

THE PAC PHENOMENON IN AMERICAN POLITICS

Fred Wertheimer*

The 1970's provided the greatest burst of campaign finance reform activities in this century. Fundamental changes of an historic nature occurred in the rules governing the role of political money in American politics.

The greatest single achievement during this period was the creation of public financing for presidential elections.¹ The country learned an important lesson from Watergate and acted to take the American Presidency off the political auction block. Two other basic concepts also became a reality: campaign finance disclosure and contribution limitations.²

These reforms were not meant to be written in stone. They were part of a process that recognized there would be an ongoing need for adjustments and in-course corrections as the laws were implemented. Most of the problems that have arisen have been incremental, not fundamental, in nature. These problems have not served to seriously challenge the basic concepts involved—that there should be public financing, contribution limits, and campaign finance disclosure for federal elections.

One ominous development in the campaign finance area did occur during the 1970's—the extraordinary growth of the political action committee [PAC] movement.³ This Article examines the PAC move-

* Senior Vice President, Common Cause. B.A., 1959, University of Michigan; LL.B., 1962, Harvard University.

The author wishes to acknowledge the superb work done by Common Cause staff members Kathryn Kavanagh-Baran, Donald Simon, Bruce Adams, and Robin Barotz in helping in the preparation of this paper. Portions of this article appeared in *PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS* (M. Malbin ed. 1980), a publication based on a conference sponsored by the American Enterprise Institute for Public Policy Research.

1. Presidential Election Campaign Fund Act of 1971, Pub. L. No. 92-178, § 801, 85 Stat. 562 (current version at 26 U.S.C. §§ 9001-9013 (1976)).

2. See 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979).

3. The term "political action committee" refers to any committee sponsored by a corporation, labor organization, trade association or other group of persons which receives contributions

ment in American politics, sets forth proposals for placing new limits on the role and influence of PAC's, and discusses the constitutional questions involved with these limits.

THE PAC MOVEMENT IN AMERICAN POLITICS

In the summer of 1974, Congress enacted a major campaign finance law in response to the Watergate scandals.⁴ In effect, the law created two different systems for financing federal elections. Beginning in 1976, presidential campaigns would be financed primarily by public funds from a one-dollar tax check-off.⁵ Congressional campaigns, on the other hand, would continue to be financed entirely by private funds.

Because of this dual system, PAC activities have focused on the United States Congress, playing a major role in the increasing inability of Congress to provide national solutions to national problems.⁶ The extent of the growth of PAC's is plain from the dollar figures. During the 1974 congressional elections, PAC's gave \$12.5 million to congressional candidates. In 1976, PAC's gave \$22.6 million to congressional candidates while contributing only \$1 million to presidential candidates.⁷ In 1980, PAC's are expected to contribute over \$55 million to congressional candidates while giving between two and three million dollars to presidential candidates.

In examining the PAC movement we are basically dealing with campaign contributions to congressional candidates. As a result of public financing, PAC contributions play a very minor role in presidential elections.

Three major points concerning the role of PAC contributions in American politics warrant examination:

or makes expenditures aggregating the excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4) (Supp. III 1979); *id.* § 441b(b) (1976 & Supp. III 1979). A political action committee that qualifies as a "multi-candidate political committee" under 2 U.S.C. § 441a(a)(4) (1976), may make contributions of \$10,000 (\$5,000 in the primary and \$5,000 in the general) to any candidate in a federal election. *See id.* § 441a(a)(2) (1976); *id.* § 431(1) (Supp. III 1979).

4. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 201, 88 Stat. 1263 (current version at 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979)). Congress had previously passed the Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 301, 86 Stat. 3, which was primarily a campaign finance disclosure law. In 1971 Congress also passed legislation creating the voluntary \$1 tax check-off program, Pub. L. No. 809, § 302(a), 80 Stat. 1587 (current version at 26 U.S.C. § 9006 (1976)). This established the funding system for the comprehensive presidential public financing system enacted in the Federal Election Campaign Act Amendments of 1974, 2 U.S.C. § 441a(b) (1976). The 1974 law also created the contribution limits that presently exist for presidential and congressional elections.

5. *See* 26 U.S.C. § 9006 (1976).

6. *See* Alexander, *The Obey-Railsback Bill: Its Genesis and Early History*, 22 ARIZ. L. REV. 653, 658-65 (1980).

7. Unless otherwise noted, figures used herein are based on Common Cause analyses of PAC and candidate campaign finance disclosure statements filed with the Federal Election Commission.

1. There has been an explosive growth in the number of PAC's and in the amount of PAC giving to congressional candidates since the enactment of the 1974 campaign finance law. The potential for future growth is almost unlimited.

2. PAC contributions have a legislative purpose. They are generally made by interest groups that have specific legislative goals and conduct organized Washington lobbying programs. In addition, they have a special "investment" quality and heavily favor incumbents over challengers, substantially adding to the imbalance in political financing between incumbents and challengers.

3. PAC money has a major and negative impact on the legislative process. Not only do PAC contributions provide access and influence for the donors, but special interest PAC's have played a key role in the growing fragmentation of our political process.

Explosive Growth in the Role of PAC's

The explosive growth of PAC's during the past six years has significantly altered the face of congressional politics. The effect of the proliferation of PAC's has been to increase the dependence of congressional candidates on PAC money and to heighten both the appearance and reality of increasing domination of congressional decisionmaking by powerful special interest groups.

The 1974 amendments to the Federal Election Campaign Act⁸ [FECA] sparked the growth of PAC's in two key ways. First, by creating public financing for presidential,⁹ but not congressional, elections it focused the attention and interest of private campaign giving on Congress. Second, the law contained a provision that authorized government contractors to establish PAC's.¹⁰ Previously, a ban on government contractors' contributions to candidates¹¹ had been interpreted as preventing contractors from establishing PAC's.

Contrary to the interpretation of at least one theorist,¹² the 1974 provision was never intended as a "reform." It was proposed and successfully lobbied for by labor and business groups seeking to protect and enhance the role of PAC's. Labor groups led the effort because they feared that their government manpower training contract would jeopardize the legality of their existing PAC's. Business groups recognized that the provision would open up substantial opportunities for

8. Pub. L. No. 93-443, § 201, 88 Stat. 1263 (1974) (current version at 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979)).

9. *Id.* at 88 Stat. 1296 (1974) (current version at 26 U.S.C. §§ 9001-9042 (1976)).

10. 2 U.S.C. § 441c(b) (1976).

11. The Hatch Act, Pub. L. No. 76-753, § 5(a), 54 Stat. 772 (1940).

12. See, e.g., Epstein, *An Irony of Electoral Reform*, REG. 35 (May/June 1979).

corporations to establish new PAC's. The consequences of making this change were not "unintended,"¹³ but were clear to both its interest group proponents and those who unsuccessfully lobbied against the provision.

The statistics indicate the alarming proportions of recent PAC growth. The total number of PAC's has increased from about 608 in 1974¹⁴ to 2,000 at the beginning of 1980.¹⁵ The most significant increase has been in the number of corporate PAC's, which has risen from 89 in 1974¹⁶ to 949 in January, 1980.¹⁷ When business-related trade association PAC's are added, the number of business-related PAC's has risen from about 450 in 1975¹⁸ to nearly 1,400 in 1980.¹⁹ Labor PAC's increased from 201 in 1974²⁰ to 240 in 1980.²¹

According to campaign finance analyst Edwin M. Epstein, "PAC operations in 1976 and 1978 reveal only the tip of a possible iceberg. . . ." ²² Certain economic interests have shown a particularly sharp increase in the number of PAC's over the years. Coal, oil, and gas interests had 12 registered PAC's in 1974 and 110 in 1978. Utilities had no PAC's in 1974 and 64 in 1978. Commercial banking interests had 36 PAC's in 1974 and 161 in 1978. And the number of communications PAC's jumped from 8 in 1974 to 51 in 1978. Various other interest groups have also organized substantial numbers of PAC's. For example, in 1978, there were 125 health-related PAC's and 114 transportation related PAC's.²³

The sharp growth in the number of PAC's has been accompanied by a corresponding increase in the amount of PAC money going into congressional elections. The amount of PAC money in the 1978 House elections, for example, totalled \$25 million²⁴—an increase of 70% over 1976, and an increase of more than 200% over the \$8.4 million spent by

13. *Id.*

14. *Growth of Nonparty-Related Political Action Committees*, 36 CONG. Q. WEEKLY REP. 853 (1978) [hereinafter cited as *Committee Growth*].

15. FEDERAL ELECTION COMM., 1979 ANNUAL REPORT 55 (1980) [hereinafter cited as 1979 REPORT].

16. *Committee Growth*, *supra* note 14, at 853.

17. 1979 REPORT, *supra* note 15, at 55.

18. Epstein, *The Emergence of Political Action Committees*, in POLITICAL FINANCE 171 (H. Alexander ed. 1979).

19. 1 FEDERAL ELECTION COMM. REPORTS ON FINANCIAL ACTIVITY 1977-1978 142 (Interim Report No. 4, 1979) [hereinafter cited as FINANCIAL ACTIVITY REPORT]. This figure is based on Epstein's formula of including all corporate PAC's plus half of the "other" PAC's that are assumed to be business-related. See Epstein, *Business and Labor Under the Federal Election Campaign Act of 1971*, in PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS 116 (M. Malbin ed. 1980)).

20. *Committee Growth*, *supra* note 14, at 853.

21. 1979 REPORT, *supra* note 15, at 55.

22. Epstein, *supra* note 19, at 143.

23. See note 7 *supra*.

24. FINANCIAL ACTIVITY REPORTS, *supra* note 19, FINAL REPORT VOL. 1, at 150.

PAC's in the 1974 House election. This growth has been caused, in part, by the increase in the number of PAC's, and, in part, by increased giving from already established PAC's. For instance, the National Automobile Dealers Association PAC increased its contributions by 6,000% between 1974 and 1978, from \$14,000 to nearly \$1 million.²⁵ Similarly, the National Association of Realtors PAC stepped up its contributions from \$245,000 in 1974 to more than \$1.1 million in 1978.²⁶

One of the great ironies of the PAC movement is that in spite of its explosive growth during the past four years, PAC's are in many ways still in the incubation stage in terms of future potential. Dozens of relatively new PAC's have the capacity to achieve growth similar to that of the Auto Dealers and the Realtors.

Thirteen of the fifteen largest corporations in America now have their own PAC's. None of these gave more than \$160,000 in 1978. But there should be little doubt that General Motors, AT&T, Ford Motor Co., Mobile Oil, Texaco, Standard Oil of California, IBM, General Electric, Chrysler, Standard Oil of Indiana, Atlantic Richfield, and Shell Oil have the potential to become million dollar PAC's over the next few years. Of the 1,000 largest industrial firms, over 80% had *not* formed PAC's by March, 1978.²⁷ Of all the firms with \$100 million or more in assets, only 17% had registered PAC's in May, 1978.²⁸ It is clear that however rapid the growth in corporate PAC's may have been thus far, the potential for PAC formation has barely been tapped.

Growth in both the number of PAC's and the volume of PAC money has resulted in an increasingly heavy reliance by candidates on special interest group donors. For example, the number of House candidates receiving more than \$50,000 in PAC money in 1978 more than tripled from 1976, rising from 57 candidates to 176. Seventy-eight members of the House received forty percent or more of their total contributions from PAC's during the 1974 elections. The number of House members receiving similar amounts in the 1978 election rose to 136.²⁹

CONTRIBUTIONS WITH A LEGISLATIVE PURPOSE

PAC contributions have a special quality—they are generally given by groups that are also regularly engaged in organized Washing-

25. See note 7 *supra*.

26. See note 7 *supra*. See also FINANCIAL ACTIVITY REPORTS, *supra* note 19, at D 132.

27. Epstein, *supra* note 18, at 184.

28. *Id.* at 185.

29. See note 7 *supra*. 155 House members received 40% or more of their funds from PAC's during the 1978 elections if PAC contributions are measured as a percentage of total expenditures. *Id.*

ton lobbying efforts. In other words, they are contributions with a legislative purpose.³⁰ Evidence that these contributions carry with them a legislative purpose is seen in the fact that PAC money is often targeted to representatives who serve on committees of particular interest to a given PAC. For instance, from the beginning of 1975 through mid-1978, dairy PAC's contributed \$381,651 to members of the House Agriculture Committee, health groups contributed over \$200,000 to members of the House Commerce Committee, which has jurisdiction over health matters, and labor groups gave almost \$600,000 to members of the House Labor and Education Committee. Banking PAC's gave nearly \$225,000 to members of the House Committee on Banking, Finance, and Urban Affairs in 1977-78.³¹

Not only do interest groups target money to relevant committees, they also concentrate on the most influential members of those committees. In 1978, PAC's provided fifty-six percent of the money the twenty-two House chairmen spent on their campaigns.³² Many members of Congress have publicly voiced their deep concern about the role being played by PAC's in the congressional process.³³

30. The relationship between PAC's and the desire to influence government policy is generally recognized. Bernadette Budde, Political Education Director of the Business Industry Political Action Committee [BIPAC], has written:

A clear pattern emerges when reviewing who does and who does not have a PAC—the more regulated an industry and the more obvious an industry is as a congressional target, the more likely it is to have a political action committee within the associations or within the companies that make up that industry. As the government moves closer and closer to partnership with an industry, the result of that liaison is a PAC, mothered by industry but unmistakably sired by government.

Budde, *Business Political Action Committees*, in *PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS* 9, 11 (M. Malbin ed. 1980).

Some of the more frank public statements made about PAC contributions recognize their special investment quality. Fred Radewagen, while serving as political participation director for the United States Chamber of Commerce, said: "The prevailing attitude is that PAC money should be used to facilitate access to incumbents." Hucker, *Explosive Growth: Corporate Political Action Committees are Less Oriented to Republicans than Expected*, 36 CONG. Q. WEEKLY REP 850 (1978). Justin Dart, chairman of Dart Industries, has said that dialogue with politicians "is a fine thing but with a little money they hear you better." Ulman, *Companies Organize Employees and Holders into a Political Force*, WALL ST. J., Aug. 15, 1978, at 1, col. 6. The Dart Industries PAC was the third largest corporate PAC contributor in 1978. *FEC Released Year-End 1978 Report on 1977-78 Financial Activity of Non-Party and Party Political Committees*, Federal Election Commission Press Release, May 10, 1979, at 7.

Perhaps no member of Congress better understands the impact of special interest groups on legislative decisions than Senator Russell B. Long, chairman of the Senate Finance Committee. Long has said that campaign contributions "can often be viewed as monetary bread cast upon the water to be returned a thousand fold." 113 CONG. REC. S8312 (1967) (remarks of Senator Long).

31. Malbin, *Of Mountains and Molehills: PACs, Campaigns, and Public Policy*, in *PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS* 169, 152, (M. Malbin ed. 1980). Malbin pointed out that the bulk of the banking PAC's contributions (40%) were given to a small group of the House candidates receiving banking contributions (9%). *Id.*

32. Weaver, *Interest Groups' Campaign Gifts to House Leaders Doubled in '78*, N.Y. Times, Dec. 25, 1978, at 1, col. 6.

33. See *Hearings on H.R. 1 and Related Legislation Before the House Comm. on House Administration*, 96th Cong., 1st Sess. 216 (1979) (statement of Rep. Anderson):

The manner in which congressional elections are currently financed is a national disgrace. Special interests view campaign contributions as a way to buy into the office of a

PAC contributions can be viewed as investments by special interests in congressional decisionmaking. This can be seen clearly in the fact that PAC's strongly favor incumbents over their challengers, regardless of party.³⁴ In 1978, for example, PAC's gave \$3.30 to House incumbents for every one dollar they gave to their challengers.³⁵

One of the best examples of the investment attitude that generally accompanies PAC giving can be seen in the activities of the American Medical Association in California. The AMA has been the nation's largest individual PAC giver to congressional candidates in each of the last three elections³⁶ and will most likely maintain this status in 1980.

During the 1974 elections, AMA PAC's gave contributions totaling \$151,165 to 29 of the 37 California incumbent members of the House facing re-election. This included 17 incumbent Republicans and 12 incumbent Democrats ranging along the ideological spectrum from Republican conservatives to Democratic liberals. Only two challengers to California incumbents received AMA contributions, and in each case their incumbent opponents received larger contributions.

In three of the five 1974 races in California which did not involve an incumbent, the AMA contributed to both Democratic and Republican candidates, assuring financial support by the AMA for whomever won. Similarly, in the 1974 Senate race in California, the AMA gave \$10,000 each to the liberal Democratic incumbent and his conservative Republic challenger.³⁷

In 1978, overall individual contributions went to House incumbents over challengers by a ratio of two to one³⁸ compared with the higher 3.3 to 1 ratio for PAC money.³⁹ This shows that the heavy investment of PAC's in incumbents is not simply a natural distribution of all of the contributions made to federal candidates.

One of the clearest demonstrations of the investment nature of

present or future Member of Congress. . . . A major source of this distrust comes from the changing way in which our campaigns are being financed. More and more political action committees, known as PACs, are being created and are involving themselves in congressional elections. Their patterns of contributions, largely to incumbents, is what causes public cynicism. . . . It is becoming a system of purchasing access and the expectation of legislative favors, and it is time for a change.

34. Miller, *Congressmen Begin to Push for Campaign Kitty*, Wall St. J., Mar. 21, 1977, at 18, col. 3. "The bulk of special interest contributions represent a sort of investment in the careers of incumbent Congressmen and Senators with the aim of enhancing the influence of the financing groups. Obviously this money is given to buy influence." *Id.*

35. FINANCIAL ACTIVITY REPORTS, *supra* note 19, at 51.

36. *See* note 7 *supra*.

37. *See* note 7 *supra*.

38. Based on figures provided in INSTITUTE OF POLITICS, JOHN F. KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY, AN ANALYSIS OF THE IMPACT OF THE FEDERAL ELECTION CAMPAIGN ACT, 1972-78 2-16 (1979) (prepared for the House Comm. on Administration) [hereinafter cited as CAMPAIGN FINANCE STUDY GROUP REPORT].

39. FINANCIAL ACTIVITY REPORTS, *supra* note 19, at 51.

PAC money can be seen by the substantial sums that are given to safe-seat incumbents. PAC money contributed to safe-seat incumbents is by definition not a necessity for financing their campaigns. Its investment nature is even clearer than PAC contributions to more competitive incumbents.

The fact that safe incumbents do not need funds for competitive races does not mean that such contributions are of no value. Incumbents like to build war chests to discourage future challengers. Also, under House rules⁴⁰ and federal campaign finance laws,⁴¹ present members of Congress—although not future members—may convert any surplus campaign funds to personal use after they leave office. When PAC givers make contributions to safe incumbents, with both the donors and recipients aware that the funds are not really needed for immediate re-election purposes, the contributions can only be considered of an investment nature.

The tendency of PAC's to make investments of their contributions plays a central role in tilting campaign funds to incumbents over their challengers. In supporting incumbents over their challengers by a wide margin—3.3 to 1 in the House, about 3 to 1 overall—PAC's are substantially adding to the noncompetitive nature of congressional elections. This is particularly true in the House where incumbents who run for re-election have been returned to office, on average, 93% of the time during the last decade.⁴²

It has been argued that, while older trade association and corporate PAC's may be interested in buying access to incumbents, the new corporate PAC's are playing an electorally more sophisticated game, concentrating on close races even if it means opposing powerful Democratic incumbents.⁴³ While some within the business community have been strongly advocating that more business funds be given to Republican challengers,⁴⁴ and while some changes in the pattern of corporate giving may have taken place during the past election, it does not appear that any fundamental change has occurred. In the 1978 elections, for example, corporate PAC's still provided more than two dollars to House Democratic incumbents for every one dollar that went to a Republican challenger.⁴⁵

Over a four year period, PAC giving, as a portion of total campaign funds received by House incumbents, has increased by fifty per-

40. House Rule 43, Clause 6.

41. 2 U.S.C. § 439a (Supp. III 1979).

42. *Re-election Success of Incumbents*, 38 CONG. Q. WEEKLY REP. 908 (1980).

43. See JACOBSON, MONEY IN CONGRESSIONAL ELECTIONS (1980).

44. See Memorandum to Washington Representatives from Clark MacGregor, National Chamber Alliance for Politics, Oct. 17, 1978.

45. FINANCIAL ACTIVITY REPORTS, *supra* note 19, at 51.

cent—from twenty-one percent of total receipts in 1974 to thirty-two percent in 1978. A vicious circle begins: incumbents who receive ever greater proportions of their funding from PAC's find it increasingly difficult to turn off the tap.

Of course, PAC's have no monopoly on the use of contributions to try to accomplish legislative goals. Individual contributions can also be tied to achieving legislative aims.⁴⁶ That is the basis for the \$1,000 individual contribution limit in FECA.⁴⁷ It is important, however, to recognize that there is a qualitative difference in our political system between individual contributions that may or may not be tied to organized lobbying efforts and PAC money that almost always is.⁴⁸ This means that as the role of PAC giving increases in the financing of congressional campaigns, an ever growing use of political money to influence congressional decisions will result.

Legislative Impact of PAC Money

The issue of whether campaign contributions provide access and influence and affect government decisions is not new. In upholding the constitutionality of the contribution limits in FECA, the Supreme Court, in *Buckley v. Valeo*,⁴⁹ said:

It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the \$1,000 contribution limitation. . . . To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined.⁵⁰

The Court specifically went on to recognize that we are dealing not only with the actuality of abuse by public officials but with the appearance of abuse as well.⁵¹

A 1980 survey by Louis Harris found that a sizeable majority of Americans feels that PAC's "increase the influence that business, un-

46. One classic case involved the activities of businessman Ross Perot. In 1974, prior to the 1974 FECA Amendments, he gave \$75,900 to congressional candidates, including \$31,900 to 12 members of the tax-writing Ways and Means Committee, and almost wound up with the enactment of an amendment designed to bring him a \$15 million tax refund. Only the disclosures of this activity by the *Wall Street Journal* led to defeat of the amendment after it had been approved by the Committee. See Hunt, *Perot Would Gain \$15 Million Benefit in Tax Panel's Bill*, *Wall St. J.*, Nov. 7, 1975, at 1, col. 4.

47. 2 U.S.C. § 441a(a)(1) (1976). See *Buckley v. Valeo*, 424 U.S. 1, 26 (1976).

48. More than half of the organizations that sponsor PAC's also maintain Washington based lobbying offices.

49. 424 U.S. 1 (1976).

50. *Id.* at 26-27.

51. *Id.*

ions and other interest groups have on government."⁵² According to Harris, because of these concerns about special interests, a sixty-eight to twenty-nine percent majority believes that Congress should place "a limit on the amount that a candidate can receive from all PAC's."⁵³

Although the process of PAC influence usually is subtle, and articulated *quid pro quos* are rare, the interrelationship between organized lobbying and PAC contributions is clear to the participants. PAC campaign giving provides special interests with access and influence,⁵⁴ and it affects legislative decisions. PAC's play a starring role in the Special Interest State⁵⁵—where powerful private interest groups dominate public policy in their own areas, and the prevailing attitude all too often is none-for-all and each-for-one.⁵⁶

Candidates receive contributions from groups that have legislative interests pending in Congress—often interests of enormous economic consequences. In accepting the contributions, candidates know that PAC givers invariably will lobby them and ask for assistance. Donors know that the money is being accepted by candidates who are aware of their legislative interests and their desires for support.⁵⁷

Furthermore, campaign finance relationships are often of an ongoing nature. In the House, the relationship can be renewed or terminated every two years depending on circumstances in the interim. In fact, relationships often involve financial support over a number of past campaigns as well as the potential for future support.

One example of the impact of money on legislative outcomes occurred in late 1979. The House gutted President Carter's hospital cost containment bill by a vote of 234-166.⁵⁸ The American Medical Association [AMA] was a leading opponent of the bill which the administration estimated would save consumers forty billion dollars during the next five years.⁵⁹ A Common Cause analysis of PAC contributions by the AMA PAC's to House members showed that 202 of the 234 members voting for the crippling amendment had been given a total of

52. ABC News-Harris Survey, *Limit on Political Action Committee Campaign Contributions Favored*, Apr. 3, 1980.

53. *Id.*

54. See generally Adamany, *PAC's and the Democratic Financing of Politics*, 22 ARIZ. L. REV. 569 (1980).

55. In what Common Cause refers to as the Special Interest State, narrow interest groups are able to virtually control government decisions in their areas of particular concern. All too often national policymaking is paralyzed because various special interests enjoy veto power over particular segments of a proposed solution. See COMMON CAUSE, *THE GOVERNMENT SUBSIDY SQUEEZE* 8 (1980).

56. See *id.*

57. As a New York Times editorial asked: "[H]ow often can even scrupulous legislators be expected to forget their dependence on PAC's?" *How to Stop Ducking the PAC Problem*, N.Y. Times, July 25, 1979, at 22, col. 1.

58. 125 CONG. REC. H10885 (daily ed. Nov. 15, 1979).

59. 15 Weekly Comp. of Pres. Doc. 2109 (1979).

\$1,647,897 in contributions from the AMA during the 1976 and 1978 campaigns, an average receipt of \$8,157 per member.⁶⁰ Of the 50 House members with the largest AMA donations, 48 supported the AMA position.⁶¹ While 122 of the members voting against the AMA-supported legislation also received AMA contributions, their average contributions amounted to \$2,287, compared to the \$8,157 average received by those who backed the AMA.⁶²

There are various factors that comprise legislative decisions in Congress. But, given these figures, it is extremely difficult to conclude, or to ask the public to conclude, that political money did not constitute a major influence in the House defeat of hospital cost containment.

It has been argued that the amounts of money received from any one PAC or group of related PAC's, when viewed as a percentage of total receipts, are generally too small—*e.g.*, five or ten percent of contributions—to influence decisions.⁶³ But the psychology and reality of congressional elections does not result in candidates placing marginal value on campaign funds. Maximum fundraising is the goal, with candidates usually working to raise as much money as they can. There is no magic formula that allows congressional candidates to determine when they have raised enough money so that a contribution representing, for example, five or ten percent of their total is no longer needed. Even if there were such a formula, five to ten percent of an average size campaign fund is a large, not small, amount. And the larger the actual sums involved, the more difficult it is to replace them, regardless of the percentage of the total they represent.⁶⁴ Given the present system in Congress, there are no easy alternatives for replacing PAC funds. In fact, just the opposite is true. For incumbents, PAC money is cheaper and easier to raise than individual contributor dollars, and it is more accessible. Impact increases further when PAC's provide significant sums to a member every two years, campaign after campaign.

The potential impact of PAC giving on a congressional candidate is perhaps best understood when we look at the fact that in 1978 there were, for example, 110 coal, oil, and gas company PAC's, 161 commer-

60. See *AMA Campaign Contributions Helped Kill Hospital Cost Containment Bill, According to Common Cause Study*, Common Cause Press Release, Dec. 18, 1979.

61. *Id.*

62. *Id.* In 1978, 320 members of the House received AMA campaign contributions—with an average contribution of \$4,176. See note 7 *supra*. As John Gardner, Founding Chairman of Common Cause, has said, "When you spray money over half of the House of Representatives, you probably have something in mind." *Oil, Ships, and Political Money*, Common Cause Editorial Memorandum, Oct. 15, 1977.

63. See Malbin, *supra* note 31, at 169.

64. In 1972, Clement Stone contributed \$2,000,000 to Richard Nixon and Stewart Mott gave George McGovern \$724,000. It cannot seriously be argued that these sums are insignificant because they represent only three and 1.4 percent respectively of those candidates' receipts.

cial banking PAC's, 281 labor PAC's, and 114 transportation PAC's.⁶⁵ Each of these PAC's is presently able to legally contribute a total of \$10,000 to a congressional candidate.⁶⁶ The cumulative impact that can and will occur under these circumstances should put to rest any notion that PAC contributions are simply "too small" to affect legislative results.

Although special interest lobbying of Congress obviously involves more than campaign contributions, there is no reason to believe, as one commentator has argued,⁶⁷ that contributions are only a small part of overall lobbying strategies. Political money is an essential ingredient, a necessity. Its capacity to influence is clearly understood by both PAC donors and recipients.⁶⁸

One of the most unusual arguments presented about PAC influence is the claim that PAC contributions from Washington-based groups are not harmful because they are accepted by members only "as signs of respect."⁶⁹ According to this argument, the gift size is often less important than the "ambiance" of which it is a part. The short answer to this assertion is that given a choice between size and ambiance, most members will choose size.

An example of the "respect" involved in this process can be seen by looking at the campaign contributions of the American Trial Lawyers' Association. During the 1976 Senate elections, there were five candidates, including four incumbents, who each received a \$5,000 contribution from the Trial Lawyers' PAC, and who then went on to lose their general election races.⁷⁰ Following the defeats of these five candidates, the Trial Lawyers turned around and made substantial contributions to each of the five newly elected Senators who had defeated the candidates they originally had backed.⁷¹ Not one of these five winning candidates had received any contributions from the Trial Lawyers during the campaign.⁷²

From this example and others, it is clear that political money does

65. See note 7 *supra*.

66. 2 U.S.C. § 441a(a)(2)(A) (1976). A PAC may make contributions not exceeding \$5,000 per candidate per election. *Id.* In an election cycle with a primary and general contest, this translates into a total PAC limit of \$10,000 per candidate.

67. Malbin, *supra* note 31, at 178.

68. Boggs, *PACs: Business' Political Renaissance*, 14 TRIAL 5 (Jan. 1978). One of Washington's most successful business lobbyists, Thomas Hale Boggs, Jr., stated: "It is important that professionals volunteer their time and exert their influence in the political process. Yet the most valuable contribution they can give is a periodic financial transfusion. Dollars, after all, are the lifeblood of political action committees." *Id.* at 7.

69. Malbin, *supra* note 31, at 178.

70. See *Trial Lawyers Group Contributes Almost Quarter of a Million Dollars to 1976 Congressional Candidates*, Common Cause Press Release, Feb. 28, 1978.

71. *Id.*

72. *Id.*

not simply follow candidates' views. For instance, in 1979, the House voted on a proposal supported by the National Association of Realtors [NAR].⁷³ The freshman class in the House had no real track record on real estate issues when these members ran as nonincumbents in 1978. An analysis of the 1979 vote on an NAR-backed amendment to eliminate new enforcement powers for The Department of Housing and Urban Development against fraudulent real estate developers showed the following: (1) the NAR contributed to fifty-one of the seventy-seven freshman in 1978; (2) forty-three of these fifty-one newcomers, with average NAR contributions of \$4,272, voted with the NAR; and (3) of the twenty freshmen opposing the NAR, thirteen received no NAR contributions.⁷⁴ The Realtors did very well on this vote with the freshman class. One would be hard pressed to argue that the contributions had been based on established voting patterns. Even when PAC money is given in response to previous positions taken, donors usually have a strong interest in the future as well. Both donor and recipient understand this.

More and more, Congress faces struggles where the particular interest of an organized segment of our society is pitted against the more generalized interest of those less directly involved. In this kind of political equation PAC contributions, which normally represent only the organized interest, take on an exaggerated importance. Also, organized interests do not "balance" each other off in the political system. Which organized interest groups, for example, compete on an ongoing basis with the dairy interests on agriculture policy, the realtors on housing policy, the maritime unions on maritime policy, the truckers and teamsters on transportation policy?

We see more and more cases of special interest groups exercising increasing power to determine or veto policies that affect their own interests. The veto power is of special significance because it is easier to block legislation in the congressional process than to pass it. With growing constraints on government resources, painful choices need to be made on how to distribute more limited resources. With groups unwilling to sacrifice government favors the veto power gains even greater weight. The result has been growing paralysis in government.

Recent years have also found repeated cases of business and labor lobbying jointly on issues concerning both sides of the industry. This is seen, for example, in defense spending, environmental regulation, cargo preference laws, trucking regulation, nuclear power, and the

73. 125 CONG. REC. H4213 (daily ed. June 7, 1979).

74. *See More than \$1 Million in Political Contributions Pays Off in Key Legislative Victory, According to New Common Cause Study*, Common Cause Press Release June 21, 1979.

Chrysler bailout. With the enormous economic stakes involved in congressional decisions, we can expect this to be a growing phenomenon. Epstein finds that: "Conceivably one of the greatest challenges to the integrity of American electoral politics could arise from excessive harmony between powerful business and powerful labor."⁷⁵

Special interest groups do not always win. Campaign contributions do not necessarily assure votes or support. Special interests, however, exercise enormous and growing power in Congress, power that is often used to paralyze the policymaking process. PAC money is playing a central and increasing role in the exercise of that power. PAC's are a key factor in the recent and rapid growth of the Special Interest State.⁷⁶

By nature, PAC's are fragmenters, and PAC's have been a major contributor to the increasing fragmentation of our political system. In this way, PAC's today serve to substantially weaken an already weakened political party system.⁷⁷ They are a major and ongoing challenge to party responsibility and party responsiveness in Congress. They will do increasing damage to the political parties, particularly in Congress, until their power is harnessed.

PROPOSED REMEDIES

There is compelling evidence that the PAC movement is a major negative force in our political process today.⁷⁸ Absent change, the situation is certain to get substantially worse. Dennis Farney has correctly analogized the PAC movement to the arms race mentality: "If Congress decides to keep the present system, more sophisticated techniques . . . are going to replace today's relatively primitive techniques just as surely as guided missiles followed the manned bomber. For in politics, as in warfare, once an arms race gets rolling, it's hard to stop."⁷⁹

The way in which congressional races are financed goes to the heart of how power is exercised in this country. As the PAC movement continues its explosive growth, our political system becomes increasingly indebted to powerful, narrowly focused special interest groups. To prevent political money from dominating legislative decisions a new system for financing congressional elections must be created.

75. Epstein, *supra* note 19, at 149.

76. See text & note 55 *supra*.

77. See Sorauf, *Political Parties and Political Action Committees: Two Life Cycles*, 22 ARIZ. L. REV. 445, 454-61 (1980).

78. See COMMON CAUSE, *HOW MONEY TALKS IN CONGRESS* 12 (1978).

79. Farney, *Harnessing the PAC Bomb*, Wall St. J., Dec. 4, 1978, at 26, col. 4.

Congressional Public Financing

It has already been demonstrated that PAC's play a minor role in the presidential elections as a result of the public financing system established in 1974.⁸⁰ Public financing for congressional races would accomplish the same ends for House and Senate elections.

The proposed system of private and public financing that has drawn the greatest support in Congress would allow a candidate to qualify for public funds by raising a threshold amount of small private contributions to show his or her viability as a candidate.⁸¹ Small private contributions would then be matched in amount with funds from the voluntary one-dollar tax checkoff.⁸² Candidates who participate in the public financing system would be subject to an overall spending limit, and wealthy candidates who participate would no longer be able to spend unlimited amounts of their own money.⁸³

Partial public financing of congressional elections would provide the following beneficial effects on our political system:

(1) Candidates would be less dependent on special interest groups' contributions because they would have an alternative way to finance their races.

(2) Incumbents would have less of a financial advantage than they now have. Challengers would be able to have small contributions collected from supporters matched by public funds. The amount of funds available to challengers should increase substantially.

(3) It would be to a candidate's advantage to try to get as many small individual contributions as possible, because each of these small contributions would be matched by public funds.

Limitations on PAC Contributions

In addition to public financing, additional steps must be taken to restrict the ability of PAC's to contribute to congressional candidates.

On October 17, 1979, the House of Representatives passed the

80. See text & notes 4-7 *supra*.

81. On August 8, 1974, the House of Representatives passed by a vote of 355-48, a bill providing for public financing of presidential campaigns. It also defeated a proposal for congressional public financing by a vote of 228-187. 120 CONG. REC. H27514 (daily ed. Aug. 8, 1974). On July 19, 1978, the House defeated, by a vote of 213-196, a procedural motion which would have allowed members to act on congressional public financing. 124 CONG. REC. H6982 (daily ed. July 19, 1978). On May 24, 1979, the House Administration Committee, by a vote of 8-17, refused to report a bill to provide federal funding for House general election campaigns. 125 CONG. REC. D671 (daily ed. May 24, 1979).

In the Senate, a bill providing for congressional public financing passed on April 11, 1974, by a vote of 53-32. 120 CONG. REC. S10952 (daily ed. Apr. 11, 1974). On August 2, 1977, the Senate abandoned its fight for congressional public financing after supporters were unable to break a 10-day filibuster. 123 CONG. REC. D1182 (daily ed. Aug. 2, 1977).

82. See H.R. 1, 96th Cong., 1st Sess. (1979).

83. *Id.*

Campaign Contribution Reform Act⁸⁴ by a vote of 217-198.⁸⁵ Sponsored by Representatives David Obey (D-Wisc) and Tom Railsback (R-Ill), the bill reduces the limit on PAC contributions to a House candidate from \$10,000 (\$5,000 in a primary plus \$5,000 in a general election) to \$6,000 in an election cycle and, for the first time, places an overall limit of \$70,000 on the amount that a House candidate can receive from all PAC's.⁸⁶ Despite the fact that the Obey-Railsback legislation deals only with House races, a threatened filibuster by opponents has blocked its consideration in the Senate.⁸⁷

The \$70,000 overall limit is particularly important in addressing the basic problem of PAC proliferation. The Obey-Railsback bill, however, does not solve the long term problem of redressing the imbalances that exist in political financing. Public financing is necessary to accomplish that goal. But the Obey-Railsback bill does challenge the ever-increasing expansion of PAC's at a critical time in their development—before they have such a stranglehold on Congress that they are able to block any threat to their power.⁸⁸

THE CONSTITUTIONAL QUESTION

Whatever steps are taken to address the existing problems posed by excessive PAC money in the political system, they must be measured against the constitutional guidelines drawn by the Supreme Court in *Buckley v. Valeo*.⁸⁹ The Court, in a sweeping examination of the constitutional implications of campaign finance reform, laid down the standards by which to measure further electoral reform measures.

84. H.R. 4970, 96th Cong., 1st Sess. (1979).

85. 125 CONG. REC. H9303 (daily ed. Oct. 17, 1979).

86. *Id.* See Comments of Congressmen Railsback, Rhodes, and Campbell, 22 ARIZ. L. REV. 667, 667-72 (1980).

87. Weaver, *Senate Bottles Up a Bill to Limit Contributions in Races for House*, N.Y. Times, Feb. 15, 1980, at 20, col. 3.

88. Some have argued that the way to cure the PAC problem is to eliminate or substantially increase the limits on individual contributions. See Malbin, *supra* note 31, at 180. It is maintained that such action will dilute the importance of PAC contributions as well as provide additional resources for challengers who presently receive insufficient campaign funds as a class. See CAMPAIGN FINANCE STUDY GROUP REPORT, *supra* note 38, at 1-13. While it is appropriate, given the sizeable inflation that has occurred since its enactment in 1974, to review the \$1,000 individual contribution limit, it is essential to note that removing or substantially increasing the individual limits is not going to solve the PAC problem. Substantially increasing the limits would no doubt supply some additional funds to challengers, but it would also supply far greater funds to incumbents. It would do nothing to broaden the base of givers. Rather it would allow a select few large givers to contribute more.

While PAC money as a general proposition has a greater capacity to be tied to lobbying efforts, this capacity also exists for large individual contributions, particularly if they were to come from a few individuals with the same interest. The higher the limit, the greater is this capacity.

Alternative funds are needed for challengers who have difficulty raising the sums needed to conduct a competitive campaign. By far the best way to accomplish this is through public financing.

89. 424 U.S. 1 (1976).

Public Financing

It is beyond dispute that, given the *Buckley* decision, a system of partial public financing of congressional campaigns, similar to the system in place for presidential primaries,⁹⁰ is constitutional.⁹¹ The Court in *Buckley* reviewed a public financing scheme for presidential elections and upheld it against a variety of constitutional challenges. First, the Court found that it was within Congress' power under the general welfare clause⁹² to enact public financing.⁹³ Congress' goals—"to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising"⁹⁴—were proper ends that could be accomplished by means of public financing of elections.⁹⁵

Nor does public financing violate the first amendment. To the contrary, the Court in *Buckley* found that public financing was "a congressional effort, not to abridge, restrict or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people."⁹⁶ Similarly, a scheme of public financing of congressional elections would serve ends fully consistent with first amendment values.

Limitations on Contributions

The Court in *Buckley* also analyzed the standards by which to measure restrictions on campaign contributions from individuals and groups. The Court noted that contribution limits infringe on freedoms of political association and thus must be subject to strict scrutiny. Nevertheless, the Court said that "[e]ven a 'significant interference with protected rights of political association' may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms."⁹⁷

90. See 26 U.S.C. §§ 9001-9042 (1976).

91. The Second Circuit recently upheld the constitutionality of the statutory scheme that conditions public financing upon a candidate's voluntary acceptance of expenditure limitations. *Republican Nat'l Comm. v. Federal Election Comm'n*, No. 79-3073 (2nd Cir. Feb. 6, 1980), *appeal dismissed*, 48 U.S.L.W. 3658 (Apr. 15, 1980); No. 79-1373, *aff'd*, 48 U.S.L.W. 3656 (Apr. 15, 1980); No. 79-1375, *aff'd*, 48 U.S.L.W. 3656 (Apr. 15, 1980). The Second Circuit and a three-judge district court unanimously rejected the claims of the Republican National Committee that the public financing provisions of the law violate the first, fifth, or ninth amendments. *Id.*

92. U.S. CONST. art. I, § 8, cl. 2.

93. 424 U.S. at 91.

94. *Id.*

95. *Id.*

96. *Id.* at 92-93.

97. *Id.* at 25.

The Court applied this standard and upheld all of the contribution limitations enacted by Congress in the FECA Amendments of 1974.⁹⁸ Although the Court showed considerable deference to first amendment concerns, it found that the contribution limitations in FECA served compelling state interests in preserving the integrity of the electoral system.⁹⁹

The reliance of candidates on large contributions, the Court said, creates the appearance of favoritism and impropriety.¹⁰⁰ Public confidence in government is eroded when candidates become dependent on large campaign contributions. Thus, the *Buckley* Court held that it is a constitutionally permissible state interest to safeguard against the appearance of, as well as the reality of, impropriety in the political system that is created by the unrestricted flow of money into political campaigns.¹⁰¹

The Court held that the \$1,000 contribution limit focused "precisely" on the evil of large contributions, while leaving individuals and groups substantial opportunities for political speech and association.¹⁰² The contribution limit thus was narrowly tailored to meet the problem of corruption, and did not "undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties."¹⁰³

Similarly, the Court upheld a \$5,000 limitation on contributions by PAC's and a \$25,000 aggregate limit on individual contributions, as necessary corollaries of the \$1,000 individual limit.¹⁰⁴ In both cases,

98. *Id.* at 23-38. The 1974 Amendment established the following limits on campaign contributions: Individuals may contribute no more than \$1,000 per candidate per election, 2 U.S.C. § 441a(a)(1)(A) (1976); \$20,000 to a national political party in a given calendar year, *id.* § 441a(a)(1)(B); and \$25,000 to all candidates, parties, and committees in a calendar year, *id.* § 441a(a)(3). Multi-candidate committees, or PAC's, may contribute no more than \$5,000 per candidate per election, *id.* § 441a(a)(2)(A); \$15,000 to a national political party in a calendar year, *id.* § 441a(a)(2)(B); and \$5,000 to any other political committee in a calendar year, *id.* § 441a(a)(2)(C).

99. 424 U.S. at 26-27. In upholding the \$1,000 limit on individual contributions, for example, the Court noted;

It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the \$1,000 contribution limitation. . . . To the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined. . . .

Id.

The Court also stated: "Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Id.* at 27.

100. *See id.* at 30.

101. *Id.* at 26.

102. *Id.* at 28.

103. *Id.* at 29.

104. *Id.* at 35, 38. See note 98 *supra*.

the Court found the additional restrictions to be necessary to avoid circumvention on the basic individual limit, and thus necessary to achieve the compelling state interests served by that limitation.¹⁰⁵

The Court in *Buckley* thus demarcated the permissible scope of congressional regulation of campaign contributions in federal elections. Although such regulation touches on sensitive first amendment questions, those are to be judged in light of the goals which Congress is trying to achieve. The Supreme Court recognized that unrestricted campaign giving creates both political corruption and the appearance of corruption and, in so doing, undermines the integrity of the electoral system. To re-establish and preserve that integrity, the Court in *Buckley* held that Congress may constitutionally restrict the ability of individuals and groups to contribute to candidates, so long as those restrictions are narrowly drawn.¹⁰⁶

Limitations on PAC's

The Obey-Railsback proposal, as passed by the House of Representatives, would limit candidates to accepting no more than an aggregate of \$70,000 in contributions from all PAC's.¹⁰⁷ The legislation is designed to restrict the domination of a candidate's campaign fund by special interest groups. Its ultimate purpose is to promote the same compelling state interest as the contribution limitations upheld by the Supreme Court in *Buckley*: to reduce both the actuality and appearance of corruption in the political process. Legislation that narrowly and directly serves such an interest can survive even the close judicial scrutiny applied where, as here, first amendment concerns are involved.¹⁰⁸

The \$70,000 aggregate limit would diminish the undue influence currently exerted by PAC's over the Congress. If candidates are limited to receiving \$70,000 from PAC's, they will have to turn more toward a broader base of individual contributors for financial support. To the extent that candidates are less dependent on PAC money, they will be less susceptible to pressures from PAC's to vote on legislation according to the narrow special interest of the group behind the PAC money. If candidates would focus their campaign funding away from a small number of PAC's toward a larger number of individual contributors, members of Congress would become more responsive to a broad

105. 424 U.S. at 35, 38.

106. *Id.* at 28.

107. See text & notes 84-88 *supra*.

108. 424 U.S. at 25.

range of national needs and interests.¹⁰⁹ The urgency of the need to end the domination of campaign financing by PAC's is underscored by the fact that 176 House candidates in 1978 received more than half of their campaign funding from PAC's.¹¹⁰

As the Supreme Court recognized in *Buckley*, large contributions are often given "to secure political quid pro quo's from current and potential officeholders," with the effect of undermining "the integrity of our system of representative democracy."¹¹¹ The contribution limits upheld in *Buckley* served to reduce this type of corruption. A new problem, however, has arisen since those limitations were enacted: the growth of PAC's, especially the scores of PAC's operating in related policy areas. Those related PAC's, for example, the 110 energy PAC's, the 161 commercial banking PAC's, and the 114 transportation PAC's,¹¹² can each make contributions to House candidates, thus aggregating the impact of their money by concentrating it in the area of their special concern.

It is for these reasons that the current system of limits on individual PAC contributions is inadequate and that an aggregate limitation is needed. The aggregate limitation is, short of public financing, the only way to deal with this horizontal proliferation of PAC's. It is the only way to stem the focused influence that money from all PAC's in a related area now has on candidates.

One of the primary House sponsors of the proposed legislation, Representative David Obey, has noted that a combination of this horizontal proliferation of interest group PAC's with the professional lobbying abilities of interest groups results in the disproportionate impact of PAC dollars.¹¹³ Because of this, current limitations on PAC contributions are insufficient to restrain the adverse effects of PAC money on the legislative process.¹¹⁴ The proposed ceiling on PAC money will di-

109. The existing \$1,000 limitation on contributions by individuals would require candidates to seek widespread financial support from individuals.

110. See note 7 *supra*.

111. 424 U.S. at 26-27.

112. See text accompanying note 65.

113. Statement of Rep. David R. Obey, Democratic Study Group, Washington, D.C. (July 26, 1979).

114. *Id.* Rep. Obey said of the current limits:

Those limits . . . are only a partial safeguard against undue influence because PAC giving is giving with a purpose. It is money given by groups who then follow their contribution with lobbying activities on behalf of their particular interest. Frequently, however, these interests coincide, such as when an issue affects an entire industry and all of the companies and labor unions in that industry. . . . When that occurs, when a large number of groups which have made substantial contributions to members are all lobbying on the same side of an issue, the pressure generated from those aggregate contributions is enormous and warps the process. It is as if they had made a single, extremely large contribution. . . . And occasionally interest groups will attempt to maximize their combined influence by collaborating in joint lobbying efforts even though some of the groups involved do not have a strong interest in the issue at hand. . . . The result of

minish the powerful relationship between PAC contributions and legislative decisions. In so doing, the legislation would accomplish what the *Buckley* Court recognized to be a compelling state interest in reducing corruption in the electoral system.¹¹⁵

The Court in *Buckley* demonstrated a concern not only for the existence of actual corruption, but also for the "impact of the appearance of corruption" resulting from large financial contributions, and the resulting perception by the public of money influencing decisions.¹¹⁶ The state has an important interest in safeguarding against the appearance of this sort of impropriety. These ends will also be served by the proposed legislation. Just as the aggregate PAC limit will reduce the dependence of House candidates on PAC money, so too will it reduce the appearance of those arrangements.

The proposed legislation will accomplish these ends directly and narrowly. Both the actuality and appearance of impropriety in the political process now stem from the disproportionate and growing role of PAC money in congressional campaigns. The legislation will cap this growth by fixing a ceiling on the amount of PAC money that may be contributed in any given campaign. The means employed by the legislation are the most direct way to serve the end of reducing the dominance of PAC influence in House elections.

Further, the proposed aggregate limit is narrowly drawn to impose the least restriction on the first amendment rights of PAC's and candidates. As the Supreme Court recognized in *Buckley*, "a limitation upon the amount that any one person or group may contribute to a candidate . . . entails only a marginal restriction upon the contributor's ability to engage in free communication."¹¹⁷ Under the proposed legislation, PAC's will continue to be free to contribute to candidates of their choice, subject to the proposed limit of \$6,000 per election cycle, so long as the candidate has not yet received an aggregate of \$70,000 in PAC contributions.¹¹⁸

Even though some PAC's will be wholly prohibited from contributing directly to a candidate once he or she has accepted \$70,000 in PAC money, the proposed legislation still does not violate the first amendment. The Court in *Buckley* upheld a scheme similar to the ag-

such activities is to negate the basic purpose of contribution limits on individual PACs, and the only effective way to deal with such a problem is to put an overall limit on such contributions such as is proposed in the Campaign Contributions Reform Act of 1979.

Id.

115. See 424 U.S. at 26.

116. *Id.* at 27.

117. *Id.* at 20.

118. H.R. 4970, 96th Cong., 1st Sess., 125 CONG. REC. H9288 (daily ed. Oct. 17, 1979).

gregate limit proposed here.¹¹⁹ Under the public financing provisions of FECA,¹²⁰ a presidential candidate of a major party who receives public money is barred from spending more than that sum,¹²¹ and therefore is prohibited from accepting any private contributions.¹²² Thus, once a candidate accepts public funding, neither individuals nor PAC's may make a contribution to that candidate. The Supreme Court upheld the constitutionality of this scheme without even seeing a need to discuss whether this total ban on contributions infringes the speech rights of PAC's or individuals.¹²³

Under the legislation proposed here, PAC's will be subject to no greater restriction than they presently are under the public financing scheme upheld in *Buckley*. The Supreme Court has already found no constitutional infirmity in the latter scheme; there is no reason to believe that the former provision is any less constitutional. Indeed, PAC's, as a class, will undergo less of a restriction on speech under the proposed aggregate limitation than under the presidential public financing system because they can, as a group, contribute \$70,000 to a candidate.¹²⁴ By contrast, under the public financing system, all PAC contributions are barred once a presidential candidate of a major party accepts public financing for the general election.¹²⁵

The Supreme Court in *Buckley* accepted the idea that one type of contribution limitation can be upheld if it furthers the purposes of another limit.¹²⁶ Here, the aggregate PAC limitation furthers the purpose behind the current scheme of contribution limits upheld in *Buckley*. Just as those limits serve to reduce the actuality and appearance of corruption resulting from uncontrolled individual and group contributions, the limit in the proposed legislation would serve the corollary purpose of reducing the actuality and appearance of corruption resulting from the over-reliance by candidates on PAC contributions.

Experience since the *Buckley* ruling has shown that the current regime of contribution limits is not sufficient in itself to ensure the integrity of the electoral process. The rapid growth of candidate dependence on PAC contributions has undermined legislative independence

119. See 424 U.S. at 85-110.

120. 26 U.S.C. §§ 9001-9013 (1976).

121. See 2 U.S.C. § 441a(b)(1) (1976).

122. See 26 U.S.C. § 9003(b)(2) (1976).

123. 424 U.S. at 91-98.

124. See text at notes 84-87 *supra*.

125. See text & notes 122-23 *supra*.

126. 424 U.S. at 35-36. The \$5,000 limit on PAC contributions was upheld because it served "the permissible purpose of preventing individuals from evading the applicable contribution limitations by labelling themselves committees." *Id.* The \$25,000 aggregate individual limitation was held constitutional because the Court found it to be "no more than a corollary of the basic individual contribution limitation that we have found to be constitutionally valid." *Id.* at 38.

and increased the perception of impropriety in congressional decision-making.¹²⁷ The proposed legislation is designed to combat these problems, to stem the erosion of public confidence in Congress, and thus to act as a companion to the present contribution limits upheld in *Buckley*. This corollary role in itself is sufficient justification under *Buckley* to support the constitutionality of the aggregate PAC limitation.

Finally, it should be noted that the proposed legislation, in limiting the amount of money they may accept from PAC's, will not infringe the free speech rights of candidates. The *Buckley* Court examined the impact of contribution limits on candidates and found it to be insubstantial.¹²⁸ The Court said that the effect of the contribution limits was "merely to require candidates . . . to raise funds from a greater number of persons" rather than to reduce the amount of money available for political expression.¹²⁹

Similarly, the aggregate limit on PAC contributions proposed here is not intended to reduce political dialogue but rather to require candidates to raise money from "a greater number of persons. . . ."¹³⁰ Once candidates have accepted \$70,000 in PAC money, they will be required, if they wish to raise more, to seek additional contributions from a multiplicity of individuals. The candidates will be able to raise as much money from these sources as they have the desire and energy to do, subject to existing limitations. As the *Buckley* Court recognized in a similar context, the "total amount of money potentially available to promote political expression" need not be reduced.¹³¹

CONCLUSION

The PAC movement is a clear and present danger today. It is a direct threat to the legitimacy of congressional decisionmaking and is likely to become an even larger threat in future years unless changes are made soon in the campaign finance laws. The growth of PAC's since the *Buckley* case has seriously undermined the integrity of the political process. As the number of PAC's increases, as the aggregate amount of PAC contributions increases, and as the number of candidates whose campaign funding is dominated by PAC money increases, the nation's public-policy process suffers. PAC money plays an expanding role in skewing legislative outcomes. The public correctly perceives this growing and corrupting influence of PAC money.

127. See text & notes 49-76 *supra*.

128. 424 U.S. at 21-22.

129. *Id.* at 22.

130. *Id.*

131. *Id.*

The Supreme Court in *Buckley* firmly held that Congress serves compelling public interests when it acts to combat these activities. The Court recognized that public financing of elections and contribution limits are permissible means to protect the public's interests. Moreover, the proposed aggregate limit on PAC contributions furthers these goals directly and narrowly and within the standards established by the Court. The proposed legislation to limit aggregate PAC contributions would help restore public confidence in the electoral system without undermining "the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties."¹³²

Any system of financing political campaigns is going to have rough edges. This is not a question of devising perfect laws with a completely predictable impact. One of the consequences we should expect for any law or system of laws is that there are always going to be some unanticipated consequences. But that should never be an argument for failing to deal with fundamental problems.

Our campaign finance laws must ultimately protect the integrity of our political process and allow our system of democracy to function competitively. Neither of those goals is being met adequately today at the congressional level. It is time to finish the job of fundamental reform on our campaign finance laws by enacting public financing for congressional races and by passing new limits on PAC contributions.

132. *Id.* at 29.