

The New Campaign Finance Sourcebook

Chapter 11

Reform Agenda

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After Congress passed a major restructuring of federal campaign finance regulation in 1974, the Supreme Court in *Buckley v. Valeo* found significant parts of the new law unconstitutional.¹ Important components of the law – contribution limits, public financing of presidential elections, and disclosure – remained in force, and Congress moved quickly to resurrect the FEC’s legal status and broad responsibilities after the Court struck down part of the agency’s appointment process. However, nothing was done to adjust to the Court’s deletion of other major elements of the regulatory system crafted by Congress. By failing to legislate an alternative definition of express advocacy and to seek new ways of balancing supply and demand for political funds in congressional elections, Congress set the stage for the subsequent collapse of the system.

The passage of the Bipartisan Campaign Reform Act of 2002 (BCRA) culminated years of effort at the national level to rewrite federal election law and address the campaign finance system’s shortcomings. By upholding the constitutionality of the two major elements of the 2002 law – the prohibition of soft money and the regulation of electioneering communications that fall short of the then current test of express advocacy – the Court in *McConnell v. FEC* spared Congress the need for a wholesale repair of BCRA.² Now the attention of reformers will naturally shift to issues surrounding the law’s implementation and the next stage of the reform agenda.

An extraordinary confluence of problems, events, proposals, and advocacy was necessary for BCRA to pass. While it is difficult to imagine history repeating itself anytime soon, a number of developments in the last election cycle will force campaign finance issues back onto the agenda. As documented in Chapter 7, the presidential public financing system has suffered severe strains in recent election cycles. BCRA exacerbated some of those strains, and congressional action is now needed to salvage the public financing system. The much-criticized Federal Election Commission (FEC) has been given important new rulemaking and enforcement responsibilities by the act. Many believe, as discussed in Chapter 9, that the FEC is ill-structured to carry out these new responsibilities. Indeed, initial rounds of rulemaking on the new law have been very contentious; some FEC rules have been thrown out by the courts. Proposals to replace or restructure the FEC will be high on the reform agenda. The rise of 527 organizations formed to influence the 2004 presidential election but operating largely outside the reach of federal campaign finance law has prompted calls for legislation to tighten the definition of “political committee” and to establish more reasonable allocation rules for the use of federal and nonfederal funds to finance their activities. In addition, the elimination of party soft money and the dramatic increase in party independent expenditures in presidential and congressional elections have placed the elimination of caps on party coordinated spending on behalf of federal candidates back on the reform agenda.

The new law was relatively modest in its ambitions, designed to repair tears in the regulatory fabric that developed over the last decade or so. It is aimed at preventing the corruption or the appearance of corruption created by huge soft money contributions solicited by federal officeholders and candidates. It also seeks to prevent the use of issue advocacy as a vehicle for circumventing contribution limits and disclosure requirements. Thus, BCRA seeks to

combat corruption rather than to increase competitiveness and participation. In this sense it is less an end in itself than a prerequisite for additional improvements in the campaign finance system, particularly ones designed to encourage a broader base of contributors and to increase the level of electoral competition. The most prominent ideas include tax credits for small donors, various forms of direct and indirect public subsidies, free or reduced-cost broadcast time for candidates and parties, and increased public affairs programming on television and radio. Advocates will be pressing these proposals in the months and years ahead.

A reform agenda prompted by the need or desire to respond to or supplement the new law by no means exhausts the possibilities. An alternative is to replace the entire regulatory regime. Some critics of the current system argue for a repeal of all limits on contributions, effectively deregulating money in politics and relying exclusively on public disclosure. At the other end of the spectrum, champions of full public financing seek to banish all but nominal qualifying private contributions from election campaigns. This approach, labeled the “Clean Money/Clean Elections” system, is similar to the full public financing program currently in place for presidential general elections. Both of these approaches have been adopted or proposed in some of the states. A rich variety of state and local experience with these and other campaign finance innovations offers lessons for federal policymakers.

A final item on the reform agenda flows from the digital revolution and the rise of the Internet. Chapter 10 summarizes the current state of federal law as it relates to political fundraising and campaigning on the Internet. Radical changes in modes of communication and forms of political campaigning lie not too distant on the horizon. These may well render obsolete much of the regulatory approach embedded in federal election law and force a major rethinking about how best to manage the problems associated with money and politics.

Adjustments to the Present System

Repairing the Presidential Public Funding System. Public funding has been a centerpiece of presidential elections since 1976, but its role in future elections is very much in doubt. In 2000, George W. Bush was the first successful candidate to decline matching public funds in the presidential nominating process. In 2004, both President Bush and Democratic presidential nominee Senator John Kerry opted out of the public funding system during the primaries, thereby avoiding spending limits tied to the matching public funds. Both enjoyed extraordinary fundraising success. Their exception could well become the rule, in the general election as well as the nominating process, if changes are not made in the system.

Both the matching funds program in the nomination phase and the full public grant in the general election are threatened by a severe shortfall of funds earmarked through the personal income tax check-off and by spending limits adjusted only for inflation, not for rising campaign costs. The increase in contribution limits from \$1,000 to \$2,000 (indexed for inflation) without a corresponding rise in the maximum amount of a private contribution that is matched with public funds (\$250) reduces the value of the public subsidy, especially when weighed against a tight spending limit, and makes it relatively easier for candidates to privately finance their campaigns. Banning party soft money and reining in party issue ads makes more perilous the position of publicly-financed candidates who have effectively won their party's nomination but run out of spending room months before the national convention.

A major effort is required to salvage the showcase of public financing in U.S. elections. Replenishing the tax check-off fund – by increasing the amount (\$3) that can be designated for public financing on individual tax returns, changing the default position (from “no” to “yes”) on the check-off used by tax preparers and in tax software programs, launching public education

initiatives, or directly appropriating funds – is essential. Eliminating state spending limits, raising the overall limit, and increasing the value of the public match would make the program more attractive to candidates. So too would raising the spending limit for participating candidates who face an opponent opting out of the public funding system. Other ideas include linking the availability of the public grant in the general election to participation in the public matching program in the primaries, raising or eliminating any limit on the amount of hard money parties can spend in coordination with their candidates, and providing free or reduced-rate broadcast time for candidates and parties.

The Campaign Finance Institute Task Force on Presidential Nomination Financing grappled with the potential collapse of the public finance program and recommended reforms to salvage it.³ FEC Commissioners Scott Thomas and Michael Toner have offered their own ideas for saving the public financing system. And legislation has been introduced in Congress to achieve that objective.⁴

Strengthening Enforcement. The absence of effective enforcement machinery has long plagued campaign finance law. Congress finally agreed to establish an enforcement agency in 1974, but it took special care – through the bipartisan structure of the Federal Election Commission, the appointment of commissioners, tight budgetary control, complex and time-consuming procedural requirements, and the prohibition on random audits – to ensure that the agency had little independent authority.

Alternative enforcement models – ones featuring less partisan agencies with more independent authority for agencies – are available within the United States (e.g., New York City) and in other countries (e.g., United Kingdom.). Ideas for restructuring or replacing the FEC are discussed in Chapter 9. They include replacing the current six-member commission with either a

single prominent administrator or an odd number of commissioners recruited in part or whole from nonpartisan settings. Reforms also seek to provide sufficient authority and resources for the Commission to act in a timely manner and to impose appropriate penalties. Senator McCain and his colleagues have introduced legislation proposing one such plan.⁵

Some analysts, including law professor and FEC commissioner Bradley Smith, believe that toughened enforcement of campaign finance law will do more harm than good, encouraging a further criminalization of the political process. From this perspective, it is best to repeal all limitations on contributions and rely on public disclosure to discipline the role of money in politics. Criminal prosecution would be limited to bribery, extortion, a misuse of public facilities for fundraising, and illegal contributions from abroad.

Regulating 527s. One controversy roiling the 2004 election arose with the formation of a small number of new political organizations – widely viewed as shadow committees of the political parties – explicitly designed to influence federal elections but not registered as federal political action committees (PACs). The most prominent of these groups – America Coming Together and The Media Fund on the Democratic side and Progress for America and Swift Boat Veterans and POWs for Truth on the Republican side – raised a major share of their funds in large individual contributions, sometimes measured in the millions of dollars. Some sponsored broadcast ads attacking or supporting federal candidates but falling short of express advocacy. Others organized massive get-out-the-vote (GOTV) activities in presidential battleground states. Critics argued that these groups should be required to register with the FEC as political action committees and operate under the contribution limits proscribed by federal law. Responding to such complaints, the FEC decided not to compel such registration in the 2004 election cycle but

approved several modest rule changes for the 2006 elections – most importantly those setting the mix of hard and soft dollars required to finance GOTV activities.

Legislation has been introduced to bring 527 organizations engaged in federal election activity under the purview of federal election law.⁶ This entails redefining what constitutes a federal political committee and determining what share, if any, of their activities may be financed with nonfederal funds. Reformers also seek to improve the timeliness of 527 disclosure, since many of these groups are only required to report their financial activities on a quarterly basis. One important legal question not yet fully resolved is whether limits can be imposed on individual contributions to political committees engaged exclusively in independent expenditures. Another concern is whether reform will reduce the efficacy of current disclosure laws, since more stringent regulation of 527 organizations may encourage some groups to try to circumvent the law by shifting their political activity to other tax exempt entities, such as Section 501(c)4 organizations, that are not subject to full public disclosure.

Reducing Restrictions on Party Expenditures. In the wake of BCRA, the national political party committees are limited to hard-money funds, i.e. none from corporate and union treasuries and limits on the size of contributions from individuals and PACs. But there are no effective limits on what parties can spend on their candidates' behalf. In its *Colorado Republican I* decision, the Court affirmed the right of parties to engage in unlimited independent spending,⁷ a decision reinforced in *McConnell* when the Court threw out the provision in BCRA requiring a party to make a choice at the time of a candidate's nomination as to whether to support that candidate with coordinated or independent expenditures, but not both. Chapter 6 chronicles how parties in the 2004 elections shifted from soft money-financed issue ads to independent and hybrid (a form of generic advertising coordinated and financed jointly by

presidential candidates and parties) expenditures, while continuing to make coordinated expenditures. In highly contested elections, particularly the presidential race, the parties spent money both in coordination with and independent of their candidates.

Many scholars and practitioners consider party independent expenditures an oxymoron at best, a perversion of the whole purpose of political parties at worst. Parties are now required to set up entirely independent operations and avoid any contact or coordination with the candidates intended to benefit from independent expenditures in order to spend money independently on their behalf. It is not obvious what public purpose is served by these awkward and inefficient requirements. The only impact of current limits on party coordinated spending is to restrict how much the parties can speak with their candidates, not how much they can spend. As initially proposed in the 1996 “Five Ideas for Practical Campaign Reform,” one reform is to eliminate the caps on party coordinated spending, thereby eliminating the incentive to engage in independent spending.⁸ The *Colorado Republican II* decision affirmed the constitutionality of those caps, but not their wisdom or efficacy.⁹ Congress clearly has the authority to legislate their elimination.

Proposals to Enhance Competition and Participation

Tax Credits for Small Donors. Only a minute fraction – less than ten percent at most – of adult citizens contribute to federal candidates, parties, and political committees. Moreover, the number and total contributions of small donors (those giving \$200 or less) fell before the enactment of BCRA.¹⁰ Most fundraising energy was devoted to courting large soft-money donors and those who were able and willing to contribute up to the maximum hard-money limit. As part of the new law banning party soft money, limits on individual contributions to candidates were increased from \$1,000 to \$2,000 (indexed for inflation) per election, and the aggregate amount any individual can contribute in federal elections to candidates, parties, and PACs was

increased from \$50,000 to \$95,000 (with adjustments for inflation) during a two-year election cycle. These upward adjustments, which only partially compensate for the effects of inflation since 1974, would appear to reinforce the recent trend of a declining importance of small donors in federal elections. Nonetheless, the 2004 election cycle witnessed an explosion of small-donor fundraising, much of it via the Internet, beginning with Howard Dean but then extending to George Bush, John Kerry, and both political parties. Millions of new donors were added to party and candidate rolls.

The question now arises as to how best to build on this explosion of small-donor fundraising. Interest in proposals to increase the incentives for the solicitation and contribution of small donations appears to be growing, reviving discussions of the benefits of tax incentives for small donors. Tax credits for political contributions at the federal level were initiated in 1972 but then repealed as part of the Tax Reform Act of 1986. Three states – Oregon, Minnesota and Ohio – have considerable experience with tax credits. Three additional states – Arkansas, Arizona and Virginia – recently approved tax credit programs. Legislation has been introduced to reestablish a federal tax credit for political donations.

Experience at the federal and state levels suggests that tax credits do encourage more active participation in the political process by average citizens, but the effects are modest. Participation averaged just under 5 percent of eligible households in the federal program, generally lower in the states. And not all of the credits went to new contributors and/or small donors; credits were also claimed by old donors, some of whom made a larger contribution than was eligible for the credit. The structure of the tax credit program will clearly shape the level and composition of participation. Is the credit set at 100 percent or some fraction of the contribution? Is it refundable? What is the maximum donation to which the credit applies?

Does it apply to contributions to candidates, parties, and political action committees? Does it cover state and local as well as federal candidates? Is it limited to households earning below a certain income? Is it combined with other incentives for candidates and parties to seek small donations (e.g. qualifying for public matches or free air time)?

Concerns about the inefficiency of tax credits and their limited impact have led some reformers to propose a more ambitious voucher program, as a supplement to private contributions or a self-contained substitute for the present system of campaign finance.¹¹ Registered voters would be given a publicly-financed voucher which they could contribute in whole or part to candidates and political organizations. The strengths of this idea are its universality and egalitarianism. The weaknesses lie with its costs and practical problems of administration.

Public Subsidies. Proposals to extend public funding at the federal level from presidential to congressional elections have always faltered in the Congress, even as a number of states have moved to provide public matching funds tied to voluntary spending limits or full public grants to qualifying candidates. The problems of the presidential public funding system make it even less likely that Congress will consider a major public funding initiative in Senate and House elections any time soon. Yet the attraction of public subsidies – to increase the number of competitive races, reduce the dominance of large contributors, diminish conflicts of interest, and slow the money chase – ensures that some variant will remain on the reform agenda. Tax credits are, of course, an indirect public subsidy. Vouchers are a direct public subsidy of campaigns, although delivered via a market-based process that is very different from most public funding schemes. Other forms of public subsidy include free or reduced-cost mailings, voter brochures, and free broadcast time.

Free Air Time. Perhaps the most intriguing and most visible proposal to reduce the barriers to entry for challengers, expand the competitive terrain of congressional elections, and lower the demand for political money is to provide free broadcast time for candidates and parties to air political ads. The cost of political advertising on television has skyrocketed in recent election cycles, as parties and groups running “issue ads” have competed with candidates for prime time on local stations. While the efficiency of television advertising varies greatly across House districts, such ads now absorb on average half of the expenditures in competitive congressional elections, substantially higher in some tight Senate races.

The Alliance for Better Campaigns, as part of its Our Democracy, Our Airways Campaign, has developed a plan to finance a system of broadcast vouchers with a small spectrum usage fee on the broadcast industry.¹² Instead of purchasing the air time with taxpayer dollars, this proposal would levy a charge on broadcasters for their use of the spectrum, which is indisputably a public asset. Candidates would qualify for the vouchers by raising a threshold amount from small contributions, after which they would receive a two-for-one match of small donations up to a specific limit set separately for House and Senate candidates. They could spend the vouchers on their local television and radio stations or, if their media markets make such advertising prohibitively expensive, trade the vouchers to finance more efficient modes of political communication. The plan is designed to provide a floor of resources for politically viable candidates in House and Senate elections – to reduce the barriers to entry for potential candidates and to ensure a minimal campaign presence in congressional districts and states across the country. Parties could use their vouchers to support state and local candidates, to boost candidates in competitive federal races, and to create a secondary market for vouchers that promotes their more efficient use.

While free political air time is a commonplace in democracies around the world, its adoption in the U.S. faces formidable opposition from the broadcast industry and a number of constitutional and legal challenges. The latter address First Amendment considerations as well as the “Takings Clause” under the Fifth Amendment.

Public Affairs Programming on Television and Radio. Television and radio stations are licensed to use the broadcast spectrum (they are given exclusive rights to an assigned frequency within a defined geographic area) in return for agreeing to serve “the public interest, convenience and necessity.” How effectively stations meet this public interest obligation is a matter of some dispute. What is not in dispute is the declining coverage of election campaigns by the national television networks and by local stations. In response to the shrinking news hole for substantive campaign coverage, the Alliance for Better Campaigns has advanced a second proposal: all television and radio stations should be required to air at least two hours a week (half in prime time or drive time) of candidate issue discussion in the month preceding the election.¹³ The stations would choose the formats they preferred – debates, interviews, town hall meetings, or something else – as well as the contests covered, length of segments, and time of airing.

While this proposal does not directly affect the financing of campaigns for federal office, it has the potential to reduce modestly the demand for political money, especially among challengers, and convey to a much larger slice of the citizenry at least the semblance of a contested election.

Alternatives to the Present System

Frustrated by the Court’s embrace in *Buckley* of a clear distinction in the constitutional protection accorded political contributions and expenditures and by the unanticipated and sometimes perverse consequences of campaign finance laws, some reformers have urged a more

radical restructuring or replacement of the present regulatory regime. Three very different alternatives have been championed: full public financing, deregulation, and a new constitutional basis for spending limits.

Full Public Financing. Six states have adopted voluntary full public financing systems for state office, three by initiative (Maine, Arizona, and Massachusetts) and three by state legislative action (Vermont, North Carolina, and New Mexico). Only two – Maine and Arizona – have laws that come close to the plans envisioned by the architects of Clean Money/Clean Elections. The Massachusetts law was repealed by the state legislature before it had any significant impact on campaign finance practices. Full public financing applies to a limited set of offices in the three remaining states: governor and lieutenant governor in Vermont, high-level judicial candidates in North Carolina, and public regulation commission members in New Mexico.

The Arizona and Maine full public financing programs provide public grants to candidates in primary and general elections who meet a low qualifying threshold in small contributions from their district or state. The public grant, which constitutes a ceiling on permissible expenditures and varies depending on the type of election being funded, is based on average expenditures in comparable races in the previous two elections.. The idea is to substitute “Clean Money,” as labeled by its advocates, for private contributions, thereby producing “Clean Elections.” Maine and Arizona permit modest private fundraising for seed money, designed to maintain a candidacy until it is certified for the public grant. They also provide additional public funds to candidates facing a privately funded, high-spending opponent or independent expenditures.

Maine and Arizona have conducted three rounds of elections – in 2000, 2002 and 2004 – under the new public financing system. Assessments of their impact on competitiveness have varied. Advocates are heartened by the experience in both states.¹⁴ They report that a substantial number of candidates for state legislative races participated in the public financing program. The competitiveness of these elections increased, while the spending gap between incumbents and challengers declined. The General Accounting Office, in a study (mandated by BCRA) of the Maine and Arizona programs, was more cautious.¹⁵ They found that it was too early to draw conclusions about the impact of these full public financing systems. The most recent study, by Kenneth Mayer and his associates at the University of Wisconsin-Madison, is less ebullient than the advocates but more upbeat than the GAO.¹⁶ The Mayer report concludes that full public funding has increased the pool of candidates willing and able to run for state legislative office and increased the likelihood that an incumbent will have a competitive race.

Whether this bodes well for the continuation and spread of full public financing systems among the states is doubtful. Public Campaign is leading a grassroots campaign in other states in support of this approach to campaign finance reform. But the movement suffered a setback in 2000 when two states – Missouri and Oregon – handily defeated Clean Election ballot initiatives; no other state victories are clearly on the horizon. Skeptics argue that citizen support for full public financing may prove evanescent, especially as Clean Election systems try to gain a foothold in more populous states that feature expensive media-based campaigns. Eliminating all private money in politics, they argue, is neither possible nor desirable. The ability to raise money is one measure of a candidate's political support and of the intensity of preferences. Contributing money to campaigns is one important channel for organized political action, an essential element of representative democracy.

Public Campaign continues to work with activists around the country to press full public financing in state and local elections. If any headway is made, it will almost certainly be at these levels of office. Congress shows no sign of seriously entertaining this reform in House or Senate elections, especially while a similar system for presidential elections is teetering on brink of collapse.

Deregulation. While Clean Election advocates want to banish private money in politics, deregulation champions want to remove all restrictions on its flow. Deregulation has the virtue of simplicity and clarity. Its adherents, ranging from Kathleen Sullivan, the former dean of Stanford Law School, and the American Civil Liberties Union (ACLU) on the left to FEC Commissioner Bradley Smith and the National Right to Life Committee on the right, embrace one central argument: the *Buckley* distinction between contributions (which can be regulated) and expenditures (which cannot) is deeply flawed. In their minds, all contribution restrictions, including source prohibitions (from corporate and union treasuries) and limits on amounts, are unconstitutional, unworkable, and unwise.

Most champions of deregulation offer mandatory disclosure of contributions and expenditures as a tool for preventing abusive finance practices, but many opposed the disclosure requirement in BCRA relating to the fastest growing component of campaign finance – electioneering communications that do not meet the Court’s current test of express advocacy. Deregulation advocates disagree on the virtue of public subsidies of election campaigns. Those on the right would repeal the presidential public financing component of existing law. Sullivan and the ACLU instead would extend public subsidies to congressional elections but avoid any link to voluntary spending limits or other mechanisms designed to restrict private donations.

The major “deregulate and disclose” bill in the last Congress, sponsored by Representative John Doolittle (R-CA), would remove all restrictions on the sources and size of contributions to candidates and parties, end all public financing, and mandate electronic filing and timely disclosure on the Internet of reports on contributions to candidates for federal office. Doolittle offers an intellectually disarming and emotionally compelling vision of a political marketplace disciplined not by arcane rules and zealous regulators but by rational citizens exercising their franchise.

Skeptics of deregulation question whether any such marketplace is feasible. Voters would find it difficult to use the ballot to discipline extravagant candidates, particularly when large economic interests invest heavily in both parties or contribute to winning candidates after the election, or when each party or candidate attracts campaign contributions from different, but equally offensive, sources. In any case, voters would be unlikely to disregard factors such as party identification, political ideology, peace and prosperity, or the candidate’s character and instead focus exclusively and quixotically on the struggle to contain the harmful effects of money in politics.

As a practical matter, deregulation is unlikely to be embraced in the near term by the Supreme Court or Congress. In the Court’s most recent decisions on campaign finance – *Shrink Missouri*, *Colorado Republican II*, *Beaumont*, and *McConnell* – only Justices Thomas and Scalia were willing to repudiate the *Buckley* framework and initiate a judicially-imposed march to a deregulated campaign finance system.¹⁷ That minority sentiment is unlikely to gain a majority during George W. Bush’s presidency. And the Doolittle bill showed little sign of life in Congress. At the peak of its popularity, the bill garnered only 71 House cosponsors and 131 votes on the floor. Given the history of past efforts to limit the direct involvement of

corporations and unions in federal election financing and the widespread populist view in the country that political money buys special interest influence, relatively few politicians feel comfortable publicly defending a repeal of all limits on political donations.

Toppling Buckley. Deregulators would like to see fall *Buckley*'s defense of the constitutionality of the regulation of political contributions. Another group of reformers also hopes *Buckley* topples – but in the opposite direction. They would like to persuade the Supreme Court to overrule the parts of the decision that prevent legislatures from enacting reasonable limits on campaign spending.¹⁸ Adherents of this approach concede that campaign spending deserves full First Amendment protection, but they argue that “judges should uphold carefully tailored regulations of such spending that are supported by compelling governmental interests.” In addition to preventing corruption or the appearance of corruption, such interests might include expanding the pool of candidates, slowing the money chase, restoring public confidence in the democratic process, equalizing the voices of citizens, reducing the disproportionate influence of concentrated wealth, and promoting the constitutional rights to vote and to petition.

While several members of the Supreme Court, including Justices Breyer and Stevens, have expressed some sympathy with these arguments, prospects on the Court are no brighter for this alternative to *Buckley* than to the one advanced by deregulators. An alternative route to a similar outcome – a constitutional amendment giving Congress and the states authority to set reasonable limits on funds expended to influence the outcome of elections – has garnered relatively little support on Capitol Hill.

Campaign Finance and the Internet

Congress and the FEC have begun to grapple with the challenges of applying the current regulatory framework for campaign finance to a radically different and rapidly changing mode of

communication. Many of these issues are elucidated in Chapter 10. The economics of political communication on the Internet is already forcing some reconsideration of the appropriateness of disclosure and contribution regulations for digital communications. Congress did not make explicit mention of the Internet in BCRA, leaving to the FEC the task of determining how campaign finance law applies to the medium. Since the new law's passage, the FEC generally has attempted to minimize regulation of political communication on the Internet, a clear break from its earlier attempts to apply legislation from the 1970s to Internet communications.

Beyond these immediate regulatory issues, however, lies a more exciting and potentially liberating reform agenda. Internet-based fundraising, reinforced by tax credits, may lead to a dominant role for small donors, thereby easing concerns about the role of big, interested money in elections. And if technology-based transformations in election campaigning dramatically reduce the cost of political communications, demands on campaign finance regulation could well lessen. The regulatory challenges that currently drive reform efforts could recede in tandem with television's status as the principal medium for political advertising.

The problems of money and politics will never be definitively solved and the challenges of campaign finance regulation will continue to confront reformers. The *McConnell* Court acknowledged as much when it concluded its majority opinion with these words: "We are under no illusion that BCRA will be the last congressional statement on the matter. Money, like water, will always find an outlet. What problems arise, and how Congress will respond, are concerns for another day."

¹ 424 U.S. 1 (1976).

² 540 U.S. 93 (2003).

³ The Campaign Finance Institute Task Force on Presidential Nomination Financing, *Participation, Competition, Engagement: How to Revive and Improve Public Funding for Presidential Nomination Politics* (2003).

⁴ See S. 1913, a bill introduced in the 108th Congress as the “Presidential Funding Act of 2003” by Senators John McCain and Russell Feingold.

⁵ In the 108th Congress, Senator McCain introduced the Senate version of the bill, S. 1388, which was entitled “Federal Election Administration Act of 2003.”

⁶ A number of senators and representatives cosponsored a bill to this effect in the 108th Congress. The legislation, S. 2828 in the Senate, was entitled “527 Reform Act of 2004.”

⁷ *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996).

⁸ Norman J. Ornstein, Thomas E. Mann, Paul Taylor, Michael J. Malbin, and Anthony Corrado, *Five Ideas for Practical Campaign Reform* (Washington: League of Women Voters Education Fund, 1997 [document originally issued under different cover in 1996]).

⁹ *Federal Election Commission v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001).

¹⁰ David Rosenberg, *Broadening the Base: The Case for a New Federal Tax Credit for Political Contributions* (Washington: American Enterprise Institute, 2002).

¹¹ Bruce A. Ackerman and Ian Ayres, *Voting with Dollars: A New Paradigm for Campaign Finance* (Yale University Press, 2002); and Richard L. Hasen, “Clipping Coupons for Democracy: An Egalitarian/Public Choice Defense of Campaign Finance Vouchers,” *California Law Review*, vol. 84 (January 1996), pp. 1-59.

¹² Alliance for Better Campaigns, “Our Democracy, Our Airwaves Campaign” (www.bettercampaigns.org/docs/index.php?DocID=11 [January 2005]).

¹³ Alliance for Better Campaigns, “Our Democracy, Our Airwaves Campaign.”

¹⁴ Marc Breslow, Janet Groat, and Paul Saba, *Revitalizing Democracy: Clean Election Reform Shows the Way Forward* (2002) (www.followthemoney.org/press/Reports/200201011.pdf [January 2005]).

¹⁵ United States General Accounting Office, *Campaign Finance Reform: Early Experiences of Two States That Offer Full Public Funding for Political Candidates*, GAO-03-453 (May 2003).

¹⁶ Kenneth R. Mayer, Timothy Werner, and Amanda Williams, “Do Public Funding Programs Enhance Electoral Competition?,” prepared for delivery at the Fourth Annual Conference on State Politics and Policy Laboratories of Democracy: Public Policy in the American States, Kent State University, Kent, Ohio, April 30-May 1, 2004.

¹⁷ *FEC v. Beaumont*, 539 U.S. 146 (2003); *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000).

¹⁸ E. Joshua Rosenkranz and The Twentieth Century Fund Working Group on Campaign Finance Litigation, *Buckley Stops Here: Loosening the Judicial Stranglehold on Campaign Finance Reform* (New York: Century Foundation Press, 1998).