Financing the 2000 *Election*

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A High-Stakes Election

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A LOT WAS AT STAKE for a wide range of participants in the 2000 elections. Candidates, parties, interest groups, and individual donors saw 2000 as an unusually important year to invest in campaigns. The White House had no incumbent running, Republican control of the House and Senate was shaky, and many of the constraints on money in American politics had been lifted owing to a series of court and administrative rulings.

Quite naturally, presidential elections, especially when no incumbent is running, foster intense competition between the parties and allied interest groups. That tendency was amplified in 2000 for the Republicans because of their visceral dislike for Bill Clinton and a strong desire to win back the White House after eight years of Democratic control. As George W. Bush said at a campaign event, "We're going to win the state of West Virginia and we're going to do so because this nation is sick and tired of the politics of personal destruction. This nation is looking for an administration that will appeal to our better angels, not our darker impulses."[1] Republican elites felt that their party should not have lost the 1992 election to Clinton and that he stole GOP issues like welfare reform to win reelection in 1996.[2]

The Republican disregard for Clinton had an added edge, an anger over the dishonor they felt Clinton had brought to the office of president through his affair with a White House intern, Monica Lewinsky, and his efforts to conceal it. The protracted investigation, House impeachment, and Senate trial failed to remove Clinton from office and reinforced Republican outrage. For many, especially those who contribute money to the Republican Party, Clinton had besmirched the presidential office, and replacing him with a Republican was important. Among voters, the direct assault on Clinton stressing the impeachment and his character flaws flopped for House Republicans in their 1998 Operation Breakout.[3] As a result, Republicans used more veiled references to Clinton in their campaign against Al Gore in 2000; among GOP elites, however, returning "dignity and honor" to the White House was a common phrase that helped unify the party and motivate financial support.[4]

The possibility of winning back the White House motivated Republicans and allied interest groups to find and rally around a winning candidate. George W. Bush exploited this unifying motive and asserted his leadership through strong, early fund-raising. And, like Clinton, he moved to co-opt issues usually identified with the other party: Social Security, health care, and education.

As a lame duck president, Clinton still had a large impact on the 2000 election, especially by assisting his party with fund-raising. He was also actively involved in Hillary Clinton's successful U.S. Senate bid in New York.[5] In his 1996 race against Bob Dole, Clinton's expanded use of party soft money for candidate definition purposes transformed how parties spend soft money, making it a powerful tool in candidate-specific promotions and attacks. Clinton's soft-money fund-raising involved giving favors to large donors, such as granting access to policy briefings in the White House, and for some, a night in the Lincoln Bedroom. Vice President Gore also was involved in questionable and possibly illegal fund-raising, including a visit to a Buddhist temple where the Democratic National Committee raised $140,000.[6] Footage of Vice President Gore's visit to the temple was used against him in a Republican National Committee ad attacking his veracity and was the "first political attack ad of the general presidential campaign."[7]

The stakes of the 2000 election were high in terms of controlling both houses of Congress. If Bush won the presidential election and the GOP held their majorities in both houses of Congress, the Republicans would achieve unified party control over Congress and the presidency for the first time in forty-six years. The possibility of a sweep excited Republicans and their interest group allies; it also motivated Democrats and allied groups like labor unions to contribute to Democrats.[8]

At the start of the 1999–2000 election cycle, the Republican House majority was razor thin, only a thirteen-seat majority, the narrowest majority in forty-five years. The Democrats came out of the 1998 election with high spirits because they had picked up a net gain of five seats in a midterm election, something neither party had done while controlling the White House since 1934. Recognizing how important money would be in 2000, they appointed Patrick Kennedy to head the Democratic Congressional Campaign Committee (DCCC). Minority Leader Dick Gephardt kept Democratic House retirements and departures by incumbents so they could run for other office to a minimum, creating few open-seat opportunities for Republicans. In contrast, Speaker J. Dennis Hastert had to defend twenty-four open seats. Hastert reportedly was not aware of the retirement of John Edward Porter (R-Ill.) until it was announced.[9] Political pundits agreed that the House was up for grabs.

Early on, the Republicans seemed more likely to hold their majority in the U.S. Senate. But that changed on July 18, 2000, with the death of Georgia Republican Senator Paul Coverdell, who was replaced by the popular former governor Zell Miller, a Democrat. A combination of vulnerable Republican incumbents like Spence Abraham (Mich.), John Ashcroft (Mo.), Rod Grams (Minn.), and Rick Santorum (Pa.), plus opportunities to gain open seats formerly held by Republicans in states like Florida and Nebraska, gave the Democrats real hope for a majority following the election. The Democrats enhanced their chances of multiple victories by recruiting strong candidates, including three who could finance their own races: John Corzine in New Jersey, Mark Dayton in Minnesota, and Maria Cantwell in Washington.[10]

To individuals and interest groups, the 2000 congressional elections provided a rare election in which either party could credibly argue that with resources, they could take or retain control of Congress. On many policy fronts this meant groups and individuals invested heavily in their preferred party, and even safe incumbents were called into fund-raising duty to help their party in this effort. The real possibility of either party controlling Congress, or even one chamber, was a frequent refrain in fund-raising appeals from all four party congressional campaign committees.

Because the 2000 elections fell on the eve of the decennial reapportionment and redistricting, parties and allied interest groups also looked ahead to 2002 and beyond by positioning themselves to secure a party advantage through redistricting. Both parties identified state legislature or gubernatorial races in which an investment would improve their political leverage for redistricting in 2001 and 2002. Examples of battleground states for this effort were Iowa, Illinois, Washington, Tennessee, and Missouri.[11]

This heightened competition even carried over into state judicial elections. States often have more than three times as many judges as legislators. With rare exceptions, judicial elections in the past were different than executive or legislative elections because of their largely invisible nature. This was true despite the large number of judicial elections on the typical general election ballot. This invisibility results in part because many judicial elections are nonpartisan affairs that often involve a vote to retain or not retain a sitting judge, rather than offer a choice between competing judicial candidates. But money is becoming increasingly important in state judicial elections. For example, Alabama spent the most on the state judicial elections, with $12.5 million spent on twelve candidates in 2000.[12] As Roy Schotland discusses in chapter 9, interest groups, recognizing the importance of the judiciary in policymaking, are also investing in judicial elections, and campaign professionals, sensing a new market for their wares, are eager to put that money into campaign communications. Indeed, the tone and nature of many judicial election television commercials is strikingly similar to ads voters see in competitive candidate and ballot initiative contests.

Thus, on all fronts, 2000 was a high-stakes election in terms of partisan and ideological control of government not only for the short run but potentially for the next decade. Individuals and groups who invest in politics understood this dynamic and gave money in extraordinary amounts.

The Regulatory Environment for Money and Politics in 2000

The regulatory environment for campaign finance has gradually changed since the major reforms of the early 1970s. In 1971 Congress enacted the Federal Election Campaign Act (FECA), which was significantly modified following the Watergate scandal with amendments in 1974, 1976, and 1979. The act was also greatly altered by the 1976 landmark *Buckley* v. *Valeo* decision, which held parts of the FECA unconstitutional.[13] In response to requests from both parties, the FECA was amended in 1979 to permit parties to spend money raised under FECA rules on party building activities like pins, bumper stickers, voter registration, and get-out-the-vote drives. Under the amended law, such party expenditures do not count against the party contribution or coordinated expenditure limits for any candidate. The Federal Election Commission in subsequent advisory opinions permitted parties at the state and federal levels to set up separate accounts for fund-raising (called nonfederal or "soft money") for party activities not expressly connected to candidates. The regulatory regime in place at the end of this decade of reform included three basic elements: disclosure, contribution limits, and expenditure limits (when linked to public financing).

Disclosure

The premise of disclosure is that the public has a right to know who is funding the candidates, parties, and interest groups involved in elections. Furthermore, if opposing candidates, parties, and the media can gain access to information about who is funding campaigns, voters can hold candidates accountable for how they fund their campaigns. The Supreme Court also noted the need to deter corruption and undue influence. Prior efforts at reform, like the Federal Corrupt Practices Act and the Publicity Act of 1910, had included some form of disclosure in their provisions. But these acts provided incomplete disclosure at best. Recommendations for reform of campaign finance from a presidential commission appointed by President John F. Kennedy were made more salient by the 1968 elections and by President Richard M. Nixon's veto of the Political Broadcasting Act of 1971. Finally, the Watergate scandal called attention to money-filled suitcases transferred to candidate campaigns and added momentum to campaign finance reform efforts.[14]

A fundamental element of the FECA is that money for election activities going to candidates, parties, and interest groups must be disclosed. Money flowing from any of these entities to another must also be disclosed. Candidates are obligated to fully disclose how they fund their campaigns, including full disclosure of how much of their own money they are giving or loaning their campaigns. The disclosure provisions in the FECA withstood constitutional challenge. As the authors in this book demonstrate, disclosure of who is advocating the election or defeat of candidates through noncandidate electioneering is far from complete. Individuals and groups can mask their identity through issue advocacy. Groups and individuals can also communicate with voters through the political parties by way of party soft money. A common element of recent reform legislation is enhanced disclosure, but not all legislation includes issue advocacy, and without greater disclosure of the true sources of issue advocacy, disclosure will remain limited.

Contribution Limitations

A centerpiece of the FECA is that money given to parties or candidates can be limited. This provision was deemed constitutional by the courts. The 1974 amendments to the FECA set aggregate contribution limits for individuals at $25,000 per year or $50,000 per two-year cycle; the amendments also specified that individuals can only give a candidate $1,000 for the primary election and $1,000 for the general election, or $2,000 per election cycle.[15] The contribution limits for political action committees (PACs) were set at $5,000 for the primary and $5,000 for the general election, or $10,000 per routine election cycle. The amendment also limited direct-party contributions to candidates and any money spent in coordination with them. One purpose of contribution limitations is to limit the influence large donors exert on candidates and political parties. Contribution limitations, like disclosure, have been breached by issue advocacy and party soft money. Large donors have many means to influence elections and communicate with voters. Under the *Buckley* v. *Valeo* decision they could spend unlimited money independent of the candidate or parties. But that electioneering was fully disclosed and the source of the communication known. In the aftermath of issue advocacy by the candidates through party soft money in 1996 and issue advocacy by interest groups in that same year we have effectively removed contribution limits.

Expenditure Limitations

The Supreme Court held expenditure limitations on candidates to be constitutional as long as these limits were voluntary and tied to some form of public financing.[16] Presidential elections are the only part of the FECA that include public funds. Every major party nominee since the FECA took effect has accepted federal funding in the general election, including outspoken critics of public financing like Ronald Reagan. Public funding in presidential primaries is partial and comes in the form of matching funds. When candidates accept matching funds, they must abide by aggregate and state-by-state spending limits, although the state-by-state limits have come to be loosely interpreted.[17]

These forms of regulation were meant to reduce the importance of large and undisclosed donors to candidates and political parties and elevate other forms of electoral competition.[18] However, the FECA did not clearly differentiate campaign communications from other forms of speech. It fell to the Supreme Court to attempt to craft a "bright line" definition of electioneering or what it called express advocacy. In *Buckley* v. *Valeo* the Court defined "express advocacy" in terms of word choice. Ads that use words like " 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' or 'reject'" constitute express advocacy.[19] The Court held that nonelection communications, or issue advocacy, are not subject to contribution limits or disclosure, while independent expenditures, which use express advocacy language, are subject to disclosure requirements.

By the 1996 election cycle, interest groups had found ways to effectively communicate election messages without using the "magic words" of express advocacy. Groups like the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) spent $35 million on issue ads without disclosure constraints or spending limitations. Other groups followed suit in 1996, including business groups, some with innocuous names like "Triad" and "The Coalition: Americans Working for Real Change."[20]

Not only did the Court uphold individual and group rights to speak out on an issue, but it also upheld the right of groups and individuals to comment expressly on political elections. In *Buckley* v. *Valeo* the Court permits unlimited express advocacy electioneering by individuals and groups, requiring only full disclosure, as long as there was no coordination or collusion with the candidate or parties. These so-called independent expenditures have been a relatively small, but sometimes consequential, part of the campaign finance mosaic ever since 1976 and were a precursor to issue advocacy in 1996. For example, in the 1980 election the National Conservative Political Action Committee (NCPAC) made independent expenditures against five Senate Democrats and may have been a factor in their defeat.[21] Groups like the National Rifle Association and the National Education Association use independent expenditures as a primary means of electioneering.

In *FEC* v. *Colorado Republican Federal Campaign Committee*, the Republican Party successfully argued that if individuals and PACs can spend unlimited amounts in independent expenditures, parties should be able to do the same. In the 1999-2000 election cycle the parties largely bypassed independent expenditures. The Democratic Congressional Campaign Committee (House Democrats) spent under $2 million in independent expenditures. The other party committees lagged far behind—the

National Republican Senatorial Committee spent $267,000 independently, mostly in Nebraska. The Democratic Senatorial Campaign Committee spent $133,000 independently, with more than half that amount spent in the New York Senate race. One state party, the Utah Republicans, spent $375,503 in independent expenditures in the Utah second congressional district.

Party Soft Money and Interest Group Issue Advocacy

Parties experience greater latitude in spending money on elections through soft money. In 1979 Congress recognized the parties' right to support their candidates and strengthen party infrastructure. As noted, the FECA was amended to permit party committees to fund some generic party activities with hard dollars (subject to the contribution limits of FECA). These expenditures are not counted toward any candidate's party contribution or coordinated expenditure limits. The advisory opinions of the Federal Election Commission (FEC) went much further, permitting state and national parties to raise money for party building to be spent as nonfederal or "soft money." Donations to the parties for nonfederal or soft money accounts are disclosed but unlimited.

The use of soft money grew in new ways during the 1996 election cycle when the Clinton-Gore campaign used soft money to promote their candidacy; the Republicans mimicked this move and widely applied it to competitive federal contests in 1998 and again in 2000.[22] The ability to use soft money to promote or attack candidates has given the parties a powerful new tool and makes soft money fund-raising more important.

Record-setting spending by candidates, as well as noncandidates, brings into question the efficacy of campaign finance regulation. The FEC is widely perceived as slow and prone to deadlock.[23] These problems with the FEC can often be traced back to those being regulated—Congress and the president. Congress structured the FEC to have an even number of partisan commissioners and has consistently left the agency underfunded for enforcement and other activities.

Lax enforcement by the FEC is clearly part of the reason individuals, candidates, parties, and interest groups circumvented the intent of the FECA, as clearly demonstrated by Anthony Corrado in chapter 4 and Thomas Mann in chapter 10. But the commission is not alone to blame for the demise of the FECA. The seeds of the demise of the FECA were sown by Congress in failing to clearly define election speech and differentiate it from nonregulated speech. Others would contend that the problem with the FEC is that it has pursued the wrong enforcement issues in cases involving the Christian Action Network, among others.[24] During the past few election cycles the ability of campaign participants to circumvent the FECA has grown. In the broad spectrum of change, two developments in the 2000 elections stand out as most important in the growing campaign finance free-for-all: party soft money and issue advocacy by interest groups.

The soft money exemption to contribution limits and the parties' ability to spend that money in ways clearly linked to the election or defeat of certain candidates has effectively removed contribution limits. Moreover, with the widespread use of joint fund-raising committees or "victory funds" in 2000, candidates could go to a donor and seek the maximum individual contribution to the candidate account, a hard money contribution to the party, and a soft money contribution with the understanding that the soft money raised through the candidate's victory fund would be spent in that candidate's contest. A visible example of a candidate using the victory fund device in 2000 was Hillary Clinton's New York Senate race.[25] The use of victory funds by candidates removes the fig leaf that soft money contributions are not candidate contributions.

Individuals are not constrained by contribution limits or disclosure provisions when they seek to influence an election's outcome through issue advocacy. For example, in 2000 one or more donors gave the National Association for the Advancement of Colored People (NAACP) Voter Fund more than $10 million to fund election activities, including an ad that graphically reminded viewers of the dragging death of James Byrd Jr. and attacked George W. Bush for not supporting hate crimes legislation in Texas.[26] Also in 2000, Jane Fonda gave $12.5 million to pro-choice ($12 million) and environmental groups ($500,000) to run ads aimed at electing candidates friendly to her perspective on these issues.[27] An early harbinger of issue advocacy came in the presidential primaries when a group calling itself Republicans for Clean Air ran ads attacking John McCain. The ad was actually funded by Texas businessman Sam Wyly.[28] No doubt other large donors contribute to issue advocacy groups, but because of the lack of disclosure, we do not know who they are.

Limits on interest group and PAC contributions have been seriously eroded. For direct contributions to candidates, PACs are still limited. But PACs may also give to congressional leadership PACs, who in turn may give to other candidates (143 leadership PACs made contributions in 2000), and, even more important, their sponsoring corporations or unions can give unlimited money to the political parties for soft money purposes.[29] For example, unions composed six of the ten largest soft money donors to the Democratic Party committees in 2000.[30] Unions, interest groups, or individuals who fund PACs can avoid limits and disclosure by spending money on issue advocacy. Hence, the pharmaceutical industry gave an estimated $10.7 million directly to candidates and parties through their PACs and individual contributions, contributing an estimated $15.8 million in soft money to the parties and then spent an estimated $40 million through a group calling itself "Citizens for Better Medicare," which ran some pure issue ads but also aggressively supported and opposed some candidates.[31] With the advent of electioneering through issue advocacy, increasing campaign activity is going undisclosed. Some groups like the Sierra Club and Americans for Limited Terms announce the amounts they spend, seeking added publicity for their issue, while other groups spend millions communicating their message but insisting that they are communicating about issues, not electioneering.

Issue advocacy is often conducted by groups such as Foundation for Responsible Government, American Family Voices, Coalition to Make Our Voices Heard, Hands across New Jersey, and Committee for Good Common Sense. These groups use innocuous names to avoid disclosing any recognizable group affiliation. Until Congress required some disclosure through legislation enacted in July 2000, some groups campaigned anonymously by exploiting the issue advocacy distinction in *Buckley* to avoid disclosure to the FEC and section 527 of the Internal Revenue Code that exempted groups with assets in noninterest-bearing accounts from reporting anything about their organizations to the Internal Revenue Service. The most visible "section 527 organization" in the 2000 election was Republicans for Clean Air, which attacked Arizona senator John McCain's environmental record. Republicans for Clean Air ran its ads only in California, Ohio, and New York in the days before the March 7, 2000, presidential primary. Most of the $2.5 million they were estimated to have spent was used in New York City.[32] The McCain campaign angrily attacked the claims in the ad and insisted it must be connected to the Bush campaign. After two days of intense media investigation, Texas billionaire Sam Wyly acknowledged that he had funded Republicans for Clean Air.[33] The controversy surrounding section 527 organizations pressured Congress to enact legislation that requires an initial notice, periodic reports on contributors and expenditures, and modified annual returns, legislation that was signed into law in July 2000 by President Clinton.[34]

Section 527 organizations continued to affect the 2000 general elections, however, because the funds raised before the legislation took effect fell outside of any disclosure provision of the congressional action. For example, Citizens for Better Medicare used their section 527 status to buy $65 million in television, radio, and newspaper ads.[35]

At the state level, participants often have even more latitude to spend money on campaigns. For example, candidates in some jurisdictions can still convert campaign funds to personal uses.[36] Even in judicial elections—a domain long thought to be removed from the taint of money and influence, the 2000 campaigns were increasingly expensive elections with active campaigning by interest groups and parties in ways that force debate on the role of electoral democracy in the judiciary.

The Supply Side

The high volume of overall spending is evidence that for individuals and groups inclined to spend money on campaigns, the 2000 elections were worth investing in. The sources of this incredible spending remain diverse but not broadly representative. Some have argued that the robust economy and the success of dot-com entrepreneurs are reasons for the high spending in the 2000 elections.[37] Added to this "new money" were the staples of campaign finance—organized labor, teachers, environmental groups, pro-choice groups, and trial lawyers supporting Democrats and business groups, trade associations, pro-life, and socially conservative groups supporting Republicans.

The Bush campaign not only exploited the depth of Republican resentment over Clinton but used a hierarchal structure with titles and levels as a fund-raising tool. Although this was not a new idea, Bush used this method on an unprecedented scale. He set up a group of two hundred individuals, whom he called the "Pioneers." Each pioneer committed to raising $100,000 in $1,000 increments. This group provided Bush "with about one-fifth of his total funds."[38] Gore had a similar structure to his fund-raising, the "Board of Directors," but he was not nearly as successful.

As a party, the Republicans continued to utilize their successful small donor program. This program worked especially well in raising hard money for the Republican National Committee (RNC) and National Republican Congressional Committtee (NRCC). The RNC more than doubled the amount of hard money it raised in 1998, from $104,048,689 to an impressive $212,798,761 in 2000. The NRCC also did well by raising $97,314,513 in 2000 compared with $72,708,311 in 1998.

Another important source of money in politics is candidates' personal wealth, which they can spend in unlimited amounts on their own campaigns. In the presidential primaries, candidate self-financing was most evident in the Republican candidacy of Steve Forbes, who spent $48 million on his own campaign.[39] Forbes's substantial personal investment in seeking office was surpassed by the more than $60 million spent by Democrat John Corzine in his successful bid for the U.S. Senate from New Jersey.[40] Both parties have long courted self-financed candidates, but the Senate Democrats clearly did better at this game in 2000 than the Republicans.[41] Mark Dayton in Minnesota and Maria Cantwell in Washington were also largely self-financed candidates. Dayton spent $11.7 million of his own funds, and Cantwell spent $10.3 million of hers.[42] Three largely self-financed candidates in key races helped the DSCC target its massive soft money war chest elsewhere.

But the most dramatic demonstration of an expanded supply of political money in the 2000 elections was the House and Senate Democratic campaign committees' success in fund-raising, especially soft money fundraising. For the first time, the Democratic Senatorial Campaign Committee (DSCC) surpassed the National Republican Senatorial Committee (NRSC) in soft money receipts and was much better at deploying the party money into competitive races.[43]

Interest groups also found 2000 to be a year in which money seemed more abundant. The context of the election—open seat for the presidency, close margins of party control in both houses, a pending redistricting, a closely divided U.S. Supreme Court with the new president likely to make one or more appointments—gave groups many themes to raise with donors when they were asking for money. Moreover, interest groups now invest money in campaigns in many ways. They can hedge their bets when they contribute hard money, which clearly business and trade associations are inclined to do; they can invest more ideologically in party soft money contributions; and they can spend anonymously through issue advocacy.

This is not to say that all potential donors were happy with the increased pressure to give more political money to more entities. Some corporate leaders have spoken out against the "influence of large donors and special interest groups." Calling itself the Committee for Economic Development (CED), this group of corporate leaders comes from corporations like Xerox, Citigroup, General Electric, Exxon Mobil, and Liberty Mutual Insurance. The committee would ban soft-money donations, increase individual contribution limits, provide public financing for congressional races, and limit campaign spending.[44]

Implications for Reform and Future Elections

Assessing how campaigns were financed in 2000 is a principal focus of this book. This book also explores the implications of current campaign finance as viewed by voters, candidates, parties, organized groups, and institutions, and addresses the question: how can the debate over campaign finance reform be informed by the way the 2000 elections were financed? The Federal Election Campaign Act, as noted, has been greatly altered from its underlying premises by campaign practices. Despite the few changes made in federal campaign laws, the state and local level has seen serious campaign finance reform activity, which offers important lessons. Finally, in recent years judicial elections, a domain in which money was not seen as very important, have seen increasingly contested elections, issue advocacy, and a new political culture. Will courts see issue advocacy differently when it involves electing state supreme court justices and other judges than when it involves legislative or executive candidates?

At the presidential level, the implications for reform that flow from the 2000 elections include whether candidates will continue to build their strategies around partial public funding. Or will they pursue the Bush strategy and avoid the constraints of matching funds in the nomination phase, yet reap the bonus without the meaningful strings of the public grant in the general election?

One major reason why candidates might forgo matching funds and limits in the primary while accepting full public funding and expenditure limits in the general election is that expenditures in the latter are effectively unlimited with party soft money electioneering. Both parties demonstrated in 1996 and 2000 that the national parties can effectively carry the candidates' message through ads funded largely by soft money, thereby permitting the candidates to accept the federal grant without real constraints. Hence, expenditure limitations are no longer meaningful at the federal level. At the state level, expenditure limits exist in several states with some form of public financing, but these are often circumvented through party spending or issue advocacy. A few candidates before 2000 turned down the matching funds, most notably John Connally in 1980 and Steve Forbes in 1996. However, George W. Bush was the first frontrunner to turn down matching funds, a move he justified in part by having to run against Steve Forbes who also turned down matching funds in his 2000 campaign.

While correcting a part of the issue advocacy problem, the legislation relating to section 527 organizations has not stopped interest groups from exploiting the Supreme Court's "magic words" dictum and investing unlimited amounts of money in presidential elections. This loophole was exploited early in the 2000 primary season when the Sierra Club and the National Abortion and Reproductive Rights Action League (NARAL) ran ads against George W. Bush in an effort to raise doubts about his candidacy and perhaps start a fight within the Republican Party on environmental and abortion issues. In some respects, the Republicans for Clean Air attacks on McCain in March 2000 were a response to the early Sierra Club environmental attacks on Bush. One lesson future candidates will likely take from 2000 is that they will need even more money in their campaign treasuries to counter not only their opponents but the opposing party and issue advocacy groups as well.

Congressional elections now fall into two different categories. The more common type of congressional election is a safe seat, in which the incumbent or candidate from the dominant party in the district or state will win. Only in a small set of contests is there real competition. Competitive campaigns have a very different dynamic. In these, noncandidate campaign activity roughly equals the spending and volume of communication by the candidate campaigns. Campaigns funded by outside money are often more strident and sometimes create problems for the intended beneficiaries.[45] Because the battle for party control of Congress centers on only a few House and Senate races, all players—parties, interest groups, safe-seat incumbents elsewhere, and leadership PACs—focus on winning these races. With so much at stake and so much being spent, the costs of advertising rise, and air time becomes scarce.

In these highly contested elections, candidate and noncandidate campaigns diversify their approach and use more mail, telephone, Internet, and personal contact. In some House races in 2000, more than eighty unique mailings and an estimated 2 million pieces of mail were sent for the two candidates.[46] Candidates in contested races should assume that at least as much will be spent against them by their opponent's allies (party soft money and issue advocacy) as by their opponent. It is also safe for them to assume that money spent by their party and allied groups will not always be to their advantage. The net effect is that candidates need to raise and spend as much money as possible because they control that money, and they will need it to compete against those allied against them.

This growth in noncandidate campaigning questions assumptions made by political scientists and voters about our candidate-centered politics. Political scientist Martin Wattenberg has argued that American elections are candidate centered, an argument reinforced by the historic pattern of weak political parties.[47] But in competitive races, campaigning is now a team sport with candidates no longer in control. The growth in joint fund-raising or victory committees is a good example. But the analogy of politics as a team sport could be taken too far because competitive federal elections are contests without a coach, a clearly defined set of rules, or referees that consistently call penalties.

To the voter, however, the presumption remains that the candidates are in control.[48] When relatively few races are seriously contested, as in 2000, recruiting high-quality candidates for these races remains important. With so much of the money spent in contested races coming from party soft money, the power of congressional campaign committees has grown because they allocate that money in whatever amounts they choose. How are these decisions made? By whom? And what are the implications for legislative behavior given this enlarged role played by large soft money donors? Will the party caucuses as a whole be more friendly to large party donors?

Issue advocacy too carries important implications for voters. These campaigns are much noisier, and issue advocacy from groups with masked identities is difficult to unravel during the heat of the campaign. In races with substantial issue advocacy and party spending of soft money, there is anecdotal evidence that voters "tune out" politics and ignore much of the mail and telephone contact directed their way.[49] Unfortunately, the media have often not given voters much help. If substantial electioneering is conducted by way of issue advocacy, shouldn't there be greater disclosure from the groups about who they are? Should groups be able to campaign anonymously?

Political scientists have long been strong advocates of strengthened political parties. On the surface it seems that the infusion of so much soft money into the parties has the salutary effect of strengthening parties, but soft money's effect on party strength depends a great deal on how the soft money is spent. In competitive environments almost all soft money is spent on candidate-centered strategies, and to an extent, the parties are merely bank accounts used by political professionals to mount campaigns for and against candidates.[50] In these cases, even large amounts of soft money do not strengthen parties appreciably. Whether the small fraction of soft money spent on voter lists, party organizing, and so forth, is great enough to have made a difference is open to debate. Clearly parties are less important than they once were in funding candidates outside the highly competitive environments. The emphasis on soft money communications may therefore have reduced the parties' willingness to invest in promising but not clearly competitive candidates. Hence, any assessment of soft money implications needs to include how it is spent, who benefits, and what it does for the parties.

The array of noncandidate campaigning from interest groups through independent expenditures, internal communications within group membership, and issue advocacy has been important in competitive races, and in the view of some, when combined with the party spending, it is determinative.[51] Because of its nature, this type of campaigning is difficult to monitor, and as groups have shifted from independent expenditures to issue advocacy, interest group campaigning has avoided disclosure. One way to track part of the activity is through a broadcast monitoring service like the Campaign Media Analysis Group (CMAG), which has the technological means to identify every television commercial in the seventy-five largest media markets. Assuming sound coding of the commercials by professional coders, we have a means to estimate the frequency of issue advocacy in the more populated markets. Using this technology in 1998, Jon Krasno and Ken Goldstein conducted studies for the Brennan Center and found nearly half of all political ads were not run by candidates (46 percent), and ads run by parties and interest groups were more negative in tone.[52] As helpful as the CMAG data are, they clearly underestimate the costs of issue advocacy, because as election day approaches stations raise their fees for noncandidate entities. The CMAG data are also limited because they only examine television activity in large markets, and as my colleagues and I have demonstrated in research on the 1997–98 and 1999–2000 election cycles, a great deal of issue advocacy takes place in the mail, on the phone, and in person.[53]

Much remains to be learned about issue advocacy. We have evidence that in the 2000 presidential race, voters perceived issue ads as indistinguishable from party and candidate ads.[54] This fact sparks several questions: is this equally true in congressional races? Assuming that the "magic words" test is inadequate to distinguish electioneering from nonelectioneering in the real world of campaigns, what are meaningful standards or definitions of electioneering? Given the importance of issue advocacy to elections, how might a disclosure requirement work? If Congress enacts a ban on soft money and does nothing about disclosure of issue advocacy, will voters end up knowing less about who is trying to influence the outcome of elections?

The constitutional question of whether issue advocacy is protected speech and therefore not subject to limitation or regulation also arises. Analysis of 2000 data shows that most issue advocacy centered on electing or defeating candidates.[55] This has profound consequences for reform and eventual judicial review of those reforms.

Far more elections occur at the state and local levels than at the federal level, yet much less attention is paid to these contests regarding implications for reform. States have enacted a wide range of campaign finance reform and provide a wealth of data. Reform is also affected because the campaign finance problem now clearly confronts the judiciary. The judicial branch, a bystander in the past, may alter its thinking. Evidence of the issue's importance to state supreme court justices is the fact that chief justices of fourteen of the seventeen largest states with judicial elections attended a recent conference to discuss reform of judicial campaign finance.[56]

Overview of the Book

Participation in this volume was not based on a common perspective on campaign finance reform. Indeed, the authors' views vary widely.

In chapter 2 Candice J. Nelson examines spending in the 2000 elections overall, giving aggregate spending estimates and comparing them to previous election cycles. This estimating process is much more difficult than at any time since 1972 because so much activity is now undisclosed. The chapter also explores the implications of dramatically rising spending for matters like static contribution limits, the time candidates spend raising money, the length of the campaign, and the growing importance of personal wealth and outside money.

This book divides the financing of the 2000 presidential elections into nomination and general election phases. John C. Green and Nathan S. Bigelow explore the nomination phase in chapter 3, and Anthony Corrado focuses on the general election phase in chapter 4. Green and Bigelow discuss how fund-raising innovations sharply increased the costs of the nomination campaigns in 2000. They also discuss the relationship among campaign finance laws, candidate resources, and structure of competition and the financing of the 2000 nomination campaigns. Unlike the presidential primaries, which saw no soft money influence, Corrado finds soft money a major component of the general election. Corrado also discusses an unprecedented use of money in politics—the financing of the Florida recount battle, including the protracted litigation. The provisions of the FECA in relation to presidential general elections are according to Corrado "ineffective and meaningless."

Paul S. Herrnson and Kelly D. Patterson examine the close party balance in the House and Senate as factors in financing the 2000 congressional elections. Other important developments in congressional campaign finance in 2000 include soft money, issue advocacy, victory committees, the continued tendency of PACs to give to incumbents, and the strategic advantages of self-financed candidates.

Much of the story of 2000 is one of party soft money and the role of the parties in our electoral process. In chapter 6, Diana Dwyre and Robin Kolodny put the role of the political parties in the 2000 election in perspective. As important as soft money is, without hard money it is not nearly as potent for electioneering. Dwyre and Kolodny explain this important interaction as well as the changing dynamics of party finance.

Interest groups influence federal elections in many ways. In chapter 7, Allan J. Cigler explores these interest group investment options and how groups may choose to behave differently in candidate contributions than in issue advocacy or soft money allocations. Cigler describes the actions of groups and organizations, in disclosed and undisclosed electioneering, that were most active in financing the 2000 elections.

With redistricting looming in 2001 and 2002, the financing of gubernatorial and state legislative elections had significance at the state and federal levels. As Anthony Gierzynski demonstrates in chapter 8, the political parties and interest groups understood this importance and invested more heavily as a result. Gierzynski summarizes an impressive collection of data on gubernatorial and legislative campaign finance and compares it with the empirical regularities at the federal level.

This is the first in this series of books on financing elections to include a chapter on financing judicial elections. Roy A. Schotland thoroughly examines recent history and the growing trend toward expensive campaigns marked by issue advocacy by outside groups. Now, unlike in the past, judicial elections are starting to resemble the other elections examined in this book. Interestingly, the courts, which will ultimately decide the fate of any legislatively enacted reform, must now confront many of the same issues in an area much closer to home, their own branch of government.

Finally, Thomas E. Mann, in chapter 10, assesses the realities of financing and the implications for reform that emerge from the remarkable election in 2000. Mann explains why the most pragmatic strategy is more effective regulation on the model of McCain-Feingold rather than deregulation or full public financing.

Notes

1. Alison Mitchell, "The Republicans: The Texas Governor; Bush Concentrates on Clinton, but Keeps an Eye on Gore," *New York Times*, August 2, 2000, p. A17.

2. James A. Barnes, "Pressure on Clinton to Turn Leftward," *National Journal,* vol. 29, April 26, 1997, p. 836.

3. David B. Magleby, ed., *Outside Money: Soft Money and Issue Advocacy in the 1998 Congressional Elections* (Rowman and Littlefield, 2000).

4. George W. Bush used the "restore honor and dignity" language frequently when discussing the 2000 race, and his website issue page uses this phrase. See (www.georgewbush.com/ [July 2, 2001]).

5. Center for Responsive Politics, "White House Guests Database" (www.opensecrets.org/whitehouse/index.htm [June 21, 2001]).

6. Ruth Marcus and Ira Chinoy, "A Fund-Raising 'Mistake'; DNC Held Event in Buddhist Temple," *Washington Post*, October 17, 1996, p. A1.

7. David B. Magleby, ed., *Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections* (Brigham Young University, Center for the Study of Elections and Democracy, February 2001). See note 22.

8. Thomas B. Edsall, "Unions in High-Tech Fight for the Future," *Washington Post*, October 31, 2000, p. A8.

9. Lynn Sweet, a reporter from the *Chicago Sun Times,* interview by Barry Rundquist, January 18, 2001. Barry Rundquist and others, "The 2000 Illinois Tenth Congressional District Race," in Magleby, *Election Advocacy*, pp.161–73; and David B. Magleby, ed., "The e-Symposium: Outside Money in the 2000 Presidential Primaries and Congressional General Elections" (www.apsanet.org/ps/ [June 2001]).

10. Corzine set a new record in self-financing by spending more than $35 million in the primary and another $25 million in the general election. See Andrew Jacobs, "Primary in New Jersey: The Democrats; Low-Key End on Both Sides as Corzine Gets Nomination," *New York Times*, June 7, 2000, p. B9.

11. See chapter 8 for a detailed analysis of gubernatorial and state legislative elections.

12. See Roy Schotland, chapter 9, in this volume.

13. *Buckley* v. *Valeo*, 424 US 1(1976).

14. Nancy Lammers and John L. Moore, eds., *Dollar Politics*, 3d ed. (Washington: Congressional Quarterly, 1982) p.10; and Robert L. Peabody and others, *To Enact a Law: Congress and Campaign Financing* (Praeger, 1972).

15. When there is a runoff election, individuals can contribute an additional $1,000, and PAC limits rise to $15,000.

16. *Buckley* v. *Valeo*, 424 U.S. 1(1976).

17. Evidence of the FEC concern for state-by-state limits is found in the states' repeated requests to Congress to abolish them. Federal Election Commission, *Legislative Recommendations* (Government Printing Office, 2001), p. 47.

18. Patricia A. O'Connor, ed., *Congress and the Nation,* vol. 4 (Washington.: Congressional Quarterly, 1977) p. 985.

19. *Buckley* v. *Valeo*, 424 U.S.1 (1976), note 52.

20. David B. Magleby, "Interest-Group Election Ads," in Magleby, *Outside Money* (Rowman and Littlefield, 2000), p. 54.

21. Thomas B. Edsall, "Financial Woes, Legal Fights Weaken Conservative PACs; For Some, Fund-Raising Drops as Debts Rise," *New York Times,* October 29, 1986, p. A1.

22. Magleby, *Outside Money;* Magleby, *Election Advocacy;* and David B. Magleby, ed., *The Other Campaign: Soft Money and Issue Advocacy in the 2000 Congressional Elections* (Rowman and Littlefield, 2002).

23. Brooks Jackson, *Broken Promise: Why the Federal Election Commission Failed* (Priority Press Publications, 1990), pp. 59–62.

24. Eliza Newlin Carney. "Besieged FEC Gets Dissed on All Sides," *National Journal,* May 24,1997, p.1038.

25. "Money Games in the Senate Race," *New York Times*, January 5, 2000, p. A20.

26. John Mintz, "The Interest Groups; Liberals Mobilize against Bush, GOP," *Washington Post*, November 3, 2000, p. A22.

27. Ruth Marcus, "Costliest Race Nears End; Bush, Gore Running Close; U.S. Campaigns Fuel $3 Billion in Spending," *Washington Post,* November 6, 2000 p. A1; and John Mintz and Susan Schmidt, "Stealth PACs' Report Campaign Financing; First Data Available under New Reform Law," *Washington Post*, November 1, 2000, p. A17.

28. Richard W. Stevenson and Richard Perez-Pena, "The 2000 Campaign: The Tactics; Wealthy Texan Says He Bought Anti-McCain Ads," *New York Times,* March 4, 2000, p. A1.

29. Center for Responsive Politics, Washington, D.C.

30. Brody Mullins and Charlie Mitchell, "Soft Money Unleashed," *National Journal*, February 17, 2001, p. 501.

31. The $10.7 and $15.8 million figures come from the Center for Responsive Politics, Washington, D.C. The $40 million dollar figure comes from Mintz and Schmidt, "Stealth PACs' Report Campaign Financing," p. A17.

32. Mike Allen, "McCain Foe Gives $100,000 to GOP Committee," *Washington Post*, April 21, 2000, p. A5.

33. John Mintz, "Texan Aired 'Clean Air' Ads: Bush's Campaign Not Involved, Billionaire Says," *Washington Post,* March 4, 2000, p. A6.

34. "Filing Requirements—Political Organizations," *IRS 2001* (www.irs.ustreas.gov/prod/bus_info/eo/pol-file.html [20 Jun 2001]).

35. "Clinton Signs Law to End Anonymous Political Ads," *Florida Times Union*, July 2, 2000, p. A13.

36. Council of State Governments, *The Book of the States,* pp. 211–28.

37. Chapter 2 explores spending in the 2000 elections in depth; and see Marcus, "Costliest Race Nears End," p. A1.

38. Susan B. Glasser, "George W. Bush's Dash for Cash," *Washington Post's Weekly Edition,* April 19, 1999, p. 10.

39. Data compiled from the Federal Election Commission, Washington (www.fec.gov [July 10, 2001]).

40. Jacobs, "Primary in New Jersey: The Democrats," p. B5.

41. David B. Magleby and Candice J. Nelson, *The Money Chase* (Brookings, 1990), p. 45.

42. Federal Election Commission, "FEC Reports on Congressional Finance Activity for 2000," Washington, May 15, 2001(www.fec.gov/press/051501congfinact/051501congfinact.html [July 10, 2001]).

43. Magleby, *Election Advocacy*; and Magleby, *The Other Campaign.*

44. Committee for Economic Development, "Business Leaders Launch Campaign Finance Reform Effort," press release, Washington, March 19, 1999.

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46. Todd Donovan and Charles Morrow, "The 2000 Washington Second Congressional District Race," in *Election Advocacy,* pp. 259–74.

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48. David B. Magleby, *Dictum without Data: The Myth of Issue Advocacy and Party Building* (Brigham Young University, Center for Study of Elections and Democracy, 2000).

49. Dana Milbank, "Mercilessly Multiplying Election Ads," *Washington Post,* October 31, 2000, p. C01.

50. Jonathan S. Krasno and Daniel E. Seltz, *Buying Time: Television Advertising in the 1998 Congressional Elections* (New York University School of Law, Brennan Center for Justice, 2000).

51. Michael W. Traugott, "The 2000 Michigan Senate Race," in Magleby, *Election Advocacy*, p. 62.

52. The Brennan Center for Justice at New York University Law School with Kenneth Goldstein, "Press Release March 13, 2001."

53. Magleby, *Election Advocacy* ; Magleby, *Outside Money*; and Magleby, *The Other Campaign.*

54. Magleby, *Dictum without Data.*

55. Ibid.; and Brennan Center for Justice with Kenneth Goldstein of the University of Wisconsin—Madison conducted an ongoing study consisting of six press releases from September 19 to October 30, 2000, titled *Brennan Center Releases Real Time Data on Ads in 2000 Campaign.*

56. The conference, Summit on Improving Judicial Selection, was held in Chicago, Illinois, December 2000.