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State Political Action Committee Financing and the 2008 Presidential Election: A Detailed Look at Mitt Romney and the Commonwealth PACs

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State Political Action Committee Financing and the 2008 Presidential Election:

A Detailed Look at Mitt Romney and the Commonwealth PACs

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Chapter 1: Introduction

Between July of 2004 and December of 2006, Mitt Romney, former governor of Massachusetts and would-be Republican presidential candidate, reported raising \$9.9 million from individual supporters across the country.¹ According to disclosure reports, this money was used to hire political consultants in Havana, Florida; pay event expenses in Boston, Massachusetts; and cover the cost of the database services that were provided to the Romney camp by an information technology group based in Falls Church, Virginia. It was also used to finance travel, office expenses, and postage.

At first glance, this sample of campaign finance receipts and expenditures does not seem unusual; such activities are typical of campaign committee fundraising and spending. However, the politically savvy may notice that the two year period over which this activity took place, 2004 through 2006, precedes the formation of the “Romney for President Exploratory Committee,” which was established on January 3, 2007.² In fact, from 2004 through the end of 2006, Mitt Romney was, for the purposes of federal campaign finance law, nothing more than the former governor of Massachusetts, who was not considered a candidate for federal office. Two-thirds of the \$9.9 million that Romney raised did not appear on any of the disclosure reports submitted to the Federal Election Commission, the agency charged with regulating campaign finance at the federal level in the United States.

¹Accumulated funds as reported in disclosure reports on PAC activity occurring between Q3-2004 and Q4-2006, as filed with the Iowa Ethics and Campaign Disclosure Board. ONLINE Available: http://iecdb.iowa.gov/reports/statewide/2006/Period_Due_Date_19-Jan%20following%20year/PACs/Commonwealth%20PAC%20The_9705_scanned.pdf [viewed 30/11/2007]

² Federal Election Commission. *Filings from Prospective 2008 Presidential Campaigns*. (2007) ONLINE Available: http://www.fec.gov/press/bkgnd/pres_cf/2008filings.html [viewed 30/11/2007]

How was Romney able to raise more than \$6 million without reporting any of it to the Federal Election Commission? Furthermore, how was he able to expend this \$6 million in a manner strikingly similar to the spending patterns of a presidential campaign committee, before even declaring his candidacy?

Since the late 1970s, politicians have been experimenting with new committee structures in order to negotiate the limitations imposed by increasingly restrictive federal campaign finance laws. These efforts have demonstrated that political action committees (PACs), first established by labor organizations in the 1940s in response to federal laws limiting their ability to finance federal campaign activity, are a useful vehicle for negotiating the strategic dilemmas that characterize today's presidential campaigns.

The legal flexibility with which PACs operate makes them uniquely able to respond to the ever-evolving legal environment and strategic pressures of the nominating process. The frontloading of the nominating calendar and the increasing use of money as a barometer of political support, both contribute to the challenging environment in which presidential contenders must campaign. The stringent regulations imposed on the presidential committees (which are strictly regulated by the FEC) often make it difficult for candidates to negotiate these challenges effectively and are increasingly seen as a hindrance to a candidate's success. Political action committees, by comparison, are much more fluid and responsive to changes in both the legal and political environment.

Like many of his competitors, Mitt Romney established a federal political action committee in anticipation of a future presidential bid. The Commonwealth PAC, established in 2004, was chaired by Mitt Romney, though it was not legally able to promote him as a candidate for the Oval Office. In fact, the Commonwealth PAC claimed

that its mission was to help elect “Republicans to all levels of office... [and] provide financial support to state and local Republican organizations operating at the critical grassroots level.”³ The Commonwealth PAC registered with the Federal Election Commission (FEC) as a multi-candidate political committee; it did not cast itself as an entity designed to support the political aspirations of only one candidate.

The purported function of a political action committee like the Commonwealth PAC is to aggregate contributions from individuals, which can later be used to make contributions to candidates or to engage in party building activities which may include voter registration drives and get-out-the-vote (GOTV) efforts.

Although the Commonwealth PAC could not act as a presidential committee, it was still able to provide Romney with important opportunities to build political support. For example, the “Commonwealth PAC... sent out a mailing describing Romney’s attributes and policy positions to Republicans in 17 states,” but it avoided the FEC’s watchful eye by refraining from suggesting “why the recipients should care.”⁴ Thus, by carefully adhering to regulatory guidelines and avoiding the specific criteria used to determine whether an individual qualifies as a federal candidate the PAC could operate much like a campaign committee, years before Romney’s White House bid became official, without being held to the same strict regulations.

PACs are capable of accomplishing many of the same political goals for which candidates would, under normal circumstances, employ their campaign committees: they

³ “About Us.” *The Commonwealth PAC*. ONLINE

Available: <http://www.thecommonwealthpac.com/about.html> [Accessed 14/9/2007]

⁴ Bernstein, David. “The PAC Mentality

How Mitt Romney, Hillary Clinton, and Other 2008 White House Hopefuls are Greasing Palms Across America.” *The Boston Phoenix*. 2005. ONLINE

Available: http://www.thebostonphoenix.com/boston/news_features/other_stories/multipage/documents/04807062.asp [Accessed 10/9/2007]

can hire staff, establish fundraising networks, build direct mailing lists, recruit volunteers, subsidize travel and donate to other candidates. Additionally, PACs offer the bonus of allowing candidates to respond more effectively to the legal and procedural pressures of the modern presidential campaign.

Under federal campaign finance laws, political action committees are granted considerably more latitude than candidate campaign committees in their fundraising practices. Because PACs are not considered campaign committees, they provide a political vehicle through which hopefuls may begin to generate seed money without officially announcing their candidacy. Because they are discrete entities (i.e., legally distinct from a campaign committee) contributors to a PAC may also give to a candidate's campaign committee. In fact, one of the most important functions a federal PAC can facilitate is to identify such willing individuals. Furthermore, those who contribute to federal PACs can give more than they would be able to give to a candidate's campaign committee, and they may do so more frequently. Under federal law, PACs may accept contributions from individuals totaling \$5,000 *per calendar year*. This is significantly more than the \$2,300 that may be accepted by a campaign committee, *per election*.⁵

A PAC also offers a major advantage with respect to spending. Under federal law, a PAC may spend an unlimited amount in each election cycle. Thus, for any prospective candidates planning to accept public funding, establishing a federal PAC allows them to begin fundraising early without fearing that they may prematurely confront the FEC

⁵ For the purposes of this individual contribution limit, a primary and general election count as separate elections. An individual donor, in the 2008 election cycle, may give up to \$4,600 to a presidential candidate.

imposed expenditure limits and the monies spent by a PAC are not considered presidential campaign expenditures so long as federal guidelines are followed.

The \$9.9 million mentioned earlier in this introduction was raised, and subsequently spent, by Romney's Commonwealth PAC. However, \$6 million of the \$9.9 million total was not disclosed to the FEC. In fact, this \$6 million appears in bits and pieces in the campaign finance reports filed with various government entities in Michigan, Iowa, New Hampshire, Arizona, Alabama and South Carolina, where the Commonwealth PAC also appears. The finances of the Commonwealth PAC thus illustrate another advantage of PACs— an individual may establish PACs at both the state and federal level. Romney not only formed a federal political action committee, he also established six state-level committees. Legally, these state PACs were separate entities from one another and from the federal Commonwealth PAC. Each PAC operated under different laws and filed their disclosure reports with separate government entities. Most importantly, the fundraising and spending of these committees did not have to be aggregated, meaning that each of the seven PACs offered supporters an opportunity to repeatedly donate the legal maximum.

By developing a network of state-level PACs, Mitt Romney was able to raise and spend a significant amount of money throughout the increasingly important shadow-campaign period; which can be defined as the period prior to an aspirant's official declaration of candidacy and the subsequent establishment of a legal campaign committee.⁶

⁶According to disclosure reports, Romney's first state PAC was established in Iowa on January 4, 2004— four years before Iowans would cast the first votes in the 2008 presidential election.

The Commonwealth PACs engaged in several activities that appear to be directly related to Romney's campaign. However, although the PACs operated prior to the formation of Romney for President, none of their activities were ever viewed by regulatory authorities as an explicit indication of Romney's formal candidacy. According to the FEC, under federal rules "there are activities that indicate that an individual is campaigning ... among these are: making statements that refer to yourself as a candidate; using advertising to publicize your intention to campaign; or taking action to qualify for the ballot."⁷ The Commonwealth PACs were able to evade the regulations applicable to formal presidential campaign committees by carefully avoiding these few activities.

Although the locations of Romney's state PACs may appear arbitrary, they in fact betray several key elements of the state-level strategy. The presence in New Hampshire and Iowa is simple enough to understand, given the essential function of these states as leaders in the presidential primary schedule. South Carolina has begun to play an important role in demonstrating a candidates' ability to appeal to Southern voters. Additionally, the Michigan PAC allowed Romney to tap into a substantial potential fundraising network due to his father's former governorship in that state. The Arizona PAC may have been formed in anticipation of a strong McCain candidacy, and Alabama, though less strategically significant, is one of a dozen states, which include Iowa, that allow unlimited individual contributions from supporters.

As noted earlier, federal PACs operate with considerably fewer regulations than campaign committees, which make them an attractive financial vehicle. State-level PACs can be even more attractive, because states determine their own contribution laws.

⁷Federal Election Commission. *Testing the Waters and Campaign Committees*. ONLINE Available: http://www.fec.gov/press/bkgnd/pres_cf/exploratory.html [Accessed 20/12/2007]

A campaign committee may only receive \$2,300 per election from an individual donor and unions and corporations are barred from contributing. A federal PAC may only receive \$5,000 per calendar year from an individual donor and as with a campaign committee, unions and corporations are excluded from making political contributions to a federal PAC. In select states, individual donations to PACs are *unlimited* and *both* unions and corporations are allowed to make contributions (though they rarely do). To illustrate the usefulness of this regulatory difference, Peter Karmanos, founder of Compuware Inc., was able to donate a total of \$250,000 to Romney's Commonwealth PACs, surpassing the federal PAC limits 119 times.⁸ In fact, as was noted in the *Wall Street Journal*, on January 31, 2007, "Since 2004, 15 other Romney backers have sunk at least \$100,000 each into the Republican's coffers, sometimes with a series of checks issued on a single day."⁹ These huge donations were not necessarily put to use in the state where they were made. Donations to individual state PACs are in no way tied to the state in which they were made; Karmanos' quarter million dollars made its way across the country to pay for Boston-based consultants, travel in Florida, and shipping costs in Pennsylvania.

State-level PACs are able to operate across state lines. In fact, in terms of state PAC donations and expenditures, state boundaries are practically non-existent. According to disclosures in 2004 and 2005, not a single donor to Romney's Iowa PAC lived in Iowa. After raising \$280,000 in 2006 with his Alabama PAC:

"\$138,500 was donated to Alabama state and local candidates who could be important allies as Romney tests his Northern pedigree in the rural South... [while] much of the remaining balance was used to help defray the costs of Romney's national operation, including a portion of the rent for his Boston headquarters [the security system was paid for out of Iowa's coffers], bills at Jules Catering of Somerville, Mass., and services provided

⁸Cummings, Jeanne. "Romney Juggles Rules on Donations." *Wall Street Journal* (2007).

⁹ Ibid.

by Daynes Music Co. of Midvale, Utah. No Alabama vendors received money from the Alabama account, according to public records.”¹⁰

Paying across state lines is more than just a way to defray costs by spreading them amongst several PACs; The Alabama Commonwealth PAC’s expenditures are as strategic as its fundraising. The PAC filed expenditures across the country, with significant expenditures made in Massachusetts and Utah, and substantial spending occurring in Florida, California, and Pennsylvania, three states which collectively represent 30 percent of the delegates needed to secure the Republican nomination. Notably, not one of these five states was one in which Romney established a state-level PAC.

Even for candidates who may be planning to forgo public funding and thus will not confront expenditure ceilings, multiple state PACs allow prospective candidates to maximize the giving of each individual donor and greatly expand the pool of potential contributors by including corporations and labor unions. As a non-incumbent, Romney was especially well situated to benefit from a complex state PAC strategy. Incumbent federal officials are limited in their ability to take full advantage of the inconsistencies between state and federal campaign finance laws. Campaign finance law allows federal incumbents to appear on behalf of a political committee but all contributions solicited by the incumbent or made to groups, associations, or committees with which federal incumbents are associated must adhere to federal contribution requirements due to the ban on “soft money” fundraising established by the Bipartisan Campaign Reform Act (BCRA). A federal incumbent, therefore, may not use a state PAC to accept corporate, union or individual donations above the federal limit. Even so, PACs are still a beneficial

¹⁰ Ibid.

tool. Should a federal incumbent establish both state and federal PACs, a potential donor would be able to donate \$5,000 to both PACs, each calendar year, and still donate \$4,600 to the candidate's campaign committee. For a federal incumbent, increasing the total number of PACs increases the frequency with which donors may contribute the maximum amount, limited though it may be by the provisions of BCRA.

While Romney's use of state PACs was particularly intricate, he is certainly not alone in capitalizing on the financial benefits of this state-level strategy. The Commonwealth PAC established the most extensive network of state-level PACs to date, but Senators John McCain, Barack Obama, and Hillary Clinton as well as former New York governor George Pataki followed suit in advance of the 2008 presidential campaign.¹¹

An Overview of This Study

Mitt Romney officially withdrew from the presidential race in February of 2008, after picking up an unimpressive seven states on the February 5 Super Tuesday. Although the Romney campaign did not survive the onslaught of contests which occurred on Super Tuesday, the extensive network of state-level PACs he established from 2004 to 2008 was the first of its kind. Though most presidential candidates now establish federal political action committees far in advance of a presidential bid, and often as a means of testing the feasibility of launching a campaign, few establish state-level committees and only Romney created such a well organized, cooperative network. Given the increasing

¹¹ Straight Talk America, Hope PAC, Hill PAC and 21st Century Freedom PAC, respectively.

importance of PACs to presidential candidates, it is likely that future candidates will go on to mimic the Romney model.

For this reason, an in-depth analysis of the Commonwealth PACs' fundraising and spending is both informative and necessary. Though a handful of reporters have commented on the fundraising practices of one or two of the committees, I was unable to identify any studies that attempt to understand the spending patterns of the state-level PACs. A study of this kind thus contributes substantially to understanding the ways in which these state committees function to the benefit of candidates, and whether or not they perform ways that will continue to make them an attractive option to future presidential aspirants.

If the study is able to conclude that Mitt Romney's state-level PACs created a strategic financial advantage for his campaign, future candidates can very likely be expected to replicate the state PAC strategy. It is important then to consider whether widespread use of these state-level committees could have important implications for the efficacy of campaign finance law and the legitimacy of the election process more generally.

This study looks at the historical context in which PACs developed, as well as the current legal environment in which they operate. It will also briefly discuss the legal and procedural challenges that candidates face and the ways in which PACs alleviate some of these pressures in ways that presidential committees cannot. An understanding of the strategic dilemmas which cause candidates to seek extraneous structures through which to establish campaign networks is essential to extrapolating the potential future of campaign finance strategy.

Furthermore, this study provides an in-depth analysis of the state Commonwealth PACs both in terms of fundraising and spending, and discusses the central issues this state PAC strategy raises with respect to campaign finance law. The study will conclude with a look into the future of campaign financing and the role these state-level PACs may play if current rules are not revised.

Chapter Two:

Money in Politics: A History of Campaign Finance Law

The history of campaign finance reform can be seen as an attempt to define the relationship between money and elections. While campaign finance law evolved over time, there are several apparent, recurring themes in American campaign finance reform.

Historically, legislators have repeatedly sought to determine what entities should be allowed to contribute to the campaigns of candidates and with what restrictions. Some of the first campaign finance laws attempted to limit the role of corporations, labor unions and the wealthy. More recently, reforms have sought to increase transparency by mandating standardized disclosure requirements for all federal candidates and limit the role of private funding through contribution limits and a system of public funding in presidential races.

However, the external incentives which make pursuing labor, corporate and fat-cat dollars a feasible strategy persist. The modern presidential campaign requires astronomical amounts of money if a candidate hopes to be competitive and a candidate's ability to swiftly and effectively fundraise is viewed by many as an indicator of their overall electability. Campaign finance laws, which limit the freedom with which a candidate can raise and spend, thus create many strategic dilemmas. When the prize is the nation's most prestigious office, candidates for the post have ample incentive to look for ways to maneuver around campaign finance laws that curtail their ability to weather the demanding campaign trail. Candidates have often responded by flouting campaign finance laws, at times by establishing extraneous structures that are not subject to federal

campaign finance law or by forming multiple committees which are. Many presidential perspectives simply chose to ignore inconvenient laws with, until very recently, little fear of repercussion.

The ingenuity of candidates, combined with changing political processes and even shifting public opinion, combines to create an ever-evolving body of campaign finance law. The reaction of candidates to new rules and the ideals which have emerged as recurring goals of campaign finance regulation, all contribute to an analysis of Mitt Romney's use of state-level political action committees. This strategy provides a prime example of a clever candidate's response to the pressures of the campaign process and the laws that make following the rules disadvantageous.

Historically, campaign finance reforms can be seen as defining the role of money in the election process in three ways, for three reasons: the first as an attempt to limit participation of certain actors in order to increase political parity; the second as mandating public disclosure of campaign finances, acknowledging the role of money in campaigns and its potential to delegitimize the democratic process; and the third and most recent, as attempting to close loopholes and abuses of existing laws while simultaneously creating a method of enforcing those laws.

Limiting Actors

The campaign culture following independence was characterized by the expectation that candidates would be personally wealthy or sustained by well-to-do friends and family. Candidates did not "campaign"; it was considered *déclassé*. Instead

hopefuls “stood” for office. Even so, those who did engage in some form of voter outreach had very few expenses. If they campaigned at all, candidates disseminated their messages by distributing inexpensive pamphlets or newspapers, by meeting personally with the electorate and in some cases, by running newspaper advertisements.¹² Given the limited scope and scale of these operations, the costs of campaigning were easily met by the candidates themselves or with the help of friends; fundraising amongst the general public was unnecessary. By the turn of the century, however, this was no longer a feasible strategy. The electorate boomed and candidates were forced to look for new sources of campaign money.

No norms or rules yet existed regarding the proper relationship between donors and recipients and the arrangements that were settled upon in this era are likely the basis of many of our modern fears regarding corruption and cronyism in campaign finance. Three new sources of campaign money emerged over the course of the 19th and 20th centuries: individual donors, corporations, and labor unions. These new donors had a stake in the political process; their success, and in the case of labor unions and corporations, existence, hinged on legislative decisions. As each became more entrenched as reliable fundraising sources, new reforms were written in order to regulate their giving.

The first individual donors were quite unlike the politically engaged who give to campaigns today. Instead, the political parties developed a system that rewarded loyal party followers with government jobs. By the 1830s the relationship became symbiotic and appointees were most often required to present part of their salaries to the party

¹² Corrado, Anthony. “Money and Politics.” The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

committees to support party activities.¹³ The practice of collecting political assessments continued for several decades until Congress passed the 1868 Naval Appropriations Act which banned the solicitation of political contributions from naval yard employees.¹⁴ Just over a decade later, the legislature expanded the Naval Appropriations Act in an attempt to completely eradicate the spoils and assessments system.¹⁵ The 1883 Pendleton Civil Service Act, created a cadre of federal employees who were required to qualify for office through examinations.¹⁶

Toward the late 1800s the American government became more involved in regulating the domestic economically than ever before. This, in turn, produced a new politically aware population with money to spare, "...the men who ran America's burgeoning businesses and industries increasingly sought favors and protection from a government that was becoming more and more involved in taxation, tariffs, and other economic matters."¹⁷ In response, corporations and other entities within the industrial sector opted to involve themselves in campaign financing. As one academic noted, "Money from corporations, banks, railroads, and other businesses filled party coffers, and numerous corporations reportedly were making donations to national party committees in amounts of \$50,000 or more."¹⁸

¹³ Corrado, Anthony. "Money and Politics." The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

¹⁴ "A Brief History of Money and Politics." The Campaign Finance Guide. Campaign Legal Center, (2007). ONLINE

Available: <http://www.campaignfinanceguide.org/guide-29.html>. [24/10/2007]

¹⁵ Corrado, Anthony. "Money and Politics." The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

¹⁶ "A Brief History of Money and Politics." The Campaign Finance Guide. Campaign Legal Center, (2007). ONLINE

Available: <http://www.campaignfinanceguide.org/guide-29.html>. [24/10/2007]

¹⁷ Ibid.

¹⁸ Corrado, Anthony. "Money and Politics." The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

Like the assessment system, the transactions which occurred between politicians and corporations did not ring of altruism. In fact, Mark Hanna, then Chairman of the Republican National Committee and chief fund raiser for McKinley, implemented a quota system akin to assessments for large corporations. "Most of McKinley's six to seven million [dollars] in campaign funds came because Hanna levied regular assessments on all businesses of consequence throughout the country."¹⁹ The administration supported the big business agenda in order to fulfill their end of the bargain.

The Tillman Act of 1907 attempted to temper the deluge of corporate dollars flowing into political pockets. Like many well-intentioned campaign finance reforms to come, however, the act had no enforcement measures and was thus largely ineffective. In quick succession, the 17th and 19th amendments were ratified and the process of accepting the direct primary was complete by 1920. The cost of the race for the presidency reflected the size of the expanded electorate and campaigns maintained their relationships with corporate and fat-cat donors to compensate.²⁰ Additionally, candidates welcomed new actors into the fold.

The era of New Deal reforms was accompanied by the rising power of labor unions. Pro-labor Roosevelt padded his own campaign coffers with union funds; "in 1936, for example, unions contributed an estimated \$770,000 to help Roosevelt's bid for reelection, including \$469,000 from the United Mine Workers."²¹ Republicans and

¹⁹ Malbin, M. J. "Money and Politics in the United States: Financing Elections in the 1980s." Chatham: Chatham House, (1984).

²⁰ "How Americans Have Financed Elections in the Past." Center for Responsive Politics. ONLINE Available: <http://www.opensecrets.org/pubs/history/history2.html>. [Accessed 1/11/2007]

²¹ Corrado, A. "Money and Politics." The New Campaign Finance Sourcebook. Ed. A. Corrado. Washington, D.C.: Brookings Institution Press, (2005).

Southern Democrats became concerned with the labor unions' increased political participation and thus prompted Congress to create a ban to parallel corporate giving restrictions in regards to labor union treasury funds. The Taft-Hartley Act of 1947 included language that not only solidified the ban on all corporate and labor giving but also extended the restrictions to the primary race as well as the general election.²² Most notably, the Act banned corporations and unions from engaging in what would, by today's laws, be seen as expenditures on electioneering in order to stymie any attempts to circumvent the law.²³ This would be the first reform to exert jurisdiction over the actions of non-candidates if they were seen as advocating on behalf of or against a particular candidate.²⁴

The majority of campaign finance regulations, historically, have attempted to limit or otherwise define which entities can participate in the election process, and to what extent. Other notable reforms were aimed at increasing transparency and political accountability. The Civil Service Reform Act of 1883, the Tillman Act of 1907, the Smith-Connally Act of 1943, and the Hatch Act of 1939 all aspired to, "...address the corrupting influence that money can have on elections. Large political campaign contributions were believed to be corrupting the system by giving those who contributed

²² "Important Dates: Federal Campaign Finance Legislation." Center for Responsive Politics. ONLINE Available: <http://www.opensecrets.org/pubs/history/history6.html>. [Accessed 1/11/2007]

²³ According to the FEC's brochure an electioneering communication is any broadcast, cable or satellite communication that fulfills each of the following conditions: The communication refers to a clearly identified candidate for federal office; The communication is publicly distributed shortly before an election for the office that candidate is seeking; and The communication is targeted to the relevant electorate (U.S. House and Senate candidates only) – Federal Election Commission. *Electioneering Communications*. (2007). ONLINE

Available: <http://www.fec.gov/pages/brochures/electioneering.shtml> [Accessed 7/12/2007]

²⁴ "How Americans Have Financed Elections in the Past." Center for Responsive Politics. ONLINE Available: <http://www.opensecrets.org/pubs/history/history2.html>. [Accessed 1/11/2007]

undue influence over government policy.”²⁵ However, the laws were based on the presupposition that limiting the contributions to candidates would accomplish this goal. The many incarnations of what was initially the 1910 Federal Corrupt Practices Act aimed to combat corruption and undue influence through other means.

The Federal Corrupt Practices Act (FCPA) was, as so many of its predecessors, notoriously devoid of enforcement procedures. The 1910 version of the law did nothing but require post-election disclosure of contributions and expenditures, though it had attempted much more, including establishing expenditure limits and expanding the coverage of federal election law to primaries as well as general elections.²⁶ The Act reemerged from the congressional session of 1911 equipped with more comprehensive disclosure rules. What’s more, the FCPA of 1911 also incorporated the first codification of spending limits for federal campaigns. The limits would not stand a Supreme Court test, however, and the court opined in the 1921 *Newbury v. United States* case that party primaries and nominating activities were beyond the scope of congressional authority. The court’s ruling would hold until a 1941 case resulted in the decision being overruled, and the law was tagged on as a rider to the Taft-Hartley Act of 1947.²⁷

The final manifestation of the FCPA, which was enacted in 1925, merely restated its previous tenets and reclaimed the ground it had lost regarding expenditure ceilings. Most importantly, it incorporated language that would outline standard reporting rules and procedures.²⁸

²⁵ Gierzynski, A. Money Rules: Financing Elections in America. Boulder: Westview Press, (2000).

²⁶ Corrado, Anthony. “Money and Politics.” The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

²⁷ Ibid.

²⁸ “How Americans Have Financed Elections in the Past.” Center for Responsive Politics. ONLINE Available: <http://www.opensecrets.org/pubs/history/history2.html>. [Accessed 1/11/2007]

However, in the words of President Lyndon Johnson, campaign finance following the enactment of the FCPA was "more loophole than law . . . invit(ing) evasion and circumvention."²⁹ The theory behind the Act was that disclosure requirements and increased transparency would make quid pro quos, bribery and other corruption easier to detect and there was some emphasis on the information being made available so that the voter's role might be one of shaming candidates into compliance. In reality, the Act accomplished few of its stated goals. Its shortcoming was its inability to enforce or even regulate the laws it had enacted. Reporting was inconsistent and unorganized.

"Campaign finance records tended to be incomplete and not readily available to the public. What few news reports that were generated from access to campaign finance records under the Publicity Act failed to stir the electorate one way or the other. Such reports revealed that all three major parties—and even the reform factions within these parties—relied primarily on large contributors."³⁰

Campaign finance laws from this era were disregarded, evaded, and held no threat of repercussion for those who engaged in what were technically illegal activities. Even in the reform minded 1970s, campaign expenditures were sporadically reported and spending limits could be evaded by both candidates and parties simply by establishing multiple committees or even claiming ignorance of previous expenditures. There was no formal audit system and the laws were rarely, if ever enforced.³¹

It is clear, however, that several goals continuously reappear; American campaign finance law has continuously sought to limit the role of labor unions, corporations, and fat-cat donors while simultaneously attempting to increase transparency.

²⁹ "Reform Attempts at the Federal Level." Hoover Institute. ONLINE
Available: <http://www.campaignfinancesite.org/history/reform1.html> [Accessed 1/11/2007]

³⁰ "Primer on Disclosure and Electronic Filings." Public Citizen. ONLINE
Available: <http://www.citizen.org/congress/campaign/issues/disclosure/articles.cfm?ID=15165> [Accessed 1/11/2007]

³¹ Ibid.

However, given the lack of enforcement measures and the ever-increasing incentive for candidates to ignore the campaign finance laws which made fundraising and spending more constrained, candidates often responded by openly disregarding the laws or evading them by establishing multiple committees or new, less regulated structures.

Separate Segregated Funds: The Birth of Political Action Committees

In 1947, the Taft-Hartley Act disallowed union officials from using any part of treasury funds, which were largely comprised of member dues, as federal political contributions. The bill was signed into law amidst fierce opposition from the unions themselves and in spite of President Roosevelt's attempted veto.³²

While politicians and candidates for public office are often described as strategic thinkers, the strategic behaviors of contributors are often overlooked. Though the laws attempted to limit the flow of union money into the campaign process, the laws did nothing to decrease the unions' incentives for contributing to candidates that supported their interests. In the wake of massive New Deal programs, it had become clear that the federal government was willing to expand its legislative jurisdiction over the American economy, which would affect both business and labor. In response, unions began to experiment with new structures through which they could move funds.

Labor unions began forming auxiliary committees which, by soliciting only members' voluntary contributions and not union dues, allowed them to operate with impunity from the laws. Political action committees, or PACs as they would come to be

³² "How Americans Have Financed Elections in the Past." Center for Responsive Politics. ONLINE Available: <http://www.opensecrets.org/pubs/history/history2.html>. [Accessed 1/11/2007]

known, were able to fund voter turnout efforts and make contributions to national parties and federal candidates without violating the conditions of the Taft-Hartley Act.³³ The Congress of Industrial Organizations (CIO) formed the first political action committee, known as a separate segregated fund, in 1944 in order to raise money for the re-election of President Franklin D. Roosevelt.³⁴

Labor unions dominated PAC activity from the late 1940s until the early 1960s when business interests began to take note of the strategy and formed their own PACs.³⁵ Union and corporate PAC activities would proliferate with no legal oversight for more than two decades. The first legislative acknowledgement of political action committees would not come until the enactment of the 1971 Federal Election Campaign Act.

³³ "How Americans Have Financed Elections in the Past." Center for Responsive Politics. ONLINE Available: <http://www.opensecrets.org/pubs/history/history2.html>. [Accessed 1/11/2007]

³⁴ A fund, wholly separate from the labor union's treasury, which is comprised largely of members' dues. The separate fund was to be filled only with voluntary donations.

³⁵ Cantor, J. E. "Political Spending by Organized Labor: Background and Current Issues." Center for Responsive Politics. ONLINE Available: <http://www.opensecrets.org/regulation/s96-484.htm>. [Accessed 20/10/2007]

Chapter 3:

The Federal Election Commission Act and Federal PACs

As the United States emerged from the second World War, the existing campaign finance laws were a conglomerate of overlapping, often ineffective, and ultimately outdated statutes. Simultaneously, the costs of campaigns skyrocketed with the advent of electronic media. According to *The Campaign Finance Guide*, “In 1956, the total cost of federal elections was \$155 million with nearly \$10 million spent on television advertising. In 1968, the cost of elections had almost doubled to \$300 million, while the amount spent on media rose to nearly \$59 million, an increase of almost 500% over 1956.”³⁶

Because the laws were rarely enforced, there were few disincentives for candidates to cease collecting corporate, union, and fat-cat contributions. Soliciting from these wealthy groups and individuals was an efficient and effective way for candidates to raise the funds they needed to campaign. In response, Congress passed the 1971 Federal Election Campaign Act. The bill was signed into law by President Nixon and went into effect almost immediately.³⁷

³⁶ Potter, T., Ortiz, D., and Corrado, A. *The Campaign Finance Guide*. Washington D.C.: The Campaign Legal Center, (2004).

³⁷ Corrado, Anthony. “Money and Politics.” *The New Campaign Finance Sourcebook*. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

The Federal Election Campaign Act

The Federal Election Campaign Act (FECA) passed in the 92nd Congress and was the first substantial campaign finance law to be enacted since the Corrupt Practices Act of 1925.³⁸ The law required full public disclosure of the receipts and disbursements of all federal campaign committees. It also enacted limits on the amount a candidate could contribute to his or her own campaign as well as the total amount a candidate could spend on media advertising.³⁹ Most notably, the law was the first campaign finance statute to take into consideration the influence of inflation on the real value of the dollar, though only in the case of expenditure ceilings.⁴⁰

Though the 1971 law was the first to clearly outline a process of legal repercussion and accountability for those that violated the spending limits, the FECA maintained some of the characteristic flaws of its predecessors. As with the Federal Corrupt Practices Act of 1925, which the 1971 law repealed, disclosure laws were rarely, if ever, enforced. Additionally, though repercussions existed, they targeted the media provider and not the candidates or committees who purchased excess media time.⁴¹ Were it not for the events of the following year, the 1971 FECA could reasonably have been expected to join the laws that preceded it as a corpse of ineffective campaign finance law. However, external circumstances greatly accelerated the perceived need for comprehensive, effective reform.

³⁸ Corrado, Anthony. "Money and Politics." The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

³⁹ Ibid. (p. 23)

⁴⁰ Ibid.

⁴¹ Samples, John. The Fallacy of Campaign Finance Reform. Chicago: University of Chicago Press, (2006).

When news of the Watergate scandal broke across family television screens nationwide, reporters decried the extraordinarily large gifts and corporate donations thought to have been made in return for promised ambassadorial appointments and guaranteed legislative favors.⁴² It became clear that Nixon's campaign committee, The Committee to Re-Elect the President, simultaneously operated three slush funds through which it laundered money and even paid the burglars who broke into the headquarters of the Democratic National Committee in the Watergate office building.⁴³ In response to public pressure, Congress produced a more comprehensive, enforceable version of the Federal Election Campaign Act.

FECA, 1974

Following Nixon's resignation, President Ford signed the reformed FECA into law. Individual gifts to a federal candidate were limited to \$1,000 per election and could not exceed \$25,000 per year, in aggregate, to all federal candidates. The law also enumerated the applicable contribution limits for party and other political committees and maintained the \$50,000 cap on what a candidate could give to his or her own campaign.⁴⁴

Campaign spending was also reconsidered. An aggregate spending limit of \$10 million per candidate in the presidential nomination cycle, and \$20 million in the presidential general election was established. An additional 20 percent of \$30 million could be spent so long as it was attributed to fundraising costs. Spending was also

⁴² Gierzynski, Anthony. Money Rules: Financing Election in America. Boulder: Westview, (2000).

⁴³ Corrado, Anthony. "Money and Politics." The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

⁴⁴ Ibid.

regulated at the state level, with limits for each state based on size of the voting age population.

These limits on spending all included adjustments for inflation, but the contribution limits did not. As a result, the contribution limits established by the 1974 law were unable to reflect the changing value of the dollar. This discrepancy thus resulted in a widening gap between the value of an individual donation and a candidate's spending power. As costs of campaigns continued to rise and expenditure limits, indexed to inflation, rose along with them, candidates were forced to increase their fundraising efforts in order to garner enough of the \$1,000 individual donations they needed to run a successful campaign. The new reforms attempted to encourage candidates to seek smaller donations from a wider pool of contributors;

“The contribution limits established by the FECA made it impossible for candidates to raise large sums quickly and efficiently. Although they did not prevent candidates from raising substantial amounts of money, they did change the way candidates went about this task. Instead of relying on a relatively small group of large donors for a significant portion of their campaign funds, candidates had to solicit donations of \$1,000 or less and finance their campaigns through tens of thousands of small gifts.”⁴⁵

This was, in terms of time and energy, a much greater burden for candidates. Not surprisingly, they looked to find a less restrictive setting. In response, candidates looked for ways to supplement or otherwise negotiate the strategic dilemma that resulted from this aspect of the law.

The political action committees that had emerged as a result of the regulation of labor unions, merited federal regulation in the 1974 revision of the FECA. Individuals could give up to \$5,000 to a PAC per year— significantly more than what was allowed,

⁴⁵ Corrado, Anthony. “Financing the 2004 Presidential Election.” *Financing the 2004 Election*. Eds. David B. Magleby, Anthony Corrado, and Kelly D. Patterson. Washington: Brookings Institution Press, (2006).

under the same law, to candidates for federal office. Most notably, the 1974 law created the Federal Election Commission, a six-member, full-time bipartisan agency which was sanctioned to, “administer and enforce the Federal Election Campaign Act (FECA).”⁴⁶

A companion act, which passed concurrently, established the tax code provision that would later provide for the public funding of eligible candidates.⁴⁷ The public financing system, which still exists today, allocates taxpayer dollars to help finance presidential elections. Candidates are able to elect whether or not to accept public matching funds, and can qualify for up to \$250 in public money for each gift that exceeds this amount. Candidates continue to qualify for matching funds so long as they demonstrate some degree of support— 10 percent of the vote in each state’s primary or caucus. However, candidates who accept public money are also subject to strict expenditure laws that are fixed to inflation, but are nonetheless limiting given the exponentially increasing cost of presidential elections. In 2004, both parties’ eventual nominees chose not to accept public money in the primary election and many candidates in 2008 followed suit.

Though campaign finance reform generally enjoyed bipartisan support, the FECA 1974 was challenged in court immediately upon being signed into law. The now infamous court case of *Buckley v. Valeo* forced the Congress to alter the legislation. The court found that “a restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration,

⁴⁶ Federal Election Commission. *What Does the FEC Do?* ONLINE
Available: http://www.fec.gov/ans/answers_general.shtml#What_does_the_FEC_do [Accessed 13/11/2007]

⁴⁷ "Important Dates: Federal Campaign Finance Legislation." *Center for Responsive Politics*. ONLINE
Available: <http://www.opensecrets.org/pubs/history/history6.html>. [Accessed 1/11/2007]

and the size of the audience reached.”⁴⁸ The court’s decision thus associated campaign spending with free speech. As a result, the *Buckley* ruling produced some of the most interesting, unintended consequences of any campaign finance law, including the advent and proliferation of issue advocacy groups and other soft money issues.⁴⁹

In the *Buckley* ruling, the court decided that the Federal Election Commission could claim jurisdiction over the acts of anyone expressly advocating for the election of defeat of one candidate or another. Simultaneously, the court ruled that the FEC could not regulate the free speech of actors with interests in educating voters about political issues. As a result, issue advocacy advertisements, or other voter outreach activities, that do not expressly advocate for or against a specific candidate are not regulated by the FEC. In order to distinguish between issue advocacy and express advocacy, the *Buckley* “magic words” serve as a litmus test for distinguishing between the two. If at any time words such as “vote for”, “reelect”, “defeat” or “vote against” are used, the FEC may claim jurisdiction.⁵⁰ Despite having established a bright line test, it has not always been easy to determine which activities constitute issue advocacy and which are clearly express advocacy. In 1992, for example, the Christian Action Network broadcast a series of ads that described former President Clinton as having a “homosexual agenda.” In *Federal Election Commission v. Christian Action Network*, the court found that the ad gave Clinton a “sinister and threatening appearance” and argued that the negative depiction of Clinton, in conjunction with the timing of the ad’s release and other symbolic imagery (such as Clinton disappearing from the screen) advocated Clinton's defeat even though

⁴⁸ Gierzynski, Anthony. *Money Rules: Financing Election in America*. Boulder: Westview, (2000).

⁴⁹ Ibid.

⁵⁰ Moramarco, Glenn J. “Magic Words and the Myth of Uncertainty.” *Election Law Journal*.1 (2002) 387-400. doi:10.1089/153312902760137622.

the advertisement never using any of *Buckley's* "magic words." The Court of Appeals, however, ruled that the ad was a "discussion of issues related to "Christian family values," intended to inform the public about political topics, rather than an exhortation to vote against Clinton in the upcoming presidential election" and thus the Christian Action Network's activities were not regulated by the FEC. Issue advocacy groups are able to relay a considerable amount of election-related information with no federal oversight.⁵¹ In response, candidates must be prepared to counter any negative issue advocacy ads in addition to rebutting their opponents' attacks.

Because there is significant uncertainty regarding what is allowed under the FECA, the 1976 law also set the precedent for allowing the FEC the right to make advisory opinions which explain how the Federal Election Campaign Act (FECA) and other campaign finance laws apply in particular factual situations.⁵² Advisory opinions often involve controversial issues which have arisen because of the law's natural inability to predict changes in the election process or to apply to creative new political strategies. As a result, these opinions often have a significant impact on how the laws are applied and even dictate what strategies become more or less advantageous in each election.

Federal PACs and the FECA

The Federal Election Campaign Act was the first legislation that acknowledged the existence of political action committees as it sought to regulate them. The FECA imposed regulations that were less restrictive than those placed on candidates and as a

⁵¹ "Bag of Tricks." Center for Responsive Politics. ONLINE
Available:http://www.opensecrets.org/pubs/law_bagtricks/loop3.asp [Accessed 2/4/2008]

⁵²Gierzynski, Anthony. *Money Rules: Financing Election in America*. Boulder: Westview, (2000).

result, the scale and scope of PAC financing boomed in the 1980s. According to one campaign finance scholar “from 1974-1986, the number of committees registered with the FEC increased from 1,146 to 4,157, while the amounts that they contributed to candidates rose from about \$12.5 million to \$105 million.”⁵³ Furthermore, PAC use would no longer be limited to union and corporate interests.

Three principal types of political action committees have emerged since the adoption of the FECA: connected PACs are directly linked to labor unions or corporations, non-connected PACs raise and spend money to elect candidates who share similar beliefs on political issues, and leadership PACs, the subject of this analysis, which are formed by politicians to help fund the campaigns of other like-minded politicians. Not surprisingly, having seen how PACs allowed unions and corporations to efficiently amass and spend funds outside of the FECA regulations and with very little federal oversight, candidates for public office took advantage of the strategy.

Though the FECA explicitly disallows the formation of a PAC as a campaign committee, the law says nothing about a potential candidate or future candidate establishing and fundraising on behalf of a PAC. Even federal officeholders, who are always beholden to federal laws, may form and chair a federal PAC, so long as all fundraising in which the PAC engages abides by FEC limits.

Leadership PACs, by law, must avoid any activities which are considered campaign-related. When ambiguities exist as to which activities constitute a “campaign-

⁵³ Corrado, Anthony. “Money and Politics.” The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

related” action, committees often seek preemptive approval from the FEC.⁵⁴ The resultant advisory opinions, more often than not, allow committees to engage in a broad range of activities that do not fall under FEC regulation. Generally, a declaration of candidacy, in the eyes of the FEC, requires an affiliated candidate to refer to him or herself as a candidate, use advertising to publicize an intended campaign or take action to qualify for the ballot.⁵⁵ So long as these actions were avoided, leadership PACs and their associated politicians could operate under the FECA rules pertaining to political action committees and not campaign committees.

In 1980, the first election following the finalization of the FECA, four of the top ten candidates had established a federal leadership PAC. Each of these candidates purported that the sole function of the committee was to raise and spend money in order to elect other members of their parties to various public offices. However, few of these PACs remained active for more than a single election cycle.⁵⁶ According to one academic, “Two of the 1980 committees ended their operations before the beginning of the primary campaigns... Bush’s Fund for a Limited Government terminated its operations on March 31, 1979, two months after Bush established a principal campaign committee and one month before he publicly announced his decision to become a candidate.”⁵⁷ By the 1988 election cycle, more than half of all presidential candidates had formed political action committees, many up to two years prior to the election. Most

⁵⁴ Corrado, Anthony. Creative Campaigning: PACs and the Presidential Selection Process. Boulder: Westview Press, (1992).

⁵⁵ Federal Election Commission. *Testing the Waters and Campaign Committees*. ONLINE. Available: http://www.fec.gov/press/bkgnd/pres_cf/exploratory.html [Accessed 20/12/2007]

⁵⁶ Corrado, Anthony. Creative Campaigning: PACs and the Presidential Selection Process. Boulder: Westview Press, (1992).

⁵⁷ Ibid.

importantly, these committees were able to engage in political activity, without necessitating that the associated politician declare a formal candidacy.

The FEC acknowledges a two-step process in becoming a candidate. Before committing to a candidacy, an individual who explores the feasibility of a potential bid does not have to register or report as a candidate. A Testing the Waters fund (TTW) or exploratory committee may thus be used without filing disclosures until a formal candidacy is established. TTW funds, according to a 1981 advisory opinion, may be used to poll, pay for telephone calls, pay for travel, hire some staff, keep a database of potential donors, pay for some overhead costs of the operation, and more. When raising money, TTW funds are still subject to all federal contribution limits as applicable to a campaign committee but until the individual advertises their bid, TTW funds are not subject to total transparency requirements.⁵⁸ However, should an individual become a candidate, he or she will be required to disclose campaign-related receipts and expenditures. Once a candidate chooses or is forced to register an official campaign committee, all spending will begin to total toward aggregate limits applicable to the expenditure caps associated with public funding should a candidate choose to take it. This roll-over necessitates that all fundraising and spending which occurs in the TTW committee adhere to federal campaign committee regulations.

As experience with the new FECA deepened and candidates began to identify the expenditure ceilings as strategic dilemmas, they sought ways to avoid triggering the expenditure limits. Exploratory committees don't resolve these issues; should the

⁵⁸ Federal Election Commission. *Testing the Waters and Campaign Committees*. ONLINE. Available: http://www.fec.gov/press/bkgnd/pres_cf/exploratory.html [Accessed 20/12/2007]

candidacy become formal, any fundraising and spending within a testing the waters committee (TTW) committee will be carried into the official presidential committee. As a result, though TTW committees may allow candidates to explore their base of support, they don't allow candidates to do so without having that activity eventually total toward expenditure ceilings. In response, candidates found that any of the preliminary activity that could be completed outside of the campaign committee and TTW committee eased the pressures candidates faced; political action committees allowed candidates to engage in essential pre-candidacy activities without fear of ever triggering the expenditure ceilings. By establishing a leadership PAC, a candidate may engage in a good deal of pre-candidacy activity without formally declaring candidacy or having any expenditures or contributions count against campaign limits. Consequently, a leadership PAC may enable a candidate to avoid triggering expenditure limits should he or she plan to accept public funds

Chapter 4: **The Bipartisan Campaign Reform Act and State PACs**

The Federal Election Campaign Act functioned much as it was meant to in the two presidential cycles following its enactment. However, as candidates and political consultants grew more comfortable with the law, they learned how best to negotiate the strategic dilemmas it created for them. The new public funding system created by the FECA necessitated adherence to expenditure ceilings if public funds were accepted; however, contribution limits remained static and thus fundraising became an increasingly burdensome undertaking given that most candidates in this period accepted public money. In seeking ways to negotiate the dilemmas thus caused by ceilings, candidates and parties sought ways to accomplish the same political tasks without triggering the FECA expenditure limits. As they explored new structures and strategies that would allow them to do so, they were able to first seek the Federal Election Commission's approval. The power of the resulting advisory opinions, coupled with newly emerging financial structures and strategies, chipped away at the efficacy of the law.⁵⁹

In 1979 the FEC issued an advisory opinion allowing national political parties to raise money without concern for federal contribution limits so long as the money was spent for "non-federal election" activities. By creating this "soft money," the FEC unintentionally provided an avenue through which parties and candidates could continue

⁵⁹ Malbin, Michael. "Assessing the Bipartisan Campaign Reform Act." The Election After Reform. Ed. Michael Malbin. Lanham: Rowman and Littlefield Publishers, Inc., (2006).

to put corporate, labor and fat-cat money to use, in ways that would not cause the public funding expenditure ceilings to take effect.⁶⁰

As the unregulated use of soft money became visible and the role of issue advocacy groups grew more apparent, concerns over the integrity of the campaign finance system, “led many legislators to conclude that campaign finance laws were being widely circumvented.”⁶¹ In fact, a Department of Justice study, along with a separate FEC investigation, found that the Democratic National Committee, in the 1996 election, had received over \$3 million from questionable, if not completely illegal sources. The results of the study, published in 1997, also found that former President Clinton had solicited large private contributions, and former Vice President Gore called in gifts of \$50,000 or more to the national party.⁶² It became exceedingly clear that campaign finance law was once again in need of an update.

In 2001, the Bipartisan Campaign Reform Act (BCRA), also known as McCain/Feingold, after its congressional sponsors, was signed into law. In a 2004 *Washington Post* article, Senators John McCain and Russell Feingold commented that:

“The McCain-Feingold law was never about reducing money in politics. Its goal was to reduce the corrupting influence of unlimited ‘soft money’ contribution to the political parties, usually solicited by federal candidates and officeholders... Ending the practice of the president, party leaders, and member of Congress soliciting huge donation from corporations, unions, and wealthy individuals improved the system.”⁶³

⁶⁰ The term “soft money” is used to encompass any money that is ultimately used for political purposes but that is not regulated by the FEC because it avoids the *Buckley* “magic” words, was allowed by an FEC advisory opinion, or is a new processes and thus has not yet been brought to the attention of the FEC.

⁶¹ Corrado, Anthony. “Money and Politics.” *The New Campaign Finance Sourcebook*. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

⁶² Ibid.

⁶³ Malbin, Michael. “Assessing the Bipartisan Campaign Reform Act.” *The Election After Reform*. Ed. Michael Malbin. Lanham: Rowman and Littlefield Publishers, Inc., (2006).

BCRA had two foci: party soft money and the role corporate and labor dollars continued to play in elections. However, in its final incarnation, BCRA offered a complete reform package, including taking the first steps to rectify the inflexibility of contribution limits and to develop measures that would allow the law to adapt alongside the elections they were meant to regulate.

The Bipartisan Campaign Reform Act's most extensive changes resulted in the prohibition of unlimited soft money contributions to national political committees:

“The law prohibits a national party committee—including any entities directly or indirectly establish, financed, maintained, or controlled by such a committee or any agent acting on a committee's behalf—from soliciting, receiving, spending, transferring, or directing to another person any funds that are not subject to federal source prohibitions, contribution limits, and reporting requirements regardless of their intended uses.”⁶⁴

Similar language is used to enumerate restrictions on federal incumbents, who under the provisions of BCRA, may not fundraise for any organization if it is not in keep with federal laws.⁶⁵ The law does allow for federal officials and candidates to appear as featured guests or speakers at a state party event at which the party raises soft money for “party building” purposes. The law is clear, however, that though they may appear, they may not directly solicit money. Federal officials and candidates may solicit funds without limit for the general treasury of any tax-exempt organization described in section 501(c) of the tax code so long as the purpose of the organization is not to conduct certain specified federal election activities and the gifts themselves do not violate the federal limits.⁶⁶

⁶⁴ Corrado, Anthony. “Money and Politics.” The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

⁶⁵ Ibid.

⁶⁶ Malbin, Michael. “Assessing the Bipartisan Campaign Reform Act.” The Election After Reform. Ed. Michael Malbin. Lanham: Rowman and Littlefield Publishers, Inc., (2006).

Additionally, BCRA increased contribution limits and for the first time in campaign finance reform, indexed them to inflation. Under the FECA, individuals could give no more than \$1,000 to a candidate's political committee per election and only \$20,000 per year to a national party committee; under BCRA, individuals could give up to \$2,000 per election to a candidate and \$25,000 per year to a party committee. Furthermore, both limits were indexed to reflect inflation. PAC limits, however, did not change under BCRA. Individuals may still contribute only \$5,000 per year to any one committee; in time, as contribution limits to presidential committees rise with inflation, the current strategic advantage offered by PACs may disappear.

In order to address the problems associated with the expansion of issue advocacy groups, the law "closed the issue advocacy loophole by requiring that any state or local party-financed public communication that features a federal candidate and promotes supports, attacks, or opposes a candidate for federal office must be funded with hard money."⁶⁷ Limiting issue advocacy by non-party groups or organizations and was approached in several new and improved ways. Moving beyond Buckley's "magic words," BCRA created a new terminology to include the political communications which cleverly avoided the magic words, but clearly were meant to influence federal elections. The new concept of "electioneering" covered a greater variety of communications. The law defines electioneering communications as those which are conveyed by a broadcast, cable or satellite communication, which is broadcast to a market of at least 50,000 people

⁶⁷ Corrado, Anthony. "Money and Politics." The New Campaign Finance Sourcebook. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

in the relevant electorate, names or identifies a federal candidate, and airs within 60 days of a general election or thirty days of a primary.⁶⁸

One of the more innovative aspects of the law was the inclusion of the “millionaire amendment”—the first attempt by campaign finance legislation to address the pressures exerted on candidates by the election process. BCRA includes special limits to be applied to candidates facing wealthy, self-funded candidates. Technically known as the “Variable Contribution Limit”, the law increases contribution limits for congressional candidates facing self-financed candidates. Though the millionaire amendment does not apply to presidential candidates, it is nonetheless an innovative aspect of the law. State and local candidates accepting public funding also face expenditure ceilings; under the millionaire clause, expenditure and contribution limits are fluid, adaptable, and increase depending on the degree to which the opposing candidate self-funds their campaign. In the 2004 senate election, Senator Barack Obama (D-IL), was one of the first candidates to benefit from this clause in his senatorial bid against Blair Hull, a securities trader worth over \$500 million. Senator Obama accepted public funding and was still able to raise and spend \$2 million more than he otherwise would have been legally able had the millionaire clause not been in effect.⁶⁹

Not surprisingly, the moment BCRA was signed into law it was in the courts; Mitch McConnell of Kentucky promised, before the bill left Congress, to challenge its constitutionality. The legal challenge was composed of 11 separate lawsuits and had more than 80 plaintiffs ranging from the Republican National Party and California

⁶⁸ Malbin, Michael. “Assessing the Bipartisan Campaign Reform Act.” *The Election After Reform*. Ed. Michael Malbin. Lanham: Rowman and Littlefield Publishers, Inc., (2006).

⁶⁹ Corrado, Anthony. “Money and Politics.” *The New Campaign Finance Sourcebook*. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

Democratic Party to the American Civil Liberties Union and the National Rifle Association.⁷⁰ The Supreme Court voted to uphold all of the law's core provisions and struck down only two aspects of the law: one which prohibited minors from making political contributions, and the other which required that parties decide to pursue independent or coordinated expenditures at the time of a candidate's nomination.

Because BCRA was primarily concerned with the increase of soft-money in elections, the legal treatment of issue advocacy groups, also known as 527s, was examined. Representative Chris Shays (R-Conn.) brought suit against the FEC with former Representative Marty Meehan (D-Mass.) regarding 527s. Meehan and Shays argued that these issue advocacy groups, which spent huge amounts of money in the 2000 election, ought to be held to the same standards as other groups which seek political influence. However, an August, 2007 decision struck down the suit, arguing that it was within the rights of the FEC to oversee 527 committees on a case by case basis, should their actions cross the bright line test established in *Buckley*.⁷¹ As a result, issue advocacy groups, funded by soft money, are still a considerable force in presidential elections.

Even with its extended jurisdictional reach, the Bipartisan Campaign Reform Act has loopholes and flaws which have given rise to new methods and strategies that law makers could not have anticipated. One unintended consequence which has already become apparent, however, is the continuing disintegration of the public financing system. The system of public money once gave candidates some incentive to solicit

⁷⁰ Corrado, Anthony. "Money and Politics." *The New Campaign Finance Sourcebook*. Ed. Anthony Corrado. Washington, D.C.: Brookings Institution Press, (2005).

⁷¹ Crabtree, Susan. "Judge Dismisses Shays, Meehan 527 Suit." *The Hill*. (30/8/2007) ONLINE. Available: <http://thehill.com/campaign-2008/judge-dismisses-shays-meehan-527-suit-2007-08-30.html> [Accessed 2/12/2007]

small donations from a wide pool of donors. Beyond that, it gave the FEC a means to curtail campaign spending without confronting the court's decision in *Buckley v. Valeo* which determined the limitation of personal expenditures to be akin to limiting free speech. Though it was once believed that choosing not to accept public funding would play poorly with voters, Bush and Kerry proved that in forgoing public matching funds they were able to spend greater sums, including more of their own money, without suffering any public backlash. Frontrunners, who are able to mobilize massive donations very quickly, have very little incentive to take public money because it will eventually limit their spending. No candidate wants to find themselves in a position where the campaign has more money on hand than it can legally spend. BCRA did nothing to make the public funding system more attractive; candidates may still only receive \$250 for each contribution of \$250 or more, although the value of a dollar in presidential races has continued to decline. The matching funds represent a very small portion of the total fundraising a candidate must complete in order to be competitive. Given the expenditure ceilings associated with accepting public matching funds, the relatively small amount made available to candidates in public money is, strategically speaking, less beneficial to the campaign than avoiding the imposition of expenditure ceilings. Furthermore, the law did nothing to assist presidential candidates facing wealthy opponents. The millionaire amendment does not apply to presidential races and as a result, candidates may, and often do face exorbitantly wealthy opponents who can spend an unlimited amount of their own money. Accepting public money eventually limits how well candidates in this position are able to respond to wealthy candidates and thus public funding system is less a help than it is a hindrance.

The decline of the public funding system means that the second and third tier candidates who must still rely on public money face a significant disadvantage. In competition with candidates with no spending limitations, many of whom are frontrunners, publicly funded candidates find themselves handicapped. Although BCRA increased the contribution limits and indexed them to inflation, it did not increase the amount of a contribution eligible for matching funds, nor did it go far enough in closing the gap between the amount a candidate needs to spend in order to wage a competitive campaign, and the feasibility of raising those funds within the confines of a campaign committee. Even for candidates who opt out of public funding and thus have no expenditure limits, the painstaking task of raising relatively small, individual donations through a campaign committee is a huge burden. Even candidates such as Senators Barack Obama and Hillary Clinton (who have raised unprecedented amounts) have spent an exorbitant amount of time and energy trying to raise that money.

Understandably then, there has been no reduction in the incentives that encourage candidates to form extraneous structures through which to spend and raise greater amounts of money. These structures are separate from the activities of campaign committees, though they are in many ways equally useful or at least supplementary.

PACs under BCRA

BCRA's primary concerns were to limit soft money and regulate issue advocacy. Given that the money accumulated in federal PACs is considered "hard" because it is regulated by federal law very little changed for PACs under BCRA. Notably, the law

does not acknowledge the existence of state-level PACs, nor does it impose any regulations on their activity.

State PACs

By the time BCRA was enacted, leadership PACs were a common part of our political system, but very little attention was paid to similar political committees being created at the state level. In 1979, Pete Du Pont established two political committees, GOPAC and the National Leadership Council. Because the committees were created at the state level, they were subject to state, not federal laws. Political action committees, filed with a state election commission or secretary of state are not considered the same entity, even when sharing the same name as a federal PAC. As a result, state PACs offer considerable advantages to those seeking office, though significant disparity exists regarding their utility to candidates depending on whether or not an individual holds a federal public office.

Given laws regarding federal incumbents and political groups with which they are associated, federal incumbents are always subject to federal regulations regarding fundraising both in size and source.

“Specifically, Senator McCain interpreted 2 U.S.C. 441i(e)(1)(A) and (B) (*see* 11 CFR 300.61 and 300.62) to permit a federal candidate or officeholder to raise funds for both a federal and non-federal account of a leadership PAC, provided that the funds raised for the non-federal account met the source and contribution limits of the Act.”⁷²

Federal incumbents must adhere to federal regulations and thus don’t stand to benefit from the state PAC strategy to quite the same degree as non-office holders or

⁷² “Rules and Regulations.” Federal Register, 67, (2002).

state-level incumbents. However, even a federal candidate can maximize the amount of money a donor can contribute; contributors can donate the full amount to multiple PACs both state and federal, before donating to a campaign committee.

Non-federal incumbents or those who do not hold office can therefore profit from laws that limit federal incumbents' fundraising, but not their own. Fifteen states including Alabama, Illinois, Indiana, Iowa, Michigan, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virginia allow individuals to make unlimited donations to state-level PACs. Thirty-six states allow some degree of corporate contributions and in five states those contributions may be unlimited. Forty states allow some degree of union contributions and seven of those states allow those contributions to be unlimited.⁷³ Most importantly, regardless of where a state PAC files its disclosure reports, state-level committees may spend without regards to state lines.

Non-federal incumbents or non-incumbents may legally establish PACs in states which allow much larger donations from individuals than the allowable amount an individual can contribute to a federal PAC or campaign committee. They may also be able to accept contributions from groups banned at the federal level such as unions and corporations. Federal office holders, however, may not. As a result, non-office holders and state-level incumbents are able to benefit from states which have unlimited individual contribution limits and those which allow labor and corporate donations in ways federal candidates cannot. A governor with a state PAC in Iowa, for example, could accept a

⁷³ Federal Election Commission. *Campaign Finance Law 2002: Chart 2-A: Contribution and Solicitation Limitations*. ONLINE.

Available: <http://www.fec.gov/pubrec/cfl/cfl02/cfl02chart2a.htm> [Accessed 28/9/2007]

\$100,000 check from a single contributor at any time; a federal incumbent would be required to accept no more than \$5,000 a year.

The relationship between law and process is symbiotic; if the rules change, they may alter the efficacy of certain strategies. Likewise, changes in the election process may cause campaign finance laws to become outdated, ineffective or irrelevant. When examining reforms it is important to take into consideration the political processes which make certain behaviors and/or strategies rewarding for candidates. Looking only at a timeline of historical campaign finance reform would misrepresent the holistic environment in which candidates function. Newly enacted campaign finance legislation is rarely the only pressure influencing actors.

Chapter 5: The Election Process and Strategic Dilemmas

The regulatory environment is not the only terrain presidential candidates must plan to negotiate. Aspirants must also prepare for a delegate selection process that begins and ends with such expedience that personal blunders, with the right amount of press, develop in the span of hours into a political catastrophe of “screaming” proportions.⁷⁴ Furthermore, the quick accumulation of early money is increasingly seen as a barometer of political support, and as a result, candidates who are unable to raise huge amounts of money early on are often discounted. The following chapter will detail the effects of both frontloading and the use of early money as a barometer of political support, on the behaviors of candidates.

Frontloading the Presidential Primary

In the 2008 presidential primary, the first contest occurred January 3, in Iowa. The event known as “Super Tuesday” fell on February 5, and included nominating contests in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Rhode Island, Tennessee, Utah, Montana,

⁷⁴ On January 19, 2004, Howard Dean finished in third-place in the 2004 Iowa Democratic caucuses. At a post-caucus rally, Dean was shouting over the audience, but the noise in the room was filtered out by his microphone, leaving only what sounded like a scream audible to the television viewers. The event is credited with singularly killing Dean’s forward momentum and quite likely, any chance he’d had at the presidency – Meyer, D. “Defending Dean’s Scream (It Just Wasn’t That Weird.” CBS News Online. (2004). ONLINE. Available: <http://www.cbsnews.com/stories/2004/01/23/opinion/meyer/main595508.shtml> [Accessed: 20/30/2007]

and West Virginia, simultaneously⁷⁵. By the time the polls closed on February 5, both parties had nearly half of the available delegates committed to one of the candidates.⁷⁶

The Democratic Party has seen an unprecedented degree of political engagement and participation in this primary election. As a result, the party has yet to determine whether Senator Barack Obama or Senator Hillary Clinton will be the party's standard bearer. Republicans, however, had effectively chosen their nominee by March 4, the date by which Senator John McCain successfully accumulated the 1,191 delegates needed to win the nomination. The 2008 Republican primary lasted only two months. Additionally, of Senator McCain's most notable competition, former Governor Mitt Romney and Mike Huckabee, only the latter continued to campaign after Super Tuesday, meaning that in the 10 primary elections which occurred between February 5 and March 4, voters had only two viable candidates from which to choose.⁷⁷

As the Democratic primary continues on into May, the party has begun to panic; after only four months of the primary campaign, politicians, media and pundits are already clattering for one of the remaining candidates to withdraw. The risk of continuing such a "protracted" battle, they argue, is that the delay in deciding the nominee gives the Republican opposition an advantage in fundraising for the general election.

⁷⁵ Super Tuesday is the term coined for the day on which the most states simultaneously hold their primary elections, and when the most nominating delegates can be won. The term found its way into the vernacular in the 1984 nominating cycle in relation to what was nearly a southern regional primary—Norrander, B. "Super Tuesday: Regional Politics and Presidential Primaries." *The Journal of Southern History* 60 (1994).

⁷⁶ **Democrats:** Alabama, Alaska caucus, Arizona, California, Colorado caucus, Connecticut, Delaware, Georgia, Idaho caucus, Illinois, Kansas caucus, Minnesota caucus, Missouri, New Jersey, New Mexico caucus, New York, North Carolina, North Dakota, Oklahoma, Tennessee, Utah
Republican: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Minnesota, Missouri, Montana, New Jersey, New York, North Dakota, Oklahoma, Tennessee, Utah, West Virginia— "The Primary Season: 2008 Calendar." *Election Guide 2008* (9/12/2007) ONLINE Available: <http://politics.nytimes.com/electionguide/2008/primaries/democraticprimaries/index.html.v> [Accessed 3/12/07]

⁷⁷ John McCain, Mitt Romney and Mike Huckabee were the only Republican candidates to win a primary state election.

As of early April, twelve nominating contests remain on the calendar. One party had already chosen its nominee, while the other decried the fact that it had not. Not only does such a frontloaded calendar affect the voters in any state which holds its nominating contest after Super Tuesday, it greatly determines the behaviors of candidates in terms of campaign fundraising and spending.

Under present election laws, a nominee is unofficially determined by the number of delegates he or she has won. Because the nominee must earn a majority of delegates, candidates must overcome a predetermined threshold in order to secure the nomination—2,026 for Democratic candidates and 1,191 for Republicans in the 2008 race.⁷⁸ As each state's primary or caucus concludes and the votes (or bodies) are counted, the candidates amass delegates. As a result of the McGovern-Fraser Commission of 1968, the delegates, for whom voters technically cast their ballot, are no longer expected to act as free agents; delegates today are supposed to represent the outcome of the state vote.⁷⁹ As a result, the nomination typically becomes a mathematical certainty before every state holds its nominating contest. Once a nominating majority has been reached by a candidate, the remaining nominating contests are nothing more than symbolic acceptance (or rejection) of the nominee.

⁷⁸ Counts exclude sanctioned states' delegates— Berg-Andersson, R. E. "2008 Presidential Nomination Process." *The Green Papers* (2007). ONLINE Available: <http://www.thegreenpapers.com/> [Accessed 21/1/2008]

⁷⁹ Mayer, W. G. "The Frontloading Problem." *The Making of the Presidential Candidates 2004*. Ed. W. G. Mayer. Oxford: Rowman and Littlefield Publishers, Inc., (2004).

Table 5.1

<p>2008</p> <p>January</p> <p>3:Iowa caucuses, 8: New Hampshire, 5:Wyoming caucus, 15:Michigan, 19:Nevada Caucuses, 26:South Carolina, 29:Florida</p> <p>February</p> <p>2:Maine caucus, 5:Alabama, Alaska caucus, Arizona, Arkansas, California, Colorado Caucuses, Connecticut, Delaware, Georgia, Idaho caucus, Illinois, Kansas Caucus, Massachusetts, Minnesota caucuses, Missouri, New Jersey, New Mexico caucus, New York, North Dakota caucuses, Oklahoma, Tennessee, Utah, West Virginia 9: Kansas caucus, Louisiana, Nebraska caucus, Washington caucuses 10: Maine Caucus 12: Maryland, Virginia 19: Hawaii Caucus, Washington, Wisconsin</p> <p>March</p> <p>4: Ohio, Rhode Island, Texas, Vermont 8: Wyoming caucus 11: Mississippi</p> <p>April</p> <p>6: Indiana, North Carolina 13: Nebraska, West Virginia 20: Kentucky, Oregon 27: Idaho</p> <p>May: Hawaii caucus (republican: un-committed)</p> <p>June</p> <p>3: Montana, New Mexico, South Dakota</p> <p>Democratic National Convention</p> <p>Aug. 25- 28th Denver, Colorado</p> <p>Republican National Convention</p> <p>Sept. 1-4: Minneapolis- St. Paul, Minnesota</p>	<p>2004</p> <p>January</p> <p>19: Iowa caucuses 27: New Hampshire</p> <p>February</p> <p>3: Arizona, Delaware, Missouri, New Mexico caucus, North Dakota, Oklahoma, South Carolina 7: Michigan caucus, Washington caucus 8: Maine caucus 10: Tennessee, Virginia 14: Nevada caucus 17: Wisconsin 24: Hawaii caucus, Idaho caucus, Utah caucus</p> <p>March</p> <p>2: California, Connecticut, Georgia, Ohio, Maryland, Massachusetts, Minnesota caucus, New York, Rhode Island, Vermont 9: Florida, Louisiana, Mississippi, Texas, Washington caucus 13: Kansas Caucus 16:Illinois 20: Alaska caucus, Wyoming caucus 27: South Carolina caucus</p> <p>April</p> <p>17: North Carolina caucus 13: Colorado 24: Kansas caucus 27: Pennsylvania 29: Nevada caucus</p> <p>June</p> <p>4: Indiana, North Carolina 8: Arizona caucus, Utah caucus, Wyoming Caucus 11: Nebraska, West Virginia 14: Delaware caucus 15: Maine Caucus 18: Arkansas, Kentucky, Oregon 21: Alaska caucus, Michigan caucus, North Carolina caucus 25: Idaho</p> <p>July 26-29: Boston, Massachusetts</p> <p>Aug. 30- Sept. 2: New York N.Y.</p>
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Table 5.1 compares the 2008 presidential primary schedule to the 2004 calendar.⁸⁰

In looking at this chart, two things become apparent: more states pressed forward following 2004, and several contests will occur after the majority of delegates have been selected on this year's Super Tuesday which falls on February 5. These two phenomena are directly related; states that vote after February 5 have considerably less influence on the election than states that vote earlier. In 2008, Republican voters in ten states had only two viable candidates from which to choose. Thirteen additional states will, for all intents and purposes, do little more than confirm John McCain's nomination. State governments are aware of this aspect of our nominating system. Consequently, in an attempt to pre-empt political impotency, states move their nominating contests forward.

National party rules apply penalties to states choosing to move their primary or caucus ahead of the specified start date— February 5 in the 2008 presidential primary election. Historically, however, these rules have been loosely enforced. Even if in 2008, for the first time in history, the RNC and DNC decide to hold states to the party rules, it is clear that states are not threatened by the possibility of losing their delegates. As New Hampshire GOP chairman Fergus Cullen has stated, "If we're being asked to choose between protecting and preserving the first-in-the-nation primary or being a delegate to the national convention, we'll give up our delegates."⁸¹ If the purpose of a nominating contest is to select the party's candidate for the presidency, then the ability to cast a

⁸⁰ "Presidential Primary and Caucus Dates." The National Association of Secretaries of State (6/5/2008) ONLINE

Available: http://archive.stateline.org/flash-data/Primary/2008_presidential_primaries.pdf [Accessed 17/2/2008]

⁸¹ "RNC to Punish States for Moving Up Primaries." US News. (23/10/2007) ONLINE

Available: http://www.usnews.com/usnews/politics/bulletin/bulletin_071023.htm [Accessed 17/2/2007]

meaningful vote would seem paramount in importance; the reality is that new incentives, both economic and political, have made the loss of delegates less important than the acquisition of the other benefits accompany an early spot in the presidential primary.

Candidates Respond

The earlier the nominating season begins, the earlier hopefuls must begin the process of positioning themselves for a candidacy and “anticipation begins with the calendar of presidential primaries and caucuses two or more years distant. A ‘strategic imperative’ for every serious candidate is making the most of the sequence of early caucuses and primaries.”⁸² The compactness of the schedule guarantees that the quality of campaigns decreases dramatically as candidates run out of money or find themselves attempting to be seen and heard in 24 states simultaneously. Most significantly, candidates now face a season that can potentially decide the nominee in a month. Strategically, this creates several problems: it shortens the window for making an impression on voters, forces them to campaign in less personal ways which results in astronomical campaign costs, supports frontrunners, and increases the difficulty of completing administrative tasks.

The speed at which the primary season begins and ends makes it necessary for candidates to lay ground work for any intended campaigning well ahead of the first races. Candidates with well-stocked coffers going into the races are better able to fund a variety of campaign needs, including printing materials, paying consultants to craft their

⁸² Buell, E. H. J. “The Invisible Primary. In Pursuit of the White House How We Choose Our Presidential Nominees.” Ed. W. G. Mayer. Chatham: Chatham House Publishers, Inc., (1996).

campaign strategy, funding staffers, and mounting advertising efforts. Candidates hoping simply to survive the first contests are much less likely to have developed an extensive network of contingency plans and campaign strategies. Even if they do well in the first contests, these candidates lack the necessary preliminary, pre-emptive campaign infrastructure to implement the necessary next steps which take time to develop. In order to be successful, candidates need to amass a significant amount of early money, months in advance of the first race in Iowa. Given the speed of the process it can be impossible to recover from one misstep. As a result, the best prepared candidates spend a good deal of time planning different contingencies so that they can respond quickly and comprehensively. As the political scientist Emmett Buell has noted, “Serious campaigns spend much of the invisible primary planning for these contingencies.”⁸³

Given the variability of each election, the unpredictability of opponents and, increasingly, the wild-card spending of interest advocacy groups, candidates must literally be prepared for everything. Candidates have very little time to explain their platform to voters, and arguably, one month is in no way enough time for even the most politically literate to form an educated opinion on an individual who may become the future leader of the United States. As political scientist William Mayer argues, “In short, it [frontloading] makes the presidential nomination process less rational, less flexible, and more chaotic.”⁸⁴

⁸³ Buell, E. H. J. “The Invisible Primary. In Pursuit of the White House How We Choose Our Presidential Nominees.” Ed. W. G. Mayer. Chatham: Chatham House Publishers, Inc., (1996).

⁸⁴ Mayer, W. G. “The Frontloading Problem.” The Making of the Presidential Candidates 2004. Ed. W. G. Mayer. Oxford: Rowman and Littlefield Publishers, Inc., (2004).

In fact, the limited amount of time available makes it impossible for candidates to even physically be in the places where they want and need to campaign. The 24 contests that took place February 5, in 2008 were followed by seven more in the next week, giving the candidates no more than a day to visit each state. These kinds of scheduling conflicts cause candidates to increasingly rely on purchasing media time and the candidates who can outspend their competition benefit. These ads are effective because they increase a candidate's name recognition; few ads, however, are able to convey a candidate's full platform or experiential history. Though expensive, these media buys result in very little air time and it is highly unlikely that the average voter is able to glean important platform and policy information from 30 second television ads and six second news bits.

Those that are truly dedicated to educating themselves might be lucky enough to attend a tarmac rally where the candidate will stand just outside of a jet to deliver a speech to an assembly of supporters before hopping back on the plane to deliver an identical speech in three or four cities over the course of the day. Given the compactness of the nomination process, candidates do not have time to meet face to face with voters or even to visit many states. This not only decreases the quality of interaction between voter and candidate, but drives up the cost of campaigns substantially.

Most voters will make decisions armed only with the briefest glances of candidates unless they are in New Hampshire or Iowa, in which case they will receive more attention than most of the rest of the United States' voting population combined. Beyond Iowa and New Hampshire, the majority of voters will likely feel the same way about candidates going into the voting booth or the caucus as they felt when they first heard of that individual's candidacy. Changes in voter preference are more likely to be a

result of the winnowing effect primaries have on the field of candidates than a consequence of increased voter education about candidates' platforms or policy initiatives

A study by two Brown University economists found that, "voters in states that vote toward the end of the primary season place more weight on returns from the earliest states than on the states voting right before their own."⁸⁵ Unsurprisingly then, those candidates who develop a great deal of popular support in early contests do well in this system; it is almost impossible for a candidate to do poorly in both New Hampshire and Iowa and maintain a presence in the primary. Election after election confirms that the frontloading of primaries and caucuses locks frontrunners into a pattern of success which is exacerbated in each contest that follows. In fact, Jimmy Carter was the last long shot candidate who went on to win.⁸⁶

One possible explanation for this phenomenon is that it is significantly harder for non-frontrunners to maintain a flow of campaign money. Though Howard Dean surprised with his ability to raise money early on, by late January "campaign officials said they had about \$3 million left and bills to pay. They were not advertising on television and had temporarily suspended staff salaries."⁸⁷ Traditionally, it is believed that if a long shot candidate can do better than expected, even without winning, then that candidate may be able to sustain enough momentum to win the nomination. Unexpected success in an early contest generally aids poll standings, attracts more coverage, and swells campaign

⁸⁵ "Early Voters Hold Most Power in Primaries, Say Economists." *Science Daily*. 2007 ONLINE Available: <http://www.sciencedaily.com/releases/2007/12/071205153149.htm> [Accessed 12/11/2007]

⁸⁶ Mayer, W. G. "The Frontloading Problem." *The Making of the Presidential Candidates 2004*. Ed. W. G. Mayer. Oxford: Rowman and Littlefield Publishers, Inc., (2004).

⁸⁷ Justice, G. and Jodi, W. "The 2004 Campaign: Fund-Raising; Figures Details Dean's Slide from Solvent to Struggle." *The New York Times*. (2004).

coffers.”⁸⁸ However, with the currently compacted schedule it is unlikely that candidates, who are not previously well-funded, will be able to translate even huge wins into something useful.

Additionally, the often unseen administrative requirements of a campaign are fairly expensive. Candidates have to get on the ballot and file a slate of electors in each state which is often a time consuming and expensive process. For example, in order to appear on an Indiana primary ballot for a state or federal office, Republican and Democratic candidates are required to submit 4500 signatures, a portion of which must come from each of Indiana’s nine congressional districts. In fact, in the 2008 Indiana primary, Republican candidate John McCain failed to submit the required number of signatures for his name to appear on the ballot.⁸⁹ Furthermore, many states have accompanying fees and the cost of sending campaign staff to states to collect signatures for ballot access is significant. Not only does it require a great degree of planning, it requires ground forces. Given the speed with which the nomination calendar begins and ends, often times filing deadlines for ballot access overlap with races in other states making it necessary to fund a full campaign in one state, while attempting to get on the ballot in another.

⁸⁸ Buell, E. H. J. “The Invisible Primary.” In Pursuit of the White House How We Choose Our Presidential Nominees. Ed. W. G. Mayer. Chatham: Chatham House Publishers, Inc., (1996).

⁸⁹“John McCain Will Appear on Primary Ballot.” Indiana Public Broadcasting News. (18/3/2008) ONLINE Available: <http://indianapublicbroadcasting.wordpress.com/2008/03/14/john-mccain-will-appear-on-primary-ballot/> [Accessed 4/3/2008]

Early Money as a Barometer of Political Support

“With Republican and Democratic contests wide open, the candidates' success at raising money is being seized by officials in both parties as an early measure of organizational and political strengths. While the predictive value of fund-raising nearly two years before Election Day is debatable -- ask President Howard Dean about that -- the money scramble has created an atmosphere of anxiety that has spread across the political field, as the campaigns have struggled to squeeze every dollar out of donors while trying to set expectations for what they and their competitors can be expected to report.”⁹⁰

The first quarter of 2007 may be characterized by the number of presidential hopefuls who established exploratory committees, also known as testing the waters committees, in this period. From January 1 through March 31 of 2007, 14 candidates filed with the FEC, though many of them had not formally declared their candidacies. Exploratory committees exist in order to give potential candidates an opportunity to explore the depth and breadth of support they may be able to expect, before deciding whether or not to declare an official candidacy. This support is often measured in terms of fundraising potency— does the candidate have a wide or wealthy enough base of support to raise the funds necessary to wage an effective presidential campaign?

As the first quarter closed, 13 of the previously mentioned presidential hopefuls had formally declared their candidacy and were thus legally required to roll their fundraising activity into a campaign committee and begin filing financial reports with the FEC. With no incumbent president or vice president to dominate the race, the press and political pundits sought a way to winnow the field of perspective candidates. The fundraising totals reported by the newly established campaign committees would thus

⁹⁰ Nagourney, Adam and Zeleny, Jeff. “Heading Toward 2008; Presidential Candidates Jockey for Position in Campaign Fund-Raising Sweepstakes.” *New York Times*. (7/4/2008) ONLINE. Available: <http://query.nytimes.com/gst/fullpage.html?res=9803E1D61030F933A05750C0A9619C8B63&ec=&spon=&pagewanted=2> [Accessed 5/3/2008]

provide a tool by which the press would crown their frontrunners. In anticipation of this phenomenon, candidates raced to raise enough money to qualify, in the eyes of the press, as valid, electable candidates:

"As we approach March 31, when campaigns have to file their quarterly fund-raising reports, the press and pundits start to obsess over the chase for money," Senator Barack Obama, Democrat of Illinois, said in an e-mail appeal that went out to potential donors on Thursday. He added, "I'm asking you to stand up and be counted -- will you make a donation now?"⁹¹

Though substantial disagreement surrounds the use of early money as an accurate barometer of a candidate's true political support, it would be difficult to argue that early money does not play a significant role in determining which candidates will emerge as frontrunners. Once the title is given, it often becomes a self-fulfilling prophesy. Frontrunners garner greater media attention and benefit from donors' predilection to invest money with the presumed winners and not with long-shot candidates.⁹² In short, once a candidate is declared a frontrunner, his or her position will more than likely be continuously reinforced.

Members of the press most commonly use three factors in determining which candidates they believe to be the frontrunners: early fundraising totals, the results of early polls and name recognition, which often results from occupying a well-known office.⁹³ However, the argument can be made that these criteria are very nearly the same thing.

⁹¹ Nagourney, Adam and Zeleny, Jeff. "Heading Toward 2008; Presidential Candidates Jockey for Position in Campaign Fund-Raising Sweepstakes." New York Times. (7/4/2008) ONLINE. Available: <http://query.nytimes.com/gst/fullpage.html?res=9803E1D61030F933A05750C0A9619C8B63&ec=&spon=&pagewanted=2> [Accessed 5/3/2008]

⁹² A study by Opensecrets.org found that's most political gifts are made to incumbents—not to their challengers— "Money follows Power Shift in '96 Elections." *The Capital Eye*. (15/11/1997) ONLINE Available: <http://www.opensecrets.org/newsletter/ce46/ce1115p1.html> [Accessed 5/3/2008]

⁹³ Buell, E. H. J. "The Invisible Primary. In Pursuit of the White House How We Choose Our Presidential Nominees." Ed. W. G. Mayer. Chatham: Chatham House Publishers, Inc., (1996).

Candidates who hold or have recently held a well-known position in state or federal government often have significant fundraising potential. Not only are they recognizable political figures outside of their own state but, in the case of federal office holders, they may commonly appear in the news. Furthermore, these candidates have won seats that most likely required them to engage in significant campaign fundraising in order to be elected to these positions. Furthermore, candidates must be visible to voters in the early opinion polls, requiring candidates to travel to these states, make speaking appearances and rub shoulders with local politicians in order to plant the seeds of future endorsements. All of these behaviors, which precede the start of the actual primaries by months if not years, necessitate the accumulation of early money. It is often true then, that the candidates who are crowned frontrunners by the press are often those with the greatest fundraising ability. “Journalists and pundits can hardly wait to call those shots, amplifying the actual financial implications...into full-blown conventional wisdom about who's on top-and who's toast.”⁹⁴

Because early money plays such an important role in determining which candidacies will be considered viable, presidential hopefuls must begin to raise money as soon as possible. It takes time for lesser-known candidates to build name recognition and developing a reliable donor base and innovative campaign strategy and such tasks are time consuming for all candidates. The earlier a candidate can begin fundraising or laying the groundwork to begin fundraising, the more likely he or she will be to have amassed the kinds of finances needed to be considered a viable candidate by the press.

⁹⁴ Gilgoff, Dan. “Dialing for Dollars.” *U.S. News and World Report*. (18/3/2007) ONLINE Available: <http://www.usnews.com/usnews/news/articles/070318/26money.htm> [Accessed 5/3/2008]

Presidential hopefuls are provided with a legal structure through which to explore their candidacy. Exploratory committees, also known as testing the waters committees, are the vehicles through which potential candidates are meant to test their fundraising prowess. However, federal law limits what can be raised in these committees to what can legally be accepted by a presidential campaign committee. This means that a candidate's exploratory committee cannot accept more than \$2,300 from an individual contributor. The kind of financing required by the shadow campaign is thus exceedingly difficult to raise within the framework of the exploratory committee:

“With celebrity candidates like New York Sen. Hillary Rodham Clinton expected to raise as much as \$100 million before the first Iowan heads out to caucus, that bottom line will be much higher than in previous contests. Some candidates are expected to unveil war chests of up to \$30 million when they report those first-quarter results, in early to mid-April...front-runners with less than \$20 million could raise doubts. Second-tier candidates with less than \$10 million may be laughed out of the race.”⁹⁵

It should therefore come as no surprise that candidates attempt to find ways to raise money more efficiently, through structures which also allow them to spend in ways that will benefit them later in the campaign.

Given these external, procedural challenges, candidates have ample incentive to find ways to campaign more effectively in the shadow period in order to raise the kind of money necessary to be competitive under the restraints of BCRA in the three-month long primary election. Not surprisingly, candidates have looked to less regulated structures to do this, and political action committees offer candidates a way to negotiate the dilemmas associated with frontloading, and the media's use of early fundraising as barometer of electability.

⁹⁵ Gilgoff, Dan. “Dialing for Dollars.” *U.S. News and World Report*. (18/3/2007) ONLINE Available: <http://www.usnews.com/usnews/news/articles/070318/26money.htm> [Accessed 5/3/2008]

Political Action Committees

The “invisible primary,” described 20 years ago by journalist Arthur T. Hadley, has become more important as a time to raise funds early, position a candidate, and spend before expenditure limits go into effect.⁹⁶ With the official nomination process often ending more quickly each year and the invisible primary extending in length, candidates who have effectively “won” the invisible primary are rarely unseated during the actual primary election. Though the accumulation of early money is not the only determinant as to which candidates emerge as leaders from the invisible primary, it is the case that with the exception of Howard Dean in 2004, “since 1976, the candidate who had raised the most money at the end of the invisible primary went on to capture the democratic nomination.”⁹⁷

Because the official primary election is so compacted, candidates must have gained name recognition, garnered political endorsements, established strategy and identified reliable donors long before the first tests in New Hampshire and Iowa. Political action committees allow presidential hopefuls to engage in all of the necessary early positioning, fundraising, and spending without having to officially declare their candidacy.

PACs can help candidates to preemptively position themselves and draw attention to their qualifications and their positions on important election issues by funding travel, speaking opportunities and appearances at events. State PACs can also donate to other politicians in order to gain political support which candidates hope will result in formal

⁹⁶ Gilgoff, Dan. “Dialing for Dollars.” *U.S. News and World Report*, (18/3/2007) ONLINE Available: <http://www.usnews.com/usnews/news/articles/070318/26money.htm> [Accessed 5/3/2008]

⁹⁷ Ibid.

endorsements. These endorsements are helpful to candidates as they race across the country to be seen and heard. Local politicians are able to stump for candidates if they are unable to swing a visit to a state or city. Additionally, PACs can hire teams of consultants to craft platforms, test messages, develop contingency plans and build invaluable lists of potential contributors. They can do all of this, without ever identifying themselves with the candidate's bid for the presidency.

Not only do PACs allow the candidates to engage in this behavior under the official radar of the press and the Federal Election Commission, political action committees can spend without fear of triggering expenditure ceilings. While none of the frontrunners in 2008 accepted public money in the primary election, a number of second tier candidates including Senators John Edwards, Joseph Biden and Christopher Dodd, did take public funds.⁹⁸ Candidates who accept public money thus inevitably face a frontrunner who may spend unlimited amounts of money while they languish, seeking contributions and fearing the expenditure ceilings which are woefully low. Though ceilings are indexed to inflation, they "...are not based on the factors that drive campaign spending- they don't account for the fundraising costs associated with small donor contributions- for example, nor for how many states would choose primaries [which are more expensive than caucuses for a candidate]."⁹⁹ Though PACs clearly offer benefits for publicly funded candidates, their utility also extends to frontrunners. Given the FEC enforced contribution limits, the task of raising the kind of early money necessary to

⁹⁸ Edwards accepted public money September 27th, 2007— Preston, M. and Robert, M. "Edwards Says He'll Accept Public Financing." *CNN Politics*. (2007).

⁹⁹ Corrado, Anthony. *Creative Campaigning: PACs and the Presidential Selection Process*. Boulder: Westview Press, (1992).

wage a competitive campaign within the heavily regulated campaign committee is time and energy consuming.

Federal PACs, though less restrictive than campaign committees, are still limited by federal contribution laws; state-level PACs are not. In those states that allow for unlimited individual donations, as well as corporate and labor contributions, state PACs are able to raise the same amounts of money, often in less time, with significantly fewer limitations. At the federal level, a PAC can accept gifts of up to \$5,000 each year. In comparison, an exploratory committee can accept no more than \$2,300 from an individual.

State-level PACs offer an even greater fundraising advantage. A candidate with state PACs may accept the maximum contribution (which in some states may be unlimited) multiple times. If former governor Mitt Romney had established only an exploratory committee to raise early money, he would have been limited to accepting \$2,300 from each of his supporters. If he had established only an exploratory committee and the federal Commonwealth PAC, which was founded in 2004, he would have been able to raise slightly more— up to \$27,300 from each contributor. However, Romney went one step further and established six state-level PACs, two of which allowed unlimited individual contributions. Romney's supporters were thus able, if they were willing, to make unlimited gifts through the state PACs in addition to the \$27,300 regulated by the FEC. Candidates are thus able to raise money through state and federal PACs faster than through their exploratory committees. Even federal candidates, who are barred from raising funds for any political committee in sums larger than what is allowed

under federal law, still capitalize on the number of maximum contributions their supporters can make if multiple committees exist.

The relatively unregulated donations allowed to state-level PACs, also makes it possible for lesser known candidates to raise the kind of money they need to compete with well-known, well-financed competitors, by maximizing a core group of donors that represent either the candidate's economic sector of support, such as Edwards' trial lawyers, or their geographic appeal, like Romney's Utah following.

Given the increased scrutiny associated with the start of the campaign, candidates often freeze their PACs as their campaigns heat up. However, it is the groundwork that PACs can accomplish that makes them so valuable; even after PACs are suspended, campaign committees may still rely on the PACs' list of donors to raise money from legal sources in legal amounts to fund their travel and media. They may also transfer staff, office leases and equipment, which significantly decreases the overhead costs associated with the presidential campaign. State-level PACs can hire staff which can then go on to account for administrative tasks necessary for getting on the ballot and filling delegate slots. Though they cannot proceed with these activities while they are being paid by the PAC, as it would be seen as a statement of candidacy, they would be able to prepare, receive payment for their work, and then transition to the official campaign committee as volunteers who could then enact the plan.¹⁰⁰ They could also, as PAC employees, identify local party members in each state who might be able to assist party candidates with getting on the ballot and finding delegates.

¹⁰⁰Federal Election Commission. *Testing the Waters and Campaign Committees*. ONLINE. Available: http://www.fec.gov/press/bkgnd/pres_cf/exploratory.html [viewed 20/12/2007]

Chapter 6: Candidate Reaction: Analysis of Mitt Romney's Commonwealth PACs

The Commonwealth PAC was the federal leadership committee of presidential contender Mitt Romney. The PAC, headquartered in Washington, D.C., was chaired by Elizabeth Anderson and operated from July 6, 2004, until January 4, 2008, the date when the FEC approved its closure. In total, the PAC raised \$3,159,476 and spent \$3,159,472 during the course of its four years of operation. The federal PAC appears to have been most active in 2006, although substantial fundraising and spending occurred in non-election years as well. In 2006 alone, the PAC raised \$2,414,047 and spent \$2,489,147, which represented 76 percent of both its total receipts and expenditures.¹⁰¹

Though it is common practice for public officeholders to form leadership PACs at the federal level, it is a markedly less common occurrence at the state-level. Mitt Romney, however, formed six state-level Commonwealth PAC affiliates in the course of two years. At least two of these state-level PACs predated the formation of his federal committee.

Though a handful of other potential presidential candidates established state-level PACs, including, for example, New York Governor George Pataki (21st Century Freedom PAC), a Republican, and former Virginia governor Mark Warner (Forward Together PAC), a Democrat, such committees were formed in only one or two places.¹⁰²

¹⁰¹ All figures, unless otherwise noted are based on receipts and expenditures reported by the committees to the various state and federal government authorities to which they disclose activities.

¹⁰² Helman, Scott and Davis, Chase, "Romney strategy pays off quickly: Multistate tactic overcomes limits." *Boston Globe*. (11/6/06) ONLINE
Available: http://www.boston.com/news/nation/articles/2006/06/11/romney_strategy_pays_off_quickly/
[Accessed 13/9/2007]

Table 6.1

Table 6.1 shows the period of activity for each of Romney's PACs alongside its

The Commonwealth PACs				
PAC	Period of Activity		Total Receipts (\$)	Total Expenditures (\$)
AZ	Jul. 2004 to Nov. 2006		18,770	18,770
SC	Aug. 2004 to Present		645,869	580,330
IA	Oct. 2004 to Present		2,410,145	1,963,355
NH	Mar. 2006 to Dec. 2007		866,866	602,321
MI	Jun. 2006 to Present		2,039,640	1,639,412
AL	Sep. 2006 to Present		792,136	331,456
State Subtotal			6,773,426	5,135,644
Federal	Aug. 2004 to Nov. 2007		3,159,476	3,159,472
Total			9,932,902	8,295,116

total receipts and expenditures as reported in the state disclosure reports available as of January 1, 2008. As the table illustrates, the first state PAC was formed in Arizona in July of 2004. The Arizona PAC was soon followed by affiliates in South Carolina and Iowa, which were established in August and October of 2004, respectively. The Statement of Organization filed by the Arizona PAC with the state's Elections Division predates the formation of the federal Commonwealth PAC. While this difference in timing is likely a product of incongruent filing requirements and deadlines, it is nonetheless significant to note that half of the state PACs were registered within months

of the creation of the federal PAC, and thus were probably conceived nearly simultaneously.¹⁰³

The order of PAC formation highlights strategic choices made by the Romney camp. As Table 6.1 indicates, Arizona, South Carolina, and Iowa were formed in late 2004. In 2008, as in every primary election since 1972, Iowa held the first presidential nominating contest in the country. Success in the Iowa caucuses is seen as an important barometer of electability by the press, pundits and general public; thus, an Iowa-focused state PAC, which could garner its associated political leader additional publicity and political support, is a logical choice. Additionally, in recent years South Carolina has been seen as a king-maker among southern states, especially in the Republican race. Great weight is given to the results of the South Carolina primary as they are often viewed as indicative of a candidate's ability to appeal to southern voters.¹⁰⁴ Arizona appears to be a less obvious strategic choice, given its relative insignificance in the nomination calendar. Arizona has never been cast as a crucial presidential battleground in past nomination contests and in 2008, was not scheduled to hold its primary until Super Tuesday, a day on which it would represent only one of more than twenty states scheduled to hold elections. Moreover, it is the home state of John McCain, who was widely expected to be the Republican presidential front-runner. The reason why a PAC was established in Arizona is thus more difficult to discern. One possible explanation is

¹⁰³ Federal entities that raise or spend more than \$5,000 must register with the FEC immediately and file quarterly thereafter, for the period of their activity. State laws often differ substantially. For example, PACs in New Hampshire register preemptively for planned activity in an election year. Thus, a PAC may submit their statement of organization at the beginning of 2006, but remain somewhat inactive until the second or third quarter. PACs in Arizona simply file statement of organization forms at the regular disclosure deadlines along with their first quarter of activity disclosure form.

¹⁰⁴ "The Republican establishment has relied on the Palmetto State to save its favored candidates, including George H.W. Bush in 1988 and 1992, Bob Dole in 1996 and George W. Bush in 2000." – "Huckabee skyrockets among GOP voters in key Southern state." CNN. (14/12/07) ONLINE Available: <http://www.cnn.com/2007/POLITICS/12/14/s.carolina.poll/index.html> [Accessed 13/11/2007]

that in establishing a state PAC in the home state of the likely frontrunner, Romney positioned himself as a viable opponent prepared to dig in for a long, competitive campaign. However, even if this assumption were to prove correct, it does not answer a second question regarding the length of the PAC's operation. While it remained open until November of 2006, it was largely inactive with no reported fundraising past the second quarter of 2004.

In 2006, the Romney camp added an additional layer of state committees to those already established; three new Commonwealth PACs appeared in New Hampshire, Michigan and Alabama. Once again the location of these PACs highlights key strategic considerations. Mitt Romney's father, George Romney, served as governor of Michigan from 1963 to 1969, which effectively casts Mitt Romney as the "favorite son" candidate of the Great Lakes State. A candidate who fails to win his or her home state loses credibility, and thus the formation of a Michigan PAC was necessary. The decision was also sensible; given Romney's name recognition in Michigan, a PAC would have had significant fundraising potential. Echoing the Iowa caucus, New Hampshire's "First in the Nation" primary holds a critical place in the election calendar and often determines which candidates will continue on as viable challengers to face the milieu of contests on Super Tuesday. The final PAC, formed in Alabama, is more of an enigma. Alabama holds no strategic significance in the nominating calendar, nor does Mitt Romney have any apparent ties to the state. Although Alabama is one of fifteen states which allow unlimited individual donations to both candidates and political action committees, there are eleven other states that have similar rules, several of which (such as Texas) hold greater significance in the nominating process.

The very fact that the Commonwealth PAC formed state affiliates would seem to indicate that administrative activity would happen within state boundaries. Interestingly enough, not all of the state PACs had offices in the states in which they were registered. The Michigan PAC, for example, was housed in the same office as the federal Commonwealth PAC, and the South Carolina and Arizona PACs were run from offices in Michigan. The New Hampshire PAC and the Alabama PAC both operated from 45 School Street in Boston, Massachusetts. In case there are any lingering doubts as to the interconnectivity of these PACs, Elizabeth Anderson chaired both the federal and Michigan PACs; Trent Wisecup, the South Carolina and Arizona PACs; and Darrell Crate, who later served as the Romney for President Committee Chair, sat as chairman of the first of the state PACs in Arizona. Some of the employees and consultants used by these committees also overlap, as will be detailed in a later chapter.

A significant amount of money was raised and spent through the state level PACs. The following tables show the reported fundraising and expenditure totals of each of the state PACs by fiscal quarter. In looking at Table 6.1, it is important to note that state campaign finance disclosure laws differ dramatically. This not only affects the required disclosure deadlines, but also the amount an individual may donate over the course of a set period of time. This makes side by side comparison of fundraising difficult, both in terms of identifying corresponding periods of activity, and in terms of the relative significance of money raised in states with vastly different contribution ceilings. Some states require quarterly disclosures of both receipts and expenditures, while others require more frequent reporting. New Hampshire, for one, requires monthly disclosures, but only in the six month period preceding an election. Additionally, Iowa, which appears to be

the highest grossing state in terms of fundraising, imposes no limit on the amount an individual may give to a political action committee. South Carolina, comparatively, allows individual contributions of no more than \$3,500 per annum.

Table 6.2

Romney Committee Receipts									
		NH	IA	MI	AL	AZ	SC		Total (\$)
2004									
Q1									0
Q2			50	50		9,770			9,870
Q3			64,750			9,000	10,550		84,300
Q4			26,000	155,160			32,500		21,3660
2005									
Q1							5,780		5,780
Q2			26,500	6,500			3,500		36,500
Q3				93,250			31,500		124,750
Q4			116,500	13,250			15,500		145,250
2006									
Q1		364,000		244,000			45,500		653,500
Q2		203,005	1,157,515	774,270	180,000		235,755		2,550,545
Q3		218,668	436,033	367,428	97,600		137,534		1,257,263
Q4			510,841	362,105	514,536		121,992		1,509,474
2007									
Q1									0*
Q2		75,376	71,956	18,991			5,758		172,081
Q3		5,817		4,636					10,453
Q4									0
Total (\$)		866,866	2,410,145	2,039,640	792,136	18,770	645,869		6,773,426

* The gap in fundraising seen in the first quarter of 2007 is likely due to the infrequency of reporting deadlines in non-election years at the state level. Many of the funds reported in the second quarter were likely raised in the first quarter.

Table 6.2 outlines the overall fundraising of each state PAC by quarter. Given the respective contribution limits, total fundraising reflects both the strategic significance of the state and its campaign finance laws. In total, the state PACs raised almost \$6.8 million in less than four years. Comparatively, the federal Commonwealth PAC raised about \$3.2 million or close to 47 percent less than the state PACs combined. The most

successful fundraising occurred in Iowa, where the PAC received more than \$2.4 million, which was about \$370,000 more than the sum received by the Michigan committee. The Michigan and Iowa PACs each raised more than \$2 million— more than double the total income of the Alabama, New Hampshire and South Carolina PACs combined, and 29 percent more than the federal PAC.

Given these fundraising patterns, it is no surprise that the state PACs were responsible for the vast majority of the expenditures made by the Romney committees.

Table 6.3

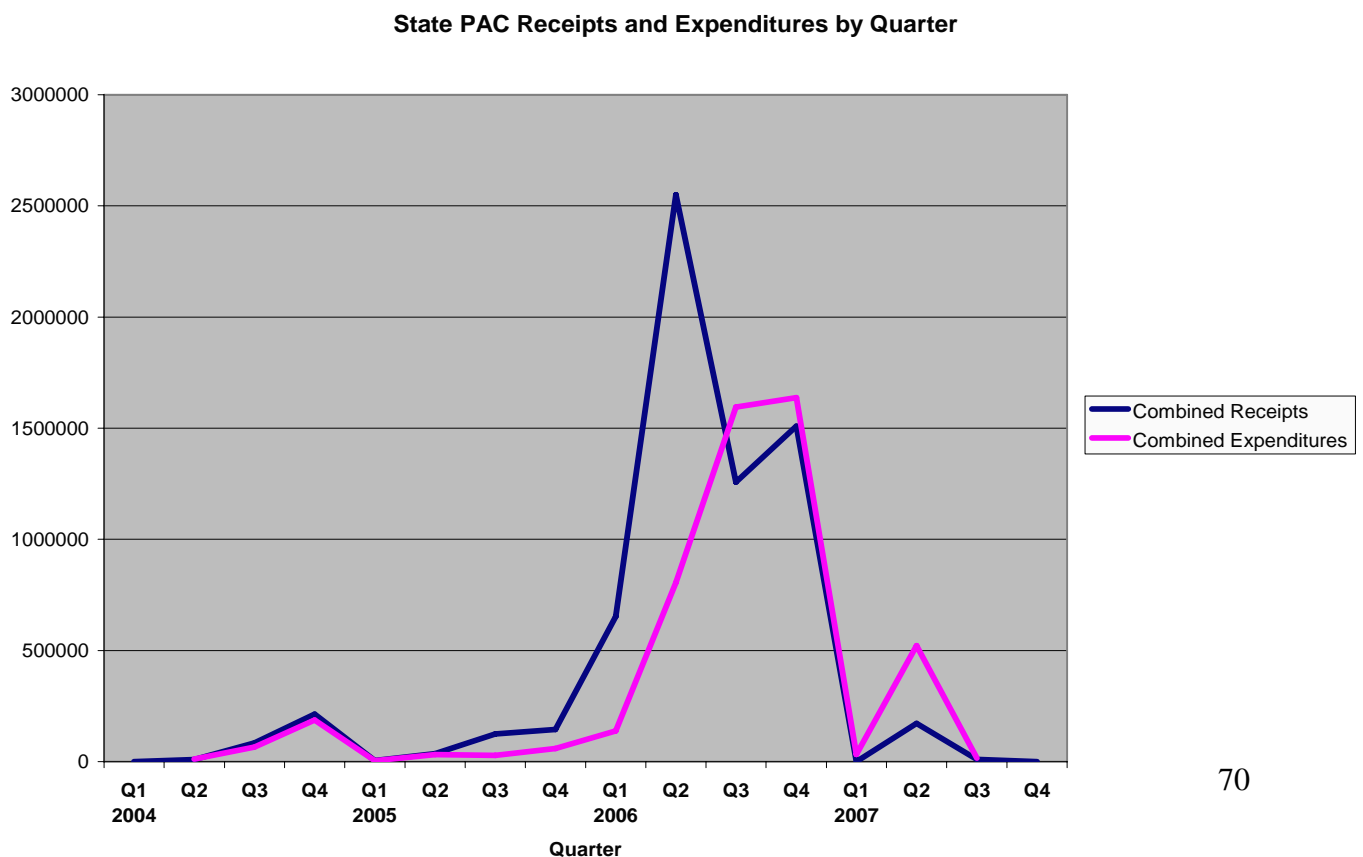
Romney Committee Expenditures									Total (\$)
		NH	IA	MI	AL	AZ	SC		
2004									
Q1									
Q2			39	40		11,701	62		11,842
Q3			63,539			2,257			65,796
Q4			12,748	128,667			45,453		186,868
2005									
Q1							3,887		3,887
Q2			15,015	11,035			5,900		31,950
Q3				23,729			5,204		28,933
Q4			47,608	2,208		2,587	6,352		58,755
2006									
Q1		77,482		32,994			27,986		138,462
Q2		92,863	277,020	232,980	33013	2,225	167,510		805,611
Q3		225,657	644,897	456,681	179895		87,626		1,594,756
Q4			715,704	606,227	118548		197,332		1,637,811
2007									
Q1							33,017		33,017
Q2		198,479	186,786	136,638					521,903
Q3		7,840		8,213					16,053
Q4									
Total (\$)		602,321	1,963,356	1,639,412	331,456	18,770	580,329		5,135,644

As Table 6.3 illustrates, the state PACs, combined, spent over \$5 million, which was 40 percent more than the \$3.2 million spent by the federal PAC over virtually the same time period. Mirroring receipts, Iowa and Michigan led in spending (\$2 million and \$1.6 million respectively) followed by New Hampshire, South Carolina and Alabama.

In both receipts and expenditures, Arizona falls well short of any other Romney committee. The Arizona PAC, though opened first, virtually ceased its fundraising after two quarters in 2004. It did spend accumulated funds into the 2006 cycle, but this spending was insignificant and was not accompanied by any new fundraising. In fact, the Arizona PAC filed for closure at the end of 2006, whereas the other state PACs continued on well into 2007.

The Alabama PAC operated for a similarly brief period of time (three fiscal quarters in 2006) but managed to raise 42 times the Arizona PAC's \$18,700. It is interesting to note, in this case, the differences in the state laws to which campaign contributors are held; Arizona caps its individual contributions to PACs at \$3,230 per calendar year, whereas Alabama does not limit the amount an individual may donate to a committee.

Graph 6.1



As Graph 6.1 indicates, the overall fundraising and spending of the state PACs produces a discernable pattern. Fundraising increases dramatically in the fourth quarter of 2005, and peaks by the second quarter of 2006. Though fundraising decreased in the state PACs between the second and third quarters of 2006, it rose again between the third and fourth quarters of the same year. Beginning in the first quarter of 2007, fundraising remained low and state PAC activity in general ended in the third quarter of 2007. Spending closely mirrors receipts until the fourth quarter of 2005 when much more money was raised than spent. Spending comes nowhere near the peak seen in fundraising between the second and third quarters of 2006, but does mirror the bounce which occurred in the fourth quarter of 2006.

Given the purported purpose of political action committees, which is to provide financial support to candidates, it seems logical that fundraising should occur prior to the mid-term elections, which makes the addition of the second tier of state PACs in New Hampshire, Alabama and South Carolina curious. Forming the PACs in the election year, and not in 2005, would seem to inhibit the committees' overall ability to raise money early, especially given the successful fundraising occurring within the first tier of state PACs. In fact, the rapid increase in fundraising illustrates the addition of the second layer of state PACs, though it can be seen that fundraising began to increase in the first three PACs toward the end of 2005. Had the second tier of PACs formed prior to 2006, additional money could have been raised in early preparation for the mid-term elections. Otherwise, it appears that the state PACS are following a logical pattern: raising money in the first half of 2006 and spending it in the latter half.

However, several discrepancies undermine this assumption. First, a review of the expenditures make clear that relatively little was actually spent on political contributions, which is the purported purpose of a political action committee.¹⁰⁵ Second, the state-level Commonwealth PACs virtually cease activity by mid-2007 instead of reinvigorating their fundraising in anticipation of the 2008 elections. In this regard, it is worth noting that the Romney for President Committee was established in January of 2007.

Contributions to the Commonwealth PACs

Romney's federal PAC raised its \$3.2 million from supporters across the country; interestingly enough, the state PACs also raised their millions with the help of geographically dispersed contributors.

There are no laws prohibiting state PACs from fundraising across state lines. An individual contributor in Utah, for example, may give to a state-level PAC established in New Hampshire so long as the gift does not exceed New Hampshire's contribution limits. All of the states in which Commonwealth affiliates were established require a PAC to include the home addresses of contributors in their financial disclosures, which makes tracking the flow of money through these committees relatively straightforward.

The Commonwealth affiliates were able to maximize Romney's donor pool by allowing the same core group of contributors to give the maximum amount, multiple times. The state-level Commonwealth PACs are considered legally discrete, which means contributions, even those made by the same individual, are not aggregated. By forming multiple state-level PACs, the Romney camp created a means by which

¹⁰⁵ Political contributions will be discussed in detail below.

contributors could give significantly more than the maximum sum they could give to the federal PAC alone. For example, Peter Karmanos, Compuware developer and Romney supporter, gave to the New Hampshire, Iowa, Michigan, and South Carolina PACs, as well as to the federal PAC.

The differences in federal and state laws are what really make this multi-state PAC strategy financially rewarding. An individual may give up to \$5,000 to a federal leadership PAC once each calendar year, and the limit is not indexed to inflation. Many of the states in which Romney created state PACs have considerably less restrictive contribution laws.

Table 6.4

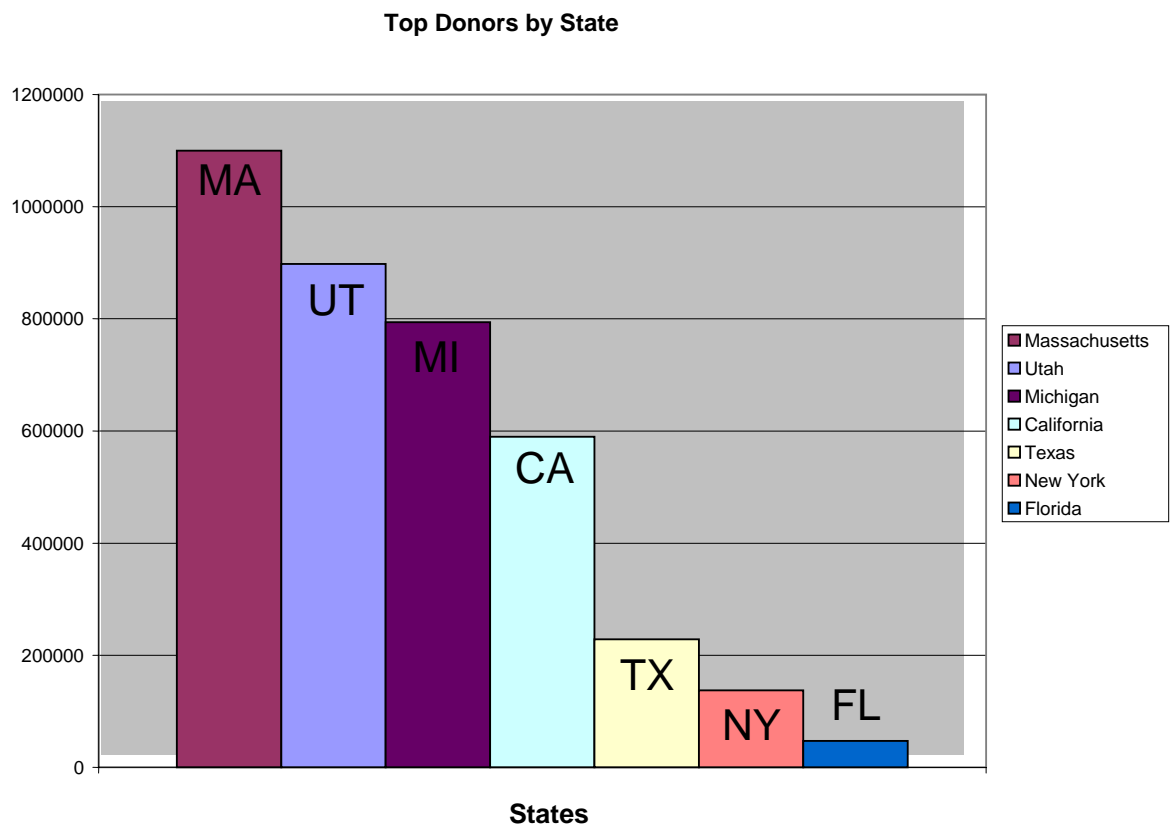
Total Allowable Individual Contribution Per Year	
Alabama	Unlimited
Iowa	Unlimited
Michigan	Unlimited
Arizona	Unlimited
New Hampshire	\$5,000
South Carolina	\$3,500
Federal PAC	\$5,000
Presidential Committee*	\$2,300 per election
*Contribution limits to presidential committees are determined per election cycle and not per annum.	

As Table 6.4 illustrates, an individual may contribute unlimited amounts to four of the six state-level PACs, and still give the full amount to each of the remaining state committees and the federal account. Furthermore, because PACs serve to identify potential contributors to a presidential committee, it is worth noting that the majority of

those who gave to multiple state PACs also gave the full amount to the Romney for President Committee.¹⁰⁶

Major contributors to the Romney committees came primarily from three states: Massachusetts, Utah, and Michigan.¹⁰⁷ Mitt Romney served as the governor of Massachusetts from 2003 to 2007, is a member of the Latter Day Saints, a Christian group based in Utah, and, as mentioned previously, the son of former Michigan Governor, George W. Romney. These factors certainly help to explain why Massachusetts, Utah and Michigan were important fundraising bases.

Graph 6.2

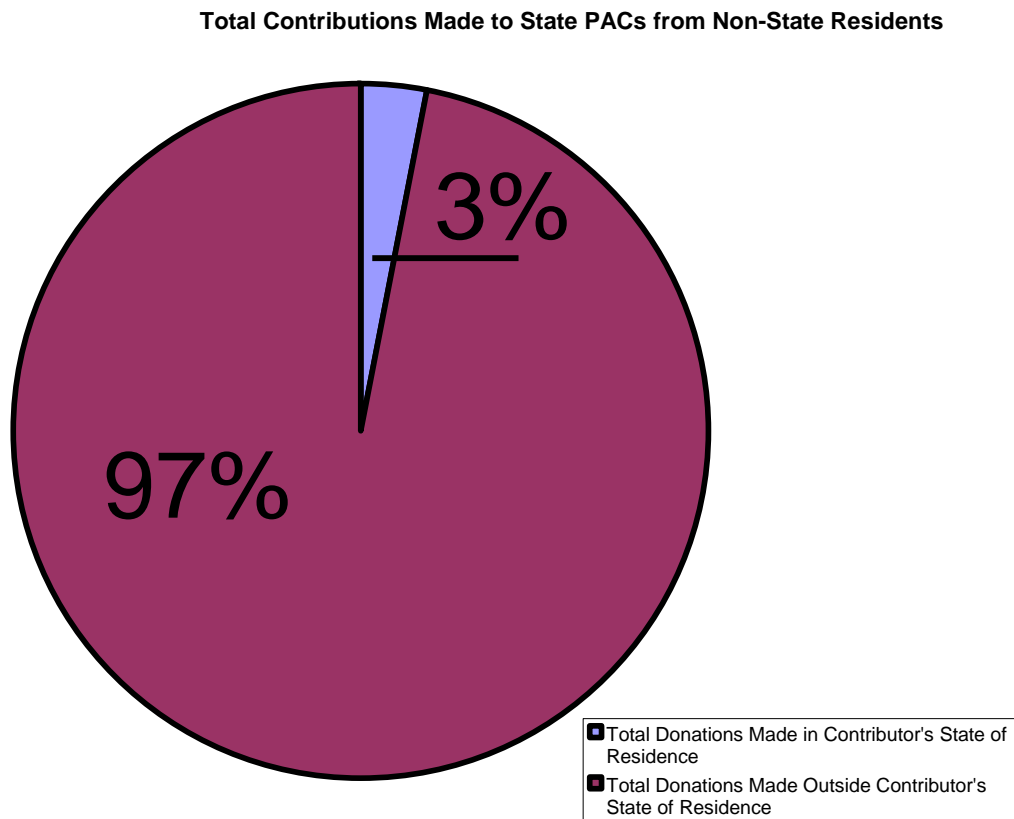


¹⁰⁶ My analysis ran until the January 1, 2008. The data do not include any contributions made to the presidential committee after that date.

¹⁰⁷ "Major contributors" are defined as the top 20 contributors in terms of aggregate giving to all committees.

As Graph 6.2 illustrates, Romney raised approximately \$1.1 million in Massachusetts where there is no Commonwealth PAC affiliate. Similarly, almost a million dollars came from Utah, where again, there is no state-level Commonwealth PAC. Monies from these states were instead directed to the assorted state PACs, regardless of a contributor's physical proximity. In fact, the majority of contributions made to the state PACs were made by out of state contributors.

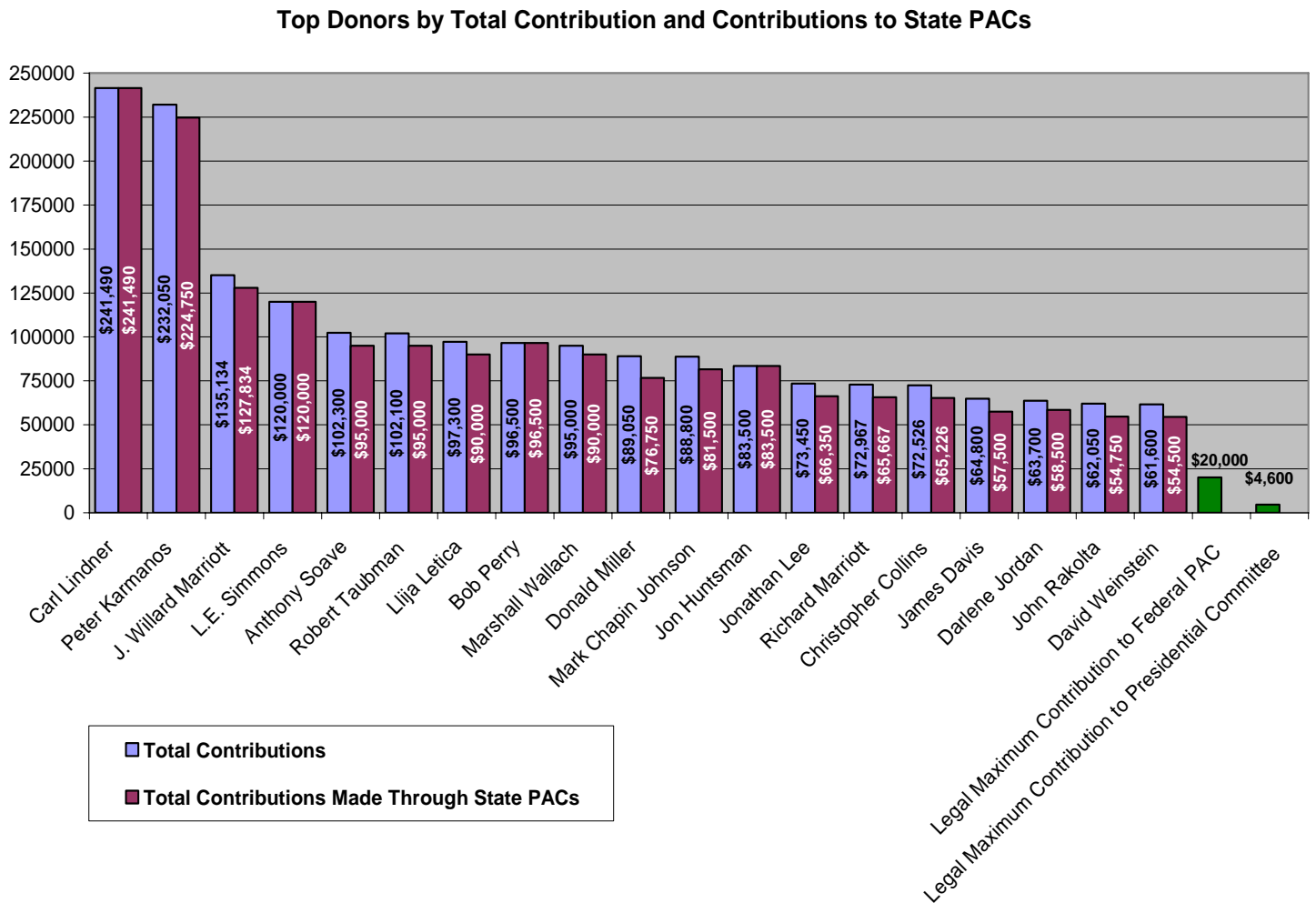
Graph 6.3



As Graph 6.3 shows, only three percent of all contributions to state committees came from in-state residents. This multi-state PAC strategy thus allowed Romney to accept contributions in amounts greater than those allowed by federal laws and thus

maximize his donor base by allowing supporters to give to multiple committees. The strategy also allowed the Romney camp to distribute regional support across the country.

Graph 6.4



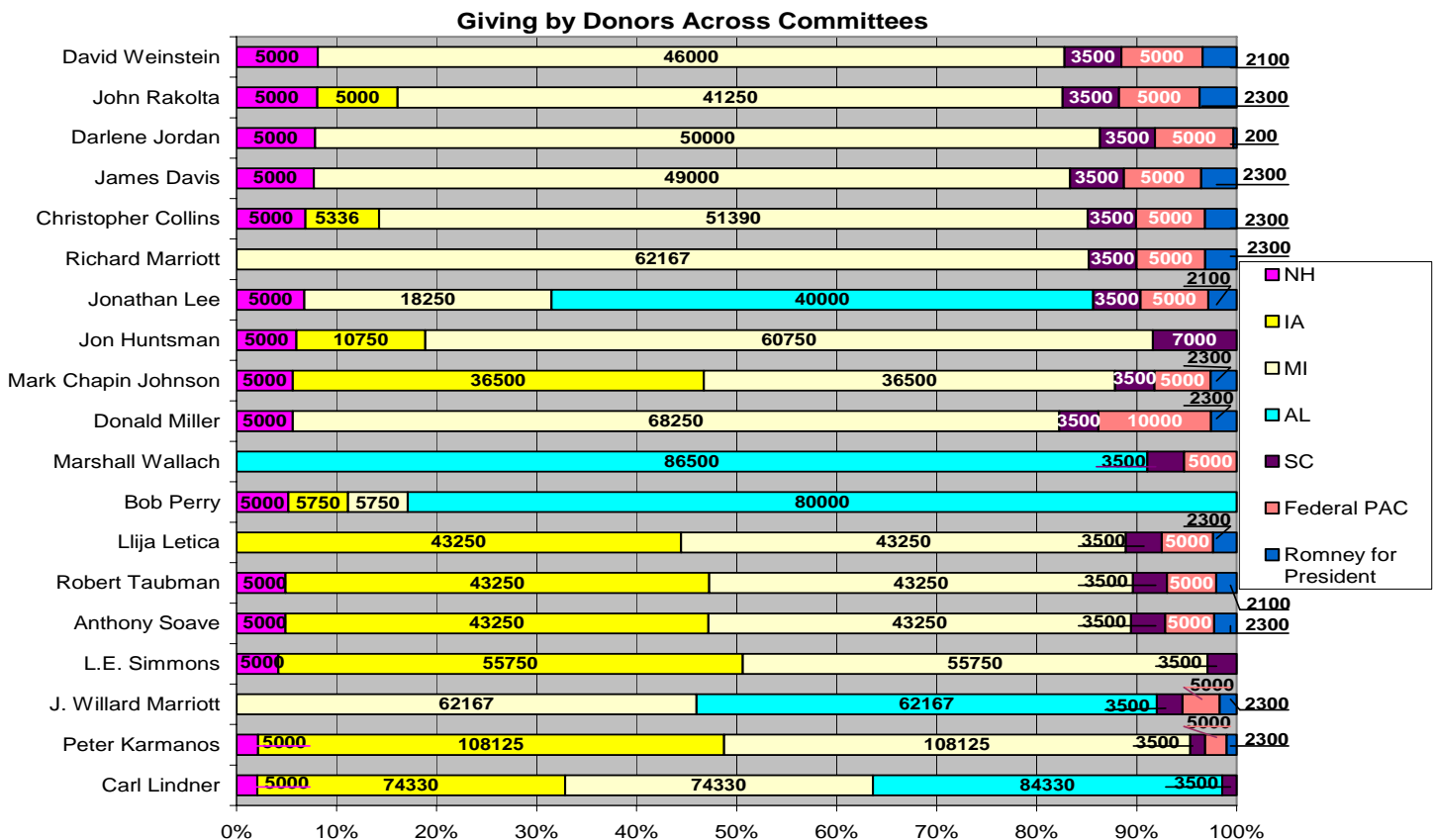
An examination of Romney's 20 top contributors illustrates clearly how the strategy was used. Graph 6.4 shows the top 20 contributors to the Commonwealth PACs and details the percentage of their total giving that went to state affiliates. It is clear that top contributors took advantage of the state PACs; all gave at least 85 percent of their total contribution through the state affiliates.

The graph also highlights how financially beneficial the multi-PAC approach was for the Romney camp. The green bars on the graph represent the total donation allowable, under federal law, to a federal-level PAC and to a presidential committee. The federal PAC operated for three years and three months. Because PACs can receive the maximum donations once each calendar year, this enabled contributors to give up to \$5,000 four times. Yet the majority of Romney's top contributors were able to give substantially more than this amount due to the availability of the state PACs. For example, two donors, Carl Lindner (a Cincinnati businessman) and Peter Karmanos, gave almost a quarter million dollars each—ten times more than the sum that could have been given legally to the federal PAC alone. Eight others gave over \$80,000, or more than three times the permissible amount.

In all, the top 20 donors gave a combined total of \$2 million, which represents 30 percent of all Romney committee receipts, excluding the presidential committee. Additionally, of the \$3.7 million raised by the state PACs, 50 percent came from these 20 contributors. Of the \$2 million contributed overall to both the federal and state PACs, \$1.8 million was given to state PACs alone. The top donors, in fact, spread their contributions extensively. Of the 153 contributors who gave to at least two committees, more than 100 gave to the federal PAC, the presidential committee and at least one state

PAC. Furthermore, 28 gave to the federal PAC, presidential committee and two state PACs, 38 gave to both federal-level committees and four state PACs, and 20 gave to at least four state PACs in addition to both the presidential committee and federal PAC.

Graph 6.5



Graph 6.5 shows the extent to which top contributors gave to multiple state-level committees, as well as the federal PAC and the Romney for President Committee. As the graph illustrates, monies made their way to the Michigan and Iowa committees predominately, with less frequent but sizable contributions made to the Alabama PAC. It is clear that the multi-state PAC strategy allowed Romney to maximize the financial output of a handful of geographically limited supporters.

The multi-state PAC strategy clearly allows donors to exceed federal limits. A handful of donors were able to give \$2 million for an average gift of \$100,000 per person—five times the legal federal limit.

These monies were distributed across the country, but the state committees, which are not monitored by any central agency, obscured the role of these influential contributors in funding the Romney campaign. Though many of the state-level financial disclosures are available online, others, such as those filed in South Carolina, are not. Most Americans are unaware of the existence of these state affiliates and thus the multi-state PAC strategy convolutes the reporting system designed by the FEC and creates confusion for those wishing to know the sources of a politician's.

Political Contributions

All political action committees, whether at the federal or state level, purport that their principal purpose is to provide financial support to politicians who hold particular partisan perspectives or policy preferences.¹⁰⁸ Furthermore, political action committees are said to engage in party building activities. Accordingly, in the case of the Commonwealth PACs, the primary expense should have been contributions to Republican politicians. However, expenditure reports indicate that political contributions did not always comprise the largest percentage of total PAC spending. In fact, in the case

¹⁰⁸ Visit The Commonwealth PAC's website to view its mission statement:

<http://www.thecommonwealthpac.com/about.html>

The 21st Century PAC, chaired by former New York Governor George Pataki has a similar mission:

<http://www.freedompac.com/>

of five of the seven Commonwealth PACs, political contributions accounted for less than half of the committees' total expenditures.

Though many of the Commonwealth committees made significant political contributions, given the relatively unrestricted legal environment in which they operated, larger gifts might have been expected. By comparison, the Michigan Straight Talk America PAC, affiliated with likely Republican presidential nominee John McCain, attributed close to 50 percent of its expenditures to political contributions, even though the PAC, held to the provisions of BCRA, could only accept \$5,000 contributions from individual supporters each year. The Commonwealth PAC's Michigan affiliate was able to raise unlimited amounts from individuals. Additionally, the Commonwealth PACs often shared office space and employees, which might reasonably be expected to significantly reduce the percentage of Commonwealth expenditures attributed to overhead costs.

With mitigated administrative costs and a relatively unrestrained operating environment, the Commonwealth PACs might have been expected to contribute significantly greater portions of their accumulated funds to the political campaigns of state politicians and local party building efforts.

Table 6.5

Committee	Total Expenditures (\$)	Total Political Contributions (\$)	%
IA	1,183,075	780,280	65
AZ	18,770	11,000	59
SC	403,530	176,800	44
AL	318,255	132,000	40
NH	463,771	138,550	30
MI	1,329,162	310,250	23
Federal PAC	2,518,401	264,250	15

As Table 6.5 illustrates, however, political contributions to candidates for local and state offices accounted for less than 50 percent of four of the six state-level committees' total expenditures. Similarly, 85 percent of the monies spent by the federal PAC did not go to supporting "like-minded" politicians.

In the cases of Arizona and Iowa, the only two committees to exceed the 50 percent mark, extenuating circumstances likely contributed to their increased giving to local and state candidates. The Arizona PAC never reached the same scale of operations as the other Commonwealth PACs. The committee raised money for only two quarters of 2004 and was largely inactive thereafter, spending only \$2,587 in 2005 and \$2,225 in 2006. By comparison, the Michigan PAC spent \$113,000 in 2005 and \$1.4 million in 2006. Although the PAC may have been toying with fundraising and party building

activity in early 2004, the experiment appears to have ended by the close of the third quarter of that same year. In fact, the committee remained inactive for most of 2005, and the final expenditures made by the committee, which went entirely to a handful of the state's political committees, also coincided with the dissolution of the PAC. In other words, the Arizona test-run was complete by the end of 2004 and leftover funds were purged just prior to the PAC's dissolution. The PAC did not go on to develop the same level of fundraising and spending as the other Commonwealth committees, and thus the high percentage of total expenditures devoted to political contributions should be considered an aberrance from typical Commonwealth PAC fundraising and spending.

The Iowa PAC, on the other hand, gave \$780,280 in political contributions. Notably, Jim Nussle, who ran in 2006 for Governor of Iowa, garnered \$200,000 from the state PAC and an additional \$2,000 from the federal PAC. Nussle, who was eventually defeated by Democratic candidate Chet Culver, thus received a quarter of the political contributions made by the Iowa PAC. If the contributions to Nussle's campaign were excluded, the Iowa PAC would have allocated only 29 percent of its total expenditures to political contributions.

On average, the Commonwealth PACs apportioned only about a third of their total expenditures to political contributions. Their behavior, however, is not unlike that of other similarly situated leadership PACs, even though McCain's Michigan PAC, which devoted almost 50 percent of its funds to political contributions, may cause Commonwealth spending to appear otherwise. For example, the 21st Century Freedom PAC, affiliated with former New York Governor George Pataki, had several state affiliates, one of which was located in Iowa. Pataki did not seek re-election in 2006, and

his state-level 21st Century Freedom PACs, like the state-level Commonwealth PACs, were subject only to applicable state laws. The 21st Century Freedom PAC affiliate operated from the fourth quarter of 2005 through the end of 2006. In total the PAC raised \$407,286 and spent \$395,095, significantly less than the amount raised and spent by the Iowa Commonwealth PAC, although Pataki's PAC operated for only half as long as Romney's committee. The 21st Century Freedom PAC of Iowa spent \$71,250 on political contributions, which represented eighteen percent of its total expenditures. Thus, when compared to other state-level political action committees, the Commonwealth PACs appear to be fairly generous in their political spending, though certainly not as generous as they might plausibly have been.

It is important to keep in mind that each state PAC operates under different contribution limits which, theoretically, ought to affect the amount political action committees contributed to other political committees and candidates. Committees in states with relatively low contribution limits to candidates and committees should be expected to contribute less overall, even if the PAC made contributions to all Republican candidates and committees in the state.

Table 6.6

Contribution Limits	To Political Committees	To Local Party Committees (\$)	To Candidates (\$)
Iowa	unlimited	unlimited	unlimited 34,000 for governor, Secretary of State, Attorney General, Supreme court. 10,000 to state senate 5,000 to state representatives Local offices limits are dependent on population of the district with 3,400 being the upper limit
Michigan	unspecified	unlimited	390 to local or legislative office 808 to state-wide office
Arizona	unspecified	unlimited	1,000
New Hampshire	unspecified	5,000	unlimited
Alabama	unlimited	unlimited	3,500 to state office 1,000 for any other office
South Carolina	unspecified	3,500	

Table 6.6 indicates, candidates in both Alabama and Iowa can legally accept unlimited PAC contributions. Additionally, only New Hampshire and South Carolina limit the amount a PAC can give to a local party committee.

While giving to individual candidates is an important means of accomplishing the stated goals of a leadership PAC, supporting local party development is also a key strategic concern. The federal Commonwealth PAC could only legally contribute \$15,000 per calendar year to the National Republican Party Committee. At the state level, however, the Commonwealth PAC affiliates were often able to give unlimited amounts to state party organizations. Thus, the Michigan PAC was able to make a single gift of

\$43,500 to the Republican Party of Michigan, a contribution that highlights the strategic benefit of establishing state-level PACs for the purpose of party building. State-level political action committees are ideally situated to contribute to local party building efforts in significant ways, often to a greater degree than what a federal PAC might accomplish. Additionally, strengthening local county, district or state Republican party committees might serve the highly beneficial purpose of developing grassroots support for a candidacy amongst the states most politically active partisans in a state. This support might translate into canvassing, calling and other helpful local activity. For this reason, a state law that limits contribution ceilings, in terms of giving to individual candidates, does not necessarily decrease a state-level PACs efficacy.

Contributing to a local candidate's campaign, by comparison, may encourage a candidate to make a public endorsement on behalf of the politician associated with the PAC. These endorsements can be key during the nominating campaign cycle, when many candidates are struggling to earn nationwide name-recognition. Significant endorsements from local office-holders in key states, such as Iowa, New Hampshire, and South Carolina, may encourage the voters who elected the endorser to support the endorsee. Thus, the incentives to give to individual candidates and political committees are significant.

Arizona, which imposes the strictest contribution limits in terms of donations made to individual candidates, is also the only clean elections state in which the Commonwealth PAC formed an affiliate. Clean elections states provide full public funding contingent on a candidate's willingness to forgo private fundraising. For this reason, the Arizona Commonwealth PAC made no political gifts to individual candidates

in Arizona. In terms of contributing to an overall understanding of Commonwealth PAC behavior, the Arizona PAC is, once again, not particularly representative.

Interestingly, party building contributions were made not only to local party committees ranging from the state to county levels, but also to local political committees with similar political ideals. Furthermore, Iowa and Alabama are the only states that specify the amount a political action committee can give to these additional state-level political committees. For all intents and purposes, these political committees, such as Iowans for Tax Relief and Republic Women of Scott County operate much like 527s and thus are able, under state law, to accept unlimited contributions from any source.¹⁰⁹

State PACs operate in a fairly unconstrained environment; there are few limitations on the total a state-level committee might contribute to candidates or to other political committees. Generally, however, the amount an individual candidate may accept from a political action committee is subject to more stringent restrictions.

¹⁰⁹ A 527 group is named after 26 U.S.C. § 527, of the U.S. tax code. A 527 group is created primarily to influence the election or defeat of candidates for public office. Candidate committees and political action committees are also created under Section 527, thus resulting in their tax exempt status, but the term is generally used to refer to political organizations that are not regulated by the Federal Election Commission or by a state elections commission, thus allowing them greater flexibility in their fundraising and spending than other political committees.

Table 6.7

Committee	Total Contributed to Candidates (\$)	Number of Candidates	Average Contribution (\$)	Total Contributed to Local/State Parties and political committees (\$)	Number of Contributions Made	Average Contribution (\$)	Total Overall (\$)
South Carolina	104,600	125	550	281,400	24	5,776	392,475
Arizona	0	0	0	11,000	7	1,571	11,000
Michigan	68,300	95	650	241,950	28	8,641	319,664
New Hampshire	54,500	44	908	222,600	28	3,001	281,081
Alabama	108,500	34	3,100	155,500	5	4,700	271,839
Iowa	656,250	112	2,458	124,030	85	1,477	784,412

Table 6.7 shows, in the case of the Commonwealth PACs the hypothesis that PACs will respond to more restrictive laws regarding gifts to individual candidates by increasing their giving to political committees is only partially correct. Though the state-level committees gave more frequently to individual candidates than political committees regardless of state-imposed caps on gifts to candidates, the average contribution made to political committees was almost always larger than those made to state candidates. Only Iowa shirks this trend; if gifts to the Nussle campaign are excluded, however, aggregate contributions to Iowa political committees exceed those made to individual candidates. South Carolina, Michigan and New Hampshire state laws all limit contributions to individual candidates; in response, the PACs in these states made significant contributions to political committees. In fact, Michigan and South Carolina gave the largest average contributions to political committees.

By comparison, the 21st Century Freedom PAC of Iowa gave to only 20 candidates and three political committees, whereas the Commonwealth PAC affiliate of the same state gave to 112 candidates and 85 political committees. Additionally, the 21st

Century Freedom PAC gave less, on average, to individual candidates and more, on average, to political committees than the Commonwealth PAC.

While the Commonwealth PACs were giving a significant amount of money to candidates and committees, table 8 also illustrates that the percentage of total spending represented by contributions simply may reflect the breadth of political giving. For example, the Iowa PAC gave \$656,250 or 65 percent of their total expenditures to candidates, but it made contributions to 112 individuals. Thus, the average contribution was less than \$2,500 per candidate. Furthermore, 30 percent of that \$656,250 went to a single candidate. If the \$200,000 contributed to the Nussle campaign is excluded from the analysis, the average drops to \$1,762 per individual candidate. Given a legal environment that allowed unlimited PAC contributions to state candidates and the successful fundraising achieved by the Iowa state-level Commonwealth PAC, \$1,762 is a surprisingly small average.

In fact, the general pattern exhibited by the Commonwealth PACs was to give broadly to many candidates and local political committees, but in relatively small denominations. Four of the six state-level committees made average gifts of less than \$1,000 to individual candidates. The only two states which gave more, Alabama and Iowa, allow unlimited donations from PACs to candidates. Upon further inspection, however, the Iowa average is skewed by the large gifts to the Nussle campaign and the Alabama PAC gave to only 34 individual candidates and five political committees, despite the ability to raise and spend unlimited amounts of money from individual donors under Alabama state law.

Thus, it is clear that even though the Commonwealth PACs did support both individual candidates and political committees and gave more on average than some similar state-level leadership PACs (although not others) and the federal Commonwealth PAC, these political contributions did not represent the majority of expenditures made by the state-level committees. Furthermore, when the freedom with which the state-level PACs were able to raise and spend their money is taken into account, the political contributions that were made appear somewhat less significant. As mentioned previously, the state-level PACs often shared administrative expenses, thus invalidating the potential argument that the remainder of the expenditures were attributed to administrative or overhead costs of operations. Therefore, in most cases, more than half of total PAC expenditures were attributed to other spending.

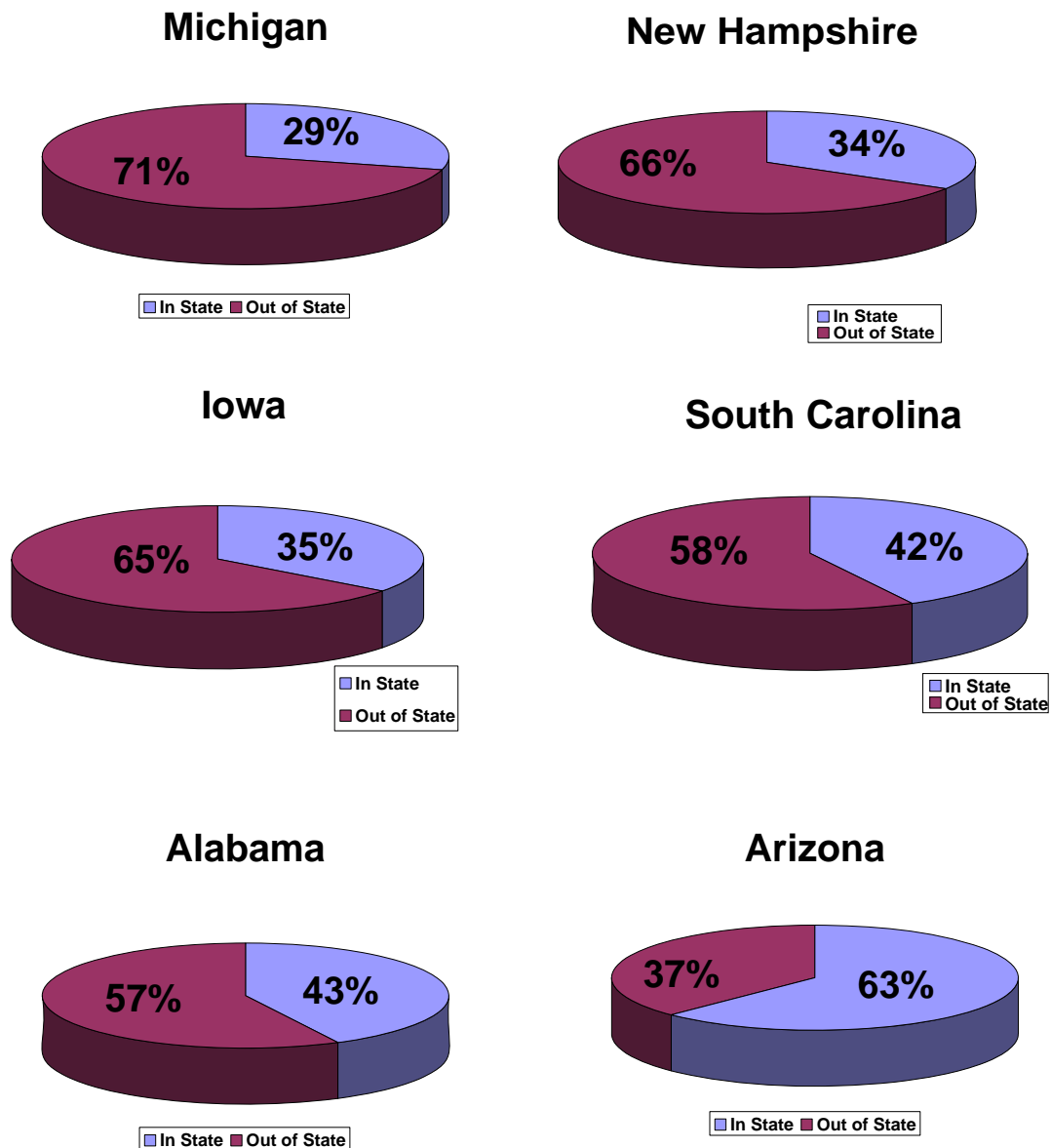
Expenditures

The Commonwealth PACs did not spend the majority of their accumulated funds making political contributions. The federal Commonwealth PAC, in fact, attributed only 15 percent of its total expenditures to political contributions, which left approximately \$2.7 million to be spent elsewhere. Similarly, the New Hampshire and Michigan state PACs attributed only 30 percent of their total spending to political contributions, meaning 70 percent of their overall expenditures were put to other uses.

A state PAC's activity is not limited to the state in which the committee files its disclosures. State-level PACs are able to fundraise and spend across state borders and as graph 6.3 illustrated, this freedom allowed the PACs to raise 97 percent of their combined

funds from out-of-state donors. Spending follows a similar pattern; the state PACs spent 60 percent of their money outside of the states in which they were technically organized.

Graph 6.6

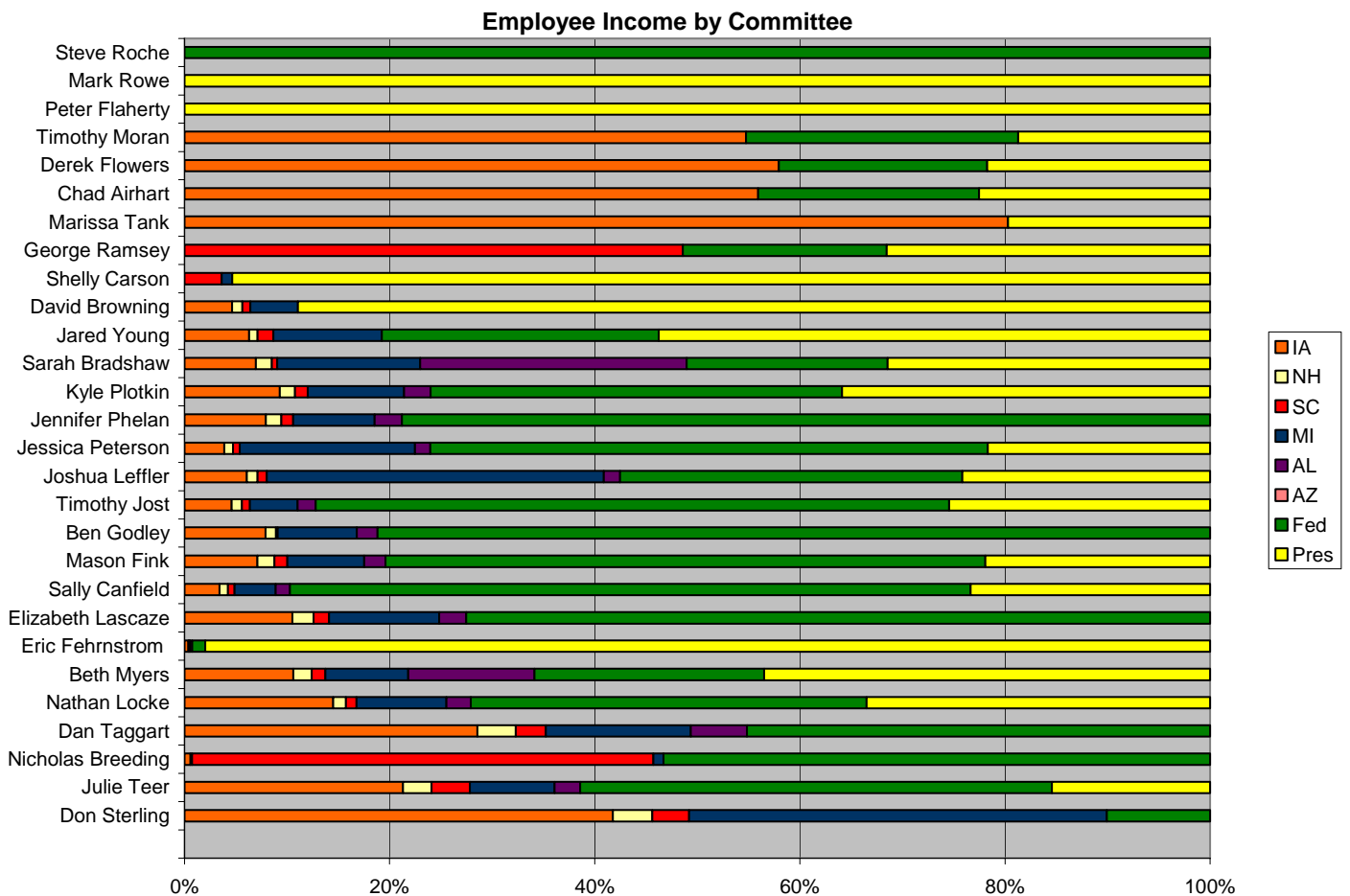


As Graph 6.6 indicates, only the Arizona PAC, a proven outlier in relation to the rest of the state committees, spent more of its money in-state than out-of-state. All other state-level PACs spent the majority of their funds elsewhere.

Graph 6.2 illustrated the geographic homogeneity of Commonwealth donors; state PAC spending followed a similar pattern. A sizable portion of Commonwealth PAC dollars went to a handful of staff and consultants who were paid on multiple occasions by several committees. Additional funds were spent on travel and other related expenses.

The states in which the Commonwealth PAC formed affiliates require that expenditures be itemized and thus all payroll expenses are noted by the name of each employee. The five state-level committees, the federal Commonwealth PAC and Romney's presidential committee were primarily staffed by the same 65 individuals. Many of these staff members reappear on multiple state PAC expenditure reports in addition to the federal PAC and the presidential committee payroll. Graph 6.5 illustrated the way that contributions to the Commonwealth PACs were distributed across multiple committees in varying amounts. Similarly, the committees paid employees from the bank accounts of several state-level PACs, as well as the federal committee.

Graph 6.7



The 28 staff members presented in Graph 6.7 represent those individuals who appeared on the payroll of more than one Commonwealth committee, or at least one PAC and the presidential committee, and grossed over \$15,000 over the course of their employment. As the graph illustrates, many employees worked for each of the Romney affiliated committees, or at least collected pay checks from their bank accounts. Though only 28 employees appear in Graph 6.7, it is worth noting that 37 employees were paid by the federal Commonwealth PAC and at least one state-level affiliate. The 65 total employees received, on average \$20,600 per person over the course of their employment.

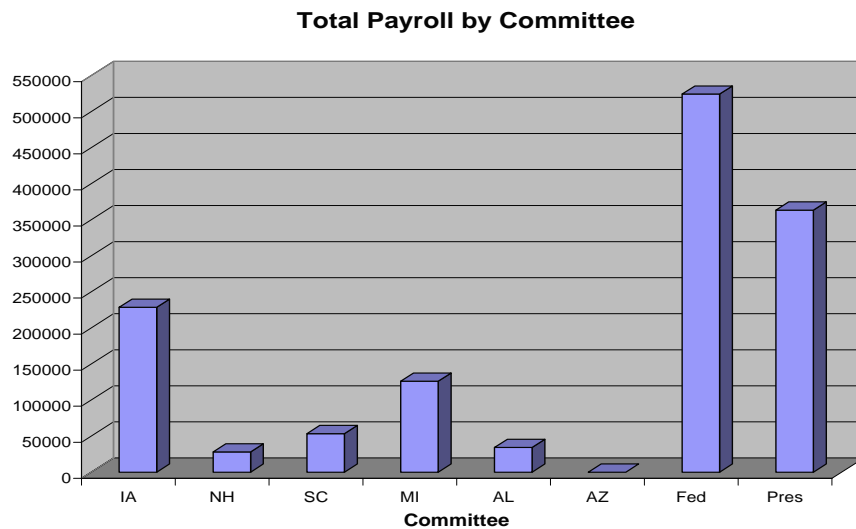
The graph also illustrates the fluidity between the Commonwealth PACs and the Romney for President Committee in terms of shared staff. Half of the individuals employed by the Commonwealth PACs eventually went on to join the presidential committee.

Table 6.8

Top Paid Employees	Total Individual Income (\$)	# of committees from which they received pay
Julie Teer	140,000	7
Sally Canfield	127,000	7
Dan Taggart	63,000	6
Jessica Peterson	56,000	7
Mason Fink	52,000	7
Beth Myers	49,000	7
Sarah Bradshaw	46,000	7
Ben Godley	46,000	6
Don Sterling	45,000	5
Tim Moran	43,000	3
Marissa Tank	42,000	3
Derek Flowers	41,000	3
Chad Airhart	38,000	3

Table 6.8 shows the total earnings of the top paid employees of the Commonwealth PACs, and the number of PACs from which they were paid. It is clear that many employees were working for multiple committees, and their income was loosely correlated with the number of committees for which the individual worked. In fact, it is likely that the PACs capitalized on the flexibility available to them to pay employees from whichever bank account was the fullest at the time, though certain trends did appear.

Graph 6.8



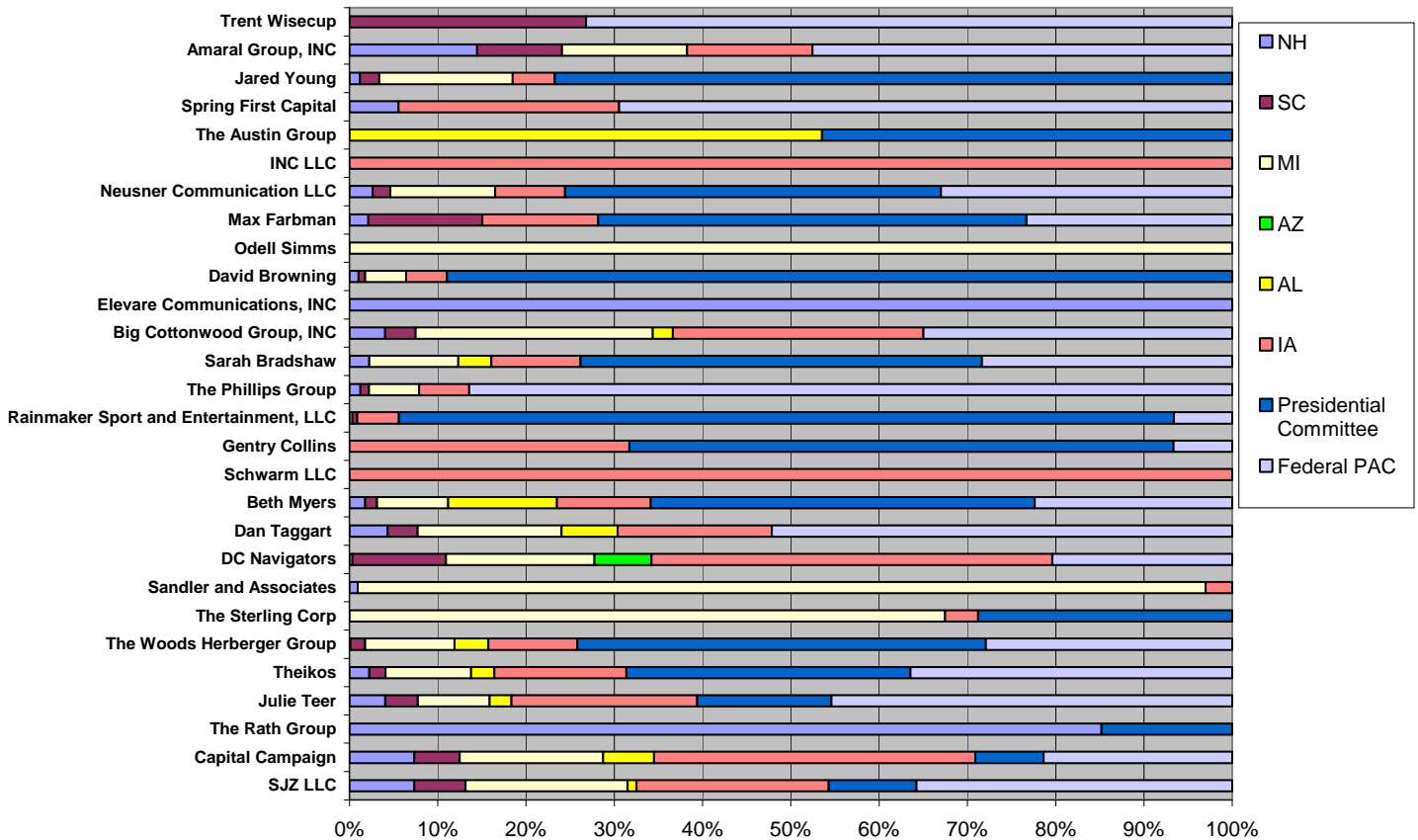
As graph 6.8 illustrates, the PACs took on differing percentages of the overall payroll expenses. The federal committee, along with the Michigan and Iowa state PACs, was primarily responsible for paying the majority of those employed by the Commonwealth PACs. The Arizona committee spent very little on payroll, which is to be expected given its limited scale and span of operations. The majority of employees were paid primarily by the Michigan and Iowa state PACs, although they also appear on the payroll of other state-level committees. The Michigan and Iowa PACs led the state committees in fundraising, and one possible explanation is that the Romney camp simply used funds from wherever they were available. There is nothing to show that the source of an employee's pay check correlates with the committee or committees for which they actually did the majority of their work. In this way, the state committees offered the

Romney campaign a fluid bank account capable of raising money wherever it was available, and spending it wherever it was needed, regardless of state lines.

Consulting firms and independent consultants were another important destination of PAC dollars. Like employees, the Commonwealth PACs overlapped substantially in terms of the consultants and firms they hired to develop campaign strategy.

Graph 6.9

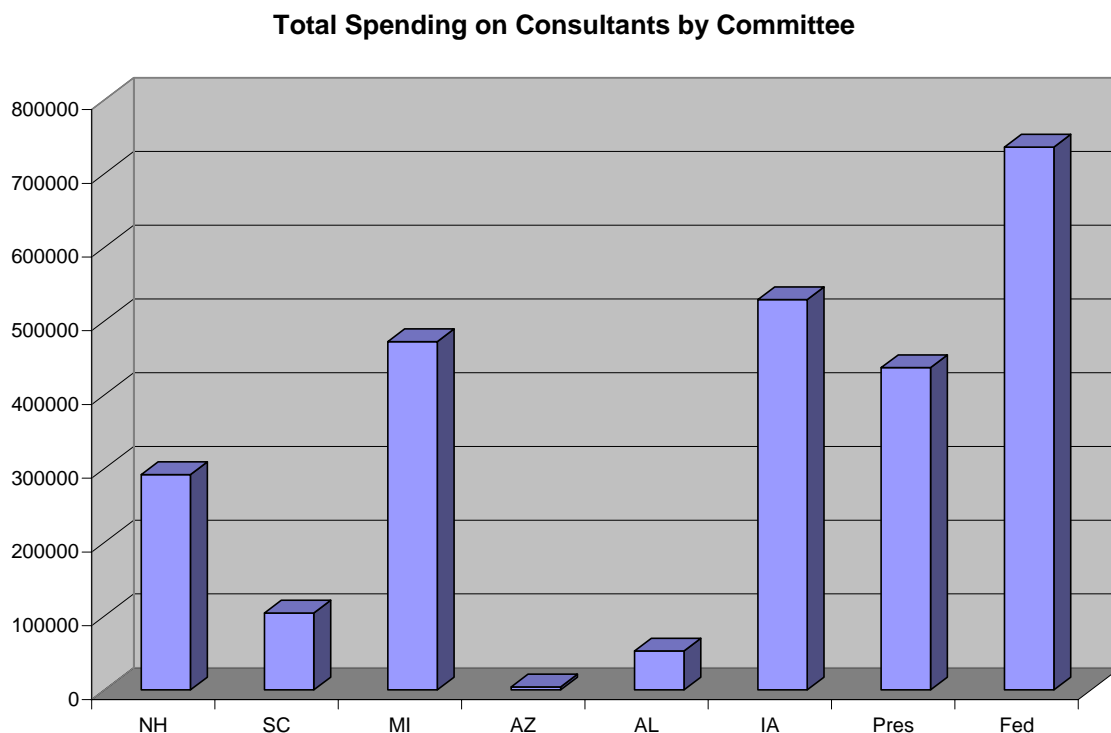
Top 30 Consultants by Total Pay



Graph 6.9 indicates the degree to which consultants were used by multiple committees. Much like the diffusion of contribution dollars and employee pay, the Commonwealth packs shared responsibility for consulting fees. SJZ LLC, Capital

Campaigns, and Theikos, for example, consulted for each of the state-level committees except Arizona, as well as for the federal PAC and even the Romney for President Committee. More than half of the top-paid consultants used by the state Commonwealth PACs were also used by the presidential committee.

Graph 6.10

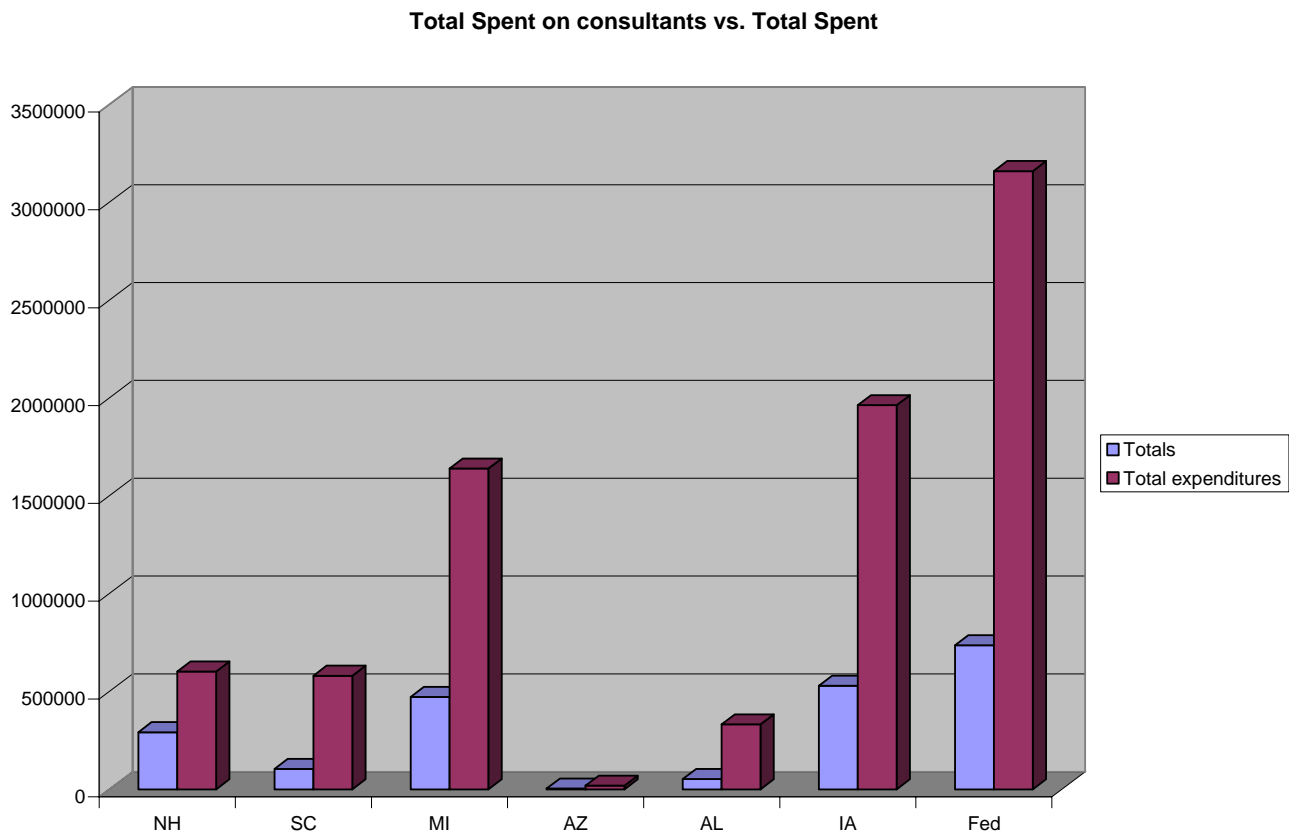


Graph 6.10 indicates that consultant fees, much like the distribution of payroll, were covered primarily by the Iowa and Michigan state PACs and the federal committee. Unlike the distribution of payroll, however, the New Hampshire PAC spent significantly more on consultants than on employees. Considering the essential role New Hampshire plays in the nominating contest, such spending is easily justifiably. Perhaps the most interesting issue is the amount the presidential committee spent on consultants compared

to the Commonwealth PACs. The Commonwealth PACs do not purport to hire consultants for the benefit of the like-minded candidates to whom they claim to support.

The question thus becomes, for whom were these consultants hired?

Graph 6.11



Graph 6.12 compares the total spent on consultant fees by each committee, and each committee's total expenditures. Almost 50 percent of the New Hampshire PACs expenditures were attributed to consulting fees. The other state PACs in South Carolina, Michigan, Alabama and Iowa (excluding the Arizona outlier) attributed between 20 and 25 percent of their expenditures to consulting costs, as did the federal PAC. In stark contrast, the presidential committee, which existed for the sole purpose of sending former

governor Mitt Romney to the White House, attributed less than one percent of its total expenditures to consulting fees.

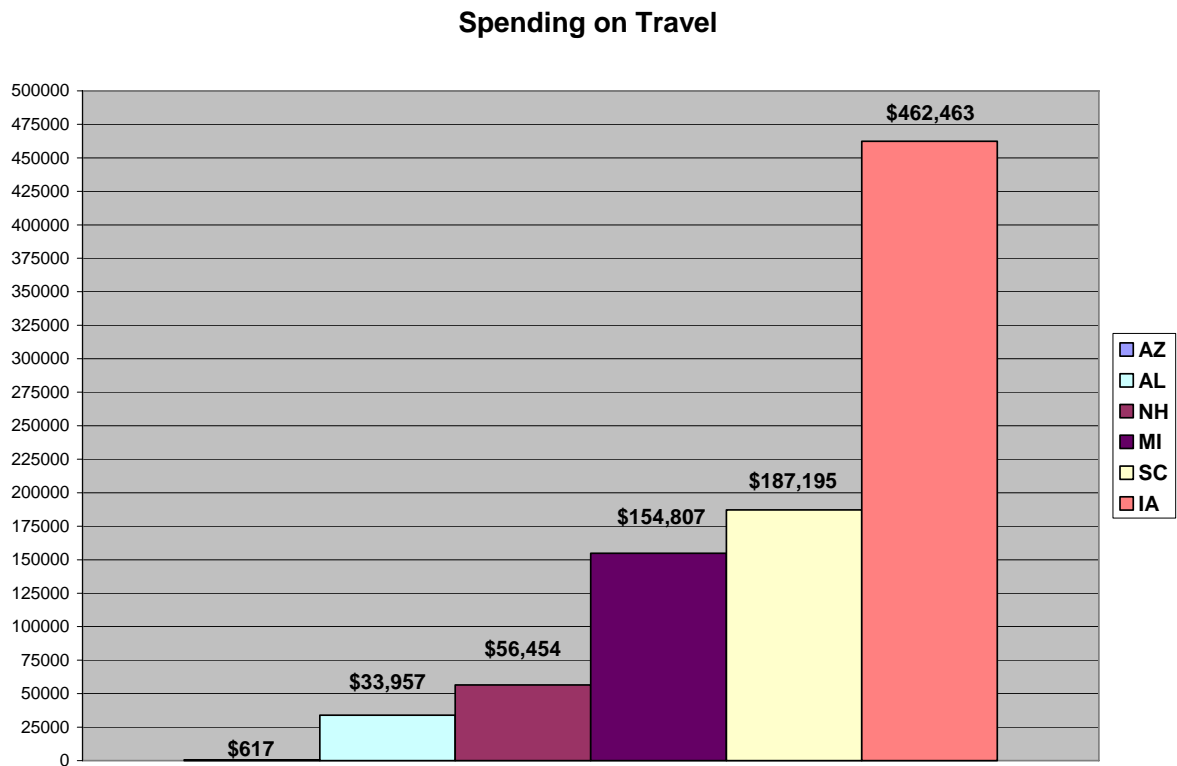
The term “consultant” may be used to identify an individual or group who has been paid to contribute their experience and skill in a specific area to the campaign; it may also be a term applied in some instances to individuals in order to avoid paying employees on a regular schedule or to account for those individuals who work intermittently, such as those responsible for advance work. Thus, the percentage of expenditures attributed to consultant fees by the state PACs may be inflated and may also represent some administrative costs. However, given the flexibility with which the term “consultant” is used, an inclusive approach was taken to determine how much the Commonwealth PACs reported paying in consulting costs.

It is worth providing a brief look at the kinds of firms the Commonwealth PACs and the presidential committee were hiring. The five highest paid consultants were SJZ LLC, Capital Campaigns, the Rath Group, Theikos and the Woods Herberger Group. These groups received, on average, \$141,674 from the Commonwealth PACs and the presidential committee, during the period in which the PACs were operating and through to December 21, 2007 in the case of the presidential committee. The Rath Group, associated with the law firm of Tom Rath, a member of the Republican National Committee, is based in Concord, New Hampshire, and provided fundraising consulting to the Commonwealth PACs. Capital Campaigns is the California-based company of Anne Dunsmore, a well-known GOP fundraiser, and SJZ LLC was formed and led by Spencer

Zwick, Romney's closest aide.¹¹⁰ Theikos is a leading IT consulting group based in Boston, and the Woods Herberger Group is the consulting firm of Ann Woods Herberger, Romney's national finance advisor.

The remaining expenditures were, by in large, attributed to travel expenses.

Graph 6.11



As Graph 6.11 illustrates, the PACs spent significant amounts of money on travel.

In fact, travel costs account for 11 percent of total committee expenditures. Michigan

¹¹⁰ Mooney, Brian C. "Romney left Mass. on 212 days in '06 Visited 35 states; built a national network" *Boston Globe*. (24/12/2006). ONLINE Available:http://www.boston.com/news/local/articles/2006/12/24/romney_left_mass_on_212_days_in_06/?page=3 [Accessed 11/10/2007]

and Iowa were primarily responsible for consultant and payroll expenses, but when it came to travel costs, Iowa and South Carolina were the big spenders. Though Michigan and South Carolina appear to have spent similar aggregate amounts of money on travel, Michigan only attributed nine percent of its total expenditures to travel or travel associated costs, whereas the South Carolina PAC attributed 32 percent of its total expenditures to travel. Iowa, the committee which spent the most overall, attributed 24 percent of its expenditures to travel costs. By comparison, the Michigan Straight Talk America PAC, affiliated with John McCain spent nothing on travel.

Though it would be helpful to be able to identify the destinations to which staff members and former governor Romney were traveling, the Iowa PAC expenditure reports billed many of their travel expenses to an American Express card which simply itemizes these payments as “credit card (travel).” In fact, this same itemization occurs in New Hampshire, South Carolina and Michigan, thus making it impossible to know exactly what the costs accumulated were, or where they were accrued. It appears then that the Commonwealth PACs, in addition to being flexible and fluid, were exceedingly mobile.

Chapter 8: Implications and Possible Reform

It is an irrefutable fact that money plays a very important role in elections. Frontrunners are determined by how much they have raised before the primary begins, everyone from unions to wealthy individuals can make their political opinion heard if they have the funds, and it takes money to be seen and heard around the nation in the increasingly compacted nominating calendar. It is unsurprising, given the vital role money plays in elections, that lawmakers have repeatedly attempted to regulate both fundraising and spending by political candidates, often in hopes of maintaining the legitimacy of the process and perhaps in hopes of protecting their own seats. Regardless of motive, several goals have emerged over the course of 200 years of campaign finance legislation: the limiting of union, corporate and fat-cat dollars and increased accountability and transparency through disclosure. At least one of these historic goals can be seen in each campaign finance law.

However, candidates do not operate in a void; the strategic pressures candidates must negotiate have become increasingly challenging in the post-BCRA era. Costs of campaigns have risen exponentially, in part because the nominating calendar is more compacted than ever before, which in turn causes candidates to spend enormous sums on travel and advertising. Furthermore, fundraising prowess is seen as a measure of public support and thus determines the media's coronation of a frontrunner.

In order to be competitive, candidates must raise astronomical amounts of early money and prepare to make themselves seen and heard across the nation in what, in 2008, was essentially three month primary election. These preparations must all be

accomplished within the confines of the FEC regulated committees, which limit candidates to accepting individual donations of no more than \$4,600 in total. Though frontrunners no longer chose to accept public matching funds, second tier candidates, who are already disadvantaged in terms of name recognition and media attention, often do, and must then confront expenditure ceilings, which limit their overall spending.

It is no surprise that candidates look to less regulated structures to accomplish many of the tasks they consider essential to waging a competitive campaign. Political action committees offer them just such a venue, particularly at the state level. Mitt Romney was the first presidential candidate to use a *network* of state-level PACs extensively during the shadow campaign.

The Commonwealth PACs allowed Romney to accept much larger gifts than those permissible under federal law. Not only were supporters able to give unlimited amounts to many of the state PACs, they were then able to make the maximum allowable contribution to both the federal Commonwealth PAC and the presidential campaign committee. Many of the state PACs allow corporate and union contributions; though Romney did not accept these monies, such gifts would not have been illegal.

The PACs also obfuscated the source of the money that ultimately laid the groundwork for Romney's presidential bid. The Commonwealth PAC hired hoards of consultants, maintained a significant staff, footed the travel bill, made political contributions to politicians who later endorsed Romney, and even developed the direct mailing list that would later make its way up to the Romney for President Committee. All of this preemptive PAC activity increased Romney's ability to fundraise for his presidential committee and build his name recognition among voters. Not a cent of the

money raised in these state-level committees was ever reported to the Federal Election Commission though the money went to fund what was, for all intents and purposes, federal campaign activity. Furthermore, the disclosure of this money, which was made to state-level government agencies, was difficult to find given that many states often do not file these reports in a timely manner or in a way that makes them readily available to the public.

It is clear that Romney's assortment of state-level PACs allowed him to get around the campaign finance laws and their goals. However, before the practice is defamed, it is worth considering the kinds of candidates the existing laws privilege. The candidates most likely to benefit from the current regulations are those who already hold positions with a high degree of visibility and name recognition, those who are able to mobilize millions of dollars quickly within the \$4,600 limit, and/or those candidates who are independently wealthy. In short, the current system elects the wealthy, the political insider, or the wealthy political insider.

Amongst those who could not compete with well-financed, well-known frontrunners in the 2008, primary there was a former ambassador, several former and current senators, many of whom chaired important senate committees, a handful of governors and a well-known mayor who brought his city through one of the most tumultuous events in American history. However, in only three months, the primary race was down to just three viable candidates: Senator John McCain had emerged as the prospective nominee in the Republican Party, while Senators Obama and Clinton were the only two candidates still viable in the Democratic Party. Many of the other candidates

were equally experienced, but failed to register with the press and public for a variety of reasons.

Mitt Romney did not go on to win the nomination; he lacked the widespread appeal, and the public was concerned with his voting record and his religious affiliation. Political action committees do not guarantee that a candidate will be able to win. A state PAC strategy might, however, allow a candidate to make a quick start, which helps to prepare the campaign for the battle to come. Furthermore, the ability to raise early money and become visible in the race early on might result in the candidate becoming one of the media's "candidates to watch," even if he or she is not considered a frontrunner. Political action committees allow candidates to begin raising name recognition, building political alliances and construct fundraising strategies years in advance of the election; Romney began to lay the groundwork for his candidacy with his state PAC network half a decade before he made his presidential bid. The Commonwealth PACs allowed Romney to gain the name recognition and visibility he needed by allowing him to maximize his regional fundraising base. State-level PACs might thus offer qualified second-tier candidates a vehicle by which they may be able to compete with well-known, well-financed frontrunners. Non-federal candidates especially, who lack access to the everyday national media that covers federal politics, stand to benefit extraordinarily by taking advantage of the unlimited donations allowed by several states.

Though a state PAC network certainly obscures the source of money, there is little evidence to prove that the public cares; no candidate has yet made a successful bid for the presidency on the platform of campaign finance reform. Additionally, there is mounting evidence to suggest that campaign finance regulation is, more often than not, a fruitless

battle. Increased regulation of these state PACs may simply force the money into even murkier waters. For as often as the historic goals of campaign finance appear in the body of campaign finance legislation, even more often candidates find ways to flout the laws which constrain their activity.

Two theoretical models are applicable to this study of campaign finance, the Hydraulics Model and the Strategic Politicians Theory. The first states that the regulating of money in politics is pointless; the two are so connected that to restrict the flow of money in one area will only shift where the money goes, not the overall amount being raised and spent. The idea first appeared in print in 1999, in a paper titled “The Hydraulics of Campaign Finance Reform,” featured in the *Texas Law Review*, (Vol. 77, No. 6 (June 1999)), [written by Samuel Issacharoff and Pamela Karlan].¹¹¹ The second theory appeared initially in the work of Gary Jacobson and Samuel Kernell in 1983 and argues that politicians are strategic actors who employ conscientious strategies to their decision making and actions.¹¹² These two theories are correlated; the challenges inherent to reforming campaign finance have less to do with the innate qualities of money and politics, than with the consequences of the strategic actions of politicians. It is not so much that money will always find a way to accompany power, but that politicians, having identified money as an important aspect of their strategies, have consistently sought ways increase their ability to raise and spend money in a way that is advantageous to them.

¹¹¹ Issacharoff, Samuel and Karlan, Pamela. “The Hydraulics of Campaign Finance Reform.” *Texas Law Review*. 77 (1999).

¹¹² Jacobson, Gary and Kernell, Samuel. “Interpreting the 1974 Congressional Election.” *The American Political Science Review*. 80 (1986).

Those who seek the presidency run to win. The process by which our country elects officials clearly favors big spenders. The modern legal frameworks intend to make numerous small, individual donations the bases of campaign money, but the cost of the campaign has grown much faster than the limits and the external pressures make early money an essential part of a successful campaign. When the stakes are as high as the office of the President of the United States, politicians have every incentive to develop a strategy that provides them with any advantage they can buy.

“The experience in presidential prenomination campaigns thus highlights the difficulty of regulating so dynamic a component of the electoral system as political finance. Given the stakes of a presidential contest, candidates will constantly be searching for ways to gain access to the resources they feel are necessary to win the nomination.”¹¹³

What this means, in terms of campaign finance, is that when the nomination process rewards well-funded candidates, presidential hopefuls have every reason to maximize the amount of money they can raise from each potential source of funding: individual, corporation, union, and political committee. When the framework through which they pursue these donations is constrained, candidates will either seek to maximize advantages within the framework, or the most creative (and perhaps brazen), will simply locate a less constrained environment, “The predominant response to the law, however, has not been to reduce spending. Instead, candidates have either violated the law, or sought ways to circumvent the limits.”¹¹⁴ State-level political action committees offer candidates a much less constrained environment.

Simply put, a candidate’s desire to win office combined with the external pressures of the legal framework and the strategic dilemmas of the nominating process,

¹¹³ Corrado, Anthony. “Financing the 2004 Presidential Election.” *Financing the 2004 Election*. Eds. David B. Magleby, Anthony Corrado, and Kelly D. Patterson. Washington: Brookings Institution Press, (2006).

¹¹⁴ Ibid.

when catalyzed by a healthy dose of ambition, gives presidential candidates overwhelming incentives to outsmart the system by seeking less constrained environments and more creative strategies through which they may gain the greatest possible advantage. State-level PACs have emerged as a new framework capable of providing a less restrictive environment, which allows candidates to confront many of the strategic dilemmas they face. If campaign finance reformers were to target these state-level committees, one possible prediction would be that candidates would increasingly form 527 groups or not-for-profits, entities that are even less regulated than the state-level PACs, because this would be more beneficial to their campaigns than returning to the highly regulated, highly constrained campaign committees.

Too often, politicians conceptualize of campaign finance reform as being synonymous with the imposition of limitations, caps, and ceilings. The argument can be made that the legislation which seeks to limit the source and amount of contributions is often the aspect of campaign finance law that is circumvented or contested as unconstitutional; rarely are arguments made against public disclosure requirements, which do not seek to limit the amount of money in elections, just make it visible. It stands to reason that perhaps the entire framework through which policymakers see campaign finance reform is somewhat off-base. If money is going to flow through the paths it is legally supposed to, there must be an incentive to channel funds through these committees and not others. As it currently stands, candidates have few incentives to abandon the practice of PAC financing, and even fewer to embrace the campaign committee as their only fundraising vehicle.

Currently, well-financed candidates have no reason to take public matching funds; publicly funded candidates are also required to accept expenditure ceilings. Those candidates who have no choice but to accept public money are then limited in their ability to compete with candidates who have not accepted matching funds, which inevitably benefits frontrunners and the independently wealthy. If it is assumed that the latter are not the only candidates who are qualified for the office of the presidency, then there must be another way to equalize the field. Instead of forcing candidates into extraneous structures in order to circumvent the debilitating legal environment, campaign finance reform might instead focus on providing candidates with an incentive to keep their operations within the well-regulated, transparent campaign committees, while simultaneously attempting to further equalize the playing field.

As the late Herb Alexander often suggested, public matching funds might instead be offered to candidates without the resulting expenditure caps.¹¹⁵ Known as “floors without ceilings,” this theoretical reform would accomplish two important things; it would make it financially rewarding to move all fundraising activity back into the campaign committee regardless of a candidate’s status as a first, second or long-shot candidate, and it would allow non-frontrunners to accept the matching funds without fearing that they will be unable to compete with those who do not.

Frontrunners, independently wealthy and second tier candidates would have very little disincentive to accept the change. With no expenditure ceilings to face, candidates could form their exploratory committees and presidential committees as early as they felt was necessary to build the name recognition and fundraising base they would need to be

¹¹⁵ Adamany, David. “Financing the 1988 Election by Herb E. Alexander and Monica Bauer. “Political Science Quarterly.107 (1992).

competitive. Frontrunners would still be rewarded for their fundraising ability, and second tier candidates would be able to accept matching funds without reticence.

Though it may seem that this proposal exacerbates the fundraising of frontrunners, the fact is that most frontrunners already outpace second tier candidates in the current arrangement. Second tier candidates are more disadvantaged in the current legal framework than they would be under this proposal.

However, additional stipulations might be applied to further equalize the field of candidates. Like the millionaire amendment of BCRA, campaign finance laws must expect that external circumstances will affect the behavior of candidates and future laws ought to be made with more of these pressures in mind. If the current election process locks in frontrunners, then perhaps a legal mechanism might be applied to aid those who are not deemed, by the press and pundits, as such. One proposal would be to set spending thresholds, which correspond to the total raised by candidates. Should a frontrunner or other candidate pass these predetermined, but flexible thresholds, the amount awarded in matching funds would be increased incrementally and applied to all candidates who have not yet reached the threshold. For example, should one of the candidates competing in the primary spend \$50 million, instead of matching up to \$250, the match would increase by half, to \$375. At the next threshold, \$100 million spent, the matching fund would increase by an additional third, to \$500. At \$150 million, matching funds would increase another quarter, bringing the match to almost \$470. Even in light of the spending power of fundraising powerhouses like Senators Obama and Clinton, given the compactness of the current calendar, it is unlikely that new system would need to implement a fourth or fifth increase.

It may be less work administratively to index the spending thresholds to inflation. However, I would argue that the Consumer Price Index, which is the most commonly used measure of inflation, does not accurately reflect the costs of a presidential campaign. In order to ensure that the spending thresholds accurately represent the costs of travel and media, in addition to other considerations, a bipartisan committee should meet to adjust the thresholds one year prior to each primary election.

The new public matching system would not artificially support unpopular candidates; to be competitive, a candidate would need to engage in substantial fundraising, and grow their support to compete with big spenders. Additionally, unlike the current public funding program, candidates who failed to win 10 percent of the primary vote in each contest would not be disqualified from receiving the matching funds. The current system significantly disadvantages candidates with regional appeal and winnows the field almost immediately; under this proposed system, candidates would qualify for the increasing matching funds until 25 percent of delegates had been awarded, at which point the matching funds would no longer increase, regardless of what was being spent by candidates. In this way, second tier candidates will be given the opportunity to compete, without being able to stay in the race with no chance of being elected.

The 2008 Democratic primary has been one of the most dynamic in decades and has prompted public participation in ways neither party has ever seen. Voter turnout is at an all-time high, politics is a popular topic of conversation among diverse crowds of Americans, and more people than ever are donating to political campaigns. Most importantly, Democratic voters claim to feel stimulated by the quality of the candidates

available to them. Few would argue that these are bad things. If the current legal framework cannot consistently produce this kind of political experience for its voters, then something should change. If campaign finance reform cannot equalize the field and provide candidates with the flexibility in fundraising and spending that is necessary to compete in a modern presidential election, then perhaps state PAC financing is a useful tool by which candidates from all walks of life will be able to make themselves heard. Even though Romney did not go on to win his party's nomination, future candidates might use his state PAC strategy, in lieu of further campaign finance reform, to make themselves visible and viable during the increasingly important shadow campaign period.

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