

# 2011 FDA Electoral Fairness Audit of the United States of America's Federal Electoral System

**Executive Summary:** The United States received a failing overall score of 30 percent for electoral fairness. The score means that the US federal electoral system from the standpoint of the US *Constitution* and electoral and media legislation is bordering being significantly more unfair than fair. The unfairness of the US federal system is concentrated primarily in the political content of public and private media and electoral finance laws. In the FDA's opinion, the US two party system is an extension of the electoral unfairness as manifested in the union of public and private major media and US corporate sector with government (i.e. Republicans and Democrats).



THE FOUNDATION FOR  
DEMOCRATIC ADVANCEMENT

Electoral Fairness Audit Completed May 18, 2011. Updated July 8, 2011.

## **About the Foundation for Democratic Advancement:**

The Foundation for Democratic Advancement ("FDA")'s mission is to advance fair and transparent democratic processes wherever elections occur. The FDA believes that fairer electoral systems and a more informed public will help ensure the election of candidates who truly represent the will of the people. The FDA fulfills its mission by performing detailed electoral audits on political candidates and parties to inform the public, objectively and impartially, about their electoral choices. Also, the FDA audits electoral legislation in terms of fairness and equity, and conducts ground level assessments of democratic processes. (For more information on the FDA visit: [www.democracychange.com](http://www.democracychange.com))

## **Purpose of Electoral Fairness Audit:**

The purpose of the FDA's electoral fairness audit (the "Audit") is to determine a grade and ranking for electoral fairness in the United States of America at the federal level of government. (This Audit is part of the FDA's global audit of electoral fairness involving all countries which hold political elections.)

This non-partisan, independent determination aims to give the citizens of the United States of America an informed, objective perspective of the fairness of the American federal electoral system.

The views in this electoral fairness audit are the views of the FDA only.

The FDA's members and volunteers are in no way affiliated with the US Electoral Commission or any of the American registered/non-registered political parties.

The Audit represents an independent assessment based on objectivity, transparency and non-partisanship. The FDA assumes no responsibility or liability for any errors in the calculation of its audit results or inaccuracies in its research of relevant American legislation.

## **Methodology for the Electoral Fairness Audit:**

The FDA focuses on four key areas of electoral fairness:

- 1) Laws and regulations on the political content of media including newspapers, broadcasters and online media before, during, and after elections;
- 2) Laws and regulations on the equality of candidates' and parties' influence before, during and after elections, such as national televised debates, restrictions on candidate nominations, party registration requirements, etc.;
- 3) Laws and regulations on electoral finance, such as party and campaign donation limits, third party spending limits etc.; and
- 4) Laws and regulations on the equality of voter say before, during, and after an election. The FDA looked at how American laws and regulations promote equality of voter say in the media, at the polling booth, through electoral finance and constitutional laws etc.

The FDA decided to evaluate these four areas of electoral fairness because, in our opinion, they are often ignored or overlooked by the international community in determining electoral fairness.

Moreover, these four areas cover broad aspects of the electoral process in which fairness could be compromised significantly.

The FDA acknowledges that electoral laws and regulations may not necessarily correspond to the implementation of those laws and regulations or the public's response to them. The implementation and response could be positive or negative, in terms of electoral fairness.

Nevertheless, laws and regulations provide the framework for the electoral system and an indication of electoral fairness.

A further study which tracks the actions of mainstream media and the enforcement or non-enforcement of electoral laws and regulation, for example, would provide a more reliable overall determination of electoral fairness.

The FDA researched current American legislation, in relation to the four areas of electoral fairness being examined. Following which, the FDA audited the research results via the FDA electoral audit team and established FDA scoring scales for the four areas of electoral fairness.

### **Weighting and Scoring:**

Overall, the FDA scoring is guided by an inherent valuation of the concepts of soundness and relevancy.

Each area of electoral fairness has a score range between 0 and 10, and each area is counted equally.

The total averaged score will provide an indication of the level of electoral fairness in the United States.

The FDA electoral audit team deliberated on the research for each area of electoral fairness, and then attempted to reach consensus on the final score. Where no consensus could be reached, the individual scores of the team were averaged.

The final score for each section must be supported by the more sound reasons and correspond to the established FDA scoring scale.

### **FDA Researchers for the USA Federal Electoral System:**

Mr. Stephen Garvey, FDA founder and executive director, bachelors degree in Political Science (University of British Columbia), and masters degree in Environment and Development (University of Cambridge).

Mr. Randy Moore, FDA volunteer and researcher, and masters student (University of Victoria).

## **FDA Electoral Fairness Audit Team:**

### ***Chief Electoral Auditor:***

Mr. Stephen Garvey, FDA founder and executive director, bachelors degree in Political Science (University of British Columbia), and masters degree in Environment and Development (University of Cambridge).

### ***Electoral Auditors:***

Mrs. Tina Frimpong, FDA executive secretary, researcher, second year student (University of Calgary), and legal assistant.

Mr. Aurangzeb Qureshi, FDA public relations specialist, and researcher, bachelor degree in Political Science (University of Alberta), and bachelor degree in Journalism (University of King's College).

Mrs. Liza Valentine, FDA design consultant and researcher, and masters degree in Architecture (University of Calgary).

### ***Observer:***

Mr. Teferi Assefa, president & CEO, Muscup Peace Foundation Inc.

## **Information Sources:**

The following information was consulted and utilized in this audit report:

*American Constitution*

US Communications Act of 1934

Electoral spending data from The Centre for Responsive Politics.

Federal Electoral Commission Act

US Federal Electoral Commission

Various media articles on the US federal electoral system.

© 2011, Foundation for Democratic Advancement

All rights reserved.

Foundation for Democratic Advancement

728 Northmount Drive NW

PO Box 94

Calgary, Alberta

Canada, T2K 1P0

info@democracychange.com

# Table of Contents:

<b>Chapter 1: Political Content of Media</b>	<b>6</b>
Executive Summary	6
Research Excerpts	6
Score	11
Rational	11
<b>Chapter 2: Equality of Political Candidate and Party Influence</b>	<b>12</b>
Executive Summary	12
Research Excerpts	12
Score	25
Rational	25
<b>Chapter 3: Equality of Electoral Finance</b>	<b>26</b>
Executive Summary	26
Research Excerpts	26
Score	35
Rational	35
<b>Chapter 4: Equality of Voter Say</b>	<b>36</b>
Executive Summary	36
Research Excerpts	36
Score	37
Rational	37
<b>Chapter 5: Overall Audit Results</b>	<b>38</b>
<b>Chapter 6: Analysis</b>	<b>39</b>
<b>Chapter 7: Conclusion</b>	<b>40</b>
<b>Chapter 8: Recommendations</b>	<b>41</b>

# ***Chapter One: Political Content of Media***

*Chapter one will focus on the research and audit results of American laws and regulations with respect to the political content of media, including newspapers, broadcasters and on-line media, before, during and after elections.*

---

## **Executive Summary:**

The United States received a failing score of 25 percent for equality of political content. The US major private media and broadcasters can be partisan and provide incomplete and imbalanced electoral coverage. The US public media and broadcasters are required to be impartial towards political candidates. However, the public media and broadcasters can be partisan towards political parties. The score of 25 percent reflects the dominance of the US major private media and broadcasters (in the share of the media market as compared to the public media) and their partisan political content, and the limited impartiality of the public media and broadcasters.

## **Research Excerpts:**

The following excerpts were identified by the FDA researchers as relevant. The FDA researchers made some excerpts bold to emphasize high relevance:

### **THE PUBLIC AND BROADCASTING:**

How to Get the Most Service from Your Local Station

Revised July 2008

Prepared by: The Media Bureau Federal Communications Commission  
Washington, D.C.

**•Reasonable Access.** The Communications Act requires that broadcast stations provide “reasonable access” to candidates for federal elective office. Such access must be made available during all of a station’s normal broadcast schedule, including television prime time and radio drive time. In addition, federal candidates are entitled to purchase all classes of time offered by stations to commercial advertisers, such as preemptible and non-preemptible time. The only exception to the access requirement is for *bona fide* news programming (as defined below), during which broadcasters may choose not to sell airtime to federal candidates. Broadcast stations have discretion as to whether to sell time to candidates in state and local elections.

**•Equal Opportunities.** The Communications Act requires that, when a station provides airtime to a legally qualified candidate for any public office (federal, state, or local), the station must “afford equal opportunities to all other such candidates for that office.” The equal opportunities provision of the Communications Act also provides that the station “shall have no power of censorship over the material broadcast” by the candidate. The law exempts from the equal opportunities requirement appearances by candidates during *bona fide* news programming, defined as an appearance by a legally qualified candidate on a *bona fide* newscast, interview, or documentary (if the appearance of the candidate is incidental to the presentation of the subject covered by the documentary) or on-the-spot coverage of a *bona fide* news event (including debates, political conventions and related incidental activities).

[Reasonable ensures legal access for all candidates for federal elective office. But the candidates still have to pay for the access.]

**The laws exempt equal opportunity for a *bona fide* newscast, interview, or documentary (if the appearance of the candidate is incidental to the presentation of the subject covered by the documentary) or on-the-spot coverage of a *bona fide* news event (including debates, political conventions and related incidental activities). [So broadcast stations have no control of their political content. ]**

Communications Act of 1934

**Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views of issues of public importance.**

[“operate in the public interest and afford reasonable opportunity for the discussion of conflicting views of issues of public importance” are vague and matter of perception. Nothing on conflicting political views and views of different political candidates. Nothing on equality of political content. ]

the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds –

- (i) a clearly identifiable photographic or similar image of the candidate; and
  - (ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate’s authorized committee paid for the broadcast.
- (D) RADIO BROADCASTS. – A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.

[Political advertisement are required to be clearly identifiable to the public.]

#### (b)CHARGES

(1) IN GENERAL. – The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed –

(A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(B) at any other time, the charges made for comparable use of such station by other users thereof.

[Equality of charges for political advertisements.]

## Relevant Sections of the FCC's Rules Dealing with Broadcast Stations

### Section 73.1944 [47 CFR §73.1944] Reasonable Access.

(a) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(b) *Weekend Access.* For purposes of providing reasonable access, a licensee shall make its facilities available for use by federal candidates on the weekend before the election if the licensee has provided similar access to commercial advertisers during the year preceding the relevant election period. Licensees shall not discriminate between candidates with regard to weekend access.

[57 FR 210, Jan. 3, 1992]

[Equal access with possible revoke of broadcast license if repeated failure to do so]

### Section 399 [47 U.S.C. §399] Support of political candidates prohibited.

**No noncommercial educational broadcasting station may support or oppose any candidate for public office.**

[Equality of public broadcasts]

No regulation of internet news in terms of political content. Regulation of paid political advertisements on the internet.

### Publicly Distributed Shortly Before Election

Generally, a communication is publicly distributed if it is disseminated for a fee by a television station, radio station, cable television system or satellite system. [11 CFR 100.29\(b\)\(3\)\(i\)](#). Electioneering communications are limited to paid programming. The station is not required to seek or receive payment for distribution of the communication to qualify. Therefore, public service announcements, infomercials and commercials are all included within the definition. The electioneering communications rules apply only to communications that are transmitted within 60 days prior to a general election or 30 days prior to a primary election for the federal office sought by the candidate, including elections in which the candidate is unopposed. A "primary election" includes any caucus or convention of a political party which has the authority to nominate a candidate to federal office. [11 CFR 100.29\(a\)\(2\)](#). This condition regarding the timing of the communication applies only to elections in which the candidate referred to is seeking office.

### Exemptions

The regulations at [11 CFR 100.29\(c\)\(1\) through \(5\)](#) exempt certain communications from the definition of "electioneering communication":

- A communication that is disseminated through a means other than a broadcast station, radio station, cable television system or satellite system. For example, neither printed media-including

newspapers, magazines, bumper stickers, yard signs and billboards-nor communications over the internet, e-mail or the telephone are included;

- A news story, commentary or editorial broadcast by a television station, radio station, cable television system or satellite system. However, if the facilities are owned or controlled by a political party, political committee or candidate, the communication must satisfy the exemption for news stories at [11 CFR 100.132\(a\) and \(b\)](#) to be exempt;
- Expenditures or independent expenditures that must otherwise be reported to the Commission;
- A candidate debate or forum or a communication that solely promotes a debate or forum. Communications promoting the debate or forum must be made by or on behalf of the sponsor; and
- Communications by state or local candidates that do not promote, support, attack or oppose federal candidates.

### **Political Committees**

As noted above, expenditures that must otherwise be reported to the FEC are not considered electioneering communications, even if they would otherwise qualify. 11 CFR [100.29\(c\)\(3\)](#) and [104.20\(b\)](#). Generally, political committees registered with the FEC are therefore not subject to the electioneering communications rules.

### **Corporations and Labor Organizations**

Corporations and labor organizations are prohibited from making or financing electioneering communications to those outside of their restricted class. [11 CFR 114.2\(b\)\(2\)\(iii\)](#).<sup>3</sup> Further, they may not provide funds to any person if they know, have reason to know, or are willfully blind to the fact that the funds are for the purpose of making electioneering communications. [11 CFR 114.14\(a\)](#).

If a communication which otherwise fits the criteria of an electioneering communication is paid for by the separate segregated fund (PAC) of a corporation, it is reportable as an expenditure - not as an electioneering communication. [11 CFR 104.20\(b\)](#).

### **Qualified Nonprofit Corporations**

Qualified Nonprofit Corporations (QNCs) may make electioneering communications. To qualify, the entity must be a [nonprofit corporation incorporated under 26 U.S.C. §501\(c\)\(4\)](#)<sup>4</sup> that is ideological in nature and qualifies for exemptions under [11 CFR 114.10](#).

If a QNC makes electioneering communications that aggregate in excess of \$10,000 in a calendar year, it must certify that it is eligible for the QNC exemption. The certification must include the name and address of the corporation and the signature and printed name of the individual making the qualifying statement. It must also certify that the corporation meets the standards of a QNC, either by satisfying all of the qualifications at [11 CFR 114.10\(c\)\(1\)-\(5\)](#), or through a court ruling pursuant to [11 CFR 114.10\(e\)\(1\)\(i\)\(B\)](#). The certification is due no later than when the first electioneering communications report is required to be filed. [11 CFR 114.10\(e\)\(1\)\(ii\)\(A\)](#).

QNCs can neither make contributions to federal political committees, nor accept any funds from corporations or labor organizations. [11 CFR 114.10\(c\)\(4\)\(ii\) and \(d\)\(2\) and \(3\)](#). Also, these regulations do not supercede any section of the Internal Revenue Code regarding [501\(c\)\(4\) organizations](#). [11 CFR 114.10\(i\)](#).

### **"527" Organizations**

Generally, [incorporated organizations operating under 26 U.S.C. §527](#) may not make electioneering communications.

However, an incorporated state party committee or state candidate committee operating under 26 U.S.C. §527 is exempt from this corporate prohibition provided that the committee:

- Is not a political committee, as defined at [11 CFR 100.5](#);
- Incorporates for liability purposes only;
- Does not use any funds donated by corporations or labor organizations to fund the electioneering communication; and
- Complies with the FEC's reporting requirements for electioneering communications. [11 CFR 114.2\(b\)\(2\)\(iii\)](#).

Unincorporated, unregistered "527" organizations may also make electioneering communications, subject to the disclosure requirements and the prohibition against corporate and labor funds.

### **Individuals and Partnerships**

Individuals and partnerships may make or finance electioneering communications, provided that certain conditions are met. Those that accept funds provided by corporations or labor organizations may neither use those funds to pay for electioneering communications, nor give them to another to defray the costs of making an electioneering communication. [11 CFR 114.14\(b\)](#).

They must be able to demonstrate through a reasonable accounting procedure that no prohibited funds were used to pay for the electioneering communication. [11 CFR 114.14\(d\)](#).

## **Electoral Fairness Audit Results for Media and Broadcasters:**

### **Score:**

The FDA electoral fairness audit team reached consensus on a score of 2.5/10.

### **Rational for Score:**

There are no restrictions on the political content of private media before/during/after an election.

Public broadcasters must be non-partisan towards political candidates, and not necessarily political parties. This distinction is important, because the public media can be biased to dominant parties, and thereby help perpetuate the US two party system. Further, public broadcasters (PBS and NPR for examples) represent only a fraction of the US media and broadcaster market.

The element of equality through freedom of expression is canceled out by the extreme bias of the political content in the US private media, and the failure of the US media and broadcast laws to encourage an equality of political content of registered candidates and parties.

## ***Chapter Two: Candidates' and Parties' Influence***

*Chapter two will focus on the research and audit results of American laws and regulations with respect to the equality of candidates and parties' influence before, during and after elections.*

---

### **Executive Summary:**

The United States received a failing score of 30 percent for equality of candidate and party influence. Private media and broadcasters can be partisan and provide incomplete and imbalanced electoral coverage. Public media and broadcasters cannot be partisan to a particular political candidate, but can be partisan to particular political parties. The US electoral finance laws for private and public funding favor, severely, dominant candidates and parties. Though the US media and broadcasters are required equal media access and opportunity to candidates and parties, that access and opportunity is based on the ability to pay. The 30 percent score is based on freedom of expression and minimal barriers to entry for candidates and parties.

### **Research Excerpts:**

The following excerpts were identified by the FDA researchers as relevant. The FDA researchers made some excerpts bold to emphasize high relevance:

THE PUBLIC AND BROADCASTING: How to Get the Most Service from Your Local Station, Revised July 2008

Prepared by: The Media Bureau  
Federal Communications Commission  
Washington, D.C.

•**Reasonable Access.** The Communications Act requires that broadcast stations provide “reasonable access” to candidates for federal elective office. Such access must be made available during all of a station’s normal broadcast schedule, including television prime time and radio drive time. In addition, federal candidates are entitled to purchase all classes of time offered by stations to commercial advertisers, such as preemptible and non-preemptible time. The only exception to the access requirement is for *bona fide* news programming (as defined below), during which broadcasters may choose not to sell airtime to federal candidates. Broadcast stations have discretion as to whether to sell time to candidates in state and local elections.

•**Equal Opportunities.** The Communications Act requires that, when a station provides airtime to a legally qualified candidate for any public office (federal, state, or local), the station must “afford equal opportunities to all other such candidates for that office.” The equal opportunities provision of the Communications Act also provides that the station “shall have no power of censorship over the material broadcast” by the candidate. The law exempts from the equal opportunities requirement appearances by candidates during *bona fide* news programming, defined as an appearance by a legally qualified candidate on a *bona fide* newscast, interview, or documentary (if the appearance of the candidate is incidental to the presentation of the subject covered by the documentary) or on-the-spot coverage of a *bona fide* news event (including debates, political conventions and related incidental activities).

[Reasonable ensures legal access for all candidates for federal elective office. But the candidates still have to pay for the access.]

**The laws exempt equal opportunity for a *bona fide* newscast, interview, or documentary (if the appearance of the candidate is incidental to the presentation of the subject covered by the documentary) or on-the-spot coverage of a *bona fide* news event (including debates, political conventions and related incidental activities). So broadcast stations have no control of their political content. ]**

Communications Act of 1934

**Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views of issues of public importance.**

[“operate in the public interest and afford reasonable opportunity for the discussion of conflicting views of issues of public importance” are vague and matter of perception. Nothing on conflicting political views and views of different political candidates. Nothing on equality of political content. ]

the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds –

(i) a clearly identifiable photographic or similar image of the candidate; and

(ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate’s authorized committee paid for the broadcast.

(D) RADIO BROADCASTS. – A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.

[Political advertisement are required to be clearly identifiable to the public.]

#### (b)CHARGES

(1) IN GENERAL. – The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed –

(A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(B) at any other time, the charges made for comparable use of such station by other users thereof.

[Equality of charges for political advertisements.]

## Relevant Sections of the FCC's Rules Dealing with Broadcast Stations

### Section 73.1944 [47 CFR §73.1944] Reasonable Access.

(a) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(b) *Weekend Access.* For purposes of providing reasonable access, a licensee shall make its facilities available for use by federal candidates on the weekend before the election if the licensee has provided similar access to commercial advertisers during the year preceding the relevant election period. Licensees shall not discriminate between candidates with regard to weekend access.

[57 FR 210, Jan. 3, 1992]

[Equal access with possible revoke of broadcast license if repeated failure to do so]

### Section 399 [47 U.S.C. §399] Support of political candidates prohibited.

**No noncommercial educational broadcasting station may support or oppose any candidate for public office.**

[Equality of public broadcasts]

No regulation of internet news in terms of political content. Regulation of paid political advertisements on the internet.

### Publicly Distributed Shortly Before Election

Generally, a communication is publicly distributed if it is disseminated for a fee by a television station, radio station, cable television system or satellite system. [11 CFR 100.29\(b\)\(3\)\(i\)](#).

Electioneering communications are limited to paid programming. The station is not required to seek or receive payment for distribution of the communication to qualify. Therefore, public service announcements, infomercials and commercials are all included within the definition.

The electioneering communications rules apply only to communications that are transmitted within 60 days prior to a general election or 30 days prior to a primary election for the federal office sought by the candidate, including elections in which the candidate is unopposed. A "primary election" includes any caucus or convention of a political party which has the authority to nominate a candidate to federal office. [11 CFR 100.29\(a\)\(2\)](#). This condition regarding the timing of the communication applies only to elections in which the candidate referred to is seeking office.

### Exemptions

The regulations at [11 CFR 100.29\(c\)\(1\) through \(5\)](#) exempt certain communications from the definition of "electioneering communication":

- A communication that is disseminated through a means other than a broadcast station, radio station, cable television system or satellite system. For example, neither printed media-including

newspapers, magazines, bumper stickers, yard signs and billboards-nor communications over the internet, e-mail or the telephone are included;

- A news story, commentary or editorial broadcast by a television station, radio station, cable television system or satellite system. However, if the facilities are owned or controlled by a political party, political committee or candidate, the communication must satisfy the exemption for news stories at [11 CFR 100.132\(a\) and \(b\)](#) to be exempt;
- Expenditures or independent expenditures that must otherwise be reported to the Commission;
- A candidate debate or forum or a communication that solely promotes a debate or forum. Communications promoting the debate or forum must be made by or on behalf of the sponsor; and
- Communications by state or local candidates that do not promote, support, attack or oppose federal candidates.

### **Political Committees**

As noted above, expenditures that must otherwise be reported to the FEC are not considered electioneering communications, even if they would otherwise qualify. 11 CFR [100.29\(c\)\(3\)](#) and [104.20\(b\)](#). Generally, political committees registered with the FEC are therefore not subject to the electioneering communications rules.

### **Corporations and Labor Organizations**

Corporations and labor organizations are prohibited from making or financing electioneering communications to those outside of their restricted class. [11 CFR 114.2\(b\)\(2\)\(iii\)](#).<sup>3</sup> Further, they may not provide funds to any person if they know, have reason to know, or are willfully blind to the fact that the funds are for the purpose of making electioneering communications. [11 CFR 114.14\(a\)](#).

If a communication which otherwise fits the criteria of an electioneering communication is paid for by the separate segregated fund (PAC) of a corporation, it is reportable as an expenditure - not as an electioneering communication. [11 CFR 104.20\(b\)](#).

### **Qualified Nonprofit Corporations**

Qualified Nonprofit Corporations (QNCs) may make electioneering communications. To qualify, the entity must be a [nonprofit corporation incorporated under 26 U.S.C. §501\(c\)\(4\)](#)<sup>4</sup> that is ideological in nature and qualifies for exemptions under [11 CFR 114.10](#). If a QNC makes electioneering communications that aggregate in excess of \$10,000 in a calendar year, it must certify that it is eligible for the QNC exemption. The certification must include the name and address of the corporation and the signature and printed name of the individual making the qualifying statement. It must also certify that the corporation meets the standards of a QNC, either by satisfying all of the qualifications at [11 CFR 114.10\(c\)\(1\)-\(5\)](#), or through a court ruling pursuant to [11 CFR 114.10\(e\)\(1\)\(i\)\(B\)](#). The certification is due no later than when the first electioneering communications report is required to be filed. [11 CFR 114.10\(e\)\(1\)\(ii\)\(A\)](#).

QNCs can neither make contributions to federal political committees, nor accept any funds from corporations or labor organizations. [11 CFR 114.10\(c\)\(4\)\(ii\) and \(d\)\(2\) and \(3\)](#). Also, these regulations do not supercede any section of the Internal Revenue Code regarding [501\(c\)\(4\) organizations](#). [11 CFR 114.10\(i\)](#).

### **"527" Organizations**

Generally, [incorporated organizations operating under 26 U.S.C. §527](#) may not make electioneering communications.

However, an incorporated state party committee or state candidate committee operating under 26 U.S.C. §527 is exempt from this corporate prohibition provided that the committee:

- Is not a political committee, as defined at [11 CFR 100.5](#);
- Incorporates for liability purposes only;
- Does not use any funds donated by corporations or labor organizations to fund the electioneering communication; and
- Complies with the FEC's reporting requirements for electioneering communications. [11 CFR 114.2\(b\)\(2\)\(iii\)](#).

Unincorporated, unregistered "527" organizations may also make electioneering communications, subject to the disclosure requirements and the prohibition against corporate and labor funds.

### **Individuals and Partnerships**

Individuals and partnerships may make or finance electioneering communications, provided that certain conditions are met. Those that accept funds provided by corporations or labor organizations may neither use those funds to pay for electioneering communications, nor give them to another to defray the costs of making an electioneering communication. [11 CFR 114.14\(b\)](#).

They must be able to demonstrate through a reasonable accounting procedure that no prohibited funds were used to pay for the electioneering communication. [11 CFR 114.14\(d\)](#).

### **Campaign Finance:**

Supreme Court rolls back campaign cash limits

NBC News and news services

updated 1/21/2010 1:43:59 PM ET 2010-01-21T18:43:59

**In a landmark ruling, the U.S. Supreme Court on Thursday struck down laws that banned corporations from using their own money to support or oppose candidates for public office.**

By 5-4 vote, the court overturned federal laws, in effect for decades, that prevented corporations from using their profits to buy political campaign ads. The decision, which almost certainly will also allow labor unions to participate more freely in campaigns, threatens similar limits imposed by 24 states.

**It leaves in place a ban prohibiting corporations and unions from directly contributing funds to candidates for any use.**

The justices also struck down part of the landmark McCain-Feingold campaign finance bill that barred union- and corporate-paid issue ads in the closing days of election campaigns. Advocates of strong campaign finance regulations have predicted that a court ruling against the limits would lead to a flood of corporate and union money in federal campaigns as early as November's congressional elections.

**The decision removes limits on independent expenditures that are not coordinated with candidates' campaigns.**

The case does not affect political action committees, which mushroomed after post-Watergate laws set the first limits on contributions by individuals to candidates. **Corporations, unions and others may create PACs to contribute directly to candidates, but they must be funded with voluntary contributions from employees, members and other individuals, not by corporate or union treasuries.**

FEDERAL ELECTION CAMPAIGN LAWS  
April 2008 THE FEDERAL ELECTION COMMISSION

- (5) The term “fund” means the Presidential Election Campaign Fund established by section 9006(a).
- (6) The term “major party” means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.**
- (7) The term “minor party” means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.**
- (8) The term “new party” means with respect to any presidential election, a political party which is neither a major party nor a minor party.
- (a) *In general.* Subject to the provisions of this chapter—
- (1) The eligible candidates of each major party in a presidential election shall be entitled to equal payments under section 9006 in an amount which, in the aggregate, shall not exceed the expenditure limitations applicable to such candidates under section 441a(b)(1)(B) of title 2.
- (2) (A) The eligible candidates of a minor party in a presidential election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the major parties in the preceding presidential election.
- (B) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for such office in the preceding presidential election and received 5 percent or more but less than 25 percent of the Federal Election Campaign Laws 102

*Dollar limits on expenditures by candidates for office of President of the United States.*

**(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—**

**(A) \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section), or \$200,000; or**

§ 441a Federal Election Campaign Laws 66

**(B) \$20,000,000 in the case of a campaign for election to such office. § 441a**

Total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the provisions of section 9003(a) and (c), shall be treated as eligible candidates entitled to payments under section 9006 in an amount computed as provided in subparagraph (A) by taking into account all the popular votes received by such candidate for the office of President in the preceding presidential election.

If eligible candidates of a minor party are entitled to payments under this subparagraph, such entitlement shall be reduced by the amount of the entitlement allowed under subparagraph (A).

[Payments favor dominate parties—based on % of vote received in last election]

**(d) Expenditures from personal funds.** In order to be eligible to receive any payment under section 9006, the candidate of a major, minor, or new party in an election for the office of President shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for election to the office of President in excess of, in the aggregate, **\$50,000**. For purposes of this subsection, expenditures from personal funds made by a candidate of a major, minor, or new party for the office of Vice President shall be considered to be expenditures by the candidate of such party for the office of President.

**(e) Definition of immediate family.** For purposes of subsection (d), the term “immediate family” means a candidate’s spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

**§ 9008. Payments for presidential nominating conventions**

**(a) Establishment of accounts.** The Secretary shall maintain in the fund, in addition to any account which he maintains under section 9006(a), a separate account for the national committee of each major party and minor party. The Secretary shall deposit in each such account an amount equal to the amount which each such committee may receive under subsection (b). Such deposits shall be drawn from amounts designated by individuals under section 6096 and shall be made before any transfer is made to any account for any eligible candidate under section 9006(a).

**(b) Entitlement to payments from the fund.**

**(1) Major parties.** Subject to the provisions of this section, the national committee of a major party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed \$4,000,000.

**(2) Minor parties.** Subject to the provisions of this section, the national committee of a minor party shall be entitled to payments under paragraph (3), with respect to any presidential

nominating convention, in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount the national committee of a major party is entitled to receive under paragraph (1) as the number of popular votes received by the candidate for president of the minor party, as such candidate, in the preceding Presidential election bears to the average number of popular votes received by the candidates for President of the United States of the major parties in the preceding Presidential election.

#### **9012. Criminal penalties**

(a) *Excess expenses.*

(1) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a presidential election or any of his authorized committees knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004 with respect to such election. It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under section 9008(d), unless the incurring of such expenses is authorized by the Commission under section 9008(d)(3).

(2) Any person who violates paragraph (1) shall be fined not more than \$5,000, or imprisoned not more than one year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

#### **9035. Qualified campaign expense limitations**

(a) *Expenditure limitations.* No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of title 2, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, \$50,000.

#### **9042. Criminal penalties**

(a) *Excess campaign expenses.* Any person who violates the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both.

#### **594. Intimidation of voters**

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

Bipartisan Campaign Reform Act 2020

	To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year <sup>[1]</sup>	Special Limits
Individual may give	\$2,500*	\$30,800*	\$10,000 (combined limit)	\$5,000	\$117,000* overall biennial limit:  ● \$46,200* to all candidates ● \$70,800* to all PACs and parties <sup>[2]</sup>
National Party Committee may give	\$5,000	No limit	No limit	\$5,000	\$43,100* to Senate candidate per campaign <sup>[3]</sup>
State, District & Local Party Committee may give	\$5,000 (combined limit)	No limit	No limit	\$5,000 (combined limit)	No limit
PAC (multicandidate) <sup>[4]</sup> may give	\$5,000	\$15,000	\$5,000 (combined limit)	\$5,000	No limit
PAC (not multicandidate) may give	\$2,500*	\$30,800*	\$10,000 (combined limit)	\$5,000	No limit
Authorized Campaign Committee may give	\$2,000 <sup>[5]</sup>	No limit	No limit	\$5,000	No limit

\* These contribution limits are increased for inflation in odd-numbered years.

1 A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the PAC. [11 CFR 110.6](#). See also [11 CFR 110.1\(h\)](#).

2 No more than \$46,200 of this amount may be contributed to state and local party committees and PACs.

3 This limit is shared by the national committee and the Senate campaign committee.

4 A multicandidate committee is a political committee with more than 50 contributors which has been registered for at least 6 months and, with the exception of state party committees, has made contributions to 5 or more candidates for federal office. [11 CFR 100.5\(e\)\(3\)](#).

5 A federal candidate's authorized committee(s) may contribute no more than \$2,000 per election

to another federal candidate's authorized committee(s). [2 U.S.C. 432\(e\)\(3\)\(B\)](#).

## **The Biennial Limit**

As an individual, you are subject to a biennial limit on contributions made to federal candidates, party committees and political action committees (PACs). The limit is in effect for a two-year period beginning January 1st of the odd-numbered year and ending on December 31st of the even-numbered year. [11 CFR 110.5](#).

The biennial limit is indexed for inflation in odd-numbered years. The **2011-12 limit is \$117,000**. This limit includes up to:

- \$46,200 in contributions to candidate committees; and
- \$70,800 in contributions to any other committees, of which no more than \$46,200 of this amount may be given to committees that are not national party committees. [11 CFR 110.5\(b\)\(1\)](#).

•*Dollar limits on expenditures by candidates for office of President of the United States.*

•(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—

•(A) \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section), or \$200,000; or

## **What is Public Funding?**

Public funding of Presidential elections means that qualified Presidential candidates receive federal government funds to pay for the valid expenses of their political campaigns in both the primary and general elections. National political parties also receive federal money for their national nominating conventions.

## **Primary Matching Funds**

Partial public funding is available to Presidential primary candidates in the form of matching payments. The federal government will match up to \$250 of an individual's total contributions to an eligible candidate.

Only candidates seeking nomination by a political party to the office of President are eligible to receive primary matching funds. In addition, a candidate must establish eligibility by showing broad-based public support. He or she must raise in excess of \$5,000 in each of at least 20 states (i.e., over \$100,000). Although an individual may contribute up to \$2,500 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state.

Candidates also must agree to:

- Limit campaign spending for all primary elections to \$10 million plus a cost-of-living adjustment (COLA).[6](#) This is called the national spending limit.

- Limit campaign spending in each state to \$200,000 plus COLA, or to a specified amount based on the number of voting age individuals in the state (plus COLA), whichever is greater.

- Limit spending from personal funds to \$50,000.

**General Election Limit: \$88.45 million**

**Overall Primary Limit: \$44.22 million**

**State-by State Primary Limits:**

State	Voting Age Population	Expenditure Limitation
Alabama	3,599,303	\$2,546,800
Alaska	527,205	\$884,500
Arizona	4,940,296	\$3,495,700
Arkansas	2,195,465	\$1,553,500
California	27,795,779	\$19,668,100
Colorado	3,865,036	\$2,734,900
Connecticut	2,727,907	\$1,930,200
Delaware	685,978	\$884,500
DC	494,192	\$884,500
Florida	14,616,271	\$10,342,400
Georgia	7,324,792	\$5,183,000
Hawaii	1,006,338	\$884,500
Idaho	1,143,651	\$884,500
Illinois	9,777,437	\$6,918,500
Indiana	4,861,307	\$3,439,800
Iowa	2,313,538	\$1,637,000
Kansas	2,133,356	\$1,509,500
Kentucky	3,323,606	\$2,351,800
Louisiana	3,397,965	\$2,404,400
Maine	1,048,523	\$884,500
Maryland	4,385,947	\$3,103,500
Massachusetts	5,203,385	\$3,681,900
Michigan	7,623,767	\$5,394,500
Minnesota	4,038,685	\$2,857,700
Mississippi	2,194,892	\$1,553,100
Missouri	4,589,980	\$3,247,800
Montana	764,058	\$884,500
Nebraska	1,359,656	\$962,100
Nevada	1,977,693	\$1,399,400
New Hampshire	1,043,155	\$884,500
New Jersey	6,691,782	\$4,735,100
New Mexico	1,514,872	\$1,071,900
New York	15,167,513	\$10,732,400
North Carolina	7,188,327	\$5,086,400
North Dakota	511,050	\$884,500
Ohio	8,840,340	\$6,255,400
Oklahoma	2,796,489	\$1,978,800
Oregon	2,986,164	\$2,113,000
Pennsylvania	9,880,374	\$6,991,300
Rhode Island	833,168	\$884,500
South Carolina	3,515,754	\$2,487,700

South Dakota	620,912	\$884,500
Tennessee	4,847,129	\$3,429,800
Texas	18,210,592	\$12,885,700
Utah	1,951,049	\$1,380,500
Vermont	500,054	\$884,500
Virginia	6,103,947	\$4,319,100
Washington	5,170,543	\$3,658,600
West Virginia	1,439,342	\$1,018,500
Wisconsin	4,372,515	\$3,094,000
Wyoming	417,319	\$884,500
<b>U.S. Territories</b>		
American Samoa	n/a	\$884,500
Guam	n/a	\$884,500
Northern Mariana Islands	n/a	\$884,500
Puerto Rico	n/a	\$884,500
Virgin Islands	n/a	\$884,500

## Expenditure Limits for Publicly Funded Candidates\*

	Primary Candidates	General Election	
		Major Party Nominees	Minor/New Party Nominees
<b>National Spending Limit</b>	\$10 mil. + COLA**	\$20 mil. + COLA	\$20 mil. + COLA
<b>State Spending Limit</b>	The greater of \$200,000 + COLA or \$0.16 x state VAP***	None	None
<b>Exempt Fundraising Limit</b>	20% of national limit	Not applicable	20% of national limit
<b>Maximum Public Funds Candidate May Receive</b>	50% of national limit	Same as national limit	Percentage of national limit based on candidate's popular vote.
<b>National Party Spending Limit for Candidate****</b>	Not applicable	\$0.02 x VAP of U.S. + COLA	\$0.02 x VAP of U.S. + COLA
<b>Limit on Spending from Candidate's Personal Funds</b>	\$50,000	\$50,000	\$50,000

(d) *Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office.*<sup>1</sup>

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2), (3) and (4) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—  
Candidates if such individual has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000;

US Federal Election Commission:

The first petition, filed on May 25, 1999 by Mary Clare Wohlford, William T. Wohlford, and Martin T. Mortimer (“Wohlford Petition”), urged the Commission to amend its rules so that the objective criteria for inclusion in Presidential and Vice Presidential debates would be established by the Commission itself, and not left to the discretion of debate staging organizations.

[Debates left to staging organizations]

*Federal election activity.*

(A) *In general.* The term ‘Federal election activity’ means—

- (i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;
- (ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);
- (iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or
- (iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual’s compensated time during that month on activities in connection with a Federal election.

(B) *Excluded activity.* The term ‘Federal election activity’ does not include an amount expended or disbursed by a State, district, or local committee of a political party for—

- (i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)
- (ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);
- (iii) the costs of a State, district, or local political convention; and
- (iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office.

(21) *Generic campaign activity.* The term ‘generic campaign activity’ means a campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.

## **Electoral Fairness Audit Results for Equality of Candidates and Parties:**

### **Score:**

The FDA electoral fairness audit team reached consensus on a score of 3/10.

### **Rational for Score:**

Public funding of candidates and parties is based on previous election results and amount of donations a candidate or party receives.

In 2011, there is a 88.45 million spending limit (for public funding). If a candidate does use public funding, then there is no spending limit.

Public funding limit is 50% of a set spending limit like 88.45 million in 2011.

During primaries, candidates must raise at least \$5000 per state in each of the 20 states to participate to be eligible for public funding. This provision favours dominant candidates and parties.

Candidates can use up to \$50,000 of their own money towards their own campaign, which favours wealthy candidates.

Public debates are not regulated by any one particular body, and thereby favours candidates and parties connected to major broadcasters.

Though access to the media is guaranteed, it is based on the ability to pay.

The elements of equality in the US legislation such as equal opportunity and access to the media and ease of candidate and party registration, is cancelled out by extreme inequalities in candidate and party finances, access to national public debates, and severe inequality in the private and public media's political content.

## ***Chapter Three: Electoral Finance***

*Chapter three will focus on the research and audit results of American laws and regulations with respect to the equality of American laws and regulations with respect to electoral finance.*

---

### **Executive Summary:**

The United States received a failing score of .5 percent for electoral finance. The score means that the US finance laws are bordering on complete electoral unfairness. The only element of fairness in the US finance laws are excessive spending limits and freedom to donate within limits. US public electoral spending favors dominant candidates and parties, and private electoral spending with no limits on electoral expenditures favors significantly wealthy candidates and parties. Also, legal entities can spend as much as they want on an election as long as they do not donate directly to political candidates and parties. Further, US spending limits on citizens favor significantly wealthy citizens, just as candidates' donations to their own campaigns do as well. The unfairness of the US electoral finance laws is a dominate feature of the US federal electoral system, whereby it impacts negatively most other aspects of the system.

### **Research Excerpts:**

The following excerpts were identified by the FDA researchers as relevant. The FDA researchers made some excerpts bold to emphasize high relevance:

#### **Campaign Finance:**

“Supreme Court rolls back campaign cash limits”

NBC News and news services updated 1/21/2010 1:43:59 PM ET 2010-01-21T18:43:59

**In a landmark ruling, the U.S. Supreme Court on Thursday struck down laws that banned corporations from using their own money to support or oppose candidates for public office.**

“By 5-4 vote, the court overturned federal laws, in effect for decades, that prevented corporations from using their profits to buy political campaign ads. The decision, which almost certainly will also allow labor unions to participate more freely in campaigns, threatens similar limits imposed by 24 states.

**It leaves in place a ban prohibiting corporations and unions from directly contributing funds to candidates for any use.**

The justices also struck down part of the landmark McCain-Feingold campaign finance bill that barred union- and corporate-paid issue ads in the closing days of election campaigns.

Advocates of strong campaign finance regulations have predicted that a court ruling against the limits would lead to a flood of corporate and union money in federal campaigns as early as November's congressional elections.

**The decision removes limits on independent expenditures that are not coordinated with candidates' campaigns.**

The case does not affect political action committees, which mushroomed after post-Watergate

laws set the first limits on contributions by individuals to candidates. **Corporations, unions and others may create PACs to contribute directly to candidates, but they must be funded with voluntary contributions from employees, members and other individuals, not by corporate or union treasuries.**”

## FEDERAL ELECTION CAMPAIGN LAWS

April 2008 THE FEDERAL ELECTION COMMISSION

(5) The term “fund” means the Presidential Election Campaign Fund established by section 9006(a).

(6) The term “major party” means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(7) The term “minor party” means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.

(8) The term “new party” means with respect to any presidential election, a political party which is neither a major party nor a minor party.

(a) *In general.* Subject to the provisions of this chapter—

(1) The eligible candidates of each major party in a presidential election shall be entitled to equal payments under section 9006 in an amount which, in the aggregate, shall not exceed the expenditure limitations applicable to such candidates under section 441a(b)(1)(B) of title 2.

(2) (A) The eligible candidates of a minor party in a presidential election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the major parties in the preceding presidential election.

(B) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for such office in the preceding presidential election and received 5 percent or more but less than 25 percent of the Federal Election Campaign Laws 102 (b)

### *Dollar limits on expenditures by candidates for office of President of the United States.*

**(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—**

**(A) \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section), or \$200,000; or**

§ 441a Federal Election Campaign Laws 66

**(B) \$20,000,000 in the case of a campaign for election to such office.**

§ 441a total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the provisions of section 9003(a) and (c), shall be treated as eligible candidates entitled to payments under section

9006 in an amount computed as provided in subparagraph (A) by taking into account all the popular votes received by such candidate for the office of President in the preceding presidential election. If eligible candidates of a minor party are entitled to payments under this subparagraph, such entitlement shall be reduced by the amount of the entitlement allowed under subparagraph (A).

[Payments favor dominant parties—based on % of vote received in last election]

d) ***Expenditures from personal funds.*** In order to be eligible to receive any payment under section 9006, the candidate of a major, minor, or new party in an election for the office of President shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for election to the office of President in excess of, in the aggregate, **\$50,000**. For purposes of this subsection, expenditures from personal funds made by a candidate of a major, minor, or new party for the office of Vice President shall be considered to be expenditures by the candidate of such party for the office of President.

(e) ***Definition of immediate family.*** For purposes of subsection (d), the term “immediate family” means a candidate’s spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

## **§ 9008. Payments for presidential nominating conventions**

(a) ***Establishment of accounts.*** The Secretary shall maintain in the fund, in addition to any account which he maintains under section 9006(a), a separate account for the national committee of each major party and minor party. The Secretary shall deposit in each such account an amount equal to the amount which each such committee may receive under subsection (b). Such deposits shall be drawn from amounts designated by individuals under section 6096 and shall be made before any transfer is made to any account for any eligible candidate under section 9006(a).

(b) ***Entitlement to payments from the fund.***

***Major parties.*** Subject to the provisions of this section, the national committee of a major party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed \$4,000,000.

***Minor parties.*** Subject to the provisions of this section, the national committee of a minor party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount the national committee of a major party is entitled to receive under paragraph (1) as the number of popular votes received by the candidate for president of the minor party, as such candidate, in the preceding Presidential election bears to the average number of popular votes received by the candidates for President of the United States of the major parties in the preceding Presidential election.

## **9012. Criminal penalties**

(a) ***Excess expenses.***

(1) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a presidential election or any of his authorized committees knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible

candidates of a major party are entitled under section 9004 with respect to such election. It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under section 9008(d), unless the incurring of such expenses is authorized by the Commission under section 9008(d)(3).

(2) Any person who violates paragraph (1) shall be fined not more than \$5,000, or imprisoned not more than one year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

### **9035. Qualified campaign expense limitations**

(a) *Expenditure limitations.* No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of title 2, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, \$50,000.

### **9042. Criminal penalties**

(a) *Excess campaign expenses.* Any person who violates the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both.

### **594. Intimidation of voters**

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

## Bipartisan Campaign Reform Act 2020

	To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year <sup>[1]</sup>	Special Limits
Individual may give	\$2,500*	\$30,800*	\$10,000 (combined limit)	\$5,000	\$117,000* overall biennial limit:  <ul style="list-style-type: none"> <li>● \$46,200* to all candidates</li> <li>● \$70,800* to all PACs and parties<sup>[2]</sup></li> </ul>
National Party Committee may give	\$5,000	No limit	No limit	\$5,000	\$43,100* to Senate candidate per campaign <sup>[3]</sup>
State, District & Local Party Committee may give	\$5,000 (combined limit)	No limit	No limit	\$5,000 (combined limit)	No limit
PAC (multicandidate) <sup>[4]</sup> may give	\$5,000	\$15,000	\$5,000 (combined limit)	\$5,000	No limit
PAC (not multicandidate) may give	\$2,500*	\$30,800*	\$10,000 (combined limit)	\$5,000	No limit
Authorized Campaign Committee may give	\$2,000 <sup>[5]</sup>	No limit	No limit	\$5,000	No limit

\* These contribution limits are increased for inflation in odd-numbered years.

1 A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the PAC. [11 CFR 110.6](#). See also [11 CFR 110.1\(h\)](#).

2 No more than \$46,200 of this amount may be contributed to state and local party committees and PACs.

3 This limit is shared by the national committee and the Senate campaign committee.

4 A multicandidate committee is a political committee with more than 50 contributors which has been registered for at least 6 months and, with the exception of state party committees, has made contributions to 5 or more candidates for federal office. [11 CFR 100.5\(e\)\(3\)](#).

5 A federal candidate's authorized committee(s) may contribute no more than \$2,000 per election to another federal candidate's authorized committee(s). [2 U.S.C. 432\(e\)\(3\)\(B\)](#).

## **The Biennial Limit**

As an individual, you are subject to a biennial limit on contributions made to federal candidates, party committees and political action committees (PACs). The limit is in effect for a two-year period beginning January 1st of the odd-numbered year and ending on December 31st of the even-numbered year. [11 CFR 110.5](#).

The biennial limit is indexed for inflation in odd-numbered years. The **2011-12 limit is \$117,000**. This limit includes up to:

- \$46,200 in contributions to candidate committees; and
  - \$70,800 in contributions to any other committees, of which no more than \$46,200 of this amount may be given to committees that are not national party committees.
- [11 CFR 110.5\(b\)\(1\)](#).

*Dollar limits on expenditures by candidates for office of President of the United States.*

(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—

(A) \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section), or \$200,000; or

## **What is Public Funding?**

Public funding of Presidential elections means that qualified Presidential candidates receive federal government funds to pay for the valid expenses of their political campaigns in both the primary and general elections. National political parties also receive federal money for their national nominating conventions.

## **Primary Matching Funds**

Partial public funding is available to Presidential primary candidates in the form of matching payments. The federal government will match up to \$250 of an individual's total contributions to an eligible candidate.

Only candidates seeking nomination by a political party to the office of President are eligible to receive primary matching funds. In addition, a candidate must establish eligibility by showing broad-based public support. He or she must raise in excess of \$5,000 in each of at least 20 states (i.e., over \$100,000). Although an individual may contribute up to \$2,500 to a primary candidate, only a maximum of \$250 per individual applies toward the \$5,000 threshold in each state.

Candidates also must agree to:

- Limit campaign spending for all primary elections to \$10 million plus a cost-of-living adjustment (COLA).[6](#) This is called the national spending limit.

- Limit campaign spending in each state to \$200,000 plus COLA, or to a specified amount based on the number of voting age individuals in the state (plus COLA), whichever is greater.

- Limit spending from personal funds to \$50,000.

**General Election Limit: \$88.45 million**

**Overall Primary Limit: \$44.22 million**

**State-by State Primary Limits:**

State	Voting Age Population	Expenditure Limitation
Alabama	3,599,303	\$2,546,800
Alaska	527,205	\$884,500
Arizona	4,940,296	\$3,495,700
Arkansas	2,195,465	\$1,553,500
California	27,795,779	\$19,668,100
Colorado	3,865,036	\$2,734,900
Connecticut	2,727,907	\$1,930,200
Delaware	685,978	\$884,500
DC	494,192	\$884,500
Florida	14,616,271	\$10,342,400
Georgia	7,324,792	\$5,183,000
Hawaii	1,006,338	\$884,500
Idaho	1,143,651	\$884,500
Illinois	9,777,437	\$6,918,500
Indiana	4,861,307	\$3,439,800
Iowa	2,313,538	\$1,637,000
Kansas	2,133,356	\$1,509,500
Kentucky	3,323,606	\$2,351,800
Louisiana	3,397,965	\$2,404,400
Maine	1,048,523	\$884,500
Maryland	4,385,947	\$3,103,500
Massachusetts	5,203,385	\$3,681,900
Michigan	7,623,767	\$5,394,500
Minnesota	4,038,685	\$2,857,700
Mississippi	2,194,892	\$1,553,100
Missouri	4,589,980	\$3,247,800
Montana	764,058	\$884,500
Nebraska	1,359,656	\$962,100
Nevada	1,977,693	\$1,399,400
New Hampshire	1,043,155	\$884,500
New Jersey	6,691,782	\$4,735,100

New Mexico	1,514,872	\$1,071,900
New York	15,167,513	\$10,732,400
North Carolina	7,188,327	\$5,086,400
North Dakota	511,050	\$884,500
Ohio	8,840,340	\$6,255,400
Oklahoma	2,796,489	\$1,978,800
Oregon	2,986,164	\$2,113,000
Pennsylvania	9,880,374	\$6,991,300
Rhode Island	833,168	\$884,500
South Carolina	3,515,754	\$2,487,700
South Dakota	620,912	\$884,500
Tennessee	4,847,129	\$3,429,800
Texas	18,210,592	\$12,885,700
Utah	1,951,049	\$1,380,500
Vermont	500,054	\$884,500
Virginia	6,103,947	\$4,319,100
Washington	5,170,543	\$3,658,600
West Virginia	1,439,342	\$1,018,500
Wisconsin	4,372,515	\$3,094,000
Wyoming	417,319	\$884,500
<b>U.S. Territories</b>		
American Samoa	n/a	\$884,500
Guam	n/a	\$884,500
Northern Mariana Islands	n/a	\$884,500
Puerto Rico	n/a	\$884,500
Virgin Islands	n/a	\$884,500

## Expenditure Limits for Publicly Funded Candidates\*

	<b>Primary Candidates</b>	<b>General Election</b>	
		<b>Major Party Nominees</b>	<b>Minor/New Party Nominees</b>
<b>National Spending Limit</b>	\$10 mil. + COLA**	\$20 mil. + COLA	\$20 mil. + COLA
<b>State Spending Limit</b>	The greater of \$200,000 + COLA or \$0.16 x state VAP***	None	None
<b>Exempt Fundraising Limit</b>	20% of national limit	Not applicable	20% of national limit
<b>Maximum Public Funds Candidate May Receive</b>	50% of national limit	Same as national limit	Percentage of national limit based on candidate's popular vote.
<b>National Party Spending Limit for Candidate****</b>	Not applicable	\$0.02 x VAP of U.S. + COLA	\$0.02 x VAP of U.S. + COLA
<b>Limit on Spending from Candidate's Personal Funds</b>	\$50,000	\$50,000	\$50,000

(d) *Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office.*<sup>1</sup>

Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2), (3) and (4) of this subsection.

The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

Candidates if such individual has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000;

## **Electoral Fairness Audit Results for American Election Finance:**

### **Score:**

The FDA electoral fairness audit team reached consensus on a score of .5/10.

### **Rational for Score:**

Public funding is matched based on previous electoral success and the amount of donations received, and therefore favors dominant candidates and parties.

Presidential candidates can contribute up to \$50,000 towards their own campaign. This contribution favors wealthy candidates.

Citizens may donate \$2,500 to each candidate, \$31,000 to the national party, \$10,000 to the state and district party and \$5,000 to any other political committee, and \$117,000 overall. These spending limits favor wealthy citizens.

There is no spending limits on presidential candidates if they use only private funds. This provision creates an opening for severe disparity in electoral spending between candidates.

Legal entities have no limit on electoral spending as long as they do not donate directly to candidates and parties.

The US score for electoral finance would have been 0 percent, if it were not for insignificant laws which encourage an element of financial equality such as limits on candidates' contributions to their own campaigns. Overall, the US campaign finance legislation promotes extreme inequality such as in 2008 Obama spending close to 800 million, while for example, Nader spending only 4 million.

## Chapter Four: Voter Say

*Chapter four will focus on the research and audit results of American laws and regulations with respect to the equality of voter say laws and regulations before, during and after an election.*

---

### **Executive Summary:**

The United States received a satisfactory score of 60 percent for equality of voter say. The score means that there is more fairness than unfairness in voter say in the United States. US voters have the freedom to voice their political views and donate to political candidates and parties. However, US electoral finance laws favor wealthy voters, and legal entities through unlimited electoral spending have the potential for more say than voters. Also, electoral finance laws favor dominant and wealthy candidates and parties, and therefore, voters are more likely to be influenced politically by them. Similarly, the US private major media and broadcasters can be partisan, which in turn may impact voter say by influencing or dominating it. The 60 percent score reflects the freedom of US voter say, but there are severe constraints on it through the freedom of other electoral participants such as the major media and broadcasters and dominant candidates and parties.

### **Research Excerpts:**

The following excerpts were identified by the FDA researchers as relevant. The FDA researchers made some excerpts bold to emphasize high relevance:

*US Constitution:*

#### **First Amendment - Religion and Expression**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

#### **U.S. Constitution: Fifteenth Amendment**

Section. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section. 2. The Congress shall have power to enforce this article by appropriate legislation.

## **Electoral Fairness Audit Results for Equality of Voter Say:**

### **Score:**

The FDA electoral fairness audit team reached consensus on a score of 6/10.

### **Rational for Score:**

US electoral finance laws limit the say of voters, while at the same time favour wealthy voters. Though there is no limit on a voter expressing himself or herself via social networking or other means.

Unlimited third-party electoral spending favours wealthy voters, and may allow legal entities to overshadow the say of voters.

The partisanship of the US private media and broadcasters impacts voter say through domination and influence, just as the finance laws favouring dominant and wealthy candidates and parties does as well.

The 60 percent score reflects the freedom of US voters to expression themselves politically, and yet that freedom is weakened by the freedom of other political entities such as the US private media and broadcasters, and the severe unfairness of US electoral finance laws.

## Chapter Five: Audit Results

*Chapter five will set out the FDA's scores for each of the areas of the American electoral system as set out above.*

---

1. Research and audit results for American laws and regulations on the political content of media including newspapers, broadcasters, online media, before, during, and after elections.

2.5/10

2. Research and audit results for American Laws and regulations on the equality of candidates and parties influence before, during and after elections.

3/10

3. Research and audit results for American laws and regulations on electoral finance.

.5/10

4. Research and audit results for laws and regulations on the equality of voter say before, during, and after an election.

6/10

Total score: 12/40

**Overall score: 30 percent**

## ***Chapter Six: Analysis***

*Chapter six will provide a brief analysis of the FDA's findings.*

---

The US federal electoral system, in terms of electoral legislation and regulations, received an overall failing grade of 30 percent.

A 30 percent grade means that the US federal electoral system has numerous major deficiencies in most if not all of the US electoral legislation and related legislation.

The US score for electoral finance of .5 percent is bordering on full inequality in terms of candidate and party electoral finance.

The US score for the political content of the media and broadcasters of 25 percent means that the political content of US media and broadcasters is significantly more unfair than fair.

The US score for equality of political candidate and party influence of 30 percent means that the US electoral system is bordering on significantly more unfairness than fairness in terms of political candidate and party influence before, during, and after an election.

The US only passing score of 60 percent for equality of voter say is based on third-party freedom of expression and the inequality of third-party say.

## ***Chapter Seven: Conclusion***

*Chapter seven will provide a summary of the FDA's findings.*

---

The US federal electoral system, in terms of electoral legislation and regulations, has numerous major electoral fairness deficiencies. The system overall is bordering on being significantly more unfair than fair.

The severe inequality of the political content of the US public and private media and broadcasters, and the severe inequality in the US electoral finance create a two party system, whereby no other party has a reasonable and fair chance of forming government. As a result, the US public is being deprived of electoral choice, and the US small and new political candidates and parties are being deprived of a fair opportunity of being elected and forming government.

The FDA believes that the source of the American electoral unfairness is rooted in the union of the US mainstream media and broadcasters with the US government (i.e. Republican and Democrat parties) and the unfair electoral laws created by the Republicans and Democrats, in particular the severe unfairness in electoral finance laws.

## ***Chapter Eight: Recommendations***

*Chapter eight will set out the FDA's recommendations on how the United States of America can improve its electoral fairness score and thereby its electoral fairness.*

---

- 1) Reform the US Election Act and US Communications Act so that 3 months prior to a federal election, during a federal election, and 1 month after a federal election, the political content of all registered parties are equal in terms of non-partisanship, frequency, and depth in the US public and private media and broadcasters.
- 2) Reform the US Election Act so that all registered candidates and parties have equal campaign finances.
- 3) Reform the US Election Act so that all registered parties and their leaders have the same opportunity to participate in national debates.
- 4) Reform the US Election Act so that there is an equality of third-party electoral spending. (See the FDA's 100 percent scoring for electoral fairness for details: [www.democracychange.com/FDA\\_100\\_percent\\_for\\_electoral\\_fairness.pdf](http://www.democracychange.com/FDA_100_percent_for_electoral_fairness.pdf) )
- 5) Reform the US Election Act so that the registration of federal political parties is based on member support equivalent to .5 percent of the voting population and a national party platform--regardless of ideology and as opposed to a special interest(s) or issue(s) platform.

The FDA believes that electoral fairness is at the heart of pure democracy. The more fair electorally a country is, the more democratic the country will be.

Therefore, the FDA believes that by improving electoral fairness, pure democracy in the United States will be advanced which in turn will improve the status of the American people as a whole.

The FDA hopes that this report will improve electoral fairness in the United States and thereby the well-being of the American people as a whole.