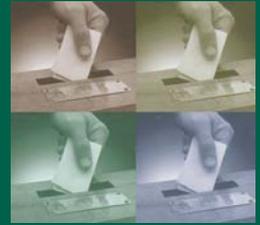




Special Edition March 27, 2002

# Election Law News

A Publication of the WRF Election Law Practice Group



## Bipartisan Campaign Reform Act of 2002

President George W. Bush signed the Bipartisan Campaign Reform Act of 2002 today, March 27, 2002. Below is a summary of the major provisions of the new law and a brief explanation of how these provisions apply to individuals, PACs, corporations, and non-profits.\* The law goes into effect November 6, 2002.

\* Citations are to Pub. L. No. 107-\_\_\_ (to be provided later), the short title of which is the Bipartisan Campaign Reform Act of 2002. This law arose as H.R. 2356, known as the Shays-Meehan campaign finance reform bill. The House of Representatives passed the Shays-Meehan bill on February 14, 2002, and the Senate passed the legislation on March 20, 2002. The House and the Senate passed technical amendments in H. Con. Res. 361 on March 20 and March 22, respectively.

### Hard Money Contribution Limits

#### A. PACs

- ◆ No change to the amount individuals may contribute to a PAC or that a PAC may contribute to candidates.

#### B. Individuals

- ◆ The limit for contributions to candidates increases from \$1,000 per election to \$2,000 per election. (Sec. 307(a)).

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## How the Bipartisan Campaign Reform Act of 2002 Affects You

### What's New for Individuals:

- Higher contribution limits to candidates and parties.
- Higher aggregate contribution limits.
- Ban on contributions by minors.
- Ban on "soft money" contributions to national political party committees.
- "Electioneering communications" can trigger FEC reports.

### What's New for Corporations:

- Ban on "soft money" contributions to national political party committees.
- Partial ban on the uses of "soft money" contributions to state, district, and local political party committees.
- Higher individual contributions limits for officers and directors.
- Ban on using corporate funds for certain issue ads, or "electioneering communications."

### What's New for PACs:

- Altered "coordination" requirements.
- No indexing of contributions to/from PACs.
- Reporting requirements for certain issue advertising or "electioneering communications."
- Longer statute of limitations.

### What's New for Non-profit Organizations:

- Ban on contributions or solicitations by parties, their officers and agents if organization involved in "federal election activity."
- Limits on fund-raising by federal candidates and officeholders for "federal election activity."
- Ban on "electioneering communications" by organizations receiving corporate or union funds.
- Reporting requirements for groups who pay for "electioneering communications."

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- ◆ An individual may contribute \$25,000 per year to a national political party committee (e.g., RNC, DNC, NRSC, DSCC, NRCC, DCCC), an increase from the current \$20,000 per year. (Sec. 307(a)).
- ◆ An individual may contribute up to \$10,000 per year to state party committees, an increase from the current \$5,000 per year. (Sec. 102).
- ◆ Aggregate limits for individuals (currently \$25,000 per year) are increased as follows:
  - i. There is an overall individual aggregate contribution limit of \$95,000 per two-year election cycle.
  - ii. Of this \$95,000, a maximum of \$37,500 may be contributed to candidates.
  - iii. Of this \$95,000, a maximum of \$57,500 may be contributed to all other political committees.
  - iv. Of the \$57,500 allowed to be contributed to political committees, a maximum of \$37,500 may be contributed to PACs, state party committees and other political committees that are not national party committees.
- ◆ The two-year election cycle starts on January 1 of odd-numbered years and extends to December 31 of even-numbered years. (Sec. 307(b)).
- ◆ Contributions by minors 17 years old or younger are prohibited. (Sec. 318).

### C. Indexing of Contributions

- ◆ The limits on individual contributions to candidates and party committees and individual aggregate contribution limits are indexed for inflation starting in 2003. (Sec. 307(d)).
- ◆ PAC contribution limits are not indexed.

### Non-profit Organizations

- ◆ All party committees, their agents, and their officers are banned from contributing to or soliciting contributions for IRS § 527 political organizations and non-profit groups that make contributions or expenditures in connection with “federal election activity” or participate in “federal election activity.” (Sec. 101).
- ◆ “Federal election activity” includes the following: (i) voter registration activity within 120 days of an election; (ii) voter identification, get-out-the-vote activity, or generic campaign activity; and (iii) advertisements (“public communications”)

that refer to a clearly identified candidate for federal office and promote, support, attack, or oppose a candidate for that office. (Sec. 101).

- ◆ Federal candidates and officeholders may solicit \$20,000 per calendar year per individual for use in voter registration drives conducted within 120 days of an election, voter identification, and get-out-the-vote activities performed by a 501(c) non-profit organization. (Sec. 101).
- ◆ Candidates may raise unlimited funds for 501(c) non-profit organizations that do not engage in political activity and for the non-political activity of other non-profit organizations. (Sec. 101).

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## New Campaign Finance Law Challenged in Court

### Senator McConnell Files Complaint

Today, Wednesday, March 27, 2002, Senator Mitch McConnell filed a Complaint in the United States District Court for the District of Columbia challenging the constitutionality of numerous provisions in the Bipartisan Campaign Reform Act of 2002. According to the Complaint, the Act, among other things, directly regulates core political speech, unconstitutionally favors some speakers over others, and imposes impermissible burdens on the activities of political parties, officeholders, candidates, and tax-exempt organizations.

In addition to Jan Baran of Wiley Rein & Fielding, other attorneys leading Senator McConnell’s effort to protect the First Amendment rights of all Americans include Judge Kenneth Starr, Stanford Law School Dean Kathleen M. Sullivan, and First Amendment expert Floyd Abrams.

The National Rifle Association also filed a separate constitutional challenge to restrictions on political speech and activity contained in the Act.

*Documents related to this litigation may be accessed on the Stanford Law School website at <http://lawschool.stanford.edu/library/campaignfinance/>.*

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## Advertising

- ◆ Corporations and unions, as well as organizations that receive funds from corporations and unions, are prohibited from running “electioneering communications,” which are certain issue advertisements. A corporation’s or union’s PAC may run such ads with hard money. A 501(c)(4) organization may, under certain conditions, make an “electioneering communication.” (Sec. 203).
- ◆ “Electioneering communications” are broadcast, cable, or satellite ads that refer to clearly identified candidates within 60 days of a general, special, or runoff election or within 30 days of a primary election or convention and are received by 50,000 or more persons in the congressional district or state where the election is being held. This prohibition does not apply to newspaper ads, billboards, direct mail, or other types of communications. (Sec. 201).
- ◆ This ban applies to “targeted” ads by 501(c)(4) social welfare organizations and 527 political organizations even if the ads are paid for with contributions from individuals. (Sec. 204).
- ◆ Any non-corporate or non-union person or group of persons who pays for “electioneering communications” must (1) file with the Federal Election Commission within 24 hours of disbursing more than \$10,000 on such ads, (2) identify the person making or controlling the disbursements and the custodian of the records, (3) identify those who have contributed \$1,000 or more, and (4) identify those to whom disbursements of more than \$200 have been made. (Sec. 201).

## Coordination

- ◆ Funds that are spent in coordination with candidates are treated as contributions under current law. The Bipartisan Campaign Reform Act of 2002 expands the definition of coordination to include coordination with political parties and party committees. In addition, the legislation repeals current FEC regulations on coordination and mandates that the FEC issue new regulations, which must address the following: (A) the republication of campaign materials; (B) the use of a common vendor; (C) communications directed or made by persons who previously served as an employee of a candidate or a political party; and (D) communications made by a person after substantial discussion about the communication with a candidate or a political party. (Sec. 214).

- ◆ If “electioneering communications” are coordinated with a political party, candidate, or officer or agent of either, then the communication would be a contribution and subject to contribution limits and prohibitions (e.g., corporate prohibition). (Sec. 202).

## Soft Money

- ◆ A national committee of a political party may not accept corporate or union contributions or contributions from individuals in excess of the contribution limits. (Sec. 101).
- ◆ State, district, and local committees of a political party are prohibited from spending soft money on “federal election activities” except as noted below.
- ◆ State, district, and local committees of a political party may raise \$10,000 in soft money per source per year (plus hard money) earmarked for voter registration activity within 120 days of an election, voter identification activities, and get-out-the-vote activities, if the funds are spent in a prescribed fashion and are raised in accordance with state law. This is so-called “Levin money.” (Sec. 101).
- ◆ The state, district, and local committees may spend any other soft money under state law on voter registration more than 120 days before an election.
- ◆ State, district, and local committees of a political party may not spend any of the “Levin money” on any broadcast, cable, or satellite communication unless the communication solely refers to a state or local candidate. (Sec. 101). This ban includes generic party advertisements.
- ◆ Federal candidates, officeholders, their agents, and entities controlled, established, or financed by them may not raise, solicit, or spend soft money. They may, however, attend, speak, or be the featured guest at events sponsored by state, district, or local committees of a political party. (Sec. 101). They may also raise funds for state or local elections as long as the contributions comply with federal contribution limits and prohibitions. (Sec. 101).

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### Text of New Law Available

The text of the Bipartisan Campaign Reform Act of 2002 is available on the Stanford Law School’s website, located at <http://lawschool.stanford.edu/library/campaignfinance/>.

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- ◆ The exception for building fund contributions to national political party committees has been repealed. (Sec. 103). A technical amendment made to the legislation by both houses of Congress allows state and local political party committees to continue to use soft money, according to state law, for the purchase and construction of office buildings for their own use.

### Millionaires Exceptions

- ◆ In Senate elections, if candidate A spends a certain amount of his or her own funds in a campaign (subtracting out the amount of personal funds spent by candidate B), then the individual contribution limit for candidate B increases to as much as six times the applicable limit (\$12,000) and the spending limit on political parties is lifted. (Sec. 304).
- ◆ In House elections, if candidate A spends a certain threshold amount of his or her own funds in the campaign (subtracting out the amount of personal funds spent by candidate B and the accrued contributions of both candidates), then the individual contribution limit for candidate B increases to as much as three times the applicable limit (\$6,000) and the spending limit on political parties is lifted. (Sec. 319).

### Increased Criminal and Civil Penalties, Longer Statute of Limitations, Effective Date

- ◆ Several general civil penalties, criminal fines, and prison terms are increased. (Sec. 312.)
- ◆ The civil penalty for violations of the conduit contribution ban is increased to no less than 300% of the amount involved and no more than \$50,000 or 1000% of the amount involved. (Sec. 315). The criminal penalties are also increased to fines of the same amount and/or a prison term of not more than 2 years.
- ◆ The United States Sentencing Commission is ordered to create sentencing guidelines for criminal violations of the campaign finance law. (Sec. 314).
- ◆ The criminal statute of limitations for violation of the campaign finance law is extended from the current three years to five years. (Sec. 313).
- ◆ The campaign finance reform legislation shall go into effect on November 6, 2002, the day after the 2002 general election. (Sec. 402).
- ◆ The increases in the contribution limits apply to contributions made on or after January 1, 2003. (Sec. 307(e)).

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