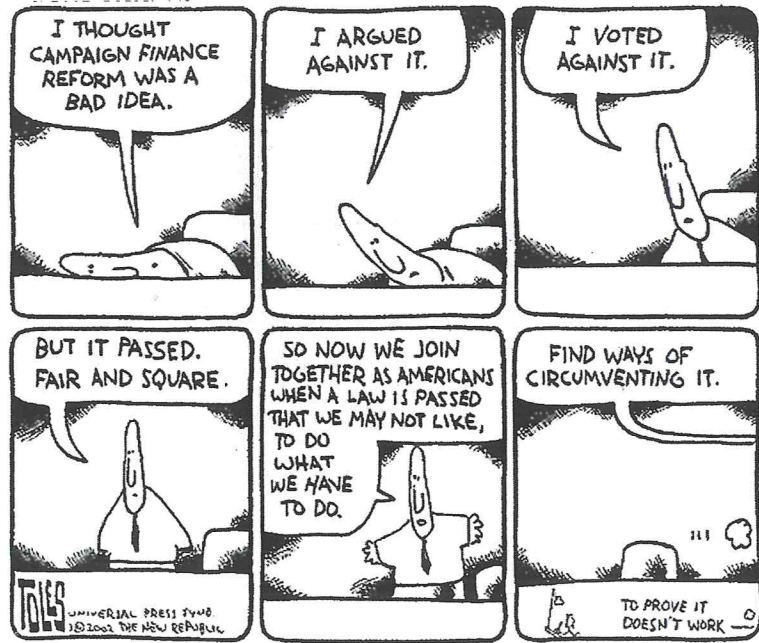


to describe candidates' positions on various issues and to promote its agenda. Issue advocacy ads frequently urge voters to contact their senator or representatives and tell him or her how to vote on a specific issue of concern to the interest group sponsoring the ad.

Although promoting issue positions is very close to promoting candidates who support those positions, the courts repeatedly have held, in accordance with the *Buckley v. Valeo* decision mentioned earlier, that interest groups have a First Amendment right to advocate their positions. In a 1996 decision,¹⁷ the Supreme Court clarified this point, stating that political parties may also make independent expenditures on behalf of candidates—as long as the parties do so *independently* of the candidates. In other words, the parties must not coordinate such expenditures with the candidates' campaigns.



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The Bipartisan Campaign Reform Act of 2002

While both Democrats and Republicans argued for campaign reform legislation during the 1990s, the bill cosponsored by Senators John McCain, a Republican, and Russ Feingold, a Democrat, finally became the Bipartisan Campaign Reform Act (BCRA) in 2002. This act, which amended the 1971 FECA, took effect on the day after the congressional elections of November 5, 2002.

Key Elements of the New Law. The 2002 law bans the large, unlimited contributions to national political parties that are known as soft money. It places curbs on, but does not entirely eliminate, the use of campaign ads by outside special-interest groups advocating the election or defeat of specific candidates. Such ads are allowed up to 60 days before a general election and up to 30 days before a primary election.

In 1974, contributions by individuals to federal candidates were limited to \$1,000 per individual. The 2002 act increased this limit to \$2,000, with annual increases. In addition, the maximum amount that an individual can give to all federal candidates was raised from \$25,000 per year to \$95,000 over a two-year election cycle. The act did not ban soft money contributions to state and local parties. These parties can accept such contributions, as long as they are limited to \$10,000 per year per individual. Although the provisions of the act were challenged by groups that saw it as a threat to their influence in elections, the Supreme Court, in a series of decisions, upheld most of the law. However, remember that the law pertains to direct contributions to candidates and funds spent that are coordinated with the candidate's own campaign.

The Rise of the 527s. Interest groups that previously gave soft money to the parties responded to the 2002 BCRA by setting up new organizations outside the parties, called 527 organizations after the section of the tax code that provides for them. These tax-exempt organizations, which rely on soft money

17. *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604 (1996).

campaign. *The Freedomnow.org v. FEC* case allowed the so-called Super PACs to collect unlimited contributions and spend money in campaigns without FEC regulation of what may be said and when. For wealthy individuals, corporations, and interest groups, the rise of the 527s and the Super PACs provide great advantages. Corporations do not want their names and products tied to a candidate endorsement because it may alienate their customers. But, if a corporation—say, an oil company—can give unlimited funds to a Super PAC with a patriotic name, the company's reputation will incur little damage. Congress and future

court decisions will decide what limits to place on what these "outside spenders" can do.

^awww.clcblog.org, accessed April 17, 2008.

^bIn the Republican presidential nominating contest in 2000, Senator John McCain was highly criticized by a 527 group, Republicans for Clean Air. The group was funded in part by individuals who supported then-Governor Bush's candidacy; www.dallasobserver.com/2000-04-06/news/clearing-the-air, accessed April 17, 2008.

^cwww.opensecrets.org/527s/527cmtdetail.asp?cycle=2004&format=&ein=200094706&tname=America%20Coming%20Together, accessed April 17, 2008.

^dwww.democracy21.org/index.asp?Type=B_PR&SEC=%7B7248831A-87CA-4C2D-B873-60C64918C920%7D, accessed April 17, 2008.

contributions for their funding and generally must report their contributions and expenditures to the Internal Revenue Service, are discussed in more detail in the Politics with a Purpose feature. What started out as a device to circumvent the campaign finance limits on donations has now grown into a complicated web of unregulated campaign financing. As noted in the box, 527 groups can be a vehicle for a particular point of view, such as the Swift Boat Veterans for Truth campaign against Senator John Kerry; however, powerful interest groups now use 527s in addition to their existing political action committees to receive monies for voter registration drives and other activities. The top names in Table 10-2 might look familiar. EMILY's List, for example, has been a long-standing PAC that supports women candidates, mostly Democrats. It still has a PAC that receives regulated contributions and makes direct limited donations to candidates. Yet EMILY's List also has a 527 organization that can accept unlimited donations and spend the funds on "uncoordinated advertising." The list of top 2010 groups includes labor unions, groups linked to business, groups headed by well-known politicians, and others that maintain both PACs and 527 organizations. This tactic gives the groups greater ability than a PAC to raise and spend money.

TABLE 10-2 ► Top Ten 527 Committees in Expenditures in 2010

COMMITTEE	2010 EXPENDITURES	VIEWPOINT	AFFILIATION
American Solutions Winning the Future	\$28.4 million	Republican	Newt Gingrich
Service Employees International Union	\$15.5 million	Democratic	SEIU
Citizens United	\$9.2 million	Conservative	
EMILY's List	\$10.4 million	Progressive	Supports women candidates
America Votes	\$11.2 million	Democratic	Union
College Republican National Committee	\$8.6 million	Republican	Republican Party
National Education Association	\$7.5 million	Democratic	Teachers' union
Citizens for Strength and Security	\$7.2 million	Democratic	
American Crossroads	\$1.4 million	Republican	Karl Rove
ActBlue	\$5.4 million	Democratic	Democratic Party

Source: OpenSecrets.org, "Top 50 Federally Focused Organizations," Center for Responsive Politics. www.opensecrets.org/527s/.

Overall, 527 groups spent more than \$540 million in the 2009–2010 election cycle, with the top 10 spending more than \$5 million each, as shown in Table 10-2. Note the wholesome and patriotic titles of the 527 committees in the table. A few are independent, but the vast majority of these groups have a partisan preference, regardless of what they call themselves.

In contrast to the 527s, charities and true not-for-profit organizations are not allowed to participate directly in any type of political activity. If they do so, they risk fines and the loss of their charitable tax-exempt status. In 2005, the IRS reviewed more than 80 churches, charities, and other tax-exempt organizations. The IRS looked for such banned activities as the distribution of printed materials encouraging members to vote for a specific candidate, contributions of cash to candidates' campaigns, and ministers' use of their pulpits to oppose or endorse specific candidates.

The IRS found that churches played a particularly important role in the 2004 elections. For example, well-known fundamentalist Baptist minister Jerry Falwell used his Web site to endorse President Bush and to urge visitors to the site to donate \$5,000 to the Campaign for Working Families. At the All Saints Church in Pasadena, California, a pastor gave a sermon in which he imagined a debate among Senator John Kerry, President George Bush, and Jesus Christ. Although Jesus won, the press reported that the hypothetical debate came out in favor of John Kerry.

Of the 82 churches, charities, and other tax-exempt organizations that the IRS examined, more than 75 percent engaged in prohibited political activity during the 2003–2004 election cycle. The IRS proposed to revoke the tax-exempt status of at least three of these organizations.

Campaign Financing and the 2008 Elections

In 2008, the current campaign financing laws were put to the test and may have failed. Senator John McCain, who authored the most recent revision of the laws, chose not to accept private donations during the general election campaign. As a result, the total amount he raised during 2008 was about \$350 million. He did, however, accept about \$1 million in PAC contributions. He ran his fall campaign on the \$84 million of federal campaign funds granted to him under law. In addition, the Republican National Committee was able to raise and spend funds toward his election.

Taking the completely opposite approach, Senator Barack Obama chose not to accept public funds for the general election campaign. During the 2008 campaign, he raised more than \$630 million but accepted no PAC donations. The Obama campaign pioneered new ways for individuals to make contributions over the Internet, and millions of individuals chose to give in that manner. One result of the disparity in funds available was the ability of the Obama campaign to mount an exceptional Get Out the Vote campaign and to purchase four times more advertising time than did McCain. At the end of the campaign came many calls for a reexamination of campaign finance laws to fit these new realities.

Citizens United, Freedom Now, and the Future of Campaign Finance Regulation

The Supreme Court decision in *Citizens United v. FEC* shook the political world like no other since *Buckley v. Valeo*.¹⁸ In many ways, the case continued the struggle of outside groups and groups not affiliated with political parties to play a bigger

18. *Citizens United v. Federal Election Commission*, 558 U.S. (2010).

role in political campaigns. Although three decades of campaign finance laws and regulation had been passed to contain the influence of groups on the political process and to limit the contributions of individuals, political action committees, and corporations, the *Citizens United* decision, on its face, lifted many of those restrictions. The decision allows corporations, unions, groups such as Citizens United, and others to spend money in campaign advertising without limit as long as it is not coordinated with a campaign. Indeed, the restriction against using direct campaign language such as “vote for Mr. Smith” has been lifted as well. President Obama expressed his disagreement with the decision during his State of the Union speech, and most Democrats applauded his remarks. The Democratic leadership of the Congress pledged to write new laws to counteract this decision, but no action was taken before the 2010 election.

While public attention was focused on the *Citizens United* decision, a federal appeals court granted even more freedom to corporations, unions, individuals, and interest groups to spend money on campaigns. In the case *FreedomNow.org v. FEC*, an interest group that represents conservative economic views charged that the FEC regulations barring individuals and groups from spending as much as they want on campaigns was unconstitutional due to the decision in *Citizens United*. The appeals court agreed, and that decision has opened the doors for the creation of Super PACs, which can raise and spend unlimited amounts of money as long as their campaigns are not coordinated with those of the candidates. Individuals can give unlimited amounts of money to a Super PAC, as can corporations, unions, or other groups. In contrast to the 527 organizations, these campaign PACs must report their donors to the FEC either quarterly or monthly. As shown in Table 10-3, the top 10 Super PACs in the first half of 2012 all had adopted innocuous names that make it difficult for voters to know who they represent unless they look up their donor list from the FEC.

With the creation of 527s and Super PACs, what a millionaire or corporation can spend on an election has no limit, which means that campaign spending will soar until some way to regulate this spending can be created. While the campaigns of the presidential and senatorial candidates may be more restrained in their attacks on opponents and less clear about the ideological issues at stake in an election, 527s and Super PACs are able to say whatever they want. We can

Table 10-3 ► Top 10 Super PACs in Expenditures in First Six Months of 2012

Super PAC	Supports/Opposes	Leans	Expenditures
Restore Our Future	Romney	Conservative	\$46.5 million
Winning Our Future	Gingrich	Conservative	\$17.0 million
Priorities USA Action	Obama	Liberal	\$9.5 million
Red, White and Blue	Santorum	Conservative	\$7.5 million
Club for Growth		Conservative	\$5.4 million
Endorse Liberty	Paul	Conservative	\$4.1 million
Make Us Great Again	Perry	Conservative	\$3.9 million
House Majority PAC	Democratic candidates	Democratic	\$3.5 million
Our Destiny PAC	Huntsman	Conservative	\$2.8 million
Majority PAC	Democratic candidates	Democratic	\$2.7 million

Source: “Super PACs.” OpenSecrets.org. www.opensecrets.org/pacs/superpacs.php, accessed June 17, 2012.

■ **Learning Outcome 5:**
Describe the general outline of today's campaign for the presidency, and discuss the impact of the primary system on the outcome of the nomination process.

"Beauty Contest"

A presidential primary in which contending candidates compete for popular votes but the results do not control the selection of delegates to the national convention.

expect to see the most explosive charges and the most negative ads come from these organizations in the future, perhaps making the polarization of the voters even stronger and creating even more cynicism among the electorate.

Running for President: The Longest Campaign

The American presidential election is the culmination of two different campaigns linked by the parties' national conventions. The presidential primary campaign lasts from January until June of the election year. Traditionally, the final campaign heats up around Labor Day, although if the nominees are known, it will begin even before the conventions.

Until 1968, however, there were fewer than 20 primary elections for the presidency. They were often **"beauty contests"** in which the candidates competed for popular votes, but the results had little or no impact on the selection of delegates to the national convention. National conventions were meetings of the party elite—legislators, mayors, county chairpersons, and loyal party workers—who were mostly appointed to their delegations. National conventions saw numerous trades and bargains among competing candidates, and the leaders of large blocs of delegates could direct their delegates to support a favorite candidate.

Reforming the Primaries

In recent decades, the character of the primary process and the makeup of the national convention have changed dramatically. The public, rather than party elites, now generally controls the nomination process. In 1968, after President Lyndon B. Johnson declined to run for another term, the Democratic Party nomination race was dominated by candidates who opposed the war in Vietnam. After Robert F. Kennedy was assassinated in June 1968, antiwar Democrats faced a convention that would nominate LBJ's choice regardless of popular votes. After the extraordinary disruptive riots outside the doors of the 1968 Democratic Convention in Chicago, many party leaders pushed for serious reforms of the convention process. They saw the general dissatisfaction with the convention, and the riots in particular, as being caused by the inability of the average party member to influence the nomination system.

The Democratic National Committee appointed a special commission to study the problems of the primary system. Called the McGovern-Fraser Commission, the group formulated new rules for delegate selection over the next several years that had to be followed by state Democratic parties.

The reforms instituted by the Democratic Party, which were imitated in part by the Republicans, revolutionized the nomination process for the presidency. The most important changes require that a majority of the Democratic convention delegates not be nominated by party elites; they must be elected by the voters in primary elections, in caucuses held by local parties (discussed later), or at state conventions. No delegates can be awarded on a "winner-take-all" basis; all must be proportional to the votes for the contenders. Delegates are normally pledged to a particular candidate, although the pledge is not always formally binding at the convention.

The delegation from each state must also include a proportion of women, younger party members, and representatives of the minority groups within the party. At first, virtually no special privileges were given to elected party officials,