The Legislative Odyssey of BCRA

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The passage of the Bipartisan Campaign Reform Act in March of 2002 signaled the beginning of a new stage in the regulation of political finance. It also signaled the end of a long and arduous congressional debate on campaign finance reform. The immediate debate that produced the new statute began in the aftermath of the 1996 election, and initiated a legislative struggle that was carried out during three successive Congresses until a version of the original bill was finally passed five years later. The roots of this debate, however, extend even farther, reaching back almost two decades to the time when Congress first sought to change the regulatory structure created by the campaign finance reforms of the 1970s. Viewed from this perspective, the Bipartisan Campaign Reform Act (BCRA) represents the end of a legislative process that started in the mid-1980s and continued with little interruption for more than fifteen years.

As might be expected from such a protracted period of legislative deliberation, the path followed on the way to reform was rarely straight or typical; indeed, it often proved to be highly unusual, even precedent setting. Instead of reflecting textbook models of the legislative process, campaign finance exemplified the type of “unorthodox lawmaking” that has become increasingly prevalent in Congress (Sinclair 1997; Dwyre and Farrar-Myers 2001). Bills rarely reached the floor of the House or Senate through the traditional committee referral process. On reaching the floor, proposals often became the subject of extraordinary procedural maneuvering that turned the process into a sophisticated parliamentary chess game rather than a serious discussion of policy issues. When one chamber did manage to pass a bill, it often failed to succeed in the other, or fell victim to a conference committee or the stroke of a president’s veto pen.

By tracing the path Congress took in producing BCRA, including a brief over-
view of some of the many false starts, wrong turns, and dead ends encountered along the way, this chapter offers an understanding of how the new law was achieved. It presents an overview of the diverse policy views that characterize the reform debate and the difficulty of resolving the many substantive concerns that legislators hope to address through campaign finance legislation. It also provides insights into the divisive issues and parliamentary obstacles that any future campaign finance proposal will be forced to overcome.

THE POLITICS OF REFORM

BCRA grew out of a bill introduced in the Senate after the 1996 election by Senators John McCain, an Arizona Republican, and Russell Feingold, a Wisconsin Democrat. A companion bill was introduced in the House under the sponsorship of Representatives Christopher Shays, a Connecticut Republican, and Martin Meehan, a Massachusetts Democrat. As compared to the 1974 Federal Election Campaign Act (FECA) and its amendments of 1976 and 1979, which were the last major pieces of campaign finance legislation to be adopted by Congress prior to 2002, the McCain-Feingold proposal was not especially ambitious. The bill’s principal purpose was to restore the regulatory framework established by FECA. Its major provisions sought to address the issues raised by the growth of party soft money and issue advocacy advertising, two innovations that emerged after FECA was implemented which significantly undermined the efficacy of the law. The bill did not call for a fundamental change in the financial activities of candidates or attempt to expand FECA by adding such comprehensive reforms as public financing for congressional elections or free broadcast time for candidates. Even so, the proposal spurred a divisive debate and was defeated a number of times before it was finally approved.

Passing a new law was difficult because campaign finance reform is a particularly contentious issue. Members of Congress hold diverse opinions with respect to regulation, which makes coalition building especially problematic. At the root of these differences are strongly held ideological views on the principles that should govern political finance. Some Members, especially conservative Republicans, believe that campaign finance is a form of political speech that deserves the fullest possible protection from government restrictions. Others, especially liberal Democrats, recognize the First Amendment implications of regulation, but place greater emphasis on the principle of equality and believe that a central purpose of campaign finance laws is to reduce the influence of large donors and thereby enhance the equity of the political finance system. Liberals also support public financing of elections as a means of leveling the playing field in elections, while many Republicans regard election funding as an unjustified or inappropriate use of taxpayer dollars.

The goals to be achieved by a campaign finance system are also a matter of
dispute. All Members generally agree that a principal purpose of regulation is to safeguard the political process from the potentially corruptive effects of private campaign contributions, but views differ as to what constitutes corruption and how this concern can best be addressed. Advocates of reform also seek to achieve a number of other objectives. These include claims that the law should ensure full and robust political debate, reduce campaign spending, promote equality in the political system, enhance political competition, provide for an informed electorate, and encourage citizen participation in the electoral process. A legislator’s stance is often determined by the goal(s) he or she considers to be most important. Moreover, these goals often conflict. For example, a reduction in campaign costs may reduce the ability of candidates to communicate with the electorate and thus diminish the amount of political debate that takes place in elections. An informed electorate or improved citizen participation may require a greater freedom to raise and spend money, which can undermine the goal of greater equality in the political process. Legislators are therefore often forced to make choices among competing objectives or priorities. This inevitably leads to different opinions with respect to proposed reforms.

Members of Congress also define the “problems” of the campaign finance system differently, and accordingly express diverse preferences as to the best solutions. There are those who support the basic regulatory approach established by FECA, but believe that further regulation is needed to address new forms of financial activity that have become commonplace in response to the law. Others regard the experience under FECA as an example of the futility of recent regulatory efforts, and advocate a less restrictive regime largely based on public disclosure rules alone. Some claim that the problem is high campaign costs. In their opinion, there is too much money in federal elections, and rising campaign expenditures are increasing the deleterious influences of money in the political process and pricing out many potential candidates. These Members tend to support some form of public subsidy and expenditure limits to reduce campaign costs. Others hold a contrary view, arguing that not enough is spent on political activity, and that greater resources are needed to help challengers overcome the advantages enjoyed by incumbents. Another perspective is more narrowly focused on the influence of “special interest” money and the role of unregulated sources of funding in the electoral process. Those who espouse these concerns tend to support greater restrictions on political action committees (PACs), a prohibition on party soft money financing, and greater regulation of interest group activities, including issue advocacy communications. Members also disagree on the role parties should play in political finance. Some are advocates of political parties and believe that campaign finance rules should promote party organizations, since parties have a stake in improving the competitiveness of their candidates and encouraging citizen participation. Those opposed to this view are more cautious, noting that parties can serve as vehicles for circumventing campaign finance limits and do little to promote citizen engagement, since they focus most
of their resources on a relatively small number of targeted races. These Members therefore support stricter regulation of party committees.

Partisan interests further complicate the debate. Democrats and Republicans have experienced varying patterns of financial support under FECA. As a result, certain reform proposals have a disproportionate effect on one party as compared to the other. For example, the Republican Party has always enjoyed greater success than the Democratic Party in soliciting contributions subject to federal limits (hard money). Consequently, in recent elections, the Democrats have been more dependent on unregulated contributions (soft money) in the financing of their election-related activities. Similarly, the political activities of labor unions are overwhelmingly conducted in favor of Democrats, so any new restrictions on union political activity are generally viewed as a disadvantage for Democrats. Such differences often lead to deep partisan divisions in the reform debate and make the need to balance the competing interests of the two parties a key concern in the crafting of legislation, especially during times of divided government. Legislators also have to be aware of the differences in campaign funding that characterize House and Senate races. The greater financial demands of a Senate race can lead to divisions between the two chambers on the best approach to regulation, even when the two chambers are controlled by the same party.

The separate interests of incumbents and nonincumbents constitute another dividing line. Current officeholders are usually well aware of their sources of campaign funding and can assess the potential influence of a proposed reform on their own reelection efforts. More importantly, incumbents usually show little interest in reforms that will change a system that has been integral to their success and perhaps make it easier for prospective opponents to mount a challenge against them. This desire to secure their positions in Congress, however, must be balanced against constituency pressures or pressures from organized groups that are actively involved in election contests. This combination of personal political considerations often leads incumbents to prefer the status quo to less predictable changes in the law.

This array of considerations and attitudes creates crosscurrents of opinion that make it difficult to construct an effective coalition in support of new legislation. This task is particularly challenging because campaign finance reform often fails to conform to the usual practices used to build coalitions in Congress. Typically, party leaders or sponsors of a particular bill can work to build support in Congress by shaping a proposal to meet the specific preferences of individual Members. This objective can be achieved by adding provisions to appease a Member or bloc of Members, as in the case of a transportation bill, defense appropriation, or educational funding bill, where a pet project or an additional programmatic component can be incorporated into a proposal to secure additional votes. Another common tactic is for sponsors to trade their own support on other legislative proposals to gain votes from party leaders or Members with an interest in those proposals. But such “pork-barrel politics” or “legislative logrolling” rarely...
works with campaign finance legislation. Indeed, the coalitions supporting a reform package are often so fragile, due to the competing interests that need to be balanced, that the addition of a new provision can lead to less support rather than more. A package of reforms cannot be built by simply combining the ideas of different Members, because many ideas are so polarizing that they serve to fracture working coalitions.

Moreover, any debate on reform is necessarily constrained by constitutional imperatives. The Supreme Court has ruled that campaign finance is an essential element of political speech and is therefore subject to the protections afforded by the First Amendment. Most importantly, in the 1976 landmark decision in *Buckley v. Valeo* (424 U.S. 1), the Court set forth regulatory parameters that have governed government action ever since. Specifically, the *Buckley* decision and its progeny have held that Congress is justified in establishing contribution limits and other restrictions only for a compelling reason, and the only reasons the courts have upheld so far have been reducing corruption or the appearance of corruption in the political process. Other possible rationales, such as stemming rising campaign costs or equalizing the relative ability of individuals and groups to influence election outcomes, do not constitute a state interest that justifies burdens on free speech. To avoid concerns about vagueness, the courts have further interpreted FECA to limit its coverage to activities that expressly advocate the election or defeat of federal candidates. Courts have also consistently held that certain areas of political finance, such as monies spent independently by individuals or political groups, are forms of political speech that may not be restricted. Other limitations, such as expenditure ceilings or limits on a candidate’s use of personal funds, are constitutionally permissible only when voluntarily accepted as a condition for receiving some form of public subsidy and only insofar as this incentive is not considered to be so compelling as to make it in effect compulsory. This linking of expenditures ceilings to public funding, as well as the need to distinguish express advocacy from issue advocacy, are two aspects of this constitutional framework that have proven to be particularly important in the recent legislative debates on campaign finance reform.

Finally, all of these political considerations must be filtered through a system of parliamentary rules and procedures that make it possible for determined minorities to impede legislative progress. In this regard, the Senate filibuster has proven to be especially important. In practice, a simple majority is not enough to pass a campaign finance bill. Advocates of reform often need to secure sixty votes in the Senate, and must be cognizant of the possibility of a presidential veto that would raise the bar even higher. During the past two decades, such a broad consensus has been uncommon. That a new law was eventually achieved, given this context, is more a testament to the determination and tenacity of the legislation’s sponsors than to the success of the legislative process.

All of these crosscurrents have been evident in Congress’s long-standing deadlock over campaign finance reform. For more than a decade, from the mid-1980s
through mid-1990s, reformers tried to pass bills to reduce the importance of political action committees, limit campaign spending, and provide some form of partial public financing to candidates. The bills failed repeatedly, sometimes after appearing to be close to final passage (see table 2.1). Then came the election of 1996.

**THE McCain-Feingold Debate**

The financing of the 1996 elections produced a watershed in the reform debate, as new financial practices and a national controversy over the sources of campaign funding led to a redefinition of the central issues facing policy makers. Advocates of reform shifted their attention away from PACs and rising campaign costs to focus on party soft money and candidate-specific issue advertising. The role of unregulated monies in the 1996 election created a political environment more favorable to reform. It also brought new approaches to resolving the problems that proved just as fractious as earlier ones.

Many of the financial patterns in the 1996 election by this time were familiar: rising candidate expenditures, increasing PAC contributions, a widening resource gap between incumbents and challengers, and a growing number of self-financed candidates. What distinguished this election was a substantial increase in the amounts of soft money raised by party committees and its use as a means of financing federal-election-related campaign activities. The national party committees raised a total of $262 million of soft money in 1996, more than three times the $86 million received in 1992 (Federal Election Commission 2001). The Democrats increased their soft money resources from $36 million in 1992 to $124 million in 1996, while the Republican funds rose from about $50 million to $138 million (Federal Election Commission 2001). The greatest growth occurred among the House and Senate campaign committees, which are supposed to be primarily concerned with the election of federal candidates. The Democrats’ two congressional campaign committees increased their soft money fund-raising from less than $5 million in 1992 to more than $26 million four years later, and their Republican counterparts increased their soft monies from $15 million to almost $48 million (Federal Election Commission 2001).

This explosive growth of soft money was spurred by a number of factors. Parties began to emphasize the solicitation of contributions of $100,000 or more from corporations, labor unions, and wealthy individuals, which allowed them to amass large sums with great efficiency. In 1991, the Federal Election Commission (FEC) adopted regulations that set clear formulas for the expenditure of combinations of hard and soft money for use in financing party-building activities, including overhead and administrative costs, as well as voter registration and turnout programs. These rules, in effect, sanctioned the use of soft money in connection with federal elections, and parties responded by spending tens of mil-
Table 2.1 A Decade of Stalemate: Major Campaign Finance Bills and Their Fates, 1985–1996

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<tr>
<th>Congress</th>
<th>Party in Majority</th>
<th>Major Bill (Lead Sponsors)</th>
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<td>Pres.: Bush</td>
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<td>103rd (1993–94)</td>
<td>Sen.: D</td>
<td>S. 3 (Boren)</td>
<td>Similar to previous.</td>
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<td></td>
<td>HR: D</td>
<td>H.R. 3 (Gejdensen)</td>
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<td>End-of-session Senate filibuster prevented appointment of conferees.</td>
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<td>Pres.: Clinton</td>
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<td>HR: R</td>
<td>H.R. 2566 (Shays-Meehan-Smith, D leaders supported)</td>
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<td>Pres.: Clinton</td>
<td>H.R. 3820 (Thomas, R leaders supported)</td>
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lions of dollars on efforts designed to turn out party supporters, especially where a heightened turnout could affect the outcome of the presidential race or key Senate and House contests.

The most important factor in 1996, however, was the advent of candidate-specific issue advocacy advertisements. Because a number of federal courts had ruled that communications that did not include terms of express advocacy—such as “vote for,” “elect,” or “defeat”—were not subject to the restrictions of FECA, party committees and other political groups began to craft broadcast advertisements that featured specific federal candidates but did not include the words that triggered federal regulation (Corrado 1997; Potter 1997). In advance of the presidential nomination contest, the Democratic National Committee transferred millions of dollars to state party committees and spent more than $40 million, most of it in soft money, to pay for ads designed to promote President Clinton’s bid for reelection. In the summer of 1996, the Republican National Committee adopted a similar tactic, spending a reported $20 million on ads in support of its prospective presidential nominee, Robert Dole (Corrado 1997). None of these expenditures were counted against the presidential candidate spending limits.

In addition to undermining the restrictions of the presidential public funding system, the rise of issue advocacy electioneering drove the demand for soft money, since most of the costs of these advertisements could be paid for with unregulated funds. Furthermore, the parties’ new approach to campaigning encouraged other political groups to follow suit, which led to a virtual explosion of such ads. The most notable campaign was conducted by labor unions, which spent an estimated $35 million on mobilization activities during the election, including $20 million on issue advertisements that were primarily targeted against freshmen Republicans (Kosterlitz 1996; Carney 1996). Business groups and tax-exempt organizations also began to finance issue ads, including a coalition of business associations organized by the U.S. Chamber of Commerce that spent $7 million to broadcast ads in thirty-three congressional districts (Salant 1996; Carney 1996).

Suddenly, the federal campaign finance system seemed to be awash in undisclosed money from sources that were supposed to be banned by FECA. This development led to allegations that emerged late in the presidential campaign that the Democrats had engaged in questionable fund-raising practices in raising soft money, including “selling access to the White House” by granting large donors privileged meetings with President Clinton, accepting illegal contributions from foreign sources, and using government offices to solicit contributions in violation of federal law. The allegations ignited a national controversy.

By early 1997 formal investigations of party fund-raising had been launched by Senate and House investigating committees, the Federal Election Commission, and the Department of Justice. These probes revealed a wide range of financial abuses and eventually led to an admission by the Democratic National
Committee that it had received at least $3 million in illegal gifts or contributions from questionable sources; these donations were later returned to the donors. The documents produced by these inquiries also showed that the Democrats had used the White House for “sleepovers” in the Lincoln Bedroom for political supporters and had held more than one hundred “coffee klatches” for the President and Democratic supporters who donated a total of more than $26 million (Rosenbaum 1997). Other abuses included Vice President Al Gore’s use of his office to make fund-raising telephone calls and his attendance at an event at a Buddhist monastery where funds were solicited, both apparently in violation of federal law. Republican actions were also called into question (Carr and Koszczuk 1998). These included transfers made from party coffers to tax-exempt organizations and the role of a private corporation in soliciting contributions for organizations that engaged in issue advocacy electioneering (Carr and Koszczuk 1998).

The Reinvigorated Debate

In the view of most advocates of campaign finance reform, the abuses associated with the unprecedented financial activities of 1996 signaled the collapse of the regulatory regime created by FECA, since the innovative use of soft money and issue advocacy had eviscerated the law’s contribution and spending limits. The controversy reinvigorated the reform debate in Congress, and legislators responded with an outpouring of proposals for reform, which ranged from complete elimination of FECA restrictions, save for disclosure, to public funding of congressional campaigns. The bill that became the focal point of congressional deliberation was sponsored by Senators McCain and Feingold (S. 25), with a companion bill sponsored in the House by Representatives Shays and Meehan (H.R. 493).

McCain and Feingold originally submitted a bill similar to a measure that they had proposed in the previous Congress; it included spending limits and reduced broadcast and postal rates. That bill had succumbed to a filibuster in the 104th Congress after only a brief debate. With Republicans in control of the Senate and House, the legislators decided to modify their proposal in an effort to garner Republican votes. They eliminated the subsidies and spending caps to focus on the issues of soft money and issue advocacy (Doherty 1997c). They also revised some provisions in part based on a package of reforms, prepared by a group of campaign finance experts, that was designed to promote bipartisan support and was endorsed by the League of Women Voters (Ornstein et al. 1997).

The twin pillars of the McCain-Feingold bill were a ban on soft money and a new conception of express advocacy communications. These provisions were considered essential in order to reduce the potentially corruptive influence of large, unregulated contributions in federal elections. The senators’ plan eliminated soft money by prohibiting federal officeholders, candidates, national party
committees, or their agents from soliciting, spending, directing, or transferring
monies that were not subject to federal contribution limits. The bill also prohib-
ited state and local party committees from spending soft money on “federal elec-
tion activities,” which were defined to include voter registration drives
conducted in the last 120 days of an election; voter identification, get-out-the-
vote drives, and generic party activities conducted in connection with an election
in which a federal candidate was on the ballot; and communications that refer
to a clearly identified federal candidate with the intent of influencing that can-
didate’s election (Cantor 1997).

With respect to issue advocacy, S. 25 called for a new “bright line” test that
moved beyond the “magic words” test used by most federal courts to determine
whether a public communication constituted express advocacy and thus had to
be financed with monies governed by federal contribution limits. Instead of the
narrow magic words doctrine, McCain and Feingold adopted criteria that had
been supported by the Federal Election Commission and had their basis in a
federal court decision that offered an expansive interpretation of express advoca-
cy (FEC v. Furgatch, 807 F2d 857 [9th Cir 1987]). Under these proposed crite-
rria, a communication would be considered express advocacy if (a) it used words
or phrases that in context would have no other reasonable meaning than election
advocacy; (b) it was broadcast on television or radio and referred to a federal
candidate in the affected state within sixty days of an election; or (3) it expressed
“unambiguous” advocacy when viewed as a whole given “limited reference to
external events” (Cantor 1997). The central purpose of this provision was to
expand the scope of federal regulation to include what some advocates of reform
were calling “sham” issue ads—ads featuring specific federal candidates that
were designed to influence election outcomes—and ensure that the financing of
such ads would be federally regulated.

The Democrats rallied around the McCain-Feingold plan, and President Clin-
ton called for its passage, but most Republicans supported alternatives. Senator
Mitch McConnell of Kentucky argued that McCain-Feingold’s restrictions on
issue communications and on the ability of party organizations to raise and
spend nonfederal funds violated the freedom of speech and rights of association
guaranteed by the First Amendment. Republicans also noted that one reason the
law was being circumvented was that federal contribution limits had not been
increased since 1974 and were too low. They therefore supported higher contri-
bution limits, as well as an increase in the ceiling imposed on an individual’s
aggregate annual federal donations.

In addition, most Republicans contended that a reform bill, to be meaningful,
had to address unregulated labor union spending. To this end, Senate Majority
Leader Trent Lott supported a plan (S. 9), known as the “paycheck protection
act,” that would require written, prior authorizations from union members and
nonmembers for the use of union dues or other payments for political purposes.
Similarly, the bill required authorization from employees or stockholders for any
use of dues or payments that were a condition of employment for political purposes. Since most corporations had no such dues, the bill principally affected labor unions. Those who were not union members, but worked in union shops, already had the option of requesting a rebate of the portion of dues used for political purposes as a result of the Supreme Court’s 1988 decision in *Communications Workers of America v. Beck* (487 U.S. 735). McCain-Feingold proposed to codify this decision. For most Republicans, however, this provision did not go far enough, since it would allow labor unions to continue to spend millions of dollars on mobilization activities largely targeted against Republicans. In their view, all monies used for political activities should be voluntarily contributed; unauthorized use of union dues violated this principle.

*Senate*

These contrasting partisan views created a deadlock in the Senate, since the Democrats, who were united in their support of McCain-Feingold, were adamantly opposed to any further restrictions on labor unions. Many also were against increasing contribution limits, since they believed higher limits would be of greater benefit to Republicans. Accordingly, the legislation’s sponsors were given little room to craft a compromise, and were forced to deem any effort to include additional labor restrictions or higher limits as “poison pills” designed to defeat the bill, since they would cause a loss of Democratic support.

In October of 1997, in the midst of extensive press coverage of video clips that had been discovered of Clinton’s White House coffees, Senator Lott brought the McCain-Feingold bill to the floor. But he relied on his power as majority leader to construct a procedure that presented the paycheck protection bill as an amendment to S. 25 (Doherty 1997b). Lott opposed S. 25, claiming that it restricted free speech and favored Democrats by failing to constrain unions. He therefore presented his amendment in order to force a Democratic filibuster. The Democrats did filibuster, but the Republicans failed to invoke cloture on a vote of fifty-two to forty-eight, with three Republicans joining the forty-five Democrats. The Republicans, in turn, filibustered on consideration of the bill, and the McCain-Feingold supporters failed to invoke cloture, falling eight votes short, as only seven Republicans joined the forty-five Democrats (Doherty 1997a). After two failed cloture votes on Lott’s proposal and three on consideration of the bill, the Senate moved to other business.

*Searching for Cloture*

The Senate sponsors and Senate Minority Leader Tom Daschle refused to accept defeat and threatened to tie up other legislation unless an up-or-down vote on the McCain-Feingold bill was permitted. In February of 1998, a vote was scheduled, and the sponsors presented a version of their bill that contained a substantial modification.
In an effort to garner the additional votes needed to break a filibuster, Senators Olympia Snowe of Maine and Jim Jeffords of Vermont, two of the Republicans who voted with McCain in October, had worked to develop a compromise that they hoped would appeal to moderate Republicans by alleviating some of their concerns about the First Amendment implications of the bill and the role of labor unions in federal elections. Their proposal offered a narrower test for express advocacy communications, designed to affect only certain broadcast communications that reached a certain threshold of spending. It also would permit such advertising, but require corporations or labor unions engaging in the defined “electioneering communications” to finance these messages with PAC funds or other monies disclosed and regulated under federal law. Specifically, the proposal, which was presented as an amendment to McCain-Feingold and was crafted with constitutional imperatives in mind, defined “electioneering communications” according to specific criteria: (1) a message broadcast on television or radio; (2) featuring a clearly identified federal candidate; (3) aired within sixty days of a general election or within thirty days of a primary election; and (4) targeted to the electorate that would vote on that candidate. Any expenditure on such electioneering communications in excess of $10,000 per calendar year would have to be disclosed. These communications would have to be paid for with monies raised in accordance with federal contribution limits (Carney 1998).

This change, however, made little difference in the voting. When McCain-Feingold was brought up on the floor (as an amendment to Lott’s paycheck protection bill, now S. 1663), McConnell again initiated a filibuster and the Senate again failed to invoke cloture. The vote was fifty-one to forty-eight against limiting debate (Democrat Tom Harkin was absent). The Snowe-Jeffords compromise had produced no additional Republican support (Doherty 1998). The vote demonstrated the solidity of the positions on both sides, and indicated that the McCain-Feingold bill would not become law until it could muster the sixty votes needed to break a filibuster.

House

With legislation stalled in the Senate, the House was reduced essentially to a symbolic effort to pass reform. The House debate in 1998 was noteworthy, however, for the divisions it revealed. From the outset, the leading reform plan was the bill sponsored by Shays and Meehan. The Republican leadership, especially House Speaker Newt Gingrich, opposed the bill and prevented it from coming to the House floor. This action forced Shays-Meehan supporters, led by a conservative group of Democrats known as “Blue Dogs,” to undertake a rarely used procedural device, a formal discharge petition, to force the bill to the floor. The petition required 218 votes to be successful, and once it surpassed 200 signatures, including twelve Republicans, the Speaker agreed to schedule a debate (Katz 1998b).
The legislative debate revolved around two alternatives, a bill (H.R. 2183) crafted by a bipartisan group of House freshman, led by Republican Asa Hutchinson of Arkansas and Democrat Tom Allen of Maine, and the Shays-Meehan proposal. The freshmen bill also focused on soft money and issue advocacy, but offered a more moderate approach to reform. The bill banned soft money at the national level, but permitted soft money at the state level, only banning the transfer of soft money from one state party to another. It also called for a doubling of individual contribution limits, including the aggregate limit for individuals, and removed the coordinated spending limits imposed on party committees. With respect to issue advocacy, the bill only required disclosure of the amounts spent on ads that feature federal candidates and only for groups that spent more than $25,000 on an ad or more than $100,000 in total.

The Republican leaders established a complicated legislative procedure for consideration of the bills, which forced the Shays-Meehan bill to compete with ten substitute amendments and pitted it directly against the freshmen bill. In the end, the freshmen bill, now positioned as a vote against Shays-Meehan, garnered 147 votes, with 61 Members voting “present.” This cleared the way for passage of Shays-Meehan, which was passed on a vote of 252 to 179 in early August, with 61 Republicans voting for the bill and only 15 Democrats against it (Katz 1998a). In September, McCain again tried to obtain a Senate vote, but still lacked the eight votes needed to break a filibuster.


During the 106th Congress, the sponsors continued to press for the McCain-Feingold bill, but although majorities in both houses once again supported this reform, no progress was made. The 1998 elections produced little partisan change in Congress and there were no further developments to alter the political environment on Capitol Hill. Consequently, the House supporters again had to rely on a discharge petition to get a vote and then navigate their way through a complex series of procedural obstacles. The procedures included an atypical “queen-of-the-hill” process in which votes were taken on three different plans, with the one receiving the greatest number of votes constituting the base bill (Dwyre and Farrar-Myers 2001, 88–89). In September of 1999, the House adopted the Shays-Meehan bill (H.R. 417) by a vote of 252 to 177, which represented the same number of “yes” votes as in the previous Congress (Martinez and Doherty 1999).

In the Senate, events proved to be even more interesting, as Senators McCain and Feingold attempted a new strategy in an effort to make some progress. McCain offered a pared-down version of the bill that included the provisions on soft money and the codification of Beck, but omitted the issue advocacy provisions. The idea was to reduce opposition based on First Amendment arguments and force a straight vote on the issue of soft money reform (Martinez and Doh-
erty 1999). But even this more modest proposal was rejected, failing to defeat a Republican filibuster on a vote of fifty-three to forty-seven. McCain also tried offering the bill passed by the House, which was also filibustered, and fell eight votes short on the cloture vote (Doherty 1999). For the fifth time in six years, reform fell victim to a filibuster, with virtually no change in the voting alignments.


After the 2000 elections, the congressional logjam began to show signs of breaking. McCain’s surprisingly strong bid for the Republican presidential nomination in his race against George Bush was accepted by many political observers as a sign that campaign finance reform was an issue of concern to voters, and McCain kept up his call for reform throughout the general election period, campaigning on behalf of dozens of congressional candidates who pledged to support reform if elected. The need for reform was also highlighted yet again by the rising amounts of soft money and issue advocacy advertising, which by 2000 had become staples of both parties’ campaign strategies. The amount of soft money nearly doubled the sum received four years earlier, reaching $495 million or about 40 percent of the national parties’ aggregate revenue (Federal Election Commission 2001). Issue advocacy advertising was also predominant, with tens of millions of dollars spent on ads featuring candidates in the final months of the election in targeted races (Holman and McLoughlin 2001; Magleby 2002b).

More importantly, the election produced a turnover in the Senate that improved the prospects for reform. The Democrats picked up four seats in the Senate elections, and when Senator Jeffords shifted his affiliation from Republican to independent, the Democrats became the majority party. The turnover also added an anticipated three or four votes in support of McCain-Feingold, leaving reformers only two votes short of the sixty needed to break a filibuster (Doyle 2000). Before the end of the election year, McCain was claiming that he had gathered the sixty votes needed to invoke cloture (Doyle and Bolen 2000).

These changes in the political environment altered the dynamics of the congressional debate. With a successful filibuster less likely, Members of Congress had to focus on the substantive issues, since for the first time in more than a decade they would face meaningful votes that might produce new legislation. The congressional sponsors also faced new challenges. First, they would have to shepherd their bills through each house without allowing any amendments that would serve as “poison pills” and undermine the fragile coalition they had built during the past two Congresses. Second, they would need to produce a bill that President George W. Bush would be willing to accept. If this second challenge was not met, the sponsors faced the possibility of a veto, which would serve to increase their “magic number” from the sixty votes needed for cloture to the sixty-seven votes needed for an override. All knew that no version of McCain-Feingold was likely to attract such support.
The effects of this new legislative context became evident in March of 2001, when the McCain-Feingold bill (S. 27) was placed before the Senate. Instead of a scripted debate with a predetermined outcome, the Senate engaged in a free-wheeling, substantive debate that extended over the course of two weeks. Senators offered numerous amendments, which were often changed on the Senate floor, and held almost daily votes on major issues. Many of the issues raised in the debate had been heard before, and the supporters of McCain-Feingold had to vote down a number of amendments that offered versions of paycheck protection (which the President supported and to which the Democrats objected), as well as other provisions that might cause Republican defections, including a proposal by Democrat Paul Wellstone that would have allowed the states to provide public funding for federal elections.

Much of the debate, however, concerned issues that had not been previously discussed as part of this bill, including the need to provide some compensation to candidates facing millionaires who were spending their own money in a bid for office, the need for better guarantees that candidates and party committees would receive the lowest unit rate on broadcast advertisements, and the need for better rules defining the concept of coordination with respect to campaign contributions and expenditures. These issues all led to new provisions in the underlying bill. The Senate adopted a “Millionaires’ Amendment” that would ease contribution limits for donors supporting candidates who faced self-financed opponents, with the limit on individual contributions increasing on the basis of a complicated formula that included the amount of personal money a self-financed candidate spent. The body also adopted, by a wide margin, a provision sponsored by Democrat Robert Torricelli that would guarantee lowest unit rates and prime-time broadcast slots to federal candidates and extend this guarantee to political parties (Taylor and Cochran 2001). An amendment sponsored by McCain that directed the Federal Election Commission to draft new regulations on coordination also passed easily (Taylor, Willis, and Cochran 2001).

The most important changes, however, concerned the restrictions on issue advocacy and the hard money contribution limits. The McCain-Feingold bill’s issue advocacy provisions, as established by the Snowe-Jeffords proposal, were drafted to focus on corporate and labor broadcast electioneering, since such a provision was considered to be constitutionally defensible. The approach did not encompass all tax-exempt advocacy organizations, and thus left a potential loophole in the law. Democrat Paul Wellstone proposed an amendment to address this concern, which narrowly passed on a vote of fifty-one to forty-six. The amendment was adopted with the support of Senator McConnell, who thought its addition would weaken the proposal by making it more susceptible to constitutional challenge (Taylor, Willis, and Cochran 2001).

Republicans continued to push for higher contribution limits. Many supported a cap on soft money contributions as an alternative to an outright ban on this form of funding. This issue threatened to divide the McCain-Feingold coali-
tion. Some liberal Democrats continued to oppose a substantial increase in the limits (Bolen 2001b). Other Members were concerned about the effects of a soft money ban, which would cost the parties a half-billion dollars in revenue, and considered higher limits a means of helping to compensate for this loss of party resources (Bolen and Doyle 2001). An indication of the support for higher limits was provided by a vote on an amendment offered by Republican Chuck Hagel that proposed a tripling of all hard money contribution limits, and was defeated by a margin of only five votes (Taylor, Willis, and Cochran 2001).

As the debate evolved, higher contribution limits emerged as central to passing McCain-Feingold. The congressional sponsors were able to negotiate a compromise, in part because Common Cause and other public interest advocates moved away from their traditional opposition to higher limits, agreeing to accept some increase if it were essential to the bill’s passage (Taylor and Cochran 2001). The compromise increased the individual contribution limit from $1,000 to $2,000, and raised the aggregate limit on annual contributions to $37,500. It also increased the amount an individual could contribute under federal law to a national party committee from $20,000 to $25,000. This amendment passed overwhelmingly, with only sixteen Democrats opposed (Taylor, Willis, and Cochran 2001).

Another significant change sought to reduce the effects of a soft money ban by permitting state and local party committees to raise soft money in amounts of no more than $10,000, if allowed by state law, solely to finance voter registration and get-out-the-vote programs. This amendment, which was sponsored by Democrat Carl Levin, was designed to address concerns, especially as expressed in the House by members of the Congressional Black Caucus and Hispanic Caucus, that a ban on soft money would reduce the funding of voter registration and turnout efforts (Cochran 2001b; Clymer 2001).

The version of McCain-Feingold that resulted from the Senate debate constituted a more extensive package of reforms than that contemplated in the original proposal, but it was easily adopted on a vote of fifty-nine to forty-one, with twelve Republicans voting for the bill and only three Democrats opposed. The House sponsors now had to follow suit and pass a bill that would avoid the need for a conference committee, which might serve as a roadblock to reform, as it had in some past years. Shays and Meehan acted accordingly, replacing their bill with a modified version of the Senate bill (H.R. 2356), which included the Torricelli, Wellstone, and Levin amendments, but did not call for an increase in the $1,000 contribution limit for House candidates.

Progress in the House was delayed by procedural obstacles. When the rule for debate was presented by the Republican leadership in July, Shays and Meehan considered it unfair, since it would require separate votes on each of the provisions they wanted to add to their bill to make it conform to the Senate version (Cochran 2001a). Consequently, Shays-Meehan supporters voted against the rule, which prevented the bill from reaching the floor, and began a discharge
petition to bring a new rule before the House. By late January 2002, the discharge petition had gathered the requisite 218 Members, including 20 Republicans.

The House debate took place over three days in early February of 2002, in a political environment that gave further impetus to reform. By this time, the bankruptcy of the Enron Corporation and other corporate scandals were matters of national attention, and raised alarming questions about the role political contributions played in policy decisions favorable to Enron and other corporations (USA Today 2002). Many Members wanted to respond to the public clamor over Enron’s collapse, and saw campaign finance reform as a vehicle to fulfill this end.

Nevertheless, Shays and Meehan still had to maneuver their proposal through a complex legislative procedure. In one of the more bizarre twists in this extraordinary saga, the Republican leadership offered two alternatives—a straight soft money ban without issue advocacy provisions and the version of Shays-Meehan passed in the previous Congress—in an attempt to siphon votes away from the new Shays-Meehan bill (Bolen and Ognanovich 2002). These tactics failed, and the debate then focused on the amending process.

Two major substantive changes were adopted in the course of the House debate. First, the House, responding to intense lobbying on the part of the National Association of Broadcasters, stripped the Torricelli amendment from the bill, with 327 Members voting for this change (Bolen and Ognanovich 2002; Moller 2002). Second, the House decided to increase the individual contribution limit to $2,000 per election for House candidates. This change was sponsored by Republican Zack Wamp of Tennessee, one of the leaders of the group of moderate Republicans supporting the bill. The issue proved to be one of the most closely fought issues in the entire debate, and passed by a slim seven-vote margin, largely due to the support of 201 Republicans, who were joined by only 17 Democrats. With the issue of hard money limits finally decided, the House approved the revised Shays-Meehan plan on a 240-to-189 vote, with 41 Republicans voting for the plan and only 13 Democrats against.

With slightly different versions of the bill adopted by the House and Senate, the sponsors had to bring the bill back to the Senate and have that body approve the House version. Otherwise a conference committee would be necessary, which would in all likelihood produce a bill unacceptable to some McCain-Feingold supporters, since Senator McConnell would be included on the committee and House appointments would be made by the conservative Republican leadership. Senate Majority Leader Daschle worked with McCain and Feingold to develop a procedure that would allow the House bill to come to the floor without any further amendments. Senate Minority Leader Trent Lott and Senator McConnell pressed for additional changes, but after two weeks of procedural maneuvering and informal debate, Daschle filed a cloture motion to end debate on a consent agreement to move the bill to the floor. The motion to end debate received sixty-eight votes, and soon thereafter, on March 20, the Senate approved the House version of the bill by a margin of sixty to forty (Doyle 2002b). After years of
debate and numerous failed attempts, Congress passed the Bipartisan Campaign Reform Act (BCRA), the first major piece of campaign finance reform legislation to emerge from Congress since 1992.

Prior to the final Senate vote, opponents of McCain-Feingold held out some hope that President Bush would veto the bill, just as his father had, in 1992, vetoed the last major campaign finance reform bill approved by Congress. This hope was premised on the fact that the proposal did not reflect all of the President’s views. In particular, Bush had called for a ban on corporate and labor soft money contributions, but believed individuals should be allowed to contribute soft money to parties. Bush also supported greater restrictions on labor and had publicly called for paycheck protection regulations (Bolen 2001a). But in the midst of a public controversy over corporate scandals and allegations that the Bush administration had given preferential treatment to major corporate donors, the President did not want to position himself as an opponent of reform. Even before the House vote, the White House was sending signals that the President could not be counted on to veto the bill. On March 27, he quietly signed the bill without the type of public signing ceremony that usually accompanies the passage of major legislation. In a one-page statement released that day, the President acknowledged that “the American electorate will benefit from these measures to strengthen our democracy,” but noted that “the bill does have flaws. Certain provisions present serious constitutional concerns” (Doyle 2002a).

CONCLUSION

The adoption of BCRA did not bring a temporary end to the campaign finance debate. Even before the law went into effect, supporters and opponents had begun to reenact their arguments in the courts and in administrative proceedings at the Federal Election Commission. Some advocates of reform quickly began to espouse the need for additional changes not considered in the act, such as free broadcast time for candidates or revisions in the presidential public funding system, the inadequacies of which had stimulated the major innovations BCRA was designed to address. Others awaited the outcome of the judicial and administrative decisions, or the initial responses to the law by political operatives, in hopes of using these developments as an opportunity to restart the debate.

Whatever the outcome of the pending actions related to BCRA, it is unlikely that they will lead to a new consensus on the issues associated with political finance. As demonstrated by the experience of BCRA, the campaign finance debate is characterized by complex policy perspectives that are not open to easy reconciliation. At the core of this debate are sincerely held philosophical views that serve to divide policy alternatives. Some legislators, like Senators McCain and Feingold, believe that large contributions corrupt the political process and that the First Amendment permits a broad scope of federal regulation to safe-
guard the political system from the undue influence of political donations. Others share the basic outlook expressed by Senator McConnell, who considers First Amendment protections to be paramount and regards unrestricted free speech and robust political debate as essential elements of a healthy democracy. Many opponents also place great emphasis on the importance of upholding the principle of federalism and the rights of association that obtain to political parties under the Constitution. These kinds of differences leave little room for compromise. In addition, these policy views are reinforced by partisan influences and practical considerations that stem from the distinctive patterns of campaign funding that characterize Democrats and Republicans, incumbents and challengers, parties and nonparty organizations. These differences have their origins in the various determinants of the behavior of political donors, which are unlikely to be altered so radically by BCRA as to produce wholly new patterns in resource distribution. Republicans will continue to raise more hard money than Democrats. Incumbents will continue to outspend challengers. Parties and nonparty groups will continue to display varying approaches in their electioneering efforts. Consequently, many of the diverse policy preferences revealed in past debates are likely to endure.

This diversity means, as a practical matter, finding consensus will continue to be difficult, but not impossible. As BCRA’s passage suggests, Congress is capable of acting. Amidst all of the political maneuvering, Congress eventually engaged in a richly textured and highly substantive debate on the issues. Legislators broke new ground on express advocacy, electioneering, contribution limits, state party finance, and making resources available to those facing self-financed opponents. Finding new ways to overcome obstacles has always been a necessity on the path to reform.

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