

RUNNING WITH AND FROM THE PAC

Henry C. Kenski*

In 16 years I have never seen anything like it. This is the best Congress that money can buy.

—Member of Congress (1979)

The political decade of the 1970's experienced an explosion in federal regulation of the electoral process.¹ Congress passed the Federal Election Campaign Act [FECA] in 1971² and amended it in 1974,³ 1976,⁴ and 1979⁵ in order to improve the honesty and efficiency of the electoral system. Although the dominant thrust of congressional action was to enhance the integrity of the process by minimizing the power of wealth and "special interests," these reforms have witnessed consequences both unanticipated and unintended by their proponents.⁶

Edwin M. Epstein has persuasively argued and documented the ironic consequences of reform.⁷ These include the legitimization of "the role of corporations and business-related groups in federal elections, greatly improving their position vis-à-vis labor and other social interests," and the establishment of the political action committee [PAC] "as the primary vehicle for business involvement in the electoral process."⁸ One irony is that labor fought hard in all three legislative

* Associate Professor of Political Science, University of Arizona. B.A., 1964, University of Arizona; Ph.D., 1971, Georgetown University.

1. The pre-1971 regulation is described in Epstein, *The Emergence of Political Action Committees*, in *POLITICAL FINANCE* 159, 160 (H. Alexander ed. 1979).

2. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) (current version codified at 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979)).

3. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (current version codified at 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979)).

4. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 (current version codified at 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979)).

5. Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (current version codified at 2 U.S.C. §§ 431-455 (1976 & Supp. III 1979)).

6. See Sorauf, *Political Parties and Political Action Committees: Two Life Cycles*, 22 *ARIZ. L. REV.* 445, 459-62 (1980).

7. Epstein, *The Business PAC Phenomenon: An Irony of Electoral Reform*, *REG.* 35 (May/June 1979).

8. *Id.*

rounds for provisions relating to PAC's. "A further irony," Epstein notes, "is that comprehensive campaign regulation has increased the role of organized 'special' interests within the federal electoral process at the expense of political parties and individual contributors—surely a far cry from what the reformers intended."⁹

Alternately criticized for their explosive growth in financing campaigns¹⁰ or praised as a healthy, new method of political participation,¹¹ PAC's are having a dramatic impact on American politics. Encouraged by both the 1974 campaign finance law limiting individual contributions¹² and favorable Federal Election Commission [FEC] rulings,¹³ the number of PAC's tripled between December, 1974 and the 1978 election.¹⁴ Nearly three-fourths (1,459) of them made contributions to federal candidates.¹⁵ In addition to this increase in numbers was an equally pronounced increase in the amount of money contributed to federal candidates. According to a recent FEC report, PAC's contributed \$35.1 million in 1978.¹⁶ This was "nearly triple the \$12.5 million in PAC contributions in 1974 and more than 50 percent above the 1976 level of \$22.6 million."¹⁷

These changes were occurring at the same time that the cost of campaigning for Congress was increasing markedly. Harvard's John F. Kennedy School of Government had its Institute of Politics do a study for the Committee on House Administration of the House of Representatives on the impact of the electoral reform laws and amendments

9. *Id.*

10. *See, e.g.*, 125 CONG. REC. H9267-9268 (daily ed. Oct. 17, 1979) (remarks of Rep. Anderson).

11. *See id.* at H9261 (remarks of Rep. Bauman).

12. 2 U.S.C. § 441a(a)(1) (1976). For the Court's view, see *Buckley v. Valeo*, 424 U.S. 1, 21-22 (1976).

13. *See the SUN-PAC ruling in FEC Advisory Opinion 1975-23*, 40 Fed. Reg. 56,584-88 (1975).

14. Cook, *Political Action Committee Spending Soared in 1978*, 37 CONG. Q. WEEKLY REP. 1043, 1043 (1979).

15. *Id.*

16. *Id.*

17. In analyzing the FEC data, Epstein concludes that simple comparisons of corporate PAC and labor PAC spending are misleading because the FEC's classification scheme separates groups other than those that are explicitly corporate or labor into four categories: (1) No-connected organizations; (2) trade/membership/health organizations; (3) cooperatives; and (4) corporations without stock. Epstein, *Business and Labor under the Federal Election Campaign Act of 1971*, in *PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS* 107, 117 (M. Malbin ed. 1980). Epstein suggests that at least half of the money raised, spent, and contributed by groups in these four categories is from business-related committees. *Id.* at 118. He concludes, therefore, that his estimates indicate "that business and business-related groups outraised and outdisbursed labor groups by almost two to one in 1978 and outcontributed them by almost 70 percent." *Id.* Although he does not believe that the current spending levels constitute "excessive interference in the political process or present the kind of threat to the body politic that would justify dramatic regulations for business and labor electoral activities," *id.* at 150-51, Epstein admonishes that "PAC operations in 1976 and 1978 reveal only the tip of a possible iceberg—clearly for corporations and other business-related groups, but to some extent even in the case of labor." *Id.* at 143.

on congressional elections.¹⁸ In examining the costs of campaigning, the study discovered that between 1972 and 1978 the amount of money spent "by congressional candidates increased by 34 percent over and above the rise in the Consumer Price Index. In actual dollar terms, the financial resources of congressional candidates rose from an average of \$52,000 in 1972 to an average of \$111,000 in 1978."¹⁹

Alarmed by the numerical growth of PAC's, the dramatic increase in campaign contributions, the coming of age of business PAC's, the possibility that business and labor spending thus far only represented the tip of a possible iceberg, and the mushrooming costs of congressional campaigns, Congress has once again entered the electoral reform thicket. On October 17, 1979, the House of Representatives voted 217-198 to adopt new limitations on PAC campaign contributions.²⁰ This vote, on an amendment to the Federal Election Commission authorization bill,²¹ would not apply to Senate candidates. The bill, sponsored by Democrat David R. Obey of Wisconsin and Republican Tom Railsback of Illinois, was designed as "a major step toward reducing the amount of money that the political arms of corporations and labor unions and other groups can contribute to the election campaigns of House candidates."²² Some of the major provisions passed by the House are as follows:

- (1)—Prohibit a House candidate from accepting more than \$70,000 from all PAC's during a two-year election cycle. If the candidate also faced a runoff, the limit would be \$85,000.
- (2)—Reduce from \$10,000 to \$6,000 the amount a PAC may contribute to a House candidate for primary and general elections combined, with a stipulation that no more than \$5,000 can be given in any one election. Candidates in general, runoff and primary elections could receive up to \$9,000, with the same \$5,000 per election restriction.
- (3)—Prohibit a House candidate from using funds contributed to his campaign to repay personal loans of more than \$35,000 that the candidate made to his campaign.
- (4)—Ban the extension of credit for direct-mail fundraising

18. INSTITUTE OF POLITICS, JOHN F. KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY, AN ANALYSIS OF THE IMPACT OF THE FEDERAL ELECTION CAMPAIGN ACT, 1972-78 16 (1979) (prepared for the House Comm. on Administration). A concise summary is found in *Summary of Findings and Major Recommendations*, Today, Oct. 12, 1979, at 9, col. 1. Further citations will come from the latter source and be hereafter cited as *Study Group Report*.

19. *Id.*

20. Buchanan, *New Limits On PAC Contributions Advanced*, 37 CONG. Q. WEEKLY REP. 2337, 2337 (1979).

21. S.832, 96th Cong., 1st Sess., 125 CONG. REC. H9289 (daily ed. Oct. 17, 1979).

22. Buchanan, *supra* note 20, at 2337.

solicitation.²³

The debate on the Obey-Railsback amendment was a spirited one, and it resurrected and enunciated the key political issues on the role of money in American politics.²⁴ Although it passed the House, it is now stalled in the Senate by threat of a filibuster.²⁵ Whether it eventually passes or not, the Obey-Railsback plan merits a comprehensive examination. Such an investigation is the purpose of this Article. Drawing upon existing scholarship, newspaper and periodical accounts, and the floor debate printed in the *Congressional Record*, the legislative struggle over Obey-Railsback will be placed in the broader historical and legislative battle over electoral reform. This discussion will be followed by an analysis of the factors of partisanship and ideology in the Obey-Railsback House vote. After examining these factors, an analysis will be made of the political issues dividing the amendment's proponents and opponents. These include the contrasting positions on the general role of money in politics, political influence, political competition, and considerations of workability and practicality. The analysis begins, however, by placing the Obey-Railsback plan in a broader historical and legislative context.

HISTORICAL AND LEGISLATIVE CONTEXT

The Obey-Railsback plan can best be understood as an attempt to build a coalition for piecemeal reform in the face of strong partisan opposition. On March 22, 1977, President Carter sent Congress a five-part electoral reform packet, including a new federal voter registration plan, presidential election reform (to allow more grass-roots participation), direct presidential election, Hatch Act revisions, and public financing of congressional elections.²⁶ The President hoped for bipartisan support for his comprehensive electoral reform package.²⁷

By the summer of 1979, four of the five proposals had been rejected by Congress and relegated to the back burner. Election-day registration and Hatch Act reform died first. After a flurry of activity in 1977, congressional action on these two reforms ended abruptly. By contrast, public financing stayed in the spotlight for three years but was voted down twice by the House Administration Committee.²⁸ On July

23. *Id.* at 2338.

24. See generally *Congressional Responses to Obey-Railsback*, 22 ARIZ. L. REV. 667 (1980).

25. Buchanan, *Obey-Railsback Plan Stalled in the Senate by Threat of Filibuster*, 38 CONG. Q. WEEKLY REP. 33, 33 (1980).

26. Cross, *Carter Proposes Broad Election Reforms*, 35 CONG. Q. WEEKLY REP. 561, 561 (1977).

27. *Id.* at 561-63.

28. Cook, *Carter Election Package Runs Into Obstacles and Is Stalled in Congress*, 37 CONG. Q. WEEKLY REP. 1454, 1454 (1979).

10, 1979, the Senate rejected a constitutional amendment to abolish the Electoral College with more than two-thirds of Senate GOP members lined up against the direct vote.²⁹ Thus, the package that President Carter hoped would win bipartisan support and speedy approval was rejected.³⁰

The fight over public finance illustrates the partisan overtones in the electoral reform battle. The proposal in the House by Democrats Frank Thompson and John Brademas attempted to reduce by seventy percent the amount of money political parties could contribute to or spend on behalf of candidates.³¹ This provision would have virtually eliminated the advantage and success Republicans have held in national party and congressional committee spending. It also would have restricted party committees in transferring funds among themselves.³² When the bill went to the floor on March 21, 1978 to see if the House would take it up, all 140 Republicans voted to keep it off the floor and it failed 198-209.³³ Common Cause charged that Thompson and Brademas sabotaged public finance and claimed that twenty-five to thirty Republicans were ready to support it if party spending cuts had not made the proposal so partisan.³⁴ Partisan voting was also a major stumbling block to President Carter's other proposed reforms which had nearly solid Republican opposition.³⁵ Another stumbling block was the antireform mood in Congress, with some members reacting negatively to the expansion of post-Watergate reforms. House Administration counsel Bob Moss commented that "[M]embers are reluctant to change the rules by which they got here."³⁶

It is in this historical and legislative context that the Obey-Railsback plan can best be understood. Actually, the fight over public finance had also included a proposal to cut PAC contributions from \$10,000 to \$5,000 per candidate in an election year. Republicans spent little time fighting these cuts because most of their energy was spent attempting to restore party contribution and expenditure limits. In addition, Republicans were aware that the reduction would apply to both labor unions and corporate PAC's, and "that it is incumbents, prima-

29. *Id.*

30. *Id.*

31. Cohen, *Running Scared in Congress—The Parties Go Head-to-Head Over Money*, 10 NAT'L J. 557, 557 (1978).

32. *Id.* at 557-59.

33. *Id.* at 561.

34. *Id.*

35. It was most evident in 1979 in the defeat of public finance in the House Administration Committee and in the direct presidential vote measure on the Senate floor. Republicans on the House Administration Committee unanimously opposed public financing, while more than two-thirds of the Senate Republicans lined up against the direct presidential vote. See Cook, *supra* note 28, at 1454.

36. *Id.*

rily Democrats, who are the main beneficiaries of PAC contributions."³⁷

With public finance dormant and the possibility of change constrained by a highly partisan political environment, Democrat David Obey and Republican Tom Railsback began drafting a bill to curb contributions by PAC's to House candidates. In its original form, the Obey-Railsback plan would have prohibited House candidates from receiving more than \$50,000 from PAC's during a two-year election cycle, and would have reduced the amount PAC's could give to individual candidates from \$5,000 for each primary or general election (\$10,000 for the election year) to \$5,000 for both combined.³⁸ It also placed a thirty-day limit on any extension of credit over \$1,000 for advertising services.³⁹

As adopted, the overall aggregate limit was changed to \$70,000 in any two-year election cycle, or \$85,000 if a runoff election after the primary was required.⁴⁰ The individual PAC contributions per candidate provision was also broadened to \$6,000 in primary and general elections combined, with no more than \$5,000 from a PAC in a single election.⁴¹ Candidates facing runoffs could accept up to \$9,000 from a single PAC with no more than \$5,000 in any one election.⁴² These changes were made in an effort to build support for the bill, which the House passed 217-198.⁴³

Having placed Obey-Railsback in the broader historical and legislative context of electoral reform and traced its emergence from the failure to enact public finance, it is now appropriate to examine more specifically the factors of partisanship and ideology in the Obey-Railsback vote.

PARTISANSHIP AND IDEOLOGY IN THE OBEY-RAILSBACK VOTE

Partisanship⁴⁴ and ideology⁴⁵ have traditionally been useful

37. Cook, *Bill Lowering Spending Levels Reported*, 36 CONG. Q. WEEKLY REP. 718, 721 (1978).

38. Cook, *supra* note 28, at 1454.

39. *Id.*

40. Buchanan, *supra* note 20, at 2338.

41. *Id.*

42. *Id.*

43. Buchanan observed that "[r]aising the aggregate limit may have made the difference in getting the votes to pass the bill. Nearly a third of the House elected in 1978—138—received more than \$50,000. But only 51—34 Democrats and 17 Republicans—topped the \$70,000 mark." *Id.* at 2337.

44. Partisanship refers to partiality to a specific political party with respect to identification and affiliation. The presumption is that affiliation as a Democrat as opposed to a Republican may result in different policy preferences and legislative voting patterns.

45. Ideology refers to a constrained system of political beliefs, particularly about the purposes and uses of government. The presumption is that liberals are more inclined to favor govern-

predictors in legislative analyses⁴⁶ and both are incorporated here. Partisanship is measured by party affiliation, while the measure for ideology is comprehensive and draws upon the conservative coalition support⁴⁷ and conservative coalition opposition scores⁴⁸ published annually by *Congressional Quarterly*. These scores are calculated from a large number of annual roll calls encompassing various foreign and domestic policy issues.⁴⁹

The analysis begins with a profile of the ideological orientation of the Congress in Table 1. These data are based on two-year averages for the 95th Congress (1977-78)⁵⁰ in order to give a comprehensive profile of an entire Congress. The data suggest that building a majority

mental action to address economic and social problems, while conservatives tend to oppose such involvement.

46. See, e.g., Dunlap & Allen, *Partisan Differences on Environmental Issues: A Congressional Roll-Call Analysis*, 29 W. POL. Q. 384 (1976); Ritt & Ostheimer, *Congressional Voting and Ecological Issues*, 3 ENV'T'L AFF. 459 (1974).

47. The conservative coalition ratings are widely accepted by congressional scholars as a reasonable measure of ideology. The term "conservative coalition" means a voting alliance of Republicans and southern Democrats against northern Democrats in Congress. A conservative coalition vote is any vote on which a majority of voting southern Democrats and a majority of voting Republicans oppose the stand taken by a majority of voting northern Democrats. The higher a given individual's support score the more conservative he or she is. Conversely, the higher a given member's opposition score the more liberal he or she is. These scores can be reasonably defended against the two most serious criticisms leveled against ratings, namely the unrepresentativeness of the sample used to measure a legislator's policy commitment (due to the small number of roll calls) and nonvalidity (due to penalties for absences, thus confusing commitment with attendance).

The conservative coalition scores are based on a large number of votes, and hence the unrepresentative indictment is not applicable. Both conservative coalition support and opposition scores penalize for absences, but as both are compiled they can be used together to remove the effect of absences on the scores. The computational formula employed is adapted from Ornstein, Peabody & Rohde, *The Changing Senate: From the 1950s to the 1970s*, in CONGRESS RECONSIDERED 3 (L. Dodd & B. Oppenheimer eds. 1977), and "is produced by dividing the support score of a member by the sum of his support and opposition scores." *Id.* at 19. The result is a conservative coalition support ratio [CCSR]. These scores are then used to classify members into liberals (0-30), moderates (31-70), and conservatives (71-100).

Since the South often deviates from the national legislative voting pattern, the data are computed nationally and then disaggregated into categories of South (eleven states of the Old Confederacy plus Kentucky and Oklahoma) and North (the other thirty-seven states). Each district is classified in the appropriate regional category.

48. The conservative coalition opposition score represents the percentage of conservative coalition votes on which a member votes "yea" or "nay" in disagreement with the position of the conservative coalition. Due to a strong relationship between partisanship and ideology, both cannot be used simultaneously as independent factors. One should be aware that the two are interrelated but that a perfect association does not exist. Thus an ordinal assessment can be rendered of the comparative importance of the two factors in the Obey-Railsback vote.

49. These scores were based, for example, on 156 votes in 1977, 164 votes in 1978, and 144 votes in 1979. Data for party affiliation, conservative coalition scores, and region for 1977 were taken from *Conservative Coalition Support and Opposition: House*, 36 CONG. Q. WEEKLY REP. 6, 6-7 (1978); for 1978 from *Conservative Coalition Support and Opposition: House*, 36 CONG. Q. WEEKLY REP. 3444, 3444-45 (1978); and for 1979 from *Conservative Coalition Support and Opposition: House*, 38 CONG. Q. WEEKLY REP. 196, 196-97 (1980).

50. To minimize incomplete data in a few districts or states, in the case of death or resignation without replacement by reelection, the replacement's yearly score served as the two-year average. A CCSR score could not be computed for House Speaker Thomas P. "Tip" O'Neill. He voted rarely and at his own discretion. Hence there are only 434 cases for the House.

Table 1. Ideological Divisions (Conservative Coalition Ratio Index)
in the 95th Congress, 1977-78 (in percentages)

	All Members	Northern Democrats	Southern Democrats	All Democrats	Republicans
House					
Liberals	34	69	9	50	2
Moderates	27	29	33	30	20
Conservatives	39	2	58	20	78
N =	(434)	(197)	(90)	(287)	(147)
Senate					
Liberals	36	75	0	52	11
Moderates	24	23	32	26	21
Conservatives	40	2	68	22	68
N =	(100)	(43)	(19)	(62)	(38)

coalition for any electoral reform legislation is not easy. They indicate that the Senate is slightly more liberal than the House, that northern Democrats are considerably more liberal than their southern counterparts in both chambers, that southern Democrats are slightly less conservative than Republicans in the House but somewhat more conservative than the GOP in the Senate, and that Republicans are slightly less conservative in the Senate than in the House. Overall, the dominant orientation of Republicans and southern Democrats is decisively conservative while northern Democrats are more inclined to liberalism.

A similar analysis has been replicated for the House for 1979, since it constituted both the beginning of a new Congress with some new members as well as the year of the Obey-Railsback vote. The new 96th Congress is slightly more conservative than its predecessor, with thirty percent of the House liberal, twenty-six percent moderate, and forty-four percent conservative. Otherwise, the patterns previously noted remain quite the same.

Table 2 demonstrates that party and ideology were both significant in the Obey-Railsback vote, although ideology was somewhat more important. Data not contained in the table show an overall vote of 217 for and 198 against. Northern Democrats favored the amendment 152-26 while their southern Democratic counterparts opposed it 36-48. Republicans voted 29-124 against the plan. The table presents that data in percentage form and lists the total number of cases (N) for each category. It illustrates that southern Democrats were clearly less supportive of Obey-Railsback than the rest of the party (forty-three percent versus eighty-five percent), while southern Republicans were even more resistant to the plan than their northern Republican counterparts (ninety-seven percent versus seventy-six percent). The data further underscore the paucity of liberals and moderates in the South in both parties. Liberals and conservatives in the South tended to approximate the national levels of support and opposition on Obey-Railsback, but the region's moderates were slightly less supportive when compared to the national or northern patterns. Overall, party and ideology were both strongly associated with the Obey-Railsback vote, but ideology was more important. The predominant conservative orientation of the South was a major factor in weakening the party/Obey-Railsback vote relationship.

The partisanship and ideological struggle, however, was also manifest in the debate over political issues, and our analysis of these issues begins with the clash of the general role of money in politics.

Table 2. Patterns of Support Between Party and Obey-Railsback, and Ideology (Conservative Coalition Ratio Index) and Obey-Railsback

Obey-Railsback	% Democratic	% Republican	% Liberals	% Moderates	% Conservatives
Nation					
Yes	72	20	95	74	13
No	28	80	5	26	87
N =	(261)	(154)	(118)	(109)	(188)
Northern					
Yes	85	24	95	79	12
No	15	76	5	21	88
N =	(177)	(120)	(108)	(81)	(108)
Southern					
Yes	43	3	90	61	14
No	57	97	10	39	86
N =	(84)	(34)	(10)	(28)	(118)

GENERAL ROLE OF MONEY IN POLITICS

The division between Obey-Railsback supporters and opponents begins with the most basic and philosophical issue: the role of money in politics. Those favoring the plan expressed grave concern about the dramatic escalation in the costs of congressional campaigning, as well as the increased reliance on PAC's for campaign contributions.⁵¹ The opponents offered a contrary view of money in politics, namely that too little money is being spent on American politics.⁵² A number of them drew heavily on the Harvard Institute of Politics' *Study Group Report*⁵³ to substantiate their view.

Underlying this basic issue clash is a question of emphasis or priority that relates to other political issues such as the fear of undue influence of wealth and organized interests eroding the integrity of the political process versus the need for more spending to enhance political competition.⁵⁴ While both sides expressed concern for the integrity of the process and the desirability of political competition, it was also clear that for both, as is often the case in political life, one of these goals was viewed as more equal than the other. Obey-Railsback supporters, disproportionately Democrats, were more fearful that wealth and organized interests were getting too involved in campaign finance. They therefore chose to run from the PAC. Opponents of Obey-Railsback, on the other hand, believed that the plan would reduce political competition, which they felt was already excessively low at present. Since more money was necessary to promote political competition, they opted to run with the PAC. At issue was a choice of which goal was perceived to be more important, and what trade-off should be made.

While the Harvard Institute of Politics' *Study Group Report*⁵⁵ was cited selectively by both sides of the Obey-Railsback debate, its conclusions stressed the need to raise individual contribution limits, to increase the amounts that political parties could contribute to candidates, and to move away from the pitfalls of over-regulation manifest in excessively burdensome and costly reporting requirements.⁵⁶ It was sensitive to and commented on the troublesome role of PAC's, but emphasized the need to strengthen individual contributions and politi-

51. See comments of Congressman Railsback, 22 ARIZ. L. REV. 667, 667 (1980); Sorauf, *supra* note 6, at 454-59.

52. See comments of Congressmen Rhodes and Campbell, 22 ARIZ. L. REV. 670, 672 (1980); Adamany, *PAC's and the Democratic Financing of Politics*, 22 ARIZ. L. REV. 569, 597-602 (1980).

53. *Study Group Report*, *supra* note 18, at 8-9.

54. Compare Elliott, *Political Action Committees—Precincts of the '80's*, 22 ARIZ. L. REV. 539, 551-52 (1980) with Wertheimer, *The PAC Phenomenon in American Politics*, 22 ARIZ. L. REV. 603, 611-16 (1980).

55. See text & note 18 *supra*.

56. *Study Group Report*, *supra* note 18, at 8-9.

cal party spending as counterweights to PAC's rather than further attempts at governmental regulation.⁵⁷

On the subject of increases in campaign spending, the *Study Group Report* noted that between 1972 and 1978 congressional campaign spending increased by thirty-four percent over and above the rise in the Consumer Price Index.⁵⁸ Equally important in the report, however, is the fact that the costs of campaigning (polling services, television time, newspaper advertising, for example) are escalating even more rapidly than campaign contributions.⁵⁹ Although not addressing the Obey-Railsback plan specifically, it would be reasonable to conclude that the tone and substance of the report tended to support the plan's opponents with respect to the role of money in politics. The *Study Group Report* emphasized that, contrary to popular belief, election campaigns need more money. Specifically it states:

[E]very study based on the information available since 1972 has shown that most campaigns have too little, not too much money. The most competitive elections, where the voters have the most information about candidates, are those in which the most money is spent. Election contests in which spending is comparatively high are also those in which voter participation tends to be highest.⁶⁰

The Obey-Railsback proponents, however, were more concerned with the issue of excessive political influence, an issue that we turn to next.

POLITICAL INFLUENCE

The battle over the political influence issue pitted Obey-Railsback supporters (particularly members of the Democratic Study Group), Common Cause (the self-styled citizens' lobby) and the AFL-CIO, against the plan's congressional opponents, business groups and conservative organizations.⁶¹ The analysis pursued here will be divided into three parts. It includes a general overview of PAC activity in the political process, the contrasting interpretations of aggregate campaign spending figures, and campaign contributions and influence in the legislative process.

PAC Activity in the Political Process

The Harvard *Study Group Report* examined the troublesome role of PAC's and why their increasing presence may prove detrimental to

57. *Id.* at 9.

58. *Id.*

59. *Id.*

60. *Id.* at 8.

61. These include the Chamber of Commerce of the United States, National Associated Businessmen, Inc., the Business-Industry Political Action Committee, the Americans for Constitutional Action, and the Committee for the Survival of a Free Congress.

the political system.⁶² In doing so, it stressed that "PAC money is interested money" and is linked to the legislative lobbying agenda.⁶³ Individual contributors may have policy goals in mind, but these are rarely linked to organized lobby efforts. Less widely observed "has been the nationalization in the sources of money available to federal candidates,"⁶⁴ with candidates relying more heavily on sources of money outside their districts or states. Finally, the growing role of PAC's has resulted in political money becoming bureaucratically organized and detached from its source and aggregated in a manner rendering less accountability.⁶⁵ The overall thrust of the PAC experience constitutes an increased institutionalization of politics.

Epstein makes a similar argument when he comments that even if we assumed that corporate or business money may not have increased in an absolute or relative sense, the essential point is that "the *process* by which the corporations and other business-related groups raise and expend monies has changed fundamentally."⁶⁶ The ad hoc, informal, unsystematic activities have given way so that "PAC's allow corporations and business-related associations to organize and *institutionalize* their electoral activities in a highly efficient way."⁶⁷ This new institutionalized pattern of giving was a major concern of the supporters of Obey-Railsback.

Another general feature of PAC activity consistently stressed by Obey-Railsback proponents in floor debate was that PAC contributions were heavily weighted toward incumbents in both parties.⁶⁸ Epstein's research confirms this PAC donor "risk aversion" trend. He underscores that this was equally true in 1976 and 1978 of both business and labor.⁶⁹ Both preferred incumbents to challengers or candidates in open races for the House and Senate. The pronounced incumbent bias in PAC giving is widely accepted by PAC critics and supporters alike, although American Enterprise Institute scholar Michael Malbin alerts us to the fact that it is more common among the newer corporate PAC's

62. *Study Group Report*, *supra* note 18, at 8-9.

63. *Id.* at 8.

64. *Id.*

65. *Id.*

66. Epstein, *supra* note 17, at 145-46 (emphasis in original).

67. *Id.* at 146 (emphasis in original).

68. Illinois Republican John Anderson noted, for instance, that more than three times as much of the PAC money goes to incumbents over challengers. 125 CONG. REC. H9267 (daily ed. Oct. 17, 1979).

69. Epstein, *supra* note 16, at 122-23. According to Epstein, in 1976 labor gave 67% of its money to incumbents, 22% to challengers, and 11% in open races, with 97% of labor's money going to Democrats. In 1978, labor gave 59% to incumbents, 21% to challengers, and 19% in open races. The 1976 estimates for business indicate 71% went to incumbents, 18% to challengers, and 11% in open races, with 57% of business money going to Republicans. In 1978, business gave 59% to incumbents, 20% to challengers, and 20% in open contests, with Republicans receiving 63%. *Id.*

to support attractive challengers or open-seat candidates.⁷⁰ Overall, however, the incumbent bias remains.

In addition to fears concerning the institutionalized pattern of giving and the pronounced incumbent bias was the fear that House incumbents were becoming too dependent on PAC contributions. Congressman Obey, for example, pointed out that in 1978, House incumbents received nearly thirty-three percent of their campaign money from PAC's as compared to twenty-eight percent in 1976 and less in previous elections.⁷¹

Influenced by these trends, the Obey-Railsback supporters suggested that the intent of their plan was to prevent the situation from getting out of hand.⁷² They were fearful that the institutionalized focus in giving, the pronounced incumbent bias, the increased reliance of members on PAC support, and the proliferation of PAC's in both numbers and contributions had reached a point where Epstein's so-called "tip of a possible iceberg" was beginning to surface too rapidly to the detriment of the surrounding political environment. Opponents differed as to the gravity of the threat and to the possible impact of the plan on current as well as future PAC operations.

Contrasting Interpretations of Aggregate Campaign Spending Figures

The proponents and opponents also clashed over the use of aggregate campaign spending figures. Much of the debate focused on the proportional percentage of PAC money of total campaign funds, with Congressman Obey presenting the proponents' case and Congressman Frenzel leading the opposition.⁷³ In a published commentary, Democratic Study Group staff director Richard P. Conlon sheds light on the interpretive differences in this dispute.⁷⁴ He points out that figures based "on aggregate receipts and aggregate contributions by PACs to candidates for both the House and the Senate, as well as candidates in primary elections and those representing fringe and minor parties" are misleading.⁷⁵ Since Obey-Railsback applies only to House candidates,

70. Malbin, *Neither a Mountain Nor a Molehill*, 3 REG. 41, 43 (May/June 1979).

71. 125 CONG. REC. H9275 (daily ed. Oct. 17, 1979). He further commented on the 1978 election and observed that "176 House candidates received more than \$50,000 from PACs compared to 57 in 1976, 72 received more than \$70,000 compared to 15 in 1976, while 21 candidates received more than \$100,000 compared to only 3 in 1976. One 1978 candidate received \$153,000 in PAC funds; another received \$172,000." *Id.*

72. *Id.* Congressman Obey argued that the bill's provisions would not force drastic cut backs in current PAC operations. "Instead, they are designed to prevent aggregate PAC influence from getting out of hand in the future and to curb the growing dependency of House candidates on interest group PACs for campaign funds." *Id.*

73. See *id.* at H9272, H9275, H9291 (remarks of Congressmen Obey and Frenzel).

74. Conlon, *Commentaries, in PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS* 185, 185-86 (M. Malbin ed. 1980).

75. *Id.*

only House data are relevant. He emphasizes that

when data for House and Senate candidates are examined separately, a different picture emerges. The proportion of Senate campaign funds contributed by PACs declined slightly from 15 percent of total receipts in 1976 to 13 percent in 1978. In the House, on the other hand, the PAC share of total receipts increased from 22 percent in 1976 to 25 percent in 1978.⁷⁶

In short, the perception of the gravity of the problem is affected by the selection of a base or denominator from which PAC percentage contributions are calculated.

Although not a source of controversy in the floor debate, special attention should be given to the views of Michael J. Malbin on aggregate spending. Malbin maintains that it is difficult to assess if business' overall involvement in electoral politics is on the rise because of the dramatic change in the style of giving.⁷⁷ Prior to 1974, individuals in business and other walks of life contributed unlimited amounts while corporations stayed out of politics as corporate entities.⁷⁸ "The real question," he argues, "is whether business PAC's and individuals in business together now give a greater combined total than the unreported combined total of what used to be given legally by individuals in business and illegally by corporations."⁷⁹ He concludes that the question is an empirical one but that we are not likely ever to learn the answer due to insufficient data from earlier years. Malbin himself doubts that business' involvement has grown much.⁸⁰ Rather, he thinks it has changed to a more open format. Malbin concludes that this is particularly true if the figures are viewed as percentages of the whole electoral dollar.⁸¹ Adopting this view, he maintains that "*PACs, therefore, were responsible for about the same percentage of Congressional-campaign contributions in 1978 as in 1976.*"⁸² The real story, he argues, is not changes in categories of giving but rather the remarkable consistency of the changes.⁸³

Malbin supports his contention that increases in PAC contributions represent a transformation in kind rather than a proportional increase in business' role by emphasizing the substantial drop in the proportional role of large contributions between 1972 and 1978.⁸⁴ In

76. *Id.* at 186.

77. Malbin, *supra* note 70, at 42.

78. *Id.* at 42.

79. *Id.*

80. *Id.*

81. *Id.*

82. Malbin, *Campaign Financing and the "Special Interests"*, 1979 PUB. INTEREST 21, 26.

83. *Id.* at 27. "What happened between 1976 and 1978 was not that any one source of funds became more important, but that campaigns became more expensive." *Id.* (emphasis in original).

84. Malbin, *Of Mountains and Molehills: PACs, Campaigns, and Public Policy*, in PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS 152, 156 (M. Malbin ed. 1980). "Contribu-

brief, he argues that the change appears to be mainly old wine in new bottles.

Malbin's thesis is stimulating but only partially persuasive. He is correct in noting that the final evaluation can always be questioned due to data limitations of earlier years. Equally appropriate is his suggestion that PAC critics may assess the increased role of business too severely by neglecting that there has been a decrease in the percentage proportion of large individual donations (particularly business-related) and a shift to PAC giving.⁸⁵ Granted these points, the PAC phenomenon is clearly more than old wine in new bottles or a change in kind rather than amount. The use of percentage proportions as the primary aggregate measure reveals, but like all aggregate measures it also conceals. As noted earlier, campaign contributions increased thirty-four percent over and above the rise in the Consumer Price Index from 1972 to 78.⁸⁶ Also, the present law places limits on both individual⁸⁷ and PAC contributions.⁸⁸ This means we have experienced an expanded campaign contribution pie in the face of stringent individual and PAC limits. Such a phenomenon could not occur unless many new participants, including members of the business community, had entered the process.⁸⁹

Another question for Malbin's thesis is whether the *proportional percentage of the whole* or the *percentage increases from previous elections* is the more appropriate measure of spending reality. If percentage increases are used, Fred Wertheimer observes that the total contributions from 1974 to 1978 for those individuals giving \$500 or more has grown by sixty-one percent. And this "has occurred even though contributions were limited to \$1,000 per election after the 1974 elections."⁹⁰ Finally, as Wertheimer points out, Malbin's contention about the relatively limited proportional percentage growth of PAC's is sustained only by focusing on the narrow time frame from 1976 to 1978.⁹¹ Malbin's own figures "show that, between 1974 and 1978, giving by PACs to House candidates went from 17 percent to 25 percent of

tions in excess of \$100 went from 39 percent to 22 percent of all House receipts over those years. Because most of the large contributions traditionally have come from business interests, this drop seems more than adequate to account for the proportionate growth in PACs." *Id.*

85. *Id.*

86. *Study Group Report*, *supra* note 18, at 9.

87. 2 U.S.C. § 441a(a)(1) (1976).

88. *Id.* § 441a(a)(2).

89. Fred Wertheimer supports this view. He has indicated that a number of those engaged in the business PAC movement claim that "corporate PACs have brought thousands of individuals who had never made contributions before into the process." Wertheimer, *Commentaries*, in *PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAWS* 192, 203 (M. Malbin ed. 1980).

90. *Id.*

91. *Id.* at 201.

total receipts, a 47 percent increase."⁹² In short, his own measure applied to a slightly longer time frame can generate a different substantive conclusion, albeit subject to interpretation. For example, when compared to a seventeen percent PAC proportion of total receipts in 1974, is a twenty-five percent proportion in 1978 significant? Contrary to Malbin, this writer believes that it is.

Campaign Contributions and Influence In The Legislative Process

Having presented the differing views of PAC activity in the political process and the interpretive meaning and selection of aggregate spending figures, a final concern involves the relationship between campaign contributions and political influence. The issue is not amenable to simple and unambiguous analysis and it almost defies empirical verification. Still, the proponents and opponents of Obey-Railsback held contrasting assessments of whether campaign contributions influence legislative voting or whether the money follows a candidate's position.

The former is reflected in the statement of David Obey who, after noting the increased dependency of House members on PAC money, said, "[W]e see something that I very seldom saw when I came here 10 years ago. We see linkages being made before the votes rather than after the votes."⁹³ Obey-Railsback supporters cited specific examples of PAC's pressuring members to vote a certain way, often by threatening to withdraw campaign support if necessary.⁹⁴ Fred Wertheimer summarized this perspective by claiming that "[t]he interrelationship between organized lobbying and contributions by PACs is clear to the participants. The process is subtle. Articulated quid pro quos are rarely involved. The process nevertheless provides access and influence, and it affects decisions."⁹⁵

The opponents of Obey-Railsback by contrast did not believe that money influenced votes, but rather than campaign contributions were given to support one's positions and voting record.⁹⁶ Malbin subscribes

92. *Id.* at 201-02.

93. 125 CONG. REC. H9289 (daily ed. Oct. 17, 1979).

94. New Jersey Republican Millicent Fenwick spoke of some of her experiences trying to ascertain how a colleague was voting and finding answers such as "I took \$58,000 from so-and-so. They want it. Millicent, are you kidding? What do you think I am going to do?" Another time a member said, "I took \$14,000 from such-and-such group, and they want it. *Id.* at H9281. Tennessee Democrat Harold Ford observed that "even when there are truly no strings attached, dependence on PAC contributions makes it more difficult for a Member of Congress to be objective when legislation affecting his financial backers is being considered by the House." *Id.* at H9283.

95. Wertheimer, *supra* note 89, at 196.

96. See 125 CONG. REC. H9277 (daily ed. Oct. 17, 1979) (remarks of Rep. Campbell). Congressman Campbell believes that the extensive number and growth of PAC's tends to strengthen the pluralistic tendencies of the system so that no representative need be so strongly influenced by any single PAC.

to this view. He claims that "it seems almost ludicrous to say that a person becomes sympathetic to the needs of business, broadly defined, *because* he receives business campaign contributions. As one member of the House Democratic leadership has said: money follows a candidate's positions and not the other way around."⁹⁷

Although the proponents and opponents of Obey-Railsback have strong and differing views of the direction of the money-vote linkage, the question does not admit to a simple, clear, and empirical answer. The best that one can do is to identify the specific PAC's contributing to a particular member and their policy interests. Then one can see if that member's future legislative voting pattern deviates in any way from his past pattern in that area. An excellent example of such an analysis identified some surprising legislative voting shifts for select members.⁹⁸ The problem with this analysis, however, is that since voting on any issue involves multiple considerations, a member can explain away his vote with alternative reasons, and deny any linkage between new financial support and a change in his voting pattern. Nonetheless, the perception of the existence of such linkages and speculation about future harm stemming from increased financial dependency were compelling factors for those supporting Obey-Railsback. For the opponents, the dominant issue was not political influence but rather the impact of the plan on political competition.

POLITICAL COMPETITION

The opponents of Obey-Railsback feared that it would constrain political competition to the advantage of Democratic incumbents. Minnesota Republican Bill Frenzel played a key leadership role on the floor and labeled Obey-Railsback "an incumbent protection bill."⁹⁹ The bill's proponents argued to the contrary.¹⁰⁰ Since the bill limited the aggregate amount a House candidate may receive from all PAC's to \$70,000 per election cycle, it constrained incumbents from capitalizing on their comparative advantage in raising money.

Although the political competition argument is not quite as one-sided as the opposition rhetoric would have us believe, a careful analysis tempered by political realism suggests that opponents of the bill have the stronger case. Obey-Railsback is more likely to have at least a

97. Malbin, *supra* note 84, at 176 (emphasis in original).

98. Merry, *Firms' Action Groups Are Seen Transforming the Country's Politics*, Wall St. J., Sept. 11, 1978, at 1, col. 6.

99. 125 CONG. REC. H9271 (daily ed. Oct. 17, 1979).

100. John Anderson, an Illinois Republican, claimed that "nothing could be further from the facts. The pure, simple fact of the matter is that more than three times as much of that PAC money is going to incumbents as is going to the challengers who would like to win a seat in this body." *Id.* at H9267.

minor negative impact on political competition. Consider the following features of the congressional electoral system. First, incumbency is a major factor in electoral success.¹⁰¹ Second, incumbents rarely lose.¹⁰² Third, Democrats, particularly incumbents, have a tremendous advantage in organizational services. Due to their strong ties to organized labor, they are the beneficiaries of labor spending "for registration, get-out-the-vote drives, logistical support for candidates, and general political education."¹⁰³ Finally, detailed empirical analysis of congressional spending demonstrates that any attempts to place limits on campaign contributions are disadvantageous to challengers.¹⁰⁴ According to one study of the 1974 election:

[A]ny reform measure which decreases spending by the candidates will favor incumbents. This includes limits on campaign contributions from individuals and groups as well as ceilings on total spending by the candidates. Even though incumbents raise money more easily from all sources, limits on contributions will not help challengers because the problem is *not* equalizing spending between candidates but rather simply getting more money to challengers so that they can mount competitive races. Anything that makes it harder to raise funds is to their detriment.¹⁰⁵

Given these features of the electoral system, it is not difficult to understand why most Republicans had grave doubts about Obey-Railsback. South Carolina Republican Carroll Campbell remarked that the bill would have a devastating effect on challengers. He complained that in the original bill the proposed \$50,000 aggregate PAC ceiling was exceeded by "38 percent of the candidates running for open seats and 14 of 19 successful challengers to incumbents exceeded that

101. The resources available to incumbents are quite impressive (franking privilege, district trips, etc.). A recent survey shows "that House incumbents have available at least \$350,000 annually in office and staff support in addition to their \$57,500 salaries and generous personal benefits." Cohen, *Public Financing for House Races—Will It Make a Difference?*, 11 NAT'L J. 783, 785 (1979).

102. Throughout the 1970's House incumbents have won nearly 95% of their general election races. The 1978 election was no different as 358 of 377 sitting House Members were reelected. Cohen, *The 96th Congress—Who'll Be Calling the Shots?*, 10 NAT'L J. 1804, 1804 (1978).

103. See Epstein, *supra* note 17, at 125. See also Malbin, *Labor, Business and Money—A Post-Election Analysis*, 9 NAT'L J. 412, 412 (1977). These in-kind contributions are not counted against candidate campaign expenditures. Malbin estimates that in 1976, for example, labor at all levels spent almost \$11 million on such uncounted and unreported spending to the benefit of the members of the Democratic presidential and congressional ticket. Any effort to curb PAC spending while ignoring labor's organizational service advantage would work to the advantage of the Democrats.

104. Jacobson, *The Effects of Campaign Spending in Congressional Elections*, 72 AM. POL. SCI. REV. 469 (1978).

105. *Id.* at 489. Jacobson replicated his analysis for 1976 and on a preliminary basis for 1978 and both studies confirmed the 1974 findings. See G. JACOBSON, *MONEY IN CONGRESSIONAL ELECTIONS I* (1980); Jacobson, *Public Funds for Congressional Campaigns: Who Would Benefit?*, in *POLITICAL FINANCE* 99, 99 (H. Alexander ed. 1979).

Table 3. The 1978 Electoral Success (Won-Loss Percentages) of 176 House Candidates Receiving the Highest PAC Contributions

Party	Incumbents % (N)	Challengers % (N)	Open Seats % (N)	All % (N)
Democrats				
Won	88	57	75	84
Lost	12	43	25	16
Republicans				
Won	91	50	71	72
Lost	9	50	29	28
Contributions				
\$100,000+				
Won	57	50	67	57
Lost	43	50	33	43
\$75,000-\$99,999				
Won	91	75	67	84
Lost	9	25	33	16
\$50,000-\$74,999				
Won	94	43	75	81
Lost	6	57	25	19

limit."¹⁰⁶ Republican Guy Vander Jagt of Michigan, head of the Republican Campaign Committee, confirmed that the new \$70,000 ceiling was unacceptable since "12 of the 14 Republicans who unseated Democrats in the last two elections received more than \$70,000 in PAC money. . ."¹⁰⁷

Utilizing available raw data¹⁰⁸ on major PAC recipients¹⁰⁹ in 1978, percentages have been tabulated to identify and summarize the existing PAC contribution/electoral outcome patterns, if any. The data are presented in Table 3. As can be seen, there were 176 candidates—97 Democrats and 79 Republicans—who received at least \$50,000 in PAC contributions. Most of them, 138 of 176, won—eighty-four percent of all Democrats and seventy-two percent of all Republicans. Incumbents in both parties were more successful than challengers, although neither matched the national average of ninety-five percent for incumbent reelection success.¹¹⁰ Examining the original raw data from which this table was generated, Rhodes Cook noted that "more than three-quarters of the leading Democratic beneficiaries of PAC money were incumbents. Among Republicans, though, the PAC contributions were more evenly distributed among incumbents, challengers, and candidates for open seats."¹¹¹

Further inspection of the table shows that the candidates receiving major PAC contributions won; the pattern, however, is not linear and is characterized by notable exceptions. Only fifty-seven percent of the twenty-one candidates who received more than \$100,000 in PAC funds won, and the same percentage applied to the fourteen incumbents in this category. On the other hand, some eighty-one percent in the \$50,000-\$74,999 category won, as did eighty-four percent in the \$75,000-\$99,999 range. Clearly, campaign contributions help, but by themselves they are not enough to assure victory.

One of the most interesting features of the table is the electoral success rate of the highest PAC contributors in the challenger and open seat categories. Although far less impressive compared to incumbents, the appropriate base for comparison should be the success rates of all challengers and all open-seat contenders. Viewed in this light, the vic-

106. 125 CONG. REC. H9278 (daily ed. Oct. 17, 1979). See comments of Congressman Campbell, *supra* note 52, at 672-74.

107. Roberts, *House Members Pressing to Curb Special-Interest Gifts*, N.Y. Times, Sept. 26, 1979, § A, at 18, col. 3.

108. Cook, *Curbs Sought on PAC Role in House Contests*, 37 CONG. Q. WEEKLY REP. 1955, 1955 (1979).

109. *Id.* A major recipient is defined as any candidate who received \$50,000 or more, the original Obey-Railsback ceiling, from PAC's during the 1978 election cycle. *Id.*

110. See Cohen, *supra* note 102, at 1804.

111. Cook, *supra* note 108, at 1955.

tory ratios are quite impressive. Only five percent of all challengers won nationally¹¹² whereas seventeen of thirty-three (nearly fifty-two percent) of high PAC recipients won. The lowest win-loss percentage was still forty-three percent for the \$50,000-\$74,999 category, and Republicans won fifty percent of high PAC recipient contests. Only fifty percent of open seat contenders, by definition, won nationally,¹¹³ but seventy-three percent of high PAC recipients did so—including seventy-one percent of the Republicans.

An alternative analysis focusing on proportional percentages suggests that the impact of Obey-Railsback would be approximately equal for both parties, or perhaps even be slightly disadvantageous for the Democrats. According to Table 3, fifty-seven percent of Democratic challengers won compared to fifty percent of Republican challengers. Moreover, seventy-five percent of Democratic open seat candidates won, while only seventy-two percent of Republicans did. Overall, eighty-four percent of all Democrats won, but only seventy-two percent of all Republicans did. The data suggest, in other words, that Democrats, and not Republicans, are primarily benefited by PAC contributions.

Further analysis indicates, however, that the value Republicans place on PAC money as a necessary resource to pick up seats and stimulate competition is understandable. From a Republican perspective as the minority party, a more appropriate focus may not be proportional percentages but the absolute number of seats won. While the overall percentage figures underscore that neither party is at a distinctive disadvantage if aggregate ceilings are placed on PAC contributions, an alternative mode of analysis looking at seats won and at specific categories suggests the opposite.

The data in Table 3 show that the Democratic success percentage for all categories combined largely reflects the large absolute number of Democratic incumbents (seventy-four) who were high PAC recipients. This is the weakest category for Republicans as only thirty-two GOP incumbents qualified as high PAC recipients. Yet even here, in the weakest category, they gained seats, having defeated nine Democratic incumbents while losing only three of their own incumbents. Moreover, as the business PAC's continued to grow and to outstrip labor PAC's, more Republican incumbents will become high PAC recipients and reduce the decisive Democratic advantage in the incumbent category.

The data further reveal Republican strength in the challenger and

112. See Cohen, *supra* note 102, at 1804.

113. *Id.*

open-seat categories. Some twenty-six Republican challengers and twenty-one Republican open-seat candidates were high PAC recipients compared to only seven Democratic challengers and sixteen Democratic open seat contenders. In the most difficult category to win, the challenger category, the Republicans picked up thirteen seats to only four for the Democrats.

Their showing in the open seat category was less impressive, but they managed to pick up fifteen seats to twelve for the Democrats. Overall, focusing on seats captured as opposed to proportional percentages helps to account for Republican resistance to curbs on PAC spending.

The key to future competition depends on challengers attracting a greater share of PAC money. Tom Railsback has noted quite appropriately that while some successful Republicans were elected with substantial sums of PAC money, it was equally true of the Democrats.¹¹⁴ Railsback refers to eight races on the Republican side where members of the minority came close but where the contribution rate between incumbent and challenger suggests "that literally the challenger was buried by PAC contributions."¹¹⁵ Selective races can be cited on both sides to illustrate the importance of PAC money in waging successful campaigns. The overall aggregate picture is best captured in Table 3, however, and it demonstrates that the electoral viability of challengers and open seat contestants is enhanced by access to major PAC contributions. Practical politics, as well as partisanship and ideology, provide the underlying rationale for Republican opposition to Obey-Railsback.

WORKABILITY AND PRACTICALITY

In addition to strong divisions over the role of money, political influence, and political competition, considerations of workability and practicality stimulated and reinforced political opposition to Obey-Railsback. Many objections were repeated early and often both throughout the floor debate and in the available periodical literature. Those cited most frequently will be identified briefly for purposes of illustration. The most basic objection to further regulation of PAC contributions was mentioned in the Harvard *Study Group Report*¹¹⁶ when it predicted that such regulations "would merely divert, but not stem the flow of money. Proliferation of new committees, perfectly legal cooperation among PACs, and a rapid expansion in independent

114. 125 CONG. REC. H9280 (daily ed. Oct. 17, 1979).

115. *Id.*

116. *Study Group Report*, *supra* note 18 at 8-9.

expenditures by these groups are the clearly predictable consequence."¹¹⁷

The expansion of independent expenditures, allowable under present law if there is no contact between a PAC and a candidate or party organization,¹¹⁸ may do more harm than good. While independent expenditures could prove helpful, independent spenders might distort campaigns by emphasizing controversial subjects or conveying misinformation about a candidate's positions. Paul M. Weyrich warns that substantial independent expenditures "could come in at the wrong time and mess up a winning campaign."¹¹⁹ Since increases in such expenditures would make it difficult for candidates and parties to retain control of campaigns, those opposing Obey-Railsback preferred the retention of the current system rather than new regulations that might possibly stimulate increases in independent expenditures.

Still another concern is that Obey-Railsback would become a rich person's protection bill, thus making it more difficult for the average citizen to run for office. Representative Frenzel stressed that the rich, protected by the Constitution, can still spend unlimited personal funds.¹²⁰ "Because individual contributions are limited to \$1,000," he added, "PACs are the only defense against rich candidates."¹²¹ PAC's are perceived to be the appropriate vehicle for the nonrich to generate the funding to wage a competitive campaign.¹²²

A final criticism is the practicality and desirability of a bill that attempts to regulate PAC's, but neglects the opportunity to strengthen parties. Republican Carroll Campbell raised an important question when he asked why the sponsors of Obey-Railsback did not raise the amount parties could give, while at the same time limiting PAC's.¹²³ The answer is clearly partisanship, as "Republicans do more effective party fund-raising than Democrats, and the majority party was not prepared to let the opposition profit fully from that advantage."¹²⁴ Thus belief in the ineffectiveness of further regulation, recognition of the difficulty of mounting coherent and controllable political campaigns in the face of increased independent expenditures, anxiety about the maximization of political advantage for the wealthy, and concern over the

117. *Id.*

118. *Buckley v. Valeo*, 424 U.S. 1, 45 (1976).

119. *Quoted in* Glen, *How to Get Around the Campaign Spending Limits*, 11 NAT'L J. 1044, 1046 (1979).

120. 125 CONG. REC. H9271 (daily ed. Oct. 17, 1979).

121. *Id.*

122. *Id.*

123. Broder, *Too Much Pluralism*, Wash. Post, Oct. 28, 1979, § B, at 7, col. 1.

124. *Id.* See comments of Congressmen Rhodes and Campbell, 22 ARIZ. L. REV. 670, 672 (1980).

neglect of political parties were practical considerations that stimulated and reinforced the opponents of Obey-Railsback.

CONCLUSION

The emergence and escalation of political action committees on the political scene is a complex, timely, and important problem. It was deemed sufficiently important by the House of Representatives that it passed the Obey-Railsback plan on October 17, 1979 to reduce the amount of money that PAC's could contribute to congressional campaigns. The bases of political support and opposition to this bill can best be understood by the factors of partisanship (party affiliation) and ideology, with the latter being slightly more important than the former. Partisanship and ideology are also reflected in the clash over issues, particularly the general role of money in politics, political influence, political competition, and considerations of workability and practicality.

A final assessment of the merits of this debate ultimately is in the eye of the beholder, and depends on what trade-off an individual is willing to make between the issues of political influence and political competition. The congressional proponents of Obey-Railsback place a higher value on the need to try to confine the so-called growing influence of PAC money, particularly since there is a new institutional or *process* dimension to giving. The opponents are justifiably concerned that political competition will diminish if new regulations are accepted. Their priority is to protect and enhance competition as an important political value. Each side attempts to minimize the alleged dangers seen by the other. Obey-Railsback supporters deny that their plan will adversely affect political competition, while the opponents claim that the excessive PAC influence problem is greatly exaggerated. In the last analysis, partisanship and ideology cast a long shadow over the various facets of the PAC controversy. Most Republicans and ideological conservatives therefore choose to run with the PAC, while most Democrats, ideological liberals, and moderates elect to run from it.

