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Analyzing PAC's

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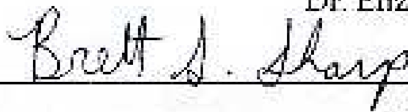

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Abstract of Thesis

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Political action committees have been the subject of controversial court cases and legislative reform. Judicial decisions and legislative reforms are the product of creating campaign finance aiming at the creation of a creating a competitive political environment. Today some of these rulings and reforms are considered troublesome and damaging to the political environment and they are the laws that gave birth to PACs. As it stands today, if a candidate receives support from a PAC and their opponent does not have PAC support, the candidate with PAC support tends to enjoy electoral success. This is examined through a case study focusing on Oklahoma elections.

Analyzing PACs

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Introduction

Running for public office has become extremely costly. USA Today reported that the cost of the 2012 election cost billions of dollars (Schouten, 2013). Individuals, corporations, organizations, political parties and political action committees (PACs) are some of the entities which contribute to these costly campaigns and in the course of the competition they drive up costs. In the 2012 election the Federal Election Commission (FEC) reported that Democrats and Republicans spent over $1.2 billion in the 2012 election (Federal Election Commission, 2012)[1]. Political action committees reported spending close to $1.3 billion (Federal Election Commission, 2012)[2] in the 2012 contest. How these entities spend their money is one of many variables that impact the outcome of an election. Other variables include voter participation and the demographic features. Identifying who is going to vote and mobilizing individuals who seem unmotivated to vote is usually the focus of campaigns (Herrera, Levine, & Martinelli, 2007).

Campaigns attempt to reach out to these voters by spending money on advertising. History tells us that campaigns which spend or raise more money than opposing candidates do not always win the election (Soberman & Sadoulet, 2007). If spending and raising more money than the opposition does not guarantee a win, then what else impacts elections? Is it the influence of the opposition's campaign? Is it the likability of a candidate? There are many questions like this that have been studied. Many of these studies lump PACs as individual contributors to campaigns.

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[1] See Table 1 Party Summary 2012 Election for totals from FEC

[2] See Table 2 Corporate PAC Spending for totals from FEC

This study examines PACs separately. The assumption is that the key to influencing and mobilizing voters is activated by the same individuals who create PACs. As a result, this study is built on the hypothesis that there is a correlation between PACs and electoral success.

To learn more about the impact of PACs the study explains the differences in PAC formations by explaining the differences in IRS categorizations. This is followed by a breakdown of all significant legislative initiatives since the 1800s that concern campaign contributions and a list of court cases that have impacted campaign laws. Finally, to test the hypothesis, the study focuses on elections for the House of Representatives and state referendums in the 2012 Oklahoma general election. The research also includes a historical case study concerning District 2 in Oklahoma. The study searches for a link between winners of elections and the amount of PAC support received compared to their losing competitors. The conclusion of the study is based on whether or not PAC supported losers of elections received more PAC support than the winners or vice versa.

Political Action Committees

The FEC divides PACs into two categories; separate segregated funds (SSF) and non-connected committees (NCC). Separate segregated fund PACs are usually branches of other entities such as corporations, labor unions, membership organizations or trade associations. Separate segregated funds can only solicit contributions from individual associated with connected or sponsoring organizations. In other words, SSFs receive their monetary from individuals who are affiliated with the entity which founded the SSF. Non-connected committees are not connected, sponsored or affiliated with the previously mentioned types of organizations. It is because of the independent NCCs statuses that they are allowed to solicit funds from the general public (Federal Election Commission, 2013).

Types of Political Action Committees. It is important to know that there are two types of PACs: Super PACs and Hybrid PACs. Understanding the differences in these PACs allows for a better understanding of how PACs are able to work around spending limits and disclosures. A Super PAC is a PAC which relies primarily on extremely large individual contributions from people who do not come from corporations or other business entities (Briffault, 2012). It is considered by the FEC to be an independent expenditure-only political committee. This means that the Super PAC formation is often only around for the purpose of spending on a campaign. A Hybrid PAC is a PAC that operates as a business which has a separate account for political causes. This separate account is for the purpose of promoting a political agenda. Hybrid PACs are the result of Carey v. FEC (2011) in which a judge ruled that a non-committed PAC or hybrid PAC is allowed to receive contributions to make independent expenditures, as long the Hybrid PAC maintains separate bank accounts:

- For the purpose of spending money on political agendas [independent expenditures].
- To receive source-and amount-limited contributions for the purpose of making candidate contributions. In addition administrative fees must reflect the amount of expenditures or account activity that occurs on the account. Also all contributions must be disclosed and limitations to campaign limits must be adhered to (Carey v. Federal Election Commission, 2011).[3]

[3] See Appendix A for ruling. The ruling is controversial because it created a loophole that allows for an unlimited amount of contributions to be made to PACs. The implications of Carey v. FEC will be discussed greatly in the literature review.

Political action committees are the end result of motivated and mobilized individuals. A PAC requires a group to be organized and effective in order to exist. All PACs must comply with federal and state laws. The FEC provides instructions and guidelines to monitor PACs. Many of these guidelines have been altered over time. Today the guidelines include provisions that require PACs to have all forms submitted within ten days, at most, after the candidate designates the committee on the statement of candidacy. Committees sponsored by entities, or SSFs, must have the Instructions for Organization form turned in no later than 10 days following establishment. Local party committees have to submit the form after exceeding certain financial thresholds during a calendar year. All organizations making expenditures regarding a federal election in excess of $1,000 per calendar year must submit the form no later than 10 days after the $1,000 threshold has been met (Federal Election Commission, 2009). The purpose of this is to prevent a PAC from trying to avoid disclosure by quickly disbanding itself. Unfortunately it has become common practice for a PAC to form, contribute funds and then collapse prior to reporting. The individual who created the PAC would then create another PAC, contribute funds and then collapse again. This allows individuals to work around contribution limits and disclosure.

The spirit of the guidelines is to allow individuals to contribute to campaigns up to a certain ceiling. Once that ceiling has been reached, the government wants to monitor the progress of funds to prevent elections from becoming corrupt and fraudulent (Buckley v. Valeo, 1976). It was this rationale that provided the creation of the Federal Election Campaign Act (FECA) of 1971 (Carroll, 1996).The result of these guidelines means that individuals who form or sustain a PAC must keep accounting information on file. Violations of these guidelines can lead to significant financial penalties and felony charges (Donsanto, 1998).

The purpose of a PAC is to further a political agenda, idea or belief. The FECA created the demand and existence of PACs. Prior to the FECA legislation individuals contributed to campaigns freely with little to no oversight. Now that the FECA and amendments to the FECA passed, the times of unregulated contributions from PAC organizations are over and the need to funnel other funds through PACs arose. Without rules aimed at providing a competitive campaign finance environment, one party could dominate all other parties and eventually erode political options.

Billions of dollars are spent during election cycles. The general election ceiling for the 2012 presidential election was $91.2 million. The overall primary limit for the 2012 presidential cycle was $45.6 million. Each state has its own limit for election spending. The sum of all state expenditure limits is more than $182 million (Federal Election Commission, 2012).These numbers are for presidential candidates only and they are implemented per candidate. This means that for the 2012 election cycle Mitt Romney and Barack Obama could have a combined spending maximum of $182 million in the presidential race. If there wasn't a general election ceiling and both candidates spent the maximum amount of money per state, then they would have spent close to $365.4 million. To put those numbers into perspective, it is important to know that these numbers do not include other elections at the federal or state level. The numbers don't include local elections either. Throw in independent spending and you have a multi-billion dollar industry. For the 2012 election it was reported that over $1 billion was spent on house races. The senate races accrued over $700 million in spending to one-third of the senate. Each presidential candidate spent over $1 billion on their campaigns (Dan Canter, 2013). Without guidelines protecting campaign finance, one of these parties may have obtained an unfair financial advantage. If one party had outspent its opposition 2 to 1, then the election may not

have turned out the way it did. It’s important to know that spending influences voting, but how effective is the spending? One of the best ways to determine effectiveness is to look at the trends of voter participation.

The first election was held in 1789 in which George Washington beat John Adams to become our first president. The 1824 presidential election between John Quincy Adams and Andrew Jackson marks the first record of popular voting (Archives.Gov , 2013). The record reflects 264,400 voters participating in the election. The U.S. records held that the 2012 election between Romney and Obama hosted a turnout of approximately 126 million voters. The increased number of popular voters counted from 1824 compared to 2012 is attributed to a rise in population and the inclusion of more voters. There are many strategies deployed to win an election, but in the end a candidate needs voters. Spending money is a major way to get those voters. Spending money provides an opportunity for parties to motivate and persuade individuals to become voters.

How are PACs Structured

There are different definitions for PACs. Some identify PACs as any institution that has political involvement. Others define PACs specifically by IRS code 527. IRS code 527 explains the definition of a PAC and the obligations to sustain a PAC.

Organizations that are not identified as 527 by the IRS are wrongly labeled PACs usually because of the organizations political involvement. It’s important to note that different organizations differentiate in purpose and are identified by their tax identification structure from the IRS. The political actions taken by organizations are limited by rules that the IRS has set forth; thus organizations are politically limited or unlimited based on their organizational structure status. The different types of organizations that are politically involved are 501 (c) (3),

501 (c) (4), 501 (c) (5), 501 (c) (6) and organizations that file under tax rules 527. Every filing has its advantages and disadvantages. Individuals who seek to found an organization specifically for political purposes will see a benefit in all the possible formations. As it stands today individuals can create an unlimited amount of organizations and potentially reap the benefits of each.

A 501 (c) (3) organization is defined as an organization that must be organized and operated exclusively for exempt purposes. Its earnings may not be related to shareholders or other forms of for-profit entities. The organization must refrain from interacting or influencing federal elections. These organizations are also known as charitable organizations (Internal Revenue Service, 2012). Please know that even though 501 (c) (3) organizations are not supposed to be involved in politics, the wording of the restrictions allows for these types of organizations to become politically involved when issues concern the organization. For example if the charity is set up to clean up drinking water, the organization is allowed to speak for or against issues concerning clean water. Other issues relating to the organization are allowed to be expressed under this filing as well, however, these organizations are restricted in how much political and legislative activity that they may conduct. If an organization formed under this IRS code breaks the rules, they will be penalized via a tax.

A 501 (c) (4) organization according to the IRS provides for the exemption of two types of organizations. The first type of exempted organization is a social welfare organization. These organizations are similar to charities except these entities exist solely for the purpose of some social service. The second type of formation is the same as social welfare, but this type of organization is limited to a particular region (Internal Revenue Service, 2012). They are allowed to be involved in politics, but they promote the mission statement of the organization. An

example of a 501 (c) (4) would be the National Rifle Association, or the National Association for the Advancement of Colored People. Both exist for the purpose of a goal, but do not exist only for the purpose of providing to a specific cause, person or idea. These narrow differences in the types of organizations and the definition of what is and isn't acceptable for promoting sometimes vague objectives is part of what makes regulating election funding so difficult.

A 501 (c) (5) organization is usually some sort of a labor union. A labor union is an organization created as an association of workers who have united so that they can have more influence with working conditions, salaries, health benefits, policies and more. In order to participate in a labor union you have to be a member and employed in the field in which the labor union represents. For instance a teachers union would require you to be a teacher. Labor unions, labor organizations and labor councils are other entity names used to represent these collective groups of people. It is important to understand that all labor unions are labor organizations, but not all labor organizations are labor unions. A labor organization is usually not bound by restrictions in membership unlike labor unions. A labor union will always file as a 501 (c) (5) while a labor organization can also file as a 501 (c) (3) or 501 (c) (4) (John Francis Reilly, 2003).

A 501 (c) (6) is an organization that is created to stimulate business within a certain geography or industry. Examples of a 501 (c) (6) are business leagues, chambers of commerce, real estate boards, boards of trade and professional sporting leagues. (Internal Revenue Service, 2012). A 501 (c) (6) is different from a 501 (c) (5) in that a (c)(6) is created for the purpose or greater good of an industry where as the (c)(5) is created for the purpose of protecting the rights of the members it serves. Usually 501 (c) (6) organizational members are businesses and a (c) (5) is comprised of individuals or employees.

A 527 Organization is the most recognizable type of PAC. Under the 527 IRS filing the organization is created specifically for political parties, campaign committees and political organizations. These organizations are subject to all federal election guidelines concerning elections. They are also the easiest to regulate because they are created and maintained for the sole purpose of promoting a candidate or political agenda. Other (c) organizations are more difficult to regulate compared to 527's because other organizational filings have the ability to justify their income/expenditures through a vast amount of legitimate courses of action. A 527 does not have the luxury of justifying the acceptance of limitless funds for the purpose of sustaining an organization that will exist beyond a specific election. A 527organization must file an initial notice, reports on income, spending, annual tax income returns and annual informational returns (Internal Revenue Service, 2013).

Super PACs are forms of 527 organizations. Hybrid PACs are usually some variation of 501 (c) organizations. The organizations are allowed to operate and expand into other types of organizations. Depending on the organization of the PAC will determine the amount of disclosure that must come from the organization. An example of this is that (c) (4) groups are obligated to report where their funds come from, but if their major contributors are other businesses, the individuals operating as the donating company will not be identified. Imagine an organization named C4. C4 is running ads aimed at electing a federal senator. According to the FEC, organization C4 must disclose where it received the funds to pay for the ads. The organization C4 reports that it received $500,000 from Limited Liability Company (LLC) A, $1 million from LLC B and $2 million from LLC C. According to FEC standards organization C4 has complied with its regulations, but the public still does not know who specifically contributed to these funds. The public is aware that company A donated funds to C4, but the public does not

know who operates LLC A. In order to find out that information the public would have to search information about LLC A. If a C4 received contributions from several LLC organizations the public would have the burden of learning who operates each LLC. These issues of identifying contributions are the key to election transparency. When an organization is able to disclose its funding's without identifying individuals or whenever money is laundered into an election through an organization, the money is referred to as dark money (Barker, 2012). Millions of dollars in the form of dark money finds its way into elections every cycle.

Literature Review

The 1800s: Van Buren to McKinley

To understand why PACs have their current structure, it is important to know and understand the legislative and court history regarding campaign finance. Both types of legislation led to the complexity of campaign contribution loopholes.

Campaigns changed from a time when people could directly contribute to official's campaigns to today where organizations are created for the purpose of electing an official. The change in how campaigns were managed began in 1828. Martin Van Buren ran the campaign for Andrew Jackson and the Democratic Party. Van Buren recognized the importance of using money to advertise, promote and run an effective campaign. As a result, money became necessary for newspaper advertisements, widespread pamphleteering, rallies, and logistical support. In addition to advertising, money was also needed for the traditional wining and dining (Smith, 1996). The Van Buren campaign revolutionized the organizational structure of campaigns. Now candidates had a new standard. They had to be organized, influential and persuasive. One of the ways that candidates can express their influence is through the media. Speaking through the media costs a lot of money. The Van Buren movement emphasized the

importance of raising money to be spent for the purpose of mass communication and set a new standard for campaigning (Miller, 1992).

The first attempt to regulate campaign finance was the 1867 Naval Appropriations Bill. The bill aimed to prohibit public officials from soliciting money from naval workers. Supporters of the bill argued that it was necessary to ban this type of solicitation in federal work yards because it inhibited free elections from occurring. If an official learned that a worker didn't vote for them in an election then the worker would fear retribution. There will always be winners and loser in elections. As a result all citizens in these grounds would fear punishment for voting for the wrong individual. Eventually elections would suffer; thus the bill was needed. (The Center for Responsive Politics, 2013).

The next attempt was in the 1883 Civil Service Reform Act in which the Naval Appropriations Bill was expanded to include all federal civil service workers. The same fear of a decline in voter participation for fear of retribution that was cited in the Naval Appropriations Bill was also cited in the Civil Service Reform Act (The Center for Responsive Politics, 2013). The 1883 Civil Service Reform Act passage meant that candidates now had to find an alternate way of funding their campaigns. The need to rely on various demographics among the voters meant that large donors were now needed. McKinley's' campaign manager Mark Hanna started thinking of ways to overcome these obstacles. Hanna was controversial in the ways to raise funds because of his party's stances on labor issues. Hanna was soliciting big businesses for campaign support; in return he suggested that the McKinley administration would support corporations and big businesses (Central Connecticut State University, 2013). Supporting big businesses only was frowned upon by Republicans who recognized that working class voters would not vote for a candidate who supported big business interests if they conflicted with worker interests (Holman,

1999). The campaign resulted in a win for McKinley, but voters were conflicted about the interests that would be served by McKinley's administration. Did he support the people who financed his campaigns? Or did he support the grass roots individuals who voted him into office? All of the uncertainty caused by the election left a bad taste in the mouth of many citizens because they didn't know whom to trust. This uncertainty and distrust led to reform (Central Connecticut State University, 2013).

The Early 1900s: Roosevelt to the Taft-Hartley Act

As a result of the McKinley-Bryan elections, President Theodore Roosevelt recognized that something needed to be done to restore trust in elections and the election process (Federal Election Commission, 2013). President Roosevelt capitalized on the issue. He spoke against his party's stance on the issue and called for ethical governance through restrictions in spending (MacCleery, 2009). He suggested that all political parties, regardless of their political affiliation, have individuals who serve a special minority. These individuals who represent special interests created a conflict of interest when trying to govern all constituents. This leads to corruption in government offices. Corruption needs to be removed. The next problem with elections was that there were a few individuals who spent a significant amount of money on elections. These individuals were vastly outspending ordinary citizens. President Roosevelt wanted to change campaign governing so that these few and powerful individuals would not easily control public office. Roosevelt wanted elections to be the voice of the people. In order to regulate these issues Roosevelt argued that the current function of government needed to change (De Witt, 2012). Roosevelt demanded that these changes occur and successfully lobbied Congress to take legislative action (Eshoo).

Roosevelt’s solution to the problem included banning contributions by corporations to any political committee or for any political purpose. Roosevelt also wanted to ban directors from using stockholders' money for such purposes. If these restrictions were to be implemented Roosevelt believed that money would no longer control elections (United States v. Auto Workers, 1957).

In response to Roosevelt’s demands, Congress enacted several statutes. Congress continued working on the issue far after Roosevelt left office. Between 1907 and 1966 legislations was passed to limit the influence of wealthy contributors, regulate campaign spending and provide for transparency. Limiting the influence of wealthy contributors was accomplished by establishing contribution limits. Campaigns were regulated under their new obligations to report their spending. Transparency measures were implemented to discourage lawbreakers. Congress believed that if individuals had to disclose their campaign income and spending, then individuals would be discouraged from breaking the law. In the eyes of Congress, disclosure made it easier to catch law breakers because people were discouraged from breaking the (Federal Election Commission, 2013).

The first of these legislative reforms was the 1907 Tillman Act. The act accomplished Roosevelt’s goals of banning corporations from spending money on campaigns and outlawing the use of shareholder funds for the same purpose (Pollman, 2009). Shortly after the Tillman Act passed, the Federal Corrupt Practices Act (FCPA) appeared.

The FCPA established disclosure requirements for U.S. House candidates. These disclosure requirements were extended in 1911 to include U.S. Senate candidates. The amendment also established expenditure limits for both House and Senate campaigns. Unfortunately no provisions were implemented to verify the truthfulness of the disclosures.

Without a way to verify whether or not a campaign was abiding by the law, the law was unenforceable. Ultimately these limitations led to the need for future legislation. (The Center for Responsive Politics, 2013).

In 1925 Congress attempted to resolve issues concerning enforceability through amendments to the Federal Corrupt Practices Act. The amendments to the act listed specific instructions in the requirements for disclosure. The amendment also provided expenditure limits which were not supported by numerical values (Martindale, 2010). Like its amendments, the amendment failed due to lack of enforcement. Congress was listed as the enforcing body for issues pertaining to campaign finance. Congressional members were tasked with punishing themselves if campaign laws were broken. No congressional member was going to willingly punish themselves or risk getting called out by attempting to punish a colleague (The Center for Responsive Politics, 2013).

The major provisions of the 1925 Federal Corrupt Practices Act were the repeal of the 1910 Publicity Act and the repeal of 1911 amendments to the Tillman and Publicity Acts. The 1925 act also required publicly disclosing campaign spending for all federal offices. It stipulated that donations over $50 must be reported, limited Senate spending to three cents per voter with a ceiling of $25,000, provided the same limits for House candidates with a ceiling of $5,000, outlawing campaign patrons, outlawing bribes and prohibiting all contributions from corporations (The Federal Corrupt Practices Act (1925)).

In 1935 the Public Utilities Holding Act was passed to protect investors from individuals who were manipulating funds to mislead the public (Meck & Cary, 1938). The act aimed at preventing public utility companies from contributing to campaigns that would impact elections involving federal positions. The act was broad and opened the doors for interpretation and

litigation. At issue was an article that stipulated for the act to be enforced, the courts may order a disposal of assets that are fair and equitable (Dodd, 1944). The act was aimed at resolving issues within the utilities industry, but the provision for prevention of contributions to federal elections was added by Republicans because they feared losing power. Because of the vague wording of "fair and equitable," more legislation would be needed for campaign contribution oversight. Without specificity, the law was not enforceable. This confounded the Tillman Act.

New problems surfaced in 1936 when Roosevelt beat Landon in the presidential election. The amount of contributions raised for the presidential campaign led to concern regarding campaign spending. This was followed by more legislation. In 1940 The Hatch Act imposed a $5,000 per year ceiling for political contributions; however the restriction affected only individuals and excluded business entities (Tanenhaus, 1954). Section nine of the act prevents federal executive officers and employees from taking part in the election. They were banned from being involved in political management or campaign management (Heady, 1947). Violators of the act would be forced to forfeit their positions. The act further stipulated that all employees were still free to vote and express their opinions of candidates and elections. The Hatch Act also stipulated that national committees could not spend more than $3 million (Nichols, 2011).

In 1943 the Smith-Connally Act was introduced with the purpose of preventing unions from striking and to prevent the use of union funds in political campaigns. (Shannon, 1948). Thus no union could be involved in elections (Nichols, 2011). President Roosevelt vetoed the bill stating that portions of the bill prohibited wartime political contributions by labor organizations. Roosevelt argued that if the provision was so important it should not be limited to wartime. At the time the U.S. was in a state of war and the provision seemed to protect existing congressional members only. Roosevelt added that the provision wasn't necessary because other bills existed

for the purpose of governing strikes during wartime. As such, this bill seemed to really only have the intent of limiting union fund spending on political campaigns. If the intention of the bill really was to resolve issues relating to strikes, then prohibition should not be limited to wartime and should also be extended all non-profit organizations (Roosevelt, 1943). Despite the veto of the bill, Congress overruled it and passed the legislation.

In 1945 the Taft-Hartley Act passed. The Taft-Harley Act was designed to encourage more candidates to participate (Slichter, 1949). Essentially the act permanently banned contributions to federal candidates from unions, corporations, and interstate banks. The ban also extended to primary elections in addition to Federal elections (The Center for Responsive Politics, 2013).

The Taft-Hartley and Smith –Connally Acts were largely unsuccessful because of their inability to collect data and their inability to enforce laws. Although the legislation rules became progressively more specific, ultimately the responsibility to enforce these rules fell on Congress. The individuals who were ignoring the law were the same individuals who were supposed to enforce the law. Elections continued and no significant controversies emerged. As a result, comprehensive legislative reform didn't occur again until the 1970s.

The Federal Election Campaign Act

The first part of several campaign reform initiatives was passed in 1971. During the 1970s Congress and the Supreme Court focused on issues regarding the campaign financing of federal elections. In the past Congress had focused on the origination of funds. The bills of the 1970s are known collectively as the Federal Election Campaign Act (FECA). They aimed at regulating the fund-raising activities of candidates, parties, private organizations, and individuals (Alexander, 1984). The first part of FECA was the repeal of the Corrupt Practices Act. The

framework for the FEC was then outlined. The need for full and timely disclosure was mentioned and defined. The legislation also set caps on media advertising; established limits on contributions from candidates and their families; permitted unions and corporations to solicit voluntary contributions from members, employees and stockholders; allowed union and corporate treasury money to be used for overhead in operating PACs (The Center for Responsive Politics, 2013). The acts major highlights are:

- The repeal of the Federal Corrupt Practices Act of 1925.
- Declared that primaries, caucuses and conventions, as well as general and special elections were now subjected to campaign finance laws.
- Defined expenditures and contributions.
- Prohibited sponsorship (patronage) of campaigns.
- Prohibited contracts between a candidate and all Federal departments or agencies.
- Non-partisan or non- voter registration drives by unions and corporations were now exempt from income/spending regulations.
- Unions and corporations were now exempt from regulations if the funds were raised from a voluntary fundraiser.
- Presidential and vice presidential candidates could contribute $50,000 to themselves; Senatorial candidates, $35,000; and House candidates, $25,000.
- Caps on advertising were limited to 10 cents per voter or $50,000. Whichever number was higher was the limit.
- Disclosure guidelines for contributions of $100 or higher were released.
- March 10th of each year was the deadline for submitting all disclosure reports (Central Connecticut State University).

Another part of FECA was the 1971 Revenue Act. The Revenue Act was designed as a counterpart to FECA. The act created a public campaign fund for eligible presidential candidates. The act also provided tax deduction options for contributions made to campaigns (The Center for Responsive Politics, 2013).

A couple of years after FECA was passed The Watergate Scandal occurred. The scandal significantly impacted the way that campaigns were regulated. As a result of the scandal many constituents and congressional leaders called for additional reform. This reform led to approval of FECA amendments.

In 1974, FECA was officially amended and the effects were scheduled to take place for the 1976 election cycle (Abrams & Settle, 1978). The amendments took into consideration a court ruling on Pipefitters Local #52 v. United States (1972)[4]. The amendments aimed at establishing regulations for businesses and union PACs. Under the act the FEC was created. The act provided the FEC with the authority to enforce provisions, increase compliance though increasing fines for violations and closing campaign finance loopholes. (Bender, 1988). The FEC was also tasked with providing legislative recommendations to ensure that campaign finance laws remained relevant and modern. The amendments aimed at addressing campaign issues without the constant need for congressional involvement (Federal Election Commission, 1976).

The 1974 FECA amendments changed contribution limits to $1,000 per candidate. These limits are reset every election. Political action committees were allowed to contribute a maximum of $5,000 per candidate (Grier & Munger, 1986). The 1974 FECA amendments provided for partial public financing of elections. This portion was specifically inserted because without this portion, there wouldn't be a way to fund the optional presidential campaign

[4] See the portion on Court Cases for more information about *Pipefitters Local #52 v. United States (1972).*

established in The Revenue Act. The 1974 FECA amendments also set the spending ceiling for House candidates at $75,000 in general and primary elections (Bender, 1988). Listed below is a synopsis of the 1974 FECA amendments:

- A presidential campaign was established for individuals who sought to have their campaign financed through public funds.
- Spending limits were set for presidential general and primary elections.
- Spending limits were also established for House and Senate primaries.
- Limits were reworded so that they were now enforceable.
- An Individual contribution limit of $1,000 per candidate resetting after every election.
- Limited PAC contributions to $5,000 per candidate.
- Individuals couldn't contribute more than $25,000 per year on elections.
- Candidates were capped on contributions to their own campaigns.
- Spending on behalf of candidates was limited to $1,000 per campaign.
- Repealed The Hatch Act.
- Allowed for unlimited advertising spending.
- Created FEC to enforce and improve campaign laws (The Center for Responsive Politics, 2013).

Following the 1976 Legislative Report from the FEC, the 1976 FECA amendments were passed. The Legislative Report noted that the FEC needed to bring FECA into conformity with the Buckley decision[5] (Federal Election Commission, 1976). The amendments limited individual contributions to national parties to $20,000 per year, and individual contributions to a PAC to $5,000 per year (The Center for Responsive Politics, 2013).

[5] See the Court Cases section for more information about the *Buckley* ruling.

More amendments to FECA were made in 1979. Prior to the 1979 amendment, House members were allowed to transfer campaign funds into their personal accounts at any time. This transfer of money made many individuals wealthy and created a negative perception of politicians (Milyo, 1997).The 1979 FECA amendments:

- Increased volunteer contribution limits in the form of supplies from $500 to $1,000.
- Raised the reporting amount to $200.
- Prevented the FEC from conducting random audits.
- Allowed state and local parties to spend unlimited amounts on campaign materials used by volunteers (The Center for Responsive Politics, 2013).

The FECA laws brought stability to the campaign finance scene. Several judicial challenges to the law occurred, but ultimately FECA prevailed until the 2002 campaign finance reform initiative. The creation of the FEC allowed for Congress to handle other issues without having to deal with the evolution that occurs in campaign spending. The FEC had the ability to annually adjust rules so that the law could adapt to a rapidly changing campaign climate.

2000s Election Reform

In 2001, President Bush came into power. One of the things on Bush's agenda was campaign reform. In March of 2002 Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. The FEC's implementation of BCRA included rulemakings on the following topics:

1. Soft Money.
2. Electioneering Communications.

3. Increased and indexed contribution limits.

4. Prohibited contributions.

5. Inaugural committees.

6. Coordinated and independent expenditures.

7. The Millionaire's Amendment.

8. Fraudulent solicitations.

9. Disclaimers.

10. Prohibited and permitted uses of campaign funds.

11. Civil penalties (Federal Election Commission, 2013).

The term soft money refers to the use of money outside the scope of federal campaign finance laws. The ways that the funds were invested in the campaign determined whether or not they were subject to FECA's contribution limitations. Soft money is viewed generally as outside the scope of FECA limitations (Briffault, 2002). Determining how to regulate these funds became an issue that the FEC believed it couldn't handle. The FEC recommended that an act of Congress be taken to address issues concerning soft money.

The Bipartisan Campaign Reform Act (BCRA) was the response to problems associated with soft money financing. Soft money seemed to significantly increase leading up to the passing of BCRA. Republicans and Democrats raised approximately $500 million in soft money both in the 2000 and 2002 elections. The amount of money that went unregulated is alarming because the money could provide an unfair competitive advantage to specific candidates depending on the amount of support that a candidate has received. (Corrado, 2005). If one candidate was receiving significant contributions from their political party, but the other was not receiving contributions from their political party then one party would have the ability to dominate an

election. This would be extremely unfair if the money was soft money and therefore unaccountable. Imagine if this were to continue on a national level and one party significantly out raised the opposing party through unregulated funds. Elections would then become less competitive and potentially lose constituent interest.

To address the issue of soft money BCRA banned the use of soft money by political parties who solicited for the monies in an effort to avoid regulations and disclosures. Essentially BCRA aimed at punishing campaign fund regulation evaders. The BCRA also prohibited state and local party committees from using soft money in voter drives. Sponsors of the Act argued that these provisions were needed so that candidates wouldn't be able to knowingly evade the government and contribution laws. The BCRA was designed to keep individuals from sidestepping the system (Comeau, 2003).

Another issue that BCRA addressed was electioneering communication. Electioneering Communications refers to any broadcast, cable or satellite communication that:

1. Refers to a clearly identified candidate for federal office.

2. Communications that are publicly distributed shortly before an election.

3. The communication targets a relevant electorate. (Federal Election Commission, 2006).

The electioneering communication portion also eliminated the use of indirectly referring to a candidate. It stipulated that communications which refer to a candidate through mentioning the candidates name, image, nickname or political party were considered direct references . If a candidate is identified through one of these measures then that candidate is obligated to report the contribution (Federal Election Commission, 2006). The act also identified electioneering communications as communications occurring right before an election. These advertisements are

obligated to disclosure laws as independent expenditures. Finally the electioneering communication portion of the act placed restrictions on corporations and labor unions that aired electioneering communications (Ellis, 2003).

Sponsors of BCRA explained that they intentionally wrote BCRA to ensure that such communications are paid for with funds subject to the prohibitions and limitations of FECA. Sponsors argued that many advertisements were used to circumvent FECA's prohibition on the use of labor organizations. They then explained that sidestepping FECA was accomplished by airing advertisements designed to avoid the language set forth by the Supreme Court regarding references in campaigns (Federal Election Commission, 2003).

The electioneering communications portion seems to be working because individuals can no longer sustain valid arguments on wording alone. Now individuals have to prove that in the process of violating the law they were not intentionally avoiding disclosure. The provision for intentions is a problem, but so far this portion has not been overturned by the Supreme Court.

The BCRA rules regarding index contributions and contribution limits were aimed at resolving five major conflicts:

1. Increasing limits made to individuals during a two-year span.

2. Indexing certain contributions limits and adjusting the contribution indexes for inflation.

3. Preventing foreign individuals from influencing U.S. elections.

4. Outlawing the act of someone funneling funds into campaigns through the name of another individual.

5. Preventing contributions from being earmarked for certain individuals or certain campaigns (Federal Election Commission, 2002).

The FEC recognized that adjustments needed to be made in the contributions section. As a result, when the FEC released their annual report, Congress took notice of the changes needed. Congress reacted and updated the rules for contributions. In the 2002 FEC report, the FEC explained the need for the changes regarding underage contributions. The FEC felt that it needed to protect elections from campaigns receiving funds in ways that require contributions on behalf of another individual who may hold opposing political views. In addition the FEC laid out the specific changes and numbers in their report. The overall synopsis was that changes needed to be made to address inflation, regulatory changes and the ability of contributors to evade the spirit of previously existing legislation. These provisions succeeded in closing previously untouched loopholes. The specificity under the indexing and extended contribution limit section addressed several grey area issues. These new rules left potential campaign smugglers with the task of figuring out new ways to accomplish their illegal goals.

The BCRA addressed contributions from minors. The issue became a problem for elections because other individuals began smuggling money into election cycles under the names of their children or other young suspecting or unsuspecting individuals. The Bipartisan Campaign Reform Act now stipulated that all individuals under the age of 18 years are prohibited from making contributions to federal candidates. Contributions and donations to committees of political parties from minors were also outlawed. The BCRA specifically used the word donation in this regulation to ensure that the rule prohibited federal and nonfederal elections. The new wording meant that states which traditionally accepted contributions from minors were no longer allowed to do so. All states must now abide by the rule regardless of individual state laws. The justification for this rule was explained as donations by minors essentially would make their way to Federal elections. If a minor donated funds to a local party,

then that local party theoretically would no longer require a subsidy from their national counterpart because whatever the local fund lacks, the national affiliation usually subsidizes. As a result, there is more money in the pocket of the national group. This trickling of funds and potential manipulation of money would thus create a loophole in the law in certain states (Federal Election Commission, 2002).

The law also reaffirmed and expanded upon contributions from foreign nationals. The law was interpreted by the FEC as a knowledge requirement. In other words, acceptance of funds from a foreign national wasn't illegal unless the accepting party knowingly accepted funds from a foreign national, purposefully neglected to determine if the contributing party was a foreign national and accepted a contribution or donation from a foreign national. Congress then laid out the definition for the word knowingly. The term was defined under a set of standards. Meeting one of these standards satisfied the knowledge requirement and thus made the contribution illegal. The first standard is that the accepting party knew that the contribution came from a foreign national. The second standard asked whether an individual had reason to believe they were accepting funds from a foreign source. The third standard questions whether the accepting party neglected to determine the origin of the funding if there was reason to suspect that the funds were coming from a foreign national (Federal Election Commission, 2002).

The law also prevented contributions made from the treasuries of corporations, labor organizations and national banks. Additionally, national banks and federally chartered corporations may not make contributions in connection with any election, including state and local elections. Contributions may, however, be made from separate segregated funds established by corporations, labor organizations, national banks, and incorporated membership organizations.

Contributions from federal government contractors were now prohibited. The prohibition applies to contributions from the personal or business funds of individuals or sole proprietors who have entered into a contract with the federal government. It does not apply, however, to personal contributions by employees, partners, shareholders or officers of businesses with government contracts; nor does it apply to separate segregated funds established by corporations or labor organizations with government contracts. This was designed to prevent a conflict of interest from forming.

Foreign national contributions were defined as contributions and donations from individuals who do not have permanent residence in the United States and lack a green card. Donations from these individuals may not be solicited, accepted, or received from, or made directly or indirectly. This prohibition encompasses all US elections; including federal, state and local elections. This prevented the smuggling of funds from illegal workers and was aimed at preventing other entities from influencing elected U.S. officials.

Accepting or making cash or currency contributions over $100 is prohibited. If a committee received a cash contribution exceeding $100, it must promptly return the excess amount to the contributor. If an anonymous cash contribution over $50 is received, the amount in excess of $50 must be used for some purpose unrelated to federal elections. This portion was aimed to regulate contributions that occurred and the origin of the funds was difficult to determine thus the receiving party had the advantage of potentially accepting several contributions from the same individual and never knowing the aggregate limit had been reached. Ignorance of this law was no longer a defense now that disclosure of cash was being monitored.

Contributions made by one person in the name of another were now prohibited. No person is lawfully allowed to knowingly permit the use of his or her name to allow a contribution

to occur. The law included an accomplice provision that prohibited an individual from knowingly assisting another person when making or accepting a contribution in the name of another (Federal Election Commission, 2004). This newly worded law provided support to laws regarding minors and foreign nationals by preventing certain potential loopholes from occurring through the auspice of contributions in the name of another individual.

New rules were implemented to monitor the selection of inaugural committees this portion of BCRA was passed in 2004. The FEC approved the final regulations and a new disclosure form was created to implement provisions of the BCRA. The new rules require inaugural committees to:

- Register with the FEC no later than fifteen days after presidential appointment.
- Report within ninety days all contributions equaling $200 or more and report the name of the donor.
- Report refunded reported donations.
- File supporting information aimed at disclosing any reportable donations accepted or refunded after the initial filing.
- Retain records for at least three years.
- Reject donations from foreign nationals (Federal Election Commission, 2004).

The need for such a change came because the highest level of office could have a committee that accepted donations under otherwise illegal circumstances. An example of this is that the inaugural committee was allowed to accept donations from foreign nationals. Now the BCRA required that in order for a committee to be considered, the inaugural committee must abide by some of the same rules that govern other officials (Federal Election Commission, 2004). This was looked at as holding the president to the same standards as other elected officials.

While the provisions weren't necessary for the purpose of upholding the sanctity of campaigns, the provisions were viewed as needed to ensure that foreign nationals were not illegally interfering. Although the measure is enforced, the literal presence of inauguration committee rules is largely a symbolic measure.

Prior to BCRA campaigns were working around election laws aimed at preventing the monopolization of elections. Individuals paid for several advertisements on behalf of campaigns. These advertisements were often coordinated with a candidate or party committee. The communication between the individual and the benefiting entity is considered an in-kind contribution. Contributions like this that are made to a candidate or party committee are subjected to the rules of federal campaign finance law (Federal Election Commission, 2007). Coordinated and independent expenditures became defined as spending that is made in conjunction or cooperation with a candidate, a candidate's staff members or a political party. Exceptions related to volunteer activity for party committees and candidates may apply (Federal Election Commission, 2004). The restrictions of expenditures were needed to prevent campaigns from creating extensions of their campaigns which could accept unlimited funds. If these extensions were allowed to coordinate with the colluding campaign then essentially many campaign finance laws became moot and campaign finance issues would once again run rampant.

The FEC listed the following prong tests to determine if a communication is coordinated or independent. The first prong test is the payment prong test. To satisfy the payment prong requirements, the communication must have been paid for in whole or in part by someone who is not the candidate themselves, someone who is not on the candidates authorized committee or a political party committee.

The second test is the content prong test. The content prong portion addresses the subject matter and timing that a communication occurs. The issue needed to be addressed because independent movies that were being publicized during an election could be considered a form of advertisement. For example, a documentary on a candidate being promoted during an election could provide a boost to a candidate and thus be an unfair advantage. The content prong portion sought to prevent these unfair advantages from occurring. Any content that did not meet the following guidelines were subjected to FEC disclosure laws. Content that mentioned or alluded to a federal candidate and is distributed to a specific voter audience before a primary election or 60 days before the general election was subjected to disclosure laws. Public communications that published, released or distributed partial or entire campaign materials prepared by a candidate or a candidate's campaign were subjected to disclosure laws. Other content that must be disclosed is content that is publicly distributed within 90 days of an election and regards a Federal office election. Content that is publicly distributed during a midterm election cycle must also be disclosed. Content related to presidential elections must be disclosed if the content is made 120 days before a presidential primary. Other than the 120 day limit, the exact disclosure requirements for other Federal offices applied the same to the presidential election. The extended timelines of 90-120 days sought to discourage anyone from scheduling content close to elections unless they planned on reporting their work to the FEC.

The third and final test is the conduct prong test. The content prong test sought to identify individuals who are legitimately conducting independent work. The prong aimed to prevent campaigns/individuals from utilizing documentary and independent film works as extensions of campaigns that are exempt from FEC guidelines. Essentially the individual producing independent content must be one-hundred percent independent from campaigns, the filmmaker

must not have acted upon the request or suggestion of a candidate or candidate's campaign and the filmmaker must provide proof of their independence from the candidate. Additionally, 120 days of independence with no affiliation to a candidate or campaign must be met. This time limit was aimed at protecting individuals who may have conducted work that included campaign members input, but was not the work of the campaign itself (Federal Election Commission, 2004).Penalties for violations of these rules are based upon law in comparison to illegal contributions made to campaigns. This provision of the BCRA was designed to prevent individuals from working around disclosure rules, but ultimately the wording of this provision leaves openings for sidestepping the legislation. This provision of the legislation was eventually overruled in Citizens United v. FEC (2010). The damage done to campaign finance laws as a result of the Citizens United ruling is alarmingly high considering the suit aimed at challenging this particular provision.

The Millionaire's Amendment provided a provision to increase contribution limits for candidates facing a wealthy opponent who intends to make large expenditures from personal funds exceeding $350,000 (Federal Election Commission, 2012). Every candidate that contributed at least $350,000 would then trigger the Millionaire's Amendment meaning that their opponents could then accept up to three times the normal contribution limits from individuals and entities. This portion was ruled unconstitutional in Davis v. FEC (2008).

Fraudulent solicitations became a problem in elections leading up to the passage of BCRA. There was an increase of misrepresentation and fraudulent solicitations. Imposters were posing as representatives of campaigns with the intention of ruining a candidate's reputation and/or preying on unsuspecting donors. The fraudulent solicitation provision was adopted to protect candidates from individuals who fraudulently misrepresented themselves as

spokespersons of a candidate in a way that is damaging to the campaign of an individual or a political party. The law also made it illegal to "knowingly" participate or conspire to violate this act (Federal Election Commission, 2002). Violations of these rules faced civil penalties. This provision aimed to prevent confusion from voters who were having a hard time understanding the positions of politicians due to conflicting fraudulent solicitations.

The BCRA attempted to resolve issues regarding disclaimers. The FEC defined a disclaimer as a statement placed on a public communication that identifies the person who paid for the communication and the individuals who authorized the communication (Federal Election Commission, 2006). Stipulations were established that required a disclaimer be present on any electioneering communication and on any public communication advocating for or against a candidate in a federal election. Disclaimers must be clear and conspicuous. Disclaimers were not considered clear and conspicuous if:

- It is the disclaimer was difficult to read or hear. Advertisements that speed through or inaudibly whisper disclaimers would not meet the requirements of this rule.
- The notification is placed where it can be easily overlooked. Therefore disclaimers that blended in with an advertisement would not meet the definition (Federal Election Commission, 2006).

Exemptions to disclaimers were allowed in situations where a disclaimer notice cannot be conveniently printed such as pens, bumper stickers, campaign pins, campaign buttons, clothing and other items. Advertisements such as skywriting were also exempt from the disclaimer rule (Federal Election Commission, 2006).

In August of 2002 the FEC sought the opinions of organizations and individuals regarding uses of campaign funds. The FEC released suggested revisions to acceptable uses of

campaign funds and also sought responses to their proposed rulemaking. The proposed rules were to:

- Allow excess campaign and donated funds to be used to pay for expenses that occur while a candidate is in office
- Establish a definition of converted to personal use funds if the funds are used for an expense that would exist regardless of a campaign or holding office. Examples of these funds include housing, clothing, vacation expenses, tuition payments, non-campaign-related automobile expenses, and a variety of other items.
- Prohibits the personal use of clothing, other than items that are used in the campaign, such as campaign T-shirts, caps with campaign slogans.
- List examples of prohibited transportation expenditures instead of having a case by case vehicle listing.
- Prohibit candidates from using campaign funds to pay themselves salaries or otherwise compensate themselves during a campaign (Federal Register, 2002).

The fifth rule was amended as a result of three responses from organizations that theorized that candidates would be at a disadvantage if they were not allowed to draw a salary. For example, an average citizen with a modest income would not be able to successfully seek office if they are afraid their mortgage will go unpaid; whereas a wealthy candidate may not have to worry about their finances and campaign full-time. This would discourage non-wealthy individuals from seeking office because they would have no way to offset losses incurred during times they are seeking election. The fifth provision as it is written today allows for the candidate to pay themselves the lowest salary of the Federal office being sought (Federal Election Commission, 2002).

The final provision under BCRA regards civil penalties. The FEC sought to amend civil penalties for violations of campaign laws. Congress answered the FECs request. Under BCRA a civil penalty will be imposed for breaking laws relating to campaign finance.

- Penalties regarding violations of reporting expenditures and contribution will not be greater than $5,500 or the aggregate amount of the violation that actually took place.
- Penalties regarding knowingly and willful violations shall not exceed the greater of $11,000 or an amount equal to two to three times the amount of any contribution or expenditure involved in the violation. If the civil penalty exceeds three times the amount of any contribution, then the penalty will not exceed the greater of $50,000 or 1,000 times the amount of the contribution involved in the violation (Federal Election Commission, 2002).

Collectively BCRA had a major impact on campaign finance reform, but the impact was eroded as a result of several Supreme Court rulings. Additionally individuals discovered loopholes that needed to be addressed. These loopholes led to the Appropriations Act of 2005.

Appropriations Act of 2005

The Appropriations Act of 2005 sought to impact how candidates were allowed to use their campaign funds. The BCRA removed a key line that allowed flexibility with the spending of campaign funds. That line was "any other lawful purpose." The line did not allow funds to be converted for personal use, but it did allow for financial flexibility in campaign spending.

On December 8th 2004 President Bush signed legislation the Appropriations Act of 2005 to fix the mentioned flaw in BCRA. The act also included other amendments to the Federal Election Campaign Act including a higher threshold of $2,000 regarding the amount that an

authorized candidate can contribute to the authorized committee of another candidate. Under the BCRA the threshold was limited to $1,000 (Federal Election Commission, 2005). The Appropriations Act was a minor tweak to the BCRA. This tweak had huge financial implications because loopholes regarding campaign fund spending were closed.

The Honest Leadership and Open Government Act of 2007

The Honest Leadership and Open Government Act sought to accomplish five things.

- Providing more transparency in campaign funding.
- The act prohibited the spending of funds for Senate, Presidential and House candidates and their authorized committees on travel on private, non-commercial aircraft (Federal Election Commission, 2007).
- The act prohibited contact from lobbyists to political candidates even if the lobbyist were a member of a congressional staff member's family.
- The act extended these rules to executive and judicial branches.
- The act made it illegal to knowingly and willfully falsifying any information that such person is required to report and fail to report all information under section 102 (U.S. Congress, 2007).

To accomplish the goal of transparency the law required that all candidate authorized committees, leadership PACs and party committees disclose their contact information along with a disclosure of bundled contributions exceeding $15,000 to campaigns. For example, if a lobbyist were to receive an honorary title within the recipient's committee or gain access to an event reserved exclusively for those who generate a certain amount of contributions, the individual might be considered to have received credit for the bundled contributions. The provision applies

to fundraising for a candidate's principal campaign committee, any Leadership PAC established, maintained, financed or controlled by a candidate or a federal officeholder and any party committee. Other provisions of the act protected campaign funds by ensuring that funds are spent in ways that normal citizens would spend their money. This meant that private planes were no longer allowed to be used if these planes were funded with campaign funds. The act was signed into law on September 14th 2007 by President George W. Bush. The law resolved minor reporting and spending issues, but it really didn't impact PAC spending. The stipulations that aimed to increase transparency really weren't beneficial. Although all of these laws require disclosure and transparency, the transparency is only conveniently available for government officials. The public still has to go through many obstacles to identify PAC contributions, funders and creators.

Court Cases

The following court cases have greatly impacted campaign laws. Some cases created the need for further reform. Other cases restored boundaries that were once thought to have been erased through legislation. The court cases are in response to many campaign reform laws. The outcomes of these cases often led to more legislation.

Newberry v. United States (1921). Truman Newberry was running against Henry Ford for a Senatorial position representing Michigan. Newberry won the election, but was accused of breaking campaign finance laws. Newberry was found guilty of spending close to 100 times the permitted limit. Newberry was displeased with the ruling and appealed to the United States Supreme Court. Three years after Newberry's conviction for overspending, the Supreme Court held that Congress did not have the authority to regulate the primary, and nomination process.

The Supreme Court ruling created hesitancy in congress when it comes to addressing issues concerning the primary and nomination process (Salisbury, 2002).

The court also held that the amendments to the Tillman act were unconstitutional. The Supreme Court declaration of unconstitutionality brought about a need for new legislation to take its place. New legislation arrived in the form of amendments to the Federal Corrupt Practices Act in 1925.

Pipefitters v. United States (1972). Unions were granted the rights to establish PAC's as long as donations were voluntary and maintained in a separate account. The Supreme Court believed that issues regarding donations had occurred previously. These issues were eventually addressed in the form of legislation. However if money was voluntarily contributed by individuals, the rationale for the provision was moot and therefore unacceptable. This ruling paved the way for the creation of PACs because the ruling opened the doors for financing a PAC (Zelizer, 2002).

Buckley v. Valeo (1976). Buckley v. Valeo (1976) is a landmark ruling that led to amendments being made to FECA in the 1970's. The issue came to light when Senator James Buckley, Republican and Senator Eugene McCarthy, Democrat sued Secretary of the U.S. Senate, Francis Valeo. They claimed that the spending ceilings in the 1974 amendments to the Federal Election Campaign Act violated their constitutional right to freedom of speech (Central Connecticut State University, 2013)

Prior to Buckley v. Valeo (1976) the two court cases Bigelow v. Virginia (1975) and New York Times Co. v. Sullivan (1964) were used to determine precedence in court cases. These two decisions suggested that campaign spending was a form of speech. Their rulings were upheld in Buckley v. Valeo (1976) (Morrison, 1999). If the ruling on these two cases had been

different then Buckley v. Valeo (1976) may have had an entirely different ruling. Buckley v. Valeo (1976) was decided on the premise that campaign expenditures should be treated as speech and that any governmental attempt to limit speech for the purpose of increased regulation should be investigated with extreme skepticism (Morrison, 1999).

Buckley v. Valeo (1976) challenged the constitutionality of FECA 1971 as amended in 1974 and the Presidential Election Campaign Fund Act. It was argued in two ways. The first argument suggested that democracy is made by the people and that equality in voting cannot exist when the wealthy spend their money for the purpose of furthering their political agenda at the expense of overshadowing other citizens who have fewer funds. The second argument is based on the premise that money spent on campaigns is a form of speech. If you limit someone's spending then you are also limiting their ability to express their ideas (Mutch, 1989).

The Supreme Court upheld the constitutionality of portions of the law, but ultimately the ruling required many new questions to be answered through legislations. The provisions that were upheld include:

1. The limitations on contributions to candidates for federal office
2. The disclosure and recordkeeping provisions of the FECA;
3. The public financing of Presidential elections.

These decisions were a step in the direction toward establishing a foundation for campaign laws because they were upheld and were now enforceable. There is no question that limiting contributions is constitutionally acceptable, but the challenge to the ruling is the interpretation of these laws. This process became evident in future court decisions that were based on interpretations of the law. As a result of the Supreme Court's interpretations, the following provisions were declared unconstitutional:

1. The limitations on expenditures by candidates and their committees, except for Presidential candidates who accept public funding;

2. The $1,000 limitation on independent expenditures;

3. The limitations on expenditures by candidates from their personal funds;

4. The method of appointing members of the FEC (Federal Election Commission, 2013).

The Supreme Court's reasoning for Buckley v. Valeo (1976) ruling regarding campaign limitations is that when a candidate accepts public funding those candidates could constitutionally be required to adhere to campaign limits. If a candidate were funding their own campaign they should be allowed more flexibility in campaign limits. This rationale supported the belief that private money should be considered an extension of a candidate's speech; whereas a publicly funded campaign shouldn't have the same flexibility because the funds supporting the campaign arrived from different individuals with different beliefs. Today many public candidates refuse public funding because of the obligatory limitations of campaign finance that come with accepting public goods. These candidates are worried that abiding by these laws would give their competitors an advantage if their competition decided to privately fund their campaign (Garrett, 2007). These fundamental decisions placed in Buckley v. Valeo (1976) made the case a commonly cited work for future legislative work and other landmark rulings. This case paved the way for Citizens United v. FEC (2010) in which corporations were eventually granted the same First Amendment constitutional protections as people.

Davis v. FEC (2008). Davis v. FEC (2008) challenged the constitutionality of the Millionaire's Amendment. On March 30th 2006 Jack Davis declared his candidacy for a House seat in New York. He intended to spend over $350,000 of his own funds on his campaign. The amount of money that he was about to spend was going to trigger stipulations set forth in

requirements for the Millionaire's Amendment. This meant that his opponent may receive an increased amount above the limits on contributions. The Millionaire's Amendment stipulated that all amounts exceeding $350,000 for the house would increase the limits of revenue from other sources for opponents unless they themselves were also contributing at or above the limit. In the event the opponent was not contributing at least the limit, then they may receive contributions from individuals up to $6,300 per election. The opponent was also allowed to accept greater amounts of funds from their political party.

Mr. Davis argued that the Millionaire's Amendment violated his First Amendment right to free speech and his Fifth Amendment right to equal protection. He also argued that the additional disclosure requirements for candidates who fell under the Millionaire's Amendment jurisdiction were the recipients of an unfair burden on their right to speak in favor of their own candidacy. Mr. Davis felt that the provision favored incumbents by allowing larger contributions from previous campaigns to be carried over into new elections. For example, a candidate who previously ran for office may have leftover funds in excess of $350,000. The candidates with leftover funds of this magnitude were not subjected to the Millionaire's Amendment and were at an advantage because their incumbent opponent would have to start from nothing.

The District Court ruled that Mr. Davis's First Amendment challenge was not valid because the Millionaire's Amendment did not burden the exercise of political speech. The court elaborated that the Millionaire's Amendment didn't prevent individuals from spending unlimited personal funds to express their beliefs. This meant that the court felt that the Millionaire's Amendment did not provide an advantage to the competitor who was receiving the benefit of the amendment. Instead the court felt that the big spender was still on an even playing field because of the ability to spend unlimited personal funds. The court stated that the Amendment actually

preserved First Amendment values by protecting the candidate's ability to participate in the political marketplace. The court also rejected the argument that his Fifth Amendment protection was violated under the law. The court states that "In order to argue that a statute violates the Fifth Amendment, a plaintiff must show that the statute treats similarly situated entities differently. The Millionaire's Amendment did not meet those requirements.

The Supreme Court disagreed with the District Court and the FEC. The FEC argued that Mr. Davis lacked the standing to challenge the limits of the Millionaire's Amendment because his opponent never accepted contributions at the higher limit; therefore no damage had been done. The Supreme Court stated that a Mr. Davis had a valid argument because at the time of the filing Mr. Davis was facing the threat of a real, immediate and direct injury.

The Supreme Court also ruled against the FEC in terms of Mr. Davis filing a moot claim. The FEC argued that the argument should not be heard unless Mr. Davis planned to run again for office otherwise nothing can be gained from the ruling. The Court ruled against the FEC noting that Mr. Davis made a public statement expressing his intentions to run again for the House and furthermore intended to trigger the Millionaire's Amendment again.

In the ruling the Supreme Court looked to Buckley v. Valeo (1976) for precedence. The court noted that the Millionaire's Amendment provided an unfair advantage to individuals who were opposing enactors of the amendment. The ruling declared the Millionaire's Amendment as unconstitutional (Federal Election Commission, 2013).

Citizens United v. FEC (2010). In 2010 Citizens United sued the FEC because it believed it was exempt from FEC disclosure regulations because the plaintiff intended to release a documentary regarding Hillary Clinton. In 2008 Hillary Clinton was a Senator and a Presidential primary candidate. Citizens United tried to pay for the syndication of its content so

that it would be available for free through video-on-demand. Citizens United intended to make the film available within 30 days of the 2008 primary. Citizens United was worried that film may be restricted by FEC laws due to the nature of the film and thus be open to civil and criminal penalties. To test the waters of their constitutional rights, Citizens United filed suit against the FEC. Citizens United argued that it was unconstitutional to ban a corporate film and that it should not be subjected to disclaimer requirements (Sullivan, 2010).

The Supreme Court agreed with Citizens United and ruled that corporations, unions and other business entities deserved the same rights as people when it comes to campaign finance. The controversial ruling opened the doors for various companies or entities to create media to promote an idea or belief.

The five to four Supreme Court decision was justified under the premise that corporations and unions have the same political speech as individuals under the First Amendment. The court didn't believe that there was enough compelling government interest to prohibit these entities from using vast corporate funds on elections or candidate campaigns. The ruling struck down federal laws banning restrictions of funds from corporations and overruled two of its previous rulings (Sullivan, 2010). Despite the fact that previous rulings were struck down the judgment supporting Citizens United v. FEC (2010) remained consistent with the Buckley v. Valeo (1976) ruling. The court's decision showed that the Supreme Court intended to uphold forms of speech regardless of who or what acted as the mouthpiece for that speech. The ruling also provided a pattern of citation when campaign finance was concerned. The courts were highly likely to base all future decisions on the Buckley v. Valeo (1976) ruling.

Carey v. FEC (2011). In 2011 Admiral James Carey, Kelly Eustis and the National Defense PAC sued the FEC under the argument that certain contribution limits concerning

organizations violated the First Amendment. They argued that the limitation laws prohibiting independent political committees from soliciting and accepting unlimited contributions designated for independent expenses in one bank account should be outlawed when PACs maintained a second separate account designed to keep track of candidate contributions. On August 19th 2011 the U.S. District Court for the District of Columbia submitted a judgment stating that the FEC agreed it would not enforce laws against the plaintiffs regarding independent expenditures held in separate bank accounts (Federal Election Commission, 2011). The FEC also acknowledged that it would not proceed to enforce the law for other organizations that operated under the same circumstances that were described in Davis v. FEC (2011) (Ingram, Queen, Hilland, & Brandenberger, 2011). The FEC updated its guidelines to ensure compliance that is consistent with the new ruling. The FEC further stipulated that:

- Until the commission adopts a new regulation all organizations who were going to proceed under this form of management must notify the FEC of the organizations intention to operate under the same conditions as Davis v. FEC (2011)
- The organization must report all receipts and disbursements for both accounts to ensure transparency.
- Report all independent spending from the non-contribution accounts.
- Report all other disbursements from the non-contribution account under the “other disbursements” filing.
- Set aside administrative expenses that are reflective of the level of spending occurring in that account (Ingram, Queen, Hilland, & Brandenberger, 2011).

The ruling of Davis v. FEC (2011) provided the groundwork for hybrid PACs to exist. The ruling inadvertently provided guidelines for companies to legally sidestep campaign finance

laws. It is unclear when or even if Congress will address the issue, but until then organizations have access to a blueprint when to form into a hybrid PAC.

Case Study

To understand a potential correlation between electorate success and PACs, The study examined the outcome of elections in which a PAC was actively attempting to mobilize its members. The hypothesis is that when elections occur and PACs are involved, the mere presence of PAC support will provide an electorate advantage to those without PAC support. In other words if a PAC is involved in an issue and the only opposition is from a politician, the PAC will have an advantage in the election. If there are competing factions of PACs that contribute comparative funds to the election then no advantage will exist. This theory is based on individuals who advocate against PACs, but who also argue that “the only way to beat a PAC is to be a PAC” (Confessore, 2012).

Through the examination of election results and the PAC disclosure of funds the study examines whether or not losing candidates receive more PAC support than winning candidates. This study is preliminary in nature because of the constant evolution of the campaign finance laws. This study is intended to provide the foundation for other studies. Ideally the case study will be the first of many more to come so that an experiment can eventually be conducted.

The study will focus on Federal elections occurring in Oklahoma. Oklahoma was selected because its representatives have primarily been Republicans since the year 2000. If the theory didn’t hold true in a state where a single party is extremely influential, then it would be highly unlikely that a correlation between electorate success and PACs exists.

The study also has a portion about the 2012 Oklahoma referendum questions. Although PACs are not under the same campaign obligations concerning state issues as they are in federal

elections, this portion of the study should provide information about whether PACs influence campaigns, or if campaigns influence PACs. The state question portion of the study is significant because of the possibility that some PACs may only contribute to a campaign if the PAC believes it is supporting a winning candidate. Political action committees may believe that they will be rewarded by the winning candidate on a quid-pro-quo basis. In the event contributions are made because of the aforementioned quid-pro-quo perception, then the results of this study would be misleading without the state question portion. The state question portion of the case study is designed to answer two specific questions that cannot be answered in the federal case study. Do PACs provide candidates a competitive boost in elections? Or did PACs contribute only to perceived landslide winners? Both theories would concern reported campaign contributions. Thus to test the theory of whether or not PACs provide a competitive boost, the state referendum study will act as a control variable for the competing theory of PACs contributing only to perceived winners. If greater PAC support is present in winning state questions compared to losing state questions, then a better understanding will exist whether or not PACs have an impact on electoral success. The study will also help to explain potential limitations of the quid-pro-quo perception.

Federal Election. The 2012 Oklahoma election featured 16 candidates for the five available House of Representative vacancies:

District 1 featured John Olson – Democrat, Jim Bridenstine- Republican and Craig Allen- Independent as candidates.

Table 1.
Election results for 2012 Oklahoma House District 1.

327 of 327 Precincts Completely Reporting								
		ABSENTEE MAIL		EARLY VOTING		ELECTION DAY		TOTAL	
JOHN OLSON (DEM)		4,118		6,287		81,016		91,421	32.00%
JIM BRIDENSTINE (REP)		8,980		7,543		164,561		181,084	63.50%
CRAIG ALLEN (IND)		510		452		11,845		12,807	4.50%
Total		13,608		14,282		257,422		285,312	100%

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District 2 featured Rob Wallace- Democrat, Markwayne Mullin- Republican and Michael G. Fulks- Independent.

Table 2.
Election results for 2012 Oklahoma House District 2.

530 of 530 Precincts Completely Reporting									
		ABSENTEE MAIL		EARLY VOTING		ELECTION DAY		TOTAL	
ROB WALLACE (DEM)		2,995		10,987		82,099		96,081	38.30%
MARKWAYNE MULLIN (REP)		5,672		16,842		121,187		143,701	57.30%
MICHAEL G. FULKS (IND)		400		1,045		9,385		10,830	4.30%
Total		9,067		28,874		212,671		250,612	99.9%

District 3 featured Timothy Ray Murray- Democrat, Frank Lucas- Republican and William M. Sanders- Independent.

Table 3.
Election results for 2012 Oklahoma House District 3.

481 of 481 Precincts Completely Reporting					
	ABSENTEE MAIL	EARLY VOTING	ELECTION DAY	TOTAL	
TIMOTHY RAY MURRAY (DEM)	2,308	6,293	44,871	53,472	20.00%
FRANK D. LUCAS (REP)	8,923	22,319	170,502	201,744	75.30%
WILLIAM M. SANDERS (IND)	524	1,143	11,120	12,787	4.80%
Total	11,755	29,755	226,493	268,003	100.1%

District 4 featured Donna Marie Bebo- Democrat, Tom Cole- Republican and RJ Harris- Independent.

Table 4.
Election results for 2012 Oklahoma House District 4.

350 of 350 Precincts Completely Reporting					
	ABSENTEE MAIL	EARLY VOTING	ELECTION DAY	TOTAL	
DONNA MARIE BEBO (DEM)	3,386	7,815	60,645	71,846	27.60%
TOM COLE (REP)	8,770	14,001	153,969	176,740	67.90%
RJ HARRIS (IND)	533	733	10,479	11,745	4.50%
Total	12,689	22,549	225,093	260,331	100%

District 5 Featured Tom Guild- Democrat, James Lankford- Republican, Pat Martin- Independent and Robert T. Murphy- Independent.

Table 5.
Election results for 2012 Oklahoma House District 5.

273 of 273 Precincts Completely Reporting									
		ABSENTEE MAIL		EARLY VOTING		ELECTION DAY		TOTAL	
TOM GUILD (DEM)		4,598		9,577		83,329		97,504	37.30%
JAMES LANKFORD (REP)		10,737		6,118		136,748		153,603	58.70%
PAT MARTIN (IND)		195		213		4,986		5,394	2.10%
ROBERT T. MURPHY (IND)		223		182		4,771		5,176	2.00%
Total		15,753		16,090		229,834		261,677	100.1%

During the 2012 election Republicans reported receiving more than $6.23 million in the form of contributions. Democrats in Oklahoma reported receiving a little more than $2.1 million in contributions.

The 2000-2010 election cycles for District 2 are interesting because a Democratic candidate won the election during those years. During the 2004 election Democratic Incumbent Brad Carson vacated the election. This paved the way for Democratic candidate Brad Carson. As a result, the 2000 and 2004 elections needed be covered in the study. The Oklahoma State Election Board didn't have an official breakdown of the 2000 election. The data provided for the 2004 election results were provided from the Oklahoma State Election Board, but at the time of the election, the representation of the data was treated differently. Listed below is the election results for 2004 (Oklahoma State Election Board).

Table 6.
Election results for 2004 Oklahoma House District 2.

UNITED STATES REPRESENTATIVE, DISTRICT 2 General Election — November 2, 2004	
Dan Boren (D)	Wayland Smalley (R)
179,579	92,963

District 1 Breakdown. John Richard Olson, Democrat disclosed spending more than $322,000. Approximately $25,000 came from PACs. James Fredrick Bridenstine, Republican spent almost $782,000 on the election. He disclosed receiving more than $210,000 from PACs (Federal Election Commission, 2013).

Figure 1.
Oklahoma District 1 Money Spent 2012 Election

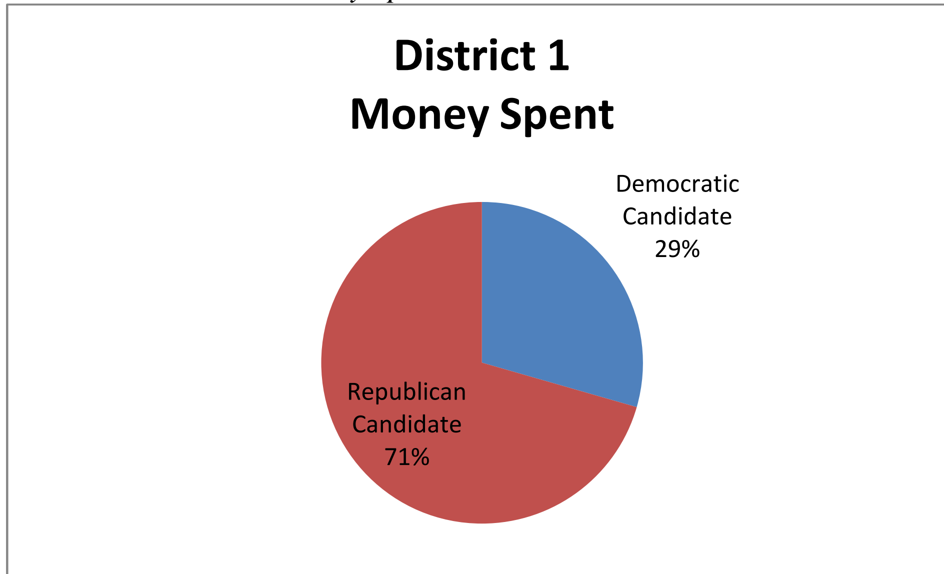
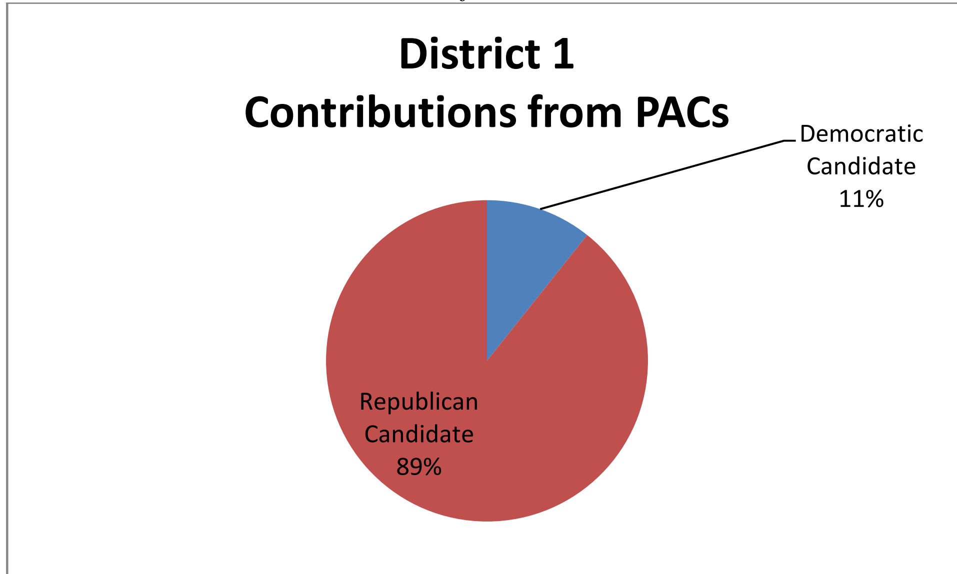


Figure 2.
Oklahoma District 1 Contributions from PACs 2012 Election.



Republican Bridenstine won by 83,000 votes. Birdenstine received 63.5% of the total vote. He received 31.5% more votes than his opponent (Oklahoma State Board of Elections 2012).

District 2 Breakdown. Rob Wallace, Democrat spent approximately $1.22 million on the election. He disclosed receiving more than $244,000 from PACs. Markwayne Mullin, Republican disclosed spending $1.73 million. He disclosed receiving more than $308,000 from PACs (Federal Election Commission, 2013).

Figure 3.
Oklahoma District 2 Money Spent.2012 Election.

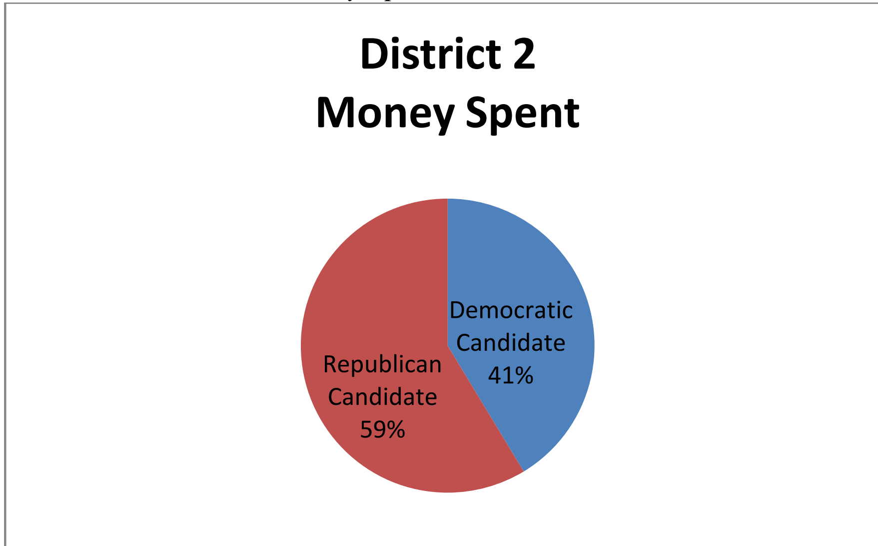
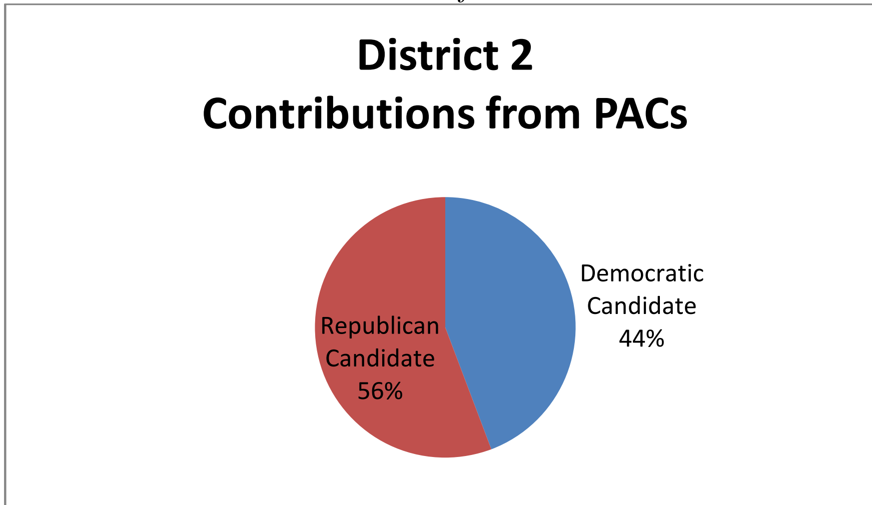


Figure 4.
Oklahoma District 2 Contributions from PACs 2012 Election.



Republican Mullian won by 39,000 votes. Approximately 57.3% of the total vote went to him. He received 19% more votes than his opponent (Oklahoma State Board of Elections 2012).

District 3 Breakdown. Timothy Murray, Democrat disclosed spending $508 on the election. There was no record of Murray receiving PAC financial support. Frank Lucas,

Republican disclosed spending $1.64 million on the election. He disclosed receiving $1.1 million from PACs (Federal Election Commission, 2013).

Figure 5.
Oklahoma District 3 Money Spent.2012 Election.

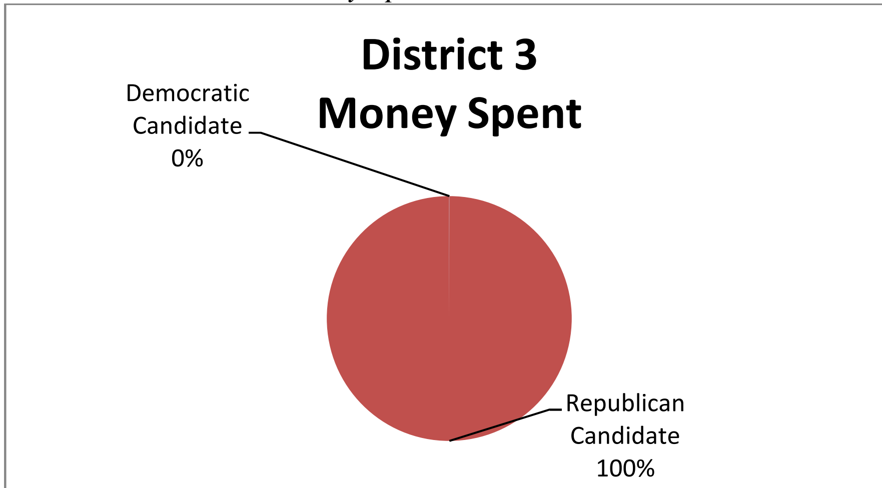
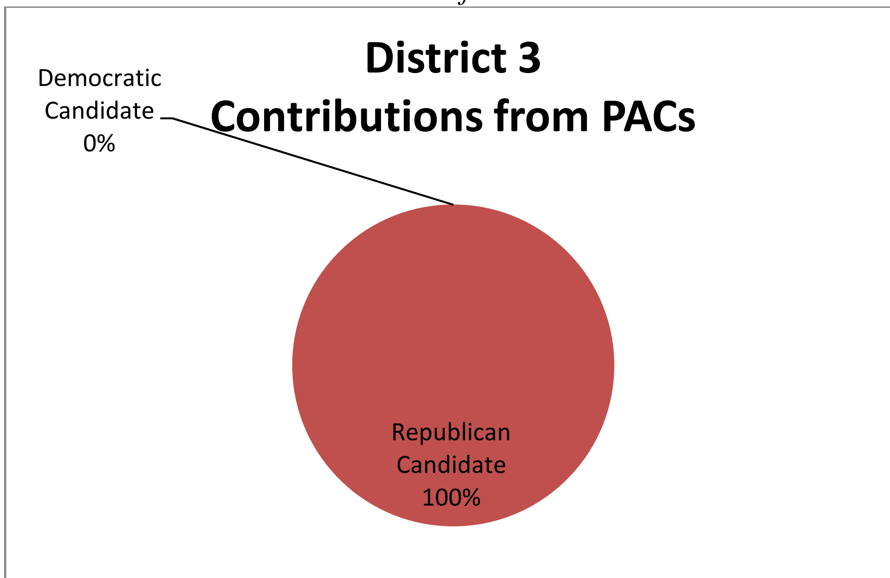


Figure 6.
Oklahoma District 3 Contributions from PACs 2012 Election.



Republican Lucas won by 125,000 votes. Lucas received 75.3% of the total vote. He received 55.3% more votes than his opponent (Oklahoma State Board of Elections 2012).

District 4 Breakdown. Donna Bebo, Democrat disclosed spending nearly $36,000 on the election. She didn't disclose receiving any contributions from PACs. Tom Cole, Republican disclosed spending a more than $1 million on the election. He disclosed receiving $428,000 from PACs (Federal Election Commission, 2013).

Figure 7.
Oklahoma District 4 Money Spent.2012 Election.

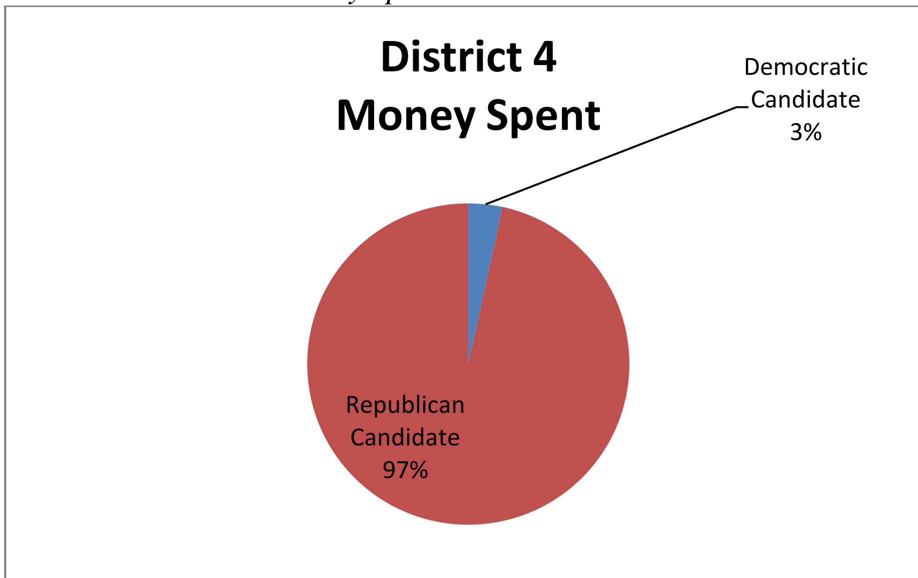
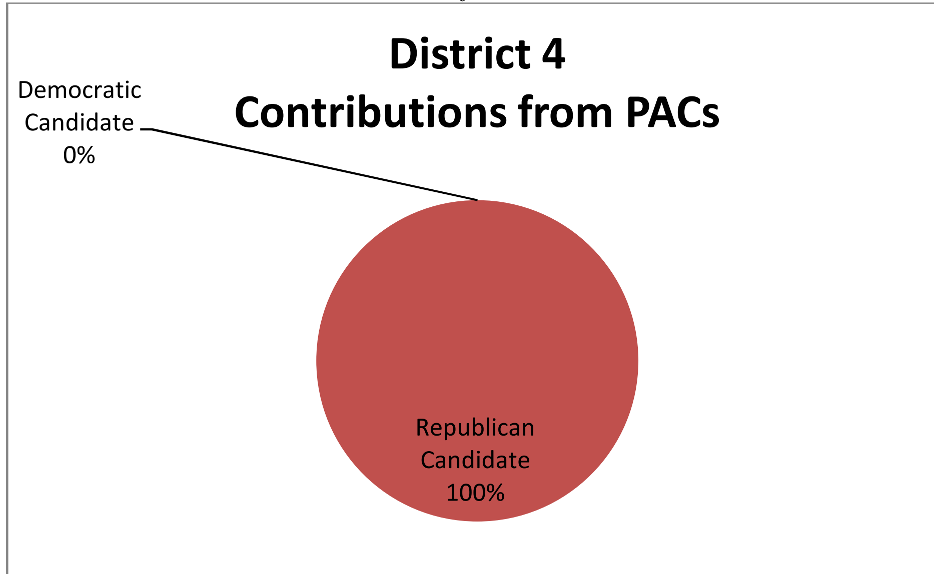


Figure 8.
Oklahoma District 4 Contributions from PACs 2012 Election.



Republican Cole won by 93,000 votes. Cole received 58.7% of the total vote. He also received 21.4% more votes than his opponent (Oklahoma State Board of Elections 2012).

District 5 Breakdown. Tom Guild, Democrat disclosed spending approximately $151,000 on the election. He disclosed receiving $100 from PACs. James Lankford, Republican disclosed spending over $1.15 million on the election. He disclosed receiving approximately $363,000 from PACs (Federal Election Commission, 2013).

Figure 9.
Oklahoma District 5 Money Spent.2012 Election.

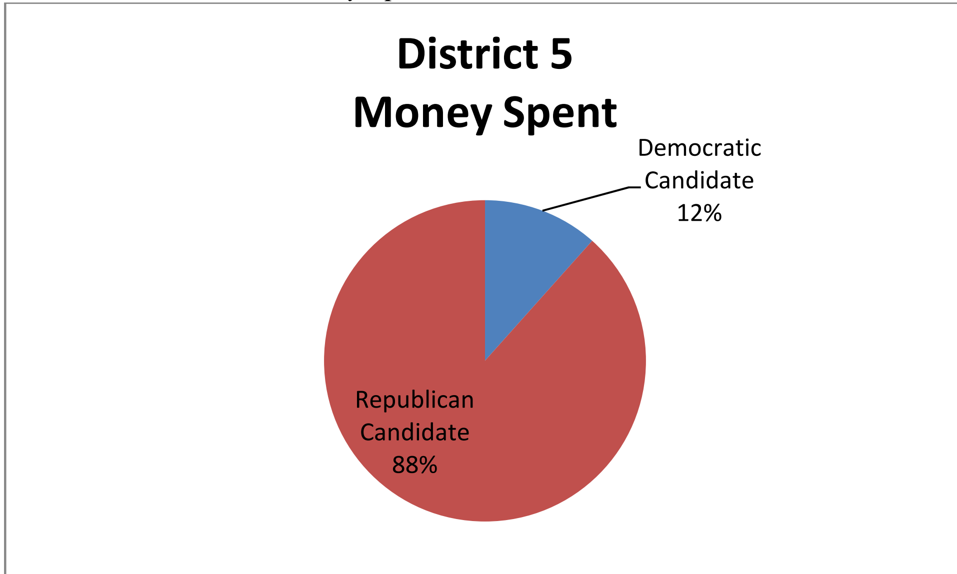
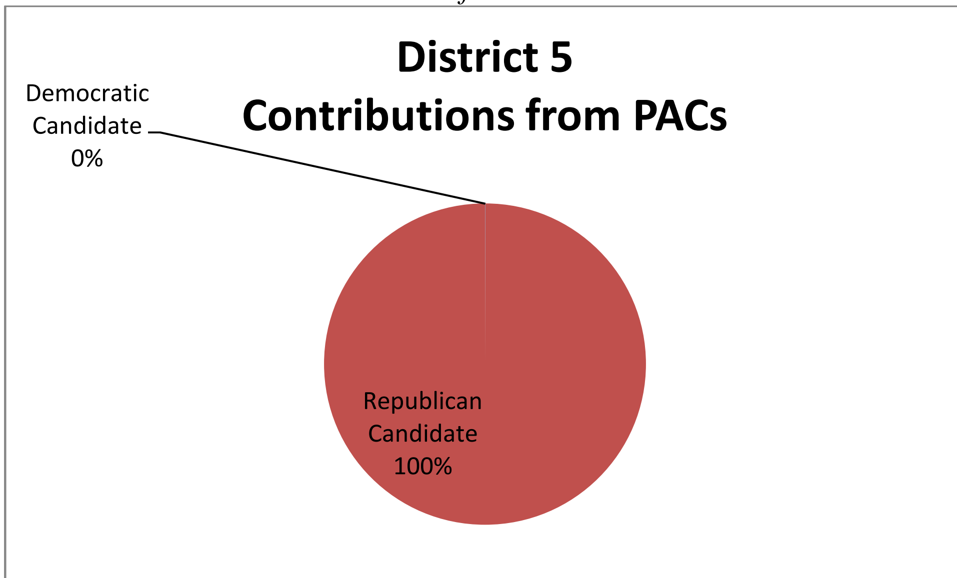


Figure 10.
Oklahoma District 5 Contributions from PACs 2012 Election.



Republican Lankford won by 53,000 votes. He received 58.7% of overall vote. He also received 21.4% more votes than his opponent (Oklahoma State Board of Elections 2012).

Previous Elections [2000 House District 2] Breakdown. Andy Ewing- Republican disclosed spending $988,000 on the election. He disclosed receiving $302,000 from PACs. Brad

Carson, Democrat disclosed spending $1.2 million on the election. Carson disclosed receiving $420,000 from PACs (Open Secrets, 2002).

Figure 11.
Oklahoma District 2 Money Spent 2000 Election.

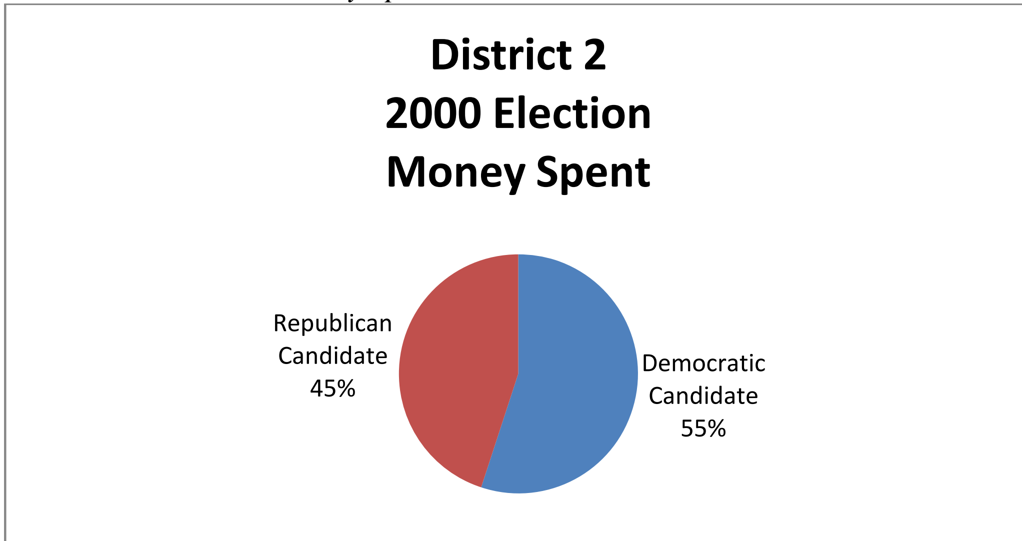
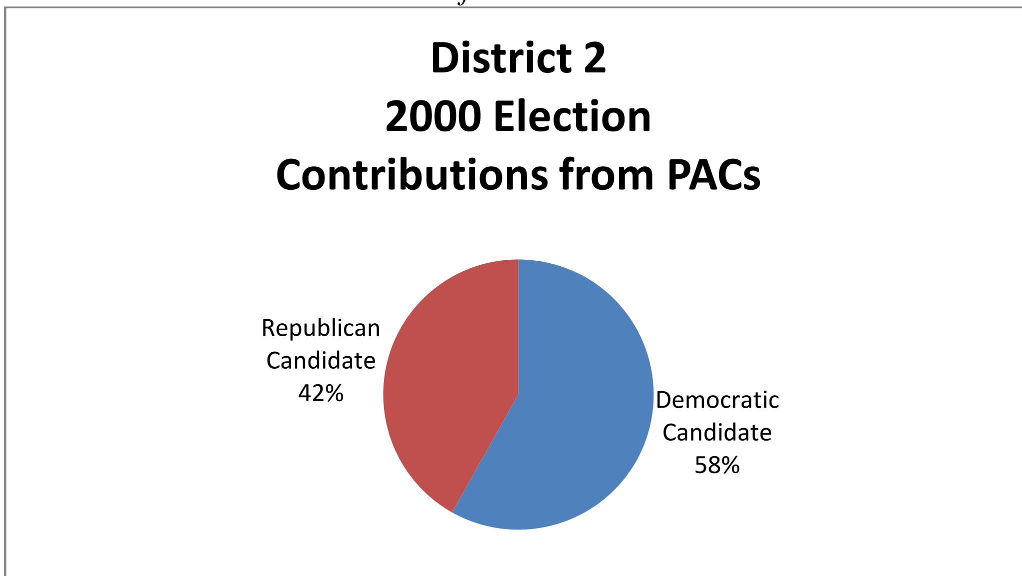


Figure 12.
Oklahoma District 2 Contributions from PACs 2000 Election.



Democrat Brad Carson won by 25,000 votes. Carson received 54.9 percent of the total vote. He also received 13.1 percent more votes than his opponent (Associated Press News, 2012).

Previous Elections [2004 House District 4] Breakdown. Wayland R Smalley, Republican disclosed spending $45,000. He disclosed receiving $200 from PACs. Dan Boren, Democrat disclosed spending more than $2 million on the election. He disclosed receiving more than $546,000 from PACs.

Figure 13.
Oklahoma District 2 Money Spent 2004 Election.

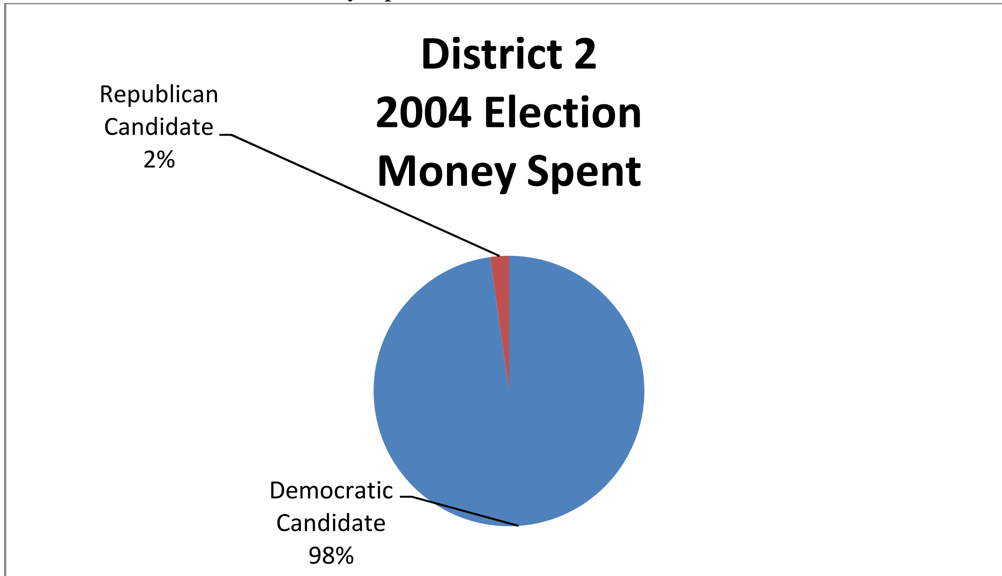
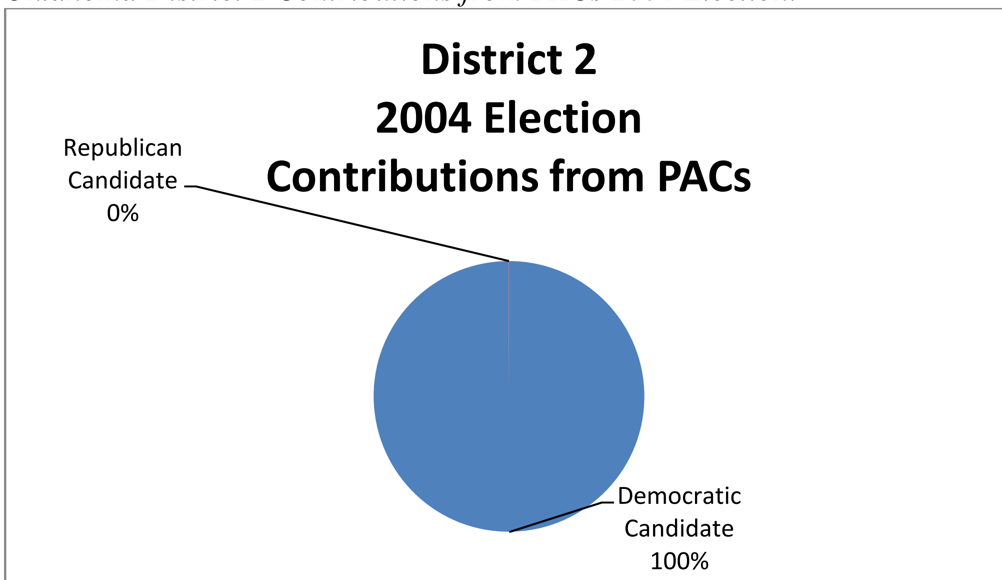


Figure 14.
Oklahoma District 2 Contributions from PACs 2004 Election.



Democrat Boren received won by 86,000 votes. Boren received 65.9 percent of the overall vote. He also received 31.8 percent more votes than his opponent (Associated Press News, 2012).

Oklahoma's Statistical Identity: [State Question Case Study Breakdown]. The case study focuses on the Oklahoma 2012 election. Information regarding Oklahoma demographics is beneficial to better understand who lives in Oklahoma and why these provisions passed. Oklahoma has an approximate 2012 population of approximately 3.4 million people (U.S. Census Bureau, 2013). Nearly 75.3% of Oklahoma's population is of voting age.

The following information regarding the gender and cultural demography of Oklahoma provides information about the number of potentially affected stakeholders concerned with State Question 759. Approximately 50.5% are female and 24.2% identify themselves as minority. About 31.8% of Oklahoma's population identifies itself as Hispanic (U.S. Census Bureau, 2013)[6].

Information regarding housing and businesses is beneficial to help understand the number of homeowner stakeholders regarding State Question 758. There are approximately 972,000 housing units privately owned in Oklahoma. Nearly 585,000 of these units still have a mortgage on them[7] (U.S. Census Bureau, 2011).

Information regarding the prison population in Oklahoma is beneficial to help understand potential stakeholders regarding State Question 762. The prison population for Oklahoma was around 26,400 as of 2009. This is the most up-to-date data that was available from the Census and the data was made available in 2011 (U.S. Department of Justice, 2011) [8].

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[6] Demographic information is relevant to State Question 759.
[7] Oklahoma housing information is relevant to State Question 758.
[8] Prison population information is relevant to State Question 762

Information regarding child support recipients, recipients of state sponsored aid and the number of cases filed for child support is important to help identify the number of stakeholders in this issue. There were a little over 437,000 children participating in state sponsored childcare programs, approximately 2.43 million cases of child support and around 200,000 children receiving state sponsored support (Oklahoma Department of Human Services, 2013)[9].

Synopsis of Oklahoma State Questions/Referendums. State Question 758 asked Oklahomans whether or not annual property tax increases should be capped at 3% instead of the existing ceiling of 5%.

State Question 759 asked Oklahomans for permission to keep affirmative action from being enforced in hiring state, city, county, town, agency and school district employees unless gender is a necessary qualification, existing court orders require preferential treatment or when affirmative action is needed to obtain or maintain federal funds.

State Question 762 asked Oklahomans for permission to remove the Governor from the parole process in cases "convicted of certain offenses defined as nonviolent offenses." The Pardon and Parole Board's approval would take the place of the Governor's approval.

State Question 764 asked Oklahomans to amend the Oklahoma Constitution so that the Oklahoma Water Resources Board would be eligible to issue bonds.

State Question 765 asked Oklahomans to abolish the Oklahoma Department of Human Services so that the legislature may then create a department or departments to provide OKDHS related services to the public.

[9] Child support cases, childcare programs and TANF distribution programs are a function of Oklahoma Department of Human Services. This information relates to State Question 765

State Question 766 asked Oklahomans for permission to “exempt all intangible personal property from ad valorem property taxation.” Examples of intangible personal property included “patents, licenses, trademarks, custom computer software” and more.

Findings

In all 2012 Oklahoma Federal House of Representatives elections, the candidate with the most contributions from PACs won. After looking closer at where the money was coming from The research showed that many of the PACs which contributed to candidates, were operated by the same individual or affiliates of the same company. In the end, candidates who received the most support from PACs won the election.

All state questions passed. Although contributions related toward advocating for or against an issue are regulated differently than contributions related to electing Federal officials, it’s worth noting that no major PAC spoke against passing the referendums. Like the Federal election PACs, many of the PACs that took an affirmative stance on state questions were in one way or another affiliated with another PAC. The amount of funding from the affirmative stance PACs compared to the lesser amounts of funds coming from negative stance PACs suggests that there may be a correlation between PACs and electorate boosts. A majority of expenditures/contributions derived from a small amount of PACs. Contributions/expenditures from PACs speaking against passing certain state questions were significantly less.

Limitations of Study. Oklahoma has recently voted Republican in a lot of elections since the year 2000. After looking at the election results it became apparent that the winners of the election may not actually be winning because of PAC support. Instead they could be winning because of their party status. To offset this the study explored elections in which a Democratic candidate won. From 2000 until the 2012 election District 2 was controlled by a Democratic

House Representative. During this time period the Democratic candidate always received more PAC support than their opponents. That trend ended in 2012 when the Republican candidates receive more PAC support than the Democratic candidate. The winner of that election was the Republican candidate. The study suggested that there may be some sort of correlation between PAC support and electorate success. Factors such as candidate “likeability,” political scandals, timeliness of advertisements, weather, effectiveness of a campaign and support from within the party are not addressed in the House Representative case study, but it was addressed in the state question case study. In addition the state question case study addressed the quid-pro-quo perception issue. Limitations of the state case study are the differences in rules between federal and state campaign laws. This issue was addressed when looking at the House Representative case study.

Both case studies had a limitation of availability of data. Data was not easily accessible from the FEC, but it was easier to obtain from the State of Oklahoma. Neither entity provided information in a manageable manner. The FEC required extrapolation of data from Microsoft Excel files. In order to properly extrapolate the data, a researcher would have to insert a code to ensure the data properly transferred into the Excel format. The instructions to accomplish this were not easily accessed or understood. In addition the FEC itself had difficulty explaining the proper way to view the data. Oklahoma allowed for easier accessibility of the data, but some of its data wasn’t available in Excel format. This means that an individual would have to sort through data from every PAC in the state of Oklahoma manually. The user would then have to sort through information in a quarterly basis rather than a yearly basis.

Although campaign laws were implemented to increase transparency, it's hard to see if transparency was indeed accomplished. The government has a better understanding of where the money goes, but the government does a poor job of making that data available to the public.

Conclusion

The U.S. Government has taken many precautions to encourage competitive elections. The government has also taken steps to ensure that speech isn't impaired in the process of ensuring competitive elections. The 2012 Oklahoma Federal House election results suggest that the government hasn't quite found that balance. In this election, the candidate with the most PAC support prevailed. This indicates that there is probably a correlation between PAC support and electoral success. The amount of impact on that relationship still needs to be determined. This theory is further supported by the historical case study in which Democratic candidates prevailed in District 2 from 2000-2011. The 2012 District 2 election addressed what can happen when an area traditionally dominated by a specific party suddenly produces less PAC support then the opposition. The party with the least amount of PAC support could have less electoral success then its PAC supported opposition. The Oklahoma referendum case study answered questions about whether or not PAC support should be looked at as a measurement of success or if increased PAC support is the result of predicted success. Future studies regarding the potential correlation between PAC support and electorate success should be conducted in swing states. Swing states have a greater chance of producing data that better challenges the correlation theory between electorate success and PAC support.

Appendix A: FTC Response to Carey v. FEC

For Immediate Release

October 5, 2011 Contact: Judith Ingram

Julia Queen

Christian Hilland

Mary Brandenberger

FEC Statement on *Carey v. FEC*

Reporting Guidance for Political Committees that Maintain a Non-Contribution Account

Washington – The FEC today announced that, consistent with its agreement to a stipulated order and consent judgment dated August 19, 2011 in *Carey v. FEC*, Civ. No. 11-259-RMC (D. D.C. 2011), it will no longer enforce statutory and regulatory provisions that:

- prohibit nonconnected political committees from accepting contributions from corporations and labor organizations, provided the political committee maintains and deposits those contributions into a "Non-Contribution Account" (described below), or
- limit the amounts permissible sources may contribute to such accounts (1).

In *Carey v. FEC* (2), the National Defense PAC (NDPAC), a nonconnected political committee, sought to solicit and accept unlimited contributions to one bank account for use in making independent expenditures in federal elections, while maintaining a separate bank account subject to the statutory amount limitations and source prohibitions for making contributions to Federal candidates.

On August 19, 2011, the Commission entered into a stipulated order and consent judgment with the plaintiffs agreeing that it would not enforce against plaintiffs the amount limitations in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) of the Federal Election Campaign Act

(FECA), as well as any implementing regulations, with regard to contributions received for independent expenditures as long as NDPAC maintains separate bank accounts as described above and allocates its administrative expenses between the accounts in a manner that closely corresponds to the percentage of activity for each account.

The Commission is providing the following guidance to the public on how it intends to proceed consistent with the stipulated order and consent judgment in *Carey*:

- The Commission will no longer enforce 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3), as well as any implementing regulations, against any nonconnected political committee with regard to contributions from individuals, political committees, corporations, and labor organizations, as long as (1) the committee deposits the contributions into a separate bank account for the purpose of financing independent expenditures, other advertisements that refer to a Federal candidate, and generic voter drives (the "Non-Contribution Account"), (2) the Non-Contribution Account remains segregated from any accounts that receive source-restricted and amount-limited contributions for the purpose of making contributions to candidates, and (3) each account pays a percentage of administrative expenses that closely corresponds to the percentage of activity for that account.

- Until such time as the Commission adopts a new regulation, nonconnected political committees that wish to establish a separate Non-Contribution Account consistent with the stipulated judgment in *Carey* should:

  - Notify the Commission of their intent to do so.

    - In the case of political committees already registered with the FEC, the committee should notify their Reports Analysis Division analyst(s) by letter or electronic submission(3) of their intent to establish a separate Non-Contribution Account.

- In the case of newly registering political committees, include the notification letter with their Form 1 (Statement of Organization).

The notification letter may state the following:

- "Consistent with the stipulated judgment in *Carey v. FEC*, this committee intends to establish a separate bank account to deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor organizations, and/or other political committees. The funds maintained in this separate account will not be used to make contributions, whether direct, in-kind, or via coordinated communications, or coordinated expenditures, to federal candidates or committees."

- Report all receipts and disbursements for both accounts pursuant to the Act and Commission regulations. *See* § 2U.S.C. 434; 11 CFR Part 104.

    - Though these contributions would normally be disclosed on Line 11(a) of Form 3X, there is not, at present, a clear way to distinguish on Line 11(a) between contributions deposited into the committee's separate accounts. Accordingly, committees should report contributions deposited into the Non-Contribution Account on Line 17 of Form 3X titled "Other Federal Receipts."

    - When itemizing on Schedule A, electronic filers should identify those receipts by entering "Non-Contribution Account" as memo text (4) or in the description field. (Paper filers should simply write "Non-Contribution Account" below the amount.)

- Report all Independent Expenditures paid from the Non-Contribution Account on Line 24 of Form 3X.

    - When itemizing on Schedule E, electronic filers should identify these

disbursements by entering "Non-Contribution Account" as memo text or in the description field along with the required purpose of the disbursement. (Paper filers should simply write "Non-Contribution Account" below the amount.)

- Report all other disbursements, including those for administrative or operating expenses made from a committee's Non-Contribution Account, on Line 29 of Form 3X titled "Other Disbursements" (as opposed to Line 21(b) of Form 3X).

  - When itemizing on Schedule B, electronic filers should identify these disbursements by entering "Non-Contribution Account" as memo text or in the description field along with the required purpose of the disbursement. (Paper filers should simply write "Non-Contribution Account" below the amount.)

- Allocate administrative expenses so that each account pays a percentage that closely corresponds to the percentage of activity for that account.

The Commission intends to initiate a rulemaking, and to amend its reporting forms accordingly, to address the *Carey* opinion and stipulated judgment, as well as related court rulings in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) and *EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009).

Political committees with specific questions regarding their reporting obligations may contact the Reports Analysis Division at (800) 424-9350 (at the prompt, press 5). Others may contact the Information Division at (800) 424-9530.

(1) Foreign nationals, government contractors, national banks and corporations organized by authority of any law of Congress cannot contribute to such separate accounts. §§ 2 U.S.C. 441b, 441c, and 441e.

(2) Materials related to *Carey v. FEC* are located at

http://www.fec.gov/law/litigation/carey.shtml.

(3) Form 99 for electronic filers.

(4) This is not to be confused with a "memo entry," which is used for disclosure purposes only and is not reflected in the cash-on-hand amount.

The FEC (FEC) is an independent regulatory agency that administers and enforces federal campaign finance laws. The FEC has jurisdiction over the financing of campaigns for the U.S. House of Representatives, the U.S. Senate, the Presidency and the Vice Presidency. Established in 1975, the FEC is composed of six Commissioners who are nominated by the President and confirmed by the U.S. Senate.

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