in the primaries. For a campaign finance law to be meaningful in those districts, greater benefits probably would have to be delivered in the primary.

• **Broadcast discounts.** The Senate bill and the plan proposed by President Clinton establish discounted broadcast rates as a significant benefit. But minority candidates generally advertise only on black radio stations, where ad rates usually are less expensive. Discounts are not likely to induce many candidates to comply with the spending limits.

• **Bundling.** The women in the caucus want to protect EMILY's List, a group that bundled more than $6 million in individual contributions for Democratic women candidates in 1992. In addition, many African-Americans are optimistic about the potential for America's Fund, a new group modeled on EMILY's List to raise money for candidates of color. S 3 would put these groups out of business, although House leaders have said they will work to protect them.

• **Party spending.** Like PACs, party committees are a welcome source of large contributions for minority candidates. The 1992 bill capped national, state and local party contributions to House candidates at an aggregate of $5,000, a sum minority candidates would like to see increased. Moreover, minority candidates do not want to see new restrictions on party spending to register and turn out voters.

• **"Keating Five" language.** The 1992 bill included language that would prohibit candidates from raising money for tax-exempt organizations that register voters. Aimed at solving a problem raised in the Keating Five scandal, such a provision would have the effect of preventing members of Congress from helping many civil rights and voting rights groups. *(Keating Five, 1991 Almanac, p. 26)*

—Beth Donovan

frustrating that senior Democrats are so apologetic about PAC money.

"I've tried to stay out of all this folderol. It's too hard to get people beyond the superficial arguments to look at reality," he says. "The whole rationale for having PACs was to enable small contributors to have an influence. What is wrong with that?"

Other minority members echo the idea that their constituents have other issues on their minds — such as civil rights, minority business start-ups and feeding, educating and protecting their children.

"This is an issue for the national media," says Corrine Brown. "My constituents have more important things on their minds."

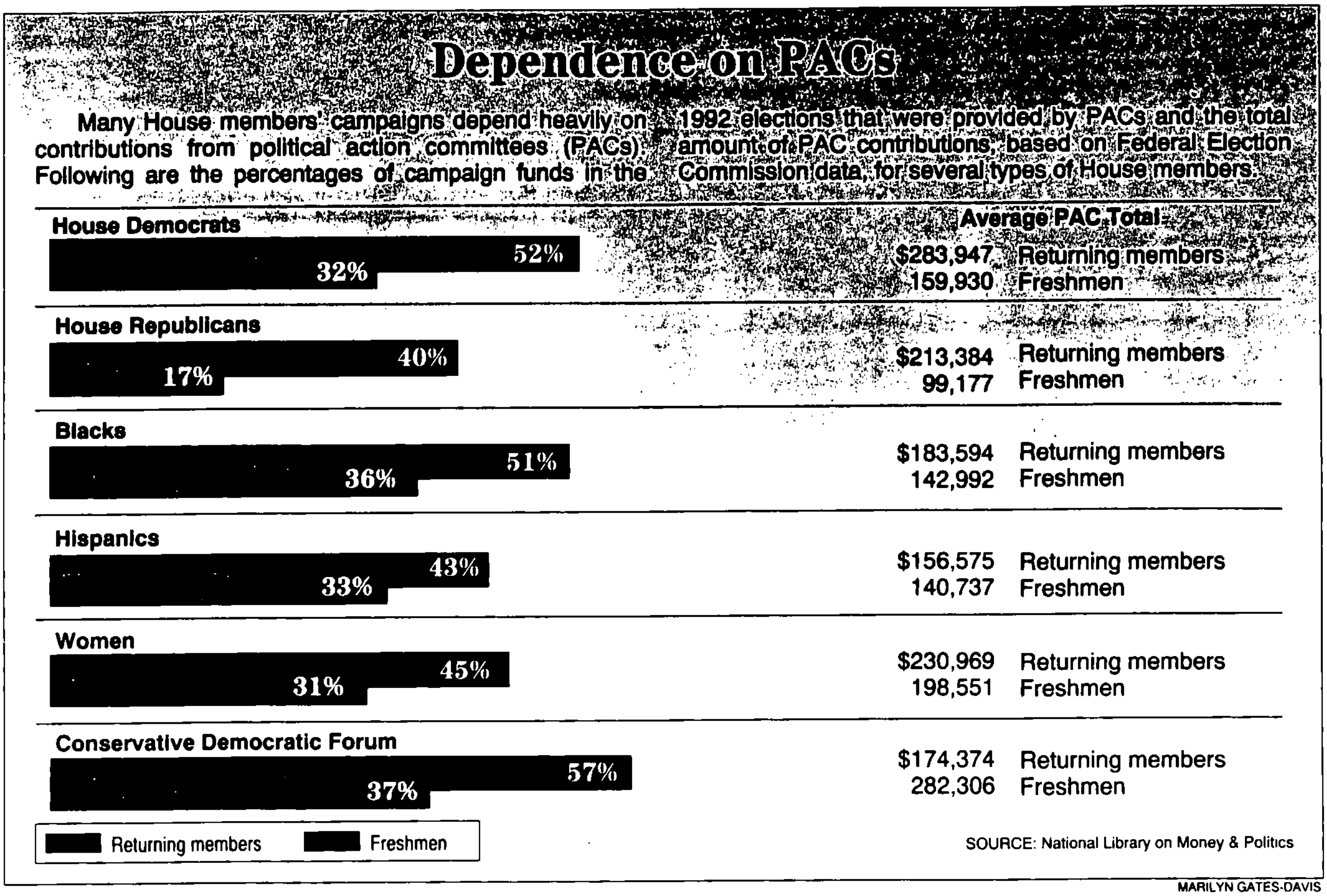
In the past, the lack of interest of their constituents kept the black caucus out of the fray. But now, with the likelihood that whatever bill clears Congress will become law, black members say they no longer can afford to let white members argue about campaign finance on their own terms. With the clout their numbers give them in the Democratic Caucus — which will have to supply nearly all of the 218 votes to pass campaign finance legislation — the black caucus is assured as large a role as it wants in the debate.

And black members are more than ready to stand up for PACs. They say the elimination of PAC money would not only take away a primary source of campaign revenue, it would leave all minority candidates who hope to represent minority districts highly vulnerable to challenges by well-heeled outsiders.

"They're no different than anyone else," says Ronald Walters, a political scientist at Howard University. "They're trying to protect their political base."

PACs' New Raison d'Etre

For House Democrats, the black caucus' move to the foreground could not have come at a better time. For years, House Democrats have battled against a widespread public percep-



MARILYN GATES-DAVIS

tion that equates PACs with special interests. Their position has been made more uncomfortable by Senate Democrats who have statewide and national fundraising sources and are unwilling to stand with their colleagues in the House.

In large part, House Democrats have struggled to defend the contributions because the lopsided PAC preference for incumbents makes the argument self-serving. In 1992, three-quarters of the PAC money given to candidates went to incumbents, according to a new study by Larry Makinson, a research analyst for the Center for Responsive Politics.

But the sense that PACs are part of the status quo may be shaken now that minority freshmen are speaking up for them. If voters can be convinced that PAC money can enable minorities and women — who almost automatically take on the image of "outsiders" — to strengthen their foothold in the House, then PAC defenders can hope to seize the "reform" label from PAC critics.

"I don't think it's a reform ... to cut off the opportunity of women and African-Americans and Hispanics and other minorities to seek office and be elected," said Foley in March as he was defending PAC money against Senate and White House efforts to craft a party plan that would slash PAC participation.

The argument was persuasive enough in those tense negotiations to get both Clinton and Senate Democrats to back off somewhat.

"I favor a smaller PAC limit," Clinton said May 7 as he released his proposals. But he went on to say that "particularly those who come from very poor districts" would have difficulty raising money with the lower limit.

The Clinton plan included higher caps than the president originally wanted and different levels for the House and Senate, something Senate leaders had resisted. The plan retained the current $5,000 cap on PAC contributions to House candidates, lowered it to $2,500 for Senate candidates and to $1,000 for presidential contenders. The bill passed by the Senate on June 17 would eliminate PACs for both chambers. *(Senate passage, Weekly Report, p. 1533)*

For House Democrats, a stand in defense of minorities' access to PAC money not only gave them strong ammunition behind the scenes, it gave them a populist case to take to editorial boards.

"It is a help to the leadership that they have the Congressional Black Caucus to shield them on PAC reform," says David Bostitis, a senior researcher at the Joint Center for Political and Economic Studies.

Share of PAC Money

The numbers show that black candidates were not all that different in 1992 than white candidates when it came to PAC funds. In fact, black candidates who won in 1992 were on average slightly less reliant on PAC money than was the typical House Democrat. Only in the freshman class did black members collect a larger share of their campaign treasuries from PACs than did the average Democrat — 36 percent to 32 percent. *(Chart, this page)*

One coalition that collected a larger share of campaign funds from PACs than did the black caucus is the Conservative Democratic Forum, a 49-member group that has no minority members and only three women in its ranks. It has not taken a position on the issue.

When looking at real dollars rather

than percentages, African-American members fall further behind the typical House Democrat. The average PAC tally among senior Democrats in 1992 was $283,947 to $183,594 for blacks. While those figures might be skewed by a few House elders who pull in millions of PAC dollars, a far smaller share of black members surpassed the $200,000 aggregate PAC cap proposed in the 1992 campaign finance bill. Just 13 of the 143 Democrats who topped that sum were black; 34 percent of the black caucus compared with 55 percent of the Democratic Caucus.

African-American members are not surprised that they come up short in PAC money. Rep. John Lewis, D-Ga., says PAC directors often take minority members for granted. He says PACs assume minority members rarely face serious challenges, "and if we are to be eliminated, it will be in the primary by a candidate who won't vote that differently."

Moreover, with the exception of labor, few of the issues of concern to black members are associated with big-money PACs. And the business PACs and others that can write the $5,000-maximum checks look for incumbents with seniority on key committees.

On that score, black members are better positioned to do well with PACs this year than in the past. Three blacks now chair full committees, and another 10 head subcommittees. As policy players, they can steer PAC contributions not only to themselves but also to junior members who might otherwise be overlooked.

"PAC interest in black caucus members is new," says Walters.

Women and Hispanic Members

Women and Hispanics also come up short in real PAC dollars, but they join black members in arguing that eliminating the money would hurt them disproportionately.

Unlike the typical House member who depends on his or her constituents to form the base of individual contributors, black and Hispanic members need to look outside because they represent disproportionately poor districts. In 16 of the 22 states with minority representation, the poorest district based on per capita income is represented by a black or Hispanic member. And in states with more than one minority-dominated district, they are clustered at the low end of the economic scale.

Only six black members represent districts in which the per capita income exceeded the national average, according to research by Fraioli-Jost, a Democratic fundraising group, based on 1990 census data.

"You have to go to where the money is," says Bostitis, "and it's not in the Congressional Black Caucus districts."

Although many of the women House members come from more affluent suburban districts, they share the problems faced by black and Hispanic members in tapping contributors who can afford to write the $1,000 checks. According to research by the Center for Responsive Politics, women House members raised the largest share of their funds in contributions of less than $200 — 24 percent. Blacks took in 19 percent in small donations; Hispanics, 16 percent. The average Democrat took in 16 percent; members of the Conservative Democratic Forum depended on donations of $200 or less for only 13 percent of their funds.

Many blacks, Hispanics and women say they would have a far tougher time replacing PAC money with $1,000 contributions than would the average white, male candidate.

"They couldn't give a damn whether they can get PAC money," says Watt. "They've got friends and associates and brothers and mothers who can write the big checks."

On a personal level, minority candidates are concerned that if PAC contributions are scaled back from the current $5,000 limit, they will be left trying to fill the void with $25 and $50 contributions — contributions that are labor-intensive and cost-ineffective to solicit.

Moreover, even if those contributions form a base sufficient to sustain a House race, they are of limited value in setting up a statewide campaign.

"A community base is great," says Michael Brown, political director of America's Fund, a new group that bundles contributions to minority candidates. "But it's not enough to take a step up."

On a broader level, African-American House members, and many of their fellow Democrats, are hopeful that the black caucus will be able to temper the near-universal negative perception of political action committees.

"PACs came into being as part of the last reform," says Lewis. "They allow working people to pool their dollars so the millionaires and the big-money interests won't be in the game alone." ■

HOUSE RULES

Democrats Drop Discharge Fight

House Democrats have abandoned their fight against Rep. James M. Inhofe's proposal to make public the signatures on petitions aimed at forcing floor votes on measures bottled up in committee.

The House is set to vote on the Oklahoma Republican's measure Sept. 27. Without active opposition, it is expected to generate a few dozen "nay" votes at most. Inhofe got a vote by gathering 218 signatures on a discharge petition. *(Weekly Report, p. 2435)*

Opponents and supporters alike say the proposed rules change (H Res 134) will make it easier for rank-and-file members to bring to the floor bills opposed by committee chairmen and other Democratic leaders.

The leadership had considered offering an alternative to Inhofe's proposal to make sure the discharge process remained difficult. That idea, advocated by Rules Chairman Joe Moakley, D-Mass., was dropped Sept. 21 after discussions among leaders and chairmen.

Leadership aides said the Democrats will consider amendments later if Inhofe's proposal makes it too easy to force bills to the floor.

Discharge petitions are pending on a term-limits proposal and a line-item veto bill, both GOP-backed measures opposed by the Democratic leadership and stalled in committee. Inhofe said he had agreed the signatures on those, believed to number about 75 each, should remain secret. If the proponents initiate new petitions next year, the signatures will be made public.

According to the Congressional Research Service, of 493 discharge petitions filed since 1931, when the modern discharge rule was first adopted, only three discharged measures have made it all the way through the legislative process — the Fair Labor Standards Act of 1938, the Federal Pay Raise Act of 1960 and a House rules change adopted during the 78th Congress (1943-44) that had no effect because it applied to the 77th Congress and opponents refused to allow an amendment. (Sixteen other measures subjected to discharge petitions were finalized through other means.)

Inhofe's effort will mark only the fourth time a measure has received final approval solely through the discharge process. ■

COVER STORY

Reforms Are Hard To Come By As 'Reform Month' Looms

Behind schedule and facing powerful opposition, leadership readies a flurry of bills on campaign finance, lobbying, other issues

Battered by complaints that Congress is too slow to change, lawmakers are responding with a flurry of legislation to "reform" the political system. But nothing is moving easily or quickly, and everything may be too timid to satisfy Congress' critics.

On the agenda for the coming weeks and months are bills to restructure how members of Congress are lobbied, entertained, judged, financed as candidates and treated as employers — not to mention a much-ballyhooed examination of virtually all of Congress' internal procedures.

House Speaker Thomas S. Foley, D-Wash., repeatedly had said he would push most of those measures through the House in October. Democrats talked optimistically about "reform month" — or even a single "reform week" — when the House would pass a campaign finance overhaul and other bills revamping the way Congress does business. But the schedule already has slipped, fueling skepticism among Congress' critics.

"We have reform week and not much reform legislation," said Fred Wertheimer, president of Common Cause, a leading critic of the campaign finance system.

However, Democratic leaders recently have stepped up efforts to ready these bills for floor action before the end of the year, even if they miss the October target.

While the changes in the works are likely to fall short of what Congress' critics want, the proposals also face internal opposition from powerful members who have a big stake in the status quo.

"I've never seen a reform that wasn't criticized for going too far — and for not going far enough," said Rep. Al Swift, D-Wash.

By Janet Hook
and the Congressional Quarterly staff

Holdups in the House

The Senate already has passed campaign finance and lobbying-disclosure bills, so most of the action in the coming weeks will be in the House.

The campaign finance bill has been slowed by disagreements among Democrats over public funding of campaigns and other issues. The lobbying bill is bogged down in controversy over a Senate-passed provision imposing strict new limits on gifts members can receive from lobbyists.

Foley had said the House also might act in October on proposals to restructure Congress. But the panel drafting the plan — the Joint Committee on the Organization of Congress — has fallen behind schedule, killing any chance that either chamber would vote on its recommendations before next year.

But two key issues before the Joint Committee may be addressed sooner.

In the Senate, two task forces are expected shortly to make recommendations on revamping the ethics process and on bringing Congress into compliance with labor laws and other statutes it imposes on others. House Democratic leaders have considered bringing a compliance proposal to a vote this year, without waiting for the Joint Committee.

The Freshman Factor

A key force behind the fall agenda in the House are the 110 freshmen who rode to office on the anti-establishment tide of the 1992 election. Many face tough re-election fights in 1994 and want to be able to say they have made headway on their agendas for change.

The freshmen have been the loudest voices calling for new limits on gifts. And in March, the Democratic freshmen set a Sept. 30 deadline for action on campaign finance. The leadership said it could not meet that deadline, but promised action in October.

Senior members also are trying to seem responsive to the public's demand for change in Washington. When the House on Sept. 28 moved to make it easier to force floor votes on populist bills, few dared oppose the change. It passed 384-40. *(Discharge petitions, p. 2618)*

By scheduling campaign finance and lobbying bills around the same time, Democrats say they hope the public relations effect will be amplified.

"In concentrating the scheduling of all these measures in one month, I believe that Democrats can underscore dramatically our commitment to making government fairer, more open and more responsive to the public's needs," Foley said in a Sept. 10 letter to Democratic freshmen. "I trust that this October will offer solid proof of congressional earnestness to deliver what we have promised."

> **"If they can't find a solution and pass [public financing], they don't want reform."**
>
> — Fred Wertheimer, president of Common Cause

Targeting Foley Again

The House will be turning to these issues at a time when Foley has again become a lightning rod for criticism of Congress. Last year, many members complained bitterly that Foley had not moved aggressively enough to head off the House bank scandal. *(Bank, 1992 Almanac, p. 23)*

Just as he seemed to put that behind him, Foley has come under fire from other quarters. The New York Times has run editorials criticizing Foley in harsh, personal terms for not doing more to pass a major overhaul of campaign finance. Mother Jones magazine this summer ran an article portraying Foley as a major obstacle to reform.

But Foley complains that the House has not gotten credit for changes it already has made — such as closing the House bank, hiring a professional administrator to run House operations and curbing the patronage system.

"Much attention was given to the problem," Foley said at a Sept. 23 speech at the National Press Club. "Very little attention has been given to the solution."

Following is a review of issues awaiting action in Congress:

Campaign Finance

Democrats Scrambling To Find House Plan

In 1992, House Democrats saw a sweeping campaign finance bill vetoed; in 1993, they made the same bill a top priority as HR 3; on May 7, Speaker Thomas S. Foley, D-Wash., joined President Clinton to unveil a revised plan; on June 17, the Senate passed its bill.

But none of that should suggest that House Democrats have a bill ready to go. As of Oct. 1, House Democratic leaders face trouble in their own ranks as they attempt to craft a package that would limit campaign spending and political action committee (PAC) contributions and provide partial public financing.

Although many meetings will be held and an array of party loyalists will be consulted over the next two weeks, in the end, the decision on what bill to press lies with two men: Foley and Majority Leader Richard A. Gephardt, D-Mo.

And from their perspective, Democrats face a no-win dilemma on campaign finance: They can bring to the floor a bill that includes substantial public financing of House campaigns and face certain defeat, or they can try to find a compromise that might pass but will get hammered in editorials. The New York Times on Sept. 26 called one such trial balloon a "disgraceful retreat" and Foley "a grand artificer."

"We can't win," said one Democratic leadership aide.

For years, public funding has been the Achilles' heel of proposals to revamp the way congressional campaigns are financed. Many critics of the current system say it is the only way to limit the influence of private donations and special interests. But Republicans and conservative Democrats decry it as welfare for congressmen.

To groups such as Common Cause and the Center for Responsive Politics that have lobbied hard for "clean" public funding of congressional campaigns, Democratic leaders are copping out by declining to aggressively whip a tax-based public funding formula.

The groups want members put to the test. They point out that Democrats overwhelmingly approved public funding in 1992 when a veto by President George Bush was guaranteed, and that the vast majority of the Democratic freshmen pledged to support it in their campaigns.

"If they can't find a solution and pass this, they don't want reform," Fred Wertheimer, president of Common Cause, says of Democratic leaders.

On the other side, many Democratic members say voters won't cotton to their voting to raise taxes in August and to fund their own campaigns in October.

While there is little fresh about this debate, it is coming to a decision point because of the leadership's pledge to move a bill to the floor soon.

"These issues aren't new," said Gephardt, who spearheads a working group on campaign finance. "We've got some decisions to make."

The major options are these:

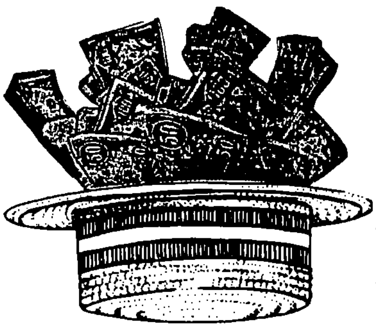
- **Repeat the 1992 bill.** Rep. Sam Gejdenson, D-Conn., a leadership point man on the issue, wants Democrats to stick with the 1992 formula that set a $600,000 spending limit for House campaigns, provided one-third public funding and set one-third ceilings for political action committee money and large contributions.

Such a proposal, however, begs the question: Where does the money come from? Revenues from a new tax on lobbying expenses that Clinton and congressional Democrats had hoped would pay for campaign finance were usurped for deficit reduction in August by the reconciliation bill.

One option is to leave the funding issue for another day. The 1992 bill did not include a means to raise the money and included a proviso that made the law ineffective until taxpayer money was raised.

- **Voluntary contributions.** House leaders are giving serious consideration to a proposal by Rep. David R. Obey, D-Wis., that would allow taxpayers to add a sum to their annual tax bill to help fund campaigns. The leadership

A Reprieve on Political Funds



Democrats and Republicans may not agree on what political reform is, but there is backroom unanimity on what it is not: a stiff crackdown on personal use of campaign funds.

After hearing directly and indirectly from members of Congress from both parties, the six members of the Federal Election Commission announced Sept. 30 that they would extend the public comment period on proposed regulations that seek to limit campaign expenditures to those incurred directly as a result of a candidacy. Set to expire Sept. 29, the comment period will now run through Nov. 15.

This will give members more time to find a strategy to deal with the draft proposal, which could crimp their lifestyles. They are loath to criticize it publicly for fear of being accused of lining their own pockets.

The proposed regulations, published Aug. 30, attempt to delineate what expenditures would be considered strictly personal and off-limits: clothes, mortgages, utility bills, payment of salary to a candidate and funeral expenses, among others. The draft lists other expenses that would be considered suspect: membership fees to clubs, greens fees and gratuities to club staff. The commission requested comments on how to deal with meals and other entertainment during which politics and pleasure are combined. *(Proposals, Weekly Report, p. 2334)*

Personal use of campaign funds is prohibited by statute and by House and Senate rules. But the statute has never been fleshed out, and House rules permit campaign funds to pay for any "political" activity; senators are allowed to use them for any "official" purpose.

Vic Fazio, D-Calif., chairman of the House Democrats' fundraising committee, said members were very interested when they saw the FEC proposals. "There's a fear that there could be a very strict interpretation and a very serious break with what has been the norm," he said. Fazio said members needed a more detailed understanding of what the FEC was trying to do. "Nobody's trying to protect what could be described as abuses where the use of campaign funds may have gone too far," he said.

One measure of the depth of the bipartisan concern about the proposed regulations is the source of the initial request for a delay: Leading Democratic and Republican campaign finance lawyers Bob Bauer and Jan Baran wrote to the FEC Sept. 27.

"It's the first thing the commission has done in its history where there's bipartisan agreement," Baran said.

Rep. Charlie Rose, D-N.C., chairman of the House Administration Committee, also requested a 45-day extension for public comments. According to an aide, Rose believes that the issue would be better dealt with legislatively. He would like the House to follow the Senate lead by including personal-use restrictions in a campaign finance bill, which will be marked up by his committee. *(Senate provisions, p. 2239)*

But if Rose has a jurisdictional interest in the issue, he also carries baggage on it that could limit his role. In 1988, he received a "letter of reproval" from the House ethics committee over a complaint that he had improperly converted nearly $64,000 in campaign funds for personal use.

—Beth Donovan

would add a backup to the plan so that if the fund was insufficient to meet the one-third public contribution, members could raise as much as 45 percent of their funds from PACs.

This is the idea that drew the wrath of The New York Times. Many critics argue that if less than 20 percent of taxpayers check the box that allows $1 of their tax bill to go to presidential campaign funds, far fewer are likely to add to their tax bills for Congress.

Within the House, the voluntary nature of the fund is not as controversial as is the fear that raising the PAC limit that high could cause some to abandon the leadership.

"Backsliding on PACs would be a serious mistake," says Rep. Eric D. Fingerhut, D-Ohio, who co-chairs the freshman reform group. "The freshman class is firm on that."

• **Tax on contributions.** The Democratic freshmen are looking over a proposal by Common Cause to impose a 7 percent tax on contributions to candidates, parties and PACs to pay for partial public funding of congressional campaigns.

Rep. Glen Browder, D-Ala., a leading House critic of public funding, introduced a new bill Sept. 30 that would impose a tax on campaign receipts over $600,000 as an incentive to comply with spending limits (with money going to the Treasury, not to pay for public funding). A Senate proposal that would tax every dollar raised by noncomplying candidates is not being seriously considered by House leaders, in part because of questions about its constitutionality.

While the freshmen are working to influence the debate, many Democrats are wondering what role the White House will play and how far it will let the House pull back on PACs and public funding. In recent weeks, Clinton has been silent on the issue, and the aide assigned to it, Michael Waldman, has been reassigned to lobby for the North American Free Trade Agreement.

"Now that the White House has walked away, there's no telling what they'll come up with," says Ellen Miller of the Center for Responsive Politics.

House leaders say they may take as long as two weeks to finalize a decision and then test it with members. House Administration Committee Chairman Charlie Rose, D-N.C., said that once a bill is outlined, his panel will mark it up quickly. The other committees with jurisdiction will be given short deadlines to act.

"Once a decision is made, things can move quickly," said a leadership aide.

—Beth Donovan

CAMPAIGN FINANCE

Democrats Eye a New Idea: Taxing Political Funds

By Beth Donovan

How can the congressional campaign finance system be cleaned up? The latest answer on Capitol Hill is: Tax the candidates.

The Senate came up with a 35 percent tax on candidates who reject spending limits; the idea broke a filibuster and cleared the way for passage in June. Now, House Democratic leaders are looking at a 7 percent tax on contributions to House candidates as a way to solve a long-simmering political problem: how to fund federal benefits for candidates who do comply with spending limits.

In a series of meetings with fellow Democrats the week of Oct. 11, House leaders began to solidify support for an across-the-board tax on House campaigns. The idea, first floated by the independent citizens' lobbying group Common Cause, is winning favor among traditional supporters of public funding as well as among opponents who do not want to soak taxpayers with a fat bill for their own elections.

"The taxpayer financing beast is dead," said Glen Browder, D-Ala., who led opposition to past Democratic bills that relied on tax revenues. "Now we can talk."

The outline backed by Majority Leader Richard A. Gephardt, D-Mo., would direct revenues from a contribution tax to a fund for partial public financing of candidates who comply with spending caps. The fund would be augmented with proceeds from a steep new registration fee for political action committees (PACs) and with voluntary donations from taxpayers who could add a sum to their annual tax bills.

Leaders are hoping to come up with a bill that could be marked up by the House Administration Committee in time to get it to the floor by the last week in October, although many details were left unresolved when the House adjourned Oct. 15.

The emerging bill would keep many features of HR 3, a bill identical to one vetoed by President George Bush in 1992, and of an outline presented by President Clinton and Democratic congressional leaders in May: spending caps for campaigns, benefits for candidates who comply and limits on PAC contributions. *(Proposal, Weekly Report, p. 1121)*

"We see positive momentum and view the new negotiations as a very positive development," said Michael Waldman, the White House aide on campaign finance. He said Clinton could actively support a bill like the one being developed by House leaders.

The idea of a contribution tax does not seem likely to quiet Republican opposition. Republicans fundamentally object to spending limits and are toying with the idea of proposing a ban on all PAC contributions.

Nor would such a tax necessarily bypass constitutional concerns raised by the Senate bill (S 3) passed June 17. The House tax could be less controversial because it is smaller and would apply universally, though Democratic leaders are leaning toward adding a penalty tax for non-compliers. Either way, critics argue that any tax on political activity restricts free speech. *(Senate provisions, Weekly Report, p. 2239)*

"Because it is a tax aimed at expressive activity, it is an unconstitutional tax," said Robert Peck of the American Civil Liberties Union.

Passing Constitutional Muster

Democratic leaders have long supported spending limits as the key to campaign finance reform. To be constitutional, limits must be voluntary, and providing public benefits is the one proven way to encourage compliance without running afoul of the Supreme Court. Funding those benefits with tax dollars, however, is anathema to many members. Hence the appeal of a plan that raises money without dipping into the pockets of average taxpayers.

The main objection to both the Senate and House tax proposals would appear to be the constitutional question. But supporters of the House Democratic plan say it raises fewer problems than does the Senate tax.

"A minimal, uniform tax might withstand constitutional scrutiny," said Kenneth A. Gross, a Democratic election lawyer. "It's better than the Senate's punitive tax."

Advocates of the across-the-board tax say the courts could look favorably on use of the revenues to provide direct federal funding to candidates because it would reduce their dependence on large individual and PAC contributions. In its landmark 1976 decision in *Buckley v. Valeo*, the Supreme Court said that some infringement on First Amendment rights was acceptable if it would reduce corruption or the appearance of corruption in the political process. *(Constitutional issues, Weekly Report, p. 431)*

Some critics also question whether it is constitutional to require a political entity to pay taxes that will go to philosophical foes.

All of these issues were raised in a 1992 case before the Florida Supreme Court challenging a 1.5 percent state tax on PACs and political parties to provide partial public funding to state candidates. In a 6-1 ruling in *State of Florida v. Republican Party of Florida*, the court found the tax unconstitutional.

"The assessment is a substantial burden on ... First Amendment rights," the court declared Aug. 27.

Democrats' Competing Interests

Ironing out the details of the proposal will be difficult — particularly because Democrats are assuming they will have to find the 218 votes needed for passage within their own ranks, and different factions of the party have different interests.

Common Cause began publicly advocating the tax after the Senate bill, which it backed, drew harsh criticism. It proposed the 7 percent tax after looking at total contributions to the registered political entities in the 1992 cycle — $1.5 billion to presidential and congressional candidates, national party committees and political action committees — and calculating that a 7 percent levy on that sum would raise about $100 million. According to the Congressional Budget Office (CBO), that would be enough to pay for public funding for House candidates.

The idea took off in early October when first-term Rep. Karen Shepherd, D-Utah, began talking it up. She and Eric D. Fingerhut, D-Ohio, who co-chair the Democratic freshman reform task force, circulated a "dear colleague" letter advocating the idea Oct. 15. They call it "players pay."

"I think of it as a user fee," said Shepherd.

Shepherd says Gephardt will continue to work out the details, even though he is preoccupied with the debate over the North American Free Trade Agreement.

The Congressional Black Caucus is among the groups Gephardt must get on board to pass a plan. Its members have expressed concern that the tax would unduly burden small campaigns. To address the issue, House leaders are considering a graduated tax that would exempt the first $100,000 in receipts.

To win over Browder, who is a spokesman for conservative Democrats on this issue, leaders are also looking at a significantly higher tax rate for candidates who exceed the spending limits. One possibility is to impose a 35 percent corporate tax on receipts in excess of 110 percent of the spending limit, an idea similar to one Browder proposed. The problem is that this would raise the very issues that draw legal fire at the Senate bill.

House leaders do not intend to touch the portions of the Senate bill that deal with Senate campaigns, and so the across-the-board tax would exempt Senate and presidential candidates, according to leadership sources.

Political action committees are likely to be hit hard. The question is, how often. House leaders are looking at a direct registration fee for PACs — $5,000 for non-connected PACs and $10,000 for connected PACs. In addition, the receipts tax could be applied to contributions to PACs, which raises the question of whether they would be taxed again when contributions are made to candidates.

"I think of it as a user fee."

—Rep. Karen Shepherd, D-Utah

Another issue is whether to tax contributions to political parties — which would hit the Republicans harder than it would the Democrats, because they raise more money. Participants in the talks say they would turn to parties only if the revenue became essential.

Who Pays How Much?

The final calculations on whom to tax how much will be made once Democrats figure out how much money they need to offset the public funding. It will be tough for them to play numbers games because they need to prove to their troops that the public money will be sufficient before the Democratic Caucus will sanction a cap on PAC funds of $200,000 per campaign, on which Clinton reportedly is insisting.

According to several sources, House leaders are committed to retaining the outline of the 1992 bill and the similar plan endorsed by Clinton. Their bill would set a $600,000 spending limit, indexed for inflation and with exemptions that could top $150,000. The bill could provide $200,000 in public funds, though a lower sum is being considered.

In April 1992, CBO estimated that the earlier bill would cost $50 million to $100 million for House races every two years. CBO stressed, however, that there is no way to determine how many candidates would participate and how much money they would collect.

Democratic leaders are relying on estimates from party consultants who place the price tag between $70 million and $80 million, but they caution that the figure could go higher. If two candidates in each congressional district were to collect 80 percent of a maximum $200,000 federal contribution, the cost would be $140 million.

Democratic leaders expect the contribution tax to generate roughly $25 million — a maximum of $38,500 per campaign — which means the benefit fund will rely heavily on other sources. According to one source close to the negotiation, PACs may be asked to kick in as much as $40 million.

Taxpayer Donations

More money could come from a voluntary contribution plan pushed in recent months by David R. Obey, D-Wis., a strong proponent of public financing. Obey's idea was to add a box to federal income tax returns allowing taxpayers to donate $10 to fund congressional races. House leaders are looking at an optional $5 add-on.

Although such voluntary contributions do not raise the ire of conservatives, Browder would prefer to leave taxpayers out of the equation altogether. But dropping the idea would drive Obey out, and Democratic leaders consider his imprimatur important.

Few supporters of public funding think Obey's plan would raise much money. In the 11 states that use taxpayer add-ons, participation tops at 1.8 percent, according to Common Cause.

Part of Obey's plan is to include a substantial advertising campaign to educate the public about the importance of voluntary federal funding of campaigns. With such a campaign, Obey estimates, 15 percent of taxpayers would give $5, which would generate $64 million. (About $20 million of that would be spent on advertising.)

Currently, 17 percent of taxpayers check the box that permits $1 of their tax bill to be diverted to fund presidential campaigns. The check-off was raised to $3 earlier this year.

The Obey plan would require taxpayers to raise their tax bills by the amount designated. The black caucus is considering a plan to raise the existing check-off to fund congressional candidates without raising tax bills. But that would require the House to come up with an alternative general revenue source and would revive the troublesome issue of direct taxpayer funding. ■

CAMPAIGN FINANCE

House GOP Plan Backs Ban on PAC Funds

Proposal could boost Republican chances, embarrass House Democrats

R. MICHAEL JENKINS

Leader Michel outlines GOP plan, backed by (from left) Reps. Hoke, Horn, Thomas and Livingston.

House Republicans offered a campaign finance plan Oct. 19 that meets two important party aims: It could make Republican challengers financially competitive with well-heeled Democratic incumbents, and it is ripe with potential embarrassment for Democrats.

The latter is more politically significant because Republicans lack the votes to enact their plan. But even if they could, they would run into the same brick wall Democrats struggle to scale on campaign finance: the First Amendment.

Republicans released their proposal in advance of House Democrats, who are trying to prepare a bill for a markup the week of Oct. 25. Concern about the constitutionality of their draft plan is one of many issues slowing their progress. *(Democrats, p. 2861)*

Item No. 1 in the GOP plan is an outright ban on political action committees (PACs). While the idea was controversial within party ranks, supporters led by Robert L. Livingston, La., argued that Democrats would suffer far more than Republicans if PACs were put out of business because the money flows most forcefully to incumbents and chairmen.

By staking a position in favor of a PAC ban, House Republicans also isolate their Democratic counterparts as the lone defenders of the PAC system so maligned by editorial writers as a vehicle for special interests. On May 26, the Senate without dissent added a ban on PAC contributions to Senate campaigns to its bill, S 3, and then voted 85-12 to extend the PAC provisions to the House. *(Senate action, Weekly Report, p. 1338)*

"There is only one group standing in the way of banning all PACs: House Democrats," said Rep. Martin R. Hoke, R-Ohio.

But if Democrats find defending \$5,000 contributions from labor union and business PACs an unpleasant political task, defending a ban in court is a monumental legal job. Liberal and conservative scholars agree that the guarantee of free association protects the right of individuals to contribute collectively to the candidate of their choice.

Aware of the problem, House Republicans included a fallback plan (as did the Senate bill): If the Supreme Court struck down the ban, the contribution cap for PACs, now \$5,000, would fall to \$1,000.

The second issue highlighted by House Republicans is a requirement that candidates raise a majority of their funds from individual contributors who live within their districts. Republicans tout a study by a Democratic polling firm that shows overwhelming public support for in-district fundraising.

"There's something distasteful about candidates raising 95 percent of their money in New York and Hollywood," said Livingston.

Democrats object that women and minorities would be unfairly hurt by limits because they have a hard time raising money in their districts. But their better argument may rest on legal grounds.

Legal experts say that such a limitation would discriminate against those who live in districts dominated by voters of another party and that it would needlessly encourage parochialism. On a more fundamental level, the limitation could be outside guidelines established by the Supreme Court for restricting political contributions.

"Any limitation on contributions has to be linked to potential corruption," said Robert Peck of the American Civil Liberties Union. "It's impossible to show any connection between corruption and an out-of-district contributor."

Republicans tout a feature of their bill that would allow party committees to greatly enhance the financial position of certain challengers. Under the plan, if a candidate begins the race with a substantial war chest — as many incumbents do — a party committee could match the sum for a challenger. The idea is to "level the playing field for challengers" — and it is one that stands to benefit Republican challengers more because their party committees usually are far better funded than their Democratic counterparts.

A United Front

Republicans put on a united show of support for their plan — with outgoing Minority Leader Robert H. Michel, Ill., there to endorse the plan alongside his likely successor, whip Newt Gingrich of Georgia.

But the plan was controversial within the Republican conference, and

By Beth Donovan

Democrats on Hold

The meetings multiplied the week of Oct. 18, but House Democrats again delayed decisions on key issues that will make or break a campaign finance bill. Despite pressure by House Speaker Thomas S. Foley, D-Wash., to bring a revised version of their campaign finance bill (HR 3) to the floor the week of Oct. 25, that goal is out of reach, according to leadership aides.

And because the package will be presented to the full Democratic Caucus before it goes to mark up, it will be difficult even for the House Administration Committee to begin its work before the week of Nov. 1.

"An enormous number of people are not addressing the merits of the bill but their own political profiles," said a participant in the talks who requested anonymity. "The process is maddening."

House leaders have not backed away from the framework of spending limits, partial federal funding and political action committee limits endorsed by President Clinton. But drafting the details is slow work. The issues impeding progress have been static for days as leaders and their aides try to calculate how much the package will cost and how much money various revenue sources will raise.

In addition, House leaders have yet to reckon with a host of issues raised by the Congressional Black Caucus. The leadership plan was drafted with scant input from minority members, and caucus members say it shows. At a minimum, the caucus wants to ensure that federal benefits will be available in primaries, the most competitive races in most black majority districts.

Among other basic issues still on the table are:

- **Federal funding.** To lower the bill's price tag, there is considerable pressure to slide the public benefit available to qualifying candidates down from $200,000 to $100,000. However, Karen Shepherd, D-Utah, says the freshmen will insist on the higher level, with backing from many public interest groups.

Leaders are considering a $200,000 limit that would decline if the funding mechanism fails to raise enough money. Part of their calculation is that it is unlikely that many candidates would receive full benefits because of the inefficiencies of raising the small contributions on which benefits depend.

- **Contributions tax.** House leaders anticipate that as much as a third of the federal funding could come from a tax on contributions to candidates. But opposition has emerged. *(Tax, Weekly Report, p. 2787)*

In a closed-door session, caucus Chairman Steny H. Hoyer of Maryland argued that the tax is unconstitutional. Several other senior Democrats joined him, although none has said the tax would be a deal-breaker. House leaders, however, are eager to scale the tax rate back, perhaps to as low as 2 percent.

A proposed 35 percent tax on contributions over the spending limit is drawing constitutional fire, but it will stay in the plan because it is the price of an endorsement from Glen Browder, D-Ala., who is thought to have the votes of many conservative Democrats. Leaders also believe it is more acceptable than the Senate plan because it does not discriminate between those who adhere to spending limits and those who do not, and it does not kick in until after a candidate raises 110 percent of the limit.

- **Soft money.** House leaders are committed, according to aides, to adhering to the outline but not the details of the Senate plan (drafted in conjunction with the White House) to eliminate most of the "soft money" that evades federal guidelines. House members do not necessarily disagree, but they may seek to raise the federal contribution limits to offset the loss of soft money. They also are looking at means to enable state parties to spend some non-federal money on generic party activities.

—Beth Donovan

the freshmen were key to the outcome.

"There was a lot of wailing on the PAC ban," said Steve Horn, a first-termer from California. "People who've been here a long time, in both parties, are comfortable with the system."

Other provisions include:

- **"Soft money" ban.** All funds used to influence federal elections would have to be raised under federal guidelines.
- **Bundling ban.** Registered lobbyists and PACs would be prohibited from the practice of bundling checks from individuals to give to a candidate.
- **Wealthy candidates.** If a candidate spends more than $250,000 in personal funds, contribution limits would be lifted for his or her opponent.
- **Union dues.** Labor unions would be required to get written permission from members before dues could be used for political purposes.
- **1994 election.** The Republican proposal would apply to the 1994 election cycle, which began Jan. 1, 1993. ■

ELECTIONS

FEC Makeup Ruled Unconstitutional

A federal appeals court Oct. 22 held that the composition of the Federal Election Commission (FEC) is unconstitutional. The court ruled that Congress exceeded its authority when it put representatives of the House and Senate on the independent commission as non-voting *ex officio* members.

A panel of judges from the U.S. Court of Appeals for the District of Columbia Circuit struck down the provision of the Federal Election Campaign Act that empowered the *ex officio* members. Because the provision is severable, the six-member commission can continue to function. But it is not clear what impact the ruling will have on the thousands of commission actions since 1976.

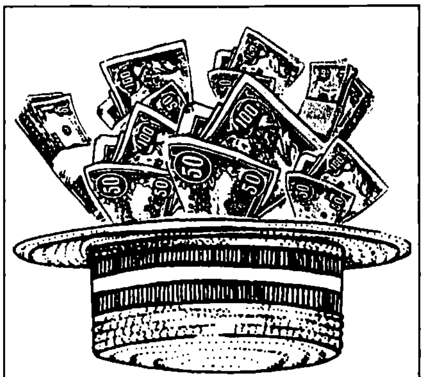
While the two members do not vote, they participate in commission deliberations on sensitive political matters.

The FEC represents itself in legal matters, and general counsel Lawrence M. Noble did not immediately decide whether to recommend that the commission appeal the decision in *Federal Election Commission v. the National Rifle Association.* The bipartisan commission is scheduled to meet in executive session Oct. 26. ■

CAMPAIGN FINANCE

Democrats Float Draft Bill, But Schedule Is Slipping

By Beth Donovan



BOXSCORE

Bills: HR 3, S 3 — Campaign finance.

Next likely action: Democratic Caucus considers bill Nov. 3; markup by House Administration Committee possible.

Background: House Democrats are looking at a new draft of the bill that would tax contributions, impose fees on political action committees and use voluntary tax checkoffs to pay for public funding of House campaigns.

Reference: Tax plan, Weekly Report, p. 2787; Senate passage, p. 1533; Clinton plan, p. 1121.

House Democrats plan to review a new campaign finance bill at a caucus meeting Nov. 3. Key members are already busy vetting new drafts of the bill in order to bring a plan to the floor before the House adjourns.

Hopes to take the bill up before the scheduled Nov. 17 vote on the North American Free Trade Agreement, however, are fading fast. Leadership aides now suggest the bill will be the last to clear the House on Nov. 22 or 23. *(NAFTA, p. 2949)*

But meeting even that goal will be difficult. Many speed bumps lie ahead:

- Party leaders must themselves reach agreement on a handful of key details, including the nagging problem of how to pay for public benefits.
- The Ways and Means Committee must be persuaded to relinquish jurisdiction on the bill's tax provisions.
- Then 218 of the 258 members of the Democratic Caucus must be convinced that passing the bill is in their personal best interest — since no GOP votes will be available.

None of it will be easy, particularly as members raise concerns about a new section-by-section analysis of an Oct. 28 draft bill.

The latest draft bill relies heavily on the formula of spending limits and federal benefits approved by the House in 1992 and recommended by President Clinton in May — a $600,000 spending limit, with no more than one third coming from political action committees (PACs) and another third from individuals who give more than $200. Candidates who agree to those conditions would receive up to one-third of the limit in federal benefits. *(Background, 1992 Almanac, p. 63)*

But the spending ceiling is likely to look more like $1 million if candidates avail themselves of the many loopholes and the sum is indexed for inflation. The aggregate PAC cap also could climb if candidates opt to finance exempt activities such as legal expenses and taxes with PAC money.

In addition, the draft departs significantly from the Senate plan on so-called "soft money," funds raised outside federal guidelines. Though aides emphasize that final decisions have not been made on soft money, the latest plan permits 40 to 50 percent of generic party activity and voter registration efforts to be paid for with soft money. The Senate and President Clinton rejected such an allocation formula.

The draft outlines a way of financing the bill from several sources. It would include a 5 percent tax on candidate receipts and a 35 percent tax on receipts above the spending limit. It would also allow individuals to include an unlimited contribution on their tax return. (Aides say a voluntary $10 taxpayer add-on is likely to be substituted.)

The draft does not include a formula for PAC registration fees, which leaders reportedly hope will raise at least $25 million, roughly a quarter of the bill's cost. One plan under consideration calls for a 10- to 12- step fee scale that begins at a few hundred dollars and goes up to $40,000. The size of a PAC's fee would depend on its gross receipts and whether it was tied to a business or labor union.

If the funding for the bill runs short, the new documents say only that benefits will be provided on a "pro rata" basis. There is no discussion of how members would make up lost funds.

Questionable New Taxes

The first political obstacle to swift action is the Ways and Means Committee, which rarely relinquishes jurisdiction on tax matters (except sometimes for user fees). The campaign finance bill proposes entirely new taxes on candidate contributions — which some legal experts suggest may be unconstitutional. It also adds a line to the basic 1040 tax form for the voluntary taxpayer add-on.

Early in the process, leadership aides said with great confidence that the committee would not pose a problem. But as panel members have reviewed the document, that has changed, and the panel has not decided how to treat the bill.

The full committee met in a closed-door session the week of Oct. 25 to discuss campaign finance along with other matters. Chairman Dan Rostenkowski, D-Ill., has met several times with Speaker Thomas S. Foley, D-Wash., and Majority Leader Richard A. Gephardt, D-Mo., to discuss the bill.

At week's end, Ways and Means staff reported that the committee would not have to act because the bill would include language stating that a separate tax bill would be required.

"We prefer one bill," said a leadership aide. "But we can only lose 40 votes, so we're not in the business of alienating anyone."

Resolving the dispute that way would also solve a potential parliamentary problem: Because the Senate passed the bill first, a conference bill would take a Senate number. But bills that raise revenues must originate in the House.

Democratic leaders also face a revolt led by a former fan of spending limits and public funding: Mike Synar, D-Okla. He has abandoned such plans and introduced a bill that would limit PACs and soft money and discourage independent campaigns. Synar says he will actively work against the Democratic bill and hopes to have his bill offered as a substitute.

"The Democratic plan doesn't pass the smell test," said Synar. "It's unconstitutional, and it will have a hard time passing because of it."

However, Democratic leaders appear to have won over a key critic of past bills: Glen Browder, D-Ala. The price of his support is a tax equal to the highest corporate rate on contributions over the spending limit, a controversial tax included in the draft.

Draft House Plan

For many first-term Democrats and public interest groups, retaining the $200,000 level for public funding in the draft is a significant victory. Though this is the level approved by the House in 1992 and recommended by Clinton, House leaders for weeks discussed lowering the figure to bring down the bill's price tag.

"We lobbied it hard," says Donna Edwards, a staff attorney with Public Citizen, a watchdog group.

In the draft, benefits will be provided only in the general election, a significant setback for the Congressional Black Caucus. Its members repeatedly remind leaders that nearly all of the competition in their districts occurs in the primary. Those drafting the legislation, however, note that including primary candidates could cause costs to skyrocket. They say that in 1992, 2,600 candidates competed in the primaries; 843 major-party candidates made it to the general election.

The draft has benefits in the form of communications vouchers that could pay for advertising, buttons, bumper stickers, pamphlets, postage and the like. Candidates would receive benefits on a matching basis for the first $200 each individual contributed.

When indexed for inflation, the spending limit would be closer to $700,000 when the bill took effect for the 1996 elections, and it includes large loopholes. If a candidate won a primary with a 20 percent margin or less, the limit would go up by $150,000 — including $50,000 in additional public benefits — according to the draft proposal.

Moreover, candidates could add up to 10 percent of the spending limit for fundraising and overhead costs. Money raised for those expenses would have to comply with the general fundraising formula: no more than one-third from PACs and one-third from contributions over $200.

"The Democratic plan doesn't pass the smell test. It's unconstitutional, and it will have a hard time passing because of it."

—Rep. Mike Synar, D-Okla.

Candidate spending on legal advice, audit costs, and federal, state, local and payroll taxes — including a new 5 percent federal tax on contributions — would not count against the expenditure cap and would not be limited. According to an analysis that accompanied the draft, the fundraising restrictions would not apply to those revenues — meaning that PACs and wealthy contributors could fund them.

Candidates could also raise up to 5 percent of the spending limit for accounting and compliance. Again, no fundraising restrictions would apply, according to the draft.

Finally, the spending and fund-raising caps would be lifted and the benefits retained if a candidate who had agreed to them faced a challenger who rejected the voluntary federal package and raised more than 25 percent of the spending limit. The limits also would be lifted if the opponent contributed more than $50,000 in personal funds. (Similarly, under the draft, complying candidates could not contribute more than $50,000 in personal funds.)

Soft Money Plays

The House has always been more supportive than the Senate of party committees that want to raise and spend money under state guidelines. This year looks like no exception.

While the Senate bill would require parties to pay for all generic party activity and voter registration efforts with money raised under federal guidelines, the House draft would let state parties pay for 40 percent of those activities with soft money in presidential election years and 50 percent in off years.

"We're not going to support a bill that doesn't shut down the soft money system, and you can't do that with an allocation formula," said Fred Wertheimer, president of the lobbying group Common Cause. He said he expected the soft money language to change before a final bill is drafted.

While Democratic aides working on the bill agree that no final decision has been made, they rebut the position of Common Cause and others. "The groups don't live in the real world," said one aide. "It's a very elitist attitude to say you can't spend money raised under state law to register voters."

The House bill raises the amount a PAC can contribute to a national party committee to $20,000 from $15,000. The Senate measure would ban PACs.

In other respects, the House draft parallels S 3, passed June 17 by the Senate. It would raise the individual federal contribution limit to $60,000 per election cycle from $25,000 per year. Within the aggregate limit, individuals could give annual contributions of up to $25,000 to federal candidates; $30,000 to national party committees (S 3 allowed $20,000); and $20,000 to new state grassroots funds that would be used for mixed state-federal party activities.

Other provisions of the draft bill:

- **Bundling.** Language prohibiting most individuals and groups from acting as conduits for candidate contributions would exempt independent PACs, including EMILY's List, a women's fundraising network.
- **Severability.** If any portion of the spending and fundraising limits or the federal benefits was found unconstitutional, the House campaign section would be invalidated. All other provisions are severable, including the funding plan.
- **Independent expenditures.** Candidates complying with federal spending limits would receive matching funds on a dollar-for-dollar basis if an independent campaign spent more than $10,000 against them. Broadcast stations would be required to provide free air time for candidates to reply.
- **Ballot initiatives.** The draft would require state initiative campaigns that affect federal elections — such as term limit measures — to comply with federal contribution limits and register with the Federal Election Commission. ■

CAMPAIGN FINANCE

Election-Subdued Democrats Go Forward on New Bill

Long lacking the spirit to champion campaign finance legislation, House Democrats have lost the will to fight it. With the tepid acquiescence of their troops, House Democratic leaders the week of Nov. 1 took the first formal steps to bring a new campaign finance bill to the floor before Congress adjourns.

A lightly attended Democratic Caucus meeting Nov. 3 to review a leadership proposal failed to turn up passionate opposition or demands for major changes. Unlike past sessions on campaign finance that sent drafters back to the drawing board and leaders retreating from promised floor votes, Democrats emerged from the 90-minute closed-door session sounding resigned to a bill moving forward.

"It's subject to criticism, but I don't know of a better solution," Rep. Peter Hoagland, D-Neb., said.

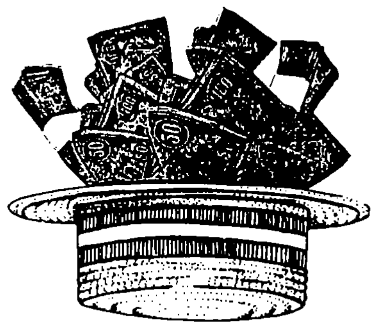
As the meeting concluded, Speaker Thomas S. Foley, D-Wash., publicly renewed his pledge that the House would vote on a campaign finance package before adjourning this year, and the House Administration Committee scheduled a markup of a new version of HR 3 for Nov. 10. The markup promises to be a formality, as Chairman Charlie Rose, D-N.C., will ask Democrats and Republicans to hold their fire until the bill goes to the floor.

Between now and then, Majority Leader Richard A. Gephardt, D-Mo., and Sam Gejdenson, D-Conn., will continue to flesh out details of a bill. Their plan relies heavily on one outlined by President Clinton in May and approved by the House in 1992 — a $600,000 spending limit with up to one-third coming from political action committees and another third from the federal government. *(Draft proposal, Weekly Report, p. 2939)*

Elections Make Inaction Anathema

The Republican sweep of the major 1993 elections the day before the Democratic session cast a pall over the proceedings. While many Democrats fear the election returns will draw challengers out of the woodwork and the bill will put money in their pockets, once vociferous arguments that voters do not care about campaign spending limits and do not like federal subsidies were subdued.

By Beth Donovan



While some senior members and key voting blocs remain skeptical, Democrats seem resigned to passing the bill as a symbol of change.

"I have respect for people who say these issues don't come up voluntarily at town meetings," said Romano L. Mazzoli, D-Ky. "But just look at the election yesterday — people want change."

Voter resistance to federal funding is addressed in the bill with a complicated formula that generates revenues from political action committees (PACs), voluntary taxpayer contributions and perhaps a contribution tax on candidates.

Expecting this "players pay" plan to blunt criticism of the bill's price tag of $70 million to $90 million, many Democrats now see resistance to a campaign finance overhaul as bad politics. Particularly among the freshman class, inaction is anathema.

"This will become an election issue if Congress fails to act," said first-term Rep. Jane Harman, D-Calif.

Many senior members left officially uncommitted, including Chief Deputy Whip Butler Derrick, D-S.C., and Ways and Means Committee Chairman Dan Rostenkowski, D-Ill. But there was little enthusiasm voiced for an alternative advocated by Mike Synar, D-Okla., that does not include spending limits.

The caucus session went more smoothly than those in the past in large part because Gephardt has held countless meetings on the bill. And he gave a leading critic of past bills, Glen Browder, D-Ala., a role in drafting the 1993 version. Browder's statement to the caucus in support of the bill quelled traditional conservative criticism.

"We'll have strong support among Southerners," Browder said afterward.

African-American members continue to object to the plan because it provides no benefits in the primary, when they face their most serious challenges. But party leaders point out that candidates will receive a guarantee of federal money during the primary allowing them to borrow against it, and a rebellion now appears unlikely.

Similarly, the New York delegation is unlikely to go AWOL, but its members call insufficient a provision that would raise the spending limit by $150,000 following contested primaries. Many in the delegation instead want to raise the spending limit by 75 percent of the amount spent by a primary challenger.

These and other concerns will be addressed before the bill hits the floor. Democrats cannot afford to take a single vote for granted since no Republicans are expected to side with them.

"All of the members of the caucus weren't there," said Gephardt after the meeting, "and we've got to talk to all of them."

Changes in the Plan

The outline presented to Democrats included several significant changes from recent drafts.

- **Universal PAC limits.** A proposed $200,000 aggregate limit on political action committee receipts and a $200,000 aggregate limit on contributions of more than $200 would apply to all House candidates — whether or not they opt to comply with spending limits.
- **Contribution tax postponed.** A 5 percent tax on candidate receipts would not kick in until the 1998 election, and only then if the fund to pay for federal benefits fell substantially short of money in 1996.
- **Federal benefit not guaranteed.** The bill would authorize up to $200,000 in federal matching funds, but if the fund to pay for them ran short, candidates would receive benefits on a pro rata basis. If that figure reached 50 cents on the dollar — up to $100,000 per candidate — the contribution tax would not be imposed in the next election.

The outline did not discuss how candidates would make up lost revenues. Gejdenson wants candidates to have to rely on small contributions, but no agreement had been reached. ■

CAMPAIGN FINANCE

House Will Vote on Limits Nearing $1 Million in '96

Despite months of bargaining among Democrats, bill has changed little from 1992 version

The path is clear for the House to vote before it adjourns for the year on a bill to limit spending on its own campaigns, but the limits are far looser than they first appear.

The House Administration Committee Nov. 10 approved a bill (HR 3) over Republican protests that ostensibly caps spending on House campaigns at $600,000. But once exemptions and inflation are factored in, the cap will be closer to $1 million for many campaigns by the time it takes effect for the 1996 elections.

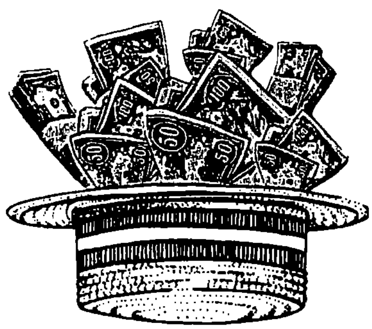
The higher limits mean that relatively few campaigns would be seriously pinched. In 1992, a third of current House members spent more than $600,000 to win their seats, but only 35 topped $1 million.

"These limits are higher than we wanted. But in the long run, they will cut into spending," said Fred Wertheimer, president of Common Cause, which has lobbied in favor of campaign finance reform for years.

Despite intraparty wrangling that held up the measure for months, Democratic leaders wrought a bill similar to one passed in 1992 that was vetoed by President George Bush. Approved by the committee on a party-line 12-7 vote, it would provide up to one-third of spending in federally funded communications vouchers and limit candidates to raising one-third of their money from political action committees (PACs). *(Highlights, p. 3092)*

The bill is changed from the 1992 version in several places. In addition to a provision that could significantly increase the spending limit, it frees candidates to raise money for causes other than their own campaigns. The new bill allows members to run their own PACs; the 1992 bill forbade it. The new bill also allows federal candidates to raise "soft money" — money that is not subject to federal guidelines — to aid state candidates, a practice barred in the 1992 bill.

By Beth Donovan



BOXSCORE

Bills: HR 3, S 3 — Campaign finance.

Latest action: House Administration Committee approved new draft of HR 3 on Nov. 10.

Next likely action: Floor vote as early as Nov. 19.

Background: Democrats' bill offers federal benefits to induce candidates to limit spending.

Reference: Background, Weekly Report, p. 3032.

The two bills are similar in that neither includes a way to pay for the federal benefits. Weeks of negotiation were dedicated to producing a new plan that would pay for the vouchers without tapping general revenues. But the Ways and Means Committee refused to give up its hold on tax-related provisions, and they had to be severed.

Democratic leaders say that next year the House will consider a separate bill likely to include a steep new registration fee on PACs, voluntary taxpayer contributions and a possible tax on candidate receipts.

The two-bill plan drew GOP ridicule. "We all know this proposal is going nowhere," said John A. Boehner, R-Ohio.

The effort Democrats expended to clear various provisions within their caucus did ensure that the bill moved through a testy, four-hour markup unscathed. Two minor amendments were approved by voice vote; 23 were rejected on mostly party-line votes. A Republican substitute was defeated 7-12.

Public Perceptions

Many Democrats say that spending limits are the key to restoring public confidence in campaigns. They argue that candidates now are forced to spend too much time raising money and that voters fear the seats are virtually bought by big-time contributors.

"Without spending caps, you don't have real reform," said Sam Gejdenson, D-Conn.

No campaign, however, would ever be subject to a $600,000 spending limit. Assuming a 3 percent inflation rate, the base limit would exceed $675,000 by the 1996 election, when the bill would go into effect.

The bill also includes a 10 percent exemption for overhead and an unlimited exemption for spending on legal fees and taxes. On top of that, any candidate who wins a primary with a margin of 20 percent or less would get a "bump-up" of $200,000 to the spending limit.

In the 1992 election, 192 candidates would have qualified for the maximum spending limit because they ran within 20 points of their primary opponents: 25 incumbents; 69 candidates running in open seats and 98 challengers.

For such candidates, not counting the legal fee exemption, the limit jumps to $970,000 after it is indexed for inflation to 1996.

"When you proceed to the floor, I will take great delight in pointing out to the American people... the phony spending limits and tremendous loopholes," said Robert L. Livingston, R-La.

Highlights of Campaign Finance Bill . . .

The campaign finance bill (HR 3) approved by the House Administration Committee on Nov. 10 would give House candidates up to $200,000 in federal benefits if they agree to limit campaign spending. That and other sums in the bill would be indexed for inflation with 1992 as the base year. *(Committee, p. 3091)*

The bill would not become effective until separate legislation to fund it is enacted and no sooner than the 1996 election cycle. Following are major provisions:

House Spending Limits

- **House candidates.** The spending limit for candidates who participate would be set at $600,000; indexed for inflation, it should near $675,000 by 1996.
- **Contested primaries.** The limit would rise by $200,000 for candidates who win primaries with margins of 20 percent or less.
- **Exemptions.** Spending for legal services and taxes would not count toward spending and contribution limits. Spending for fundraising, accounting and overhead also would be exempt from spending limits up to 10 percent of the expenditure cap.
- **Limits lifted.** The spending limit would be voided and federal benefits retained if a candidate who had pledged to comply with federal limits faced an opponent who did not do so and raised or spent more than 25 percent of the spending limit ($150,000).

Contribution Limits

- **PAC limits.** Candidates could accept up to $5,000 per election from a political action committee (PAC), the same amount as in current law, but with a new aggregate cap of $200,000. This limit applies to all candidates, regardless of whether they agree to abide by federal spending limits.
- **Large-donor limits.** Candidates could accept no more than a total of $200,000 from contributors who make donations of $200 and more. This limit applies to all candidates, regardless of whether they agree to abide by federal spending limits.
- **Individual contributions.** The bill would raise the limit on what an individual can give to candidates, parties and political committees to $60,000 per two-year election cycle from $50,000 per cycle. Within that limit, an individual could make annual contributions of up to $40,000 to state party committees, $20,000 to national party committees and $25,000 to candidates.
- **Contested primary.** If a candidate wins a primary with a margin of 20 percent or less, he or she could raise an additional $66,600 in PAC contributions and $66,600 from large donors.
- **Personal contributions.** To be eligible for federal benefits, candidates could not contribute to or loan their campaigns more than $50,000 in personal funds.
- **Carry-over of funds.** Contributions carried over from past elections would be "undesignated" and not count against any aggregate contribution cap. Funds expended would count against the spending limit.
- **Limits lifted.** All contribution limits would be lifted and federal benefits retained for an eligible candidate who faced an opponent who did not pledge to abide by spending limits and contributed more than $50,000 in personal funds. The contribution limits would remain in place for the opponent.
- **Minors.** No one under 18 could contribute to a political campaign.

Federal Benefits

Candidates who agreed to comply with optional spending limits would be eligible for partial federal funding of their general-election campaigns.

Not only is the potential spending limit higher than that in the 1992 bill, it would extend to many more candidates. Last year's bill offered $150,000 (now $200,000) in added spending for candidates who won with margins of 10 percent or less (now 20 percent).

Critics of the bump-up say that a candidate with a difficult primary may campaign hard, win by 21 percent and lose the money, while a candidate with four marginal challengers may win by 19 percent and get the funds.

"It really requires candidates to predict how much they're going to win their primary by," said Benjamin L. Cardin of Maryland, the only Democrat to join Republicans in an unsuccessful 8-11 vote to strip the provision.

The add-on is most likely to benefit challengers and those running in open seats. Unlike incumbents, who generally coast to nomination, outsiders often slog through tough primaries.

The PAC cap and the federal benefits would grow alongside the spending cap. Candidates with contested primaries would get an added $66,600 in each category. After indexing for inflation, they could collect over $225,000 from PACs and $225,000 in vouchers.

Restive Democrats

While Democrats held ranks throughout the markup — never losing more than one member on a roll call — nearly everyone expressed reservations about the bill.

"None of us are totally happy," said Barbara B. Kennelly, D-Conn.

Committee Chairman Charlie Rose, D-N.C., offered no insight on his views about the bill. Martin Frost, D-Texas, said he would oppose it on the floor.

"I will vote to report this, but I think it's a bad bill," he said, adding that the bill had "basically flawed and unworkable sections."

With Democrats skittish about changing the way campaigns are run, Republicans aimed to tar the bill rhetorically. The tone quickly became partisan and personal.

A Republican amendment to ban PACs provoked the most hostile exchange of the day. Livingston argued that 90 percent of PAC money goes to incumbents and that it should be eliminated to level the field for challengers. Democrats fired back that PACs give small donors a chance to participate on a par with the wealthy.

"The gentleman is going back to

. . . That House Will Consider on Floor

• **Communications vouchers.** Eligible candidates who face a general-election opponent would be entitled to up to $200,000 in federal communications vouchers. The vouchers could pay for advertising, postage and voter contact material (bumper stickers, brochures, buttons, yard signs) used during the general-election period.

The vouchers would be provided on a matching basis: The first $200 contributed by an individual would be matched with federally funded vouchers.

• **Contested primaries.** Eligible candidates who win a primary with a margin of 20 percent or less would be eligible for an additional $66,600 in federal benefits.

• **Independent expenditures.** Eligible candidates who are adversely affected by attacks from independent groups that spend more than $10,000 would be eligible for federal communications vouchers equal to the expenditure. Use of the vouchers would not count against the spending limit.

Soft Money

The bill would restrict the role of "soft money" — funds raised outside federal restrictions — by all party committees. Only money raised within federal guidelines, "hard money," could be used for generic party activity and any other party activity that promotes a federal candidate or significantly affects a federal election.

State party committees would have to use hard money for all voter registration and get-out-the-vote drives in presidential election years. In other years, such drives designed exclusively for state candidates could be paid for with soft money.

State party committees would have to use hard money for voter list development during even-numbered election years.

• **Exemptions.** National party committees could raise and spend soft money for funds to construct and maintain office buildings and television and radio broadcast facilities. They also could transfer soft money to state party committees for state uses and contribute soft money to state candidates.

State parties could use money raised under state guidelines for most administrative and overhead expenses, party conventions and other state functions.

• **Credit cards.** The bill would overturn an existing Federal Election Commission (FEC) prohibition on party committees entering into profitable relationships with banks to establish credit card services.

• **Federal candidate fundraising.** Federal candidates and officeholders would be prohibited from raising soft money for party committees. They could raise non-federal money for state candidates.

• **PAC contributions.** The bill would increase the amount PACs can give annually to national parties to $25,000 from $15,000. It also would increase PAC contributions to state party committees to $15,000 a year, up from $10,000.

Miscellaneous

• **Bundling.** The bill would prohibit bundling of campaign contributions by political parties, lobbyists, trade associations, partnerships, foreign agents and corporate and union officers, employees and agents. PACs that are connected to a union, business or other entity that lobbies Congress also would be barred from bundling.

• **Ballot initiative committees.** Committees working for or against a ballot initiative that affects federal officeholders or candidates — term limits, for instance — would be required to comply with federal fundraising guidelines and disclose all expenditures to the FEC.

• **Severability.** If any portion of the optional spending limits or federal benefits package is found unconstitutional, the entire section would fall. All other provisions of the bill are severable.

the country club, to the boardrooms . . . to represent the rich," Gejdenson said to Livingston.

"Gimme a break," said Livingston.

"This is not the Larry King show," interjected Rose. "Everyone will please behave."

"I dare say that the gentleman knows more people in board rooms and country clubs than I do," Livingston shot back to Gejdenson after pulling out a 1992 fundraising report.

"Wrapping yourself in all the poor people and all the women and all the downtrodden . . . is a fundamental hypocrisy," added Bill Thomas, R-Calif.

A comment by Steny H. Hoyer, D-Md., finally cooled tempers: "There's no doubt why the public calls us all a bunch of snakes, because we all call each other a bunch of snakes."

GOP Amendments

As the markup drew to a close, Livingston offered a Republican substitute that would ban political action committees, require funds to be raised from constituents and provide added party funding for candidates who face incumbents with large warchests. *(GOP plan, Weekly Report, p. 2859)*

Its rejection on a party-line vote marked the last in a long series of defeats. Only one Republican amendment was accepted, and it repeated language already in the bill.

Thomas offered an amendment designed to force the Supreme Court to revisit the issue of mandatory spending limits by moving to strike the voucher provisions. Democrats say the vouchers are necessary to get candidates to comply with limits in accordance with past Court decisions. Thomas' amendment was defeated 8-9.

Livingston amendments that were defeated by partisan voice votes would have: cut PAC contributions to $1,000; prohibited PACs from bundling; and required corporations, labor unions and non-profit groups to report political activity.

An amendment by Boehner to ban franked mass mail in election years was defeated on an 8-11 vote, with Dale E. Kildee, D-Mich., joining Republicans.

Only two Democratic amendments were offered. One, by William L. Clay, Mo., was accepted by voice vote. It would require most organizations that lobby Congress to disclose their funding sources. A Cardin amendment to limit spending in the general election to $500,000 was defeated by voice vote. ■

CAMPAIGN FINANCE

House Takes First Big Step In Overhauling System

Dissatisfied Democrats join forces with GOP in revolt that almost keeps bill from floor

With their bags packed to spend the next two months back home, House members decisively — if anxiously — approved a sweeping overhaul of the congressional campaign finance system Nov. 22. But the vote is just the first of three needed before campaigns will have to change the way they raise money — difficult votes on a conference report and separate funding legislation loom for next year.

Passed 255-175, the Democratic leadership bill (HR 3) would provide partial public funding of House campaigns for candidates who agree to comply with federal spending caps. It also would limit the aggregate amounts candidates can receive from political action committees (PACs) and individual contributors who give more than $200. *(Vote 605, p. 3288; bill highlights, Weekly Report, p. 3092)*

"There was real skepticism whether Congress could do anything meaningful on campaign finance reform," said Rosa DeLauro, Conn., who headed the Democratic whip task force on the issue. "This bill is real reform."

Despite the leadership enthusiasm, even some Democrats take issue with that statement, arguing that the spending and PAC limits should be lower. And Republicans argue that the bill will not reform the House but merely preserve Democratic hegemony.

"The bill is awful, it's goofy, it's complex, it's unfair, it's unbelievable, it's unconstitutional," said Republican Rep. Robert L. Livingston, La. "Its sponsors should be ashamed."

Early this year, it appeared that House Democratic leaders would be an obstacle to passage as they slowed White House plans to unveil a unified proposal by insisting that the $5,000 PAC contribution limit be retained. And then October — once slated to be "reform month" — came and went without House action.

Even in the waning hours, it appeared Democratic leaders might falter as the House was poised to reject the rule to bring the bill to the floor. But in the end, they pulled in the votes needed, setting the stage for a conference with the Senate sometime next year.

By Beth Donovan

Foley praises passage Nov. 22.

BOXSCORE

Bills: HR 3 (H Rept 103-375), S 3 — Campaign finance.

Latest action: House passed HR 3 by 255-175 on Nov. 22.

Next likely action: House-Senate conference next year.

Background: Democrats' bill offers federal benefits to induce candidates to limit spending. Separate legislation would be needed to provide financing.

Reference: Committee approval, Weekly Report, p. 3091; Senate passage, p. 1533.

"Each step of the way, people tell me it can't be done," said Sam Gejdenson, Conn., chief architect of the Democratic plan. "I just keep going a step at a time."

The next two steps, however, will be no easier than the last. Conferees have to craft a package that can be approved in both chambers despite major differences between the House and Senate bills. The tenets of the Senate bill — a steep new tax on candidates who reject spending limits and a PAC ban — were both specifically rejected by House leaders. *(Senate provisions, Weekly Report, p. 2239)*

"It's going to be a very hard conference, but it's doable," said Fred Wertheimer, president of Common Cause, which lobbied for the bill. "You've got to combine the best features of both bills to come up with reform that represents a breakthrough."

Moreover, the bill was passed only by shunting the controversial question of how to raise funds for the benefits it offers. And even if enacted, it would not take effect until separate legislation to provide those funds becomes law.

The Congressional Budget Office estimates that House candidate benefits will cost $93 million, and the total election cycle cost is put at $181 million. So far, the Ways and Means Committee has shown little interest in taking up a major funding bill for congressional campaigns. *(Ways and Means, p. 3247)*

"Nothing will happen — no limits, no controls — unless a financing package is passed," said California Rep. Bill Thomas, a leading Republican critic of the Democratic plan. "Go home and tell your folks that."

Synar Wasn't Bluffing

Despite the lopsided vote for the bill — which included 22 Republicans and all but four of the 66 Democratic freshmen — it came within a whisker of not even making it to the House floor. Only a relentless series of personal appeals by Speaker Thomas S. Foley, D-Wash., and aggressive Democratic whipping during an unusual Sunday session finally cleared the way for passage.

Three days before the key Nov. 21 vote, Mike Synar, D-Okla., called an afternoon news conference to announce that he had the votes to block consideration of the bill. He said members on both sides of the aisle would reject a rule that prohibited amendments or alternatives other than the one put forward by the Republican leadership — alternatives such as his own.

A Formidable Hurdle

When the whipping was done and votes were tallied, the name of one Democrat stood out among the 39 who crossed party leaders on the key vote on campaign finance: Dan Rostenkowski of Illinois.

Dan Rostenkowski

Rostenkowski stood fast Nov. 21 against the rule that allowed the bill (HR 3) to get to the floor. While he voted for the bill the next day, he was one of 25 Democrats to vote with Republicans to send the bill back to committee, which would have killed it for the year. Though his opposition did not determine the outcome of those votes, Rostenkowski, as chairman of the Ways and Means Committee, retains the power to thwart the bill later. *(Votes 599, 604, 605, p. 3288)*

Even if signed into law, the Democratic leadership's campaign finance bill will not become effective until funding for candidate benefits is enacted. And the fate of that legislation lies next year with Ways and Means.

"It's going to need Ways and Means' support," said Benjamin L. Cardin, D-Md., a member of the panel. "Ways and Means is very hostile to it right now."

Led by Majority Leader Richard A. Gephardt, Democrats worked long and hard to devise a funding mechanism that could raise the nearly $100 million needed to provide candidates with up to $200,000 in public benefits if they comply with optional spending limits.

Without tapping general revenues — something the bill's report explicitly forbids — they came up with a plan to allow taxpayers to voluntarily contribute $10 for House campaigns and to impose new registration fees on political action committees that could go as high as $20,000. If those revenues fell short, Democratic leaders were ready to endorse a 5 percent tax on candidate receipts.

The plan was vetted by many members active on campaign finance, but none who served on Ways and Means, according to committee members. When they finally saw it at a Nov. 3 Democratic Caucus, the panel balked and the funding plan was stripped out of the bill.

"The early briefings we got came from news accounts," said Robert T. Matsui, D-Calif., a member of the committee. "None of the 23 Democrats expressed any enthusiasm for the plan when we finally saw it."

In the end, the lack of funding may have helped Democrats lock in a few votes, but it also opened them up to ridicule from Republicans and renewed suspicion from interest groups who have long questioned Democratic leaders' commitment to partial federal funding of House campaigns.

And passing a funding bill may now be the biggest hurdle to making their theoretical campaign finance plan a reality.

Along with Rostenkowski, four other Democrats on the panel voted against the rule. And of those who supported it, several said Ways and Means would not take up the funding question until pressed to do so — though none would be identified on the point.

"No one is going to get serious until we know we have to, until after there's a conference report," said one.

The pressure is not likely to come from the chairman. In a statement inserted in the Congressional Record immediately before the vote on the rule, Rostenkowski expressed deep reservations about the bill and partial federal funding of congressional campaigns.

"I must express great concerns about the public financing provisions contained in the task force proposal," he wrote. The taxpayer add-on and PAC registration fees "would finance approximately one-fifth of the cost of the legislation — I repeat, about 20 percent. Even if all the other task force ideas for financing were implemented ... the estimates available to me today indicate a substantial shortfall.

"I have great fear that the eventual burden for funding this legislation may rest on some broad cross section of the American taxpaying public. I find it unacceptable that the American taxpayer would pay for congressional elections."

The question for next year is how far will he go to find other means to pay for a bill Democratic leaders say is important to them and their party.

—Beth Donovan

Long a backer of public financing of campaigns, Synar this year was shoved outside the leadership loop after he abandoned support of federal funding, saying it lacked the votes to pass. Instead, together with Republicans including Reps. Fred Upton, Mich., and Steve Gunderson, Wis., he advocated lower PAC and individual contribution limits in lieu of a spending cap.

Calling his plan "the second best bill for both parties," Synar said he simply wanted a vote on it.

Public interest groups including Common Cause attacked his effort as a subterfuge for killing a campaign finance overhaul. Their objections were echoed in editorials in The Washington Post and The New York Times on the morning of Nov. 20, when the Rules Committee was set to meet on the bill.

"The practical effect of widening the choices would be to provide cover for opponents of reform who wish to gut the Democratic bill," wrote the Times. The Post called HR 3 "the best of the lemons on the lot."

Armed with rare editorial backing for a closed rule, the committee sat through more than three hours of testimony as Synar and a score of others paraded in. As expected, all 35 proposed amendments were rejected — all but six of them from Republicans — as well as three other substitute measures.

"C-SPAN should be at the Rules Committee," said first-term Rep. Martin R. Hoke, R-Ohio, referring to the cable network that televises congressional proceedings, "because that is where the tyranny of the majority takes place."

But even as the panel approved the rule on a partisan 7-3 vote (Martin Frost, D-Texas, abstained), Democratic leaders were only beginning to review a preliminary whip count that showed Synar was not bluffing.

NAFTA Distractions

Democratic leaders had been distracted for weeks with the North American Free Trade Agreement vote Nov. 17 and were nervously looking ahead to a difficult budget vote. Meanwhile, Synar quietly gathered support for his effort to present his plan. *(NAFTA, Weekly Report, p. 3174; Budget, p. 3254)*

He started with a solid base of GOP support. Not only do most Republicans oppose the Democratic bill — they argue that spending limits hurt challengers — most also oppose closed rules at any time. Although Common Cause and other groups lobbied the 15 Republicans who had voted for a similar 1992 bill that was vetoed, the GOP votes were never in doubt.

Among Democrats, Synar assembled an odd lot. In addition to friends and a few who supported his idea, he won backing from some Democrats who complained the leadership bill did not go far enough and others who said it went too far. Supporting Synar were first-termer Martin T. Meehan, D-Mass., who complained the Democratic PAC limit was too high, and other Democrats who had voted against past campaign finance bills such as Frost; Bob Carr, Mich.; Gene Taylor, Miss.; and W. J. "Billy" Tauzin, La.

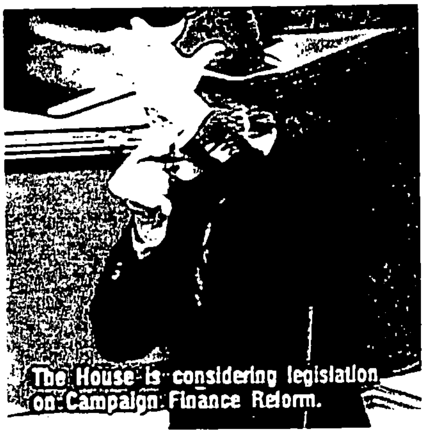
"All these guys who oppose reform are hiding behind Synar," one Democratic whip groused hours before the vote. "It's incredible."

Democratic leaders went into high gear on Sunday, Nov. 21. The bill was supposed to come up early that afternoon — with the crucial vote on the rule coming first — but a laundry list of noncontroversial bills was slipped onto the schedule one by one to buy time.

"We didn't have the votes an hour ahead of time," said Barbara B. Kennelly, D-Conn., a chief deputy whip.

Foley spent much of the day cajoling members personally on the floor, working the phones when the floor was quiet. President Clinton called Synar at 4 p.m. — 90 minutes after debate was first scheduled to begin — to ask him to back off. And White House lobbyists — already lining Capitol hallways to fight a spending cut amendment sponsored by Reps. Timothy J. Penny, D-Minn., and John R. Kasich, R-Ohio — added a yes vote on the campaign finance rule to their litany.

"The Speaker called me and indicated how important it is to him personally. That rarely happens," said Dan Glickman, D-Kan., as he reversed his earlier support of Synar.



C-SPAN

Rep. Robert L. Livingston donned a clown's hat and nose Nov. 22.

Along with appeals to party loyalty, Democratic leaders and interest groups warned that if the bill went back to the drawing board, it would become more difficult to rebuff efforts to lower the $5,000 PAC contribution limit, which has been a baseline demand of the Democratic Caucus. Clinton, the Senate and many first-term Democrats favor a lower limit.

"The people whipping for the bill are saying it could be a lot worse," said Texas Democrat Charles Wilson, who voted for the rule.

As Sunday wore on, Democrats whittled their deficit down from 15 votes to 12 to 8 votes until they finally secured a majority. To ensure the troops held, Foley made one last appeal from the well of the House. It was the first time his staff could recall his speaking in behalf of a rule and only the fourth time he voted for one as Speaker.

"We have promised to deal with this issue this year," Foley exhorted. "Let us do it."

The rule was adopted, 220-207, with 39 Democrats voting against it and only three Republicans voting for it. *(Vote 599, pg. 3288)*

Final Passage

After the drama of the rules fight, final passage — put off until the following day — was an anticlimax, if a sometimes theatrical one. Democrats and Republicans alike knew the vote would swell in favor of the Democratic bill with many members unwilling to vote directly against campaign finance. Eighteen Democrats and 18 Republicans who voted against the rule supported the bill.

Almost to a one, the Democrats who rose in favor of the bill called it imperfect, but the best that could be done to respond to public disgust with campaign fundraising and spending without running afoul of constitutional or budgetary imperatives.

"The American people have told us over and over again ... that they've had enough of business as usual," said Herb Klein, N.J. "This bill may not be perfect, but it is a real, bold step forward."

The spending limit — which could easily go as high as $970,000 by 1996 for candidates who face competitive primaries — drew a mixed response from Democrats. Many said they wished the limits were lower, but nearly all said challengers will benefit from spending limits and federal assistance.

"Do not tell me spending limits lock in an incumbent advantage," said first-termer Eric D. Fingerhut, D-Ohio. "You and I know incumbents can raise as much money as they want."

For their part, Republicans alternated between calling the limit an "incumbent protection" and ridiculing it as exorbitant, repeatedly referring to "the $1 million spending limit."

While many Democrats applauded the aggregate cap that will keep PACs from providing more than a third of a campaign's funds, several others stood to defend the role of PACs in the political process. Democrats argue that PACs enable small donors to pool their resources to help candidates and that the public is served because the PAC interests are well known, while it is hard to trace the agendas of rich individual donors.

"If you eliminate PACs, all you do is drive the money trail underground," said David R. Obey, D-Wis.

The GOP alternative, which was rejected 173-263, would ban PACs, and throughout the debate, Republicans hammered Democrats for retaining the "special interest money." They also angrily denounced Democrats for retaining so-called leadership PACs that enable members to establish PACs to give to colleagues. *(Vote 603, p. 3288)*

"Political action committees have poisoned the political process," said Wayne T. Gilcrest, R-Md., who ousted a Democrat in 1990.

The Republican plan would require candidates to raise a majority of their funds in their districts. To Republicans, this would keep level the playing field for challengers and enhance voter confidence in the system.

"Of course you spend too much time raising money," said Thomas. "You're never in your district. You're in New York, Hollywood."

Democrats counter that confining

fundraising would put those from poor districts and those lacking access to affluent voters at a disadvantage.

"Over 90 percent of the people who sent me here earn less than $25,000 a year," said James E. Clyburn, D-S.C., who said that without outside fundraising, he could not have campaigned for the seat he won in 1992.

Another line of Republican attack was the effective date of the Democratic bill, which would take effect in 1995 at the start of the next election cycle. Republicans say a new law should be effective for the 1994 elections. Democrats counter that the current election cycle is already half over.

That had been a sticking point with interest groups involved in the issue, but as passage now seems unlikely until late next year, it is no longer high on their agenda. Instead, groups such as Common Cause and Public Citizen will work to eliminate leadership PACs and include the Senate's tougher restrictions on money raised outside federal guidelines.

The groups also will work to pass a bill to fund the federal benefits in the House package and to persuade the Senate to include some measure of public funding.

For Republicans, the latter issue is red meat. During the House debate, they repeatedly attacked the Democratic plan for lacking a funding mechanism and suggested Democrats would soon be picking taxpayers' pockets to foot the bill. Livingston donned a clown's hat and bulbous red nose to illustrate his views on the Democratic plan.

If Democrats disliked Livingston's get-up, they also know that federal funding is the issue that causes them the most trouble internally on campaign finance. To impose the spending limits that they see as essential, Democrats must offer an enticement to ensure that the limits remain voluntary. The only incentive the Supreme Court has sanctioned thus far is public money.

Majority Leader Richard A. Gephardt, D-Mo., said that he hopes the House can move a funding mechanism in time to bring it to conference, but that will be difficult.

"If there is any attempt to use taxpayer funds for these campaigns, I will be in vigorous opposition," said Glen Browder, Ala., a conservative Democrat whose support for the bill was said to be vital to Democratic success.

This fight will be continued later. ■

ORGANIZATION

Congressional Reform Panel Winds Up Work in Discord

House members approve modest proposals with most Republicans opposed

The Joint Committee on the Organization of Congress ended on a sour and partisan note Nov. 22, when House members approved recommendations to improve Congress that Republicans derided as a pale shadow of real reform.

The recommendations — designed to streamline committees, revamp the budget process and make Congress more accountable — were adopted, 8-4. A majority of Republicans were opposed, but Vice Chairman David Dreier of California and Bill Emerson of Missouri reluctantly voted for the proposals, saying they hoped that the GOP could make major changes when the plan hits the House floor next year.

"This is the lowest-common-denominator reform package," said Dreier. "We can do better than this, and I hope we can on the floor of the House."


R. MICHAEL JENKINS

Hamilton explains plan Nov. 22

House Joint Committee Chairman Lee H. Hamilton, D-Ind., hailed the package as "significant and meaningful reform." He acknowledged that the package "falls short of most anybody's concept of bold or major reform," but said the recommendations would have no chance of being carried out if the panel had been more ambitious.

As approved by the House members of the Joint Committee, the recommendations call for establishing a two-year cycle for budget and appropriations, authorizing use of nonmembers of Congress in ethics investigations and imposing tighter limits on the number of committees and subcommittees that members can sit on. The panel also recommended requiring Congress to comply with labor laws and other statutes from which it is now exempt — a change intended to address the oft-heard complaint that Congress holds itself above the laws it passes. *(Highlights, p. 3250)*

The Senate members of the Joint Committee approved a separate set of recommendations Nov. 4. House and Senate members have no plans to reconcile the differences between their proposals before introducing them as legislation. The Senate, for example, calls for the elimination of all joint committees; the House does not. Next year, both chambers' recommendations will have to be considered by several committees before they can go to the floor.

Although Senate members finished their recommendations in a one-day drafting session, House members' debate spanned five days and dragged through the weekend of Nov. 20. The House debate took longer in part because it was more partisan than the Senate's. The process was complicated by the fact that the Joint Committee's rules prohibited proxy voting, so meetings had to be scheduled at a time when all members could attend — a difficult task during Congress' year-end workload crush.

During consideration of an initial plan drafted by Hamilton, House members of the Joint Committee rejected many Republican amendments for more drastic changes on 6-6 party-line votes, including proposals to ban proxy voting in committee and restructure the committee system. Also rejected were amendments to make it harder for the majority party to bring bills to the floor under fast-track procedures, to give Republicans more committee staff and to make other changes that would

By Janet Hook

14. Mining Royalties

Members have tried since 1987 to revamp the 1872 Mining Law, one of the last remaining "homesteading" measures enacted to entice development of the West. But as with other natural resource and public lands issues, Western senators have long managed to outmuscle their House colleagues on mining disputes, so the 121-year-old law has remained in a virtual stalemate.

The House this year gave a major boost to supporters of an overhaul by passing a tough mining bill (HR 322) on Nov. 18. The lopsided vote is expected to give the House much leverage in upcoming negotiations with the Senate, which passed a much leaner version by voice vote on May 25.

House passage came on a 316-108 vote: R 70-102; D 245-6 (ND 166-3, SD 79-3); I 1-0.

The 1872 Mining Law requires no royalties to be collected from miners who extract valuable ores from federal lands. It also allows miners to buy, or "patent," claims on federal lands for as little as $2.50 an acre. The law requires limited repair of abandoned hard-rock mines.

Under the House-passed bill, sponsored by Nick J. Rahall II, D-W.Va., miners would be required to pay an 8 percent royalty on hard-rock minerals but would be allowed to deduct the costs of transportation. The bill would eliminate patenting and require miners to pay an annual lease fee of $100 on existing claims and $200 a year for new claims.


Rahall

The bill also would impose tough federal standards for the repair of federal land and require miners to be more environmentally sensitive.

The House passed HR 322 despite strong objections from Republicans that the measure would lead to a loss of jobs in states where the mining of gold, silver, copper and other hard-rock minerals is a dominant industry.

Only six Democrats voted against the measure, while nine Republicans from Western, Rocky Mountain or Plains states voted for the measure, including New Mexico's Steven H. Schiff and Joe Skeen, who hail from a state with large copper mines.

The Senate's alternative bill (S 775), crafted by Larry E. Craig, R-Idaho, would impose a 2 percent royalty, but would allow most exploration, mining and development costs to be deducted. Patenting would still be allowed, although miners would be required to purchase federal land at fair market prices. The bill balks at establishing new federal reclamation standards, choosing instead to allow state laws to govern the repair of damaged public lands.

The House vote on mining is especially important because of the unusual "ticket to conference" strategy adopted by the Senate. At the behest of Energy and Natural Resources Chairman J. Bennett Johnston, D-La., the Senate quickly moved Craig's bill through committee and the floor with no amendments and little debate. The Senate's leading mining reform advocate, Dale Bumpers, D-Ark., agreed to hold his fire until the House-Senate negotiations.

The Senate's Western coalition, usually in agreement on public lands issues, is expected to split on mining reform. And because the final bill is likely to be written in conference, the strength of the House vote gives House negotiators added leverage against divided Senate conferees.

George Miller, D-Calif., chairman of the House Natural Resources Committee, Rahall and Energy and Mineral Resources Subcommittee Chairman Richard H. Lehman, D-Calif., crafted HR 322 so it would leave no doubt about the House's position on mining while still appeasing House Democrats from states containing most of the nation's hard-rock minerals.

"The House was not ambivalent on this issue," said Philip M. Hocker, president of the conservationist Mineral Policy Center. "The House does not want an ambivalent conference." *(Weekly Report, pp. 3191, 1355.)*

15. Campaign Finance

For most of 1993, House Democratic leaders resisted action on legislation to overhaul the campaign finance system. But in the waning days of the session, under pressure from the freshman class and editorial writers, they reversed course and used their clout to wrest a bill from defeat at the hands of an unusual bipartisan coalition.

Early in the year, House leaders delayed completion of a joint administration-congressional Democratic plan by demanding that the current $5,000 limit on political action committee (PAC) contributions be maintained for House candidates. Then — after the plan was presented May 7 and the Senate passed its version June 17 — House leaders delayed further, saying they did not have the votes to pass a bill because of opposition to provisions calling for partial federal funding of campaigns.

For years, Democrats have struggled with the Supreme Court mandate that spending limits must be voluntary and accompanied by direct federal subsidies to candidates. Most Democrats support restrictions on spending, but many resist providing public benefits. With concern about the deficit high, the funding question became particularly salient.

Nearly all Republicans oppose any federal funding of congressional campaigns, and many object to spending limits. Alone, they can do little to block a Democratic bill, but this year they were joined by an odd assortment of Democrats — some who resist federal funding; some who say the spending and PAC limits are too high; and yet others who resist change in the system that elected them. For months, Democratic leaders made little effort to unite their party on the issue.

By early fall, however, they were under pressure from first-term members who said voters would not tolerate inaction. Although October — once dubbed "reform month" — came and went without public action, Democratic leaders did begin serious, private negotiations to reach a consensus within the House Democratic Caucus.

They cobbled together a funding mechanism that met with preliminary caucus approval. It relied heavily on voluntary taxpayer contributions and a new PAC registration fee. But when the Ways and Means Committee balked at waiving its right to review tax legislation, it was dropped from the plan and an unfunded bill was readied for floor action.

In that way, the 1993 bill was identical to a plan Congress approved in 1992 that was vetoed by President George Bush. The two bills are also similar in that both include spending limits with up to one-third coming in federal money; both also cap PAC and large individual contributions at one-third of a candidate's total funds.

The 1993 spending limits, however, are potentially far higher than those in the 1992 bill. The new plan also permits leadership PACs and allows candidates to roll over substantial war chests from one election to the next, practices restricted in the earlier bill.

Once the bill was formally presented, the coalition that had stymied action began to lose steam. Naysayers were more adamant behind closed doors than in public; and many Democrats who had voted for or endorsed the 1992 bill when it was certain to be vetoed were reluctant to vote no now.

The loose coalition had one last card to play: the vote on the rule bringing the bill to the floor. From the Republican bloc to the scattered Democrats, all had amendments they wanted to support, but the rule forbade them.

To overcome their campaign to defeat the rule, Democratic leaders — even Speaker Thomas S. Foley, D-Wash. — worked the House floor for hours during an unusual Sunday session. The vote was delayed repeatedly as party whips counted and recounted their votes. Late in the day, Nov. 21, the House narrowly approved the rule, 220-207: R 3-168; D 216-39 (ND 156-15, SD 60-24); I 1-0.

Passage of the bill the next day was anticlimactic. Many members who were willing to vote against the rule were unwilling to vote against the package. *(Related Senate vote, p. 3452; background, Weekly Report, p. 3246)*

16. 'Reinventing Government'/Spending Cuts

When President Clinton eked out enough votes to pass his five-year deficit-reduction plan in August, the hard-fought victory came with a price: To win the votes of recalcitrant fiscal conservatives who thought the package of budget savings and tax increases did not cut enough, Clinton had to promise they would get another chance to glean more savings before the year's end.

Clinton kept that promise and gave lawmakers another vote on spending cuts, in the dual form of a package of rescissions from just-passed appropriations for fiscal 1994, plus selected cost-saving proposals from Vice President Al Gore's "reinventing government" initiative. But when that package (HR 3400) came to the floor Nov. 22, it opened the door for a bipartisan group of aggressive "deficit hawks" to offer their own deficit-reduction package, forcing the administration once again to scramble for votes to protect the president's five-year budget plan.

The showdown vote came on an amendment by Timothy J. Penny, D-Minn., and John R. Kasich, R-Ohio, who wanted to cut the budget by $90 billion over five years. It was Penny who had extracted the promise from Clinton and House Democratic leaders for a chance to offer a major deficit-cutting plan.

The original Clinton proposal was a relatively modest package of about $11.5 billion in savings. When the Congressional Budget Office later declared the package would save only $305 million, the White House beefed up its plan by adding language already proposed by the administration to trim the federal work force by 252,000 employees over five years, bringing total savings to $37.1 billion in outlays.

A large bulk of Penny-Kasich savings, by contrast, was $34.2 billion that would have come from cuts in the Medicare program, the health-care subsidy for the elderly and disabled.

Clinton is planning his own revisions to the Medicare system to help pay for his proposed overhaul of the health-care system, while the Penny-Kasich amendment would have steered Medicare savings only toward reducing the deficit.

The other feature of the Penny-Kasich bid that made the White House and Democratic leaders nervous was its mandate to lower ceilings on annual appropriations below levels ordered in the August deficit-reduction plan. Under that law, discretionary spending was capped for five years at fiscal 1993 levels. The Penny-Kasich amendment would have reduced those limits by another $43 billion through fiscal 1998.

Penny Kasich

"We have just begun to look for places to reduce the deficit," conceded Majority Leader Richard A. Gephardt, D-Mo., in a floor speech that paid homage to the spirit, if not the content, of the Penny-Kasich amendment. "But if we act on this amendment tonight, we act prematurely, because we not only cut, we take the caps down further."

Defense Appropriations Subcommittee Chairman John P. Murtha, D-Pa., helped lead the charge against the amendment on grounds that the lower spending limits would endanger defense spending, because budget rules no longer put up protective "fire walls" that insulate defense from spending cuts.

Other chairmen of Appropriations subcommittees launched their own lobbying assaults. One tactic criticized by lawmakers was a form letter by Energy and Water Appropriations Subcommittee Chairman Tom Bevill, D-Ala., and ranking Republican John T. Myers of Indiana threatening that specific water projects in members' districts might be at risk should the Penny-Kasich amendment pass.

Before the vote, Clinton called wavering lawmakers and recruited Cabinet secretaries and first lady Hillary Rodham Clinton to urge freshmen to vote against it.

Clinton prevailed again as the House rejected Penny-Kasich, 213-219: R 156-18; D 57-200 (ND 33-139, SD 24-61); I 0-1.

The vote was a late-session affirmation not only of Clinton's continued ability to thwart attempts by fiscal conservatives for more drastic deficit reduction, it also showed he still could count on the votes of labor-oriented liberal Democrats just days after the fractious vote on the North American Free Trade Agreement (NAFTA).

In contrast to the NAFTA vote of Nov. 17, Clinton enjoyed help from labor groups, which considered the cuts too draconian: 125 Democrats came back to Clinton on the Penny-Kasich amendment after opposing him on the free trade agreement vote. Lobbyists for the AFL-CIO and other unions were lined up outside the House, calling on lawmakers to kill the amendment, though some continued to speak bitterly about Clinton's treatment of labor during the NAFTA debate. *(Background, Weekly Report, pp. 3254, 3174)* signaled his willingness to compromise. His proposed 25 percent cut, however, did not meet the basic Republican demand: any spending beyond the $4 billion for extended unemployment benefits had to be offset with cuts in other programs. Although a handful of Republican moderates said they were interested in compromising, none voted for cloture April 21. Mitchell offered to trim the bill to $12.9 billion in appropriations and trust-fund spending, with $5 billion in offsetting cuts. Minority Leader Bob Dole, R-Kan., rejected that proposal, and Mitchell refused Dole's counteroffer of a $6.55 billion package with $2.55 billion in offsetting cuts.

By voice vote, the Senate then agreed to strip the bill down to one provision — a $4 billion emergency appropriation for extended unemployment benefits. The truncated measure quickly passed, and Clinton signed it into law April 23 (PL 103-24). *(Related House vote, p. 3442; background on Senate action, Weekly Report, p. 1001)*

3. Campaign Finance

For three years in a row — from 1990 through 1992 — the Senate approved campaign finance legislation that would have provided substantial public funding to candidates who agreed to comply with spending limits.

But this year Democrats could not break a Republican-led filibuster until they stripped out all public funding.

While concern over the deficit was a key factor, another was the occupant of the White House. Republicans had not tried to filibuster those previous bills because they knew that then-President George Bush would veto them. President Clinton, on the other hand, had promised to sign a bill.

Democrats have long argued that the way to reform the campaign finance system is to limit spending, which they say would keep incumbents from winning on the strength of their fundraising advantages. The only way limits can be imposed within the confines of the Supreme Court's 1976 decision in *Buckley v. Valeo* is to make them voluntary and encourage compliance by offering partial public financing.

Republicans, on the other hand, object to spending caps, which they say would prevent challengers from being as visible as incumbents. They also object to asking taxpayers to foot even part of the bill for congressional campaigns.

After two cloture votes failed on largely party lines to end the 1993 filibuster, Democrats agreed to a demand by five key Republicans that public funding be eliminated and replaced with a new 34 percent tax on contributions to candidates who reject spending limits.

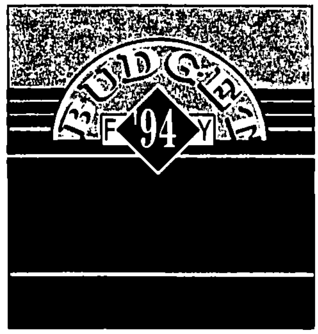
The tax amendment, offered by Sen. Dave Durenberger, R-Minn., passed on a 52-47 vote June 16, with 47 Democrats in support.

Though many say the tax will not pass constitutional muster — they argue that it is a tax on speech — the absence of public funding paved the way for a 62-37 vote to shut off debate hours later.

The bill as passed by the Senate sets spending limits ranging from $8.25 million for a candidate in California to $2 million for those in small states. It bans political action committee contributions, prohibits groups that lobby Congress from bundling individual contributions to a candidate and restricts the use of money raised outside federal guidelines in federal elections.

With the exception that it lacks public funding, the bill essentially models a plan endorsed by Clinton on May 7. The Senate passed the bill June 17 on a vote of 60-38: R 7-35; D 53-3 (ND 42-0; SD 11-3). *(Related House vote, p. 3449; background, Weekly Report, p. 1533)*

4. Budget-Reconciliation



It was the closest Senate vote in six years, and President Clinton came perilously close to seeing his entire economic plan go down to defeat at the hands of rebellious Democrats. But in the end, he won passage of the budget-reconciliation bill (HR 2264 — PL 103-66) that was designed to put a reworked version of his plan into law.

The bill passed only with the intervention of Vice President Al Gore, who cast the tie-breaking vote shortly after 3 a.m. June 25. The vote was 50-49: R 0-43; D 49-6 (ND 38-3, SD 11-3).

Clinton's heavy reliance on tax increases to reduce the deficit was initially the cause of the division among Senate Democrats. Conservative Democrats, many of them from energy producing states, balked at his proposal for an energy tax, based on the heat content of fuels. They wanted more emphasis on spending cuts, and when the bill came over from the House, some were determined to kill the energy tax, even if it meant bringing down the entire package. *(Related House vote, p. 3449)*

The leading Democratic opponent was David L. Boren of Oklahoma, who initially had praised the Clinton plan but later became a vocal critic. In the weeks leading up to the Senate vote, Clinton had to rewrite key elements of his plan. But every attempt to produce a formula satisfactory to the conservatives caused problems with other party factions.

Deeper spending cuts drew protests from liberal senators, who wanted to defend programs for the poor and elderly. Pro-business moderates were upset that costly business tax breaks were to be scaled back to pay for a smaller energy tax.

Each group was able to exercise a sort of veto power over the deal because of Clinton's strategy to rely entirely on Democratic votes to pass his program. It was a strategy borne partly out of necessity, partly out of choice. Republican leaders worked hard to keep their rank and file unified in opposition to Clinton's plan. The White House had almost no opportunity to seek a bipartisan coalition in support of its economic program.

At the same time, the White House and Democratic leaders in the Senate made little effort to attract moderate Republicans, some of whom said they would have supported tax increases if the administration had been willing to make a more serious attempt at cutting spending in entitlement programs, such as Social Security and Medicare.

The upshot was that Clinton's plan had to rise or fall with the Democrats alone.

Democrats escaped this quagmire with a laboriously crafted compromise that junked Clinton's energy tax and replaced it with an increase in federal excise taxes on gasoline and other transportation fuels. Liberals had to accept deeper cuts in Medicare, but they managed to limit the damage. And the moderates won a commitment from free flow down the highway of everything you put on a truck."

Looking to Johnson — and the Future

Despite those defeats, Democratic leaders hailed this as the most productive session of Congress in a generation. House Speaker Thomas S. Foley of Washington said the session produced a "virtually unprecedented series of legislative actions" that rivaled and even surpassed that of Lyndon B. Johnson's first year in office.

Nonpartisan observers say that comparison is overstated, noting that none of the laws passed this year had the paradigm-busting impact of Johnson's Great Society programs.

"Family leave is important, but it's not the civil rights bill; the Brady bill is of some consequence, but it's not Medicare," said Christopher J. Deering, a political scientist at George Washington University. "The Great Society programs were larger in number and broader in scope and really did mark a sea change."

And while the bills passed this year addressed important issues, they did not touch such problems as poor schools and the homeless. "I don't know if [constituents] look at what we've accomplished this year and relate to how it is going to make their lives better," said Sen. David H. Pryor, D-Ark.

That may change next year if Congress makes big changes in the health-care system — something members say is a serious concern to their constituents. "The big one is health care," said Simpson. "If we could get that done in a sensible way, they could trumpet that from the housetops."

Following is a summary of major legislation acted upon or awaiting action in the 103rd Congress:

INSIDE CONGRESS

Issue: Congressional reform.

Synopsis: Faced with continuing public disillusionment with the political process in Washington, lawmakers considered a variety of proposals to improve congressional operations. After a yearlong study, the Joint Committee on the Organization of Congress recommended a series of changes, including proposals to streamline the committee system, revamp the ethics process and require Congress to live under the laws it passes. Neither the House nor the Senate acted on those recommendations before the end of the year.

Status: Long before the Joint Committee acted, the House took a step toward streamlining its committee system: On March 30, the House voted to disband four special and select committees that had no authority to write legislation.

During the summer, House Democratic leaders were engulfed by a fast-rising tide of resentment over the traditional veil of secrecy that hid signatures on the discharge petitions that members could use to try to force floor votes on measures bottled up in committees. The leaders lost a public relations war, and on Sept. 28, the House voted 384-40 for a measure (H Res 134) to make the signatures public.

The Joint Committee's recommendations were issued far later in the year than had been expected. Although the panel had planned to draft its report in September or October, action was postponed until the last weeks of the session in November. Tensions between the House and Senate ran high, and the two chambers ended up reporting separate recommendations, although their proposals had much in common. Both recommended a two-year budget cycle, tighter restrictions on the number of committees members can sit on and cuts in congressional staff.

House members of the Joint Committee also included proposals on:

- **Ethics.** The panel called for allowing other outside citizens to be used in conducting ethics investigations of members of Congress.
- **Congressional compliance.** A new Office of Compliance would be set up to propose regulations to bring congressional employees under protections of federal workplace laws and to investigate and resolve complaints. Congressional staff could seek judicial review of the office's decisions.

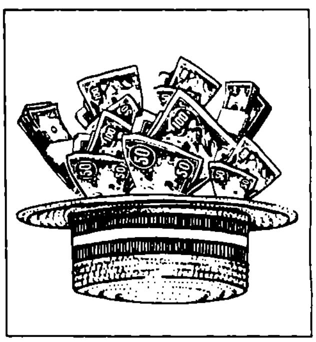
Senate members of the Joint Committee deferred action on ethics and congressional compliance because separate task forces in the Senate were studying those issues. The compliance task force, headed by Sen. Harry Reid, D-Nev., sent its recommendations to Majority Leader George J. Mitchell, D-Maine, the week of Dec. 6, but they were not made public. Before adjourning, the Senate passed a resolution (S Res 173) extending the deadline for the ethics task force to March 1, 1994.

Senate members of the Joint Committee approved their recommendations unanimously; the House recommendations were approved 8-4, over loud GOP complaints that they did not go far enough.

What to watch for: Many of the Joint Committee's proposals are expected to face stiff opposition from members reluctant to change the status quo. Before going to the House and Senate floor, the recommendations will have to be considered by party caucuses and several committees; most of the issues will be handled by the House Rules and Senate Rules and Administration committees. If the House and Senate approve different versions of recommendations that affect both chambers — such as the two-year budget process or a proposal to abolish joint committees — then the differences will have to be worked out in conference. Members of the Joint Committee said they expected floor action in the Senate by February and in the House in March.

Related stories: Senate proposals, Weekly Report, p. 3094; House proposals, p. 3249; House select committees, p. 816; discharge petitions, p. 2618.

Issue: Campaign finance.



Synopsis: Campaign finance legislation passed in both the House and Senate this year, but the two bills differ substantially. Reconciling them in conference will be difficult.

The public debate over the way campaigns raise and spend money has been heated for more than a decade, but partisan divisions blocked action — culminating in President George Bush's 1992 veto of a Democratic-written bill.

This year, Clinton and Democratic congressional leaders pledged to overhaul the campaign finance system. On May 7, they unveiled a plan — similar to the 1992 bill — that would provide substantial public funding to candidates who agree to abide by campaign spending limits.

As in the past, the Senate was the first to take up the proposal, but by the time the chamber was done with it, the bill bore little resemblance to the original.

After three weeks of dilatory debate and two unsuccessful cloture votes, Democratic leaders wrenched the bill out of the chamber by abandoning nearly all the public funding. They replaced it with a new tax on campaigns that do not comply with spending limits.

Saying they too lacked the votes for public funding, House Democratic leaders delayed consideration of the bill for months. Then after they finally honed a plan to provide candidates with benefits without hitting the taxpayer with the tab, the Ways and Means Committee balked at waiving its right to review and write tax provisions. The funding mechanism was dropped and will have to be considered separately.

It took heavy leadership lobbying in the final days of the session to approve the rule bringing the bill to the House floor and prohibiting most amendments. But once that was done, passage was simple.

The House bill also differs from the Senate on the issue of political action committees. The Senate bill bans PACs; the House bill sets a $200,000 aggregate cap on PAC contributions and leaves room for leadership PACs.

The House exempts EMILY's List, an organization that raises money for female Democratic candidates, from anti-bundling provisions. The Senate bill does not.

Bills: S 3 — S Rept 103-41;
HR 3 — H Rept 103-375, Part 1.

House status: HR 3 passed the House on Nov. 22, 255-175, a day after members voted 220-207 for the rule bringing the bill to the floor.

Senate status: S 3 passed on June 17, 60-38, after senators voted 62-37 to shut off debate.

What to watch for: House and Senate conferees are not expected to begin work until the spring. The only route to quick conference action is to let each chamber have its own rules to govern its own campaigns — but Senate Republicans vowed to filibuster such a solution. Though House Democratic leaders will push for faster action, Ways and Means Committee members say they will not consider separate funding legislation until a conference report is approved. Public interest groups will push to solidify and lower spending limits and preserve public funding.

Related stories: House passage, Weekly Report, p. 3246; House bill highlights, p. 3092; Senate passage, p. 1533; Senate provisions, p. 2239; constitutional questions, p. 2215; Clinton plan, p. 1121.

Issue: House Post Office investigation.

Synopsis: A federal investigation into the House Post Office continued to hang over Ways and Means Committee Chairman Dan Rostenkowski, D-Ill.

Former House Postmaster Robert V. Rota on July 19 pleaded guilty in federal court to conspiracy and embezzlement charges and admitted helping certain members illegally convert taxpayer-financed stamps and stamp vouchers to cash.

Court documents implicated Rostenkowski and former Rep. Joe Kolter, D-Pa., in the scheme. The two men were identified as Congressman A and Congressman B, respectively, but details in court papers about their allegedly sham stamp purchases matched stamp purchases attributed to them in public House spending reports. Several members allegedly took part in the scam, which prosecutors said began in 1978, but no one else was explicitly implicated in court papers.

Kolter and Rostenkowski have denied wrongdoing. They have been under scrutiny by a grand jury since mid-1992. The panel's term expired on Oct. 29, but the probe is continuing. About a week earlier, prosecutors put out word that their investigation of Rostenkowski "is ongoing and has been expanded" to counter any impression that their case had faltered. That action followed reports that Rostenkowski's payroll records had been subpoenaed from the House Finance Office but that some turned up missing.

House status: Some House Republicans called for an immediate ethics committee inquiry of the allegations in Rota's plea, rather than waiting for the Justice Department to finish its case, but they did not press the issue.

Meanwhile, House Administration Committee leaders on Oct. 20 called for an ethics probe of the Finance Office after hearing employees admit that the office violated its own rules in doing favors for Rostenkowski while overseeing his payroll.

What to watch for: An indictment of Rostenkowski is widely expected because prosecutors essentially accused him of embezzlement in documents related to Rota's plea. The government is investigating other aspects of Rostenkowski's finances, including car leases financed with House funds and rental deals financed with campaign funds. Rostenkowski has hired one of Washington's most aggressive lawyers, Robert S. Bennett.

Related stories: Probe status, Weekly Report, p. 2862; Rostenkowski's lifestyle, p. 1403; Rota's plea, p. 1923; Rostenkowski's cash-outs, p. 2019; ethics probe, p. 2146.

Issue: Sexual misconduct allegations/Packwood.

Synopsis: The Senate Ethics Committee began investigating charges of sexual misconduct against Bob Packwood, R-Ore., on Dec. 1, 1992, but its investigation stalled in a dispute over a subpoena for Packwood's personal diaries. The Senate spent two days of wrenching debate Nov. 1-2 before deciding to enforce a subpoena for the diaries. The senator came to the brink of resignation in the closing days of the session as the Ethics Committee expanded its investigation into unrelated matters and the Justice Department began a criminal probe, but he changed attorneys and prepared to fight.


Packwood

The committee initially acted after The Washington Post printed allegations on Nov. 22, 1992, that Packwood had made unwanted sexual advances toward several female aides and lobbyists. The Post followed up on Feb. 7 with a story detailing additional allegations. All told, the Post said

Inside Congress

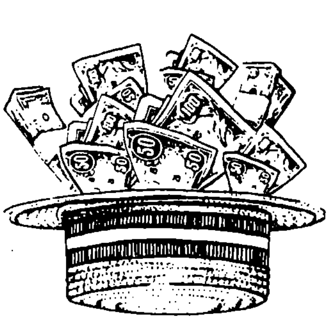
Campaign Finance

Look for a long, difficult conference on campaign finance this year. The House and Senate passed vastly different bills in 1993. Reconciling them will be no easy task, and almost certainly will be done in private by House and Senate leaders.

The House bill (HR 3) would encourage candidates to comply with optional spending limits by providing them with federally funded communications vouchers — vouchers that House Democrats still must figure out how to pay for in separate legislation.

The Senate bill (S 3) would impose a steep new tax on campaigns that reject spending limits — a tax even Democratic leaders suggest may be unconstitutional.

The Senate bill would ban PACs and extend the prohibition to the House. The House bill would permit PACs to give members' campaigns up to $5,000 and allow members to retain so-called leadership PACs, which enable them to give to one another.



Negotiating compromises will be particularly difficult because virtually every line in both measures was written to gain the support of specific members, and because both bills passed narrowly without significant GOP support. Any change, anywhere, could jeopardize final passage.

As big as the challenge, however, the impetus to succeed may prove greater: Many members believe the voters are insisting on change.

Optimists foresee a conference report ready by late spring. Pessimists say it will take a scandal or a string of incumbent primary defeats to jump-start the process. *(1993 Weekly Report, p. 3357)*

Congressional Reform

The recommendations of the Joint Committee on the Organization of Congress are supposed to move early this year — February in the Senate and March in the House. But the proposals face stiff opposition from members reluctant to change the status quo. Unless the Joint Committee does a very aggressive job of selling its recommendations, the timetable is likely to slip.

Before going to the House and Senate floors, the recommendations will have to be considered by several committees and probably by party caucuses.

Expect a lot of resistance to the proposal to institute a two-year budget, an idea strongly opposed by members of the Appropriations committees.

The Senate's proposal to abolish all joint committees will probably go nowhere because the House recommendations didn't include that proposal.

New limits on subcommittee and committee memberships have a chance to survive, but their ultimate success depends on a tough mechanism for enforcing them. Congress has tried to limit committee assignments before, only to see the efforts undermined by waivers.

Even some members of the Joint Committee have expressed reservations about their panel's recommendations. In the final report filed in December by Senate members of the panel, Budget Committee Chairman Jim Sasser, D-Tenn., raised questions about proposed changes in the budget process. Four Republican senators called for stricter controls on entitlement spending and for a new leadership committee to set budget priorities.

The Senate chairman and vice chairman of the panel — David L. Boren, D-Okla., and Pete V. Domenici, R-N.M. — endorsed the idea of using outside citizens to conduct Senate ethics investigations. But that proposal has been opposed by Senate Majority Leader George J. Mitchell of Maine. *(1993 Weekly Report, p. 3357)*

Boren

Domenici

Lobbying Disclosure

Early this year, the House is expected to take up legislation (HR 823) that would close loopholes in lobbying disclosure laws and restrict gifts lobbyists can give members.

A push to pass the bill in 1993 fell short, but in the closing days of the session, a bipartisan group of members came up with a sweeping agreement that would ban virtually all meals, entertainment, gifts and travel-related expenses from lobbyists and lobbying firms to members and their staffs. That may generate opposition from members who like the rules the way they are. From the other side, the citizens' lobbying group Common Cause wants the proposed gift rules "substantially strengthened," but it calls the legislation "an important step in the right direction."

The Senate has already passed its version of the bill (S 349). It includes a strict gift disclosure rule and a nonbinding resolution in favor of tighter gift acceptance rules, but it is not clear how the House gift provisions would fare in conference or on final approval. *(1993 Weekly Report, p. 3252)*

Packwood Ethics Probe

Packwood

A federal court ruling is likely any day on whether Sen. Bob Packwood, R-Ore., will be required to turn over his diaries to the Senate Ethics Committee. Packwood has argued that forcing him to give up the diaries would violate his Fifth Amendment right against self-incrimination and his Fourth Amendment right of privacy.

The Ethics Committee was investigating charges of sexual misconduct against Packwood when it came across entries in the diary that raised questions about whether he had exchanged official favors for job offers for his estranged wife. The Justice Department also is investigating. *(Story, p. 17)*