ONE

# Adaptation and Innovation in the Financing of the 2008 Elections

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The 2008 elections were by any standard historic. The nation elected its first African American president, and the Republicans nominated their first female candidate for vice president. More money was raised and spent on federal contests than in any election in U.S. history. Moreover, the way money was raised by some candidates and party committees has the potential to transform American politics for years to come. Barack Obama raised a record-setting $745 million for his campaign. While Obama's fundraising was extraordinary, other federal candidates, political party committees, and interest groups also raised and spent record-setting amounts in the 2008 election cycle.

The 2008 election was the second in a row in which the Democrats picked up more than twenty-eight seats in Congress, something neither party has done since the Republicans gained twenty-eight seats in 1950 followed by a gain of twenty-two in 1952.[1] Part of the reason for the Democrats' recent ascendancy is the success of their party congressional campaign committees in raising money in limited amounts from individuals. The Democratic congressional campaign committees substantially outspent the Republicans.

Other components of the Democrats' dominance in 2008 included their skillful use of technology in voter contacting, fundraising, and volunteer recruiting. Compared with their efforts in previous years, Democratic-leaning interest groups cooperated much more efficiently in 2008, sharing membership and contact information through a new database that appeared to best the microtargeting capacity of the Republican National

Committee's voter tracking system. Another Democratic advantage was the absence of successful Republican front groups. While interest group spending overall rose in 2008, no group mounted attack ads on the scale of those used against presidential candidates in 2000 or 2004. Perhaps the most important advantage for Democratic candidates was the national issue agenda, especially public disapproval of President George W. Bush.

## Issue Agenda

The election was in many respects a referendum on the Bush presidency. Many in the public strongly linked the Bush administration with increasingly negative opinion toward the war in Iraq. The war became a distinct liability for Republicans in 2006 and 2008, though they had used the issue to their advantage during the 2002 and 2004 elections. Opposition to the Iraq War provided presidential candidates like Obama and Republican Ron Paul with an early springboard in recruiting supporters and raising money. Support for the war, especially for the 2007 troop surge, was a major focus of the McCain campaign, but the issue faded in importance following the collapse of Bear Stearns and Lehman Brothers, two large financial firms, in mid-September.[2] President Bush and senior administration officials sought to calm an anxious public as stock values dropped and the possibility of an economic depression loomed. John McCain suspended his campaign to return to Washington to attend to the crisis, while Obama did not. Instead, Obama announced that he intended to participate in the first presidential debate, with or without McCain.[3] President Bush convened a meeting at the White House attended by McCain and Obama. After the meeting McCain returned to campaigning and participated in the presidential debate. The sense of uncertainty about the government response to the economic crisis was amplified when House Republicans initially voted against the administration's bailout proposal. Early in the crisis, McCain repeated a statement he had made earlier that the "basics of the economy are sound."[4] The Obama campaign used this statement as an example of McCain's lack of understanding about the economy.

President Bush's declining popularity helped the Democrats not only in the presidential race but also in key congressional battlegrounds. Democratic congressional candidates, including some freshmen incumbents and Democrats running for open seats that had been Republican going into the election, also ran against Bush at least as much as against their Republican opponents. In the North Carolina Senate race between Republican incumbent Elizabeth Dole and Democratic challenger Kay Hagan, for example, the Democratic Senatorial Campaign Committee ran an effective ad in which two elderly men sitting on a porch debated whether Senator Dole is ninety-two or ninety-three—highlighting the fact that she voted in agreement with President Bush 92 percent of the time and was ranked ninety-third in effectiveness in the Senate.

More generally, the Obama campaign established change as the overriding message of the election and reinforced that theme repeatedly. Obama promised to make changes in international relations (particularly the war in Iraq) and domestically in energy, health care, education, and economic and regulatory policy. Also central to Obama's campaign was the theme of changing the tone in Washington. Obama's nomination itself symbolized a dramatic change, and his possible election as the first African American president became a subtext for the entire election. McCain tried to change the theme of the election from a referendum on Bush and eight years of Republican control of the White House to a referendum on Obama, highlighting, as Hillary Clinton had done in the primary campaign, his inexperience. But those efforts largely failed.

## More Candidates, More States in Play

As is the norm in presidential election years, the focus in 2008 was on the contest for the presidency. The absence of a current or former president or vice president seeking the nomination, for the first time in more than half a century, attracted a wide field of candidates in both parties. Three sitting U.S. senators became the central players in the nomination phase: Republican senator John McCain of Arizona all but secured the Republican nomination after the Super Tuesday primaries on February 5, 2008, and with Mike Huckabee's concession in early March the contest was over. Democratic U.S. senators Hillary Clinton (New York) and Barack Obama (Illinois) waged a nomination contest that included primaries and caucuses in all states and territories, holding aside the disputed early contests in Florida and Michigan.[5]

Just as the field expanded in the Democratic nomination contest, so too the electoral map for the general elections grew to include states that had been safely Republican—North Carolina, Indiana, and Virginia, for example—and states that had been trending less Republican, such as

Nevada and Colorado. This had the effect of forcing McCain to defend states that had been safe for Bush in 2000 and 2004 while having also to compete in perennial battlegrounds like Ohio, Pennsylvania, and Florida.

One important reason more states were in play was the substantial money advantage Obama had in both the nomination and general election phases of the campaign. He outspent Senator Clinton through May 2008 by $43.8 million (see chapter 3), and in the general election Obama and the Democratic National Committee (DNC) outspent McCain and the Republican National Committee (RNC) by $150 million (see chapter 4).[6] Obama's spending and aggressive campaigning in states that Bush had taken for granted, combined with McCain's limited spending as a result of accepting public funding, meant that McCain had to make hard choices in resource allocation.

As happened in the 2006 midterm election, the Democrats and their interest group allies succeeded in expanding the playing field of competitive congressional races in 2008. In the years following redistricting, competitive U.S. House races typically decline in number. In the 1990s, for example, the number of competitive races in early October of each election year declined in a linear manner over time. Since 2000 a different pattern has emerged: there were fewer competitive contests in 2002 than in 1992, but the number of competitive contests rose in 2006 and 2008.[7] In 2006 and 2008 Democrats targeted vulnerable Republican incumbents in both houses but especially in the U.S. Senate. The success of Barack Obama in bringing into play once solidly GOP states like North Carolina, Colorado, and Virginia helped Democratic congressional candidates.

## Electronic Electioneering

Technology and the Internet reached new levels of importance in 2008. This was true in fundraising but also in persuasion and electioneering. Over the eight years leading up to the 2008 elections there had been glimpses of the potential of the Internet as an organizing and fundraising tool. In 2000 John McCain's campaign was recognized by scholars as having "the most successful Internet effort," raising a reported $6.4 million online.[8] Interest groups like MoveOn.org also successfully used the Internet to raise money and mobilize volunteers.[9] In 2004 the Howard Dean campaign raised about $20 million online.[10] In 2008 Republican candidate Ron Paul developed what one observer called "a rabid online community" and surprised many with his fundraising success. His extensive use of the Internet demonstrated the potential of these tools for both parties.[11]

But the Obama campaign integrated technology, message, and strategy in ways not seen before. As Joe Trippi, who worked on the Dean campaign, put it, "It's like the Dean campaign [was] the Wright brothers, [and] the Obama campaign was Apollo 11."[12] Part of this owed to the candidate himself, who was committed to the use of technology, and part to the dynamics of the initially steep uphill battle for Obama. As the campaign began, Obama was considered to be significantly behind Clinton in both fundraising ability and name recognition. Quite likely motivated by this campaign reality, Obama reached out to individuals and groups that are traditionally underused in political campaigns, among them youth and minorities. He maintained a large network of field offices, staffed mostly by volunteers, and put to use the strengths of his volunteers—their high levels of enthusiasm and energy and their capacity to use technology—to build support and electoral success in time-intensive caucus states.

Jon Carson, the national field director of the Obama campaign, praised Obama's ability to generate new voter contacts through creative use of Internet social networking: "As a community organizer himself, he knew the value of a list and the value of using every opportunity to get that work done."[13] Complementing the campaign's frequent text messaging and e-mails to supporters, a major innovation was Obama's own social networking website, My.BarackObama.com.[14] Obama's early and continued opposition to the war in Iraq also helped build his popularity with many influential liberal voices on the Internet, such as Arianna Huffington and Markos Moulitsas.[15] The net effect of this was an estimated 7 million supporters who were connected to the Obama campaign in some way through social network and campaign website programs.[16] By the time of the election the Obama campaign had an e-mail list of 10 million, and that number rose to 13 million by the time he took office.[17]

## The Rules

The rules for financing the 2008 federal elections were based in large part on the 1974 post-Watergate amendments to the Federal Election Campaign Act of 1971 (FECA) and on the Bipartisan Campaign Reform Act of 2002 (BCRA), which took effect with the 2004 election cycle. These major legislative structures left to the Federal Election Commission (FEC) important roles in rulemaking and enforcement. The courts have been important in upholding some provisions of FECA and BCRA while declaring other parts unconstitutional.[18] In 2008, for example, court rulings since the previous presidential election changed some aspects of the law, particularly with respect to the timing and types of advertisements run by interest groups.

The underlying principles of both acts center on contribution limitations and disclosure. Together, the laws require disclosure of candidate, party committee, group, and large individual contributions to candidates and disclosure of what candidates, party committees, and groups spend on federal elections. Meanwhile, the laws limit what individuals and groups can give to federal candidates, political party committees, political action committees (PACs), and other committees that finance federal election activity and are therefore subject to federal law.

Several different groups were created by these rules. Often these groups are referred to by the section of the law they fall under; thus the rules in some ways define the players. Section 527 organizations are tax-exempt nonprofit organizations that have as their "principal purpose" political activity. Technically they encompass both groups that register with the FEC as political committees and those that do not. The most visible of the 527s have been organizations that are involved in politics but have not registered as political committees with the FEC.[19] Through much of the 2000 election cycle, Section 527 organizations could avoid disclosure by not registering with the FEC and thereby not having income to report to the IRS. That has changed, and some disclosure is now required through the IRS.[20]

Section 501(c) of the Internal Revenue Code defines a range of organizations, some of them charitable and tax exempt, with different restrictions on what, if any, role such groups can play in political campaigns. Organizations established under Section 501(c)3, for example, are charitable organizations. Contributions to these organizations qualify as tax deductions, and the organizations are the most restricted in terms of campaign activities. They "cannot endorse candidates, contribute to campaigns, or organize a political action committee. However, they can conduct nonpartisan voter registration and get-out-the-vote efforts in accord with FEC regulations as well as participate in activities related to state and local ballot measures. In addition, they may sponsor candidate forums on issues of public concern."[21] By contrast, Section 501(c)4 groups are public advocacy organizations and have significantly more latitude in electioneering, so long as election activity is not their primary purpose.[22]

### *Disclosure*

Although debate continues about many aspects of campaign finance regulation, there is widespread consensus on the need for transparency, or disclosure.[23] The campaign financing laws mandate reporting to the FEC of all contributions from individuals, party committees, and PACs. For individuals, once a person has given more than $200 to a particular candidate or political committee in an election cycle, that donor's name is disclosed and becomes available to the FEC. Specified types of contributions to Section 527 organizations are reported to the IRS by the committee receiving the contribution. Donors whose combined contributions to a candidate do not exceed $200 are not identified by name in FEC reports. Their contributions, however, are disclosed.

The Bipartisan Campaign Reform Act expanded on the FECA disclosure rules by requiring "disclosure of the costs of electioneering communications by any spender who exceeds $10,000 in aggregate expenditures and the disclosure of any contributions of more than $1,000."[24] Electioneering communications that must be disclosed are television and radio advertisements that refer to a federal candidate and are broadcast within thirty days of a primary or sixty days of an election. State parties are also required to disclose any money spent on voter registration or voter mobilization efforts if a federal candidate is on the ballot.[25]

### *Contribution Limitations*

A second element of current campaign finance rules is contribution limitations for individuals giving to candidates, party committees, or political action committees and for party committees and PACs giving to candidates or to each other. Table 1-1 provides the contribution limits for individuals over the two-year election cycle, before and after passage of BCRA.

Under FECA, an individual could give $50,000 over each election cycle to parties, candidates, and PACs combined. The aggregate limit under BCRA was almost doubled, to a two-year cycle limit of $95,000. Most of the contribution limits under BCRA are indexed for inflation, so the aggregate amount an individual was allowed to contribute to parties, candidates, and PACs in 2007–08 rose to $108,200.[26] Of this total, an individual could contribute in most cases $4,600 to a candidate ($2,300 in the primary and $2,300 in the general election) and in the event of a runoff another $2,300. The total of an individual's contributions to all federal candidates in 2007–08 was capped at $42,700. The remaining $65,500 of

Table 1-1. *Individual Campaign Contribution Limits over Two-Year Election Cycle, Pre-BCRA and Post-BCRA*

Dollars

| | | | | | Aggregate total per year | | |
|---|---|---|---|---|---|---|---|
| *Year* | *To any candidate committee (per election)* | *To any national party committee (per year)* | *To any state or local party (per year)* | *To any PAC or other political committee (per year)* | *To candidates* | *To parties and political committees* | *Overall* |
| Pre-BCRA | 1,000 | 20,000 | 5,000 | 5,000 | 25,000 | 25,000 | 25,000 |
| 2004 | 2,000[a] | 25,000[a,b] | 10,000[c] | 5,000[a] | 37,500 | 57,500 (37,500)[d] | 95,000 |
| 2006 | 2,100[a] | 26,700[a,b] | 10,000[c] | 5,000[a] | 40,000 | 61,400 (40,000)[d] | 101,400 |
| 2008 | 2,300[a] | 28,500[a,b] | 10,000[c] | 5,000[a] | 42,700 | 65,500 (40,000)[d] | 108,200 |
| 2010 | 2,400[a] | 30,400[a,b] | 10,000[c] | 5,000[a] | 45,600 | 69,900 (45,600)[d] | 115,500 |

Source: Adapted from Center for Responsive Politics, “Campaign Contribution Limits” (www.opensecrets.org/ overview%20/limits.php [August 2009]).

a. Subject to aggregate limit.

b. Per party committee.

c. Levin funds, subject to state law but not subject to the aggregate limit.

d. Figure in parentheses is maximum amount of larger total to political committees.

an individual's two-year cycle limit could be contributed to party committees or PACs. An individual could give $28,500 to any single national party committee in 2007–08. In addition, an individual could give up to $10,000 to a state or local party committee. This includes a category of contribution, sometimes called Levin funds after Michigan senator Carl Levin's amendment to BCRA, that represents "funds raised and spent by state, district, and local party committees for federal election activity, subject to a combination of state and special federal restrictions," including that they "may not refer to a clearly identified candidate for federal office."[27] An individual could also give up to $40,000 to PACs, with a limit of $5,000 to a single PAC per year.[28] Thus an individual wishing to give the maximum allowable in a federal election must contribute more to interest groups or party committees than to candidates.

Individual contribution limits do not apply to candidates' spending of their own money, including loans they may take out to fund their campaign. The presence of self-financed candidates or the possibility of such candidates in the future prompted an amendment to BCRA. Dubbed the Millionaires Amendment, this addition to the act included a provision intended to level the playing field between wealthy, self-financed candidates and their opponents. From 2004 through 2006, candidates whose opponents used a large amount of personal money to fund their campaigns were allowed to accept three to six times more in contributions from individuals than would otherwise be permitted under BCRA. In 2004 this amendment was invoked in twelve house races and eight Senate races.[29] The 2004 race between Pete Coors (R) and Kenneth Salazar (D) for the open Colorado seat in the U.S. Senate was one of those contests. Because Coors loaned his campaign $571,000, the provision allowed Salazar to raise an additional $750,000 from individuals who had previously contributed to him, helping him secure victory.[30] The Millionaires Amendment was declared unconstitutional before the 2008 election.[31]

### *Public Funding*

For presidential elections FECA established a system of partial public financing in the nomination phase and full public financing in the general election phase. The source of the funds is a voluntary tax check-off on federal income tax returns. Taxpayers who check the box on the return allocate a few dollars of the money they are already paying in taxes to go toward the Presidential Election Campaign Fund. In the nomination phase, FECA allows public funds to be used to match individual contributions of up to

$250 to participating candidates if the candidate to whom the contribution has been given has raised at least $5,000 in amounts of $250 or less in at least twenty different states.[32] Candidates who accept the public match must also accept state-by-state and overall spending limits for nomination-phase campaigning. Candidates can decline the public match and its spending limits, which most major candidates did in 2008.

The Federal Election Campaign Act also offers a grant to major-party candidates in the general election in lieu of their doing additional fundraising for their campaigns. The amount of the public grant, which is indexed to inflation, was $84.1 million in 2008.[33] Minor-party candidates may qualify for partial general election funding, based on their party's electoral performance.[34] Candidates participating in public financing for the general election cannot accept additional private donations, and they commit to spending no more than the grant they receive (not counting money raised and spent from a separate account for legal fees and accounting expenses).[35]

Public funds are also provided for the major-party conventions, including in 2008 a grant of $16.3 million to each major party. Minor parties are entitled to a partial grant if they meet established criteria.[36] Within the contribution limits for individuals, parties may raise money to cover convention expenses. Certain supplemental services may be provided by the host city and state, including additional public transportation to and from the convention site.

Between 1976 and 2000, John Connally in 1980 and Steve Forbes in 1996 and 2000 were the only major contenders to decline the matching funds in the nomination phase. There were other less well-known candidates who did not take public funds during this period, principally for ideological reasons.[37] The 2000 election marked the first time a successful nominee, George W. Bush, declined matching funds, relying instead on his network of contributors to fund the nomination campaign without the match and the encumbrance of the spending limits.[38] Bush demonstrated that candidates could on their own raise more than the limits allowed and not suffer in public favor by declining public funding. In 2004 Republican incumbent George W. Bush and Democrats John Kerry and Howard Dean all chose to forgo matching funds. By 2008 it was assumed that most serious candidates would not accept the match, and that was the case with John McCain, Mitt Romney, Rudy Giuliani, Hillary Clinton, Barack Obama, and Bill Richardson.

Reasons not to accept the public matching funds start with the constraints of the state-by-state spending limits—a growing problem because of the front-loading of the caucuses and primaries, which makes early heavy spending in excess of the limits more important.[39] An even greater problem is the overall spending limit, since the cost of running has far outpaced the amount a candidate is allowed to spend.[40] This problem became greater as candidates opted out of the public financing system. To compete with those who opted out, all candidates would probably need to raise and spend more than the matching system allowed.[41] Moreover, when the contribution limits were increased under BCRA, the limit on an individual contribution that qualified for public matching was left unchanged, at $250. Thus the increase in contribution limits served to reduce the relative value of the public dollars. Taken together, then, there were several strategic reasons for candidates to decline public financing in the nomination phase.

Although the matching fund system of partial public financing declined over three election cycles, the public funding grant for general elections had been accepted by all nominees until 2008, when Barack Obama declined the grant. Obama, who at one point had pledged to accept public funding if nominated, reversed himself. But he did not pay a price in public support for his reversal.[42] By declining the grant, he was able to continue fundraising for his own campaign throughout the general election, something McCain, by accepting the grant, could no longer do. But Obama would not be able to rely so heavily on his party committee, which without his share of the presidential fundraising would not play its traditional supporting role. As Anthony Corrado and Molly Corbett observe, Obama's choice involved the risk "that he would not be able to compete financially with McCain and his party"—a risk that was "minimized by the fact that Obama had already raised a substantial amount of general election money well before the end of the primary season."[43] Obama achieved a financial superiority that meant he could outspend McCain and the Republican Party committee allies in the air and on the ground in an expanded field of play.

### *Party Money*

The Federal Election Campaign Act limited the amount of individual and PAC contributions to candidates and parties. Party committees are organized around the units of competition in our national government. The

Democratic and Republican national committees focus primarily on presidential elections, state parties, and to a lesser extent congressional races.[44] The congressional campaign committees are organized to help House Democrats (Democratic Congressional Campaign Committee) and House Republicans (National Republican Campaign Committee) or Senate Republicans (National Republican Senatorial Committee) or Senate Democrats (Democratic Senatorial Campaign Committee). Party committees provide important services, including candidate recruitment and training, opposition research, financial support, and assistance with fundraising.

Not long after FECA took effect the parties began asking for access to more resources. This led to important Federal Election Commission rulings that permitted unlimited contributions from individuals and interest groups to political party committees for "party building purposes."[45] This unlimited money, or "soft" money, could even be given to party committees by corporations and unions from their general treasury funds, funds that had long been off limits for candidates and party committees.[46]

The FEC's advisory opinions regarding the 1979 amendments were later exploited by candidates and party committees to circumvent the FECA limits. By 1996 the "party building" purposes of soft money had been expanded, in practice, to include candidate-specific electioneering, and in 2000 and again in 2004 more than $500 million in soft money was raised and spent by the party committees, often to pay for television ads, mail, and electioneering that were largely indistinguishable from candidates' campaigns.[47] Moreover, candidates were actively seeking soft money for their party committees, as the Clinton White House sleepovers and coffees showcased. Soon congressional party and committee leaders were also courting soft-money donors.

The Bipartisan Campaign Reform Act banned party soft money and in so doing prompted a debate over the future viability of the party system without it. Republicans had been more successful in raising hard money, and so it was widely assumed that BCRA advantaged them. Democrats had become more dependent on soft money. For example, in 2000 and 2002 the Democratic Senatorial Campaign Committee gleaned 66 percent and 61 percent of its receipts, respectively, from soft-money contributions. In contrast, soft-money contributions to the National Republican Senatorial Committee for 2000 and 2002 totaled 46 percent and 53 percent, respectively, of all funds raised.[48] With respect to the impact of the soft-money ban on the Democrats, some went so far as to argue that BCRA was a suicide bill; others used less dramatic language to contend that the law would “threaten the reinvigoration of national parties and the revitalization of America’s federal democracy” or “make it much more difficult for strongly institutionalized party organizations to emerge.”[49]

By banning soft money, BCRA created a need for party committees to target individual donors, but it also created added opportunities for those donors to contribute to party committees. The incentive was built into the individual contribution limits. A donor who had maxed out on contributions to candidates could still give $28,500 to a party committee, and if giving to more than one, up to $65,500.

How have the party committees responded to BCRA? Has the law severely impaired the parties? These questions are explored in detail in chapter 6, but the short answer is that the parties have successfully adapted their fundraising efforts. In 2004, the first post-BCRA election, the party committees in the aggregate raised more hard money than they had raised in hard and soft money combined in 2000. This means that, in effect, the party committees more than doubled their hard-money receipts. In 2000 the Democrats raised $213 million and the Republicans $362 million in hard-money receipts for national and congressional campaign committees. When soft money is included, 2000 receipts increase to $470 million for the Democrats and $620 million for the Republicans. In hard money only in 2004, total Democratic receipts were $576 million and total Republican receipts were $657 million, surpassing what the parties had raised in hard and soft money combined in 2000. In 2008 that happened again: total combined receipts for Democratic national committees were $599 million, and for Republican national committees, $640 million. There is some variability in fundraising performance of party committees based on committee leadership and perceived electoral opportunities and—in 2008 especially—on whether the presidential standard-bearer accepts public funding and its contingent proscription against general election campaign fundraising.

A presidential standard-bearer who accepts public funding in the general election can encourage individuals to give to the national party committee. That is what George Bush and John Kerry did in 2004, and John McCain in 2008. Such efforts yielded substantial sums for the RNC in 2004 and 2008 and for the DNC in 2004. Funds raised by the national committees can be spent in joint candidate–party committee voter mobilization efforts or in advertising that mentions both the candidate and the party. Obama’s decision to bypass public funding meant that he continued to seek contributions for his campaign and through joint fundraising committees with the DNC. This gave him more control over message. As one McCain staffer put it,

> Victory operations [joint McCain-RNC] cannot be candidate specific and they can't be just about the presidential campaign—they need to be about the entire ticket. And in an election where the Republican Party brand was damaged, where the incumbent president was a Republican and was incredibly unpopular . . . being a Republican is not necessarily the way you want to brand yourself if you want to win the campaign.[50]

### *Electioneering Communications*

A second major objective of BCRA was to define in statute what had been defined only in court decisions. The 1976 U.S. Supreme Court decision on the constitutionality of FECA, *Buckley* v. *Valeo*, distinguished between "express advocacy" in an election setting, which was deemed permissible for regulation, and "issue advocacy," which had a broader purpose and could not be regulated by FECA. Congress had not defined the difference in the FECA legislation, but the Court illustrated the distinction in a footnote to its opinion. The note defined *express advocacy* as "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'"[51] Communications lacking these magic words, even when clearly about electing or defeating a candidate, were not subject to disclosure or limitation as to the source of funding or the amount the group could spend.

Just as political parties exploited soft-money rules to spend unlimited amounts of money, especially in 1996 and thereafter in candidate-specific electioneering, so too interest groups began to use issue advocacy to attack or promote particular candidates. In 1996 the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) spent more than $35 million on ads mostly targeted to the defeat of freshmen Republicans in the House of Representatives.[52] The union spent this in addition to hard money it contributed to candidates and party committees. Business interests quickly followed suit with ads from allied groups.

In 1998 and subsequent cycles, "front groups" with innocuous names like Citizens for Better Medicare, Coalition to Make Our Voices Heard, and Council for Better Government ran issue advertising in the immediate preelection period clearly aimed at persuading voters to vote against one candidate or for another. John McCain was the target of attacks from issue advocacy groups in the 2000 presidential primaries, especially in South Carolina, and then later from a group named Republicans for Clean Air, which ran ads in three states criticizing his environmental record. The "group" was in fact two individuals from Texas.[53] Following the 2000 primary cycle, Congress passed legislation that called for at least some reporting by such groups, a requirement absent in the 2000 election.[54]

The Bipartisan Campaign Reform Act sought to define electioneering communications more realistically as "any broadcast, cable or satellite communication that fulfills each of the following conditions: (1) The communication refers to a clearly identified candidate for federal office; (2) The communication is publicly distributed shortly before an election for the office that candidate is seeking; and (3) The communication is targeted to the relevant electorate." "Shortly before" is defined as thirty days before a primary election and sixty days before a general election.[55] That definition was initially upheld in *McConnell* v. *Federal Election Commission* (2003) but was subsequently challenged in an applied case, *Federal Election Commission* v. *Wisconsin Right to Life* (2007), as being too broad. Writing for the majority on a closely divided Supreme Court, Chief Justice John Roberts overturned the BCRA definition and provided yet another definition of electioneering communications: "A court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[56]

Beyond the content of issue ads, *FEC* v. *Wisconsin Right to Life* simultaneously allowed groups greater latitude in advocacy, including in the period directly before the primary and general elections, but the BCRA disclosure provisions as interpreted by the FEC remained in place. In chapter 2 Anthony Corrado explores this in greater detail, and in chapter 7 Allan Cigler describes the ruling's effect on interest groups.

An important outgrowth of the 2008 election is the litigation and eventual Supreme Court ruling in a case involving a documentary titled *Hillary: The Movie*. The film was shown in theaters in six cities and sold as a DVD.[57] Citizens United, the group that produced the movie, "wanted to increase distribution by making it available through video-on-demand within the period before the 2008 primary when electioneering communications funded by general corporate or union money are prohibited."[58] Citizens

United also wanted to avoid disclosing funding sources for its advertisements. The group made television ads promoting the movie and went to federal court challenging provisions in *Austin* v. *Michigan State Chamber of Commerce*, *McConnell* v. *FEC,* and the FEC's application of the law.[59] The Supreme Court's decision, handed down more than a year after the 2008 election, is a major reversal of long-standing precedent. In a 5-4 decision, a closely divided Supreme Court declared prohibitions on electioneering communications by corporations unconstitutional.[60] This ruling could have important implications for the financing of federal elections into the future. Ironically, a movie that had only limited viewership during the 2008 campaign spawned a ruling that could dramatically expand spending by corporations and unions in future federal elections. This decision is discussed in greater length in chapter 2.

### *Independent Expenditures*

Individuals and groups are allowed to spend unlimited sums of money independently of party committees and candidates. The court in *Buckley* v. *Valeo* stated that large independent expenditures did not "appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions."[61] The right to independent expenditures was extended to political party committees in the 1996 election cycle.[62] During the period of unconstrained electioneering through soft money and so-called issue advocacy, the use of independent expenditures was not as great. But in the post-BCRA world of campaign finance, especially for political party committees, independent expenditures have come to be an important part of the story. The use of independent expenditures by political party committees is explored in chapter 6, and by groups in chapter 7.

As a result of *Buckley* v. *Valeo* and *FEC* v. *Wisconsin Right to Life*, the most important provisions of BCRA still in force are the party soft-money restrictions and the contribution limits for individuals and PACs. As described previously, the law did not lead to the demise of political parties. It has also not removed money from politics; rather, it has channeled fundraising efforts toward individual donors and away from other sources of money. It has not changed the tone of the campaigns. It remains true that party committees and interest groups generally mount more negative attacks than candidates do, but the overall tone of the 2004–08 campaigns was not markedly less negative than the tone of campaigns in 1996–2002 (see table 1-2).

Table 1-2. *Political Ads, by Type, 2004 and 2008 Federal Election Cycles*
Percent

| | Contrast | Promote | Attack |
|---|---|---|---|
| *2004* | | | |
| Candidate | 25.9 | 52.9 | 21.2 |
| Party | 24.4 | 8.6 | 67.0 |
| Coordinated | 42.7 | 14.4 | 42.8 |
| Group | 14.2 | 7.5 | 78.3 |
| Overall | 26.3 | 31.1 | 42.6 |
| *2008* | | | |
| Candidate | 16.5 | 57.5 | 26.0 |
| Party | 28.2 | 1.2 | 70.6 |
| Coordinated | 20.7 | 3.5 | 75.8 |
| Group | 11.4 | 22.8 | 65.8 |
| Overall | 17.4 | 46.9 | 35.6 |

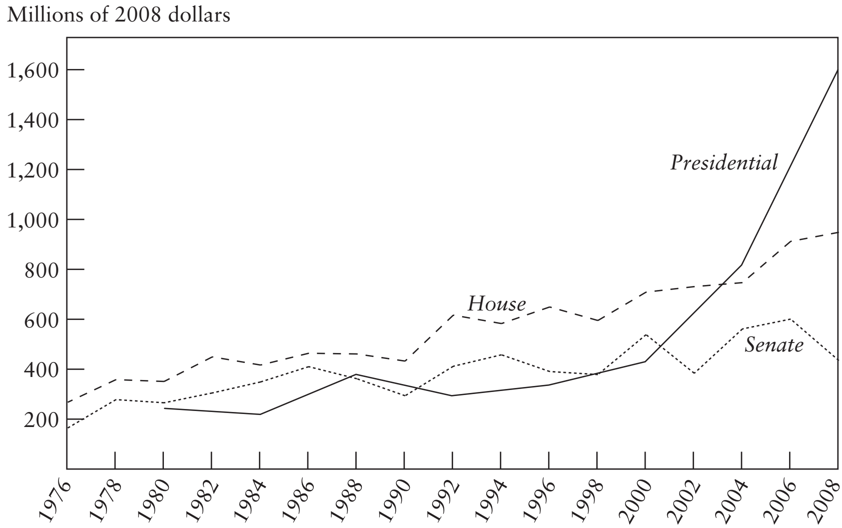
Source: E-mail communication from Ken Goldstein, July 27, 2009.

Although part of the motivation for legislation passed in 2000 and reinforced in 2002 with BCRA was to stop groups from mounting anonymous attacks, the reality is that this mode of electioneering continues, though with somewhat better disclosure than before BCRA.[63] The 2004 election saw visible and effective attacks from outside groups on both sides in the presidential race. Groups attacking Bush included the Media Fund and MoveOn.org. The attacks on Kerry came most notably from the Swift Boat Veterans and POWs for Truth.[64] Less visible groups were still active in 2006.[65] As discussed in chapter 7, the 2008 election did not see the same intensity of outside group activity, but that was probably because of the unusual circumstances of the 2008 election rather than a change in strategy by interest groups.

## Financing the Most Expensive Election in U.S. History

It has become a commonplace observation with each election cycle that more money was raised during the current cycle than in the prior cycle. But in the case of 2008, the increase was substantial and not isolated to presidential candidates. Figure 1-1 provides total spending by House, Senate, and presidential candidates for the post-FECA period (1976–2008) in 2008 dollars.

Figure 1-1. *Inflation-Adjusted Expenditures, 1976–2008 Congressional and Presidential Campaigns*




Source: 1972–96 congressional data from John C. Green, ed., *Financing the 1996 Election* (Armonk, NY: M. E. Sharpe, 1999), p. 23; 1998 congressional data from FEC press release, April 4, 1999; 2000 congressional data from FEC press release, May 15, 2001; 2002 congressional data from FEC press release, June 18, 2003; 2004 congressional data from FEC press release, June 9, 2005; presidential data from the Center for Responsive Politics (www.opensecrets.org); 2006 congressional data from Bob Biersack, FEC deputy press officer, e-mail communication with Stephanie Curtis, July 3, 2007; 2008 data from FEC (www.fec.gov/press.shtml).

### *Spending Patterns*

Figure 1-1 shows a general trend toward increased spending over the period, peaking in presidential election years. However, it is also the case that the slope of increase rose substantially in 2008. Table 1-3 allows a more detailed understanding of how the 2008 elections compared with those of 2000 and 2004. Some of the entries in the table are incomplete. For example, the estimate of spending by Section 527 organizations in 2000 is incomplete because disclosure of spending was not required until July of that year. Similarly, the estimate for issue advocacy spending is based on data provided to the author by the Campaign Media Analysis Group. It does not include any estimate for spending on mail and telephone contact, voter mobilization, and the like.[66]

Our overall spending estimate of close to $6 billion in 2008 shows a more than 30 percent increase over 2004 spending, which in turn

Table 1-3. *Overall Spending, 2000–08 Federal Elections*
Millions of dollars

| | *2000* | *2004* | *2008* |
|---|---|---|---|
| Presidential candidates[a] | 645 | 958 | 1,829 |
| Congressional candidates[b] | 978 | 1,099 | 1,297 |
| National parties (federal)[c] | 544 | 1,214 | 1,219 |
| National parties (nonfederal)[d] | 498 | . . . | . . . |
| State and local parties (federal)[e] | 171 | 201 | 318 |
| State parties (nonfederal)[f] | 330 | 67 | 94 |
| PACs[g] | 320 | 532 | 767 |
| 527s | 101[h] | 442[i] | 258[i] |
| 501(c)s | 10[j] | 60[k] | 196[k] |
| Issue advocacy[l] | 248 | . . . | . . . |
| Individual expenditures[m] | 4 | 2 | 2 |
| Total | 3,849 | 4,575 | 5,980 |

Sources: Compiled from FEC data; Campaign Media Analysis Group data; Center for Responsive Politics data (www.opensecrets.org/527s/index.php and www.cfinst.org/pr/prRelease.aspx?ReleaseID=221).

a. Includes all presidential election–related spending in prenomination, convention (including the convention grant and spending by host committees), bridge, and general election periods. Candidate transfers to party committees are deducted from the total to avoid double counting.

b. Includes all spending by congressional candidates. Candidate transfers to party committees are deducted from the total to avoid double counting.

c. Includes all spending by national party committees including independent expenditures and coordinated expenditures on behalf of candidates. Contributions to candidates are deducted from the total to avoid double counting.

d. Transfers among party committees are deducted from total.

e. Includes all spending by state and local party committees, including money contributed to candidates, independent expenditures, and coordinated expenditures on behalf of candidates. The national party transfers were deducted from the Democratic and Republican state and local party disbursements.

f. Includes nonfederal (soft-money) share of state party expenses that must be paid with a mix of federal (hard) money and some soft money during election cycle.

g. Total includes independent expenditures and internal communication costs made by PACs. PAC contributions to federal candidates are deducted from the total to avoid double counting.

h. Major transfers removed. Estimate is much lower than the actual amount because 527 spending was only disclosed as of July 2000, owing to the adoption of the new disclosure law.

i. Total includes spending by groups that were either thoroughly committed to federal elections or were heavily involved in federal elections but also doing substantial state and local work. Total includes electioneering communications made by 527 organizations.

j. Total includes independent expenditures made by 501(c) groups.

k. Total includes groups spending at least $200,000 and consists of independent expenditures, electioneering communications, and other expenditures (including internal communication costs) made by 501(c) groups.

l. This money was spent on broadcast ads in the top seventy-five media markets between March 8 and November 7, 2000. This figure may include some money reported by parties, PACs, 527s, or 501(c) groups elsewhere in the table.

m. Total includes independent expenditures made for or against candidates by individual donors.

exceeded spending in 2000 by 19 percent. The most pronounced increase in overall spending occurred in the presidential race, which accounted for more than half of the overall increase in the 2008 election cycle. Including all candidates for the presidency, spending in 2008 rose 91 percent over 2004 and 183 percent from 2000 to 2008. Some of the increase in spending between 2000 and 2004 can be explained by the higher BCRA individual contribution limits. But when figures are indexed for inflation, the BCRA limits rose by 15 percent between 2004 and 2008, while total spending rose by more than 30 percent. Moreover, PAC contribution limits were not changed by BCRA, yet PAC spending rose by 44 percent between 2004 and 2008. An even larger factor in the rise in individual contributions to the Democratic and Republican national committees in 2004 was the decision by both Bush and Kerry to accept public funding in the general election and encourage individuals to contribute to the national party committees rather than to their campaigns. This same approach was taken by McCain in 2008.

Spending by congressional candidates in the aggregate also rose from 2000 to 2004 and then again in 2008. Comparing congressional elections over time is problematic because the set of states having Senate elections varies from cycle to cycle. That concern aside, the increase in the initial post-BCRA election (comparing 2000 with 2004) was 12 percent. Between 2004 and 2008 congressional candidate spending rose another 18 percent. These increases far exceeded the inflation-indexed BCRA increases in contribution limits. However, in 2008 spending by Senate candidates actually fell by $113.5 million from the 2006 midterm.[67] The more comparable spending in House contests rose in 2008 over 2006 and 2004.[68]

For a complete picture of political parties' fundraising over time, nonfederal soft money has to be added in with the federal hard money. The national party committees raised a combined $1.09 billion in hard and soft money in 2000. In 2004, without soft money as an option, the parties raised in the aggregate $1.23 billion, representing a 17 percent increase. In hard money alone, the national party committees saw a 115 percent increase between the $574.5 million they raised in 2000 and the $1.23 billion raised in 2004. Between the amount raised in 2004 and the $1.24 billion raised in 2008, the parties saw only a .5 percent increase, again all in hard money. Nevertheless, that the presidential candidates were spending 91 percent more than they had in 2004 makes even more impressive the parties' ability to hold steady in hard dollars raised at $1.2 billion.

Another large growth sector in federal elections has been political action committees. Limits for contributions to any particular PAC, unlike those to the candidates and party committees, were not increased by BCRA. Limits on individuals' aggregate contributions to PACs were increased by BCRA just as the overall individual aggregate limits were raised and indexed to inflation. PACs saw a 66 percent spending increase between 2000 and 2004 and another 44 percent increase between 2004 and 2008. As discussed in greater detail in chapter 7, interest groups not only make PAC contributions to candidates and party committees, but they also make independent expenditures and are otherwise involved in contributing to groups organized under Sections 527 and 501(c) of the Internal Revenue Code.

As noted, the estimates for 2000 are imprecise because reporting requirements for some activities were limited. But in that cycle, groups spent at least $359 million beyond their PAC spending. The 2004 cycle saw a substantial amount of 527 activity ($442 million). Interest groups remained important to federal contests, as they had in the 1996, 2000, and 2004 elections, but in different ways. Spending by 527 organizations was less in 2008 ($258 million) than in 2004. However, 501(c)s spent more, disbursing $196 million in 2008 as compared with $60 million in 2004.

One way to examine the interest group sector is to combine spending from PACs, 527s, and 501(c)s with the issue advocacy estimate for 2000 into an aggregate figure for interest group spending. Interest groups as a whole spent $679 million in 2000, $1.034 billion in 2004, and $1.221 billion in 2008. Overall, then, interest groups spent more in 2008 than in 2004 or 2000.

This may be a surprise to some because in 2008 the more visible Section 527 groups spent less. Interest groups in the aggregate spent 52 percent more in 2004 than in 2000 (though 2000 figures are most likely underestimated because of incomplete reporting by 527 organizations and the difficulty of tracking issue advocacy ads).[69] Between 2004 and 2008, when there was more complete reporting, there was an overall increase in spending by interest groups of 18 percent.

Another important finding shown in table 1-3 is the relative balance between parties and interest groups in the system of contemporary campaign finance. In 2008 political parties spent $1.537 billion on federal-level elections or only about $300 million more than interest groups ($1.221 billion). Candidates exceeded political parties and interest groups, spending $3.13 billion. Another way to look at these data, however, is to say that interest groups and parties together spent $2.76 billion—or about 46 percent of all spending, compared with about 52 percent by candidates. The remaining spending came from state parties for nonfederal campaigns and individual independent expenditures. This shows that to understand the financing of the American federal-level elections requires a careful assessment of how candidates, political parties, and interest groups raise and spend money.

*The Campaign Finance Coalitions*

In raising and spending money in American electoral campaigns, the two sides consist of the candidates, their political party committees, allied interest groups, and individuals. As noted, candidates in the 2008 presidential race were not only the most visible but were also predominant in the raising and spending of money. That was especially the case for Barack Obama, who by declining public financing was able to better control his team's message than had he relied more on the DNC and allied groups, as had John Kerry and George Bush in 2004 and John McCain in 2008. From the perspective of the voter, however, the party, the candidate, and group campaigns are often indistinguishable.[70]

DATABASES AND MICROTARGETING. Candidates have long been the beneficiaries of efforts by allied groups and party committees in registering and mobilizing voters. Before passage of BCRA this was one of the ways party soft money was spent. Both parties have long maintained data files of registered voters at the state and national levels. Republicans had the advantage in 2004 in the use of voter databases and sophisticated statistical modeling using large survey samples to identify persuadable voters and those with a high propensity to vote for a particular candidate. This methodology came to be called microtargeting. Bush, using a group named TargetPoint and the RNC's large Voter Vault database, outperformed Kerry, America Votes, and the DNC in this critical area.[71]

The DNC also has its own database of voters, something called Demzilla in the 2004 campaign. While not as advanced or complete as the Republicans' database, Demzilla was expanded and improved in 2008. This happened, in part, as a result of DNC chair Howard Dean's fifty-state campaign strategy, which deployed national committee staff to all fifty states. Data enhancement was one part of this expanded outreach. The Democrats added VoteBuilder in 2008, a software program used to update and refine the voter list.

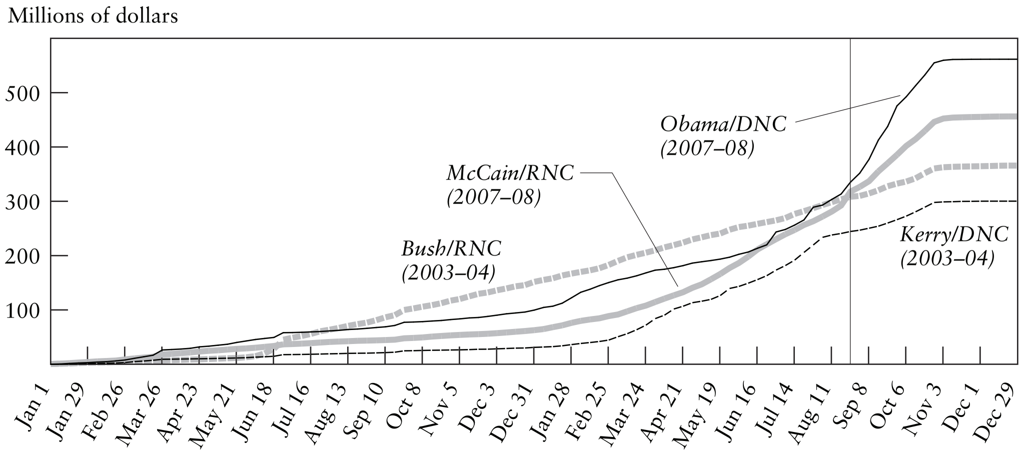
Democratic allies also acted to help the Democrats close the gaps in microtargeting and list development. Smarting from the Democrats' 2004 defeat, Harold Ickes organized a group of investors to fund a group to counter the Republican advantage in building a list and statistical modeling. The investors formed Catalist, a limited liability corporation. By 2008 the Catalist list of voters rivaled the RNC's Voter Vault in size, approximately 220 million voters. The list has address, party registration, vote history (whether a person has voted in past general and primary elections), and as much as can be discovered from public sources about voters' gender, age, race, phone number, e-mail address, automobile registration, gun registration, and hunting and fishing licenses as well as a range of consumer information that can be purchased from marketing firms like newspaper, magazine, and cable television subscription lists. Unlike the Voter Vault, which cannot legally accept information from groups, Catalist can and does obtain membership information from Democratic-leaning interest groups. Among the investors in Catalist are labor unions, teachers organizations, trial lawyers, and environmental and prochoice groups, all of whom match up their lists with Catalist. As the campaign proceeded, the file was updated with information on change of address and the results of voter canvass or other activity. Among those that purchased access to the Catalist list were the campaigns of Hillary Clinton and Barack Obama, the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee, the America Votes Coalition, the Service Employees International Union, the AFL-CIO, and the Sierra Club.[72]

Beyond Catalist the progressive side in 2008 used a new data management tool called the Voter Activation Network (VAN). This software allows campaigns to integrate volunteer, donor, and membership data with voter contacts through canvassing and other means and to microtarget voters in a technologically savvy and efficient manner. During the 2008 election the Obama campaign used VAN extensively as an active interface to mobilize voters and volunteers.[73]

The RNC and McCain campaign used a similar method and built on the success of the Bush and RNC campaign in 2004. In addition to TargetPoint, the Republicans used a second firm, Grassroots Targeting, headed by Blaise Hazelwood, who had directed the 72-Hour Task Force get-out-the-vote effort for the RNC in 2004 and 2006. Michael Myers of TargetPoint Consulting said, "Being able to use the past work and keep building on that is a big advantage and helps us out a lot."[74]

PRESIDENTIAL FUNDRAISING PARTNERSHIPS. One of the most important teammates for a presidential candidate is the national party committee. This has been especially the case for candidates who accept public funding. During much of the nomination phase of a presidential election the focus is heavily on the candidates and their fundraising. But once the nominee is known, the party committees become more central to the overall funding strategy of the candidates. Perhaps because of Obama's success in raising money from individuals, McCain often is discounted as a fundraiser. In fact, the McCain-RNC combined fundraising in 2008

Figure 1-2. *Cumulative Itemized Receipts from Individuals to Presidential Nominees and National Party Committees, 2004 and 2008 Federal Elections*[a]




Source: FEC records of individual contributions, downloaded March 3, 2009 (ftp://ftp.fec.gov/FEC/).

a. The vertical line near the beginning of September 2008 indicates the approximate date of the national party conventions.

substantially surpassed the Bush-RNC fundraising in 2004, and Bush had the advantages of the incumbency in raising money in 2004, something McCain lacked in 2008. It is interesting to contrast the Bush-RNC and Obama-DNC lines in figure 1-2. For the period from July of the off-year (2003 or 2007) until July–September of the election year, the Bush-RNC campaign raised more money than the Obama-DNC team. After that, the Bush-RNC fundraising line continues to climb at a steady rate while the Obama-DNC slope rises much more.

Obama's money advantage, apparent by the spring of 2007, impacted all aspects of the campaign. Perhaps the most visible effect was Obama's expansive television, radio, and Internet campaign. Obama ran more ads on network television than had any campaign in decades, even having a thirty-minute commercial that ran in primetime slots on CBS and NBC networks. Obama also made more extensive use of radio than did McCain. In North Carolina, for example, the Obama campaign outspent the McCain campaign, $250,000 compared with $40,000, in radio ads.[75] Perhaps more important, Obama had control over his television advertising message. This was something McCain did not have in his joint McCain-RNC ads. Evan Tracey, of the Campaign Media Analysis Group, observed that both the number and content of ads matter: "Tonnage works, and we see that all the time," but "message control is more important sometimes than message tonnage."[76] In 2008 Obama had both.

While outspending McCain three-to-one on television advertising, Obama also mounted a large-scale ground operation.[77] In 2004 Kerry and the DNC essentially left the ground game to allied groups, including organized labor, environmental and prochoice groups, and especially a Section 527 group named America Coming Together.[78] That year America Coming Together and America Votes, which coordinated the ground activity of pro-Democratic interest groups, spent a combined $81.6 million.[79] Major donors to America Coming Together and related groups like America Votes and the Media Fund (which ran television ads critical of Bush) included philanthropist George Soros, Progressive Corporation insurance firm chair Peter Lewis, and Hollywood executive Steven Bing.[80] America Coming Together exceeded its ambitious goals for voter registration and turnout but failed to match the success of the RNC's 72-Hour Task Force in getting voters to the polls.

In 2008 Obama's game plan was to run the ground game himself, applying some of the principles he had learned as a community organizer. The system relied on a large number of dispersed field offices staffed by employees who, in turn, relied on volunteers. The offices had a common look and feel. The space was often more Spartan, compared with McCain field offices, but with hand-painted signs and a buzz of excitement. Overall Obama had 770 offices compared with McCain's 370.[81] The difference in offices and paid staff varied a bit by state, but in a sample of five battleground states Obama had on average twenty-seven more field offices in each state than McCain.[82] One marker of success in the field is new voter registration. The political scientist Dennis Johnson has observed that in a group of twelve key states, the voter rolls "expanded by about 4 million persons," with Democrats adding in Florida "twice the number of new voters as Republicans; in Colorado and Nevada, the ratio is four-to-one and in North Carolina, it was six-to-one."[83]

Obama's operation was consistently conscious of tracking individual preferences and levels of interest. People who attended Obama events were invited to fill out a card with information that allowed the campaign to communicate with them. The millions of people who went to the Obama website were invited to do the same. Individuals were invited to set up their own social network with the campaign through a website named My.BarackObama.com, or MyBO. Dennis Johnson reports on the metrics: "The more than 2 million persons who had logged onto MyBO could form their own groups and communities, blog (400,000 blog postings), set fundraising plans ($30 million raised from 70,000 people), volunteer (35,000 volunteer groups were created), host events (200,000 offline events). By Election Day, Obama 'knew' more than 7 million supporters through social network and campaign website operations."[84] In addition, Obama had 2.2 million Facebook supporters and 800,000 followers on MySpace.

Whereas campaigns typically seek out individuals or communicate with people without knowing much about their preferences, tools like MyBO and the campaign's voter file allowed the campaign to broaden its reach and tailor its message. Again from Johnson: "The Obama campaign took great strides in making it an intimate campaign, between Obama himself, his closest aides, volunteers, and individuals."[85] Seen by observers as key to his early success in Iowa, Obama's database and tracking tools helped the campaign mobilize voters for caucuses and primaries and then for early voting and absentee voting in the general election.[86] Individuals were organized to call voters in their own state or, if their state was not competitive, to call voters in nearby states that were.

All of this happened on a scale not seen before in American electoral politics. It also was not cheap. Without the money advantage the Obama campaign had, the scale could not have been as great. But participants in the Obama campaign did not get the impression the campaign was flush. At the field offices, volunteers used their own cell phones if they had free minutes, then they used inexpensive Cricket phones, and then they used the landlines. Obama offices charged individuals for bumper stickers and lawn signs, again reinforcing the sense of people pitching in.

Aided by Obama's momentum and undoubtedly by his ground efforts as well, Democratic congressional candidates did exceptionally well in 2008. The resource advantage of the party congressional committees that supported them is also part of the story. One important point of coordination among team players in recent elections has been in collecting information on potential donors, voters, and volunteers. Although it is against the law for interest groups to formally join with party or candidate committees, a degree of cooperation among candidates and their party committees is allowed, particularly in research and get-out-the-vote efforts. In addition, PACs and other groups with complementary agendas are free to form alliances—a flexibility that has proved invaluable to the Democratic team, which has more interest group players, such as unions and environmental groups.

The net effect of the advances made by both sides was that 2008 was the most database-driven campaign to date. Both sides invested heavily in modeling voter preferences and in microtargeting appeals. Brian Wolff of the Democratic Congressional Campaign Committee, when asked about the importance of microtargeting, said, "It was the be-all, end-all of what we were doing."[87] Overall, the Democratic team's effort in microtargeting and get-out-the-vote proved more effective, with some of the success attributable to Obama's own efforts, which were financed through his campaign.[88]

CONGRESSIONAL CAMPAIGN COMMITTEES. Beyond the core party functions of providing infrastructure like voter lists and research on candidates and the opposition, party committees help fund campaigns. They do this through contributions to candidates and by spending in coordination with candidates. Both of these types of spending are limited. Before BCRA, party committees spent heavily on campaigns through soft money. Now that soft money is largely banned, party committees spend heavily on particular races through independent expenditures. As a result of a Supreme Court ruling in a case brought by the Colorado Republican Federal Campaign Committee, the party committees can spend unlimited amounts of hard money independently. As hard-money contributions to the party committees rose following BCRA passage, much of that money has been spent in particular contests.

The party committees spent heavily in competitive contests in 2008. Overall, the two parties spent more than $353 million in independent expenditures in 2007–08, most of which went to congressional races. For example, the Roger Wicker (Republican) versus Ronnie Musgrove (Democrat) Senate race in Mississippi saw the most party independent expenditures, totaling more than $20.4 million. The ratio of spending was about two-to-one in favor of those trying to help Musgrove. The dynamic of party independent expenditures is discussed in greater detail in chapter 6.

INTEREST GROUPS. Political action committees are one way interest groups seek to influence the outcome of federal elections. As table 1-3 summarizes, PAC activity was up substantially in 2007–08, more than double their spending in the last pre-BCRA presidential election (in 2000). As discussed in chapter 7, PACs allocate their funds disproportionately to incumbents. In 2008 that remained the case: PACs contributed $304.7 million to presidential and congressional incumbents. In comparison, they contributed only $48.7 million to challengers and $32.4 million to open-seat candidates. They spent $134.7 million in independent expenditures in the 2008 elections, of which $84.9 million was spent on behalf of favored candidates and $49.8 million against opposing candidates.[89] As noted, in 2008 there was less spending by Section 527 organizations and more spending by 501(c) organizations; including PAC spending, interest groups overall spent more in 2008 than in 2004 or 2000.

The reality that interest groups were more active in 2008 may have been overlooked because there was not an attention-getting group that successfully attacked a candidate as was seen in 2000 and 2004. For example, in 2004 a group named Swift Boat Veterans and POWs for Truth ran ads and sent mail attacking Democratic nominee John Kerry's war record, honor, leadership, and participation in Vietnam War protests; these efforts effectively portrayed the idea that "if Kerry can't fight for his honor, how will he fight for security."[90] The ads, which went unanswered by the Kerry campaign for two weeks, are widely seen as having hurt the Kerry candidacy. Throughout much of the 2008 campaign observers anticipated a Swift Boat–type attack. Some efforts in this direction came now and then but not in a sustained way that generated the same kind of attention. The 2004 campaign also saw a positive ad from a Section 527 organization named Progress for America, which ran an ad thanking President Bush for protecting America. The tone and content of the ad would have been roundly criticized if the ad had come from the Bush campaign, but coming from an outside group it delivered a positive, patriotic message intended to help Bush. We did not see ads of this type on a large scale in 2008.

Interest groups, especially pro-Republican ones, directed a lot of their attention in 2008 to U.S. Senate races (see chapter 7). This was the result of a perception, reinforced by the Democratic Senatorial Campaign Committee, that the Democrats had the potential to reach the critical sixty votes in the U.S. Senate. In some states like Colorado, five different groups spent as much as $1 million each against the Democratic candidate Mark Udall, in hopes of holding what had been a Republican seat. Udall won with 52.8 percent of the vote.

Business and labor groups were also fighting each other over the airwaves more directly than is often the case. In 2008 a major focus was the Employee Free Choice Act. The Chamber of Commerce spent $30 million opposing unions' efforts to allow unions to be recognized with a majority of workers' signatures on a public card instead of requiring a secret ballot election.[91] Unions also invested heavily in advertising and member-to-member communications on the issue. In the end, some Chamber of Commerce–backed Senate candidates, like Elizabeth Dole in North Carolina and John Sununu in New Hampshire, lost, while others the Chamber supported, like Susan Collins in Maine, won. This sets the stage for a legislative fight on this issue and highlights the central role the Chamber now plays among the groups typically supporting Republicans.[92]

## Raising the Money

Money to finance federal elections comes from three sources: individuals; party committees; and interest groups, which are themselves often aggregations of individual contributors. Individuals may contribute to candidates, party committees, and interest groups and may spend money independently. Candidates making contributions are sometimes treated like other individuals and in other respects are treated differently.[93]

Money is raised by candidates, party committees, and interest groups at events, through appeals to individuals sent through the mail, on the phone, in person, and increasingly in 2008 through appeals sent by e-mail. Candidates are not above giving their website in debates, and it is now a staple in paid advertising for the candidate to urge people to go to the website and contribute to the campaign.

Even more than congressional candidates, presidential candidates turn to individuals to finance their campaigns. Candidates exploit their personal networks of individual donors and seek endorsements from others willing to share contacts. Political action committees have typically focused much more on congressional than presidential elections. Some candidates, like Barack Obama in 2008, have made a point of not accepting any PAC contributions. When fundraising by all presidential candidates is combined, individuals provided 80 percent of all receipts in 2007–08, PACs provided 3 percent, party committees 2 percent, and candidates' contributions or loans to their campaigns, 9 percent. This pattern is similar to 2004, except that the share of funding coming from individuals was less in 2004 (70 percent).

Congressional candidates also raise most of their money from individuals, but the proportions vary by candidate type—incumbents, challengers, and open-seat candidates. In 2007–08, repeating a long-standing pattern, House candidates relied less on individual donors than did Senate candidates. Compared with recent congressional elections, PACs played a larger role. Even so, more than half of all the money raised by House incumbents came from individuals (51 percent), and open-seat candidates and challengers raised proportionately more from individuals, as well.

Personal relationships between the donor and the person asking for the money are considered a key to successful fundraising. Individuals who successfully tap their personal networks for a candidate or party committee are called "bundlers." Some past presidential campaigns have set thresholds for bundlers to aim for. For example, Senator Clinton's campaign had a group called Hillraisers—people who had raised $100,000 from individuals. For Senator McCain, the elite groups of bundlers were known as Trailblazers, who raised $100,000, and Innovators, who raised $250,000.

Bundling is an especially important mode of fundraising for individuals making large contributions. A smaller form of bundling, microbundling, arose on the Internet in 2008. Campaigns like those of Mitt Romney, Ron Paul, and Barack Obama encouraged supporters to use the Internet to invite friends and others to contribute. This is discussed in greater detail in chapter 3.

The expanded use of the Internet in fundraising was clearly one of the most important developments in campaign finance in 2007–08. Paul raised more than $17 million from small individual contributions of $200 or less in 2007. This was 61 percent of his 2007 fundraising. But Paul's early success among small donors pales in comparison with that of Obama, who, as one observer put it, "raised more from small individual contributions in 2007 than Bill Bradley or Al Gore had raised from individuals contributing at any level in 1999 or John Edwards or John Kerry had raised from individuals contributing at any level in 2003."[94] Moreover, the Obama campaign saw financial contributions as but one means of involving and empowering volunteers in the nomination and general election phases.[95]

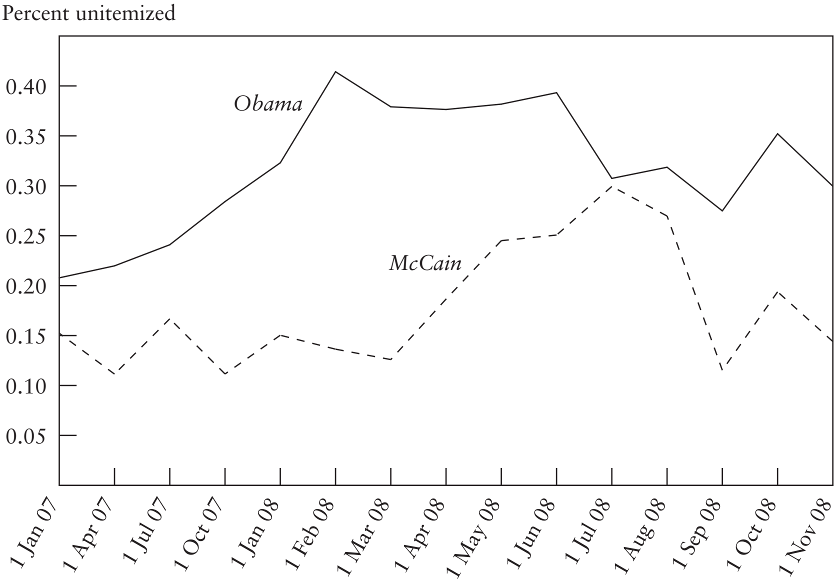
Individual donors whose aggregate contributions to a single candidate or group fall below the $200 threshold are not disclosed by name and address in the FEC database. Contributions from these individuals are described in summary reports as unitemized contributions. Figure 1-3 plots the percentage of contributions of less than $200 coming from contributors who gave more than $200 in the aggregate to John McCain and Barack Obama over the 2007–08 election cycle.

While candidates, party committees, and PACs ensure compliance with FEC reporting requirements by tracking small individual contributions—to differentiate between itemized and unitemized donations—once a donor exceeds the $200 threshold, additional contributions are reported to the FEC. The exception to this is presidential candidates who report contributions of less than $200 as a condition of claiming matching funds.

While the Obama campaign is seen as having substantially benefited from small individual contributions, it was large donors who were critical in the early going. Richard Wolffe describes the donation process:

> Contrary to their own carefully cultivated image, the money did not grow at the grass roots. "It wasn't the Internet," said [Penny] Pritzker [the national finance chair for the Obama campaign]. "We tapped everybody and did every event we could. He'd do seven events in New York, back-to-back-to-back-to-back." Internet donations totaled less than 15 percent of Obama's fund-raising through 2007. Money only started to cascade through the Web after Iowa in early January 2008, and it would take another several months, as the primaries dragged on, for the grass roots to represent half the campaign's fund-raising.[96]

Figure 1-3. *Unitemized Contributions to Presidential Candidates as Share of Total Contributions, 2007–08*




Source: Bob Biersack, FEC deputy press officer, e-mail communication with David Magleby, March 4, 2009.

Obama's success is thus attributable to his success with donors at all giving levels.

As is evident from figure 1-3, in proportionate terms Obama's unitemized contributions started out substantially ahead of McCain's and had an upward trajectory in the share of his total receipts through his securing the Democratic nomination in June 2008. During the most intensely fought part of the nomination campaign, more than 40 percent of Obama's overall fundraising total came from small individual donations.[97] Once Obama was the presumed nominee, contributions from fence-sitting donors came in with larger dollar contributions. The pattern for McCain is the opposite; his unitemized contributions as a share of all contributions increased in March 2008 soon after he became the presumed nominee, and at one point in the summer McCain and Obama were at near parity in the percentage of small contributions from donors on a monthly basis. Because Obama had many more donors, his money raised from small donations always surpassed McCain's. Both can-

Table 1-4. *Number of Reported Contributions in Presidential Election Years*

| *Year* | *Total number of contributions* | *Year* | *Total number of contributions* |
|---|---|---|---|
| 1984 | 244,645 | 1986 | 255,601 |
| 1988 | 407,823 | 1990 | 511,629 |
| 1992 | 835,718 | 1994 | 789,288 |
| 1996 | 1,146,494 | 1998 | 937,120 |
| 2000 | 1,569,508 | 2002 | 1,293,128 |
| 2004 | 2,376,404 | 2006 | 1,701,993 |
| 2008 | 3,108,886 | | |

Source: Compiled from FEC data.

didates had another increase in unitemized contributions in the September–October period, but by this time the Obama campaign was again far outpacing McCain among donors of small contributions. Of course, small donors in this period, when McCain had otherwise stopped raising money, were mostly donors to joint McCain-RNC "victory" committees.

Individual contributions of less than $200 represented just over 40 percent of all individual contributions to presidential candidates in 2008. For U.S. House candidates they were 20 percent, and for U.S. Senate candidates, 22 percent, of the total. Contributions to House candidates of less than $200 were slightly less likely to be given to incumbents (47 percent) than were contributions of more than $200 (54 percent). Contributions to House Democrats of $200 or less (58 percent) were more likely to be made than contributions above this threshold (56 percent). Contributions to Senate candidates of less than $200 were more likely to be made to Democrats (61 percent). Among those giving $200 or less, Democratic challengers did better than Democratic incumbents.

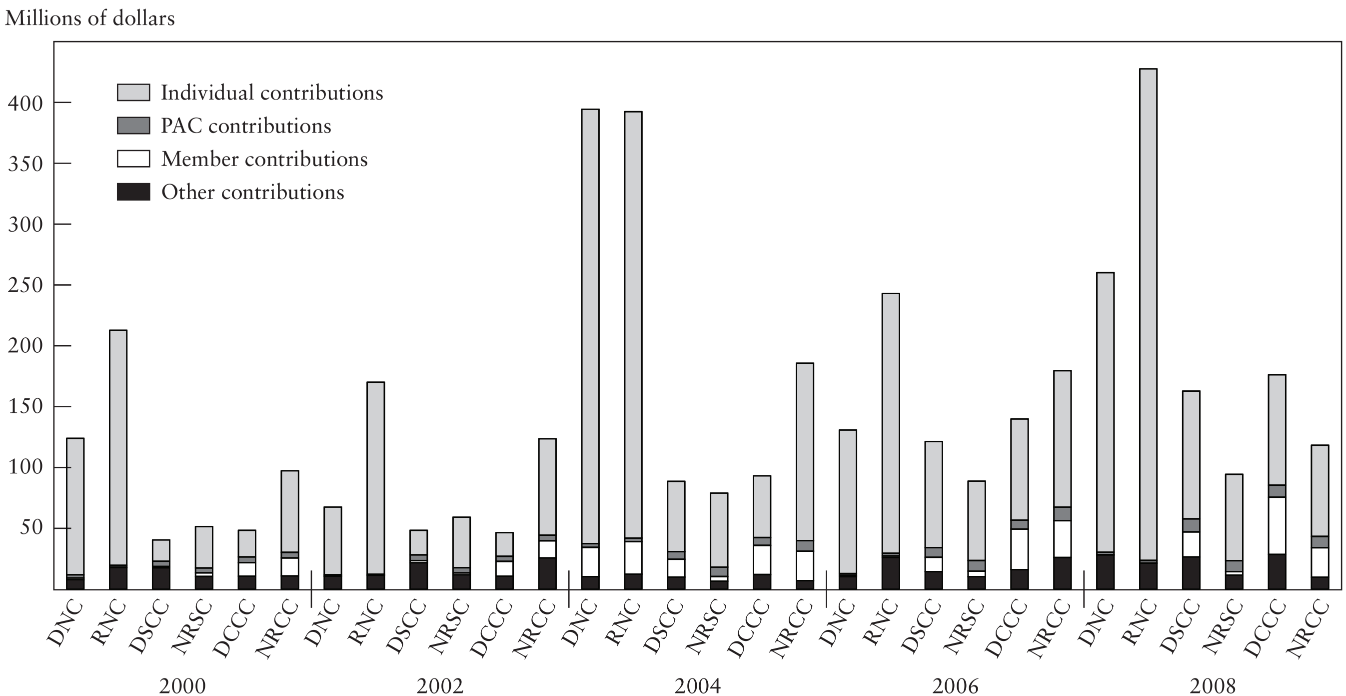
Tracking the total of an individual's contributions to various candidates, political party committees, and interest groups is difficult because data are reported to the FEC as separate contributions rather than aggregations of all contributions an individual has made. One measure of activity is to simply track the number of reported contributions over time from individuals who have exceeded the $200 reporting threshold. When we do that we find a general upward trend in numbers of contributions in presidential election years from 1996 through 2008. The number of reported contributions since 1984 are presented in table 1-4.

Scholars who have wanted to link contributing money to other attitudes and behaviors have included items in surveys on the topic. On this form of participation, as with turnout and other forms of participation as well, substantial overreporting is assumed. The American National Election Study (ANES) has asked respondents in presidential elections since 1952 the following question: "During an election year people are often asked to make a contribution to support campaigns. Did you give money to an individual candidate running for public office?"[98] The self-reported proportion making a contribution to candidates or parties at any level ranges from 4 percent in 1952 to 16 percent in 2004. In 2008 the proportion of respondents who reported having made contributions was 14 percent.[99] The mean level of respondents reporting they had made a contribution through the 2004 election cycle was 9 percent. A Gallup poll included similarly worded questions in 1956, 1960, 1964, and 1976. The responses in those polls varied from ANES's responses for these four election cycles by an average of less than 1 percentage point. There are some patterns in the survey responses. For example, 8–12 percent reported having made a contribution in the 1956–76 elections. Then from 1980 through 1996, the proportions drop to between 6 and 10 percent.[100]

Political party committees raised and spent record-setting amounts of money in 2007–08 (see figure 1-4). Party committees raise money from four sources: individuals, PACs, candidates, and transfers from other state or national party committees. In the last three presidential elections, the DNC and RNC have consistently raised between 88 and 91 percent of their funds from individuals. Congressional campaign committees get more money from individuals than from any other source but turn more to PACs and contributions from candidates than do the RNC and DNC. Candidate contributions to House and Senate campaign committees typically take the form of unlimited transfers from their own campaign committee accounts. Recently, candidate contributions to the House campaign committees and the Democratic Senatorial Campaign Committee have amounted to 10 percent or more of all committee receipts and reached a high of 27 percent of the latter committee's receipts in 2008.

In 2008 Democrats received more in contributions from all individual donors giving to candidates and political party committees (56 percent for Democrats compared with 44 percent for Republicans). The partisan advantage Democrats had among individual donors was even greater among donors giving at or near the maximum allowable contribution of

Figure 1-4. *Source of Receipts to National Party Committees, 2000–08 Federal Elections*[a]




Source: Federal Election Commission, "Party Financial Activity Summarized for the 2008 Election Cycle: Party Support for Candidates Increases," press release, May 28, 2009 (www.fec.gov/press/press2009/05282009Party/20090528 Party.shtml [July 22, 2009]).

a. Overall heights of bars represent total receipts for that category. This figure includes federal or "hard" money only. Contributions from individuals include proceeds from joint fundraising efforts with presidential campaigns in 2004 and 2008.

$108,200 (61 percent for Democrats compared with 35 percent for Republicans).[101]

One other contrast between the parties is noteworthy here. The Democrats have done much better than the Republicans in getting members to give to the congressional campaign committees. In 2008 Democratic members gave the Democratic Senatorial Campaign Committee $20.6 million compared with the National Republican Senatorial Committee's receipts of $2.8 million. The Republican committee chair and Nevada senator John Ensign said his committee needed "a lot more help from colleagues."[102]

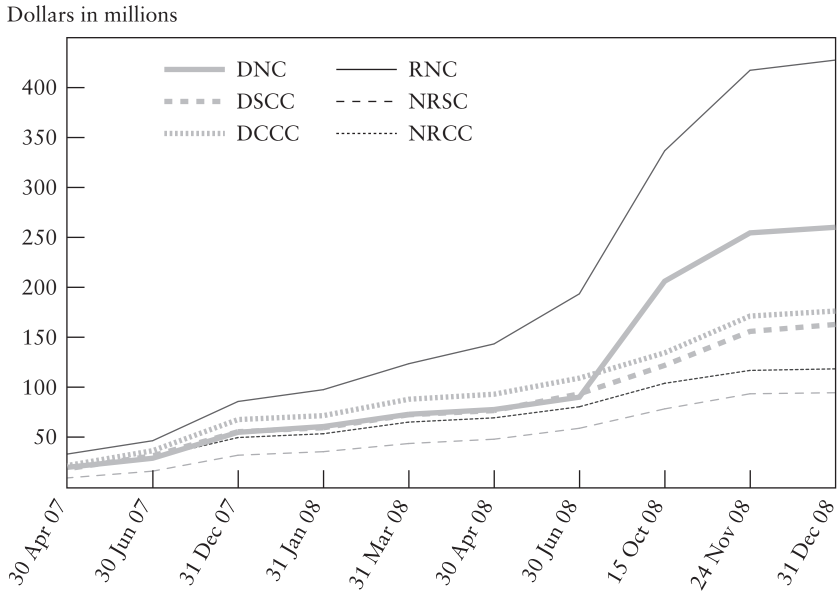
Party committees generally get off to a slower start in fundraising than do the candidates. This is a result of the donors' focus in the early months of the cycle on the candidates and not so much on the political party committees. Figure 1-5 plots party committee receipts by reporting period for the 2007–08 cycle.

The RNC saw a substantial increase in receipts in the June 30, 2008, FEC report and an even more substantial rise in the October 15 report. The McCain campaign, like the Bush campaign of 2004, made a concerted effort to urge individuals to donate to the RNC. The DNC saw a similar increase in its receipts in 2004. But in 2008, with Barack Obama able to continue to raise money as a candidate, the DNC did not see the increase it had in 2004 or that the Republicans saw in 2004 and 2008. The Democratic congressional campaign committees found themselves in the unusual position of outpacing the Republicans. Note the steeper rise in receipts for them in the June–October period and even more in the October–November period. Even though the Republicans were facing a possible sixty-seat Democratic majority, the flow of money to the National Republican Senatorial Committee did not keep pace with the Democratic Senatorial Campaign Committee.

## Overview of the Book

Our analysis of campaign finance in the 2008 federal elections draws heavily from Federal Election Commission data as well as data from the Internal Revenue Service and other agencies. We also draw on various independent research projects by our authors, all experts in the subjects of their chapters. One project we draw from substantially was a study funded by the Pew Charitable Trusts to examine a sample of battleground states. For that study I conducted more than 200 interviews in Washing-

Figure 1-5. *Hard-Money Receipts to National Party Committees, 2008 Election Cycle*[a]




Source: Federal Election Commission (http://fec.gov/press/press2008/2008NewsReleases.shtml), January 19, 2009; November 24, 2008, data from Bob Biersack, deputy press officer, Federal Election Commission, e-mail communication with Stephanie Curtis, January 13, 2009; December 31, 2008, data from Bob Biersack, FEC deputy press officer, e-mail communication with Stephanie Curtis, February 19, 2009.

a. Data from January 1, 2007, through each date listed.

ton or in one of the battleground states. They were all conducted on the record, and most were digitally recorded. We express appreciation to those interviewed for making time available for us to learn from them. We also express appreciation to the academics who conducted the studies of the battleground states for their collection of data on voter contacting by mail, in person, through the Internet, and in other ways.

Chapter 2 of this volume examines the regulatory environment of the 2008 election. Even though this was the second presidential election conducted under the provisions of BCRA, the implementation of the new law continued to be a matter of great controversy. As mentioned earlier, between 2004 and 2008 there were two U.S. Supreme Court rulings striking down provisions of BCRA, and other cases were pending. Key issues concerning the implementation of BCRA's statutory provisions were also being decided at the FEC, including a number of regulatory questions that were first raised before the 2004 election. The resolution of these matters was complicated by the fact that the FEC was left powerless throughout much of the election cycle, owing to unfilled vacancies on the commission. The FEC's inactions, as well as its rulings, influenced the financial activities that took place in 2008. Anthony Corrado reviews the legal and regulatory decisions made during this election cycle, their implications with respect to the efficacy of the law, and the issues that remain unresolved with respect to the financing of federal elections.

In chapter 3, John Green and Diana Kingsbury analyze the financing of the 2008 presidential nomination. With no incumbent president or vice president running, the interest and attention given to the race was high. Continuing a trend toward front-loading, two states defied the Democratic Party and held contests earlier than party rules permitted. Of central importance to the financing of 2008 was the protracted battle for the Democratic nomination. What did this do to candidate fundraising strategy? How did it impact McCain, who secured his nomination months before Obama did? What lessons will candidates learn from this for future nomination fundraising strategy? And the question that may be of most relevance: Is the FECA system of public matching funds dead?

The financing of the presidential general election is the subject of chapter 4. Anthony Corrado discusses the first contest to feature a nominee who did not accept public funds and describes the ways candidates and political committees raised and spent money in this context. In particular, he examines the strategic implications of Obama's decision and the tactics used by the McCain campaign to try to remain financially competitive. His analysis highlights the complexities of general election funding and the advantages Obama gained as a result of his financial strength. In doing so, he identifies the challenges facing the public funding system as a result of the 2008 experience.

While the presidential contest was the most visible element of the 2008 federal elections, congressional elections had their own dynamics in financing and electioneering. Republicans were fighting to limit their seat losses in hopes of denying Democrats sixty Senate seats, while Democrats felt emboldened by their victories in the 2006 midterm elections and by a set of Republican retirements that led to contested primaries, some of which, like New Mexico's, were so intense that they hampered the Republican candidates' general election chances. In the House the Democrats were also flush from regaining the majority in 2006 and hoped to build on that success in 2008. While Bush was not on the ballot in 2008, voters in battleground House and Senate races might have assumed he was, given the intensity of the Democrats' effort to tie Republicans running in 2008 to Bush and his policies. Party committees played a large role in some Senate and House races, spending more independently than the candidates spent. Paul Herrnson and Stephanie Perry Curtis examine these dynamics of congressional campaign finance in chapter 5.

In chapter 6 I explore the role of party committees in 2008. The two most important remaining provisions of BCRA are the increases in individual contribution limits and the party soft-money ban. As noted, the party committees have quickly substituted hard money for soft money. How have they done this in so short a time? What are the implications of a large party presence in competitive elections? Is the ascendancy of the Democrats likely to endure? Can the National Republican Campaign Committee come back?

Interest groups surprised many observers in 2008. As noted, there was less 527 organization activity but much more 501(c) and PAC spending. Was this a function of the candidates and issues of 2008, or is this likely something that will be repeated? Alan Cigler, an expert in interest groups, addresses this question in chapter 7. He assesses the difference PACs made in 2008 and explores whether increased PAC activity is a mode of participation in lieu of 527 and 501(c) spending. More broadly, 2008 saw a decline in Republican ally involvement, especially at the end of the campaign, and a substantial effort by labor unions, especially the Service Employees International Union, in independent expenditure and 527 activities.

In chapter 8, our concluding chapter, Thomas Mann revisits several themes of this chapter. Having now had two presidential elections under BCRA, what can we conclude about the impact of the legislation? Is the system of campaign finance in 2008 preferable to the one in place in 2000? How could it be improved?

## Notes

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92. Engstrom, interview.

93. Candidates may contribute to their own campaigns without limitation, to other campaigns with limitation, to the party committees (without limitation when transferring money from their campaign account and with limitation when contributing personal funds), and to PACs (with the same limitations as other individuals). Party committees may make limited contributions to candidates and PACs; they may also spend limited amounts as coordinated expenditures with candidates.

94. See David Magleby, "Rolling in the Dough: The Continued Surge in Individual Contributions to Presidential Candidates and Party Committees," *Forum: A Journal of Applied Research in Contemporary Politics* 6, no. 1, art. 5, p. 4 (www.bepress.com/forum/vol6/iss1/art5 [August 2009]).

95. Vargas, "Obama Raised Half a Billion Online."

96. Richard Wolffe, *Renegade: The Making of a President* (New York: Crown Publishers, 2009), p. 74–75.

97. Magleby, Jones, and Lassen, "Turning the Tables."

98. See American National Election Studies, "Time Series Studies, 2000–2004" (ftp://ftp.electionstudies.org/ftp/resourcs/questions/2000s.htm). The wording of

this question has not been consistent over the course of the ANES studies. The question was not presented in this form until 1980. Previously, respondents were asked whether they had given to either a party or a candidate, not just whether they had given to an individual candidate. In other words, the numbers we get over this range of years will conflate two different sets of data, one being contributions to a candidate and the other being contributions to a party or candidate. There is not a way to look only at contributions to individual candidates.

99. In the Cooperative Congressional Election Study the proportion reporting having made a contribution was 29 percent.

100. Kelly D. Patterson, "Spending in the 2004 Election," in *Financing the 2004 Election,* edited by Magleby, Corrado, and Patterson, pp. 68–93, 79.

101. For the 2004 election cycle the aggregate individual limit was $95,000. In 2007–08 that limit was raised to $108,200.

102. Martin Kady II, "Ensign: GOP Senators Need to Pony Up for '08 Races," *Politico Live,* Politico.com blog, February 13, 2008 (www.politico.com/blogs/thecrypt/0208/Ensign_GOP_senators_need_to_pony_up_for _08_races.html [October 2009]).