

Potential Federal Campaign Finance Legislation on the Horizon

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With a Republican President taking office and unifying party control of the White House and Congress this year, major changes to the federal campaign finance laws may be on the horizon. The particular details and ultimate odds of passage of any such legislation remain uncertain at this time, especially because the Republican leadership and rank-and-file members are not monolithic in their views on many campaign finance issues. However, it would not be surprising to see legislative increases in the contribution limits and a rollback of restrictions on the state and national political party committees.

Sen. Ted Cruz (R-TX) and Rep. Mark Meadows (R- NC) fired the opening salvo before the 115th Congress had even convened, introducing a bill late last year to eliminate all monetary limits on individual and PAC contributions to federal candidates. Dubbed the "SuperPAC Elimination Act of 2017," the bill's title suggests an attempt to combat – according to some – the competitive monetary disadvantage that candidates have been put at in the age of super PACs. While independent groups may raise unlimited amounts to advocate for or against candidates, candidates themselves are still limited to raising campaign funds in increments of \$2,700 per individual or \$5,000 per PAC.

The Cruz-Meadows proposal would not put federal candidates at complete legal parity with super PACs, insofar as the bill would retain the prohibitions against using corporate and union treasury funds to make contributions to candidates. By contrast, super PACs generally are permitted to accept contributions from such sources, subject to certain prohibitions. The Cruz-Meadows bill also would require candidates to report within 24 hours all contributions received from any donors who have given more than \$200 to the candidate during

Authors

Caleb P. Burns
Partner
202.719.7451
cburns@wiley.law

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any calendar year.

While the total elimination of campaign contribution limits for candidates may seem like a radical idea, a tally done by the National Conference of State Legislatures in 2014 indicated that 12 states did not have any contribution limits. Missouri recently removed itself from those ranks when voters enacted contribution limits by ballot initiative during last November's election. (*Election Law News*, November 2016) Still, an increase in contribution limits has been the general legislative trend in states recently. According to a 2015 study by the Center for Competitive Politics, 15 states enacted increases in their contribution limits after the U.S. Supreme Court's *Citizens United* decision and a subsequent federal court ruling allowed for super PACs. Thus, even if the federal contribution limits are not eliminated altogether, it would not be surprising to see legislation to substantially increase the limits.

The last time the federal limit on individual contributions was increased by statute was in 2002, when the Bipartisan Campaign Reform Act (BCRA, also popularly known as "McCain-Feingold") doubled the preexisting \$1,000 limit on contributions to candidates, and also provided for automatic increases for inflation at the start of each two-year congressional election cycle. (BCRA also provided for increases in the limits on individual contributions to party committees.) However, as advocates for another legislative increase in the contribution limits note, the higher baseline limits enacted in 2002 still lagged behind the original limit enacted in 1974 after accounting for inflation. In addition, the \$5,000 limit on contributions from PACs to candidates has not been increased or adjusted at all since 1974.

Legislation to reverse some of the burdens that BCRA enacted on the national and state party committees also may be in the cards. At a high level of generality, there is broad support for making life easier for the party committees. Notably, even the Brennan Center for Justice, which typically favors stricter campaign finance laws, issued a report in 2015 expressing guarded support for easing several restrictions on parties.

Also in 2015, Federal Election Commission (FEC) Commissioner Lee E. Goodman introduced a proposal at the FEC to roll back some of the agency's rules restricting coordination between parties and candidates and "Federal Election Activities" conducted by state parties. U.S. Senate Majority Leader Mitch McConnell also pushed hard to attach a rider to the "omnibus" spending bill at the end of 2015 to facilitate coordination between parties and candidates. The FEC rulemaking has not proceeded very far due to disagreements between the agency's commissioners over the proposal's details and agency rulemaking priorities, while intraparty misgivings scuttled the omnibus rider.

Meanwhile, pressure continues to build against the funding straitjacket that BCRA imposed on the parties when it eliminated so-called soft-money contributions to them. Late last year, the U.S. Court of Appeals for the D.C. Circuit rejected a bid by the Louisiana state Republican Party committee to engage in so-called "Federal Election Activity" (FEA) free from federal regulation, so long as the activity is not coordinated with any federal candidates.

BCRA regulated many state party functions as FEA, such as conducting certain voter registration, voter identification, and get-out-the-vote drives and “generic campaign activity” that may coincide with federal elections. State parties are required to pay for FEA using funds raised within the federal contribution limits and source prohibitions, which are often much stricter than what is permitted under state law.

In addition, to prevent non-federal funds from being used to subsidize FEA, BCRA (and FEC regulations implementing) imposed complex accounting and recordkeeping requirements on state party committees’ use of federal and non-federal funds to pay their staff. These accounting and recordkeeping requirements have proven to be very difficult to understand and comply with not only by the state parties, but also by the FEC commissioners who have deadlocked several times on when and how to apply them.

Given the plethora of other major issues that are poised to be at the top of the policy agenda, campaign finance legislation may not see action during the first 100 days of the Trump Administration. But the prospects for a significant federal campaign finance bill to be enacted may now be at their highest since the last major legislative changes were made in 2002.