

The methods by which the federal government has attempted to regulate money in politics have varied widely over the past 100+ years. From the earliest bans of assessments on naval yard workers to a recent push for corporations to disclose political expenditures to shareholders, regulations and legislation have run the gamut. Most campaign finance laws, however, have revolved around a few common questions:

1. *Who* can spend money?
2. *How* can they spend it?
3. How *much* money can they spend?
4. How much money can they give to *others* (i.e. campaign contributions) to spend?
5. And *who needs to know*?

At the national level, the campaign finance system has generally attempted to answer these questions through three primary avenues: contribution restrictions (amount limits and source prohibitions), disclosure requirements and spending limits—the latter of which has been largely taken off the table due to a series of court rulings that have rendered most mandatory limitations on spending to be unconstitutional.

Every state must adhere to the same campaign requirements for all candidates running for federal office within each state. Thus, a candidate running for U.S. Congress in Colorado is limited to the same contribution limits and disclosure requirements as a candidate running for Congress in Virginia, and both are banned from receiving direct corporate and labor union contributions. These laws are applicable to all candidates for federal office, including both Congress and Presidential races. Additionally, political party committees and other types of committees and entities that are conducting political activities to influence federal candidate elections are also required to follow federal laws—both campaign finance and tax laws—no matter the state of origin.¹

Contribution Restrictions

The Federal Election Campaign Act (first passed in 1971), in conjunction with other federal laws, places amount limits on contributions by individuals and groups to candidates, party committees and certain other types of political committees. *Attachment A shows how the limits apply to various participants in federal elections.*²

Federal law also prohibits candidates, political parties and certain political committees from receiving contributions from certain sources:

- Corporations;
- Labor organizations;
- Federal government contractors; and
- Foreign Nationals (which includes: foreign governments, political parties, corporations, associations and partnerships, along with individuals with foreign citizenship and immigrants who do not have a “green card”).³

¹ Zainad, FEC Information Center. Phone Interview. April 9, 2012.

² http://www.fec.gov/pages/brochures/fecfeca.shtml#Contribution_Limits

³ Note that FECA also prohibits foreign nationals, national banks and other federally chartered corporations from making contributions and expenditures in connection with state and local elections.

In addition, federal government contractors and Foreign Nationals are also prohibited from making *expenditures* related to federal elections.⁴ Finally, for federal elections, no one may make a contribution in another person's name, and no one may make a contribution in cash of more than \$100.

Corporate and Union Activity

While corporations and unions cannot make direct contributions to candidates, they may establish a type of political committee known as a "Separate Segregated Fund (SSF)." (Note: An SSF is one specific type of Political Action Committee (PAC); there are other types of PACs as well).

These SSFs can then raise (voluntary) contributions from certain individuals (corporate executive and administrative employees and shareholders, union members, and family members of these individuals) to contribute directly to candidates or to spend in support of candidates. SSFs *cannot* draw from corporate or union treasuries for these expenditures, and they cannot use dues/fees collected upon condition of membership or employment in the connected organization.⁵ However, corporate and union treasury funds may be used to pay operating costs for the SSF. SSFs *cannot* solicit the general public. SSFs that are making contributions to candidates must adhere to federal contribution limits (as shown in Attachment A).

Political Party Activity

Political parties have local, state and national levels. Party committees may contribute directly to candidates, subject to the contribution limits shown in Attachment A.

Candidates

Finally, candidates themselves are allowed to "contribute" unlimited funds to their own campaigns, since mandatory limits on candidates spending on their own behalf have been ruled unconstitutional (*Buckley v. Valeo*). However, if a candidate wishes to contribute to another candidate, they are subject to federal contribution limits.

Spending ("Expenditure" Limits)

Some early campaign finance regulations tried to limit the amount of money individuals and groups could spend to get elected. As outlined in last week's brief, most of these regulations have been ruled unconstitutional. The United States Supreme Court ruled in *Buckley v. Valeo* that requiring candidates to abide by spending limits violates the 1st Amendment of the U.S. Constitution.⁶ The First Amendment protects free speech, and the court has ruled that political communications are protected speech. Therefore, the court said, limiting political spending by candidates is equal to limiting speech, and is impermissible. In *Buckley*, it was specifically decided that:

1. Candidates can *spend* unlimited amounts on their campaigns. While their available funds may be limited in practical terms due to contribution limits on donors, they are allowed to spend their personal money freely on their own campaign and to spend as much of their donors' money as they can raise within contribution limits.
2. Individuals and political committees can make unlimited "independent expenditures" apart from candidate campaigns.

⁴ <http://www.fec.gov/pages/brochures/foreign.shtml>

⁵ <http://www.fec.gov/pdf/colagui.pdf> and phone interview with Dorothy Yeager, FEC analyst.

⁶ <http://www.ncsl.org/legislatures-elections/elections/campaign-finance-an-overview.aspx>

3. The *Citizens United* decision expanded this First Amendment-protected right of unlimited independent expenditures to include corporations and labor unions; corporations and unions can now make such expenditures directly from their treasuries.

An independent expenditure is defined as “an expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate and which is made independently from the candidate’s campaign. To be considered independent, the communication may not be made with the cooperation, consultation or concert with, or at the request or suggestion of, any candidate or his/her authorized committees or a political party, or any of their agents.”⁷

Public financing

Candidate spending limits are generally considered to be constitutional only if they are *optional*. Such “voluntary” spending limits can be seen in the form of public financing, where candidates agree to adhere to expenditure limits in return for receiving public funds for their campaign.

The concept of public financing was first proposed by President Theodore Roosevelt in 1907, but wasn’t actually implemented until FECA in 1971 (amended in 1974), when a system of presidential election public financing was enacted. This presidential public financing system was upheld as constitutional in *Buckley v. Valeo*.

To qualify for public funding, Presidential candidates must first meet various eligibility requirements.⁸ They must agree to:

- Limit campaign spending for all primary elections to \$10 million plus a cost-of-living adjustment (COLA). This is called the national spending limit.
- Limit campaign spending in each state to \$200,000 plus COLA, or to a specified amount based on the number of voting age individuals in the state (plus COLA), whichever is greater.
- Limit spending from personal funds to \$50,000.

Additionally, candidates must demonstrate that they have “broad-based public support,” and must be seeking nomination by a political party for the office of the President in order to receive primary matching funds. He or she must raise in excess of \$5,000 in each of at least 20 states (i.e., over \$100,000). Although an individual may contribute up to \$2,500 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state.

Once a candidate is determined to be eligible, the candidate can receive public financing from the Treasury in the form of matching funds (up to a point). The federal government will match up to \$250 of an individual's total contributions to an eligible candidate. The U.S. Treasury then makes the actual payments from the Presidential Election Campaign Fund. This fund consists of dollars voluntarily checked off by taxpayers on their federal income tax returns. The checkoff (\$3) neither increases the amount of taxes owed nor decreases any refund due for the tax year in which the checkoff is made.

If a candidate then win’s the party’s nomination, he or she can also get public financing to run the general election campaign. For these payments, the Republican and Democratic candidates who win the nominations are eligible to receive a grant (also from the Presidential Election Campaign Fund) to cover expenses of their general election campaigns. This is a basic \$20M grant that is adjusted for

⁷ http://www.fec.gov/pages/brochures/fecfeca.shtml#Contribution_Limits

⁸ <http://www.fec.gov/pages/brochures/pubfund.shtml>

inflation each Presidential election year (e.g. in 2008 it was \$84.1M).⁹ Nominees accepting these funds must use the funds only for campaign expenses, and must agree not to raise private contributions (i.e. expenditures must be limited to the amount of public funds they receive).

Importantly, for the 2012 general election cycle, each party's candidates (Pres. Obama and Gov. Romney) declined these public funding grants for the first time since the inception of public financing.¹⁰ Several states and cities, however, continue to use public financing (this will be covered in more detail in a future brief).

Political Parties

Beyond candidate contributions, national and state party committees may make additional "coordinated expenditures," subject to limits, to help their nominees in general elections. Party committees may also make unlimited "independent expenditures" (not-coordinated) to support or oppose federal candidates.¹¹

Disclosure Requirements

As discussed in last week's brief, Supreme Court rulings on campaign finance cases—from *Buckley* to *Citizens United*—have generally upheld federal disclosure laws.¹² Federal disclosure requirements are established by campaign finance statutes, FEC regulations *and* by federal tax codes.

Current law requires candidate committees, party committees and all other types of federal political committees to file regular reports disclosing the money they raise and spend. They must report every penny that they receive and spend—including monetary donations, donated items (such as office furniture) and in-kind contributions (e.g. printing services). At a certain threshold, contributions and expenditures must be itemized, i.e. contributions exceeding \$200 from an individual in an election cycle must identify donor information, and expenditures exceeding \$200 to any individual or vendor must be itemized.

Independent Expenditure-Only Committees (i.e. SuperPACs) are also required to disclose contributions and expenditures. However, disclosure for contributions that SuperPACs receive from 501(c)(4) groups need only identify the name of the group, not the individual donors who contributed money to the 501(c)(4).

Groups must comply with more specific disclosure requirements if they undertake certain advertisements. According to current law, any persons or groups must file "ad specific" reports with the FEC if they purchase ads that either:

- 1) Expressly advocate for or against a federal candidate, or
- 2) Are considered "electioneering communications," meaning broadcast ads (television, radio, cable, satellite) that run within 30 days prior to a primary election or 60 days prior to a general election, mention a federal candidate and are targeted towards a specific electorate.

⁹ FEC

¹⁰ <http://www.nytimes.com/2012/09/12/us/politics/romney-and-obama-juggle-campaigning-and-fund-raising.html>

¹¹ FEC

¹² FEC Court Case Abstracts.

Persons who make electioneering communications that aggregate more than \$10,000 in the calendar year must file the “24 Hour Notice of Disbursements/Obligations for Electioneering Communications” with the FEC within 24 hours of the disclosure date.

However, a regulation adopted by the FEC in 2007 provides that, with respect to the “ad specific” reports, donor disclosure is only required for contributions that were *specifically designated* for election ads. This places non-disclosure as the default assumption for FEC filings.¹³ This FEC regulation is currently being challenged in *Van Hollen v. FEC*.¹⁴

A 2011 report from the Center for Responsive Politics asserts that, between 2006 and 2010 (after *Citizens United*):¹⁵

- The percentage of spending coming from groups that do not disclose their donors rose from 1 percent to 47 percent.
- 501c non-profit spending increased from zero percent of total spending by outside groups in 2006 to 42 percent in 2010.
- Outside interest groups spent more on election season political advertising than party committees for the first time in at least two decades, besting party committees by about \$105 million.
- The amount of independent expenditure and electioneering communication spending by outside groups quadrupled from 2006 to 2010.
- Seventy-two percent of political advertising spending by outside groups in 2010 came from sources that were prohibited from spending money in 2006

States

Every state must adhere to the same campaign requirements for all candidates running for federal office within each state. For state and local offices, however, candidates must follow the rules of their own states/localities. This means, for example, that a candidate running for Governor in Colorado is banned from receiving corporate donations, and can only receive individual contributions totaling \$1100 over the course of the election cycle (split between primary and general). A candidate running for Governor in the State of Virginia, however, can receive unlimited contributions both from corporations and from individuals. An example of the vast difference between state laws (updated in 2010) can be viewed in a report done by the National Conference of State Legislatures.¹⁶

Colorado had a history of fairly restrictive campaign finance laws over the last decade or more. Similar to the federal system, Colorado’s 2012 campaign finance regime is primarily defined by two major platforms: campaign finance *laws* (set into state statutes and the Colorado Constitution), and *interpretations* of these laws as defined by Colorado’s Office of the Secretary of State. ***These laws and interpretations will be discussed in detail in next week’s brief...***

¹³ Campaign Legal Center

¹⁴ FEC Court Case Abstracts.

¹⁵ MacColl, Spencer. *Citizens United Decision Profoundly Affects Political Landscape*. May 5, 2011.

¹⁶ http://www.ncsl.org/print/legismgt/limits_candidates.pdf

Contribution Limits for 2011-2012

	To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year ¹	Special Limits
Individual may give	\$2,500*	\$30,800*	\$10,000 (combined limit)	\$5,000	\$117,000* overall biennial limit: <ul style="list-style-type: none"> • \$46,200* to all candidates • \$70,800* to all PACs and parties²
National Party Committee may give	\$5,000	No limit	No limit	\$5,000	\$43,100* to Senate candidate per campaign ³
State, District & Local Party Committee may give	\$5,000 (combined limit)	No limit	No limit	\$5,000 (combined limit)	No limit
PAC (multicandidate)⁴ may give	\$5,000	\$15,000	\$5,000 (combined limit)	\$5,000	No limit
PAC (not multicandidate) may give	\$2,500*	\$30,800*	\$10,000 (combined limit)	\$5,000	No limit
Authorized Campaign Committee may give	\$2,000 ⁵	No limit	No limit	\$5,000	No limit

* These contribution limits are indexed for inflation.

¹ A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the PAC. 11 CFR 110.6. See also 11 CFR 110.1(h).

² No more than \$46,200 of this amount may be contributed to state and local party committees and PACs.

³ This limit is shared by the national committee and the national Senate campaign committee.

⁴ A multicandidate committee is a political committee with more than 50 contributors which has been registered for at least 6 months and, with the exception of state party committees, has made contributions to 5 or more candidates for federal office. 11 CFR 100.5(e)(3).

⁵ A federal candidate's authorized committee(s) may contribute no more than \$2,000 per election to another federal candidate's authorized committee(s). 11 CFR 102.12(c)(2).

¹⁷ http://www.fec.gov/pages/brochures/fecfeca.shtml#Contribution_Limits