

Cato Institute Policy Analysis No. 42: The Federal Election Commission: A Case for Abolition

October 23, 1984

Mary Meehan

Mary Meehan is a Washington-based journalist who has written widely on election laws.

Executive Summary

Expressing the frustration of many political activists, the 1984 Republican Party platform declares that "Congress should consider abolishing the Federal Election Commission." The platform does not list all complaints about the commission, but it does note the basic constitutional problem associated with it: "Even well-intentioned restrictions on campaign activity stifle free speech and have a chilling effect on spontaneous political involvement by our citizens." It also attacks the sheer complexity of the regulations the commission is supposed to enforce: "We deplore the growing labyrinth of bewildering regulations and obstacles which have increased the power of political professionals and discouraged the participation of average Americans." [1]

The Republicans have performed a great service by raising the issue of the Federal Election Commission (FEC). There is also a sense in which the Democrats have performed a service by suffering so visibly from campaign regulation. Examples of this service are presidential candidate Walter Mondale's difficulties with his delegate committees during the primaries and vice-presidential candidate Geraldine Ferraro's tribulations in the aftermath of an FEC investigation of her 1978 congressional campaign.

It is now up to others to explain in detail what is wrong with the FEC and the law it enforces. This paper is offered as a contribution to the discussion. Many of its examples are taken from the 1984 campaign.

Early Days of the Commission

In 1974, in the wake of the Watergate scandals, Congress passed the Federal Election Campaign Act (FECA), which represented a major expansion of federal controls over campaign finance. The law limited the amounts individuals and political committees could give to federal candidates, limited the amounts candidates could spend on their campaigns, required detailed financial reports, and established public subsidies for presidential candidates and conventions. It continued the existing ban on direct corporate and union contributions, but it also continued permission for corporations and unions to subsidize administrative costs of political action committees (PACs). Corporate PACs could solicit donations from stockholders and managers; union PACs, from union members. In addition, the act repealed a ban on PAC establishment by government contractors. It also authorized establishment of the Federal Election Commission to administer the law, write regulations based on the law, and certify the subsidies for those who qualify.

The commission was appointed and confirmed in the spring of 1975. One of its first tasks was to defend its authorizing legislation, for the law was under constitutional attack in the federal courts by a coalition of liberals and conservatives. The coalition was led by Republican-Conservative Sen. James Buckley of New York and former Sen. Eugene McCarthy of Minnesota. A leading Democratic presidential candidate in 1968, McCarthy was preparing an independent campaign for the presidency in 1976.

The U.S. Supreme Court rendered a mixed decision in *Buckle v. Valeo* early in 1976. It struck down the spending limits for nonsubsidized candidates, but said that other candidates could be required to abide by spending limits as a condition for receiving subsidies. This meant that congressional candidates could not be held to spending limits, while presidential candidates could. The Court also struck down limits on "independent spending"--spending by individuals or committees on their own (without consultation or coordination with a candidate). The Court upheld the contribution limits, the reporting requirements, and the subsidies for presidential candidates.[2]

Candidates for federal office have been struggling with the law and the FEC ever since.

The Commission Discourages Free Speech

Critics of the FEC have often charged it with overzealous enforcement of the law. Although their point is valid, the fundamental problem is the law itself. To anyone who knows the basic provisions of the law and the basic realities of politics, the law's restrictions on free speech are self-evident.

Despite other changes in the law since it was first passed, its contribution limits for individuals remain \$1,000 per primary and \$1,000 per general election for each candidate.[3] A wealthy candidate is allowed to spend unlimited amounts from his/her own funds, but a candidate's family members are held to the same limits as other individuals.

(This is the provision of the law that brought grief to Rep. Ferraro after she borrowed large sums from her family to finance her 1978 campaign.)

The contribution limits prevent many candidates from raising the money they need for communications with the public-- that is, for free speech. Cutting off a candidate's access to funding can be as effective as using a muzzle; it restricts or prevents access to television and radio advertising, to print ads, and to direct-mail efforts. Although direct-mail campaigns rely primarily on small donors, they are quite expensive to run.[4] Candidates need "seed money" to start them, and this money is denied to many by the Federal Election Campaign Act.

The spending limits restrict speech, too. A candidate who exceeds the spending limits is in violation of the law, must repay any public funds involved, may be fined (and theoretically, at least, may even be imprisoned), and is likely to be embarrassed politically. So candidates either refrain from contact with voters they would otherwise engage in or else use various subterfuges to appear to be within the limits. In 1980 this led several candidates to arrange lodging for campaign staff just outside New Hampshire to avoid bumping the spending limit for that crucial primary state.[5]

The state-by-state spending limits have become such a nightmare that the FEC itself has proposed their elimination (although not the overall limit on primary spending). In March 1984 the FEC noted that exploitation of various loopholes had "developed into an art which when skillfully practiced can partially circumvent the state limitations." It also noted that the state limits had "proven a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the commission." [6]

The law and the commission also inhibit communication with the voters by requiring campaign staff to spend an inordinate amount of time doing paperwork and, in many cases, answering charges raised by the FEC or by political opponents. Political campaigns, like other human ventures, are finite operations; time devoted to coping with campaign regulations is time taken away from the voters. Dealing with the regulatory apparatus is a special burden for congressional candidates who have never run for federal office before and who must rely largely on volunteers. It is also a special burden for an insurgent campaign. Looking back to the 1968 antiwar campaign in which he challenged an incumbent president of his own party, Eugene McCarthy testified at Senate hearings:

But I would say, Senator, that if we had had the federal election law, I do not think we could have done anything else close to what we did in 1968 in the challenge on the war. It just would have been impossible to organize and to allow the volunteers to operate. Most everybody would have been in violation of the federal election act within two weeks.[7]

Finally, the commission has a chilling--if not freezing-- effect on the speech of grass-roots, issue-oriented groups. One court case, still pending six years after the alleged offense, is a good illustration. The case involved Massachusetts

Citizens for Life, a nonprofit, incorporated organization. In 1978 the group prepared and distributed a special issue of its newsletter, highlighting the abortion voting records and views of various candidates. The FEC decided that the money spent in this way (less than \$10,000) was corporate spending in connection with a federal election and thus a violation of the law. In June 1984 a federal judge held otherwise, finding that the activity was protected by the First Amendment.[8] Several days later the newsletter editor of Massachusetts Citizens for Life described the effects of the lengthy battle: "I can testify that there has been a chilling effect on our ability to communicate with proliferers. I had to have everything checked by a politician or a lawyer." [9] In August 1984 the FEC appealed the case.[10]

In a case involving late filing of disclosure reports, another Massachusetts group, Women's Action for Nuclear Disarmament, recently was fined \$600. In pleading for leniency, the group's lawyer said, "During the period in question, the Committee's activities were carried out in the most part by an informal group of women who volunteered their services whenever they had time. Most had families, and many even had full-time or part-time jobs." [11] The commission, however, insisted on the fine and an admission of wrongdoing.[12] How many volunteer groups will continue to have volunteers as people come to understand the legal and financial dangers of political work today?

The Commission Discourages Free Association

Besides guaranteeing freedom of speech and press and religion, the First Amendment guarantees "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Yet the FECA and the FEC have the effect of forbidding people to assemble and work together politically under certain circumstances. The prime example is that of "independent spending," which the Supreme Court said may not be limited. The draconian limits on direct contributions to a campaign make independent spending very tempting, especially for a broad range of issue-oriented groups, from the National Conservative Political Action Committee (NCPAC) to the League of Conservation Voters.[13]

To escape the contribution limits, however, such groups must report to the FEC any independent spending of more than \$250 in a calendar year and must certify, under penalty of perjury, whether it was truly independent. If they say they consulted with the candidate or his campaign, then the spending was really a contribution and, if large enough, a violation of the contribution limits. If they consulted, but swear that they did not, they are liable to perjury charges. The only safe course of action is to avoid all contact with the candidate they support, trying to learn of his themes and plans through the news media. Presumably they can send a volunteer to pick up the candidate's literature. However, they cannot reproduce the literature (or excerpts from the candidate's broadcasts) in any large quantity. Under FEC regulations, such reproduction is considered a contribution to the candidate.[14]

In addition to severely limiting First Amendment rights, these regulations can result in embarrassment for a candidate who is supported by independent spending. Candidates tend to view independent spending as a loose cannon rolling around their deck. For example, during the period when there was doubt about whether vice-presidential candidate Ferraro's husband would release his tax returns for public scrutiny, NCPAC held a press conference announcing that it would run a television commercial attacking Ferraro on that issue. The commercial was to feature Anne Burford, whose prior leadership of the Environmental Protection Agency had caused great controversy. However, the Reagan-Bush campaign apparently did not want voters to be reminded of Burford; nor did it want a backlash of sympathy for Ferraro. Because NCPAC was engaged in independent spending, though, the campaign could not communicate its wishes directly to NCPAC. The most its director could do was issue a statement saying that "we've had absolutely no discussion with NCPAC on this issue and furthermore I would like to disassociate Reagan-Bush '84 from the NCPAC commercial." [15]

The Commission Encourages Hypocrisy and Deceit

It is ironic that a law reputedly designed to ensure honest politics has encouraged a great amount of fudging, concealment, and deceit. This has occurred because the law's contribution and spending limits work against the law's reporting requirements. When campaign treasurers faithfully report all transactions, they are likely to be charged with violating the law. The only way to get truthful reports across the board would be to repeal the limits.

The FEC enforcement files contain many examples of reporting that is, to be charitable, less than forthright. Occasionally the daily newspapers trumpet such cases, as they did during the 1984 primaries when Walter Mondale's

"independent" delegate committees came to light. FEC regulations allow candidates for delegate to a national nominating convention to spend unlimited amounts to get themselves elected. The condition--one that political operatives 20 years ago would have found incredible-- is that their efforts not be coordinated with that of their presidential candidate's campaign.[16] Mondale's campaign advised delegate candidates on how to set up committees to take advantage of the "loophole." Many of them did so, receiving large sums from labor union political action committees (PACs) to help their efforts. Because Mondale had promised not to accept PAC money for his own campaign, he was embarrassed when the PAC donations to delegate committees were headlined in the press.[17] That was a political problem, not a legal one.

Reports of coordination of delegate committees with or by the Mondale campaign, however, suggested a legal problem. Reporters found that people dropped from the Mondale campaign payroll were picked up by delegate committees and that money was transferred among delegate committees across state lines.[18] Mondale's campaign treasurer said that the first fact "suggests we laid them off and they may have gone someplace else. I don't think that's any evidence that we coordinated." He said that the monetary transfers across state lines simply showed that "they had extra money and they passed it on." [19] A Washington Post reporter said that efforts to find how labor unions and individual donors around the country knew that a specific delegate committee in New Hampshire needed money "produced a widespread burst of amnesia and ambiguity." [20]

The media coverage finally subsided after Mondale decided to take responsibility for the committees, to count their spending as spending by his campaign, and to refund the PAC money.[21] Before the days of the FECA, however, candidates took responsibility for their campaigns from the beginning. They and their staffs felt no need to pretend that their delegates were running independent campaigns.

The atmosphere created by the FECA and the FEC encourages many candidates to pretend that they are above taking so-called special-interest money. Those who have studied campaign finance, though, know that special-interest money denied entrance at the front door is coming in the back door. In 1976 the two major parties cooperated in amending the law to allow direct corporate and union donations to their building funds. The Republicans were the first to take advantage of this provision, building a new wing on their national headquarters with the help of Getty Oil, Atlantic Richfield, Westinghouse, and others.[22] A Democratic fundraiser suggested that the Republicans could decorate their new wing with "stained-glass windows, like you do in churches, named for big contributors." [23]

In 1979 congressional Democrats and Republicans amended the law again, allowing state parties to spend large sums in support of their presidential tickets. Many states allow direct corporate and labor donations to state parties. In addition, wealthy individuals who have given the maximum amounts allowed at the national level may channel more money to the state level. The Republicans tapped these sources of so-called soft money for an estimated \$9-15 million in 1980, and both parties are counting on large boosts from the same sources in 1984.[24]

All of this activity is in addition to the huge sums poured into campaigns by corporate and labor PACs. By allowing government contractors to subsidize PAC overhead costs, the FECA has led to an explosive growth of PACs, especially on the corporate side.[25] It also has encouraged the growth of PACs by permitting them to give far more to each candidate per election (\$5,000) than it allows an individual to give (\$1,000). Although the PAC explosion is often referred to as an "unintended consequence" of the FECA, there is evidence that members of Congress knew precisely what they were doing when they paved the way for it.[26] Although the lobby group called Common Cause opposed the labor/corporate PAC provision, it vigorously supported the final version of the FECA that included that provision. Common Cause has been crusading against the PACs ever since.[27]

As Eugene McCarthy remarked in 1983:

The whole operation demonstrates the great principle of Gilbert Chesterton, who said you have to watch the Puritans. He said what they generally do is kill St. George and keep the dragon. I thought of this because Common Cause is now attacking its own bill. They were for the reform act. . . . but they found enough dragon in it so they can keep attacking the dragon and St. George is gone.[28]

The Commission Encourages Campaigns to Harass One Another

The commission is bound by law to investigate formal complaints. Consequently, its enforcement files are filled with complaints filed by candidates and ideological groups against one another. Challengers file complaints against incumbents. The National Right to Work Committee files complaints against labor unions.[29] The National Abortion Rights Action League files complaints against anti-abortion groups,[30] and the National Right to Life Committee files complaints against pro-abortion groups.[31] All of this activity provides employment for many lawyers, both inside and outside the FEC. In most cases it is hard to find any other positive effect of the complaints. They usually involve petty violations (if any) or are designed to intimidate the opposition and discourage exercise of First Amendment rights.

There are at least four incentives that lead many candidates and groups to file complaints against their opponents. First, it gives them a chance to issue a press release spattering mud all over their opponents. Second, if the complaint has any basis at all, it is certain to cause difficulties for opponents and force them to devote resources to answering the charges that would otherwise be used for direct political combat. Third, it can be effective in cutting off money the opposition needs and in discouraging certain methods of communication. Fourth, it is often a way of obtaining revenge, of retaliating for complaints the other side has filed.

The National Right to Work Committee has become quite enthusiastic about the complaint process. Early in 1984 its leaders announced they would place private detectives in labor groups to gather evidence of alleged violations of the election law in union activities for Walter Mondale.[32] We seem to be regressing from petty harassment to vigilante activity.

The Commission Enforces the Law in a Discriminatory Fashion

Many critics of the FEC have charged that the commission, in its investigations, is much harder on defeated candidates and on ideological groups than on the congressional incumbents who control the FEC budget and have power to amend the FECA. Non-incumbents complain of long ordeals that involve formal responses, affidavits, audits, and substantial legal fees.[33]

In the now-famous case of Rep. Ferraro's family loans for her 1978 campaign, the FEC general counsel recommended lenient action because Ferraro's husband and her campaign treasurer both swore that a former FEC lawyer had advised the candidate that the family loans were proper. When this came to light during the 1984 campaign, the former FEC lawyer denied he had given such advice. "Absolutely I never told them they could do it. I told them exactly the opposite," said attorney David Stein. He asked, "Why didn't the FEC ever talk to me?"[34] It seems a reasonable question. The fact that Ferraro was a congressional incumbent may have something to do with the answer.

Congressional Quarterly, Inc. checked FEC enforcement files for the first quarter of 1979, a period shortly before the Ferraro matter was settled. It found that among incumbents only two senators and six representatives "had been investigated for non-compliance with the election law. The cases were closed after the FEC was satisfied that nothing was amiss." However:

The number of non-incumbents under investigation in the same period was far greater; eight Senate candidates and 52 House hopefuls were probed. Mostly, the allegations concerned reports that were not filed on time. While, as with the incumbents, most of these cases ended up without charges of wrongdoing being filed, a few candidates were fined.[35]

More recently a Wall Street Journal reporter checked more than 200 enforcement cases and found greater discrepancies:

After the 1982 election, the Commission fined some unsuccessful House candidates who were late in filing required disclosures of their campaign financing. But it let half a dozen incumbent House members off without fines for similar offenses. . . . The Commission almost never audits disclosure reports of Senate or House members. In one case, the campaign committee of Democratic Rep. Cardiss Collins of Chicago didn't respond to numerous Commission requests to explain an unaccounted-for increase of nearly \$9,000 in its bank account. Rather than open an audit to resolve the discrepancy, the Commission simply dropped the case without any explanation.[36]

The Wall Street Journal's most striking contrast was the following:

Roger Canfield, a California congressional candidate, was slapped with a \$100 fine last year by the Federal Election Commission for failing to include on his billboards a statement that the signs were financed by his campaign committee. . . . But at the same time the Commission was riding herd on Mr. Canfield, it was allowing House Majority Leader James Wright and more than a dozen other Democrats to keep nearly \$74,000 in illegal political gifts. The Commission did fine the donors in the biggest corporate-donation case since Watergate, but then quietly closed the door on the incident.[37]

Discrimination against Independents and Minority Parties

The FEC discriminates simply by enforcing the law. The severe limits on individual contributions fall most heavily on independent, or nonparty, candidates, in that they are not eligible for the special loopholes that parties have created for themselves. But the limits also hurt minority parties and new parties, which start with a much smaller base of contributors than do the Democratic and Republican parties.

The huge subsidies given to major-party candidates exacerbate disabilities already suffered by minority-party candidates. By the end of the 1984 campaign, the federal government will have given in the neighborhood of \$130 million to the candidates and conventions of the Democratic and Republican parties.[38] By late August of 1984, only one minor-party candidate (Sonia Johnson of the Citizens Party) had qualified for public funding. She had received less than \$186,000 in subsidies.[39]

Had former Rep. John Anderson (R-Ill.) decided to run as a minority-party candidate in 1984, he would have been eligible for about \$6 million in public funding because of his showing in the 1980 election.[40] That sum would have compared poorly, though, with the roughly \$50 million (not counting convention subsidies) that each major-party candidate could expect.

Independents and minor parties also suffer excessively from the regulatory apparatus. Relying on shoestring operations, they cannot afford the platoons of lawyers and accountants that keep the major parties out of trouble. The major parties also run the FEC itself, whose commissioners are evenly divided between Republican and Democratic appointees. This gives built-in protection to each major party, but gives nothing at all to independents and minor parties.[41]

The Constitution does not authorize government support, that is, establishment, of political parties. Such support was so far from the minds of the founding fathers that they did not think to ban it explicitly, as they banned establishment of a national religion. In its *Buckley v. Valeo* decision the Supreme Court did not accept the argument that the FECA's bias in favor of the major parties violates the First and Fifth Amendments.

The constitutional objection to party establishment, although substantial, is by no means the only objection. A comparison of American politics today with the unregulated politics of the nineteenth century suggests that we have lost a great deal of vitality by allowing government to regulate and subsidize the process by which the government itself is chosen. In place of the colorful politics of the Jacksonian period and the multi-party choices of the 1850s and 1890s, we now have a staid and stagnant system in which two parties take turns running the government and cooperate in suppressing the growth of new parties and independent movements. Alternative visions and philosophies are, for all practical purposes, restricted to opinion journals and symbolic campaigns. They are allowed to exist as long as they are ineffective.

Inflating Campaign Spending

The commission's effect on the level of campaign spending is a function of its certifying huge sums of public money for presidential candidates and conventions.

Presidential candidates now spend money on such relatively frivolous events as straw polls in the autumn preceding the primary season.[42] They pay large salaries to staff members who, 15 or 20 years ago, would have been paid modestly if at all. Mondale's campaign press secretary initially received \$48,000 a year, but was cut back to about \$30,000 after Gary Hart's primary challenge forced Mondale to spend more for television commercials.[43] A salary

reduction to \$30,000 may be a hardship by Washington, D.C., standards, but \$30,000 seems a high salary to people whose tax dollars are helping pay that salary, but who themselves earn far less. These are people who cannot imagine receiving more than \$10,000 in "consulting fees" in one month; yet a high Mondale official received that in April 1983, over a year before the Democratic convention.[44] It is difficult to imagine that presidential candidates would spend money in this way were it not for the large public subsidies they receive.

In 1984 Ronald Reagan, an incumbent president unopposed for renomination, received \$10.1 million in public subsidies for his primary campaign. This was in addition to some \$15 million in private donations he received for the primaries.[45] It must have been a real challenge to his campaign staff to devise ways to spend all of that money.

The FEC certified slightly more than \$8 million for the nominating convention of each major party in 1984; thus each convention cost the taxpayers about \$2 million per day. Both presidential and vice-presidential nominations were decided well in advance of the conventions, and the Republicans did not even debate their platform. Each party, though, found ways to spend a great deal of money for what amounted to a week's free advertising for party and candidates. In the second quarter of 1984 alone, the GOP convention committee paid a total of \$65,000 to a New York firm for "lighting and design services" and for a "design coordinator fee." It paid over \$42,000 to a Dallas firm for "50 portable radios" and for "radios, mobile units." The committee gave \$21,500 to one man for unspecified "professional services." [46]

Professionalization of Politics

The commission has the effect of professionalizing politics. It does so in three ways. First, as campaign finance expert Herbert Alexander says, "because the laws are so complex, no major candidate goes without hiring a lawyer and an accountant." [47] Second, by making so much money available to presidential candidates, the FEC encourages them to pay high salaries and fees to professional pollsters, fundraisers, media specialists, and the like. [48] Third, by its audits and enforcement actions, the FEC tends to drive volunteers away from politics.

The commission's anti-volunteer effect has not received as much attention as it deserves. A survey of targets of enforcement actions and their attorneys several years ago drew some strong replies. One respondent said, "I was totally disillusioned, disappointed, and terribly distressed over the charge and the harassment that followed. . . . We will soon have no activists and then we're really in trouble." Another remarked, "All indicate they will never again get active in politics; serves to take political involvement away from people and vest operations in hands of expensive and costly pros." A third respondent declared, "This commission succeeded in keeping me away from politics in the future." [49]

Conclusion

Many members of Congress who voted to pass the election law in 1974 have been blaming its defects on the FEC ever since. The commission has many faults, to be sure, but its major faults stem from the law itself. Until Congress summons the courage to admit this by repealing the law--and, incidentally, abolishing the commission--we will have severe restrictions on First Amendment rights, as well as discrimination against the underdogs of American politics.

Any proposal to repeal the law and abolish the FEC must deal with at least two major objections. First is the contention that such action would allow so-called special interests to buy elections. The biggest spenders, however, do not always win elections. The classic example is John Connally, former governor of Texas and former treasury secretary in the Nixon administration. Running in the 1980 Republican presidential primaries, Connally spent \$12.6 million, much of which was provided by people associated with big business. Connally's showing, for all his money, was precisely one national convention delegate. [50] In the 1982 Senate election in Minnesota, a wealthy candidate named Mark Dayton spent over \$7 million-- primarily from his own pocket--against incumbent Sen. David Durenberger, who had about \$4 million to spend. Durenberger won. [51] According to the Minnesota poll, "Dayton's expensive campaign. . . . was criticized by 38 percent of all voters, and seven-eighths of this group voted for Durenberger." [52]

When voters believe that unqualified candidates are trying to buy an election with their personal fortunes, or that candidates have received too much special-interest money, they can follow the Minnesota example and vote against those candidates. Judgment by the voters is supposed to be one of the fundamental elements of democracy.

This is not to deny that money can be a corruptive influence in American politics. The underlying reason for such influence was explained by then-Rep. David Dennis (R-Ind.) in the 1974 debate over the campaign law:

The trouble with this country and the reason we have special-interest money running it, both from business--and we do--and from milk funds, as well as from labor and from everybody else, is that we have made the government too big and too powerful, and every single person in this country who has two nickels, or a business, or a farm, has to come down here and beg for permission to live. And naturally they try to pay the bureaucrats and the politicians off.[53]

As long as the government offers huge subsidies to some and threatens others with potentially crippling regulation, business and labor and farm groups will try to influence elections to protect their interests. Money denied entrance at the front door will come in the back, as is the case today.

What, then, would we do about disclosure? Should disclosure requirements be saved so that voters will know the sources of a candidate's money? Certainly a case can be made for this approach. Politically speaking, moreover, it is hard to imagine that Congress could afford to repeal the disclosure requirements, as well as the other parts of the law.

Surely, however, it could greatly simplify the disclosure rules. The FEC report forms are extremely complex; they demand much information that has nothing to do with potential or actual corruption. It is hard to see what public interest is served by requiring that campaigns reveal where they buy their buttons, how much they pay for their bumper stickers, or how much they pay their campaign staffs. This information may fascinate political scientists and reporters, but there is no public "right to know" it. Moreover, the very complexity of the information required adds to campaign costs, leads to late filing, and-- especially with presidential campaigns--makes it hard to find the general pattern of giving because reports are so bulky.

An alternative is to require that campaigns simply list all donations, loans, and debts of \$1,000 or more. This would greatly alleviate the bookkeeping burden of campaigns. It would lead to more timely reports, and it would focus public attention on the sources of campaign money rather than the minutiae that interest specialists.

A more purely libertarian solution was suggested by campaign veteran Edward Crane. He proposed a free-market approach: "Candidate A has Arthur Andersen & Co. audit her receipts and challenges candidate B to do the same. If the voters want disclosure they'll get it--without any new laws." [54]

Whatever the outcome of the disclosure issue, Congress should keep in mind a comment by Ralph K. Winter, Jr., one of the lawyers who argued the *Buckley v. Valeo* case for the plaintiffs. Winter, who is now a federal judge, said: "The greatest campaign reform law ever enacted was the First Amendment." [55]

FOOTNOTES

[1] "Text of 1984 Republican Party Platform," Congressional Quarterly Weekly Report, August 25, 1984, p. 2110.

[2] On the early history of the law and the commission, see Herbert E. Alexander, *Financing the 1976 Election* (Washington, D.C.: Congressional Quarterly Press, 1979), pp. 1-36, 559-61. See also, *Buckley v. Valeo*, 424 U.S. 1.

[3] For campaign finance law currently in force, see U.S. Federal Election Commission, *Federal Election Campaign Laws* (Washington, D.C.: U.S. Government Printing Office, 1984).

[4] Michael J. Malbin, "New Campaign Finance Law Faces Legal, Political Tests," *National Journal*, July 12, 1975, p. 1018; Dom Bonafede, "Democratic Candidates Raising More--and Spending More--than Expected," *ibid.*, January 14, 1984, pp. 61-62.

[5] Herbert E. Alexander, *Financing the 1980 Election* (Lexington, Mass.: D.C. Heath and Co., 1983), p. 138. Alexander also reported, "Primary campaign flights were arranged to pass through cities outside the primary state, making them interstate trips, which, unlike intrastate trips, do not fall under the primary state's spending limit.... Primary-state campaign staff members sometimes were placed on the national campaign committee staffs so at least a

portion of their salaries could be excluded from the primary state's limit." *Ibid.*, pp. 138-39.

[6] U.S. Federal Election Commission, Annual Report 1983 (Washington, D.C.: U.S. Government Printing Office, 1984), p. 37.

[7] U.S. Senate, Committee on Rules and Administration, Hearings on Campaign Finance Reform Proposals of 1983, 98th Cong., 1st sess., p. 355.

[8] "FEC v. Massachusetts Citizens for Life, Inc.," *FEC Record* (August 1984), pp. 7-8.

[9] Writer's telephone interview of Massachusetts Citizens for Life newsletter editor Dale O'Leary, July 6, 1984.

[10] According to FEC press aide Sharon Snyder, the commission filed an appeal on August 27, 1984.

[11] Thomas C. Spring, in letter to Charles N. Steele (FEC general counsel), March 30, 1984, p. 2.

[12] Matter Under Review (MUR) file no. 1632. In this writer's experience, campaign volunteers have also been intimidated by the FECA's criminal penalties; see 26 U.S.C., Sec. 9012.

[13] "FEC Issues Final Report on 1981-82 Independent Spending," FEC press release, October 14, 1983, p. 2.

[14] See 2 U.S.C., Sec. 434; and 11 C.F.R., Sec. 109.

[15] Ed Rollins, quoted in Dale Russakoff, "Ad Hits Ferraro 'Scandal'," *Washington Post*, August 17,