

September 13, 1979

RESTRICTING POLITICAL ACTION COMMITTEES

H.R. 4970

STATUS

On July 26, 1979, Congressmen David Obey (D-Wis.) and Tom Railsback (R-Ill.) introduced The Campaign Contributions Reform Act of 1979, H.R. 4970, a bill to further limit the campaign contributions by non-party multi-candidate political action committees (PAC's) to candidates for election to the House of Representatives. The bill has been referred to the House Administration Committee, which has jurisdiction over election matters. However, the sponsors are seeking a ruling from the Rules Committee allowing the bill as a floor amendment to the Federal Election Commission authorization bill scheduled for floor consideration the week of September 17-21. H.R. 4970 currently has more than one hundred co-sponsors.

BACKGROUND

H.R. 4970 is the latest in a series of proposals to effect substantive changes in the Federal Election Campaign Act of 1971 as amended in 1974 and 1976. It is a follow-up to H.R. 1, a bill providing for taxpayer financing of House elections, which the House Administration Committee failed to report on a 8-17 vote earlier this year. Most of the sponsors of H.R. 4970 previously sponsored H.R. 1, and H.R. 1 was only the most recent attempt to pass taxpayer financing of House elections.

During the first session (1977) of the 95th Congress, both houses of Congress turned serious attention to federal financing of congressional races. President Carter, Speaker of the House "Tip" O'Neil (D-Mass.), and Senate Majority Leader Robert Byrd (D-W.V.) all expressed support for the idea. On June 24, 1977, the Senate Rules Committee reported a bill, S. 926, providing for federal financing of Senate general elections only. A provision of the original bill providing government financing of primary

elections was deleted in committee. S. 926, as reported, established a campaign spending ceiling of \$250,000 plus 10 cents multiplied by each state's voting-age population. Major party candidates would have automatically received 25 percent of their spending ceiling in federal funds, and in addition, would have been eligible for matching funds on all individual contributions of \$100 or less up to the spending limit. Only contributions received within fourteen months of the general election would have been matchable.

The bill further provided that candidates accepting federal financing would have been limited to spending only \$35,000 of their own money in their campaigns. If a candidate exceeded the personal or total spending limit, his rival would have been eligible for up to 62.5 percent more than the spending limit in matching funds. Third party candidates would not have been eligible for automatic grants but could have received matching funds if they raised \$100,000 or 10 percent of the spending limit through individual contributions of \$100 or less. Money to finance S. 926 would have come from the Presidential Election Campaign Fund. When the bill came to the floor of the Senate, Republicans and Southern Democrats initiated a filibuster which survived three cloture votes and finally succeeded in killing the bill.

In October of 1977, public financing of House elections was revived after 155 Democrat members signed a letter asking that a bill be reported. An unnumbered bill was introduced into the House Administration Committee for markup on October 25. The bill provided up to \$25,000 in matching public funds for major party candidates who agreed to limit general election campaign spending to \$125,000 plus \$25,000 for fund raising costs. Only private contributions of \$100 or less would have been matched. If a candidate exceeded the limit, his rival would have been eligible for up to \$50,000 more in matching funds. The bill also provided \$25,000 per candidate in federal grants for a district-wide mailing to be used between July 1 and two weeks before the election. The grant counted against the spending total.

Third party and independent candidates would receive money only retroactively. To qualify for matching funds, they had to receive at least 5 percent of the vote. Like the Senate plan, the bill was to be financed from the Presidential Election Campaign Fund. But the bill was killed when the committee voted to accept an amendment by Congressman Mendel Davis (D-S.C.) to extend federal financing to primaries as well. The amendment would have increased the cost to the government dramatically.

In 1978, during the second session of the 95th Congress, the Democrat leadership made two attempts to bring federal financing of House campaigns directly to the floor of the House. In March, the public financing proposal was attached to a controversial bill (H.R. 11315) lowering the limits on spending by parties and political action committees. By a 198-209 vote, the House refused

to approve the rule that would have allowed floor consideration of the bill. Republican members voted unanimously against the rule, 0-140; Southern Democrats also voted against the rule 35-49; Northern Democrats favored the rule, 163-20.

Two major changes were made in the bill after the March defeat. The effective date was pushed back from 1978 to 1980, and the spending limits were raised from \$125,000 plus \$25,000 for fund raising costs to \$150,000 plus \$30,000 for fund raising. The rest of the bill remained the same.

On July 19, 1978, during floor consideration of the FEC fiscal 1979 appropriations bill, a motion was made to end debate. Supporters of government financing sought to defeat the motion in order to permit drafting of an alternative rule that would have allowed a House vote on the revised government financing bill. The motion carried 213-196, with the majority, therefore, voting against government financing of House elections. Republicans supported the rule 106-30; Southern Democrats 62-22; but Northern Democrats opposed the rule 45-144.

H.R. 1 limited overall expenditures by a candidate to \$150,000 for a general election campaign, plus 20 percent (\$30,000) for fund-raising costs, and 10 percent (\$15,000) for one mailing within the district, for a total of \$195,000. To this total, a candidate could contribute and/or loan \$25,000 of his personal funds or those of his immediate family. In addition, a candidate could receive matching public funds up to a total of \$60,000 for individual contributions of \$100 or less. A bill calling for similar public financing for Senate campaigns was introduced in the Senate but was abandoned when H.R. 1 failed in the House Administration Committee.

Aside from public financing, H.R. 11315 must be regarded as the father of the current H.R. 4790. H.R. 11315 was so controversial that the public financing rider attached to it received little attention. The bill incorporated almost all of the provisions of H.R. 4970 in that it proposed cutting in half non-party PAC contributions from \$10,000 to \$5,000 in an election year. But, in addition, H.R. 11315 proposed severe restrictions on the contributions of party PAC's, and this was the provision that the House Republicans, whose party PAC's were better financed than those of the Democrats, objected to so strenuously. H.R. 4970 attempts to eliminate that controversy by proposing restrictions on contributions of non-party PAC's only.

H.R. 4970

The bill has three major provisions:

1) It would cut in half the amount individual non-party PAC's could contribute to individual House candidates in each two-year election cycle. Currently, a PAC may contribute \$5,000 during a

primary contest, \$5,000 during the general-election period, and, for a runoff, an additional \$5,000. Under H.R. 4970, an individual PAC could contribute to an individual candidate an aggregate of \$5,000 with respect to a general election and a primary election relating to such general election. A PAC could contribute an additional \$2,500 to a candidate involved in any run-off election. For special elections, candidates would receive the same aggregate \$7,500 for the primary, general, and run-off elections relating to the special election.

2) H.R. 4970 provides that the total amount of contributions a candidate could accept from all non-party PAC's would be limited to \$50,000 per general or special election and any primary relating to such a general or special election. Currently, there is no limit on the amount candidates can accept from PAC's.

3) The bill would prohibit the extension of more than \$1,000 credit for over 30 days "for goods or services relating to advertising on broadcasting stations, in newspapers or magazines, by direct-mail (including direct mail fund solicitations) or other similar types of general public political advertising."

DISCUSSION

(Referring to tables in appendix.)

Table A demonstrates that the average total contributions to candidates for the House increased more than 100 percent between the 1972 and 1978 elections - from \$51,752 in 1972 to \$111,232 in 1978. Yet, with a 52.9 percent price increase between 1972 and 1978 (using the implicit price deflator of the GNP calculated by the Joint Economic Committee), a candidate in 1978 had only \$72,983 in 1972 dollars with which to purchase goods and services for his campaign, an increase of only 41 percent. In other words, the rate of inflation outpaced the rate of increase in campaign contributions between 1972 and 1978.

Of the four sources of contributions, PAC contributions were the only source to increase substantially - almost fourfold without an inflation consideration - between 1972 and 1978. Political parties have become the weak sister in contributions to campaigns while individual contributions have remained as the most important source of campaign contributions. Since 1974, candidates' contributions and loans to their own campaigns have increased significantly although they still are less than 10 percent of contribution sources.

The sweeping 1974 Amendments to the Federal Election Campaign Act effected all the limitations on individual, PAC, and party contributions that are still law. Table A demonstrates that the 1974 Amendments (a major provision of which limited individual contributions to \$1,000) have forced candidates to rely increasingly on PAC contributions and their own personal resources.

H.R. 4970 is directly aimed at curbing candidate reliance on PAC contributions. Table B shows that 176 (13.3 percent) of the 1,322 candidates for the House in 1978 (primary, general, and special elections) exceeded H.R. 4970's ceiling of \$50,000 in total non-party PAC contributions. Seventy-nine of the candidates were Republicans and 97 were Democrats. There were 140 winners and only 36 losers. In addition, of the 176 candidates, 105 were incumbents, 32 were challengers, and 39 were candidates for an open seat. Overall, Table B shows that Democrat incumbents were the largest single group benefiting from PAC contributions. Challenging an incumbent is the most difficult election task. Only 19 challengers were successful in the 1978 House elections. And Table B shows that there were only 32 challengers among the 176 candidates who received more than \$50,000 in total PAC contributions. Yet, 14 of the 19 successful challengers in 1978 were among those 32 candidates.

There were 58 open seats in the 1978 House elections. Five of those open seats were won by candidates running unopposed. Thus, there were 106 major candidates (for 53 seats) running for open seats. Table B shows that 39 of those candidates (38%) relied on total PAC contributions exceeding \$50,000.

Thus, it can be seen that although incumbents were the largest group of candidates receiving more than \$50,000 in total PAC contributions, successful challengers and open seat candidates were heavily dependent on total PAC contributions exceeding \$50,000. Table C demonstrates that the average total PAC contributions to the three types of candidates increased significantly from 1976 to 1978. With challengers still the weakest group, the 1978 elections show that PAC's of all kinds put more money, on the average, into open seat races than in races involving incumbents.

H.R. 4970 provides for a \$5,000 limit in contributions by an individual PAC to an individual candidate in a normal two-year election cycle (excluding the relatively infrequent run-off and special elections). Table D shows that the prevailing pattern is for PAC's to contribute to candidates in amounts totaling \$5,000 or less. Of the 38,143 aggregate PAC contributions to candidates in the 1978 House elections (an aggregate PAC contribution is the total amount an individual PAC gave to an individual candidate -regardless of how many contributions the PAC gave to total that amount), only 1.8 percent (677) amounted to more than \$5,000. Thus, it would seem that the \$5,000 ceiling on PAC contributions to individual candidates is a less significant provision of H.R. 4970 than the \$50,000 ceiling on total PAC receipts by a candidate. Yet, the candidates who received more than \$5,000 from the different types of PAC's were the candidates whose political positions were most favorable to these PAC's and who, additionally, had plausible chances of victory. Table D shows that labor and trade association PAC's supported 232 and 361 candidates respectively with total contributions exceeding \$5,000. Thus, these two types of PAC's would have been severely restricted by H.R. 4970 in 1978.

while corporate PAC's, which supported only 23 candidates with total contributions exceeding \$5,000, would have been only slightly affected.

Tables E and F show the political preferences in the 1978 elections of the four major types of PAC's: corporate, labor, independent (CSFC on the right, NCEC on the left), and trade associations. Independent PAC's, with no affiliation to any major institution or profession, had the least amounts of money. Overall, they supported Republican challengers and open-seat candidates by wide margins as compared to any other types of candidates. And, interestingly, independent PAC's contributed 41 percent of their funds to Republican challenges - although this amounted to average total contributions of only \$3,275 to this group. Thus, the Republican version of that perennially under-financed candidate, the challenger, received special emphasis from independent PAC's in 1978.

All corporate PAC's gave the largest percentage of their contributions to Democrat incumbents in 1978, but the largest average total contributions went to Republican open seat candidates followed closely by Republican incumbents. During the 1977-78 election cycle, there were 821 corporate PAC's in existence, more than any other type of PAC. Trade associations had 543 PAC's, labor had 281 PAC's, and 254 PAC's were independent. Yet, corporate PAC's were still third to labor and trade association PAC's in contributions to 1978 House candidates. In 1977-78, corporate PAC's contributed \$9.5 million to House candidates, labor PAC's contributed \$9.9 million, trade association PAC's contributed \$11.2 million, and independent PAC's contributed \$2.5 million.

Labor PAC's supported Democrats almost exclusively in the 1979 House elections. And almost two-thirds of their money went to Democrat incumbents - although Democrat open seat candidates received the largest average total contributions from labor PAC's.

Of the four major types of PAC's, trade association PAC's spread their money most evenly among the different types of candidates. Incumbent Democrats received more than a third of trade association PAC money, followed by incumbent Republicans. Yet, open seat Republicans received the largest average total contributions from trade association PAC's. Open seat Democrat candidates were also well-financed by trade PAC's.

Tables E and F taken together show that independent PAC's are substantially in the Republican camp while labor PAC's are almost exclusively in the Democrat camp. Corporate and trade PAC's both contribute more than one-third of their funds to incumbent Democrats and, adding incumbent Republicans, more than 60 percent to incumbents. Thus, these two types of PAC's contribute most of their funds to that type of candidate most likely to emerge victorious in elections: the incumbent. (Ninety-five percent of all House incumbents won re-election in 1978.) Yet,

when there is a possibility of change, i.e., when a race presents a plausible challenger or open seat candidate, both trade and corporate PAC's favored Republican challengers and open seat candidates to their Democrat counterparts in the 1978 elections.

Tables H and I offer some statistics on the ten largest PAC's, in terms of contributions to candidates, during the 1977-78 election cycle. The top ten include four trade PAC's and six union PAC's. By way of comparison, the two largest corporate PAC's are also included. Table H shows that Democrat candidates received almost twice the amount in total contributions from these ten largest PAC's than Republicans. The six labor PAC's favored Democrats almost exclusively, while three of the four trade PAC's favored Republicans - the American Dental Association being the only one of the four to contribute more to Democrats than Republicans.

Table I demonstrates the effect that H.R. 4970's \$5,000 ceiling on contributions to individual candidates would have had on the activities of the ten largest PAC's during the 1977-78 election cycle. The ten largest PAC's contributed to a total of 2,956 candidates, an average of 295 each. Of that total, 248 candidates received more than \$5,000 in contributions, an average of 24 each. The American Medical Association PAC gave more than \$5,000 to the most candidates: 75, while the American Dental Association gave more than \$5,000 to only two candidates. Overall, less than 10 percent of the candidates favored by the top ten PAC's received more than \$5,000 in contributions. Yet, again it must be assumed that such candidates were those whose election was most important to each PAC's interests and, in all probability, whose race was competitive. It must be concluded that H.R. 4970 would restrict the activities of these big PAC's in a significant way.

CONCLUSION

In its 1976 Buckley vs. Valeo decision, the Supreme Court ruled that the provisions of the 1976 Amendments to the Federal Election Campaign Act providing for ceilings on the amount candidates for the House and Senate could spend on their campaigns was an unconstitutional restriction of free political speech. But the Court also said that the ceiling on campaign expenditures by presidential candidates was constitutional if presidential candidates accepted public financing. Earlier this year, H.R. 1 attempted to extend this quid pro quo (i.e., expenditures ceilings for public funds) to House elections by offering up to \$60,000 in public funds in exchange for a ceiling of \$195,000 in campaign expenditures.

H.R. 4970 offers no quid pro quo. It does establish a ceiling of \$50,000 on the total amount a candidate can receive from non-party PAC's. If the bill had been law in the 1978 elections, there would have been 176 instances of PAC's being

