

# ARTICLES

## Political Finance and the American Political Parties

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### Introduction

Since 1972 the body of law regulating political finance in the United States has changed almost completely.<sup>1</sup> Some argue that these changes have adversely affected our political parties.<sup>2</sup> Even if that opinion is correct, the larger question of whether we should be concerned about the weakening of the political parties remains. These are complex issues that require, at a minimum, a three-fold inquiry. First, how do we define our political parties and their role in the American polity? Second, how do the new campaign finance laws apply to political parties, both directly and indirectly? Finally, what have been the practical effects of these laws on the political parties?

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1. The following campaign finance legislation has been enacted since 1972: the Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972); the Revenue Act of 1971, Pub. L. No. 92-178, 85 Stat. 497, as amended 87 Stat. 138 (1973); the Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263; the Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 and the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339.

The principal campaign finance law preceding the Federal Election Campaign Act and its subsequent amendments was the Federal Corrupt Practices Act, ch. 368, tit. III, 43 Stat. 1070 (1925) (codified in scattered sections of 2 and 18 U.S.C. (1970)) (repealed 1972). Its most important legacy was the prohibition of corporate treasury contributions or expenditures in general election campaigns for federal offices. 2 U.S.C. § 241 (1940). In 1947 Congress extended this prohibition to primary elections and added a ban on the use of union treasury funds for federal campaign purposes. Labor Management Relations (Taft-Hartley) Act of 1947, ch. 120, tit. III, § 304, 61 Stat. 136, 159 (codified at 29 U.S.C. §§ 141-197 (1976)).

2. See, e.g., J. KIRKPATRICK, *DISMANTLING THE PARTIES* 14, 21, 23 (1978); Ranney, *Political Parties: Reform and Decline*, in *THE NEW AMERICAN POLITICAL SYSTEM* 213, 241-45 (A. King ed. 1978).

The first of these questions has been at the center of a lively debate among scholars and journalists for decades, and probably will never be resolved.<sup>3</sup> However, its outlines can be sketched. The second question lends itself to relatively simple and straightforward analysis. The third line of inquiry is hindered because the political finance laws have been repeatedly amended and because their lifetime has been so brief that the ability of political parties to adapt to these laws is still being tested. Nonetheless, preliminary inquiry is useful because further changes in campaign finance law are likely, and those making the changes should be informed by whatever systematic analysis is possible.<sup>4</sup>

## I. Discovering and Defining Political Parties

Americans use the term "the party" loosely.<sup>5</sup> Sometimes they appear to use the term to refer to party workers, organizations, and committees. At other times it appears to mean government officials who are members of the same party. Often, especially with the recent attention to public opinion polls, "the party" constitutes all the voters who identify themselves as partisans and who generally vote for the candidates of their party. The leading text on political parties acknowledges these three usages: "the major political parties are in truth three-headed political giants, tripartite systems of interactions . . . . As political structures they include a party organization, a party in office, and a party in the electorate."<sup>6</sup> Recognition of the tripartite party is essential for any discussion of political finance because laws and prac-

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3. See H. AGAR, *THE PRICE OF UNION* (1950); D. BRODER, *THE PARTY'S OVER: THE FAILURE OF POLITICS IN AMERICA* (1972); J. BURNS, *THE DEADLOCK OF DEMOCRACY* (1963); P. HERRING, *THE POLITICS OF DEMOCRACY: AMERICAN PARTIES IN ACTION* (1940); J. KIRKPATRICK, *supra* note 2; *POLITICAL PARTIES IN THE EIGHTIES* (R. Goldwin ed. 1980); A. RANNEY, *CURING THE MISCHIEFS OF FACTION* (1975); A. RANNEY & W. KENDALL, *DEMOCRACY AND THE AMERICAN PARTY SYSTEM* (1956); E. SCHATTSCHNEIDER, *PARTY GOVERNMENT* (1942); F. SORAUF, *PARTY POLITICS IN AMERICA* 6-8, 370-96 (4th ed. 1979); American Political Science Assoc., Comm. on Political Parties, *Toward a More Responsible Two-Party System*, 44 AM. POL. SCI. REV. (Supp. 1950); Goodman, *How Much Political Party Centralization Do We Want?*, 13 J. POL. 536 (1951); Kirkpatrick, *Toward a More Responsible Two-Party System: Political Science, Policy Science or Pseudo-Science?*, 65 AM. POL. SCI. REV. 965 (1971); Ranney, *Toward a More Responsible Two-Party System: A Commentary*, 45 AM. POL. SCI. REV. 488 (1951); Stedman & Sonthoff, *Party Responsibility—A Critical Inquiry*, 4 W. POL. Q. 454 (1951); *Toward a More Responsible Two-Party System*, 44 AM. POL. SCI. REV. (Supp. 1980).

4. See, e.g., Gaunt, *Campaign Financing Faces Senate Scrutiny*, 41 CONG. Q. WEEKLY REP. 170 (1983); Taylor, *Efforts to Revise Campaign Laws Aim at PACs*, Washington Post, Feb. 28, 1983, at A5, col. 1.

5. F. SORAUF, *supra* note 3, at 6-18.

6. *Id.* at 8.

tices affect these three party elements differently, and each impact will alter the relationships between the three branches of the parties.

The picture of parties as three-headed political giants is only a line drawing. A fully developed picture is vastly more complex. Each of the three divisions is indeed a "system of interactions."<sup>7</sup> This is best illustrated by the party organization. Americans think of the party organization as a hierarchy headed by the national parties and followed at each lower level by the state parties, county, city, and town parties, and then the ward and precinct parties.<sup>8</sup> This portrayal is deceptively simple. The national, state, and local parties are generally quite independent of one another.<sup>9</sup> The national committees have been scornfully described as "politics without power,"<sup>10</sup> while city and county parties are often characterized as "political machines."<sup>11</sup> Moreover, the party units at each level may be quite independent of one another.

Similar decentralization is found in party relations in government. At any level of government the party group in the legislature may be quite separate in organization, operation, and outlook from the executive of the same party. Furthermore, the influence of a party's federal officeholders over their colleagues in the state capitol, city and town halls, and county courthouses may be very slight indeed.

The emphasis on the nonhierarchical nature of parties is significant for political finance regulation for several reasons.<sup>12</sup> First, it serves as a reminder that political finance laws may affect some levels or groups in the party but not others. Second, it focuses attention on parties as congeries of individuals and organizations whose relationships to one another are based on common goals, mutual respect, personal relationships, and political resources. As money has become an increasingly important political resource, the financial strength of the many centers of party organization may help to shape their interactions with one another. If political finance laws or practices shift funding strength between levels of the party or among organizations at the same governmental level, patterns of influence within the party may follow. Third, it helps direct examination of how money is used within political

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7. *Id.*

8. *Id.* at 60-67, 110-18.

9. *See* E. SCHATTSCHNEIDER, *supra* note 3, at 129-51.

10. C. COTTER & B. HENNESSY, *POLITICS WITHOUT POWER: THE NATIONAL PARTY COMMITTEES* (1964).

11. *See, e.g.*, E. SCHATTSCHNEIDER, *supra* note 3, at 144-51.

12. For a discussion of the conceptual importance of party decentralization for political finance practices, see D. ADAMANY, *CAMPAIGN FUNDS AS AN INTRAPARTY POLITICAL RESOURCE; CONNECTICUT, 1966-68*, at 7-11, 52-57 (1972).

parties. Specifically, it is important to discover whether different elements or levels in the parties need and use money for different purposes, and what the consequences are for party effectiveness and for the governmental process when campaign funds are used in these different ways.

## II. The Activities of Political Parties

There is a heated controversy about the role of political parties in democracies. One view holds that democracies cannot survive without political parties because the parties are essential for the performance of certain "functions" that must occur in free societies.<sup>13</sup> A particularly exuberant assertion of this theory states: "No America without democracy, no democracy without politics, no politics without parties, no parties without compromise and moderation."<sup>14</sup>

Another approach acknowledges that parties in democracies have engaged in certain activities that have strengthened self-government. This approach—aptly described by one of its adherents as a "minimalist" view<sup>15</sup>—does not aver that a free society is incapable of successfully conducting its affairs without the performance of these activities; nor does it insist that these important activities can be performed only by political parties.<sup>16</sup> Nevertheless, adherents of this approach see parties as valuable contributors to the democratic process; and, in general, they seek to promote the health of parties as a means of strengthening democracy.

The scholarly debate about the role of political parties need not be rehearsed to address the issues raised by new laws and practices in financing politics. It is sufficient to acknowledge that parties perform a number of functions that support our system of government. The fol-

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13. See Lowi, *Toward Functionalism in Political Science: The Case of Innovation in Party Systems*, 57 AM. POL. SCI. REV. 570 (1963). The functionalist approach assumes that certain functions are necessary for the operation of societies and then searches for institutions which perform those functions. This approach is elaborately stated in a volume dealing with developing nations, rather than specifically with political parties. See G. ALMOND & J. COLEMAN, *THE POLITICS OF DEVELOPING AREAS* (1960). See also C. MERRIAM & H. GOSNELL, *THE AMERICAN PARTY SYSTEM* (1949).

Critical views of the functionalist approach to political parties can be found in Scarrow, *The Function of Political Parties: A Critique of the Literature and the Approach*, 29 J. POL. 770 (1967), and King, *Political Parties in Western Democracies*, 2 POLITY 111 (1969).

14. C. ROSSITER, *PARTIES AND POLITICS IN AMERICA* 1 (1960).

15. Fishel, *American Political Parties and Elections: An Overview*, in *PARTIES AND ELECTIONS IN AN ANTI-PARTY AGE* xvi (J. Fishel ed. 1978).

16. See, e.g., L. EPSTEIN, *POLITICAL PARTIES IN WESTERN DEMOCRACIES* (1967); F. SORAUF, *POLITICAL PARTIES IN THE AMERICAN SYSTEM* (1964).

lowing discussion describes four activities that have been important in supporting democratic processes, and estimates how they will be affected by changing campaign finance laws.

First, parties have been credited with significant responsibility for “structuring the vote” and for “political socialization.” Simply put, structuring the vote means that parties provide an opportunity for voters to have a readily identifiable choice at the polls.<sup>17</sup> Generally, this activity involves parties in attempting to direct the choices made by voters by appealing for support for party candidates. According to Anthony King, “[e]fforts to structure the vote can range from the simple allocation of party labels to candidates to the conduct of large-scale educational and propaganda campaigns.”<sup>18</sup>

Political socialization also involves persuasion, but its focus is broader than winning support for particular candidates or issues associated with a party. Frank Sorauf explained this function as follows: “The parties participate in the political socialization of the American electorate by transmitting political values and information to large numbers of voters and future voters. They preach the value of political commitment and activity, and they convey information and cues about the confusing political system.”<sup>19</sup> Parties do not undertake political socialization from altruistic motives, of course. They emphasize the value of political participation in order to encourage their adherents to vote, to engage in party work, and to contribute money. Indeed, the overt manifestations of political socialization by parties—conducting registration and get-out-the-vote drives, soliciting money and manpower through mail, telephone, and door-to-door appeals, and seeking to recruit new party members—are party efforts to mobilize voters and resources. Socialization is thus a consequence of parties’ campaigning and building their organizations. In the modern era much of the responsibility for managing campaigns has shifted to candidates themselves; it may well be that the “party in government” contributes at least as much as party organizations to political socialization.

A second important function performed by parties is the accumulation of political power<sup>20</sup> by “representing and aggregating multiple group interests.”<sup>21</sup> Sorauf has captured an important element of this party function:

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17. L. EPSTEIN, *supra* note 16, at 77 (“Structuring the vote is the minimum function of a political party in a modern democracy.”).

18. King, *supra* note 13, at 120.

19. F. SORAUF, *supra* note 3, at 13-14.

20. *Id.* at 14.

21. Fishel, *supra* note 15, at xvii.

[Parties] aggregate masses of ineffectual individuals and groups and thereby organize blocs powerful enough to govern or to oppose those who govern . . . . By using his or her attachment to the party as a perceptual screen, the voter has a master clue for assessing issues and candidates. So both within the individual and in the external political world, the political party operates to focus political loyalties on a small number of alternatives and thus to accumulate support behind them.<sup>22</sup>

This definition is limited, however, to the aggregation of individuals who support the party, its platform, and its candidates simply because of their self-identification with one party label rather than another.

Other commentators have emphasized the brokerage role that parties have traditionally played. Party leaders have an interest in reaching out to various blocs and in bringing them into the party coalition.<sup>23</sup> In doing so, party leaders assure each group that some of its aspirations will be incorporated into the party platform and will become public policy if the party and its candidates are successful. In a more subtle form, this aggregation of interests occurs when groups are drawn into the party as participants in party governance and affairs. Recent commitments by the Democratic party to set aside twenty-five positions at-large on the Democratic National Committee for representatives of unions and of blacks<sup>24</sup> are an uncharacteristically overt method of assembling interest groups within the party structure.

Whatever the process of accumulating interests, the purported benefit to a democratic polity is twofold. First, fragmentation is diminished. Political forces are assembled in a relatively small number of party coalitions which pose identifiable and understandable alternatives and have sufficient strength to advance these alternatives in the governmental forum. Second, a multitude of interests will find their aspirations represented in the government. This will diminish the danger that these interests will feel abandoned, and will prevent them from going into permanent opposition to the governmental system.

A third significant activity engaged in by parties is recruiting political leaders.<sup>25</sup> The exact manner in which recruitment takes place is difficult to specify. At one time it might have been accurate to say that political parties recruited elected officials by nominating them for office. But party conventions and caucuses no longer select the candi-

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22. F. SORAUF, *supra* note 3, at 14.

23. W. KEEFE, *PARTIES, POLITICS AND PUBLIC POLICY IN AMERICA* 22-23 (2d ed. 1976).

24. Murray, *Campaign Blitz Makes Manatt DNC Chairman*, 39 CONG. Q. WEEKLY REP. 394 (1981).

25. See, e.g., J. KIRKPATRICK, *supra* note 2, at 5-13; L. EPSTEIN, *supra* note 16, at 201-31; W. KEEFE, *supra* note 23, at 21-22.

dates who will appear on the ballot under the party banner. In most jurisdictions, this function is performed by primary elections.<sup>26</sup> Nonetheless, parties may still engage in the recruitment of politicians. Party leaders may give encouragement to potential candidates. In a few jurisdictions, party organizations still endorse candidates.<sup>27</sup>

In districts dominated by the other party, leaders of the minority party actively search out candidates who will "fill the ticket." This is not an insignificant enterprise. From the party perspective, it strengthens the ticket by drawing whatever following the candidate has to the party ticket. From a broader perspective, it provides voters with a choice at the polls in order to show discontent with incumbents. Indeed, there is no real democratic process in elections unless voters have a choice of candidates.

In addition to recruiting candidates, parties often recruit officials. Many appointed officials are recommended initially by party leaders and have participated actively in partisan affairs. Those who are neither identified with a party nor recommended by party leaders are often nonetheless cleared by party leaders.

Parties also recruit political activists. Party organizations actively seek to recruit new workers, contributors, and members.<sup>28</sup> This is one route by which people are brought into the political process and, for many, into governmental roles. Here, the recruitment function intersects with a party's political socialization activities.

A fourth party function is the role that parties play in governance. There are important differences in the governing roles attributed to parties. Most political observers agree that:

The American parties are a force for unification in the divided American political system. The decentralization, even fragmentation, of government is an incontestably crucial fact of American politics. To the fragmentation of the nation and the fifty states, multiplied by the three-fold separation of power in each, the two great national parties bring a unifying centripetal force. They help to hold together the disparate fragments of government by bringing similar traditions, interest, symbols, and issues to all the parts. They unify with an obviously limited efficiency: for example, they often fail to bind president and Congress together in causes that transcend the separation of powers. But they do constitute a force for unity, a political adhesive, in a set of institu-

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26. F. SORAUF, *supra* note 3, at 203-10.

27. *Id.* at 210-11, 214-17; *see also* M. Jewell, *The State Party Convention As a Device For Influencing Primary Elections* (1983) (paper presented at annual meeting of the American Political Science Association).

28. F. SORAUF, *supra* note 3, at 91-96.

tions that divides.<sup>29</sup>

There is less agreement on the extent to which parties offer coherent programs in elections, develop policies while in government, and organize to promote the enactment of these programs and policies. Indeed, there is disagreement on whether the American parties should do this. One perspective is that the principal role of parties is to collect the diverse interests in American society into coalitions and thereby serve as “[t]he unwitting but forceful suppressors of the ‘civil-war potential’ we carry always in the bowels of our diverse nation.”<sup>30</sup> There are differences between the parties, but each party includes some elements from every group and viewpoint in American society, so that “[t]he difference . . . is one of tendencies rather than principles.”<sup>31</sup> This difference, although slight, provides voters with some degree of choice. This perspective concludes that ultimately: “[The parties] are weak agents in the struggle for power because they have been strong agents in the course of our rise to nationhood. It has been their historic mission to hold the line against some of the most powerful centrifugal forces in American society . . . .”<sup>32</sup>

A wholly different approach to the governmental function suggests that there are substantial differences between the parties,<sup>33</sup> that these differences should be clarified and re-enforced, and that parties should take greater responsibility for explicitly stating policies and assuring their adoption.<sup>34</sup> A few commentators contend that officeholders who do not support the party should be subject to some form of discipline.<sup>35</sup> Party discipline is deemed essential if parties are to formulate coherent policies, present them to the voters, and then enact those policies if they win an electoral mandate.

At a minimum, the parties are vehicles for retrospective judgment by the voters. When a party fails to satisfy the electorate, voters can turn to the other party. This view is substantiated by the fact that vot-

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29. *Id.* at 14.

30. C. ROSSITER, *supra* note 14, at 59.

31. *Id.* at 148.

32. *Id.* at 54.

33. There is considerable literature suggesting substantial differences in policy beliefs and ideological perspectives between those active in the two parties. A sampling of the evidence can be found in N. NIE, S. VERBA & J. PETROCIK, *THE CHANGING AMERICAN VOTER* 200-09 (1976); Ranney, *supra* note 2, at 234-36; McClosky, Hoffman & O'Hara, *Issue Conflict and Consensus Among Party Leaders and Followers*, 54 AM. POL. SCI. REV. 406 (1960); Nexon, *Asymmetry in the Political System: Occasional Activists in the Republican and Democratic Parties, 1956-1964*, 65 AM. POL. SCI. REV. 716 (1971).

34. See E. SCHATTSCHNEIDER, *supra* note 3.

35. See, e.g., American Political Science Assn., *Toward a More Responsible Two-Party System*, *supra* note 3.



ers who shift from one party to another actually share the views of the candidates or parties to which they transfer their support.<sup>36</sup>

For this article the crucial issue is whether campaign finance legislation strengthens the capacity of parties to perform the following functions: 1) structure the vote and engage in political socialization; 2) aggregate and represent multiple interests; 3) recruit political leaders; 4) govern, either by suppressing conflict and thus promoting stability or by formulating clear alternatives and converting them into public policy. Unfortunately, the impact of political finance laws on the ability of parties to engage in these activities is difficult to separate from other factors that also bear on party performance. There is general agreement that parties have undergone dramatic change in recent years. Some commentators believe that the direction of change has been to weaken parties. It is therefore necessary, before reviewing recent campaign finance legislation and assessing its impact, to describe the changing condition of American political parties and the reasons for those changes.

### III. The Thesis of Party Decline

There is a great deal of modern commentary announcing the decline or demise of political parties.<sup>37</sup> In general, these narratives detail such phenomena as declining party allegiance in the electorate, waning effectiveness in party organizations, and deteriorating party cohesion in government.

No sooner had the thesis of party decline become popular than there emerged a revisionist view arguing that American parties are not terminally ill.<sup>38</sup> Although these revisionists acknowledge that parties are changing in many ways, they emphasize evidence of continuing strength of party organizations and signs that parties are adapting to modern methods of campaigning. Some even argue that the party apparatus in government has continuing vitality.<sup>39</sup> Several authors believe that the life signs of parties signal only continuing life rather than robust good health; however, they have little difficulty recommending

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36. See, e.g., V. O. KEY, *THE RESPONSIBLE ELECTORATE* (1966); Boyd, *Popular Control of Public Policy: A Normal Vote Analysis of the 1968 Election*, 66 AM. POL. SCI. REV. 429 (1972).

37. See, e.g., W. CROTTY & G. JACOBSON, *AMERICAN PARTIES IN DECLINE* (1980); J. KIRKPATRICK, *supra* note 2; Ranney, *Political Parties*, *supra* note 2.

38. See, e.g., *PARTY RENEWAL IN AMERICA* (G. Pomper ed. 1980); Cotter & Bibby, *Institutional Development of Parties and the Thesis of Party Decline*, 95 POL. SCI. Q. 1 (1980).

39. See Ornstein & Rhode, *Political Parties and Congressional Reform*, in *PARTIES AND ELECTIONS IN AN ANTI-PARTY AGE* 280-94 (J. Fishel ed. 1978).

modest reforms that would revive the patient.<sup>40</sup>

The ensuing sections detail the evidence of party decline, note the signs of continuing party vitality, and suggest the causes of party affliction. The general thrust of these observations is that the primary causes of party distress are not found in campaign finance laws and that there is some prospect for adaptation by and revitalization of parties to their modern environment. Parties may well play an important role in American politics, albeit a different role from their tradition.

#### A. Evidence and Counterevidence of Party Decline

The most persuasive evidence of party decline is the decrease in allegiance among voters. While the percentage of voters identifying themselves as independents has increased markedly, the percentage of voters who identify themselves as Democrats or Republicans has declined.<sup>41</sup> This decline is especially sharp among younger people; this raises the possibility that as younger generations displace older ones, the decline in party affiliation will become even more pronounced.<sup>42</sup> In comparison to other American governmental and political institutions, the parties are held in relatively low esteem by the public.<sup>43</sup> Split-ticket voting is on the rise in elections for national offices and at the state and local levels.<sup>44</sup> Moreover, there has been a sharp decline in the extent to which voters evaluate candidates by their party label. Voters now evaluate candidates based on candidates' individual characteristics and their positions on important issues.<sup>45</sup> Formerly such issue posturing

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40. See, e.g., THE FUTURE OF AMERICAN POLITICAL PARTIES: THE CHALLENGE OF GOVERNANCE (J. Fleishman ed. 1982).

41. See, e.g., W. CROTTY & G. JACOBSON, *supra* note 37, at 26-33; F. SORAUF, *supra* note 3, at 138. The percentage of Americans reporting that they were "independent" rather than identified with a political party rose from 24% in 1956 to 36% in 1976. *Id.* A preliminary report on 1980 shows that 34% of the respondents identified themselves as "independent." Roettger & Winebrenner, *The Voting Behavior of American Political Scientists: The 1980 Presidential Election* 36 W. POL. Q. 134, 137 (1983).

42. See, e.g., W. CROTTY & G. JACOBSON, *supra* note 37, at 40-41; N. NIE, S. VERBA & J. PETROCIK, *supra* note 33, at 59-66.

43. Dennis, *Trends in Public Support for the American Party System*, in PARTIES AND ELECTIONS IN AN ANTI-PARTY AGE 3-21 (J. Fishel ed. 1978). A 1976 Wisconsin survey showed that on a 7 point scale measuring public confidence in 12 institutions, political parties rated 11th. Each of the three branches of the federal government, the federal, state and local governments, the police, military, and federal bureaucracy, and national elections all engendered more public confidence than did the political parties. Adamany & Grossman, *Support for the Supreme Court as a National Policy Maker*, 5 LAW & POLICY Q. 405, 411 (1983).

44. See, e.g., W. CROTTY & G. JACOBSON, *supra* note 37, at 34-35; N. NIE, S. VERBA & J. PETROCIK, *supra* note 33, at 67-68.

45. See N. NIE, S. VERBA & J. PETROCIK, *supra* note 33, at 156-73.

was associated predominantly with parties rather than candidates.<sup>46</sup> Hence, parties have lost some of their relevance to specific issues that are important to voters, while candidates have gained visibility on those issues.<sup>47</sup>

Another commonly cited indicator of party demise is the alleged sharp decline in institutional party strength. There is, however, little documentation for this proposition since there have been few systematic studies of either the strengths or activities of party organizations.<sup>48</sup> Furthermore, it is difficult, if not impossible, to make sweeping generalizations about institutional vitality since party organizations exist on many different levels. Although the once powerful urban political machines are in poor condition, there are indications that state<sup>49</sup> and local<sup>50</sup> party organizations are in good health.

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46. See Wattenberg, *The Decline of Political Partisanship in the United States: Negativity or Neutrality?*, 75 AM. POL. SCI. REV. 941, 947-48 (1981).

47. This may not be surprising in an era marked by campaigns centered on candidates, but it also suggests potential for party resurgence among the electorate if parties develop visibility on issues. This is not too far fetched, since generally voters perceive that parties differ on both issues and general political philosophy. *Id.* at 943; G. POMPER, *VOTERS' CHOICE* 166-85 (1975). The difficulty for parties is that voters do not associate specific issue stances with the parties. Therefore, the question is whether parties can take steps to re-establish the link between the party label and issues about which voters feel strongly.

48. See W. CROTTY & G. JACOBSON, *supra* note 37, for a commentary on party decline that omits any evidence or discussion of the purported atrophy in political party organizations.

49. Recent studies show that 90% of state party organizations maintain permanent headquarters, 90% have a full time executive director or party chairman, and 63% have five or more staff workers. J. Gibson, C. Cotter, J. Bibby, & R. Huckshorn, *Assessing Institutional Party Strength*, 18-20 (paper presented at the 1981 Annual Meeting of the Midwest Political Association). Party budgets averaged \$340,000, which is more than double the budgets of a decade earlier. *Id.* at 19. Two-thirds of the state organizations operate ongoing electoral mobilization programs involving voter identification, voter registration and get-out-the-vote efforts. They also conduct occasional polling, offer training sessions for candidates and workers, and make at least modest efforts to recruit and financially support candidates. *Id.* at 24-27.

50. A survey of the nation's 3662 counties, towns, and districts showed that the Democrats had no organization whatsoever in only 73 and a Republican presence was missing in only 209. *Id.* at 38. These local parties are aptly described as "skeletal." L. EPSTEIN, *supra* note 16, at 101. Only 8% reported any full-time or part-time staff, only 13% maintained year-round offices, and only 26% had formal budgets. However, 75% met on at least a quarterly basis. Moreover, despite the thinness of the party apparatus, the vast majority were involved in recruiting candidates for Congress, county office, or the state legislature. About two-thirds made campaign contributions. Grassroots campaign activities were widespread: 66% distributed posters or signs, and 62% purchased advertising. The majority reported providing at least 8 of 14 specified services to assist their candidates. J. Gibson, C. Cotter, J. Bibby & R. Huckshorn, *supra* note 49, at 37-40. A 1976 survey shows an increase in the percentage of voters personally contacted during the campaign, but it does not specify whether these contracts are by candidate organizations or political parties. M. Wolfe, *Personal Contact Campaigning in Presidential Elections: Who's Been Talking to All Those*

The third and final aspect of party decline is the party's diminishing role in government. Commentary on this phenomenon tends to focus on three specific developments. First, it is said that the President's role as a party leader has waned. The President no longer has much stake in providing leadership to the party organization; furthermore, he increasingly lacks the capacity to lead his own party in the government, especially in Congress. A leading scholar explained this development as follows:

Presidential candidates run for office without relying on party organizations, by hiring media and campaign technicians, and by making personalistic and issue-oriented appeals to the voters. This approach has assured a growing separation between the President and his party.<sup>51</sup>

The converse of this situation, however, is also undoubtedly true: the party organization can no longer control or deliver the vote; a presidential candidate is therefore compelled, in some measure, to run a media-based, non-party campaign.

The presumed decline of presidential leadership in Congress is prompted, in part, by the same factors. Members of Congress run non-party campaigns, and the President's influence over them directly or through the party organization is consequently diminished.<sup>52</sup> An executive branch liaison to Congress recently lamented: "It used to be that a central piece of information on a vote was the president's position. Now the central information is the issue. With the breakdown of party discipline, it is clear that voters expect members to exercise independent judgment."<sup>53</sup>

The independence of congressmen from the President is also heightened by the increased electoral security that accompanies incumbency. Political scientists have remarked on the "disappearing marginals"—the infrequency of races for seats in the House in which an incumbent is defeated or even closely challenged. Senate incumbents are somewhat less secure, but they continue to enjoy a seventy-five percent re-election rate.<sup>54</sup> Finally, presidential coattails have virtually disappeared, making congressional candidates less dependent on

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Voters and What Have They Accomplished? (1979) (paper presented at annual meeting of the Midwest Political Association).

51. Orren, *The Changing Styles of American Party Politics*, in *THE FUTURE OF AMERICAN POLITICAL PARTIES* 41 (J. Fleishman ed. 1982).

52. See Agranoff, *The New Style of Campaigning: The Decline of Party and the Rise of Candidate-Centered Technology*, in *THE NEW STYLE IN ELECTION CAMPAIGNS* 3-49 (R. Agranoff ed. 1972).

53. W. CROTTY & G. JACOBSON, *supra* note 37, at 238-39.

54. *Id.* at 192-93.

the fate of their party's presidential nominee and therefore less reliant on their national party.<sup>55</sup> Under these circumstances presidential leadership of his party in Congress becomes difficult indeed.

The second asserted trend toward party decline in government is the decentralization of power in Congress. In brief, this decentralization occurred with the shift of authority from party leaders and party caucuses to the Rules Committee and to committee chairmen, who were selected solely on the basis of seniority. The dispersion of legislative authority to subcommittees and subcommittee chairmen has diffused policy leadership and put members who are not strong partisans in positions of legislative leadership.<sup>56</sup> Furthermore, in the Senate the filibuster has been increasingly used to block leadership initiatives by the majority party as well as by the President.<sup>57</sup>

There is, however, a countervailing trend in the House of Representatives. The party leadership gained substantial authority as a result of reform in the House during the 1970's.<sup>58</sup> The Speaker of the House now dominates the Rules Committee, which, in the view of one observer, "was effectively transformed from master to servant of the House."<sup>59</sup> The establishment of the Steering and Policy Committee to shape legislative strategy and recommend committee appointments has given party leaders considerable authority over the committee system.<sup>60</sup> The Democratic party caucus has been revitalized, and it has refused to elect or re-elect committee chairmen who have obstructed the party program.<sup>61</sup> The House Democrats have also adopted rule changes to make the attachment of "riders" to appropriations bills more difficult,

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55. *Id.* at 194-96.

56. Patterson, *The Semi-Sovereign Congress*, in *THE NEW AMERICAN POLITICAL SYSTEM* 125, 167 (A. King ed. 1979).

57. W. CROTTY & G. JACOBSON, *supra* note 37, at 214-16; Ornstein & Rhode, *supra* note 39, at 280-81.

58. *See generally* Ornstein & Rhode, *supra* note 39, at 281-91; Patterson, *supra* note 56, at 160-69.

59. Sundquist, *Party Decay and the Capacity to Govern: The Challenge of Governance*, in *THE FUTURE OF AMERICAN POLITICAL PARTIES* 42, 50 (J. Fleishman ed. 1982).

60. Ornstein & Rhode, *supra* note 39, at 286. In the 98th Session of Congress, the House Democratic leadership strengthened party discipline by ousting Rep. Phil Gramm from the House Budget Committee because of his vigorous collaboration with the White House and the Republicans on President Reagan's budget and tax program in the prior session. *See* Plattner, *House Panel Seats Assigned: Democrats Tighten Control*, 41 CONG. Q. WEEKLY REP. 4 (1983); Tate, *Gramm: An Unrepentant Weevil Bolts Party*, 41 CONG. Q. WEEKLY REP. 5 (1983).

61. *See* Ornstein & Rhode, *supra* note 39, at 288-89. Rep. G.V. Montgomery who sided with the Republicans on President Reagan's budget and tax programs, was given a 16 to 11 vote in the Steering and Policy Committee to retain his chairmanship of the Veterans' Affairs Committee. He was finally approved by the caucus only after "repenting" his position

thereby strengthening the leadership's ability to shape legislation.<sup>62</sup>

The third suggested measure of declining party strength in government is congressional roll call voting. Since the early 1960's, there has been a decline in the percentage of roll call votes with "party line" voting—that is, a roll call in which the majority of members of one party are in opposition to a majority of members of the other party.<sup>63</sup> "Party line" votes constituted half or more of the total annual roll call votes only once in the Senate and twice in the House during that period.<sup>64</sup> This may be said to reflect a relatively low level of party unity and a relatively modest party difference in Congress.

Viewed from another perspective, one might reach a different conclusion about the role of parties in congressional voting. Although there is considerable variation from year to year, party-line voting in the Ninety-seventh Congress was only five percent less than in the Eight-eighth Congress two decades earlier.<sup>65</sup> Many roll calls deal with issues about which the parties have not adopted different positions and are not identified by the public as representing alternative perspectives.

The President's role as party leader is revealed by roll call voting in Congress. Only once in two decades has the President's party in either house failed to give him a majority of its votes on a majority of the legislative measures he endorsed; and generally the President's party has given him majority support on sixty percent of roll call votes.<sup>66</sup> Similarly, the opposition party always casts a majority of its votes against a majority of the President's legislative initiatives.<sup>67</sup> Fur-

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and making clear that he "got the message" to support the party leadership whenever possible. Plattner, *supra* note 60, at 4, 6.

62. Plattner, *Democrats Force Changes in House Rules*, 41 CONG. Q. WEEKLY REP. 7 (1983).

63. See, e.g., F. SORAUF, *supra* note 3, at 341; *Democrats Overtake GOP in Party-Line Vote Loyalty*, 41 CONG. Q. WEEKLY REP. 107-08 (1983) [hereinafter cited as *Democrats*]. The extent of decline in partisanship in congressional roll call voting depends on the baseline one selects. Scholars initially assessed party voting as those roll calls on which 90% of the members of the other party. By this measure, a high degree of cohesion characterized the House of Representatives in the decades just prior to the turn of the century. By the 1930's, party cohesion in Congress had measurably declined. Partisanship has continued to decline, using either the 90% rule or the more generous measure employed by Congressional Quarterly. J. TURNER, *PARTY AND CONSTITUENCY: PRESSURES ON CONGRESS 15-39* (E. Schneider rev. ed. 1970).

64. F. SORAUF, *supra* note 3, at 341; *Democrats*, *supra* note 63, at 107.

65. See F. SORAUF, *supra* note 3, at 339.

66. W. CROTTY & G. JACOBSON, *supra* note 37, at 237; Cohodas, *Presidential Support Study Shows Reagan Rating Fell 10 Percentage Points in 1982*, 41 CONG. Q. WEEKLY REP. 94-96 (1983).

67. W. CROTTY & G. JACOBSON, *supra* note 37, at 237; Cohodas, *Presidential Support*, *supra* note 66, at 94-96.

thermore, the President has been successful in gaining congressional support on more than fifty percent of all the roll calls since 1953, and seventy percent of the roll calls in twenty-one of those thirty years.<sup>68</sup> The percentage of presidential victories has been higher for Democratic presidents because they have had a majority in both houses for twenty-eight of those thirty years.<sup>69</sup> Even so, the ability of both Democratic and Republican Presidents to fashion victories using majority support among their own partisans together with some support from opposition party members is impressive.

Finally, there is persuasive evidence that the two parties are becoming more cohesive and more ideological in congressional voting. Except for the Southern Democrats and Northeastern Republicans, Democrats in every region of the nation consistently have been far more liberal in congressional roll call voting than their Republican counterparts.<sup>70</sup>

When one considers the evidence in total, the much proclaimed and decried decline of American parties appears to be only a modest tendency. Party decline is sharpest in the electorate, where both self-proclaimed party affiliation and party-line voting have plummeted. This may foretell significant deterioration in party organizations and in partisanship in government. To date, however, elements in the party, with the exception of the old-style urban machine, have been weakened only slightly during the post-war period. It remains to be seen whether political finance laws and practices have contributed significantly to the party decline that has occurred.

## B. The Causes of Party Decline

Jeanne Kirkpatrick, an important advocate of the thesis of party decline, has suggested several causes of party decomposition: "this trend has had and continues to have various sources—cultural, social, technological, demographic, political, and legal—but . . . the most important sources of party decomposition are the *decisions* taken by persons attempting to reform the parties."<sup>71</sup>

Other scholars do not unequivocally identify reform efforts as the

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68. W. CROTTY & G. JACOBSON, *supra* note 37, at 236; Cohodas, *Presidential Support*, *supra* note 66, at 94-96.

69. W. CROTTY & G. JACOBSON, *supra* note 37, at 236.

70. See Shaffer, *Party and Ideology in the U.S. House of Representatives*, 35 W. POL. Q. 92-106 (1982).

71. J. KIRKPATRICK, *supra* note 2, at 2 (emphasis in original).

most important cause of party decline.<sup>72</sup> Professor Orren has bluntly argued that "it is a sentimental self-deception to believe that the amendment of election rules will suddenly revive strong party structures."<sup>73</sup> Instead, he distinguished three forces that contribute to party decomposition: 1) long-term social and geographic trends; 2) changes in the media, especially the growth of television in the political process; 3) the laws and rules that regulate the campaign process.<sup>74</sup>

*Demographic and Social Trends.* It is clear that a better educated populace is less likely to rely on party precinct leaders to guide their vote. They will instead look to a multitude of information sources. Moreover, an educated population is less likely to find attractive the traditional incentives for political action or political loyalty: they do not seek patronage jobs, clubhouse socializing, or private welfare.

Population mobility breaks down neighborhood ties and severs connections to precinct organizations. A proponent of political action committees has argued the case persuasively:

No longer, for example, does all political campaign activity revolve around local precincts. Precinct politics was based on the premise, true at the time, that the warm relationship between neighbors would make them receptive to the opinions of neighborhood political opinion leaders (footnote in original omitted). The demise of the neighborhood as the center of social or economic activity, however, has signaled the demise of neighborhood or precinct politics.

Today we are not influenced by neighborhood leaders, but rather by particular occupational or socio-economic group leaders. Consequently, our politics are no longer neighborhood based, but directed toward particular occupational or socio-economic groups.<sup>75</sup>

*Media Technology.* The impact of technology on parties is readily understood. Some have called television "the new political god . . . the principal influence acting on the voter in a campaign and his chief source of information . . . and the one he trusts most implicitly."<sup>76</sup> Television messages and computer-prepared communications create a

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72. See, e.g., W. KEEFE, *supra* note 23, at 171-72; Sorauf, *Political Parties and Political Action Committees: Two Life Cycles*, 22 ARIZ. L. REV. 445, 446-50, 454-62 (1980). Both L. Epstein and James Sundquist emphasize patronage as a basis for party organization. L. EPSTEIN, *supra* note 16, at 108, 233-42; Sundquist, *supra* note 59, at 47-48.

73. Orren, *supra* note 51, at 32.

74. *Id.* at 31-32.

75. Elliott, *Political Action Committee—Precincts of the 80's*, 22 ARIZ. L. REV. 539, 540-41 (1980).

76. W. CROTTY & G. JACOBSON, *supra* note 37, at 67.



link between candidates and voters without the need for party intermediaries.

As party cues have become less important to voters, and candidate cues have become more important, media are better suited than traditional organizations to the tasks of persuasion and mobilization. Candidates are assured of broader coverage and more consistency (or specialization, where appropriate) in their communications to voters by disseminating their messages through the media rather than through an army of campaign workers.

Even in the nomination process, mass media have displaced party elites as a means of communication among those who will make decisions.<sup>77</sup> This is obviously true when nominations are made in state or local primaries, since these nominations are actually a series of elections possessing most of the properties of the general election. In the presidential nominating process, the mass media have also dominated the establishment of connections between contributors, caucus participants, local workers, and candidates for the nomination.<sup>78</sup>

*Laws and Regulations.* Professor Orren has argued that the long-term social and demographic trends which have weakened parties are generally beyond the control of policymakers.<sup>79</sup> He believes that the expanding influence of mass media is probably irreversible, and that efforts to regulate their political uses would raise constitutional challenges based on the First Amendment.<sup>80</sup> Orren contends that “[i]f we are to strengthen political parties, we must exercise leverage where it is strongest, in the third category of factors—the rules and regulations governing elections.”<sup>81</sup>

For several reasons it is highly unlikely that the rules and regulations outside the campaign finance area will be altered in a manner that would strengthen parties. First, it would seem an implausible step to restore the strength of party precinct organizations by returning to the system of patronage appointments, preferential contracting, and other economic favors. Yet, there is recognition among scholars that the patronage system was the glue that held the political machine together in

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77. See Polsby, *The News Media as an Alternative to Party in the Presidential Selection Process*, in *POLITICAL PARTIES IN THE EIGHTIES* 50, 54-64 (R. Goldwin ed. 1980).

78. *Id.* at 55.

79. Orren, *supra* note 51, at 31-32 (raising general constitutional questions).

80. *Id.*

81. *Id.* at 32.

the heyday of party strength.<sup>82</sup> Second, it is highly unlikely that we will abandon the modern social welfare system to restore party strength.<sup>83</sup>

Third, it is unlikely, no matter how desirable, that party organizations will again assume the exclusive authority to name candidates. It was pointed out long ago that the primary election causes decay of the minority party;<sup>84</sup> furthermore, primaries destroy the unity of parties because primaries draw candidates of every stripe and the party leaders cannot weed out even those whose views are wholly anathema to the party's posture.<sup>85</sup> The judiciary has recently created doubts about the authority of states to impose regulations on party nominating and operating processes.<sup>86</sup> And the Democratic party has sought to restore some of the influence of party activists in the presidential nominating process: 561 members of Congress, state and local public officials, and party officials were automatically seated as uncommitted delegates in the 1984 Democratic National Convention.<sup>87</sup> Nonetheless, there has

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82. See L. EPSTEIN, *supra* note 16, at 108-111; F. SORAUF, *supra* note 3, at 68-70, 399; Sundquist, *supra* note 59, at 47.

83. See Sundquist, *supra* note 59, at 47.

84. V.O. KEY, *AMERICAN STATE POLITICS: AN INTRODUCTION* 169-96 (1956).

85. F. SORAUF, *supra* note 3, at 212-13.

86. The Supreme Court has held that national party conventions may prescribe and enforce rules for delegate selection, even in the face of contrary state laws, party rules, or judicial orders. *Democratic Party v. Wisconsin*, 450 U.S. 107 (1981); *Cousins v. Wigoda*, 419 U.S. 477 (1975). These decisions recognize that political parties are protected by the First Amendment freedom of association. The Court has, however, recently used these convention cases to uphold a party's rules for selecting persons to fill vacancies in public offices at the state level against a challenge that the party's procedures excluded nonmembers from the selection process. *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982).

There are unfolding lines of legal doctrine that may free parties from some of the state-imposed limitations on their methods of selecting candidates and structuring party affairs. The Massachusetts Supreme Judicial Court struck down a law that would have permitted candidates to gain access to a party's primary ballot in contravention of a provision of the state party's charter which limited ballot access to candidates who had received at least 15% of the delegate votes in the state party convention. *Opinion of the Justices*, 385 Mass. 1201, 434 N.E.2d 960 (1982). In the case of *Ripon Soc'y, Inc. v. Nat'l Republican Party*, 525 F.2d 548 (D.C. Cir.), *rev'd*, 525 F.2d 567 (D.C. Cir. 1975) (*en banc*), *cert. denied*, 424 U.S. 933 (1976), the court refused to hold the apportionment of seats in state party organizations and conventions to a one-person one-vote standard pursuant to the Equal Protection Clause. Instead, the court held that any rational basis for apportionment was sufficient to meet constitutional standards, and suggested that party strength in the electorate would be one rational basis for delegate apportionment. 525 F.2d at 588. If these theories are developed, it would strengthen the parties by again allowing them to assert some authority over nominations and over internal party structure, thus regaining some of the influence lost as a result of legislative reform of political parties.

87. Cook, *Democrats' Rules Weaken Representation*, 40 CONG. Q. WEEKLY REP. 749-51 (1982); Smith, *Power Shifts South for '84 Democratic Meet*, 41 CONG. Q. WEEKLY REP. 351-52 (1983).

been very little movement among state and local party leaders to reassert party organization control over the selection of candidates. Many doubt that the authority to make nominations should be shifted from the electorate back to the party organization; and many others fear an adverse public reaction against their party and its candidates if such steps were taken.

In one area, however, Congress and the state governments have greatly accelerated the regulation of activities bearing on the vitality of political parties; and the Supreme Court has gone a long way toward sustaining those regulations. That area is political finance. To adequately assess the strength and potential of political parties it is necessary to examine the laws regulating political money and to assay whether in practice these laws have weakened or strengthened the party organizations.

#### IV. Parties and Money in the '80's

##### A. Laws Governing Party Financing of Elections

The Federal Election Campaign Act (FECA) of 1971 and its amendments, the Presidential Election Campaign Fund Act (PECFA), and a modest body of other statutes are the basic body of law governing federal election financing.<sup>88</sup> These laws provide, in general, for the following political financing arrangements: (1) limits on expenditures, where constitutionally permitted, (2) limits on the amounts and sources of contributions, (3) full disclosure of campaign contributions and expenditures, and (4) public financing of national political party conventions, of presidential general election campaigns, and, in part, of presidential nominating campaigns. The laws provide for their own enforcement, including the issuance of regulations and advisory opinions and the bringing of civil actions in the courts by the Federal Election Commission (FEC).<sup>89</sup> These same arrangements, in various combinations, are now found in virtually all of the states.<sup>90</sup>

The authority of Congress and the state legislatures to regulate political finance is limited by the Constitution as interpreted by the

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88. For statutory citations to campaign finance regulations, *see supra* note 1.

89. This commentary draws largely on the author's previous exposition of statutory and judicial regulations of campaign financing. *See* Adamany, *Financing Political Parties in the United States*, in *THE CHANGING BRITISH AND AMERICAN PARTY SYSTEMS* 153-84 (V. Bogdanor ed. 1984).

90. H. ALEXANDER, *FINANCING POLITICS* 169-70 (1976).

Supreme Court.<sup>91</sup> This has been an area of vigorous judicial review and intervention, largely because the Justices have regarded campaign finance regulations as restricting the First Amendment guarantees of free expression and association.<sup>92</sup>

In *Buckley v. Valeo*,<sup>93</sup> the Supreme Court held that the FECA expenditure limits violated the First Amendment.<sup>94</sup> The Court found protected speech and association elements in political contributions. Nevertheless, the Court held that contributions to candidates and to organizations, including political action committees, may be limited in order to avoid the actuality or appearance of corruption.<sup>95</sup> Expenditures made in collaboration with candidates—"coordinated expenditures"—are treated as contributions subject to restriction.<sup>96</sup> On the other hand, contributions from or expenditures by candidates for their own campaigns may not be limited, since a candidate presumably is not corrupted by the expenditure of his own funds.<sup>97</sup> The Court sustained the provisions requiring full disclosure of campaign receipts and expenditures, although it recognized that disclosure may deter campaign contributions.<sup>98</sup>

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91. The principal judicial doctrines were laid down in *Buckley v. Valeo*, 424 U.S. 1 (1976). See also *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978) (expanding First Amendment rights of corporations to make expenditures for political advocacy in referendum campaigns); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981) (limiting legislative authority to establish contribution limits in referendum campaigns). An extended treatment of litigation arising from campaign finance practices in the 1980 campaign may be found in Ifshin & Warin, *Litigating the 1980 Presidential Election*, 31 AM. U. L. REV. 485-550 (1982).

92. See, e.g., *Buckley*, 424 U.S. at 14-23, 64-69; *Bellotti*, 435 U.S. at 775-86. It is unlawful for any national bank, corporation or labor organization to make a contribution or expenditure in connection with any election or political office. 2 U.S.C. § 441(b) (1976). However, these expenditures have gained constitutional protection as a result of the extension of First Amendment protection to such expenditures in referendum campaigns. *Bellotti*, 435 U.S. at 819-22 (White, J., dissenting). A similar argument might be made that corporate or union treasury contributions to candidates, which are entirely prohibited by the same provisions, are constitutionally protected, subject to whatever contribution limits are established by Congress and sustained by the judiciary. *Id.* For a brief discussion of these issues, see Adamany, *PACs and the Democratic Financing of Politics*, 22 ARIZ. L. REV. 569, 583-88 (1980) and the extensive literature cited therein.

93. 424 U.S. 1 (1976).

94. *Id.* at 19-20, 39-59.

95. *Id.* at 16-18, 20-22, 23-38.

96. *Id.* at 46-47 n.66.

97. *Id.* at 51-54.

98. *Id.* at 64-68. The Court has, however, recognized that unpopular minor parties or independent candidates might claim exemption from the disclosure requirements if they can show "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.* at 68-74. The Court's first application of that standard rejected an

The Court in *Buckley* also held that the expenditure of public funds to subsidize political campaigns and party conventions is within the spending authority of Congress.<sup>99</sup> The Court further held, however, that presidential candidates who accept public subsidies under the PECFA may be required to abide by expenditure and contribution limits that could not otherwise be constitutionally applied to them.<sup>100</sup> These limits also affect political party participation in the presidential race.<sup>101</sup> The statutory limit for general election expenditures in presidential campaigns is set at the public subsidy of \$20 million, adjusted for inflation since 1974;<sup>102</sup> in 1980, the statutory limit was \$29.4 million.<sup>103</sup> Additional expenditures are allowed for accounting and legal services necessary to comply with the law;<sup>104</sup> and further spending, up to twenty percent of the expenditure limit, is permitted for fundraising.<sup>105</sup> National political party committees are permitted to make coordinated expenditures on behalf of their presidential candidate of amounts not exceeding two cents per voting age person, adjusted for inflation since 1974.<sup>106</sup> In 1980, national party committees were permitted to make up to \$4.6 million in coordinated expenditures.<sup>107</sup>

There are two other avenues of party expenditure in presidential campaigns. First, parties may spend unlimited amounts to develop general campaign themes, promote issues, or appeal for support for the party ticket.<sup>108</sup> Second, state and local party organizations have been authorized by the 1979 amendments to the FECA to make unlimited expenditures for certain grassroots campaign activities.<sup>109</sup> Both of

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“unduly narrow view of the minor party exemption” and permitted exemption from disclosure where there was evidence of sweeping government surveillance and harassment of minor party activists. *See* *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87 (1982).

99. *Buckley*, 424 U.S. at 91-93.

100. *Id.* at 88-89, 99, 107-09; *Republican Nat'l Comm. v. Federal Election Comm'n*, 487 F. Supp. 280 (S.D.N.Y.), *aff'd*, 445 U.S. 955 (1980).

101. *Republican Nat'l Comm. v. Federal Election Comm'n*, 487 F. Supp. 280 (S.D.N.Y.), *aff'd*, 445 U.S. 955 (1980). For a critical comment on the result, see Nicholson, *Political Campaign Expenditure Limitations as Unconstitutional Conditions*, 10 HASTINGS CONST. L.Q. 601 (1983).

102. 2 U.S.C. § 441a(b)(1)(B), (C) (1976 & Supp. 1980).

103. H. ALEXANDER, *FINANCING THE 1980 ELECTION* 110 (1983).

104. 2 U.S.C. § 431(9)(B)(vii) (1976 & Supp. 1980).

105. 2 U.S.C. § 431(9)(B)(vi) (1976 & Supp. 1980).

106. 2 U.S.C. § 441a(c), (d)(2) (1976 & Supp. 1980).

107. H. ALEXANDER, *supra* note 103, at 297.

108. The Supreme Court has limited the scope of the FECA's spending limits to “expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.” *Buckley v. Valeo*, 424 U.S. 1, 40-44 (1975).

109. 2 U.S.C. 431(9)(B)(iv), (viii), (ix) (1976 & Supp. 1980).

these additional opportunities for party spending were substantially used in 1980.

From one perspective, the special authorization for political party spending on behalf of presidential candidates appears to strengthen the role of party organizations since no other person or group can make such expenditures. From another perspective, however, the special authorization for party spending is unimpressive. Because the Supreme Court has invalidated limits on spending, persons and groups who are independent of the presidential candidate are not bound by his agreement to limit expenditures as a condition for receiving public money.<sup>110</sup> In 1980, individuals and nonparty committees made \$13.7 million in independent expenditures to influence the nomination and election campaigns for President.<sup>111</sup> Eleven million dollars was spent in the general election,<sup>112</sup> and was thus in direct competition with the efforts of the political parties to elect their nominees. The Republicans were the overwhelming beneficiaries of independent expenditures, with \$12.5 million of the total spent to support Republican candidates and another \$737,000 spent to oppose Democrats.<sup>113</sup>

Party expenditures, although restricted to amounts well below the level of independent expenditures, may nonetheless be valuable to candidates because they may be spent in collaboration with campaign organizations. In 1980, however, the independent expenditure groups generally developed campaign themes consistent with those emphasized by the presidential and congressional candidates.<sup>114</sup> There is some evidence that the Republican party campaign managers engaged in regular information sharing with the managers of independent expenditure committees,<sup>115</sup> thus promoting unified efforts on behalf of Republican candidates.

Political parties appear to have received favorable treatment in the drafting of the FECA's contribution limits. An individual may give up to \$5,000 in any calendar year to a nonparty committee. By contrast, individuals may contribute up to \$20,000 annually to political party committees, and nonparty committees may give up to \$15,000 to party

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110. See *Buckley*, 424 U.S. at 54-59. For a critical comment on the effects of this aspect of the Court's decision in *Buckley*, see Claude & Kirchhoff, *The "Free Market" of Ideas, Independent Expenditures, and Influence*, 57 N.D. L. REV. 337, 339-66 (1981).

111. Fed. Election Comm'n, *FEC Study Shows Independent Expenditures Top \$16 Million*, Press Release 1 (Nov. 29, 1981).

112. *Id.*

113. *Id.* at 3.

114. See H. ALEXANDER, *supra* note 103, at 387-402; E. DREW, *POLITICS AND MONEY* 135-43 (1983).

115. E. DREW, *supra* note 114, at 136.

organizations.<sup>116</sup>

Party committees are also given preference over individuals and nonparty committees in the amounts they may contribute and spend to directly assist candidates. Individuals may give up to \$1,000 to candidates in each primary election and each general election;<sup>117</sup> nonparty committees may contribute up to \$5,000 to candidates.<sup>118</sup> By contrast, in Senate races, the national political party committees may contribute \$17,500.<sup>119</sup> Vastly more important, national party committees may make coordinated expenditures in Senate races in the amount of \$20,000 or two cents per voting age person in the state, subject to inflationary adjustment.<sup>120</sup> In 1982, permissible coordinated expenditures were \$655,900 in California, the nation's largest state, and \$36,880 in the nation's smallest jurisdictions.<sup>121</sup> In states with only a single member of the House of Representatives, the limit in House campaigns is the same as for the United States Senate,<sup>122</sup> generally \$36,800.<sup>123</sup> In other states, the limit is \$10,000, adjusted for inflation;<sup>124</sup> in 1982, this amount was \$18,400.<sup>125</sup>

The FECA also permits state and local party committees together to make coordinated expenditures of two cents per voting age person in Senate races and to expend an amount equal to the national party committee outlays in races for the House of Representatives.<sup>126</sup> In practice, however, state and local party committees have been only modestly involved in making coordinated expenditures.<sup>127</sup> The Republican state party committees have designated the national party organization as their "agent" for coordinated expenditures purposes, thus effectively doubling national party coordinated expenditures on behalf of candidates. This practice was challenged by the FEC and the Democratic Senate Campaign Committee, but was upheld by the Supreme Court.<sup>128</sup>

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116. 2 U.S.C. § 441a(a)(1), (2) (1976 & Supp. 1980).

117. 2 U.S.C. § 441a(a)(1)(A) (1976 & Supp. 1980).

118. 2 U.S.C. § 441a(a)(2)(A) (1976 & Supp. 1980).

119. 2 U.S.C. § 441a(h) (1976 & Supp. 1980).

120. 2 U.S.C. § 441a(c), (d)(3)(A) (1976 & Supp. 1980).

121. Sabato, *PACs, Parties, and Independent Groups*, in *THE AMERICAN ELECTIONS OF 1982*, at 74 (T. Mann & N. Ornstein eds. 1983).

122. 2 U.S.C. § 441a(c), (d)(3)(A) (1976 & Supp. 1980).

123. Sabato, *supra* note 121, at 74.

124. 2 U.S.C. § 441a(c), (d)(3)(B) (1976 & Supp. 1980).

125. Sabato, *supra* note 121, at 74.

126. 2 U.S.C. § 441a(c), (d)(3).

127. H. ALEXANDER, *supra* note 103, at 91.

128. *Federal Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27 (1981).

As in presidential contests, independent expenditure committees can spend unlimited sums to support or oppose candidates for Congress. In 1980, these expenditures totalled \$2.3 million in congressional races.<sup>129</sup> Republicans were the primary beneficiaries: \$643,000 was spent to advocate election of their candidates, while \$318,000 was spent on behalf of Democratic candidates.<sup>130</sup> In contrast to the \$1.3 million spent to urge the defeat of Democratic candidates, a mere \$57,000 was spent to attack their Republican opponents.<sup>131</sup>

In 1982, independent expenditures in congressional races reached \$5.7 million, an increase of 146 percent from 1980.<sup>132</sup> Again, Republicans were the principal beneficiaries of these expenditures, although their massive advantage dwindled slightly as liberal PACs came to the aid of Democrats. More than \$790,000 was spent to advocate the election of Republican congressional candidates, while \$4.0 million was spent to attack their Democratic opponents.<sup>133</sup> Independent expenditures on behalf of Democrats totaled \$368,800, while outlays to oppose Republicans were \$550,000.<sup>134</sup> The strategy of independent expenditure committees to devote their resources to negative campaigning thus persisted in 1982.

Independent expenditures were heavily concentrated in a small number of committees: the top ten spending groups accounted for \$5.2 million of total outlays of \$5.7 million.<sup>135</sup> The National Conservative Political Action Committee (NCPAC) continued to be the top independent spender with outlays of \$3.2 million.<sup>136</sup> Only two of the top ten independent expenditure committees could be regarded as "liberal" in orientation, and their expenditures were merely \$272,000.<sup>137</sup> Two trade association committees were also among the top ten, each spending approximately \$200,000.<sup>138</sup> Six of the top ten PACs, accounting for roughly \$4.5 million, were conservative organizations.<sup>139</sup>

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129. *FEC Study*, *supra* note 111, at 4.

130. *Id.*

131. *Id.*

132. Fed. Election Comm'n, *FEC Issues Final Report on 1981-82 Independent Spending*, Press Release 1 (Mar. 22, 1983). See also Cohen, *Giving Till It Hurts: 1982 Campaign Prompts New Look at Financing Races*, 14 NAT'L J. 2144-53 (1982).

133. *FEC Issues Final Report*, *supra* note 132, at 6.

134. *Id.*

135. *Id.* at 2.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*



In 1979, Congress greatly expanded the opportunity for local and state political party organizations to participate in the financing of campaigns for federal office. Unlimited coordinated expenditures by state and local party committees are now permitted for three types of activity: slate cards or sample ballots listing three or more candidates recommended by the party organization; registration and get-out-the-vote activities, except mass media advertising, conducted on behalf of presidential and vice presidential candidates; and campaign materials such as handbills, brochures, posters, stickers, signs, and so forth, but excluding mass media advertising, on behalf of any federal office candidate.<sup>140</sup>

The magnitude of these grassroots expenditures in 1980 is not known. According to FEC reports, Republican state and local party expenditures on behalf of federal office candidates in 1980 were \$837,300, and comparable Democratic party outlays were \$375,000.<sup>141</sup> It is estimated, however, that actual outlays by state and local party committees were \$15 million on the Republican side and \$4 million by the Democratic camp.<sup>142</sup>

It is apparent that state and local party expenditures for grassroots campaigning and for mobilizing voters will increase. In view of the limitations on national party committee spending in both presidential and congressional campaigns, the unlimited spending authorization in the 1979 FECA amendments is a powerful incentive for candidates and national party activists to assist local and state party organizations to raise funds. Furthermore, the FECA permits unlimited transfers of funds between national, state, and local party committees.<sup>143</sup> National party committees can transfer funds, which cannot be designated for candidate support to state and local party committees which may use them for grassroots campaigning on behalf of federal office candidates and for mobilizing voters.

Independent expenditure committees can spend unlimited amounts of money for all of these same purposes. In addition, the FECA specifically permits labor unions and other organizations to communicate with their members, and corporations to communicate with stockholders and executive/administrative personnel, for the purpose of advocating the election or defeat of candidates.<sup>144</sup> Nonpartisan

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140. 2 U.S.C. § 431(9)(B)(iv), (viii), (ix) (1976 & Supp. 1980).

141. Fed. Election Comm'n, *FEC Releases Final Figures on 1979-80 Major Political Party Activity*, Press Release 3 (Feb. 21, 1982) (corrected release).

142. H. ALEXANDER, *supra* note 103, at 299.

143. 2 U.S.C. § 441a(A)(4) (1976 & Supp. 1980).

144. 2 U.S.C. § 431(9)(B)(iii) (1976 & Supp. 1980).

registration and get-out-the-vote activities are exempt from FECA expenditure rules.<sup>145</sup>

Public financing of campaigns<sup>146</sup> is the newest and most controversial element in American national policy for regulating politics. At the national level, subsidies of \$3 million are provided to the major political parties to pay the costs of national presidential nominating conventions.<sup>147</sup> Adjusted for inflation, this subsidy amounted to \$4.4 million in 1980.<sup>148</sup> Public financing of national conventions relieves the parties of costs they formerly bore, allowing them to use their funds to support candidates or engage in party-building activities.

A candidate seeking the presidential nomination of a major party is eligible for public support of his campaign. To qualify for public financing a candidate must raise \$5,000 in each of twenty states through contributions from individuals in amounts not exceeding \$250; candidates are then eligible to have contributions in the amount of \$250 or less matched by federal funds.<sup>149</sup> An overall spending limit of \$10 million is imposed as a condition for receiving public funds.<sup>150</sup> Adjusted for inflation, this amount was \$14.7 million in 1980.<sup>151</sup> State by state expenditure limits are prescribed within the national spending ceiling.<sup>152</sup> The law also provides that a candidate's eligibility for public subsidies terminates thirty days after the second successive primary in which he receives less than ten percent of the vote; eligibility may be renewed if he receives twenty percent or more of the vote in a subsequent primary.<sup>153</sup>

Opponents of this public subsidy scheme argue that it reduces reliance by presidential candidates on traditional party activists.<sup>154</sup> The party may still be important, however, because a broad fundraising base is necessary in order to trigger matching grants. Moreover, the American party organizations have historically not been involved in prenomination contests. A more plausible complaint is that public campaign subsidies have encouraged states to adopt the primary sys-

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145. 2 U.S.C. § 431(9)(B)(ii) (1976 & Supp. 1980).

146. *See, e.g.*, Presidential Election Campaign Fund Act, Pub. L. No. 92-178, §§ 801-02, 85 Stat. 562 (1971) (codified at 26 U.S.C. §§ 9001-13 (1976 & Supp. V 1981)).

147. *Id.* at §§ 9008(a), (b).

148. *See* H. ALEXANDER, *supra* note 103, at 267.

149. 26 U.S.C. §§ 9033(b), 9034(a).

150. 2 U.S.C. § 441a(b)(1)(A), (c) (1976 & Supp. 1980).

151. H. ALEXANDER, *supra* note 103, at 136. An additional \$3 million was allowed for fundraising expenses pursuant to 2 U.S.C. § 431 (9)(B)(vi) (1976).

152. 2 U.S.C. § 441a(b)(1)(A) (1976).

153. 26 U.S.C. § 9033(c)(1)(B), (4)(B) (1976 & Supp. V 1981).

154. Ranney, *supra* note 2, at 242; J. KIRKPATRICK, *supra* note 2, at 14.

tem, thus diminishing the role of state and local party leaders in selecting presidential nominees. The trend toward primaries was, however, already strong before the advent of public financing of nomination campaigns.<sup>155</sup>

Public funding of general election campaigns is said to weaken the link between candidates and party organizations by relieving office-seekers from virtually all dependence on party committees.<sup>156</sup> This argument is somewhat weakened by the authorization for parties to make coordinated expenditures and to engage in general political advertising stressing issues or partisan affiliation. Moreover, the 1979 amendments give state and local parties wide scope to directly support presidential candidates; the FECA's authorization for unlimited transfers between party committees invites the national party organizations to be substantially involved in financing state and local campaign activities.

The absolute prohibition on private contributions to presidential campaigns creates an opportunity for parties to win financial support from interested citizens who would otherwise give to presidential candidates. There is evidence, however, that independent expenditure committees have been quicker and more adroit in exploiting this possibility; they have solicited contributions by claiming that they are permitted to campaign directly for the candidate since they are not subject to the candidate's spending limit.<sup>157</sup> A number of commentators have urged that presidential candidates be authorized to receive small individual contributions in order to encourage public participation and to weaken the appeal of independent expenditure groups.<sup>158</sup> But this would not aid the parties. Instead, it might further attenuate the party's role in presidential elections by allowing greater concentration of financial resources in the presidential candidate's campaign apparatus.

The importance of party affiliation in American politics is heightened because eligibility for public financing is dependent on the status of a candidate's political party.<sup>159</sup> Major parties receive the full statutory subsidy. Minor parties receive a proportional subsidy, and new parties may receive a post-election grant if they gain enough votes.

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155. THE AMERICAN ELECTIONS OF 1980, at 369 (A. Ranney ed. 1981).

156. Ranney, *supra* note 2, at 242.

157. Democratic National Committee Task Force on Independent Expenditures, LIBERTY OR LOOPHOLE: INDEPENDENT EXPENDITURE COMMITTEES IN FEDERAL ELECTION CAMPAIGNS 40-42 (1982).

158. See, e.g., Adamany, *Letters*, 6 REGULATION 2 (1982); Note, *Independent Political Committees and the Federal Election Laws*, 129 U. PA. L. REV. 955, 988-99 (1981).

159. 26 U.S.C. §§ 9002(6), (7), (8), § 9004(a) (1976 & Supp. V 1981).

In a provision which does not bear directly on political parties, the FECA authorizes unions, corporations, and trade associations to establish political action committees, to expend treasury funds to administer these committees, to use treasury money to solicit certain employees or members for contribution to PACs, to engage in nonpartisan registration and get-out-the-vote drives, and to advocate support for candidates among shareholders, members, and employees.<sup>160</sup> The funds raised by political action committees can be contributed directly to candidates, up to a limit of \$5,000 in each election. Christopher Arterton has observed that:

[T]he most detrimental aspects of the [FECA] for political parties come about through the advantages open to institutional competitors. For example, over the past five elections, congressional candidates have become increasingly dependent upon funds channeled through political action committees . . . . At the governing stage, they are real competitors to parties for influence upon the behavior of public officeholders.<sup>161</sup>

Political action committees in the aggregate now exceed parties in the amount contributed to candidates.<sup>162</sup> PACs also spend about the same amount as parties on direct efforts to influence voter choices among candidates.<sup>163</sup>

The FECA is not the sole cause of the new muscle of PACs. Non-connected committees, mainly ideological or issue-oriented groups unconnected with economic institutions, raise most of their funds through mass mail appeals and devote most of their campaign-related expenditures to mass media or mass mail efforts urging support or opposition to specific candidates. Their activities in fundraising and advocacy are possible because of modern technology. Their authorization is embedded not in the FECA, but in Supreme Court decisions extending First Amendment protection to independent expenditures.

Corporate political action committees have experienced the greatest growth in money and numbers, and it is the corporate PACs that have the greatest potential for further growth.<sup>164</sup> The FECA's authorization for corporations and unions to establish the PACs, use treasury funds for administration and solicitation, contribute to candidates

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160. 2 U.S.C. § 441b(b)(2) (1976 & Supp. 1980).

161. Arterton, *Political Money and Party Strength*, in *THE FUTURE OF AMERICAN POLITICAL PARTIES: THE CHALLENGE OF GOVERNANCE* 101, 118-19 (J. Fleishman ed. 1982).

162. Adamany, *supra* note 89, at 175.

163. *See infra* text accompanying notes 282-85.

164. E. Epstein, *PACs and the Modern Political Process* (paper delivered at the 1982 Conference on the Impact of the Modern Corporation).

through PACs, and engage in candidate advocacy is the principal cause of the emergence of these formidable competitors to political parties.

### B. The Financial Vitality of Political Parties

Despite forecasts of party decline, America's political parties now show greater financial vitality than at any time since World War II. Indeed, they are probably financially stronger now than at any time in this century.

In 1969-70, the Republican National Committee (RNC) reported revenues of \$18 million, a sum that astonished the nation's leading commentator on political finance.<sup>165</sup> The Democrats raised and spent considerably less.<sup>166</sup> During the 1972 campaign, national Republican party committees apparently spent \$8.3 million on presidential and congressional campaigns, while the Democrats were credited with spending roughly \$4.8 million.<sup>167</sup> This was in the election year that marked the transition to the FECA, which has subsequently been criticized as being responsible for the ruin of political parties.

After eight years under the FECA, the Republican national committees raised \$130.3 million in the 1979-80 election cycle, while their Democratic counterparts had receipts of \$23 million.<sup>168</sup> In the "off year" 1982 election cycle, the national parties raised even greater sums. In the 1981-82 period, Republican national committees raised \$191.0 million and their Democratic rivals raised \$31.7 million.<sup>169</sup>

The financial health of state and local parties is not as easily estimated. Fewer than 600 of an estimated 7300 party committees at the local, state, and national levels come within the financial reporting provisions of the FECA. These undoubtedly include a preponderance of the committees with substantial financial activity. State and local Republican party committees reporting to the FEC had net receipts of \$33.8 million in 1979-80; comparable Democratic party organizations had net receipts of \$9.1 million.<sup>170</sup> In 1981-82 Republican state and local committees reported to the FEC that they had received \$23.9 million, while their Democratic counterparts reported receipts of \$7.6 mil-

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165. H. ALEXANDER, *MONEY IN POLITICS* 111 (1972).

166. *Id.* at 116.

167. H. ALEXANDER, *FINANCING THE 1972 ELECTION* 84-90 (1976).

168. *FEC Releases Final Figures*, *supra* note 141, at 2. These figures exclude \$5.1 million received by the Democrats and \$5.4 million received by the Republicans under the Presidential Election Campaign Fund Act to subsidize the national party conventions.

169. Fed. Election Comm'n, *FEC Final Report for 1981-82 Confirms Republicans Outspent Democrats 5 to 1*, Press Release 2 (Apr. 26, 1983).

170. *FEC Releases Final Figures*, *supra* note 141, at 2.

lion.<sup>171</sup> A further bit of evidence that state and local party committees have become financially stronger is that average state party budgets in sixteen states increased from \$188,000 in the mid-1960's to \$341,000 in the late 1970's.<sup>172</sup>

National, state, and local party committees subject to federal reporting requirements accounted for approximately \$32.3 million, or twenty-four percent, of total expenditures of \$136 million in 1972 campaigns for federal office.<sup>173</sup> A preliminary estimate indicates that expenditures of \$740 million were made in 1980 by presidential and congressional candidates and their supporters, political action committees, and political parties.<sup>174</sup> The \$196.8 million in net disbursements by national, state, and local party committees in 1980 represents a maximum of twenty-eight percent of total political expenditures for federal candidates and by federally-registered committees.<sup>175</sup> Allowing for some unevenness in the figures, party roles of twenty-four percent of total spending in 1972 as the FECA was taking effect, and twenty-eight percent in 1980, after it was well-established, certainly do not constitute evidence of party decay resulting from enactment of the present federal campaign finance laws. It also does not indicate significant party revitalization, although the uses of party money may support that conclusion.<sup>176</sup>

The vitality of national Republican party financing has been made possible by advances in technology, the party's investment in fundraising, and its stable central office bureaucracy. Beginning in the early 1970's, the Republicans made systematic party appeals on behalf of the Republican Sustaining Fund to those individuals who had made small contributions to GOP presidential candidates.<sup>177</sup> In 1980, aided by a special postal subsidy granted to the parties by Congress in late 1978, the Republican National Committee (RNC) had a contribution base of 1.2 million persons.<sup>178</sup> The RNC raised about eighty percent of its

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171. *FEC Final Report for 1981-82 Confirms Republicans Outspent Democrats 5 to 1*, *supra* note 169, at 2.

172. *See* J. Gibson, C. Cotter, J. Bibby, & R. Huckshorn, *supra* note 49, at 19.

173. This figure is inexact because of inconsistency of reporting. The calculations are based on data in H. ALEXANDER, *supra* note 167, at 78, 84, 86, 96.

174. This estimate is based on data in H. ALEXANDER, *supra* note 103, at 104.

175. Party spending includes federal grants for the operation of national party conventions. The data is derived from *FEC Releases Final Figures*, *supra* note 141.

176. *See infra* part IV C.

177. H. ALEXANDER, *FINANCING THE 1976 ELECTION* 711-12 (1979).

178. *Cf.* Clark, *The RNC Prospers, the DNC Struggles as They Face the 1980 Elections*, 12 NAT'L J. 1617, 1618 (1980) (RNC papers offer estimate of expected base); REPUBLICAN NATIONAL COMMITTEE, 1981 CHAIRMAN'S REPORT 12-13, 22-23, 31-32 (1981).

funds through mass mail appeals, relying on gifts averaging only \$29.<sup>179</sup> The National Republican Congressional Committee (NRCC) relied even more heavily on small gifts, receiving ninety percent of its receipts from 300,000 contributions averaging \$23.<sup>180</sup> By 1981 national Republican committees had contacted forty million households with fund appeals and had an active contributor list estimated between 1.7 million and 2.1 million.<sup>181</sup>

The remarkable information storage and retrieval capacities of computers were necessary for the enormously successful building of the Republican contributor base. Also essential for the GOP's success was the party's willingness to invest in "prospecting" for contributors, staff and equipment, and mail appeals. An extended period of investment and development was possible because the Republican national party organizations had relatively stable leadership and professional staff to carry out a consistent, long-term plan to build up the party's financial capacity.<sup>182</sup>

The Republicans also continued to seek money from large donors, although the definition of "large donors" has been revised downward since 1972 when the Republican presidential candidate received gifts of \$50,000 or more from 153 individuals.<sup>183</sup> The Republican Eagles Program, which seeks \$10,000 gifts, increased from 198 persons in 1975 to 865 in 1980.<sup>184</sup> The "Victory '80" program, soliciting contributions of \$500, \$1,000, or \$2,500, raised more than \$1 million.<sup>185</sup> A convention gala and a network of nineteen party dinners during the 1980 general election campaign raised more than \$4 million, which was shared with state and local parties.<sup>186</sup> A special PAC 40 Club raised sums of \$5,000 from more than forty political action committees.<sup>187</sup> In 1980, NRCC's National Leadership Council had more than 400 members, each of

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179. Clark, *supra* note 178, at 1618.

180. Cohen, *Democrats Take a Leaf from GOP Book with Early Campaign Financing Start*, 13 NAT'L J. 920, 923 (1981).

181. Kayden, *Parties and the 1980 Presidential Election*, in FINANCING PRESIDENTIAL CAMPAIGNS: AN EXAMINATION OF THE ONGOING EFFECTS OF THE FEDERAL ELECTION CAMPAIGN LAWS UPON THE CONDUCT OF PRESIDENTIAL CAMPAIGNS 6.11 (C. Arterton ed. 1982); Sabato, *supra* note 121, at 75.

182. On stability in the national party bureaucracies, see Adamany, *Political Parties in the 1980's*, in MONEY AND POLITICS IN THE UNITED STATES: FINANCING ELECTIONS IN THE 1980's (M. Malbin ed. 1983).

183. H. ALEXANDER, *supra* note 167, at 370-99.

184. See Adamany, *supra* note 182, at 108-09.

185. *Id.*

186. *Id.*

187. *Id.*

whom contributed \$2,500 or more.<sup>188</sup> The National Republican Senatorial Committee (NRSC) was supported by a 4000-member Business Advisory Board, consisting of contributors of \$250 to \$750, and by the Senate Republican Trust, a group of corporate executives who contribute \$10,000 annually.<sup>189</sup>

National Democratic fundraising has been vastly less impressive. Incumbency in the White House and in Congress hindered party efforts because those in control of the government were able to go directly to individual large contributors and to PACs to raise campaign funds.<sup>190</sup> Moreover, the advantages of incumbency—including staff, the postal frank, and readily available radio and television studios—made the need for party fundraising and support services substantially less urgent for Democrats than for Republicans.

Until 1982, the Democrats carried heavy indebtedness from their financial debacle in 1968, and were unable to invest in the technology and prospecting activities essential to build a small contributor base.<sup>191</sup> Furthermore, the party's coalition character meant that candidates reached out to political action committees, various ideological constituencies, and other fund sources that were not party oriented. Finally, the rapid turnover of leadership in the Democratic National Committee (DNC) and the DNC's subservience to short-term White House political goals during the Carter presidency prevented long-term commitment to party-building and fundraising activities.<sup>192</sup>

An entirely different concern is whether the Democrats have the capacity to develop a base of small contributors sufficient to provide substantial funding.<sup>193</sup>

The differences in demographics between the two parties may ultimately affect the ability of the Democrats to raise sums comparable to the Republicans. Since the traditional constituencies of the Democratic party are not generally affluent, direct mail fundraising may never be as successful for them as it has been for the Republicans, even though the Democrats currently have a larger pool of potential supporters. Despite the fact that the average direct mail contribution is quite small, research on contribution patterns reveals that income is directly and strongly related to

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188. *Id.*

189. *Id.* at 76-77.

190. Arterton, *supra* note 161, at 109-110.

191. Adamany, *supra* note 89, at 167-68. *See also Democrats Pay Off '68 Debt But GOP Has Money Edge*, Wash. Post, June 6, 1982, at A2, col. 1.

192. Adamany, *supra* note 182, at 86; Arterton, *supra* note 161, at 109-110; Kayden, *supra* note 181, at 6.19-6.20.

193. *See generally* Adamany, *supra* note 182, at 105-06.



political giving.<sup>194</sup>

There is some history of Democratic success in mass fundraising. Both the McGovern and McCarthy campaigns won support from large numbers of contributors;<sup>195</sup> their campaign rosters, however, were not properly maintained and were not fully shared with the party organization.<sup>196</sup> From 1972 through 1975 the Democratic National Committee sponsored four telethons, which raised \$17.1 million in average gifts between \$11 and \$15. The most successful attracted contributions from 390,000 people.<sup>197</sup> It is argued, in any case, that since more than eighty million Americans identify themselves in the polls as Democrats, very low levels of participation—between 1.5 and 2 percent of party identifiers—would still allow the Democratic party to establish as large a contributor base as the Republicans.

In 1981, leaders of the DNC and the Democratic Congressional Campaign Committee made commitments to invest modestly in mass mailings and to reinvest the resulting revenues to expand their small contributor base. They raised \$2.7 million from mass mail appeals and reinvested \$2.1 million in further appeals.<sup>198</sup> One commentator concluded that in 1982 “the Democrats demonstrated the self-discipline necessary to developing a successful direct mail program by reinvesting the proceeds of early ‘prospecting’ mailings into additional solicitations; and the party’s list of contributors consequently increased from 25,000 in 1981 to more than 220,000 by the end of 1982.”<sup>199</sup> By late 1983, the DNC’s contribution list had grown to 324,000.<sup>200</sup> Nonetheless, the Democrats still remain heavily reliant on PAC contributions, which increased markedly in 1982 as labor unions decided that they must take an interest in rebuilding the Democratic national organization,<sup>201</sup> and in obtaining large individual gifts.

The conclusion that emerges from a review of contemporary party financing is that technology, investment, and stable organization per-

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194. Arterton, *supra* note 161, at 110.

195. H. ALEXANDER, FINANCING THE 1968 ELECTION 44 (1971); H. ALEXANDER, *supra* note 167, at 293-94.

196. Adamany, *supra* note 182, at 96.

197. Ellwood & Spitzer, *The Democratic National Telethons: Their Strengths and Failures*, 41 J. POL. 828-64 (1979); H. ALEXANDER, *supra* note 177, at 396.

198. Cook, *Democrats Develop Tactics: Laying Groundwork for 1984*, 40 CONG. Q. WEEKLY REP. 1591, 1595 (1982).

199. Sabato, *supra* note 121, at 83.

200. Mollison, *Manatt Helps Organize Distraught Democrats*, Detroit Free Press, Nov. 16, 1983, at 8C, col. 1.

201. B. Edsall, *Labor is Becoming Financial Mainstay of Democratic Committee*, Wash. Post, Sept. 19, 1981, at A3, col. 1.

mitted the Republican party to attain the greatest financial strength in modern political history. For the first time a political party's finances have been solidly based primarily on widespread support from millions of contributors of small amounts. The Democrats have similar prospects, although they remain to be tested. The FECA has not been a bar to the remarkable revitalization of party financial strength. Even though the FECA has prohibited large contributions, it has not prevented the parties from seeking substantial sums from both individuals and political action committees.

One may argue that parties could be further strengthened by increasing or eliminating the contribution limits. For the Democrats, this would purportedly provide an opportunity to raise enough investment money to develop a mass fundraising program competitive with the successful Republican system. But it might also sap the party's will to shift from large gifts to a great many small contributions. Ultimately, the lifting of contribution limits would disproportionately advantage the Republicans. They have always raised more money from large contributors, and they continue to win the support of most of the very wealthy and of the upper middle classes.

Even if both parties' finances would be strengthened by eliminating or increasing contribution limits, valid purposes of the FECA would be defeated by such amendments. First, the contribution limits were intended to diminish the corruption that has often accompanied large contributions. It is true that contributions to parties are not as directly corrupting as those to candidates; nonetheless, they do have corruptive potential, especially if increased party financing would strengthen the influence of party organizations in policymaking and governance. Second, the contribution limits were an attempt to increase the equality of citizens in elections. The equality of the vote is seriously diluted by rampant inequality in resources or influence in the processes leading up to elections.<sup>202</sup> No form of political activity lends itself to greater inequality than contributing money, and any substantial loosening of existing contribution limits would reintroduce this element of inequality into the political process.<sup>203</sup>

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202. See, e.g., Shockley, *Money in Politics: Judicial Roadblocks to Campaign Finance Reform*, 10 HASTINGS CONST. L.Q. 679 (1983).

203. See Adamany, *supra* note 92, at 570-71; H. ALEXANDER, *supra* note 90, at 9 (1976); D. ADAMANY & G. AGREE, *POLITICAL MONEY* 2-4 (1975).

### C. Party Money and Party Activities

*Structuring the Vote and Political Socialization.* The revitalization of party funding has permitted some party efforts that are clearly intended to structure the vote along party lines and has allowed other efforts that indirectly may have that effect. Most unexpected was the advent of "institutional advertising"—that is, party-sponsored advertising promoting the party and its themes without mentioning specific candidates. This initiative was due in part to the FECA's limits on party contributions to candidates and on coordinated expenditures by parties on behalf of candidates. Having reached these legal limits, the Republican party attempted to find additional ways to promote candidates. Their decision was straightforward: advertise the party and party themes, thereby indirectly assisting the candidates on the party ticket.

In 1980, the national Republican committees spent \$9.4 million<sup>204</sup> on a nationwide television campaign featuring six different messages attacking Democratic "failures" in the areas of inflation, unemployment, energy, national security, and government spending. The most visible advertisement featured a look-alike for House Speaker Tip O'Neil and focussed discontent with Democratic policies through him. These campaign commercials emphasized party voting by consistently closing with the slogan "Vote Republican. For a Change."<sup>205</sup> Republican polls showed a high recollection of these advertisements.<sup>206</sup>

In 1982, the Republicans sponsored party-oriented commercials urging voters to "stay the course" and claiming that President Reagan had increased social security benefits.<sup>207</sup> The RNC also sponsored a weekly radio address by the President, which reached both listeners to the program and those who read or heard about the President's views as reported in the media. The GOP institutional advertising campaign, which stretched from late spring through election day, cost \$15 million.<sup>208</sup> Even more unusual was the Republicans' \$2.3 million television campaign in the 1981 non-election year. It praised the President's success in enacting his budget and tax measures and featured the

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204. Adamany, *supra* note 182 (\$9.4 million); H. ALEXANDER, *supra* note 103, at 310 (\$9.5 million).

205. Robinson, *The Media in 1980: Was the Message the Message?*, in *THE AMERICAN ELECTIONS OF 1980*, 185-86 (A. Ranney ed. 1981); Clark, *supra* note 178, at 1620; Adamany, *supra* note 182, at 82.

206. Adamany, *supra* note 182, at 82.

207. Sabato, *supra* note 121, at 78.

208. *Id.* at 77.

theme: "Republicans—Leadership That Works for a Change."<sup>209</sup>

The Democrats' party-oriented campaign was smaller, involving only about \$1 million in 1982.<sup>210</sup> It gave more emphasis to striking at the Republicans than to the Democratic party and its themes. In one advertisement a Republican elephant rampaged through a china shop, trampling social programs such as social security. In another, a Baltimore factory worker who had been featured in Republican ads in 1980 recanted his previous support of the GOP and reported that many of his fellows had suffered unemployment because of the Reagan programs.<sup>211</sup>

Both parties made efforts to structure and mobilize the vote through grassroots campaigning and registration and get-out-the-vote drives. Such activities have long been performed by the parties. With the emergence of significant financial strength in the Republican national party, the sponsorship of these grassroots campaign efforts has been shifting from their traditional locus in ward, town, and city committees to the national party organizations. The 1979 amendments to the FECA authorized local party committees to engage in unlimited expenditures for grassroots campaigning; the FECA's provision allowing unlimited transfers of funds between party committees permitted the RNC to fund the local committees' efforts. Although it is difficult to pinpoint the actual sums involved, several commentators believe that in 1980 the Republican National Committee was responsible for providing \$9 million to local party committees for grassroots campaigning, either by direct intraparty transfers or by channeling money from contributors to strategically located local party units.<sup>212</sup> The cost of Republican state and local grassroots campaign activities to aid candidates for federal office in 1980 has been estimated at \$15 million, while similar Democratic activities have been calculated at \$4 million.<sup>213</sup>

In 1980, the RNC spent approximately \$1 million to conduct a voter registration, identification, and get-out-the-vote program called "Commitment '80." The RNC claims that between 800,000 and one

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209. *Id.*

210. *Id.* at 85.

211. *Id.*; Broder, *Dixie the Elephant is Smashing in Democratic Party Ad Debut*, Wash. Post, Sept. 15, 1983, at A15, col. 1.

212. Kayden, *supra* note 181, at 6.16. One estimate puts 1980 local and state party spending on behalf of the Republican presidential candidate at \$15 million. H. ALEXANDER, *supra* note 103, at 113. Of this sum, \$9 million was reported to have been "channelled" by Republican party operatives directly from contributors to state and local party committees. *Id.* at 302; E. DREW, *supra* note 114, at 105, 109.

213. Alexander, *supra* note 103, at 113-14.

million people were involved in some grassroots activity, 100,000 volunteers hosted parties in their homes to get the massive voter drive underway, 85,000 volunteers participated in training and leadership meetings to give direction to these efforts, and 700,000 or more voters were registered.<sup>214</sup>

In 1980, the Democratic National Committee reportedly registered about 1.1 million new Democratic voters in fifteen states at a cost of \$750,000 and made phone contacts with 5 million voters in twenty-two states at a cost of about \$600,000.<sup>215</sup> More than two-thirds of these calls were principally of a vote structuring character because they urged support for the Democratic ticket. The remainder were get-out-the-vote reminders. The scope and success of this program has been doubted by some familiar with the DNC operation.<sup>216</sup>

Some party expenditures could be characterized as vote structuring activities, but their relationship to vote structuring is at best indirect. Both parties, for example, have made substantial efforts to put research, radio and television commercials, and other information at the disposal of candidates and their managers.<sup>217</sup> Both parties issue press releases targeted to districts in which opposition party officeholders are thought to be vulnerable on the issues.<sup>218</sup> The training of campaign staffs has been said to indirectly influence campaign activities by bringing the staff in closer coordination with the party's position.<sup>219</sup> Yet most of these activities focus attention on candidates or officehold-

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214. Clark, *supra* note 178, at 1620; Adamany, *supra* note 182, at 83. One commentator has said that "whether those [800,000] volunteers later went out into the neighborhoods is questionable." Kayden, *supra* note 181, at 6.12. She does not attribute this to financial or organizational failure, but rather to changes in American society which already have made the old-style party organizations obsolete. "Most believe the kinds of grassroots activities called for in the [Commitment '80] program were no longer functional and no amount of money or planning could alter that fact. . . . Explanations reflect the changed nature of American society from the days when such activities were more common: people no longer welcome strangers at the door, nor are they eager to knock on strange doors; in a great many households all adults are employed outside the house and when they are at home, they are less eager to have interruptions than they might have been in the past. . . . Changes in communication technology . . . have eliminated the need for door-to-door activities: direct mail and paid media enable the party—or any other group—to communicate directly and fully with voters in a far more sophisticated and complete manner than volunteer message carriers, however well-trained and articulate." *Id.* at 6.13.

215. L. Francis, *The Democratic National Committee and the 1980 Elections (1981)* (report presented to the Democratic National Committee).

216. *See* Adamany, *supra* note 182, at 91.

217. Arterton, *supra* note 161, at 128; Sabato, *supra* note 121, at 76-77, 84; Roberts, *Parties' Outlook: Distinctly National*, N.Y. Times, May 4, 1982, at A28, col. 3.

218. Sabato, *supra* note 121, at 77, 84.

219. Arterton, *supra* note 161, at 128.

ers rather than on the party as a whole; in this respect, the parties are actually widening the public's perceived gap between the relevance of political parties and of candidates to issues and governance.

A case can be made that both parties are extending their efforts in citizen socialization toward politics. Certainly the massive mail appeals for money are attempts to persuade citizens to participate in political affairs. The high response to these appeals might be regarded as success by parties in persuading people to become involved in politics. Similarly, the programs to mobilize volunteers, as in "Commitment '80," are party efforts to involve citizens in political affairs regardless whether the mobilization activities are actually successful in controlling or delivering the votes in the precincts.

Notwithstanding these efforts, there is reason to doubt that modern party campaign activities do very much to structure the vote or to promote political socialization. The parties' "institutional advertising" has a distinctly negative quality, blaming the opposition or accusing them on emotional issues. Mass mail fund appeals tend to have the same character: they are less party-oriented than issue-specific, and they generally exploit issues that engender or play on fear or hostility. While these activities may influence voting, it is doubtful that they transmit political values, an understanding of a party's platform, or an awareness of a candidate's views on the issues of the day.

It has been established that there is less party-line voting than before, that fewer voters think of themselves as partisans, and that there is less connection between party labels and the vote.<sup>220</sup> It appears that modern campaign activities do little to extend citizens' political knowledge or involvement or to structure the vote. A desirable contribution of parties to American politics has been diminished. The relationship of campaign finance laws and practices to this loss, however, is minimal.

*Recruitment of Political Activists.* In contrast to the parties' small role in vote structuring and political socialization, parties may significantly influence candidate recruitment. This is clearest in the affluent Republican national party. Republican recruitment efforts have had three distinct elements: (1) investing funds in state campaigns to promote the fortunes of aspiring candidates who would later be in position to run for Congress; (2) assuring substantial "start up" funds for candidates for the House and Senate; and (3) providing campaign services to candidates. The Democrats have lacked the financial resources to sig-

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220. See *supra* text accompanying notes 41-47.

nificantly engage in these activities. The Democrats have also had less incentive to engage in major recruitment activities because prior to 1982 they held substantial majorities in both houses of Congress and could afford the luxury of an "incumbent preservation" strategy.

The parties have been stimulated to strengthen their candidate recruiting activities by an important body of scholarship suggesting complex links between the attractiveness of specific candidates, the mobilization of political resources, and election outcomes.<sup>221</sup> These findings tend to displace theories that congressional races are largely ordained by presidential coattails in the presidential election years and by voter satisfaction with presidential performance, especially presidential management of the economy, in the "off year" elections.

Emerging scholarship suggests that the single most important variable in congressional races is the attractiveness of the challenger, such as the proven ability to win votes in previous elections, and his or her ability to mobilize political resources, especially campaign funds. Attractive congressional candidates, especially those who have previously been elected to other offices or who have made strong showings in past races for Congress, are most likely to come forward if they assess their prospects for success favorably. An important element in this assessment has always been the President's popularity and the condition of the economy at the time—usually six months or more before an election—when candidates are deciding whether to throw their hats into the political ring. Another factor is their ability to obtain advance commitments of the political resources, especially money, necessary to wage strong campaigns.

Those who provide political resources also assess candidates' prospects for success. Only rarely do these political elites contribute resources solely from ideological motivations. They seek a reasonable degree of certainty that candidates they support have real prospects to win elections. This especially affects challengers. If their prospects are not strong, contributors may engage either in a strategy of supporting incumbents, since it is both wasteful and potentially dangerous to support losing challengers, or in a strategy of foregoing contributions altogether, especially if the incumbent's record is unpalatable.

The evidence is quite persuasive that there is a strong relationship between a challenger's spending and his prospects of electoral success.<sup>222</sup> There is no similar correlation between incumbent spending

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221. See, e.g., G. JACOBSON, MONEY IN CONGRESSIONAL ELECTIONS (1980); G. JACOBSON & S. KERNELL, STRATEGY AND CHOICE IN CONGRESSIONAL ELECTIONS (1981).

222. See G. JACOBSON, *supra* note 221, at 141-57.

and election day victory. The reason is apparent. Incumbents are reasonably well-known, and voters usually have some generalized and reasonably well-fixed attitude of support or dislike for them. By contrast, challengers tend to be relatively unknown; the availability of campaign funds allows them to increase their visibility and shape a favorable image.

It was recently suggested that political parties might break the mutually re-enforcing cycle of calculations by candidates and major contributors.<sup>223</sup> The authors of this theory reasoned that "strong parties might be able to deploy candidates and campaign resources to counteract rather than reinforce the effects of national forces."<sup>224</sup> If funds were provided to relatively attractive candidates, their prospects would improve even in the face of a grim political and economic climate. Resource-providing elites would be drawn in to provide further support because they would recognize that the disadvantaged party's candidates were running well. The same strategists predicted that because of strong Republican candidate recruitment, 1982 would not be as good a year for Democrats as would ordinarily be expected.<sup>225</sup> In fact, the Republicans lost only twenty-six seats in the House of Representatives rather than the roughly forty-five seats that were predicted would be lost in light of the nation's deteriorated economic condition. The explanation for the Democrats' relative lack of success: "the abundance of Republican money and campaign services."<sup>226</sup>

When the lesson of the 1982 election becomes generally understood, party recruitment will become steadily more important. Attractive candidates will be more readily persuaded that their prospects are good, despite adverse national political or economic conditions, if their national party organization can provide substantial funding and support services. As a result, party success in recruiting strong candidates will also improve.

All of this has important consequences for voters and for government. It means voters will have a choice of more visible and more capable candidates even under conditions which formerly tended to produce weak challengers. Voters will be better able to control public officials and public policy because they can more readily exercise choices at the polls. Under continually competitive conditions, incum-

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223. See Jacobson & Kernell, *Strategy and Choice in the 1982 Congressional Elections*, 15 PS 423-30 (1982).

224. *Id.* at 427.

225. *Id.* at 429-30.

226. See Sabato, *supra* note 121, at 80.



bents will presumably pay closer attention to constituent interests and preferences as they make public policy. A final possibility is that parties will assume greater influence in the governmental process because their support for challengers will often be essential both to recruiting candidates and to assuring the viability of their campaigns. This potential party role in governance, however, is subject to substantial discount by external conditions which tend to confine party discretion in recruiting and financing candidates.<sup>227</sup>

The Republican party's recruitment efforts are complex. In 1978, for example, the Republican National Committee contributed \$530,000 to GOP gubernatorial candidates and spent \$1.7 million to aid the party's state legislative candidates.<sup>228</sup> One major purpose of these expenditures was to elect Republican officeholders who could protect the party's interest in the reapportionment of legislative and congressional districts that would occur after the 1980 election; another purpose was to "restock the primary recruitment pools for congressional candidates" by placing possible contenders in state legislative seats where they could gain experience and visibility.<sup>229</sup> National party expenditures to aid state and local candidates continued in 1980 and 1982.<sup>230</sup>

The Republican party has also made significant contributions to congressional candidates.<sup>231</sup> Republican general election candidates for the United States Senate in 1980 spent \$35 million in their nomination and election campaigns, including party contributions of \$677,000.<sup>232</sup> Party committees made additional coordinated expenditures of \$5.4 million on their behalf.<sup>233</sup> Party outlays thus accounted for 15.1 percent of the funds spent directly by or on behalf of Republican Senate candidates. In races for the House of Representatives, Republican general election candidates spent \$58.6 million, including \$3.5 million in contributions from party committees.<sup>234</sup> These committees spent an additional \$2.2 million in coordinated expenditures. Total

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227. See *infra* notes 263-85, 297-305, 320-24 and accompanying text.

228. Bibby, *Political Parties and Federalism: The Republican National Committee Involvement in Gubernatorial and Legislative Elections*, 9 PUBLIUS 229, 231, 235 (1979). Party efforts to win control of state legislatures continued in 1980. See Buchanan, *National GOP Pushing Hard To Capture State Legislatures*, 38 CONG. Q. WEEKLY REP. 3188-92 (1980).

229. Mann & Ornstein, *The Republican Surge in Congress*, in THE AMERICAN ELECTIONS OF 1980, at 263, 264-66 (A. Ranney ed. 1981).

230. Adamany, *supra* note 182, at 100.

231. See Sabato, *supra* note 121, at 74-75.

232. Fed. Election Comm'n, *FEC Releases Final Statistics on 1979-80 Congressional Races*, Press Release 3-4 (Mar. 7, 1982) (corrected release).

233. *Id.*

234. *Id.*

party outlays therefore constituted \$5.7 million, or 9.4 percent, of total disbursements of \$60.8 million.<sup>235</sup>

This party role in total expenditures appears modest on the surface, but its importance should not be understated. The Republicans concentrated their funds in those districts in which their candidates for the House of Representatives appeared to have strong prospects for success. Generally they were able to make the maximum contributions and coordinated expenditures permitted by law in those races.<sup>236</sup> They were also able to give the maximum financial support permitted by law in all Senate races where GOP candidates had reasonable electoral prospects.<sup>237</sup>

Republican party committees were able to provide this financial support to their candidates almost immediately after they were nominated because they had raised money steadily during the interelection period. The impact of this assured early money can scarcely be overstated. It allowed candidates to develop early campaign momentum, which attracted additional funds and other political resources. These guaranteed early funds surpass all other recruitment incentives to candidates.

The pattern of Republican financial assistance to candidates continued in 1982. Republican general election candidates and party organizations spent \$62.5 million in Senate races,<sup>238</sup> party contributions were \$600,000 and party coordinated expenditures were \$8.7 million,<sup>239</sup> for a party effort totaling 14.9 percent of all outlays. In House races, Republican general election candidates and party committees spent \$92 million.<sup>240</sup> Contributions of \$5.3 million and coordinated expenditures of \$4.6 million accounted for 10.8 percent of campaign spending.<sup>241</sup>

The Democrats have not developed a strong financial base like that of the Republican national party. This has diminished the Democratic opportunity to use campaign funds as a recruitment tool. In 1979-80, for example, net candidate disbursements and party coordinated expenditures for Democratic general election candidates for the Senate totaled \$41 million.<sup>242</sup> Total party contributions and coordi-

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235. *Id.*

236. Sabato, *supra* note 121, at 74-75.

237. *Id.*

238. See Fed. Election Comm'n, *FEC Releases Data on 1981-82 Congressional Spending*, Press Release (May 2, 1983).

239. *Id.*

240. *Id.*

241. *Id.*

242. *FEC Releases Final Statistics*, *supra* note 232.

nated expenditures were only \$1.6 million, or 3.9 percent.<sup>243</sup> Similarly, candidate disbursements and coordinated expenditures for Democratic general election House candidates totaled \$57.5 million, while party contributions and coordinated expenditures were \$1.3 million or 2.3 percent.<sup>244</sup> This low level of party support, even if targeted in key districts, was insufficient to have a significant impact on recruiting candidates.

In 1980 the Democrats had so many congressional incumbents that candidate recruiting may have been a low priority for party committees. In 1982, however, the Democrats had strong reasons to recruit aggressive officeseekers, but the party's finances still did not permit substantial support for candidates. In 1982 Democratic general election candidates for the Senate spent \$44.5 million and were supported by \$1.5 million in coordinated expenditures.<sup>245</sup> Yet party contributions of \$600,000 and coordinated expenditures of \$2.3 million accounted for only 4.6 percent (\$2.9 million) of the candidates' financial efforts.<sup>246</sup> The Democratic party role in House campaigns was even smaller. Expenditures of \$88.3 million and party coordinated outlays of \$700,000 constituted a total campaign effort of \$89 million.<sup>247</sup> The party's contributions of \$1 million and coordinated expenditures of \$700,000 made up only 1.9 percent (\$1.7 million) of that total campaign effort. Plainly, Democratic party committees have a very long way to go before they play a significant role in candidate recruitment.

Republican candidates are undoubtedly influenced to run by the array of special campaign services their party offers. Republican candidates receive valuable research materials on most political issues. Regional party staffers assist GOP candidates in organizing and conducting campaigns.<sup>248</sup> In both 1980 and 1982 the Republicans conducted a special Campaign Management College for House and Senate campaign managers and senior staff;<sup>249</sup> this program focused on sophisticated technologies and fundraising activities, as well as on conventional campaign practices. The national Republican party committees have developed a data bank of voting patterns and demographic characteristics of districts throughout the country. This information has proved useful to candidates as well as Republican party units in target-

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243. *Id.*

244. *Id.*

245. *FEC Releases Final Report on 1981-82 Congressional Elections*, *supra* note 238.

246. *Id.*

247. *Id.*

248. Adamany, *supra* note 182, at 79, 99.

249. *Id.* at 80.

ing areas for registration efforts, get-out-the-vote drives, and canvassing.<sup>250</sup>

Most impressive has been the development of GOP polling and media materials for candidates. In 1980, the national Republican party maintained a professional staff to train candidates to conduct reliable polls inexpensively.<sup>251</sup> By 1982 the party had developed more sophisticated tracking polls.<sup>252</sup> These polls showed trends in public opinion and allowed candidates successfully to make continuing adjustments in campaign strategy.

In 1980 the Republican party assisted its candidates by providing scriptwriting, filming, and editing for campaign commercials.<sup>253</sup> In 1982, this program evolved into full scale development of campaign commercials and buying broadcast time, which saved candidates considerable sums. Larry Sabato has reported that the Republican National Committee gave ninety-two GOP candidates 180 television advertisements and other media services in 1982.<sup>254</sup> This was a dramatic increase from the eight candidates assisted in 1978 and about fifty helped in 1980.<sup>255</sup> The Republican program of institutional advertising in 1980 and 1982 was also of assistance and thus aided Republican efforts to recruit candidates.

The Democrats provided a much slimmer package of campaign assistance in both 1980 and 1982, partly because they lacked sufficient financing. In former years, some services were also less important to the Democrats since they mainly fielded incumbents. Many Democratic incumbents, long in office and recently without serious competition, lost touch with the emerging campaign technology and were simply unprepared to wage modern political campaigns. In 1980, the Democrats ran four or five training sessions for congressional candidates, and these sessions apparently were far less sophisticated than the Republican campaign schools, but their Democratic efforts to advise candidates how to meet New Right attacks on the social issues were successful.<sup>256</sup> There was no apparent effort by Democratic party groups to assist candidates with activities such as polling and media spots.

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250. *Id.* at 81, 99-100.

251. *Id.* at 81; Sabato, *supra* note 121, at 76-78; Roberts, *supra* note 217.

252. Sabato, *supra* note 121, at 76-78.

253. Adamany, *supra* note 182, at 81.

254. Sabato, *supra* note 121, at 77.

255. *Id.*

256. Adamany, *supra* note 182, at 89-90.

In 1982, the Democrats attempted to provide greater assistance to candidates. Issue papers were prepared and circulated. "National training academies" were held for candidates and party operatives.<sup>257</sup> The Democratic Party apparently enlisted labor unions to help with polling and precinct targeting, although neither the unions nor party committees made these efforts on a scale comparable to the Republican program.<sup>258</sup> The Democratic Congressional Campaign Committee waged a campaign to send critical press releases into the districts of Republican congressmen,<sup>259</sup> presumably to weaken them to attack from Democratic challengers. The DNC hired a well-known political consultant to strengthen Democratic party organization activities in eighteen states.<sup>260</sup> Voter registration, identification, and turnout were especially emphasized.<sup>261</sup> Although much more vigorous than in 1980, Democratic efforts in 1982 were still limited by a lack of sophistication and a thin purse.<sup>262</sup> They did not come close to matching the Republicans' support for candidates, and Democratic support activities presumably were not attractive enough to assist significantly in candidate recruitment.

*Aggregating and Representing Interests.* It was once possible to describe the political parties in terms of the regional and socio-economic blocs which voted for them.<sup>263</sup> The South was the "Solid Democratic South," while the Rocky Mountain states were stoutly Republican. Union workers and other blue collar occupations were Democrats, while business and professional people were consistently Republican. Catholics and Jews were part of the Democratic coalition, while Protestants (except blacks) were mainly Republicans. After the New Deal, blacks and other racial minorities were Democratic. The nationality groups that most recently immigrated to the United States were Democrats; old settlers and their more recently arrived kin were Republicans.

To some extent these lines continue to divide persons who identify with the two parties.<sup>264</sup> Moreover, there have been modern attempts to re-enforce regional and socio-economic bloc voting. The Republicans have had a "Southern Strategy." The Democrats have insisted on spe-

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257. Sabato, *supra* note 121, at 84.

258. *Id.* at 88-89.

259. *Id.* at 84.

260. *Id.*

261. *Id.*

262. Roberts, *supra* note 217; Peterson, *Republicans May Show What Money Can Do in November Races*, Wash. Post, May 30, 1982, at A2, col. 1.

263. See C. ROSSITER, *supra* note 14, at ch. 6.

264. F. SORAUF, *supra* note 3, at 147.

cial representation for unionists, blacks, women, and the young in party conventions; and their platforms have been particularly overt in wooing such diverse groups as women, blacks, Hispanics, and gay men and lesbians. In fact, women have shown somewhat greater affinity for the Democrats than in the past, and blacks seem to remain consistently Democratic in outlook.<sup>265</sup>

Generally, however, traditional voting lines are blurring. Many voters have declared themselves independent and an unexpected number of others have deviated from traditional party banners to claim opposition party affiliation.<sup>266</sup> Moreover, the traditional lines have not held up at the ballot box. There appears to be a nationalization of American politics: in each successive election, voting groups look more and more alike. In each election some groups abandon traditional patterns by voting predominantly for the other party's candidate.<sup>267</sup> There is strong evidence that voters increasingly are dividing along issue and ideological lines rather than by traditional groupings.<sup>268</sup>

The effectiveness of parties in aggregating interests has had two aspects. First, each party brought together the groups that predominantly supported its candidates and sought to meld them into a coalition in which all would share in governmental policymaking and appointments. Second, each party was mindful that it was supported by at least a significant minority among blocs principally affiliated with the opposition; each party therefore sought to broaden its coalition to make room for these minority blocs. The aggregation of interests was a device of electoral strategy; but its effects were to have all groups represented in each party, and to mute differences between parties in the course of making national policy.<sup>269</sup> With the erosion of bloc lines, there has been less reason to mobilize and aggregate the traditional groups. In addition, with the rise of ideological and issue voting, it has become increasingly difficult to build coalitions, since issues and ideology tend to clarify differences and to divide voters along clearer dimensions. The campaign finance laws have had little to do with the decline of traditional blocs in the American electorate or with the increase of issue orientation by voters in elections.

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265. Bonafede, *Women's Movement Broadens the Scope of Its Role in American Politics*, 14 NAT'L J. 2108-11 (1982); Will, *Black Voting Bloc Trouble for GOP*, Detroit News, Mar. 25, 1983, at 9A, col. 1.

266. N. NIE, S. VERBA & J. PETROCIK, *supra* note 33, at ch. 13.

267. On traditional voting bloc defections in 1980, see Clymer, *Displeasure with Carter Turned Many to Reagan*, N.Y. Times, Nov. 9, 1980, at A28, col. 3.

268. See N. NIE, S. VERBA & J. PETROCIK, *supra* note 33, at chs. 11, 12, 18.

269. See C. ROSSITER, *supra* note 14, at 54-60.

There is, however, another reason for the atrophy of party coalition-building activities that is related to campaign finance laws. As party organizations lost control of nominations and of vote-mobilizing activities, they have not been able to “deliver” governmental policies. As a result, organized interest groups—such as business, labor, religious organizations, veterans, and others manifesting underlying socio-economic divisions in society—have not found it necessary or useful to work closely with party organizations. These organized groups have sought directly to influence the electoral process by contributing to candidates rather than parties and by campaigning for or against candidates. In these respects, campaign finance laws have promoted direct political activity by groups at the expense of the traditional party role of aggregating interests and groups.

The FECA’s authorization for associations and corporations to spend their treasury money to organize PACs has plainly had the effect of heightening direct, interest group politics. It would be a mistake to believe, however, that there was no interest group money in politics before the enactment of the FECA. Long before the FECA, labor unions collected “voluntary” funds from members and made contributions to candidates and parties;<sup>270</sup> and unions waged vigorous efforts to register union voters, persuade them, and get them to the polls.<sup>271</sup> Business interests also made political contributions to candidates and parties. A small part of their effort was through traditional trade or professional associations that collected voluntary contributions from members.<sup>272</sup> The most important flow of business money was channeled by well connected solicitors directly from corporate officers and directors to candidates or party organizations.<sup>273</sup> Year after year it was possible to detect substantial contributors who were directors or officers of major defense contractors, *Fortune 500* industrial firms, the American Petroleum Institute, and similar entities.<sup>274</sup>

In one respect, the FECA has curbed the old system of direct interest group influence. The contribution limits cap the amount that a union or a corporate official can give to a candidate, and put a ceiling on the total amount an individual can give to all candidates. Despite these limitations, there is little doubt that, on balance, the FECA has

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270. A. HEARD, *THE COSTS OF DEMOCRACY* 185-87 (1960); H. ALEXANDER, *supra* note 165, at 170-72.

271. H. ALEXANDER, *supra* note 165, at 173-75.

272. *Id.* at 175-76.

273. G. THAYER, *WHO SHAKES THE MONEY TREE?* 165-205 (1973).

274. *See* H. ALEXANDER, *supra* note 165, at 153-57; H. ALEXANDER, *supra* note 167, at 383-93; D. ADAMANY & G. AGREE, *supra* note 203, at 34-37.

promoted direct interest group activity. The FECA allows unions and corporations to use substantial sums of treasury money to solicit contributions. The result has been a massive increase in the number of dollars raised, especially by corporations. Moreover, the new corporate PACs raise most of their funds by small contributions from large numbers of employees.<sup>275</sup> This tends to diminish the influence of the contributors and strengthen the influence of corporate officers on how political funds should be spent and to whom such money should be contributed.

The contribution limits on PACs have not been effective in reducing the direct influence of interest groups. The typical pattern<sup>276</sup> is for a large number of separate union PACs or PACs from the same sector of the business community to contribute to the \$5,000 maximum to candidates. In the aggregate these \$5,000 gifts become massive amounts.

The vast increase in direct interest group activity under the FECA can be readily illustrated. The total number of PACs registered with the FEC rose from 608 in 1974 to 3,371 at the end of 1982.<sup>277</sup> The total financial activity of PACs was not well documented before 1976, but in that year their total adjusted receipts were \$54.4 million.<sup>278</sup> In 1980 PAC receipts had risen to \$137.7 million,<sup>279</sup> and in 1982 total receipts were \$199.5 million.<sup>280</sup> The PACs have nearly achieved parity with political parties in fundraising ability. Total local, state, and national party receipts reported to the FEC were \$196.2 million in 1980 and \$253.9 million in 1982.<sup>281</sup>

In making contributions, PACs have greatly outdistanced the political parties. In 1980, PACs contributed \$60.2 million to candidates, and made independent expenditures of another \$14.2 million to support or oppose candidates.<sup>282</sup> By contrast, party committees contributed \$6.2 million to candidates and spent \$17.4 million in coordi-

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275. Adamany, *supra* note 92, at 590.

276. *See* Sabato, *supra* note 121, at 89-96.

277. Fed. Election Comm'n, *PACs Increase in Number*, Press Release 1 (Jan. 14, 1983).

278. Epstein, *Business and Labor Under the Federal Election Campaign Act of 1971*, in *PARTIES, INTEREST GROUPS AND CAMPAIGN FINANCE LAWS* 117 (M. Malbin ed. 1980).

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

280. Fed. Election Comm'n, *FEC Publishes Final 1981-82 PAC Study*, Press Release 1 (Nov. 29, 1983).

281. *FEC Releases Final Figures*, *supra* note 141, at 3; *FEC Final Report for 1981-82 Confirms Republicans Outspent Democrats*, *supra* note 169, at 2.

282. *FEC Releases Final PAC Report*, *supra* note 279.



nated expenditures on behalf of candidates.<sup>283</sup> In 1982, PAC contributions rose to \$87.6 million and their independent expenditures were \$5.7 million.<sup>284</sup> Party committees contributed \$6.9 million and made coordinated expenditures of \$16.9 million.<sup>285</sup> Hence, PACs outdistanced parties by a margin of more than three to one in direct candidate support in 1980 and almost four to one in 1982. Although the parties offered an array of services, institutional advertising, and other forms of assistance, the value of these services undoubtedly would not equalize the levels of support candidates received from the two sources.

The FECA also authorizes PACs to engage in some types of campaigning that duplicate the canvasses traditionally conducted by political parties. The law specifically excludes from the definition of "expenditures," which may be subject to limitation under the FECA, spending for "nonpartisan activities designed to encourage individuals to vote or to register to vote."<sup>286</sup> It is not difficult for unions or corporations to determine which groups or their members, employees, or stockholders are most likely to vote for candidates favored by the union or corporate leadership. Thus, nonpartisan registration and get-out-the-vote drives are often candidate or party oriented, following the preferences of the union or corporation.

The law also permits organizations, including unions and corporations, to communicate, using treasury funds, to members, stockholders, or executive and administrative personnel about political issues and candidates.<sup>287</sup> Unions have long engaged in both voter mobilization and voter persuasion activities; but with the availability of treasury funds, labor engaged in greater election efforts in 1982 than at any time since 1976.<sup>288</sup> More than three million members of union households were registered to vote; an estimated 150,000 labor volunteers and several thousand staff members canvassed union neighborhoods and conducted registration and get-out-the-vote drives.<sup>289</sup> Mass mail appeals were added to the longstanding union technique of using phone banks

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283. *FEC Releases Final Figures*, *supra* note 141.

284. *FEC Publishes Final 1981-82 PAC Study*, *supra* note 280, at 2.

285. *FEC Final Report for 1981-82 Confirms Republicans Outspent Democrats*, *supra* note 169, at 2.

286. 2 U.S.C. § 431(9)(B)(ii) (1976).

287. 2 U.S.C. § 431(9)(B)(iii) (1976).

288. *See, e.g.*, Sabato, *supra* note 121, at 88-89. On labor's role in politics generally, including union campaign efforts, see Keller, *Organized Labor's Vital Signs Show Waning Political Clout; But Numbers Don't Tell All*, 40 CONG. Q. WEEKLY REP. 2111-18 (1982); Keller, *Once a Washington Power, Labor Now Plays Catch-up in Lobbying and Politics*, 40 CONG. Q. WEEKLY REP. 2189-95 (1982).

289. Sabato, *supra* note 121, at 88.

to contact union members.<sup>290</sup>

There is little information on direct corporate appeals to stockholders or employees on behalf of particular candidates. It is inevitable that as companies become more familiar with the campaign laws, they will expand their political action activities beyond making campaign contributions. The Realtors' PAC may serve as a model for campaigning by business groups: in 1982 it used phone campaigning and direct mail appeals on behalf of endorsed candidates.<sup>291</sup>

The Supreme Court has held that no limit can be imposed on independent expenditures to support or oppose candidates.<sup>292</sup> This has allowed PACs to mount substantial media campaigns that overlap with the FECA's special authorization for parties to make coordinated expenditures. In 1980, conservative PACs dominated the independent expenditure effort, spending their money primarily to oppose Democratic candidates for Congress.<sup>293</sup> The dominance of conservative PACs increased in 1982, but a variety of liberal PACs struck back, often defending Democratic incumbents by making the expenditures of conservative PACs an issue.<sup>294</sup>

It can be argued that the political parties aggregated interest group campaigning by channeling and directing PAC contributions. There is some evidence to support such a contention. In 1980, for example, the RNC and NRSC assigned staff members to work full time with PACs. These staff members shared information with PACs and urged them to funnel contributions to Republican candidates, especially challengers, who appeared to have high prospects of winning.<sup>295</sup> In 1982, both Republicans and Democrats expanded their efforts to coordinate PAC contributions.<sup>296</sup>

The parties, however, have strong competitors for the role of directing PAC money and endorsements.<sup>297</sup> Both the liberal National Committee for an Effective Congress and the conservative Committee for the Survival of a Free Congress provide lists of candidates they favor in closely contested races.<sup>298</sup> More influential are the efforts of

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290. *Id.*

291. *Id.* at 96.

292. *Buckley v. Valeo*, 424 U.S. 1, 54-59 (1974).

293. *See supra* notes 129-31 and accompanying text.

294. *See Sabato, supra* note 121, at 102-03.

295. *See Adamany, supra* note 182, at 103.

296. *Sabato, supra* note 121, at 96-98.

297. Roberts, *Helping PACs Decide How to Spend Their Money*, N.Y. Times, Sept. 9, 1982, at A8, col. 3; Eaton, *Critics Fear PAC Money Unduly Sways Congress*, L.A. Times, Dec. 20, 1982, at § 1, p. 1, col. 1.

298. *Sabato, supra* note 121, at 94.

the Business and Industry Political Action Committee (BIPAC), which has been providing lists of business-oriented candidates in competitive races since the mid-1960's.<sup>299</sup> In addition, BIPAC holds periodic briefings for staff members of PACs with similar interests to provide information about key races.<sup>300</sup> In 1982, the Chamber of Commerce made extraordinary efforts to influence PAC support for candidates: it conducted a closed-circuit, satellite-transmitted program for 250 PAC managers in seven cities to urge their support for 100 business-oriented candidates.<sup>301</sup> It is plausible that party influence in directing PAC support will wane further as the relatively new staffs of PACs gain more sophistication, expand their own sources of information about candidates and races, and become more confident in making political judgments.

It may be that PACs will eventually align themselves with the two parties along the traditional American political divide: labor and liberal PACs would be affiliated with the Democrats; trade associations, professional groups, corporate PACs, and conservative organizations would be allied with the Republicans. This scenario does seem possible since many PACs have contributed predictably to candidates of the parties for which they have had a traditional affinity. The important exceptions have been trade association and corporate PACs, which have tended to favor incumbents. In 1980, however, business-oriented PACs showed a strong propensity to support Republican challengers against Democratic incumbents—at least those Democratic incumbents who appeared vulnerable.<sup>302</sup>

Although it cannot be said that the parties aggregated the interests embodied in the PACs or even represented those PACs, there might nonetheless be constellations of PACs and parties. Parties would likely be the central bodies in these arrays because of the affiliations of candidates with parties and the broader range of activities ordinarily undertaken by parties. This picture of a “new politics” of parties and PACs has been aptly described by one of the nation's leading students of parties:

Since major groups would probably be far more comfortable with one major party than the other, they would in most instances have no option but to support most of the party's candidates in the general election or to remain silent. Such a degree of commitment suggests that bargaining, the use of group leverage,

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299. *Id.* at 95.

300. *Id.*

301. Roberts, *supra* note 297.

302. See E. Epstein, *supra* note 164; Sabato, *supra* note 121, at 90-91.

would take place at the nomination step, especially in primary election contests. Majority building thus would become more complex and less efficient as the number of steps and the number of participants in it increased. The picture, then, is one of a group of intermediate electoral organizations [the PACs] clustering around each of the major parties and trying to mediate its building of majorities. In electoral politics, at least, it is a picture that suggests a shift in American practice to some point between two-party and multi-party electoral politics.<sup>303</sup>

Even this indirect aggregation and representation of interests is not clearly in the political parties' stars. In 1982, the business-related PACs apparently returned to their pre-1980 strategy of assisting incumbents, largely without regard to party affiliation.<sup>304</sup>

Except for ideological independent committees and groups like labor on the left and oil producers on the right, then, party affiliation and philosophy were not the prime determinants of PAC contributions in 1982. Rather, practical and strategic questions were crucial indicators for most PACs. In deciding which incumbents to support, the typical trade or corporate PAC in 1982 appears to have asked a set of queries somewhat like these: (1) Is the congressman on a key committee affecting our industry?; (2) Do we have a plant in the district?; (3) Has the incumbent voted "right" on issues affecting us?; (4) Has the incumbent been accessible to us?; (5) Has he attempted to get to know our problems and helped us to cut government red tape?<sup>305</sup>

Applying these criteria, business-related PACs found many Democratic incumbents worthy of financial support. Business-oriented PACs reverted in 1982 to a pattern of promoting short-term interests rather than developing a coalition with other generally conservative committees and the GOP to effect a long-term alignment of PACs along traditional party lines. The parties, in turn, are unlikely to play central roles in aggregating or representing interests as long as PACs do not drift toward long-term alignments with parties.

*Governance.* It is important not to fall into the trap of blaming the present disorganization of governmental policymaking on contemporary conditions, including campaign finance laws. There may have been a time, in the era of the city machines and courthouse rings, when a party organization could discipline an officeholder who displeased the party regulars. Those species of American party organizations were held together largely by the incentives of patronage, preferments, and

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303. Sorauf, *supra* note 72, at 463.

304. Cohen, *supra* note 132, at 2145.

305. Sabato, *supra* note 121, at 93.

privileges. An officeholder might be punished for not delivering the expected material benefits, but only rarely could it be expected that he would be jilted by the party organization for failing to follow a party platform or a President who belonged to the same party.<sup>306</sup>

The more remote the policymaking process from local machines and material incentives, the less likely it was that local party organizations would exercise their authority to insist on adherence to party programs by their elected officeholders. As a result, even in the heyday of party organizations, the American parties scarcely conformed to a model of cohesive agencies of governance. As one commentator stated:

Parties in America fall well short of the ideal of democracy or even of the reality of parties in many other countries. They are especially ineffectual in the task of formulating policies and transforming them into governmental programs, and thus they get only low marks for their performance of the great, overriding function of channeling and disciplining the struggle for power.<sup>307</sup>

These words, written in 1960, predated both modern campaign technology and contemporary election laws, including campaign finance regulations. Even in 1960, however, the failure of party government was an old story. In 1942, the leading proponent of American party government admitted:

[W]hen all is said, it remains true that the roll calls demonstrate that the parties are unable to hold their lines on a controversial public issue when the pressure is on . . . . This condition . . . constitutes the most important single fact concerning the American parties. What kind of party is it that, having won control of government, is unable to govern?<sup>308</sup>

One can make the argument that modern conditions have further weakened the ability of parties to mobilize public officials behind the party's program. Modern campaign technology connects candidates directly to voters, thus emphasizing candidate strategy. Moreover, the prominence of PACs tends to pull candidates away from adherence to a party program. During the campaign, candidates may trim sails in order to garner contributions. In office, they give preferred access to the special interests who provided these contributions, and they weigh their need to return to the PACs for money as they deliberate on issues.

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306. See Sundquist, *supra* note 59, at 47.

307. C. ROSSITER, *supra* note 14, at 51.

308. E. SCHATTSCHNEIDER, *supra* note 3, at 131-32.

The beginning of the Ninety-eighth Congress was marked by a news story noting that:

More and more members of Congress are openly expressing their fears of a political financing system that excites the strong suspicion—and possibly the reality—that the special interests that organize PACs get favored treatment from the legislators whose campaigns they underwrite.<sup>309</sup>

Senator Robert Dole put it more bluntly: “When these political action committees give money, they expect something in return other than good government.”<sup>310</sup>

Oddly, the parties are now showing somewhat greater vitality than they have during most of the modern era. Roll call voting along party lines remains reasonably strong.<sup>311</sup> There is also an ideological cast to the parties that was previously lacking.<sup>312</sup> Furthermore, voters are now more ideologically consistent in their views and tend to vote for candidates who share their views.<sup>313</sup>

It is unlikely that the campaign finance laws are significantly related either to the weakness of party government or to the perceived revival of party cohesion along ideological lines. It may be that party weakness has been fueled by the availability of PAC contributions, which allows candidates to make mass media appeals directly to voters without reliance on party support, and causes officeholders to make policy decisions with little regard to party positions. But money was already available from non-party sources prior to the enactment of the FECA. Parties have never played major roles in financing candidates.<sup>314</sup>

Equally implausible is the assertion that the revitalization of party finance, particularly in the national Republican party, is causing new ideological cohesion within the parties.<sup>315</sup> It is true that the Republican party demonstrated unusual discipline in supporting President Reagan's program during his first year of office.<sup>316</sup> Toward the end of the President's first congressional session, however, that unity had already

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309. Taylor, *supra* note 4, at A5, col. 1. See generally E. DREW, *supra* note 114, at 67-76.

310. Taylor, *supra* note 4, at A5, col. 1.

311. See *supra* notes 63-69 and accompanying text.

312. See *supra* note 70 and accompanying text; Sundquist, *supra* note 59, at 57-58.

313. See N. NIE, S. VERBA & J. PETROCIK, *supra* note 33, at chs. 12, 13, 18; G. POMPER, *supra* note 47, at 166-85; Wattenberg, *supra* note 46.

314. See Adamany, *supra* note 89, and sources cited therein on patterns of party financial support for candidates.

315. See Sundquist, *supra* note 59, at 52.

316. *Id.* at 45.

begun to weaken.<sup>317</sup> The early stages of the Ninety-eighth Congress indicate that the Republican members of Congress will assume a larger measure of independence than they did two years earlier.

A crucial question is whether the Republicans can use their substantial financial resources to instill party discipline. The Republican party played an important role in recruiting candidates in 1982; it follows that it would seek out or support those who adhered to the party line. Indeed, the Republican National Committee did become involved in a few primaries.<sup>318</sup> Nevertheless, it has been reported that "decision making was not based upon the policy positions of the candidates; as in the grand old days, estimates of electability dominated the party choice. According to the RNC's counsel, . . . neither ideology nor issues entered into decisions of which candidates should receive the maximum support."<sup>319</sup>

There is some evidence that the Republican party leadership attempted to influence the behavior of Republican members of Congress by directly or indirectly suggesting that campaign funds would be withheld if they did not support the President's program.<sup>320</sup> But there is no evidence that such tactics were widespread or that they were successful. Noting that Republican candidates now receive substantial financial contributions and technical assistance from the national party organization, one commentator has astutely reasoned that:

[o]nce a new member takes his seat, whether money proves to be an instrument of continuing discipline will depend on the willingness of party leaders to withhold funds in future campaigns from members who defy the leadership. If past experience is a guide, it can be assumed that such penalties would be imposed only on the rarest of occasions, and the Republicans therefore, despite their greater resources, will encounter much the same degree of difficulty the Democrats have always faced in molding a cohesive majority party out of an assemblage of individualists.<sup>321</sup>

A quite different use of party money would be to stimulate grassroots support for the party position during the congressional session. In 1981, the Republican National Committee used its substantial financial resources to wage a campaign to mobilize support for President

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317. Plattner, *Congress in 1982: Stirrings of Independence*, 40 CONG. Q. WEEKLY REP. 3143 (1982).

318. See Arterton, *supra* note 161, at 130; Roberts, *supra* note 186.

319. Arterton, *supra* note 161, at 129.

320. See, e.g., Evans & Novak, *Nixon Style Noted in Tax Bill Fight*, Detroit News, Aug. 16, 1982, at A11, col. 1.

321. Sundquist, *supra* note 59, at 52.

Reagan's tax and budget packages.<sup>322</sup> Both individuals and organized groups were urged by the Republican national party to communicate their views to legislators. The Republican organization's greatest effort was aimed at stirring up grassroots pressure on Democratic members of Congress. This strategy is readily understood: Republican party pressure on its own officeholders might well jeopardize their re-election prospects by splitting the party's support base in their districts, and replacement of a Republican Congressman with a Democrat would be worse than occasional defections by the party's own members from that district.

The Republican party's effort was not as organized or successful as party leaders had hoped; however, this might be attributed to hurried planning and implementation, as well as the unfamiliarity of using such campaigning as a party device. One commentator has argued that "the use of party machinery and finances to mobilize citizen opinion has provocative potential. Carried to an extreme, party committees might use this citizen link to pressure officeholders into greater party discipline."<sup>323</sup> He then characterized this activity as resembling "more the functioning of a political action committee than . . . a revitalized and nationalized version of traditional parties."<sup>324</sup> It may be that the party has become simply another interest group bringing pressure on officeholders, rather than an instrument for mobilizing elected officials to support a coherent program and policy. This falls far short of the governance function generally visualized for political parties.

One must conclude that the American parties, even at their zenith, were only weak instruments of policymaking. The decline of traditional party organizations, in response to social and demographic changes as well as the new campaign technology, eroded the already modest governance functions of parties. The FECA contributed to the decline of party government by authorizing PACs, which could supply substantial funds to candidates to use the new campaign technology. The FECA did not cause any major changes, however, since candidates had already been raising money to wage new style campaigns even before the PACs emerged so mightily from its provisions.

Ironically, there is an increasing level of party cohesion in Congress. But this is due to changes in technology, the ideological and issue orientation of voters, and the tendency of candidates to appeal to these changing constituencies. Increased funding may have allowed

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322. Arterton, *supra* note 161, at 130-31.

323. *Id.* at 131.

324. *Id.*



candidates to wage such campaigns, but did not cause them to do so. In sum, campaign finance laws have had little impact on party cohesion in government.

## V. Political Finance and Institutional Balances

One of the common complaints about the new campaign finance regulations is that they have distorted carefully balanced institutional relationships throughout the American political system.<sup>325</sup> There is no doubt that traditional institutional balances appear to be shifting. It is not clear, however, that campaign finance laws are the principal causes of these shifts, although they plainly contribute to some of them.

One concern is the centralization of political campaigns. In presidential races, the public subsidy flows to candidates. This greatly increases the control of the central campaign staff over political activities. The candidate's staff husband's resources to assure their availability for approved campaign activities, such as mass media advertising or direct mailing. The candidate is held strictly accountable for following the FECA's complex restrictions on the use of public money, its limits on contributions and expenditures, and its disclosure requirements. This requires careful operation of the campaign treasury.<sup>326</sup>

The centralization of campaigns has been said to separate parties from candidates.<sup>327</sup> The parties are limited in their expenditures on behalf of candidates in both congressional and presidential races. Moreover, the required separation of funds in federal office campaigns from the funds used for local and state candidates has tended to drive state and local parties out of federal campaign activities.<sup>328</sup>

There is little doubt that the disclosure requirements of the FECA and the flow of public subsidies to candidates have produced some centralization in campaigns. It should be remembered, however, that the national parties were not historically separate from the presidential campaigns. It was traditional for a party's presidential nominee to appoint one of his operatives as national party chairman, and for the na-

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325. See, e.g., Adamany, *Political Finance in Transition*, 14 *POLITY* 314, 328-31 (1981).

326. See Cheney, *The Law's Impact on Presidential and Congressional Election Campaign*, in *PARTIES, INTEREST GROUPS AND CAMPAIGN FINANCE LAWS* 238, 239-40 (M. Malbin ed. 1980); Keefe, *Presidential Campaign Strategy Under the Law*, in *PARTIES, INTEREST GROUPS AND CAMPAIGN FINANCE LAWS* 233-37 (M. Malbin ed. 1980).

327. See, e.g., Kayden, *Campaign Finance: The Impact on Parties and PACs*, in *AN ANALYSIS OF THE IMPACT OF THE FEDERAL ELECTION CAMPAIGN ACT, 1972-78*, at 4.20-.23 (1979).

328. Kayden, *The Nationalizing of the Party System*, in *PARTIES, INTEREST GROUPS AND CAMPAIGN FINANCE LAWS* 257, 264-65 (M. Malbin ed. 1980).

tional committee to operate simply as an arm of the presidential campaign.<sup>329</sup> Thus, the presidential campaigns were already firmly centralized at the national level.

By contrast, the centralization of congressional campaigns and the separation of state and local parties from federal office campaigns tend to concentrate political decisionmaking in fewer hands. Recent changes in the FECA have greatly eased this centralized campaigning, except in the area of financial reporting. The judicially created right to engage in independent expenditures and PACs' statutory authority to campaign among members, employees, or shareholders have decentralized campaign activity. The 1979 amendments to the FECA authorizing local party organizations to engage in grassroots voter mobilization and campaigning have further reduced the tendency to centralize campaigning in the candidate's headquarters.

Nevertheless, congressional campaigns will likely remain centralized. One of the most important causes of centralization is not the FECA, but the changing style of politics: with the decline in effective precinct organizations and the emergence of media and mass mail campaigning, candidates naturally concentrate resources in their personal campaign committees in order to engage in these expensive campaign activities.

A second concern is the presumed nationalization of political parties.<sup>330</sup> In the Democratic party this nationalization has occurred largely in national party rulemaking.<sup>331</sup> Nationalization in the Republican party has been spurred by party finances.

Republican national party committees raised \$130.3 million in 1980<sup>332</sup> and \$191 million in 1982.<sup>333</sup> State and local Republican organizations reporting to the FEC had net revenues of \$33.8 million in 1980<sup>334</sup> and \$239 million in 1982.<sup>335</sup> The highly successful mass mail fundraising by the national Republican committees largely accounts for this disparity. These fundraising techniques are the progeny of

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329. Ranney, *supra* note 2, at 236-37.

330. See, e.g., Huckshorn & Bibby, *State Parties in an Era of Change*, in *THE FUTURE OF AMERICAN POLITICAL PARTIES: THE CHALLENGE OF GOVERNANCE* 70, 80-84 (J. Fleishman ed. 1982); Kayden, *supra* note 328, at 263-64.

331. See Huckshorn & Bibby, *supra* note 330, at 80-82.

332. *FEC Releases Final Figures*, *supra* note 141 (figures exclude public subsidies to parties for party convention expenses).

333. *FEC Final Report for 1981-82 Confirms Republicans Outspent Democrats*, *supra* note 169, at 2.

334. *FEC Releases Final Figures*, *supra* note 141, at 3.

335. *FEC Final Report for 1981-82 Confirms Republicans Outspent Democrats*, *supra* note 169, at 2.

modern technology rather than of the FECA; they would have been possible if the FECA had never been enacted. Party nationalization has been heightened by the manner in which the Republican national party committees have spent their funds: support of local and state candidates, as well as federal office aspirants; party-oriented institutional advertising; technical services to candidates; grassroots campaigning; and creation of a regional staff network.

The Democratic national party committees raised \$23.1 million in 1980<sup>336</sup> and \$31.4 million in 1982.<sup>337</sup> Their local brethren registered receipts of \$9.1 million in 1980<sup>338</sup> and \$7.6 million in 1982.<sup>339</sup> Although the national party gained financial strength, its resources did not give rise to a nationalization of party activity. Moreover, it possessed neither the strategy nor the skills to provide the party-oriented services and activities that characterized the Republican national party, although the Democrats did make fledgling efforts of this kind in 1982.

Despite some evidence of party nationalization, there is also evidence of vitality in the local and state parties. State parties generally maintain a professional staff and a headquarters, have a reasonable funding base, and engage in campaign activities.<sup>340</sup> Local parties operate modestly during interelection periods and engage in a wide array of campaign activities.<sup>341</sup>

Republican party finance has been strengthened in some states by the use of mass mail appeals, often with the encouragement or direct assistance of the Republican National Committee.<sup>342</sup> Both parties have benefitted from state public subsidy schemes. In eight of the twelve states with public subsidy plans, the funds run entirely or partly to state or local party committees.<sup>343</sup> In 1980, public subsidies to parties in these eight states totalled \$1.5 million.<sup>344</sup> This amount is likely to increase as public subsidy plans become better established and as the par-

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336. *FEC Releases Final Figures*, *supra* note 141, at 3.

337. *FEC Final Report for 1981-82 Confirms Republicans Outspent Democrats*, *supra* note 169, at 2.

338. *FEC Releases Final Figures*, *supra* note 141, at 3.

339. *FEC Final Report for 1981-82 Confirms Republicans Outspent Democrats*, *supra* note 169, at 2.

340. *See supra* note 49.

341. *See supra* note 50.

342. Huckshorn & Bibby, *supra* note 330, at 95.

343. Jones, *State Public Campaign Finance: Implications for Partisan Politics*, 25 AM. J. POL. SCI. 342-61 (1981); Noragon, *Political Finance and Political Reform: The Experience with State Income Tax Checkoffs*, 75 AM. POL. SCI. REV. 667-87 (1981); R. Jones, *Patterns of Campaign Finance in the Public Funding States* (paper presented at 1982 meeting of the Midwest Political Ass'n).

344. Jones, *Patterns of Campaign Finance*, *supra* note 343.

ties see an advantage in promoting taxpayer participation in election financing. Although \$1.5 million in subsidies is quite modest in the context of national party expenditures, it is a commitment to the vitality of state parties and permits the parties a somewhat stable funding base for organizational and campaign activities.

A number of studies have shown that each segment within the parties performs different political functions.<sup>345</sup> Candidates generally spend their funds on media advertising, campaign literature, and similar direct promotional activities. State parties use their money for staff, candidate support, and organizational stimulation and maintenance. Local organizations generally make candidate contributions and spend funds on mailings to voters, posters and signs, brochures, headquarters and telephone banks. It can be argued that the shift of funds to candidates and national parties and away from local parties will cause some specialized functions to be performed at the expense of others. This contention lacks force in the present day because many of the organizational activities conducted by state and local parties have atrophied for reasons unrelated to funding, and the effectiveness of those activities has been minimized by the advent of more effective campaign technologies. Hence, even if contemporary shifts in the locus of political activity toward candidates and national parties are actually occurring, it is unlikely that the erosion of the traditional specialized functions of parties is due to changes in political finance laws.

A third concern is the rising level of bureaucracy in political structures.<sup>346</sup> The complexity of the FECA has caused parties and candidates to hire accountants and attorneys to assure compliance with legal requirements and limitations. More important than these compliance bureaucrats, however, are the staffs devoted to fundraising and political activity. A permanent technical and professional staff is necessary to operate a continuously growing mass mail fundraising program. In addition, the new political services offered by parties—technical services to candidates, training programs for party workers and campaign managers, field operations to support party and candidate organizations, polling and media development activities—require permanent, professional party bureaucrats. In any case, volunteer party activity has been weakened by the passing of old style political organizations, the decline of neighborhoods, the transience of voters, and other factors that have

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345. See, e.g., D. ADAMANY, *supra* note 12, at 26-55; A. HEARD, *supra* note 270, at 304-11, 395.

346. See Kayden, *supra* note 327, at 4.14-15.

eroded traditional party structures.<sup>347</sup>

In 1982 the Republican National Committee employed 350 staff members, the National Republican Congressional Committee 84 employees, and the Republican Senatorial Campaign Committee 40 staffers.<sup>348</sup> The counterpart Democratic committees had a total of 141 employees.<sup>349</sup> The Republican party staffs were generally well paid, enjoyed continuing employment, and performed specialized tasks in a business-like operating structure.<sup>350</sup> There was high turnover on Democratic party staffs, working conditions were much more pressured and chaotic, and there was less emphasis on specialization and technical skill in Democratic offices.<sup>351</sup>

The evidence is persuasive that the FECA, together with the revitalization of party finances, has promoted party bureaucracy, especially in the Republican party. Modern technology has become the critical factor in modern campaigning, fundraising, and other political activities. Such technology, which requires modern fundraising as its fuel, has weakened traditional party organizations by requiring professional staffs for the new party operations. Neither political finance laws nor modern financing practices are the sole cause of the bureaucratization of parties; but they are substantial contributors to the new pattern of party staffing that is significantly responsible for that trend.<sup>352</sup>

A fourth concern is the shift of influence from the legislative to the executive branch of government. It has been suggested that campaign finance laws accelerate this shift:

Publicly financed presidential campaigns would gradually raise public esteem for the executive because of its freedom from private money entanglements, while diminishing respect for a legislature still reliant on private and special interest sources. Similarly, generous public financing of presidential campaigns will gradually raise the visibility of the executive, increasing public reliance on and confidence in the president for policy leadership.<sup>353</sup>

At least one commentary has intimated that this condition has come to pass. Unable to contribute to the 1976 presidential campaign, "special interests poured their funds into congressional coffers, creating in effect a dual electoral system—a 'clean' presidential campaign and a 'dirty'

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347. *See supra* part III B.

348. Schram, *GOP Meets Reality—on the Button*, Wash. Post, May 16, 1982, at A4, col. 3.

349. *Id.*

350. Adamany, *supra* note 182, at 108-09.

351. *Id.*

352. *See supra* part III B.

353. D. ADAMANY & G. AGREE, *supra* note 203, at 176.

congressional one. This was claimed to have harmed Congress' image and integrity while improving the image of the presidency."<sup>354</sup> There can be little doubt that the flow of PAC money and influence now hangs like a dark cloud over the Congress.<sup>355</sup>

This shift of influence might be heightened by the establishment of "presidential PACs." For example, Citizens for the Republic was established in 1977 as the successor to Citizens for Reagan.<sup>356</sup> Its purpose was to support conservative Republican candidates. By strengthening the conservative wing of the Republican party, Citizens for the Republic also helped promote the fortunes of Ronald Reagan as he sought the 1980 Republican presidential nomination. Citizens for the Republic was joined in 1980 by PACs established by Senator Edward M. Kennedy and former Vice President Walter Mondale. An analysis of their contributions to congressional candidates in 1982 showed a disproportionate level of support for safe incumbents.<sup>357</sup> This analysis indicates that the purpose of these PACs is to win support for their sponsors in the presidential nomination race rather than to hold or enlarge the Democratic contingent in Congress. The probable next step for PACs is to move from promoting the nomination campaigns of their sponsors to presidential PACs that support members of Congress for the purpose of making them beholden to the President.

If the President accepts public financing, the PECFA mandates that his personal campaign committee cannot accept private contributions in the general election.<sup>358</sup> The campaign finance laws thus increase the incentive for the President to raise funds for a PAC whose purpose will be to enhance executive influence in Congress. The 1979 amendments to the FECA have somewhat diminished this incentive by encouraging the President to raise money that local and state party committees can use for grassroots campaigning on his behalf.<sup>359</sup> But this modest encouragement for party-oriented fundraising will be absent during the mid-term congressional season, leaving the President to raise and spend money through a presidential PAC solely for the purpose of working the executive will on Congress.

A fifth concern is the vast fundraising disparity that has arisen be-

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354. AMERICAN ENTERPRISE INSTITUTE LEGISLATIVE ANALYSIS, NO. 18, 95TH CONGRESS, PUBLIC FINANCING OF CONGRESSIONAL CAMPAIGNS 27 (1978).

355. See Cohen, *supra* note 132; Eaton, *supra* note 297; Taylor, *supra* note 4 at A5, col. 1.

356. H. ALEXANDER, *supra* note 177, at 328.

357. Cook, *Presidential Hopefuls Funnel Contributions to Safe Races*, 40 CONG. Q. WEEKLY REP. 2074-75 (1982).

358. See *supra* note 100 and accompanying text.

359. See *supra* notes 109, 140-42 and accompanying text.

tween the two political parties.<sup>360</sup> In 1980, total receipts of Republican local, state, and national party committees reached \$164.1 million, while their Democratic counterparts had receipts of \$32.1 million.<sup>361</sup> In 1982, GOP committees raised \$214.9 million, while Democratic party groups raised \$39 million.<sup>362</sup> This five-to-one Republican advantage widened in 1982: in actual dollars the Republican edge increased from \$132 million in 1980 to \$174 million in 1982.

The funding difference between the two parties' organizations is the crucial factor in overall Republican superiority in campaign finance. In 1980, Democratic general election candidates for Congress spent \$97.2 million, including party contributions of \$1.5 million, and benefitted from coordinated party expenditures of \$1.4 million.<sup>363</sup> Hence, their direct campaign efforts were \$98.6 million, with party support providing \$2.9 million. Republican general election candidates spent \$93.6 million, including \$4.2 million in contributions from party groups, and were aided by party coordinated expenditures of \$7.6 million.<sup>364</sup> In total, GOP candidates direct campaign efforts cost \$101.2 million, with party money accounting for \$11.6 million. If party funds were omitted, Democratic candidates would have outspent Republicans by a margin of \$95.5 million to \$89.6 million.

A similar pattern occurred in the 1980 presidential campaign. Expenditures on behalf of Ronald Reagan in the general election were \$64.1 million, with the Republican National Committee accounting for \$4.6 million and state and local party efforts adding \$15 million.<sup>365</sup> President Carter enjoyed total campaign support of \$54 million. The Democratic National Committee provided \$4 million, while state and local party units spent another \$4 million on behalf of the President's re-election bid.<sup>366</sup> Without party efforts, the \$64.1 million to \$54 million campaign advantage enjoyed by Ronald Reagan over President Carter would have been reversed, with Carter spending \$46 million to Reagan's \$44.5 million.

The crucial role of party organization spending can be illustrated by examining total general election outlays by presidential and con-

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360. Adamany, *supra* note 89, at 165-69.

361. *FEC Releases Final Figures*, *supra* note 141, at 3 (figures exclude public subsidies to parties for party convention expenses).

362. *FEC Final Report for 1981-82 Confirms Republicans Outspent Democrats*, *supra* note 169.

363. *FEC Releases Final Statistics*, *supra* note 232, at 3-4.

364. *Id.*

365. H. ALEXANDER, *supra* note 103, at 299.

366. *Id.*

gressional candidates and party spending in 1980.<sup>367</sup> Republican total outlays can be estimated at \$303 million, while Democratic outlays were \$179 million. The difference of \$124 million closely approximated the \$126.8 million by which Republican party committees outspent Democratic party organizations.<sup>368</sup>

Republican superiority in financing elections is not new. Republican presidential candidates and national party committees have outspent Democratic candidates and party groups, as well as their labor allies, in every election in this century except the contests of 1912, 1916, and 1960.<sup>369</sup> What is new is that the Republican margin is accomplished by the financial muscle of its party committees rather than by the funding advantage of its presidential candidates.

It is unclear whether the Democrats will be able to imitate the Republican successes in mass fundraising by party organizations.<sup>370</sup> It is possible that PAC activity will favor the Republicans as more corporate PACs form and as PACs emphasize policy over incumbency when giving money and campaigning.

In a period when party identification among voters has weakened and traditional political machines have atrophied, money has become increasingly important because it will buy modern campaign technologies that effectively reach voters. Under these circumstances, a substantial and apparently permanent Republican fundraising advantage, organized by continuing party committees rather than by transient candidate organizations, constitutes a more troubling competitive imbalance than did the Republican financing advantage of prior decades. Indeed, such a continuing imbalance may pose a threat to the effectiveness of electoral competition, which is the key to checking and holding accountable those who hold public office.

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367. These calculations combine the general election spending by Democratic and Republican candidates for President, the Senate, and the House of Representatives, as well as the reported spending by local, state, and national political party committees (excluding the amounts reported to the FEC as contributed to those candidates or as coordinated expenditures spent on their behalf).

368. *FEC Releases Final Figures*, *supra* note 141, at 3.

369. The disparity in expenditures for the years 1904 through 1956 is found in A. HEARD, *supra* note 270, at 16-20, while the expenditure data for the years 1956 through 1980 is found in H. ALEXANDER, *supra* note 103, at 109.

These sources also show that Republicans generally outspent Democrats by a three to one margin early in the century and usually by a two to one margin in the modern era. In 1976 and 1980, however, the disparity between Republican and Democratic presidential campaign spending diminished because of the equalizing effect of the Presidential Election Campaign Fund Act, which provided equal subsidies and fixed equal expenditure limits for the major party candidates. See H. ALEXANDER, *supra* note 177, at 5-6.

370. See *supra* text accompanying notes 195-98.



A sixth concern has already been elaborated: the shift in political strength from political parties to political action committees.<sup>371</sup> PACs have almost achieved equality with parties in funding; they have greatly exceeded parties in contributions to candidates and in independent expenditures; and they have the legal authority to wage grassroots campaigns among their members, employees, or shareholders, although only labor unions have exploited this authority vigorously. PACs, especially in the corporate sector, are likely to continue to gain strength more rapidly than parties.<sup>372</sup> The growth of business PACs and, to a lesser extent, labor PACs can be directly attributed to the FECA's authorization for corporations and labor unions to use treasury money for PAC administration, solicitation, and operation. One commentator has estimated that corporations alone spent \$20 million of treasury money in 1980 to operate their PACs.<sup>373</sup> New political finance laws are not behind the expansion of ideological PACs; the financing base of such PACs is the product of modern technology and would have been legal prior to enactment of the FECA. On balance, however, the complaint that the FECA has contributed substantially to the shift in influence from parties to PACs has considerable merit.

A final concern is that modern campaign finance laws have caused a great shift from party-oriented to candidate-oriented politics. There is no doubt that such a shift has occurred but it is doubtful that the FECA is a major cause of this shift. Instead, the key factors are the decline in party organizational strength, the dominance of mass media, and the availability of nonparty funds.

In 1980, political parties accounted for only 7.4 percent of direct outlays and coordinated expenditures in the campaigns of general election candidates for Congress.<sup>374</sup> They provided 12.2 percent of candidate-controlled funds in the 1982 general election campaigns of major party candidates.<sup>375</sup> Parties, however, have never been principal suppliers of money to candidates; rather, "political parties have historically dealt largely in non-financial resources and have never successfully made the transition to the cash economy of the new campaign politics."<sup>376</sup> The FECA does limit party contributions and coordinated ex-

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371. See *supra* text accompanying notes 270-94 and 309-10.

372. See E. Epstein, *supra* note 164, at 54-55.

373. See H. ALEXANDER, *supra* note 103, at 412.

374. These calculations are party contributions and coordinated expenditures as a percentage of reported expenditures by general election congressional candidates plus party coordinated expenditures. See *FEC Releases Final Statistics*, *supra* note 232, at 3-4.

375. See *1981-82 Congressional Spending*, *supra* note 238.

376. Sorauf, *supra* note 72, at 451.

penditures in candidate campaigns; but the 1979 amendments to the FECA, the opportunities for institutional advertising, the latitude to provide campaign services and to assist in field operations all encourage a much greater role than the parties are capable of assuming. In light of the revitalization of Republican party financial strength, it may be that parties are doing more now to assist candidates than they have at any time in the modern era.

In sum, the palpable shift from party-oriented to candidate-oriented politics does not have its root in the FECA. Modern politics have undergone important institutional shifts—within parties, between parties and candidates, between departments of the government, and between parties and PACs. Yet very few of those shifts have been significantly caused by the FECA or the other campaign finance laws. The vast change in the status of parties must be attributed to forces far larger and much longer in progress than the revision in campaign finance laws.

### Conclusion

Neither the imminent demise of political parties nor the adverse impact of campaign finance laws upon the parties is as obvious as has been portrayed by commentators and critics. There is no doubt that the American parties have changed dramatically. Old style political organizations and activities have diminished. They have been replaced by national party structures whose activities are surprisingly well adapted to modern conditions. Employing mass media, computer communications, polling, and a professional staff familiar with these techniques, the Republican Party has engaged in party-oriented campaigning, has provided campaign support for candidates, and has offered organizational assistance to state and local party units. The Democratic Party has engaged in similar, though much less extensive, activities.

Parties may no longer be very effective in performing functions that benefit the nation's political process. Their vote structuring and mobilizing activities have plainly declined. Their ability to aggregate and represent the nation's voting blocs and organized interests has weakened. Although party organizations in America have never been able to deliver "party government" in the model of Great Britain and many other democracies, the national parties continue to be important factors within the government. The evidence indicates that party efforts to recruit candidates have become stronger in recent years.

The decline in traditional party activities can be traced primarily to causes outside the realm of political finance. Media technology has supplanted party organization as the main communications link between candidates and voters. Demographic and socio-economic changes among the American people have weakened longstanding vote blocs, shifted primary social interactions from neighborhoods to the workplace, and changed citizens' political expectations and interests.

Laws and government operations have also weakened traditional parties. Social services now fall within the purview of government rather than of political organizations. Patronage and preferments are neither widely available nor desirable as incentives for political involvement. The spread of primaries, combined with changing campaign technology, has largely removed control of nominations from party organizations.

The changes in the nation's political processes were already well underway when the Federal Election Campaign Act was passed. Indeed, the Act's provisions give some preference to political parties in their contribution and expenditure provisions. Even its much criticized public financing of presidential campaigns has not had obviously harmful consequences for political parties. They can make extensive coordinated expenditures for media and other campaign activities to support their presidential nominees and can spend virtually unlimited amounts on canvassing and voter mobilization.

At the very least, the FECA has not been a barrier to the impressive revitalization of party fundraising. The Republican Party now has significant financial strength. Democratic efforts to become financially competitive face obstacles, but they do not arise from the political finance laws. As Michael Malbin aptly observed: "For the most part, the [FECA] has neither helped nor hurt the parties; it has simply stayed out of their way."<sup>377</sup>

The campaign finance laws indirectly have injured parties by losing awesome institutional competitors: political action committees. The constitutionally mandated opportunity for ideological PACs to make unlimited independent expenditures gives them a competitive advantage over parties. Congress can diminish this inequality by authorizing greater party financial support for candidates or by raising the limits on coordinated expenditures.

Corporations and labor unions compete with parties on a wholly different footing. These entities are permitted by the FECA to employ

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377. Malbin, *What Should be Done About Independent Campaign Expenditures?*, 6 REGULATION 41, 45 (1982).

the vast resources they possess as the nation's major economic institutions to operate PACs and solicit funds for PACs. Their use of treasury money for advocacy and for registration and vote drives among stockholders, employees, and members is also authorized by law.

Corporations and unions are not citizens entitled to vote, but rather are artificial persons created by law for limited economic purposes.<sup>378</sup> As such, their expenditures to operate PACs and to engage in political campaigning seem at odds with the fundamental values that focus our political system on the equality of voters in elections.<sup>379</sup> Expenditures by corporate and union PACs significantly alter the continuing competition for influence between individuals acting equally through the suffrage and large institutions employing concentrated economic power.

The impact of PACs is to weaken party roles in aggregating interests and in governance. PACs assume roles that parties play in campaigns—supplying money to purchase polling technology and communications media, mobilizing blocs of voters, and structuring the vote through direct appeals to the members and stockholders of the PACs' sponsoring organizations. PAC involvement in campaigns lessens the already modest reliance of officeholders on their parties and, more importantly, greatly heightens the influence of PACs and their sponsoring institutions in the governmental process.

There are strong reasons to curb the role of PACs. Corporate and union PACs introduce massive inequalities of economic power into the equalitarian political process. They jeopardize the ability of parties to engage in activities that have important consequences for the democratic political process. The provisions of law which loosed PACs into the political process should be repealed or revised. Corporate or union PACs do not have to be entirely removed from the political arena. For example, they could be allowed to operate using only voluntary contributions. And, if the Supreme Court is willing, corporate and union PACs should be prohibited from using treasury money for direct advocacy both among stockholders and members and among the public at large.

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378. D. ADAMANY & G. AGREE, *supra* note 203, at 4.

379. Herbert Alexander has explained that: "The American system of government is rooted in the principle of 'one man, one vote,' but, like other democracies, it is hobbled by an unequal distribution of economic resources. . . . In a sense, broadly based political power, as affected through universal suffrage, was conceived and has been used to help equalize inequalities in economic power, despite frustrations brought on by the system of financing politics." H. ALEXANDER, *supra* note 165, at 12.

On balance, the parties continue to have impressive vitality as they adapt to the modern technology of politics. The FECA has not significantly weakened opportunities for parties to raise money. In fact, in some respects it has given them preferred treatment. Additional steps could be taken directly to strengthen parties.<sup>380</sup> Perhaps the most important measure to strengthen parties would be to withdraw the charter for the nation's major economic institutions to finance the parties' principal competitors, the political action committees.

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380. The author has previously recommended a series of steps to diminish the influence of large individual and institutional givers, stimulate political competition, encourage citizen participation, and strengthen political parties. Among these proposals are (1) public financing of congressional campaigns, while permitting small contributors and political parties to support congressional candidates, (2) modest public subsidies to political parties for organizational activities, (3) allowance for individual contributions up to \$250 to presidential candidates in general election campaigns, (4) higher limits for coordinated expenditures by national political parties in campaigns for federal office, (5) extension to presidential and congressional campaigns of the present authorization for state and local parties to make unlimited registration and get-out-the-vote expenditures, (6) disclosure in all campaign advertising and on campaign materials of independent expenditure by groups, when pertinent, that they have raised less than 50% of their funds in the affected district, (7) a limitation on the aggregate contributions a candidate could receive from political action committees. Adamany, *Political Action Committees and Democratic Politics*, 1983 DET. C.L. REV. 1013; D. ADAMANY & G. AGREE, *supra* note 203, at ch. 11; *cf.* Adamany, *supra* note 92, at 597-602; Adamany, *supra* note 158, at 2-3; Democratic National Committee Task Force on Independent Expenditures, *supra* note 157, at 80-90.

