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THE FORGOTTEN FEW: CAMPAIGN FINANCE REFORM AND ITS IMPACT ON MINORITY AND FEMALE CANDIDATES

JASON P. CONTI*

Abstract: Campaign finance reform attracts intense political, academic, and media attention. The debate swirling around the McCain-Feingold legislation in 2001 is evidence of the power of the issue. Despite the intensity of the spotlight, commentators and politicians often overlook an important element of any proposed reform: diversity. This Note explores campaign finance reform from an under-explored angle: the impact proposed reforms would have on minority and female candidates. This Note explores the woefully inadequate diversity of representation in elective office and critiques numerous proposals for change from the perspective of a prospective minority or female candidate. This Note concludes that in order for the diversity of those holding elective office to better reflect the diversity of the nation as a whole, reformers must take the concerns of minority and female candidates into account and must institute publicly funded campaigns.

The two most important things in politics are money and I can't remember what the other one is.

—Mark Hanna

During every election cycle, politicians, incumbents and challengers trumpet the need for campaign finance reform. However, once the election cycle has ended and a large percentage of the politicians already in the House of Representatives and the Senate return to those bodies, the issue seems to face stiff opposition and insurmountable odds. Certainly, reform does not fail to occur because of a

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* Senior Articles Editor, BOSTON COLLEGE THIRD WORLD LAW JOURNAL (2001–2002).
1 Campaign Finance as a Civil Rights Issue, 43 HOW. L.J. 5, 11 (1999) (Samantha Sanchez, co-director of the National Institute on Money in State Politics, quoting former senator Mark Hanna (R-Ohio)).
2 Rachel Van Dongen & Amy Keller, Democratic Candidates Try to Rally Around Campaign Finance Reform, Pollsters Wonder Whether Issue Will Matter to Voters, ROLL CALL (D.C.), Aug. 10, 1998 (explaining that several Democratic candidates were trying to use campaign finance reform to their advantage in the 1998 mid-term election).
3 Tim Curran, Campaign Finance Reform Bill Besieged By Four Separate Democratic Factions, ROLL CALL (D.C.), May 17, 1993; Martin Van Der Werf, U.S. Senate Struggles with Campaign
lack of bills; in each Congress, a significant number of proposals are introduced presumably to bring about meaningful reform.\textsuperscript{4} Despite seemingly good intentions, with the exception of the campaign finance bill that passed the Senate in April 2001, campaign finance legislation usually does not leave its assigned committee, and the legislation that does manage a full vote in the House or Senate usually fails to gain a majority.\textsuperscript{5}

While there is no shortage of campaign finance reform legislation, the real problems with campaign finance laws, for the most part, are not being addressed within the blizzard of proposed legislation.\textsuperscript{6} Reformers hope to achieve several different intended goals when proposing a change, including controlling campaign costs and controlling where campaign money originates.\textsuperscript{7} However, the main goal of any real campaign finance reform must be to increase the competitiveness of congressional elections by attempting to level the playing field between incumbents and challengers.\textsuperscript{8}

While increasing parity between challengers and incumbents is an often-touted idea from reformers, particularly academics as op-

\textit{Finance Reform; Complex Plan to Set Spending Limits Spurs Bickering Between Democrats, GOP, ARIZ. REPUBLIC, June 14, 1993, at A1. Then Representative and current Republican U.S. Senator from Arizona Jon Kyle has said “This [the most recent campaign finance bill] proves there is nothing more difficult to get bipartisan consensus on than campaign finance reform.” See id.; PHILIP D. DUNCAN & CHRISTINE C. LAWRENCE, CONGRESSIONAL QUARTERLY’S POLITICS IN AMERICA 1998, THE 105TH CONGRESS 44 (1997) (listing Jon Kyle as the junior senator from Arizona).}


\textsuperscript{6} See KAREN O’CONNOR & LARRY J. SABATO, AMERICAN GOVERNMENT, ROOTS AND REFORM 461 (2d ed. 1996).

\textsuperscript{7} PAUL S. HERRNSON, CONGRESSIONAL ELECTIONS, CAMPAIGNING AT HOME AND IN WASHINGTON 244-45 (1995).

\textsuperscript{8} See id. at 244.
posed to entrenched incumbents, most reformers often overlook a significant factor: the effect of any proposed reform on minority and female candidates.\textsuperscript{9} Because of the dearth of minority and female politicians in Congress and in gubernatorial mansions across the country, minority and female candidates tend to start from the inferior challenger position.\textsuperscript{10} In addition to facing systemic dilemmas encountered by most challengers, minority and female candidates come to electoral contests with a host of unique disadvantages and concerns.\textsuperscript{11} It has long been known that the percentage of minorities and women in Congress is disproportionately low compared to the overall population; linking the problem to money, however, is a recent and under-explored area.\textsuperscript{12}

Part I of this article examines the dismally low representation of women and minorities in elective office, focusing on Congress because of its position as a feeder for higher office (i.e. the presidency). Part II details the monetary problems of all challengers and highlights the specific struggles faced by minority and female candidates. In ad-

\textsuperscript{9} See id.; Spencer A. Overton, \textit{But Some Are More Equal}: Race, Exclusion, and Campaign Finance, TEX. L. REV. (forthcoming 2002) (manuscript at 6, on file with author) [hereinafter \textit{But Some Are More Equal}]. Overton explains that, “Reformers’ class-based critique of the current campaign finance system is inadequate because race operates as a distinct political identity worthy of independent analysis in the campaign finance context.” Id. at 7. This article, while relevant to all people of color, focuses more on black candidates and politicians because there is limited information pertaining to other groups. See generally infra.

\textsuperscript{10} See \textsc{Barbara C. Burrell}, \textit{A Woman’s Place Is In the House}, \textsc{Campaigning for Congress in the Feminist Era} 106 (1994); \textsc{John Theilmann \\& Al. Wilhite}, \textit{Discrimination and Congressional Campaign Contributions} 153 (1991).

\textsuperscript{11} \textsc{Linda L. Fowler}, \textit{Candidates, Congress, and the American Democracy} 125 (1993). While the problems of minority and female candidates are not exactly the same, nor are the circumstances of individual candidates within these groups, minority and female candidates in general share similar ideological leanings and a disproportionately low number within Congress. \textsc{Id.}; \textsc{Burrell, supra} note 10, at 135; Terry Smith, \textit{Reinventing Black Politics}: \textit{Senate Districts, Minority Vote Dilution and the Preservation of the Second Reconstruction}, 25 HASTINGS CONST. L.Q. 277, 280–81 (1998). Fowler notes that, “In studies of roll call voting . . . female lawmakers are consistently more liberal than their male colleagues, even when party affiliation is controlled . . . Similar patterns are evident among African-American legislators, who have constituted the most liberal and cohesive voting block in the Congress.” \textsc{Fowler, supra}, at 125. Fowler explains that the sample of Hispanic and Asian legislators is too low to come to any reliable conclusions. \textsc{Id.} Also, Fowler points out that “women and ethnic minorities often bring different occupational backgrounds to Congress . . . life experiences [that] probably contribute to the differing agendas that women and ethnic minorities pursue in Congress . . .” \textsc{Id.} at 125–26; \textsc{Theilmann \\& Wilhite, supra} note 10, at 156–57.

\textsuperscript{12} \textsc{Theilmann \\& Wilhite, supra} note 10, at 57. The authors note that, “Numerous works investigate the impact of money on congressional campaigns, but only a handful . . . examine the impact of campaign funding on the election of blacks and women.” \textsc{Id.}
tion, Part III details several of the most popular campaign finance proposals, explaining how each proposal, if implemented, would impact minority and female candidates. Part IV focuses on the positive campaign finance reform experiment in Maine, a full public funding scheme, and also explores the force of politics in limiting reform. Finally, Part V of the article details the best and worst reform proposals with regard to female and minority candidates, and stresses the need for reformers to take the interests of minority and female candidates into account when devising any possible campaign finance reform.

I. CONGRESSIONAL COMPOSITION: THE MELTING POT

A. Minority Congressional Composition

The 2000 election included a record number of black candidates for federal office on major party tickets, a total of seventy candidates, an increase from fifty-seven in 1998.\textsuperscript{13} Despite the increase in candidates, however, the thirty-nine black members elected in 2000 to the 107th Congress equals the number of black members in the 106th Congress.\textsuperscript{14} Even worse, the only non-incumbent black candidate for a federal office who won in 2000 was William Clay, Jr. from Missouri, who won his House seat from his retiring father.\textsuperscript{15} Of the thirty-three black challenger or open-seat candidates in 2000, thirty-two of them lost—everyone except Clay.\textsuperscript{16}


\textsuperscript{14} Bositis, The Black Vote in 2000, supra note 13, at 3. The number thirty-nine represents thirty-seven voting members and two non-voting delegates. \textit{Id.} Non-voting delegates cannot cast votes on the House floor, but these representatives from Puerto Rico, the District of Columbia, Guam, American Samoa and the Virgin Islands enjoy most of the member privileges including office space, staffs, and the ability to vote in committee. ROGER H. DAVIDSON \& WALTER J. OLESZEK, CONGRESS AND ITS MEMBERS 27 (5th ed. 1996).

\textsuperscript{15} Bositis, The Black Vote in 2000, supra note 13, at 3.

\textsuperscript{16} \textit{Id.} Challengers are candidates who take on incumbents, and open-seat candidates are candidates that run for an office that does not have an incumbent seeking reelection. See Herrnson, supra note 7, at 16–17.
The Senate will again be without a single black member among its ranks.\(^\text{17}\) In addition, in the last six election cycles (every two years from 1990 through 2000), a span that has seen each of the 100 Senate seats come up for election twice (a total of 200 races) there have only been a total of ten black major-party nominees, representing less than 3\% of the overall total.\(^\text{18}\) In the 107th Congress, with 535 voting members in the House and Senate and five non-voting delegates, blacks comprise thirty-seven voting members, and two delegates, or 7.2\%.\(^\text{19}\) The 2000 census revealed that blacks comprise 12.1\% of the nation’s population, unchanged from the 1990 census.\(^\text{20}\)

On the state level, eleven major-party black candidates sought statewide elective office in 2000, down from twenty-five in 1998.\(^\text{21}\) Of the eleven candidates, four were winners.\(^\text{22}\) The four black victors included a public service commissioner in Georgia, a North Carolina Court of Appeals justice, North Carolina’s state auditor and the Texas railroad commissioner.\(^\text{23}\)

The dismal representation level of Hispanics has become that much more apparent since the release of the minority percentage breakdown from the 2000 census.\(^\text{24}\) The Hispanic population grew by


\(^{18}\) See *Bositis, The Black Vote in 2000*, supra note 13, at 8. The 200 races with 400 candidate slots include incumbents, so there have not been 400 different candidates. See id.

\(^{19}\) See id. at 3. In the thirty-two districts in the nation that have the highest percentage of blacks, twenty-nine are represented by black representatives. See John Mercurio, *House GOP Back to 6-Seat Majority*, Roll Call (D.C.), June 21, 2001.


\(^{22}\) Id. The four winners included a Georgia Public Service Commissioner, a North Carolina Court of Appeals justice, a North Carolina State Auditor, and a Texas Railroad Commissioner. *Id*.

\(^{23}\) Id.

\(^{24}\) See Schmitt, *For 7 Million People in Census*, supra note 20, at A1. The term Hispanic, as defined by the United States Census Bureau, includes Hispanics or Latinos of any race, including general categories labeled Mexican, Puerto Rican, Cuban, and other Hispanic or Latino. See *Summary File 1; 2000 Census of Population and Housing*, United States Census
about 58% compared to the 1990 census and for the first time has surpassed blacks as the largest minority group.25 Hispanics went from comprising 9.3% of the population to comprising 12.5% following the 2000 census.26 Despite the rise, there are only twenty-one Hispanic representatives in the House, about 4.8% of the total.27

B. Women in Congress: A Slow Climb

In the 2000 election, the ranks of women in Congress swelled to a record number.28 Following the 2000 election, the Senate includes thirteen women, which is an increase of four women over the last Congress.29 Every woman who received a major party nomination for the Senate in the year 2000 won in the general election.30 In addition, the House has a record number of women serving in the 107th Congress, swelling to sixty women as well as two non-voting delegates.31 The fifty-four incumbent female representatives are joined by eight new women in the House; five female candidates won open-seat elections in 2000, two beat incumbents in 2000, and one won a special election in June 2001.32 The sixty-two members in the House (sixty


26 Id.


29 See id. The new members of the Senate include Maria Cantwell, D-Wash., Jean Carnahan, D-Mo., Hillary Rodham Clinton, D-N.Y., and Debbie Stabenow, D-Mich. Id. Three incumbent female senators were reelected in the year 2000: Dianne Feinstein, D-Cal., Kay Bailey Hutchinson, R-Tex., and Olympia Snowe, R-Me. Id.

30 Id.


32 Ayres, supra note 31, at A14; Election 2000, supra note 28. All female incumbents who ran for re-election won. Election 2000, supra note 28. One of the two female candidates who managed to beat an incumbent, Democrat Jane Harman in California, had been a congresswoman from the district until 1998 when she gave up her seat to run for governor of California, lost in the gubernatorial Democratic primary, and then reclaimed her seat in 2000. The Pacific, WASH. POST, Nov. 9, 2000, at A40.
voting members and two delegates) as well as the thirteen senators is roughly 13.9% of the total 535 voting members and five non-voting members of Congress. Every census since 1950 has shown that women outnumber men, and the 2000 census was no different; women make up 50.9% of the nation’s population.

In the states, a record number of women are serving as governors. The five female governors following the 2000 election included two incumbents who did not face an election, one incumbent who won re-election, and two newcomers. In addition, women also serve in a number of other statewide elective offices. Despite other gains, however, the number of women in state legislatures after the 2000 election dropped slightly from 22.5% to 22.3%.

33 See Election 2000, supra note 28. One of the sixty-two female members in the House was recently elevated to the highest position a woman has held in either House of Congress in U.S. history. See Adam Clymer, A New Vote Counter; Nancy Patricia Pelosi, N.Y. TIMES, Oct. 11, at A18. Pelosi’s, D-Cal., Democratic colleagues elected her to the number two spot, House Democratic Whip, second only to House Minority Leader Richard A. Gephardt, D-Mo. Id.

34 Mary Beth Schneider, Women Still Hold Majority, but Not Their Share of Power; Females Are Not Common in Leadership Positions Despite a Half-Century of Change, INDIANAPOLIS STAR, May 27, 2001, at A1. This represents a slight drop from the 1990 census, when women comprised 51.3% of the general population. Id.


36 Id. Jeanne Shaheen in New Hampshire won re-election, and Ruth Ann Miller (D) in Delaware and Judy Martz (R) in Montana won for the first time. Id. Jane Dee Hull (R) of Arizona and Christine Todd Whitman (R) of New Jersey did not face an election. Id. Whitman left her gubernatorial post before her term ended, however, to serve as head of the Environmental Protection Agency in the Bush administration. David M. Halbfinger, DiFrancesco Sworn In as Acting Governor, N.Y. TIMES, Feb. 1, 2001, at B5; Glen Johnson, A Divided Panel Backs Ashcroft, Key Opponents of Bush Choice Hoping for 40 Votes Tomorrow, BOSTON GLOBE, Jan. 31, 2001, at A1. With Whitman’s departure, Senate President Donald T. DiFrancesco (R) became the acting governor of New Jersey, reducing the female gubernatorial total to four. Halbfinger, supra, at B5. However, the number returned to five when Massachusetts Lieutenant Governor Jane M. Swift (R) became the first female governor in the state’s history when she was sworn in as acting governor to replace Governor Paul Cellucci (R), who left to be the U.S. ambassador to Canada. Frank Phillips, Transfer of Power; ‘Her Excellency’ Swift Is First Woman to Serve as Mass. Governor, BOSTON GLOBE, Apr. 11, 2001, at A1.

37 Election 2000, supra note 28. Following the 2000 election, CAWP listed eighty-four statewide elected officials including sixteen lieutenant governors, eight attorney generals, thirteen secretaries of state, eleven state treasurers and a host of other positions. Id.

38 Id. Of 2229 female candidates for state legislatures in 2000, preliminary results showed that 1388 won, which added to the 269 already elected female state legislators, bringing the number to 1656 women, or 22.3% of the total. Id. The ten state legislatures that have the highest percentage of female representatives range from Connecticut’s 28.9% to the highest percentage of 39.5% in Washington state. Id. The ten states with the lowest percentage of women in state legislatures range from 15.7% in Virginia, down to the 50th state for female legislators, Alabama, with 7.9% of the total. Id.
C. Congressional Diversity: A Limited History

The under-representation of minorities and women in Congress has improved but not at a precipitous rate.\(^{39}\) As Fordham University School of Law Professor Terry Smith points out, in the 208-year history of the Senate, there have been only four black senators, five Asian senators, and only three senators who appear to have Hispanic surnames.\(^{40}\) Smith paints a somewhat rosier picture of the historical composition of the House, noting that the percentages of minorities in the House has risen since redistricting following the 1990 census.\(^{41}\) However, despite the rise, as of 1996, fewer than 100 blacks had served in the House and Senate combined throughout the nation's history.\(^{42}\) Women have enjoyed a slow yet steady climb in the number of female office-holders, increasing in the House from 2.5% of the total in 1967, to about 14% of the House following the 2000 ele-

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\(^{39}\) See BURRELL, supra note 10, at 135; Smith, supra note 11, at 280–81.

\(^{40}\) See Smith, supra note 11, at 281. The four black senators in the nation's history include two from Reconstruction, Hiram Rhodes Revels, R-Miss., and Blanche Kelso Bruce, R-Miss., and only two from this century, Edward William Brooke (R) who served in the late 1960s and throughout the 1970s from Massachusetts, and Carol Moseley-Braun (D), elected in 1992 from Illinois, and defeated by a white, male Republican in 1998. Id.; Campaign Finance as a Civil Rights Issue, supra note 1, at 18.

\(^{41}\) Smith, supra note 11, at 281. Prior to redistricting in 1990, blacks made up only 4.9% of Congress and Hispanics made up 2.5% (compared to voting age populations of 11.1% and 7.3% respectively). Id. Following the redistricting effort to make more majority-black and majority-Hispanic districts, numbers jumped to 8% black, 4% Hispanic, 1% Asian and .2% Native American. Id. However, current numbers show that since the post-1990 spike in percentage, the number of black representatives in the 107th Congress has actually fallen to 7.2%. See Bositis, The Black Vote in 2000, supra note 13, at 3.

\(^{42}\) DAVIDSON & OLESZK, supra note 14, at 125. The authors note that no blacks served in Congress from 1900 through 1928, and in the next twenty-five years only three blacks were elected. Id. Even in modern races involving minorities, some commentators blame race as the deciding factor. See Mercurio, supra note 19. A June 19, 2001 special election in Virginia pitted two state senators against one another: a white Republican, Randy Forbes, and a black, female Democrat, Louise Lucas. Id. Forbes won 52% to 48%, prompting some to suggest the “defeat resulted from lingering racism in a state that has only elected one black House Member . . . since Reconstruction.” Id. Mercurio quotes Rep. Maxine Waters, D-Cal., as saying, “Clearly the difference here was race . . . . [S]he had all the qualifications. She fit that district, except for race.” Id.
tion. However, as of 1996, less than 200 women had been elected or appointed to Congress.

Despite the noted gains in the percentages of minorities and women in Congress, the percentage of each in relation to the overall population is still grossly disproportionate. Minorities and women in Congress are so rare in fact, that this year a Pennsylvania congresswoman challenged a black female representative's right to travel on a "members only" elevator not realizing that she was a member of Congress. In order to raise the percentages, minority and women candidates will either have to wait for more open seats to become available, which does not occur at a precipitous rate, or beat incumbents.

II. Money Gets in the Way

A. Financial Problems Faced by Challenger Candidates

The problems faced by challengers, regardless of race or gender, is no secret in politics. David E. Price (D), a congressman from North Carolina first elected in 1986, has said that he knew when he

43 BURRELL, supra note 10, at 8. The author includes a chart detailing the percentage and number of women in the House, rising from 2.5%, or eleven members in 1967, to forty-seven members, 10.8% in 1993, the last year listed. Id. The percentage following the 2000 election is calculated similar to Burrell's numbers which do not include non-voting members. Id. In the 107th Congress, there are sixty female voting members of the House out of 435 members. See Ayres, supra note 31, at A14; Election 2000, supra note 28.

44 See DAVIDSON & OLESZEK, supra note 14, at 125. The authors note that as of 1996, "somewhat more than 150 women have been elected or appointed to Congress." Id. The rise of women in Congress began with Jeannette Rankin (R), first elected from Montana in 1916. Id.

45 See supra Section I.

46 See Schneider, supra note 34, at A1. The black congresswoman Rep. Julia Carson, D-Ind., said that Rep. Melissa Hart's, R-Pa., comments "really didn't impact me that much; it's not my first time at the rodeo." Id.

47 DAVIDSON & OLESZEK, supra note 14, at 64–65. The authors include a table showing the number of incumbents seeking reelection every two years for the last fifty years. Id. The fifty-year average is that 397 members of the House seek reelection and 29.1 members of the Senate do so (out of the roughly one-third up for reelection every two years). Id. These numbers equate to approximately 91% of incumbents in the House and approximately 87% of incumbents in the Senate who seek reelection. See id. With only 9% of the House seats and 13% of the Senate seats opening up in any given election cycle, it would take a long time to reach parity with regard to minorities and women by just relying on seats opening up as opposed to challenging incumbents who do seek reelection. See id.

decided to run that the odds of beating an incumbent were long at best: In each election from 1966 through 1984 (except for one), general election success rates for House incumbents were 92% or higher.49

While there are numerous reasons for incumbent success,50 certainly the financial advantage ranks among the most prominent.51 Price recalls how difficult it was to raise initial dollars to run for office, a process that made him understand why many qualified candidates simply will not jump through the political hoops necessary for success.52 Fundraising is so important that the only way challenger candidates can overcome the advantages of incumbency is to amass a gigantic war chest to support their effort.53 In order to amass the necessary funds, challengers face the equally unenviable prospects of either gathering large sums of money from individual donors and/or dipping into their personal funds.54 In short, the most effective steps towards attempting to unseat an incumbent involve elements that the average challenger cannot or will not do.55

49 See id. at 10–11. Price said a number of contributing factors, including the district’s volatility and the incumbent’s narrow win the election before, led to his decision to run. Id. at 11. O’Connor and Sabato explain that high reelection rates are the norm, ranging well above 90% in most election years in the House. O’CONNOR & SABATO (3rd ed.), supra note 5, at 360–61. However, the authors note that there is more chance for turnover in the Senate for various reasons, with incumbent reelection rates going as low as 60% in 1980. Id. at 361. However, the 1994 election, which has been regarded as a landslide because Republicans won enough seats to take back the Senate and the House, still saw a reelection rate for incumbent representatives and senators of 90%. Id.

50 O’CONNOR & SABATO (2d ed.), supra note 6, at 419. The reasons for incumbent success include a high name recognition because they are already in office, additional access to the media because of the nature of their position, which lends itself to many high-profile events, and the fact that “every year the average member of the U.S. House of Representatives expends about $750,000 in taxpayer funds to run the office. Much of this money directly or indirectly promotes the legislator by means of mass mailing or constituency services.” Id.

51 Price, supra note 48, at 28. Price notes that, “There are many reasons for the advantages congressional incumbents enjoy, but the status quo orientation of political finance surely ranks high on the list.” Id.

52 Id. at 27.


54 See Price, supra note 48, at 14; Sunstein, supra note 53, at 1402. Price says that during his first campaign for Congress in which he was a challenger, in order to raise the needed cash, “we did what we had said we would never do—we took out a $45,000 second mortgage on our home.” Price, supra note 48, at 14.

55 HERRSON, supra note 7, at 142. The author explains that the best process to follow to amass the necessary funds starts with challengers donating or loaning the initial funds needed. Id. The challengers will then ask relatives, friends, colleagues, local activists, and anyone else they can think of to donate funds to their campaign. Id. Only after there has
Even if challenger candidates do amass the needed amounts of cash to mount a serious challenge, these candidates still do not perform as well as one might think. Studies have shown that throughout the years, there is a "reasonably strong and positive relationship between the amount of money spent by challengers and the share of the vote they received." One study conducted by Professor Gary W. Copeland has shown that the expected vote totals for challengers is, in the words of the author, "truly depressing." Copeland’s study shows that the average House challenger in 1998 spent about $300,000, and the predicted vote total at that level of spending was only 39.1%. In terms of predictive vote total based on spending, a House challenger who spent $1,000,000 received 43.1%; a challenger who spent $2,000,000 received 45.4%, which is "within striking distance." In order for the predicted vote total to have been more than 50%, a House challenger would have had to spend $8,000,000. The findings confirm what has for a long time been intuitively known in politics: "Few challengers have the capacity to spend the amount of money necessary to beat an incumbent."

B. The Never-Ending Struggle: Minority Candidates and Campaign Cash

Minority candidates, specifically challenger minority candidates, raise much less money than white candidates, ultimately leading to less success on election day. Jamin Raskin and John Bonifaz, in a *Yale Law and Policy Review* article, note that while the creation of majority-minority districts in which black or Hispanics comprise more than

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56 Price, *supra* note 48, at 28. Table 2.1 shows congressional challengers funding levels and outcomes from 1984 through 1990. *Id.* Well-funded challengers, those with over $300,000, numbered 180 during the four elections; only ninety-six (slightly over 50%) polled at least 45% in the general election. *Id.* And of the well-funded challengers, only thirty-five (or slightly over 19%) won their race. *Id.* In the four elections, only seven challengers who raised under $300,000 won. *Id.*


58 See *id.* at 20.

59 *Id.*

60 *Id.* at 20, Table 3.

61 *Id.*


50% of the population has increased black and Hispanic representation in Congress, it seems likely that private financing of political campaigns “now systematically favors white candidates and white interests over minorities” in statewide races and races in majority-white districts.64

In 1994, both Ron Sims (D), a county official in Seattle, and Alan Wheat (D), a congressman from a Kansas City district that was 75% white, ran for the Senate as viable black candidates.65 While Sims ran in Washington against an incumbent, and Wheat ran for an open seat in Missouri, both candidates fell far behind their opponents in the fundraising race.66 Despite running viable campaigns, both candidates lost to white candidates by sizable margins.67 In addition, a fierce 2000 congressional race in Kentucky involved a white incumbent, Anne Northup (R), outspending her black opponent, Democratic Representative Eleanor Jordan, by a margin of almost two to one.68 In that race, described as a bell-weather because both candidates were in-

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64 Id.
66 Id.
67 DUNCAN & LAWRENCE, supra note 3, at 818, 1518. In Missouri, John Ashcroft, former governor, beat Wheat by a margin of 60% to 36%, in a race in which, “Wheat’s effort in the primary depleted his finances, and he showed little strength among the rural whites critical to the party’s statewide majorities.” Id. at 818. In addition, during the campaign, some accused Ashcroft of highlighting Wheat’s race. Cooper, supra note 65, at A12. Cooper notes that E. Terrence Jones, a political scientist at the University of Missouri-St. Louis, “suggested that Ashcroft has tapped into a ‘subtle racism’ because ‘each of Ashcroft’s ads has had a picture of Alan [Wheat] in it, not too flattering, and clearly indicating his race,’” a charge Ashcroft denied. Id. In Washington, incumbent Senator Slade Gorton (R) beat Sims 56% to 44%, “a virtual landslide for the man who was defeated for re-election in 1986 only to narrowly win the state’s other Senate seat two years later.” DUNCAN & LAWRENCE, supra note 3, at 1517–18. In addition, Carol Moseley-Braun, a black Senator from Illinois, lost her reelection bid in 1998 to Peter Fitzgerald who spent $18 million from his own pocket. Campaign Finance as a Civil Rights Issue, supra note 1, at 18–19. William McNary, co-director of Citizen Action/Illinois, notes that Fitzgerald “refused to campaign in African-American districts or African-American areas” and characterizes Moseley-Braun, who raised $14 million, as unable “to raise enough money to defend herself.” Id.
68 Mary Leonard, Campaign 2000/Congress; Women Candidates Fierce, Financed, BOSTON GLOBE, Nov. 5, 2000, at A37. Leonard notes that Northup, collected almost $3 million for the campaign, while Jordan, raised more than $1.6 million. Id. Northup wound up winning the election by a comfortable margin, 53% to 44%. Al Cross, Election 2000; Kentucky; 3rd Congressional District; In Big-Money Race, Rep. Northup Wins Big, COURIER-JOURNAL (Louisville), Nov. 8, 2000, at 5X.
tense competitors, Jordan accused Northup of “using subtle racial slurs to malign her.”

While each race comes with its own dynamics and it is difficult to generalize why black candidates do not do as well as white candidates, some have noted that a large contributing factor is the small amount of money blacks are willing or able to donate to campaigns. Many studies have shown that black candidates have a harder time raising funds than white candidates. One of the first major and often-cited studies of campaign funds and minority candidates comes from John Theilmann and Al Wilhite in their book *Discrimination and Congressional Campaign Contributions.* The authors note that aggregate campaign contributions to black candidates in general, when adjusted for various variables, on average resulted in a shortfall that ranged from $7000 to $30,000, meaning, “Apparently, being a black candidate in 1988 reduced a candidate’s campaign contributions by nearly $30,000.” As for individual contributions, Theilmann and Wilhite also note that black candidates face significant obstacles in cobbling together campaign donations. The authors’ research led them to two conclusions: First, individuals “appear to discriminate against black candidates,” and second, black candidates are more dependent on smaller contributions, which means higher costs trying to recruit additional small donations.

Theilmann and Wilhite’s findings have been expanded upon in studies that continue to show that minority candidates have a more difficult time raising money to run for office. The results of the 1994 elections show a sobering picture for minority candidates: The average winning white candidate for the House during the 1994 election

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69 See Leonard, *supra* note 68, at A37. Jordan noted that she was pictured as an “angry black woman” in many of Northup's advertisements. *Id.*

70 Cooper, *supra* note 65, at A12. Cooper quotes Michael Brown, political director of AMERICA's Fund, a group that supports minority candidates, as saying, “Traditionally, we people of color have not written the kind of checks other people do.” *Id.*


72 See generally Theilmann & Wilhite, *supra* note 10.

73 *Id.* at 76–77.

74 *Id.* at 145–46.

75 *Id.* at 146.

received $562,000, while the average successful black and Hispanic candidates raised less than two-thirds of that figure.\textsuperscript{77}

In addition, Public Campaign, a non-profit, non-partisan group dedicated to campaign finance reform, conducted a study entitled \textit{The Color of Money} that examined the sources of individual campaign contributions with respect to race during the 1996 federal election.\textsuperscript{78} The organization used zip code data from federal campaign reports and information from the U.S. Census to show that areas with the highest percentages of blacks do not give at the same rates as localities where whites comprise the majority.\textsuperscript{79} Public Campaign notes that because people of color tend to have "less wealth and lower incomes than whites in general," it is to be expected that their giving levels are also lower.\textsuperscript{80} While much of Public Campaign's findings tend to pit figures from the highest giving areas against figures from areas with a majority of people of color (not exactly a fair comparison), the numbers still show a disturbing disparity.\textsuperscript{81}

Finally, a survey of donors who gave over $200 to the 1996 congressional campaign showed that less than one percent identified themselves as people of color.\textsuperscript{82} In general, all the evidence seems to point to one conclusion: Candidates of color raise less money.\textsuperscript{83} Given that the top-spending candidate in the 1998 House elections won 95\% of the time, candidates with an inherent disadvantage in raising campaign cash will have a much more difficult time winning elections.\textsuperscript{84}

\textsuperscript{77} Shanahan, \textit{supra} note 71, at 9.
\textsuperscript{78} See generally \textit{The Color of Money}, \textit{supra} note 71.
\textsuperscript{79} Id. at 1 (Executive Summary). There are 2500 zip codes with over 50\% people of color totaling about 41 million people. \textit{Id.} In those areas, eight out of 10,000 people gave over $200, compared to the twenty-six top-giving zip codes in which more than four in 100 gave a contribution, and the national participation rate which is about two per 1000, or twenty per 10,000. \textit{Id.}
\textsuperscript{80} See \textit{id.} at 1 (Intro.).
\textsuperscript{81} \textit{Id.} at 1–2 (Intro.). Some of Public Campaign's findings include: The twenty-six zip codes that gave the most money to candidates, parties, and PACs during 1995–96 gave about the same number of contributions as all 2492 zip code areas in which people of color make up 50\% or more, even though the population of the 2492 zip codes is sixty times greater than the twenty-six highest-giving zip codes. \textit{Id.} at 2. Zip code 10021 in New York, whose 107,000 residents are 91\% white, gave $9.3 million, while the 9.5 million residents of the 483 communities that are more than 90\% people of color gave $5.5 million. \textit{Id.} at 1 (Executive Summary).
\textsuperscript{83} \textit{Campaign Finance as a Civil Rights Issue}, \textit{supra} note 1, at 12.
\textsuperscript{84} See \textit{id.} at 13.
C. Women’s Fundraising Prowess

The ability of female candidates to collect campaign contributions is much greater than that of minority candidates, and in some circumstances, better than that of white, male candidates. However, this does not mean that female candidates do not face fundraising challenges that keep their numbers in Congress much lower than their 50% share of the population. Theilmann and Wilhite concluded that aggregate funding received by women was not significantly different than male candidates’ funding. However, although women were found to be at less of a financial disadvantage, the authors’ determination of a “total impact” of race and sex found that “black and female candidates suffer indirect discrimination” when it comes to fundraising. Furthermore, the authors conclude that “racial and sexual contribution differentials” will impact elections and the make-up of Congress regardless of the intent of the contributor, ultimately making further sexual and racial integration of Congress “an arduous task.”

Despite such empirical evidence that shows women are able to compete in attracting campaign donations, some experts still suggest that the very nature of being a female candidate puts a politician at a disadvantage. Susan Carroll, in her book *Women as Candidates in American Politics*, starts with the assumption that women have difficulty in raising funds and then attempts to explain the reasons. While Carroll acknowledges that men also face fundraising problems, she notes that there are several reasons why raising funds is particularly difficult for women. First, Carroll notes that women “may face

85 Shanahan, *supra* note 71, at 9. The average winning female candidate in the 1994 election raised $680,000, significantly more than the average successful male candidate’s total of $562,000. *Id.* This statistic is not conclusive, however, given that this could mean a higher percentage of female incumbents faced stiff competition causing them to raise more campaign cash, fewer male incumbents faced stiff competition, or a whole host of other possibilities. See *id.*

86 See *Burrell, supra* note 10, at 128; Schneider, *supra* note 34, at A1. Burrell notes that although total amounts raised and spent from various sources have equaled or exceeded male candidates, money is still a problem because “so few women have been able to run as incumbents.” See *Burrell, supra* note 10, at 128.

87 Theilmann & Wilhite, *supra* note 10, at 152.

88 See *id.* at 154, 162.

89 *Id.* at 156–57.


91 See *Carroll, supra* note 90, at 49–50.

92 *Id.* at 50.
greater psychological barriers” in asking for money because of past socialization roles that did not expect women to be breadwinners.93 In addition, Carroll argues that many women are not tuned into “occupational and social networks” that can prove invaluable when trolling for dollars.94 Finally, Carroll contends that women are not as accustomed to giving money to politicians and therefore female candidates have a hard time raising money from other women.95

While the inherent problems women face may have an impact on their ability to collect campaign donations, recent studies have not reflected any perceived difficulty in raising funds.96 However, other commentators have noted that such difficulties may not be reflected in empirical fundraising data because gender may hinder candidates in the earlier stages of the recruitment process.97 Some have suggested that female candidates in the early stages of a race may face problems with soliciting donors, with gaining the support of party elders, or with primary voters who may tend to be different kinds of voters.98

Despite the conflicting and tenuous conclusions regarding female candidates’ ability to attract campaign donations as compared to males, no one questions the unusually low percentage of female members of Congress as compared to the general population.99 In addition, the vast majority of large donors to political campaigns are men rather than women.100 Given this low percentage of representation, the fact that men are more likely to contribute to campaigns, and the fact that there appears to be inherent differences in male and

93 Id.
94 Id.
95 Id. at 51. Carroll quotes Suzanne Paizis, author of the rather dated 1977 book Getting Her Elected: A Political Woman’s Handbook, as saying “While ‘she’ is writing a $5 check for her favorite woman candidate (and considering that a sizable donation), ‘he’ is writing a $50 or $500 check for the candidate of his choice (usually male).” Id. In addition, Carroll notes that female candidates in a 1976 study most often cited money as a major problem, invoked by 58% of congressional candidates and almost 53% of statewide candidates. Id. at 51-52.
96 THEILMANN & WILHITE, supra note 10, at 152; Shanahan, supra note 71, at 9.
97 FOWLER, supra note 11, at 129. Fowler cites Carroll as suggesting that the general election may reflect equality for women, but the discrimination may actually be present in the nomination stage or earlier. Id.
98 Id. Fowler notes that little research has been done in this area, making concrete conclusions with regard to female candidates’ ability to raise money a difficult proposition. See id.
100 Miller, Guess What?, supra note 82, at 5. Miller points out that a survey of donors who gave over $200 were 80% male. Id.
female candidates’ fundraising (if not in aggregate donations than in the source of those donations), it follows that female candidates in general will feel the effect of reform in ways different than male candidates.101 Terry Smith concludes that, “the current system of campaign finance discriminates against women . . . [and] is unable to foster even symbolic diversity.”102

In addition to female candidates’ problems, minority candidates appear to face a host of fundraising problems that differ from those of the average white, male candidate, meaning that these candidates also will experience different effects as the result of reform than the average candidate.103 Because of these unique differences, it is essential for any campaign finance reform proposal to alter the laws to promote the election of minority and female candidates rather than inadvertently hinder their prospects.104

III. An Abundance of Proposals

A. Attacking a Key Element to Success: Political Action Committees

Political Action Committees (PACs) are one of the primary targets when reformers look to alter the current campaign finance sys-

101 See THEILMANN & WILHITE, supra note 10, at 149. There is some evidence that individual contributors are hostile to women, but in general it appears as though women collect a good percentage of their money from individual contributors, which means more time spent on fundraising activities. Id.

102 Terry Smith, Parties and Transformative Politics, 100 COLUM. L. REV. 845, 865 (2000). Articles on women in politics regularly cite money as a barrier for female candidates. See William March, Women Set to Launch Challenge, TAMPA TRIBUNE, Aug. 19, 2001, at 1. March notes that, “several experts agree that money is one problem for many female candidates of both parties . . . Women are more likely to come to politics from civic or community activities than business, and may therefore have less access to fundraising networks . . . .” Id. Indeed, the general notion even in smaller political markets is that women have a harder time raising campaign cash. Kimberly Marselas, Women Succeeding in Political Arena, MARYLAND GAZETTE (Glen Burnie), Mar. 28, 2001, at A1. Marselas notes that, “Female candidates, if they can win the support of their party, still lag behind men when it comes to getting financial backing.” Id.

103 See THEILMANN & WILHITE, supra note 10, at 76–77; Shanahan, supra note 71, at 9; Vogel, supra note 71, at 3B. See generally The Color of Money, supra note 71.

104 See THEILMANN & WILHITE, supra note 10, at 156–57; Sunstein, supra note 53, at 1390. Theilmann and Wilhite explain that with the current campaign finance structure, “further sexual and racial integration of Congress will be an arduous task,” indicating that the already delicate situation must be factored when weighing a change. See THEILMANN & WILHITE, supra note 10, at 156–57. Sunstein’s article warns that campaign finance reform needs to avoid joining the list of regulations and legislation that have resulted in unintended consequences. See Sunstein, supra note 53, at 1390.
In order to understand what altering PACs would do to female and minority candidates, it is important to understand what PACs are and how they function.

Political committees are required to register with the Federal Election Commission (FEC) and are subject to limits on campaign contributions and sources of contributions. PACs are political committees that may be eligible for multicandidate political committee status, which brings with it an ability to donate more money. Multicandidate political committees can make contributions to any candidate or to their committee in any federal election up to $5000, not more than $15,000 in a calendar year to any political committee maintained by a national party, and up to $5000 per year to other political committees, including local and state party committees.

PACs also employ another method to aid their candidates of choice: bundling. In essence, bundling allows a group to collect a

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105 CAMPAIGN FINANCE REFORM, A SOURCEBOOK 159 (Anthony Corrado et al. eds., 1997). Steven F. Stockmeyer, former executive director of the National Association of Business Political Action Committees, a collection of over 120 PACs, told the Committee on House Oversight in 1995 that “PACs have become the whipping boy of the campaign finance debate. For 20 years, professional reform groups have engaged in a McCarthy-like attack on PACs and this narrow view has been repeated by an unquestioning media.” Id.


107 Federal Election Commission, 11 C.F.R. § 100.5(e)(3); CAMPAIGN FINANCE REFORM, A SOURCEBOOK, supra note 105, at 6. The term “multicandidate committee” means:

a political committee which (i) has been registered under section 303 [USCS § 433] for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.


108 2 U.S.C. § 441a(a)(2). The term “election” with regard to the above statute, and all parts of the statute that mention election, is defined as:

(A) a general, special, primary, or runoff election; (B) a convention or caucus of a political party which has authority to nominate a candidate; (C) a primary election held for the selection of delegates to a national nominating convention of a political party; and (D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

2 U.S.C. § 431(1)(A)-(D). This means, for instance, that the contribution limit of $5000 per multicandidate political committee to any given candidate per election allows a committee to give $5000 in the primary and another $5000 in the general election and in any special or runoff election that includes that candidate. See id.; 2 U.S.C. § 441a(a).

109 See 2 U.S.C. § 441a(a)(8). The provision states:
large number of donations from a sizable group of donors, bundle them together, and present them to a candidate.\textsuperscript{110} This loophole requires certain reporting criteria for “earmarked” donations.\textsuperscript{111} Earmarked donations are those in which there is “a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized committee.”\textsuperscript{112} Reporting of such earmarked contributions requires that the conduit or intermediary report to the FEC and the recipient candidate the donor’s name and mailing address, and for individuals making contributions over $200, their occupation and employer.\textsuperscript{113} The recipient then must report any conduit that provided one or more earmarked contribution over $200, the total amount of contributions from the conduit, and the information identifying individuals giving more than $200.\textsuperscript{114}

The FEC regulations alter this structure if it is determined that the conduit exercised “direction or control” over the choice of the recipient candidate; if no “direction or control” exists, then there is no effect on the conduit’s contribution limit to the candidate; however, if the FEC determines there was “any direction or control,” the contribution will count against the limits of both the individual and the conduit.\textsuperscript{115} The term “direction or control,” however, appears meaningless in light of the District of Columbia Court of Appeals decision in Federal Election Commission v. National Republican Senatorial

For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

\textit{Id.} \textsuperscript{110} See \textit{id.}; Curran, \textit{supra} note 3.


\textsuperscript{112}Id. § 110.6(b) (1) (2000).

\textsuperscript{113}Id. § 110.6(c) (1) (i), (iv) (A).

\textsuperscript{114}Id. § 110.6(c) (2) (i)–(ii).

\textsuperscript{115}Id. § 110.6(d) (1)–(2).
Committee, in which the court found no "direction or control" when a national party helped a small, defined number of candidates.  

Fred Wertheimer and Susan Weiss Manes, Common Cause's former president and former vice president for issue development, respectively, note that most people believe that PACs were created out of the reform of the federal campaign finance laws in 1974, when in reality PACs have been around since the 1950s. However, the 1974 amendments, which allowed entities with government contracts to operate PACs for the first time, paved the way for the explosion in the number of PACs today. The number of PACs grew to 4079 in 1996, more than six times the number in 1974.

The rise of PACs and their supposed negative influence on the electoral process has caused reformers to propose a plethora of changes to the current campaign finance laws, ranging from nibbling on the edges to a complete ban of all PACs. Some reform proposals have merely suggested reducing PAC contribution limits from the current $5000 to any given candidate in any given election to a lower amount, thus reducing their ability to give significant sums of money to candidates.

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116 See 966 F.2d 1471, 1478 (D.C. Cir. 1992); Wardle, supra note 111, at 541–42. In this case, the National Republican Senatorial Committee (NRSC) pre-selected four 1986 Senate candidates and proceeded to solicit donations on their behalf. FEC, 966 F.2d at 1473. The Committee sent out letters saying it would divide the money equally among four candidates, only giving their states and not their names. Id. The court said this was not "direction or control." See id. at 1478. Since this decision, there has been an increase in the number of political interest organizations that have supported federal candidates by bundling. Wardle, supra note 111, at 558.

117 Fred Wertheimer & Susan Weiss Manes, Campaign Finance Reform: A Key to Restoring the Health of Our Democracy, 94 COLUM. L. REV. 1126, 1136 (1994) (pointing out the common misconception about the history of PACs).

118 Id. at 1136–37. The authors explain that there was nothing accidental or coincidental by the explosion in the number of PACs—the 1974 provision, later amended by a 1976 provision, "was designed by special interests to protect PACs and to enhance the role of PACs and was not proposed or enacted as a reform." Id. at 1136 n.55, 1137.

119 O'CONNOR & SABATO (3d ed.), supra note 5, at 336.


121 H.R. 151, 107th Cong. (2001). One of the provisions in Rep. Thomas E. Petri's, R-Wis., bill includes reducing the maximum PAC contribution from $5000 to $2000. Id. § 8; Curran, supra note 3. The article explains that President Clinton's campaign finance reform legislation in 1993 had originally considered lowering the $5000 limit for PACs, and also notes that the bill at the time included a provision to lower PAC contributions to $2500 in Senate races. See Curran, supra note 3.
Other reform proposals have been more significant, including the complete ban of political action committees’ ability to give money to candidates.\textsuperscript{122} This reform, although proposed, may not be a viable reform as even proponents of the idea admit that it may be found unconstitutional because it would restrict political speech.\textsuperscript{123} Finally, a more popular and perhaps more constitutional proposal includes banning the practice of bundling, a tool PACs have used to increase the coffers of selected candidates.\textsuperscript{124} A ban on the practice would no longer allow PACs to solicit donations to a candidate from a large

\textsuperscript{122} H.R. 2866, 106th Cong. (1999). Rep. Nick Smith’s, R-Mich., proposed bill in the last Congress would have amended FECA to state, “[N]o political action committee may make any contribution to any candidate or any authorized committee of the candidate with respect to any election for Federal office.” \textit{Id.} § 101. During a panel discussion sponsored by the Administrative Law Section of the American Bar Association, panelists discussed changes to campaign finance laws, including a complete ban on PAC contributions and expenditures, or a reduction of PAC contribution limits to $1000 per candidate per election. \textit{Revolutionizing Campaign Finance, supra} note 120, at 163–65.

\textsuperscript{123} \textit{CAMPAIGN FINANCE REFORM, A SOURCEBOOK, supra} note 105, at 162. Joel M. Gora, Professor of Law at Brooklyn Law School, testified in front of the Senate Committee on Rules and Administration in 1996, telling members of the committee that there is no Court precedent that would uphold a total ban on PACs, stating “Political contributions are fundamentally protected by the First Amendment, as embodiments of both speech and association.” \textit{Id.} The moderator of an ABA panel’s discussion on campaign finance said that although the idea of banning PACs would be discussed, he noted that a complete ban could be “declared unconstitutional” and so also asked participants to discuss reducing the PAC contribution limit. \textit{Revolutionizing Campaign Finance, supra} note 120, at 165. One participant, the aforementioned Steven Stockmeyer, affiliated with an association of PACs, called the idea of a complete ban, “absolute nonsense,” adding that “The PAC ban is unconstitutional, as they themselves admit in the bill.” \textit{Id.} at 179. Stockmeyer continued, “It’s a tongue-in-cheek ban, if it’s anything. It’s two fingers crossed behind your back. What it basically says is, ‘We know this is unconstitutional so we have to have a fallback provision—in case it is found unconstitutional—which would establish a new PAC limit.’” \textit{Id.}

\textsuperscript{124} See H.R. 151, 107th Cong. (2001). Another proposal in Rep. Petri’s bill would insert language that states, “No political action committee ... may act as an intermediary or conduit with respect to a contribution to a candidate for federal office.” \textit{Id.} § 5; Ian Ayres & Jeremy Bulow, \textit{The Donation Booth: Mandating Donor Anonymity to Disrupt the Market for Political Influence}, 50 STAN. L. REV. 837, 869 (1998). The authors’ proposal for mandated donor anonymity would “effectively outlaw bundling” by keeping PACs from getting the credit for soliciting the donations. \textit{See Ayres & Bulow, supra, at 869–70; Wertheimer & Weiss Manes, supra} note 117, at 1128; Wardle, \textit{supra} note 111, at 573; Curran, \textit{supra} note 3. Curran’s article, in discussing the fighting regarding President Clinton’s campaign finance bill in 1993, lists the anti-bundling provision as one of the sources of consternation. \textit{See Curran, supra} note 3; \textit{Proposals at a Glance, supra} note 4. The article gives an overview of various campaign finance-related bills in the 105th Congress, listing Rep. Sam Farr’s, D-Cal., measure which would ban bundling, among other things. \textit{Proposals at a Glance, supra} note 4.
number of donors and package them together as one large donation free from the $5000 limit imposed on PACs.\footnote{125 See Curran, supra note 3.}

PACs generally have been known to give heavily to incumbent members of Congress rather than challengers.\footnote{126 Wertheimer & Weiss Manes, supra note 117, at 1135. The authors explain that, “For most PACs, contributions to challengers are seen as a waste of money. Moreover, few PACs are willing to run the risk of antagonizing an incumbent Member of Congress by contributing to his or her opponent.” Id.; Revolutionizing Campaign Finance, supra note 120, at 172–73. Donald Simon, former Acting President of Common Cause, notes that “over 70% of PAC money goes to incumbents,” leading him to conclude that “this is a very important reason that incumbents are able to consistently outraise, and therefore outspend, challengers.” Revolutionizing Campaign Finance, supra note 120, at 172–73.} Because of this reality, it would seem as though any proposal that purports to reduce the power of PACs would help challengers and therefore benefit women and minority candidates, because of their tendency to be challenger candidates.\footnote{127 See BURRELL, supra note 10, at 106; THEILMANN & WILHITE, supra note 10, at 153; Revolutionizing Campaign Finance, supra note 120, at 172–73.} However, not all PACs follow the narrow-minded, incumbent-oriented script that many anti-PAC reformers claim.\footnote{128 HERRNSON, supra note 7, at 109–10.} PACs that follow ideological strategies give money to incumbents, challengers and candidates in open-seat elections who share “their broad ideology or positions on specific, often emotionally charged issues such as abortion.”\footnote{129 Id. at 109–10.} Ideologically driven PACs will often give money to candidates in close elections, and such PACs “rarely give money to members of Congress for the sake of securing access to the legislative process.”\footnote{130 Id. at 109–10.}

Indeed, although experts claim that over 70\% of PAC money goes to incumbents, minority and female candidates do better than expected with regard to PAC contributions.\footnote{131 THEILMANN & WILHITE, supra note 10, at 107; Revolutionizing Campaign Finance, supra note 120, at 172–73.} Theilmann and Wilhite, in their book Discrimination and Congressional Campaign Contributions, note that there is both good and bad news with regard to blacks and women and PACs.\footnote{132 THEILMANN & WILHITE, supra note 10, at 107.} The authors explain that “the tendency of at least some types of PACs to support non-incumbent blacks and women is encouraging,” because the authors state that “without substantial institutional support such candidates have little chance of
success." However, the authors go on to highlight the fact that PACs are more likely to throw support to candidates in open-seat elections, not to those candidates challenging incumbents. Aid to open-seat candidates will help black and female candidates, but not as much as healthy support to challengers, since open seats are less likely to occur.

Women's PACs really began to make sizable donations in 1992, the so-called "year of the woman." EMILY's List, a group that funds pro-choice Democratic women running for office, stands for the concept that Early Money Is Like Yeast—it makes the dough rise. The group, founded by Ellen Malcolm, began in 1986 by collecting over $350,000 from more than 600 donors. The group kept growing, and really caught on in 1992, raising $6 million, four times more than in any previous year of operation. That year also saw the rise of other female-oriented groups' ability to raise significant sums. EMILY's List continued to grow, and by 1998, the group had swelled to 50,000 members in fifty states with total contributions of $7.5 million, all of which helped elect seven new pro-choice Democratic women to the House that year.

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133 Id. at 107, 152. The authors later explain that "nonincumbent blacks were often helped by PAC contributions, most notably by labor and nonaligned PACs," and "nonincumbent female candidates appeared to benefit from PAC contributions . . . particularly prominent were the nonaligned PAC contributions, which totaled between $4700 and $8200 more to women candidates in four of the five elections." Id. at 152.

134 Id. at 107. While Theilmann and Wilhite's work is one of the most comprehensive studies of campaign contributions to minority and female candidates, it was published in 1991, before the real influx of PAC money from female-oriented groups. ELEANOR CLIFT & TOM BRAZAITIS, MADAM PRESIDENT: SHATTERING THE LAST GLASS CEILING 99 (2000); RICHARD LOGAN FOX, GENDER DYNAMICS IN CONGRESSIONAL ELECTIONS 116-17, 141 n.7 (1997); Mary Lynn F. Jones, A Big Leap Year; Women Candidates Capture Greatest Number of Seats Since 1992, CHI. TRIBUNE, Nov. 15, 2000, at 3. See generally THEILMANN & WILHITE, supra note 10.

135 See DAVIDSON & OLESZEK, supra note 14, at 64–65.


137 CLIFT & BRAZAITIS, supra note 134, at 17.

138 Id. at 88.


140 LOGAN FOX, supra note 134, at 117, 141 n.7. The Women's Campaign Fund in 1992 raised $1.3 million, almost twice as much as its previous record; the Hollywood Women's Political Committee contributed $543,671; the National Organization for Women contributed $593,845; and the National Women's Political Caucus contributed $500,000. Id.

141 CLIFT & BRAZAITIS, supra note 134, at 99. This is the largest increase of Democratic women in the House in a non-presidential election year. Id.
continued the upward trend of contributions from EMILY's List: The group doled out almost $9 million to female candidates.\(^\text{142}\)

Despite some experts explaining that restrictions on PACs would ultimately help challengers because PAC money tends to flow to incumbents, many political operatives with the needs of female and minority candidates in mind do not support imposing restrictions on PACs.\(^\text{143}\) Perhaps there is no better real-life example of minority candidates and PAC money than Georgia Congressman John Lewis.\(^\text{144}\) Lewis describes himself as a "grass-roots candidate" who did not have a large following of supporters who could write $1000 checks when he first decided to run for Congress.\(^\text{145}\) In his own words, he claims he "was able to mount a credible and ultimately successful bid for Congress only because of the support given me by labor union political action committees and a few other PACs."\(^\text{146}\) Lewis succinctly explains the role of PACs in his political rise: "If not for the support of these 'special interests,' this former civil rights worker, this poor son of a sharecropper would not have had a prayer of making it to the U.S. House of Representatives."\(^\text{147}\)

Lewis' support is not an isolated occurrence in the minority community and among minority congressmen.\(^\text{148}\) Jesse Jackson, Jr., first elected to Congress from Illinois's second district in a special election in 1995, has said that he cannot raise enough from his district, so as he puts it, "I have to go to PACs."\(^\text{149}\)

Indeed, the elimination or weakening of PACs has been known to be a dangerous reform for black candidates, given that both black men and women have received more than half of their contributions

\(^{142}\) Jones, supra note 134, at 3.


\(^{144}\) DUNCAN & LAWRENCE, supra note 3, at 392. Although Lewis won in 1986 in the general election with a vote total of 75%, he had to endure a strong primary challenge from state Sen. Julian Bond. Id. Bond beat Lewis in the primary, but it was close enough to force a run-off in which Lewis won the nomination with 52%. Id.

\(^{145}\) Lewis, supra note 143, at A25.

\(^{146}\) Id.

\(^{147}\) Id.

\(^{148}\) In-Kind Donations to Political Campaigns, supra note 143, at 34.

\(^{149}\) Id.; DUNCAN & LAWRENCE, supra note 3, at 448.
from PACs in the past. Ellen Miller, a member of the Board of Directors at the Center for Responsive Politics, has been quoted explaining that "the people who live in African-Americans' districts can't afford to pay to play." For this reason, John Bonifaz, the founder and executive director of the National Voting Rights Institute, has said that eliminating PACs "essentially knocks out the one place where labor and minority candidates have an ability to compete . . . . It's a classic false reform . . . put out by people who want to retain the status quo and pretend they've taken a step toward reform when they've only exacerbated the present system."

Other experts have echoed these sentiments, warning that even the best intentions when enacting campaign finance reform could lead to unintended consequences. Cass Sunstein, a University of Chicago law professor, writes that any reform that includes restricting or eliminating PACs could lead to the unintended consequence of reducing a powerful resource for minority candidates. Sunstein explains that "Sometimes minority candidates can succeed only with the help of PACs specifically organized for their particular benefit." The importance of PAC money to minority candidates crystallized in a formal policy sense during the 1993 struggle over campaign finance reform in which the Congressional Black Caucus delayed in supporting any reform in part because of provisions regarding PACs. In short, PACs play a prominent role in the financial security of minority candidates, particularly black candidates, and any restriction on this

150 Shanahan, supra note 71, at 9. Shanahan explains that in the 1994 election, 53% of the contributions to black male candidates and 54% of the contributions to black female candidates came from PACs; PAC contributions to Hispanic and white men and women ranged from 37 to 42%. Id.

151 Id.

152 Id. Shanahan explains that Bonifaz actually would like to get rid of all interest-group funding of campaigns, but until that happens, minorities will need to continue to rely on PAC money. Id.

153 Sunstein, supra note 53, at 1390, 1409-10.

154 Id. at 1410.

155 Id. at 1409.

156 See David J. Weidman, Comment, The Real Truth About Federal Campaign Finance: Rejecting the Hysterical Call for Publicly Financed Congressional Campaigns, 63 Tenn. L. Rev. 775, 783 (1996) (noting that the Black Congressional Caucus "has vehemently opposed any proposals to eliminate PACs"); Curran, supra note 3. Curran notes that PACs make major contributions to "many African American House Members, who often lack large contributor bases in their own districts." Curran, supra note 3.
funding source would disproportionately affect this already underrepresented group.157

With regard to women and PACs, the hesitation to reform is just as intense as in the minority community because of the importance of "women's issues" PACs.158 Commentators have explained that one of the reasons women have been able to equal or exceed men in fundraising has been the rise of women's issues PACs.159 In his book Gender Dynamics in Congressional Elections, Richard Logan Fox quotes several campaign managers of female candidates who explained the importance of this money: "The contributions from the women's groups were vital ... I don't know where we would have got [sic] the money we needed without EMILY's List."160 Another campaign manager for a female candidate explained, "The money from the women's groups was crucial for us."161

In fact, experts across the board seem to agree that the success of these "women's issue" PACs have greatly aided female candidates.162 Nancy E. McGlen and Karen O'Connor, in their book Women, Politics, and American Society, explain that, "Recent efforts by women's PACs ... have been critical in alleviating the financial obstacles faced by women candidates."163 Barbara C. Burrell, in her book A Women's Place

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157 See David A. Bositis, The Congressional Black Caucus in the 103rd Congress 28–29 (1994) [hereinafter The Congressional Black Caucus]. Bositis explains that because "many of their districts are among the poorest in the nation, Caucus members are more dependent upon contributions from political action committees (PACs) than are other members of the House." Id. at 28. Bositis also cites figures showing that the twenty-eight Caucus districts that have black voting-age populations of over 50% in 1989 had a mean household income of $30,878, while the figure for all districts was $38,453. Id. Also in 1989, the proportion of people living in poverty in these districts was 24.2% compared to 13.1% nationally. Id. at 29; The Federal Election Commission Twenty Year Report, 32 (1995), at http://www.fec.gov/pdf/20year.pdf (last visited Jan. 22, 2002) [hereinafter Twenty Year Report]. The Report notes that "Without PAC funding, some say minority candidates could not amass sufficient funds to communicate effectively with the electorate." Twenty Year Report, supra, at 32.

158 See Burrell, supra note 10, at 128, 130; Carroll, supra note 90, at 171; Logan Fox, supra note 134, at 116–17; Nancy E. McGlen & Karen O’Connor, Women, Politics, and American Society 86 (2d ed. 1998); Friedman, supra note 143, at 50; Schwinn, supra note 143, at A10.

159 LOGAN FOX, supra note 134, at 116.

160 Id. at 117.

161 Id.

162 See Burrell, supra note 10, at 128, 130; Carroll, supra note 90, at 171; Logan Fox, supra note 134, at 117; McGlen & O’Connor, supra note 158, at 86.

163 McGlen & O’Connor, supra note 158, at 86. The authors list EMILY's List, NOW PAC, the Women's Campaign Fund, Women in the Senate and House (WISH), and Republican Network to Elect Women (RENEW) as some of the critical groups. Id.
Is in the House, explains that, “PACs have made a difference and made women major players in the electoral process. . . . [T]he women’s PACs have become crucial elements in the process of electing women to the U.S. Congress.” Finally, Susan Carroll notes that women’s PACs are important for two essential functions: raising money and performing other tasks that have fallen to political parties in the past, including candidate recruitment, training and “in-kind services.” In short, it seems as though commentators and experts agree, “The existence of these groups is essential for female candidates.”

It is clear that reducing the influence of PACs by lowering contribution limits or banning them outright would negatively effect female candidates, but proponents of “women’s issue” PACs also have another group of enemies: those who wish to ban bundling. Bundling involves soliciting money for candidates, combining the donations and then sending the money to candidates endorsed by the group.

Certainly many commentators have not been supportive of the bundling loophole. However, the more popular position among female activists is that cutting out bundling without an exemption for non-lobbying PACs would have a disproportionately negative impact on female candidates. These commentators suggest political committees, like EMILY’s List, that do not engage in lobbying should be exempted from a bundling ban because they do not seek access to legislators once they are elected; therefore, there is no possibility of wrong doing. EMILY’s List head Malcolm wrote in a New York Times op-ed piece, “The last thing EMILY’s List wants is a loophole [exempting non-lobbying PACs] that would pour special-interest money into

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164 BURRELL, supra note 10, at 128, 130.
165 CARROLL, supra note 90, at 171.
166 LOGAN FOX, supra note 134, at 117.
168 See Friedman, supra note 143, at 50; Schwinn, supra note 143, at A10.
169 Wertheimer & Weiss Manes, supra note 117, at 1128, 1142. The authors write: “The bundling loophole poses a serious threat to the integrity of existing federal contribution limits . . . .” Id.; Ayres & Bulow, supra note 124, at 869. The authors contend that bundling “allows groups of individual contributors to buy access or influence.” Ayres & Bulow, supra note 124, at 869.
170 Friedman, supra note 143, at 50; Schwinn, supra note 143, at A10. For example, Rep. Rosa DeLauro, D-Conn., a former head of EMILY’s List, strongly supports the continuation of bundling. Schwinn, supra note 143, at A10.
171 See H.R. 3, 103d Cong. § 501 (1993) (including such a ban for non-lobbying PACs); Wardle, supra note 111, at 550-51; Bundling Makes Emily’s List, LEGAL TIMES, Apr. 26, 1993, at 5; Friedman, supra note 143, at 50; Schwinn, supra note 143, at A10.
campaigns. That would take us back to the very system that kept women out of office.”

Given the nature of the fundraising that these groups engage in, little question exists that taking away bundling would be a handicap. Indeed, some have called the bundling loophole EMILY’s List’s “life blood.” By taking away EMILY’s List and similarly minded groups’ ability to generate funds, female candidates would be stripped of one of their few financial advantages and thus put in an even more unenviable position. One commentator, Herbert Alexander, former director of the Citizens Research Foundation at the University of Southern California, explains bundling by noting: “I don’t call it [bundling] a loophole . . . Blacks and women are under-represented in Congress. They hit on a way of networking and now they’re told, ‘You can’t do that.’”

In short, any reform proposal that limits the amount of contributions to candidates from PACs, bans PACs from making contributions, or bans the practice of bundling would have a serious impact on female and minority candidates. What might start as a noble attempt at reform—reigning in the supposed power of PACs—would put the already under-represented female and minority candidates in an even more powerless position should such reforms be enacted.

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173 See Wardle, supra note 111, at 565; Pat Swift, Gender Gap Plays a Role in Campaign Funding, BUFFALO NEWS, Mar. 18, 2000, at 7C.
174 Bundling Makes Emily's List, supra note 171, at 5.
175 See Gail Collins, Why the Women Are Fading Away, N.Y. TIMES, Oct. 25, 1998, § 6 (Magazine), at 54 [hereinafter Why the Women]. Collins writes:

[...] Campaign finance reform keeps receding, and some contrarians say that Emily's List is one of the reasons. That's near-heresy: Emily's List, a political action committee that “bundles” donations from backers interested in promoting Democratic women in politics, has done more than any group to put women's campaigns on an equal financial level with men's. Still, nearly any discussion of finance reform inevitably raises the question of what such reform would do to Emily.

Collins, Why The Women, supra, at 54; Schwinn, supra note 143, at A10. Schwinn describes the bundling loophole as “a loophole that means big bucks for women candidates and others.” Schwinn, supra note 143, at A10.
176 Schwinn, supra note 143, at A10.
177 See Bositis, The Congressional Black Caucus, supra note 157, at 28-29; Burrell, supra note 10, at 128, 130; Carroll, supra note 90, at 171; Logan Fox, supra note 134, at 117; McGlen & O’Connor, supra note 158, at 86; Sunstein, supra note 53, at 1410; Curran, supra note 3; Friedman, supra note 143, at 50; Schwinn, supra note 143, at A10; Shanahan, supra note 71, at 9.
178 Sunstein, supra note 53, at 1409-10.
Another popular proposal reformers target when discussing campaign finance reform involves soft money. Soft money officially arose out of the 1979 amendments to the Federal Election Campaign Act (FECA), in which Congress amended the law to include regulations that exclude state and local party-building activities from the federal contribution limits outlined in FECA. The FEC has since decided the 1979 amendments allow individuals and organizations to give unlimited amounts of money to the national parties' state and local party-building campaign accounts, money that is not subject to the strict caps found in FECA. This money—is generally intended to be used for party-building expenditures at the state and local levels and cannot be spent in conjunction with federal candidates. Soft money provides a vehicle through


181 Direct contributions from political parties are regulated like PACs, meaning that they can give up to $5000 per election (with the primary and the general election considered two separate elections) to any given candidate. 2 U.S.C. §§ 441a(a)(2), 431(1)(A)–(D); Briffault, supra note 179, at 625. However, the parties enjoy two additional special capabilities to help candidates: First, party committees can engage in coordinated expenditures that do not count against the $5000 cap, but instead are governed by a separate calculating mechanism that still results in a cap, but it is higher. 2 U.S.C. § 441a(d), (h); Briffault, supra note 179, at 625–26. The U.S. Court of Appeals for the Tenth Circuit invalidated FECA's caps on party-coordinated expenditures with a party's congressional candidates. See FEC v. Colo. Republican Fed. Campaign Comm., 213 F.3d 1221, 1252–53 (10th Cir. 2000) ("Colorado Republican II"). The Supreme Court, however, reversed the Tenth Circuit and found that a party's coordinated expenditures "may be restricted to minimize circumvention of contribution limits." FEC v. Colo. Republican Fed. Campaign Comm., 121 S. Ct. 2351, 2371 (2001); Briffault, supra note 179, at 625. The second party provision is that state party committees can undertake "grass-roots" efforts, including get-out-the-vote drives and voter registration, in unlimited amounts so long as the money complies with FECA's source and cap requirements. 2 U.S.C. §§ 431(8)(B)(x)(2), (xii)(2), 431(9)(B)(viii)(2), (ix)(2); Briffault, supra note 179, at 626. Because the 1979 amendments excluded state and local party-building expenditures from contribution limits, this allowed contributors to give unlimited amounts of money to the national parties' state and local party-building accounts, dubbed "non-federal" accounts. Ansolabehere & Snyder, supra note 180, at 598. After the 1979 amendments, soft money began to grow in the 1980's, rising from $19 million in 1980 to $45 million in 1988, and was used to "build the infrastructure of the national parties," including staff costs, polling, data processing and office space. Briffault, supra note 179, at 629.

182 See Ansolabehere & Snyder, supra note 180, at 598–99.
which wealthy individuals and groups can help influence policy by contributing unlimited amounts of cash to the national parties, a major reason why critics find it to be such a corrupting influence.\textsuperscript{183} Soft money has grown increasingly more influential in elections across the country, increasing at an exponential rate in 1992, 1996, 2000, and in the first six months of 2001.\textsuperscript{184}

In addition to the general growth in soft money receipts, the parties have begun to expand the uses for soft money, including spreading the wealth towards congressional campaigns.\textsuperscript{185} The 1997–98 midterm election cycle was the first time that soft money played a large role in congressional campaigns; before that election, soft money was mostly limited to presidential campaigns.\textsuperscript{186} In addition, both political parties have turned to “issue advocacy” as another means of utilizing soft money.\textsuperscript{187} Issue advocacy ads, which advocate or oppose the cause of a candidate, can be partially paid for with a party’s soft money so long as they do not contain “magic words,” including “vote for,” “elect,” “cast your ballot for,” “vote against,” or “defeat.”\textsuperscript{188} Through this new method, parties have increased the usefulness of soft money and now can use these funds to pay for ads that directly aid federal candidates.\textsuperscript{189}

\textsuperscript{183} See id. at 601.

\textsuperscript{184} See Alison Mitchell, Bush and McCain Meet on Campaign Finance, N.Y. TIMES, Jan. 25, 2001, at A20 [hereinafter Bush and McCain Meet]. The 2000 election found the parties raising the highest amounts of soft money ever, with the Democrats’ party committees taking in $243.1 million and the Republicans collecting $244.4 million, for a total of $487.5 million. Id. In 1996, the two national political parties together raised $263 million, nearly three times as much as was raised in 1992. Steve Campbell, Campaign System Riddled with Loopholes; They Render Existing Finance Restrictions Virtually Meaningless, THE PORTLAND PRESS HERALD (Me.), Sept. 16, 1997, at 1A. Soft money did not stop expanding in the 1990s. The Democratic and Republican party committees raised $98.8 million in soft money ($65.6 million for the GOP and $33.3 million for Democrats) in the first six months of 2001, almost triple the amount raised in the first six months of the last non-presidential election cycle, 1997–98. Ben White, Soft Money Soars for Both Parties as GOP Takes in Record Sum for Six-Month Span, WASH. POST, Sept. 6, 2001, at A9. The parties collected only $54.5 million in the first six months of 1999–2000. Id.

\textsuperscript{185} See Briffault, supra note 179, at 630.

\textsuperscript{186} See id.

\textsuperscript{187} See id. at 632–33.

\textsuperscript{188} Id. at 631–33. The author notes that an FEC Advisory Opinion in 1995 that allowed the Republican National Committee to criticize President Clinton by name while discussing issues led to the widespread use of such “issue” advertising in the 1996 election. Id. at 632. The Advisory Opinion also stipulated that issue advocacy ads cannot be paid for exclusively through soft money; only a specified portion of the cost can be funded through soft money, a ruling that was challenged but failed to yield injunctive relief before the 1998 election. Id. at 633.

\textsuperscript{189} Id. at 633.
Although numerous bills contain language concerning banning or restricting soft money, the piece of legislation that has engendered the most attention over the last several years is that of Arizona Senator John McCain (R) and Wisconsin Senator Russell Feingold (D). Various forms of this legislation have been proposed and have failed in past years, but in 2001 the McCain-Feingold bill passed the Senate in a bipartisan 59-41 vote. The legislation bans soft money, increases the aggregate individual contribution limit from $25,000 to $37,500, increases the amount an individual can give to a candidate in each election from $1000 to $2000, creates provisions for candidates running against independently wealthy opponents, and establishes a ban on advertising by particular groups thirty days before a primary and sixty days before a general election.

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191 See Mitchell, Campaign Finance Bill Passes in Senate, supra note 5, at A1. Twelve Republicans and forty-seven Democrats joined together to pass the legislation. Id. Despite the success, the outcome was far from certain even a short time before the vote. Larry Bivins, Thompson Pushes Bill Banning ‘Soft Money’; Bipartisan Support Could Expedite Vote on Reform, TENNESSEAN, Jan. 23, 2001, at 6A. Bivins quoted Republican Senator from Tennessee Fred Thompson as saying, “We have a better chance than ever before to get something done” in late January, and Alison Mitchell quoted Thompson just a month and a half later saying, “I’m not confident of the outcome.” Bivins, supra, at 6A; Alison Mitchell, Before Debate, Added Scrutiny of Finance Bill, N.Y. TIMES, Mar. 12, 2001, at A1 [hereinafter Before Debate]. The proponents of a ban on soft money said they received a boost in the summer of 2000 when the Supreme Court ruled that limits on party coordinated expenditures with candidates are justified. Colo. Republ.1 121 S. Ct. at 2371; Adam Clymer, The Supreme Court: Campaign Money: Justices Uphold Curbs on Coordinated Political Spending, N.Y. TIMES, June 26, 2001, at A15. McCain said, “Clearly this decision demonstrates that McCain-Feingold restrictions on campaign contributions are constitutional,” and Rep. Shays, co-sponsor of the House legislation said, “The Supreme Court’s decision is wind in the sails of the movement to reform our badly broken campaign finance system.... We are even more confident today that the court will uphold a soft-money ban.” Clymer, The Supreme Court: Campaign Money, supra, at A15. Opponents, however, noted that proponents “can take no comfort in today’s decision,” because ‘the Colorado case was about federally restricted hard money while McCain-Feingold would ban nonfederal soft money.” Id. (quoting Senator Mitch McConnell, R-Ky.)

192 See S. 27, 107th Cong. 2001 §§ 101, 102, 308, 304, 201–204 (2001). Both individual contribution limits, the aggregate and per candidate per election limit, are indexed for inflation. Id. § 308. The new individual contribution limits would be raised in addition to other benefits if a candidate’s opposition spends over a certain multiple of the threshold
The McCain-Feingold legislation has been considered the darling of the press, covered extensively in and endorsed by the media.\textsuperscript{193} The media seems quick to decry the use of soft money but has been slow to mention any possible good that could come from this funding source.\textsuperscript{194} At least one positive result has been linked to soft money: The early use of soft money in the 1980s is considered to have been essential to the revitalization of state party operations.\textsuperscript{195} While this may not at first appear to be a positive development given the public’s general desire to recoil from party labels, many political scientists stress the need to maintain strong, healthy political parties when looking to reform the current system.\textsuperscript{196}

By using soft money, parties can have a profound impact on congressional elections in ways that would not be possible if they had to adhere to the low limits imposed by FECA.\textsuperscript{197} Reformers tend to view this increased party role as a negative development, but it also could be viewed as a mechanism to increase competition in elections.\textsuperscript{198} Political parties, when compared to individuals and PACs, are the most likely source for campaign contributions to non-incumbent candi-

limit, which is equal to $150,000 plus $0.04 multiplied by each member of a state’s voting age population. See id. §§ 304, 308. The legislation also prohibits issue advertising from corporate and labor interests thirty days before a primary election and sixty days before a general election. Id. § 203. Also, the bill increases the senatorial campaign committee limit from $17,500 to $35,000, strengthens the ban on fundraising on federal property, strengthens the foreign money ban, ensures the lowest media rates for candidates with some exceptions, provides for a study and report on clean elections, increases some penalties for violations, and modifies disclosure provisions. See §§ 308(c), 302, 303, 305, 306, 312, 314, 317, 501–504.


\textsuperscript{194} RONALD J. HREBENAR ET AL., POLITICAL PARTIES, INTEREST GROUPS, AND POLITICAL CAMPAIGNS 143 (1999).

\textsuperscript{195} Id.

\textsuperscript{196} See Briffault, supra note 179, at 644. The FEC’s Twenty Year Report notes that, “virtually all observers agree that parties are essential to American politics.” Twenty Year Report, supra note 157, at 31. One political scientist, Larry Sabato, has said, “The parties help stabilize an inherently unstable political system . . . . Anything that weakens those institutions makes democracy more unstable in the United States.” Steven Thomma, Reforms Can Have Unintended Consequences, SAN DIEGO UNION-TRIBUNE, Mar. 25, 2001, at G6.

\textsuperscript{197} HREBENAR ET AL., supra note 194, at 155.

\textsuperscript{198} See id. at 158; MICHAEL J. MALBIN & THOMAS L. GAIL, THE DAY AFTER REFORM, SOBERING CAMPAIGN FINANCE LESSONS FROM THE AMERICAN STATES 153 (1998); Ansolabehere & Snyder, supra note 180, at 619; Briffault, supra note 179, at 660; Mitchell, Before Debate, Added Scrutiny of Finance Bill, supra note 191, at A1 (noting that “some lawmakers argue that the ban on soft money will weaken the two-party system by causing donations to flow away from parties . . . .”).
Because parties tend to mold their campaign expenditures around maximizing the number of seats they can win, they are much more likely to give to challenger candidates than other sources, such as individuals. In fact, authors Michael J. Malbin and Thomas L. Gais, in their book *The Day After Reform*, explain that there is an “intense party bias [in the states] in favor of challengers and open-seat candidates in close races,” adding that parties in most states “give a basic level of contributions as risk capital to a wide variety of challengers and open-seat candidates.”

Professors Stephen Ansolabehere and James M. Snyder, Jr. have concluded, “More party money in congressional elections . . . would probably produce much higher electoral competition.” In addition, they also have calculated that the reverse situation—reducing the fundraising abilities of the political parties—would reduce challenger vote shares in the electoral process, mainly because non-incumbents have a much easier time attracting party money than PAC money. In addition, parties spend considerable sums for voter registration and voter turnout, elements that tend to be key for challenger candidates.

Proponents of a ban of soft money cite the Brennan Center

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199 HREBENAR ET AL., *supra* note 194, at 158; MALBIN & GAI,S, *supra* note 198, at 153 (noting that in competitive races, state parties are more likely to help challengers than any other source); BRiffault, *supra* note 179, at 660.
200 BRiffault, *supra* note 179, at 661.
201 MALBIN & GAI,S, *supra* note 198, at 152.
203 See id. at 608, 611. Although the authors admit that a large reduction in party money would reduce challenger vote shares by 2.5%, they conclude this would not “change competition in the national elections appreciably” because the typical challenger only receives 35% of the vote. See id. at 611. However, one could argue a 2.5% vote loss could impact some challengers in tight elections. See id. As Clift and Brazaitis point out, challenger candidate Harriett Woods (D) lost by a mere 27,000 votes to incumbent John Danforth (R) in the 1982 Missouri Senate race in which she received inadequate party support; 2.5% added to Woods’ vote total certainly would have helped her win the race since she lost by about 1%. See CLIFT & BRAZAITIS, *supra* note 134, at 87. In addition, professors Thad Kousser and Ray LaRaja did a study involving party money and also concluded that a ban on soft money would lead to 2.5% less in votes for challengers, ultimately concluding that “credible challengers will be hurt the most.” THad KOUSSER & RAY LARAJA, *Will a Soft Money Ban Stifle Political Competition? Theory and Evidence from the States*, 24 (presented at the 2000 Annual Meeting of the American Political Science Association, Aug./Sept. 2000) (on file with author).
204 MALBIN & GAI,S, *supra* note 198, at 152; ANSOLABEHERE & SNYDER, *supra* note 180, at 617. By studying three states, ANSOLABEHERE & SNYDER conclude that if the national parties did not provide money for grass roots activities including direct mail and voter registration, turnout in these states would have been reduced by slightly more than two percent. ANSOLABEHERE & SNYDER, *supra* note 180, at 616–17; Ken Bentsen Jr., *Term Limits Would Forfeit Our Right to Choose*, HOUSTON CHRON., Nov. 4, 1991, at C15 (expressing the notion that
for Justice at NYU School of Law (Brennan Center) for the proposition that all state and national party committees combined spend 8.3% of their soft money on voter mobilization, voter registration, and get-out-the-vote drives.\footnote{205} However, in the 2000 election, which saw the two national parties raise $487.5 million in soft money, 8.3% works out to over $40 million, a hefty sum that challenger candidates would have had to raise to mount get-out-the-vote drives if soft money was no longer available.\footnote{206} In addition, Professor Ansolabehere has calculated that a soft money ban could force the parties to eliminate up to 20% of the money they spend aimed at drawing out new voters, and to cut as much as two percent of activities aimed at boosting election-day turnout, consequences that hinder challengers and therefore minority and female candidates.\footnote{207} In short, a ban on soft money, or a restriction on party money, would affect challengers more than incumbents.\footnote{208} Because female and minority candidates are under-represented and therefore tend to be challenger candidates, it naturally follows that they would be disproportionately affected by a ban on soft money.\footnote{209} More specifically, additional evidence suggests that female and black candidates in particular benefit from party money not just by virtue of their challenger status, but by virtue of being female or black.\footnote{210} The Brennan Center has noted that of the thirty-eight members of the Congressional Black Caucus, only one benefited from party-sponsored issue ads.\footnote{211} However, incumbent black House members is not the group reformers should be concerned with; incum-

\footnote{205}{The Purposes and Beneficiaries of Party "Soft Money", Brennan Center for Justice at NYU School of Law (on file with author).}
\footnote{206}{See Mitchell, Bush and McCain Meet, supra note 184, at A20.}
\footnote{207}{See Bentsen, supra note 204, at C15; Bositis, The Black Vote in 2000, supra note 13, at 3; Election 2000, supra note 28; Thomma, supra note 196, at G6.}
\footnote{208}{See HREBENAR ET AL., supra note 194, at 158; MALBIN & GAIS, supra note 198, at 152–53; Ansolabehere & Snyder, supra note 180, at 608, 617; Briffault, supra note 179, at 660–61.}
\footnote{209}{See HREBENAR ET AL., supra note 194, at 158; MALBIN & GAIS, supra note 198, at 152–53; Ansolabehere & Snyder, supra note 180, at 608, 617; Briffault, supra note 179, at 660; Bositis, The Black Vote in 2000, supra note 13, at 3; Election 2000, supra note 28.}
\footnote{210}{McGLEN & O’CONNOR, supra note 158, at 87; THEILMANN & WILHITE, supra note 10, at 129.}
\footnote{211}{The Purposes and Beneficiaries of Party "Soft Money", supra note 205.}
bents are reelected at extremely high rates each election cycle.\textsuperscript{212} Soft money is important for minority candidates in instances where a viable challenger or a viable participant in an open-seat election needs an infusion of cash.\textsuperscript{213} In fact, evidence shows that when viable minority and female candidates need money, the party steps forward to provide support.\textsuperscript{214} When Eleanor Jordan, a black state legislator, tried to unseat Anne Northup in a 2000 Kentucky House race, the Democratic party spent $821,837 on advertising; Jordan raised a total of about $1.6 million for her campaign.\textsuperscript{215} In addition, Wilhite and Theilmann’s book, although written before the real explosion in soft money and before the use of soft money in congressional campaigns, shows that women and blacks benefit at a greater rate from party money than do white, male candidates.\textsuperscript{216} The authors found the evidence for black candidates more compelling, concluding, “the Democratic party gave significantly greater contributions to black candidates than to their white counterparts in three of the five elections studied,” which resulted in a racial benefit of about $4000 to $12,000.\textsuperscript{217} With regard to women, the benefit does not appear to be as profound, but at least some analyses show that women may get more money from the parties than men.\textsuperscript{218} In short, experts indicate that party support is a key element to the success of female and minority candidates.\textsuperscript{219}

\begin{itemize}
\item \textsuperscript{212} See id.; O’CONNOR & SABATO (3rd ed.), supra note 5, at 360–61 (explaining that high reelection rates are the norm, ranging well above 90% in most election years in the House).
\item \textsuperscript{213} See Cooper, supra note 65, at A12.
\item \textsuperscript{214} See The Purposes and Beneficiaries of Party “Soft Money”, supra note 205, at Figure 8.
\item \textsuperscript{215} See id.; Leonard, supra note 68, at A37.
\item \textsuperscript{216} THEILMANN & WILHITE, supra note 10, at 129. The authors note that in general both parties are more inclined to give greater amounts to black and female candidates. Id. They note, however, that the advantage with party money improves their chances of winning only marginally because of the power of incumbency. Id. Theilmann and Wilhite’s book, published in 1991, came before the explosion of soft money. See Briffault, supra note 179, at 629–30; Campbell, supra note 184, at 1A; Mitchell, Bush and McCain Meet, supra note 184, at A20; White, supra note 184, at A9. See generally THEILMANN & WILHITE supra note 10. However, it follows that a pattern of party spending pre-soft money that benefits certain candidates would continue to help those candidates when soft money is involved. See generally THEILMANN & WILHITE supra note 10.
\item \textsuperscript{217} THEILMANN & WILHITE, supra note 10, at 126.
\item \textsuperscript{218} McGLEN & O’CONNOR, supra note 158, at 87; THEILMANN & WILHITE, supra note 10, at 129. Although the authors do not offer concrete evidence on whether females have a better time attracting campaign funds from political parties, it seems clear that generally, “party support . . . [has] more to do with the competitiveness of the race than with the gender of the candidate.” LOGAN FOX, supra note 134, at 124.
\item \textsuperscript{219} ELECTORAL SYSTEMS IN COMPARATIVE PERSPECTIVE, THEIR IMPACT ON WOMEN AND MINORITIES 103–04 (Wilma Rule & Joseph F. Zimmerman, eds., 1994). The authors note
For these reasons, many female and minority candidates and political operatives tend to oppose the elimination of soft money for fear that it could weaken the ability of parties to aid candidates. The debate in 2001 regarding the House version of the McCain-Feingold bill, sponsored by Representatives Christopher Shays, R-Conn., and Martin Meehan, D-Mass., indicates that many House minority members have grave reservations with banning soft money, fearing such a move could have serious repercussions for the future diversity of Congress. In fact, even some House Democratic leaders who support a soft-money ban have said they understand minority members' reservations with a ban because of the dire effects it could have on their political futures. However, not all participants in the debate agree with

that one of the key barriers to the election of women and minorities is weak political parties. Id.; CATHERINE WHITNEY, NINE AND COUNTING, THE WOMEN OF THE SENATE 57 (2000). The author, in conjunction with the then nine female senators, notes that party support and money are the "critical components to women achieving credibility and being elected to office." Id.; Penny M. Miller, Staking Their Claim, The Impact of Kentucky Women in the Political Process, 84 KY. L.J. 1163, 1176 (1995/96) [hereinafter Staking Their Claim]. The author notes that in recent years the national parties "have played an increasing advocacy role for women in office . . . . In the last decade, the national parties have taken active steps to promote women's candidacies . . . ." Miller, Staking Their Claim, supra, at 1176.

See Swift, supra note 173, at 7C. The author notes that "women's views of campaign finance reform are colored by their preference for fund raising networks and issue groups. They tend to oppose eliminating soft money contributions." Id.; Curran, supra note 3. The author explains that some members of the Congressional Black Caucus, in the 1993 struggle over President Clinton's campaign finance legislation, seemed to be more interested in some form of increased disclosure rather than an outright soft money ban. Curran, supra note 3.

Darryl Fears, Keys to a Campaign Bill; Divided Black Caucus Is Heavily Lobbied, WASH. POST, July 11, 2001, at A1; Karen Hosler, As 'Soft Money' Ban Foet, Wynn Comes Under Fire; Md. Democrat's Stance Could Help Defeat Bill, BALT. SUN, July 12, 2001, at A1 (noting that up to half of Rep. Albert R. Wynn's, D-Md, Congressional Black Caucus colleagues "appeared to be aligned with him" against the Shays-Meehan bill); Alison Mitchell, Blacks and Hispanics in House Balk on Campaign Finance Bill, N.Y. TIMES, May 9, 2001, at A1 [hereinafter Blacks and Hispanics in House Balk]; Mitchell, House G.O.P. Seeks New Way, supra note 190, at A1; Philip Shenon, The Black Caucus, Once a Foe, Enjoys Soft-Money Games, N.Y. TIMES, Aug. 27, 2001, at A1. Rep. Bennie G. Thompson, D-Miss., noted, "We'll never be able to match the resources the Republicans can generate, but soft money allows us to be competitive." See Shenon, supra, at A1. Shenon notes that "Mr. Thompson called it hopeless to think that he and other black lawmakers from poor, mostly rural districts could ever make up for the loss of soft money," and Rep. Earl F. Hilliard, D-Ala., said that a soft-money ban was a "threat to my continued service in the Congress." Id. In addition, Shenon points out that soft money was spent in November 2000 for a get-out-the-vote drive in Rep. Hilliard's district and that soft money is paying for an attorney and a demographer in his effort to avoid having his district redrawn in a way that might threaten his reelection. See id.

See Shenon, supra note 221, at A1. Shenon notes that even the House leaders who support the soft-money ban say black members who oppose the ban "have reason to be concerned about a moratorium and that the caucus's voter-education programs in Florida
this contention.\textsuperscript{223} Some argue that soft money is an evil that must be eliminated from the political world and contend that minority and female candidates will not be harmed by such a ban.\textsuperscript{224} However, evidence indicates that eliminating soft money, while a politically salient idea in light of the passage of McCain-Feingold in the Senate, may prove to be disastrous for competition and challengers in particular.\textsuperscript{225} Because female and minority candidates tend to be challengers, a soft-money ban would fall particularly hard on this group of prospective candidates, a factor that must be considered when Congress debates the merits of passing this so-called "reform."\textsuperscript{226}

C. Raising the Individual Contribution Limit

Under FECA, individuals cannot make contributions over $1000 to any candidate during an election.\textsuperscript{227} In addition, an individual is

\textsuperscript{223} See The Purposes and Beneficiaries of Party "Soft Money", supra note 205; Hosler, supra note 221, at A1; Memorandum from the Fannie Lou Hamer Project, to the Congressional Black Caucus (May 15, 2001), at http://www.filhp.org/cbcmemo.htm (last visited Jan. 22, 2002) [hereinafter Memorandum to Congressional Black Caucus]. The Fannie Lou Hamer Project is a group working to reshape campaign finance reform as a civil rights issue; the group has created the Fannie Lou Hamer standard which, "asks whether a proposed reform would make the system more fair for someone like Hamer, a poor woman of color" who championed voting rights. See Spencer Overton, Fannie Lou Hamer Wouldn't Like This, WASH. POST, Mar. 29, 2001, at B11.

\textsuperscript{224} See The Purposes and Beneficiaries of Party "Soft Money", supra note 205; Hosler, supra note 221, at A1; Memorandum to Congressional Black Caucus, supra note 223. Hosler explains that Rep. Wynn's stance against a soft-money ban has rankled many of his House Congressional Black Caucus colleagues including party elders like Rep. Charles B. Rangel, D.N.Y., and Rep. John Lewis, D-Ga. Hosler, supra note 221, at A1. The Fannie Lou Hamer Project argues that soft money's role in get-out-the-vote efforts could be supplemented with hard money and/or a bill could allocate federal money for such activities; in addition, the group argues that banning soft money will reduce the influence of big business and release the stranglehold soft money has on top leadership positions. See Memorandum to Congressional Black Caucus, supra note 223.

\textsuperscript{225} See HREBENAR ET AL., supra note 194, at 158; MALBIN & GALS, supra note 198, at 152-53; Ansolabehere & Snyder, supra note 180, at 608, 617; Briffault, supra note 179, at 660; Bositis, The Black Vote in 2000, supra note 13, at 3; Election 2000, supra note 28; Mitchell, Campaign Finance Bill Passes in Senate, supra note 5, at A1.

\textsuperscript{226} See HREBENAR ET AL., supra note 194, at 158; MALBIN & GALS, supra note 198, at 152-53; Ansolabehere & Snyder, supra note 180, at 608, 617; Briffault, supra note 179, at 660; Bositis, The Black Vote in 2000, supra note 13, at 3; Election 2000, supra note 28.

\textsuperscript{227} 2 U.S.C. § 441a(a)(1). "No persons shall make contributions—(A) to any candidate and his [or her] authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000." \textit{Id.} The term "election" with regard to the above statute, as with multicandidate political committees, means that the contribution limit of $1000 allows an individual to give $1000 in the primary and another $1000 in the
allowed to give up to $20,000 to a committee or committees organized by the national parties and up to $5000 to any other political committee in a calendar year.\textsuperscript{228} Finally, in any given calendar year, an individual can make no more than $25,000 in total donations.\textsuperscript{229}

In the landmark Supreme Court case involving campaign finance, \textit{Buckley v. Valeo}, the Court upheld the individual contribution limits set at $1000.\textsuperscript{230} Since Congress passed FECA in 1974 and the Court upheld contribution limits in 1976, the dollar amount has remained unchanged.\textsuperscript{231} Some reformers have targeted these limits, looking, in particular, at raising the $1000 limit on donations to candidates and the total limit of $25,000 in any calendar year.\textsuperscript{232} The McCain-Feingold legislation that passed the Senate would hike the individual contribution limit from $1000 to $2000 and the aggregate individual limit from $25,000 to $37,500.\textsuperscript{233}

The Supreme Court recently confirmed the constitutionality of limiting contributions to candidates in \textit{Nixon v. Shrink Mo. Gov't PAC}, decided in 2000.\textsuperscript{234} In \textit{Nixon}, the Court rejected the notion that Missouri’s then $1075 limit on candidates for statewide office was too low, upholding the idea in \textit{Buckley} that limits are constitutional unless they are “so radical in effect as to render political association ineffective,”

\begin{footnotesize}
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    \item \textsuperscript{228} 2 U.S.C. §§ 431(1)(A)-(D), 441a(a)(1).
    \item \textsuperscript{229} 2 U.S.C. § 441a(a)(1)(B)-(C).
    \item \textsuperscript{230} 424 U.S. 1, 143 (1976). While the appellants argued that the $1000 contribution ceiling “unjustifiably burdens First Amendment freedoms, employs overbroad dollar limits, and discriminates against candidates opposing incumbent officeholders and minor-party candidates in violation of the Fifth Amendment,” the Court notes that “It is unnecessary to look beyond the Act’s primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the $1,000 contribution limitation.” \textit{Id.} at 24, 26.
    \item \textsuperscript{231} See \textit{id.} at 26; 2 U.S.C. § 441a(a)(1)(A). The individual contribution limit is not indexed for inflation, and therefore has remained at $1000. See 2 U.S.C. § 441a(a)(1)(A); \textit{Buckley}, 424 U.S. at 26.
    \item \textsuperscript{232} S. 176, 107th Cong. § 8 (2001) (increasing the individual contribution limit to candidates to $3000, and indexing the amount each calendar year “based on the increase in the price index”); S. 27, 107th Cong. §§ 102, 308 (2001) (increasing the aggregate individual contribution limit from $25,000 to $37,500); S. 22, 107th Cong. § 203 (2001) (increasing the individual contribution limit to candidates to $3000, increasing the limit to political parties to $60,000, increasing the limit from individuals to political committees to $15,000, and increasing individuals’ aggregate limit to $75,000); S. 17, 107th Cong. § 102 (2001) (increasing the aggregate contribution limit for individuals from $25,000 to $30,000); H.R. 380, 107th Cong. § 102 (2001) (increasing the aggregate contribution limit for individuals from $25,000 to $30,000).
    \item \textsuperscript{233} S. 27, 107th Cong. §§ 102, 308 (2001).
    \item \textsuperscript{234} 528 U.S. 377, 397–98 (2000).
  \end{enumerate}
\end{footnotesize}
drive the sound of a candidate's voice below the level of notice, and render contributions pointless.\footnote{Id. at 397.}

Despite the constitutionality of contribution limits, some have questioned the logic of imposing such barriers, and there is also disagreement regarding the impact of such limitations on challengers and incumbents.\footnote{Id. at 389–90 n.4; \textit{Campaign Finance Reform, A Sourcebook}, supra note 105, at 108–09; \textit{Theilmann and Wilhite}, supra note 10, at 146; \textit{Campaign Finance as a Civil Rights Issue}, 43 How. L.J. 41, 46–47 (1999); Kathey Pruitt, \textit{Rights Group Opposes Raising Campaign Gift Limit}, \textit{Atlanta J. \& Const.}, Aug. 5, 2000, at 4E.} FEC Commissioner Bradley A. Smith argues that, “Contribution limits tend to favor incumbents by making it harder for challengers to raise money and thereby make credible runs for office,” noting that the lower the limit, the more difficult it becomes to raise a large amount of needed cash in a short time.\footnote{CAMPAIN FINANCE REFORM, A SOURCEBOOK, supra note 105, at 108–09.} However, Justice Souter, writing for the majority of the Court in \textit{Nixon}, addressed the respondent’s contention that contribution limits favor incumbents over challengers, concluding, “We found no support for the proposition that an incumbent’s advantages were leveraged into something significantly more powerful by contribution limitations applicable to all candidates, whether veterans or upstarts.”\footnote{528 U.S. at 389–90 n.4. Some reformers do not seem sold on higher limits: Senators McCain and Feingold “didn’t intend to promote higher hard-money limits but accepted them as a necessary compromise.” See Janet Hook \& Doyle McManus, \textit{A Win for Campaign Finance Won’t Mean Victory for Reform}, L.A. TIMES, Mar. 31, 2001, at A1.}

Apart from looking just at contribution limits from the challenger perspective, there is some evidence that blacks and women collect money from individuals in smaller amounts and therefore would not benefit from an increase in the contribution limit.\footnote{\textit{Theilmann and Wilhite}, supra note 10, at 146; \textit{Campaign Finance as a Civil Rights Issue}, 43 How. L.J. 41, 46–47 (1999); Kathey Pruitt, \textit{Rights Group Opposes Raising Campaign Gift Limit}, \textit{Atlanta J. \& Const.}, Aug. 5, 2000, at 4E.} Theilmann and Wilhite, when analyzing individual contributions, note that their formula shows that individuals “appear to discriminate against black candidates (and to a smaller extent women challengers),” and more importantly in this context, “black and female candidates appear to be dependent on smaller contributions.”\footnote{\textit{Theilmann and Wilhite}, supra note 10, at 146.} This makes sense for black candidates, considering that black members of Congress tend to represent some of the poorest districts in the country and therefore cannot rely on individuals within their district to raise large individual contributions.\footnote{\textit{See Bositis, The Congressional Black Caucus}, supra note 157, at 28.}
There is evidence that people looking out for the interests of black candidates do not wish to see an increase in contribution limits.242 The National Association for the Advancement of Colored People (NAACP), the Southern Regional Council, the Georgia Rural Urban Summit, and the Fannie Lou Hamer Project, a group that views campaign finance reform as a civil rights issue, all objected to a move by the Georgia legislature that allowed for an increase of individual contribution limits to up to twice their previous level.243 Brenda Wright, managing attorney of the National Voting Rights Institute, wrote a letter to the U.S. Department of Justice noting that black voters are “far less likely than white voters to have sufficient funds to contribute at any level to political campaigns,” and also indicating that white candidates receive a disproportionate amount of large contributions.244 In addition, at Howard University Law School’s 1999 event Campaign Finance as a Civil Rights Issue, professor and journalist Roger Wilkins explained that some “reformers” find the individual contribution limits to be too low and want to increase them, despite the fact that only one-tenth of one percent of individuals gave $1000 in 1996.245 Finally, the debate over the House companion to McCain-Feingold, Shays-Meehan, indicated that several minority politicians and commentators fear an increase in the individual contribution limit would be detrimental to minority candidates in particular.246

In short, although there is some debate over whether contribution limits help or hurt challengers, it seems as though women and blacks in particular are not inhibited by such limitations; in fact, they may benefit from them.247 While raising contribution limits is typically just one element in a package of reforms, it does not appear as though it would have any benefit to female or black candidates and would most likely prove problematic.248 This represents another reason why the McCain-Feingold measure that passed the Senate, with its

242 Campaign Finance as a Civil Rights Issue, supra note 236, at 46–47; Pruitt, supra note 236, at 4E.
243 Pruitt, supra note 236, at 4E.
244 Id.
245 Campaign Finance as a Civil Rights Issue, supra note 236, at 46–47.
246 See Fears, supra note 221, at A1.
247 Nixon, 528 U.S. at 389–90 n.4.; Campaign Finance Reform, A Sourcebook, supra note 105, at 108–09; Theilmann and Wilhite, supra note 10, at 146; Campaign Finance as a Civil Rights Issue, supra note 236, at 46–47; Pruitt, supra note 236, at 4E.
248 See S. 176, 107th Cong. (2001); S. 27, 107th Cong. (2001); S. 22, 107th Cong. (2001); S. 17, 107th Cong. (2001); H.R. 380, 107th Cong. (2001); Theilmann and Wilhite, supra note 10, at 146; Campaign Finance as a Civil Rights Issue, supra note 236, at 46–47 (1999); Pruitt, supra note 236, at 4E.
increased individual contribution limits, is not reform for black and female candidates.249

D. Putting a Ceiling on Campaign Spending

There has been plenty of discussion regarding capping the amount of money candidates are allowed to spend in a federal election.250 Proposals that call for a mandatory so-called “ceiling” on spending face strict constitutional dilemmas.251 However, because the idea has regularly been floated, a brief mention is deserved.252

The Supreme Court in Buckley struck down the expenditure limit included in FECA, finding that “limitations on campaign expenditures, on independent expenditures by individuals and groups, and on expenditures by a candidate from his personal funds are constitutionally infirm.”253 The Court equated the restriction on spending money as being a restriction on political speech.254 For that reason, any mandatory spending cap appears as though it would have difficulty meeting the Supreme Court’s analysis in Buckley.255 In September 2001, the United States Court of Appeals for the Tenth Circuit overruled a district court decision that enforced a campaign expenditure limit in the mayoral race in Albuquerque, New Mexico.256 In en-

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249 See S. 27, 107th Cong. §§ 102, 308 (2001); Theilmann and Wilhite, supra note 10, at 146; Campaign Finance as a Civil Rights Issue, supra note 236, at 46–47 (1999); Pruitt, supra note 236, at 4E.


251 See Buckley, 424 U.S. at 19, 143.

252 See supra sources cited note 250.

253 Buckley, 424 U.S. at 143.

254 Id. at 19. “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, and the size of the audience reached.” Id.

255 See id. Blasi, however, argues that candidate time protection is an important element that could help make spending caps constitutional. See Blasi, supra note 250, at 1284.

joining the city from enforcing the limit and ordering an injunction, the appeals court noted that the reasons listed for the expenditure limit in Albuquerque are no different than the interests that were insufficient in *Buckley*; therefore, the court found the limit must fail. In another recent case, the Supreme Court indicated that campaign spending limits are still invalid under the Court’s decision in *Buckley*, noting that “Later cases have respected this line between contributing and spending.”

In Vermont, a district court did a thorough analysis of the state’s public funding statute, finding, among other things, that the statute’s expenditure limits were unconstitutional. The district court noted that “Buckley set an extremely high constitutional threshold for expenditure limits . . . .”

Some commentators express the view that spending caps would not help challengers and are nothing more than incumbent protection devices. Others espouse the opposite view, noting that caps on spending might help challengers and therefore hope the Court reconsiders *Buckley* to allow for the imposition of such caps. Although

257 Id. at *8, *11.
260 Id. at 481.
261 BURRELL, supra note 10, at 188 (claiming that “ceilings on spending and methods of raising money hurt challengers and advantage incumbents”); MALBİN & GAIS, supra note 198, at 144; *Constitutional Implications of Campaign Finance Reform*, supra note 250, at 170 (including Bob Peck, associated with the American Civil Liberties Union, who notes that those who support spending limits assume “people are sheep, who are attracted to whoever spends the most money,” and calls such “reform” a way to decrease accountability); *Revolutionizing Campaign Finance*, supra note 120, at 178 (including an address by Steven F. Stockmeyer, former executive director of the National Association of Business Political Action Committees, saying that there is no evidence such caps would work in congressional elections); Smith, supra note 250, at 605 (noting that a flat spending cap may “harm those challengers most likely to actually defeat an incumbent” because the best challengers tend to have the most funding); Wertheimer & Weiss Manes, supra note 117, at 1152 (quoting former Senator Robert Dole, R-Kan., as saying “As I have said many, many times before, an absolute—fixed—cap on campaign spending is nothing more than a prescription for incumbency protection.”).
262 See Klarman, supra note 250, at 538 n.218. The author notes, “For those of us who believe that unlimited campaign spending generally benefits incumbents more than challengers, the one useful step the Court might take in this area is to overrule its ghastly decision in *Buckley*, which constitutionally entrenches incumbents . . . .” Id.; Lieberman, supra note 250, at 462. Former Democratic vice presidential nominee and current Connecticut Senator Joseph Lieberman notes there are a number of things reformers can do, including asking the Court to reconsider *Buckley* by showing the “detrimental impact the unlimited spending they permitted . . . [has] had on our campaign system.” Lieberman, supra note 250, at 462. Wertheimer & Weiss Manes, when responding to critics who say public financing and spending limits would protect incumbents, note that “it is the current unlimited spending system that is the ultimate protection scheme for incumbents.”
some language in recent cases has indicated that the Court may be a little closer to reconsidering Buckley, other cases have questioned the practical impact of the Supreme Court language.263 However, although minority candidates in particular would seem to benefit from spending caps because these candidates tend to collect fewer campaign contributions, these caps on their own would not help minority or female candidates because they would not help challengers in the one area where they need the most support: Fundraising.264 In addition, mandatory campaign spending caps appear as though they would face stiff constitutional scrutiny under the Court’s Buckley analysis.265 However, there is a plan that could include spending limits and meet constitutional scrutiny: Public financing.

E. The Most Far-Reaching Approach: Public Financing

The Supreme Court, in a footnote within the lengthy Buckley decision, laid out what may be the most promising form of campaign finance reform.266 While declaring limits on campaign expenditures unconstitutional, the Court noted:

Wertheimer & Weiss Manes, supra note 117, at 1152. Van Der Werf describes spending limits as having been “advocated for years as a way to even the advantage incumbents have . . . .” Van Der Werf, supra note 3, at A1.

263 Colo. Republican, 121 S. Ct. at 2360 n.8. Although the FEC did not ask the Court to reconsider the expenditure limits approach in Buckley, the majority opinion, joined by five justices, notes in a footnote that “such limits could be justified in light of post-Buckley developments in campaign finance.” Id. In addition, Justice Kennedy’s dissent in Nixon v. Shrink Missouri states that there could be a scheme with some limits on expenditures that would meet constitutional scrutiny, and Justice Breyer notes in his dissent that Buckley and its expenditure limits ruling could be reconsidered. Nixon, 528 U.S. at 405, 409. This would seem to indicate that several justices, perhaps a majority, are willing to reconsider Buckley. See id.; Colo. Republican, 121 S. Ct. at 2360 n.8. However, the Tenth Circuit noted recently that although “The district court also perceived that the Supreme Court currently was divided over Buckley’s scope . . . the statements [questioning Buckley] are not those of a majority even if joined by other members of the Court.” Homans, No. 01–2271, at 8. The Tenth Circuit also noted that “the Supreme Court has not suggested that the distinction between campaign expenditures and campaign contributions is about to change.” Id. at 9. See generally Buckley, 424 U.S. 1 (1976).

264 See Mary Becker, Patriarchy and Inequality: Towards a Substantive Feminism, 1999 U. CHI. LEGAL F. 21, 60 (1999) (drawing the conclusion that “Women, African Americans, Latinos and other disproportionately poor groups near the bottom of the social structure have less political power in an electoral system in which voice and power can be purchased than they would in a system with public financing of campaigns, stringent spending limits, and free media time . . . .”); Raskin & Bonifaz, supra note 63, at 279 n.26; Copeland, supra note 57, at 20.

265 See Colo. Republican, 121 S. Ct. at 2356; Buckley, 424 U.S. at 19, 143; Homans, No. 01–2271, at 10–11.

266 Buckley, 424 U.S. at 57 n.65.
[C]ongress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public funding.\textsuperscript{267}

With this small notation, the Court left the door open to allow public funding of campaigns to trickle down from the current publicly funded presidential election process to congressional campaigns.\textsuperscript{268}

Public funding plans can take on many different forms, ranging from full funding to smaller proposals to provide free air time to qualifying candidates.\textsuperscript{269} Even the older form of the McCain-Feingold bill included public-funding elements that have since been stripped from the legislation.\textsuperscript{270} Although there is some variation, public-funding proposals can be broken into four general categories. The first category is the lowest rung of public funding: Providing free air time to qualifying candidates.\textsuperscript{271} Supporters argue that free communication vouchers are essential to reform because television is very important to elections, television advertising comes with a very large price tag, and proposals including free television time are workable because the public owns the airwaves.\textsuperscript{272} Proposals vary in form, mainly by the length of air time each candidate would receive, but the premise behind the idea is the same: Because advertising is the quick-

\textsuperscript{267} Id.


\textsuperscript{270} See S. 27, 107th Cong. (2001); HREBENAR, ET AL., supra note 194, at 164–65. The authors list the elements of the older McCain-Feingold legislation, noting that the bill included: Voluntary spending limits ranging from $1.5 million to $8.25 million in the Senate and $600,000 per election in the House; thirty minutes of free, prime-time television on stations in their state for complying candidates; the ability for House and Senate candidates to purchase advertising time at 50% of the lowest rate; and mailing benefits for complying candidates. See HREBENAR, ET AL., supra note 194, at 164–65.

\textsuperscript{271} See HREBENAR, ET AL., supra note 194, at 164–65; Price, supra note 48, at 27; Blasi, supra note 250, at 1318–19. Wertheimer & Weiss Manes encourage limited amounts of free television time through the use of vouchers, citing the fact that “Television is the most powerful means of communication in our society and plays a critical role in our national elections.” Wertheimer & Weiss Manes, supra note 117, at 1151.

\textsuperscript{272} Wertheimer & Weiss Manes, supra note 117, at 1151–52.
The intermediate level includes proposals that include a certain amount of public funding short of full public financing.274 Such proposals could include a “floor” of public funds in which the government would match smaller donations through an expansion of the tax check off system, or a system in which the government would ensure a candidate was not at a substantial disadvantage against his or her opponent.275

The next level involves providing public money to fully fund campaigns, a proposal that can and often does include some form of reduced or free television/radio air time.276 The typical full public funding proposal first makes the program voluntary so as to comply with Buckley.277 In addition, in order to qualify as publicly funded candidates, a candidate would need to show a minimum level of support by collecting a certain number of relatively small qualifying contributions.278 Once a candidate has qualified to receive public funds and

273 See HREBENAR, ET AL., supra note 194, at 164–65 (outlining a former version of the McCain-Feingold bill that offers participating Senate candidates thirty minutes of free, prime-time television on stations in their state, and House and Senate candidates could also purchase advertising time at 50% of the lowest rate); Marty Jezer et al., A Proposal for Democratically Financed Congressional Elections, 11 YALE L. & POL’Y REV. 333, 345, 349–51, 354–59 (1993) (endorsing a plan by The Working Group on Electoral Democracy that would give a House candidate fifteen minutes for the primary and thirty minutes for the general election and thirty minutes to each Senate candidate during the primary and sixty minutes for the general campaign, all in one to five minute slots); Raskin & Bonifaz, supra note 269, at 1196–97 (1994) (endorsing The Working Group on Electoral Democracy’s proposal); Wertheimer & Weiss Manes, supra note 117, at 1151–52; Curran, supra note 3 (explaining that Clinton’s 1993 campaign finance proposal included a $600,000 voluntary spending cap for House candidates who would receive up to $200,000 in “communication vouchers” to be used to buy print and broadcast advertising.)

274 Price, supra note 48, at 27.

275 Id.; Sunstein, supra note 53, at 1412 (admitting that a system in which the government ensures a candidate is not at a substantial disadvantage has numerous problems including who would qualify and what would prevent candidates from being unfairly excluded).


277 Ford & Levien, supra note 269, at 318; Raskin & Bonifaz, supra note 269, at 1191; Wertheimer & Weiss Manes, supra note 117, at 1149.

278 Ford & Levien, supra note 269, at 318 (requiring $20,000 raised in $100 increments to qualify); Raskin & Bonifaz, supra note 269, at 1190 (requiring 1000 $5 contributions for House candidates and 2000 $5 contributions for Senate candidates in states with one House district, and an additional 250 per district); Wertheimer & Weiss Manes, supra note 117, at 1149 (requiring qualifying contributions, but leaving out the details of the number and amount of those qualifying contributions).
has pledged not to campaign for private dollars, that candidate would then receive payments based on her specific Senate or House race.\textsuperscript{279} Proposals for full financing also can include a number of other elements, including a provision that provides publicly funded candidates with additional money if their opponent spends over a predetermined amount and a provision that addresses independent expenditures by non-candidate groups and individuals.\textsuperscript{280}

Finally, the most radical and therefore least politically viable option involves creating a voucher system to replace our current financing mechanism.\textsuperscript{281} In general, a voucher proposal would give each voter campaign vouchers that could be used to fund political campaigns.\textsuperscript{282} In addition, with limited exceptions, only vouchers could be used to fund campaigns.\textsuperscript{283} Despite some benefits, even supporters admit that it is a long road towards enacting such a far-reaching reform.\textsuperscript{284}

Based on evidence from the states, it appears as though the most viable reform is a full-financing system that includes many of the ele-

\textsuperscript{279} Ford & Levien, \textit{supra} note 269, at 318 (charging the FEC with setting the amount of public funding for candidates based on various aspects of the district or state); Raskin & Bonifaz, \textit{supra} note 269, at 1190–92 (listing specific dollar amounts for House and Senate candidates including House candidates receiving $100,000 in the primary and an additional $150,000 for the general campaign and Senate candidates receiving $100,000 for the primary plus $50,000 for each congressional district, and $150,000 for the general campaign plus $75,000 for each additional congressional district in exchange for an agreement the candidate would not raise or private money during the primary and general election); Wertheimer & Weiss Manes, \textit{supra} note 117, at 1149 (explaining a proposal could use either a matching formula which would lead to a partial publicly-funded system like presidential primaries, or a grant system that would give candidate full financing like the general presidential election).

\textsuperscript{280} Ford & Levien, \textit{supra} note 269, at 319–20; Raskin & Bonifaz, \textit{supra} note 269, at 1198–99; Wertheimer & Weiss Manes, \textit{supra} note 117, at 1150.


\textsuperscript{282} Ackerman, \textit{supra} note 281, at 71 (explaining that each registered voter would get a balance of "red-white-and-blue money" or vouchers that would be the only source of funding to pay for elections); Hasen, \textit{supra} note 281, at 22 (noting that voters could use the vouchers to fund candidates, licensed interest groups or political parties); Sunstein, \textit{supra} note 53, at 1412.

\textsuperscript{283} Ackerman, \textit{supra} note 281, at 71; Hasen, \textit{supra} note 281, at 5; Sunstein, \textit{supra} note 53, at 1412.

\textsuperscript{284} Hasen, \textit{supra} note 281, at 44 (noting that although the Supreme Court should find such a proposal constitutional, "such an outcome is far from certain").
ments listed above.\textsuperscript{285} Several states, including Arizona, Maine, Massachusetts and Vermont, have passed so-called "clean election" laws that implement public financing for offices within the state.\textsuperscript{286} Although the clean elections laws in the four states share many different elements, Maine’s law is perhaps the most helpful in understanding the structure of a sound public-funding system because it has withstood a challenge in federal court and has already been tested in an election.\textsuperscript{287}

IV. A POSITIVE EXPERIMENT FROM THE STATES AND THE LIMITATIONS OF POLITICS

A. As Goes Maine, so Goes the Country?

The Maine Clean Election Act was a 1996 ballot initiative that was approved by over ten percentage points.\textsuperscript{288} The law, which went into effect for the 2000 election, involves public funding for Governor, State Senator, and State Representative races.\textsuperscript{289} Candidates must declare their intention to be certified, agree not to exceed certain limits when collecting "seed money," and obtain a certain number of quali-


\textsuperscript{286} AZ. REV. STAT. ANN. § 16–940 (2000); ME. REV. STAT. ANN. tit. 21A, § 1121 (2000); MASS. GEN. LAWS ANN. ch. 55A, § 1 (2000); VT. STAT. ANN. tit. 17, § 2801 (2000); Robert Dreyfuss, Reform Beyond the Beltway; States as Laboratories of Clean Money, AM. PROSPECT, May–June 1998, at 50 (noting that Maine’s clean elections passed by a margin of 56 to 44% on November 5, 1996); Robert Dreyfuss, Reform Gets Rolling; Campaign Finance at the Grass Roots, AM. PROSPECT, July–Aug. 1999, at 39 (noting that the measure in Vermont was passed by the state legislature in 1997; the measure in Massachusetts garnered 67% of the vote in 1998; and the measure in Arizona, a conservative state, was passed by the voters by 51% to 49% in 1998). See Rick Klein, Clean Elections Concessions Offers May Not Save Funding Bill, BOSTON GLOBE, Sept. 27, 2001, at B5 [hereinafter Clean Elections Concessions]. Klein notes that actual funding for clean elections in Massachusetts has stalled. Id. See Section IVB.

\textsuperscript{287} See ME. REV. STAT. ANN. tit. 21A, §§ 1121–1128 (2000); Daggett v. Comm’n on Gov’t Ethics & Election Practices, 205 F.3d 445 (1st Cir. 2000); CAMPAIGN FINANCE REFORM, A SOURCEBOOK, supra note 105 at 373; Hungry for Good News, supra note 285, at 24A.

\textsuperscript{288} CAMPAIGN FINANCE REFORM, A SOURCEBOOK, supra note 105, at 373; Ford & Levien, supra note 269, at 314; Dreyfuss, Reform Beyond the Beltway, supra note 286, at 50.

\textsuperscript{289} ME. REV. STAT. ANN. tit. 21A, § 1123 (2000).
fying contributions during the qualifying period. Once the candidate has been certified and transferred all collected money to the Maine Clean Election Fund, a candidate can only spend money from the Fund and may not accept any contributions unless authorized. The Fund, financed through a number of methods including a tax check-off program and revenue from other taxes, disperses money based on the average of the last two elections. The law also includes a provision that provides clean election candidates with additional money if their non-clean election opponent exceeds the distribution amount proscribed for clean candidates. A candidate must return any unused money, and a candidate who has been denied certification can appeal the decision through a proscribed method. The Commission on Governmental Ethics and Election Practices will prepare a report that documents, evaluates, and recommends changes by January 30, 2002, and every four years after that date. In addition, in conjunction with the clean elections law, Maine also lowered contributions from an individual, political committee, other committee, corporation or association to $500 for gubernatorial candidates and $250 for all other candidates.

290 Id. § 1125 (1)-(3). Seed money cannot exceed $50,000 for gubernatorial candidates, $1500 for State Senate candidates and $500 for State House of Representatives candidate. § 1125 (2) (A)-(C). For gubernatorial candidates to qualify, 2500 verified registered voters must give a qualifying contribution, defined as $5 in the form of check or money order; a State Senate candidate must collect 150 such contributions; and a House candidate must collect fifty such contributions. §§ 1122(7), 1125 (3).

291 § 1125(5)-(6).

292 §§ 1124-1125(7), (8)(A)-(C). The Fund disperses money based on the specific type of election: contested primaries, uncontested primaries, and contested general elections. Id. Revenues may not be expended for uncontested general elections. § 1125 (8)(D).

293 21-A M.R.S. § 1125(9). Matching funds can be triggered if a:

[Finance or election report shows that the sum of a candidate’s expenditures or obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent expenditures reported under section 1019, exceeds the distribution amount under subsection 8, the commission shall issue immediately to any opposing Maine Clean Election Act candidate an additional amount equivalent to the reported excess. Matching funds are limited to 2 times the amount originally distributed under subsection 8, paragraph A or C, whichever is applicable.

Id.

294 Id. § 1125(13)-(14).

295 Id. §§ 1122(2), 1128.

296 Id. §§ 1015(1)-(2), 1056(1).
In *Daggett v. Commission on Gov't Ethics & Election Practices*, a long list of plaintiffs challenged Maine's new funding mechanism, arguing that the public funding mechanism unconstitutionally coerced candidates to participate, and that the contribution limits violated the First Amendment.297 The First Circuit concluded that the contribution limits of the State Representatives and Senators are constitutional and the public funding scheme does not violate the First Amendment, thereby upholding the Act.298 The court, in evaluating whether or not the system is so stacked towards participation as to be deemed coercive—and therefore unconstitutional—held that "Maine's public financing scheme provides a roughly proportionate mix of benefits and detriments to candidates seeking public funding, such that it does not burden the First Amendment rights of candidates or contributors."299 In short, Maine's law, while perhaps not perfect, is a good model with which to craft other full-funding systems.300

Despite Maine's success, full public funding does not lack critics.301 Some critics indicate the public does not support full public congressional funding, others claim giving additional money once an opponent exceeds a certain level is unconstitutional, while others note that such a system would do little for equality or corruption.302 However, it is not difficult to find support for full public financing from female and minority activists; in fact, many see this as the best possibility for real reform.303 In Maine, numerous groups joined the fight for full public funding, including the Maine Women's Lobby and the NAACP, further evidence that public funding would be a positive development for minorities and women.304 Those looking to put more women into office need only look to the results of Maine's

297 *Daggett*, 205 F.3d at 450. The plaintiffs included legislative candidates, campaign contributors, political action committees, and the Maine Libertarian Party. *Id.*

298 *Id.* at 472. The First Circuit did not rule on the $500 limit to gubernatorial candidates, finding that none of the parties in the suit had standing on that issue. *Id.*

299 *Id.*

300 See generally *id.*

301 HREBENAR, ET AL., *supra* note 194, at 168–70; Joseph E. Finley, *The Pitfalls of Contingent Public Financing in Congressional Campaign Spending Reform*, 44 EMORY L.J. 735, 739–40 (1995) (addressing the constitutionality of contingent public funding which is like Maine's matching program, in that the candidate receives extra money if their opponent exceeds a certain level); Smith, *supra* note 250, at 592.


303 *Campaign Finance as a Civil Rights Issue*, *supra* note 236, at 48; *Constitutional Implications of Campaign Finance Reform*, *supra* note 250, at 197; Malcolm, *supra* note 172, at A23.

304 See Dreyfuss, *Reform Beyond the Beltway*, *supra* note 286, at 50.
first election under the clean elections laws to find heartening evidence of success. In addition, 54% of those running under clean election won (sixty-two candidates including thirty-seven incumbents), and more women ran than usual. Problems did occur during the 2000 election in Maine. Interest groups spent more on issue advertising, overly complex reporting requirements may have deterred some candidates, and non-clean candidates delayed reporting expenditures so clean candidates would not get their matching funding right away. Overall, however, “most agree in Maine that while the Clean Elections Act will be revised before 2002, it’s there to stay.” Public financing would at least level the playing field for challengers and encourage new faces to enter the political ring; because of women’s tendency to fall into that category, full funding would be a positive reform for female candidates.

The same is true for minority candidates, a group that has expressed the most desire for full public funding. Many minority activists have encouraged a full-funding system; numerous civil rights groups have called for such a system, and a black congressman, Harold E. Ford, Jr., D-Tenn., has written an article advocating such a change. In July 2001, the NAACP adopted a resolution calling cam-

505 Goldberg, supra note 285, at 44; Hungry for Good News, supra note 285, at 24A; Klein, Clean Elections Act Alters Terrain in Maine, supra note 285, at A1; Silver, supra note 285, at 1C.
507 Goldberg, supra note 285, at 44; Hungry for Good News, supra note 285, at 24A; Klein, Clean Elections Act Alters Terrain in Maine, supra note 285, at A1; Silver, supra note 285, at 1C. In addition, more than 10,000 Maine residents made $5 contributions to candidates, spending on legislative races went down by 18%, and the disparity of funding between winners and losers “leveled off ‘significantly.’” Emmet Meara, Maine’s Clean Elections Called ‘Best System in the Nation’, BANGOR DAILY NEWS, June 15, 2001, at B4.
509 Id.
510 Id.
511 See Id.; Malcolm, supra note 172, at A23.
512 Campaign Finance as a Civil Rights Issue, supra note 236, at 48; Constitutional Implications of Campaign Finance Reform, supra note 250, at 197.
513 Campaign Finance as a Civil Rights Issue, supra note 236, at 48 (including remarks by professor and journalist Roger Wilkins, who noted “And if you want to really equalize it, say nobody can give any money except we the people. So we’ll have public financing of campaigns. That seems to me to get closer to one person, one vote than anything I know.”); Challenging the Campaign Finance System as a Voting Rights Barrier: A Legal Strategy, 43 How. LJ. 63, 73 (1999) (including a speech by civil rights activist Dr. Gwen Patton who explained “If we truly want to see a democratic society, we have to complete the unfinished
Campaign finance reform a civil rights issue and supporting full public funding.\textsuperscript{314} Professor Raskin has said that public funding would be helpful to black candidates because, “It is precisely people who come from the poor communities who would benefit from public financing of elections.”\textsuperscript{315} In short, minority candidates would benefit from such a system because it would erase the historical fundraising disparity between minority and white candidates.\textsuperscript{316} As Warren Tolman, a 2002 Massachusetts gubernatorial candidate and clean money proponent, explains, “The reason why the clean elections movement is a threat to the political establishment is precisely its appeal: it levels the playing field and opens the door of electoral politics to real working men and women, more minorities, and more women . . . .”\textsuperscript{317}

B. Don’t Under-Estimate Politics

If election reformers’ only prerogative was to increase the number of minority and female members in the House and Senate, there are more radical, non-finance related approaches that could easily accomplish that goal.\textsuperscript{318} However, one key element with which any re-

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\textsuperscript{314} NAACP Endorses Public Financing, supra note 313.

\textsuperscript{315} Constitutional Implications of Campaign Finance Reform, supra note 250, at 197.

\textsuperscript{316} See id.; Campaign Finance as a Civil Rights Issue, supra note 1, at 19.

\textsuperscript{317} Warren Tolman, Cleaning Up Elections in Massachusetts, BOSTON GLOBE, July 6, 2000, at A15.

\textsuperscript{318} See H.R. 1189, 107th Cong. (2001) (sponsored by Rep. Cynthia A. McKinney, D-Ga., allowing states to create multi-seat congressional districts); H.R. 3068, 105th Cong. (1997) (a predecessor to H.R. 1189 also sponsored by McKinney along with thirteen co-sponsors, including nine black representatives); Becker, supra note 264, at 79–80 (outlining three
form must contend is the politics of getting a particular piece of legislation passed.\textsuperscript{319}

As University of Virginia Professor Michael J. Klarman explains, commentators may disagree about the benefits and harms of certain reform, but "The one thing that virtually all commentators agree upon, though, is that legislators drafting campaign finance legislation will seek to enhance the advantages of incumbency."\textsuperscript{320} One need only look at past campaign finance fights to get an idea of the range of self-interests present.\textsuperscript{321} During the 1993 fight over President Clinton's campaign finance legislation, a time when Democrats controlled the White House, Senate and House, different factions torpedoed any reform.\textsuperscript{322} As Capitol Hill's newspaper \textit{Roll Call} explained, up to four different constituencies in the House considered "portions of the bill to be threats to their own political futures, and they appear willing to scuttle the legislation in its current form."\textsuperscript{323}

Others argue that campaign finance reform is so complicated in its specifics and politics that action or inaction is difficult to understand.\textsuperscript{324} Indeed, because incumbents do not like passing legislation


\textsuperscript{320} See Klarman, supra note 250, at 536–37; Sunstein, supra note 53, at 1400.

\textsuperscript{321} See Cottle, supra note 319, at 20; Curran, supra note 3.

\textsuperscript{322} See Curran, supra note 3.

\textsuperscript{323} Id. The author explains that four Democratic constituencies, Southern conservatives, minorities, liberal reformers and women, all had different problems with Clinton's 1993 campaign finance legislation. Id. Southern conservatives did not like provisions including some public funding, minority members did not like some PAC and soft money elements of the bill, women opposed the anti-bundling provision, and liberals complained the bill did not go far enough. Id.

\textsuperscript{324} See Collins, \textit{Campaign Finance 101}, supra note 319, at A23. Collins explains the politics over the McCain-Feingold legislation in 2001:

Sometime this month, the McCain-Feingold campaign finance reform bill is going to come up in the Senate. Its supporters have the votes to win, in theory. But there are pitfalls. A theoretically sympathetic senator could offer an amendment that eases the rules for unions, or Emily's List, or the Christian Coalition, and suddenly—poison pill—the whole fragile coalition of support
that would endanger their own electoral safety, it appears as though politics has whittled down the most touted reform proposal, the McCain-Feingold bill.\textsuperscript{325} The legislation, although it finally passed the Senate in 2001, has been reduced to an acceptable, and weaker, majority-friendly bill, much removed from its 1997 form.\textsuperscript{326} In addition, politicians generally do not face a great deal of constituent pressure to pass campaign finance reform and instead choose to focus on more popular issues.\textsuperscript{327} Politics impacted the most recent attempt at changing campaign finance law.\textsuperscript{328} After the Senate passed the McCain-Feingold bill, the House was slated to debate and vote on that body’s companion measure, the Shays-Meehan bill.\textsuperscript{329} However, even before debate could begin, a procedural maneuver by those opposed to the


\textsuperscript{325} See Silver, supra note 285, at 1C. Silver explains that “the original legislation has been gutted,” having lost provisions involving bundling and free air time, leaving the bill “riddled with loopholes.” \textit{Id.}

\textsuperscript{326} See S. 27, 107th Cong. (2001); HREBENAR, ET AL., supra note 194, at 164–65. The authors list the elements of the older McCain-Feingold legislation, noting that the bill included voluntary spending limits ranging from $1.5 million to $8.25 million in the Senate and $600,000 per election in the House, and in return offered complying candidates thirty minutes of free, prime-time television on stations in their state, and House and Senate candidates could also purchase advertising time at 50\% of the lowest rate; also, the bill included mailing benefits for complying candidates. See HREBENAR, ET AL., supra note 194, at 164–65; Silver, supra note 285, at 1C. The bill that passed the Senate does not contain any of these provisions. See S. 27, 107th Cong. (2001); Mitchell, \textit{Campaign Finance Bill Passes in Senate, supra} note 5, at A1.

\textsuperscript{327} See Van Dongen & Keller, supra note 2. The authors explain that, “most strategists believe that the issue doesn’t have much political bite.” \textit{Id.}

\textsuperscript{328} Alison Mitchell, \textit{2 Groups in House Are at Focal Point on Campaign Bill}, \textit{N.Y. Times}, July 12, 2001, at A1 (noting that “two pivotal groups” were at the center of the future of reform, “Republican freshman and black Democrats.”)

legislation forced the proponents to vote down the rules for debate and therefore postpone a vote on the measure.\textsuperscript{330} Although, the terrorist attack on September 11 dimmed prospects for reform in 2001, the collapse of Enron enhanced the chances for a floor debate in 2002.\textsuperscript{331} 

Despite the fact that public funding reformers in Arizona, Maine, Massachusetts and Vermont were successful, and polls show public financing support at 60 to 80\%, recent public-financing efforts in Missouri and Oregon during the 2000 election failed by sizable margins, indicating support for this kind of reform may not be as broad as supporters would like.\textsuperscript{332} In addition, despite the fact that Massachussetts voters approved clean elections in a 1998 ballot initiative, politics is getting in the way of actually funding the measure.\textsuperscript{333} The battle over clean elections made its way to the Massachusetts Supreme Judicial Court in December 2001, where the justices were critical of the legislature's refusal to fund the initiative, but conflicted over the

\textsuperscript{330} See Mitchell, \textit{Campaign Measure Shelved}, supra note 324, at A1. House leaders insisted that sponsors of the bill would have to introduce each of the minor changes to their bill in a separate measure, fourteen in all, rather than allowing them to put forward one package. \textit{Id.} Supporters of the legislation felt this was too difficult and therefore told supporters to vote down the rules, therefore postponing taking up the issue. \textit{Id.} Opponents had already tried to avoid passing the Shays-Meehan bill by backing a measure by Rep. Bob Ney, R-Ohio, that allowed contributors to give up to $75,000 a year to each of the six national political committees and allowed unlimited contributions to state parties. \textit{Id.}

\textsuperscript{331} See Broder, \textit{supra} note 324, at A1; Amy Keller, \textit{Election Reform Efforts Expected to Move Forward}, \textit{ROLL CALL} (D.C.), Sept. 24, 2001. Following the failure of bringing debate on Shays-Meehan, proponents were collecting signatures for a petition to force the House leadership to bring the issue on to the calendar. See Broder, \textit{supra} note 324, at A1. Supporters had collected 210 of 218 needed signatures before the terrorist attack. \textit{Id.} The signature drive stopped after the attack and many questioned whether or not the issue would reappear on the agenda because of more pressing national concerns. See id.; Keller, \textit{supra}. However, when Enron collapsed, the media focused on the company's significant campaign donations and political access, whereby re-igniting the drive for reform. See Mitchell, \textit{Enron's Woes}, \textit{supra} note 324. As a result, by January 21, supporters expected to pick up the signatures they needed to force the House leadership to schedule a floor debate. See \textit{id.}

\textsuperscript{332} See Dreyfuss, \textit{Reform Gets Rolling}, \textit{supra} note 286, at 39; Terry Ganey, \textit{Missourians Reject Public Financing of Election Campaigns; Proposal to Restrict Billboards Appeared to Pass}, \textit{St. Louis Post-Dispatch}, Nov. 8, 2000, at A15 (explaining that the ballot initiative, which failed by a 2–1 margin, was "a target for business organizations like the Chamber of Commerce and Associated Industries of Missouri" because it would have been funded through a corporate franchise tax on 7500 employers); \textit{The Measures}, \textit{OREGONIAN}, Nov. 8, 2000, at C4 (listing a ballot initiative, public money for candidates, as going down to defeat with 60\% voting against the proposal).

\textsuperscript{333} Klein, \textit{Clean Elections Concessions}, \textit{supra} note 286, at B5.
court’s power to impose a remedy. In short, if the House is having problems passing Shays-Meehan, which includes modest reform, the prospects for an entirely new federal public funding mechanism is daunting at best. As Representative Martin T. Meehan, D-Mass., has said, “Members are not going to change a system that benefits them unless they feel they have no choice.”

V. THE BEST AND THE WORST CAMPAIGN FINANCE REFORM HAS TO OFFER

Campaign finance reform proposals fall into three general categories: smaller efforts that could make some difference to minority and female candidates, larger, more beneficial proposals, and proposals that would be detrimental to these groups. While any reform proposal will have to go through the congressional ringer, it is essential that reformers remember that actions that seem to improve the way Americans elect their politicians could come at a cost—even less diversity than we currently have.

There are “reforms” that if passed could have a serious impact on minority and female candidates. Proposals that ban PAC contribu-


337 See HREBENAR ET AL., supra note 194, at 158; MALBIN & GAIS, supra note 198, at 152–53; McGLEN & O’CONNOR, supra note 158, at 87; THEILMANN & WILHITE, supra note 10, at 129, 146; Ansolabehere & Snyder, supra note 180, at 608, 617; Becker, supra note 264, at 79–80; Briffault, supra note 179, at 660–61; Campaign Finance as a Civil Rights Issue, supra note 236, at 46–47 (1999); Ford & Levien, supra note 269, at 317–22; In-Kind Donations to Political Campaigns, supra note 143, at 34; Raskin & Bonifaz, supra note 63, at 279 n.26; Raskin & Bonifaz, supra note 269, at 1189–1202; Wertheimer & Weiss Manes, supra note 117, at 1135, 1149–54; Clymer, Many Proposals, supra note 336, at 1; Curran, supra note 3; Friedman, supra note 143, at 50; Lewis, supra note 143, at A25; Pruitt, supra note 236, at 4E; Schwinn, supra note 143, at A10; Shanahan, supra note 71, at 9.

338 See Sunstein, supra note 53, at 1390, 1409–10; Clymer, Many Proposals, supra note 336, at 1.

339 See HREBENAR ET AL., supra note 194, at 158; MALBIN & GAIS, supra note 198, at 152–53; McGLEN & O’CONNOR, supra note 158, at 87; THEILMANN & WILHITE, supra note 10, at 129, 146; Ansolabehere & Snyder, supra note 180, at 608, 617; Becker, supra note 264, at 79–80; Briffault, supra note 179, at 660–61; Campaign Finance as a Civil Rights Issue, supra note 236, at 46–47 (1999); In-Kind Donations to Political Campaigns, supra note 143, at 34;
tions or reduce the amount they could contribute would be detrimental, as would proposals that would eliminate the practice of bundling without some protection for groups like EMILY's List. Therefore, a ban on soft money, without a way for national parties to make up the loss in contributions, could negatively impact minority and female candidates. In addition, proposals to raise the individual contribution limit alone would do little to aid challengers and would harm minorities. Any proposal that just puts a spending cap without additional measures to help challenger candidates would not be very beneficial because it would not help with fundraising, the most essential element to any challenger's campaign. Finally, in analyzing a package of reform, the McCain-Feingold legislation that passed the Senate in 2001 may wind up doing exactly what minority and female candidates need the least—help keep entrenched incumbents in their current positions. The bill's combination of abolishing soft money, increasing contribution limits and other measures like allowing candidates to spend more against wealthy opponents equals an incumbent-friendly piece of legislation. In addition, the protracted fight

Raskin & Bonifaz, supra note 63, at 279 n.26; Wertheimer & Weiss Manes, supra note 117, at 1135; Friedman, supra note 143, at 50; Lewis, supra note 143, at A25; Pruitt, supra note 236, at 4E; Schwinn, supra note 143, at A10; Shanahan, supra note 71, at 9.

In-Kind Donations to Political Campaigns, supra note 143, at 34; Wertheimer & Weiss Manes, supra note 117, at 1135; Friedman, supra note 143, at 50; Lewis, supra note 143, at A25; Schwinn, supra note 143, at A10; Shanahan, supra note 71.

See Hrebenar et al., supra note 194, at 158; Malbin & Gaits, supra note 198, at 152-53; McGlen & O'Connor, supra note 158, at 87; Theilmann & WilHITE, supra note 10, at 129; Ansolabehere & Snyder, supra note 180, at 608, 617; Briffault, supra note 179, at 660-61.

See Hrebenar et al., supra note 194, at 158; Malbin & Gaits, supra note 198, at 152-53; McGlen & O'Connor, supra note 158, at 87; Theilmann & WilHITE, supra note 10, at 129; Ansolabehere & Snyder, supra note 180, at 608, 617; Briffault, supra note 179, at 660-61. Despite evidence that suggests a soft money ban could be detrimental to minority and female candidates, the issue is not clear cut; some participants in the public debate have taken the opposite approach and support a ban on soft money. See The Purposes and Beneficiaries of Party “Soft Money”, supra note 205; Memorandum to Congressional Black Caucus, supra note 223; Hosler, supra note 221, at A1.

See Theilmann and WILHITE, supra note 10, at 146; Campaign Finance as a Civil Rights Issue, supra note 236, at 46-47 (1999); Pruitt, supra note 236, at 4E.

See Raskin & Bonifaz, supra note 63, at 279 n.26; Copeland, supra note 57, at 20 (noting "Few challengers have the capacity to spend the amount of money necessary to beat an incumbent.").


Id. The authors note, “One outcome is clear: Abolishing soft money and relying entirely on hard money favors incumbents, no matter what their party"; in addition, the Sen-
regarding the House version of the McCain bill, Shays-Meehan, illustrates that some minority politicians are beginning to realize that the elements of these measures could hurt minority representation.\(^{347}\) Although not all commentators and minority representatives agree, several minority members of the House balked at several proposals in the Shays-Meehan bill that comply with the Senate version, including an increase in hard-money limits for Senate races and an all-out ban on soft money.\(^{348}\) Some minority members said a ban on soft money could undercut get-out-the-vote efforts including registration and mobilization.\(^{349}\) In short, while it is most likely not the intention of

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\(^{347}\) Fears, supra note 221, at A1; Hosler, supra note 221, at A1 (noting that up to half of Rep. Wynn’s Congressional Black Caucus colleagues “appeared to be aligned with him” against the Shays-Meehan bill); Mitchell, Blacks and Hispanics in House Balk, supra note 221, at A1; Mitchell, House G.O.P. Seeks New Way, supra note 190, at A1. One possible reason why race was not as much of a factor in the Senate debate is because of the dismal representation of minority members in the Senate. See Bositis, The Black Vote in 2000, supra note 13, at 3 (listing a total of thirty-nine black members elected to the 107th Congress, including thirty-seven black voting House members and two black non-voting House delegates).

\(^{348}\) Fears, supra note 221, at A1 (noting that “The smaller Congressional Hispanic Caucus issued a formal notice that it has major concerns regarding the Shays-Meehan bill . . . .”); Hosler, supra note 221, at 1A; Mitchell, Blacks and Hispanics in House, supra note 221, at A1; Mitchell, House G.O.P. Seeks New Way, supra note 190, at A1. Even some members of the Congressional Black Caucus who said they would vote for Shays-Meehan expressed some reservations:

> We do believe in campaign finance reform . . . . Soft money has been used to drown out the voices of our constituents and people like them across the country. But the question is whether a soft-money ban that takes money away from get-out-the-vote efforts is almost suicidal for the black caucus.

Hosler, supra note 221, at 1A (quoting Rep. Elijah E. Cummings, D-Md.). Dissenters to this logic argue that a ban on soft money would return politics to a more grass-roots approach and would increase the clout of poorer and minority districts by reducing the power of big-money politics. See Donna Brazile, Soft Money’s Scanty Leftovers, N.Y. TIMES, July 11, 2001, at A17; Fears, supra note 221, at A1. In fact, Rep. Wynn took criticism for his stance against Shays-Meehan and for co-sponsoring legislation with Rep. Ney that would limit but not completely ban soft money. See Hosler, supra note 221, at 1A. Hosler notes, “Some of Rep. Albert R. Wynn’s colleagues in the Congressional Black Caucus say they are troubled, even angry, that he would work to defeat what they see as a crucial political reform.” Id.

\(^{349}\) Mitchell, Blacks and Hispanics in House, supra note 221, at A1. Some members said problems with black citizens voting in Florida during the 2000 election emphasized the need for voter mobilization efforts; Rep. Wynn, said “Florida made all of us aware of what goes on at the street level, the need for voter registration for example.” See id. In addition, another member noted “If you take away the source of funding for the get-out-the-vote
reformers, legislation like McCain-Feingold and Shays-Meehan, could result in unintended consequences like reduced voter participation and weakened political parties.\textsuperscript{350}

There are, however, small proposals that might be considered more politically feasible than a complete overhaul of the campaign finance system.\textsuperscript{351} Proposals that call for reduced or free media time for candidates in exchange for a spending cap, similar to the concept in Clinton’s 1993 campaign finance bill, would help.\textsuperscript{352} Also, one of the components proposed in The Working Group on Electoral Democracy’s proposal for Democratically Financed Elections to Congress, could greatly help minority candidates: campaign scholarships for poor or working people running for Congress.\textsuperscript{353} Through this proposal, a candidate who can demonstrate that she would be unable to support herself or her family during the campaign would receive a reasonable amount of money for living expenses.\textsuperscript{354}

Small proposals, however, would lead to small results.\textsuperscript{355} To enact real reform, to truly give minorities and women the chance to reach parity in the United States Congress, full public financing needs to be enacted.\textsuperscript{356} Many commentators have proposed full public funding schemes that no doubt would help minority and female candidates.\textsuperscript{357}

\textsuperscript{350} See Thomma, supra note 196, at G6. Thomma warns about unforeseen results, and quotes Boston University History Professor Bruce Schulman as saying reform “always has unintended consequences because people find creative ways to evade the rules.” Id. Thomma notes that McCain-Feingold could limit the parties’ ability to bring new voters to the polls, make parties more dependent on interest groups whereby giving them more clout, and make incumbents even more secure. See id.

\textsuperscript{351} See Raskin & Bonifaz, supra note 269, at 1194; Curran, supra note 3.

\textsuperscript{352} See Curran, supra note 3.

\textsuperscript{353} See Jezer, et al., supra note 273, at 347; Raskin & Bonifaz, supra note 269, at 1194.

\textsuperscript{354} See Jezer, et al., supra note 273, at 347; Raskin & Bonifaz, supra note 269, at 1194. This source of funding would only be available to qualifying challengers because incumbents’ congressional salary would bar them from receiving this money. See Jezer, et al., supra note 273, at 347.

\textsuperscript{355} See Lieberman, supra note 250, at 463. The author describes reform like closing the soft money loophole as being “incremental reform” as opposed to “comprehensive reform,” which seems to be described as “radically recast[ing] our entire campaign finance system.” Id. at 462–63.

\textsuperscript{356} See Constitutional Implications of Campaign Finance Reform, supra note 250, at 197; Dreyfuss, Reform Gets Rolling, supra note 286, at 39 (noting that a “disparate coalition” including women’s groups and civil rights organizations among other groups were targeting states for clean money campaigns); Klein, Clean Elections Act Alters Terrain in Maine, supra note 285, at A1; Malcolm, supra note 172, at A23.

\textsuperscript{357} Ford & Levien, supra note 269, at 317–22; Raskin & Bonifaz, supra note 269, at 1189–1202; Wertheimer & Weiss Manes, supra note 117, at 1149–54.
However, because politics will always trump ingenuity and good intentions, it is more beneficial to look towards a full-funding plan that has engendered some support on Capitol Hill. Representative John F. Tierney (D-Mass.) has introduced a bill in the 107th Congress along with forty-nine co-sponsors that would establish clean elections for House candidates. The proposal, which borrows heavily from the Maine clean elections idea, requires a major party candidate in a primary election to declare herself a clean money candidate, promise not to run as a private money candidate in the general election, and collect 1500 qualifying contributions, defined as $5 exactly from registered voters from the candidate's state. The candidate then needs to turn over all qualifying contributions to the House of Representatives Election Fund in exchange for public funding in the primary. A candidate qualifies as a general election clean candidate if the candidate satisfies certain requirements: The candidate (1) qualified during the primary period; (2) filed a declaration attesting to having completed the requirements to be a clean elections candidate; (3) secured a written agreement with their party that the party will only spend a certain amount in connection with the candidate; (4) and the candidate’s political party nominated the candidate to be placed on the ballot, or the candidate qualified as an independent to be placed on the ballot.

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558 See H.R. 1637, 107th Cong. (2001); See Klarman, supra note 250, at 536–37; Collins, Campaign Finance 101, supra note 319, at A23; Cottle, supra note 319, at 20; Curran, supra note 3.


560 H.R. 1637, 107th Cong. §§ 501(15), 502(a)(1)–(2), 505(a) (2001) (explaining that qualified candidates shall be certified no later than five days after a candidate files a declaration). A “Major Party Candidate” is defined as “a candidate of a political party of which a candidate for Member of or Delegate or Resident Commissioner to the Congress, for President, or for Governor in the preceding 5 years received, as a candidate of that party, 25 percent or more of the total number of popular votes received in the State (or Congressional district, if applicable) by all candidates for the same office.” Id. § 501(9). Qualifying contributions are defined as $5 exactly from registered voters from the candidate’s state. See § 501(15).

561 Id. § 502(a)(2)(D).

562 Id. § 502(b).
A clean election candidate agrees not to accept private contributions after the qualifying period, not to expend funds other than those from their clean money funds, and not to expend personal funds.\textsuperscript{363} In addition, clean election candidates can accept no more than $35,000 in seed money, defined as contributions from one person that may be no more than $100 in the aggregate.\textsuperscript{364} This money can be used for campaign expenses (excluding television or radio advertising or personal use) from the date of the previous election through the earliest date clean election funds are made available.\textsuperscript{365} Clean election money is distributed based on the applicable percentage of 80\% of the base amount for each election cycle involved.\textsuperscript{366} The base percentage is calculated using the national average of all amounts expended by winning candidates during the last three general elections for House districts.\textsuperscript{367} In addition, the bill includes a provision to provide matching funds to a clean election candidate should a person make an independent expenditure against the clean election candidate or in favor of her private money opponent, or if the private money opponent should expend more than 125\% of the amount of clean money provided.\textsuperscript{368} Finally, the bill includes several important provisions including a restructuring and strengthening of the weak FEC and free and reduced broadcast time for clean election candidates in the primary and general election.\textsuperscript{369}

On the whole, the bill includes a number of key components for a viable clean election proposal, including full funding and provisions for matching funds.\textsuperscript{370} Also, and perhaps more importantly, this pro-

\textsuperscript{363} Id. § 503. The bill does allow a candidate or a member of a candidate’s immediate family to make a qualifying contribution. Id. § 503(b) (2).

\textsuperscript{364} H.R. 1637, 107th Cong. § 501(16), § 504(a) (2001).

\textsuperscript{365} Id. § 504(a), (d), (g) (explaining that unspent seed money must be returned before clean election funds are made available for an election period); § 506(b)(1)–(2) (explaining that money shall be made available on the later date of either when the candidate is certified or the date on which the primary election period begins for the primary, and forty-eight hours after certification of the primary results or the date in which a candidate is certified as a general election clean candidate, whichever comes first).

\textsuperscript{366} Id. § 506(c). The “applicable percentage” is: “25 percent, in the case of a candidate in a primary election who is not a major party candidate; 40 percent, in the case of a major party candidate in a primary election; 60 percent, in the case of any candidate in a general election.” Id. § 506(c) (3)(A) (i)–(iii).

\textsuperscript{367} Id. § 506(c)(3)(B).

\textsuperscript{368} Id. § 506(d). The bill limits matching funds to 200\% of the clean money amount available. Id. § 506(e).

\textsuperscript{369} H.R. 1637, 107th Cong. §§ 301(c), 302, 501–508 (2001).

\textsuperscript{370} See generally id.
Proposal comes directly from a member of Congress who has found forty-nine colleagues to co-sponsor this legislation in the 107th Congress.\textsuperscript{371}

Despite its strengths, the proposal could be improved in a few ways, beginning with the inclusion of Senate races.\textsuperscript{372} Because of the severe deficiency of minorities and women in the Senate, any full funding proposal should encompass both the House and Senate.\textsuperscript{373} In addition, the bill currently requires all qualifying contributions to come from in-state registered voters; this provision should be altered to allow some out-of-state contributions, given that minority candidates tend to collect a sizable amount of money from outside their districts and states.\textsuperscript{374} In addition, in calculating how much a clean election candidate should receive, the bill relies on a formula that calculates the national average of all amounts expending by the winning candidates during the three most recent House elections.\textsuperscript{375} In order to tailor money to a specific area, a more effective approach would require an independent commission or the FEC to determine how much is appropriate for each House district or Senate race based on the peculiarities of that area.\textsuperscript{376} Finally, The Working Group on Electoral Democracy’s idea of scholarship money for poor or working class candidates would truly make the electoral process more open to all kinds of potential candidates.\textsuperscript{377}

\begin{footnotes}
\item[371] See H.R. 1637, 107th Cong. (2001), \textit{Bill Summary \& Status for the 107th Congress, supra} note 359.
\item[372] See Raskin \& Bonifaz, \textit{supra} note 269, at 1190 (including House and Senate candidates). Senator Wellstone’s companion measure in the Senate calls for full public funding for Senate elections, S. 719, 107th Cong. (2001). If it is easier procedurally to split up the bills, then it makes sense to do so; however, it is important to note that full public funding will not be full until both House and Senate candidates have the clean election option. See S. 719, 107th Cong. (2001); H.R. 1637, 107th Cong. (2001).
\item[373] See S. 719, 107th Cong. (2001) (providing public funding for just the Senate); H.R. 1637, 107th Cong. § 502(a)(2)(A) (2001) (requiring a major party candidate to collect 1500 qualifying contributions for House elections, but failing to provide a mechanism for Senate elections); Raskin \& Bonifaz, \textit{supra} note 269, at 1190; Bositis, \textit{The Black Vote in 2000, supra} note 13, at 3 (failing to list a single black member of the Senate in the 107th Congress); Election 2000, \textit{supra} note 28 (listing thirteen female senators in the 107th Congress).
\item[374] See H.R. 1637, 107th Cong. § 501(15)(B) (2001); \textit{Constitutional Implications of Campaign Finance Reform, supra} note 250, at 197 (including an explanation from Raskin that “the reason why so many members of the Congressional Black Caucus raise their money out of state is because the people in their districts cannot afford to give them the huge sums of money that are required to run for public office”).
\item[376] See Ford \& Levien, \textit{supra} note 269, at 318 (charging the FEC with setting the amount of public funding for candidates based on various aspects of the district or state).
\item[377] See Jezer, et al., \textit{supra} note 273, at 347; Raskin \& Bonifaz, \textit{supra} note 269, at 1194. The bill also bans soft money, limits independent and coordinated political party expendi-
\end{footnotes}
Tierney’s bill is a beginning, a framework upon which to build. One setback to any such proposal, in addition to the fact that incumbents would seek to block its passage, is the cost of such a proposal. Politicians are sensitive to cost, and such a large-scale proposal could be cost prohibitive, even during times of relative fiscal prosperity. However, it is important to note that the cost for the average publicly funded campaign is less than the cost of the average campaign because candidates do not need to spend money trying to raise more money through direct mail and other methods, a large expense in any campaign. Aside from the cost, in order for real campaign finance reform to become a reality, reformers need to attract a ground swell of support to force drastic action. Until such support develops, politics will continue to delay real reform that would help increase the number of minorities and women in the United States Congress. The most recent campaign finance legislation to pass a chamber of Congress, the McCain-Feingold bill, merely includes a study and re-

This page contains a reference to the McCain-Feingold bill, which is a key piece of legislation related to campaign finance reforms. The text discusses the challenges and setbacks that have hindered the implementation of comprehensive campaign finance reform, highlighting the costs associated with such proposals and the need for broad support to overcome political resistance. It also notes the potential benefits of public funding for campaigns, which can reduce financial barriers for candidates, particularly those from underrepresented groups.

The document further references various legal and policy discussions surrounding campaign finance reform, including the impact of financial contributions on election outcomes, the role of public funding in leveling the playing field, and the importance of sustained public support to drive substantive changes in campaign finance laws. The text underscores the complexity of addressing the deep-seated issues in campaign finance and the necessity of sustained and broad-based efforts to achieve meaningful reform.
port of clean elections; there is a long road to travel before actually enacting real reform, federal clean election legislation.\textsuperscript{384}

\textbf{CONCLUSION}

Minorities and women have historically been under-represented in the United States Congress; although this situation has improved slightly, there is still a paucity of representation from these groups.\textsuperscript{385} Many politicians, or "reformers," claim to be peddling viable reform proposals that would improve the way campaigns are financed.\textsuperscript{386} Too often, however, these "reformers" fail to take the concerns of challengers generally and the special concerns of minority and female candidates in particular, into account when crafting "reform."\textsuperscript{387} There are many proposals, including the McCain-Feingold bill that passed the Senate in 2001, cloaked in "reformer" clothing that would do little to promote diversity, or even worse, would endanger the limited progress women and minorities have achieved.\textsuperscript{388} The best approach for increasing the number of women and minorities in politics is to enact a clean election system similar to that of Maine, which includes full funding for House and Senate races.\textsuperscript{389} Short of that proposal, legislators must at least take the special needs of minority and female candidates into account when enacting "reform," lest we might find ourselves wading through a sea of unintended consequences.\textsuperscript{390}

\textsuperscript{384} See S. 17, 107th Cong. § 312 (2001). The legislation calls for a study and report to be completed by the Comptroller General of the United States looking into the number of candidates and races impacted by clean election money and the effects of such money on candidates in Arizona and Maine. See id.


\textsuperscript{387} See Herrnson, \textit{supra} note 7, at 244; Overton, \textit{But Some Are More Equal}, supra note 9, at 6-7.


\textsuperscript{390} See Sunstein, \textit{supra} note 53, at 1390; Overton, \textit{But Some Are More Equal}, \textit{supra} note 9, at 6-7; Thomma, \textit{supra} note 196 (explaining that McCain-Feingold could result in stronger political interest groups, reduced voter participation, and weakened political parties).