

October 31, 1979

RESTRICTING POLITICAL ACTION COMMITTEES: AN UPDATE

STATUS

On October 17, the House, by a 217-198 vote, amended the annual Federal Election Commission reauthorization bill (S. 832) to include new limitations on the contributions of political action committees (PAC's) to candidates for the House. The new limitations were an amended version of the Obey-Railsback bill (H.R. 4770) which was introduced by Congressmen David Obey (D-Wis.) and Tom Railsback (R-Ill.) on July 26, but was never referred to the House Administration Committee for hearings or consideration. Instead, the Rules Committee accepted the bill as a floor amendment to the FEC authorization bill. The House approved the rule by a 228-182 vote, adopted three amendments to the original Obey-Railsback bill, and then passed the amended version as an amendment to the authorization bill. S.832 had previously passed the Senate as a non-controversial annual reauthorization bill without new limitation on PAC's. With a conference with the Senate required, the House has already passed a resolution insisting that the conference report include the PAC restrictions. Although the PAC restrictions apply only to House candidates, a Senate filibuster designed to force the bill into committee has been threatened. The debate in the Senate is shaping up along party lines with Republicans opposing the new PAC restrictions.

THE BILL AS AMENDED

As amended, the Obey-Railsback part of the FEC reauthorization bill has five major provisions:

- 1) It establishes a ceiling of \$70,000 on the total amount a candidate for the House can receive from all PAC's in any two-year election cycle. Candidates involved in runoff elections could receive up to \$85,000. The original Obey-Railsback pro-

posal had a ceiling of \$50,000. Under current law, there is no ceiling on total contributions a candidate for the House can receive from PAC's.

2) It reduced the amount each PAC can contribute to any individual House candidate from \$5,000 for each primary, general, and runoff election to \$6,000 for both primary and general elections combined. A candidate involved in a runoff election could receive a maximum of \$9,000 from any single PAC for the primary, general, and runoff elections combined. No candidate could receive more than \$5,000 from a single PAC for any one election.

The original Obey-Railsback bill had limited individual PAC contributions to individual candidates to \$5,000 for a candidate involved in a primary and general election, and \$7,500 for a candidate also involved in a runoff election.

3) It prohibits a candidate from using contributions to his campaign committee to repay himself for more than \$35,000 of his own personal loans to his campaign. No such provision was included in the original Obey-Railsback proposal.

4) It would establish a limit on the extension of credit by political consultants, advertising firms and similar organizations that provide advertising services to House candidates. Such organizations would be able to extend credit to candidates only on the same basis as they extended credit to non-political clients -- subject to an outside limit of 60 days on any extension of credit. The 60-day limit would apply even if a firm ordinarily extends credit for longer periods. H.R. 4970 had a 30-day limit.

5) It would completely prohibit all extension of credit or advancement of funds to a political candidate by a direct-mail fundraising company.

THE \$70,000 CEILING

Under the original Obey-Railsback proposal, a candidate would have been prohibited from receiving more than \$50,000 from all PAC's in a two-year election cycle. There were 176 House candidates, 79 Republicans and 97 Democrats, who received more than that amount in the 1977-1978 election cycle. The House voted to raise the ceiling to \$70,000 during debate on the floor. FEC statistics show that the new ceiling would have affected the campaigns of 68 candidates, out of 1,285 candidates in the House general election, for the 1978 elections. Of the 68 candidates, 29 were Republicans and 39 were Democrats.

Of the 29 Republicans, 13 were incumbents, 11 were challengers, and five were candidates for an open seat. Seventeen were winners and 12 were losers. Eighteen were candidates in a competitive race (won by 55 percent of the vote or less), and 11 were candidates in a non-competitive race (55 percent or greater).

Of the 39 Democrats, 31 were incumbents, 4 were challengers and 4 were candidates for an open seat. Thirty-two were winners and 7 were losers. Seventeen were candidates in a competitive race, and 22 were candidates in a non-competitive race.

Among the 68 candidates overall, the number of incumbents was pre-dominant-as it is in every other category of campaign finance. There were 44 incumbents, 9 candidates for an open seat, and 15 challengers. Only 19 incumbents lost in the 1978 general elections, but 8 of those incumbents received more than \$70,000 in total PAC contributions. Six of those 8 incumbents were involved in competitive races. Conversely, 9 of the 19 successful challengers needed PAC contributions exceeding \$70,000. Another 5 challengers receiving PAC contributions over \$70,000 lost competitive races to incumbents. Thus, of the 38 major candidates involved in the 19 races in which an incumbent was defeated, 17 received PAC contributions exceeding \$70,000.

The provisions of the amended bill capping PAC contributions at \$70,000 and individual PAC donations at \$6,000 per candidate applies to a full two-year election cycle. Current election law allows a PAC to contribute \$5,000 to a candidate in each primary, general, and runoff election.

The \$70,000 ceiling will have the greatest effect on candidates who are involved in both a competitive primary election and a competitive general election: that is, candidates who must spend substantial funds for two elections in one two-year election cycle.

Under current law, candidates are required to make financial reports to the Federal Election Commission immediately following each primary, general and runoff election. A previous Heritage Foundation Issue Bulletin (No. 37, March 14, 1979) dealt with the differences between primary and general election expenditures. That study was based on the Federal Election Commission's "E Index" of campaign expenditures for all candidates in the 1977-78 election cycle.

Using the same source, it can be determined that 61 House candidates spent more than \$100,000 in primaries alone in 1978. Such heavy primary expenditures seem to indicate that these 61 candidates endured tough and expensive primary races, even before moving into the general elections. The FEC's Interim Report Number 5 (June, 1979) gives each candidate's PAC receipts. Checking the overall (for the two-year election cycle) PAC receipts of these 61 candidates involved in competitive primaries in Interim Report Number 5 reveals that 19 of the candidates received more than \$70,000 in PAC contributions.. Another 10 received between \$60,000 and \$70,000. Thus, candidates who had substantial expenditures for both primary and general election campaigns relied heavily on PAC contributions. The Obey-Railsback restrictions will probably have a marked effect on such candidates in the future.

Not only did incumbents win 95 percent (358 of the 377 races in which an incumbent ran) of the 1978 House races, but, additionally, only 77 of the 435 races (18 percent) were competitive, that is, the winner won with 55 percent or less of the vote. Of the 77 races, incumbents won 37, challengers won 15, and 25 were open-seat races. Ten of the 37 incumbents involved in a competitive race received PAC contributions of \$70,000 or more. In the 15 competitive races in which a challenger defeated an incumbent, 6 of the challengers had more than \$70,000 in PAC contributions, and 6 of the losing incumbents also received more than \$70,000 in PAC contributions. Thus, 12 of the 30 major candidates in competitive races in which an incumbent lost relied heavily on PAC contributions.

In the 25 competitive races for an open seat, 3 winners and 5 losers received PAC contributions exceeding \$70,000. In the 37 competitive races in which an incumbent won, 10 of the winning incumbents and 5 of the losing challengers received PAC contributions in excess of \$70,000. Thus, overall, of the 154 major candidates in the 77 competitive House races in the 1978 elections, 35 candidates relied on PAC contributions in excess of \$70,000.

ADDITIONAL DISCUSSION AND CONCLUSION

Although the "average" candidate for the House received 25 percent of all his contributions from PAC's in the 1978 elections, contributions from individuals remained the largest source of contributions for the "average" candidate. In the 1978 House elections, candidates received an average of 61 percent of all their contributions from individuals. The Obey-Railsback bill as amended, whose primary purpose is to further restrict the influence of PAC's, also will restrict campaign solicitations from individuals with its provision prohibiting all extension of credit to candidates by direct-mail fundraising companies. With federal election law restricting to \$1,000 the amount an individual can contribute to a candidate, candidates in the 1970's have found that direct-mail fundraising the most efficient way of soliciting contributions from a large number of individuals.

Yet, hiring a professional to solicit individual contributions is very expensive. Since few candidates have had the necessary funds at the start of a campaign to contract with a direct-mail fundraiser on a cash basis, it has been common for such fundraisers to extend credit to candidates until returns from the first mailings have come in. Since direct-mail solicitations have become the basis of fundraising from individuals, restricting the customary credit terms will likely also restrict the amount candidates are able to raise from individuals. Thus, the Obey-Railsback bill will limit candidate income from two of the four sources of campaign income: individuals and PAC's. Seemingly, candidates will have to turn more to the other two sources of campaign income: political parties and candidate loans and contributions to their own campaigns. With the widely-

acknowledged weakness of the two political parties, it remains to be seen whether the parties will be able to attract some of the contributors that have favored contributing to PAC's in recent years. If the Obey-Railsback bill forces candidates to turn more to their own personal resources, it will continue a trend that seems to be a direct result of the federal election laws of the 1970's. In the 1974 House elections, the average candidate contributed and/or loaned his campaign an average of \$3,480. By the 1978 elections, this amount had increased nearly 300 percent to \$10,267. By way of comparison, the total PAC contributions to candidates increased by about 130 percent over the same period. The much-publicized Harvard study of the federal election campaign laws, commissioned by the House Administration Committee, concluded that the laws of the 1970's have favored wealthy candidates. Additionally, the study concluded that the laws have restricted the ability of candidates to raise funds, thereby making the average campaign under-financed rather than over-financed. It is possible that passage of the Obey-Railsback bill will continue this trend.

Yet, the bill also attempts to discourage wealthy candidates by the provision restricting the amount such candidates can recover from their campaign treasuries to \$35,000. The purpose is to prevent wealthy candidates from heavily bankrolling their own campaigns and then holding fundraisers after the election in an attempt to recover their own investment. Seemingly, this will inhibit candidates from investing more than \$35,000 in their own campaigns. Any loan by a candidate to his own campaign beyond this amount would automatically turn into a non-recoverable contribution. In its Buckley v. Valeo (1976) decision, the Supreme Court ruled unconstitutional any law that would put a ceiling on the amount a candidate could contribute or loan his own campaign. The Obey-Railsback bill attempts to sidestep this ruling, not by restricting the amount a candidate can give or loan to his own campaign, but by providing a disincentive regarding the amount a candidate might be willing to loan this campaign.

With the bill proposing to reduce the contributions of an individual PAC from \$10,000 for an individual candidate's primary and general election combined to \$6,000 for the primary and general election combined (and from \$15,000 to \$9,000 for a candidate additionally involved in a runoff election), more PAC's will likely be formed. Yet, a labor union together with all its chapters and a corporation together with all its subsidiaries are allowed to have only one PAC among them under current law. Thus, corporations and labor unions with already existing PAC's will not be able to form additional PAC's affiliated with same organizations and under the same control. So, the bill seems to favor the creation of more non-affiliated, "ideological" PAC's -- such as CSFC on the right and NCEC on the left. These kinds of PAC's normally have a broader political viewpoint than the more famous "special-interest" PAC's affiliated with one specific corporations or one specific union. Under Obey-Railsback, the nonaffiliated PAC's could proliferate with the simple restriction that the same board of directors of such PAC's could not control more than one PAC.

Correspondingly, the influence of the already existing affiliated PAC's will be reduced. New affiliated PAC's, representing the same political interest as existing affiliated PAC's, could be formed by other unions or corporations in order to compensate for the reduced influence of the existing PAC's. Yet, every labor union of any significance has long been involved in politics and already established a PAC. During the House floor debate, several supporters of the Obey-Railsback bill argued that the purpose of the bill was to restrict the increasing clout of corporate PAC's. But, despite the increase in corporate PAC activity, the biggest and best-financed corporate PAC's still cannot compare to the biggest and best-financed union and trade association PAC's. And, in any case, the number of corporations vastly outnumbers the number of unions. The possibilities for increasing the number of corporate PAC's are great, while the possibilities for increasing the number of union PAC's are almost nil. Thus, Obey-Railsback could cause the creation of more corporate PAC's. Additionally, with a corporate or union PAC restricted to \$6,000 as the amount it can contribute to its most-favored candidates, such PAC's will likely spread the excess money to more candidates. Thus, the "special interest" PAC's will extend their "special interests" to more candidates although the influence on individual candidates will be less.

The previous section on the \$70,000 ceiling demonstrated that such large accumulations of PAC contributions were probably critical to many candidates involved in competitive races. This fact exists alongside the fact that incumbents as a group received more PAC contributions than challengers or candidates for an open seat. But, with only 18 percent of the races for the House in 1978 being competitive (such a low percentage has been the pattern throughout the 1970's), one fact is probably irrelevant to another. Incumbents have all the advantages of incumbency to compensate for Obey-Railsback's new restrictions on PAC's as a source of campaign money. Challengers, and specifically those challengers finding themselves in the relatively infrequent competitive races, will be hampered. With the provisions of the bill restricting PAC's, inhibiting candidates' loans to their own campaigns, and inhibiting fundraising from individuals by prohibiting the extension of credit to candidates, only the political parties remain unburdened by new restrictions. Whether the parties will be able to elicit new loyalties from their members and thereby compensate candidates for their lost contributions from the other three sources of campaign contributions remains to be seen. If the parties are unable to accomplish this, the trend in impoverished candidates is likely to continue.

A final note: while the campaigns of only 68 House candidates would have been restricted by the \$70,000 ceiling in the 1978 House elections, another two years of double-digit inflation will likely increase the number of affected candidates to a number approximately the 176 candidates affected by the \$50,000 ceiling of the original Obey-Railsback provisions.

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