CONGRESSIONAL RESPONSES TO OBEY-RAILSBACK

Tom Railsback*

On October 17, 1979, the House passed amendments to the Federal Election Commission authorizations that would further limit contributions by political action committees [PAC's] to candidates running for election to the House of Representatives. My colleague David Obey of Wisconsin and I had introduced the legislation to further limit PAC's during the summer of 1979, because it had become apparent to us that the role of PAC's in the congressional election process had grown so rapidly that PAC's could soon dominate the legislative process. Members of Congress have become increasingly dependent on PAC contributions to finance their election campaigns. While in 1974 contributions from PAC's amounted to eighteen percent of all contributions to House candidates, in 1978 PAC contributions reached twenty-five percent of all contributions. The total amount of PAC money in House elections tripled during that period, rising from $8.4 million in 1974 to $25 million in 1978.

The limitations approved by the House specify that a PAC may contribute a maximum of $6,000 to a candidate for a primary and a general election combined, or $9,000 in the event of a runoff election. The present limits are $10,000 and $15,000 respectively. In addition, a candidate may accept from all PAC's no more than $70,000 for a primary and general election combined, or $85,000 in the case of a runoff. Indirect campaign contributions would be prevented by limiting the extension of credit by advertising firms and other companies that provide advertising services to candidates to not more than sixty days, and prohibiting any extension of credit in connection with the preparation for mailing or mailing of any materials which solicit funds for the purpose of influencing the election of a candidate. House candidates

* United States Representative, Nineteenth District of Illinois.

would be prohibited from using more than $35,000 of funds contributed by others to their campaign to repay themselves for contributions or loans made to the campaign from personal funds.

My interest in campaign spending began in the early 1970's, when I became concerned about the length of campaigns, the amount of money being spent, and the apparent advantages for the incumbent. In an effort to reduce these advantages, I introduced a bill to limit the franking privilege for the incumbent, put a spending limit on campaigns, and require that the broadcast media make available more time for both the challenger and the incumbent on an equal basis. That bill, however, was not acted upon by Congress. My interest grew when, as a member of the House Judiciary Committee, I participated in the investigation of the so-called "milk funds" scandal. At first the investigation was directed at the alleged presidential involvement in tapping the dairy cooperatives in exchange for an increased price support level for milk. The Committee then began to check to see what contributions were being made by dairy cooperatives to members of Congress. The contributions were much larger than I would have expected. In a number of instances, this special interest group made substantial contributions to incumbents and challengers even though they had no substantial dairy operations in their districts. The same organization then lobbied intensively for an increase in the milk price supports over what had been recommended by the Secretary of Agriculture.

Since that time PAC's have assumed an ever more powerful role in the financing of congressional candidates, and the number of PAC's has increased from 500 in 1974 to over 2,000 in 1980. By supporting limitations on PAC contributions, I do not mean to suggest that campaign funds from business, labor, trade, and professional organizations are inherently injurious to the system. My concern is that when the level of PAC contributions threatens to become so great, and a candidate's receipt of donations so substantial, the integrity of the process is called into question. I feel that reasonable limits should be imposed.

During the consideration of the PAC legislation, several theories were presented regarding whom would be most affected by these limits. While some would argue that further restrictions on PAC contributions to House candidates would protect and strengthen the position of the incumbent, I do not believe that this would be the case. In the 1978 election, House incumbents received about three and one-half times more in PAC contributions than did their challengers. While PAC money represented thirty-two percent of the incumbents' total receipts, it only amounted to seventeen percent of the challengers' funds. It is clear, therefore, that a measure limiting PAC contributions would re-

duce funds available to incumbents to a greater extent than to challengers. If the $70,000 limit had been in effect during the 1978 campaign, forty-four incumbents would have received funds in excess of this limit, while only twenty-seven challengers would have reached the ceiling. I believe that these figures prove that tighter limits on the amount of PAC money contributed to congressional races would, in most cases, be relatively advantageous to challengers.

The object of the restrictions on PAC contributions, however, is not to help or hurt the incumbents, but to place reasonable restraints on that kind of campaign money likely to influence the legislative decisionmaking process. PAC money is interested money. Even though political action committees may not always be successful in accomplishing specific legislative goals, they do have definite agendas for public laws.

There also has been considerable disagreement regarding whether restrictions on PAC contributions would have greater effect on corporate PAC's, or labor PAC's. Even experts from the same ideological camp cannot agree on which special interest groups would be most affected by this reform. While it has been suggested that this is a pro-labor proposal, Michael Malbin, a Fellow with the American Enterprise Institute who opposes the proposal on other grounds, concludes that it would have its most serious impact on union, not corporate, PAC's. In fact, the terms of this legislation apply equally to corporate, labor, trade, and ideological PAC's. Under existing law, corporate PAC's are allowed to engage in exactly the same practices as labor PAC's, and the bill does not alter this equal treatment.

A preliminary look at the 1980 election campaign shows that PAC's are raising and spending more and more money to help their candidates win election. According to the Federal Election Commission, between January 1, 1979 and June 30, 1980, PAC's raised $86 million, and spent $63 million. During the last election cycle between the dates of January 1, 1977 and June 30, 1978, PAC's raised $54.9 million, and spent $39.9 million. I feel that the restrictions I have proposed to limit campaign spending by PAC's would halt the dramatic increases in PAC contributions which threaten the integrity of the campaign process, and yet would not force any major reduction of PAC activities from current levels. Without a reasonable limitation now, I am convinced that more and more candidates seeking House seats will be compelled by the competition of the campaign to accept increasingly larger amounts of PAC funds, and the public's faith in the independence of Congress' judgment will be seriously undermined.

John J. Rhodes*

The Obey-Railsback proposal is a nongermane amendment to S. 832, The Federal Election Commission Reauthorization Act, which the House passed on October 17, 1979. The proposal prohibits any House candidate from receiving more than $70,000 from political action committees [PAC's], in a primary and general election combined. Currently there is no limit on the aggregate a House candidate may receive from PAC's. The proposal also reduces from $10,000 to $6,000 the amount one PAC could give a candidate in a primary and general election combined. Of that $6,000, no more than $5,000 could be received from a PAC in a single election. Candidates facing runoff elections would have an $85,000 aggregate limit and could accept up to $9,000 from a single PAC, with no more than $5,000 coming in any one election.

In addition, the measure prohibits a House candidate from using more than $35,000 of contributed campaign funds to repay personal loans that the candidate made to his campaign. It also bans the extension of credit for direct mail fundraising solicitation, and allows advertising firms and other companies that provide advertising services to extend credit to House candidates for no more than sixty days. Finally, it restricts to $400,000 Federal Election Commission expenditures for providing services to state and local election administrators.

The Obey-Railsback Amendment is aimed particularly at reducing the ability of PAC's to participate in the electoral process. Some well-intentioned people might argue that curtailing the participation of political action committees is good, because PAC's represent so-called special interests. This rather elitist attitude is predicated on the assumption that there is always a greater public interest against which special interests are arrayed. I am not convinced that limiting PAC participation is necessarily a blow against so-called special interests, or in favor of some vague and undefined public interest. The fact is, PAC's are composed of individuals from all walks of life, all areas of endeavor: working people, business men and women, doctors, lawyers, engineers—the list is virtually endless. These people join together voluntarily in such groups to support various candidates. American citi-

* United States Representative, First District of Arizona.

zens are discouraged from taking an active role in the electoral process when their ability to support candidates of their choice is impaired in any way. We need to encourage participation, not discourage it.

Beyond that, by severely curtailing the ability of PAC's to support candidates—particularly without improving the ability of broad-based political parties to financially support candidates—we are establishing a special class of potential candidates with a unique advantage. I am thinking of those individuals of considerable wealth who would be willing to spend their own personal funds on their own campaigns. The Obey-Railsback Amendment would enable a wealthy candidate to have a larger campaign chest than one who must rely upon contributions from supporters. I doubt that this is a direction in which we want to move. This point was addressed in *Buckley v. Valeo*, wherein the Supreme Court decided that limitations on independent campaign expenditures by individuals or groups are constitutionally infirm.

An indirect, but negative result of the Amendment would be the severe impairment of the ability of a candidate—particularly a challenger—to raise funds, especially during the critical early stages of a campaign. As a consequence, it would become even more difficult for challengers to develop effective campaigns and unseat incumbents.

I believe that a record of evidence should be made, demonstrating whether the current system is working properly and whether the changes sought by the Obey-Railsback proposal are necessary and desirable. Despite the enormous impact this legislation would have upon the process by which members of the House of Representatives are chosen, not a single day of hearings has been held on the proposal. I have not seen a single line of testimony—from election experts, candidates, contributors, or the general public—on any aspect of this proposal. In other words, there has been no showing that PAC's have abused their rights under present law. Nor has any evidence been introduced of illegal or improper activity that would warrant the kind of drastic political surgery that would result from this legislation. Until such evidence is produced, I believe the Obey-Railsback Amendment should not be enacted into law.

Carroll A. Campbell, Jr.*

I strongly oppose the Obey-Railsback Amendments. Although the bill's sponsors contend that passage of their proposal is necessary to curb the "alarming" increase of special interest money in congressional compaigns and the growing "dependence" of House candidates on such funds, I find these arguments unconvincing.

First, the political action committees [PAC's] which would be affected by this bill are nothing more than voluntary organizations of like-minded citizens that provide an effective mechanism for participation in the political process.

Further, individual PAC contributions are already limited to $5,000 per election. A PAC is not going to "buy" a Congressman for $5,000, particularly in these days of $100,000 or $200,000 campaigns. Current law protects members of Congress from being beholden to any single PAC for a significant portion of campaign funds. Corporate PAC contributions in 1978, in fact, averaged less than $1,000 per candidate.

Finally, it is unfair to lump together all corporate and trade association PAC giving, as if PAC's were all participants in a special interest conspiracy. The facts do not support such a thesis. But that is what we are in effect doing by setting an aggregate ceiling on contributions of all nonparty political action committees.

The real victims of Obey-Railsback are businesses and those people who choose to participate in the political process through their workplace. The real beneficiary is labor. While it is true that under this bill labor PAC contributions would be cut to the same dollar amount as business PAC contributions, the unions' other strengths—manpower, get-out-the-vote drives, facilities and other in-kind campaign assistance—would remain untouched.

The Supreme Court in *Buckley v. Valeo*[1] held: "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment."[2] As a restriction of one element of our society vis-

* United States Representative, Fourth District of South Carolina.

1. 424 U.S. 1 (1975).
2. *Id.* at 48-49.

a-vis another, as a ceiling in practical terms on overall campaign spending, as a threat to the first amendment's protection of associational rights, Obey-Railsback might well fail the test of constitutionality.

Beyond that, the Obey-Railsback Amendment would have a deleterious effect on political participation. While it is billed as a measure to instill more public confidence in Congress as an institution, it really builds into the law still more advantages for incumbents and discourages still more citizens from participating in the political process.

Obey-Railsback would help incumbents simply because it would have a devastating effect on challengers. Although only 13.3% of all candidates for the House in 1978 exceeded the bill's originally proposed $50,000 aggregate PAC ceiling (most of them incumbents), 38% of the candidates running for open seats and 14 of 19 successful challengers exceeded that limit. Challengers of both parties who unseated incumbents in the 1978 election spent an average of $215,028. PAC's contributed $50,000 or more in all races won by a vote margin of 10% or less.

Since an individual's contributions to his own campaign cannot constitutionally be limited, Obey-Railsback would close doors to candidates of modest means. The Amendment to limit the amount a candidate can lend to his own campaign does not solve this problem. It would only assure that a less-than-wealthy candidate could not provide the seed money to prove the viability of his campaign, and would have no effect on the direct expenditures wealthy candidates could afford to make. In any event, that provision might well be struck down by the courts as an unconstitutional limit on a candidate's own campaign expenditures.

Obey-Railsback ignores the wide-ranging differences in congressional districts evidenced by the nearly $40,000 difference in average campaign expenditures between the Northeast and the Far-West in 1978. Regional differences in costs are further complicated by differences in size of district, urban/rural makeup, and costs of and necessity for using various kinds of media.

By limiting PAC contributions, Obey-Railsback would encourage independent expenditures, completely out of the candidate's control. As more restrictions are placed on campaign contributions, the more we can expect various groups to function outside of the system and the less the candidate himself will be able to manage the direction of his own campaign. There is ample proof that special interest groups will take advantage of loopholes in restrictive campaign laws: labor with its "educational" activities; single-issue interests promoting often emotional positions and claiming sole credit for electing or defeating candi-

dates; ideological PAC's campaigning against incumbents, in some cases where a challenger has not even announced.

There is nothing wrong with political action committees, as Obey-Railsback would have us believe. To say that PAC's are an immoral force is to deny the right of individuals united on any given issue to join together to make themselves heard. I find it surprising, in view of the nation's declining electorate, that Congress should be considering a bill which will further discourage citizen involvement in the electoral process. This I believe Obey-Railsback would do. We have already enacted safeguards to protect members of Congress from undue influence as a result of campaign contributions. Obey-Railsback purports to solve a problem that does not exist. I vigorously oppose this perhaps well-meaning but seriously misguided proposal.