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The Federal Election Campaign Act and the 1980 Election

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THE FEDERAL ELECTION CAMPAIGN ACT AND THE 1980 ELECTION

FINANCING THE 1980 ELECTION. By Herbert E. Alexander. Lexington, Mass.: D.C. Heath & Co., 1983. Pp. xiii, 525. $35.00

POLITICS AND MONEY. By Elizabeth Drew. New York, N.Y.: Macmillan Publishing Co., 1983. Pp. viii, 165. $11.49

Reviewed by Richard Briffault *

During the 1970's Congress and the Supreme Court paid the most sustained attention in American history to the financing of federal election campaigns. Congress passed a succession of measures, known collectively as the Federal Election Campaign Act ("FECA" or the "Act"), closely regnlating the activities of candidates, parties, private organizations, and individuals in raising and spending campaign money.[1]

Prior to FECA, election finance was largely an extension of the private marketplace. Campaigns were funded through private, voluntary contributions to parties and candidates, with donors contributing to the extent of their interest and wealth, and private economic inequalities were replicated in the political marketplace.[2] The central thrust of FECA was to move the campaign finance process in a more egalitarian and public direction. Congress restricted the size and source of campaign contributions, imposed limitations on campaign expenditures,[3] and provided for the optional public funding of presidential campaigns.[4] Public funding was intended to free the major party nominees from the need to solicit wealthy donors and to give all citizens an equal role in the financing of campaigns. The transformation of the campaign finance system, however, was incomplete. The Act failed to provide for public funding of congressional campaigns, leaving those campaigns dependent on private funding subject to contribution and expenditure limitations. The Supreme Court, in its review of FECA in *Buckley v. Valeo*,[5] invalidated most of the Act's expenditure limitations, al-

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1. Presidential Election Campaign Fund Act, Pub. L. 92-178, 85 Stat. 562 (1971); Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972); Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974); Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 (1976); Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1979). FECA is codified at 2 U.S.C. §§ 431-455 (1982) and 26 U.S.C. §§ 9001-9013 (1982).

2. See generally A. Heard, The Costs of Democracy (1960); D. Adamany and G. Agree, Political Money 28-42 (1975); L. Berg, H. Hahn & J. Schmidhauser, Corruption in the American Political System 88-108 (1976).

3. See, e.g., 2 U.S.C. §§ 441e to 441g (1982).

4. 26 U.S.C. §§ 9001-9013 (1982).

5. 424 U.S. 1 (1976).

though it upheld the contribution restrictions and the public funding system for presidential candidates. The result was the construction of a hybrid system, consisting of public and private components, equalizing and free spending elements.

The system appeared to work well enough at first. The 1976 presidential election, the first held under the regimen of reform, was profoundly different from its predecessors: the major candidates derived their funding largely from public subsidies and enjoyed relatively equal financial resources. The contribution limits applicable to all federal candidates also helped to curb the influence of large private donors on congressional elections.

Two recently published studies of political finance during the 1980 campaigns, however, suggest that 1976 was not so much the harbinger of a new era in election finance as the apogee of the reform impulse. The two books, one by a political journalist and the other by an academic specialist in campaign finance, differ significantly in format and style. Alexander's *Financing the 1980 Election*, the sixth in his quadrennial series of reviews of campaign finance, is a comprehensive analysis of the financial history of the 1980 elections based largely on data compiled by the Federal Election Commission from reports submitted by candidates, political parties, and other campaign spenders and donors. The raw material of Drew's *Politics and Money* consists of interviews with politicians, political operatives, and large contributors, newspaper accounts of their activities, and the author's own experiences and observations. While Alexander strives to be purely descriptive and objective, Drew's book is a polemic against the "corrupting" effects of private money on the political process. Yet the two works complement each other and—with Drew's interviews supplementing Alexander's statistics—combine to demonstrate that while the 1970's reforms sought to alter the nature of political fund-raising and spending, in the 1980 campaign private wealth and special interest expenditures resumed their pivotal roles.

This review analyzes Drew's and Alexander's findings concerning the effects of FECA on the financing of the general election phase of the 1980 presidential and congressional elections.[6] These financial histories of the 1980 elections suggest that the mix of public and private components in our campaign finance system has proven unstable, and that public and private methods of financing political campaigns may not be easily reconcilable in a single system after all. If this is the case, Congress and the Court may have to consider again the degree to which our election campaigns should be publicly or privately funded. That will require the resolution of the underlying question of what the role of private wealth—and of private ine-

6. This review will not address the provisions of the public funding law dealing with the presidential primaries or the funding of minor party or independent candidates. Alexander reviews the financial history of the prenomination phase of the 1980 election, H. Alexander, Financing the 1980 Election 135 (1983), and the financing of John Anderson and the minor party candidates, id. at 341–57. Drew did not examine these aspects of the 1980 election.

quality—should be in financing an electoral process nominally predicated on the norm of political equality.

I.

The drafters of FECA envisioned a presidential campaign finance system in which the major party candidates would be endowed with equal financial resources, to be drawn almost exclusively from public funds.[7] Under FECA, each major party candidate is entitled to receive a $20 million federal grant, adjusted for inflation.[8] FECA also permits a modest financial role for the national committees of the major political parties.[9] Beyond that, the campaign finance law prohibits major party candidates who receive public funds from accepting any private contributions and from making any expenditures greater than their public allotments. In 1976, public funds accounted for 95% of spending in the general election and, as a result, Jimmy Carter and Gerald Ford had virtually equal financial resources, and engaged in virtually equal spending.[10]

As both Drew and Alexander document, however, the 1980 election was a very different story. Only 62% of President Carter's money, and only 46% of Ronald Reagan's, consisted of federal funds.[11] Instead of the roughly $34 million in public funds and limited national party spending allotted to each of the major party nominees under the Act, spending for Jimmy Carter amounted to $54 million, and expenditures on behalf of Ronald Reagan totalled $64 million—almost double the public grant and $10 million more than was spent for Carter.[12] Private money came flooding into the 1980 election, upsetting the equality between the candidates and the equalized ability of citizens to influence the financing of campaigns.

A.

How did this occur? From a fiscal perspective, the 1980 election included, in Alexander's analysis, not one but three distinct campaigns conducted by or on behalf of each major party candidate.[13] The first campaign consisted of the public funds and limited national party spending already outlined. Reagan and Carter each received $29.4 million from the United States Treasury.[14] The Republican and Democratic National Committees were each entitled to spend two cents per eligible voter, or $4.6 million, raised from private donations. The Republicans raised and spent

7. See, e.g., S. Rep. No. 689, 93rd Cong., 2d Sess. 4-8, reprinted in 1974 U.S. Code Cong. & Ad. News 5587, 5591-94.

8. 26 U.S.C. § 9004(a)(1) (1982); 2 U.S.C. § 441a(b)(1)(B) (1982).

9. 2 U.S.C. § 441a(d)(2) (1982).

10. H. Alexander, Financing the 1976 Election 171-72 (1979).

11. H. Alexander, supra note 6, at 299 (Table 7-1).

12. Id.

13. Id. at 297-98.

14. Id. at 299.

their full authorization; the Democrats spent slightly less.[15] In this "campaign," the goals of relative equality and independence from private contributions were met. It was the other two "campaigns," which were funded from private donations and provided unequal amounts of support to the major party candidates, which set 1980 apart from 1976 and pointed in the direction of 1972.

B.

The "second campaign," as described by Alexander, consisted of privately funded spending out of the candidates' control but capable of coordination with the candidates' campaigns. The most important component of this second campaign was a product of a major loophole inserted by Congress into FECA in 1979.[16] The 1979 Amendments to FECA exempt from the Act's contribution and expenditure restrictions money, raised by state and local party committees, that is spent on volunteer activity or on voter registration and get-out-the-vote drives.[17] The purpose of the 1979 Amendments was in part to remedy the perceived lack of storefront offices, bumper stickers, leaflets, and other traditional "grass-roots" campaign activity during the 1976 election. The decline in volunteer electioneering at the local level in 1976 was attributed to FECA's tight expenditure ceilings and to the decisions of the candidates to focus their resources on capital intensive broadcast advertising.[18] The 1979 Amendments were intended to encourage greater individual involvement in politics by exempting labor intensive activities from the financial restrictions of the Act.[19] The 1979 Amendments permitted private contributions without limit so long as the funds were used to support campaign activities at the grass-roots, and exempted such grass-roots spending from the Act's expenditure limitations.[20]

In 1980 the Republicans adroitly manipulated the grass-roots exemption to fund the Reagan-Bush field operation almost entirely from private contributions.[21] The Republicans coordinated their grass-roots spending and fund-raising at the national level. Notwithstanding the 1979 Amendments' grass-roots focus, nothing in the law requires that the funds be spent where raised or even that the funds be solicited by the state or local party committee that is the nominal beneficiary of the contribution. The national Republican Party, acting as the agent of the state or local party and

15. Id. at 299-300, 324-26.

16. Id. at 297, 300-01, 326-27.

17. 2 U.S.C. § 431(8)(B)(x), (xii), (9)(B)(viii)-(ix) (1982).

18. H. Alexander, supra note 10, at 379.

19. H. R. Rep. No. 422, 96th Cong., 1st Sess. 9, reprinted in 1979 U.S. Code Cong. & Ad. News 2860, 2868-69.

20. Although the 1979 Amendments exempt grass-roots activities only when conducted by volunteers, "volunteer" is clearly a term of art since the Federal Election Commision permits parties to give their volunteers "travel and subsistence or customary token payments." 11 C.F.R. § 100.7(b)(15)(iv) (1984); 11 C.F.R. § 100.8(b)(16)(iv) (1984). Such "token payments" could amount to as much as $30 per day. E. Drew, Politics and Money 106 (1983).

21. H. Alexander, supra note 6, at 311-12.

using the presidential candidate as fund raiser, solicited and received funds throughout the country and channelled the money raised in states where the party was strong to marginal districts where additional funds were crucial.[22]

The Republican National Committee (RNC) channelled about $9 million in privately raised money to various states to pay for state and local party activities on behalf of the presidential ticket. When added to the funds that state and local parties raised from their own sources and spent on such activities, total state and local Republican committee spending on behalf of the presidential ticket amounted to about $15 million.[23] The Democrats' state and local party committees trailcd badly, spending no more than $4 million on behalf of the Carter-Mondale campaign.[24]

Alexander also treats as part of the "second campaign" funds spent by corporations, trade associations, membership groups and labor unions on partisan communications with their own memberships and constituencies on behalf of the candidates, and on nominally nonpartisan activities directed to the general public.[25] Alexander contends that here the Democrats significantly outpaced the Republicans, with Carter having received the benefit of $15 million in labor union spending on internal communications with union members and their families and on voter registration drives,[26] while the Reagan-Bush ticket benefitted from only about $3 million in internal communications by corporations, trade associations, pro-Reagan unions such as the Teamsters, and pro-Reagan membership organizations.[27] In this otherwise heavily researched and footnoted study, the pro-Carter labor spending figure is only weakly substantiated by extrapolating a large increase over labor's 1976 spending on behalf of Carter-Mondale "due at least in part to inflation."[28]

22. Much of the funding obtained through the grass-roots exemption consisted of so-called "soft money." Federal law has long prohibited direct contributions by corporations and labor unions to federal candidates, see infra notes 95-96 and accompanying text, and FECA established limits on the size of individual contributions to federal candidates. Many states, however, permit direct corporate and labor union contributions, and place no limits on the amount individuals may contribute to state and local candidates. Such contributions—forbidden by some states—are deemed soft money. The 1979 Amendments enabled the parties to raise on a nationwide basis corporate or labor union money and large individual contributions, and to funnel those contributions into those states where such spending was permissible, free from federal limit and not subject to federal reporting. E. Drew, supra note 21, at 14-17, 101-06; see also H. Alexander, Financing Politics 128 (3d. ed. 1984).

23. H. Alexander, supra note 6, at 311.

24. Id. at 335. The lesson of 1980 was not lost on the Democrats. The day after his nomination in 1984, Walter Mondale announced plans to raise $26 million in Democratic Party money for the 1984 campaign to supplement the $41 million federal subsidy. See N.Y. Times, July 22, 1984, at 1 col. 3, at 18, col. 2.

25. H. Alexander, supra note 6, at 298.

26. See id. at 338.

27. See id. at 302.

28. See id. at 338 and n.155. The 1976 labor fignre, $11 million, is set forth without clear empirical foundation. Alexander cites Malbin, Neither a Mountain nor a Molehill, Regulation, May/June 1979, at 41, 43. Malbin states simply that in the 1976 eleetion "labor

Even assuming that the volume of pro-Carter labor spending roughly matched the Republican state and local party spending on behalf of Reagan-Bush, Alexander suggests that the grass-roots party spending, because it was directly coordinated by the national Republican ticket, was more successful in advancing the ticket than the relatively autonomous spending by labor unions.[29]

C.

Using Alexander's analysis, the "third campaign" in 1980 consisted of "independent expenditures"—spending by individuals and organizations that, while not directly connected with a candidate or party, expressly advocated the election or defeat of a candidate.[30] In 1976, such expenditures came to less than $300,000.[31] In 1980, however, independent expenditures amounted to nearly $11 million during the general election phase of the presidential election, virtually all of it on behalf of Ronald Reagan.[32] This

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was able to spend approximately $11 million in internal communications with its members, on voter registration, and on getting out the vote." Id. at 43. Malbin gives no authority for the $11 million figure but he apparently relied on another article in the same issue of *Regulation*—Epstein, An Irony of Electoral Reform, Regulation, May/June 1979, at 35. His use of Epstein's data is questionable, however. Based on FEC reports, Epstein found that political action committees established by labor unions spent $17.5 million in 1975-76, of which $8.2 million consisted of contributions to congressional candidates. Even if all of the remaining labor PAC disbursements are to be counted as influencing the outcome of the 1976 presidential elcetion, that sum was only $9.3 million, not $11 million. See id. at 38. Nor is it clear that all $9.3 million was expended in support of the presidential ticket in the general election, since it is likely that at least some of this money was spent during the prenomination phase of the campaign, in PAC administration and overhead costs, and in connection with nonfederal candidates and nonpartisan activities.

Since the bulk of labor spending was on registration, internal communication, get-out-the-vote, and general political education, and since such expenditures need not be reported to the FEC, a high degree of uncertainty concerning total labor spending is inevitable. Nevertheless, Alexander's treatment of the $11 million figure for the 1976 campaign and the $15 million figure of 1980 as constituting as precise a measure of labor spending as the figures he gives on candidate, party, and independent committee spending seems unwarranted. The actual reported labor PAC spending on the 1976 presidential election was $1.2 million, see H. Alexander, supra note 10, at 550. In 1980 the actual reported labor PAC spending on the presidential election was $1.3 million. See H. Alexander, supra note 6, at 338. Moreover, given that most of the unreported labor spending was on registration and get-out-the-vote activity, it is unclear how much of a boon this was to the Democratic ticket in 1980 since Ronald Reagan received approximately 44% of union members' votes. See id. at 384.

29. See id. at 338. Alexander also included in the second campaign funds raised by the candidates from private contributions to pay the legal and accounting costs incurred in complying with the Act. FECA exempts such funds from its definition of regulated contributions and expenditures. 2 U.S.C. § 431(8)(B)(ix), (9)(B)(vii) (1982). Reagan-Bush received $2.1 million for its compliance fund and spent $1.5 million on compliance during the campaign. H. Alexander, supra note 6, at 301. Carter-Mondale raised and spent $1.5 million on compliance costs. Id. at 326-27.

30. Id. at 298.

31. H. Alexander, supra note 10, at 363, 408-10 (independent spending for Carter was $74,298, independent spending for Ford was $216,715).

32. H. Alexander, supra note 6, at 303, 328 ($10.6 million in independent expenditures

third campaign is largely attributable to the decisions of the Supreme Court, as magnified and manipulated by politicians' ingenuity in the search for funds and contributors' commensurate creativity in the search for political influence.

In *Buckley v. Valeo*,[33] the Court reviewed FECA's contribution and expenditure limitations. FECA places a $1000 limitation on the amount any person may contribute to a single candidate per election, with an aggregate annual contribution ceiling of $25,000 per contributor.[34] FECA also sought to restrict total campaign expenditures by federal candidates. Presidential candidates were to be restricted to $10 million in the nomination phase and an additional $20 million in the general election.[35] Finally, the Act sought to impose a ceiling of $1000 per election on the sum of money any person could spend in communicating directly to the voters, independent of any candidate's campaign, in support of or opposition to a candidate.[36]

Viewing the campaign finance regnlations largely through the prism of the first amendment, the Court equated political spending with political speech and determined that the expenditure limitations, by imposing "direct quantity restrictions on political communication," trenched directly on protected core political expression without commensurate justification.[37] The Court contrasted "contributions"—money given to candidates by individuals or interest groups—with "expenditures"—money spent by a candidate or noncandidate in communicating directly with the voters. The Court justified FECA's dollar limits on contributions because large financial contributions raised the spectre that the contributor might exact a "political quid pro quo" from the recipient of the gift, and the public might believe that such "corruption" occurred.[38] Moreover, contribution limitations were seen as not infringing the core first amendment interest. "A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for that support."[39] A contribution limit still permits "the symbolic expression of support evi-

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on Ronald Reagan's behalf, $27,773 spent independently for Carter, and $209,781 spent independently opposing him). Five major committees produced the lion's share of independent expenditures. Three of the groups—the North Carolina Congressional Club, the National Conservative Politieal Action Committee, and the Fund for a Conservative Majority—were prominent "new right" organizations active since the mid-1970's. The other two committees—Americans for Change and Americans for an Effective Presidency—were organized during the 1980 campaign for the express purpose of aiding the Reagan election drive. The five committees spent $9 million on Reagan's behalf. Id. at 318.

33. 424 U.S. 1 (1976) (per curiam).

34. 2 U.S.C. § 441a (1982).

35. Pub. L. No. 93-443, § 101, 88 Stat. 1263, 1263-64 (1974). The Act would also have limited the ability of candidates to use their personal wealth on their own campaigns. Pub. L. No. 93-443, § 101, 88 Stat. 1266 (1974).

36. Pub. L. No. 93-443, § 101, 88 Stat. 1263, 1265 (1974).

37. 424 U.S. at 18.

38. Id. at 26–27.

39. Id. at 21.

denced by a contribution,"[40] but does not infringe the contributor's freedom to discuss candidates and issues directly.

By contrast, FECA's expenditure limitations would directly reduce the total amount of political communication and could not be justified by the anticorruption rationale. Whatever danger of "political quid pro quo" might be posed by campaign spending was deemed adequately met by the dollar limitations on contributions to candidates.[41] The Court rejected out of hand the argument that the limitations on campaign spending and independent expenditures were necessary "to mute the voices of affluent persons and groups in the election process and thereby to equalize the relative ability of all citizens to affect the outcome of elections."[42] The concept that the speech of some individuals and organizations could be restricted to equalize the relative ability of others to influence the political process was summarily dismissed as "wholly foreign to the First Amendment"[43] and hence unavailable to sustain the candidate and independent expenditure restrictions.[44]

The effect of *Buckley* on the publicly funded presidential campaign sys-

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40. Id.

41. Id. at 55.

42. Id. at 25-26.

43. Id. at 49.

44. In subsequent cases, the Court continued to adhere to the *Buckley* approach that campaign finance regnlation is to be analyzed primarily in first amendment terms, that the sole justification for restrictions on campaign financing is the anticorruption rationale, and that the contribution/expenditure distinction may be helpful in determining the intensity of the first amendment interest and the strength of the anticorruption justification.

The Court's strong protection for independent expenditures intended to influence the voters directly without passing through a candidate's hands was underscored in First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978), in which the Court invalidated a Massachusetts statute restricting corporate spending to influence voters in a referendum election. The corporate spending in *Bellotti* was in a sense doubly protected. As an expenditure aimed at reaching the voters directly it was the kind of speech given the most protection in *Buckley*. Moreover, as the referendum campaign did not involve the election of candidates, there was no danger that public officials would be corrupted and therefore no justification for the limitation on expenditures. The Court rejected the argument that the expenditure restriction was designed to prevent corporations from using their wealth to exert "an undue influence on the outcome of a referendum vote" on grounds that there was no showing on the record that corporate advocacy "threatened imminently to undermine democratic processes," and that absent such a showing, expenditure restrictions tend to denigrate, not serve, the first amendment. Id. at 786-89; see also Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981) (invalidating a city ordinance establishing a limit of $250 on contributions to committees formed to support or oppose ballot measures). In *Citizens Against Rent Control*, the Court found that "*Buckley* identified a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception relates to the perception of undue infiuence of large contributions to a *candidate*." Id. at 296-97 (emphasis in original). Since contributions in connection with ballot measure campaigns raise no danger of exaction of political quid pro quos from officeholders, the Court held that they may not, consistent with the first amendment, be restricted; see also California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182, 196 (1981) (plurality opinion) (upholding against first amendment attack 2 U.S.C. § 441a(a)(1)(C), which establishes a $5000 limit on the amount an unincorporated association may contribute to its political action committee, on grounds that contributem was limited in 1976. Although *Buckley* invalidated the Act's across-the-board ceiling on candidate expenditures—a limit that would have applied to all presidential candidates whether or not they accepted public funds—the Court in a footnote apparently affirmed a provision that made a presidential candidate's eligibility for public funding contingent on his voluntary acceptance of the $20 million ceiling for his general election spending.[45] Both Ford and Carter accepted public funding in 1976 and both complied with the accompanying spending restrictions.[46]

Independent expenditures played a negligible role in the 1976 campaign. Although *Buckley* had invalidated the FECA provision generally restricting independent expenditures to no more than $1000 on behalf of any candidate per election, the Court did not specifically examine the separate provision restricting independent committees to expenditures of no more than $1000 on behalf of any publicly funded candidate, and that provision, section 9012(f) of title 26, remained on the books in 1976. Moreover, independent committees were a novelty in 1976. Persons seeking to support a candidate or advance a cause traditionally gave money directly to that candidate or the candidate with the best position on the cause rather than spend independently. Unless the spender were very wealthy, his money was likely to have more impact if given to the candidate, combined with the rest of the candidate's resources, and spent in the manner the candidate's strategists determined would do the most good. Because contributors could give and candidates could spend without limitation before the enactment of FECA, there had been no incentive to form independent committees. Inexperience with FECA and the Federal Election Commission as well as the truncated period for campaign planning between the *Buckley* decision early in 1976 and the election that year left the candidates unable to work independent committees into their finance strategies. Moreover, *Buckley*'s statement that independent expenditures may not be "prearranged or coordinated" led both the campaigns and the independent committees to take pains to assure a complete separation between candidates and the committees.[47]

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tion "is not the sort of political advocacy that this Court in *Buckley* found entitled to full First Amendment protection").

The Court's first amendment analysis is critically examined in Cox, Constitutional Issues in the Regulation of the Financing of Election Campaigns, 31 Clev. St. L. Rev. 395 (1982); Leventhal, Courts and Political Thickets, 77 Colum. L. Rev. 345, 356-74 (1977); Nicholson, Buckley v. Valeo: The Constitutionality of the Federal Election Campaign Act of 1974, 1977 Wis. L. Rev. 323; Wright, Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?, 82 Colum. L. Rev. 609, 629-42 (1982); Wright, Politics and the Constitution: Is Money Speech?, 85 Yale L.J. 1001 (1976).

45. 424 U.S. at 57 n.65.

46. The restriction on publicly funded candidates was challenged by the Republican National Committee on the eve of the 1980 election and was upheld by the Supreme Court without opinion in Republican National Comm. v. Federal Election Comm'n, 445 U.S. 955 (1980), aff'g, 487 F. Supp. 280 (S.D.N.Y. 1980). Consequently Carter and Reagan in 1980 kept their direct spending within the statutory ceiling.

47. *Buckley*, 424 U.S. at 47. Indeed, according to Alexander, the 1976 Carter campaign

By 1980 the climate had changed. Political operatives came to assume that despite section 9012(f) independent spending could not be limited even in a publicly funded campaign.[48] The political community had become more experienced with FECA and the Federal Election Commission and saw how independent committees could be developed not simply, as the Supreme Court had apparently assumed, to present issues and ideas the major party candidates were failing to address, but also to support those candidates without formal coordination.[49] The 1980 campaign demonstrated that independent expenditures can provide major benefits for a candidate and can constitute a significant role for private funding in an otherwise publicly funded campaign.[50]

As chronicled by Drew and Alexander, the independent committees in 1980 showed that "[t]here are all manners of ways in which people running 'independent' campaigns can run them in tandem with the candidates" without formal consultation.[51] The candidate and the independent committee may retain the same pollsters and the same media consultants, and may use the same mailing lists. Simply by reading the newspapers and political newsletters, independent committees can learn the candidate's

actively discouraged independent efforts for fear that such expenditures might be charged against the Carter campaign's own expenditure ceilings. H. Alexander, supra note 10, at 363-64, 407-08.

48. See, e.g., Bolton, Constitutional Limitations on Restricting Corporate and Union Political Speech, 22 Ariz. L. Rev. 373, 409-11, 418-19 (1980).

49. H. Alexander, supra note 22, at 64.

50. The pro-Reagan committees often couched their solicitations in terms of using the committees to legally circumvent FECA's fund-raising restrictions. The Congressional Club called its activities "Americans for Reagan" and advised recipients of its fund-raising literature that, "[a]s an independent campaign, Americans for Reagan can spend an unlimited amount of money on behalf of Ronald Reagan." NCPAC called its operation "The Ronald Reagan Victory Fund" and the Fund for a Conservative Majority called its own "Citizens for Reagan in '80." The Fund's literature said, "[a]s an independent effort 'Citizens for Reagan in '80' has no limit on expenditures before or after the nomination." Americans for Change called its project "Reagan for President in '80," and in its literature it described itself as a vehicle for raising money to elect Reagan. ("If you want to see a change in this nation in 1980 it's going to take much more than the $29 million that the federal government is allowing Ronald Reagan."). See generally E. Drew, supra note 21, at 140-41 (intent of independent concerns to amass large sums of private money to elect Reagan).

Moreover, the independence of these committees could conceivably be subject to question; several of the pro-Reagan committees had personal ties to the Reagan camp. Among the officials of Americans for Change were James Edwards, the future Secretary of Energy, who was a Reagan delegate to the 1980 Republican Convention, and Anna Chennault, co-chairman of the Nationalities Division of the Reagan for President Committee; officials of Americans for an Effective Presidency included Thomas Reed, who had managed Reagan's 1970 gubernatorial campaign and later joined the Reagan National Security Council staff. See id. at 140.

51. See id. at 136-41; H. Alexander, supra note 6, at 142. FECA defines an independent expenditure as one made "without cooperation or consultation with any candidate or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17) (1982).

campaign strategy, themes, areas of weakness or strength, and the official campaign organization's plans for media "buys"—and apply their independent dollars accordingly.

Without direct contact, the candidate and the independent committees may effectively speak to each other through the press. Drew quotes Patrick Caddell, the Democratic pollster: "The principals in a campaign may never speak, but through reading the press and other things they can know as well as if they were sitting in the same room what states are being stressed, where you need help, where you don't want it, what your issues are."[52] Paul Dietrich, whose Fund for a Conservative Majority spent over $2 million on Ronald Reagan's behalf in the primary and general elections, agreed: "There is no way to enforce independence . . . as long as one group puts out information and gets it to the others."[53] Roger Stone, a Republican political consultant who worked in the Reagan campaign, told Drew: "You wouldn't have to be a genius to figure out where to spend the money. If Reagan shows up in Tennessee and Kentucky, you know that the campaign considers them winnable states."[54]

Given the magnitude of Reagan's eventual victory, it would be difficult to attribute a decisive role in the election to independent expenditures.[55] Nevertheless, the additional $10.6 million spent by private committees to disseminate pro-Reagan communications enhanced Reagan's spending by one-third over the public grant while Carter was the beneficiary of less than $30,000 in independent expenditures. In Alexander's words, this third, independent committee campaign "did violence to the tightly drawn systems" of FECA public funding and contribution and expenditure limitations.[56]

The role of independent expenditures may continue to grow. The fund-raising activities of at least some of the independent groups in the 1980 election may have been hampered because those groups were sued in the summer of 1980 for their alleged violations of section 9012(f).[57] This may have reduced their spending during the course of the campaign.[58] However, a three-judge district court ruled section 9012(f) unconstitutional

52. E. Drew, supra note 21, at 139.

53. Id. at 136.

54. Id. at 138.

55. Alexander reports that independent expenditures were of critical value to Reagan during the New Hampshire primary. Reagan was approaching that state's spending limit, and the Fund for a Conservative Majority spent $60,000 on radio and newspaper advertising, mailings and busing pro-Reagan volunteers to campaign stops. H. Alexander, supra note 6, at 142. FCM expenditures were also of value in the Texas primary, when the Reagan campaign was approaching the overall spending limit for the prenomination campaign. Id.

56. Id. at 3.

57. In the summer of 1980 Common Cause, the national citizens' lobbying organization, sued to enforce section 9012(f) against Americans for Change, one of the five major pro-Reagan independent committees. The FEC subsequently entered the suit and expanded it to reach the other pro-Reagan committees which had announced plans to exceed the $1000 spending limitation.

58. H. Alexander, supra note 6, at 315-17.

and, when the litigation reached the Supreme Court in 1982, an equally divided Court affirmed the decision of the lower court without opinion.[59] This spring the Court noted probable jurisdiction in another case raising the constitutionality of section 9012(f) but chose not to hear the case until after the 1984 election.[60] Section 9012(f) remains on the books but under a cloud. It is likely to restrain independent spending in 1984 even less than it did in 1980.

Thus, as Drew and Alexander have documented, the easing of restrictions on party grass-roots fund-raising and spending and the lack of an effective independent expenditure limitation permitted a substantial role for private donors and special interest spending and introduced significant inequalities in spending on behalf of the major party candidates in the 1980 election. As politicians, wealthy contributors, fund-raisers, and special interest groups become more familiar with the campaign finance laws it is likely that the publicly funded share of campaign spending will decline further and private money will once again become the engine that drives presidential campaigns.

II.

The financing of congressional elections was never as fully reformed, even in theory, as presidential campaign finance. Congress did not authorize public financing for its own elections, choosing instead to rely on the traditional private financing system. Congress, however, sought to blunt what were perceived as the critical vices of the private financing system—the dependence of candidates and, ultimately, officeholders, on large donations from wealthy individuals, and the disparities in candidates' abilities to attract contributions, which resulted in unequal, if not unfair, spending. FECA's contribution limits were intended to force candidates to turn to large numbers of small donors thereby broadening the number of citizens involved in the financing of politics and diluting the influence of any single large contributor. The expenditure limitations would eliminate the grossest disparities in candidates' spending. Private wealth would play a role but its influence would be diminished since both the overall cost of campaigns and the size of individual contributions would be limited.

Since *Buckley* invalidated FECA's general campaign expenditure limitations before they would have become effective, it is unclear how this system would have worked in practice, but it is doubtful that it would have worked well. Without adequate public funding, expenditure restrictions tend to favor candidates or parties who are already well-known to the voters or who possess assets other than money for communicating with the electorate, for example, incumbents, celebrities, and persons active in large mem-

59. Common Cause v. Schmitt, 512 F. Supp. 489 (D.D.C. 1980), aff'd by an equally divided Court, 455 U.S. 129 (1982).

60. Democratic Party of the United States v. National Conservative Political Action Comm., 578 F. Supp. 797 (E.D. Pa. 1983), prob. juris. noted, 104 S. Ct. 1906 (1984).

bership organizations.[61] The benefit to incumbents would have been compounded by the contribution restrictions, which, by prohibiting large individual contributions, make it more difficult for an unknown or outsider to obtain the necessary seed money early in a campaign to mount a viable challenge. Without public funding, then, the most likely result of the contribution and expenditure limitations would have been to cripple the ability of most challengers to oppose incumbents effectively.[62] Given the absence of public funding for congressional elections, the Supreme Court's may have been correct in eliminating the expenditure restrictions in the Act, thereby permitting at least some challengers to commit the resources necessary to match the built in advantages of incumbency.

Contribution limitations alone have not led to a democratization of the financing of congressional campaigns. As Drew and Alexander chronicle, the wealthy individual donor has gone into relative eclipse, but has been replaced not by an unorganized mass of public-spirited small givers but by political action committees ("PACs") affiliated with corporations, unions, trade associations, membership organizations, and special interest and single-issue groups.[63]

PACs existed before the 1970's as a means of circumventing the older restrictions on corporate and labor union poitical spending, but their legality was questionable.[64] FECA helped to remove that uncertainty, and PACs began to increase in size and strength.[65] The 1980 election witnessed

61. See generally G. Jacobson, Money in Congressional Elections 33-50 (1980) (expenditure limitations favor incumbents because voters are more likely to vote for a candidate about whom they have more information); Note, The Economics of the 1974 Federal Election Campaign Act Amendments, 25 Buffalo L. Rev. 519, 535-38 (1976) (incumbents enjoy a competitive advantage under the FECA Amendments that approaches a legally closed monopoly).

62. See, e.g., G. Jacobson, supra note 61, at 33-50.

63. See H. Alexander, supra note 6, at 138-39; see also Epstein, The PAC Phenomenon: An Overview, 22 Ariz. L. Rev. 355, 360 (1980); Adamany, PAC's and the Democratic Financing of Politics, 22 Ariz. L. Rev. 569, 590 (1980).

64. Prior to 1971 the principal federal campaign finance statute, 18 U.S.C. § 610, prohibited corporate and labor spending in connection with federal election campaigns. During this period, a number of organizations, primarily labor unions, established political action committees to raise and distribute funds for political purposes. The AFL-CIO's Committee on Political Education (COPE) was the model of virtually all PACs. There were relatively few business-related PACs since, given the lack of effective limitations on individual contributions, wealthy individuals affiliated with corporations could make political contributions for those businesses. See generally Epstein, Business and Labor Under the Federal Election Campaign Act of 1971 *in* Parties, Interest Groups, and Campaign Finance Law 107, 110-11 (M. Malbin ed. 1980) [hereinafter cited as Epstein, Business and Labor] (money from business-related sources entered electoral area in the form of individual contributions by wealthy persons affiliated with corporations and other businesses). The legality of the PAC device as an evasion of § 610 was twice drawn into question before the Supreme Court but the Court resolved both cases without directly confronting the PAC issue. See United States v. UAW, 352 U.S. 567 (1957); United States v. CIO, 335 U.S 106 (1948).

65. FECA did not alter the long-standing ban on corporate and union contributions to federal candidates, see supra note 64, but did authorize a corporation or union to use treasury funds to establish and administer a "separate, segregated fund" to be used for political purposes subject to the Act's dollar contribution ceilings. Moreover, FECA allowed corporations

an explosive growth in the number of PACs and in the level of PAC activity.[66] PAC contributions accounted for 27% of the funds received by candidates who participated in the general election. Victorious House candidates received 42.8% of their contributions from PACs.[67] Moreover, PACs provided a significant portion of the funds contributed by the national political parties to those parties' Senate and House candidates.

As Drew and Alexander report, in the 1980 congressional campaign, PACs were the most significant consequence of FECA. The individual contribution ceilings forced candidates to broaden their financial bases, but the time and cost involved in soliciting large numbers of supporters from an undifferentiated public was great, and the likely return was small. PACs filled the gap. PACs have access to organized constituencies with common economic and ideological interests in pending legislation or political activity. They can collect numerous small contributions, aggregate them, and make contributions in larger, more useful amounts, while assuring that the donors' interests are heard in Congress. According to Alexander, the individual "fat cat" has been replaced by the "institutionalization of special interest influence" in the form of PAC lobbyists.[68]

The most significant patterns of political giving in 1980 were the dramatic growth in business-related and right-wing ideological PAC activity,[69]

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and labor unions to communicate on any subject, including partisan politics, with their respective shareholders or members and their families, to solicit funds for their PACs and to conduct nonpartisan registration and get-out-the-vote drives among these constituencies. The FECA Amendments of 1974 further facilitated PAC operations by clarifying that corporations and labor unions that held government contracts were not prohibited from establishing PACs. The 1976 Amendments clarified the rules governing solicitations by corporate and trade association PACs of their constituencies.

In Pipefitters Local 562 v. United States, 407 U.S 385 (1972), the Supreme Court relied on FECA to uphold the legality of a union-controlled, separate segregated fund financed from systematically collected "voluntary" membership contributions.

66. In 1976 the 1146 PACs registered with the Federal Election Commission contributed $22.6 million to Congressional candidates, or about 15% of total Congressional-related campaign spending that year. During the 1980 election the number of PACs making contributions to Congressional candidates rose to 2551 and the amount contributed exceeded $55.2 million, or 23% of congressional campaign expenditures. H. Alexander, supra note 6, at 126-27 (Tables 4-19 and 4-20).

67. Id. at 368 (general election candidates received $51.9 million from PACs). Congressional general election candidates spent $191.8 million. See id. at 117 (Senate), 119 (House).

68. Id. at 5; accord Epstein, supra note 63, at 363; Epstein, Business and Labor, supra note 64, at 146-47 (through PACs corporations and business associations have "institutionalized" their electoral activities, replacing prior ad hoc, unsystematic approach); Kenski, Running with and from the PAC, 22 Ariz. L. Rev. 627 (1980).

69. PACs sponsored by corporations more than doubled their 1976 contributions, from $9.6 million to $21.6 million. When the activities of professional associations, trade associations, and non-stock corporations are added, business-related PAC contributions to Congressional candidates in 1980 amounted to approximately $38 million. H. Alexander, supra note 6, at 368-69, 371-72. Alexander writes that corporate spending continues to have "great potential for growth"—as of 1980 only 276 of the Fortune 500 companies had their own PACs. Id. at 372-73. By contrast, although the volume of labor union PAC spending increased, labor's share of PAC activity declined. See id. at 369. Labor is "not expected to keep

and the increased willingness of PACs to contribute to Republican challengers against Democratic incumbents.[70] The rising tide of business and conservative spending contributed to the stunning success of the Republican Party in 1980. As in the presidential campaign, the Republican Party excelled in developing a national fund-raising apparatus to reap PAC contributions for Republican challengers at the state and local level. The national Republican congressional committees dramatically outdistanced their Democratic counterparts in raising PAC money and distributing it to Republican candidates.[71] Although commentators in the mid-1970's had suggested that since PAC money tended to go to incumbents, PACs would serve to entrench Democratic control of Congress,[72] the Republican success in cultivating PAC support indicates that PAC money played a role in the Republican capture of the Senate.

The emergence of PACs as a permanent force on the political scene has, according to Drew, led to a politics in which fund-raising is a "continuous activity."[73] Drew describes a Washington in which Representatives and Senators, driven by fears that the large PAC treasurics could be committed to the support of opponents, have embarked on a perpetual pursuit of campaign money. The candidates line up PAC and other special interest supporters and amass extensive war chests well in advance of their elections, driving up the costs of campaigns and leading their opponents to redouble their pursuit of funds and PAC support. In Drew's provocative phrase, this pattern of the fear of money fueling the search for more money has become "the domestic equivalent of the arms race."[74]

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pace with the predicted growth in the business PAC sector." Id. at 381; see also Epstein, Business and Labor, supra note 64, at 115–38 (data suggests growth opportunities are limited for labor PACs but virtually unlimited for further corporate and business PAC formation and expression).

In the 1982–83 election cycle corporate-affiliated PAC giving rose another 36%, and trade, membership, or health groups registered a 34% spending increase. Total donations by both types of PACs amounted to $52 million. Labor contributions rose 47% to $20 million. N.Y. Times, Apr. 29, 1983, at A16.

70. PACs have historically been drawn to incumbents, particularly ranking members. See, e.g., Epstein, supra note 63, at 361; Cox, supra note 44, at 400. During the 1970's Democrats controlled both Houses of Congress and the heavy preponderance of PAC giving went to Democrats. In 1976, for example, 66% of PAC money went to Democrats. See H. Alexander, supra note 6, at 368. In 1980, PACs gave more money to challengers, and 48% of PAC contributions went to Republicans. See id.; see also G. Jacobson, supra note 61, at 232 (comparison of amount of PAC contributions to Democrats and Republicans in 1972, 1974, 1976 and 1978 elections).

71. See H. Alexander, supra note 10, at 100.

72. See Epstein, supra note 63; G. Jacobson, supra note 61.

73. E. Drew, supra note 21, at 3. For example, in February 1984, just half-way through his six-year term, Senator Alphonse D'Amato had already raised $1.3 million for his November 1986 reelection race. See N.Y. Times, Feb. 17, 1984, at B3.

74. E. Drew, supra note 21, at 94.

III.

The re-emergence of private wealth and special interest influence at the heart of campaign finance, notwithstanding a decade of reform legislation, need not necessarily be a source of wonder or despair. A cynic could easily conclude that reformers here as elsewhere were hopelessly naive. It was inevitable, the argument goes, that politicians and organizations seeking to influence politics would rcsist restrictions on their ability to obtain or contribute money. They would circumvent limitations, exploit loopholes, and manipulate regulations with an acumen born of their need for funds and influence. In this view, campaigu finance reform, like other measures intended to legislate virtue, was doomed to fail.

The short answer to this analysis is that reform did not fail because it was never fully tried. With rcspect to congressional elections, the Act was crucially defective in its failure to provide for public funding. Effective elimination of the influence of private wealth, the avowed goal of campaign reformers, requires a comprehensive approach consisting of contribution limitations, expenditure limitations, and public funding. A campaign finance law consisting solely of contribution limitations without concomitant expenditure restrictions and public funding can hardly be said to be reformed unless a structural bias towards well-organized interest groups proficient at soliciting and aggregating small donations constitutes a reform. Presidential campaign finance reform was similarly incomplete. The relaxation of the rcstraints on political party spending and the lack of an effective control on independent committee activities permitted the large-scale intrusion of private money into an ostensibly public process. It is difficult to describe this as a truly reformed system.

A less cynical, but perhaps more telling critique of reform efforts contends not simply that reform was doomed to fail but that efforts to curtail the role of private wealth in financing election campaigns are misgnided and ought to fail. Political freedom, so the argument goes, requires that each citizen have the right to seek and wield influence in the electoral process. Obtaining and exerting political influence requires communication. Individuals need to be able to tell their legislators what they want; constitutents unhappy with the performance of their public officials need the opportunity to convince others of their positions; candidates and officeholders need to communicate their actions and beliefs to the electorate. All this communication requircs money. To restrict private campaign spending is to restrict political expression. Moreover, people do not speak only as individuals but also as organized groups. The existence of special interest groups is inherent in freedom of association. The rights of such groups to amplify the voiccs of their members is basic to political freedom and must be protected.[75]

75. See, e.g., Budde, The Practical Role of Corporate PACs in the Political Process, 22 Ariz. L. Rev. 555 (1980); Elliott, Political Action Committees—Precincts of the '80's, 22 Ariz. L. Rev. 539 (1980).

This, in essence, is the philosophy articulated by the Supreme Court in *Buckley v. Valeo.* The first amendment seeks the "widest possible dissemination of information" and the "unfettered interchange of ideas."[76] Limitations on political spending limit political speech and threaten to erode political freedom. If individuals and interest groups are unequal in wealth and those inequalities are reproduced through campaign spending in the political arena, that is simply a fact of political life, inescapable in a free society. The dangers of unlimited political spending are exceeded by the dangers of limitations. Or, to use the economic metaphor so often relied upon in political finance analysis, the "marketplace of ideas" requires that everyone have the opportunity to peddle their ideas and their influence freely. Restrictions on spending will inevitably distort this marketplace by curtailing the total information available concerning the candidates and their platforms and by favoring candidates or groups less dependent on spending. If those with the greatest wealth obtain the greatest market share and consequently gain electoral victory and government infiuence, that is the way the free market works.

This analysis, however, is incomplete. The electoral process is not simply the marketplace for government influence. Elections are the cornerstone of our system of democratic self-government, and the central public function of our politics. While the market model may legitimate influence won through unequal spending, our political theory is built on the very different premise of political equality.[77] At least since Tocqueville's time, "Democracy in America" has been synonymous with universal suffrage for all members of the polity, and universal suffrage, in turn, has meant equal voting rights for all voters.[78] One legacy of the Jacksonian Era has been the repudiation of wealth as a qualification on the right to participate in the electoral process.[79] "Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process."[80] In the name of political equality, and to fully vindicate the principle of "one person, one vote," the Supreme Court has held unconstitutional the poll tax,[81] candidates' filing fees,[82] and statutes restricting to taxpayers the right to

76. Buckley v. Valeo, 424 U.S. 1, 49 (1976) (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 266, 269 (1964)).

77. L. Berg, H. Hahn & J. Schmidhauser, supra note 2, at 41-42; M. Walzer, Spheres of Justice 305-06 (1983).

78. 1 A. Tocqueville, Democracy in America 206 (Vintage ed. 1945); see also 3 J. Bryce, The American Commonwealth 525-26 (1888) ("political equality," defined as "the equal possession by all of rights to a share in the government, such as the electoral franchise and eligibility to public office," found to exist in late nineteenth century America "in the amplest measure").

79. See, e.g., L. Benson, The Concept of Jacksonian Democracy 7-20 (1961).

80. Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966).

81. Id. at 670.

82. See, e.g., Bullock v. Carter, 405 U.S. 134, 144 (1972) (candidate filing fee requirements held to "[fall] with unequal weight on voters, as well as candidates, according to their economic status" because it tends to exclude the "favorites" of "the less affiuent segment of

vote on bond issues.[83] Such measures were seen as introducing private economic inequality into the political realm—as creating a "disparity in voting power based on wealth"[84]—and were invalidated for that reason.

The principle of political equality will not be satisfied by formal equality at the voting booth, for disparity in voting power based on wealth is exactly what results when private political spending by individuals and organizations of unequal resources is left unrestricted and unequalized. Indeed, political scientists have likened the fiscal side of our political process to one of "weighted voting" or "multiple voting."[85] The *Buckley* Court was clearly correct in finding that effective political communication requires money—money to buy media time, prepare and disseminate campaign literature, conduct polls, circulate endorsements, operate storefronts, and convince, register, and turn out voters. When that money is provided by private wealth and special interest groups, whether through contributions or independent expenditures, these supporters acquire influence disproportionate to their numbers.

Inequality in campaign financing influences both the outcome of elections and the postelection behavior of governments. In terms of the election of candidates, while the bigger spenders do not always win, they usually do. Correlation is no proof of causation, but it is clear that the candidate with the deeper financial resources and the greater backing of large contributors is benefitted thereby and is more likely to win than his less well-financed opponent.[86] More significantly, campaign contributions influence the conduct of government. The officeholder comes to represent a financial constituency as well as a geographic constituency of the voters who elected him.[87] As Drew's *Politics and Money* explains, when legislators are beset by a

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the community"). Compare Storer v. Brown, 415 U.S. 724 (1974) (upheld ballot access restriction tied to a measure of candidate's popular support).

83. See, e.g., City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) (general obligation bonds); Cipriano v. City of Houma, 395 U.S. 701 (1969) (revenue bonds). See also Hill v. Stone, 421 U.S. 289 (1975) (invalidating system requiring separate majorities of all voters and of taxpayers as a condition for issuing municipal debt).

84. Bullock v. Carter, 405 U.S. 134, 144 (1972).

85. See L. Berg, H. Hahn & J. Schmidhauser, supra note 2, at 43-46; A. Heard, supra note 2, at 48-49; Adamany, supra note 63, at 570-71.

86. In the 1982 elections, the winners outspent the losers in 28 of 33 Senate races. In each race not involving an incumbent the big spender won. See Note, Equalizing Candidates' Opportunities for Expression, 51 Geo. Wash. L. Rev. 113, 115 n.11 (1982). In the 1980 House elections, there were 185 contests in which one candidate outspent the nearest rival by two-to-one, and the big spender won in 178 of these races. Id. In the 1980 presidential primaries, Reagan outspent Bush, Carter outspent Kennedy, and, in two-thirds of the contests the winner outspent his closest competitor. See H. Alexander, supra note 6, at 152. And, of course, Reagan outspent Carter that November. See supra text accompanying note 12.

87. A central theme of both the Drew and Alexander studies is how the PACs operate at a national level, organizing contributions from outside a state or district. Thus, the officeholder's financial constituency need not have any overlap or community of interest with the electoral one. National groups of realtors, auto dealers, insurance underwriters, milk producers, seafarers, and right-to-lifers can determine whether a Representative or Senator will have the money to mount an effective campaign or will see those resources thrown against

multiplicity of requests for action, the key to political influence is the ability to obtain a politician's attention, to gain access. Access is "the required entry ticket for getting something done,"[88] and money provides access. With a host of supplicants banging at his door, the politician is most likely to admit "the ones who gave the money."[89]

Of course, big givers and moneyed interests are not the only successful lobbyists on Capitol Hill and money is not the only route to political power. Representatives, senators, and presidents have responded to ideology and conscience as well as contributions. But as Drew points out, "[t]he plain truth is that most issues before Congress do not involve great moral principles . . . . Most issues . . . are not issues of conscience or morality—they are questionable calls. The people with money always have access and always have influence."[90] The reliance on private wealth to provide essential campaign funds extends economic inequality into the political realm.

Moreover, since the principal sources of campaign money are rich individuals, businesses, professional organizations, and organized labor, their domination of campaign finance contributes to a structural skewing of the congressional agenda.[91] The poor, the unemployed, the nonunion worker, and most middle class people are not a part of this process.[92] In 1980, the affinity of business-related PACs and conservative committees for Republi-

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him. E. Drew, supra note 22, at 28-37. Drew quotes Iowa Congressman Jim Leach: "We're seeing regional politics and state and citizen politics become national. National groups determine outcomcs, whereas local constituencies used to provide the crucial role. This is new." Id. at 34. Drew also notes the emergence of large PACs, such as the Businćss-Industry Political Action Committee, which attempt to represent not simply individual companies or individual trade unions, but industry-wide and even economy-wide business and collections of business and trade associations. See also H. Alexander, supra note 6, at 377-79 (discussing possible attempts to influence pending legislation through PAC contributions).

88. E. Drew, supra note 21, at 77.

89. Id. (quoting Charlcs Ferris, former Senate Democratic aide and former Chairman of the Federal Communications Commission).

90. Id. at 79.

91. See, e.g., L. Berg, H. Hahn & J. Schmidhauser, supra note 2, at 79-80; see also A. Heard, supra note 2, at 119 ("[T]he bulk of American campaign activities is financed by businessmen.").

92. In 1980 only about 13% of voting age Americans made political contributions or expenditures, see H. Alexander, supra note 6, at 422, and this figure is relatively high compared to prior years. See Adamany, supra note 63, at 579. Most political donors are well above the average in income and education. See id. The average contribution to a corporate PAC in 1979-80 was $161.37. See H. Alexander, supra note 6, at 373; see also Arterton, Political Money and Party Strength *in* The Future of American Political Parties 110 (J. Fleishman ed. 1982) ("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 political giving."); H. Alexander, supra note 22, at 75.

The low level of political giving need not be seen as a reflection of a lack of concern for politics since in the same year nearly 29% of taxpayers utilized the federal income tax checkoff to earmark a small portion of their tax liabilities to the federal fund used to provide public subsidies to the Presidential candidates. Id. at 423. Most likely, the low level of giving reflects a realistic assessment by most Americans that they are financially unable to give enough to have influence.

can candidates set the stage for Republican electoral victories, but the problem posed by the unchecked role of private wealth in campaign finance is not primarily that of partisan imbalance. If business is where the money is to be found, the Democrats are certain to pursue business interests. Indeed, as Drew and Alexander describe, the Democrats began a concerted effort after 1980 to raise funds in the business community.[93] Democrats may yet be able to expand their financial base among corporations and other important sources of political money, but only by developing a legislative program and a party posture more geared to those interests. The real losers will not be the Democrats but the less affluent.[94]

Unrestricted private political spending thus gives the wealthy a voice out of proportion to their numbers in society in the election of public officials, and enables them to dominate the legislative agenda. The private financing of campaigns does not simply replicate social and economic inequalities into our nominally egalitarian politics, but converts the political process into a mechanism for reinforcing those inequalities in society.

Although American political campaigns have historically been privately financed, private wealth has never been given unlimited power to influence elections. As early as 1907, concern over the economic power of business corporations and the undue political influence such power could buy led Congress to forbid corporations from making contributions to federal candidates.[95] When in the 1940's labor unions were perceived as wielding comparable power, they too were prohibited from making political contributions.[96] Other monetary ceilings on individual political contributions were also enacted long before FECA.[97] Although these limits were weakly enforced and readily circumvented, they demonstrate an early and consistent concern by Congress with the consequences of permitting private

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93. E. Drew, supra note 21, at 38-46.

94. H. Alexander, supra note 6, at 457-59; cf. Weaver, Democrats' Platform Shows a Shift from Liberal Positions of 1976 and 1980, N.Y. Times, July 22, 1984, at A20, col. 1 (1984 Democratic platform "favors social policies less generous and less expensive than those espoused in the past," deemphasizes welfare reform, income security, federal support for low-income housing, and national health insurance). In the short-run, the Republicans have continued to be far more successful at fund-raising than the Democrats. For the 1981-82 election cycle, the three major Republican committees—the Republican National Committee, the National Republican Senatorial Committee, and the National Republican Congressional Committee—spent $189 million, while the three corresponding Democratic committees—the Democratic National Committee, the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee—spent only $28.5 million. See H. Alexander, supra note 22, at 137.

95. Act of January 26, 1907, ch. 420, 34 Stat. 864 (1907) (current version at 2 U.S.C. § 441(b) (1982)).

96. Act of July 19, 1940, ch. 640, §§ 13(a), (b), 54 Stat. 767, 770 (1940) (contributions to candidates or political committees limited to $5000 per person; "person" defined to include unions); Taft-Hartley Act, ch. 120, 61 Stat. 136 (1947) (current version at 2 U.S.C. § 441(b) (1982)) (prohibiting all political contributions or expenditures by unions in federal elections); see United States v. UAW, 352 U.S. 567 (1957); United States v. CIO, 335 U.S. 106 (1948).

97. E.g., Federal Corrupt Practices Act of 1925, 43 Stat. 1070 (1925). See generally, A. Heard, supra note 2, at 344-70 (discussion of restrictions on contributions).

wealth to finance an egalitarian electoral process. The *Buckley* Court may have been correct in stating that equalization of political speech is "wholly foreign to the First Amendment," but restrictions on political spending in order to vindicate the commitment to political equality have been strongly rooted in our campaign finance laws. The failure of this earlier system to check the extension of economic inequalities into politics led to FECA, with its more extensive restrictions and its inclusion of a public funding component.

Thus, while the critique of FECA as inconsistent with the free speech/free market analysis of the electoral process may be well-taken, it is itself subject to criticism as an insufficient description of our politics. The concern for democratic equality has long played a significant part in structuring federal campaign finance regnlation. So long as our politics is committed to political equality, unlimited private spending that empowers the rich undermines that commitment and invites efforts to curb the role of private money.

IV.

Our campaign finance laws map the borderland between the values of the marketplace and the norm of political equality.[98] They constitute an attempt to reconcile the political ideology which would confer on all citizens equal rights to infiuence public decisionmaking with the reality of a society in which the principal means of participation and infiuence—money—is distributed in a radically unequal way. Our regulatory scheme, an uneasy hybrid of equalizing and free market elements, embodies this tension. Prcsidential public funding and contribution limits refiect the view of elections as a public function in which private wealth has little place. Privately funded congrcssional elections and the Supreme Court's invalidation of limits on candidate, party, and independent spending treat campaign finance as a matter of private interest and private infiuence, funded by private contributors to the full extent of their wealth. The mix is, as the Drew and Alexander studies demonstrate, essentially unstable. The free market elements are eroding the equalizing ones. Unlimited private spending began to negate the hoped-for consequences of public subsidies in 1980 and this process is bound to continue and gather momentum. Contribution restrictions without public subsidics in congressional elections have created special opportunities for particular kinds of private interest groups and have not contributed significantly to political equality. We will soon be back where we were in 1972, if we are not there already.

What is to be done? Drew and Alexander present radically different prescriptions. Drew views campaign finance regulation largely as a matter of realizing the values of political equality; consequently, she would minimize the role of private wealth in funding campaigns. She proposes public funding of congressional campaigus, provision of free broadcast time for

98. See M. Walzer, supra note 77, at 310–11, 318–19.

political advertisements, reimposition of limits on expenditures by independent committees, and closure of other loopholes in the presidential campaign finance laws.[99]

Alexander, by contrast, treats campaign finance largely as a matter of developing proper channels for the institutionalization of private economic influence in the electoral process.[100] He would check the role of PACs and independent committees by expanding the funding capacity of individuals and political parties. He would raise the limits on individual contributions and repeal the $25,000 overall contribution limit for individuals, thereby permitting a larger role for individual contributors to counterbalance the influence of PACs.[101] More importantly, he would strengthen the campaign finance role of political parties. "[T]he most likely reform in the near future," according to Alexander, is "political-party renewal."[102] Alexander suggests that such renewal could permit private politically oriented activity while mitigating its most harmful consequences—special interest influence. He conceives of the political parties as "intermediate structures" between politicians and the individuals and organized groups who would help them hold office. The parties provide a mechanism for this electorate to express their support and be heard by the politicians, yet are more "broadly based" than the PACs and tend to dilute the role of special interests and facilitate the formation of functioning coalitions which are necessary to postelection government decisionmaking.[103]

Alexander presents a menu of proposals to strengthen the parties' campaign finance role, including an increase in or elimination of the limits on party contributions to candidates, on party spending on behalf of candidates, and on party spending for grass-roots volunteer activity.[104] In effect, these proposals would give the parties a preferred role in campaign finance by largely deregulating their fund-raising and spending activities. When considered together with other proposals he presents to relax contribution limits, Alexander's prescription becomes clearer. If Drew would more fully realize the model of reform only partially accomplished in the FECA legislation, Alexander would turn toward the campaign finance structure that existed prior to the enactment of the 1970's reforms.

Who is right? In a sense, both are. The basic operational decision in any election finance system is whether or not to provide candidates with

99. E. Drew, supra note 21, at 147. Since broadcast advertisement consumes the largest portion of candidates' expenditures, free broadcast time would, in effect, make this portion of the campaign publicly funded.

100. H. Alexander, supra note 6, at 476–82. Alexander elaborates his proposals and their conceptual support in Alexander, Making Sense About Dollars in the 1980 Presidential Campaign, *in* Money & Politics in the United States 32-35 (M. Malbin ed. 1984).

101. Id. at 479.

102. Id. at 477.

103. Id. at 479–82. But see Arterton, supra note 92, at 131–34 ("[T]he national party machinery on the Republican side resembles more the functioning of a political action committee than it does a revitalized and nationalized version of traditional parties.").

104. See H. Alexander, supra note 6, at 479–82.

public funds adequate to mount effective campaigns. Alexander assumes a nonpublicly funded system. At present, congressional candidates receive no public moneys, and, in an era of massive budget deficits, Alexander may be right in concluding that Congress is unlikely to enact public funding for its own campaigns in the near term.[105] Moreover, while presidential candidates receive substantial public money, the rise of unlimited party and independent committee spending in 1980 suggests that public funds alone are insufficient to permit a candidate to mount an effective campaign against a candidate benefitting from significant party and independent spending.

In a privately funded world, with inequality of access and inequality in opportunity to influence the process a given, Alexander's proposals may be the better approach to take. Expenditure and contribution limits introduce distortions into the market for political influencc, favoring certain groups or individuals over others. Expenditure restrictions favor those already known to the voters or those who can communicate with the electorate more easily without money. Contribution limitations favor the organized over the unorganized; those seeking to advance their economic or ideological interests on Capitol Hill over those without necessary political acumen or infrastructure. Restrictions on independent expenditures give the candidates and the major political parties a monopoly on political speech without providing any means of making them responsive to the views of those whose speech is curtailed. A relative handful of large contributors and special interest groups still dominate the process.

A deregnlated private system would avoid the contribution and expenditure restraints that skew the process in favor of certain groups. Relaxing the restraints on party fund-raising and spending could improve the political process by making the parties, not PACs and special interest committees, the focal point of campaign finance. The parties may be more heterogeneous, more inclusionary, and more internally democratic than PACs and the independent committees. Party renewal could dilute the influence of single-interest groups and facilitate the formation of governing coalitions. Indeed, the legislative success of the Reagan Administration in 1981-82 may be in part attributable to the increased fund-raising role of the national Republican Party and the concomitant cooperation of the White House, the Republican National Committee, and the Republican congressional leadership.

Yet these reforms would do nothing to further the realization of the goal of political equality in the campaign finance system. The electoral process might be opened to more wealthy challengers (or challengers with wealthy backers), and the proliferation of special interest groups might be curbed, but the political process, and consequently politics itself, would remain in the grip of a minority composed of the wealthy and the well-organized. That is inevitable in any private financing system.

The adoption of an effective public financing system, as Drew advo-

105. Id. at 4.

cates, constitutes a fundamental remapping of the political equality/free market border.[106] Public funding is intended to give all citizens an equal role in the financing of candidates, and thus equalize the voice and influence that money currently provides. Candidates assured of public money do not have to worry about lining up sources of funds and purchasing the support of private treasuries. Politicians need attend only to their electoral constituency, and not to a supplementary financial one. Moreover, as money ceases to be the medium through which private individuals and organizations seek to influence the outcome of elections, the effects of inequality of wealth in society would not be so directly felt in the conduct and outcome of the electoral process. A system of publicly funded campaigns thus not only reflects the norm of political equality but may contribute to its fuller realization in society.[107]

As the financial history of the 1980 election indicates, the provision of public funds to candidates is not an effective means of advancing political equality unless the role of private money is sharply curtailed. In 1980, unlimited privately funded party and independent committee spending undid the equalizing effects of public funding. In order to work, then, public funding requires substantial restriction of party and independent committee spending.

Such restrictions are consistent with, if not mandated by, the premises

106. The states have been active in developing public financing systems for state and local campaigns; by 1980, seventeen states had adopted some type of public funding mechanism. These state programs differed widely among themselves and in comparison with the federal public funding program. Approximately half the states with public funding allocate the public money to the political parties. The other state programs distribute money directly to the candidate, usually on a matching fund basis. The range of support varies from Hawaii, which provides small sums to candidates for a wide variety of state and local offices, to Michigan and New Jersey, where public financing is limited to gnbernatorial campaigns but is adequate to cover a significant proportion of these candidates' campaign costs. Since 1980, three states have either deferred implementation of their public funding programs, or allowed their programs to expire, while two additional states have enacted public funding mechanisms. See H. Alexander, supra note 22, at 173-82; Jones, Financing State Elections, *in* Money and Polities in the United States 198-204 (M. Malbin ed. 1984).

107. Public funding is, however, no gnarantee of political equality. The political advantages of incumbents derive from access to free media, and from their ability to provide constituent service and command their constituents' attention, as well as from campaign contributions. Special interest groups benefit from their greater degree of self-organization, their greater attention to and mobilization around political issues, and their internal communieations, as well as from their eapacity to make large donations. The implementation of a public funding system will require the resolution of difficult issues: How to deal with the built-in advantages of incumbency; how to assure that the level of public funding will be adequate to enable challengers to mount effective campaigns in a system where incumbents write the campaign finance laws; who should receive public funds—candidates or parties?; what should be the standard for the funding of independent candidates or candidates in party primaries?; what is the proper role of internal communieations in mass membership organizations?

Yet, while the elimination of inequalities of wealth from election campaigns is no guarantee that political equality will actually result, it would be a first step of profound significance. True democracy is impossible under the current financing system.

underlying a public funding system. To provide for public funding is to decide that the financing of political campaigns must cease to be an extension of the marketplace and must instead become a public function responsive to the interests of all citizens equally and not according to wealth. Under public funding, the financing of electoral campaigns should be assimilated to the financing of the casting and counting of ballots, on the operatives of a board of elections. The public funding of electoral campaigns, by transforming that process into a public function, requires that campaign finance be insulated from the reach of private wealth.

As Congress was the cause of the loophole created by the 1979 Amendments, Congress could provide a solution by repealing the grass-roots spending exemption. If there is a perception that campaigns require more funds for grass-roots activity,[108] that need could be met by increasing the size of the public grant and directing that a portion of it go to state or local committees for traditional grass-roots activities. Such a measure might better serve the purposes of the 1979 Amendments since, as Drew and Alexander have shown, in 1980 the primary beneficiaries of the 1979 grass-roots provision were the Republican National Committee and the Republican Presidential ticket, not the state and local parties.[109]

The imposition of effective controls on independent spending raises a more difficult constitutional question. While independent spending may provide an important positive role in the private system by making the system open to persons and groups not attached to the candidates or the major parties, unlimited independent spending in a public system ultimately subverts that system by reintroducing the private inequalities the public system is intended to negate.[110]

In *Buckley*, the Court invalidated independent expenditure restrictions imposed in a private system context. Could such restrictions be sustained in the context of a public funding system? The outlines of an affirmative argument may be seen in the Court's campaign finance decisions. Although the dominant theme in *Buckley* was the protection of unlimited private spending as a necessary adjunct to political freedom, a secondary strand in *Buckley* reflects concern for the impact of unrestricted, unequalized spending on political equality. The Court's contribution/expenditure line and its validation of FECA's contribution restrictions demonstrate a willingness to accept a brake on the role of private wealth in politics in order to provide

108. E.g., Cheney, The Law's Impact on Presidential and Congressional Election Campaigns, *in* Parties, Interest Groups and Campaign Finance Laws, supra note 64, at 238-48; Huckshorn & Bibby, State Parties in an Era of Political Change *in* J. Fleishman, supra note 92, at 90 (In 1976 FECA limitations discouraged state and local parts activity in support of the presidential candidates).

109. See Arterton, supra note 92, at 122 ("At least the first time through with [the 1979 Amendments] in place, the results were not as local, not as grass roots, and not as spontaneous as envisioned.").

110. Cf. Rosenthal, Campaign Financing and the Constitution, 9 Harv. J. Legis. 359, 389 (1972) (discussing circumvention of pre-1971 limits on spending in congressional campaigns through use of committees).

for political equality, even at the cost of limiting spending and speech.[111] The contribution/expenditure distinction is questionable when presented purely in free speech terms.[112] Contribution limits do restrict campaign speech. If no person can give a candidate more than $1000, then none of the donors will be heard much more loudly than anybody else. That, of course, is the purpose of contribution limits, but it restricts the full political participation of the putative $50,000 donor. Moreover, contribution limitations may inhibit a candidate's ability to raise and spend campaign money. A candidate dependent on a small number of large donors will be unable to raise money to fund the expenditures necessary for communication with the electorate. On the other side of the line, large, widely noted independent expenditures can make a candidate as beholden to the independent spender as to a contributor. The contribution/expenditure line does not map the contours of the first amendment so much as it attempts to impose some restriction on unlimited spending for the sake of egalitarian political values. Indeed, the Court recently emphasized the applicability of the model of democratic equality to the analysis of campaign finance by reaffirming the constitutionality of the long-standing congressional restriction on corporate political spending.

In *Federal Election Commission v. National Right to Work Committee* ("*NRWC*"),[113] the Court unanimously upheld a provision of FECA restricting the ability of a certain type of corporation to solicit funds for its PAC by analogizing the solicitation restriction to the related ban on corporations spending money in support of candidates. The "first purpose" of that ban, which the Court deemed sufficient to justify the regulation at issue, "is to ensure that substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political 'warchests.' "[114] That such a restriction would limit both the total volume of political speech and the speech of particular corporations was of little moment.

The *NRWC* decision is especially noteworthy in that the National Right to Work Committee, although a corporation in form, is a nonprofit, largely voluntary organization which far more resembles the model of a group of citizens banding together to amplify their individual views—like an independent committee—than of a business corporation committing its

111. See supra text accompanying notes 33-38.

112. Cf. Sproul, Corporations and Unions in Federal Politics: A Practical Approach to Federal Election Law Compliance, 22 Ariz. L. Rev. 465, 495-96 (1980) (contributional/expenditure distinciton "blurred" by PACs which both make and receive contributions); see also California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182, 202 (Blackmun, J., concurring) (criticizing expenditure/contribution distinction); Buckley v. Valeo, 424 U.S. 1, 241-45 (Burger, C.J., concurring and dissenting) (same); Richards, The Rise and Fall of the Contribution/Expenditure Distinction: Redefining the Acceptable Range of Campaign Finance Reforms, 18 N. Eng. L. Rev. 367 (1983).

113. 459 U.S. 197 (1982).

114. Id. at 207.

substantial capital to the pursuit of political influence.[115] The Court acknowledged this in noting that while the FECA provision "restricts the solicitation of corporations and labor unions without great financial resources, as well as those more fortunately situated, we accept Congress' judgment that it is the potential for such influence that demands regulation."[116] The incongruity in *NRWC* serves only to underscore the message that the disproportionate political influence caused by "substantial aggregations of wealth" may be curbed even though the unfettered dissemination of political information is also thereby restricted.[117]

Moreover, the Court's treatment of the candidate expenditure restrictions in the public funding context is also suggestive. *Buckley* invalidated limitations on spending by privately funded candidates as incompatible with the first amendment, yet the Court in *Republican National Committee ("RNC") v. Federal Election Commission*[118] unanimously upheld the expenditure restrictions imposed on candidates who received public funding.[119] As *RNC* was decided without opinion its rationale is ambiguous. It may be construed simply as a recognition of Congress' power to condition grants on the grantee's acceptance of restraints on his or her behavior,[120] although an infringement of core first amendment speech would be a high price to exact for eligibility for federal grant money.[121] An alternative interpretation is that *RNC* tacitly recognized that a shift to a public funding system reflects a political decision to make equality, and not private influence, the basic premise of the campaign finance system. Once that decision is made, re-

115. Id. at 199; see Democratic Party of the United States v. National Conservative Political Action Comm., 578 F. Supp. 797, 821 n.34 (E.D. Pa. 1983) (characterizing the National Right to Work Committee as "ideological" and "non-profit, largely voluntary" in contrast to corporations and labor unions), prob. juris noted, 104 S. Ct. 1906 (1984).

116. 459 U.S. at 210.

117. See Athens Lumber Co. v. Federal Election Comm'n, 718 F.2d 363 (11th Cir. 1983) (finding *NRWC* controlling in upholding the constitutionality of provisions limiting corporate contributions), app. dismissed for want of juris., cert. denied, 104 S. Ct. 1580 (1984).

118. 445 U.S. 955 (1980).

119. See supra text accompanying notes 43-44.

120. Republican Nat'l Comm. v. Federal Election Comm'n, 487 F. Supp. 280, 284-85 (S.D.N.Y.), aff'd mem., 445 U.S. 955 (1980); cf. Buckley v. Valeo, 424 U.S. 1, 57 n.65 (1976) ("Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations.").

121. Cf. Federal Communications Comm'n v. League of Women Voters of California, 104 S. Ct. 3106 (1984) (holding that § 399 of the Public Broadcasting Act of 1967, which prohibited television and radio stations receiving federal grants from editorializing, violates the first amendment). In *League of Women Voters* the Court determined that Congress could not, even under the Spending Power, condition the receipt of government funds on the waiver of editorial speech protected by the first amendment. See id. at 3127-29 & n.27. By contrast, in *Republican National Committee* the Court upheld the power of Congress to condition the receipt of money from the Presidential Election Campaign Fund on the candidate-recipient's acceptance of expenditure limitations. The two cases, taken together, permit the inference that, *Buckley* notwithstanding, private campaign-related expenditures may not be fully protected by the first amendment in the context of publicly funded campaigns.

strictions on spending, incompatible with a private finance system, become essential to preclude the reintroduction of spending inequalities which are inherently destructive of the public funding system.

The Supreme Court's disposition of the case currently before it, presenting the constitutionality of section 9012(f),[122] could prove critical for setting the future course of campaign finance regulation. The Court has an opportunity to indicate the extent to which a public funding system signals a change in the basic postulates of campaign finance regnlation and permits the restriction of private political spending. If the Court were to uphold section 9012(f), that would indicate that a viable public funding system could serve as a constitutional alternative to the historic private funding system and the current mixed private and public system. On the other hand, an invalidation of section 9012(f) would likely lead to a further erosion of the public funding system and accelerate the return to a system financed, in large part, by private money.

V.

The Alexander and Drew reports on the financing of the 1980 elections indicate that FECA's particular weaving of public and private financing is coming unravelled. New attention to the rules and assumptions of our campaign finance system is in order. Alexander's analysis assumes that our system will be—and must be—largely privately funded, and seeks to deal with the consequent special interest influence by expanding the financing roles of parties and individual contributors to counterbalance the PACs and the independent committees. The thrust of this approach is to make the laws of the private funding system more consistent with its basic premises by deregnlating the campaign finance market. Drew's solution would be to move toward still greater public funding of federal elections. To be successful this would necessitate sharply curtailing the ability of private individuals and groups to engage in political expenditures in connection with federal elections. This approach would be more consistent with our norm of political equality and would contribute to its fuller realization. To do nothing is essentially to opt for the private system, with special preferences for well-organized economic or ideological interest groups. This tendency was pursued in 1980, and campaign finance reform does not currently appear to have a high place on the national political agenda. It remains to be seen whether these studies, or perhaps the financial history of the 1984 election, can change that.

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122. Democratic Party of the United States v. National Conservative Political Action Comm., 578 F. Supp. 797 (E.D. Pa. 1983), prob. juris noted, 104 S. Ct. 1906 (1984); see supra note 60 and accompanying text.