ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3634 HSTA CAMPAIGN FINANCING (FILE 3)

510

January 3(?), 1984 - Draft staff letter to Mr. Ely.

January 9, 11 & 12, 1984 - Staff phone conversations with Barbara Pargeter on behalf of Senator Faiks.

February 9, 1984 - Office visit from Mr. Ely; draft January 3 letter provided.

February 16, 1984 - Staff letter to Mr. Ely with final copy of January 3 letter.

February ?, 1984 - Mr. Dankworth conversation with Senator Gillman.

early May (?), 1984 - meeting regarding recommended candidates.

May 22, 1984 - letter to employees from Bill Allen, enclosing 1984 version of "Authorization for Payroll Deduction."

July 27, 1984 - Second North Slope visit includes Abood, Bennett, Paul Fischer, Lacher, Moss, Ward.

Early August, 1984 - Payroll Deduction checks written to Abood, Coghill, Lacher,
August 2, 1984 - 1984 Notice of Recommended Candidates, eight in number: Abood, Beardsley, Bennett, Coghill, Paul Fischer, Lacher, Moss, Ward.

mid-October 1984 - Seward Picnic with refunds to employees; Kenai Petroleum Club party with candidate(s).

ALASKA PUBLIC OFFICES COMMISSION

ADMINISTRATIVE REGULATIONS

IMPLEMENTING AS 15.13

MAY 1984

Should you have any questions concerning the administrative regulations, please contact:

Alaska Public Offices Commission
610 C Street, Suite 211
Anchorage, Alaska 99501
(907) 276-4176

ALASKA ADMINISTRATIVE CODE
Title 2. DEPARTMENT OF ADMINISTRATION
ALASKA PUBLIC OFFICES COMMISSION REGULATIONS

CHAPTER 50. CONFLICT OF INTEREST, CAMPAIGN DISCLOSURE AND REGULATION OF LOBBYING

Article 2. Campaign Disclosure

Section

Article 2. Campaign Disclosure (cont.)

Article 3. Campaign Disclosure and Regulation of Lobbying Complaints and Investigations

2 AAC 50.310. FILING. (a) All reports that are required to be filed under the provisions of AS 15.13 and this chapter must be received by the commission on or before the due date. Except for the 24 Hour Report, "received" means either

(1) hand-carried to the commission's central office or its branch office in the state capital; or

(2) postmarked. The date shown by the postmark is presumed to be the date it was deposited in the United States mail.

(b) The 24 Hour Report required by AS 15.13.110(b) must be filed with the commission's central office either by a collect telegram or by actual physical delivery within the prescribed time. 24 hour Reports may not be mailed.

(c) All forms will be available at the commission's central and branch offices, at district offices during state election years, and at the participating municipalities. (Eff. 5/14/80, Register 74)

Authority: AS 15.13.020(j) and (k)
AS 15.13.030(10)
AS 15.13.110(a) and (b)

2 AAC 50.315. CONTRIBUTION LIMITATION EXEMPTION. (a) Groups which nominated a candidate for governor who received at least 3 percent of the total vote cast at the 1982 general election for governor are considered to be exempt from the contribution limitation set out in AS 15.13.070(a).

(b) Until the effective date of a statutory definition of "political party" which replaces AS 15.60.010(20) as it exists on the effective date of this section (and was held invalid in Volger v. Miller, 660 P.2d 1192 (Alaska 1983), a group, other than a group described in (a) of this section, desiring an exemption from the contribution limitation set out in AS 15.13.070(a) must submit to the Commission an application for exemption. In accordance with (c) of this section, the Commission will review the application and, in its discretion and on a case-by-case basis, grant the exemption.

(c) Among the criteria which may be considered for exemption are:

(1) an organized membership, composed of registered voters, which represents a political program;

(2) prior history as a political group under AS 15.13.050 including the receipt of substantial contributions and the disbursement of substantial expenditures made for the purpose of influencing the election of Legislaive candidates in more than one district; and

(3) the percentage of votes received by a statewide candidate nominated in the name of the group in the preceding general election. (Eff. / /84, Register .)

Authority: AS 15.13.030(10)

2 AAC 50.320. GENERAL RECORDKEEPING REQUIREMENTS FOR CANDIDATES AND GROUPS. (a) Every candidate and group required to report contributions or expenditures under the provisions of AS 15.13 shall maintain detailed records of all contributions received and expenditures made in accordance with the uniform methods of bookkeeping set out in the commission's bookkeeping guide.

(b) A candidate or his treasurer, and the treasurer of a group, may issue a receipt, and shall record the receipt of every contribution received, unless otherwise exempted by this chapter, regardless of the dollar amount or value of the contribution. While the identity of a person who has contributed no more than $100 to a campaign is not required to be individually reported by the treasurer on a campaign disclosure report, the name of such a contributor, along with the amount and type of his contribution, must be recorded by the treasurer and maintained by the treasurer, for comparative purposes, in case that person makes additional contributions which total over $100.

(c) The identity of a person who has contributed over $100 in the aggregate per year to a candidate's or groups's campaign must be reported in accordance with sec. 321 of this chapter.

(d) Each bookkeeping record required under this section shall be maintained by the candidate or the treasurer of a group and may not be destroyed for a period of four years from the date of the contribution. The records shall be available for inspection by the commission upon request of the commission.
(Eff. 5/14/80, Register 74)

Authority: AS 15.13.030(2)
AS 15.13.030(10)
AS 15.13.040
AS 15.13.120(e)

2 AAC 50.321. REPORTING CONTRIBUTIONS AND EXPENDITURES. (a) Each candidate or group filing reports under AS 15.13 must identify

(1) each monetary contribution, or aggregate of contributions from the same contributor, which totals in excess of $100 by reporting

(A) the date received;

(B) the check number;

(C) the name and address of the contributor;

(D) the principal occupation and employer of the contributor; and

(E) the amount;

(2) each non-monetary contribution, or aggregate of non-monetary contributions from the same contributor, valued at more than $100 a year, by reporting

(A) the date received;

(B) the name and address of the contributor;

(C) the principal occupation and employer of the contributor;

(D) a description of the contributions; and

(E) their estimated fair market value;

(3) each loan, or aggregate of loans from the same contributor, which totals in excess of $100, by reporting

(A) the date received;

(B) the name and address of the lender, guarantor or co-signer;

(C) the principal occupation and employer of the lender, loan guarantor or co-signer;

(D) the interest rate; and

(E) the amount;

(4) each paid expenditure by reporting

(A) the date of the payment;

(B) the check number;

(C) the name and address of the payee;

(D) the purpose of the expenditure; and

(E) the amount; and

(5) each accrued expenditure by reporting

(A) the date the expenditure was incurred;

(B) the name and address of the business or individual with whom the debt was incurred;

(C) the purpose of the accrued expenditure; and

(D) the amount.

(b) When reporting monetary and non-monetary contributions or loans, a cumulative total must be kept by each candidate or group of the contributions (including loans) made to it, regardless of the total, and reported pursuant to (a) of this section when

(1) monetary contributions by the same contributor bring the total to over $100; or

(2) non-monetary contributions by the same contributor bring the estimated total value to over $100; or

(3) loans by the same lendor, guarantor, or co-signer bring the total to over $100; or

(4) a combination of monetary or non-monetary contributions or loans by the same contributor brings the total to over $100. (Eff. 7/22/78, Register 67)

Authority: AS 15.13.030(10)
AS 15.13.040(a) and (b)
AS 15.13.130(2) and (4)

2 AAC 50.324. SHARED CAMPAIGN REPORTING. Except for expenditures by the candidates for governor and lieutenant governor of the same political party who have been nominated to run in the general election, the following provisions apply to all candidates and groups, other than a political party, subject to the provisions of AS 15.13 and this chapter:

(1) The use, by one candidate, of the money, goods or services raised or generated by his campaign, to influence the election of another candidate, is considered a contribution and cannot exceed the $1000 limitation set by AS 15.13.070(a); nothing in AS 15.13 or this chapter, however, limits an individual's right to make any expenditure whatsoever to influence the election of a candidate, so long as that expenditure is not made at the suggestion of that candidate, directly or indirectly paid for by that candidate, or otherwise controlled by that candidate.

(2) An expenditure made by one group, other than a political party, on behalf of another group which is controlled by a candidate is considered a contribution and may not exceed the $1000 limitation set by AS 15.13.070(a).

(3) A candidate may not join his campaign committee with that of one or more candidates in order that they may file a single report of their joint campaign, nor may a group join with one or more groups in order that they may file a single report of their joint efforts.

(4) Candidates or groups prohibited from forming a joint campaign under (3) of this section may share in campaign efforts, under (5) of this section, so long as they keep separate campaign accounts and file separate statements of their contributions and expenditures under AS 15.13 and this chapter.

(5) Two or more candidates, or two or more groups, may share in campaign efforts so long as the cost of, and receipts from, shared efforts are allocated equally to each participating candidate or group's campaign.

(6) So long as the costs of, and receipts from shared efforts are allocated equally to each participant of a shared campaign, neither the costs or receipts are considered as a contribution from one participant to any of the other participants.

(7) Each candidate or group filing reports pursuant to AS 15.13 and this chapter must complete an APOC Form 15-SA, the "Shared Campaign Activities" form which represents his or its proportionate share of the receipts and expenditures of a shared campaign effort.

(8) a proportionate share of the amount of an expenditure benefiting one or more candidates, or one or more groups, of a shared campaign effort, but paid for in full by one of the candidates, or by one of the groups, will be considered a contribution by

(A) the paying candidate to the other candidates; or

(B) the paying group to the other group

(9) Media communications regarding a shared campaign activity are considered properly identified so long as the identification includes the words "paid for by" and the name of each candidate or group sharing in

the cost of the communications. The address and treasurer of each participating candidate or group need not be listed. However, if a communication is paid for in its entirety by only one of the participants then, in accordance with 2 AAC 50.369, full and proper identification is required. (Eff. 7/22/78, Register 67; am 5/14/80, Register, 74)

* to be changed to chairman in next revision.

Authority: AS 15.13.030(10)
AS 15.13.040(a) and (b)
AS 15.13.070(a)
AS 15.13.090

2 AAC 50.325. RECORDKEEPING REQUIREMENTS FOR NON-MONETARY CONTRIBUTIONS. (a) In order to establish the value of a non-monetary contribution under circumstances where no easily determined, regular, or meaningful pricing precedent exists, a campaign treasurer shall, on the applicable campaign disclosure statement, report the contribution with a detailed description of the good or service provided, including the name and address of the donor, in lieu of the requirement that he make a determination of the monetary value of the contribution. This non-monetary contribution shall not be counted towards determining the $1,000 limitation for the contributor involved. Applicable circumstances include the use of an office, including office equipment and telephones for local calls, on an infrequent and irregular basis; the closing of a restaurant for an evening and the donation of those facilities to a candidate or group for a fund-raiser, etc.

(b) In circumstances where a non-monetary contribution is a donated good or service for which a fair-market value exists, a campaign treasurer shall record and report, except as required by (c) and (e) of this section, only those non-monetary contributions which exceed $50 in estimated fair market value. Contribution of a good or service whose estimated fair market value does not exceed $50 does not count toward determining the $1,000 limitation for the contributor involved. Goods and services include, but are not limited to, items donated to a garage sale; food donated to a potluck dinner; wood, paint, or carpentry expertise donated for sign construction; paper donated for flyers; and other items donated to a campaign for its use.

(c) The actual cost or value of a good or service purchased specifically by a person for donation to a campaign, or purchased at the request or suggestion of a campaign for use by that campaign, is considered a non-monetary contribution to the candidate or group receiving the donation, and shall be recorded and reported in full as required by AS 15.13 and secs. 320 and 321 of this chapter.

(d) Non-monetary contributions of air, land, and water transportation and hotel/motel accommodations shall be valued as follows:

(1) air travel:

(A) if commercial or charter service is used, the actual commercial or charter cost;

(B) if noncommercial, business plane is used, the actual cost of plane operation to the destination;

(C) if individually owned plane is used, the actual cost of plane operation to the destination, or prevailing mileage allowance permitted by the State of Alaska.

(2) motor vehicle:

(A) if a rental or lease vehicle is - used, the actual charge for the vehicle;

(B) if noncommercial, business vehicle is used, the actual cost of vehicle operation to the destination;

(C) if individually owned vehicle is used, the actual cost of vehicle operation to the destination, or prevailing mileage allowance permitted by the State of Alaska.

(3) water travel:

(A) if commercial or charter service is used, the actual commercial or charter cost;

(B) if noncommercial, business vessel is used, the actual cost of vessel operation to the destination;

(C) if individually owned, noncommercial vessel is used, the actual cost of vessel operation to the destination, or prevailing mileage allowance permitted by the State of Alaska.

(4) room and board donated or paid for by a contributor at a commercial establishment shall be valued at the rate ordinarily charged for such accommodations.

(e) In circumstances where a non-monetary contribution is a professional service, the value of the professional service, and any costs or expenses associated with performing that service which have been paid by the donor, shall be recorded and reported in full, and as provided for by sec. 350 of this chapter. For the purposes of this section, a "professional service" shall be defined to include any service concerned with research, public opinion surveys or polls, computer services, campaign media production or preparation, and campaign consultation or management.

(f) Contributions of goods or services listed below are exempt from being reported by a campaign treasurer;

(1) a candidate's own contribution of goods or services, or goods remaining from prior campaigns which are reused by his campaign, excluding transportation costs, which shall be reported as required by (d) of this section, or at the actual cost to the campaign;

(2) volunteer services, except as specified in (e)* of this section;

(3) services provided by an accountant or other person to prepare reports or statements required by this chapter; and

(4) ordinary hospitality in a home; "ordinary hospitality in a home" means a small (no more than 25 people), informal get-together in a private home, where friends and neighbors of the host are invited to meet the candidate; functions held in private homes for the purpose of raising funds do not meet the criteria of ordinary hospitality in a home. (Eff. 5/14/80; Register 74; am 5/24/81; Register 78; am / /84, Register)

Authority: AS 15.13.030(10)
AS 15.13.040

[*Appears incorrectly as (d) in Alaska Administrative Code; amendment to be made.]

2 AAC 50.326. RECORDKEEPING REQUIREMENTS AND EXEMPTIONS WHEN REPORTING A FUND-RAISER. (a) A candidate or his treasurer, and the treasurer of a group, shall report all the contribution and expenditure activity related to a campaign fund-raiser in a format designated by the commission and in accordance with this section. Fund-raisers sponsored in conjunction with several candidates or groups are viewed as shared fund-raising activities and, while subject to the provisions of this section, are reported separately on APOC Form 15-3SA and in accordance with 2 AAC 50.324.

(b) When reporting a fund-raiser, a candidate or his treasurer, and the treasurer of a group, shall state the total number of contributing participants, the date and place where the event was held, if applicable, a description of the type of fund-raising activity, and the total costs of, and receipts from, the event.

(c) For the purposes of this section, "fund-raiser" includes, but is not limited to, a garage sale; a raffle or drawing; an auction; a spaghetti feed or pot-luck dinner; the sale of campaign material, such as posters, buttons, stickers, clothing, key chains, and ashtrays; or a sponsored concert.

(d) The requirement in AS 15.13.040 and sec. 320 of this chapter that a candidate or his treasurer, or the treasurer of a group, must record the name of every person making a contribution, regardless of the amount of that contribution, does not apply to events which meet the following criteria:

(1) Fund-raisers, similar in nature to spaghetti feeds, bingo games, dances, or concerts, where

(A) there are 25 or more paying participants, and

(B) except as described in (f) of this section, the cash amount received from any one person does not exceed $50;

(2) fund-raisers, such as a raffle, lottery or a drawing, where

(A) 25 or more tickets are sold, and

(B) except as described in (f) of this section, the price of a ticket or the amount received from any one person purchasing chances does not exceed $50;

(3) fund-raisers, the income from which is based on the sale of campaign material, where, except as described in (g),

(A) the price of an item being sold does not exceed $10, or

(B) the amount received from any one person purchasing items does not exceed $50;

(4) fund-raisers, such as garage sales and auctions, where, except as described in (g)

(A) the fair market value of an item donated for sale or auction does not exceed $50; or

(B) the amount received from any one person purchasing items at the garage sale or auction does not exceed $50.

(e) When reporting receipts from a fund-raiser which meets the recording exemption set out in (d) of this section, the candidate or his treasurer, or the treasurer of a group, need only report the total amount of contributions received from or generated by the fund-raiser, along with the total number of paying participants, tickets sold, or items purchased, as applicable.

(f) If a person contributes in excess of the exempted amounts stated in (d)(1)(B) or (d)(2)(B) of this section, then the name of that person, and the amount and type of that contribution, must be recorded as set out in sec. 320 of this chapter.

(g) If the cost of or value of an item exceeds the exempted amount, or if a person contributes or pays in excess of the exempted amounts stated in (d)(3) or (4), then the name of that contributor or buyer must be recorded as set out in sec. 320 of this chapter. (Eff. 5/14/80; Register 74; am 5/24/81, Register 78; am / /84, Register).

(h) A contribution made by a person to attend or otherwise participate in a "fund-raiser" as defined in (c) of this section, whether or not exempted from full recording as set out in this section, may not be received by or on behalf of a candidate in violation of AS 15.13.070(a). (Eff. 5/14/80; Register 74; am 5/24/84, Register 78; am / / 84, Register)

Authority: AS 15.13.030(10)
AS 15.13.040

2 AAC 50.330. REPORTING CAMPAIGN EXPENDITURES FOR TRANSPORTATION. (a) Direct campaign expenditures for transportation or reimbursements to a person for transportation are reportable and shall be valued in accordance with 2 AAC 50.325(d).

(b) Personal living expenses of the candidate and the candidate's campaign workers, or the campaign workers of a political group, are not considered campaign expenditures and need not be reported unless the candidate's or group's campaign actually pays, either directly or through reimbursement, for the room and board of the traveling campaign workers or the candidate. (Eff. 5/6/76, Register 58; am 5/14/80, Register 74; am / /84, Reg)

Authority: AS 15.13.030(10)
AS 15.13.040

2 AAC 50.332. REPORTING ZERO CONTRIBUTION OR EXPENDITURE ACTIVITY. (a) Each candidate or group required to file a full report of all contributions received and expenditures made in accordance with AS 15.13 and this chapter shall report in accordance with the reporting schedule set out in AS 15.13.110(a), regardless of the amount of their reportable contributions or expenditures. In the absence of any contribution or expenditure activity whatsoever during a reporting period, each candidate or group not already exempt from reporting under (b) or (c) of this section shall submit by the appropriate due date the "Short Form" on Schedule A of the Campaign Disclosure Statement certifying that no contributions have been received or expenditures made.

(b) A candidate who does not intend to receive or accept contributions, or make expenditures during his campaign for municipal or state public office, including any personal campaign contributions or expenditures, may file APOC Form 15-0, the "Campaign Reporting Exemption Form." A candidate who files the exemption form is not required to submit any other reports to the commission concerning his campaign. The reporting exemption is revoked if a candidate accepts contributions or spends money to influence his election. A candidate whose exemption is revoked must immediately register his change of status on APOC Form 15-1 and, in accordance with AS 15.13.110, must disclose his campaign contribution and expenditure activity beginning with the first campaign disclosure report due following his change in status. Failure to report campaign contribution or expenditure activity after the reporting exemption is revoked subjects the candidate to both civil and criminal penalties for noncompliance with the reporting requirements of AS 15.13 and this chapter

(c) The treasurer of a political party subdivision or political action committee previously registered with the commission which does not intend to receive or accept contributions, or make expenditures, during a municipal campaign may, in accordance with the requirements set forth in (b) of this section, file APOC Form 15-0. (Eff. 7/22/78, Reg. 67; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 15.13.040(a) and (b)
AS 15.13.110

2 AAC 50.333. REPORTABLE DATE OF A CONTRIBUTION. A contribution is considered received, and reportable as such, on the day in which that contribution is in the possession of a candidate, or a treasurer or deputy treasurer of a candidate or group in accordance with AS 15.13.070(e) and this chapter (Eff. 7/22/78., Register 67).

Authority: AS 15.13.030(10)
AS 15.13.070(e)

2 AAC 50.334. PERSONS WHO MAY ACCEPT CONTRIBUTIONS. (a) A candidate's campaign committee, or a group, may authorize a person who is not registered as a deputy treasurer to accept or solicit campaign contributions on its behalf for any single event. Campaign committees or groups are not in violation of AS 15.13.070(e) if contributions collected by the authorized person are turned over to a candidate, treasurer, or deputy treasurer of the intended committee or group within 72 hours.

(b) An individual who is, or will be, fund-raising on a regular basis throughout a political campaign must be registered as a deputy treasurer in accordance with AS 15.13.060(e).

(c) Individuals that have not been "authorized" to accept campaign contributions by either a candidate or his treasurer, or the treasurer of a group, are prohibited from collecting campaign contributions on behalf of a candidate's campaign committee or a group. (Eff. 4/28/79, Register 70; am 5/14/80, Register 74)

Authority: AS 15.13.030(10)
AS 15.13.060
AS 15.13.070(e)
AS 15.13.130(2)

2 AAC 50.340. EXPENDITURES TO ADVERTISING AGENCIES OR CAMPAIGN MANAGEMENT SERVICES. Whenever a required report includes an expenditure to an advertising agency, or to an individual or business which provides campaign consultation or management services, the report shall be accompanied by a statement* detailing all services rendered, including the identity of each business from which campaign goods or services were purchased or subcontract-

ed, or media advertising placed, and their costs. (Eff. 5/16/76, Register 58; am 5/14/80, Register 74).

*Staff will request this information when clarification of a report is needed.

Authority: AS 15.13.030(10)
AS 15.13.040(f)

2 AAC 50.342. REGISTRATION OF GROUPS SUPPORTING OR OPPOSING BALLOT ISSUES. Each group, before making an expenditure in support of or in opposition to a ballot proposition, shall register with the commission on forms provided by the commission. (Eff. 5/14/80, Register 74)

Authority: AS 15.13.010(b)
AS 15.13.030(10)
AS 15.13.040(b)
AS 15.13.050

2 AAC 50.350. CONTRIBUTION OF PROFESSIONAL SERVICES. (a) A contribution as defined by AS 15.13.130(2) includes donated services where the services performed are the same kind for which the donor has received more than 25% of his income in any one of the preceding three calendar years.

(b) Contributed professional services shall be value under AS 15.13.130(2)(A) at the amount which the donor received for the kind of services contributed. (Eff. 5/16/76, Register 58)

Authority: AS 15.13.030(10)
AS 15.13.130(2)

2 AAC 50.351. INDEPENDENT EXPENDITURES. (a) An independent expenditure is a disbursement of funds which is made expressly to support or oppose an individual's candidacy or a ballot issue. An independent expenditure is not made with the cooperation, consent, in consultation with, or at the request or suggestion of, a candidate, a candidate's campaign committee, or a group, and must be reported in accordance with AS 15.13.040(d)(2) and (e) by the maker of the expenditure.

(b) An expenditure made at the request of, in consultation with, or at the suggestion of a candidate, a candidate's campaign committee, or a group supporting or opposing a ballot issue, is considered an in-kind contribution by the person making the expenditure, and must be reported in accordance with AS 15.13.040(a) by the candidate or group benefiting from the contribution, and by the "contributor" in accordance with AS 15.13.040 (d)(1) and (e).

(c) There is no limit on the amount or frequency of independent expenditures.

(d) The report of an expenditure to influence the outcome of a ballot issue required to be filed under AS 15.13.040(d)(2) will be closed to the public only if the commission determines, in response to a written request, that the individual who makes the expenditure would likely be subject to undue harassment, threats, or economic reprisals as the result of public disclosure. After publication, the person granted an exemption shall provide the commission with a copy of the communication in order to enable the commission to verify which communications were sponsored by that person. (Eff. 5/14/80, Register 74; am / /84, Register)

Authority: AS 15.13.030(10)
AS 15.13.040
AS 15.13.090

2 AAC 50.355 LOANS. (a) A loan from an individual or person to a candidate is considered a contribution to the extent of the outstanding balance. An unpaid loan, when added to other contributions from the same lender, may not exceed the $1,000 contribution limitation.

(b) A loan to a candidate from a regulated lending institution which is endorsed, guaranteed, or co-signed by a person or persons other than the candidate, is considered a contribution to the extent of the outstanding balance. When a loan is endorsed, guaranteed, or co-signed by more than one person, each guarantor's contribution is calculated by dividing the amount of the loan by the number of persons who guaranteed it and the calculated amount contributed by each may not exceed the $1,000 contribution limitation.

(c) 2 AAC 50.355(c). Repealed.

(d) A bank loan made directly to a candidate, in accordance with applicable banking laws and in the ordinary course of business, does not count as a contribution by the bank. It must, however, be reported by the candidate as the candidate's personal contribution to the campaign.

(e) A loan may be forgiven, or the guarantor may pay off a loan, so long as the amount forgiven or paid does not exceed $1,000. The candidate must indicate on the applicable campaign disclosure report when a loan reverts to a monetary contribution. (Eff. 5/14/80, Register 74; am 10/18/81, Register 80)

Authority AS 15.13.030(10)
AS 15.13.040
AS 15.13.070
AS 15.13.130(2)

2 AAC 50.360. MUNICIPALITIES. (a) When a municipality seeks to influence the outcome of an election, it shall report in the same manner as a group. For the purpose of complying with AS 15.13.040(b)(1)'s requirement to list the name and address of each officer and director, the municipality shall list the name and address of its mayor and of its council or assembly members. For the purpose of complying with AS 15.13.040(b)(1)'s requirement to list the name and address of its campaign treasurer, the municipality shall list the name and address of its finance director, controller, treasurer, or equivalent officer. For the source of contributions [(AS 15.13.070(h)], the municipality shall list the particular fund from which the appropriation is made.

(b) All communications which are paid for by a municipality and which are related to an election are considered to be intended to influence the outcome of an election unless they are only notices of the election or unless they are required by statute, charter, or ordinance.

(c) The municipality shall file with the commission a list of candidates and their mailing addresses within seven days following the deadline for filing for municipal office. (Eff. 5/16/76, Register 58)

Authority: AS 15.13.010
AS 15.13.030(10)
AS 15.13.060
AS 15.13.090

2 AAC 50.362. DRAFT GROUPS. (a) A draft group must report its contribution and expenditure activity as a group, under the requirements of AS 15.13 and this chapter.

(b) A draft group

(1) may make expenditures in order to raise, through contributions to the group, the money necessary to

(A) defray its own administrative costs; and

(B) attempt to draft persons to become candidates, including the expenditure of money to

(i) extoll the qualities of persons the group is attempting to draft; and

(ii) inform the general public both of the group's position on issues, as well as the qualities of leadership it seeks in potential candidates; and

(2) may not

(A) engage in any political activities other than those described in (b)(1) and (c) of this section;

(B) accept contributions in excess of $1000 from any person or group;

(C) make any expenditures which may benefit a person whom the group has successfully drafted for office, and who has made it known that he or she will be seeking election to public office, except for personal travel expenses, opinion surveys, or polls, however, the group may continue in its attempts to draft other persons for elective office; and

(D) except as provided in (c), make contributions to, or contribute previously produced material to, or expend funds on behalf of, any person who has declared that he or she is seeking office or who has filed a declaration of candidacy or nominating petition or become a candidate by any other means.

(c) A draft group which expends more than 50 percent (%) of its funds in an effort to draft one individual or, in the case of gubernatorial and lieutenant gubernatorial candidates, a team of individuals, to campaign for public office is, for the purposes of AS 15.13.130(3) and this chapter, considered a controlled group. Should the person or team subject to the draft formally declare for public office, then the amount contributed to the draft group shall be added to any contributions made that same year to the drafted candidate's or team's own campaign committee in order to determine whether or not a contributor has made the maximum allowable contribution as outlined in AS 15.13.070(a). As a controlled group, the draft group may contribute the maximum allowed by law to the candidate or team of candidates. (Eff. 7/22/78, Register 67; am 5/14/80, Register 74; am / /84, Register).

Authority: AS 15.13.010
AS 15.13.030(10)
AS 15.13.040(b)
AS 15.13.070(a)
AS 15.13.100(b)
AS 15.13.130(a), (3) and (4)

2 AAC 50.363. SUBCOMMITTEES OF A CANDIDATE'S CAMPAIGN COMMITTEE OR OF A CONTROLLED GROUP. A subcommittee may be created within a candidate's campaign committee or within a controlled group. These subcommittees are not considered separate groups and shall not maintain separate bank accounts and records or file separate reports. The name of the candidate or controlled group must be a part of the name of the subcommittee. The name of the subcommittee shall not be used when identi-

fying political advertising under AS 15.13.090 and sec. 369 of this chapter (Eff. 7/22/78, Register 67; am 5/14/80, Register 74).

Authority: AS 15.13.030(10)
AS 15.13.050
AS 15.13.040(a)
AS 15.13.090

2 AAC 50.369. PROPER IDENTIFICATION OF POLITICAL COMMUNICATIONS. (a) "Proper identification" of a communication intended to influence the election of a candidate or the outcome of a ballot issue means, except as provided in (d) of this section, that the communication is clearly identified with the words "paid for by," followed by the name and full address of the candidate, group, or individual actually paying for the advertising. The name of the campaign chairman must also be identified. If the candidate and the chairman are the same person, the name need not be repeated.

(b) Standard English abbreviations may be used in the written identification.

(c) "Clearly identified," as used in AS 15.13.090, means that

(1) in all printed communications, the proper identification must be visible, separate from the text of the advertisement itself, and large enough to be read by a person with average vision without the aid of corrective lenses;

(2) in all audio-visual communications, the proper identification must either

(A) be visual, and of sufficient size and duration to be read in full by the viewer; or

(B) be spoken, and played at the same audio level as the text of the communication itself; or

(C) be both visual and spoken, in accordance with (A) and (B) of this paragraph;

(3) in all audio communications, the proper identification must be spoken at the same audio level as the text of the communication itself.

(d) If the commission determines an expenditure report will not be made public under 2 AAC 50.351(d), the political communication intended to influence the outcome of a ballot proposition or question is properly identified if, in lieu of the "paid for by" phrase, the communication includes, in accordance with (c) of this section, the commission identification waiver number. Eff 4/28/79, Register 70; am 10/18/81, Register 80; am / /84, Register)

Authority: AS 15.13.030(10)
AS 15.13.090

2 AAC 50.370. OBJECTS TOO SMALL TO CONTAIN THE PROPER IDENTIFICATION. If the size of an object utilized for a campaign advertisement is such that it is impractical to print the identification of the candidate, group, or person paying for the advertisement on the object, the advertisement shall instead be identified in a regular expenditure report to the commission. Objects considered too small for full identification include pencils, pens, and buttons. (Eff. 5/16/76, Register 58; am 5/14/80, Register 74)

Authority: AS 15.13.030(10)
AS 15.13.090

2 AAC 50.375. COMMUNICATIONS BY INCUMBENT ELECTED OFFICIALS. (a) A communication by an incumbent state

elected official, who is also a declared candidate for elective office, with his constituency via a newsletter or other printed matter, or a paid radio or television spot, does not constitute a reportable campaign expense unless it specifically and expressly advocates the election or defeat of a candidate (including himself), or the passage or defeat of a ballot issue.

(b) A communication by an incumbent municipal elected officer who is also a declared candidate for elective office, with his constituency via a newsletter or other printed matter, or a paid radio or television spot, does not constitute a reportable campaign expense unless it specifically and expressly advocates the election or defeat of a candidate (including himself), or the passage or defeat of a ballot issue.

(c) The commission will, in its discretion, review a communication by an incumbent elected official when a question concerning whether or not the communication is a reportable campaign expense arises. (Eff. 7/22/78, Register 67)

Authority: AS 15.13.010
AS 15.13.030(10)
AS 15.13.045
AS 15.13.090
AS 15.13.130(4)

2 AAC 50.380. EARLY CAMPAIGNING. An individual wishing to campaign for municipal elective office shall comply with AS 15.13.100 by providing written notification to the commission of his candidacy for a particular municipal office only if the filing period has not opened. The ability to file a letter announcing one's intent to run for public office only applies, however, to individuals campaigning for municipal office. An individual wishing to campaign for state elective office shall comply with AS 15.13.100 by filing a declaration of

candidacy with the lieutenant governor. (Eff. 5/16/76, Register 58; am 5/14/80, Register 74)

Authority: AS 15.13.030(10)
AS 15.13.100

2 AAC 50.385. REPORTING BY ORGANIZATIONS AND BUSINESS OR TRADE ASSOCIATIONS. (a) A group, as defined by AS 15.13.130(3), does not include an organization or business or trade association, if

(1) the major purpose of such an organization or association is other than to influence the outcome of an election; and

(2) the money for any political contributions or expenditures is paid from the general fund of such an organization or association, as opposed to a special fund as described in (d) of this section.

(b) "Major purpose" means, in this section, that the stated major goals and objectives of an organization or business or trade association are primarily directed towards attempting to influence the outcome of elections and, in actual dollar amounts, that more of the organization's or business or trade association's money is devoted to contributions or expenditures to influence the outcome of an election than to any other single purpose.

(c) Organizations and business or trade associations which, in accordance with (a) of this section, do not have to register and report as political groups, but who do make campaign contributions from their general funds to, or expenditures for or against, a candidate or political group, must file reports under AS 15.13.040(d) and (e).

(d) If, however, an organization or association not defined as a political group conducts a special fund drive among, or levies a special assessment upon, its membership, and if the proceeds of such a special fund drive or assessment are to be used primarily to influence the outcome of an election, then the organization or association which raises campaign funds in this manner must file reports of its campaign activity in accordance with AS 15.13.040(b) and (c), and is considered a group as defined in AS 15.13.130(3). (Eff. 7/22/78, Register 67; am 5/14/80, Register 74)

Authority: AS 15.13.010
AS 15.13.030(10)
AS 15.13.040(b), (c), (d), and (e)
AS 15.13.130(3)

2 AAC 50.390. CIVIL PENALTY ASSESSMENTS FOR THE LATE FILING OF A CAMPAIGN DISCLOSURE REPORT. (a) A report required to be filed within the time required by AS 15.13.110(a) and (b) is delinquent if not received, in accordance with sec. 310 of this chapter, on or before the due date.

(b) The report continues to be delinquent and subject to a civil penalty until received.

(c) Commission staff will send notice to each candidate or group of his or its delinquency under AS 15.13.110(a) within five working days after the due date of the report.

(d) Upon receipt of a delinquent campaign disclosure report, commission staff will

(1) calculate the initial civil penalty as follows:

(A) is a statement in writing made under oath and upon penalty of perjury; and

(B) must be sworn to before a notary public, municipal clerk, court clerk, postmaster, or any other person authorized to administer oaths or, if none of the preceeding alternatives is available, may be signed by the official without benefit of the oath so long as the official states, in writing, that the affidavit is signed under penalty of perjury; or

(2) pay, within 30 days after receipt of the assessment notice described in (d)(2) of this section, the civil penalty assessed.

(f) If a candidate or group subject to a civil penalty assessment for the late filing of a campaign disclosure report refuses, or fails, within the time required, to submit an affidavit or make payment, then commission staff will refer the matter to the attorney general for appropriate action. The commission will not hear an appeal if an affidavit is not filed within the time required.

(g) An affidavit timely filed with the commission will be considered at the next regular meeting of the commission. If a candidate or group's appeal is

(1) denied by the commission, commission staff will notify the candidate or group of its decision within 15 days, and require that the civil penalty originally assessed be paid within 30 days after the date of the letter containing notification of the commission's decision; or

(2) accepted by the commission, commission staff will notify the candidate or group of its decision within 15 days, informing him or it that the civil penalty assessment has been waived and that the matter is considered closed; or

(3) accepted, in part, by the commission, commission staff will notify the candidate or group of its decision within 15 days, and require that the reduced civil penalty assessment be paid within 30 days after the date of the letter containing notification of the commission's decision.

(h) A candidate or group may appeal the commission's decision to deny or partially accept reasons for lateness to the superior court within 30 days after his receipt of the notice under Rule 45 of the Appellate Rules of the Alaska Court System. If no appeal is made within 30 days and no payment is made, the matter will be referred to the attorney general for appropriate action.

(i) If, upon review of a report required by AS 15.13.110(a), (b), or (e), the commission's staff finds substantial or continuous noncompliance with AS 15.13, any provision of this chapter, or with requests by staff for information required to be reported under this chapter, the matter must be brought to the commission for review. The commission may, in its discretion, reduce or waive any initial civil penalty, uphold any initial civil penalty, increase the amount of any initial civil penalty to an amount not exceeding the maximum amount established in AS 15.13.125, or instruct its staff to begin preliminary investigation into the matter. Where no initial civil penalty has been assessed, the commission may assess a civil penalty up to the maximum amount established in AS 15.13.125 if the candidate or group in question does not comply. (Eff. 7/22/78, Register 67; am 5/14/80, Register 74; am 5/24/81, Register 78; am 10/18/81, Register 80; am / /84, Register)

Authority: AS 15.13.030(6) and (10)
AS 15.13.110(a) and (b)
AS 15.13.125

2 AAC 50.395. REPORTING BY A BUSINESS ENTITY OR LABOR ORGANIZATION. (a) A business entity or labor organization making a contribution or expenditure from its general fund or treasury, for the purpose of influencing the outcome of an election, shall make a full report of its contribution and expenditure activity under AS 15.13.040(d) and (e), and in accordance with AS 15.13 and this chapter.

(b) The subscribers to a contingency fund constitute a group, as defined by AS 15.13.130(3), if a contingency fund is maintained by a business entity or labor organization, if political campaign contributions or expenditures of the business entity or labor organization are made from the fund, and if the major purpose of the fund is political. A "contingency fund" as used in this chapter, is a discretionary account established separate from the business entity's or labor organization's general treasury and variously, often voluntarily, funded. "Major purpose" means that in actual dollar amounts, more of the fund's money is devoted to contributions or expenditures to influence the outcome of an election than to any other single purpose.

(c) A group organized as in (b) of this section must register and report under AS 15.13.040(b) and (c), and in accordance with AS 15.13 and this chapter, unless the head or principal executive officer of the business entity or labor organization certifies, under oath and upon penalty of perjury

(1) that none of its contingency fund money is used for political purposes; or

(2) that its contingency fund

(A) is funded only through a voluntary uniform assessment, or nonvoluntary but uniform assessment, upon its subscribers, and

(B) accepts no individual contributions into the contingency fund.

(d) If a contingency fund meets the requirements of (c)(1) or (2) of this section, then its political contribution or expenditure activity must be reported separately to the commission, under AS 15.13.040(d) and (e), and in accordance with AS 15.13 and this chapter.

(e) If the major purpose of the business entity or labor organization's contingency fund is not to influence the outcome of an election, under (b) of this section, but if political contributions or expenditures are made from the fund, then a full report of the contingency fund's contribution and expenditure activity must be made under AS 15.13.040(d) and (e), and in accordance with AS 15.13 and this chapter.

(f) A group organized as in (b) of this section and which reports under AS 15.13.040(b) and (c), and in accordance with AS 15.13 and this chapter, must report the name and address of each subscriber to the contingency fund, his principal occupation and employer, and the amount paid into the fund by the subscriber, if the subscriber has promised to pay, paid directly, or otherwise paid or contributed into the fund an amount exceeding $100 in a calendar year. The name, address, occupation, and employer of a subscriber contributing in excess of $100 as described in this subsection must be reported under AS 15.13 and sec. 321 of this chapter.

(g) A business entity or labor organization shall report under (a) of this section unless it conducts a special fund drive among, or levies a special assessment upon, its employees or members, the proceeds of which are to be used for political contributions or expenditures. If a business entity or labor organization acts as described in this subsection, then the individual contributors become members of a group, as defined by AS 15.13.130(3), and must register and report under

AS 15.13.040(b) and (c), and in accordance with AS 15.13 and this chapter. (Eff. 7/22/78, Register 67; am 5/14/80, Register 74)

Authority: AS 15.13.010
AS 15.13.030(10)
AS 15.13.040(b), (c) (d), and (e)
AS 15.13.130(3)

2 AAC 50.397. REPORTING BY PERSONS OUTSIDE THE STATE. Persons residing outside the State of Alaska are subject to the same reporting requirements, restrictions, and responsibilities under AS 15.13 as those placed upon persons residing within the state. (Eff. 4/28/79, Register 70)

Authority: AS 15.13.030(10)

2 AAC 50.400. DISBURSEMENT OF A SURPLUS BALANCE IN A CAMPAIGN ACCOUNT. (a) The disbursement of a surplus balance of a candidate or group's campaign account shall be reported to the commission within 10 days after final disposition of the balance.

(b) A candidate disbursing the surplus balance in his campaign acount may

(1) give the money to charity; or

(2) repay his contributors; or

(3) repay himself, if he made contributions to his own campaign; or

(4) take, as income, any money which exceeds the amount which he personally contributed to his campaign; or

(5) leave the money in a campaign account until the next time he campaigns for elective office;

however, any interest realized from a surplus in a campaign account must remain in the account and be reported on the first report required of him when he is again a candidate for elective office; or

(6) contribute the money to another candidate or a group controlled by a candidate, not to exceed the $1000 limitation, or to a political party or group supporting a ballot proposition or question; or

(7) transfer the money to his office allowance fund.

(c) A group disbursing the surplus balance in their campaign account may

(1) give the money to charity; or

(2) repay its contributors; or

(3) leave the money in a campaign account until the following election, if the group plans to remain active; however, any interest realized from a surplus in a campaign account must remain in the account and be reported on the first report required of the group when it is again active in an election; or

(4) contribute the money to a candidate or a group controlled by a candidate, subject to the $1,000 limitation and other prohibitions under AS 15.13 and this chapter, or to a political party or group supporting a ballot proposition or question.

(d) Any candidate or group wishing to disburse the surplus balance in a campaign account in a manner not described in (b) or (c) of this section may request commission review and approval of the manner in which he or it wishes to disburse the surplus. (Eff. 7/22/78, Register 67; am 10/18/81, Register 80)

Authority: AS 15.13.030(10)

2 AAC 50.405. DEFINITIONS. In 2 AAC 50.310 -- 2 AAC 50.405 and in AS 15.13

(1) "business entity" means a sole proprietorship, partnership, corporation or professional corporation, company, firm, business trust, or any other business entity or a combination of these;

(2) "draft group" means a group of two or more persons organized for the purpose of drafting one or more individuals to run for elective office by becoming a candidate under AS 15.13.130(1);

(3) "labor organization" means a local, national or international union, or labor council, or any other labor organization recognized under the laws of the state or federal government;

(4) "contribution" includes purchase, payment, obligation to pay, deposit or gift of money, goods or services which is received by a candidate or political group, or on behalf of a candidate or political group, as the result of a fund-raising activity. (Eff. 7/22/78, Register 67; am / /84, Register)

Authority: AS 15.13.030(10)
AS 15.13.130(1), (2), and (3)

2 AAC 50.450. COMPLAINTS. (a) A complaint filed with the Commission must be in writing and must contain the following:

(1) the full name and mailing address of the person making the complaint;

(2) the name of the person or group alleged to be in violation;

(3) allegations of specific facts which, if true, would constitute

(A) a violation of AS 15.13 or of a provision of 2 AAC 50.310 - 2 AAC 50.405;

(B) a violation of AS 24.45 or of a provision of 2 AAC 50.505 - 2 AAC 50.545;

(C) a violation of AS 39.50 or of a provision of 2 AAC 50.010 - 2 AAC 50.200;

(4) the basis of the complainant's knowledge of the alleged facts, differentiating between statements made upon personal knowledge and those made upon other sources of information and belief; and

(5) any documentation relevant to the facts alleged which is available to the complainant.

(b) The complaint shall be signed by the complainant and the signature shall be verified by a notary public, municipal clerk, court clerk, postmaster, or any other person authorized to administer oaths. Notarial service will be provided by the commission without cost.

(c) Upon receipt of a complaint properly filed and sworn, the Commission staff will promptly

(1) acknowledge receipt to the complainant; and

(2) determine whether the complaint sets out facts which, if true, would constitute a violation of law.

(d) If the staff determines that a complaint does not set out facts which, if true, constitute a violation of the law, it shall promptly inform the complainant and close the file.

(1) The staff, upon request of the respondent, will furnish a copy of all the information in its file on the complaint to the respondent.

(2) The complainant may request that the commission review the staff's determination. The review must be conducted in closed session.

(A) If the commission, by majority vote, upholds the staff's determination, the matter shall be closed.

(B) If the commission, by majority vote, determines that the complaint is sufficient on its face, the complaint shall be handled pursuant to 450(e).

(e) If the staff or the commission pursuant to 450(d)(2)(B) determines that a complaint sets out facts which, if true, would constitute a violation of the law, the staff will:

(1) notify the complainant;

(2) notify the respondent, providing a copy of the complaint, any accompanying documents, and a copy of the commission's investigative and hearing procedures;

(3) inform the commission that a complaint has been filed, providing a copy of the complaint and any accompanying documents; and

(4) begin a preliminary investigation.

(f) Any person against whom a complaint is filed may file an answer. The answer shall:

(1) specifically admit or deny all material allegations of the complaint;

(2) state any defenses expected to be raised by the respondent;

(3) include any relevant documentation in the possession of the respondent; and

(4) be a signed and sworn statement.
(Eff. 5/16/76, Register 58; am 12/29/77, Register 64; am / /84, Register)

Authority: AS 15.13.030(8)
AS 15.13.030(10)
AS 15.13.045
AS 15.13.120(d)
AS 24.45.021(b)
AS 24.45.131(a)
AS 39.50.050(b)

2 AAC 50.460. PRELIMINARY INVESTIGATION.
(a) The staff will undertake a preliminary investigation if

(1) a properly filed and sworn complaint has been found to be sufficient; or

(2) information has been obtained by the commission or staff in the normal course of business which, if true, would constitute a violation of the law.

(b) When the staff initiates an investigation based on 460(a)(2), it will set out in writing the facts, information, and law involved along with documentation, and process it in accordance with 2 AAC 50.450(e).

(c) In conducting a preliminary investigation, the staff may use any of the methods set out in AS 15.13.045. It may also

(1) request written and sworn statements from any party, witness, or other person which are relevant to the investigation; and

(2) use the services of the Alaska State Troopers or private investigators to secure factual information pertinent to the investigation.

(d) Upon completion of a preliminary investigation, staff will provide a written summary of the investigation to the commission at the next regularly scheduled meeting, or at a special meeting. The summary will include a staff recommendation for dismissal, for continued investigation, or that the matter be addressed in a hearing. Notice of the meeting and copy of the summary will be provided to the respondent and complainant in advance of the meeting. The decision of the commission with respect to the findings of the preliminary investigation will be sent by certified mail to the complainant and respondent. (Eff. 5/16/76, Register 58; am 12/29/77, Register 64; am / /84, Register)

Authority: AS 15.13.030(8)
AS 15.13.030(10)
AS 15.13.045(a)
AS 15.13.120(b)
AS 24.45.021(a)
AS 24.45.131(a)
AS 39.50.050(b)

(Note: 2 AAC 50.470 describes the Commission's hearing procedure should a matter be set for hearing. If you would like to have a copy, please call the comission office.)

INDEX

Report No. 82-92 GOV

POLITICAL ACTION COMMITTEES: THEIR EVOLUTION AND GROWTH AND THEIR IMPLICATIONS FOR THE POLITICAL SYSTEM

Joseph E. Cantor
Analyst in American National Government
Government Division

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ABSTRACT

This report examines the campaign fundraising vehicles commonly referred to as political action committees. It traces their evolution and their growth, both in number and in level of financial activity, and it analyzes the impact they are having on the political system as the 1980s begin.

INTRODUCTION

Political action committees (PACs) are the vehicles through which interest groups raise and contribute money to political candidates. Although originally the almost exclusive domain of organized labor, their appeal has extended since the early 1970s to businesses, trade associations, and a wide range of other interest groups. Their proliferation in number and their growth in level of financial activity during this period has occurred at a rapid pace. In 1980, some 2,500 PACs had receipts in excess of $137 million and contributed more than $55 million to candidates for the United States Congress. PACs have thus become a major source of campaign financing in modern political campaigns.

This report examines the growth of PACs in recent years and analyzes the reasons for the increased reliance upon them in American political campaigns. This study focuses as well on the reasons for the continuing controversy surrounding PACs and discusses their implications for the political system.

Chapter One discusses what is meant by the term "political action committee" and gives a rough idea of how it functions. Chapter Two places them in perspective by examining how business and labor were involved in campaign financing before the modern PAC era and traces the legislative, executive, and judicial decisions which gave impetus to their growth and development. Chapter Three presents the data on their growth and proliferation, in terms of both numbers and dollars, and reviews the most widely held theories explaining their growth. Chapter Four analyzes the issues raised by PACs in terms of their impact on the political system. Chapter Five reviews recent congressional attempts to curtail PAC influence, analyzes some of the current proposals to limit them, and discusses the prognosis for the future of PACs in our political system. Finally, a bibliography and appendix are included for further reference.

Two explanations regarding terminology used in this report bear mentioning. First, the term "interest group" is used to refer to organizations which pursue particular policy goals through the political arena, and it ecompasses corporations, labor unions, and trade associations, as well as the various ideological or issue groups.

Second, because of the activity of and the public interest in those PACs which are ideologically homogenous in nature, this report makes reference to "liberal" and "conservative" PACs. In virtually all instances, these labels reflect the self-ascription of the groups themselves; at the very least, they reflect the widespread and uncontested characterizations appearing in the media and in academic writings.

Finally, several individuals deserve a note of thanks for their assistance in the preparation of this report. In particular, Kent Cooper, Chief of the Federal Election Commission's Public Records Division, provided invaluable and patient help in the compilation of data for Chapter Three. He also reviewed that chapter, as did Professor Herbert Alexander of the Citizens' Research Foundation. Sherry Shapiro, a Congressional Research Service bibliographer, assisted in the preparation of the bibliography at the end of this report.

CONTENTS

WHAT IS A POLITICAL ACTION COMMITTEE AND HOW DOES IT WORK?

In setting the stage for the discussion to follow, this chapter defines the term "political action committee" and sketches the essential outline of how a PAC operates. This is not intended to be an explicit, detailed guide to the formation of a PAC; such guides do exist and, in fact, provided considerable assistance in the preparation of this outline. 1/ Those considering setting up a PAC would be well advised to obtain a copy of the Federal Election Campaign Act and Title 11 of the Code of Federal Regulations (pertaining to Federal Elections), as well as consulting with a qualified attorney or accountant familiar with the campaign finance laws. This chapter is confined to conveying some idea of what is involved in the mechanics of setting up and operating a PAC, so as to appreciate the role these vehicles play in American politics and the issues they raise for the political system.

I. WHAT IS A POLITICAL ACTION COMMITTEE

The term "political action committee" is widely used to denote a legal entity which is established by an interest group to raise and spend money in an attempt to influence elections. In spite of its common usage, the term

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1/ Sudow, William E. Organization and Administration: PAC Legal Considerations. In Political Action for Business: The PAC Handbook. Washington, Fraser Associates, 1981. p. 192-218. Sproul, Curtis C. Corporations and Unions in Federal Politics: A Practical Approach to Federal Election Law Compliance. In Political Action Committees and Campaign Finance: Symposium. Arizona Law Review, v. 22, 1980: 465-518.

is, in fact, a colloquial expression which does not appear in Federal statutes. In order to understand the legal framework in which a PAC operates, one must explore the definitions of three related, but not equivalent, legal terms: "political committee," "separate segregated fund," and "multicandidate political committee."

Virtually all PACs, as we will refer to them throughout this report, are "political committees." Under the definition in 2 U.S.C. 431 of the Federal Election Campaign Act (FECA):

> (4) The term "political committee" means--
> (A) any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year; or
> (B) any separate segregated fund established under the provisions of section 441b(b) of this title; or
> (C) any local committee of a political party which receives contributions aggregating in excess of $5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined in paragraphs (8) and (9) of this section aggregating in excess of $5,000 during a calendar year, or makes contributions aggregating in excess of $1,000 during a calendar year or makes expenditures aggregating in excess of $1,000 during a calendar year.

For purposes of this report, the third type of political committee--ones that are affiliated with a political party--will not be considered; these are not what is generally meant as political <u>action</u> committees. Instead, this report is concerned with what the Federal Election Commission refers to as "nonparty" political committees, which can take the form of either definition (A) or (B).

The essential distinction between political committee (A) and political committee (B) is the latter's affiliation with an existing, sponsoring organization, in contrast with the former's ostensibly independent status. It is the latter type of political committee, the separate segregated fund, which has constituted the forerunner and, in a sense, the moving force behind the proliferation of PACs. Until recently, the term "separate segregated fund" was virtually synonomous with the term "political action committee," and, even today, with the increasing growth of and attention focused on the unaffiliated, independent PACs, separate segregated funds account for more than 80 percent of PACs.

A separate segregated fund is "little more than a bookkeeping concept," which is not defined in the Federal election laws. 2/ As will be explored in Chapter Two, it developed out of the legal prohibitions on the spending of general treasury funds for political contributions by unions and corporations. Such prohibitions led labor unions (and ultimately others) to establish and underwrite the operating expenses of distinct committees (maintaining accounts separate from the unions') to collect and distribute voluntary political contributions from their members, without involving direct union contributions to candidates. In such a manner, the concept of a separate segregated fund came into being.

The law authorizes three specific political activities which can be conducted with general treasury funds of unions and corporations. While 2 U.S.C. 441b(a) prohibits contributions to Federal candidates by national banks, corporations, and labor organizations, Section 441b(b)(2) states that this prohibition shall not include--

> (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;
> (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and

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2/ Sproul, Corporations and Unions in Federal Politics, p. 493.

> (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

Part C thus sanctions the establishment of separate segregated funds by corporations, unions, membership organizations, cooperatives, and corporations without capital stock; in addition, trade associations are granted the same right in 2 U.S.C. 441b(b)(4)(D). These entities represent six of the seven types of PACs recognized under law, and they will be discussed at length in Chapter Three, which presents data on spending by the various types of PACs. A key feature of all three sanctioned activities (parts A, B, and C of section 441b(b)(2)) is that they must be confined to the audiences specified in the law; this has an important bearing on the operations of PACs and their implications for the electoral process.

The kinds of expenses which may be paid out of the general treasuries of the sponsoring organizations are elaborated in the regulations promulgated by the Federal Election Commmission. 11 C.F.R. 114.1(b) states:

> "Establishment, administration, and solicitation costs" means the costs of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising and other expenses incurred in and running a separate segregated fund . . . .

These costs need not be reported to the Federal Election Commmission.

Having described the principal characteristics of PACs which are separate segregated funds, one must take note of other political committees which are established as independent, political fundraising and spending vehicles. These committees must simply meet the criteria of raising or spending over $1,000 in a calendar year and then file the appropriate forms with the Federal Election Commission. These unaffiliated PACs are not governed by the restrictions applicable to the separate segregated funds, in terms of whom they may solicit for contributions, nor are they able to rely upon a sponsoring organization to bear their administrative and fundraising costs; such costs must be paid out of the voluntary contributions they raise. Therein lies the paramount advantage and disadvantage accruing to what the FEC describes as the "non-connected" PACs, the seventh and final PAC category. As will be discussed later in this report, the unaffiliated (or non-connected) grouping is largely comprised of ideological interest groups.

One additional bit of legal terminology--the term "multicandidate political committee"--needs to be explained in order to round out one's fundamental understanding of what a PAC is and why it is such a much-discussed vehicle. This term arises from the limitations placed on political contributions by individuals and groups under Section 441a of the FECA.

Subsection (a)(1) limits "persons" to contributions of $1,000 per election to any Federal candidate or his authorized committees, $20,000 per year to national political party committees, and $5,000 a year to other political committees. As defined in 2 U.S.C. 431(11), the term "person" includes:

> an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

Thus, the limits above apply to an individual citizen as well as to an organization or group.

The law makes provision, however, for a special type of political committee, to which different contribution limits apply; this type of PAC is the "multicandidate political committee," which is defined in Section 441(a)(4) as:

> a political committee which has been registered under section 433 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

By meeting these three additional criteria, the multicandidate PAC may, under 2 U.S.C. 441a(2), contribute $5,000 per election to a Federal candidate, $15,000 to a national political party committee, and $5,000 to any other political committee.

Whereas the last limitation is the same as for the basic political committee and the second is actually lower, the $5,000 limit on contributions to candidates, in contrast with the $1,000 limit applicable to basic political committees and individuals, provides greater opportunities for influence and, hence, greater incentive for a political committee to attempt to meet the three additional criteria for multicandidate status. With these criteria being relatively easy to meet, it is hardly surprising that most nonparty committees today are multicandidate committees. What this means is that, for all intents and purposes, most PACs may contribute more money to Federal candidates than can individual citizens (this difference is accentuated by the imposition of a $25,000 aggregate limit on political contributions by individuals, with no such limit on political committees). This distinction has had a profound bearing on the growth of PACs, as well as on the debate surrounding their influence on American politics.

In summary, virtually all PACs are political committees, most, but not all, are separate segregated funds, and most, but not all, are multicandidate political committees. Because of the implications for public policy and in the interests of greatest consistency with common usage, the term "PAC," for purposes of this report, will generally refer to nonparty, multicandidate political committees which may be either separate segregated funds or unaffiliated entities. The sections which follow in this chapter will have particular applicability to separate segregated funds, although they will be broadly relevant to all types of PACs.

II. HOW A PAC OPERATES

A. Organization

A PAC is required to file a statement of organization with the Federal Election Commission within ten days after its establishment. 3/ For a separate segregated fund, the regulations suggest several alternative events which can be considered to constitute "establishment":

> a vote by the board of directors or comparable governing body of an organization to create a separate segregated fund to be used wholly or in part for federal elections; selection of initial officers to administer such a fund; or payment of the initial operating expenses of such a fund. 4/

For an unaffiliated PAC, "establishment" is considered to have occurred when it meets the requirements of a political committee (i.e., when an organization or group raises or spends more than $1,000 in a year). 5/

In order to register with the FEC, the newly-formed PAC must file a Statement of Organization, FEC Form 1 [a copy is provided in Appendix A], which contains the following information:

1) name, address, and type of committee

2) name, address, relationship, and type of connected organization

3) name, address, and committee position of custodian of records (may be the treasurer)

4) name and address of treasurer

3/ 11 C.F.R. 102.1

4/ 11 C.F.R. 102.1(c)

5/ 11 C.F.R. 100.5(a); 102.1(d)

5) listing of depositories used by committee (at least one must be designated) 6/

The one officer required by law in a PAC is the treasurer, who plays a pivotal role in the committee. As stated in 2 U.S.C. 432(a):

> Every political committee shall have a treasurer. No contribution or expenditure shall be accepted or made by or on behalf of a political committee during any period in which the office of treasurer is vacant.

In selecting the name, a separate segregated fund must include the name of its connected organization in its Statement of Organization, on all reports filed, and in all advertisements and communications. 7/

Beyond the requirements above, there are virtually no other steps required for the establishment of a PAC. Those in charge of the PAC may or may not decide to incorporate. By-laws which set forth the goals, organizational structure, and guidelines for PAC operations are recommended by many authorities, but they are not required by law. 8/

Regarding the tax status of a PAC, the law states that political organizations are not entirely exempt from income taxation and are required to file tax returns. 9/ However, a PAC qualifies for a limited tax-exempt status "as long as it is organized and operated primarily for the purpose of receiving contributions and making expenditures within the meaning of the Act." 10/

6/ 11 C.F.R. 102.2(a)

7/ 11 C.F.R. 102.14

8/ Sudow, Organization and Administration, p. 199-200.

9/ 26 U.S.C. 6012(a)(6)

10/ Sudow, Organization and Administration, p. 207.

B. Records and Reports

Under 2 U.S.C. 432, the treasurer is required to keep an account of the PAC's financial transactions and to store these records for three years after the relevant reports are filed. In terms of receipts, these records must include:

1) an account of all contributions received

2) the name and address of persons who contribute more than $50

3) employment status of persons contributing over $200 in a year

4) identification of any contribution by a political committee

For items 2-4, the date and amount of contributions must be included, as well. For all PAC disbursements, the records must provide:

1) name and address of every recipient

2) date, amount, and purpose

3) name of candidate (and office sought) on whose behalf disbursement was made

A receipt, invoice, or cancelled check is required to be kept for disbursements exceeding $200.

Section 434 of the FECA requires PACs to report information on their financial activity to the Federal Election Commission at regular intervals; 2 U.S.C. 439 also requires relevant sections of reports to be filed with the Secretary of State in those States where candidates have received PAC contributions. Current regulations require them to use FEC Form 3-X [see Appendix B].

These reports elicit information on PAC receipts through two methods. The first, categories of receipts, requires the reporting of total amounts in contributions from individuals, party committees, other political committees, and all these sources combined; in addition, total amounts of transfers from affiliated committees, loans, offsets to operating expenses, and other receipts must be reported in the categories section. The second section of the receipts report provides an itemized account (with dates and amounts) of contributions from individuals who contribute more than $200 in a year and from all committees (political and otherwise); in addition, itemized accounting is required for transfers from affiliated committees, all loans to the PAC, all rebates to offset operating costs in excess of $200, and dividends or interest in amounts over $200. 11/

With regard to PAC disbursements, the same two methods are used. The categories of disbursements provide the total amounts spent on operating expenses, transfers to affiliated committees, loan repayments, offsets, contributions to other political committees, loans made by the PAC, independent expenditures, and other expenses. An itemized accounting (with dates and amounts) is required for each disbursement of more than $200 in a year (stating the purpose of the expenditure), each transfer to an affiliated committee, each loan repayment, each refund or offset, each contribution to a political committee (with name and office sought, if to a candidate's authorized committee), each loan, and each independent expenditure of more than $200. 12/

Finally, the reports filed must also disclose such information as cash on hand, outstanding debts and obligations, and summaries of contributions and operating expenditures. 13/

11/ 11 C.F.R. 104.3(a)(2) and (4)

12/ 11 C.F.R. 104.3(b)(1) and (3)

13/ 11 C.F.R. 104.3(a)(1), (c), and (d)

PACs may choose one of two schedules for filing their disclosure reports. The first option requires election-year reports on a quarterly basis (due January 31, April 15, July 15, and October 15), a pre-election report (due 12 days before a primary or general election), and a post-election report (due 30 days after a general election); in non-election years, two semi-annual reports are required under this system (due July 31 and January 31). The second reporting option requires monthly reports (due by the 20th day of the following month) in both election and non-election years; during election years, however, pre- and post-election reports and a year-end report (due January 31) are required in lieu of the November and December monthly reports. 14/

C. Solicitation of Contributions

At the core of a PAC's existence is its ability to raise money. The FECA and its interpretative regulations offer detailed guidelines which must be followed by the various types of separate segregated funds in their appeals for voluntary contributions. One overriding rule, at least with respect to union or corporate employers who solicit their subordinates, is that all solicitations must inform the employee of the political purposes of the PAC and of his right to refuse to contribute without fear of reprisal. 15/

Corporations may only solicit contributions to their PACs from their stockholders, administrative or executive personnel, and families. 16/ The

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14/ 11 C.F.R. 104.5(c)

15/ 2 U.S.C. 441b(b)(3)(B) and (C)

16/ 2 U.S.C. 441b(b)(4)(A)(i)

law defines "executive or administrative personnel" as:

> individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities. 17/

Labor unions may only solicit contributions from their members and their families. 18/ Such solicitations by unions and corporations may be in written or oral form and may occur at any time, with no limitation on the number of times per year.

In addition to the above guidelines, the law permits corporations and unions to solicit each other's solicitation pools twice a year. This type of solicitation must be in writing and be sent to the residence of the prospective donor. 19/ The regulations further require that these written solicitations inform the reader that a custodial arrangement exists to protect the anonymity of those who do not contribute, those who make a single contribution of $50 or less, and those whose aggregate contributions in a year do not exceed $200; the corporation or union may not be informed of those who fail to contribute, and those who contribute less than $50 at a time or $200 in the aggregate may send their contributions to the custodian. 20/

The law requires that whatever methods a corporation uses in its fundraising efforts must be made available at cost to a labor union which represents its employees. 21/ The regulations suggest that such methods of

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17/ 2 U.S.C. 441b(7)

18/ 2 U.S.C. 441b(b)(4)(A)(ii)

19/ 2 U.S.C. 441b(b)(4)(B)

20/ 11 C.F.R. 114.6(c) and (d)

21/ 2 U.S.C. 441b(b)(6)

solicitation include but are not limited to a payroll deduction or check-off system, computers for addressing envelopes for home solicitations, and the use of corporate facilities for fundraising events. 22/

The rules governing solicitation by membership organizations (other than trade associations), cooperatives, and corporations without capital stock are much simpler than those for corporations and unions. Any of the three former types of organizations may solicit its members at any time and in any manner, without any restriction on number of solicitations per year. 23/

The guidelines governing a trade association permit it to solicit the stockholders and administrative or executive personnel (and families) of member corporations, provided that the corporation grants specific, prior approval and that it not permit such solicitations by any other association that year. The corporation is free to limit the number of solicitations during the year by the authorized trade association and to further restrict the solicitation pool. 24/

The law has little to say regarding solicitations by non-connected PACs, except that they must identify any communications as being paid for by them. 25/ Beyond that, as previously stated, they may solicit anyone for contributions, through any vehicle, any number of times.

One final comment regarding PAC solicitation of contributions deserves mention here. Contributions to a PAC are generally eligible for the 50 percent

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22/ 11 C.F.R. 114.5(k)

23/ 2 U.S.C. 441b(b)(4)(C); 11 C.F.R. 114.7

24/ 2 U.S.C. 441b(b)(4) (D); 11 C.F.R. 114.8

25/ 11 C.F.R. 110.11

tax credit applicable to all political contributions; a maximum credit of $50 may be taken by a single taxpayer and $100 by those filing a joint return. This provision is commonly mentioned by PACs in their fundraising appeals.

D. The Decision-Making Process

Of all the aspects of political action committees, their operation and their role in our political system, the one which is probably the least understood is the PAC decision-making process. There is a dearth of literature on how PACs arrive at decisions on which candidates to support, and there is no systematic, comprehensive examination of this question. What literature does exist is largely confined to examples of selected PACs and is heavily anecdotal in nature. Furthermore, the insights into the inner workings of PACs focus especially on corporate PACs. This is perhaps attributable to the efforts of corporate spokesmen to publicize their operations, in order to help shape a sympathetic public perception of them. Thus, not only are the existing accounts oriented to the corporate sector but they may be lacking in objectivity, as well. Although this section attempts to provide some useful generalizations on the PAC decision-making process, it is necessarily limited by the aforementioned constraints.

The fundamental reason for the generally hazy perception of PAC internal workings is the absence of detailed legal guidelines and disclosure requirements, such as those that apply to the PAC's financial operations. In the case of the vast majority of PACs which are affiliated, it is known that the leadership of the sponsoring organization has broad authority to control the spending decisions of their PACs. A board of directors is usually established as the ultimate decision-making body of the PAC, and management-level officers of the company or union typically serve on the PAC board. The day-to-day operations of the PAC are generally handled by a designated manager, who may serve only parttime in that capacity and whose principal occupation might be government affairs specialist of the connected organization. 26/ The PAC board may also rely on standing committees to assist with such specific tasks as fundraising, monitoring legislators' votes, or voter education. 27/

The number of people actually involved in the decision-making process will also vary. It appears that some actively encourage input from the contributors, which may involve an earmarking system, while others reserve the decisions on whom to support to the PAC board of directors or a subgroup thereof. Some may place particular emphasis on the advice of Washington representatives of the connected organization; others may solicit input from local affiliates before making decisions for the national body. 28/

Most of the literature stresses the wide number of options open to PAC decision-makers. Some of these options are summarized below as a means of illustrating how varied the operations and foci of PACs are likely to be. Through these choices, a PAC assumes its own identity:

1) to limit contributions to local races or to support candidates across the Nation;

2) to pursue an incumbent-oriented approach or to take more risks on challengers;

26/ Cohen, Richard E. Congressional Democrats Beware--Here Come the Corporate PACs. National Journal, v. 12, August 9, 1980: 1306.

27/ Sudow, Organization and Administration, p. 197.

28/ Budde, Bernadette. Business Political Action Committees. In Michael J. Malbin (ed.). Parties, Interest Groups, and Campaign Finance Laws. Washington, American Enterprise Institute for Public Policy Research, 1980. p. 22-23.

3) to concentrate contributions on incumbents in legislatively strategic places, such as key committee positions;

4) to contribute early in the election cycle (perhaps taking more risks) or wait until later in the campaign (perhaps to assess who is most likely to win);

5) to contribute in primaries or just in general elections;

6) to coordinate giving with other PACs or to work alone;

7) to give a small number of large donations or to give a larger number of token contributions;

8) to contribute to Presidential candidates, to parties, to other PACs, as well as to congressional candidates;

9) to give to State and local or just Federal candidates;

10) to allow contributors to earmark contributions to designated candidates;

11) to make post-election donations to help ease a candidate's campaign deficit;

12) to make in-kind donations to candidates (such as providing goods and services) or just financial contributions;

13) to make independent expenditures or limit spending to direct candidate contributions. 29/

One final point might be made here regarding PAC decision-making. Often, if not most of the time, the initial suggestion for contributing to a particular

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29/ Kendall, Don R. Corporate PACs: Step-by-Step Formation and Troublefree Operation. Campaigns and Elections, v. 1, Spring 1980: 18;

Kayden, Xanda. The Impact of the FECA on the Growth and Evolution of Political Action Committees. In U.S. Congress. House of Representatives. Committee on House Administration. An Analysis of the Impact of the Federal Election Campaign Act, 1972-1978. From the Institute of Politics. John F. Kennedy School of Government. Harvard University. Committee Print, 96th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1979. p. 101. (Hereafter cited as U.S. Congress. An Analysis of the Impact of the FECA) candidate emanates from the candidate himself. 30/ The practice of candidates making appeals for PAC money has become so widespread that advice on how to maximize their chances for obtaining PAC contributions appears to have become a standard part of the training for modern-day candidates. 31/

E. Regulation of PACs

PACs are Federally regulated by three primary sources. The first is the Federal Election Campaign Act of 1971 and its 1974, 1976, and 1979 Amendments: Public Laws 92-225, 93-443, 94-283, and 96-187, respectively. The FECA is codified in law as 2 U.S.C. 431 et seq. Secondly, Title 11 of the Code of Federal Regulations includes regulations promulgated by the Federal Election Commission which are based on the statutes and which serve as more detailed guidelines for participants in the campaign finance process; these also have the advantage of being written with the intent of easier comprehensibility than statutory language. Finally, the FEC is authorized under 2 U.S.C. 437f to issue Advisory Opinions, at the request of individuals, candidates, or committees, which are intended to clarify questions or perceived ambiguities about the law. These Advisory Opinions are compiled and indexed by the FEC; the index is updated periodically and is available at the Commission.

30/ Kayden, Xanda. Campaign Finance: The Impact on Parties and PACs. In U.S. Congress. An Analysis of the Impact of the FECA, p. 86.

31/ How to Solicit PACs. Campaigning Reports, v. 1, July 26, 1979: 7-9.

EVOLUTION OF POLITICAL ACTION COMMITTEES

Although they have only recently become a major source of campaign funding in the United States, political action committees are not a recent phenomenon. Furthermore, interest group involvement in the electoral process is not a new development. Groups have for quite some time sought--legally and illegally, directly and indirectly--to maximize their influence over the selection of public officials. The first section of this chapter outlines the laws governing group involvement in Federal elections prior to the Federal Election Campaign Act of 1971 and discusses the types of activities in which the groups were engaged. The second section traces the key laws and administrative and judicial rulings of the 1970's which served to facilitate the establishment of PACs as that decade advanced.

I. GROUP INVOLVEMENT PRIOR TO THE 1970s

A. Legal Restrictions

Direct participation in elections by corporations and labor unions, the foremost types of interest groups, has been circumscribed for much of this century. The Tillman Act of 1907 32/ prohibited corporations and national banks from making "money contribution[s]" in connection with any election. It was enacted at the suggestion of President Theodore Roosevelt in the wake of charges during his 1904 campaign that he had received large corporate contributions

32/ 34 Stat. 864 (1907)

from prospective government contractors and in light of increased public cynicism over the role of large corporations in the electoral process. 33/ This prohibition was extended by the Corrupt Practices Act of 1925 34/ to all contributions (not just monetary ones). That law, however, excluded primary elections and nominating conventions from its restrictions, in accordance with the prevailing interpretations of the Supreme Court's decision in Newberry v. United States. 35/

The role of labor unions in election campaigns was not circumscribed until 1943, with the enactment of the War Labor Disputes (or Smith-Connally) Act. 36/ Prior to that, most labor campaign contributions had come from union dues of members. What had prompted the move to curtail labor's political giving was the marked upsurge of such activity in and following the 1936 elections, as described in the following account:

> The 1936 elections saw an eruption of political activity by organized labor. Reported political expenditures by interstate labor organizations ran to over $750,000. This exceeded by eight times the sum raised by the American Federation of Labor for political purposes during the previous 30 years. Labor dove into active campaigning and into campaign contributing on behalf of Democratic candidates. The move provoked a fierce howl that clearly marked 1936 as a watershed year in the political alignment of social and economic interests. 37/

33/ Epstein, Edwin M. Corporations, Contributions, and Political Campaigns: Federal Regulation in Perspective. Berkeley, Institute of Governmental Studies, May 1968. p. 11-12.

34/ 43 Stat. 1074 (1925)

35/ 256 U.S. 232 (1921); the Newberry decision was seen as placing limits on the Federal Government's authority to control party primaries and conventions.

36/ 57 Stat. 167 (1943)

37/ Heard, Alexander. The Costs of Democracy. Chapel Hill, The University of North Carolina Press, 1960. p. 169.

In addition to the concern over the growing power of unions among opponents of labor's political philosophy, there developed a desire to protect the rights of union members from having their dues monies given to candidates with whom they differed politically. 38/ Consequently, the 1943 Act prohibited unions from making contributions in connection with elections for Federal office. An important distinction to note is that although unions were barred from using their treasuries for campaign contributions, they interpreted the law as not applying to their separate segregated funds.

The 1943 Act was only in effect until six months after the end of World War II, and, in 1947, Congress passed the Labor Management Relations (or Taft-Hartley) Act which made permanent the restrictions on labor's political activities. 39/ Furthermore, it extended the ban for both corporations and labor unions to expenditures as well as contributions, in light of efforts by the CIO's Political Action Committee in 1944 to circumvent the Smith-Connally prohibition on union contributions. 40/ The 1947 Act also extended coverage (for corporations and unions) to primaries and conventions. This appeared to be consistent with the Supreme Court's ruling in *United States v. Classic*, 41/ which was interpreted as overruling the Newberry decis[illegible] sanctioning Federal regulation of the nominating process. 42/

38/ Ibid., p. 190.

39/ 61 Stat. 159 (1947)

40/ Epstein, Corporations, Contributions, and Political Campaigns, p: 14.

41/ 313 U.S. 299 (1941)

42/ Epstein, Corporations, Contributions, and Political Campaigns, p. 151-152 [fn. 43]

The 1947 Taft-Hartley Act, as it amended the 1925 Corrupt Practices Act under 18 U.S.C. 610, was the principal law governing the political activities of corporations and labor unions until the Federal Election Campaign Act took effect in 1972. The law, however, was widely considered to be vague, while the judicial interpretations were seen to be insufficiently precise to offer a clear "line of demarcation" between permissible and impermissible corporate and labor activities. 43/ Furthermore, rulings by the Supreme Court and lower courts in six cases during the 25 year period had cast sufficient doubt on the constitutionality of 18 U.S.C. 610 that Federal officials were reluctant to prosecute presumed offenders of the law. 44/ As depicted by one observer:

> Virtually no corporation or labor union that wished to do so was deterred de facto from making campaign contributions and expenditures. 45/

B. How Interest Groups Made Political Contributions

1. Labor

Labor unions had been engaged in political activity for quite some time, but until 1936, unions had contributed only small amounts directly to political campaigns. The American Federation of Labor (AFL), the major umbrella labor organization at that time, maintained a practice of

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43/ Ibid., p. 56-57.

44/ Epstein, Edwin. Corporations and Labor Unions in Electoral Politics. In Alexander, Herbert (ed.). Political Finance: Reform and Reality. Philadelphia, The Annals of the American Academy of Political and Social Science, v. 425, May 1976. p. 37.

45/ Ibid., p. 39.

not using its general funds for political purposes. 46/ The enormous increase in union contributions in 1936 (discussed earlier) emanated almost exclusively from unions affiliated with the more politically aggressive Committee for Industrial Organization (CIO), established in 1935. The preponderance of contributions by the CIO affiliated unions were made from union funds, as authorized by convention votes. 47/

In response to the Smith-Connally Act's prohibition on labor contributions in 1943, the Congress of Industrial Organization--as the CIO was later called--made the first foray into the field of political action committees, as we now know them. Labor unions had operated political committees in the past (most notably Labor's Non-Partisan League, which began a brief existence in 1936), but the CIO-PAC, established in July 1943, constituted the earliest effort at successfully maintaining what is today known in law as a "separate segregated fund"—a separate account for transfering voluntary contributions from members to political candidates. In addition to the CIO-PAC, the CIO, under the direction of Sidney Hillman, established the National Citizen's Political Action Committee (NC-PAC) in 1944, in order to collect political funds from progressive individuals outside of labor's ranks. 48/

The CIO-PAC entered the political arena during the election of 1944. Prior to the Democratic Convention, it raised $647,903 from the general funds of its affiliated unions, of which it spent $478,499 on primary campaigns and "political education" of its members on issues. Given that the 1943 law did not cover

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46/ Overacker, Louise. Presidential Campaign Funds. Boston, Boston University Press, 1946. p. 50.

47/ Ibid., p. 50-51.

48/ Ibid., p. 57-58.

primary elections, it was an allowable expenditure for CIO-PAC. But once the convention was held and the general election campaign was considered to have begun, the existing PAC funds were frozen. Thereafter, the CIO-PAC launched its "A Buck for Roosevelt" drive to collect one dollar in voluntary contributions from its five million members; half of the money was to be used by the PAC and the other half was to be channeled to the union's State or local political action committees. The PAC raised $470,852 in this manner. 49/

It is important to bear in mind that the CIO-PAC's activities were controversial at the time (indeed the primary contributions led to the tighter restrictions in the 1947 Act), but they played a major role in establishing precedents for later--and modern--modes of political activity by labor unions (and other groups). As the following passage reveals, the principal focus was, from the outset, on the maintenance of separate and distinct accounts for channeling political contributions:

> The status of the PAC committees also posed some legal conundrums. Union officials argued that these were not "labor organizations" within the meaning of the Smith-Connally Act as they were separately organized, under different sets of officers, and maintained independent treasuries. Nevertheless, the connection between the PAC and the CIO was very close on every level of organization. Sidney Hillman, President of the Amalgamated Clothing Workers of America, an important CIO affiliate, was chairman of both the CIO-PAC and the NC-PAC; the State political action committees frequently utilized the existing mechanism of CIO State councils; and local political action committees were similarly set up as committees of CIO locals. At the national level, and in most of the States, financial separation was strictly observed, and at the local level union personnel assigned to full-time PAC work were transferred to the PAC payroll. But when CIO personnel were assigned to the PAC on a part-time basis it was frequently impossible to distinguish the services which were political and which should be charged to the PAC. In California the separation between CIO and CIO-PAC was never very clearly defined. The State PAC was set up as a subcommittee of the

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49/ Ibid., p. 57-59.

CIO, funds were not separate, and no separate records were kept. After the trade union fund was "frozen," the financial support of the CIO-PAC came from individual trade union members. CIO membership lists were, of course, used in soliciting contributions, and in some instances the "voluntary" character of these gifts was questioned. However, the modest size of the funds would seem to indicate that if compulsion was used, it was surprisingly ineffective. 50/

With the CIO breaking ground in establishing and operating separate political funds in order to comply with Federal law, other labor unions followed suit. The AFL, the other major labor organization, set up its Labor's League for Political Education in 1947. 51/ In 1955, these two umbrella organizations merged to become the AFL-CIO, and their PACs were united as the Committee on Political Education (COPE). COPE quickly established itself as the foremost source of labor-oriented political giving, although other national unions added considerably to the overall political war chest of the American labor movement.

In 1956, seventeen national labor political committees made disbursements of some $2.1 million; in addition, 155 State and local union affiliates had political committees in operation that year, although much of the local groups' funds constituted transfers from the national committees. 52/ By 1968, there were 37 national labor political committees making disbursements of $7.1 million. 53/

The most visible manifestation of labor's political giving took the form of "free funds"--direct contributions to candidates from voluntary donations

50/ Ibid., p. 60-61.

51/ Heard, The Costs of Democracy, p. 192 (fn).

52/ Ibid., p. 189.

53/ Alexander, Herbert. Financing the 1976 Election. Washington, Congressional Quarterly Press, 1979. p. 559.

by union members. Contributions to candidates for Federal office by interstate committees (limited to amounts of $5000) were required to be reported under the Federal Corrupt Practices Act, thus making it possible to gauge (however ineffectively) the level of contributions by such groups as labor unions.

But free funds alone did not reflect the true level of labor's political giving, and three other major avenues were widely used--all of which were funded from the general treasuries of unions:

(1) Contributions to candidates for State and local offices could be made from union treasuries in those States which did not prohibit such practices (few did). In some States, Democratic candidates could expect to receive 10-20 percent of their campaign funds from unions.

(2) Union treasuries were used for "educational" expenditures, which were technically non-political (thus not subject to Federal laws prohibiting union dues money for political purposes) but which typically involved such activities as get-out-the-vote drives, voter registration drives, and distribution of voting records of elected officials. The following passage indicates the significance of this category of labor assistance to candidates:

> Organized labor's registration drives may be of more value to the Democrats than direct money contributions. In 1968 COPE spent more than $1 million on registration alone, concentrating on marginal Congressional districts. Local and state labor organizations tried to match this national outlay. Labor's registration drives, naturally, are carried out selectively in heavily Democratic precincts. 54/

(3) Public service activities, such as union newspapers and radio programs, could be funded from the union treasuries, and they were able

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54/ Alexander, Herbert E. Money in Politics. Washington, Public Affairs Press, 1972. p. 170.

to disseminate information and views supportive of their political philosophy. 55/

In addition to the channels of activity open to labor unions discussed above, the unions enjoyed wide latitude in political activity as a result of various Supreme Court decisions. Such practices as union employees receiving compensation while providing services to candidates and express advocacy of candidates' election or defeat in TV or radio time paid from union funds were common. 56/

The above discussion reveals the range of options open to labor unions which sought to influence the political process prior to the campaign finance laws enacted during the 1970s. While pioneering in the field of separate segregated funds and political action committees for direct candidate contributions, the unions found many other valuable means of making their influence felt. As the costs of many of these activities were not required to be reported under the financial disclosure laws in existence through 1972, it was exceedingly difficult to obtain accurate data on the degree of labor unions' financial activity in Federal elections. This difficulty was compounded by the ease with which the disclosure laws could be legally circumvented, as reflected in the practice by national labor committees of transfering funds to State affiliates, not subject to Federal reporting requirements. 57/ However uncertain one may be as to the extent of labor spending in the years leading up to the FECA of 1971, one may safely conclude that the unions were playing a vital role in the financing of election campaigns.

55/ Ibid., p. 170-171; and Heard, The Costs of Democracy, p. 177-178.

56/ Alexander, Money in Politics, p. 171.

57/ Ibid., p. 172.

2. Business

The channels for political activity by the business sector prior to the 1970s were also well-established, although it is even more difficult to gauge the level of business-oriented activity than it is for labor activity. Corporate interests did not enter the political action committee field until the 1960s, having instead become accustomed to donating large amounts of money to campaigns through corporate executives and other wealthy individuals associated with large corporations. 58/ While this was perhaps the most visible way of spending political money in the interests of business, it was by no means the only way.

Corporations themselves were prohibited from spending treasury money on contributions to Federal candidates, but, as with labor unions, there was a wide range of activities relating to the political process on which general funds could be spent. Here again, the line between partisan and bipartisan, permissible and impermissible, was often blurred enough to facilitate the undertaking of activities by a corporation which had a distinct slant toward an intended beneficiary or point of view. Such election-related activities as voter registration and get-out-the-vote drives among employees, provision of employee and stockholder lists to political parties, payroll deduction systems for political contributions, and campaign fund-raising drives among employees were conducted by various corporations, apparently not in violation of 18 U.S.C. 610. 59/

Aside from the above-mentioned "educational" activities, corporations had some leeway in engaging in more partisan endeavors, such as to:

58/ Epstein, Edwin M. An Irony of Electoral Reform. Regulation, v. 3, May/June 1979. p. 35.

59/ Epstein, Corporations, Contributions, and Political Campaigns, p. 45.

(1) support or oppose candidates, parties and issues in their regular publications, circulated to their employees, stockholders, suppliers and customers;

(2) distribute informational literature to the general public which stated the issues and candidates' records, but which did not advocate the election or defeat of candidates;

(3) engage in public service advertising on public issues;

(4) wage advertising campaigns with regard to public policy issues not on the ballot as referenda or initiatives;

(5) advertise in program books of national party conventions--a popular practice for which corporations could receive a tax deduction; and

(6) use corporate facilities and personnel to seek voluntary contributions to an affiliated political action committee (further discussion below). 60/

The discussion until this point has been confined to corporate political activities apart from direct contributions to candidates. But this aspect was not neglected by those seeking to inject business' point of view into the political process. There were both direct (and legal) and indirect (and extra-legal) methods for contributing to candidates.

A survey of the Nation's businessmen in 1959 found that half of those interviewed claimed to have contributed to election campaigns in 1958--a high figure for a non-Presidential year and markedly higher than that of the overall population in any year. 61/ Corporate officials gave considerably to election campaigns, with the understanding that the corporation would receive the credit in the eyes of the campaign officials.

60/ Ibid., pp. 46-55.

61/ Ibid., p. 69.

> Since, obviously, there is no official record of "corporate giving," an index of company contributions is usually compiled by aggregating the "individual" donations of corporate officers and directors. The underlying assumption of such compilations is that corporate officials act as conduits for company contributions to parties or candidates. 62/

In 1956, for example, 199 officials of some of the 225 largest corporations contributed $1.9 million in amounts of $500 or more to interstate committees. 63/ Both political parties made an effort to attract wealthy (often corporate-affiliated) donors, by creating such prestigious conduits as the Democrats' President's Club--which raised around $3.8 million in 1964--and the Republican Congressional Boosters Club. 64/

As impressive as these and other data may be, they reflect only a share of the contributions from corporation-associated individuals. By giving cash contributions or to intrastate committees, donors could and did avoid Federal reporting requirements. By giving to intrastate committees, wealthy donors could also circumvent the Federal contribution limit of $5000. This limit was also circumvented through the practice of giving contributions through members of one's own family. An example of this practice can be found in 1956, when 12 families commonly associated with particular corporations gave over $1.1 million to interstate political committees (the families were DuPont, Field, Ford, Harriman, Lehman, Mellon, Olin, Pew, Reynolds, Rockefeller, Vanderbilt, and Whitney). 65/ Hence, large amounts of money could be given legally, despite

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62/ Ibid., p. 61.

63/ Ibid., p. 64.

64/ Ibid., p. 67.

65/ Ibid., p. 68.

the limits, and large amounts could go unreported legally, despite the disclosure requirements.

The indirect corporate contributions, those made illegally with corporate treasury funds, are, not surprisingly, more difficult to gauge.

> Such donations did not appear on any lists filed with governmental agencies, nor were they mentioned in annual reports to stockholders. Most businessmen were understandably disinclined to discuss their campaign activities. 66/

In 1960, Alexander Heard wrote:

> It is not unusual for corporate funds to make up 10 percent of the campaign fund of a candidate for state or local office, and the percentage has gone higher. In all, in a presidential election year, several million dollars of corporate money finds its way by one process or another into political campaigning. 67/

When read in the wake of the experiences of the 1972 Nixon re-election campaign, this passage understates the potential for channelling corporate money into political campaigns. According to Edwin Epstein, an estimated $30 million was contributed to that campaign from the business sector--through both legal and illegal channels. There were widespread allegations of strong pressure tactics applied to corporate officials, and some 20 corporations and officials were indicted (with most pleading guilty or nolo contendere) on charges of making illegal corporate political contributions. Thus, the 1972 campaign illustrated that the corporate sector could be a lucrative source of campaign funds given a systematic effort by a campaign. 68/ Significantly, the 1972 experiences were a major impetus in the amending of the campaign finance law in 1974.

66/ Ibid., p. 69.

67/ Heard, The Costs of Democracy, p. 130.

68/ Epstein, Edwin M. Labor and Federal Elections: The New Legal Framework. Industrial Relations, v. 15, October 1976, p. 262.

According to Heard, the various, commonly-used methods of indirect corporate contributions stressed concealment of corporate funds:

(1) expense accounts were used to reimburse corporate officials for campaign-related entertaining and traveling;

(2) contributions "in-kind," whereby goods and services were loaned or donated by a business to a campaign (e.g., office equipment, company airplanes, etc.);

(3) advertisements in political journals, paid for from corporate funds but with the source concealed;

(4) corporate money "laundered" through public relations firm on retainer, with money then funneled into campaigns;

(5) fees to lawyers re-routed to campaigns;

(6) salaries and bonuses to employees, given with the expectation that they, in turn, will make political donations (said to be a particularly notorious practice);

(7) contributions channeled through other organizations, such as trade associations; and

(8) direct corporate payments, e.g., from petty cash. 69/

One practice omitted in Heard's list was that of corporate officials' receiving remuneration while doing campaign work, a widespread occurrence according to most accounts. The picture that emerges is of corporate activities resembling those of labor unions in exploring avenues for political involvement.

The final avenue of corporate activity during the pre-1970's era was the political action committee. The first major PAC in the business (and professional) sector was the American Medical Political Action Committee (AMPAC),

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69/ Heard, The Costs of Democracy, p. 133-134.

founded in 1961 by the American Medical Association to further the goal of "minimizing government control over the medical profession." 70/ It was followed in August 1963, by the Business-Industry Political Action Committee (BIPAC), which was established by the National Association of Manufacturers "to provide financial support to Congressional candidates who support the principles of constitutional government." 71/

Both of these PACs followed the lead of COPE and created two separate accounts--one for administrative costs for which corporate funds could be used and the other for the contributions themselves for which only voluntary funds could be sought. The system was described by the then-President of BIPAC, Robert Humphrey, before House hearings in the 89th Congress:

> Mr. Humphrey . . . . we have two distinct funds. We have two distinct divisions of operation. One is political education, and the other is political action. We maintain separate bank accounts. The political education funds are used for our administrative overhead. We do not intermingle the funds. We have a small political education budget and the money in our education account comes from corporate contributions and from subscriptions to our publication. 72/

During the 1964 elections, BIPAC spent $203,283 and AMPAC spent $402,052 (compared with the $988,810 spent that year by COPE). 73/ In 1968, BIPAC's spending jumped to $519,700 and AMPAC's to $682,000 (COPE spent $1,207,000 that year). 74/ BIPAC

70/ Alexander, Herbert E. Financing the 1968 Election. Lexington, D.C. Heath and Company, 1971. p. 202.

71/ Ibid., p. 201.

72/ U.S. Congress. House. Committee on House Administration. Subcommittee on Elections. Election Reform Act of 1966. Hearings, 89th Cong., 2nd Sess., July 21, Aug. 17, 22, and 25, 1966. Washington, U.S. Govt. Print. Off., 1966. p. 120.

73/ Alexander, Herbert E. Financing the 1964 Election. Princeton, Citizens' Research Foundation, 1966 [study number 9]. p. 64-65.

74/ Alexander, Financing the 1968 Election, p. 195, 201-202.

and AMPAC together accounted for 61 percent of total expenditures by the 33 national business and professional committees then in existence. 75/

Those 33 represented a three-fold increase in the number of business and professional committees registered in 1964, 76/ and by 1972, there were some 200 such committees. 77/ Furthermore, as more business-oriented groups were formed, the enormous gap between reported business and labor spending (nationally) was narrowed significantly. Gross disbursements by the 37 national-level labor committees totaled $7.1 million in 1968; a little over $2 million was spent by the 33 business and professional committees that year--a gap of around three and one-half in labor's favor. 78/ By 1972, the national labor committees spent $8.5 million, while the business and professional committees spent $6.8 million--an advantage by labor of around 33 percent. 79/ Of course, the labor totals do not reflect the substantial value in additional services which unions have traditionally provided, as indicated in this 1972 account:

> . . . it would be difficult to exaggerate the political value of labor's enormous manpower pool, particularly for voter registration and get-out-the-vote activities on election day. The AFL-CIO Industrial Union Department and affiliates may put as much as $4 to $5 million into citizenship activities, including registration drives. 80/

By the same token, the spending data do not reflect the additional resources of the business sector which was channeled into political campaigns through

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75/ Ibid., p. 200-201.

76/ Ibid., p. 200.

77/ Alexander, Herbert E. Financing the 1972 Election. Lexington, D.C. Heath and Company, 1976. p. 461.

78/ Alexander, Financing the 1968 Election, p. 194, 201.

79/ Alexander, Financing the 1972 Election, p. 504, 461.

80/ Ibid., p. 506.

the many avenues described above. The data is indicative, however, of the growing, open role of corporations in the political process during the decade preceding the Federal Election Campaign Act.

3. Conclusion

This section on the role of business and labor in political campaigns prior to the 1970's suggests that both of these vital sectors of our society have long sought to influence the electoral process. In examining the proliferation of PACs in the 1970s and beyond, it is important to bear in mind that their underlying raison d'etre--the furthering of the group's policy goals and the maximizing of its influence through the election of sympathetic public officials--has been a guiding principle long before the modern-day era of PACs. Groups sought influence and spent money in large quantities, through legal and extra-legal channels. The PAC evolved as a means of legally circumventing the prohibition on corporate and, later, union contributions to candidates. Once labor unions were forced to turn to this method, they quickly developed a pattern of effective operations through the use of separate segregated funds. It was only a matter of time before the business community began to emulate labor's successes. The fundamental point is that interest group involvement generally and political action committee activity specifically pre-dated the campaign finance reforms of the 1970's. Indeed, they set the precedents for today's PACs.

II. STIMULI TO PAC GROWTH IN THE 1970s PROVIDED BY LEGISLATIVE, JUDICIAL, AND ADMINISTRATIVE DECISIONS

This section will examine those actions by the three branches of the Federal Government which set the stage for the proliferation of political action committees during the 1970's. Essentially, it provides a legislative history of the important PAC provisions, specifically focusing on the Federal Election Campaign Act of 1971 and its 1974 and 1976 Amendments. In addition, the Supreme Court's 1971 decision in Pipefitters Local 562 v. United States, its 1976 decision in Buckley v. Valeo, and the Federal Election Commission's 1975 Advisory Opinion in the Sun Oil Company case will be examined, for their relevance to the legislative history and for their role in the PAC growth of the 1970's.

These actions occurred against a backdrop in which PACs had existed and were growing in number but in which uncertainty existed over what types of political activity were permissible. Such concerns were heightened by inconclusive judicial rulings and interpretations of the law (18 U.S.C. 610), and they served to hamper interest groups in exploring the full potential of the PAC vehicle. By clarifying the ambiguities in the law and by institutionalizing the PAC as a recognized vehicle under the law, these legislative and other actions created the climate in which political action committees could flourish.

A. The Federal Election Campaign Act of 1971

The Federal Election Campaign Act of 1971 (Public Law 92-225) 81/ marked the first time the concept of the political action committee was codified into Federal law. Section 205 of that Act amended 18 U.S.C. 610 to exclude three specific activities from the legal restraints on corporate and union political expenditures. As stated in the amended version of Section 610, the following activities could be funded from corporate or union general treasuries:

81/ 86 Stat. 3.

> communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject;
>
> nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; [and]
>
> the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization . . . .

While thus opening the door for the political action committee, the amended section added the following language to ensure that only truly voluntary contributions be made to the PAC:

> . . . . Provided, that it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

The above amendments to 18 U.S.C. 610 were initially offered as an amendment to H.R. 11060 (the House version of the FECA) by Representative Orval Hansen. The Hansen amendment passed the House by a 233-147 vote, 82/ replacing a section of the House Administration Committee's bill which also sanctioned the separate segregated fund but which was seen as prohibiting the use of union (and corporate) treasuries in registration and get-out-the-vote drives.

Supporters of the Hansen amendment argued that its intended effect was to codify in law what 18 U.S.C. 610 had been interpreted to mean. 83/ Describing his amendment as consistent with the then-existing statute, Hansen stated:

> For the underlying theory of section 610 is that substantial general purpose treasuries should not be diverted to political

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82/ Federal Election Reform. [Vote in the House] Congressional Record, v. 117, November 30, 1971. p. 43391.

83/ Steiger, William. Federal Election Reform. Remarks in the House. Congressional Record, v. 117, November 30, 1971. p. 43388.

> purposes, both because of the effect on the political process of such aggregated wealth and out of concern for the dissenting member or stockholder. Obviously, neither of these considerations cuts against allowing voluntary political funds. For no one who objects to the organization's politics has to lend his support, and the money collected is that intended by those who contribute to be used for political purposes and not money diverted from another source. 84/

The Senate's version of the FECA--S. 382--had contained no provision comparable to the Hansen amendment, and the conferees on the legislation accepted the House-passed language. 85/ Thus the Hansen amendment became law.

Section 206 of the FECA amended 18 U.S.C. 611, which prohibited political contributions by Government contractors, to extend the ban to indirect, as well as direct, contributions. 86/ Because PAC contributions could be viewed as indirectly emanating from the organization's treasury funds, this section apparently had a chilling effect on Government contractors interested in establishing PACs. Furthermore, the fact that many of the most important corporations and unions were engaged in some form of Government contracting meant that the new provisions of 18 U.S.C. 611 would conceivably affect a wide range of interest groups. 87/ It was ironic that, while one section of the new campaign finance law provided the legal foundation for political action committees, the next section may have caused sufficient confusion so as to inhibit many potential sponsors of PACs from establishing them.

84/ Hansen, Orval. Federal Election Reform. Remarks in the House. Congressional Record, v. 117, November 30, 1971. p. 43381.

85/ U.S. Congress. House. Conference Committee. Federal Election Campaign Act of 1971. Conference Report to accompany S. 382. House Report No. 92-752, 92nd Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1971. p. 30-31.

86/ Epstein, Corporations and Labor Unions, p. 40-41.

87/ Alexander, Financing the 1976 Election, p. 560.

B. Pipefitters Local 562 v. United States

The Supreme Court's June 1972 ruling in the case of Pipefitters Local 562 v. United States 88/ provided the first legal interpretation of the revised 18 U.S.C. 610, and it validated the concept of unions' and corporations' maintaining separate voluntary funds for political contributions. The case involved the conviction of the union and three officers for their maintaining control over a separate segregated fund for which solicitations were systematically made at job sites. The Court of Appeals had upheld their conviction 89/ on the grounds that the fund was compulsory and union-financed rather than voluntary and member-financed. 90/

The Supreme Court's 6-2 reversal of the Court of Appeals ruling coincided with the aspirations of organized labor, which had played a key role in the passage of the Hansen amendment, apparently with the pending Supreme Court ruling in mind. According to one account:

> Uncertain as to what direction the Supreme Court would take, the AFL-CIO sought legislative legitimization of the key aspects of its electoral role since the 1940s: utilization of the political action committee device to raise and distribute political monies; communicating politically with its members; and, finally, member-oriented registration and get-out-the-vote activities. 91/

Thus, the Pipefitters case served, while it was still pending, as the catalyst for the passage of the Hansen amendment and, later, as the first judicial decision that observers saw as legitimizing the thrust of the Hansen amendment.

88/ 407 U.S. 385 (1972).

89/ 434 F. 2d 1127 (CCA 8th, 1970).

90/ Epstein, Labor and Federal Elections, p. 261.

91/ Epstein, Edwin M. The Emergence of Political Action Committees. In Alexander, Herbert (ed.). Political Finance. Beverly Hills, Sage Publications, 1979. p. 165.

The Supreme Court held that no violation of the (amended) law had occurred, in view of the fact that contributions were sought for the PAC on a voluntary basis (with no reprisals threatened), that the intended political purpose of the donations was clearly indicated, and that the money was kept segregated from the union treasury (dues money). That the union officials were involved in collecting the funds and retained control over their disposition was not viewed by the Court as a violation of the law.

> Nowhere, however, has Congress required that the political organizations be formally or functionally independent of union control or that union officials be barred from soliciting contributions or even precluded from determining how the monies raised will be spent 92/

By giving its sanction to the voluntary, separate segregated fund, the Court accorded primacy to the protection of the individual stockholder or union member from having to contribute to candidates opposed to their personal philosophies over the sometimes conflicting goal of limiting the influence of unions and corporations in elections through their aggregated wealth. 93/ The Court stated:

> When Congress prohibited labor organizations from making contributions or expenditures in connection with federal elections, it was, of course, concerned not only to protect minority interests within the union but to eliminate the effect of aggregated wealth on elections. But the aggregated wealth it plainly had in mind was the general union treasury--not the funds donated by union members of their own free and knowing choice. 94/

Although it refused to deal with constitutional issues, 95/ the Court's

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92/ 407 U.S., at 415.

93/ Epstein, Corporations and Labor Unions, p. 42.

94/ 407 U.S., at 415-416.

95/ 407 U.S., at 407.

ruling in the Pipefitters case nonetheless offered a sense of legitimacy to the operation and concept of the separate segregated fund--the essence of the PAC--and particularly to the practice of union (or corporate) control over the disposition of the runds. Without the right to involve themselves in this aspect of the process, the political influence of business and labor would be sharply curtailed.

C. The Federal Election Campaign Act Amendments of 1974

The Federal Election Campaign Act Amendments of 1974 (Public Law 93-443) 96/ constituted a response of Congress to the Watergate scandal and is principally remembered for its imposition of limitations on campaign contributions and expenditures, and the establishment of the Federal Election Commission. With regard to PACs, the FECA Amendments of 1974 made three changes, relating to penalties, contribution limits, and government contractors; the basic intent of 18 U.S.C. 610, as amended by the 1971 Act, was not affected by the 1974 legislation.

Section 101(a) of Public Law 93-443 amended 18 U.S.C. 608 to impose a limitation of $5000 on the amount a "political committee" (other than a candidate's principal campaign committee) could donate per election to a candidate for Federal office, while any other "person" was limited to giving $1000. As defined in the amended section (b)(2), a "political committee" met the criteria of what the 1976 Amendments defined as a "multicandidate committee" --one that is registered for at least six months with the FEC, receives contributions from more than 50 persons, and makes contributions to five or

96/ 88 Stat. 1263 (1974).

more Federal candidates. Hence, the term "political committee" under the 1974 Amendments can be read as "multicandidate committee" or "political action committee," the terms used today; the term "person" under the 1974 Amendments would today refer to both an "individual" or a (non-multicandidate) "political committee." Thus, the 1974 Amendments made the critical distinction for purposes of the contribution limit between the political action committee and the individual. The opportunity for greater leverage accorded the PAC has had a profound impact on our electoral process.

The second PAC-related provision in the 1974 Amendments was in Section 101(e) which amended 18 U.S.C. 610 to impose higher penalties for violations of the ban on corporate and union contributions. The penalty for organizations convicted of violating the ban was raised from $5000 to $25,000 and from $10,000 to $50,000 for officers of those organizations who were found guilty of such violations.

The third provision, and the one which may well have had the biggest impact on PAC development in the 1970s, was the authorization for Government contractors to set up PACs. The confusion over this question stemming from the 1971 Act was exacerbated by a 1972 law suit by Common Cause against TRW, Inc., which alleged that the company, a major Government contractor, violated the law by setting up a PAC. 97/ Both the House Administration Committee, in its report on H.R. 16090, 98/ and the Senate Rules and Administration Committee, in its report on

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97/ Epstein, Corporations and Labor Unions, p. 49.

98/ U.S. Congress. House. Committee on House Administration. Federal Election Campaign Act Amendments of 1974. Report to accompany H.R. 16090. House Report no. 93-1239, 93rd Cong., 2nd Sess. Washington, U.S. Govt. Print. Off., 1974. p. 20-21.

S. 3044, 99/ recommended amending 18 U.S.C. 611 to allow Government contractors to establish separate segregated funds. These provisions were passed by the respective chambers, and the following language was reported by the conference committee 100/ and was written into Public Law 93-443 as Section 103, amending 18 U.S.C. 611 to read:

> This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation or labor organization for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 610 of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund.

This provision removed a major stumbling block to the establishment of PACs by those companies and unions doing business with the Federal Government.

D. The FEC's SUN PAC Advisory Opinion

On November 18, 1975, the newly-created Federal Election Commission issued an advisory opinion in response to a request from the Sun Oil Company which had a dramatic effect on the rise of the corporate political action committee. Sun Oil had requested permission from the FEC to expend corporate funds in seeking employee and stockholder contributions to two separate political programs: a trustee payroll deduction plan (SUN EPA), which would act as a conduit for political contributions to candidates designated by the donor, and a political

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99/ U.S. Congress. Senate. Committee on Rules and Administration. Federal Election Campaign Act Amendments of 1974. Report to accompany S. 3044. Senate Report no. 93-689, 93rd Cong., 2nd Sess. Washington, U.S. Govt. Print. Off., 1974. p. 17.

100/ U.S. Congress. House. Conference Committee. Federal Election Campaign Act Amendments of 1974. Conference Report to accompany S. 3044. House Report no. 93-1438, 93rd Cong., 2nd Sess. Washington, U.S. Govt. Print. Off., 1974. p. 67-69.

action committee (SUN PAC), through which contributions would be given to candidates at the discretion of company officials.

In Advisory Opinion 1975-23, the FEC approved the proposed Sun Oil Company programs and, in so doing, established several important precedents:

1) that general treasury funds could be used to establish, administer, and solicit contributions to both SUN PAC and SUN EPA;

2) that Sun could solicit contributions to SUN PAC from employees, as well as stockholders

3) that Sun could establish multiple PACs with separate contribution and expenditure limits (as long as the funds came solely from voluntary contributions); 101/ and

4) that the payroll deduction (automatic check-off) plan was a legitimate vehicle with which the company could seek contributions, in contrast with the prohibition on such a plan for labor unions engendered in the 1947 Taft-Hartley Act. 102/

Clearly, the major ground broken by the SUN PAC ruling was the permission granted for corporations to solicit employees, in addition to stockholders (as specifically permitted in 18 U.S.C. 610). This was seen by labor unions and the two dissenting FEC Commissioners as upsetting the political balance Congress had sought to establish between corporations and unions. Sun Oil, for example, had 126,555 stockholders and 27,707 employees, few of whom were unionized; thus, while the company could solicit over 150,000 persons, the union could solicit just a small fraction of that. 103/ The FEC did seek to alleviate some of the

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101/ Epstein, The Emergence of Political Action Committees, p. 167.

102/ Epstein, Labor and Federal Elections, p. 268.

103/ Epstein, The Emergence of Political Action Committees, p. 168.

potential problems caused by allowing employees to be solicited by the corporation, and it recommended the following guidelines in its opinion:

> First, no superior should solicit a subordinate. Second, the solicitor should inform the solicited employee of the political purpose of the fund for which the contribution is solicited. Third, the solicitor should inform the employee of the employee's right to refuse to contribute without reprisal of any kind. 104/

The guidelines apparently did little to assuage the concerns of organized labor that employees would be pressured, however subtly by their employers. In general, unions were distressed by the SUN PAC (and SUN EPA) ruling, while the business sector hailed it.

In its detailed prescriptions for the establishment and operation of corporate PACs, the FEC helped create a climate more conducive to their establishment. As one account stated:

> While it was the 1971 and 1974 amendments that provided the legal authority for business PACs, it was SUN PAC that provided the imprimatur for the explosion in their size and numbers. 105/

E. The Supreme Court's Buckley v. Valeo Decision

On January 30, 1976, the Supreme Court issued its decision in the case of Buckley v. Valeo, 106/ in which the constitutionality of many of the campaign finance reforms of 1974 were at issue. Most notably, the Court upheld the limits on contributions, while nullifying the expenditure limits. Although 18 U.S.C. 610 and 611 were not directly at issue, the Buckley decision did have a bearing on political action committees in three areas.

104/ Federal Election Commission. Advisory Opinion 1975-23. Federal Register, v. 40, no. 233, Dec. 3, 1975. p. 56584-56588.

105/ Epstein, An Irony of Electoral Reform, p. 36.

106/ 424 U.S. 1 (1976)

In two instances, the Court relied upon, and its decision coincided with, the FEC's ruling in the SUN PAC case. In its defense of the limitation on contributions, the Court argued that ample opportunities remained for individuals and groups to have an impact on the electoral process. The PAC was held up as an example in the following footnote, in which the Court made reference to the ability of corporations to solicit employees (the prime contribution of the SUN PAC decision in the view of many commentators):

> While providing significant limitations on the ability of all individuals and groups to contribute large amounts of money to candidates, the Act's contribution ceilings do not foreclose the making of substantial contributions to candidates by some major special interest groups through the combined effect of individual contributions from adherents or the proliferation of political funds each authorized under the Act to contribute to candidates. As a prime example, §610 permits corporations and labor unions to establish segregated funds to solicit voluntary contributions to be utilized for political purposes. Corporate and union resources without limitation may be employed to administer these funds and to solicit contributions from employees, stockholders, and union members. Each separate fund may contribute up to $5,000 per candidate per election so long as the fund qualifies as a political committee under §608(b)(2) 107/

As the footnote continued, the Court appeared to adopt another aspect of the SUN PAC ruling--concerning the question of proliferation, the establishment of multiple PACs within an organization:

> The Act places no limit on the number of funds that may be formed through the use of subsidiaries or divisions of corporations, or of local and regional units of a national labor union. The potential for proliferation of these sources of contributions is not insignificant. In 1972, approximately 1,824,000 active corporations filed federal income tax returns . . . . In the same year, 71,409 local unions were chartered by national unions . . . .
>
> The Act allows the maximum contribution to be made by each unit's fund provided the decision or judgment to contribute to particular candidates is made by the fund independently of control

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107/ 424 U.S., at 28 [fn. 31].

or direction by the parent corporation or the national or regional union. 108/

The third respect in which the Buckley decision had an impact on PACs concerned the issue of independent expenditures. The Court declared unconstitutional the FECA's limitations on independent expenditures, those made in support of or opposition to candidates without prior approval of or coordination with a candidate's own campaign. 109/ By lifting the limits on such expenditures, while leaving intact those on direct contributions to candidates, the Court's ruling created a major avenue for individuals and groups seeking to influence elections beyond the level permitted under the FECA. In the years since 1976, particularly in 1980, the independent expenditure route has become increasingly popular, with the leaders in the field being the political action committees. These two vehicles—the PAC and the independent expenditure—are changing the way in which our politics are financed in the 1980s. And the increasing convergence of the two methods is having a particularly profound impact on the system.

F. The Federal Election Campaign Act Amendments of 1976

On May 11, 1976, the Federal Election Campaign Act Amendments of 1976 (Public Law 94-283) 110/ were signed into law. Although the new amendments were necessitated by the Supreme Court's ruling in the Buckley v. Valeo case, which did not deal directly with PACs, the 1976 law contained numerous and important provisions which had a direct bearing on PACs and their evolution. These provisions

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108/ Ibid.

109/ Ibid., at 47-48.

110/ 90 Stat. 475 (1976).

represented an attempt to clarify the laws relating to PACs through greater specificity as to who could establish separate segregated funds and how they could be operated. Furthermore, the PAC provisions constituted a compromise between the interests of business and labor, in view of charges by labor that the balance of power between the sectors had been tilted toward business by the SUN PAC ruling; such concerns by labor had been heightened by the significant increase in corporate PACs following that advisory opinion. 111/

Major changes resulting from the 1976 Amendments included: the explicit authority granted to trade associations, membership organizations, and other groups to establish separate segregated funds, the restriction on types of employees corporations could solicit, guidelines for soliciting contributions for all categories of segregated funds, a limit on the proliferation of PACs within an organization, permission for unions to make use of payroll deduction plans to solicit contributions to its PACs, the introduction of the term "multicandidate committee," and new limits affecting contributions by both a political committee an multicandidate committee.

First, the cam finance laws were recodified with the removal of all relevant sections from Title 18 of the U.S. Code and their reassignment to Title 2. Section 610, dealing with contributions by unions, corporations, and national banks, became 2 U.S.C. 441b; Section 611, dealing with contributions by Government contractors, became 2 U.S.C. 441c.

Under section 441b, the prohibition on political contributions and expenditures by unions and corporations was recodified as subsection (a). The definition of "contribution or expenditure" and the exclusions became

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111/ Epstein, The Emergence of Political Action Committees, p. 169-170.

subsection (b)(2), with alterations made in the wording of each of the three excluded activities--those that could be conducted with the organization's general treasury. The permission for internal communications [(b)(2)(A)] and nonpartisan registration and get-out-the-vote drives [(b)(2)(B)] were amended to allow corporations to direct such activities at executive or administrative personnel (and their families), in addition to stockholders (and their families); no change was made affecting the eligible pool for unions (members and their families). The third exclusion--separate segregated funds--was amended to give specific authority for such funds to organizations other than unions and corporations; section 441b (b)(2)(C) excluded from the term "contribution or expenditure":

> the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

The original FECA prohibition against coercion in the solicitation of contributions to PACs was transferred intact to subsection (b)(3)(A). Furthermore, two prohibitions, based on the FEC's guidelines for solicitation in the SUN-PAC ruling, were added. Subsection (b)(3)(B) required employees to be informed of the political purposes of the fund when solicited, while subsection (b)(3)(C) required that the solicited party be informed of his right to refuse to contribute without reprisal. (The FEC suggestion that supervisors not solicit their subordinates was not incorporated into the 1976 Amendments.)

Subsection (b)(4)(A) made it unlawful, unless specifically permitted, for corporations to solicit anyone other than stockholders and executive or administrative personnel and their families [(b)(4)(A)(i)] and for unions to solicit anyone other than union members and their families [(b)(4)(A)(ii)]. This provision was generally seen as a defeat for the business sector by curtailing the blanket permission to solicit all employees in a corporation. Subsection (b)(4)(B) granted permission for unions and corporations to make two written solicitations per year of each other's pool of potential contributors, the solicitations to be conducted by a third party to protect the confidentiality of membership lists.

The guidelines for groups other than unions and corporations were outlined in subsection (b)(4)(C) and (D). In the former, membership organizations, cooperatives, and corporations without capital stock were authorized to solicit their members for contributions to a separate segregated fund. In the latter subsection, trade associations were granted permission to solicit the executive or administrative personnel and stockholders (and families) of member corporations, provided that the corporations gave prior approval and permitte more than one affiliated trade association to make such solicitations per year.

Organized labor received a substantial boost from subsections (b)(5) and (6), which gave them permission to solicit contributions in the same manner that corporations did and required corporations to make available such systems to unions at cost. This meant that the payroll deduction plan approved for corporations by the SUN PAC Opinion but denied to labor unions by the Taft-Hartley Act was now available to labor, as well. Thus, a fundraising system which greatly facilitated the collection of donations would be available to unions, with the corporations required to assist in the mechanics of the operation.

The final subsection of the new 2 U.S.C. 441b defined what was meant by the terms "executive or administrative personnel." Subsection (b)(7) defined them as:

> individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.