Peter Paul v. The Clintons: FEC Complicity and a Plea for Real and Present

Ellis Washington, Savannah State University

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Peter Paul v. The Clintons:
FEC Complicity and a Plea for Real and Present
Campaign Finance Disclosure Laws

By

Ellis Washington*

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“[Campaign finance] disclosure gets relatively little attention from scholars.” ¹

~ Professor Bradley W. Smith,
Former Chairman of the FEC

“Why must they apologize to Hillary for saying, ‘iron my shirts’, if she doesn’t apologize to us [Americans] for laundering our campaign contributions.” ²

~ Rush Limbaugh, conservative intellectual

INTRODUCTION

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This Article is an analysis of current legislation, case law and election law policy regarding campaign finance disclosure rules and the need for a truly independent Federal Election Commission to efficiently enforce existing election laws. Admittedly, this article isn’t as theoretical as other scholarly works on this subject, however, since campaign finance reform is a rather complex subject, I didn’t want to get caught up in the endless minutiae of legislative and court opinion other than a general review in the context of the case at bar as well as the present state of campaign finance reform policy. I also wanted to avoid getting bogged down in the litany technical arguments about who can give, what, when, where, how much and at what time? As a predicate to this apologetic I will use the ongoing case *Paul v. Clinton, et al.*, and will address a critical issue of this, now, seven year long case. Does the public have a right to know who contributed to political campaigns and how much they contributed?

To set the stage for the primary issue at bar let’s look at the federal prosecutor’s closing argument in a related campaign finance reform case with similar questions of law to be resolved (U.S. v. Rosen [2005]). The prosecutor in that instant case summarized the facts succinctly in his opening statement:

This case is about the public’s right to know. The case is about the public’s right to know who is paying how much to their elected officials. The case is about the public’s right to know how much Peter Paul is paying to a national campaign. . . This case is about the public’s right to know the truth, and the defendant, David Rosen’s, (Hillary’s treasurer) continued and intentional obstruction of that public right.
This rational view of election law under a constitutional paradigm is not a new concern for those who advocate real and tougher campaign finance disclosure laws. The battle has been ongoing for almost a century now.\(^5\) Take the case, *Citizens Against Rent Control v. City of Berkeley*, the Court held: “The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed; if it is thought wise, legislation can outlaw anonymous contributions.”\(^6\) This is a clear, unmistakable utterance of ‘black letter law’ from the Supreme Court. Yet, in the area of campaign finance disclosure laws, its pronouncements are largely ignored, unenforced and with any authority and influence.

The *Citizens* case was handed down in 1981. From that time to the present, the Court, the FEC, the Senate Finance Committee have done little in the interim to improve the rules for how America finances its elections. Furthermore, and numerous other think tanks, political groups, and campaign finance organizations of all political viewpoints have written their congressman in protest. Furthermore, political organizations have filed voluminous numbers of amicus briefs in support of one position or another on this issue, all levels of judges have spoken on campaign finance reform including the Supreme Court, yet money still dominates politics and incumbency is tantamount to a divine right.

It is amazing to me that if we measure 42 years ago, from the time of *Buckley v. Valeo*, or even for the past 100 years since Theodore Roosevelt issued his progressive reforms on political contributions we are further away from any serious, tough campaign finance disclosure laws was suppose to remedy. Laws that punish politicians who skirt election laws, by hiding the identity and amounts of their contributors, with assured prison time, exorbitant fines and loss of office. Campaign finance disclosure laws are, to me, a critical
issue that goes to the heart of maintaining America’s constitutional Republic. Without strong campaign finance disclosure laws, the survival of America is in doubt. In his succinct observation, Justice Brandeis’ famous aphorism—“Sunlight is the best disinfectant”—could easily be applied as a demand for openness and transparency in all political finance contributions.

Part I of this Article is a general historical background of the Federal Election Commission (FEC), its purpose, powers, limitations and the ongoing debate between scholars of the two major schools of thought regarding campaign finance disclosure laws—disclosure vs. privacy. Part II addresses the actual and ongoing case regarding disclosure: Peter Paul v. The Clintons, et al., a landmark case on the scope and limits of campaign finance disclosure law. I predict that this case is of such transcendent importance to the integrity of the American political system that it will eventually be heard by the U.S. Supreme Court. I cite the case history of how plaintiff, Peter Paul initially became acquainted with the Clintons on June 24, 2000, the day after President Bill Clinton proposed that Paul, through his agent Jim Levin, set up and finance a campaign fundraiser with Hollywood entertainment for his wife’s, Hillary Rodham Clinton, 2000 New York senatorial campaign. In exchange, Clinton agreed to become a “rainmaker” for a business venture Mr. Paul had with comic book icon Stan Lee of Spiderman fame. Despite repeated urging by Mr. Paul through the courts, I will discuss how Mr. Paul’s $1.9 million campaign contribution, to this day, has yet to be acknowledge in any of Sen. Clinton’s official federal disclosure statements. Part III addresses real and present solutions to the intractable problems of regulating money’s influence on politics from four different philosophical viewpoints ending with several
poignant lessons on campaign finance disclosure we can all learn from the Peter Paul v. The Clintons case. Finally, regarding the title of this Article and the title of Part III, I borrowed the tenor of the phrase, “real and present punishment” from the famous and often quoted “clear and present danger” language found in U.S. Supreme Court Justice Oliver Wendell Holmes, Jr. opinion in the case Schenck v. United States, a case concerning limits on political speech against the draft during World War I where Justice Oliver Wendell Holmes wrote:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the United States Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right.

I. The Background: A Brief History of the Federal Elections Commission (FEC)

A. The Purpose

Disclosure has been the foundation of campaign finance regulation for almost a century, dating back to Theodore Roosevelt and Congress’s passage of the federal Publicity of Political Contributions Act of 1910. In modern times, reformers have utilized a disclosure paradigm when addressing the issue of advocacy and tax code provisions. The McCain-Feingold Act is a basic enlargement of disclosure rules for individual contributions. The principal federal provisions requiring disclosure of
individual contributions were enacted as part of the 1974 amendments to the Federal
Election Campaign Act (“FECA”).

Founded in 1975 by the United States Congress to regulate the campaign finance
legislation in the United States, the Federal Election Commission (“FEC”) is an
independent regulatory agency that was created in a provision of the 1975 amendment to
the Federal Election Campaign Act. It describes its duties as “to disclose campaign
finance information, to enforce the provisions of the law such as the limits and
prohibitions on contributions, and to oversee the public funding of Presidential
elections.”

Throughout this Article I will endeavor to stress the key issues underlying the debate
over disclosure policy, especially the following critical issues of campaign finance
disclosure:

- What are the primary reasons of disclosure laws? To detect and prevent
corruption, inform voters, or advance accountability and civility? Are some of the
purposes of disclosure laws constitutionally unsound?
- Who should be required to disclose? Candidates, parties, and PACs only? Donors
and fundraisers? Other speakers, including nonprofit organizations?
- What information should be disclosed? Contributions? Expenditures? Names?
Addresses? Contracts for future advertising? At what level of detail?
- When should disclosure be made? How quickly and often? Electronically?
Internet? U.S. mail?
- To whom should disclosure be made? To media entities like television stations
airing political advertisements? Newspapers? To voters themselves, via
disclaimers within political communications? To government agencies?
- What limitations and exemptions relate to disclosure laws? Time restrictions,
donor limits, and small contributor exceptions? Immunity when disclosure
imposes undue burdens on or threats to people?
- Whose rights and which rights are at risk in the constitutional dispute regarding
disclosure? The political candidate’s right to free speech? The voter’s right to
know? The third party’s right to criticize politicians? Do some of those
constitutional rights take precedence over others?
Furthermore, I will attempt to scrutinize the inherent pressure between competing First Amendment considerations driving the disclosure debate: the right to free, private, and even secret speech and association; the public’s right to information about political candidate’s contributors and the critical significance of an educated informed electorate for any constitutional republic to survive.\textsuperscript{19}

**B. The Power**

Despite the fact that the Commission’s name designates broad authority over U.S. elections, its official duties are basically limited to the administration of federal campaign finance laws.\textsuperscript{20} The FEC’s basic duties are as follows:

1. It enforces limitations and prohibitions on contributions and expenditures.
2. Investigates and prosecutes violations (investigations are typically initiated by complaints from other candidates, parties, “watchdog groups,” and the public),
3. Audits a limited number of campaigns and organizations for compliance, and
4. Administers the presidential campaign fund, which provides public funds to candidates for president.

The FEC also publishes reports filed by Senate, House of Representatives and Presidential campaigns that lists how much each campaign has raised and spent, and a list of all donors over $200, along with each donor’s home address, employer and job title. This database, dating back almost 30 years, prohibits private organizations from using this database to solicit new individual donors. To enforce this provision the FEC authorizes campaigns to include a limited number of “dummy” names to their donor lists.
However, these campaign donor list may use this information to solicit Political Action Committees (PACs). While theoretically these exhaustive campaign finance resources are available to everyone, they are rarely used by the public. The FEC also maintains an active program of public education directed for the purpose of explaining the law to the candidates, campaigns and committees which it regulates.

C. The Limitations of the FEC

The limitations of the FEC, in many cases, are synonymous with the remonstrations by critics of the FEC, including campaign finance reform supporters such as Common Cause and Democracy 21, in addition to many, many other organizations who have argued that bipartisan philosophy of the FEC’s makes the agency “toothless.” Why? Because of the excessive time and bureaucrat red-tape it takes to administer for punishment is another criticism of the FEC. Critics claim that most FEC penalties for violating federal election laws take place so far after the actual election where the violation took place, that in many cases the politician that perpetrated the initial campaign finance fraud has long since left office or has moved upward to a higher political office.

FEC supporters on the other hand state that the Commissioners rarely vote evenly along partisan lines, and that the response time problem may be intrinsic to America’s political system. Endemic to the time factors to bring an FEC complaint and see it to trial and resolution it becomes necessary to resolve a formal complaint filed with the court - including time for defendants to respond to the complaint, time to investigate in discovery and engage in legal analysis, and finally, where warranted, prosecution which of necessity takes far longer than the comparatively brief period of a political campaign.
Furthermore, many critics contend that the commissioners act as an ally of the “regulated community”—of political parties, interest groups, and politicians when investigating violators of campaign finance disclosure laws, issuing rulings and writing regulations. This is the central complaint of Respondent, Peter Paul, and his claim of complicity by the FEC in not only failing to be a good faith broker between campaign contributors and the public, but on many occasions act as a stealth ally to the political powers that be (Congress). This is a clear and present separation of powers violation by politicians on both sides of the aisle who gave the FEC their mandate in the first place.

An obvious and disturbing conflict of interest between the FEC and political candidates that exist to this day despite all of the glowing non-partisan and bi-partisan rhetoric and legislation, like the vaunted and unwieldy Bipartisan Campaign Reform Act of 2002 (BCRA), et al.22

On the other side of the campaign finance disclosure issue is the ubiquitous problem of privacy. Critics of disclosure like former FEC Chairman Bradley A. Smith and Stephen M. Hoersting, Executive Director of the Center for Competitive Politics, have been vocal opponents of the FEC for pursuing overly aggressive enforcement theories as an infringement of First Amendment rights of free speech.23 The Federal Election Administration Act of 2007, was introduced in the US Congress in 2007 as an attempt to fix redundant problems with the FEC. This bill would replace the FEC with a “Federal Elections Administration” with only three board members and with expanded powers, and would also require enforcement proceedings to take place before administrative law judges. It was introduced in the Senate by John McCain and Russ Feingold, and in the
House of Representatives by former Representative Martin Meehan and Christopher Shays.

D. The Famine: The Scholar's Debate—Disclosure vs. Privacy

FEC Chairman Bradley A. Smith and Stephen M. Hoersting, Executive Director of the Center for Competitive Politics, have been frequent critics of the FEC for engaging in overly aggressive, anti-privacy enforcement theories, and for infringing on First Amendment rights of free speech. The arrogance of political figures, particularly incumbents with the benefits of a term in elected office, regarding campaign contributions can be summarized by these two intractable, vulgar and cynical aphorisms: 1) ‘We’ll take all the money you got . . . and then some’; 2) ‘Screw the FEC!’

The central arguments of the two primary schools’ of thought on campaign finance reform, disclosure v. privacy, the key case is McIntyre v. Ohio Elections Commission. This case invalidated a state law requiring the election related communications include the sponsor’s name and address. However, the McIntyre Court forgot that the distinction cuts both ways for while disclosure required by Ohio’s unconstitutional law was arguably “especially intrusive,” it was also “especially informative.” If the intrusiveness of contribution disclosure is lessened for the fact that it provides minimal information, the information argument in favor of disclosure must weaken in kind, in other words—privacy trumps disclosure. The McIntyre Court’s effort to distinguish the two positions ignored the other side of the cost-benefit balance.
Critics of contribution disclosure contend that it provides much less information than was required by the Ohio law. *McIntyre* struck down that law as inadequately useful to overcome the ubiquitous ‘right to privacy.’ On this point, Elizabeth Garrett, representing the conventional wisdom of the academic community, noted that in order for the support of a contributor to provide a helpful indication for a voter, at least the voter must correctly associate the contributor’s ideology with the recipients, and must be able to learn of the contribution expediently.\(^{26}\) If we hypothetically contrast mandatory disclosure of Mrs. McIntyre’s name on her pamphlets with the mandatory disclosure of her contribution to Senator X, the Ohio law fulfills these conditions better than does contribution disclosure. In fact, contribution disclosure fails both tests; so the argument goes.

Furthermore, the conventional wisdom among many academics who hold views on election law is that disclosure of a campaign contribution only aids a voter who correctly associates the contributor’s identity with some ideological position and then correctly connects that position with that of the candidate. This is easier said than done. First of all, the information argument for campaign disclosure assumes that the individual names and addresses in a list of modest-sized contributions will be of critical importance to voters.\(^{27}\) Regardless, if these dubious suppositions were true, those voters would also have to know what Mrs. McIntyre considers in order to represent any inference at all in relation to her campaign contribution. Furthermore, it is improbable that even wealthy or famous individual contributors can easily be associated with ideological positions.\(^{28}\) If a voter both knows who Mrs. McIntyre is and identifies her views properly on issues, her campaign contribution to Senator X shows her support, but says little about the
fundamental motivation for that support. A voter still can only presume whether Mrs. McIntyre and Senator X in fact have the same opinion on any particular subject, and whether ideology really initiated the campaign contribution at all.29

In the next section of this Article, the conventional wisdom of the academy following the McIntyre paradigm disintegrates when a big money donor like Mr. Peter Paul is actively solicited by a powerful and popular ex-president of the United States to fund his wife’s cash-strapped senatorial campaign. This seemingly simple scenario regarding the public’s right to know who contributed to a political campaign has so far devolved into a convoluted, frustrating and fruitless seven year shell game where Senator Hillary Rodham Clinton tells the American public: ‘Guess how much Mr. Paul contributed to my campaign if you can.’

II. The Case: Peter Paul v. The Clintons

Business mogul, Peter Paul, in his landmark campaign finance disclosure case Paul v. Clinton, et al. (S. Ct. CA 2001), contends that Sen. Hillary Rodham Clinton (D-NY) executed the biggest campaign-finance fraud in the history of American politics. Peter Paul, as recently as Dec. 2007, filed a second complaint with the Federal Election Commission charging the Democrat senator with submitting a false report – for a fourth time – that hides his personal donation of a multi-million dollar Hollywood gala and fund-raiser that helped put her in office.30

Characterizing the case as “Hillary’s Chappaquiddick,” Paul is trying to air his charges amid virtually no coverage by the mainstream media by producing three different
documentaries, including the January 2008 release of a revealing documentary called, “Hillary Uncensored.” This fascinating DVD narrates his short, volatile political relationship with the Clintons and his subsequent protracted court case of seven years in his yeoman’s efforts to bring transparency to campaign finance reform. Peter Paul hopes, despite the virtual unison blackout by the mainstream media, that his documentary on Senator Clinton will have the kind of election-season buzz generated by liberal icon, Michael Moore’s “Fahrenheit 9/11.” Also, a website, the “Hillary Clinton Accountability Project,” documents his accusations and offers a virtual clearinghouse of information detailing the facts of his case. Paul contends, “I am exposing the frauds Hillary directed, and I witnessed, that won her seat in the Senate on her march to the White House,” and “It has become my penance to warn the American people of the real threat to our republic posed by this power-hungry sociopath” as cited in a series of revealing editorials by writer, Art Moore and published in the well-regarded Internet political journal, WorldNetDaily.com by founder and CEO, Joseph Farah.

Paul insists Clinton’s new amended report, finally acknowledged his contributions but falsely classified them as being from his companies and from his business partner, Marvel Comics creator Stan Lee, instead of from him as personal gifts. According to federal law and FEC guidelines Paul contends Clinton should have refunded the money, because it was intended for Hillary Clinton’s national senatorial campaign, and the limit for such donations at that time was $25,000. Represented by the public-interest law firm U.S. Justice Foundation, Paul also alleges, in a civil suit, former President Bill Clinton reneged on a $17 million deal to promote Paul’s Internet businesses, causing one of his public companies to collapse by diverting his Japanese partner’s investments. Paul
claims he was asked to fund the Hollywood event in exchange for the former president agreeing to be his “rainmaker” in his business venture with comic book icon, Stan Lee.

A. The Prologue

The Hollywood bash

The charges in the FEC filing and civil suit arise from a lavish Aug. 12, 2000, event at a private Brentwood estate that featured tributes to the Clintons from A-list actors such as Gregory Peck, Jack Lemmon, Michael Douglas, Goldie Hawn and John Travolta, topped off with performances by Cher, Stevie Wonder, Diana Ross, Paul Anka, Toni Braxton, Patti LaBelle, Melissa Etheridge, Sugar Ray and Michael Bolton. But after a series of unflattering articles published in the Washington Post splashed reports of Paul’s 1970s criminal convictions accusing the senator of being soft on crime, Sen. Clinton suddenly and immediately moved to officially distance herself from her major donor just five days after the “Hollywood Gala Salute to President Clinton.”

Paul contends the Clintons were fully aware of his past legal problems, pointing out he was vetted more than eight times by the Secret Service. Under the Carter administration, he was convicted for cocaine possession and an attempt to bilk Cuban dictator Fidel Castro of $8 million. He ascribes that to politics, arguing he was embraced by Ronald Reagan’s kitchen cabinet, which “realized the problems I had were more related to being gung ho about removing Castro” than any overarching criminal activity. While still on parole, he said, he worked directly with Chief Justice Warren Burger and visited President Reagan in the White House. In 2001 he pleaded guilty to one count of violating
Securities and Exchange Commission regulations on the trading of his stock after being extradited from Brazil, where he spent more than two years in prison.

Despite Paul’s chief role in funding and organizing the star-studded event and the hours she spent with him in conversation at two previous fund-raisers, at the gala and the next day at the house of actress Barbra Streisand, the New York senator publicly insisted she barely knew him, declaring, “We will not be accepting any contributions from [Peter Paul].” But Paul contends the campaign’s latest amended FEC report proves her pre-election promise was a “cynical lie.” “Hillary Clinton made a vow to the voters and to (senatorial opponent) Rick Lazio that she wouldn’t take money from me to avoid my being a political issue,” Paul said. “She continues to hide my role as her biggest contributor for political reasons. The federal election law says she can’t lie about my contributions for political reasons. She is continuing to violate the federal election laws,” said Paul.

Paul says the Hollywood event cost close to $2 million. The government acknowledges it cost more than $1.2 million to host and raised $1 million in “hard money” contributions. In addition, Paul claims, the fair-market value of the entertainment he provided amounted to another $1 million in contributions. He argues that since Sen. Clinton reported the value of gala photographer Annie Liebovitz’s contributions to the event, it’s impossible for her to justify not reporting the value of the performances of Cher, Diana Ross and the others used to raise hard money for her campaign. “That is a minimum of $1 million in fair market value for their collective performances at the concert that she witnessed and knows remains unreported,” Paul
asserts. But New York Senate 2000, in its first report, declared only $366,000 to the FEC.38

Paul charges Sen. Clinton not only knew of the actions taken by her treasurer Grossman, she directed those actions and others in violation of federal campaign statutes and regulations. Then, he contends, she helped cover it up through misleading the FBI investigation that led to the indictment of her former finance director, David Rosen, on criminal charges related to the reports. Rosen, Paul emphasized, was indicted for actions for which Grossman now has admitted responsibility.39 Paul argues that while Rosen was acquitted in 2006, the trial established, through government prosecutors and FBI witnesses, that Paul contributed more than $1.2 million of his personal funds to Sen. Clinton’s campaign in an attempt to persuade President Clinton to become a spokesman for his businesses after leaving office. Paul asserts Grossman, de facto committed perjury in his testimony at the Rosen trial by stating he did not know the event cost over a million dollars. “He now admits he not only knew it cost over a million but he intentionally hid that fact from the FEC.”40

‘Reporting violation’

Ian Stirton, a spokesman for the FEC, told WorldNetDaily he could not comment on the allegations in Paul’s upcoming complaint, but he downplayed the actions for which Clinton’s group and treasurer were fined, calling it a “reporting violation” that did not result in any gain for the campaign. Stirton said the law at the time required joint fund-raising groups such as New York Senate 2000 to report to the FEC both federal and non-federal receipts. (The FEC later abolished joint fund-raising committees). Even though
the non-federal funds did not concern the Federal Election Commission, the spokesman continued, they still had to be reported to the FEC. That resulted in Grossman agreeing in the conciliation deal to pay a civil fine of $35,000 and to amend the false reports.\textsuperscript{41}

Paul’s donation was considered a non-federal contribution, Stirton explained, and Clinton’s treasurer, “for whatever reason,” did not report it. But Paul contends that the issue fundamentally in this case is the public’s right to know who a major candidate’s contributors are and how much they gave. “The reason Hillary did not report it is clear,” he said. “She vowed she wouldn’t take money from me; how can she report she took more than $1 million from me without admitting she lied to get elected?” Paul points out that FEC spokesman Bob Biersack testified at the Rosen trial that Congress’s fundamental purpose for FEC laws was to provide the public with complete and accurate information on how a campaign is run, who funds it and how much the donors give.\textsuperscript{42}

Sen. Clinton violated that purpose, Paul claims, by hiding his leading role in contributing to her election. “If she is not held accountable she will continue to hide the truth from voters in her current campaign,” he asserted. “I challenge anybody to read the general counsel’s report from the FEC and not decide that the Clinton campaign has been lying and falsely accusing me of lying since I filed my complaint,” he continued. The fourth amended report, submitted by Grossman attributed contributions of $838,000 to Paul’s holding companies, Paraversal and Excelsior, rather than to Paul personally, and $225,000 to his business partner Stan Lee, creator of Spiderman, the Incredible Hulk and others,\textsuperscript{43} despite Lee’s denial under oath.
Paul argues the federal government, in three different instances, has established the companies were alter egos for him personally, meaning he personally gave the money to Clinton’s campaign. “I signed the checks, yet Hillary’s campaign refuses to disclose that simple fact in its reports, undermining the right of the voters to know the truth,” he said. Former Clinton aide Dick Morris, now a chief critic, believes that had Sen. Clinton reported accurately the cost of the event, she would have had almost $1 million less money to spend. “This extra hard money was pivotal to her ability to finance her 2000 Senate campaign,” he said in an editorial. “I’ve worked with Hillary: She’s a master of detail,” Morris argued. “A decision to underreport the costs of an event like the Hollywood extravaganza by almost three-quarters of a million dollars could not possibly have been made without her knowledge and approval – probably, at her direction.”

**Confronted on camera**

Sen. Clinton was confronted about Paul’s contributions on camera in 2001 by ABC News investigative reporter Brian Ross but refused to comment. Since then her only comments to the media about the case have come through lawyers. After her finance director Rosen was indicted and tried, Clinton said through her lawyer David Kendall: “[Mrs. Clinton’s] Senate Campaign Committee has fully cooperated with the investigation. New York Senate 2000 properly reported all donations in 2000.” But Paul points out that after the FEC settlement with New York Senate 2000 forced it to admit omitting more than $721,000 from its reports, Kendall suddenly was replaced by attorney Mark Elias as a spokesman for Clinton’s campaign. “No explanation was given for Kendall’s four years of false statements to the media,” Paul said.
B. The Quid Pro Quo

Paul, in his pleadings and to this author, repeatedly proclaims that he was expressly asked by former President Bill Clinton to fund the Hollywood fundraiser event for Sen. Hillary Clinton in exchange for the former president agreeing to be his “rainmaker.” Senator Clinton’s intent to hide Paul’s identity as her largest contributor was reflected in her joint fundraising committee’s FEC reports regarding Event 39, which falsely listed Stan Lee Media, Inc. as the event’s primary underwriter. No contributions at all are attributed to Paul, the identical falsehood reported to the public through the media. The cost of the event was also underreported, since Senator Clinton clearly knew differently. Senator Clinton either deliberately withheld the true information from New York Senate 2000 – which is the same crime for which David Rosen was indicted in 2005 – or the joint fundraising committee aided and abetted Senator Clinton’s intent to deceive the public.

It should be noted that the January 30, 2006, amended report persists in obscuring Peter Paul as the source of in-kind contributions for Event 39, through the falsehood of attributing $225,000 (a portion of the $1,240,972 figure determined by the Commission to be the true cost) to Stan Lee individually. This conflicts with the Commission’s finding that the event was funded almost entirely by Paul. The amended report also lumps together under one figure, $838,902, two corporate entities – Paraversal Inc. and Excelsior Productions. Not only is this *prima facie* illegal, but no member of the public searching for donations by “Peter Paul” to Senator Clinton’s campaign would have any clue that this figure represents money he spent on her campaign. Most glaringly, by
failing to designate this sum as an “in-kind” contribution, the report makes the sum appear to be expenditure by the campaign, rather than a donation to it. This conforms to Senator Clinton’s desired falsity, conveyed through the Washington Post, that Paul was paid for his services. The remaining $177,070 of the $1,240,972 is unaccounted for. The report is also defective in other ways, as, for example, by not breaking down Paul’s in-kind contributions by expenditures, since in-kind contributions are required to be shown as both donations and expenditures.51

The Commission has taken no action against New York Senate 2000 for failing to comply with the conciliation agreement. Indeed, the Commission’s actions, in allowing this false report to serve as consideration for Senator Clinton’s and other’s immunity from further investigation and enforcement action, would lead any reasonable person to conclude that the Commission is colluding with Senator Clinton in defrauding the public. It is incumbent upon the Commission to set aside the conciliation agreement, re-open its investigation, and demand compliance with the FECA. As the prosecutor in the Rosen case told the jury in closing argument: “The very function of the FEC was willfully and knowingly obstructed by the defendant in this case.”52 The Commission ignored clear evidence of Senator Clinton’s and her agent’s solicitation, coordination, and acceptance of Paul’s in-kind expenditures.

Paul set forth in full in his Supplemental Declaration in his California civil case against the Clintons the facts demonstrating how he was solicited by President Bill Clinton, Governor Ed Rendell (D, PA), Hillary’s senatorial campaign spokesman, James Levin, and Hillary Clinton herself to support her first senatorial campaign, how his expenditures were coordinated by Senator Clinton’s agents, particularly James Levin and David
Rosen, and Senator Clinton’s knowing acceptance of them which Paul incorporates in full his Supplemental Declaration and its supporting exhibits. Paul’s account also describes Senator Clinton’s coordination of his expenditures as to the largest vendor – Gary Smith and Black Ink Productions – and her insistence that he use Smith rather than Dick Clark Productions. Paul met and spoke at length with the Commission’s investigator, relaying to the Commission all of this information, which was based on his own, first-hand knowledge. In particular, Paul explained that his willingness to underwrite Event 39 was absolutely contingent on the President’s acceptance of his future employment offer; a clear demonstration of solicitation for Paul’s expenditures by Senator Clinton’s authorized agent. The Commission chose to ignore Paul’s report to the extent that other sources did not provide corroboration.

The Supplemental Declaration is supported by corroborating testimony from the Rosen Trial. Additionally, Levin testified that the idea for Event 39 originated with Kelly Craighead’s requested meeting with him, David Rosen, and Aaron Tonken in Chicago on June 23, 2000. At that meeting, Senator Clinton’s agents conceived of the idea for Event 39, and Levin was detailed by President Clinton to not only solicit Paul to pay for it, but to stay in close contact with Paul to oversee his expenditures and efforts in producing the event.

C. The Treachery (The Clintons Being the Clintons)

In an essay I wrote on Sen. Hillary Rodham Clinton for WorldNetDaily, I looked through the annals of history to find what I referred to as her “precedent figure,” a historical figure of some note that had similar characteristics and worldview in order to do a comparative analysis of this well-known political figure, who has the dubious
distinction as the most polarizing figure in current American politics. I found one of Senator Clinton’s precedent figure to be that infamous political philosopher, Niccolo Machiavelli, whose treatise on political statescraft *The Prince* (1513), originated the idea of separating moral considerations from legal and political concerns—“The end justifies the means.”

Sen. Clinton’s actions regarding her repeated failure accurately disclose her campaign contributors, as contended in the pleadings of *Paul v. Clinton, et al*, violated the following U.S. statutes:

2 U.S.C. Sec 441a (a)(7)(B)(I) provides:
Expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate. (Therefore Peter Paul’s expenditures cannot be deemed to be a “soft money” contribution)

(f) No candidate shall knowingly accept any contribution in violation of the provisions of this section...

(a)(1)(A) No person shall make contributions... to any candidate with respect to any election for Federal office which, in the aggregate, exceeds $2,000.

2 U.S.C. Sec 437g(d)(1)(A)(I) provides:
Any person who knowingly and willfully commits a violation of any provision of this act which involves the making, receiving, or reporting of any contribution, donation, or expenditure (I) aggregating $25,000 or more during a calendar year shall be fined under Title 18, or imprisoned for not more than 5 years, or both...

Regarding the issue of corruption by revealing campaign contributions to public examination, Buckley states the government advances its efforts to “deter actual corruption and avoid the appearance of corruption.” This is a different proposition from the information rationale, which posits that contributions allow predictions about
candidates’ opinions on the issues. Conversely, it has problems comparable to the information rationale that make it weaker than normally thought before.

In customary campaign finance jurisprudence, stopping corruption is the most preferential justification for regulation. However, “corruption,” as a rule, takes on the precise sense of a direct connection between candidate and contributor. A “quid pro quo: dollars for political favors.” A broader and less precise formulation of the corruption interest extends from worries about “quid pro quo” swaps to a more general concern that elected officials will be too beholden to contributors; and that candidates are violated by certain forms of campaign financing. A better phrase for this broader understanding of corruption is “excessive influence.”

The evil is distinct; many see disclosure as the solution. They assume that well informed voters will penalize a candidate that uses “dirty” money. When analyzed in light of present day law and technology, this rationale for disclosure displays two major flaws. First, the corruption argument, like the information argument, fails to justify disclosure of medium-sized contributions. The majority of campaign donors’ contributions are too small to merit corruption argument. Their insignificant power poses little chance of quid pro quo corruption. One of the lawyers for the Buckley plaintiffs wrote, a few years prior to the decision, “it is flatly unbelievable that a contribution of [$100] could have an undesirable impact.” Buckley recognizes that many small contributions “are too low even to attract the attention of the candidate, much less have a corrupting influence.” To a certain extent, serving as one side of a corrupt trade or influencing the candidate particularly, the average small contribution merits only a perfunctory thank-you card and ensuing demands for more money.
Second, even when somewhat larger sums are contributed, very few voters actually give much consideration to the nature of candidates’ donors when deciding whether to support them or not. The usefulness of disclosure as a system to discourage corruption collapses if its theoretical enforcers, an irate public, do not play their assigned role.

Of the many conventional reasons that disclosed campaign contributions influence such a small number of voters, the most evident resembles the challenges just discussed in association with the information interest of campaign finance disclosure. Raw data about contributors isn’t difficult to obtain, but is difficult to process and understand. The implications of any supposed “dirty” campaign contribution can be understood merely in the milieu of a candidate’s complete campaign finance profile. “Excessive” influence is also in the eye of the beholder. Different candidates may be equally indebted to their donors; voters will often find it difficult to distinguish between candidates on this basis.

More essentially, conscientious voters seeking to decide which candidate to support must balance corruption concerns against factors that will often be more important to them. As David Adamany and George Agree ably analyzed the problems of campaign disclosure in an important law review article over a quarter century ago:

The theory of disclosure insists that voters will reject candidates at the polls when disclosure shows too much spending, misdirected spending, unsavory or disfavored financial sources, or excessive contributions. In elections, however, a citizen cannot express himself [or herself] solely on campaign finance practices; his vote for a candidate is a decision about many other issues as well . . . .

[V]oters do not and should not give campaign finance practices heavy weight in
making ballot choices, and therefore candidates rarely need fear that disclosure of such practices will result in political penalties at the polls.\textsuperscript{67}

This is not an undesirable public apathy. Rather, it may stand for rational prioritization by the voting public. If the electorate favors one candidate’s substantive issue positions, anxiety with his or her campaign finance practices singularly may not (and possibly should not) change that inclination.\textsuperscript{68} In addition, disclosure is feasible only if we presuppose that sunlight leads voters to act in response in some manner we consider right. But there are several additional statements well-established in this one: voters must be able to learn something constructive, and they must decide to take action on it.

Concerning enforcement mechanisms of the FEC, the third campaign interest \textit{Buckley} found in disclosure, “gathering the data necessary to detect violations of the contribution limitations,”\textsuperscript{69} can be dispensed with totally. First, the Court has discarded campaign finance disclosure requirements intended at preventing associated illegal political activity, such as libel or deception, because of their overbroad application.\textsuperscript{70} Even if they could be modified more narrowly, the idea that a campaign would fracture the rules but then devotedly report the breach is “silly.”\textsuperscript{71}

More notably, enforcement may require reporting, but not true public disclosure of campaign contributors. Although the two are often conflated,\textsuperscript{72} it is important to distinguish between them. Disclosure can be defined as the government’s release of information about political contributions to the general public. It is conceptually separate from reporting, when the law required donors or recipients to tell the government about contribution so that the government, without necessarily releasing the information, can monitor compliance with the law.\textsuperscript{73} Senator X could comply with reporting of campaign
contributions but not disclosure. Other personal information is reported to the government, but not disclosed to the public, in income tax returns and census forms. Balancing the government’s interest in campaign finance enforcement adds no validity to the pro-disclosure side of the scale.

D. The Case: Where the Case Stands Now?

Meanwhile, in his civil lawsuit, Paul prepared a response to Sen. Clinton’s motion to dismiss the case based on California’s anti-SLAPP law, which protects politicians from frivolous lawsuits, but also protects the public seeking transparency in the political process from retaliatory suits by politicians. Peter Paul appealed on Dec. 27, 2007, filing a second complaint that incorporated certain key issues previously discarded by President Carter, and later, President Clinton appointed lower court judges.

A brief filed by Mr. Paul on Jan. 11, 2007 in a civil fraud case alleges Sen. Hillary Clinton engaged in criminal misconduct, citing a violation of federal code that carries a possible five-year prison sentence. Business mogul Peter Franklin Paul, who claims he was the largest contributor to Clinton’s 2000 campaign, alleges the New York Democrat solicited and accepted his illegal contribution of more than $1 million and falsified statements to the Federal Election Commission.

Paul’s attorney, Colette Wilson of the U.S. Justice Foundation, argues in the brief filed with the California Court of Appeal that Sen. Clinton’s actions violated Title 2 section 437 of the U.S. federal code, which states:
Any person who knowingly and willfully commits a violation of any provision of this act which involves the making, receiving, or reporting of any contribution, donation, or expenditure aggregating $25,000 or more during a calendar year shall be fined under Title 18, or imprisoned for not more than 5 years, or both.  

The Clintons’ longtime attorney, David Kendall, in an interview with WorldNetDaily recently that he had not seen Paul’s filing, but he offered a brief response to the charge Sen. Clinton violated the criminal statute. “Any such allegation is totally false and totally unsupported,” he said. Arguing for the strength of his case, Paul asserted “even David Kendall can’t argue with the application of the law.” “He’s going to try to use some magic tricks to divert attention from it, but Hillary Clinton has never denied any of my allegations,” Paul told WorldNetDaily. “Even when she filed a sworn declaration, which is her only comment about my allegations, there was not one denial.” Paul called the declaration “a new first in non-denial denials, in which Hillary Clinton has extended her trademark poor memory to stating that if she doesn’t remember something happening, it didn’t happen.” Nowhere in the declaration, Paul argues, “does she say Peter Paul was a liar.”

Paul’s new brief is an appeal pertaining to his civil fraud suit alleging that President William Clinton destroyed his entertainment company, Stan Lee Media, to get out of a $17 million deal in which the former president promised to promote the firm in exchange for Paul’s massive contributions to Sen. Clinton’s 2000 campaign. The businessman claims he was directed by the Clintons and Democratic operatives to foot the bill for a
lavish Hollywood gala and fund-raiser prior to the 2000 election that eventually cost about $2 million.  

The brief, filed Jan. 11, 2207 by petitioner Peter Paul, is an appeal of an April 7, 2006, decision by Los Angeles Superior Court Judge Aurelio Munoz, granting Sen. Clinton her motion to be dismissed from the case based on the state’s anti-SLAPP law, which protects politicians from frivolous lawsuits during their election campaigns. But in the brief, Paul’s attorneys argue Sen. Clinton violated the federal code and, therefore, according to the law, would not be covered by the anti-SLAPP statute.  

In his April 2006 ruling, Munoz scheduled a trial to begin March 27, 2008, but it was delayed when, in September, he ruled that the discovery process might require former president Clinton and his wife to testify under oath. This meant the trial could not proceed until the anti-SLAPP appeal is resolved. Paul is asking that in the event the anti-SLAPP order is not reversed, the appeals panel allow him to proceed with limited discovery. Paul’s current appeal will further delay the trial date. Wilson told WND that she estimated oral arguments for the appeal might not take place before fall. Paul said he finds it “perplexing” that the Federal Election Commission, in all its investigation and analysis of the funding of the Hollywood gala, never referred to the specific statute cited in his brief. In January 2006, responding to a complaint by Paul, the FEC issued a $35,000 fine to a joint fund-raising committee that included Clinton’s campaign, New York Senate 2000, for failing to accurately report $721,895 in contributions from Paul.  

In May 2005, Clinton’s former top fund-raising aide, David Rosen, was acquitted for filing false campaign reports that later were charged by the FEC to treasurer Andrew
Grossman, who accepted responsibility in a conciliation agreement. Paul points out the trial established his contention that he personally gave more than $1.2 million to Sen. Clinton’s campaign, and his contributions intentionally were hidden from the public and the FEC. He contends his new appellate brief is significant. “This is the first time a court of competent jurisdiction – not a grand jury or prosecutor – will be reviewing a charge of criminal conduct against Hillary Clinton,” he said. Paul acknowledged, however, that the appeals court could rule in his favor without a finding on the alleged criminal violation. Wilson said that if the court does find Sen. Clinton engaged in criminal conduct, the finding would not compel the FEC to take action. But it would be “very persuasive,” she said, and the FEC could refer the case to the attorney general for a criminal indictment.

III. Instituting Real and Present Punishment for Violators of Campaign Finance Disclosure Laws

A. The Academic View

The title of this Article and section, as I mentioned before at the beginning of this Article I borrowed the tenor of the comes from the phrase, “real and present punishment” in U.S. Supreme Court Justice Oliver Wendell Holmes’ opinion in Schenck v. United States, concerning speech against the draft during World War I:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the United States Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort
that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right.\textsuperscript{91}

This position is extreme to the average American’s view but is a mainstream academic concept; in particular, the idea that Bruce Ackerman and Ian Ayres’s recently suggested replacing mandatory disclosure of contributions with mandatory anonymity has also generated debate, but ironically neither the authors nor their critics emphasize privacy considerations in their arguments.\textsuperscript{92} If “We the People” overwhelmingly support campaign finance disclosure, then silence about its privacy costs is nearly universal, except of course the widespread support of privacy in the academy.\textsuperscript{93}

\textit{Buckley v. Valeo} supported the disclosure of individual campaign contributions on the contention that the benefits of campaign finance disclosure outweigh the costs of individual privacy considerations.\textsuperscript{94} However, the understanding of these benefits and costs in 1976 must now be viewed in light of new technology, heightened concern for privacy, and the down and dirty realisms endemic in campaigns of modern times.

Statistics on campaign contributions show that very few American adults, about 10 percent, even make political contributions of any amount.\textsuperscript{95} The average political campaign contributions are modest donations not amounting more than a few hundred dollars.\textsuperscript{96} However, much larger amounts of campaign contributions are given by entities like corporations, unions, special interest groups,\textsuperscript{97} and unlimited independent expenditures by millionaires.\textsuperscript{98} This does not set aside in identical manner the privacy concerns of numerous, small checks written by singular contributors to a campaign for causes that they personally support.
The guidelines of the Federal Election Campaign Act ("FECA") proscribe that candidates for federal office, and PACs that contribute to such candidates, must file regular reports about the contributions and expenditures they have made. Also, candidates must cite singular political donations made over $200 in one election cycle, including their address, occupations and employer. PACs are required to designate the same information about individuals who contribute over $200 in any calendar year. Since 1980 the $200 limit has not changed since 1980, when it was raised from the $100 level originally set in 1974.

The states are even more strict regarding their disclosure laws for nonfederal elections. The majority of states require campaigns to list contributions below the federal threshold of $200. Some states set disclosure requirement as low as $20 or $25, and several other states require reporting of all contributions, despite their amount. Conventional wisdom holds that most government election agencies pursue their disclosure obligations with zeal. In their own publications, the FEC has stated that providing reliable information about campaign contributions “perhaps the most important of the FEC’s duties.” The FEC publishes a large directory of federal and state agencies that give pertinent information about “money in politics,” including names and financial data on campaign contributions. The FEC’s Web site is well-constructed and has a fairly elaborate and user-friendly search engine where the public can easily access any person’s reported federal contributions that can be searched under several categories including name, city, state, zip code, employer, or occupation. According to one comprehensive survey conducted in 2007, forty-six states and four major cities also provide online public access to campaign finance materials.
Regarding the benefits of disclosure, *Buckley* promotes the idea that disclosed campaign contributions “allows the voters to place each candidate in the political spectrum more precisely.” This characterization of campaign finance law emphasizes the alliances of individual financial backers is telling about a candidate’s likely political ideology. In a similar manner, public endorsements of special interest organizations, labor unions, political actions committees (PACs), or other elected officials can also be determine. While this debate holds true for very large contributions, critics contend that it makes little sense regarding disclosure for small, individual contributions that amount to less than a few hundred dollars.

Although it appears hard to argue with the government’s interest in upholding the public’s right to know about political candidates’ views on issues of public concern, the *McIntyre* Court did just that. Ohio offered a parallel interest to defend its ban on anonymous electioneering. “The simple interest in providing voters with additional relevant information,” the Court said, “does not justify a state requirement that a writer make statements or disclosures she would otherwise omit.” The *McIntyre* Court admitted that Ohio’s campaign financial disclosure laws might be helpful to voters, but deemed this benefit insufficient to remove the right to privacy.

*McIntyre*, at times utilized intellectual jujitsu to differentiate the political leaflet disclosure requirement from campaign finance disclosure rules. However, the telling difference, according to McIntyre, was the fact that a political leaflet disclosed more private information than disclosure of a political contributor (or, presumably, a financial expenditure):
True, in another portion of the Buckley opinion we expressed approval of a requirement that even ‘independent expenditures’ in excess of a threshold level be reported to the Federal Election Commission. But that requirement entailed nothing more than an identification to the Commission of the amount and use of money expended in support of a candidate.  

At the risk of over stating their point, the Court has only a plausible argument. The introduction of Mrs. McIntyre’s “personally crafted” political pamphlet may indeed percpitate stricter privacy costs than disclosure of the type of contribution one might make to Senator X’s campaign.

**B. The Libertarian View: Justice Clarence Thomas’ Dissent in McConnell**

Regarding the libertarian view of campaign finance disclosure, one of the more comprehensive analyses is Justice Clarence Thomas’ twenty-five page dissent in McConnell. Here, Justice Thomas argues that a shift away from a post- *Buckley* law toward stricter constitutional restrictions on regulation of campaign contributions. This paradigm would remove the contribution-expenditure dichotomy by inserting both under strict (or perhaps “exacting”) scrutiny of constitutional proof. Therefore, Thomas’ view could be summed as: more federal regulation of campaign disclosure equals less freedom of speech.

The customary adaptation of this libertarian model would abolish contribution limits and require full, open and immediate disclosure of all campaign contributions. Supporters of the libertarian view regarding campaign finance disclosure laws understand this construction as comparable to a free market (i.e., laissez faire), where disclosure
grants market players the information they require to put together the decisions they need to make. By mandating disclosure, the government sets the stage that voters (buyers in the political marketplace) have precise information as regards to the campaign finances of a politician running for office (the prices and contents of the products they purchase in the political marketplace of ideas). As former Representative Tom DeLay (R, Texas) characterized it, the libertarian model would “let the voters decide through instant disclosure,” allowing them to assess candidates “while [the candidates] are collecting their money and spending it.”

For its advocates, their plan contains a fatal contradiction. Applying strict scrutiny means that disclosure, too, must withstand the highest level of constitutional proof. The structure removes the Buckley distinction between the fact of a campaign contribution and its size, but only does so by raising both up to a high level of constitutional protection. Moreover, this consequential balance leads to reoccurring concerns about privacy costs that are not utilized under Buckley. It is doubtful that widespread disclosure of small or medium-size donations would survive the strict scrutiny test the libertarian model predicts.

The libertarian narrative isn’t as simple as it sounds because the unrestricted campaign contributions that would be allowable under the libertarian model include an unforeseen circumstance. If campaign contribution limits were unconstitutional on First Amendment free speech grounds, an affluent donor could not write a million-dollar check to a political candidate. Because bribery and information interests would become much stronger, campaign finance disclosure would do better in the case of very large contributions. The possibility of campaign donors extracting a quid pro quo is much
greater if they have contributed enormous amounts of money into a political campaign’s coffers. Theoretically, this increases the corruption factor. A small list of large political contributors, in contrast to a lengthy list of small donors, provides information that is together more accessible and more relevant for the voting public. Added to this libertarian structure, intended to make campaign contribution limits exceedingly more difficult to impose, there would be no clear, or less invasive, option to campaign finance disclosure.

By applying the libertarian structure to permitted large contributions, using the highest constitutional standard of proof, strict scrutiny, adds weight to the privacy side of the balance; in this sunlight, government interests favor the large donor. In such cases, state interests, in an attempt to protect its own, can surmount even the strictest scrutiny; large campaign donations increase the corruption. Under a libertarian model, the corruption probability of a $200 political donation is less simply because the donor has the choice to give $20,000. The opposite is correct. $200 becomes even less important to a political figure that has the talent to collect money from more generous campaign contributors. At the lower end of the donation amount government interest continue only because a large group of small contributions totals a big sum. Politicians set up dummy accounts, whereby contributors with deep pockets can distribute the money through the households of several individuals, often unbeknownst to them. Defense for contributions increases as the libertarian model favors privacy above even the Buckley model. Yet, as campaign contributions rise, the scales tip toward disclosure.118

This irregular, bifurcated consequence illustrates two points: first, the disclosure obligation at the libertarian structure’s foundation is incompatible with its original
argument, the high First Amendment importance of political contributions; second, disclosure should be assessed in the framework of a complete regulatory regime. At this time, the exclusion of contribution limits changes the Buckley analysis in several respects.

Richard Posner, a respected judge on the Seventh Circuit Court of Appeals in Chicago, and a prolific writer and legal philosopher in his own right, has long contended that the capacity of political contributors to protect data about themselves from others leads to inequalities in all types of daily relations with people who would react in a different way if they had full disclosure regarding campaign finances.\(^{119}\) I agree with judge Posner on this point wholeheartedly.

**C. The Conventional View**

Writer Trevor Potter, wrote an informative and balanced article for the Brookings Institution on the history of campaign finance reform.\(^{120}\) Potter chronicles that in recent years Congress passed three major additions to the federal campaign disclosure laws, including new electronic filing requirements;\(^ {121}\) disclosure requirements for so-called 527 organizations, or stealth PACs; and a number of extensive disclosure provisions in the Bipartisan Campaign Reform Act of 2002 (the Reform Act, or BCRA).\(^ {122}\)

The willingness to enact strong campaign disclosure laws is less singular than the political posturing on both sides of the aisle would have you believe.\(^ {123}\) For example, the next to-undivided public endorsement of disclosure theoretically speaking often disintegrates when awareness turns to exacting, often contentious issues. Disclosure requirements for candidate-specific “issue advertising,” campaign action on the Internet,
and expenditures by nonprofit organizations persist to cause substantial disagreement. Moreover, the government’s interest to enforce campaign disclosure requirements continues to be a hotly debated issue. Example, the examination of fundraising in the 1996 presidential election by the Senate Committee on Government Affairs (detailed in the Thompson Committee Report) chronicled a disconcerting, relentless culture of dodging disclosure requirements. The Supreme Court has frequently noted the skill used by political figures to circumvent the requirements wherever possible.

Campaign finance disclosure remains a fiercely debated aspect of election law. The Supreme Court’s jurisprudence on this issue is long, complex often incongruous. While the Court has generally upheld laws necessitating disclosure of campaign contributions and spending, it has ruled that disclosure can violate the First Amendment freedom of speech protections in certain cases: when it is applied to anonymous speech by individuals regarding ballot proposals; when it is viewed as producing strict regulatory burdens on the voter; or when its campaign finance disclosure affiliates citizens to politically provoked threats, intimidation, and retaliation.

**Future Issues**

The reappearance of the tried and true political strategy of “bundling” hard money (particularly in fundraising for presidential campaigns), possibly will result in new proposals for enforcement of existing bundling and carry out disclosure requirements for new disclosure or bureaucratic measures. In the main, proposals for more transparent campaign finance disclosure by individuals who work as fundraisers are likely to turn out to be more frequent.

BCRA’s changes notwithstanding, many calls for disclosure reform continue. Corporations and unions, whose political actions at this time go mostly undisclosed,
persist to be the subject of disclosure proposals. Additionally, critical disclosure proposals address telephone communications, get-out-the-vote spending (so-called street money), and “no disclosure, no deposit” rules. Furthermore, prominent is an encouraging development toward political candidates’ instituting of voluntary disclosure programs for their personal campaigns that exceed current law requirements. Following this trend, in the 2000 presidential election, several presidential candidates voluntarily disclosed information about their major campaign contributors.

George W. Bush, for instance, disclosed all of his contributors on his campaign website, in addition to the required FEC reports. Also, in the 2004 presidential election both President Bush and his Democratic challenger, Senator John Kerry, complied with that tradition. In conclusion, it is noteworthy that a number of the best advances in campaign finance disclosure have come from nongovernmental websites, as well as those sustained by watchdog and media entities, which use the information in the government databases but reformat them in ways that make the information more helpful to the public.

D. The Conservative View

Criticisms of campaign finance reform

The conservative movement of the political right is perhaps the most singular critic of so-called campaign finance reform. Besides arguments based on the First Amendment, campaign finance reform is frequently criticized by the right for its unintended consequences, including fewer competitive elections, securing the divine right of incumbency, and the opposition of political financing and grassroots political activism as a result of convoluted regulations.
Many conservative critics of campaign finance reform attest that CFR violates free speech and infringes on people’s First Amendment rights. The argument is that the rationale of the free speech clause of the First Amendment is the guarantee that people have the right to publish their political views. This original understanding of the constitution held that when the laws excluded people from advocating for or against political candidates by proscribing the content or the quantity of political campaign advertising, then these laws were in direct conflict with the constitutional guarantee of freedom of political speech.

Other conservative opponents of CFR have contended that amendments to campaign finance laws can and have initiated detrimental unintended (or perhaps intended) consequences. For instance, a number of political scientists and political commentators say that the advent of political action committees [PACs] helped accelerate the deterioration of political parties in the United States. As candidates find more creative means in their fund raising and secure access to campaign finance outside of party channels, conservative critics have noted (and decried) that this has devolved in lengthy periods of fund raising with little time for campaigning. Disclosure requirements may direct people to circumvent giving to political rivals, thus increasing campaign contributions to incumbents. Individual large donors may fear angering the current office-holder. Limitations on campaign contributions advantage incumbents, keeping them from an effective challenge.

Other conservatives argue that it is impossible to segregate money from political speech; political influence. Another case in point is the influence, power and control by 527s demonstrated in the 2004 elections like MoveOn.org, of the left, the Swift Boat
Veterans for Truth, on the right among many, many other political pressure groups spent nearly $400 million on manipulating the previous elections usually mercilessly criticizing either political candidates; in this case Sen. John Kerry and Pres. George W. Bush, respectively. However, the current campaign election of 2009 between Sen. Barack Obama and Sen. John McCain have no less vitriol from 527s or pressure groups as they did in previous elections and the amount of money poured into presidential campaign elections continues to amaze.

Critics of campaign finance regulation make strange bedfellows. Conservative interest groups, the National Rifle Association, conservative talk radio, the Christian Coalition, and liberal interest groups, AFL-CIO, the National Education Association, and American Civil Liberties Union, all favor a classic laissez faire approach to campaign finance limits.

Numerous political conservatives emphasize that campaign finance regulations are extremely complex, problematical and almost impossible to bring into compliance. Conservatives argue that limiting the amount and how money can be raised for political office disallows regular, politically unconnected citizens, from participating in the election process, especially from campaigning for elective office. Restricting political involvement to an exclusive, elite class who possess the financial, political and legal apparatus necessary to run for office; in contemporary political campaigns, legal and accounting expenses comprise a considerable proportion of the overall financial plan. Some conservative critics also contend that the extremely convoluted rules of CFR have the overall effect of discouraging involvement by dissuading citizens from even trying to enter the arena of political work or grassroots activism.
Another problem political conservatives have with CFR is the lack of direct evidence showing a correlation that campaign contributions actually affect legislators’ votes on issues of public policy. On this issue, studies by political scientists have found that contributions are usually driven by entrenched political ideology, philosophical mores and social relations.

As the chorus of political groups of all philosophical strips grows under the brave new world of campaign finance reform which invented an entire new class of political pressure groups called 527s, it is inevitable that one of these disparate groups would file a law suit on First Amendment grounds. That lawsuit occurred in February 2008, where a new group calling itself "SpeechNow.org" challenged FEC rules that infringe of the First Amendment rights of political action committees from collecting more than $5,000 annually from each contributor. SpeechNow.org contents that under the Free Speech Clause of the First Amendment that it as well as other so-called 527s have the constitutional right to collect unlimited donations to help elect federal candidates who hold their views on free speech. Only if it reaches the Supreme Court, and that Court is willing to remove the convoluted strictures of campaign finance reform, will we see change.

E. The Rational View: Peter Paul’s Plea to the Clintons

How did we get here? How did we descend into this abyss of violating political speech in America? Like the Garden of Eden, it all begain with such promise, such hope, such utopian ideas of progressivism, liberalism, egalitariansim and equality under the law. Where every vote would be counted equally and money would become increasingly less important by legislative fiat. Such lofty language of “giving a voice to the little guy”: an
open and transparent system where the public would know who contributed to every campaign and how much”; quid pro quo would be a thing of the past. McCain-Feingold (BCFA) would bring real reform and openness to the financers of political speech. Where did we go wrong?

Mr. Paul’s case can be summerized with these two questions: Please, Senator Clinton, tell America how much money I donated to your senatorial campaign? To the FEC, Mr. Paul asks: Isn’t your mandate from Congress to zealously enforce our federal campaign finance disclosure laws?

Below is a recap of the narrative regarding the political relationship between Mr. Peter Paul, Bill and Hillary Clinton. The DOJ Prosecutor, Schwager told Rosen’s jury that “…it was a felony to deny the people the right to know that Peter Paul gave more than $1.2 million to Hillary’s campaign. And it is a crime for a candidate or their agent to solicit and coordinate excessive contributions knowingly accepting more than $25,000.”

Below is a sequence of events that led to the case Peter Paul v. The Clintons, et al.:

Kelly Craighead and Jim Levin- agents of Hillary and Bill- conceived of the Gala Event 39, to coincide with the DNC convention, on June 23, 2000 after a Hillary fundraiser in Chicago when Hillary detailed them to vet my agent, Aaron Tonken who I had paid the expenses for him to supply Olivia Newton John to entertain the fundraising event at Howard Tulman’s apartment.

June 24, 2000- Jim Levin as an agent for President Clinton who was acting as Hillary, the candidate’s agent, called me in my office to solicit my underwriting and producing of the Gala fundraiser they conceived of the night before on Hillary’s behalf

June 25, 2000 Levin calls back saying he will be seeing President Clinton on July 4 weekend if I would pay for the event he will discuss my interests with Clinton- I say if Clinton will work with me (as both Hillary and Tonken personally advised
him from June 9 and in a limo ride with the President on June 16) I will pay for and produce event. (Levin confirmed in his Rosen trial testimony he called me June 24 and said he would meet with President and come and see me)

July 5, 2000- Levin visits with me in Los Angeles, vets me and my company. July 11, 2000 he arranges a conference call with Kelly Craighead he and Rosen in my office and Howard Wolfson on the phone where we discussed the $1.1 million budget and that I would pay at least $525k, and the structure of event- This is how Wolfson and Hillary knew two days after the event that the event cost more than $1 million as Hillary was quoted through Wolfson in the Washington Post)

July 14, 2000- Levin flew to Washington where he saw the President at Camp David and got Clinton to confirm he would accept my $17 million employment package for 1 yr of post White House rainmaking for SLM and my other company Mondo English. Levin called from Washington to confirm the deal.

Sunday - July 16, 2000 - Rosen and event producers have meeting at my house to begin deciding on printing and sending out 25,000 invitations etc- I begin paying for the event.

Monday, July 17, 2000- Hillary calls me at my office where Stan Lee and others are present to thank me for agreeing to pay for and produce the event and she discusses her role in helping produce and ensure the success of the event.( I video taped that conversation and the videotape was subpoenaed by the US Attorney for the Eastern Dist of NY in 2001 and withheld from every investigation, grand jury and the criminal trial of David Rosen until April, 2007 enabling the Rosen federal judge and prosecutor and the FEC and Senate Ethics Committee, and all Clinton apologists and media supporters to conclude there was no evidence that Hillary was involved in any direct way!)

August 12, 2000 - Hillary, Bill and Chelsea confirm at the Gala when I spent over 6 hours with them that we had a deal

August 13, 2000 - At a Clinton Library fundraising brunch at Barbara Streisand’s home, Chelsea spends 45 minutes sitting with me, my wife, Oto and Haim Saban describing the night before when she played Scrabble with her parents after the Gala and they were excited about working with us when they left the White House. Hillary introduced my wife to Barbara Streisand as the wife of the man who underwrote the Gala, Bill speaks to Oto about his agreement to share the $17 million employment package with me.

Aug. 13 - Tendo Oto and SLM make their deal for Asian partnership - Oto gives $5 mil and promises another $5-7 mil in November for the American joint venture…On Aug. 12 he had paid $27K to attend the federal fundraiser gala. Giving money was illegal. Attending was illegal. Since Oto had no social security number to check out when he showed up at the event with his camera crew, the
Secret Service said no way. Clinton had the Secret Service stand down, and Oto sat directly behind the president and first lady.

Aug 14 - Ed Rendell calls Peter Paul in a panic. Lloyd Grove is preparing a story for the WASHPOST about Paul’s felony record for “The Cuban Coffee Caper” two decades previous when he was an international attorney in Miami. Rendell tells Paul to deny he gave any money and just play along. Shortly after the warning call, Grove called.

Aug 15 - Lloyd Grove writes the story in the WASHPOST about Paul’s felony past from two decades previous involving the Cuban Coffee Caper and defrauding Fidel Castro of $8.7 million … Howard Wolfson vows that they would never take any money from Peter Paul

Aug 17 - Grove writes a second story about $2,000 given by Paul at Spago … Wolfson says they will return the money, and a check is immediately cut and sent to Paul … Wolfson actually admits Hillary knew the gala cost over a million dollars when he says to Grove on Hillary’s behalf that Paul gave no money to the event and that “it cost more than $1 million but was an in-kind contribution.”

Aug 18 - behind the scenes, while disavowing him in public, the Clintons write personal notes to Paul, dated Aug 18, and sent Aug 21, almost a week after the Washington Post disavowals, expressing their gratitude … Hillary: “We will remember it always”… Bill’s note… Even Chelsea got into the act.

Aug 24 - Campaign Finance Chairman David Rosen is directed by Hillary to send a fax to Paul asking for another $100,000 (actually, one of several faxes) as payment for the $150,000 pledge he made to host the unreported Spago lunch fundraiser for her (videotaped by Paul but never reported to the FEC according to the FBI)… Hillary had promised the money for the Working Families Party in New York … Paul will send no more money until he hears it face to face from Bill Clinton that they still have a deal (second document shows Gordon’s acknowledgement that it was “done”)

Sept. 22, 2000 - Clinton steps off AF-1 in Los Angeles (we have photo) and assures Paul that the deal is still a go … Paul has Steven Gordon send a stock transfer of $55K to the Working Families Party for Hillary… we can find no evidence that they ever declared that donation. If the Clintons were disavowing Paul in public, claimed he gave no money, and had no business arrangement with the President as claimed by Hillary, why would the President of the United States be meeting Paul in public as he stepped off AF-1? For what possible purpose? That’s not hard to figure out, is it?

Nov 7 - Hillary is elected.
Nov 13 - just six days after Hillary's election, an agreement for Venture Soft USA Inc is recorded in Illinois between Jim Levin, Clinton’s business adviser, and Tendo Oto … Levin was Clinton’s “eyes and ears” in dealing with Paul, got proprietary business information, and with Clinton’s knowing assistance stole the Japanese partner for their own deal.

Dec 2000 - Stan Lee Media collapses when Clinton’s interference with his business partner… the additional $5-7 million promised in November from partner Tendo Oto was not invested due to the Clinton/Levin interference by convincing Oto to renege on his promise and incorporate his US subsidiary with Clinton through his agent Jim Levin in Illinois instead of Hollywood, it will be proven that Oto’s money would have kept the company solvent until Clinton came aboard as he had promised Peter Paul.

Early 2001 - Paul discovers that the campaign has filed two fraudulent FEC reports, only reporting 366K for the cost of Event 39 … he spent over a million dollars on it. Paul hires Judicial watch in March, 2001 at the request of the US Attorney in New Jersey to proffer Paul’s evidence against the Clintons to 4 AUSA’s from New York, California and New Jersey.

June 18, 2001 - Paul files initial civil fraud lawsuit against the Clintons and several others for business fraud.

July 3 - Treasurer Andrew Grossman is served with the lawsuit that includes documentation for $1.6 million spent by Paul

July 11 - David Kendall accepts service for Hillary along with the exhibits that corroborate more than $1.6 million documented expenses paid by Paul as an in-kind contribution to Hillary’s campaign.

July 18 - press conference at National Press Club. Paul has messenger hand deliver a demand letter to Hillary’s senate office.

July 30 2001 - despite Paul’s demand letter to Hillary Clinton, the ABC 20/20 expose on Paul’s claims, and all of the documentation attached to the civil complaint, a third false FEC report is filed by Hillary’s campaign… this time they declare $401K to be the final cost for Event 39 … continuing what the FEC itself found to be the fabrication that Stan Lee Media donated the money.

October 17, 2003- Paul refiled the Civil Fraud suit against the Clintons and the AP reported that Hillary’s office stonewalled their questions for two days, never providing any comment about Paul’s suit or claims. Hillary has never denied Paul’s claims and in her sworn Declaration in the case.

Jan 2005 - criminal indictment of David Rosen is unsealed.
May 2005 - Rosen acquitted in criminal trial in Los Angeles...the perjury in this trial was astounding...the judge (appointed by the Clintons) and prosecutor (directed by Chief of Public Integrity Noel Hillman who protected Bill and Sandy Berger in the destruction of National Security documents) went out of their way to condemn Paul and claim that Hillary had nothing to do with it... FBI affidavit during the trial documenting $1.2 mil from Paul that was not declared was confirmed by the prosecutor as the basis of the prosecution of Rosen- Denying the public’s right to know what peter Paul gave to Hillary’s campaign. The prosecution does not call Paul, Aaron Tonken, or key witness Kelly Craighead (Craighead was also never called by the FEC - she will be a key witness in Paul v Clinton) or Howard Wolfson whose quote on behalf of Hillary Clinton in the Washington Post Aug 17, 2000 confirms Hillary knew the Gala cost more than $1million, was an in kind contribution- .... The prosecution does not use damaging evidence against Rosen obtained while Ray Reggie (brother in law of Ted Kennedy) was wearing a wire. In Tonken’s book, King of Cons, he tells how he sat in a van with Hillary detailing all of the money that was being spent on her.

Dec 2005 - FEC determines that Hillary’s campaign deliberately under reported $721,000, but finds no evidence Hillary personally knew of the illegal contribution and fines the campaign treasurer a mere $35,000, and orders a new amended FEC filing in exchange for immunity from further investigation for everyone connected with the campaign...treasurer Andrew Grossman signs conciliation agreement with the FEC, the equivalent of a nolo contendre plea.

Jan 2006 - the fourth fraudulent FEC report is filed ... among the false statements are that Stan Lee (whom we have on tape in a deposition swearing that he gave no money) is credited with a 225K personal donation and two of Paul’s holding companies are credited with RECEIVING $839,000 rather than paying $1.2 million that the Department of Justice Prosecutor told the Rosen jury Paul personally paid. Paul is still never named personally as the donor of ANY money as he has demanded- This leads to the conclusion that the FEC has aided and abetted what the Department of Justice prosecutor described as a felony- denying the public again the right to know what peter Paul donated to Hillary’s campaign! This time the crime was done 6 months after it was described by the Department of Justice and with the apparent complicity of the FEC No media outlet reported on this FEC report being filed or that it omitted any mention of Peter Paul’s contributions again.

April 7, 2006 - Hillary removed as defendant but judge made clear to Kendall that she would be testifying ... Hillary’s sworn declaration turned into the court by Kendall can only be described as a work of fiction ... no reporters attended the hearing and not one mainstream media source wrote that a trial date had been set for defendant Bill Clinton (trial date postponed until appeal is hear to bring Hillary back in as a defendant) ... Chelsea will be one of the witnesses called ... although her mom claims no knowledge of the business deal, if Chelsea testifies honestly, she will tell how the family stayed up late after the gala playing scrabble
and discussing the excitement of daddy going to work for the creator of Spiderman … from a private fundraiser at Zev Braun’s house in early 2000, Paul has home video of Hillary laughing and discussing with him how he had arranged in 1993 for Fabio to chase her around the room and pick her up in a romance pose… the president referenced that event the next year at the Italian-American Foundation Dinner…. her declaration claiming that she met Paul in early 2000 is simply a lie.

June 2006 - Senate Ethics Committee announces it will not investigate Hillary on Ethics charges because the Judge, prosecutor in the Rosen case and the FEC failed to find any culpability of Hillary they refuse Paul’s offer to appear and testify. A copy of the complaint is delivered to Hillary’s DC office with copy delivered to Sen. Voinovich, chair of the Senate Ethics Committee.

Jan. 10, 2007 - Paul counsel files Appellate Brief to bring Hillary back into the case as a defendant (that delays the trial date for Bill, set for March 27, 2007…it also delays depositions)….no mainstream media source had reported that defendant Bill Clinton had a trial date in a case involving the collapse of Spiderman Stan Lee’s company).

April 2007 - after a two-year battle for the return of evidence, including home videos, an assistant US attorney provides Paul with a list of items they will return to him…… included was the “smoking gun video”: July 17, 5-minute conference call, Hillary Clinton….. when the numerous pieces of evidence were finally sent, the shipment did not include that video…..Paul’s counsel argues vehemently for that to be sent….Paul believes that a low-level functionary screwed up by putting that piece of evidence on the manifest — Hillary never thought it would see the light of day…that video was finally sent because they could not deny its possession.¹³⁹

The critical issues of the landmark, ongoing, case, Paul v. Clinton, et al., must be cleansed with the disinfectant of sunlight.¹⁴⁰ First, the public indeed has a constitutional right to know who and how much was contributed without getting enmeshed in the red tape of FEC bureaucracy. Without being subjugated to partisian tricks of sham advocacy, fraud, deceit and negligent misrepresentation. Without being exposed to unfair business practices. Without being bribed by the temptation of unjust enrichment. Without the threat of civil conspiracy by becoming embroiled in prolonged litigation used to silence disenters. Second, if “We the People” are to have open, transparent campaign finance
disclosure laws that are not enforced at the expense of constitutional rights then a mechanism must be put in place to thwart any FEC complicity with political parties on both sides of the aisle and negates the Washington, DC powerbrokers.

The Federal Election Administration Act of 2007 (FEAA), was introduced in the US Congress in 2007 in an attempt to fix rampant and intractable problems with the FEC. This bill would replace the FEC with a “Federal Elections Administration” with only three board members and with expanded powers, and would also require enforcement proceedings to take place before administrative law judges. Like the “Bipartisan Campaign Finance Disclosure Act of 2002” (BCFA, aka “McCain-Feingold”), this legislation, FEAA, seeks to remedy the current problems of the FEC, but, so far, has only fueled more controversy.

In conclusion, this ongoing seven year oddyssey in the courts regarding Mr. Pauls campaign fraud case against the Clintons boils down to these simple facts: Paul contends Sen. Clinton's participation in soliciting performers and planning the Hollywood event would make his more than $1.2 million in contributions a direct donation to her Senate campaign rather than to a joint fundraising committee, violating federal statutes that limit "hard money" contributions to a candidate to $2,000 per person. Knowingly accepting or soliciting $25,000 or more in a calendar year is a felony carrying a prison sentence of up to five years.

Paul points out Sen. Clinton's legal team and a judge have made a point over the past six years of insisting that she had no knowledge of the preparations for the Hollywood event, including at the Rosen trial. Clinton-appointed U.S. District Judge A. Howard
Matz declared the senator had "no stake in this trial as a party or a principal" and was "not in the loop in any direct way, and that's something the jury will be told." If Judge Matz takes back this clearly prejudicial pronouncement in favor of Senator Hillary Clinton and her central role in this campaign finance fraud, Judge Matz will have facilitated the FEC in possibly aiding and abetting in a felony.  

In my view the Federal Election Administration Act of 2007 (FEAA) is typical Orwellian Washington-speak whereby politicians believe that if one lie (McCain-Feingold) does fool them, add an even bigger lie (Federal Election Administration Act of 2007). With this new, entrenched more convoluted layer of bureaucracy under the rubric of “bipartisanship” the American people who especially since the advent of President Franklin Delano Roosevelt’s New Deal socialist policies of the 1930s and 1940s, politicians have viewed with increasing scorn as “useful idiots” continue to lie, obfuscate and enrich themselves all under the guise of “campaign finance reform.” There is no reform here only FEC complicity with both political parties, the academic class, particularly many well-know legal academics like McGeveran, Ackerman, Bradley and others add another front in the business-as-usual camp while feigning reform rhetoric.

Paul contends ultimately that his case will expose "the institutional culture of corruption embraced by the Clinton leadership of the Democratic Party," which seeks to attain "unaccountable power for the Clintons at the expense of the rule of law and respect for the constitutional processes of government." In light of Senator Hillary Clinton’s recent departure from the campaign as the presidential nominee for the Democrat Party, and although she has more popular votes than her opponent, Senator Barak Hussein
Obama (D-Illinois) she could not obtain more electoral college votes and states than Obama, even though Hillary won all of the largest and swing states so crucial to any candidate in any presidential election in modern times. In conclusion, it would not be hyperbole to plainly and emphatically state that it is impossible for a democracy or a representative republic to exist where the machinery to elect it’s candidates, especially for the highest office of President of the United States, is so wrought full of cronyism, deception and blatant corruption about who contributed to one’s political campaign and how much they gave. Businessman, Peter Paul, through his lawsuit against Bill and Hillary Clinton and the Democrat Party is trying to rectify that problem and bring utter transparency to election laws in America particularly in the area of campaign finance disclosure.

Endnotes


professor of law at Capital University Law School in Columbus, Ohio. While researching this Article, I asked the following questions regarding what I and many observers view as lax enforcement of our campaign finance disclosure laws by the FEC:

Q: “Why do you think so little is written on this subject by scholars? Do you think the FEC could have done more under your tenure in this area [to enforce disclosure laws]? Can the FEC (or will the FEC) do more to strengthen campaign disclosure laws in the future?” Answer by Professor Bradley: “I think little is written because there has not been too much disagreement on the issue. The FEC’s role here is pretty well determined by the statute – it’s not one with much discretion for the Agency. I personally would favor less disclosure – I think that there is very little reason to require public disclosure of contributions as small as $200 for contributions to campaigns or $250 for independent expenditures (adjusted for inflation since those levels were set, those amounts would be about $600 and $750, respectively, which seems more reasonable). It would be a tremendous help to small campaigns to have a rule that a campaign spending under $XXX (I’d say maybe $200,000) doesn’t have to report at all (once they crossed that threshold, then they would have to report for all expenses and contributions). Also, the FECA requires a variety of reports to be filed within 24 or 48 hours – there is almost nothing the public needs to know within 24 hours, and those time frames are most burdensome on small campaigns.”

The great British historian, Edward Gibbon, in his magnum opus, Decline and Fall of the Roman Empire—“A nation of slaves is always prepared to applaud the clemency of their master, who, in the abuse of absolute power, does not proceed to the last extreme of injustice and oppression.” This idea seems to be a prescient application to America’s current campaign finance reform crisis where America, the world’s oldest and continuing representative Republic seems to be incapable of conducting an efficient and honest presidential election.

See generally, Election Law Journal, the only peer-reviewed journal on election law in America and a great repository of current academic opinion on election law and policy by the country’s foremost legal scholars: http://www.liebertonline.com/elj?cookieSet=1

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Conservative radio talk show host Laura on her program on Jan 18, 2008 made the following unflattering but truthful reference regarding commissions in general: “When I see someone setting up a commission, then I know they have no real ideas.” See generally, www.LauraInghram.com


5. As early as 1905, President Theodore Roosevelt recognized the need for campaign finance reform and called for legislation to ban corporate contributions for political purposes. In response, Congress enacted several statutes between 1907 and 1966 which, taken together, sought to:

- Limit the disproportionate influence of wealthy individuals and special interest groups on the outcome of federal elections;
- Regulate spending in campaigns for federal office; and
- Deter abuses by mandating public disclosure of campaign finances.

See generally www.FEC.org For an excellent and comprehensive article on campaign finance disclosure laws see also William McGeeveran, Mrs McIntyre’s Checkbook: Privacy Costs of Political Contributions Disclosure, 6 U Pa J Const L 1, 2003-2004, pp 9-10 (hereinafter McIntyre’s Checkbook). Another example was a recently declassified FBI report that made the shocking accusation that NY governor, Thomas Dewey, the zealous, crime-busting district attorney in 1946 pardoned the “boss of all bosses” Lucky Luciano. This was not big news because the public was willing to look the other way regarding Luciano’s mafia activities due to the fact that Luciano used his vast influence to stopped the sabotage against the shipping industry on the east coast, ended union longshoreman strikes and most notably added the Allies in their invasion of Sicily and the defeat of Mussolini.


“The Commission is made up of six members, who are appointed by the President of the United States and confirmed by the United States Senate. Each member serves a six-year term, and two seats are subject to appointment every two years. By law, no more than three Commissioners can be members of the same political party, and at least four votes are required for any official Commission action. This structure was created to encourage nonpartisan decisions and, some claim, to discourage rulings which would be harmful to both major parties.”

“The Chairmanship of the Commission rotates among the members each year, with no member serving as Chairman more than once during his or her term. The current composition of the FEC includes Republican commissioners David Mason (Vice Chairman) and Hans von Spakovsky, and Democratic commissioners Robert Lenhard (Chairman), Stephen Walther and Ellen Weintraub. One Republican seat is vacant due to the resignation of Commissioner Michael Toner in March 2007. As of October 2007 Commissioners Mason and Weintraub were serving past the end of their terms because successors has not yet been named.”
9. Much of the material regarding the creation, purpose, powers and limitations of the FEC can generally be found in two primary sources: (1) the Federal Election Committee article at: www.Wikipedia.com; (2) The official website of the Federal Election Committee at: www.Fec.gov  See excerpts from their website below:

Introduction

The Federal Election Commission (FEC) is the independent regulatory agency charged with administering and enforcing the federal campaign finance law. The FEC has jurisdiction over the financing of campaigns for the US House, the US Senate, the Presidency and the Vice Presidency.

Federal campaign finance law covers three broad subjects, which are described in this brochure:

- Public disclosure of funds raised and spent to influence federal elections;
- Restrictions on contributions and expenditures made to influence federal elections; and

Historical Background

As early as 1905, President Theodore Roosevelt recognized the need for campaign finance reform and called for legislation to ban corporate contributions for political purposes. In response, Congress enacted several statutes between 1907 and 1966 which, taken together, sought to:

- Limit the disproportionate influence of wealthy individuals and special interest groups on the outcome of federal elections;
- Regulate spending in campaigns for federal office; and
- Deter abuses by mandating public disclosure of campaign finances.

In 1971, Congress consolidated its earlier reform efforts in the Federal Election Campaign Act (FECA), instituting more stringent disclosure requirements for federal candidates, political parties and political action committees (PACs). Still, without a central administrative authority, the campaign finance laws were difficult to enforce.

Following reports of serious financial abuses in the 1972 Presidential campaign, Congress amended the FECA in 1974 to set limits on contributions by individuals, political parties and PACs. The 1974 amendments also established an independent agency, the Federal Election Commission (FEC) to enforce the law, facilitate disclosure and administer the public funding program. Congress made further amendments to the FECA in 1976 following a constitutional challenge in the Supreme Court case Buckley v Valeo; major amendments were also made in 1979 to streamline the disclosure process and expand the role of political parties.
The next set of major amendments came in the form of the Bipartisan Campaign Reform Act of 2002 (BCRA). Among other things, the BCRA banned national parties from raising or spending nonfederal funds (often called “soft money”), restricted so-called issue ads, increased the contribution limits and indexed certain limits for inflation.

Public funding of federal elections originally proposed by President Roosevelt in 1907 began to take shape in 1971 when Congress set up the income tax checkoff to provide for the financing of Presidential general election campaigns and national party conventions. Amendments to the Internal Revenue Code in 1974 established the matching fund program for Presidential primary campaigns.

The FEC opened its doors in 1975 and administered the first publicly funded Presidential election in 1976.


11. Ibid at 52.

12. 36 Stat 822 (1910). This statute, the first federal campaign finance disclosure law, required post-election disclosure of national parties’ contributions and expenditures. Id The campaign for its passage began in 1904. See David Adamaney, The Unaccountability of Political Money, in MONEY, ELECTIONS, AND DEMOCRACY: REFORMING CONGRESSIONAL CAMPAIGN FINANCE 95, 96-97 (Margaret Latus Nugent & John R Johannes eds, 1990) (noting that the National Publicity Bill Organization was formed in 1904 to encourage disclosure of campaign contributions); see also Buckley v Valeo, 424 US 1, 61-63 (1976) (per curiam) (describing the history of campaign finance disclosure laws). Disclosure law enacted before 1974 were ineffective and therefore largely “symbolic.” Briffault, above note 31, at 651-52.

13. See McIntyre’s Checkbook, above note 6.


16. See www.FEC.com Section on “The Commission” reads as follows:

The Commission
Commissioners

The FEC has six voting members who serve staggered six-year terms. The Commissioners are appointed by the President with the advice and consent of the US Senate. No more than three Commissioners may belong to the same political party. The Commissioners elect two members each year to act as Chairman and Vice Chairman.

Public Meetings

The Commission normally holds a public meeting each week. At this meeting, the Commissioners adopt new regulations, issue advisory opinions, approve audit reports concerning Presidential campaign committees, and take other actions to administer the campaign finance law.

In addition, the Commissioners meet regularly in closed sessions to discuss pending enforcement actions, litigation and personnel matters.

17. See www.FEC.com, the section on “Disclosures” reads as follows:

Disclosure

The FECA requires candidate committees, party committees and PACs to file periodic reports disclosing the money they raise and spend. Candidates must identify, for example, all PACs and party committees that give them contributions, and they must identify individuals who give them more than $200 in an election cycle. Additionally, they must disclose expenditures exceeding $200 per election cycle to any individual or vendor.

Contribution Limits

The FECA places limits on contributions by individuals and groups to candidates, party committees and PACs. The chart below shows how the limits apply to the various participants in federal elections. The chart below shows the specific contribution limits for 2007-2008 (see Federal Register [PDF] notice). The chart is also available as an HTML table.


19. “Dr Franklin, what have you given us?” “Madam, we have given you a Republic, if you can keep it!” – Benjamin Franklin (1787). “The Benjamin Franklin opening quote is a testament to the ignominious results America would suffer if she chooses the wrong worldview. It was made by that august sage of the Colonial Period as he departed from Constitution Hall in Philadelphia at the end the First Constitutional Convention, Sept 18, 1787. Franklin had just finished a grueling series of meetings with representatives from
all 13 colonies, each with their own petty, selfish interests and provincial agendas. They tried with every Machiavellian artifice to make their narrow interests pre-eminent in America’s charter document. Finally, after weeks of arguing, debating, threatening, drafting, redrafting, amending and re-amending, our beloved Constitution was essentially born.”

“Nevertheless, Franklin, knowing the savageness and intractability of human nature was convinced that unless America’s republic was rooted in strong moral precepts out of the Judeo-Christian tradition, that republic would die a stillborn death in the cradle – thus his sardonic reply to that inquisitive, anonymous lady: “Madam, we have given you a Republic, if you can keep it!” In other words, if you [America] don’t %!&*@ it up.” See Ellis Washington, *Is Islam Compatible with a Republic?*, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=54848. As the Court itself has noted, application of First Amendment scrutiny “does not allow us to avoid the truly difficult issues involving the First Amendment. Perhaps foremost among these serious issues are cases that force us to reconcile our commitment to free speech with our commitment to other constitutional rights.” *Burson v Freeman*, 504 US 191, 198 (1992). Justice Cardozo also famously echoed that sentiment. As he wrote, “The reconciliation of the irreconcilable, the merger of the antitheses, the synthesis of opposites, these are the great problems of the law.” Benjamin N Cardozo, *The Paradoxes of Legal Science* (Columbia University Press, 1928), p 4.

20. See www.FEC.com, above note 9 in the section titled “Power”.


23. Ibid.


Sacramento, CA – Access to state-level candidate campaign disclosure data continued to improve in states across the country, according to *Grading State Disclosure 2007*, a comprehensive evaluation of campaign finance disclosure laws and programs in the 50 states. The 2007 study, released today by the California Voter Foundation, found that Washington State ranks first in the nation in campaign disclosure, while Oregon ranked as the most improved state in 2007. The study is the fourth in a series, which was first conducted in 2003, and is online at www.campaigndisclosure.org.

The assessment was conducted by the Campaign Disclosure Project, which seeks to bring greater transparency and accountability to money in state politics. The
Among the study’s significant findings:

- States with the strongest campaign disclosure programs are: Washington, California, Oregon, Florida, Hawaii, Michigan, Virginia, Georgia, Illinois, New Jersey and Ohio.

- States with the weakest campaign disclosure programs are: Delaware, Nebraska, New Hampshire, Nevada, North Dakota, Mississippi, Montana, South Dakota, Alabama and Wyoming.

- Oregon was the most improved state, climbing from 24th to 3rd place, followed by South Carolina, which jumped from 49th to 33rd. Colorado, New York and Pennsylvania also showed significant improvements.

“There nearly half of the states earned higher grades in 2007 shows that state disclosure agencies take their responsibilities very seriously and are actively working to provide better access,” said Bob Stern, president of the Center for Governmental Studies. “However, it is important to recognize that state legislatures have the greatest impact on strengthening access to campaign data. Without comprehensive campaign disclosure laws in place, agencies are limited in what they can offer the public.”

Each state was assessed, graded and ranked for its overall performance as well as its performance in each of the four grading categories. States performed best in the law category, with 44 receiving passing grades and six failing. Thirty states passed in the electronic filing category; 20 failed. Thirty-four states passed in both the data access and web site usability categories, while 16 failed.

The Campaign Disclosure Project sets a high, but not impossible, standard for state campaign finance disclosure. Grading criteria were developed by the Campaign Disclosure Project partners, the project’s advisory board and a panel of expert judges, who also assisted with the grading process. In developing the criteria, efforts were made to balance the concerns of practitioners and government officials with the public’s need for timely, complete and effective disclosure.


27. Cf McIntyre, 514 US at 348-49 (“Moreover, in the case of a handbill written by a private citizen, . . . the name and address of the author add little, if anything, to the reader’s ability to evaluate the document’s message.”). One possible exception is the rare contribution by a person whom an opponent tries to revile as a campaign issue. In the 2000 Senate race, for example, Hillary Rodham Clinton was attacked for receiving contributions from several allegedly pro-Palestinian figures, a potential liability in a state with a large Jewish vote. See Clifford J Levy & David M Halbfinger, *Torrent of Campaign Cash Both Helped and Backfired*, NY TIMES, Nov 9, 2000, at B20. These exceptions are so minor and unusual, however, that they seem to prove the rule that modest individual donations are rarely newsworthy. Besides, in this case, the accusations did not have the desired impact with the public, see Ibid, further underscoring the minimal information in spotlighting such individual contributions. Cf Garrett, above note 21, at 1034-35 (discussing potential cues provided by contributions from “notorious” groups).

28. See Garrett, above note 24, at 1043 (“For example, what information is conveyed by substantial financial support from Bill Gates?”).

29. Ibid (stating that mixed motives for individuals’ contributions make them less informative than groups’ contributions). As noted earlier, Mrs McIntyre’s support may have nothing to do with Senator’s X’s views.

30. A sample of the voluminous pleadings of the Paul v Clintons, et al, case shows an astonishing array of evidence that all points to the following irrevocable facts:
   1) that the Clinton’s sought a quid pro quo from Paul which can be summarized thusly: ‘Fund my wife’s 2000 New York Senate run and I’ll be a rainmaker for your joint venture with comic book icon Stan Lee;’
   2) Though numerous types of corroborating evidence: word of mouth, recording conversations, photographic evidence, written, internet, etc, it is clearly evident that The Clinton’s knew Paul personally and actively solicited his financial help for political fundraisers even after the unflattering story appeared linking Sen Clinton with fundraisers with a criminal background (Aug 17, 2000);
   3) that to date Clinton has arrogantly extended this litigation for over seven years and has yet to admit that she has filed four [4] false campaign disclosure reports (each one punishable for up to 5 years in prison) which continues to hide Mr Paul’s $1.9 million dollar campaign contribution to Sen Clinton’s campaign.

32. August 18, 2000: Three days after telling the Washington Post that Peter Paul made no contribution to the August 12, 2000 Gala and that her campaign would not accept contributions from him, Hillary sent this letter to ensure Paul would not contradict her false story to the Post. The letter reads: (“Dear Peter: Thank you so very much for hosting Saturday night’s tribute to the President and for everything you did to make it the great occasion that it was. We will remember it always. With gratitude for your friendship and warm regards, I remain [...] Sincerely yours, /s/ Hillary”). See also Peter Paul’s own website, “Hillary Clinton Accountability Project” at: www.Hillcap.org, which is a repository of pleadings regarding his 6 + year legal battle against the Clintons and the FEC to adopt stronger campaign finance disclosure laws. In the section “The Documents Don’t Lie” the website has the following narrative that succinctly summarizes Mr Paul’s case and the meaning of the ancillary documents:

The following original court pleadings and government documents, letters, published articles and photos reproduced and linked here are evidence of the frauds directed by the Clintons against not only Peter Paul, but also against the voters of New York, Hillary Clinton’s 2000 Senate opponent, the Federal Election Commission, the IRS, the FBI, the Justice Department Office of Public Integrity, the U.S. Senate, the Inspector General, Federal Courts, Grand Juries, and the shareholders of Stan Lee Media -- in order to elect Hillary Clinton to the Senate and to thwart and obstruct all investigations into those frauds to protect Hillary and Bill Clinton’s ambitions to regain the White House.

These documents present an irrefutable public record of a conspiracy between a sitting U.S. President, a First Lady Senate candidate turned U.S. Senator, and the Chairman of the Democratic Party to defraud a businessman of $2 million and to destroy a public company in order to generate the largest campaign contribution made to benefit the Senate candidate, while avoiding accountability from the public and all regulatory and investigatory federal agencies and the federal judiciary. The evidence presented here clearly supports the reasonable conclusion that the Clintons have succeeded in exempting themselves from the Rule of Law in the United States.


34. See Lloyd Grove, Washington Post Used By Hillary To Mislead Voters, WASH POST, August 15, 2000 and – Hillary Returns Bucks to Ex-Felon – Lloyd Grove, WASH POST, August 17, 2000 (“Two days after the Gala, the Washington Post uncovered Peter Paul’s felony convictions during the 1970’s for defrauding Fidel Castro and possession of cocaine when Paul was an international lawyer in Miami. Asked by the Post for a comment, Hillary Clinton campaign spokesman Howard Wolfson denied accepting any contributions from Paul and distanced him from Hillary’s campaign. Then, when the Post uncovered a $2,000 check Paul had given the campaign in connection with an earlier fundraiser he had underwritten, Wolfson said the campaign was returning the $2,000 and would not accept any contributions from Paul”).
(“Wolfson also admitted that the Gala had cost more than $1 million, but said “it was an in kind contribution, not a check.” Nevertheless, when the campaign filed its only report about the Gala three months later, it reported the cost as a mere $366,000. The fraudulent report was submitted two more times to the Federal Election Commission.”) See Art Moore, Top Donor Seeks to Expose ‘Hillary’s Chappaquiddick’, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=49478


36. Ibid.

37. Ibid.

38. Ibid.

39. Ibid.

40. Ibid.

41. Ibid.

42. Ibid.


44. See above note 32.

45. Ibid.

46. See above note 32.

47. Ibid.


49. Ibid.

50. See First Amended Complaint, paragraphs 35-38; E-Brief at Clerk’s Transcript, go to 1 CT iii, scroll to hyperlinked page 16, then go to pages 1 CT 22-23.

51. See Supplemental Declaration of Peter F Paul, paragraphs 89 and accompanying Exhibits 43, found on E-Brief under Clerk’s Transcript, go to 1 CT vi, scroll to hyperlink for page 771, then scroll to 4 CT 808, line 13 and hyperlinked exhibit, at 5 CT 1034. 6 Rosen Transcript, May 25, 2005, at 162.


55. See above note 45 to see the controlling federal statutes of Paul v The Clintons, et al.


58. The Supreme Court has applied this more expansive view to an analysis of limits on the size of contributions. See Nixon v Shrink Mo Gov’t PAC, 528 US 377, 389-90 (2000) (recognizing a state interest in stopping corruption “extending to the broader threat from politicians too compliant with the wishes of large contributors”). The Court most recently discussed the corruption rationale in FEC v Beaumont, 123 S Ct 2200 (2003), where the majority opinion seemed to revivify a moribund interpretation of Austin v Michigan Chamber of Commerce, 494 US 652 (1990), as including the use of the corporate form to amass “war chest” for political spending as a form of corruption. Beaumont, 123 S Ct at 2209-10.


60. McIntyre found this justification inapplicable to the situation before it, because it was a referendum campaign rather than a candidate campaign. McIntyre v Ohio Elections Comm’n, 514 US 334, 356 (1995); see Citizens Against Rent Control v City of Berkeley, 454 US 290, 298 (1981) (differentiating between candidate campaigns and ballot initiatives); Richard L Hasen, The Suprising Complex Case for Disclosure of Contributions and Expenditures Funding Sham Issue Advocacy, 48 UCLA L REV 265 (2000) [hereinafter Hasen, Complex Case].

61. See National Election Studies, Center For Political Studies, University of Michigan, The NES Guide to Public Opinion and Electoral Behavior, at http://www.umich.edu/~nes/nesguide/toptable/tab6b_5.htm (last visited Jan 24, 2008) [hereinafter NES Studies]. The NES survey has asked slightly different versions of
essentially the same question concerning political contributions for many years. Since
1980, between 6 and 10 percent of respondents say they have made such a contribution; 7
percent did so in 1998 and 9 percent in 2000. Ibid. In fact, extrapolating from FEC data,
it appears that the number of contributions to candidates of under $200 is over twice the
number of those over $750. In the 1999-2000 election cycle, individual contributions of
less than $200 to congressional candidates totaled $169,289,822.

62. RALPH K WINTER, JR, CAMPAIGN FINANCING AND POLITICAL
FREEDOM 21 (1973). Under the original FECA amendments then being debated,
contributions above $100 were disclosed; the threshold is now $200. See Federal
Election Campaign Act Amendments of 1979, Pub L No 96-187 § 304(b) (3) (A) of
FECA). The law revised aspects of FECA which, after the experience of a few election
cycles, were considered administratively burdensome. Privacy was not a motivating
factor for the increase in the threshold. An earlier version of the bill left the $100 level in
place. See HR Rep No 96-422, at 18 (1979), reprinted in 1979 USCCAN 2860, 2878.

63. 424 US at 82-84; see Garrett, above note 24, at 1015-16 (“Indeed, sums substantially
higher than $200 probably do not buy political favors . . . .”); Fred Bernstein, Op-Ed, An
Online Peek at Your Politics, NY TIMES, Oct 4, 2000, at A35 (“A corruption-watcher
worried about such small amounts would be missing the forest for the twigs.”).

64. BRUCE ACKERMAN & IAN AYRES, VOTING WITH DOLLARS: A NEW
PARADIGM FOR CAMPAIGN FINANCE 5 (2002), at 27 & 250 nn2-3 (“Researchers
have yet to find an election between candidates in which information about funding
actually made a difference in the outcome”).

65. Ian Ayres & Jeremy Bulow, The Donation Booth: Mandating Donor Anonymity to
Disrupt the Market for Political Influence, 50 STAN L REV 837 (1998) (offering an
earlier version of the “secret donation booth” proposal).

66. See David W Adamany & George E Agree, POLITICAL MONEY: A STRATEGY
FOR CAMPAIGN FINANCING IN AMERICA 103-12 (1975) (arguing that the “tidal
wave” of disclosed campaign finance information overwhelms both journalists and
voters) at 14: (“In the present political financing system, both parties and virtually all
candidates receive and use funds from big givers and interest groups. Voters usually do
not have a choice between clean money candidates and dirty money candidates; all are
soiled.”).

67. Ibid at 112, 114 (arguing that disclosing campaign finance information does not
affect voting decisions because, among other things, voters choose “leaders . . . whose
general outlook coincides with their own . . . [and] selectively perceive facts that confirm
their choices”).

68. See Ibid at 113-114. Ackerman and Ayres not that the public has been found to pay
more attention to campaign financing in referendum campaigns—exactly those situations
in which votes turn on only one issue, rather than complex bundles of policy preferences,
leaving more room for consideration of funding. ACKERMAN & AYRES, above note 61, at 27 & 250 n2 (citing ELISABETH R GERBER, THE POPULIST PARADOX: INTEREST GROUP INFLUENCE AND THE PROMISE OF DIRECT LEGISLATION (1999)).


70. See McIntyre v Ohio Elections Comm’n, 514 US 334, 343-44 (1995) (rejecting the argument that disclosure is “a means to prevent the dissemination of untruths” because “the ordinance plainly applies even when there is no hint of falsity or libel”); Talley v California, 362 US 60, 64 (1960) (rejecting the justification of leaflet disclosure law as a means to enforce fraud, false advertising, and libel laws because of overbreadth in application).

71. DAVID ADAMANY, FINANCING POLICING POLITICS: RECENT WISCONSIN ELECTIONS 250 (1969) (“As a practical matter, the only enforcement benefit that disclosure laws have is the occasional reporting of a minor infraction which occurs because the law’s provisions are obscure”).

72. The FEC itself fell into this trap when extolling the virtues of disclosure: “In fact, it would be virtually impossible for the Commission to effectively fulfill any of its other responsibilities without disclosure. The Commission could not, for example, enforce the law without knowledge of each committee’s receipts and disbursements.” Fed Election Comm’n, Administering and Enforcing the FECA, in CAMPAIGN FINANCE REFORM: A SOURCEBOOK 293, 294 (Anthony Corrado et al eds, 1997), available at http://www.fec.gov/pages/20year.htm [hereinafter FEC Twenty-Year Report].

73. See Buckley v Am Constitutional Law Found, 525 US 182, 198 (1999) (holding that the government interest in apprehending “petition circulators who engage in misconduct” can be fulfilled just as well by collecting information about circulators with petitions—reporting—rather than mandating that petition circulators wear identification badges—disclosure).

74. Federal campaign finance law requires campaigns to keep records about all contributors who give over $50, even though only those over $200 need to be reported to the FEC. See 2 USC § 432 (c) (2003).

75. See 26 USC § 6103 (2003) (establishing the general rule that disclosure of information from tax returns is prohibited, with specified exceptions, including recent changes related to investigating terrorist activity).

77. The symposium on *McConnell* appearing in the issue, 6 U Pa J CONST L 56 (2003), canvasses many views concerning the significance and outcome of McConnell. As contribution disclosure is one of the only major issues that is not raised in that case, I will simply consider the question here on the basis of the Buckley framework and two nascent schools of thought concerning post-Buckley law.


81. Ibid.

82. 2 USC § 437g(d)(1)(A)(i) and 441a, subsections (a)(7)(B)(i) and (f).


90. Ibid at 52.
91. Ibid.


94. Buckley v Valeo, 424 US 1, 66-68 (1976) (per curiam) (finding that three state interests supporting disclosure outweigh donors’ First Amendment interests in keeping contributions private.)

95. See National Election Studies above note 58.

96. In fact, extrapolating from FEC data, it appears that the number of contributions to candidates of under $200 is over twice the number of those over $750. In the 1999-2000 election cycle, individual contributions of less than $200 to congressional candidates totaled $169,289,822.

97. This is mostly the infamous soft money that the McCain-Feingold Act aims to curb. Of course, most of this money originally came from individuals. See Stephen Ansolabehere et al, Why Is There So Little Money in U.S. Politics?, 17 J ECON PERSP 105, 108 (2003) (estimating that, in the 2000 elections, individuals gave $1.1 billion to candidates, $700 million to parties, and $600 million to PACs, for a total of $2.4 billion in individual contributions, and trade associations; $235 million came from public funding). Corporations and unions have long been barred from contributing to candidates directly. See Taft-Hartley Act of 1947, 61 Stat 136, § 304 (1947) (banning direct contributions to candidates by labor unions); Act of Jan 26, 1907, ch 420, 34 Stat 864 (1907) (imposing similar restrictions on corporations and national banks).

98. One such expenditure, which received a great deal of attention, was a television advertisement attacking John McCain’s environmental record in the 2000 presidential primaries, funded by over two million dollars from Sam and Charles Wyly, Texas financiers who supported the candidacy of George W Bush. Edward Walsh & Terry M Neal, McCain Hits TV Ad Blitz from Texas, Voters Are Urged to Condemn Bush Backers’ “Dirty Money,” WASH POST, Mar 5, 2000, at A20.
99. 2 USC § 434(b)(3)(A) (2000); 11 CFR 104.3(a) (4) (i) (2002). The requirement to identify individuals by their name, address, occupation, and employer is found in 2 USC § 431 (13) (A) (2000).

100. See Federal Election Campaign Act Amendments of 1979, Pub L No 96-187, § 104, 93 Stat 1339, 1348 (1980) (codified at 2 USC §§ 431-455) (amending §304(b) (3) (A) of FECA). The law revised aspects of FECA which, after the experience of a few election cycles, were considered administratively burdensome. Privacy was not a motivating factor for the increase in the threshold. An earlier version of the bill left the $100 level in place. See HR REP No 96-422, at 18 (1979), reprinted in 1979 USCCAN 2860, 2878.


102. See generally Feigenbaum & Palmer, above note 44, at chart 1. The only exceptions, according to this compilation, are Mississippi ($200), North Dakota ($200), Nebraska ($250), and New Jersey ($300). Ibid.

103. The eight states are Arizona ($25), Colorado ($25), Michigan ($20), New Hampshire ($25), Ohio ($25, but higher for in-kind contributions), Washington ($25), Wisconsin ($20), and Wyoming ($25); the District of Columbia requires disclosure at the $10 level. Ibid. The states that have no threshold (although the fine print of the law sometimes limits disclosure in other ways) are Alabama, Louisiana, Maryland, and West Virginia. Ibid. New Mexico allows contributors to give up to $100 to a candidate anonymously—that is, without even the candidate knowing their identity. Ibid. At NM-1 Stat Ann §§ 1-19-34(B), 1-19-34(D)). A handful of other states allow small anonymous contributions, but since the permissible amounts are below the disclosure thresholds in those states, they make no difference for the privacy of the contributor. See Ibid. At chart 2-B.


106. See http://www.fec.gov (last visited Feb 2, 2008); see generally Campaign Finance Institute Task Force on Disclosure,
http://www.cfinst.org/disclosure/pdf/websitewoes.pdf (Oct 2002) (“As late as 1996, the major source of public information on money in federal elections was the small FEC Public Records office in Washington, DC. A visitor could laboriously examine and, for a fee, copy microfilmed campaign finance reports . . . ”).


108. 424 US at 67 (“[S]ources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.”); see BRADLEY A SMITH, UNFREE SPEECH: THE FOLLY OF CAMPAIGN FINANCE REFORM 224 (2001) (“Knowing the sources of a candidate’s campaign funds provides us with a shorthand method for estimating a candidate’s probable stand on a variety of issues.”).

109. McIntyre v Ohio Elections Comm’n, 514 US 334, 348 (1995); see Potter, above note 23, at 103-04 (suggesting that McIntyre dismissed and thus undermined informational interest from Buckley).

110. McIntyre, 514 US at 348 McIntyre suggested that a voter could instead take the anonymous nature of the pamphlet into account when assessing it. 514 US at 348 & n11 (quoting New York v Duryea, 351 NYS2d 978, 996 (NY Sup Ct 1974)) (“‘Do not underestimate the common man. People are intelligent enough to evaluate the source of an anonymous writing . . . . They can evaluate its anonymity along with its message . . . .’”).

111. 514 US at 353-57; see also infra notes 209-14 and accompanying text (discussing other efforts in McIntyre to distinguish elections ). The Court also noted that Mrs McIntyre’s expenditure was independent, while contributions to a candidate implicated corruption interests, see infra Part II.B, which were not present in her case. 514 US at 354.

112. Ibid at 355 (citations omitted).

113. See Shrink Mo Gov’t PAC, 528 US at 410 (Thomas, J, dissenting).

114. See SABATO & SIMPSON, above note 5, at 328-35 (arguing for deregulation of campaign financing); Smith, above note 122, at 215-20 (arguing against campaign finance regulation as it currently stands); Kathleen M Sullivan, Against Campaign Finance Reform, 1998 UTAH L REV 311, 326-27 (arguing for full disclosure); see also COMMISSION ON CAMPAIGN FINANCE REFORM, DOLLARS AND
DEMOCRACY, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK: A BLUEPRINT FOR CAMPAIGN FINANCE REFORM 97-98 (dubbing such proposals “deregulate and disclose” and calling them “inadequate foundation for reform”).

115. The quotation is from Rep Tom DeLay, then the House majority whip and now the majority leader. Excerpts from House Debate on the Shays-Meehan Campaign Finance Bill, NY TIMES, Feb 14, 2002, at A30.

116. See above Part III (expressing doubt that disclosure would “exacting” scrutiny).

117. The enforcement interest, of course, disappears entirely, because there is no limit to enforce.

118. Courts would need to draw some line at which the size of a contribution inflated the corruption and information interests enough to overcome strict scrutiny and justify disclosure. It is impossible to fix a number in such a hypothetical situation, without either a factual record or a definitive statement of the libertarian framework; given the strict scrutiny applied under the libertarian framework, the burden would be on the government to justify whatever threshold the legislature had selected.

119. See, eg, Nixon v Shrink Mo Gov’t PAC, 528 US 377, 399-405 (2000) (Breyer, J, concurring) (laying out, in an opinion joined by Justice Ginsburg, a more flexible approach to constitutional judgments about campaign finance, which may or may not be reconciliable with Buckley); Colo Republican Fed Campaign Comm V FEC, 518 US 604, 648-50 (1996) (Stevens, J, dissenting) (urging, in an opinion joined by Justice Ginsburg, that limits on direct campaign spending, at least by political parties, should be constitutional).

120. Buckley v Valeo, 424 US 1, 67, n 80 (1976), quoting Louis Brandeis, Other People’s Money (National Home Library Foundation, 1933), p 62; see Buckley v American Constitutional Law Foundation, 525 US 182, 223 (1999), Justice O’Connor dissenting: (“[I]n the United States, for half a century compulsory publicity of political accounts has been the cornerstone of legal regulation. Publicity is advocated as an automatic regulator, inducing self-discipline among political contenders and arming the electorate with important information,”) quoting Herbert E Alexander and Brian A Haggerty, The Federal Election Campaign Act: After a Decade of Political Reform (The Foundation, 1981), p 37. See also Herbert E Alexander, Financing Politics: Money, Elections and Political Reform, 4th ed (CQ Press, 1992), p 164: (“‘total disclosure’ has been recognized as the ‘essential cornerstone’ to effective campaign finance reform and ‘fundamental to the political system’”).

121. 2 USC sec 434(a)(11).


124. See my discussion of congressional debate over Pub L 106-230 below.

125. See US Senate, Report 105-167, vols 1–6 (1998) (“Thompson Committee Report”), available at www.senate.gov/~gov_affairs/sireport.htm [January 2005]). The Thompson Committee Report studied the federal elections of 1996 to demonstrate the frequency with which campaign finance laws, including disclosure provisions, are evaded or ignored. Among many other topics, the report demonstrates how campaign money laundering, the use of front groups to hide political operatives’ true identities, and other means of evasion of disclosure rules are widespread (pp 15981–82).

126. See FEC v Colorado Republican Federal Campaign Committee, 533 US 431, 462 (2001) (Colorado II), noting the “practical difficulty of identifying and directly combating circumvention under actual political conditions”; Buckley, 424 US at 76: “Efforts . . . had been [made] in the past . . . to avoid the disclosure requirements by routing financial support of candidates through avenues not explicitly covered by [disclosure].” See also the discussions of McIntyre v Ohio Elections Commission, FEC v Massachusetts Citizens for Life, and Brown v Socialist Workers ‘74 Campaign Committee, above note 23.

127. Political fundraisers play a major role in the campaign finance system. Many fundraisers are also lobbyists, and many gain prominence and influence through their fundraising efforts. Because they deliver other people’s money rather than contribute or spend their own resource, their campaign finance activities often go totally undisclosed. Fundraiser disclosure has been proposed to extend reporting requirements to cover this gap in the Federal Election Campaign Act’s disclosure regime. Fundraiser disclosure proponents seek to require that reports by political committees list all persons who raise over a threshold amount, or indicate a range of fundraising amounts.

128. Union campaign spending is difficult to track because so much of it is made in the form of in-kind contributions of services, phone banks, and so forth. See “What If We Knew How Much Labor Really Spends on Elections?” National Journal’s Cloakroom, December 10, 1997 (now called NationalJournal.com; a subscription service available at the website). Likewise, corporations often make in-kind contributions—such as the ready availability of corporate jet aircraft, use of corporate facilities for fundraising, and the like—which is undisclosed; 26. 2 USC sec 434(a)(11).


131. See my discussion of congressional debate over Pub L 106-230 below.
132. See US Senate, Report 105-167, vols 1–6 (1998) (“Thompson Committee Report”), available at www.senate.gov/~gov_affairs/sireport.htm [January 2005]). The Thompson Committee Report studied the federal elections of 1996 to demonstrate the frequency with which campaign finance laws, including disclosure provisions, are evaded or ignored. Among many other topics, the report demonstrates how campaign money laundering, the use of front groups to hide political operatives’ true identities, and other means of evasion of disclosure rules are widespread (pp 15981–82).

133. See *FEC v Colorado Republican Federal Campaign Committee*, 533 US 431, 462 (2001) (*Colorado II*), noting the “practical difficulty of identifying and directly combating circumvention under actual political conditions”; *Buckley*, 424 US at 76: “Efforts . . . had been [made] in the past . . . to avoid the disclosure requirements by routing financial support of candidates through avenues not explicitly covered by [disclosure].”

134. See generally, the discussions of *McIntyre v Ohio Elections Commission*, *FEC v Massachusetts Citizens for Life*, and *Brown v Socialist Workers ’74 Campaign Committee*.


136. Christopher Witko, a political scientist at California State University, Sacramento, said the following about PACs in his article, *PACs, Issue Context, and Congressional Decisionmaking*:

Scholars have claimed that PAC influence on congressional behavior is more likely on certain types of issues. After considering both roll-call voting and committee participation, I argue that the conditions making PAC influence on voting most likely make influence on participation least likely, and vice versa. The analysis of 20 legislative proposals indicates that PACs are able to influence voting on non-ideological/non-visible issues, but are more likely to influence participation on ideological/visible issues. Unlike previous studies, these findings demonstrate that PACs can influence behavior across different contexts, but that the route to influence differs depending on the type of issue being considered.


137. See Mother Jones article titled, Campaign Inflation, http://www.motherjones.com/news/special_reports/mojo_400/

Bush was banking on private wealth from the start. Before the race even began, he announced that he would accept no federal matching funds during the primaries -- enabling him to ignore the
spending limits that accompany them -- and instead turned to a relatively small group of
corporate owners and executives eager to buy shares in his start-up venture. He spent more than
$100 million to win the GOP nomination, more than doubling the previous record. The stories
that follow examine some of the industries that invested the most capital in Bush, and how they
expect him to repay them: handing over billions in Social Security to Wall Street brokers, keeping
the Internet tax-free for Silicon Valley entrepreneurs, drilling on public lands to benefit Texas
oilmen, curtailing lawsuits by workers and consumers against tobacco companies and asbestos
manufacturers.

To be sure, not every big donor on our list represents business interests. Some are retired or work
for nonprofit charities. Others give to support their favorite cause, whether it be military support
for Israel or abortion rights for women. And many who top the list -- like Slim-Fast founder S.
Daniel Abraham (No 1, $1,518,500) and Philadelphia philanthropist Peter Uttenwieser (No 4,
$1,304,700) -- are longtime Democratic donors. But whatever their political views, many
members of the Mother Jones 400 agree on one thing: The cost of doing business on Capitol Hill
is too high. "It's terrible," Richard Farmer (No 15) told reporters. "I think the whole campaign
finance situation is ridiculous."

"I think it sucks," agrees Alan Solomont (No 66), a nursing home investor who gave $361,500 to
the Democrats. "We have a lousy system of financing campaigns." …

"There is a certain community of people who have been giving year in and year out for a number
of years," he says. "We're like the ward bosses of the 21st century."

Implicit in the list of the 400 largest campaign donors is the tormenting fear that they
back the wrong horse so to speak which would percepitate political reprisials from the
winning candidate. For example, in the 2009 presidential election in America, the
candidate most political commentators didn’t give much of a chance to win for lack of
name recognition and political inexperience (Barack Obama) under the conventional
model will have a lot of scores to settle with those large donors who supported his rival
Sen Hillary Rodham Clinton, despite the fact that he technically won the nomination
several months before Clinton was eventually forced to relinquish the Democrat
nomination.

138. In viewing a list of the top 20 527s groups who contributed to political campaigns
in 2006 it is evident that there are few new players to the table:

Top 20 527 groups, 2006 election cycle

<table>
<thead>
<tr>
<th>Rank F / E</th>
<th>Name</th>
<th>Current Fundraising</th>
<th>Current Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 / 1</td>
<td>Service Employees International Union</td>
<td>$20,476,280</td>
<td>$23,209,043</td>
</tr>
<tr>
<td>Date</td>
<td>Name</td>
<td>Amount 1</td>
<td>Amount 2</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------------------------------------------</td>
<td>------------</td>
<td>------------</td>
</tr>
<tr>
<td>2 / 2</td>
<td>American Federation of State, County and Municipal Employees</td>
<td>$17,923,404</td>
<td>$16,288,863</td>
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<tr>
<td>3 / 4</td>
<td>America Votes</td>
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<tr>
<td>4 / 6</td>
<td>EMILY’s List</td>
<td>$10,109,275</td>
<td>$8,088,793</td>
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<tr>
<td>5 / 8</td>
<td>Club for Growth</td>
<td>$6,963,089</td>
<td>$6,873,134</td>
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<td>6 / 3</td>
<td>Progress For America</td>
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<td>7 / 11</td>
<td>Economic Freedom Fund</td>
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<tr>
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<td>International Brotherhood of Electrical Workers</td>
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<td>$3,888,692</td>
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<tr>
<td>9 / 7</td>
<td>America Coming Together</td>
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<td>10 / 24</td>
<td>International Union of Operating Engineers</td>
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<td>GOPAC</td>
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<td>14 / 19</td>
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<tr>
<td>Rank</td>
<td>Group Name</td>
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<td>Spent</td>
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<tr>
<td>15</td>
<td>Sheet Metal Workers International Association</td>
<td>$1,952,623</td>
<td>$1,824,083</td>
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<td>16</td>
<td>Gay &amp; Lesbian Victory Fund</td>
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<td>17</td>
<td>Grassroots Democrats</td>
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<td>18</td>
<td>League of Conservation Voters</td>
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<td>New Democrat Network</td>
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<td>National Education Association</td>
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<td>$3,589,432</td>
</tr>
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</table>

As of October 23, 2006

See http://en.wikipedia.org/wiki/527_group#Top_20_527_groups._2C_2006_election_cycle

These well-known groups (mostly Democrat political organizations) were the biggest beneficiaries of campaign finance reform measures collectively known as “McCain-
Feingold.” This so-called “reform” has only further entrenched the power of incumbency and have brought very little reform.


140. See above note 112.


144. Lydia Saad, Hillary Clinton’s Swing-State Advantage, 5/28/08: http://www.gallup.com/poll/107539/Hillary-Clintons-SwingState-Advantage.aspx. For an article about where the case stands as of the time this article is published, see: Art Moore: Fraud Suit against Bill Clinton eyes Spider-Man, http://www.wnd.com/index.php?fa=PAGE.printable&pageId=69061. Art Moore cites Paul’s new complaint which he received leave from the court to incorporate a new and related law suit by Stan Lee of Stan Lee Media alleging that Bill and Hillary Clinton engaged in numerous fraudulent acts leading to the collapse of a business deal that he, business partner, Peter Paul and the Clinton’s had together. The opening paragraphs summarizes the incorporation of the new facts of this the Paul v The Clintons, et al, case:

“A multimillion-dollar lawsuit that had Sen. Hillary Clinton in its crosshairs amid her run for the White House has narrowed its focus to charges of business fraud against former President Bill Clinton and Spider-Man creator Stan Lee – now the target of a related suit over who owns rights to iconic comic book characters worth billions.

Hollywood entrepreneur Peter F. Paul is redrafting his complaint after California Superior Court Judge Aurelio Munoz granted the former president a motion for judgment on the pleadings last week. A motion of this kind alleges that even if all the assertions of the complaint are accepted as true, the defendant would still win the lawsuit.

Paul contends the original complaint, drafted with the help of his former legal team, Judicial Watch, had a political bent that obscured the main thrust of the
case. Paul claims Bill Clinton accepted a $17 million employment package in which the former president promised to promote Paul's Internet-based media company, Stan Lee Media, and asked Paul to spend more than $1.2 million to support his wife's first Senate run. But, instead, the complaint says, Clinton reneged on his obligation by using privileged information to steal away Paul's key Japanese investor and $5 million promised to Stan Lee Media, contributing to the company's demise in late 2000.

Paul maintains Hillary Clinton "aided and abetted" Bill Clinton's efforts to destroy his company after illegally soliciting, coordinating and directing more than $1.2 million in expenditures from him to help assure her election to the Senate. …"