

# Key Points - Federal Campaign Finance Regulation

## Bipartisan Campaign Reform Act - (McCain-Feingold)

and

### U.S. Supreme Court ruling - *Citizens United v. Federal Elections Commission*

**1947** - First prohibition on corporate contributions to election campaigns or electioneering communications.

**1970's** - The Federal Election Campaign Act (FECA) of 1972 required candidates to disclose sources of campaign contributions and campaign expenditures. Amended in 1974 with statutory limits on contributions, and creation of the Federal Election Commission (FEC).

#### **BCRA Law (McCain-Feingold, 2002) provisions:**

- Prohibits direct contributions to candidates by corporations and unions using general treasury funds;
- Prohibits independent expenditures that expressly advocate the election or defeat of a candidate through any form of media - in connection with certain qualified federal elections.
- BCRA Sec.203, as amended - Prohibits electioneering communication as well, defined as broadcast, cable or satellite communication that "refers to a clearly identified candidate for Federal office" - made within 30 days of a primary, or 60 days of a general election.
- However, corporations or unions may establish a "separate segregated fund" (PAC) for these purposes. Moneys received are limited to donations from corp stockholders and employees, or in the case of unions, members of the union.

#### **Citizens United ruling (February, 2010):**

##### **Overtured:**

- Laws or rules that prohibit corporations and unions from spending treasury money on ads that advocate electing or defeating candidates for president or Congress but are produced independently and not coordinated with the candidate's campaign.
- The prohibition in BCRA that prohibits issue-oriented ads paid for by corporations or unions 30 days before a primary and 60 days before a general election.

##### **Upheld:**

- The ban on donations by corporations from their treasuries directly to candidates.
- The ability of corporations, unions or individuals to set up PACs that can contribute directly to candidates but can only accept voluntary contributions from employees, members and others and cannot use money directly from corporate or union treasuries.
- The McCain-Feingold provision that anyone spending money on political ads must disclose the names of contributors.

## **Congressional response (proposed: Sen. Chuck Schumer, Rep. Chris Van Hollen, et al):**

### **The plan has six key components:**

- **Foreign influence would be deterred** by banning corporations which have 20% foreign ownership, a foreign-majority board of directors or U.S. operations (or political decision making) under the direction or control of a foreign entity, including a foreign government, would be barred from doing the independent expenditure ads permitted under Citizens United.
- **Pay-to-Play restrictions** by extending the existing ban on government contractors' political contributions to these independent expenditures, and barring TARP recipients from using taxpayer money for political expenditures.
- **Stand By Your Ad requirements** would be extended to require a corporation's CEO to appear on camera to say that he or she "approves this message," just like candidates do now, and for shadow groups/coalitions, the top funder does the disclaimer and the top five contributors have to be listed in the ad.
- **More disclosure** to make clear who's funding these activities, both in filings with the FEC and to corporate shareholders (both within 24h of each such expenditure and compiled quarterly). Also, registered lobbyists would have enhanced disclosure requirements.
- **Ensuring media access** by requiring broadcasters to extend the lowest unit rate to candidates and parties whenever corporations place independent expenditure ads on them, and requiring broadcasters to ensure candidates reasonable access to airtime (so that corporations can't dominate the market).
- **Extending coordination restrictions** to ban coordination between a corporation or union and the candidate on ads referencing a Congressional candidate within 90 days of the primary through the general election, and even before that window for ads which explicitly promote, support, attack or oppose a candidate.

### **Brennan Center proposals (summary):** (letter to Sen. Schumer, 2-2-2010)

- Promote public funding of political campaigns
- Modernize voter registration
- Demand accountability
- Advance a voter-centric view of the First Amendment

### **Move-To-Amend.org (and similar grassroots groups around the nation):**

- Build nationwide grassroots and coalition support, for possible amendments to the U.S. Constitution at some point, clarifying that only natural persons have free speech political rights, and limiting or prohibiting use of corporate treasury funds for electioneering or to influence election outcomes.