chapter 1

Introduction: Clarifying a Muddled Debate

"If God really wanted campaign finance reform, he would have made it easier to understand."

Gail Collins
New York Times columnist[1]

1. Gail Collins, "Personality Politics," *Denver Post* (Mar. 3, 2001), at B7.

To the joy of some and to the disdain of many, campaigns for Congress and the presidency bring thousands of ads to American television screens, beginning in late summer and continuing through November. Having been in existence for more than 40 years, political commercials are now an entrenched part of presidential races, Senate races, House races, gubernatorial races, and even state Supreme Court races. Political ads have become the prime method for communicating with voters in geographically large districts and as such are potent tools for changing minds and ultimately winning elections. Advertising has been all-but-institutionalized in modern-day campaigns and has been professionalized by political and media consultants beyond what might once have been imaginable. Political advertising in 2001 is a mature cultural phenomenon with a distinct history, notorious examples, a reputation for deciding close races, and a debate raging about its role and its effects.[2]

The fact that television ads are so numerous in an election year indicates a consensus on the part of professional political consultants that television ads are a key element to a winning campaign. Yet despite this consensus, there has been grave public concern about the role television and particularly television ads play in elections. Each year—as candidates, parties, and groups attempt to convey their messages over the airwaves—familiar complaints about political ads are heard: there are too many of them, the ads are just soundbites, the ads are too negative, the ads are from an undisclosed source, the ads lack taste, the ads create cynicism and apathy. In short, there is considerable concern over the role of political advertising despite its deep roots in American political culture.

The debate over the role of political ads draws upon law, political science, social science, and viewers' visceral reactions to the ads they see. These overlapping bases for debate, however, make it difficult to find common ground upon which to base consensus and public policy, as everyday viewers, political scientists, and legislators move from drastically different assumptions and points of view. For example, vicious, negative ads may offend the sensibilities of the public but succeed in driving down approval ratings of the targeted candidate. Ads aired very early in a campaign may seem pointless to viewers yet accomplish the goal of scaring off potential opponents in a race. Likewise, scholars may be concerned about the impact of essentially anonymous advertising, while legislators feel that disclosure rules are already sufficiently effective. More-

KEY TERMS OF THE DEBATE

Throughout this report, several key terms will be used that need clarification from the outset. The most important are express advocacy and issue advocacy since the meaning of these terms is not only the focus of this study, but the meanings can and will change with adjustments in legislation or court interpretation.

Express advocacy is supposed to consist of campaign messages for or against the election of candidates, while issue advocacy is supposed to consist of non-campaign messages about political issues, public policies, or bills pending in Congress. The former may be subject to campaign finance laws regulating the amount and sources of campaign contributions, while the latter may not be subject to such regulation.

Under a common interpretation of the U.S. Supreme Court's 1976 decision in Buckley v. Valeo (addressing the constitutionality of the Federal Election Campaign Act), a magic words test determines whether or not a communication counts as express advocacy. Applying that standard, if a political advertisement contains such words as "vote for," "vote against," "elect," or other comparable terms, the message is viewed as express advocacy. If no such "magic words" appear in the message, it is then viewed as issue advocacy. As a consequence of this test, advertisements without magic words are often called issue ads.

This study examines the significance of the magic words standard of express advocacy in light of the real world of campaign advertising on television. The research shows that the standard has facilitated an abuse of the spirit, if not the letter, of federal campaign finance law. Parties and groups now saturate the airwaves with electioneering issue ads designed to influence votes in candidate elections by avoiding the use of magic words and thus obtaining the protection from regulation properly belonging only to genuine issue ads.

2. Bob Dole, presidential candidate in 1988, is believed to have lost the New Hampshire primary as a result of George H.W. Bush's "Senator Straddle" ad, which aired in the final weekend before the primary and which went unanswered by the Dole team.

over, whether or not an ad includes the words "vote for," "vote against," "elect," or "defeat"—facetiously known as "magic words"—may seem inconsequential or even bizarre to viewers, but whether or not an ad contains such words can be crucial for determining how each ad must be paid for and regulated.

The result is a debate in which participants are in danger of talking past each other if they do not succeed in finding a shared factual basis for discussion. The purpose of this study is to establish a strong factual foundation which policymakers, opinion leaders, and citizens can use to add depth and accuracy to the debate over political ads. *Buying Time 2000* adds to the debate and to the policy-making process by providing statistical data and analysis of the television advertising in the 2000 campaigns for House, Senate, and president.

PURPOSE OF STUDY

The primary objective of this project is to give a systematic description and analysis of the political advertising in the 2000 elections, with special emphasis on the role issue ads have come to play in influencing elections. The major topic explored in this study is the extent to which parties and groups have used the issue ad loophole to shield their electioneering activity and avoid federal campaign finance law. In order to achieve this objective, three separate, powerful databases on campaign television advertising and issue advocacy have been created. The first two databases consist of televised political ads in 1998 and 2000. The third database documents how the parties have spent soft money in the 2000 election cycle. These data sets have been used to test assumptions about the nature of political advertising by candidates, parties, and special interest groups.

As in the 1998 publication of *Buying Time,* authored by Jonathan Krasno and Daniel Seltz, federal campaigns are the exclusive focus of our study. But while *Buying Time 1998* was limited to congressional general elections, *Buying Time 2000* includes data on the congressional primaries and general elections, as well as the presidential primaries and presidential general election. As a result, this year's report is broader in scope, but it still can draw comparisons to the advertising activity of 1998.

THE RISE OF ISSUE ADVOCACY

As noted above and in our 1998 study, the use of electioneering issue ads is one of the latest and most intriguing innovations in campaign finance law evasion. Parties and groups now routinely air ads that are intended to elect or defeat a candidate but which avoid "magic words" sometimes associated with express advocacy, allowing parties and groups to skirt campaign finance regulations. The message is nevertheless unmistakably clear in these ads, just as the message of a soda commercial is clear whether the slogan is "Drink Coke" or "Coke is it."

Savvy political advertisers and the people who hire them have taken advantage of the magic words test. Corporations and unions now use treasury funds to pay for electioneering issue ads that are indistinguishable from candidates' ads, despite decades-old federal laws banning the use of those funds for electioneering. Parties and interest groups have likewise fallen over each other to run ads directed at electing or defeating candidates under the

KEY PLAYERS IN THE DEBATE

For purposes of this study, there are three key players in political advertising. These players are:

Candidates: All ads run by candidates are assumed to be election-related, and so the money used to pay for them is subject to federal campaign finance laws.

Parties: All ads sponsored by political parties in federal elections are subject to reporting and disclosure requirements. Other restrictions may apply. Parties may pay for campaign ads coordinated with candidates, which are subject to spending and contribution limits; parties may pay for campaign ads that use the magic words but are aired independently of candidates, which are subject to contribution limits but not spending ceilings; and parties may sponsor "issue ads," which are subject only to disclosure requirements.

Groups: As used in this study, the term "groups" includes individuals, organizations, corporations, labor unions, and PACs. When groups independently run ads that use magic words for or against candidates, the money that pays for the ads is subject to federal campaign finance laws, including disclosure rules. When groups run "issue ads"—whether genuine issue ads or electioneering issue ads—federal campaign finance laws under the "magic words" standard do not apply.

guise of issue ads. Stopping just short of calling for the election or defeat of a candidate allows these players to have an increasingly powerful impact on elections across the country.

Indeed, the scope of electioneering issue ads has expanded dramatically in the last three election cycles. The amount spent by parties and groups on electioneering issue ads swelled from $30 million in 1998 to more than $200 million in 2000. Viewers see more and more ads, but as long as the ads avoid using magic words, the electorate gets less and less information about who is behind them.

Many scholars, regulators, and politicians have for some time doubted the usefulness of the magic words test. But the data analyzed here shed light on just how few advertisements exist today that use those magic words to communicate an explicit campaign message. Data from the Brennan Center's study of the 1998 and 2000 elections demonstrate that in modern-day ad campaigns, magic words are virtually non-existent. Candidates, political parties, and interest groups rarely incorporate any of the magic words into their campaign ads.

KEY FINDINGS

In addition to confirming earlier findings, such as the deficiency of the magic words test in defining issue advocacy, this study documents many new and surprising results. Key findings in the 2000 study include:

▶ Independent groups spent, conservatively estimated, more than $98 million on media buys for political television commercials in 2000. Political advertising by independent groups has sharply risen over 1998 levels in both the Senate and House races.

▶ For the first time ever, the major parties spent more on television ads in the presidential general election than the candidates themselves. The Democratic and Republican parties accounted for 49% of all the ad spending on the Bush-Gore battle, while the candidates themselves accounted for just 42%. Outside groups accounted for 9%.

▶ The magic words test for express advocacy has no basis in the reality of political advertising. In 2000, even candidates used terms such as "vote for" or "elect" in only about 10% of their ads; in 1998, only 4% of all candidate ads used such magic words.

▶ Electioneering issue advertising—ads designed to influence elections without using magic words—by the parties grew dramatically from 1998 to 2000. Parties spent $20.5 million on electioneering issue ads in the 1998 congressional races. In 2000, they spent $79 million on electioneering issue ads in congressional races, and an additional $80 million on electioneering issue ads in the presidential race.

▶ Electioneering issue advertising by groups grew dramatically from 1998 to 2000. In 2000, group electioneering issue ads totaled more than $49 million, compared to $10 million in 1998. Group electioneering issue ads in the congressional general elections amounted to more than $32 million, compared to $10 million in 1998.

▶ The parties moved from using attack ads to using contrasting ads. About 44% of the party ads were attack ads in 2000 compared to 60% in 1998. However, the percentage of positive ads dropped from 28% to 24%.

▶ Researchers determined that a majority of television ads (59%) sponsored by independent groups were electioneering ads. Within 60 days of the election, that figure grew to 86%.

▶ Specific congressional actions addressing the problems of soft money and issue advocacy can help close the loopholes without infringing on genuine issue advocacy. Restricting party soft money and replacing the magic words standard of express advocacy with a standard based on timing and candidate identification (the "60-day bright line test") can better ensure that campaign finance regulations apply where appropriate. More than 99% of the group-sponsored ads that would be subject to campaign finance regulation under this test would have been appropriately captured.

Buying Time 2000 offers a unique look at the scope of advertising in the 2000 elections. The following chapters explain the advertising in the federal elections by examining in detail the timing, cost, number of airings, market locations, and tone of the ads aired, as well as other characteristics.

Chapter Two details how the data analyzed in this report were collected. The study outlines the procedures used and explains the methods for coding each advertisement.

Chapter Three describes the historical events that led to the enactment of laws governing political advertising today. It gives a brief history of campaign finance regulatory efforts and discusses the recent evolution of federal law governing political advertising. It also outlines how those seeking to evade campaign finance rules have innovated their practices in a manner that allows them to utilize corporate and union treasury funds in a way campaign finance rules intended to prohibit.

Chapter Four identifies the different players in the 2000 elections and describes how each used political ads to meet their electoral objectives. Candidates, parties, and groups are examined as distinct categories and their ads are analyzed with respect to their tone, content, length, and timing.

Chapter Five looks at the different roles campaign ads played in races for the House, Senate, and presidency. The study notes the features of ad spending in competitive versus non-competitive races, as well as open seat races versus incumbent-contested races. It also explores the different ad strategies employed by Democrats and Republicans in the congressional and presidential races.

Chapter Six examines the timing of ads in all races with respect to variables such as sponsor and tone. Special attention is given to the timing of issue ads and the types of group issue ads aired within 60 days of a general election. Group issue ads featuring a candidate are examined for their timing as well.

Chapter Seven looks at the role soft money played in the 2000 ad fight. Using a newly developed database on soft money expenditures, information on the increased role of soft money in federal elections is presented.

Chapter Eight gives an overview of the legislative remedies currently proposed for dealing with electioneering issue advertising and soft money. A replacement for the "magic words" test currently used to shield electioneering issue ads from regulation is described and its potential impact is explored.

Appendix A is a case study on the presidential race, with particular attention paid to the state-by-state expenditures by the parties and the candidates over time.

Appendix B gets into the specifics of several closely watched 2000 races. Nine case studies are presented, consisting of the Senate races in Michigan, Virginia, New York, Washington, and New Jersey, and House races in Pennsylvania, California, New Jersey, and Kentucky. All are analyzed with respect to their ad quantity, tone, timing, and other factors.

Appendix C shows the coding format which provided the raw data for the *Buying Time* study.

Finally, Appendix D displays a sample storyboard which coders viewed.

Campaign advertising is at once a cultural phenomenon and a part of a larger body of political activity that is regulated by federal law. Political ads are therefore something most everyone has seen but which are governed by rules few understand completely. The policy conclusions that develop can be improved by detailed research into political advertising and a willingness to take a fresh look at the political tool which has come to dominate our perception of politics, politicians, and American elections.

chapter 2

Methodology of the Study

Buying Time 2000 is founded upon three separate databases compiled in SPSS format: television tracking data in 1998; television tracking data in 2000; and a party soft money database for the 2000 election cycle. The first two databases were initially complied by the Campaign Media Analysis Group (CMAG), a business specializing in political consulting and reporting, and shall be referred to as "television advertising" databases throughout this study. Using satellite technology originally developed by the U.S. Navy for tracking Soviet submarines, CMAG collects television commercials aired in the top 75 (of 216) media markets across the nation, an area that contains more than 80% of American households. This technology detects the slots in television programming when commercials appear, assigns a unique digital fingerprint to each commercial, and transmits snapshots of every four or five seconds of each commercial to CMAG headquarters, where the ad is transformed into a storyboard (*see* Appendix D for examples), along with information about the date, time, and station on which the commercial appeared. CMAG later adds information on estimated costs of each commercial.

CODING AND AUGMENTING THE CMAG TELEVISION TRACKING DATA

After CMAG captured the content of ads in storyboards, students under the direction of Professor Ken Goldstein at the University of Wisconsin examined the content of the ads and coded each one for several specific variables. This process allowed for an enhanced description of political advertising in 2000 (*see* coding sheet, Appendix C). To code each ad, students viewed the storyboards of each distinct ad: the physical readout of what CMAG was able to capture on screen. Each storyboard consists of visual snapshots from the ad as well as the full text of the script.

Students at the University of Wisconsin/Madison viewed each of the 3,327 unique political ads that aired a total of 940,755 times in various markets across the nation and coded each of the ads for content.[1] Most of the content codes were objective in nature: Did the ad use any of the "magic words" currently used to test for express advocacy such as "vote for (candidate X)," "reject (candidate X)," or "(candidate X) for Congress"? Was a candidate identified or pictured in the ad? What action, if any, did the ad encourage viewers to take? Some of the content codes were subjective in nature, such as: In your opinion, is the primary purpose of this ad to provide information about or urge action on a bill or issue, or is it to generate support or opposition for a particular candidate?

Multiple coders examined each storyboard to ensure accuracy and high inter-correlation amongst coders. The authors also examined storyboards to verify coder accuracy with respect to specific factual characteristics, such as whether a candidate was featured in the ad.[2] When results from the database needed to be confirmed, the storyboards were used to check the database outputs.

CMAG provides information on about 300 political races, including federal elections, state elections, and judicial elections. Non-campaign ads involving legislative or policy issues are also captured by CMAG. As with *Buying Time 1998,* the focus of *Buying Time 2000* is restricted to ads pertaining to federal races. For the purposes of this study, the extensive and highly-detailed data generated by CMAG provide information on 2,871 distinct ads by candidates, parties, and groups aired more than 845,000 times in the 2000 calendar year (removing ads referring to state or judicial elections). The complete television advertising database analyzed here includes information from CMAG on the length of each ad, the number of times each ad was aired and in which markets, and an estimated cost of each media buy, along with the information from the coders about the content and tone of the ads.

SPONSORS AND UNITS OF MEASURE

Ads are distinguishable by their sponsor, content, and the measure of their impact. The sponsors of ads in the 2000 federal elections consisted of presidential and congressional candidates, national and state party committees, and independent groups.[3] Content analysis includes a wide range of variables, including the full text of each ad, the use (or lack of use) of magic words often associated with express advocacy, and the coders' interpretations of the purpose and intent of each ad. The two main measures of the impact of an ad are the number of airings and the amount estimated to have been spent on the ad.

When discussing the number of ad airings, it is important to note the distinction between the number of ad spots and the number of distinct ads. While more than 845,000 spots aired in federal elections in calendar year 2000, there were just 2,871 distinct ads aired by all sponsors. Some sponsors used few ads aired with particularly high frequency, while other sponsors used various different ads which aired only a few times. One type of ad purchase which relies on multiple airings is the cookie-cutter ad. A cookie-cutter ad is a template ad that is altered to target a specific race. These ads often share the same images and script except for the final frame, which is tailored to mention the appropriate candidate for that ad buy. With this method, independent groups and parties have used a single ad skeleton to impact an assortment of races across the country.

The CMAG cost estimates are the most readily digestible to the layperson. The database describes how much an ad aired at a particular time would be expected to cost. However, the cost estimates for the 2000 races unquestionably underestimate the true amount spent on the television ads. All cost figures offered in this study

1. Data for an estimated 100 additional distinct advertisements were discovered upon a spot check of selected television networks late in the course of research, but the missing data are not extensive and do not significantly affect the results of the study.

2. Intercoder consistency was not always proof against error. For example, multiple students concluded that an ad featured a candidate when the person was in fact an officeholder who was not running for election. Such coding errors were corrected. When coders disagreed with respect to a particular question, Professor Goldstein made the judgment as to the appropriate code.

3. For the purposes of *Buying Time 2000*, coordinated expenditures by parties and candidates have been attributed to the party.

under-estimate the actual costs because (i) estimates do not include any costs beyond media buys, such as production costs; (ii) estimates are limited to major media markets and do not include all media markets; and (iii) estimates are of typical market prices, not actual market prices that increase as demand increases or as Election Day nears.

This last caveat is extremely important in understanding how much the CMAG cost estimates under-report actual costs. Because television stations may reserve the right to preempt advertisements at the last minute and without warning, players often pay premium prices to ensure that their ad will run during specific time slots. These premiums, not accounted for by CMAG, ensure that an ad will not be preempted by another buyer. With the extremely high volume of ads on the air in 2000, anecdotal reports confirm that significant premiums were paid on many ads aired in close proximity to Election Day.[4] This suggests that CMAG cost estimates are lower than the actual outlay. All that said, the cost estimates nevertheless are proportional between the sponsors and provide perspective on the world of political advertising and are roughly in line with other studies on campaign spending.[5]

The data are reflected throughout this report in the form of charts and tables. A few notes on terminology in these tables. Figures are frequently totaled at the bottom of each table as "Table Total." These totals will include any missing data and so they may add up to a slightly higher number than the summation of individual rows in the table. The term "Col %" refers to the percentage of values in a column of the table and "Row %" refers to the percentage of values in a row of the table. "Sum %" is the percentage of the sum of the values—always dollars—in the table.

ACCURACY AND RECODING

Because of the importance for public policy purposes of how many genuine issue ads featuring a candidate were aired by groups within 60 days of an election, the authors examined in detail all of the group ad storyboards aired during that time frame. Special attention was given to ensure that the database was accurate with regard to whether or not a candidate was featured, whether magic words were used, and whether the ad was aired in the candidate's state or district. Ads that were coded incorrectly were recoded by Prof. Ken Goldstein at the University of Wisconsin. Professor Goldstein made all final determinations on coding accuracy of the students.

The sheer volume of ads in 2000—the total number of spots was more than triple the 1998 total—meant that the database when first compiled contained multiple errors. These errors usually took the form of missing data values, where the database simply did not contain the information CMAG intended to record. In these cases, efforts were made to determine the missing values, either by extrapolating from other data or by researching the specific race to which an ad pertained.

In order to make the data more manageable, the information provided by the coders was simplified by the authors with the creation of new summary variables. New variables—such as the competitiveness of electoral districts and incumbency—were created to aggregate the data and to provide the authors with additional tools for analysis. The "competitiveness" of electoral districts, for example, was a composite variable based on pre-election analyses by Stuart Rothenberg of *Roll Call,* the *Cook Political Report,* and pre-election polls by CBS News.

From a methodological perspective, cookie-cutter ads offered their own unique coding problems. Cookie-cutter ads are identical except for mentioning different candidates in different jurisdictions. At times the technology did not allow CMAG to distinguish that a candidate running for office in one state was erroneously mentioned in an ad aired in a different state. In these instances, Professor Goldstein reviewed the cookie-cutter ad outlays and recoded the ads appropriately.

SOFT MONEY DATABASE

To supplement the coded CMAG database in this study, the authors compiled a database of soft money spending by the state and national parties, which shall be referred to as the "soft money database" throughout this study. The soft money database is a composite of four FEC data files, comprising the reports required of all national and state party committees which expended soft

4. Senator Robert Torricelli offered an amendment to the McCain-Feingold Bill on March 28, 2001, aimed at reducing the premiums ad purchasers are forced to pay television stations in order not to be preempted. The debate over the amendment illustrated how stations had made millions off premiums charged to candidates who were fearful of losing their time slot to another advertiser.

5. See, for example, David Magleby ed., "Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections" (Feb. 2001), available at [www.byu.edu/outsidemoney]; and Annenberg School of Public Policy, "Issue Advertising in the 1999-2000 Election Cycle" (2001), available at [www.appcpenn.org].

money in relation to the 2000 federal elections. The party committees of all 50 states plus the national party committees of major and minor parties are included.

Self-reported itemized expenditures by the party committees have been coded by the authors for seven types of expenditures:

1.
media-issue advocacy (television and radio buys and production, direct mail advertisements and mail production associated with issue advocacy);

2.
general mail (other mail expenditures not associated with issue advocacy);

3.
voter mobilization (all get-out-the-vote (GOTV) expenditures, telephone banks, phone expenses associated with GOTV, voter registration activities, absentee mail drives, slate mailers, lawn signs and any other expense associated with voter drives);

4.
consultants (outside consultants, lawyers, and accountants);

5.
party salaries (wages, salaries, benefits, and other employment-related expenses of party staff);

6.
administration (operations and overhead); and

7.
fundraising (all expenses directly associated with fundraising).

Most direct mail expenditures in this study have been classified in the media-issue advocacy category. Not all political scientists would agree.[6] Party direct mail is sometimes assumed to consist primarily of party-building appeals, such as lists of party endorsements and slate mailers. A recent study of issue advocacy in the 2000 elections, however, documented a dramatic rise in party direct mail activity coinciding with the rise in overall party electioneering issue advocacy. The study further found that much of this direct mail advertising resembled the content and tone of television and radio electioneering issue ads. The direct mail appeals were generally non-personalized mass appeals and electioneering in nature, mostly mailed as Election Day neared, frequently negative in tone, and usually paid for by soft money. These are patterns identical to televised electioneering issue ads. As the author of that study concluded:

"A focus on soft money and issue advertising that only catalogues broadcast ads misses much of the story. In 2000, as in 1998, candidates, interest groups, and the political parties waged an intense ground war through mail, telephone calls, and person-to-person contact. . . . Parties and interest groups sometimes employed cookie-cutter mailers, using the same template in different races but inserting the local candidate's name and image."[7]

Recognizing that party direct mail has become another avenue for soft money spending on behalf of electioneering issue ads, this study classifies most party direct mail as such, unless otherwise indicated. Any direct mail designated for such activities as party slate mailers, absentee mail ballot drives, or other mailings designated for mobilizing voters rather than electioneering issue advocacy are classified in this study as "voter mobilization." This soft money database serves as the foundation for Chapter Seven of this report.

6. See, for example, Ray La Raja and Elizabeth Jarvis-Shean, "Assessing the Impact of a Ban on Soft Money: Party Soft Money Spending in the 2000 Elections" Policy Brief, Institute of Governmental Studies and Citizens' Research Foundation (July 6, 2001).

7. David Magleby, op. cit., at fn. 4

chapter 3

Express Advocacy and Issue Advocacy: Historical and Legal Evolution of Political Advertising

This chapter provides historical and legal background for the analysis of express advocacy and issue advocacy in the 2000 federal elections. However, a brief detour is needed to clarify the distinction between those terms and to introduce other terminology that will appear throughout this book. This terminology is generally accepted among political scientists and legal analysts who closely follow political advertising trends and their implications for the federal campaign finance system. The subsequent historical and legal analyses flesh out the origins of the current controversy over just what advertising should be regulated.

THE DISTINCTION BETWEEN "EXPRESS ADVOCACY" AND "ISSUE ADVOCACY"

In the current federal campaign finance system, the extent to which political advertising is regulated depends upon the identity of the ad's sponsor and, in some cases, the ad's content. Campaign finance requirements can be justified constitutionally only when advertising is intended to influence the outcome of elections. Since it is sometimes difficult to know the intent of the sponsor, the sponsor's identity and ad's content can be used as objective indicia of intent. This study shows, however, just how infrequently those characteristics capture the relevant intent and demonstrates that other factors incorporated into current reform proposals do a better job.

The existing regulatory scheme based on sponsor identity and advertising content is complex. For example, all ads sponsored by candidates are deemed to be electioneering ads—ads meant to affect electoral outcomes. Contributions for such ads must be raised under specified limits, and an array of record-keeping and reporting requirements govern both contributions and expenditures. At the other end of the spectrum are ads that genuinely discuss issues of public policy (as opposed to the election or defeat of candidates). Such ads are altogether exempt from campaign finance regulation. Other advertising falls in the middle: the fundraising and disclosure requirements that govern "groups" – the term used in this study to refer to individuals and entities other than candidates and political parties – vary with the identity of the group and the language of the group's advertisement. Political parties must disclose all contributions and spending for ads, but whether parties finance advertising with funds raised under contribution limits (known as "hard money") or with unregulated contributions (known as "soft money") depends on the language used in the ads.

Under current law, hard money must be used to pay for party ads that expressly advocate the election or defeat of a clearly identified candidate—that is, if the ads fall under the category of "express advocacy." Express advocacy is often interpreted to include only ads that contain specific terms urging the election or defeat of a candidate, such as "vote for," "vote against," "support," or "defeat" – what have come to be known as "magic words." The term that is generally used to convey the opposite of "express advocacy," and that constitutes the primary focus of this study, is "issue advocacy."

Issue advocacy, properly understood, includes communications by parties or groups intended to further or to derail a political issue, legislative proposal, or public policy—not to advocate the election or defeat of candidates. But issue advocacy has recently acquired a broader meaning. When express advocacy is interpreted to require magic words, any advertising that avoids using such words passes as issue advocacy. "Issue advocacy" as commonly used includes both genuine issue ads (ads discussing issues) and electioneering issue ads, sometimes called sham issue ads (ads that are intended to influence the outcome of an election but avoid using magic words). Under this broad definition, issue advocacy has become a major loophole in campaign finance law, because electioneering issue ads are typically treated as genuine issue ads for regulatory purposes.

EARLY REGULATORY HISTORY AND THE ISSUE ADVOCACY DEBATE

Campaign advertising in the United States can be dated back to 1791, when print media was first used for campaign purposes. The anti-federalists financed the *National Gazette* to denounce Alexander Hamilton's supporters as "monarchists." The federalists responded with their own partisan propaganda with publication of the *Gazette of the United States.* The costs of campaign advertising first raised eyebrows in the presidential election of 1800, when Thomas Jefferson spent $50 of his own money for the publication and distribution of campaign newsletters. But campaign costs generally remained minimal for several more decades because of popular hostility to what John Quincy Adams called "electioneering."[1]

Following the Civil War and the onslaught of industrial capitalism, monied interests became increasingly concerned about government regulation of the economy. To advance their interests, corporations began providing candidates and political parties with ever-larger sums to pay for campaign expenses, including advertisements. Frequent allegations of corruption in federal and state elections eventually led to public pressure for limits on corporate money in campaigns.

In 1907, the federal government adopted its first serious campaign finance regulation, the Tillman Act, which prohibited direct corporate contributions to federal candidates. The Publicity Acts of 1910 and 1911 soon fol-

1. Alfred Thayer, *Who Shakes the Money Tree? American Campaign Finance Practices from 1789 to the Present* (New York: Simon and Schuster, 1974), at 26-27.

lowed, requiring disclosure of campaign financial activity of all candidates and political committees involved in House and Senate elections.[2]

Just what counted as electoral activity subject to disclosure requirements emerged as an important question early in the efforts to reform campaign financing. In 1926, the U.S. Senate launched an investigation into the campaign activities of the Anti-Saloon League, an organization formed in the late-1800s to promote Prohibition. The League had become an effective political force in American politics, lobbying officeholders on Capitol Hill, publishing leaflets, and campaigning for and against congressional candidates.[3] The League responded to the investigation by claiming that its activities did not fall under federal campaign finance disclosure laws because they were "educational, scientific, and charitable rather than political as intended by law."[4] In the end, the Senate investigative committee declined to take any action against the Anti-Saloon League.

Labor unions used the Anti-Saloon League's argument to combat a similar investigation in the 1950s, conducted by the Senate Subcommittee on Privileges and Elections under the Taft-Hartley Act of 1947. The Act barred direct contributions from union treasuries to federal candidates (making permanent a similar ban in the War Labor Disputes Act of 1943—also known as the Smith-Connally Act—enacted as a temporary wartime measure over President Roosevelt's veto). The unions sought to evade the ban on union contributions and to avoid disclosing their financing of political activities by claiming that their advertisements were educational rather than electioneering in nature. Other organizations, such as the Americans for Democratic Action, also took advantage of the distinction between educational and political activities to evade disclosure laws in the same period.[5] Campaign financing thus continued for decades to be unregulated for all practical purposes.

THE FEDERAL ELECTION CAMPAIGN ACT AND *BUCKLEY V. VALEO*

After decades of at best sporadic enforcement of federal campaign financing laws, Congress renewed its determination to regulate money in politics in the early 1970s. Suspicions of financial abuses, exacerbated by criminal allegations against President Richard Nixon in connection with the Watergate scandal, prompted Congress to pass in 1971, and to amend in 1974, the Federal Election Campaign Act (FECA). The law, as amended, imposed a variety of disclosure requirements, contribution limits, and mandatory spending ceilings on all candidates, parties, and groups.

Opponents of campaign finance regulation immediately challenged FECA and its amendments in the landmark case, *Buckley v. Valeo*.[6] Among other provisions that the Supreme Court found to be constitutionally flawed was a disclosure requirement for independent expenditures made "for the purpose of . . . influencing" federal elections. The Court worried that the ambiguity of that phrase posed First Amendment problems.

To salvage the reporting rule, the Court narrowly construed the statute to reach only funds used for communications that "expressly advocate" the election or defeat of a candidate. According to the Court, its interpretation ensured that the regulations would apply only to "spending that is unambiguously related to the campaign of a particular federal candidate"—including communications

2. Demands for public disclosure of campaign finances were voiced by an influential citizens' lobbying group known as the National Publicity Law Association. This organization was largely responsible for New York's adoption of a disclosure law for state elections and for persuading Congress to adopt the Federal Corrupt Practices Act of 1910, which was a post-election disclosure law for committees involved in House races. The Federal Corrupt Practices Act was amended in 1911, to add three important features. First, candidates and committees in Senate as well as House elections had to report their finances. Second, the amendments required candidates and committees to report their finances before as well as after each election, including primary elections. And third, spending ceilings were imposed on candidates. Candidates for the House were not to spend more than $5,000 in total and candidates for the Senate were not to spend more than $10,000 or an amount established by state law, whichever was less. Both the disclosure laws and the mandatory spending ceilings were generally ignored with impunity.

For a fuller discussion of the history of money in politics, *see* George Thayer, *Who Shakes the Money Tree?* (New York: Simon and Schuster, 1973); and Craig Holman, "The History of Campaign Finance Reform: Probably More Than You Ever Wanted to Know" (2000) (unpublished paper on file at the Brennan Center for Justice at NYU School of Law).

3. Peter Odegard, *Pressure Politics: The Story of the Anti-Saloon League* (New York: Columbia University, 1928), at 88.

4. David Parker and John Coleman, *Cycles, Trends, and One Damn Thing After Another: Parties, Interests and Campaign Finance,* paper presented at the University of Wisconsin/Brennan Center Roundtable on Issue Advocacy (Chicago, Apr. 18, 2001).

5. *Id.*

6. 424 U.S. 1 (1976) *(per curiam).*

that contain "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.'"[7] So interpreted, the Court concluded, the disputed requirement was neither "void for vagueness" (insufficiently explicit about the scope of spending subject to regulation) nor substantially "overbroad" (applicable to political speech that does not constitute electioneering). The distinction between educational and electioneering communications, established in practice since the Anti-Saloon League resisted disclosure of its activities in the 1920s, was now firmly ensconced in campaign finance jurisprudence.

But the narrowing construction created its own problems. For example, consider the following advertisement, which was aired just days before one of the 2000 presidential primary elections:

"Last year, John McCain voted against solar and renewable energy. That means more use of coal-burning plants that pollute our air. Ohio Republicans care about clean air. So does Governor Bush. He led one of the first states in America to clamp down on old coal-burning electric power plants. Bush's clean air laws will reduce air pollution more than a quarter million tons a year. That's like taking 5 million cars off the road. Governor Bush, leading, for each day dawns brighter."

Because the ad never used any of the magic words of express advocacy identified in *Buckley,* its sponsor was treated as exempt from disclosure laws. The viewing public saw only a tag line reading "paid for by Republicans for Clean Air." No campaign finance reports were filed with the Federal Election Commission (FEC), and many voters probably assumed that the ad was sponsored by an environmental group. It took reporting by the news media to reveal that the ad was paid for by Charles and Sam Wyly, two Texas billionaires and long-time friends and contributors to then-candidate George W. Bush.[8] The Wyly commercial is now a classic example of an electioneering issue ad—an electioneering advertisement that exploits the magic words test to avoid campaign finance regulation.

Usually, electioneering issue ads have been sponsored by groups that want to avoid the legal constraints imposed on entities that engage in electioneering. For example, PACs are subject to reporting requirements and limits on the contributions they may accept. But avoiding magic words allows organizations to escape those rules. In 1992, the Christian Action Network spent $63,000 on advertising attacking candidates Clinton and Gore for supporting a gay rights agenda.[9] Though the ads aired in close proximity to the election and featured clearly identified presidential and vice-presidential candidates, the group eluded disclosure requirements by not using magic words. Similarly, in 1994, Americans for Limited Terms avoided regulation when it successfully used electioneering issue ads to attack then-House Speaker Tom Foley of Washington.

Unions and corporations have also used electioneering issue ads to sidestep prohibitions against using their treasury monies in connection with candidate campaigns. In 1996, the AFL-CIO declared that it would spend $20.7 million on issue advocacy (*i.e.,* ads not using magic words) in an effort to win Democratic Party control of Congress.[10] The AFL-CIO's major innovation was to put real financial strength behind electioneering issue ads. Unsurprisingly, their opponents responded in kind. That same year, 33 business organizations including the National Association of Manufacturers and the U.S. Chamber of Commerce formed an organization called "The Coalition: Americans Working for Real Change" to counter the AFL-CIO's advertising campaign with thousands of electioneering issue ads of their own.[11] In the 1996 election cycle, more than 24 groups aired electioneering issue ads. By 2000, groups were familiar enough with the magic words test to understand how to air electioneering ads under the guise of issue advocacy. But such ads really took off as a means of evading federal source limitations on union and corporate campaign spending when the political parties combined electioneering issue ads with a second campaign finance loophole—soft money.

7. *Id.* at 42, 44, n.52, 79-80.

8. The Wylys might well have avoided disclosure, but one brother called a news conference essentially to boast about their role in the advertisement. John Mintz, "Texan Aired Clean Air Ad," *Washington Post* (Mar. 4, 2000), at 6.

9. Eliza Newlin Carney, "Airstrikes," *The National Journal* (June 15, 1996), at 1313.

10. *Id.*

11. Peter Stone, "Business Strikes Back," *The National Journal* (Oct. 25, 1997), at 2130-33

LYING IN WAIT— THE SOFT MONEY LOOPHOLE

In the late 1970s, the Federal Election Commission determined that certain political party activities not directly related to federal elections were exempt from the Federal Election Campaign Act's fundraising restrictions. The decision was supposed to promote traditional party-building activities, such as voter registration and get-out-the-vote programs, by allowing parties to finance such activities with the federally unregulated funds now known as "soft money." But, as explained in Chapter Seven, little soft money is actually used for those purposes.

In the 1996 presidential election, party consultants to the Democratic National Committee (DNC) realized that a potential financial bonanza for campaign advertising lay dormant.[12] By using soft money for electioneering issue ads that avoided magic words (and thus were ostensibly not related to federal elections), unlimited funds from corporations, unions, and individuals could be employed to help Clinton defeat Dole. The DNC spent feverishly on anti-Dole issue ads, which aired throughout the summer of 1996 after Dole had spent most of his campaign funds. The other national party committees learned from the DNC's example. In July 1996, the National Republican Congressional Committee announced an $8 million dollar electioneering issue ad campaign that would complement the $23 million pledged by the Republican National Committee for electioneering issue ads.[13] Parties often used electioneering issue ads in this way, supporting their candidate with harsh, negative ads attacking the opponent. Parties also began attempting to equalize resources between congressional candidates by paying for electioneering issue ads that were indistinguishable from candidate ads.[14]

CANDIDATES JOIN THE SPOILS SYSTEM TOO

Candidates also began to notice the potential advantages of combining unregulated money with issue ads. Although FECA strictly regulates all activity by a candidate's campaign committee, candidates began circumventing the regulation by establishing separate committees or other entities that were ostensibly unrelated to their federal campaigns. Since the mid-1990s, these entities have included state campaign committees, ballot measure committees, and leadership PACs, as well as non-profit corporations or political organizations formed under sections 501(c)(3), 501(c)(4), or 527 of the Internal Revenue Code.[15] These organizations, which allow candidates to exploit the magic words test articulated in *Buckley,* are sometimes chaired by the candidates themselves but are frequently directed by former or current campaign consultants or staff of the candidate. Candidates

12. Dick Morris, *Behind the Oval Office: Winning the Presidency in the Nineties* (New York: Random House, 1997), at 141.

13. Eliza Newlin Carney, "Party Time," *The National Journal* (Oct. 19, 1996), at 2214.

14. See generally, Jonathan Krasno & Daniel Seltz, *Buying Time: Television Advertising in the 1998 Congressional Elections* (Brennan Center 2000).

15. Each of these different types of committees employed by federal candidates to solicit contributions in excess of contribution and source limitations has its own benefits and disadvantages in tax law and campaign finance law. For example, state campaign committees offer federal candidates an opportunity to solicit funds according to state campaign finance laws, which often are more lenient than federal laws or non-existent altogether. For example, states such as Colorado, Idaho, Illinois, New Mexico, Utah and Virginia have absolutely no limits on amounts or sources of contributions to state candidates. A federal candidate may establish a state committee so long as all funds expended by the committee go to promoting state candidates or ballot issues. These funds may not be used to promote federal candidates directly (although these funds are often used to promote the federal candidates indirectly through issue advertising or to finance other political projects of the candidate), and an FEC regulation bars transfers of these funds into federal candidate accounts.

The use of non-profit committees generally fall into three distinct categories: charities [501(c)(3)]; social welfare organizations [501(c)(4)]; and political organizations [Section 527]. Charities offer the benefit of providing contributors with tax deductions for their donations, but may not participate in a candidate campaign or dedicate a "substantial part" of its proceeds for promoting issues and legislation. Due to their limited political opportunities, candidates and groups generally prefer to use the soft money and issue advocacy loopholes through social welfare organizations, instead. Contributions to social welfare organizations are not deductible, but such groups need only be "primarily engaged in promoting in some way the common good" and thus have much greater leeway in their political activities. Though such committees are not supposed to get involved in candidate campaigns, their primary mission may be to lobby for political causes (i.e. issue advocacy). Both 501(c)(3) and 501(c)(4) committees must file financial records with the IRS, but the "political" expenditures of these committees are frequently reported as "educational" expenditures. Section 527 is a special tax provision originally designed by the IRS to shelter political parties from paying taxes on contributions as income. These political organizations must be primarily established to promote the election or defeat of candidates. Donations to political organizations are not tax deductible, but the funds may be used for any political purpose, including contributions and expenditures for candidates. Originally, Section 527 committees did not need to disclose their financial activities, and thus became a popular conduit for persons wishing to cloak their financial activities while getting involved in campaign activity (first exploited by the Sierra Club). The Internal Revenue Code has since been changed to require such organizations to file regular financial reports with the Internal Revenue Service, although not with the FEC.

have learned from parties and groups that the issue ad loophole can be used to shield campaign activity from federal rules and regulations.

Federal candidates at all levels began earnestly making use of such entities in 1996 to bolster the campaign efforts of their official candidate committees. New York Republican Senator Alfonse D'Amato used a state ballot measure committee for this purpose. When D'Amato's popularity ratings dropped to nearly 30 percent, the Senator took charge of an environmental bond measure committee and solicited contributions that would have violated FECA had he raised them for his official campaign. The contributors to D'Amato's campaign and to the bond measure committee included many of the same individuals: more than 90% of those who contributed to the bond measure committee had also contributed to D'Amato's official campaign committee. The donations included corporate contributions and a donation of $100,000 from Computer Associates International Chairman Charles Wang and his wife. The bond measure committee then used these funds to pay for television ads across the state of New York featuring D'Amato and his family strolling on a beach, playing in a water fountain, and hugging. His daughter explained to the television audience that her dad was a real "fighter" for the environment.[16]

Several presidential candidates in 1996 and in 2000 also established entities unregulated by the FEC to increase their public visibility. Steve Forbes' non-profit organization, "Americans for Hope, Growth, and Opportunity," could receive undisclosed contributions of unlimited amounts. While in theory Forbes' organization was promoting an issue, most of its funds paid for television advertisements featuring Forbes in key primary states. Forbes' tactic was copied by Bob Dole and his "Better America" foundation and Lamar Alexander and his "We the Parents" organization.[17] Senator Bob Kerry, among other Democrats, also joined the fray with his non-profit committee, Building America's Conscience & Kids PAC (BACKPAC). In 1999, while contemplating a run for the Republican presidential nomination, John Ashcroft utilized a leadership PAC to run issue ads promoting himself in Iowa and New Hampshire, accepting a $400,000 check from the House of Lloyd, a Missouri direct sales marketing firm.[18]

LOOKING AHEAD

The use of issue advocacy as a means of evading federal campaign laws may have occurred on occasion in America's distant history, but it finally took hold as a persistent and recurring problem in the 1990s. *Buying Time 2000* explores the use and abuse of issue advocacy in modern times, and documents its nature and frequency in the last election cycle. This study also assesses pending congressional reforms of FECA designed to address these problems for their likelihood of finding an appropriate balance between protecting the precious right of freedom of political expression and ensuring that the money financing campaigns does not undermine the integrity and fairness of our democratic government.

16. John Riley, "D'Amato Backers Aided Bond Act," *The Times Union* (Dec. 24, 1996), at A1; Raymond Hernandez, "Democrat Attacks Ad for Bond Act as Illegal Plug for D'Amato," New York Times (Oct. 25, 1996), at B1.

17. Luke McLoughlin, "Shakedown Washington-Style: Non-Profits as the Latest Way to Skirt Finance Laws," *Harvard Political Review* (Apr. 1999), at 24.

18. Susan Glasser & Juliet Eilperin, "Don't Ask, They Don't Have to Tell," *Washington Post National Weekly* (May 24, 1999), at 10.

chapter 4

The Players and Their Ads

Chapter Three offered a discussion of the historical and legal evolution of political advertising in American campaigns. That discussion explained how political advertising sponsors can manipulate the content of their ads to avoid campaign finance regulation. This chapter now focuses on the sponsors and content of their ads.

There are three general categories of players in the world of political advertising: candidates, parties, and groups. The third category of political players—groups—includes all independent committees, organizations, and individuals who participate in the political arena. This chapter explores the roles of each of these three players in the world of political advertising. The magnitude of their involvement in political advertising in the 2000 federal elections is compared and the content and nature of their ads are examined. Also explored in this chapter are the different types of ads that result from the complexities of campaign finance law and the interplay between content and sponsor. In addition, the length and tone of ads by all sponsors are noted, along with other variables.

SCOPE OF ADVERTISING IN 2000

The television advertising database shows that there were 940,755 airings of political television commercials in federal, gubernatorial, and judicial elections over the 2000 calendar year in the nation's top 75 media markets—at a total cost of $672,045,453. In federal elections only, a total of 2,871 unique ads were aired 845,923 times at an estimated cost of $628,655,572. The airings of these ads were fairly evenly distributed among presidential, Senate and House elections—despite great differences in the numbers of candidates in each type of election—and were concentrated most heavily in the general elections (*see* Figure 4-1). The greatest share of these airings occurred in the last few months prior to Election Day.

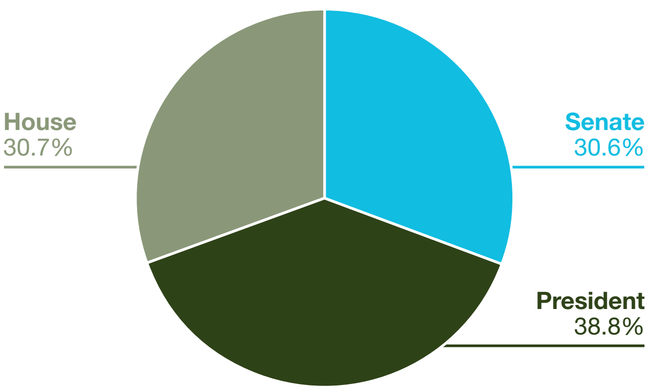


Figure 4-1. Airings of Television Advertising in Federal Elections, 2000 Calendar Year

Over all elections combined in 2000, candidates were the principal sponsors of most political television ads, with party committees running second, and independent groups third (*see* Figure 4-2). Parties played almost no role in primary elections, but became a viable political player in the general election at all levels—House, Senate and presidential. There was, however, one very important caveat to this overall trend which is discussed in greater detail in Chapter Five: for the first time in recent history, the total cost of political advertising by parties exceeded that of political ads sponsored by candidates in the 2000 presidential general election. In all other federal elections, candidate advertisements continued to outpace advertisements by both parties and groups.

Although group-sponsored ads were not as prominent as candidate and party ads in 2000, group ads are rapidly gaining ground. In the 2000 election, there were 142,421 airings of political television ads sponsored by

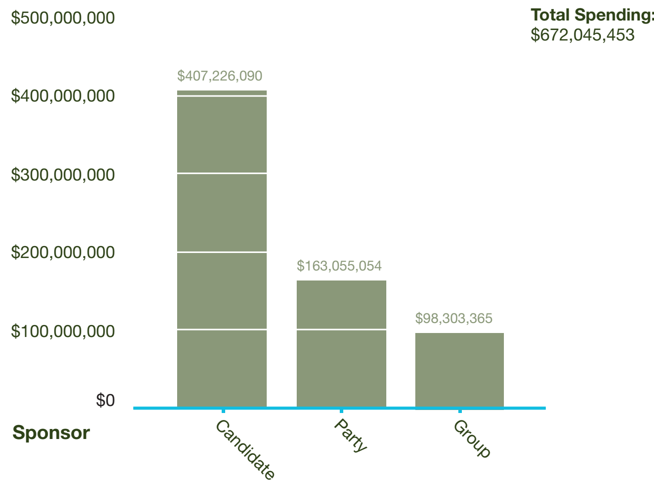


Figure 4-2. Cost of Media Buys in the 75 Major Media Markets, by Candidates, Parties, and Groups

independent groups—at a cost conservatively estimated at $98 million. In the 1998 congressional general elections, groups spent less than $11 million to air 21,712 ads.

MAGIC WORDS AND ADVERTISEMENTS

When the magic words test is applied to campaign advertisements in the real world, it has very little, if any, correlation with electioneering activity. Political ads by party committees, which were universally perceived as electioneering by the coders in this study, almost never employ magic words. Even candidate ads, which are defined as electioneering by law, employ magic words only 10% of the time. The low percentage of candidate ads using magic words highlights how unnecessary such words are to convey an explicit electioneering message. That parties and groups can also effectively convey their electioneering messages without magic words is not surprising, but the legal ramifications are enormous. Avoiding magic words has no value for candidates, but for parties and groups it means that ads can be paid for with $100,000 or $1,000,000 contributions (*see* Figure 4-3).

The different magnitudes of the types of political ads reveal how the different players attempted to bend the campaign finance rules to their advantage in the 2000 elections. While all candidate ads are included in the regulatory framework of contribution limits and disclosure requirements, nearly all television ads sponsored by parties and groups eschew magic words. The absence of such words places the ads into the category of issue ads, which are not fully covered by federal laws, if covered at all. In

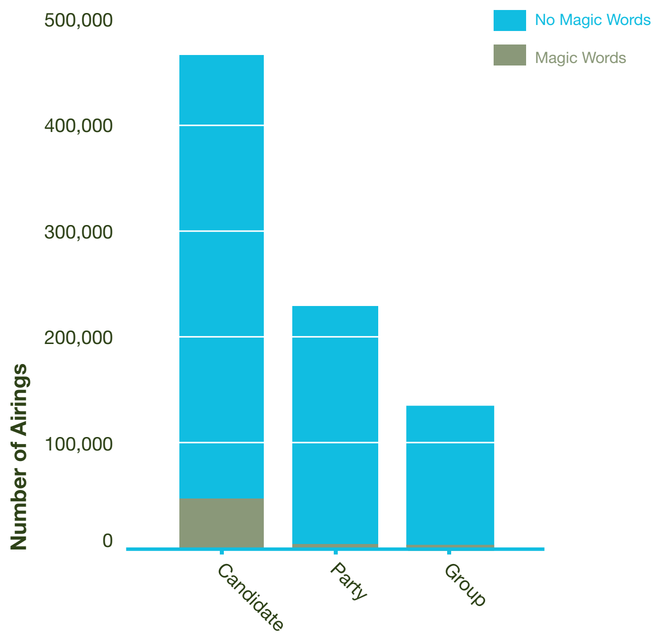


Figure 4-3. Use of Magic Words in Political Advertisements, by Candidates, Parties, and Groups

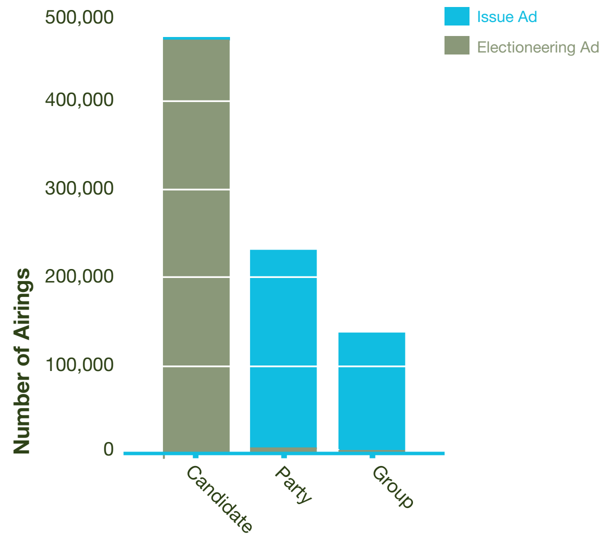


Figure 4-4. Airings of Issue Ads by Sponsor

the case of party issue ads, soft money may be used to finance part or most of these ads. In the case of group-sponsored ads, only a small fraction of these ads are subject to federal law because groups rarely elect to use the magic words used to test for express advocacy. Thus, like party ads, the vast majority of group-sponsored ads are issue ads exempt from federal regulations that can be paid for with contributions of unlimited size and from any sources (*see* Figure 4-4).

Because none of the players makes much use of magic words, issue ads by the parties and groups—whether electioneering in intent or aimed at genuine issue discussion—comprise the bulk of their advertising. The legal consequences of issue advocacy vary somewhat for parties and groups. Parties must report the financial activity behind all of their advertising. However, party "issue" ads may be financed in part by funds received from sources that would otherwise be illegal—corporate and union treasuries and donations in excess of the party contribution limits. The significance of soft money spending by the parties is discussed in greater detail in Chapter Seven. Issue ads sponsored by groups, whether genuine or not, escape federal campaign finance laws in terms of both contribution limits and disclosure requirements, and thus who paid for the ads will usually be hidden from the public.[1]

REMOVING THE VEIL OF ISSUE ADS

The nature and content of issue ads needs further elaboration at this point. The category of issue ad splits into two very important sub-categories: *genuine issue ads* versus *electioneering issue ads.* As shown below, the magic words standard for distinguishing issue ads from campaign ads allows many campaign ads for and against candidates to operate outside of the rules intended to govern them. Through the veneer of issue advocacy, political parties, corporations, labor unions and ideological groups have turned the magic words standard of express advocacy into a major loophole in federal and state campaign finance laws.

Without a doubt, a significant share of issue ads are in fact genuine issue ads discussing pressing public policy issues or pending legislative matters. According to the

1. In some cases, groups have avoided using magic words because they make for ineffective advertising, not necessarily out of a desire to conceal financial sources. This has led to an interesting situation in the full public financing system of state elections in Maine. In Maine, participating candidates who are opposed by significant independent expenditure activity (which is reported), as opposed to issue advocacy (which is not reported), may receive additional public financing to offset those reported independent expenditures. One Democratic-leaning group which purchased electioneering issue ads across the state opted to report that spending rather than conceal the information. The Republican-dominated elections commission then decided to count the spending as independent expenditures and awarded additional public funds to Republican candidates.

coders of this study, about $42 million of group spending on political advertising involved discussion of issues or legislation unrelated to an election. However, even more was spent by independent groups on electioneering issue ads—those intended to influence the outcome of candidate elections. More than $49 million was spent by groups on issue ads intending to generate support or opposition for a specific candidate. And while issue ads discussing political issues or pending legislation—genuine issue ads-are distributed fairly evenly throughout the year, electioneering issue ads primarily air near Election Day. As discussed in greater detail in Chapter Six, nearly 80% of group-sponsored electioneering issue ads aired within 60 days of November 7; most of the remainder of electioneering issue ads appear to have aired around primary election dates.

The content of group ads offers clues to the sponsors' intent. Almost half (49.7%) of all group-sponsored ads throughout the 2000 calendar year mentioned or otherwise depicted a candidate. While a significant percentage of group-sponsored ads called for viewers to "send a message or call someone to express yourself" (28.8%), a very small percentage of group ads actually urged action or attention to a particular matter (4.3%). Even fewer identified a specific bill number of pending legislation to act upon (1.3%). In total, about 58% of all group-sponsored advertisements over the course of the entire calendar year were coded as electioneering, rather than providing information or urging action on issues or legislation.

Taking advertisements sponsored by groups and parties together, one can easily recognize the poverty of the magic words test. To start, all ads sponsored by parties, bar none, were perceived as electioneering whether or not they used magic words. About 58% of all group advertisements were perceived as electioneering. Together, 83% of ads aired in 2000 by parties and groups were not about informing citizens about a policy issue or a legislative matter, but instead were about electing candidates. This was an increase over 1998, when 75% of the advertisements aired by parties and groups were perceived as electioneering ads (*see* Figure 4-5).

CHARTING THE DISTINCTIONS BETWEEN ELECTIONEERING ISSUE ADS AND GENUINE ISSUE ADS

Issue ads perceived as electioneering versus genuine employ starkly different content in their ads, and these differences reflect their respective roles in the world of political advertising. Again, genuine issue ads are intended to influence the public debate on pressing social issues or pending legislation. Electioneering issue ads are intended as campaign commercials, minus magic words, and are aired to influence the outcome of elections.

As such, one would expect the content of electioneering issue ads to be geared more toward specific candidates and less toward public policies or abstract issues. The opposite would be expected of genuine issue ads. Genuine issue ads would be expected to provide information useful for affecting public policies, while electioneering issue ads would be expected to shape the viewer's the image of a candidate. The database confirms these predictions.

Figures 4-6 through 4-9 demonstrate the substantive differences in content between genuine issue ads and electioneering issue ads. Almost all genuine issue ads avoid

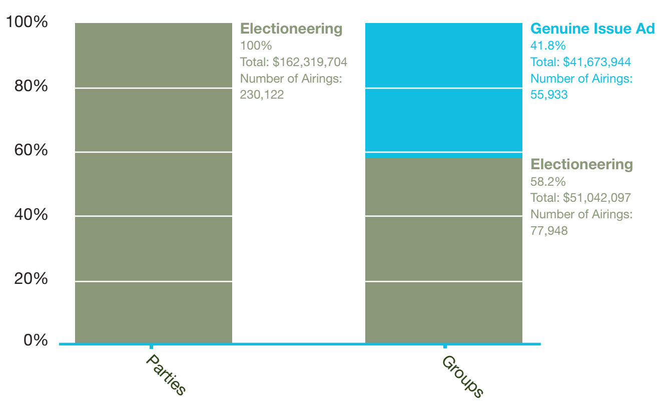


Figure 4-5. Electioneering Advertising vs. Genuine Issue Advocacy Sponsored by Parties and Groups, Calendar Year 2000

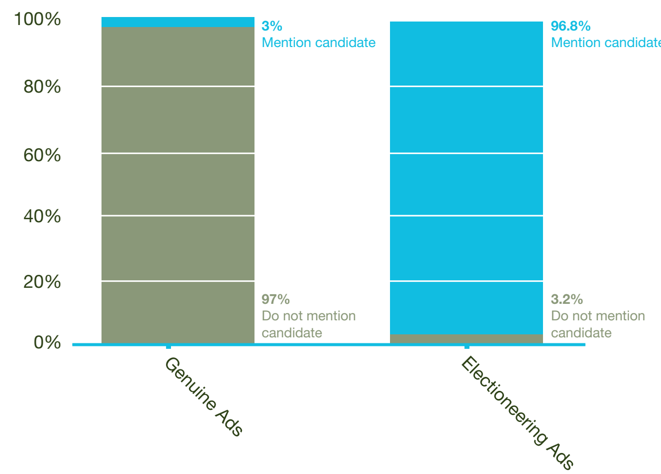


Figure 4-6. Proportion of Issue Ads That Mention a Candidate

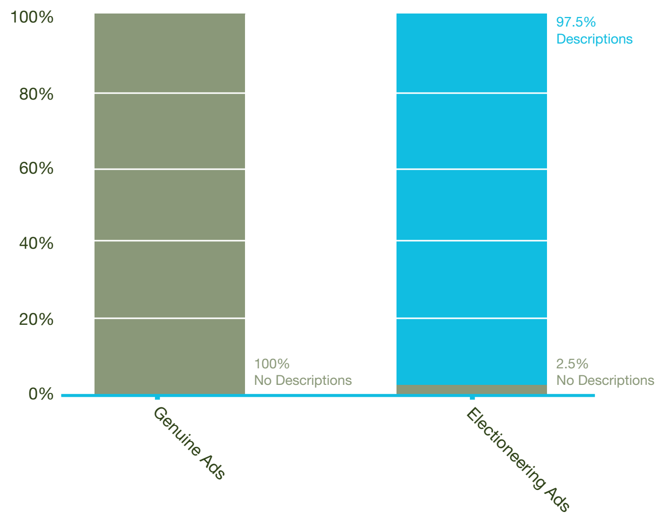


Figure 4-7. Proportion of Issue Ads Using Descriptions of Candidates

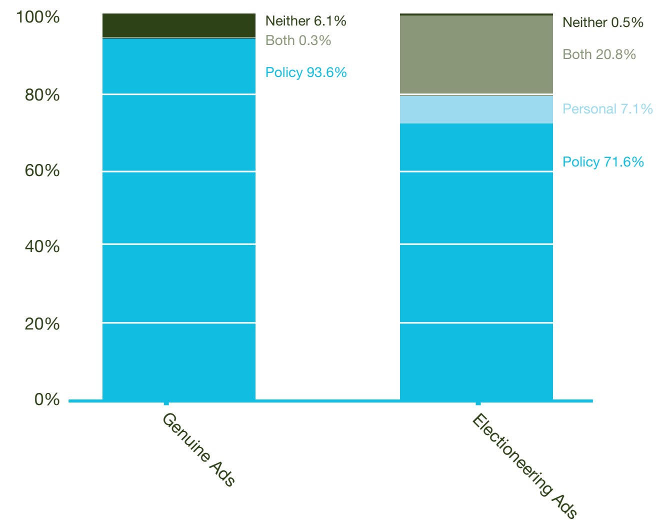


Figure 4-9. Proportion of Issue Ads That Are Policy-Focused

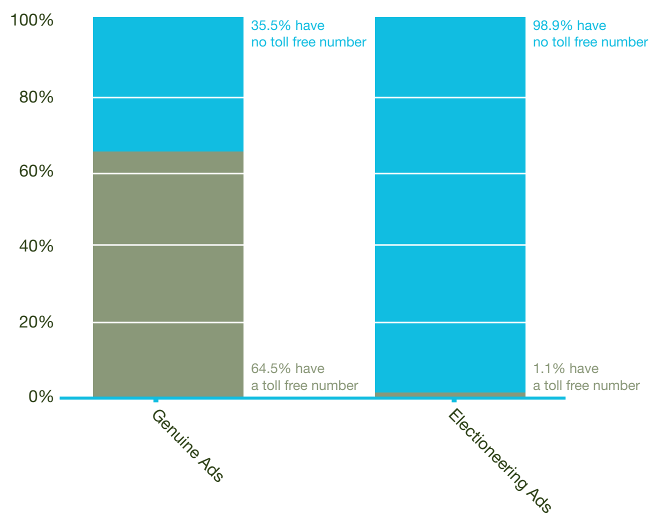


Figure 4-8. Proportion of Issue Ads Giving Toll-Free Phone Numbers

depicting a candidate by name, voice, or appearance in the advertisement, while the exact opposite is true of electioneering issue ads: almost all electioneering issue ads depict a candidate in one form or another (*see* Figure 4-6). Nearly all of the electioneering issue ads do not merely depict a candidate, but instead feature the candidate as the central focus of the ad.

Accordingly, the electioneering issue ads are wrought with various descriptions of the candidate or candidates (*see* Figure 4-7). The electioneering issue ads are liberally sprinkled with such terms as "career politician," "hypocrite," "friend of Bill Clinton" or some other description designed to improve or tarnish the image of the candidate being discussed. Genuine issue ads rarely, if ever, contain any adjectives describing a candidate. The favorite characterization of candidates in electioneering issue ads sponsored by Democrats is "friend of special interests" (referring to Republican opponents). The favorite characterization of candidates in electioneering issue ads sponsored by Republicans is "taxing (or some version of supporting taxes)" (referring to Democratic opponents). Genuine and electioneering issue ads differ also with respect to the information provided to viewers and the action urged of them. While both types of issue ads frequently encourage viewers to call or write to someone to express their viewpoints, genuine issue ads usually provide a toll-free phone number (*see* Figure 4-8). Electioneering issue ads will frequently provide a regular telephone number or address, but rarely offer to fund the call by providing a toll-free phone number. The sponsors of genuine issue ads sincerely want viewers to get involved and will often pay for the means to do so. Sponsors of electioneering issue ads merely want to affect viewers' impressions of candidates. Even though these ads frequently encourage viewers to call the candidates and "tell them you do not like what they are doing," the objective of electioneering issue ads is to influence viewers' votes, not to encourage contact between viewers and candidates.

While both types of issue ads make use of policy appeals to achieve their respective objectives, electioneering issue ads are significantly more inclined to emphasize personal traits of candidates or officeholders (*see* Figure 4-9). Genuine issue ads almost never make references to personal traits.

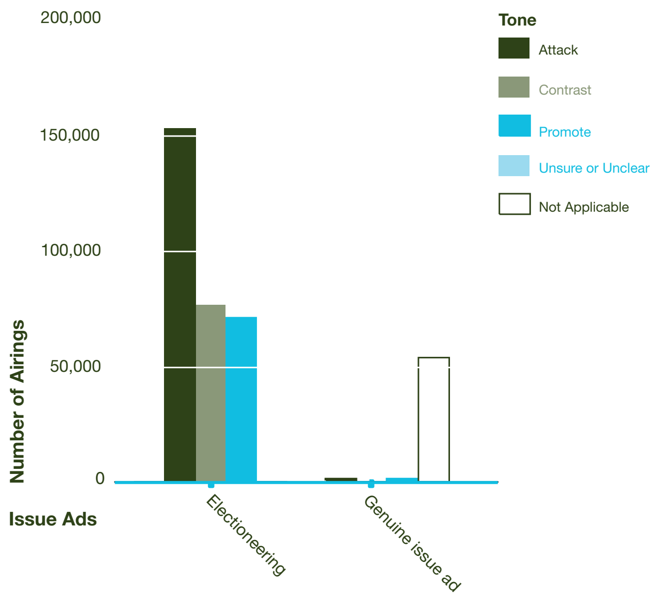


Figure 4-10. Tone of Electioneering Issue Ads vs. Genuine Issue Ads, Calendar Year 2000

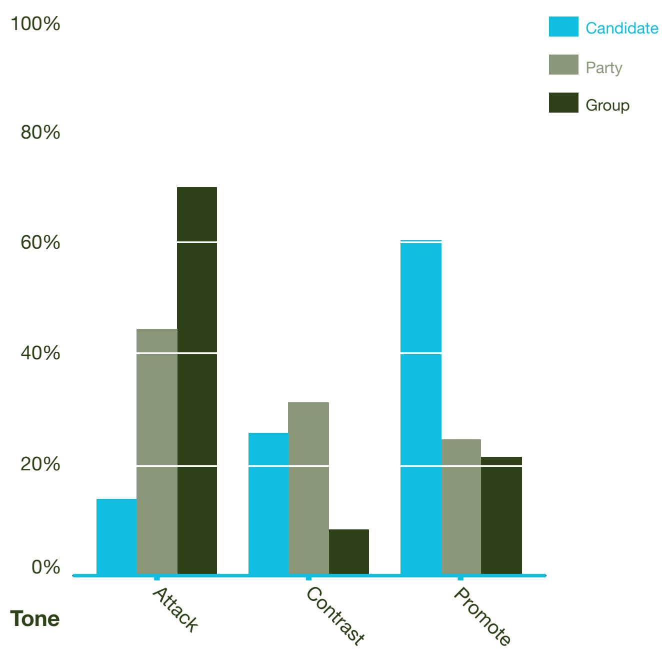


Figure 4-11. Percentage of Candidate Ads and Electioneering Issue Ads by Parties and Groups that Attack, Contrast, or Promote Candidates .

Finally, it is important to recognize the difference in tone between electioneering issue ads and genuine issue ads. Electioneering issue ads either promote, contrast, or attack candidates, and most often they attack candidates (*see* Figure 4-10). By far, most electioneering issue ads are negative in tone, attacking candidates for bad policy stances or impugning their characters. This kind of measure of the content of ads is hardly even applicable to genuine issue ads. It is rare for a genuine issue ad to make any reference, positive or negative, to a candidate.

TONE OF ELECTIONEERING ISSUE ADS AND ALL POLITICAL ADVERTISEMENTS

The negative tone of electioneering issue ads not only distinguishes them from genuine issue ads, it also distinguishes them from all other forms of campaign advertising. Electioneering issue ads are decisively more negative and attack-oriented than candidate ads and party ads using magic words. Candidate ads—and to a lesser extent party ads using magic words—are more inclined than group-sponsored electioneering issue ads to promote candidates or to compare and contrast candidates on issues (*see* Figure 4-11). Conversely, electioneering issue ads sponsored by parties and groups tend to attack candidates and attempt to denigrate their character. These ads do not discuss substantive issues and frequently focus on the personal histories of candidates. And as Election Day nears, electioneering issue ads by both parties and groups become increasingly personal and negative in tone.

LENGTH OF ADS

While issue ads by parties and groups can easily be separated into two categories and ads by all sponsors were very diverse in terms of content, nearly all of the ads in the 2000 elections shared one noteworthy attribute: length. Despite differences in tone, timing, sponsor, and topics presented, more than 90% of the ads in the 2000 election were 30 seconds long (*see* Figure 4-12). There was a slight variation within the category of genuine issue ads, in which 88.5% were aired in 30-second spots. Nearly 10% of genuine issue ads were aired in 60-second spots, three times more than any other type of political advertisement. Only one ad—a presidential primary ad sponsored by Bill Bradley—aired longer than 60 seconds.

The length of a political advertisement appears to be related to its content. Ads that are 10-seconds, 15-seconds, or 20-seconds in length are unlikely to be narrated by a candidate. But slightly more than 30% of 30-second

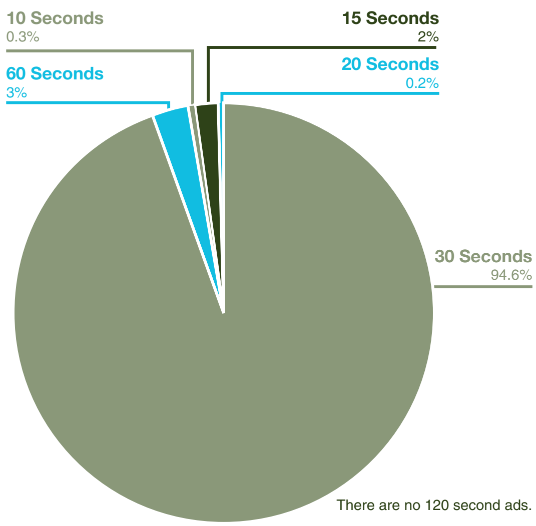


Figure 4-12. Length of All Televised Political Advertisements, in Seconds

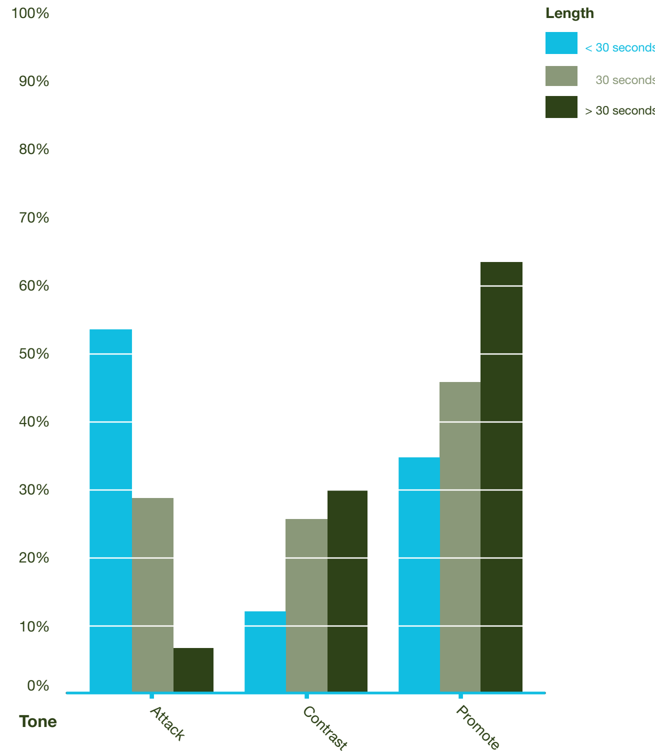


Figure 4-14. Tone of Political Ads, by Length

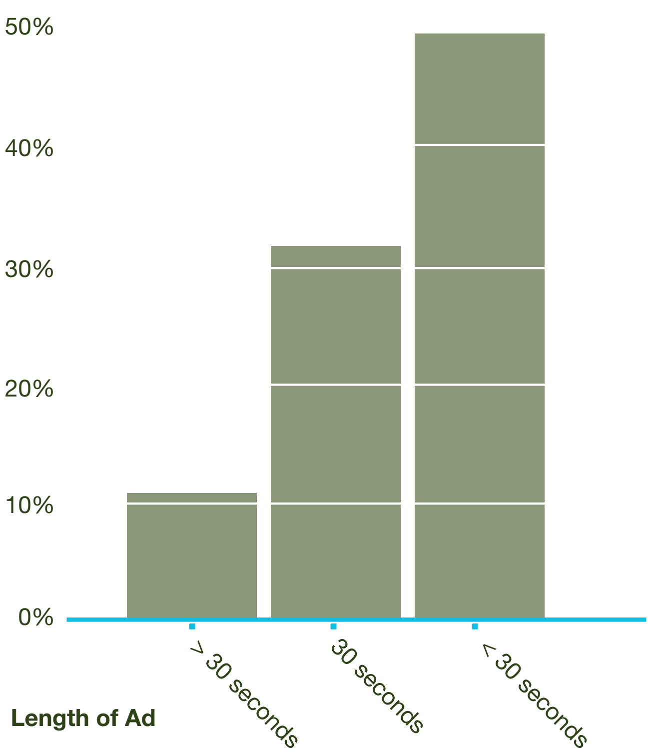


Figure 4-13. Proportion of Ads Narrated by Candidate

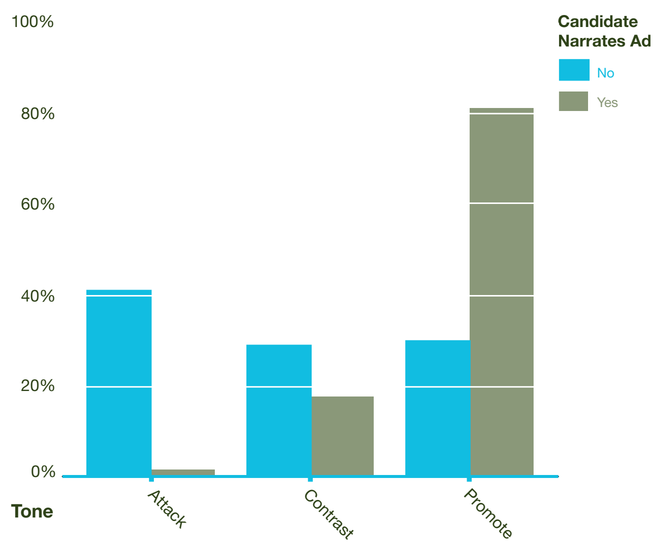


Figure 4-15. Tone of Ads in Which the Candidate Narrates

	Theme	% of Ads
Candidates	Health care	14.4%
	Education	12.8%
	Background	12.3%
	Social security	8.9%
	Taxes	8.9%
Parties	Health care	17.9%
	Social security	15.3%
	Education	14.2%
	Political record	6.8%
	Environment	6.3%
Groups	Health care	31.5%
	Medicare	19.6%
	Abortion	6.5%
	Environment	6.4%
	Education	6.2%
Democrats	Health care	22.1%
	Background	9.6%
	Education	8.6%
	Political record	8.0%
	Taxes	6.5%
Republicans	Education	16.5%
	Social security	13.6%
	Health care	12.9%
	Taxes	9.7%
	Background	8.8%
Electioneering Ads	Health care	17.5%
	Education	12.7%
	Social security	10.0%
	Background	9.2%
	Taxes	8.3%
Genuine Issue Ads	Health care	25.8%
	Medicare	25.5%
	Trade/NAFTA	8.8%
	Environment	7.3%
	Political record	6.3%

Figure 4-16. Most Frequent Themes of Ads

ads are narrated by the candidate (*see* Figure 4-13). In the same vein, ads that are longer than 30 seconds and which feature a candidate or his or her voice are more likely to be positive in tone and to promote the candidate's qualities. The 120-second Bill Bradley ad, for example, presented Bradley's biographical information, from his family to his lifestyle, without ever referencing any other candidate. Ads that are shorter than 30 seconds, on the other hand, are far more likely to be ads attacking other candidates. Evidently, campaign strategists do not want attacks leveled with the candidate's own voice. Once again, the tone of 30-second spots falls somewhere in between the shorter and longer ads (*see* Figures 4-14 and 4-15). About 44% of 30-second spots are attack ads, 28% contrasting and 28% positive.

THEMES OF ADS

Perhaps the most striking thematic aspect of political advertising in 2000 was the difference between candidate, party, and group electioneering ads versus genuine issue ads. While the frequency of electioneering ads followed the normal pattern of highlighting health care, education, and social security, the issue of Medicare played prominently among genuine issue ads—an issue that was not specifically identified in most candidate and party ads. Trade and the environment also were frequent themes among genuine issue ads, although they were very infrequent in electioneering advertisements of all sorts (*see* Figure 4-16). Thus, just as tone, timing, and the presence of a candidate on screen separate genuine issue ads from electioneering issue ads, the themes presented often separate them as well.

Overall, ads by Democratic sponsors (i.e. candidates, parties, and groups) most frequently addressed the issue of health care, while the Republican sponsors' favorite issue was education. Surprisingly, the issue of taxes played somewhat infrequently among both parties. In the aggregate, among all ads sponsored by candidates, party committees, and groups, the issue of health care dominated. Education and social security also were strong themes in political advertisements.

RACIAL DIVERSITY IN CAMPAIGN ADS

With the exception of Green Party candidate Ralph Nader, who only aired 200 spots, sponsors tended to show very little racial diversity in the ads purchased.[2] Of all the ads aired by Democratic candidates, the Democratic Party, and pro-Democrat groups, only 8.4% of the ads featured multi-racial or multi-ethnic individuals. Ads by Republican candidates, the Republican Party, and pro-Republican groups were almost twice as likely to have racially diverse persons featured in the ads, to the tune of 15.5% of all such ads. None of the ads sponsored by members of the Reform Party or Libertarian Party showed racial diversity (*see* Figure 4-17).

Racial diversity in political advertisements, or lack thereof, fluctuated substantially from state to state. Nationwide, only 12.2% of all ads featured racially diverse persons. Only in California and New Mexico did more than 20% of all ads reflect racial diversity. More than 15% of ads aired in Alabama, Iowa, Kentucky, New York, Oregon, and Texas depicted racially diverse images. None of the ads in Idaho or Mississippi contained racially diverse persons.

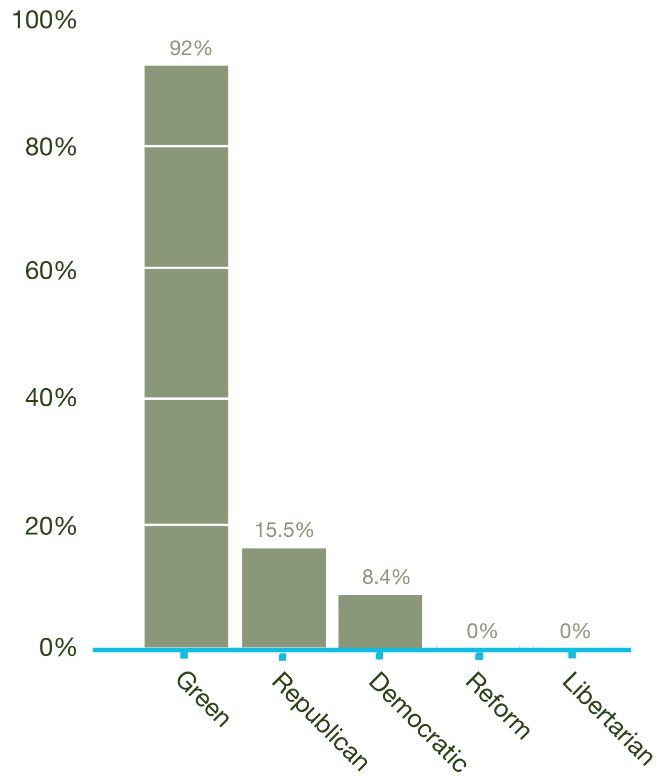


Figure 4-17. Ads Featuring Racial Diversity, by Party

PARTY DIFFERENCES

In terms of partisanship, overall activity by Democratic and Republican sponsors (candidates, parties, and groups) was balanced. Republican candidates were only slightly more likely to buy television time than Democratic candidates, while Democratic Party committees barely nudged out Republican Party committees in the quantity of advertising air time in the 2000 elections. A similar partisan balance is found among group-sponsored ads. Ads by groups that tended to lean Democratic were slightly more prevalent than ads by groups leaning Republican (*see* Figure 4-18).

In terms of just party-sponsored ads, the fact that the total number of ads by the Democratic Party in the congressional races exceeded the amount aired by the Republican Party was a significant change from 1998. Whereas in 2000 the Democratic Party accounted for 52% of all party ads in the congressional races and the Republican Party accounted for 48%, the Republican Party accounted for 64% of party ads in congressional races in 1998 compared to just 36% by the Democratic Party. The Democratic Party was able to equalize the Republican Party's ad barrage in just two years.

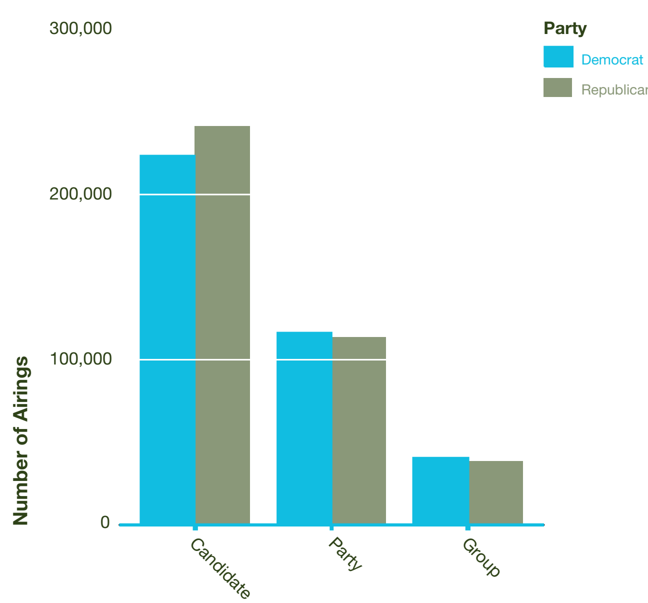


Figure 4-18. Airings of Ads, by Partisan Affiliation/ Leaning of Sponsor

2. Of Nader's 200 spots, 92% included persons who were racially diverse.

chapter 5

Television Advertising in House, Senate, and Presidential Races

In the previous chapters, political advertisements in the 2000 elections have been analyzed according to the different *content of ads* (use of magic words, thematic focus, mention of candidate, etc.) and different *types of advertisers* (candidates, party committees, and groups). This chapter examines how ads varied across different races—House, Senate, and presidential—as well as how factors such as incumbency and competitiveness came into play in those contests.

OVERVIEW

The overall amount of money spent on television ad buys in the battle for the presidency, the Senate, and the House (excluding genuine issue ads) was $578,147,606, and this money was spent nearly equally across the three types of races. About 36.6% was spent on the presidential election, 36.9% on the Senate elections, and 27.5% on the House elections. In terms of absolute numbers of spots, 38.7% of the ads targeted the presidential race, 30.6% of the ads targeted the Senate races, and 30.6% of the ads targeted House elections.

With the Republican Party determined to hold on to its majorities in both the House and the Senate, and the Democratic Party similarly focused on picking up enough seats to reclaim their majority status, both parties clearly recognized the importance of winning key Senate and House races. As such, the political players were greatly concerned with the House and Senate elections, to say nothing of the presidential election.

CONTROLLING THE DEBATE ON THE AIR

Taking all ads and ad sponsors together, candidates were responsible for the majority of political television ads aired in the 2000 federal races. Party committees ran second and independent groups third. Parties ran no ads in the primary elections, but were crucial players in the general elections at each level—House, Senate and presidential. However, the ability of candidates to air the vast majority of ads in their race, and thus control the debate on the airwaves, varied widely across different offices.

The ad war for the presidency was fought not just by the candidates but by their parties and by interest groups. As noted in Chapter Four, candidates were the sponsors of the majority of ads in the presidential primary and general elections combined, but only barely. In the presidential race, candidate spending amounted to 52.3% of the total, while party spending amounted to 39.6% of the total and groups accounted for 8.1%.

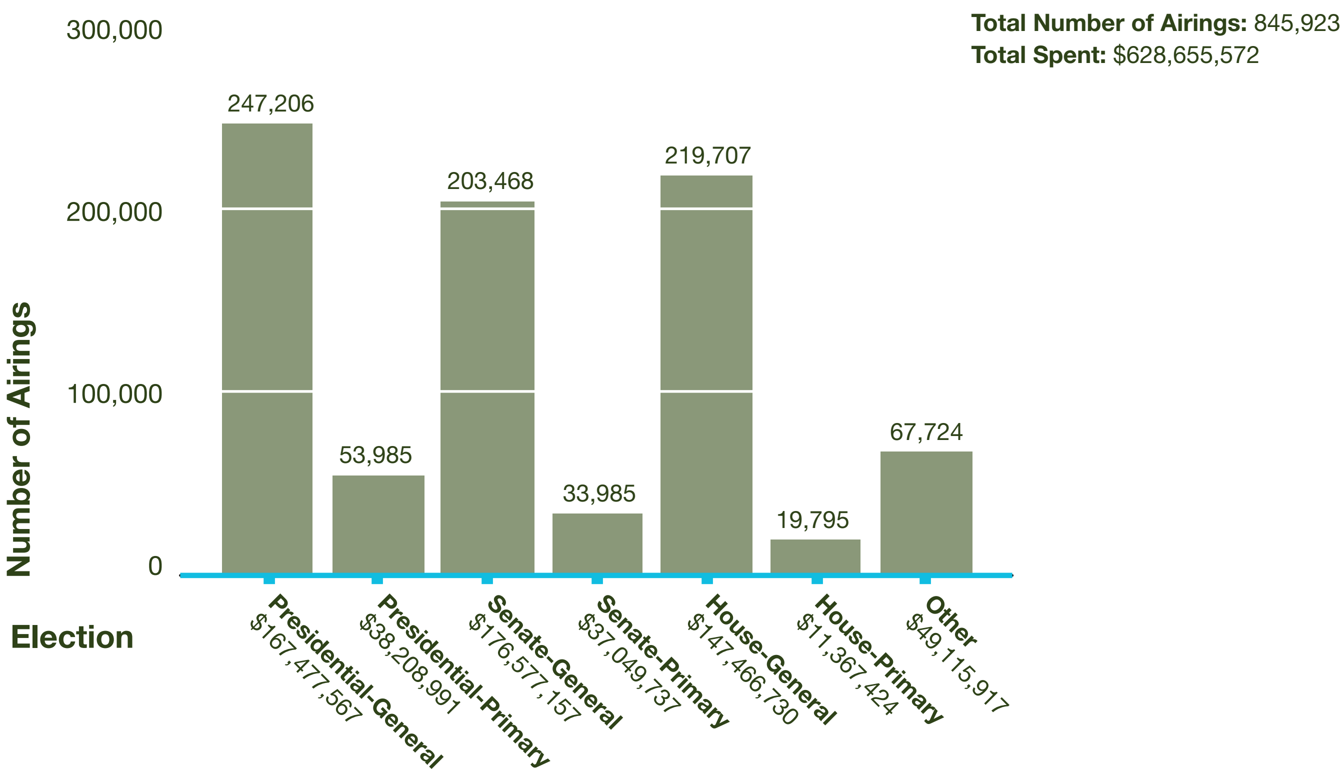


Figure 5-1. Magnitude of Television Advertising in Federal Elections, 2000 Calendar Year

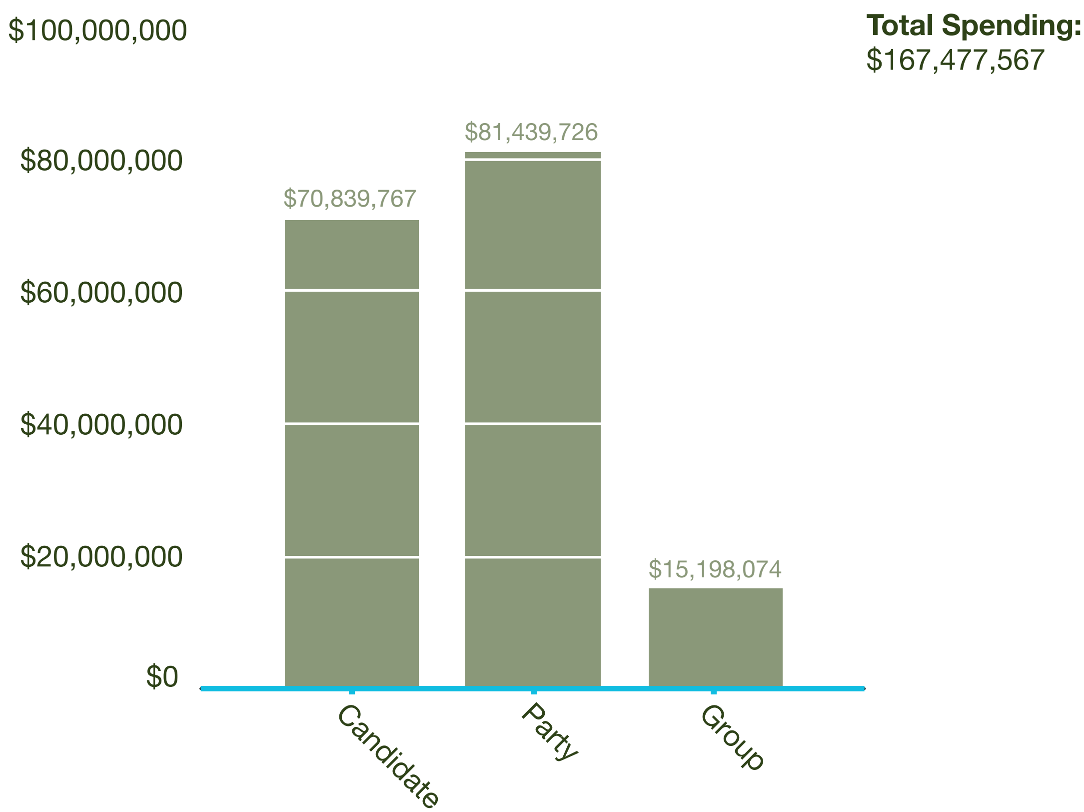


Figure 5-2. Media Buys in the Presidential General Election by Candidates, Parties, and Groups

		Number of Airings	Col %	Sum
Presidential:	Candidate	153,662	51.0	$107,502,904
	Party	123,360	41.0	$81,439,726
	Group	24,169	8.0	$16,743,928
	Table Total	301,191	100.0	$205,686,558
Senate:	Candidate	169,391	71.3	$165,241,482
	Party	53,052	22.3	$37,531,627
	Group	15,010	6.3	$10,853,785
	Table Total	237,453	100.0	$213,626,894
House:	Candidate	144,632	60.7	$90,993,439
	Party	53,468	22.4	$43,107,957
	Group	40,366	16.9	$24,732,758
	Table Total	238,466	100.0	$158,834,154

Figure 5-3. Advertising Spots and Spending in Presidential, Senate, and House Elections, by Advertiser

Any picture of the presidential election would be incomplete if it did not include the major role soft money played in the presidential election of 2000. The bulk of soft money was raised and allocated by the national party committees to be spent primarily in support of or opposition to the presidential candidates. As discussed in Chapter Seven, with the influx of large soft money contributions from business interests, labor unions, and wealthy individuals, television spending by the major parties reached $162 million in 2000, more than $81 million of which was spent on advertising in the presidential general election alone.

For the first time in history, party spending surpassed candidate spending on ads in the presidential general election. Including in the totals spending by minor candidates and parties like the Reform Party, the Green party, and the Libertarian Party, candidates barely account for a majority of ads aired: 51% versus 41% by the parties and 8% by groups. But when the field is limited to the major party candidates—Bush and Gore—and the parties and groups who supported them, there is a very different picture. The candidates account for only 42% of the ad spending in their contest, compared to 49% by the parties and 9% by groups. In terms of dollars, the major parties spent $81 million in the presidential general election, while candidates spent $69 million. Thus, the party coffers, loaded with soft money, played an especially potent role in the Bush-Gore battle (*see* Figure 5-2).

This balance of spending could suggest that presidential candidates are losing control over their campaigns, or it could suggest that the candidates are relying more on the party to do their advertising. This second hypothesis is more credible, since even before President Clinton began directing the DNC advertising campaign outright in 1995 and 1996, candidates controlled the design and scope of party advertising campaigns beyond the extent to which they are permitted by law. Thus while the major candidates were outspent by their parties in the presidential ad war, it is reasonable to assume that many, if not most, of the party ads were done at the direction of the candidates.

Candidates dominated the airwaves to a far greater extent in the combined primary and general elections of Senate races, where they accounted for 77.4% of the spending and 71.3% of the airings. The scope of party and group spending was far smaller: parties accounted for 17.6% of the spending and 22.3% of the ads; groups accounted for just 5.1% of the spending and 6.3% of the airings. But even as the overall cost and magnitude of Senate ads increased from $103 million in the 1998 general elections to $213 million in the 2000 primaries and general elections, candidates saw their share of the total spending decrease. While they accounted for 77.4% of the spending in 2000, in 1998, Senate general election candidates accounted for 85% of the spending in their races. Parties accounted for 14.5% and groups just 0.5% in 1998.

Groups achieved their largest percentage of spending and airings in the combined primary and general House elections, where they accounted for 15.6% of the spending and 16.9% of the airings. This share was approximately the same as in 1998 when groups were responsible for 15% of the House general election spending and 14.5% of the airings. Groups spent just under $25 million in 2000, roughly comparable to their combined spending in the Senate and presidential races ($28 million). House candidates accounted for a slightly larger share of the airings than the presidential candidates did in their races, with House candidates paying for 57.3% of the ad spending, and garnering 60.7% of the airings (*see* Figure 5-3). But these figures represented a decrease from the 1998 general election, when House candidates accounted for 69% of the ad spending in their races and 72% of the airings.

In terms of group advertisements, overall television advertising by groups in the 2000 elections showed little partisan favoritism. Aggregate group spending was roughly comparable for Democratic and Republican candidates in all races combined. However, when broken down by level of office, group spending showed a heavy Democratic tilt in the presidential race, and moderate favoritism for Republicans in both the House and Senate races. Remarkably, the Democratic bias among group advertising in the presidential race amounted to more than $3 spent for Democrats for every $1 spent for Republicans (*see* Figure 5-4).

Apparently, much of these partisan discrepancies in group support between level of offices can be attributed to the respective financial resources of the other players in the election—specifically, the candidates and parties. Most Republican-leaning group spending was done in the primary election, helping Bush overcome the challenge from John McCain. Once Bush received the nomination, group support for Republican candidates shifted to the congressional races. Both the Bush campaign and the Republican Party significantly outspent their rivals in the presidential general election—58.6% Republican to 41.4% Democratic for candidates, and 56.4% Republican to 43.6% Democratic for parties. Meanwhile, Democratic candidates and parties outspent their rivals in both the House and Senate general elections by roughly the same proportions. Accordingly, in what appears to have been a tacit understanding among candidates, parties, and groups—if not outright illegal coordination—group spending followed the shortfall of their favored party.

Democratic-leaning groups spent most in the presidential election; Republican-leaning groups spent more in the House and Senate elections. And both Democratic-leaning and Republican-leaning groups targeted the bulk of their television advertising in the most competitive states or districts.

The presidential primaries accounted for the majority of the ads in the 2000 federal primaries. Political players televised 53,985 spots for and against presidential primary candidates, while 33,985 were aired in the Senate primaries, and only 19,759 aired in the House primaries. The size of the presidential primary advertising reflects the fact that the presidential primary season is far longer than most congressional primary campaigns and the fact that television advertising is virtually indispensable to presidential primary candidates seeking to build name recognition and raise contributions.[1]

The numbers also indicate that television advertising in congressional primaries may not be considered cost-effective in some districts. Moreover, the actual number of contested congressional primaries has receded dramatically over the past 40 years. As one analyst noted in a 1995 essay, "between 1946 and 1952, fully 15 incumbent Senators lost their reelection runs in party primaries; between 1988 and 1994, only one incumbent Senator (Democrat Alan Dixon of Illinois) lost in a primary. In House races, there were 48 primary re-election losses between 1946-52, and about half that many, 25, between 1988-94."[2] In 2000, just two House incumbents lost in their party's primary.

THE 2000 PRESIDENTIAL ELECTION

The historic 2000 presidential election was high drama for many months. Voters witnessed contentious and exciting primaries in early 2000 followed by an extremely tight race in the general election. Television advertising in both the primaries and the general election was significant, both in terms of magnitude and in cost. Importantly, the unique features of the primary season and general election battle for electoral votes determined where and when ads were aired.

In any presidential election, the outcome largely depends on a handful of hotly contested states. During the primary season, specific states such as Iowa and New Hampshire are the focus of enormous attention as primary candidates attempt to win early victories and build momentum. Since candidates must show strength early in the primary season in order to have a chance at the nomination, winning one or two key states becomes the focus of each candidate's campaign.

Similarly, the general election is fought in a small number of states which each side believes it has a competitive chance of winning. Most Americans reside in states that are already assumed to be casting their electoral votes for one candidate or the other, and thus these states are not the focus of advertising campaigns by the candidates of either major party. The spending and airings figures from the 2000 race reflect the important role these tossup states played in the general election.

Consistent with the findings for all federal elections, the candidates, parties, and groups involved in the presidential election of 2000 rarely made use of magic words that unquestionably subject the sponsors to campaign finance regulations. Only 10% of all advertisements sponsored by the presidential candidates explicitly told viewers to "vote for" or "vote against" the candidate or used other synonyms. Just 1.9% of party-sponsored ads in the presidential elections used magic words, and virtually no group-sponsored ad affecting the presidential race included magic words.

This pattern stands in stark contrast to the messages conveyed by these ads. According to the coders, every single party-sponsored ad in the presidential race and all but 0.1% of group-sponsored ads were electioneering ads (*see* Figure 5-5).

THE PRESIDENTIAL PRIMARY SEASON

In the Democratic presidential primary, the most serious opposition to Vice President Al Gore for the Democratic nomination came from former Senator Bill Bradley. Bradley's campaign was an insurgent campaign against the sitting Vice-President and was in need of one significant victory in order to gain traction. Having played for the New York Knicks and served as Senator from New Jersey for three terms, Bradley spent heavily in New York, as well as California where he believed he could surprise Gore. The Bradley campaign also spent heavily in Massachusetts, a typical move for campaigns that wish to

1. Although the television advertising database begins January 1, 2000, and thus does not capture all advertising relevant to the primary elections, primary advertising usually does not occur until the beginning of the calendar year. This suggests that the presidential primaries may account for an even larger percentage of the total primary airings, as only presidential candidates—anticipating the January 24 Iowa caucus—would seem to have reason to air ads before January 1.

2. Ron Faucheux, "Follow the Money: Incumbents May Walk, But It's Cash that Talks," *Campaigns and Elections* (June 1995), at 26.

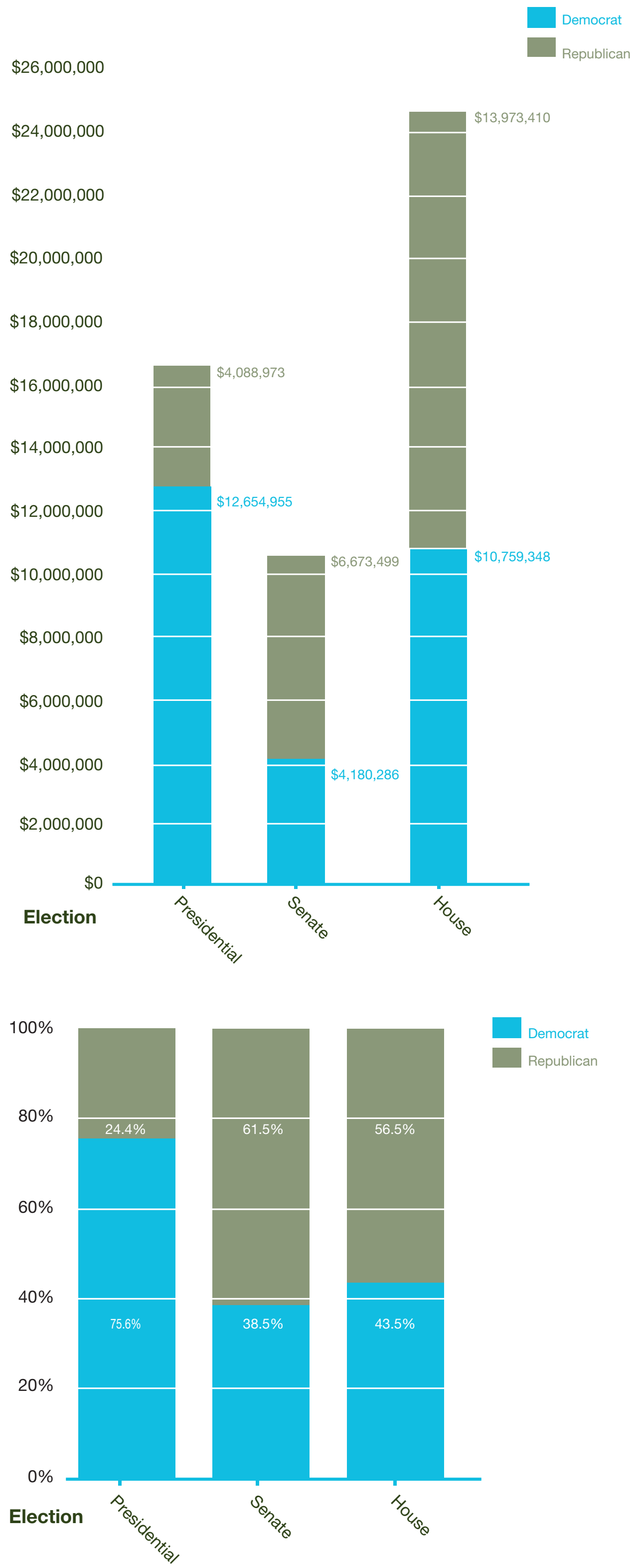


Figure 5-4. Group Spending on Political Ads, by Level of Office and Partisan Leanings (Top chart by dollar amount, Bottom chart by percent)

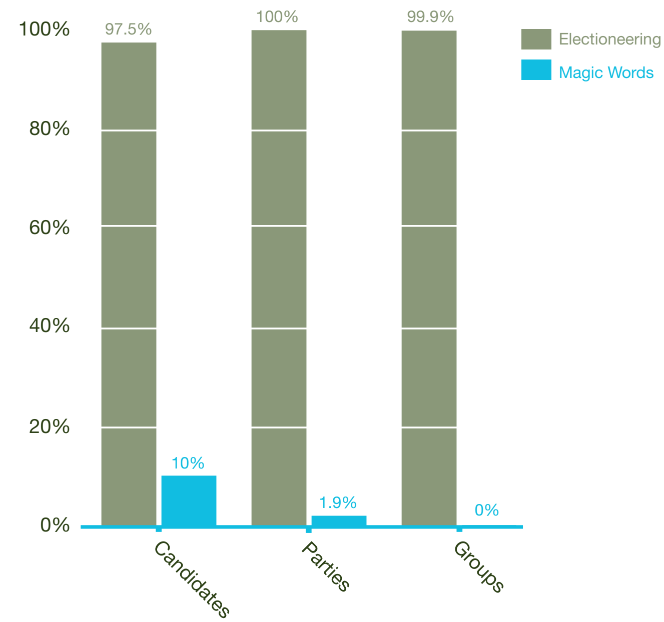


Figure 5-5. Proportion of Electioneering Ads in the Presidential Race vs. Ads Which Used Magic Words

broadcast ads into lower New Hampshire, the site of the nation's earliest primary. Gore also spent heavily in these three states, and as such 83% of the Democratic presidential primary candidates' total $15 million expenditures for television spots were spent in these three states. Though Bradley outspent Gore $1.8 million to $1.4 million in the Boston media market, Bradley failed to win in New Hampshire and dropped out of the race five weeks later.

McCain's stunning 19-point defeat of Bush in the New Hampshire primary turned the Republican nomination into what seemed to be a seesaw battle. Bush had accumulated a large warchest that was exceeded only by that of millionaire Steve Forbes, who had virtually unlimited personal funds to spend on ads. The Republican primary candidates made significant expenditures for television spots in at least eight states, including McCain's home state of Arizona. Other states topping the Republican candidates' spending list included California, Massachusetts (again, to reach New Hampshire's southern tier), Michigan, North Carolina, Ohio, Virginia, and Washington. Roughly 87% of the Republican candidates' total $23 million in television expenditures was made in these states.

Unlike that of the Democrats, the Republican primary election attracted substantial spending on television ads by special interest groups—almost all of which favored the candidacy of George W. Bush. Collectively, group spending in the Republican primary amounted to nearly $1.5 million, compared to less than $70,000 in the Democratic

		Sum:	Col Sum %:	Sum:	Col Sum %:
		Democrat		**Republican**	
Candidate		$3,919,833	41.9	$7,348,232	52.2
Party		$3,374,080	36.1	$6,433,810	45.7
Group		$2,054,778	22.0	$299,217	2.1
Table Total		$9,348,691	100.0	$14,081,259	100.0
		Jacksonville		**Miami**	
Candidate	Democrat	$97,090	7.6	$1,460,882	15.6
	Republican	$634,244	49.4	$3,571,773	38.2
Party	Democrat	$31,267	2.4	$605,471	6.5
	Republican	$480,814	37.5	$2,648,670	28.3
Group	Democrat	$24,810	1.9	$1,061,496	11.4
	Republican	$14,855	1.2	.	.
Table Total		$1,283,080	100.0	$9,348,292	100.0
		Mobile		**Orlando**	
Candidate	Democrat	$249,385	20.9	$705,556	18.3
	Republican	$459,528	38.5	$917,722	23.8
Party	Democrat	$106,093	8.9	$829,388	21.5
	Republican	$380,039	31.8	$964,684	25.0
Group	Democrat	.	.	$397,743	10.3
	Republican	.	.	$36,178	0.9
Table Total		$1,195,045	100.0	$3,851,271	100.0
		Tampa		**W. Palm Beach**	
Candidate	Democrat	$1,068,564	19.5	$587,741	16.9
	Republican	$1,315,465	24.0	$909,028	26.2
Party	Democrat	$1,250,403	22.8	$657,551	18.9
	Republican	$1,503,493	27.5	$836,149	24.1
Group	Democrat	$139,249	2.5	$431,480	12.4
	Republican	$198,228	3.6	$49,956	1.4
Table Total		$5,475,402	100.0	$3,471,905	100.0

Figure 5-6. Spending on Television Ads in Florida's Major Media Markets, Presidential General Election

primary. One group-sponsored ad attacked Republican Steve Forbes for attacking other Republican candidates, while most of the other group-sponsored ads in the Republican primary were harshly negative in tone against John McCain, contributing to an air of hostility among the candidates. For example, one such ad, sponsored by Americans for Tax Reform, pictured John McCain, and then read: "The only Republican candidate approved by the liberal New York Times.... Senator John McCain, helping Democrats pass a campaign finance reform bill that would keep the Republican Party from fighting the liberal national media...." Another such ad, sponsored by Voters for Campaign Truth, ended with the statement: "John McCain, stop this bigoted attack on the Christian voters of South Carolina and America." In sum, anti-McCain group spending accounted for $1.35 million of the total $1.5 spent by groups in the Republican primary.

THE PRESIDENTIAL GENERAL ELECTION

In what was one of the tightest general elections ever—and only the fourth presidential election since popular suffrage in which the winning candidate lost the popular vote[3]—the air war of the 2000 race took place primarily in 10 states: Florida, Illinois, Iowa, Michigan, Missouri, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin. Republican strategists included an eleventh state in that mix—California—despite the fact that California has typically been a Democratic stronghold.

The Bush campaign and the national Republican Party paid for nearly $12 million in television buys in California in the general election, nearly as much as they spent on television in Florida. Gore and the Democratic Party all but ignored Republican efforts in California, spending just $107,000 on television in that state. Instead they focused their efforts on the state of Florida, which in the final weeks appeared more and more like a tossup than a Republican stronghold. Gore easily won California with an 11-point margin, while Bush officially hung onto Florida with a razor-thin vote margin of 537 ballots—a vote margin that determined the outcome of the election.

The waste of Republican campaign dollars in California enabled Gore to outspend Bush in several other key states. Despite being outspent nationwide on television time by Bush and the Republican Party $86 million to $64 million, Gore and the Democratic Party bought more airtime in Iowa, Michigan, New Mexico, Oregon, Pennsylvania and Wisconsin—each one an important swing state that Bush narrowly lost. But, in the end, the election hinged on Florida.

In Florida, the candidates, parties, and groups completely saturated the television airwaves, especially in the final weeks of the campaign and in the media markets key to each candidate's strategy. Combined Bush and Republican Party spending was nearly even with Gore and Democratic Party spending in the critical markets of West Palm Beach, Tampa-St. Petersburg, and Orlando. However, the Republican campaign was able to outspend the Democrats in the conservative media markets of Pensacola and Jacksonville, as well as in the crucially important Miami market. Overall, Bush and the Republican Party ultimately outspent Gore and the Democratic Party in Florida by more than $6 million (*see* Figure 5-6).

But Gore received significant ad assistance from independent groups in Florida. Planned Parenthood spent nearly $1.5 million on television spots criticizing George Bush's record on abortion, and the AFL-CIO and the Sierra Club also spent heavily on television ads attacking Bush. Across Florida, various groups spent more than $2 million for television spots on behalf of Gore's candidacy, and only about $300,000 in support of Bush. Altogether, however, combined television spending by Bush, the Republican Party, and sympathetic groups amounted to $4.7 million more than the combined spending by Gore, the Democratic Party and pro-Gore groups. Despite this spending advantage and other advantages Bush enjoyed in Florida, Bush officially won the state by only a few hundred votes, a tally whose validity many continue to question.

The special interest group spending which allowed Gore to remain competitive on the Florida airwaves also played a very significant role in buying air time in many other states. Group spending exceeded more than $15 million in the presidential contest alone, with group spending heavily favoring Gore over Bush by a factor of 5-to-1 in the general election. Most of the group spending for the Democratic presidential ticket came from a small handful of organizations. Planned Parenthood accounted for 42% of group spending for Gore, followed by the AFL-CIO, Handgun Control, and the Sierra Club. In terms of group spending, Bush was supported primarily by Americans for Job Security, a secretive organization associated with the insurance industry which accounted for 85% of Republican-leaning group spending in the presidential race.[4] More information on the presidential race is included in Appendix A.

3. The other three presidential elections in which the winning candidate lost the popular vote are: John Quincy Adams in 1824; Rutherford B. Hayes in 1876; and Benjamin Harrison in 1888.

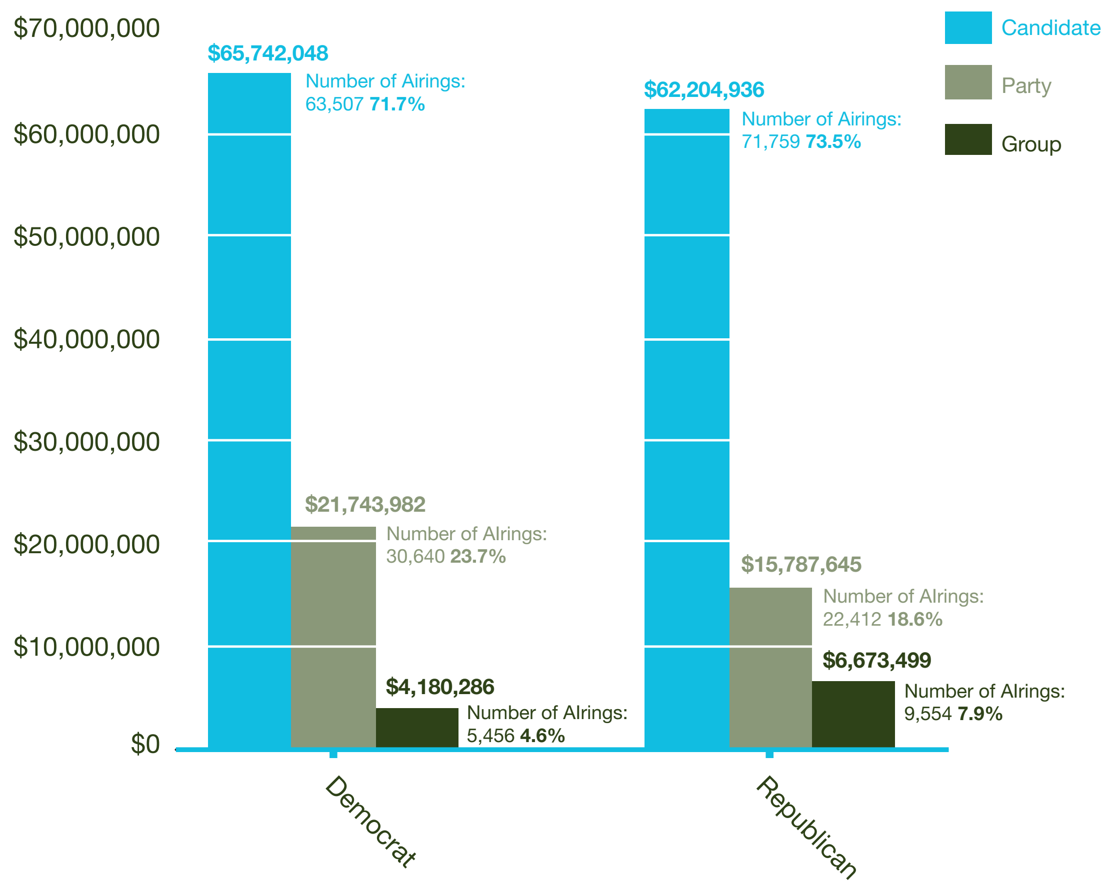


Figure 5-7. Partisan Balance in Television Spending in the Senate General Election

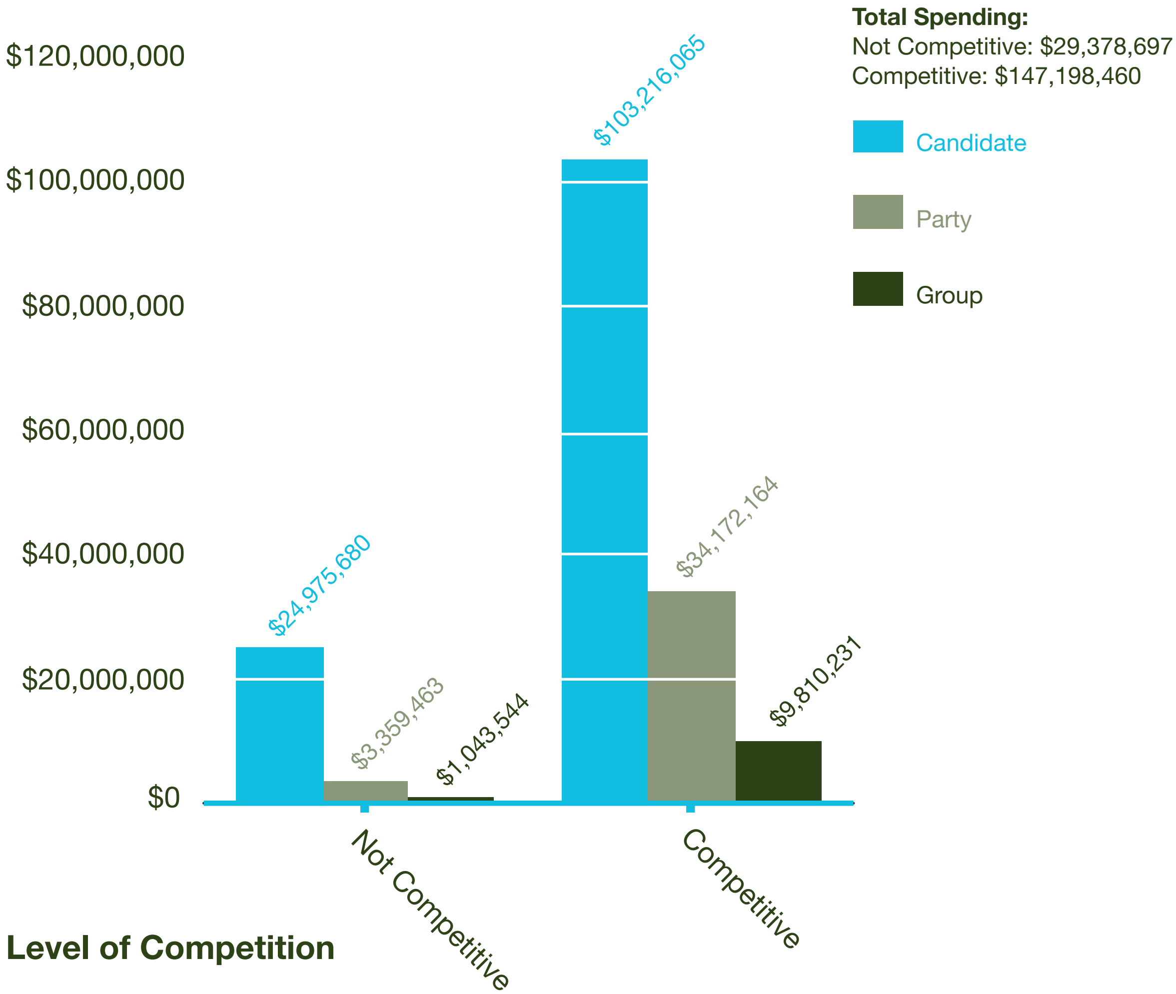
THE 2000 SENATE ELECTIONS

With the Senate controlled by a slim Republican majority—54 seats were held by Republicans and 46 by Democrats—the stakes in the 34 Senate elections in 2000 were extremely high. Moreover, Republicans faced the uphill task of defending 19 seats compared to the Democrats' 15. As a result, Senate primaries and general elections saw large amounts of television advertising not just by the candidates but by their parties and interest groups. Detailed summaries of several Senate races are included in Appendix B.

1. SENATE PRIMARY ELECTIONS

The majority of the spending by candidates, parties, and groups in the 2000 Senate races took place during the general election. In fact, parties and groups ran no ads in any of the top 75 media markets targeting Senate primary campaigns. Slightly more than $37 million was spent on TV ads across the nation by Senate primary candidates—roughly 17% of the total spent on Senate races—but primary spending remained fairly limited in most states. Of the 34 Senate primaries taking place across the country, just 15 saw advertising on television. The Senate primaries in California, Pennsylvania and Washington saw less

4. The true identity of Americans for Job Security and the source of their funds has remained a mystery even to Republican officeholders who appeared in their television ads. Senator Chuck Hagel (R-Neb.) and Nebraska Governor Mike Johanns, who appeared in one of the commercials, told the *Omaha World Herald* that they did not know who paid for the ads. The group has continued to date to conceal their contributors despite a new law requiring such Section 527 groups to disclose their funding sources. Editor, "Endorsement for Secrecy," *Political Finance & Lobby Reporter* (Apr. 11, 2001), at 1.



	Not competitive		Competitive	
	Sum	Row Sum %	Sum	Row Sum %
Candidate	$24,975,680	19.5	$103,216,065	80.5
Party	$3,359,463	9.0	$34,172,164	91.0
Group	$1,043,554	9.6	$9,810,231	90.4
Table Total	$29,378,697	16.6	$147,198,460	83.4

Figure 5-8. Television Advertising in Competitive Senate General Elections, by Sponsor

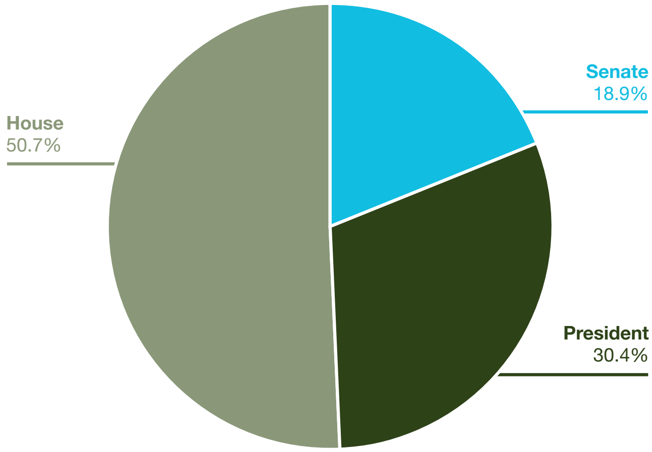


Figure 5-9. Group Advertising in House, Senate, and Presidential Races

than $2.7 million in ad spending respectively. Colorado, Florida, Maryland, Nebraska, Nevada, New York, Ohio, Rhode Island, South Carolina, and Tennessee each witnessed no more than $1.4 million, and most saw far less. Only the Minnesota and New Jersey primaries exceeded $5 million in television ad costs.

The bruising New Jersey Senate primary battle saw the Democratic candidates spend in excess of $17 million on television spots—amounting to 47% of all funds expended nationwide for advertising in the Senate primary season. The New Jersey spending spree was led by Wall Street multimillionaire Jon Corzine, who spent a record $35 million of his own money for all campaign activities to defeat former Governor Jim Florio for the Democratic nomination.[5] Corzine's spending total averaged out to about $300,000 a day, as opposed to Florio's total campaign expenditures of $2.5 million. Corzine ultimately won the primary election with 247,351 votes (and went on to win the general election), at a cost of $141.50 per primary vote compared to $13.89 per primary vote for Florio.[6]

In addition to Corzine, Mark Dayton of Minnesota pulled off a successful run in the primary and general elections financed largely by his own money. The Minnesota Democratic primary candidates combined spent $5.5 million on television spots, most of it coming from the personal wealth of department store heir Dayton and his trial lawyer opponent, Mike Ciresi. Both candidates had campaign budgets of almost $5 million each in the primary.

2. SENATE GENERAL ELECTIONS

The Senate general elections saw considerably more activity on the airwaves. Corzine and Dayton continued their massive buys of television time, and were joined by several other Senate candidates. Spending $176,577,157 on TV time nationwide, the general election campaign for the 34 U.S. Senate seats was even more costly than the presidential campaign. Candidates accounted for 72% of the spending, while parties accounted for 22% and groups just 6%. Republican candidates and Democratic candidates spent roughly the same on ads, $62 million to $65 million. But removing New Jersey from the equation leaves Democratic candidates trailing Republican candidates $50 million to $60 million in ad spending. The Democratic Party poured $21 million into the Senate races compared to $16 million by the Republican Party; pro-Democrat groups spent $4 million compared to $6.5 million by pro-Republican groups (*see* Figure 5-7).

As one might expect, the Senate races that analysts expected to be competitive attracted most of the spending on television advertising. Candidates raised and spent on average four times more on advertising in competitive than in non-competitive Senate elections.[7] Television spending by parties and interest groups was about 10 times higher in competitive than in non-competitive elections (*see* Figure 5-8).

THE 2000 HOUSE ELECTIONS

The role of television advertising in House elections is distinct from that in Senate and presidential elections. Television advertising is often too expensive for House candidates, and compact districts often make television advertising inefficient. Thus the usefulness and practicality of TV ads often vary from district to district. While in the aggregate, House, Senate and presidential elections receive roughly the same amount of ad spending, this spending was not spread out evenly across all 435

5. David M. Halbfinger, "Deep Pockets: How Corzine Spent $35 Million on a Primary;" *New York Times* (Sept. 17, 2000), at 4.

6. Don Van Natta, "In Politics, It's Only Money: Yours or Theirs," *New York Times* (Jun. 11, 2001), at D4.

7. Competitive Senate general elections were expected in Delaware, Florida, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Virginia, and Washington.

House races. Only 39% of all House races in the 2000 elections saw some level of TV advertising.

In 2000, the Democratic Party hoped to continue its streak of picking up House seats, having gained nine seats in 1996 and five more in 1998. The Republican Party had the onerous task of protecting the 26 seats left open by Republican incumbents not running for re-election. The high stakes of the House elections made each close race of national importance. Profiles of closely-watched House races in California, Pennsylvania, Kentucky, and New Jersey are located in Appendix B.

1. HOUSE PRIMARY ELECTIONS

In the House primary season, the absence of television advertising was stark. Just 12% of House primary races had any television advertising in 2000. While most of the ads were aired by candidates attempting to defeat an opponent, in a few primary races incumbents ran ads touting their accomplishments even though they were not seriously challenged from within their own party. Incumbents such as these anticipated a strong challenge in the general election and spent money on television time in the primary to bolster their standing.

Bolstering one's standing with early spending in preparation for a general election challenge was precisely the strategy of incumbent Rep. George Nethercutt, who was seeking re-election in Washington's 5th congressional district. Nethercutt ran a series of ads justifying his decision not to fulfill his self-imposed term limit pledge. One ad declared "...He did a heck of a job in Congress...He fought for term limits but they didn't pass...He's a good congressman."[8] A similar strategy was employed in California's 49th congressional district, where Rep. Brian Bilbray, completely unopposed in the primary, knew that his vote for the impeachment of President Clinton would become a major issue in a general election challenge. Bilbray spent $200,000 on TV before the general election even got under way. Bilbray lost in the general election to challenger Susan Davis.

Only one race involved significant television spending by an incumbent and a challenger from within the incumbent's own party: Utah's second congressional district pitting Republican incumbent Merrill Cook against Republican Derek Smith. Based more on personality clashes than ideology, Smith trounced Cook, who was dogged by allegations of a volatile temper and became one of only two congressional incumbents defeated in the primary season.[9]

2. HOUSE GENERAL ELECTIONS

The House general elections witnessed considerably more television advertising than the primaries, as spending by candidates, parties, and groups swelled to more than $147 million. Candidates combined spent about $80 million, followed by $43 million in television buys by the parties, and $24.5 million by independent groups. Surprisingly, the House elections drew more attention from special interest groups than any other type of election. Groups aired more than half of their total advertisments in House elections—more than what they aired in the presidential and Senate elections combined (*see* Figure 5-9).

Consistent with other types of races, television time in House general elections flowed to the hotly contested races. In the 2000 elections, about 10% of House races were considered competitive by election analysts. More than 74% of television advertisements aired within these 45 competitive races, and group spending tracked closely with competitiveness.[10] Groups focused their ad purchases, running ads in only 49 of the 435 House districts. Groups aired 77.4% of their ads in Republican-held districts, 9.1% in Democrat-held districts, and 13.4% in open races. Group spending tended to favor Republicans more than Democrats (56.4% to 43.6%). Pro-Democrat groups spent more on open seat races compared to pro-Republican groups, $3.5 million to $2 million. Where an incumbent was facing a challenger, group spending was fairly evenly divided between incumbents and challengers—$9.3 million versus $8.5 million—except when broken down

8. Nethercutt advertisement, "Nethercutt Heck of a Job," CMAG ad report, storyboard #1416, available at the Brennan Center. The ad aired 140 times between 9/14/00 and 9/18/00.

9. Immediately after the defeat, Cook then threatened to run a write-in campaign in the general election and to hinder Republican party leadership efforts in the House for the remainder of his term. Editor, "Cook Sets Conditions for Write-In Bid," *National Journal's House Race Hotline* (Jun. 30, 2001), at 1.

10. The 45 competitive general election House races include: Arizona's 4th; California's 15th; California's 20th; California's 27th; California's 36th; California's 49th; Connecticut's 2nd; Connecticut's 5th; Florida's 3rd; Florida's 8th; Florida's 12th; Florida's 22nd; Illinois' 10th; Illinois' 17th; Indiana's 8th; Kansas' 3rd; Kentucky's 2nd; Kentucky's 3rd; Kentucky's 6th; Michigan's 8th; Minnesota's 2nd; Minnesota's 4th; Minnesota's 6th; Missouri's 4th; Missouri's 6th; Nevada's 1st; New Hampshire's 2nd; New Jersey's 7th; New Jersey's 12th; New Mexico's 1st; New York's 2nd; North Carolina's 8th; North Carolina's 11th; Ohio's 12th; Oklahoma's 2nd; Pennsylvania's 4th; Pennsylvania's 10th; Pennsylvania's 13th; Texas' 25th; Utah's 2nd; Virginia's 2nd; Washington's 1st; Washington's 2nd; Washington's 5th; and West Virginia's 2nd.

by party. Group spending on behalf of Democrats heavily favored challengers over incumbents ($6.2 million versus $950,000), but group spending on behalf of Republicans heavily favored incumbents over challengers ($8.3 million versus $2.3 million). This can be largely attributed to the fact that the Republicans were in the majority and the Democrats were attempting to unseat as many incumbents as possible in their quest to re-take the House.

Party spending also tracked closely with competitiveness. The parties aired ads in only 48 House races, and while they spent $43 million on ads, a third of that spending ($14.4 million) was directed at just six House districts: New Jersey's 12th, California's 36th, New York's 2nd, Florida's 22nd, California's 27th, and Michigan's 8th. About 41% of party spending on House races went to open seat races, 35% to seats held by Republicans, and 24% to seats held by Democrats.

The concentration of party spending on competitive races makes sense from a strategic point of view, but casts doubt on whether the soft money which funds party ads actually serves the ostensible purpose of getting out the vote as opposed to attacking or promoting specific candidates. Only 6% of party ads aired in House races actually mentioned the party name, though these ads are in theory intended to pay for grassroots party-building. At the same time, 99% of all party ads aired in House races featured or mentioned a candidate for office. Indeed, coders found that 100% of the party ads had the purpose of generating support for or opposition to a specific candidate.

The data also cast doubt on a claim recently raised by certain members of Congress: that soft money is used by the Democratic Party to increase voter turnout for minority candidates. The data show that parties have made no great effort to support minority candidates *via television ads* in the top 75 media markets. Less than 7% of party ad spending in House elections went to races with minority candidates; 93% went to promote white candidates. Of the 42 races in which the Democratic Party aired television ads, just three included minority candidates, and none were amongst the top recipients of party help. This suggests that the main goal of party spending on advertising is to assist those candidates who are in competitive races, not to increase voter turnout nationally or in districts with candidates of color.

chapter 6

The Timing of Political Ads

Chapter Six explores the timing of televised political advertisements by candidates, parties, and groups in the 2000 federal elections. It comes as no surprise that political ads tend to cluster near Election Day. Of course, there are notable exceptions to this clustering effect, depending on the particular needs of a candidate or buyer. For example, Dick Morris, a campaign consultant for President Bill Clinton's 1996 re-election campaign,[1] believed that early advertising was necessary for the candidate to overcome negative personal images over the course of the campaign. Other buyers of political commercials, especially special interest groups that have no protection under the "lowest unit charge" law,[2] may be compelled to buy earlier when the airwaves are less expensive.[3]

1. At the urging of consultant Dick Morris, the Clinton campaign launched an unprecedented barrage of television commercials more than one year before the election. In order to evade FECA's spending limits, the early television ads avoided using magic words of express advocacy and were sponsored by the Democratic Party and paid for in part from party soft money coffers. This flurry of "issue advertising" by the Clinton team was estimated to have cost $34 million. Kathryn Tenpas, "The Clinton Reelection Machine: Placing the Party Organization in Peril," *Presidential Studies Quarterly* (Winter, 1998) at 761.

2. In an effort to reduce the costs of campaigns and to prevent broadcasters from exploiting campaigns as the election deadline approaches, Congress passed a law in 1971 requiring broadcasters to provide candidates with the "lowest unit charge" for television spots within 60 days of the general election. The lowest unit charge law applies only to candidates, not to political parties or special interest groups that buy television time to influence elections.

But the FCC has allowed different pricing mechanisms to emerge that undercut the lowest unit rate law. Foremost among these pricing mechanisms is the development of different rate categories—the two most important being "fixed" and "preemptible." The "fixed" rate is the highest and guarantees the ad will be aired at the selected time; the "preemptible" rate is cheaper but allows stations to bump the ad if someone else will pay a higher price for the time slot. As Election Day nears, candidates cannot afford being bumped from prime time and so they compete with the parties and other political players in a spending "free-for-all" for television time. Competing against the parties which are awash in soft money, candidates are forced to pay the same high prices for ad time.

3. Television spots increase substantially in cost as Election Day approaches, reflecting the rising demand for the airwaves as candidates, parties and groups compete against each other as well as against commercial advertisers. Broadcast television spots increased in price about threefold between August and November of the 2000 election year, with the sharpest increases occurring in late October through Election Day, peaking at $1,200 per 30-second spot in one study. David Magleby et. al, "Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections," (Feb. 26, 2000), at 11, available at [www.byu.edu/outsidemoney].

FREQUENCY OF ADVERTISING BY WEEK

Despite these exceptions, the data clearly show that political advertising increases substantially among all buyers (candidates, parties, and groups) as Election Day nears. As one might expect, the majority of election ads are aired in the weeks closest to the day of election. Approximately 60% of all federal election ads were aired in the six weeks prior to the election.

The television advertising database shows that there were 940,755 airings of political television commercials in federal and gubernatorial elections over the 2000 calendar year in the nation's top 75 media markets—at a total cost of $672 million. Of this total, 845,923 ads were aired in federal elections alone at an estimated cost of $628 million. The greatest share of these airings occurred in the last few months prior to the general election.

Across all federal elections combined in 2000, candidates were the principal sponsors of most political television ads, with party committees running second and independent groups third. Candidate, party, and group ads shared similar advertising patterns over time. While candidate ads made up a larger percentage of ads overall, all three players meted out their messages in approximately the same proportions from week to week. In the final four weeks of the campaign, candidates aired 50% of their ads, parties aired 50% of their ads, and groups aired 60% of their ads (*see* Figure 6-1).

CANDIDATE COMPETITION AND TIMING OF ADVERTISING

The competitiveness of candidate races also affects the magnitude and timing of political advertising.[4] As expected, television ads in competitive races began airing in greater frequency than ads in non-competitive races in July and August, and completely overshadowed ads in non-competitive races by October through Election Day. Interestingly, advertisements in races classified as non-competitive in October spiked ahead of the competitive races in the early primary season (*see* Figure 6-2). The early spike in ads in non-competitive races is due largely to the presidential primary elections. Some states which were competitive primary states were later considered non-competitive in the general election.

Looking at the congressional races, incumbents, challengers and open seat candidates aired comparable numbers of ads, until the final weeks of the campaign. In House and Senate contests alike, campaign advertising by incumbents clearly outstripped challengers, while candidates vying for open seats also placed more television ads in the waning weeks of the campaign than candidates challenging incumbents (*see* Figure 6-3).

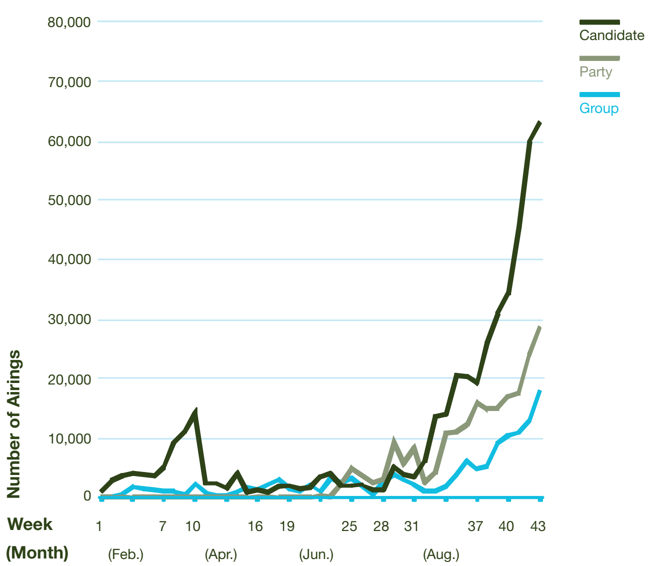


Figure 6-1. Magnitude of Ads by Sponsor, by Week

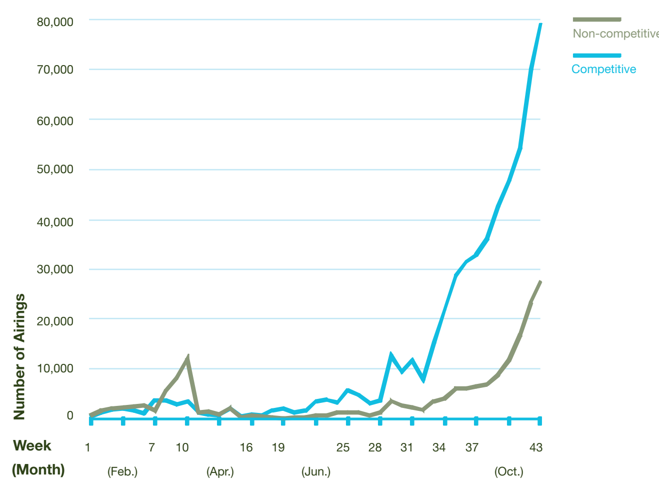


Figure 6-2. Frequency of Ads Between Competitive and Non-Competitive Races

4. For a description of "competitive races," see Chapter Two, "Methodology of the Study."

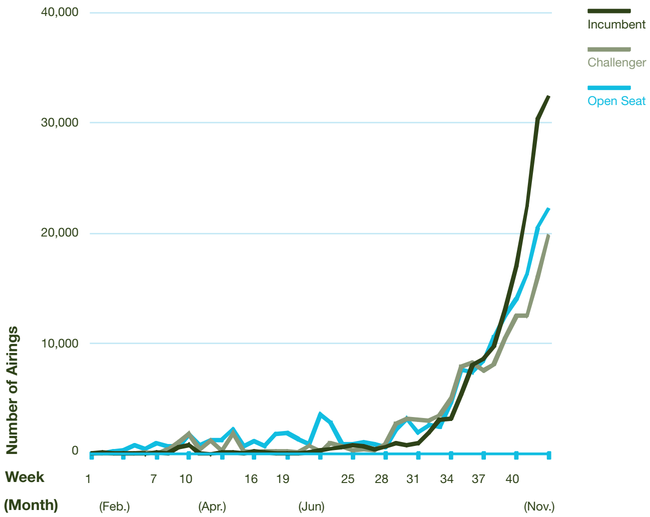


Figure 6-3. Magnitude of Ads by Incumbency, House and Senate Races

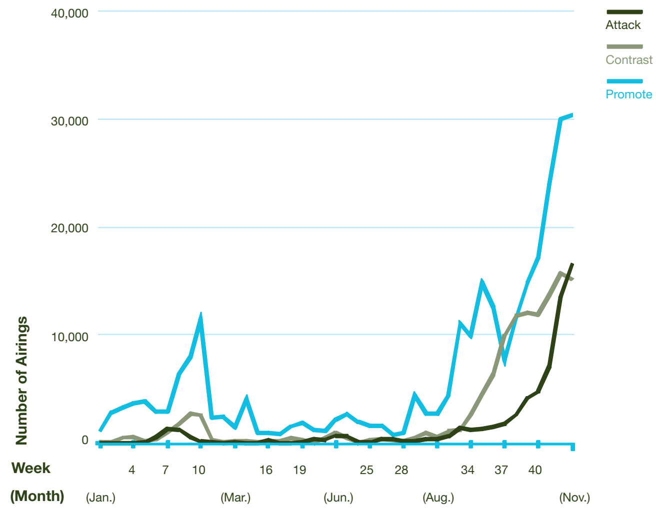


Figure 6-4. Tone of Ads for All Federal Candidates, Over Time

TONE OF CANDIDATE ADS OVER TIME

Ads were coded for tone in one of three ways: negative, positive, or contrasting multiple candidates. Negative ads focused solely on an opposing candidate; positive ads focused on promoting a candidate. Contrasting ads portrayed and drew distinctions between two or more candidates. While the number of negative ads and positive ads increased significantly in the final weeks of the election, they remained in close proportion to each other. Positive ads outnumbered negative ads every week with three exceptions: two weeks in early August and the final week of the election (week 43). And only in the final week of the election did negative ads significantly exceed positive ads.

As noted in previous chapters, candidate ads tended to be the most positive compared to party and group ads. Contrary to popular perceptions, candidate ads tended to remain consistently positive over time. As Figure 6-4 indicates, among all federal candidates there were more positive ads than negative each and every week throughout the election. In the House and Senate races, candidates were highly consistent in their tone. Positive ads remained the dominant type of ad all the way through the congressional elections, though contrasting ads and attack ads increased in number immediately prior to the election.

However, candidate ads by Gore and Bush in the presidential race were far less consistent. Positive ads promoting the candidates were aired in high numbers early in the race, but candidates increased their proportion of contrasting and negative ads in the later stages of the campaign. Interestingly, there was a discrete and significant window where neither candidate was airing ads on his own. Throughout the summer, the presidential candidates did not air ads in significant numbers. But with 12 weeks remaining before Election Day, the candidates began a dramatic escalation in their advertising. Spending on positive, negative, and contrasting ads all increased significantly, with negative ads leaping from almost zero airings to more than 7,000 in the last week alone. Despite vows to "change the tone in Washington," the presidential candidates aired more than 90% of their negative ads in the final three weeks of the election. As a result, negative ads were especially prominent as the tight race went down to the wire (*see* Figure 6-5).

Senate candidates also utilized early positive ads in their campaigns. However as the Senate battles went on, contrasting and attack ads made up a greater and greater percentage of the overall advertising, though positive ads remained the most prevalent. House candidates followed a similar strategy, though they did not put as much emphasis on airing positive ads early. Throughout the election year positive, contrasting, and negative ads by House candidates remained in approximately the same proportion, even as the number of airings across all three categories increased from 1,500 in one week at the end of July to more than 20,000 in the week before the election.

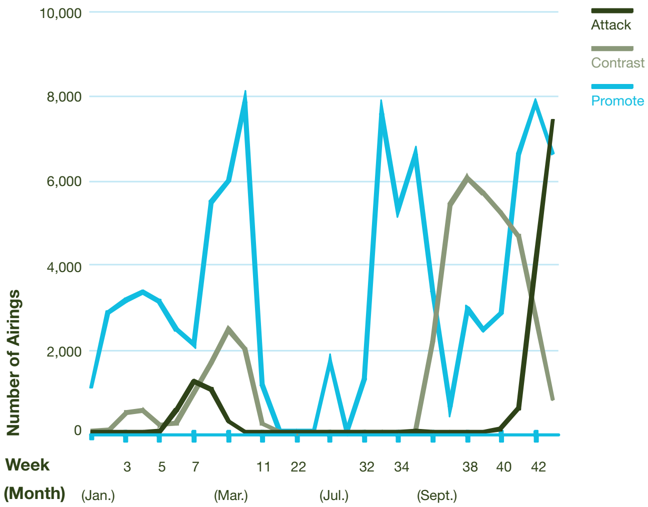


Figure 6-5. Tone of Presidential Candidate Ads

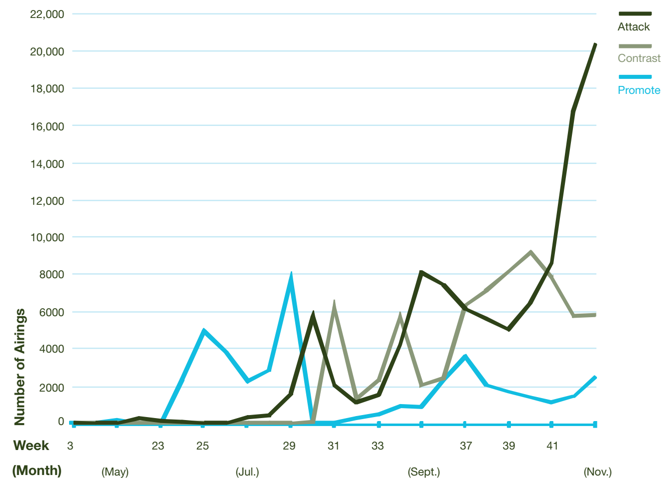


Figure 6-6. Tone of Party Ads in Federal Elections, by Week

TONE OF PARTY ADS THROUGH THE ELECTION CYCLE

When looking at ads sponsored by parties and groups, however, a very different picture emerges—a picture that most Americans witnessed on television and helped lead to popular disillusionment with campaign advertising. While for most of the election, candidates concentrated on promoting their own image and providing the viewer with a positive message, parties chose to rely heavily on contrasting and negative ads. In the 2000 elections overall, party ads were primarily positive until 13 weeks (August) before the election. With 13 weeks left, the party transformed its television presence into one that was heavily negative and heavily contrasting. Only a small number of party ads aired in the three months before the election focused exclusively on the qualities of the favored candidates. Negative ads accounted for more than half of all ads aired by the parties in the final two months of the election, as the parties pounded viewers with thousands of exclusively negative ads (*see* Figure 6-6).

Party advertising in the House races was extremely negative. Negative ads were more prevalent than contrasting ads and positive ads for the entire 2000 calendar year. Moreover, negative ads increased at a dramatic rate in the six weeks prior to the election, mushrooming to two, then four, then six, and finally eight times the number of positive ads. Contrasting ads were also used by parties, but not to a great extent. Even at their peak, contrasting ads barely amounted to half of the negative ads, and in the final week of the election, 9,327 negative ads were aired by the parties, compared with 2,451 contrasting ads and 935 positive ads. Thus in the last seven days of the House races, for every positive ad aired by the parties, the parties aired 10 negative ads.

Party involvement in Senate campaigns was not quite as attack-oriented, but nor was it positive in tone. In the Senate races, parties made no serious effort to promote their candidates with positive ads. In the final two months of the campaign, viewers saw three times as many negative and contrasting ads as they did positive ads. Airings of positive ads remained at late-summer levels while negative ads and contrasting ads increased dramatically as Election Day approached. Additionally, attack ads were more prevalent than contrasting ads until two weeks before the election, when contrasting ads became most common.

The overall negative pattern of party advertising held true for the presidential race. Party ads were all but entirely positive for the spring and summer months, and then with roughly 13 weeks left, ads promoting candidates disappeared and were replaced by thousands of contrasting ads and attack ads. Contrasting ads exceeded attack ads until three weeks before the election, when contrasting ads dropped off and attack ads increased in number. Positive ads by the party were barely a blip on the screen over the final 10 weeks of the campaign (*see* Figure 6-7).

In all federal elections, and especially the presidential race, the candidates and the parties seem to be playing the game of "good cop, bad cop." The candidates want to come across on the television as generally positive and attentive to social concerns. The parties, on the other hand, apparently feel comfortable attacking opponents

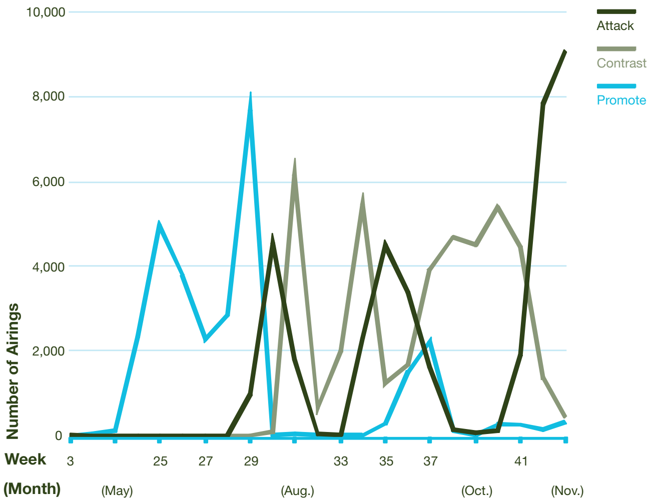


Figure 6-7. Tone of Party Ads in the Presidential Race, by Week

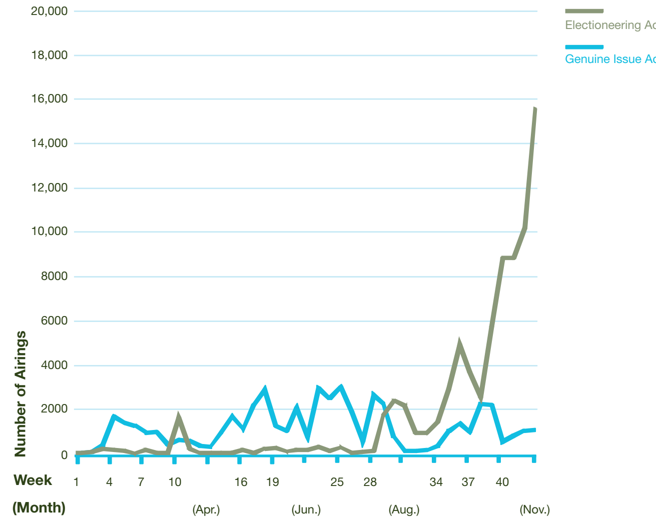


Figure 6-8. Distribution of Genuine Issue Ads vs. Electioneering Issue Ads Through the Calendar Year 2000

and sounding the bells of negativity, deriding personal qualities as well as political viewpoints. Parties apparently assume that voters will not associate the negative party campaign with the candidate being promoted.

GROUP-SPONSORED ADS IN THE 2000 ELECTIONS

If party committees appeared unabashedly negative in tone in the 2000 elections, independent groups were downright ugly. Taken as a whole—including both genuine issue ads and electioneering issue ads—group-sponsored ads tend to replicate the general negative tone of party ads. But when focusing on electioneering issue ads, an entirely different picture emerges.

As discussed in Chapter Four, special interest groups sponsored both genuine issue ads (urging action on a public policy or legislative bill) and electioneering ads (promoting the election or defeat of a federal candidate). In the 2000 election, genuine issue ads are rather evenly distributed throughout the year, while group-sponsored electioneering ads make a sudden and overwhelming appearance immediately before elections (*see* Figure 6-8).

Among all group-sponsored ads, negative ads were highly visible in the House races. Beginning early and remaining dominant throughout the 20 weeks preceding the election, negative ads were the major story in group advertising in House races. Positive ads were also very visible, building slowly from roughly 1,000 ads a week in September to 3,000 ads per week by the end of October. But negative ads were more prevalent overall, accounting for 63% of the group ads in House races.

Senate races attracted significant amounts of group ads as well, with roughly half of the ads being negative. Contrasting ads did not become prominent until seven weeks before the election. Positive ads outpaced negative ads for much of the election but with three weeks remaining in the race, negative ads grew to more than double the number of positive ads. Still, compared to the presidential race and the House races, group spending in the Senate races was the least negative, garnering 49% of the total airings.

Group ads in the presidential race became even more extreme. In the 2000 presidential contest, all group-sponsored electioneering ads were generally hostile toward the candidates—either attacking a presidential candidate or contrasting two or more candidates. *Not a single group-sponsored ad aired in the 2000 presidential race promoted a candidate.* About 88% of group-sponsored electioneering ads were negative, with contrasting ads barely showing up on the radar screen. Negative ads accelerated as the election approached, peaking at more than 7,000 airings in the final week of the election.

An even more negative picture develops when looking at group-sponsored electioneering ads rather than genuine issue ads. As shown in Figure 6-9, group-sponsored electioneering ads in all federal elections almost always are predominantly negative in tone, begin outnumbering positive ads by 20-to-1 as early as two months before the election, and completely overwhelm positive and contrasting electioneering issue ads in the last few weeks of the campaign.

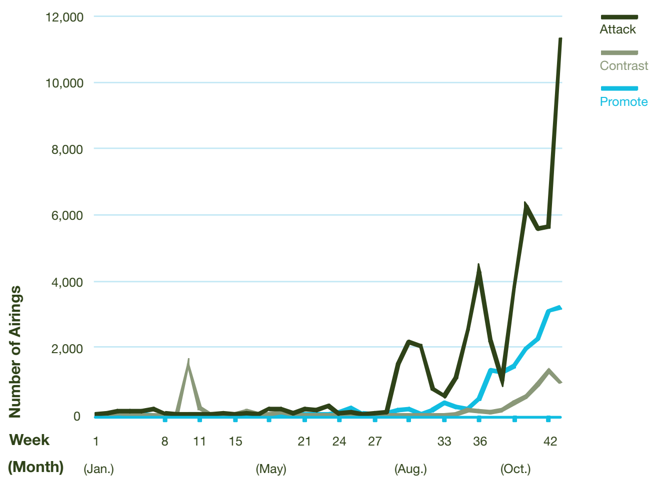


Figure 6-9. Tone of Group Electioneering Ads in All Federal Elections

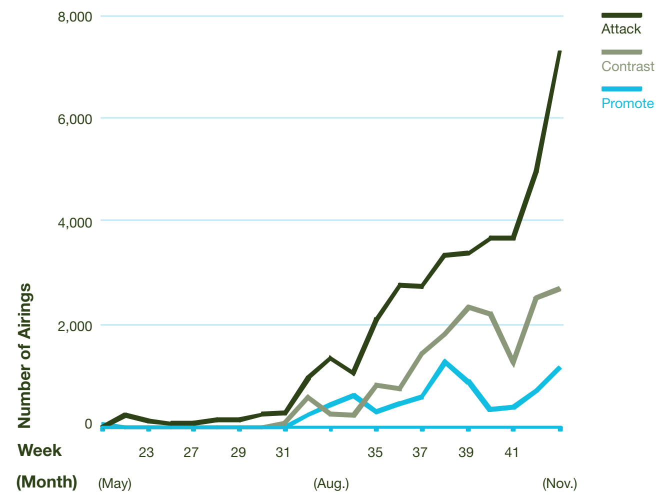


Figure 6-10. Tone of Party Ads in Incumbent-Contested Races, by Week

EFFECT OF INCUMBENCY ON THE TONE OF ADS

The tone in congressional open seat races—races one might expect to be more bitter given both parties' heightened desire to win the seat—did not differ markedly from the tone in congressional races overall. While the open seat races saw more spending and ads overall, the tone of the ads was similar to the incumbent-contested races.

Candidates utilized negative, positive, and contrasting ads in roughly the same proportions in incumbent-contested and open seat races. Roughly 60% of the candidate ads in incumbent-held and open seat races were positive ads, while between 26% and 30% were contrasting. Incumbents, challengers, and open seat candidates alike ran comparable races in terms of tone of campaign advertising. Even in select races that were considered the most competitive, the proportion of positive and negative ads were similar among all candidates. This was the case by party affiliation as well. Candidates aired slightly more negative ads in Republican-incumbent races than in Democratic-incumbent races, 16% negative as opposed to 11% negative. Candidate ads in open seat races were 16% negative. The most notable trend, of course, was that incumbents, challengers, and open seat candidates alike increased the airing of negative ads closer to Election Day, though the greatest bulk of candidate advertising remained positive in tone.

By contrast the tone of party ads differed significantly across different kinds of races. In open seat races, party ads began as primarily, if not exclusively, positive in tone, promoting their candidates early in the election season. The tone of ads fluctuated thereafter, until the final week of the general election campaign when the parties then saturated the airwaves with attack ads. While party advertising in open seat races was 60% negative, the tone in incumbent-held races varied. Party ads in Republican-incumbent races were 64% negative, while party ads in Democratic-incumbent races were 52% negative. Just 15% of the party ads in Republican-incumbent races promoted the candidate, and only 8% of party ads in Democratic-incumbent races did the same. Over time, party ads in incumbent-contested races consistently remained attack-oriented (*see* Figure 6-10).

As usual, group electioneering ads were incredibly negative across categories, though the intensity of the attack ads varied. Open seat ads by groups were extremely negative: 72% of the ads were negative, 8% were contrasting, 20% were positive. Ads by groups in Democratic-incumbent seats were also very negative. About 69% of the ads were negative, while 17% were contrasting, and 14% were positive. The pattern in Republican-incumbent races was quite different, however, as groups spent significant sums on positive ads. While 56% of the ads were negative, 38% were positive, and just 6% were contrasting. These positive ads were aired primarily by pro-Republican groups who sought to establish positive images for Republican House incumbents.

POLICY CRITICISMS VS. PERSONAL INNUENDO

While parties and groups aired negative ads at high volume in the 2000 races, most of the negative ads focused on policy positions of the candidates—claiming that candidate X was on the wrong side of a given issue. In most cases, electioneering ads by the parties and groups focused on the candidates' views on policy issues exclusively, although a large portion of ads involved both policy positions and personal traits of the candidates. Very few of the negative ads by parties and groups consisted exclusively of personal attacks against candidates.

Across categories, personal attack ads were not a significant part of the ad war in the 2000 race. While ads dealing exclusively with the candidates' views on policy increased dramatically as Election Day approached, the number of ads focusing solely on personal issues remained flat through October and November. This is the case regardless of level of office and competitiveness of the race. Despite using large amounts of negative advertising, groups and parties avoided exclusively personal attack ads, focusing most often on critiques of the candidates' views on policy and, less frequently, mixing policy positions with personal traits of the candidates.

Most attack ads focus on a candidates' policy positions, but this fact runs contrary to popular perceptions of the campaign ad war in 2000. The ads that denigrate a candidate's character apparently tend to stick in the public's consciousness. Whether personal attack ads are more effective, or simply more offensive, they seem to be more memorable and taint the general image of all campaign ads.

SIXTY DAYS BEFORE THE GENERAL ELECTION

In the two months prior to the 2000 election, very few of the group issue ads were aired to promote an issue; most group issue ads encouraged the election or defeat of candidates. Within 60 days of the election there were 50,950 airings of group-sponsored ads featuring candidates for federal office. Of these, 331 airings were genuinely about an issue or bill pending before Congress. About 80% of the genuine issue ads featuring candidates were aired well before the 60 days of Election Day. This is consistent with the general understanding of political debate. Congressional debate of policy issues occurs throughout the year, with most votes on key decisions occurring before Labor Day. This year-long debate is when most genuine issue ads should be expected to air. Conversely, the weeks immediately prior to the election, especially after Labor Day, are the time for electioneering and advertisements about candidates for office. Television spots also become increasingly expensive in the final weeks, driving many other potential advertisers temporarily off the air. Ads referring only to issues and not to candidates are less likely to be found in the months immediately preceding a race.

In the 2000 election, the majority of group ads lacked magic words—and thus were labeled issue ads—but the majority of them promoted or attacked candidates, rather than raised awareness about an issue or pending legislation. Since most of the group issue ads had an electioneering purpose, the fact that 75% of the group issue ads aired within 60 days of the election should not be surprising. As in 1998, genuine issue advocacy became overwhelmed by group-sponsored electioneering issue ads with the increased proximity to Election Day (*see* Figure 6-11).

The ramification of this qualitative change in the nature of issue ads within 60 days of the general election will be discussed in greater detail as it relates to campaign finance regulations in Chapter 8.

	Number of Airings	% of Total Group Airings	Distinct Ads	% of Distinct Group Ads	Cost	% of Total Group Ads
Total Group Ads	142,421	100%	393	100%	$97,878,367	100%
Total Group Ads w/o "Magic Words"	130,999	91.98%	343	87.27%	$91,093,834	93.06%
Group Ads w/o "Magic Words" Aired within 60 days	69,901	49.08%	192	48.85%	$48,051,553	49.09%

Figure 6-11. Group-Sponsored Advertising in 2000 Federal Elections

chapter 7

Political Parties and Soft Money

The role of the players in political advertising—candidates, parties, and groups—has been analyzed in prior chapters. However, the newly changing role of political parties in the world of advertising requires additional scrutiny. With the new influx of unlimited funds from business interests, labor unions, and wealthy individuals, spending by party committees on television for all federal offices in the 2000 election reached $162 million, more than $81 million of which was spent on advertising in the presidential election alone. This represents about a 60% increase over party spending in the 1996 elections.[1] According to FEC records, this increase in party spending was largely boosted by a dramatic rise in "soft money."

This chapter examines the unique role that political parties now play in political advertising. Particular attention is given to the sources of "soft money," and what the flow of this money into the parties has meant for party politics.

1. "2000 Presidential Race First in Modern History Where Political Parties Spend More on TV Ads than Candidates," Brennan Center Press Release (Dec.11, 2000) [www.brennancenter.org].

THE CONCEPT OF "SOFT MONEY"

As discussed in greater detail in Chapter Three, the concept of "soft money" arises by contrast with the concept of "hard money," the latter of which refers to funds raised under the restrictions of campaign finance law. The federal restrictions include bans on contributions from certain sources—corporate and union treasuries, and foreign nationals, for example—and monetary limits on the amounts of contributions from all others. Political parties and groups that raise money for television advertising that expressly advocates the election or defeat of a clearly identified federal candidate must comply with those restrictions. But political parties and groups that seek to influence federal elections generally treat any advertisement that lacks magic words as if it were issue advocacy, which is exempt from campaign finance regulation, so soft money has become a major source of funding for electioneering issue ads.

There are, of course, important differences in how federal laws and regulations treat the use of soft money by party committees as opposed to by unaffiliated groups. The single most important difference is that parties, unlike groups, must disclose the sources and expenditures of soft money. Party soft money is supposed to be spent on generic party-building activities, get-out-the-vote drives, voter registration, and the like. Used for these purposes, soft money helps mobilize people into the political process. Indeed, until recent years much of the academic political science community defended soft money for this reason. But as more and more studies have documented how soft money is actually raised and spent by the parties, this enthusiasm has waned. Indeed, prominent political scientists signed onto a Supreme Court *amicus* brief calling for enforcement of party fundraising and spending restrictions, and many more have signed a "scholars' letter" in support of congressional efforts to ban soft money.[2]

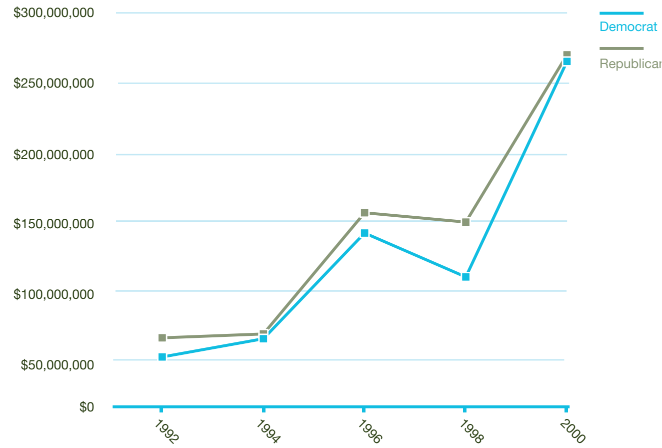


Figure 7-1. Soft Money Receipts by National Parties

THE RISE OF PARTY SOFT MONEY

In the 2000 election cycle, national and congressional party committees broke all previous records in soft money fundraising and, for the first time, Democratic party committees were on par with Republican party committees in terms of raising and spending soft money. National Republican party committees raised $249.9 million in soft money and spent $252.8 million in soft money, while national Democratic party committees raised $245.2 million in soft money and spent $244.8 million. These national committee soft money expenditures were for many political purposes, not just television advertising (*see* Figure 7-1).[3] This was a banner year for soft money, which totaled five times the amounts raised and spent in 1992.

Democratic party committees managed to close the gap with Republicans in raising and spending soft money for the first time in the 2000 election cycle, but the parity is not likely to persist for long. Republicans have historically developed better hard money fundraising techniques, and thus gave less emphasis to soft money. Although the Republicans made somewhat less use of the loophole in 2000, the Republican Party is quickly catching on and will likely surpass Democratic efforts in the next election cycle. Party disclosure reports for the first half year of the 2002 election cycle show that the national Republican committees are already outraising their Democratic counterparts in soft money. The national committees of the Republican Party have raised $65.8 million in soft

2. In *Federal Election Commission v. Colorado Republican Federal Campaign Committee,* decided in 2001, the U.S. Supreme Court found constitutional a longstanding law restricting the amount of money that political parties can spend in coordination with their candidates. The Court recognized that coordinated spending of money donated to a party is "tailor made to undermine contribution limits" and has the "power to corrupt." The Brennan Center filed an *amicus* brief on behalf of 14 prominent political scientists urging the Court to uphold the restrictions on political party spending. The brief is available at [www.brennancenter.org]. *See also* "Top Scholars Say Shays-Meehan Legislation Will Benefit Political Parties, Strengthen Grass-Roots Activities," Brennan Center Press Release (July 10, 2001) [www.brennancenter.org].

3. David Magleby, ed. "Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections," Paper prepared for The Pew Charitable Trusts (Feb. 26, 2001), at 16, available at [www.byu.edu/outsidemoney]

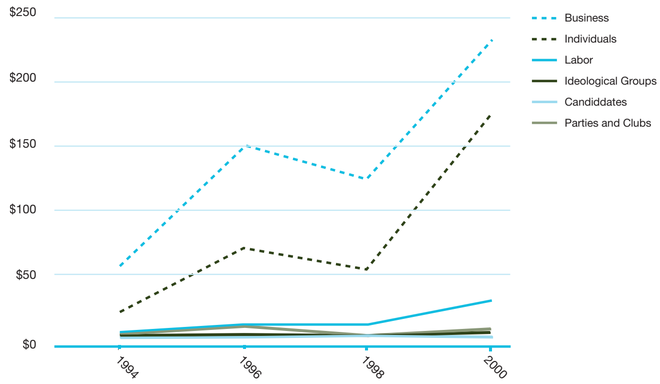


Figure 7-2. Sources of Soft Money Contributions to National Party Committees

money in the first six months of 2001—doubling its previous records for a six-month period—while the national committees of the Democratic Party have raised $38.1 million in soft money over the same period.[4]

The fact that Republicans can outraise Democrats in soft money should not be surprising. Corporations and business interests provide the largest share of soft money contributions—labor unions comprised roughly 15% of the top 50 soft money contributors in 2000[5] —and with an incumbent Republican administration, corporate funds are expected to flow decidedly to Republican Party coffers (*see* Figure 7-2). With what will prove to be critical congressional contests in 2002, the Republicans will increasingly take advantage of the soft money loophole.

THE "ALLOCATION RATIO" AND TELEVISION ADVERTISING

The soft money loophole for television advertising did not really come into existence until the FEC developed regulations applying an "allocation ratio" to state party committees in the late 1980s. In response to a request from the Kansas Republican Party on how to allocate expenditures that benefited both federal and state election activities, the FEC ruled that the party could use soft money to pay for the nonfederal share of costs. A 1988 federal court order, in a case pursued by Common Cause, required the FEC to develop specific allocation formulas for hard money and soft money to prevent parties from abusing their new soft money privileges. The FEC subsequently issued a regulation that permits national party committees to make all disbursements that affect both federal and non-federal elections with a fixed allocation formula in which a share of the costs may be paid for with soft money. In presidential election years, the national parties are permitted to spend 35% soft money and 65% hard money on their joint federal/non-federal expenses, while in non-presidential election years the national parties are permitted to pay up to 40% of joint expenses using soft money. The parties have used these allocation formulas when purchasing electioneering issue ads that refer to federal candidates. The parties have reasoned that these ads, although typically mentioning only federal candidates, nevertheless support state and local candidates and party-building activities.

In the same regulation, the FEC offered state party committees more favorable allocation ratios than the national party committees, under the reasonable assumption that more state party sponsored activity is non-federal activity. State party allocation rules are complicated, based on criteria like the number of state and federal candidates on the ballot or the amount of space or time devoted to state and federal candidates. On average, state party allocation ratios have been about 60% soft money to 40% hard money.

In 1996, the Clinton campaign staff cooperated with the Democratic Party in making full use of these allocation ratios. The national party committee transferred at least $32 million in soft money to state Democratic committees in key electoral districts. The money reportedly came with specific instructions from the national party on how to spend it. Within days of receiving the transfers, state party committees often hired campaign consultants working with the Clinton campaign and the national Democratic party committee to design, produce, and distribute state party electioneering issue ads.[8]

4. Editorial, "GOP Doubles Soft Money Over Last Election Cycle While Democrats' Receipts Increase 40%," *Money & Politics Report* (Aug. 27, 2001), at 1.

5. Common Cause, Soft Money Donor Profiles (2000) [www.commoncause.org]

6. Federal Election Commission, AO 1978-10.

7. 11 C.F.R. § 106.5.

8. Jill Abramson and Leslie Wayne, "Democrats Used the States to Bypass Limits," *New York Times* (Oct. 2, 1997), at 1.

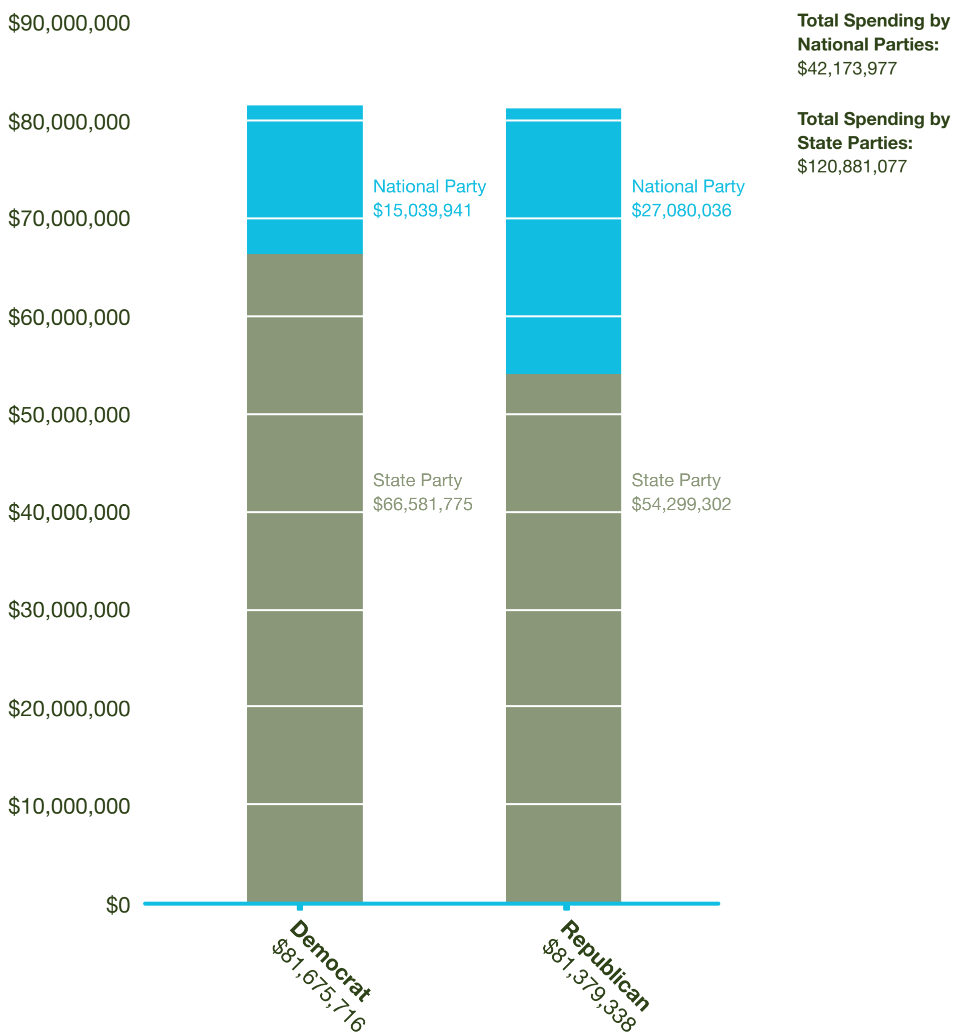


Figure 7-3. Television Spending by the Major Parties in Federal Elections

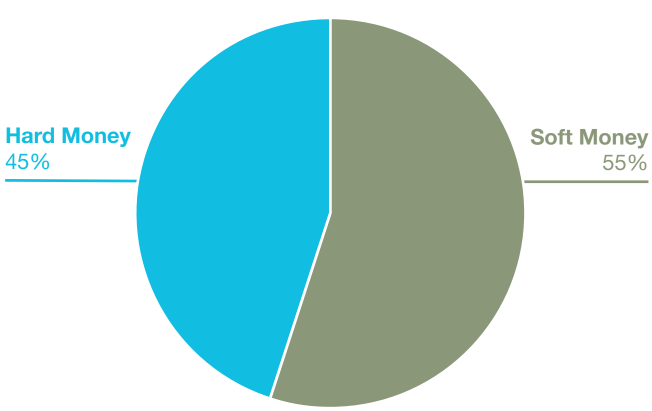


Figure 7-4. Overall Party Spending on Television Ads in Federal Elections: Soft Money vs. Hard Money

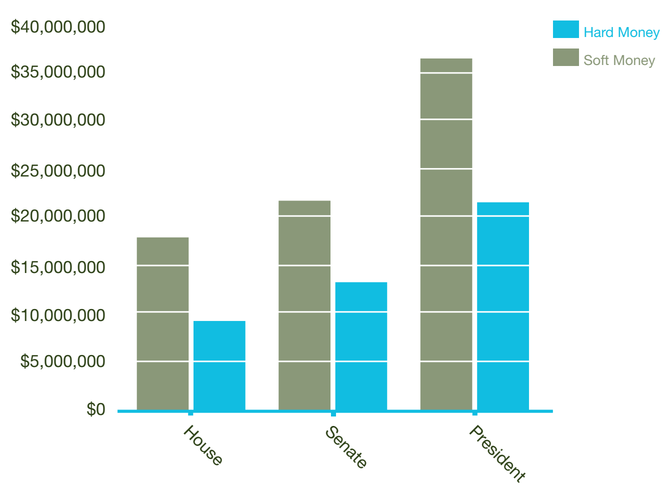


Figure 7-5. State Party Soft Money vs. Hard Money for Media Buys in Federal Elections

The 2000 television advertising database shows that both national parties have dramatically escalated their use of state parties and their more favorable soft money ratios. According to FEC reports, both national parties transferred the bulk of their own soft money revenues to their respective state party committees.

Using $274 million in soft money transfers from the national parties to state parties in the 2000 election—Democrats transferred $145 million in soft money and Republicans $129 million[9] —the Democrats and Republicans bought more television time in relationship to federal elections than ever before through their state party committees. Overall, 77% of party-sponsored political commercials relating to federal elections in the 2000 election were paid for by state parties. The national party committees and federal congressional committees combined purchased about 23% of the party airwaves that addressed federal elections. Not surprisingly, most of this state party spending activity took place in the nation's most competitive states: Florida, Pennsylvania, California, Michigan, Washington, and Ohio. The consequence is clearly visible in party spending patterns on television ads, where both major parties rely primarily on state party committees to pay for their television ads, but with Democrats relying even more so on the state parties (*see* Figure 7-3).

These percentages vary considerably depending on office and party. Nearly 93% of media buys relating to U.S. senatorial elections, for instance, were purchased by state party organizations, with Democratic state parties accounting for more than 97% of such buys and the Republicans 86%. The top five states of state party committee advertising for U.S. Senate elections were: Virginia, Florida, Michigan, New York, and Missouri.

Applying the soft money allocation ratios for each state—controlling for the actual amount of soft money transferred from the national party committees to state party committees in each state—a reasonably clear picture of party soft money spending on television advertising emerges. This study has found that—contrary to the spirit if not the letter of federal law—soft money in the 2000 elections comprised the single largest source of funding for party ads promoting the election or defeat of federal candidates. More than 55% of funds that paid for the airing of party ads across the nation were in the form of soft money; only 45% of the funds paying for these ads came from money raised within the limits of federal law (*see* Figure 7-4). When broken down by office, soft money spending on television spots was particularly focused on the Senate and presidential races—with soft money accounting for 60% and 58% of total television spending, respectively—and provided just short of half the funds in House races (48% of total television spending).

Soft money has also provided the means for the national parties to dominate state party activities. A sign of the "nationalization" of the state parties appears when looking at television spending by the state parties in federal elections. At all levels of federal elections—House, Senate, and President—the state parties spent more on television advertising in soft money, which is largely transferred from the national parties, than in hard money, which comes primarily from state sources (*see* Figure 7-5). In House races, state party committees spent an estimated $17,825,893 in soft money to buy party television commercials, or 66% of the total spent by state parties on such ads. In Senate races, state party committees spent an estimated $21,622,159 in soft money on party television advertising, or 62% of the total spent by state parties on such ads. And state party committees spent an estimated $36,336,091 in soft money on airing ads designed to promote the election or defeat of presidential candidates, or 62% of all television spending in federal elections by state parties. In the aggregate, unlimited and unregulated soft money remains the primary source of funds for federal electioneering ads sponsored by the parties.

PARTY ADS HAVE LITTLE TO DO WITH PARTY-BUILDING AND EVERYTHING TO DO WITH ELECTIONEERING

Whether or not party ads used magic words—and only 2.3% of party spots did—coders at the University of Wisconsin perceived all 231,000 party spots as electioneering in nature—that is, designed to campaign for or against candidates. Not a single genuine issue ad was to be found among party-sponsored advertisements. These ads—96% of which mentioned or depicted a candidate—were not concerned about issues; they were focused on electing candidates.

Nor were party ads in the 2000 election aimed at party-building. Almost 92% of party ads never even identified the name of a political party, let alone encouraged voters to register with the party, to volunteer with the local party organization, or to support the party. The idea that soft money is an important means of strengthening the party as an organization has little, if any, relevance to the reality of party politics and television advertising (*see* Figure 7-6).

Party ads, like those sponsored by special interest groups, tend to be very negative and to attack the charac-

9. Federal Election Commission, Press Release (Jan. 12, 2000).

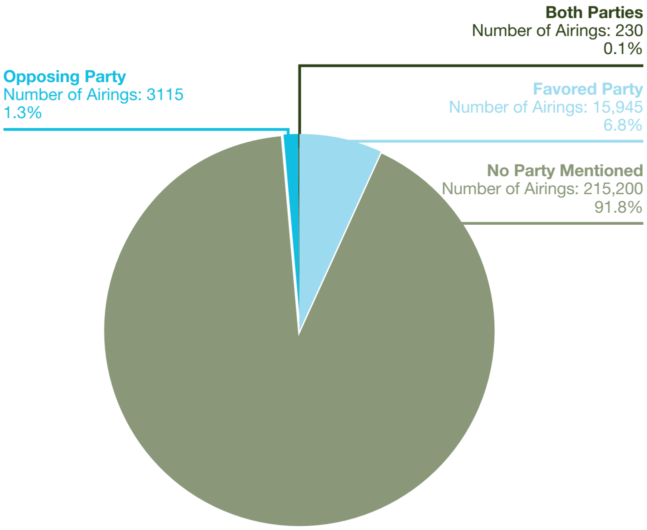


Figure 7-6. Party Ads Mentioning the Name of a Party

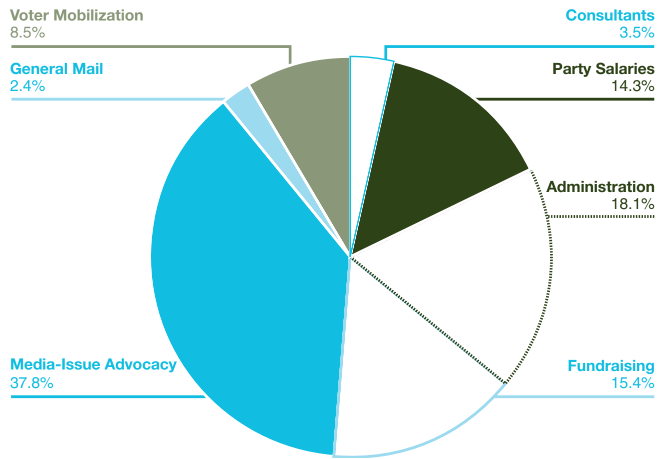


Figure 7-8. How the Parties Spend the "Soft Money" Dollar, 2000 Election Cycle

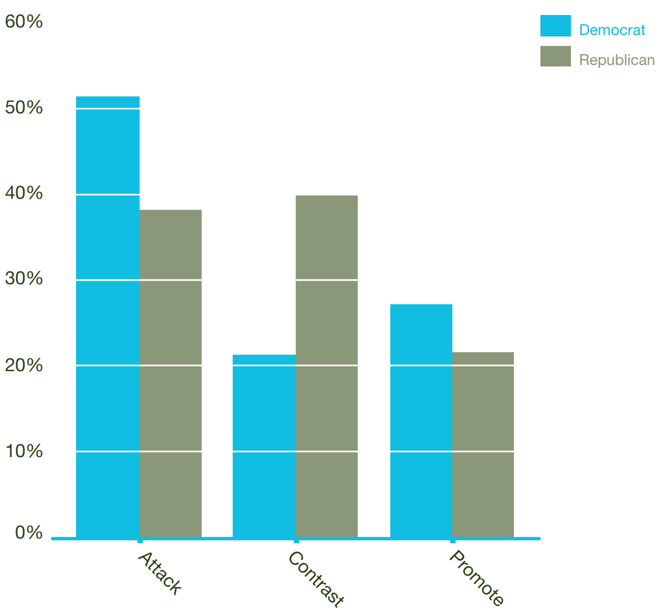


Figure 7-7. Tone of Party Ads, by Democrats and Republicans

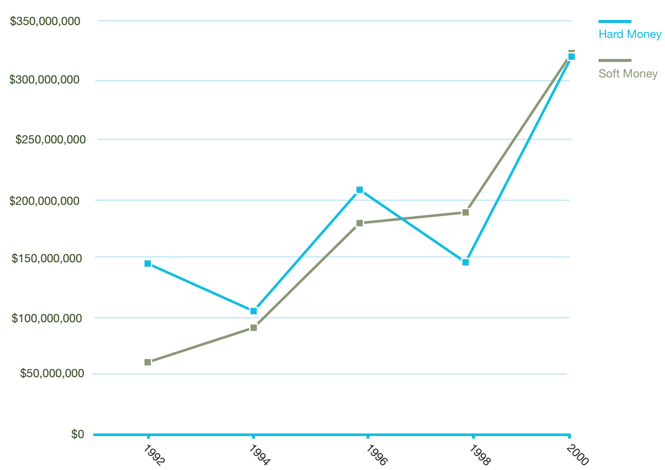


Figure 7-9. Hard and Soft Money Spending in Federal Elections by State Parties

ter of candidates. Nearly half of party ads denigrate candidates, while only 16% of candidate ads do so. Apparently, without a specific name of a person behind the ad, parties and groups feel freer to go negative and to attack candidates on their merits or character. Given that nearly all party ads focus on candidates, this amounts to a lot of negative political commercials saturating the airwaves.

Interestingly, there was a significant difference in the tone of party spots between the two major parties in the 2000 elections. While 51% of Democratic Party ads attacked the merits or character of Republican opponents, only 38% of Republican Party ads did so. Republican ads were far more likely to contrast and compare candidates than those of Democrats, although this technique can also be fairly negative in tone. Both parties aired roughly equivalent proportions of positive ads promoting their own respective candidates (*see* Figure 7-7).

PARTY SOFT MONEY AND VOTER MOBILIZATION

As shown in the soft money database, just as soft money spent on party television spots is primarily used for electioneering rather than party-building purposes, soft money spent by the parties on all activities in general also focuses on electioneering at the cost of party-building. In fact, only 8½ cents out of every soft money dollar is spent by the parties on activities associated with mobilizing voters, such as get-out-the vote drives, party registration efforts, absentee ballot mailings, party slate mailings, phone banks, and other activities intended to fortify a party's electoral base. By far, the single greatest share of soft money dollars spent by the parties relative to federal elections goes into electioneering advertising for or against candidates.

The Brennan Center has developed a unique soft money database that tracks soft money expenditures by all national and state parties relative to federal elections in the 50 states. The data show that voter registration, getting voters out to the polls, and other voter mobilization activities are not a priority of soft money spending by the parties. Instead, the largest bulk of party soft money is allocated to buying the television ads discussed above, radio ads, and direct mail electioneering issue ads. Running distant second, third, and fourth places behind electioneering ads in soft money spending are administration, fundraising, and party salaries, respectively (*see* Figure 7-8).

Most of this spending originates from transfers of soft money from the national parties to the state parties, which have greater liberties in spending soft money in federal elections.[10] As soft money spending by the state parties matches or exceeds hard money spending by the state parties, the state parties grow increasingly dependent on the national party leadership, at least with regard to television advertising. As shown in Figure 7-9, such a nationalization of the state parties is also becoming apparent in all other areas of spending activity relative to federal elections.

In accordance with the desire of the national party leadership, the soft money transferred to the states is poured into media and direct mail advertising for and against federal candidates. What little of the soft money the national parties reserve for themselves is mostly budgeted for fundraising, administration, and staff salaries (*see* Figure 7-10).

Democratic and Republican party committees in the aggregate spent roughly comparable amounts of soft money in the 2000 election cycle for all activities—approximately $243 million by the Democrats and $229 million by the Republicans. Third party committees spent a fraction of the major parties' soft money budgets—a mere $2 million over the same period.

However, some significant differences in soft money spending were apparent between the major parties in the 2000 election cycle. Consistent with the findings on television advertising discussed above, Democrats were more likely to spend their soft money through state party organizations than the Republicans (*see* Figure 7-11). Democrats made more extensive use of soft money allocation ratios in the last election, and Republicans had greater access to hard money resources.

Similarly, while both major parties spent the bulk of their soft money dollars on media electioneering advertising, Democratic soft money spending was somewhat more inclined toward media spending and Republican soft money spending was more inclined toward administration, salaries, and fundraising (*see* Figure 7-12). The differences in soft money spending by the parties in the 2000 elections may be noteworthy, but indications are that such differences may not persist in future elections.

10. Some co-mingling of state soft and hard money occurs with the national party transfers, which explains why the numbers in the soft money database do not exactly match FEC records of total soft money transfers. Some of the federal soft money may be exchanged for state hard money; some state parties will pump their own soft money into the equation; and other state parties may use the federal soft money for exclusively state election purposes. Nevertheless, the data are very closely comparable to the recorded FEC totals of national party soft money transfers, indicating that the national parties have substantial discretion, if not control, over the monies used by the state parties relative to federal elections.

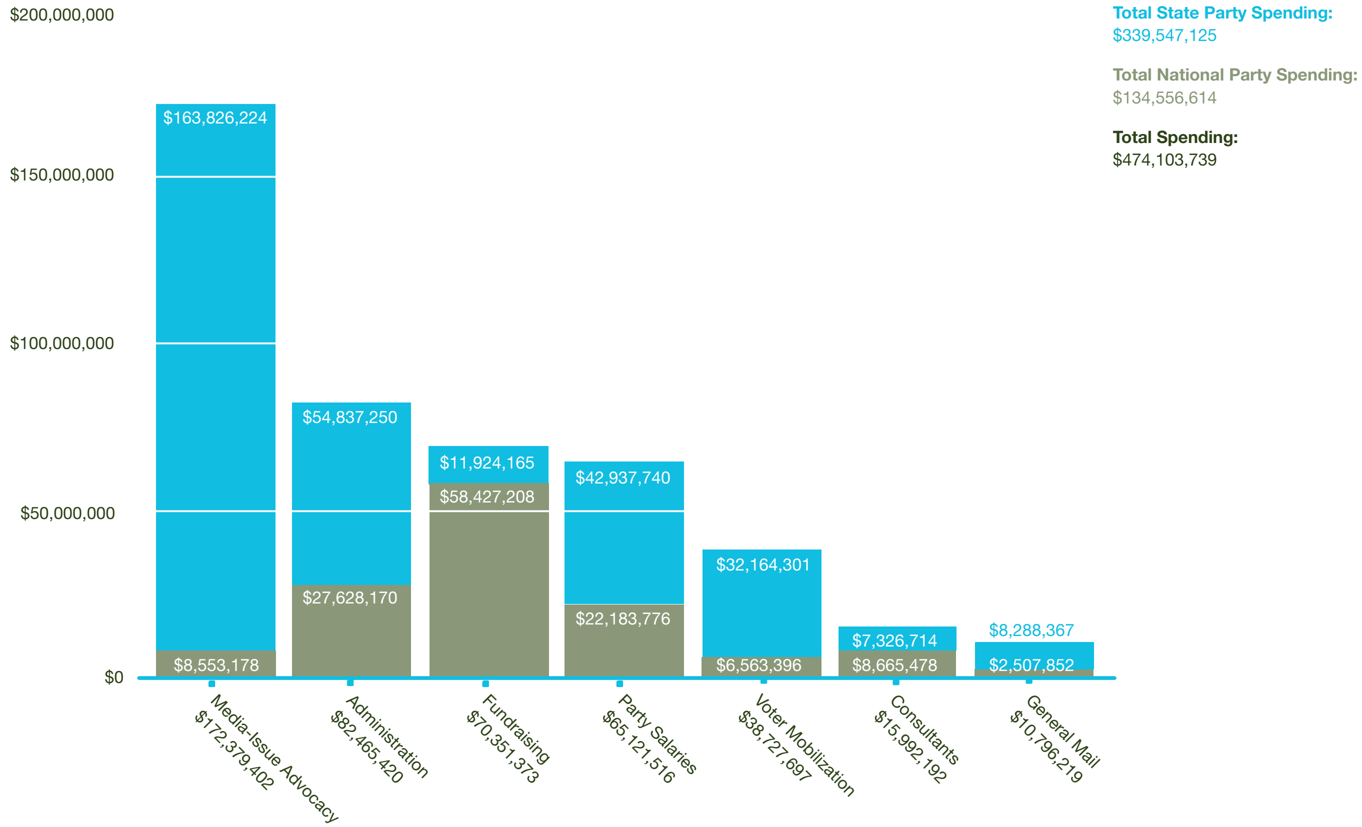


Figure 7-10. National Party vs. State Party Soft Money Spending, 2000 Election Cycle

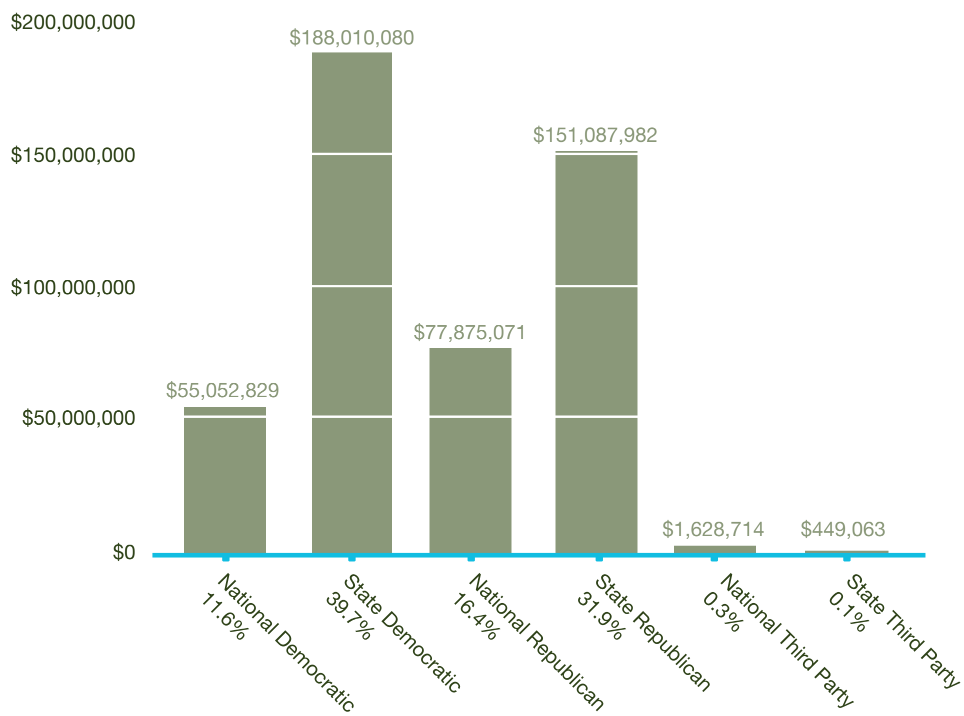
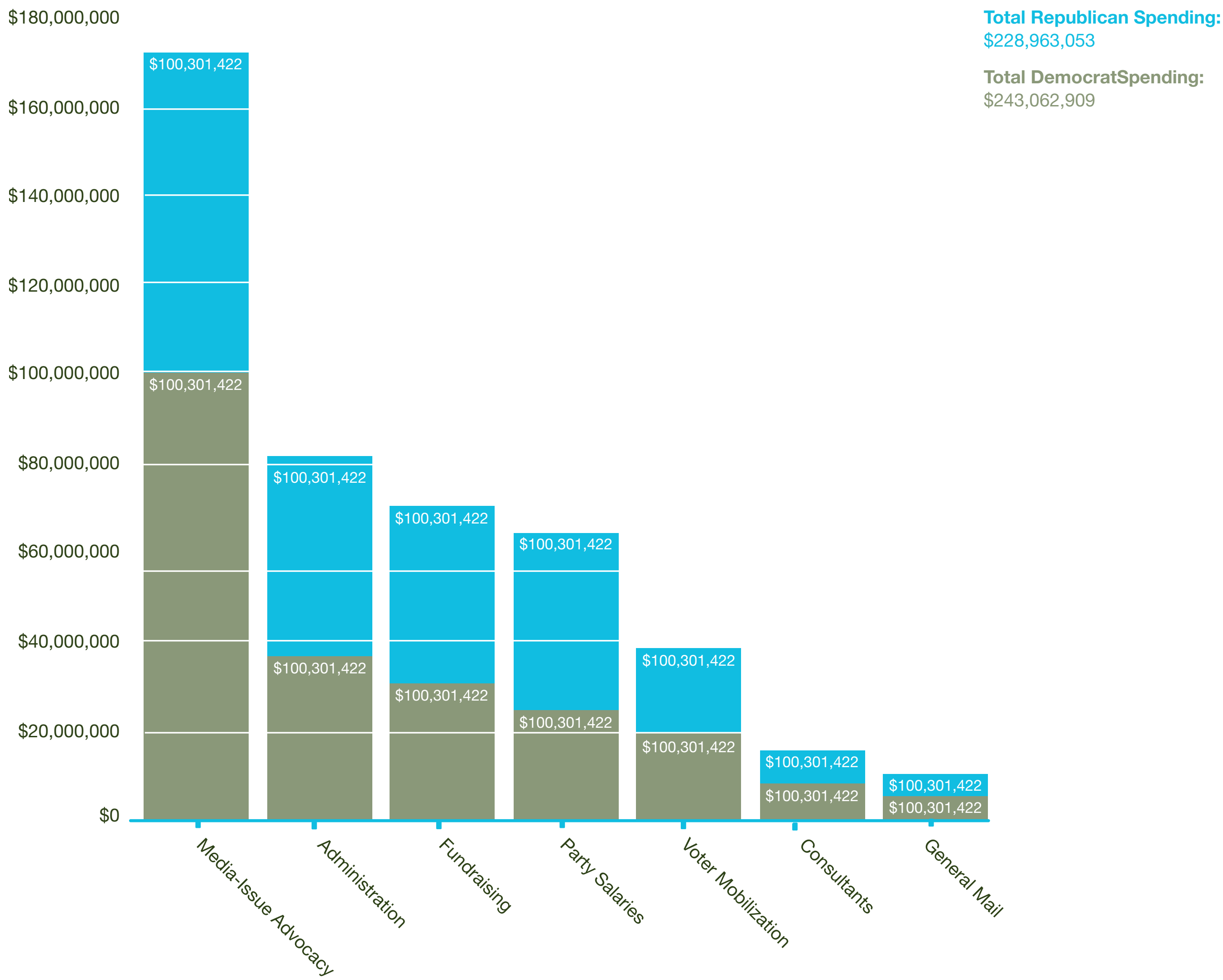


Figure 7-11. Aggregate Direct Soft Money Spending in Federal Elections by All State and National Party Committees, 2000 Election Cycle



	Democratic		Republican	
	Sum	Col Sum %	Sum	Col Sum %
Media-Issue Advocacy	$100,301,422	44.3	$72,050,484	31.7
General Mail	$5,612,418	2.5	$5,135,318	2.3
Voter Mobilization	$19,544,266	8.6	$18,961,972	8.3
Consultants	$8,443,216	3.7	$7,496,579	3.3
Party Salaries	$24,778,417	11.0	$39,601,116	17.4
Administration	$36,693,720	16.2	$44,956,334	19.8
Fundraising	$30,822,279	13.6	$39,421,358	17.3
Table Total	$243,062,909	100.0	$228,963,053	100.0

Figure 7-12. Soft Money Spending by All Party Committees: Democrats vs. Republicans, 2000 Election Cycle

chapter 8

Closing the Loopholes: Assessing the Impact of Reform

For the first time in almost a quarter century, a major revision of federal campaign finance law is under serious consideration. The magic words standard of express advocacy is widely recognized as an inadequate test for electioneering with little relevance to the real world of political advertising. Under the guise of issue advocacy, parties and groups have waged expensive and sometimes secretive campaign wars for and against candidates. And the unabated influx of soft money has rendered contribution limits under the Federal Election Campaign Act impotent. These are some of the problems that Congress, state legislatures, and citizen initiatives are attempting to address. This chapter examines the likely impact of some of the principal proposals for reform of the campaign finance system that are under consideration.

CAMPAIGN FINANCE REFORM IN CONGRESS

Although the 107th Congress offers the best opportunity in decades for meaningful reform of federal campaign finance laws, Congress has been feverishly debating a variety of campaign finance bills since 1986. With Democrats taking control of the Senate in that year, a number of bills calling for public subsidies or campaign cost-reduction benefits occupied floor debates. In the 100th Congress, Democratic campaign reform bills were blocked by a Republican filibuster. In the next three congressional sessions, public financing bills were approved by both houses, only to fail conference committee reconciliation in two of those sessions and a veto by President George Bush in the 102nd Congress. With Republicans again assuming control of the Senate in the 104th Congress, campaign finance reform could not survive a Senate filibuster, and the House declined to act.

The 1996 elections marked a significant change in the reform movement in Congress. These new trends in financing campaigns, documented in this study, shifted the debate away from strengthening the current regulatory framework toward closing loopholes in existing federal election law. Rapidly escalating abuses of issue advocacy and soft money threatened the very integrity of the existing system and raised serious questions about the feasibility of any limits on money in politics.

As a result, Christopher Shays (R-CT) and Marty Meehan (D-MA) introduced a bill (H.R. 2183), now known as the Shays-Meehan bill, seeking to regulate issue advocacy and soft money. Known more popularly at the time as the "freshmen bipartisan bill," the measure proposed strict limits on soft money in federal elections, especially as used by the parties, and redefined express advocacy to include any ads that depict a candidate within 60 days of an election. This latter provision would have included electioneering issue ads aired within 60 days of an election within the entire contribution and disclosure regulatory framework. Though a floor vote was temporarily prevented by the House leadership, H.R. 2183 eventually reached the House floor through a successful discharge petition. Debate ended with the House passing the Shays-Meehan bill, only to see it killed by a Senate filibuster of its companion measure, the McCain-Feingold bill. The next congressional session was a replay of House passage of Shays-Meehan and Senate filibuster of the McCain-Feingold version. However, the 106th Congress did implement new disclosure rules for certain tax-exempt political organizations under Section 527 of the Internal Revenue Code, which previously had not reported their financial activity.

KEY ELEMENTS OF CURRENT REFORM EFFORTS

In a striking reversal of fortunes, campaign finance reform in the 107th Congress first passed the Senate in April of 2001 and was then delayed in the House. Campaign finance reform had received a serious boost from the presidential primary campaign of Senator John McCain. In 2000, Senator McCain energized previously disaffected voters by making campaign finance reform a top priority in his bid for the Republican presidential nomination. Though he lost his nomination bid, much of the Republican Party in general, and the U.S. Senate in particular, saw the writing on the wall and came to embrace some limits on soft money and issue advocacy. The Senate ratified the McCain-Feingold bill (S. 27) on April 2, 2001, after an intense two-week debate on the Senate floor. But the House stalled action on the Shays-Meehan counterpart (H. 380), and the bill's fate is uncertain as of this writing.[1]

Key policy proposals of the current campaign reform bills remain much the same as those in the versions of the 105th Congress: (1) to include in the campaign regulatory framework electioneering issue ads that depict a candidate and are aired within 60 days of the general election (within 30 days of a primary election); and (2) to ban or dramatically curtail the use of soft money in federal elections, especially by the parties. The objective of the first key proposal is to replace the dysfunctional magic words test with a more realistic "60-day bright-line" test. The objective of the second key proposal is to preserve the integrity of federal contribution and source limitations. The analyses of political advertising and party soft money conducted in this study provide important insights into the impact on campaigns that these reform proposals are likely to bear.

1. After the Senate approved the McCain-Feingold bill, supporters of the McCain-Feingold bill urged the House to act on the Shays-Meehan bill by Memorial Day. Speaker Hastert pledged that the House would take up the matter during the week of July 9th. However, Hastert then imposed a series of unique procedural rules which would have required a separate vote on each of the 14 amendments proposed by the bill's sponsors, a procedure calculated to defeat the entire package. In a cooperative lobbying effort between Senator McCain, the House sponsors, and House Democratic leadership, the House (including 19 Republicans) rejected Speaker Hastert's rules of procedure. Speaker Hastert then removed the bill from further floor debate. Until such time as a discharge petition may force the issue back onto the House floor, the bill remains in limbo.

	Magic words		No Magic words		Table Total	
	Number of Airings	Row %	Number of Airings	Row %	Number of Airings	Row %
Candidate	48,803	10.4	419,114	89.6	472,266	100.0
Party	5,282	2.3	224,840	97.7	230,147	100.0
Group	2,882	2.2	130,999	97.8	142,421	100.0
Table Total	57,451	6.9	775,558	93.1	845,923	100.0

Figure 8-1. Proportion of Advertisements by Candidates, Parties, and Groups that Employ "Magic Words"

	Generate support for candiates		Provide information on issues		Table Total	
	Number of Airings	Row %	Number of Airings	Row %	Number of Airings	Row %
Candidate	462,751	98.9	5,166	1.1	472,266	100.0
Party	230,122	100.0	0	0.0	230,147	100.0
Group	77,901	58.2	55,981	41.8	142,421	100.0
Table Total	771,863	92.7	61,147	7.3	845,923	100.0

Proportion of Advertisements by Candidates, Parties, and Groups that Are Perceived as "Electioneering"

THE BRIGHT-LINE TEST ADDRESSES THE ISSUE ADVOCACY LOOPHOLE

Within a matter of just a few years, parties and special interest groups have turned the magic words standard of express advocacy into a major loophole in federal and state campaign finance laws. Through the veneer of issue advocacy, corporations, labor unions, and ideological groups have found a new way to influence elections and evade contribution limits and disclosure requirements.

A significant share of the issue ads sponsored by groups in 2000 did in fact discuss pressing political issues, inform viewers of pending legislative matters, or attempt to influence public policy. About a third of group spending on political advertising involved genuine issues or legislation. Most group-sponsored issue ads, however, were designed to influence elections by promoting or attacking candidates—in other words, they were electioneering issue ads.

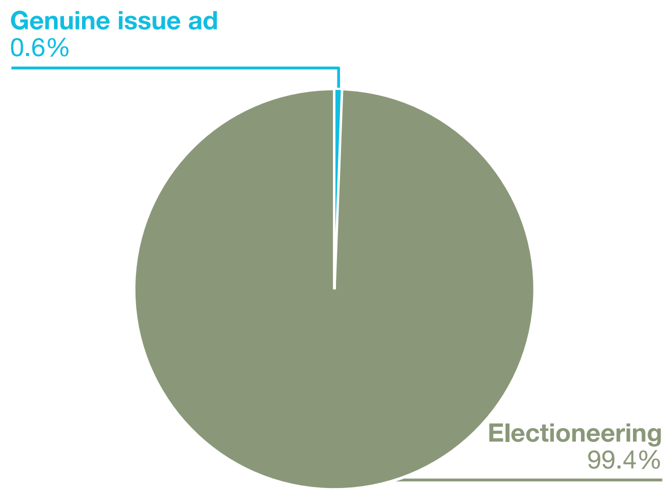


Figure 8-2. Genuine Issue Ads by Groups Aired Within 60 Days of the Election that Depict a Candidate, as a Proportion of All Group Ads that Depict a Candidate in the Same Time Period

Electioneering issue ads, of course, avoid using magic words that would immediately classify them as campaign ads for or against candidates, but they do not shy away from talking about the candidates. Almost all group-sponsored ads found to be electioneering focused on a candidate, either by mentioning a candidate's name or depicting a candidate's image, or both. Very few genuine issue ads depicted a candidate; those that did referred to a candidate indirectly, usually as a sponsor of a bill. Within 60 days of the general election, about 86% of electioneering issue ads sponsored by groups depicted a candidate. Others made references to a candidate in condemning the policies of a particular party or administration.

A congressional proposal, offered as the Snowe-Jeffords amendment to the McCain-Feingold bill and originally part of the Shays-Meehan bill, attempts to reestablish the distinction between genuine issue ads and electioneering issue ads by creating a new category of political advertising called "electioneering communications." In brief, the bill defines a broadcast advertisement as an electioneering communication if the ad: (1) airs within 60 days of a general election, or 30 days of a primary election; (2) features a candidate's name, image, or likeness; (3) reaches the candidate's general constituency; and (4) is paid for by an individual or group that has spent $10,000 or more on electioneering communications within a calendar year.

The data in this study show the inadequacy of magic words as a test for electioneering. No more than 7% of all political advertisements in the 2000 election cycle contained magic words. Only about 10% of all candidate ads used magic words; party and group-sponsored ads used magic words about 2% of the time. Conversely, as shown in Figure 8-1, coders found that about 93% of all political advertisements in the 2000 election cycle were electioneering ads (i.e., they generated support for or opposition to candidates), whether or not they used magic words. All party-sponsored ads were coded as electioneering, as were well over half of group-sponsored ads.

The Snowe-Jeffords 60-day bright-line test correlates much more closely with electioneering in advertising than the magic words test does. Of all group-sponsored issue ads that depicted a candidate within 60 days of the election, 99.4% were found to be electioneering issue ads (*see* Figure 8-2). In absolute numbers, *only three genuine issue ads (which aired a total of 331 times in the 2000 elections) would have been defined as electioneering communications under the Snowe-Jeffords amendment.* Unlike the magic words test, the 60-day bright-line test offers a far more accurate standard for defining electioneering that reflects the realities of modern campaign advertising.

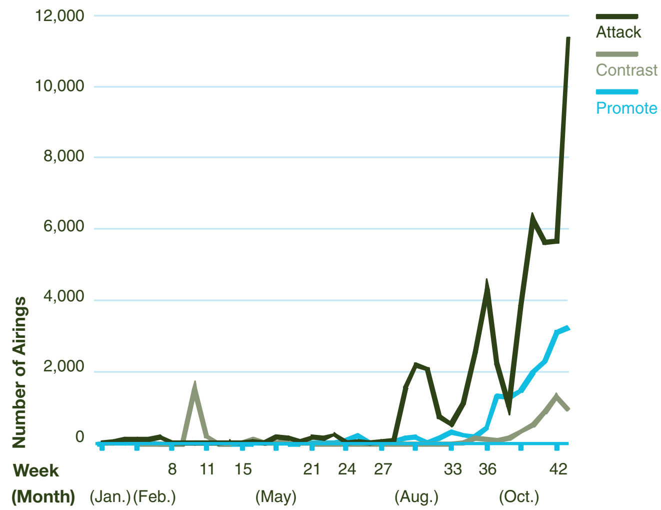


Figure 8-3. Tone of Group Electioneering Issue Ads in All Federal Elections, by Week

A REALISTIC TEST FOR ELECTIONEERING COULD IMPROVE ACCOUNTABILITY FOR ATTACK ADS

Electioneering issue ads sponsored by groups are decidedly negative in tone and often attack a candidate's character. Candidate ads and, less so, party ads are much more inclined than group-sponsored ads to promote candidates or to compare and contrast candidates on issues. More than 70% of electioneering ads sponsored by groups are attack ads that denigrate a candidate's image or character, as opposed to fewer than 20% of candidate-sponsored ads.

As discussed in Chapter Six, when Election Day nears, electioneering issue ads become increasingly negative and personal in tone, souring the campaign process for many candidates and voters alike. As shown in Figure 8-3, in the last 60 days of an election, candidates and the American public can expect a wave of group-sponsored television advertising casting aspersions on a candidate's integrity, health, or intentions. Because these ads avoid using magic words, the public often never learns the true identity of the accuser.

The 60-day bright-line test would not prohibit these types of ads, but it would require disclosure of who is sponsoring the ads in the two months preceding the election. Political advertisements tend to grow increasingly negative and attack-oriented the more the sponsor is shielded from association with the ad. If groups were required to

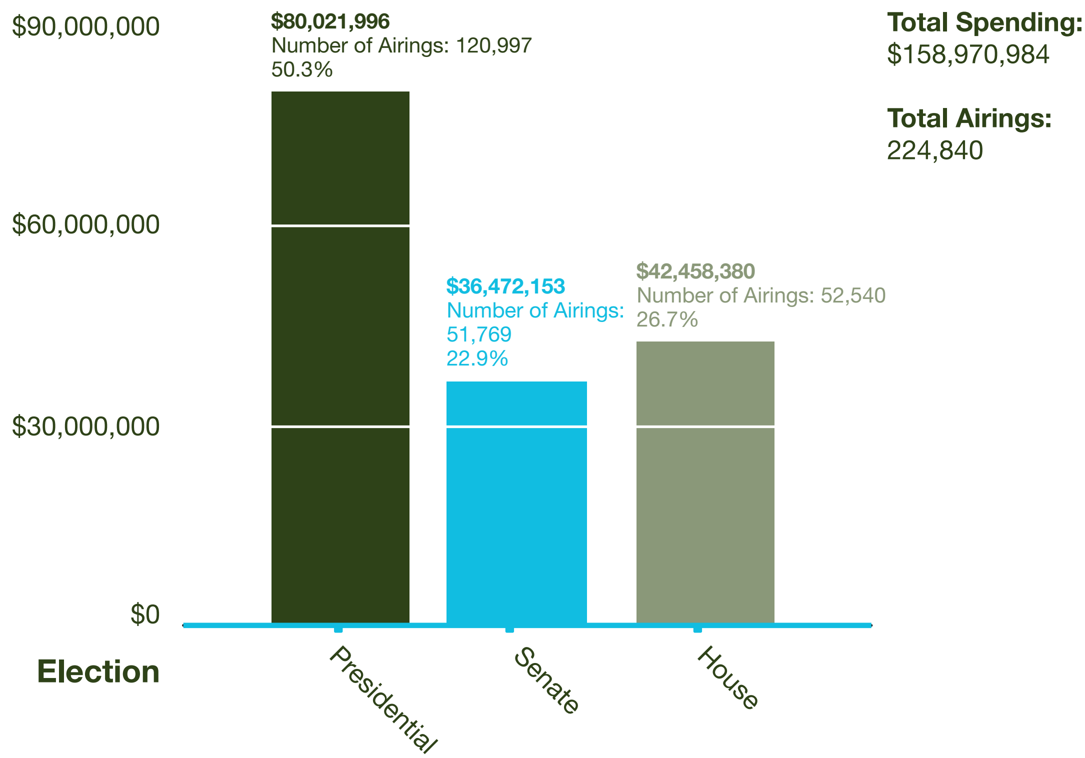


Figure 8-4. Proportion of Party Spending on Electioneering Issue Ads Targeting Presidential, Senate, and House Races

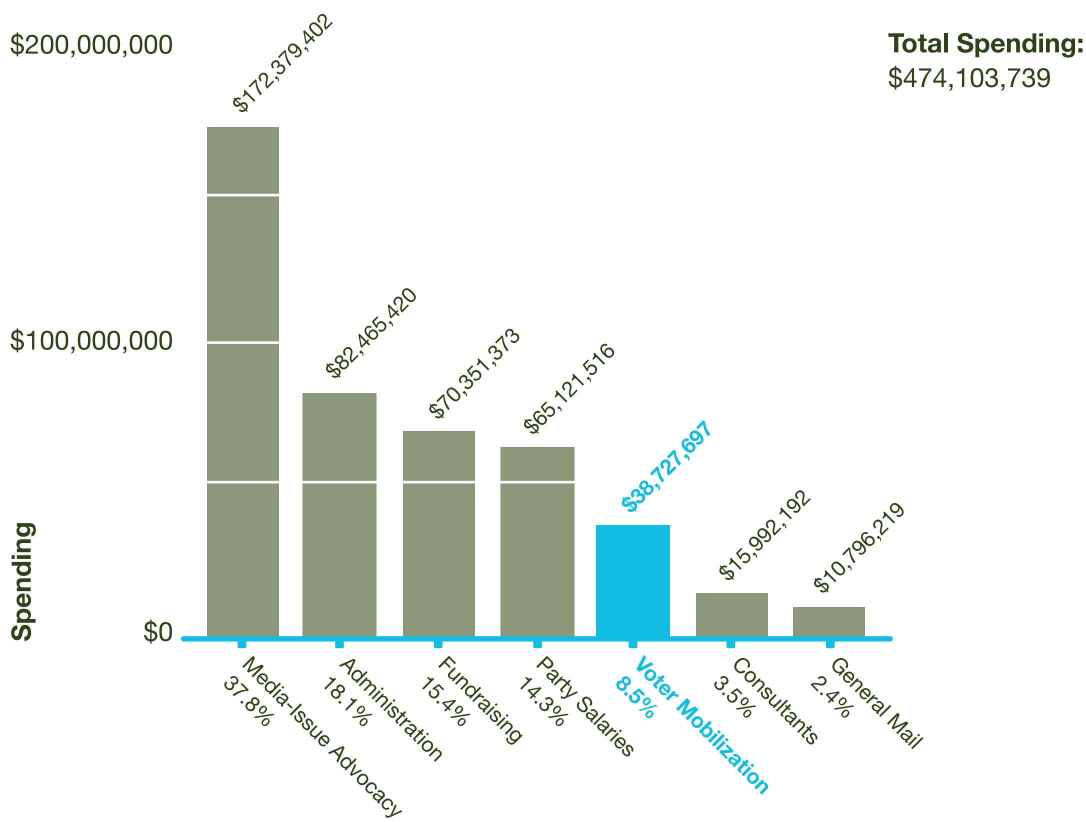


Figure 8-5. Soft Money Spending by All National and State Party Committees in Federal Elections, 2000 Election Cycle

identify who is paying for ads, they would be held more accountable for the content of the ads. The requirement might influence sponsors to tone down the negativity in some of these ads.

A BAN ON PARTY SOFT MONEY WOULD PRESERVE THE INTEGRITY OF FECA

The original intent of Congress when it passed FECA was to require that all money spent to influence federal elections be raised in specified, limited amounts. Soft money—since it consists of funds raised outside federal limitations on the sources and amounts of contributions—is not supposed to be used for electioneering purposes. Under federal election law, campaign advertisements are to be paid for by hard money. Because television campaign ads are often the heart and soul of candidate campaigns, the financing of television advertising is certainly one area in which FECA should be controlling.

For the first time since creation of FECA, soft money constituted the majority of funds paying for party-sponsored television advertisements promoting or attacking federal candidates. As discussed in Chapter Seven, an estimated 55% of all funds used to buy television time for party electioneering purposes came in the form of soft money. This means that in terms of party fundraising and spending activity for television ads, federal law was effectively evaded.

The ban on soft money fundraising and spending by the national parties contained in the McCain-Feingold and Shays-Meehan bills would reverse this trend and reaffirm the tenets of FECA. This study, and others like it,[2] have documented the dramatic rise in party soft money since 1996 and the subsequent erosion of FECA. A ban on soft money fundraising and spending by the national parties would go a long way toward preserving the integrity of federal election law.

A BAN ON SOFT MONEY IN TELEVISION ADVERTISING WOULD HAVE LITTLE IMPACT ON PARTY-BUILDING ACTIVITIES

Every party ad aired in the 2000 election cycle was coded as electioneering—that is, designed to campaign for or against candidates. The finding is unsurprising in view of the fact that almost 96% of all party ads mentioned a candidate's name or pictured a candidate's likeness or image. By contrast, only about 8% of all party ads encouraged voters to join or work with a party or even mentioned the name of a political party (*see* Figure 8-4). These ads were focused on electing candidates, not on mobilizing voters or enhancing party strength. Yet these television ads were and remain the primary emphasis of soft money spending by the parties. If party soft money were banned, the ban could have a significant impact on televised issue advocacy, but it would have little impact on party-building activities.

A BAN ON PARTY SOFT MONEY FOR ANY PURPOSES WOULD HAVE LITTLE SIGNIFICANCE FOR PARTY VOTER MOBILIZATION ACTIVITIES

Simply put, the parties spend very little soft money on any activity associated with voter mobilization, including get-out-the-vote efforts, phone banks, voter registration, absentee ballot drives, party slate mailers, or any other activity intended to rally potential voters to the polls. Only 8½ cents out of every party soft money dollar in the 2000 election cycle was spent on voter mobilization activities. Instead, as noted above, the parties spent the largest bulk of soft money on electioneering issue ads that promoted or attacked candidates for federal office, either in the form of television, radio, or direct mail advertising. Coming in as distant second, third, and fourth priorities for soft money spending by the parties were administration, fundraising, and party salaries (*see* Figure 8-5).

This lack of soft money spending by the parties for voter mobilization has remained fairly constant over the last decade, despite dramatic escalations in the amount of soft money dollars pouring into party coffers in 1996 and again in 2000. More soft money has not translated into a higher proportion of expenditures on voter mobilization drives. In all probability, whatever money for get-out-the-vote drives that may be lost by a ban on soft money could be replaced by hard money dollars.

NEITHER MAJOR PARTY CLEARLY WINS OR LOSES WITH CAMPAIGN FINANCE REFORM

The congressional debate over the McCain-Feingold and Shays-Meehan bills has been mired in partisan

2. David Magleby, ed. "Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections," Paper prepared for The Pew Charitable Trusts (Feb. 26, 2001), available at [www.byu.edu/outsidemoney]; Jill Abramson and Leslie Wayne, "Democrats Used the States to Bypass Limits," *New York Times* (Oct. 2, 1997), at 1.

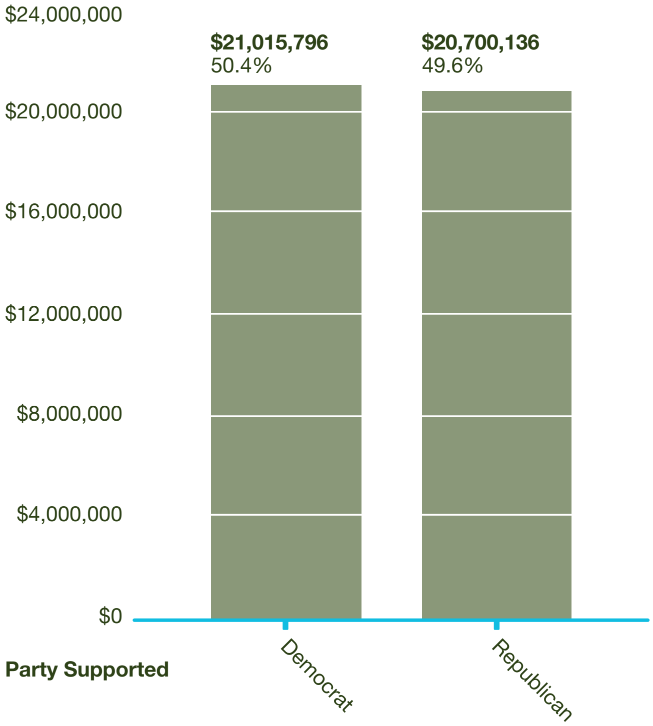


Figure 8-6. Group-Sponsored Electioneering Ads Supporting Democratic vs. Republican Candidates Within 60 Days of the 2000 Election

politics. Opponents of the bills have attempted to rally additional opposition through appeals to partisan loyalties.

"I believe the McCain-Feingold bill will hurt the Republican Party and hurt conservative causes," said Republican presidential candidate George Bush during the January 7, 2000 Republican debate.[3]

"This [McCain-Feingold bill] is going to have a devastating effect on the ability to elect Democrats.... There is absolute unanimity on the part of the Democratic consulting community that this bill is a disaster for Democrats," said one Democratic strategist.[4]

Which party stands to gain and which party stands to lose, if any, in a new system regulating electioneering issue advocacy and banning soft money? It is always difficult to give a definitive answer on the impact of any campaign finance reform because much depends on how the players adapt to the new campaign finance system and how well the regulators address new challenges. But there is considerable empirical evidence from the television advertising databases and the soft money database to provide reasonable assessments of the impact of these campaign reform proposals on party politics.

Trends in group-sponsored advertising broken down by level of office suggest that Democrats may be affected most by a regulation on group-sponsored electioneering issue ads at the presidential level, but Republicans would be affected most by such a regulation in congressional elections. Group-sponsored ads in the 2000 presidential contest were decisively Democratic-leaning, while group-sponsored ads at the congressional level were predominantly Republican-leaning. However, as discussed in Chapter Five, the underlying reason for this partisan bias at different levels of office appears to have been the fact that the respective party organizations made a decision to target their own resources. The Democratic Party poured more money into television advertising in congressional elections, while the Republican Party targeted the presidential race. Group spending appeared to have complemented the parties' strategic decisions. Where Democratic Party spending was weakest (the presidential race), groups picked up the slack—and vice versa for the Republicans. Party and group spending decisions were indeed mutually beneficial, if not coordinated.

But taken as a whole, the notion of partisan favoritism by groups does not hold up. The proposed electioneering issue advocacy regulations are not likely to impact one party more than the other, where group ads are concerned.[5] The partisan bias by level of office washes out in the aggregate.

Overall spending by special interest groups on electioneering advertisements—electioneering issue ads as well as ads using magic words—has not consistently favored candidates of one major party over the other. Aggregate spending on group-sponsored electioneering ads slightly favored Republican candidates in 1998, and slightly favored Democratic candidates in 2000. But the differences in partisan support in both election cycles were very small. In the 2000 election, for example, 52% of spending by groups on electioneering advertisements favored Democrats while 48% favored Republicans over the course of the year. Within 60 days of the general election—the time period that would be affected by the proposed regulation of electioneering issue advocacy—the

3. *Quoted in* Andrew Stober, "Bush is No Poster Child for Morality," *University Wire* (Oct. 18, 2000).

4. *Quoted in* Ruth Marcus, "Democrats' 'Soft Money' Fears," *Washington Post* (July 11, 2001), at 9.

5. This assumes that pro-Democrat and pro-Republican groups are currently receiving similar amounts of corporate and union treasury donations, and that each side would be impacted roughly equally by the prohibition on such donations described in Snowe-Jeffords.

proportion of support for Democratic versus Republican candidates breaks almost evenly, with 50.4% of group spending on ads favoring Democrats and 49.6% favoring Republicans (*see* Figure 8-6).

Nor is banning soft money to the national party committees likely to produce a partisan strategic imbalance for one party over the other. The trends here are more difficult to assess because of erratic fluctuations in soft money fundraising since 1992, but the numbers suggest that the partisan impact of a soft money ban would be mixed, depending on election cycle and other conditions. The Republican Party has always raised more soft money than the Democratic Party in absolute dollars, including in the 2000 election cycle, when the Democrats diverted considerable energy to soft money fundraising and almost reached parity with the Republicans. In absolute dollars, then, a ban on soft money may disadvantage the Republican Party somewhat more than the Democratic Party. Looking at soft money fundraising in the first half of 2001, Republicans clearly have more to lose in terms of dollars than Democrats. Following the concerted effort of Democratic soft money fundraising and spending in the 2000 elections, Republicans have decided to make a stronger effort at soft money fundraising in the next election cycle and have succeeded in raising 40% more in soft money than their counterparts. Fundraising figures for the first six months of 2001 show that the national committees of the Republican Party raised $65.8 million in soft money—more than double the amount Republicans raised during the comparable period in the previous election cycle. The national committees of the Democratic Party raised $38.1 million in soft money in the first half of 2001—a 40% increase over the previous cycle, but clearly losing ground to Republican soft money fundraising.[6] Given that the Republican Party has retaken the White House, and that business interests are a far more formidable source of soft money than labor, the Republican Party should continue to exceed the Democratic Party in soft money fundraising.

In percentage terms, however, soft money comprises a larger proportion of Democratic Party expenditures because of the inability of Democrats to rival Republican hard money fundraising. The Democrats raise less soft money but rely on it far more than the Republicans. The proportions have fluctuated wildly over each election cycle, but in 2000 soft money accounted for 47% of national Democratic party committee funds and 35% of Republican Party funds (*see* Figure 8-7). In this sense, a soft money ban could be seen as disadvantaging the Democratic Party somewhat more than the Republican Party. But again the universe of fundraising is not static. Republicans appear to be focusing greater efforts on soft money fundraising and may be closing the percentage gap while expanding the divide in absolute dollars. And Democrats are beginning to strengthen their hard money fundraising capabilities. The numbers presented here show mixed results for both parties from a soft money ban. Neither party stands to clearly gain or lose a strategic advantage.

Instead of looking for a strategic advantage from a soft money ban, the parties should be looking for the structural benefits to be gained by such a ban. Without digressing into the image problems and actual and perceived corruption that soft money has brought to the national parties—from Lincoln bedroom sleepovers to

		Hard Money	Soft Money	Total	% Soft Money
1992	Democrats	$ 155.5	$ 36.3	$ 191.8	19%
	Republicans	$ 266.3	$ 49.8	$ 316.1	16%
1994	Democrats	$ 121.1	$ 49.1	$ 170.2	29%
	Republicans	$ 223.7	$ 52.5	$ 276.2	19%
1996	Democrats	$ 210.0	$ 122.3	$ 332.3	37%
	Republicans	$ 407.5	$ 141.2	$ 548.7	26%
1998	Democrats	$ 153.4	$ 91.5	$ 244.9	37%
	Republicans	$ 273.6	$ 131.0	$ 404.6	32%
2000	Democrats	$ 269.9	$ 243.1	$ 513.0	47%
	Republicans	$ 447.4	$ 244.4	$ 691.8	35%

Figure 8-7. Total Hard Money and Soft Money Expenditures in Federal Elections by the Democratic and Republican Parties, 1992-2000

6. Editor, "GOP Doubles Soft Money Over Last Election Cycle, While Democrats Receipts Increase 40%," *Money & Politics Report* (Aug. 27, 2001), at 1.

foreign sources of campaign contributions—other major structural injuries to party politics have come from the growth in soft money.

The soft money system has made both political parties dangerously dependent on a few wealthy contributors. In the 2000 election cycle, some $300 million of the parties' soft money came from only 800 donors. The national party committees have developed fundraising operations to cater to these wealthy few, a decision that is particularly evident within the Democratic Party. These soft money funds are used primarily for electioneering purposes, undermining the integrity of federal campaign finance limits. And soft money has led to a "nationalization" of the party system, in which the national party leadership doles out the money to state and local party committees and usurps control over many of their activities.

None of these developments are healthy for a strong party system. As 17 leading political scientists—all advocates of a strong party system—wrote in defense of the McCain-Feingold and Shays-Meehan bills:

"The elimination of soft money will have a significant impact, at least in the short run, on political party fundraising. However, political parties will be able to raise very substantial amounts of hard money in the future, even more than they have in the past, and they will doubtless maintain their position in the forefront of electoral actors. Money will be raised in smaller amounts, from a larger base of contributors, which will ameliorate the current potentially corrupting and agenda-altering focus on a small set of large donors. In terms of spending, the parties will likely shift away from candidate-specific advertising and towards more grass-roots, get-out-the-vote, and party-building activities. Because parties have longer term interests than individual candidates, this shift in emphasis should ultimately strengthen the political parties."[7]

CONCLUSION

The future of the American campaign finance system rarely looks bright. Each election cycle brings new innovations in campaign finance evasion as parties, candidates and groups strive to bend the system to their benefit. At times the existing rules and regulations seem more like fiction than fact and new reforms at the federal level seem doomed before they are even proposed.

Clearly, the magic words test has become impoverished in the face of skilled issue advertising and the realities of mass communication. The magic words test stands no chance against advertisers who make a living by expressing messages in subtle but effective terms. In an age where Nike shoes are promoted with a silent swoosh rather than a loud proclamation of "buy me," the line separating issue advocacy from express advocacy is in need of strengthening. Closing the issue ad loophole is necessary to catch ads that have an explicit electioneering message but no magic words.

Though this loophole has been expanding for years, public opinion has started to catch up with those who have for years taken advantage of the system in the pursuit of electoral success. Regardless of refined legal or policy distinctions in types of advertisements, the public is keenly aware that most political ads are indeed electioneering ads and that the political players are sidestepping federal campaign finance laws. The legal community has begun to catch up, recognizing the futility of the magic words test and taking steps to draft more sophisticated methods for regulating electioneering. Political scientists, too, have responded to the dearth of information about the nature and scope of electioneering issue ads by conducting studies to shed light on this once-secretive tool.

Combining the insight from these three communities adds to the likelihood that public policy will emerge that is grounded in scholarship, legal expertise, and political realism. The shared effort of citizens, lawyers, and political scientists working with legislators creates room for optimism about a system few deny is in dire need of repair.

7. Paul Allen Beck et al, "Scholars' Letter on Shays-Meehan" (July 9, 2001), available at [www.brennancenter.org].

appendix

A

Presidential Profile: Bush v. Gore

Since much of the Bush-Gore race has been discussed previously in Chapter Five and Chapter Six, we add additional analysis here regarding state-by-state numbers. One fact that jumps out from the data is the amount of party advertising in the presidential contest. When the field is limited to the major party candidates—Bush and Gore—and the parties and groups who supported them, candidate spending accounts for only 42% of the ad spending in the presidential contest, compared to 49% by the parties and 9% by groups. Thus the party coffers, loaded with soft money, played an especially potent role in the Bush-Gore battle. As stated earlier, the dollar figures included in this analysis understate actual outlays and are limited to the nation's 75 largest media markets.

The campaign between the Texas Governor and the Vice-President was extremely close for much of the general election. For only the fourth time in history, a candidate won the Electoral College while losing the popular vote. The state which held the country's attention for weeks, Florida, was called by many political scientists and commentators a statistical tie.[1]

As the race grew tight in the final two months of the campaign, many states which had been ignored by the campaigns suddenly came back onto the radar screen. As Rick Berke of the *New York Times* wrote less than two weeks before the November 7th election,

> *"The roster of states that are tossups in the general election is actually expanding in the closing days of the presidential campaign, a marked departure from previous elections and one that has forced Gov. George W. Bush and Vice President Al Gore to hustle around the nation even more than past nominees."*[2]

As well as traveling from state-to-state, Gore and Bush made their presence known by broadening their ad outlays to include states that were once thought to be uncontested. Running counter to established political precedent, the presidential campaigns searched for weaknesses in the opposition strongholds. Bush and the Republican Party made a significant effort in California in the final month of the campaign, making that state their top state (in total advertising dollars) each week for the final four weeks. Gore and the Democratic Party, meanwhile, made a serious effort to take Florida. At the same time, Gore and the Democratic Party made Pennsylvania their top state every week of the campaign with just four exceptions. Week 35 saw Ohio topping Pennsylvania, though only barely, $754,929 to $735,144. Weeks 40, 41, and 43 saw Florida as the number one state.

Groups were far more involved in supporting Gore on the airwaves than Bush. As shown in Figure A-3, pro-Bush groups, such as Americans for Job Security, did not air ads until October, and then only in small numbers. In the aggregate, groups spent more than $12 million to help Gore, and just $2 million to help Bush. Of the 19 states where both pro-Bush and pro-Gore groups aired ads, pro-Gore groups outspent Bush in 17, and Gore won in 10 of those 17 states.

In terms of aggregate spending on television ads by the presidential campaigns, it becomes evident that presidential races are fought out in only a handful of states. Political scientists, pollsters, and pundits alike recognize that most presidential outcomes are determined by fewer than 10% of the nation's voters. Most voters reside in states that are generally viewed as securely Democratic or securely Republican. These states tend to be overlooked by the campaigns as they target their resources on tossup states. As a result, many large but uncontestable states, such as Texas, may be almost entirely ignored by the campaigns, while states with few electoral votes may find themselves awash with television campaign ads from candidates, parties, and groups.

The 2000 presidential election did not conform as neatly to conventional political wisdom as in other recent presidential elections; the fact that Florida became a tossup state reflects the uniqueness of the most recent campaign. Nonetheless, spending on television ads by the candidates, parties, and groups combined in the 2000 presidential election shows that electing the nation's president continued to boil down to the electoral choices of just a handful of states. The air war of 2000 primarily took place in less than a dozen states.

1. Jim Hoagland, "Dynasty at Work," *The Washington Post,* (Dec. 14, 2000), at A35; David R. Dow, "Biggest Loser is the Supreme Court's Legitimacy" *The Houston Chronicle* (Dec. 14, 2000), at A47.

2. Richard L. Berke, "The 2000 Campaign: The Widening Battle; Bucking History, Tossup States Increase, Forcing Candidates to Rethink Strategies" *New York Times* (Oct. 27, 2000), at A27.

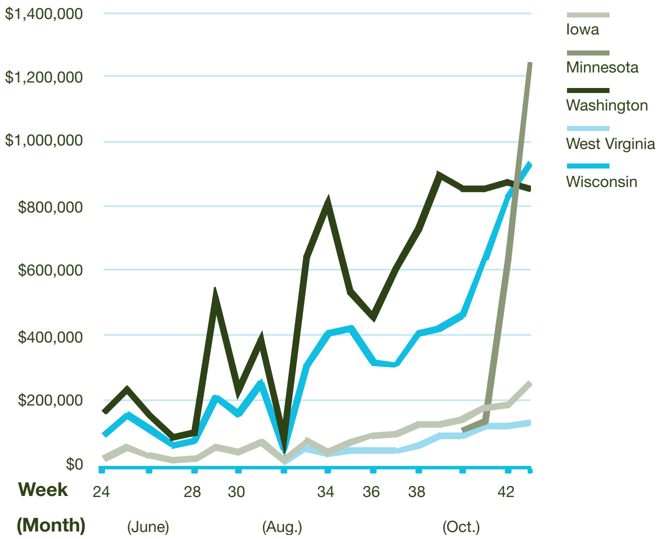


Figure A1: Spending in States First Considered Non-Competitive, Later Considered Competitive

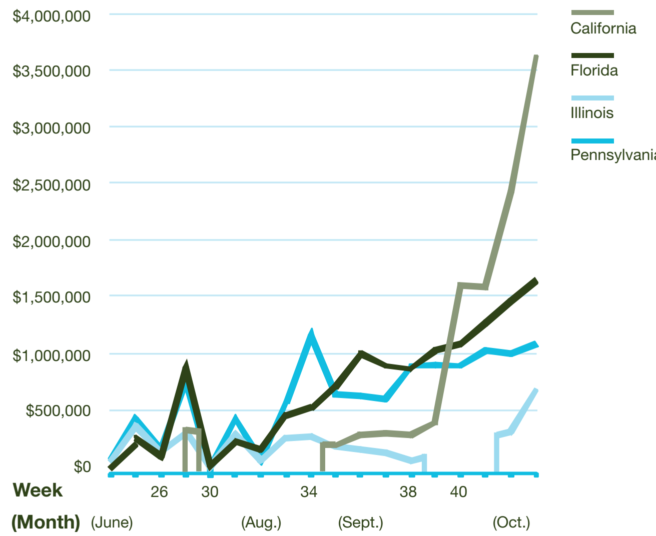


Figure A2: Bush and Republican Party Spending in Florida, California, Illinois, and Pennsylvania

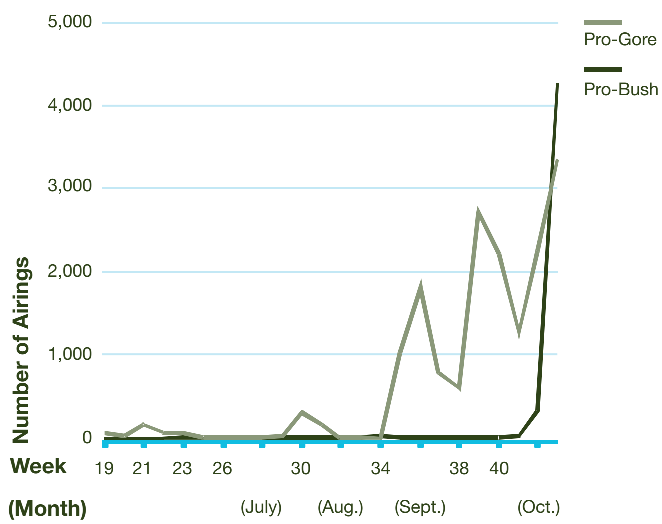


Figure A3: Number of Group-Sponsored Ads Promoting Bush vs. Gore

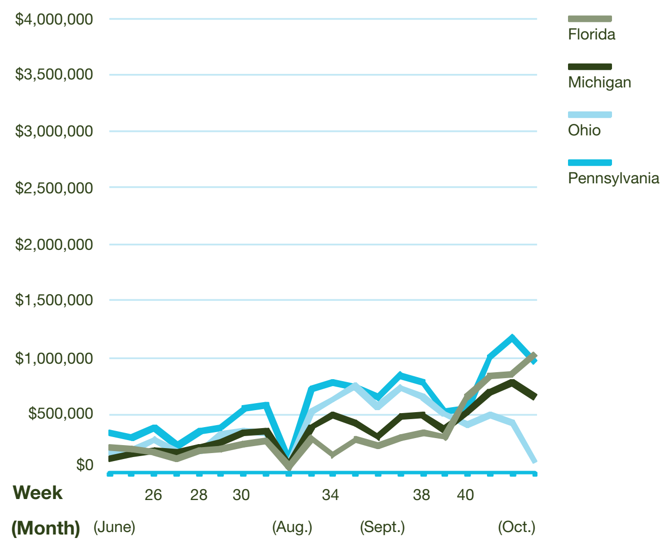


Figure A4: Gore and Democratic Party Spending in Florida, Michigan, Ohio, and Pennsylvania

			Sum	Winner
1	Arkansas	Pro-Gore	$4,949	BUSH
	Arkansas	**Pro-Bush**	**$35,887**	
2	California	Pro-Gore	$93,867	GORE
	California	**Pro-Bush**	**$11,193**	
3	Florida	Pro-Gore	$2,054,778	BUSH
	Florida	**Pro-Bush**	**$299,217**	
4	Illinois	Pro-Gore	$81,531	GORE
	Illinois	**Pro-Bush**	**$7,782**	
5	Iowa	Pro-Gore	$44,941	GORE
	Iowa	**Pro-Bush**	**$38,505**	
6	Kansas	Pro-Gore	$461,844	BUSH
	Kansas	**Pro-Bush**	**$62,015**	
7	Maine	Pro-Gore	$53	GORE
	Maine	**Pro-Bush**	**$36,886**	
8	Michigan	Pro-Gore	$1,708,903	GORE
	Michigan	**Pro-Bush**	**$305,053**	
9	Minnesota	Pro-Gore	$471,992	GORE
	Minnesota	**Pro-Bush**	**$195,963**	
10	Missouri	Pro-Gore	$1,064,936	BUSH
	Missouri	**Pro-Bush**	**$105,603**	
11	Nevada	Pro-Gore	$439,812	BUSH
	Nevada	**Pro-Bush**	**$145,772**	
12	New Mexico	Pro-Gore	$185,756	GORE
	New Mexico	**Pro-Bush**	**$31,232**	
13	North Carolina	Pro-Gore	$2,155	BUSH
	North Carolina	**Pro-Bush**	**$104**	
14	Oregon	Pro-Gore	$558,099	GORE
	Oregon	**Pro-Bush**	**$152,818**	
15	Pennsylvania	Pro-Gore	$2,518,762	GORE
	Pennsylvania	**Pro-Bush**	**$818,182**	
16	Texas	Pro-Gore	$1,280	BUSH
	Texas	**Pro-Bush**	**$234**	
17	Washington	Pro-Gore	$603,894	GORE
	Washington	**Pro-Bush**	**$45,728**	
18	West Virginia	Pro-Gore	$18,799	BUSH
	West Virginia	**Pro-Bush**	**$2,277**	
19	Wisconsin	Pro-Gore	$610,634	GORE
	Wisconsin	**Pro-Bush**	**$117,657**	
	Table Total		**$13,339,093**	

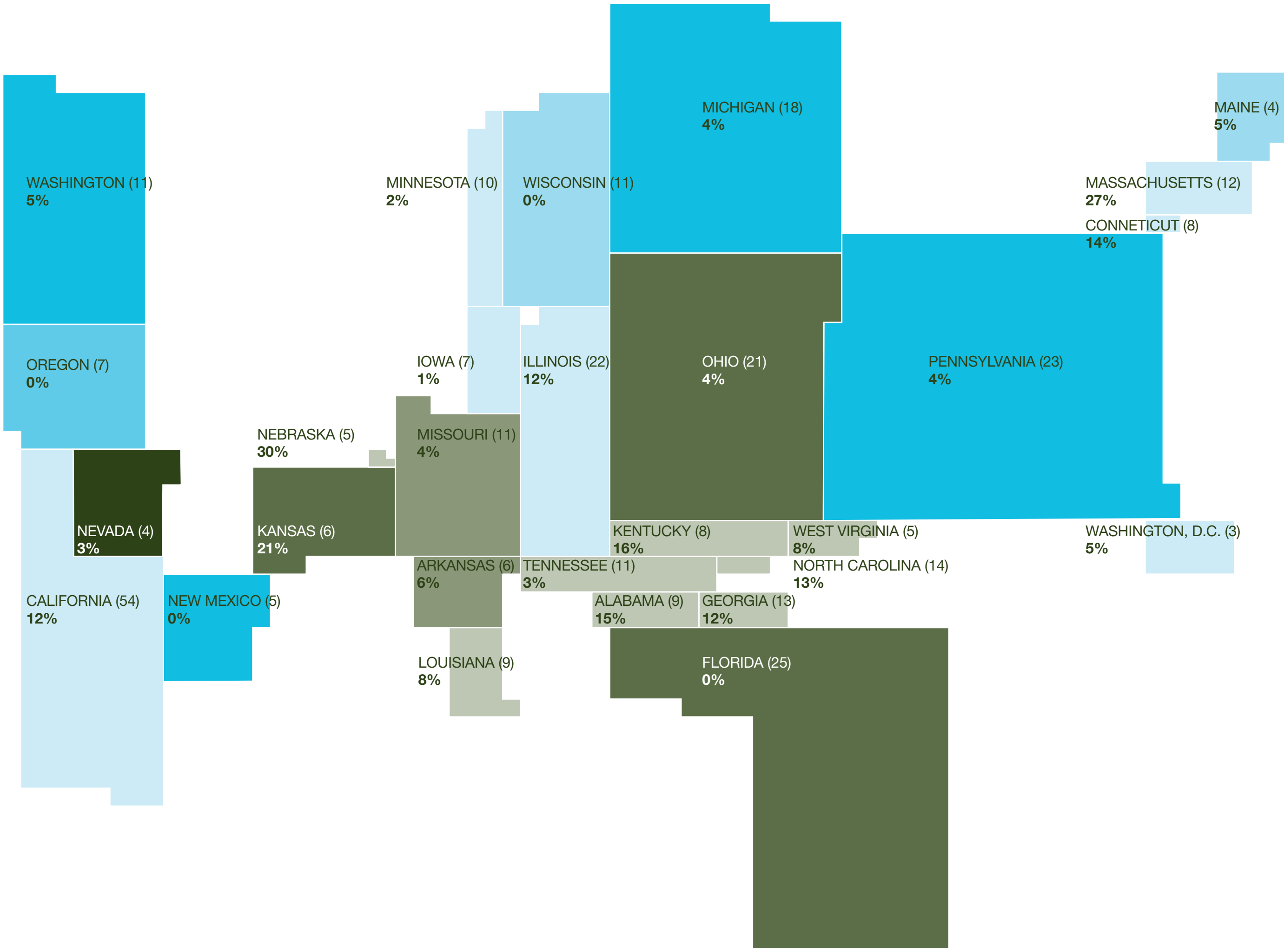
Group Spending on the Presidential Race – States where both Pro-Bush and Pro-Gore groups spent $$

Figure A-5. Head-to-Head Interest-Group Spending, by State

As shown in the accompanying map (*see* Figure A-6), several states received grossly disproportionate attention in terms of ad buys compared to their electoral college votes. In this map, designed to express how the players viewed the electoral landscape, size of state is determined by cumulative campaign spending in that state by Bush, Gore, the DNC, the RNC, and interest groups. Color of state indicates the winner. The intensity of the color in that state corresponds to the amount of money spent per eligible voter. In this graph, the amount of eligible voters includes some citizens actually barred from voting due to felony conviction.

States that received less than $1,000 in presidential ad spending are omitted.

Right: Figure A-6. Ad Spending on Presidential Race



Cumulative spending per state:

= $1,600,000
= $100,000

Winner:

= Bush
= Gore

Price paid per eligible voter:

= $0.00 - .99
= $1.00 - 1.99
= $2.00 - 2.49
= $2.50 - 3.49

Electoral Votes:

State Name (#)
= Electoral Votes

Vote Margin:

#% = Vote margin of winning candidate

States with no spending:

That Bush won

ALASKA (3)
ARIZONA (8)
COLORADO (8)
IDAHO (4)
INDIANA (12)
MISSISSIPPI (7)
MONTANA (3)
NEW HAMPSHIRE (4)
NORTH DAKOTA (3)
OKLAHOMA (8)
SOUTH CAROLINA (8)
SOUTH DAKOTA (3)
TEXAS (32)
UTAH (5)
VIRGINIA (13)
WYOMING (3)

That Gore won

DELAWARE (3)
HAWAII (4)
MARYLAND (10)
NEW JERSEY (15)
NEW YORK (33)
RHODE ISLAND (4)
VERMONT (3)

appendix B

Senate and House Profiles

With the Republican Party controlling the House and Senate by small margins, the 2000 elections were the focus of both parties' ambitions to improve their position in each legislative body. Because control of the House and Senate depended largely on the outcome of a handful of competitive races, an analysis of several key races is included in this report. Information on the timing, location, and magnitude of ad buys provides a clearer picture of the air war being waged for the control of Congress. Each profile provides the amount spent on TV ads by candidates, parties, and groups, as well as final vote percentages in these races. Also included are final figures reported to the FEC on all campaign spending along with graphs highlighting important features of each particular race, such as tone and selected market locations.

Virginia

SENATE RACE: ROBB-ALLEN

Incumbent Senator Chuck Robb was challenged by outgoing Governor George Allen in a closely contested race that ultimately saw Robb lose the Senate seat he had held since 1989. Robb, the Democratic Party, and pro-Robb groups spent $9.77 million on his campaign, while Allen, the GOP, and pro-Allen groups spent $9.35 million.

Robb's candidate committee spent only $3.7 million on ads versus Allen's $5.25 million, but Robb was helped significantly by his party and sympathetic groups, as the Democratic Party outspent the Republican Party by over $1 million and pro-Robb groups spent nearly $1 million more than pro-Allen groups. These two edges contributed to the overall lead Robb enjoyed in terms of ad volume for the last seven weeks of the campaign. In those remaining weeks, pro-Robb ads outnumbered pro-Allen ads every single day.

One clue to Allen's victory may lie in the tone of ads each candidate chose to run. Ads by Allen were 45% positive, 40% contrasting, and 15% attack ads. But Robb's campaign aired no ads that were outright negative. About 39% of Robb's ads were positive, while 61% were contrasting ads. Overall, however, 40% of all Robb ads run by the party, the candidate, and pro-Robb groups combined were negative in tone, compared to just 20% for all pro-Allen ads combined. This was because party and group ads accounted for more than 60% of the pro-Robb spending, and, taken together, party and group ads were 65% negative and 35% contrasting. The Democratic Party and pro-Robb groups did not air a single positive ad. Thus while Robb's campaign eschewed ads that were solely negative, Robb's allies aired thousands of negative ads on his behalf.

Democrat: Charles Robb
Total FEC Spending: $6,537,158
Vote Percentage: 47.7%

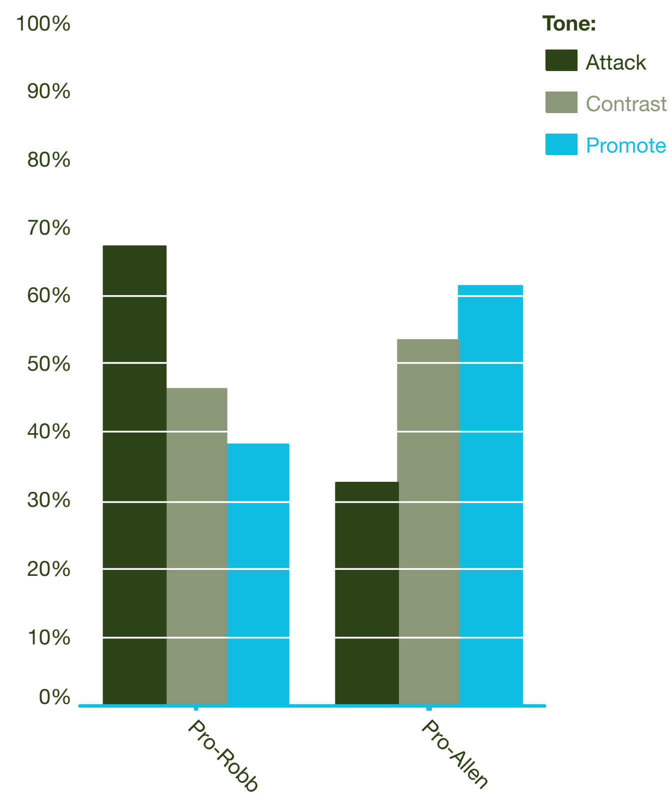
Total Ad Spending for Robb:

Candidate	$3,717,342	38.7%
Party	$5,022,088	51.2%
Group	$1,033,783	10.1%
Total	$9,773,213	100.0%

Republican: George Allen
Total FEC Spending: $9,980,930
Vote Percentage: 52.3%

Total Ad Spending for Allen:

Candidate	$5,256,525	56.2%
Party	$3,999,348	42.8%
Group	$94,549	1.0%
Total	$9,350,422	100.0%



Tone of Pro-Robb and Pro-Allen Ads

New Jersey

SENATE RACE: CORZINE-FRANKS

In one of the most highly publicized races in the nation, millionaire Jon Corzine faced Congress Member Bob Franks in the New Jersey Senate race. Corzine's immense wealth and his willingness to use it made him a national figure in the 2000 campaigns. Eventually spending more than $60 million, Corzine spent heavily on television ads to defeat former Governor Jim Florio in the primary and Franks in the general election.

Corzine spent more money on television ads than any other Senate candidate. Aside from attempting to build his name recognition, unique geopolitical features of New Jersey forced Corzine to spend heavily in order to get his message out. As New Jersey lacks its own major media market, the candidates had to air ads in Philadelphia and New York in order to reach the electorate. Given that it was a presidential election year, with Senate candidates also running in tight races in New York and Pennsylvania, the cost of ad buys dramatically increased.

Franks received no help from the Republican Party in the form of party ads. If the party was aiding Franks with television ads, it did so without directly placing ads in the major markets.

Franks was never able to mount a significant air presence compared to Corzine, but Corzine ultimately won by less than four percentage points. According to *Campaigns and Elections,* "Corzine's extraordinary campaign, with its record breaking spending, probably could have been stopped—by money, and relatively little of it, at the right time."[1] The analysis here indicates that Corzine's lopsided advantage in TV spending did not produce a similar lopsided advantage at the polls.

Democrat: Jon Corzine
Total FEC Spending: $63,209,506
Vote Percentage: 50.1%

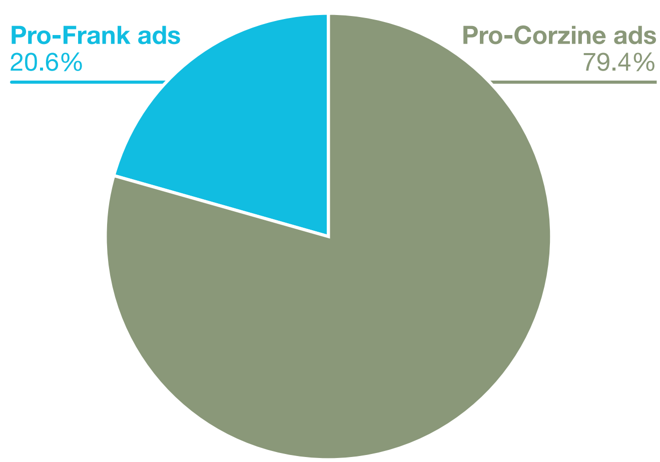
Total Spending for Corzine:

Candidate	$32,885,265	100%
Party	$0	0%
Group	$0	0%
Total	$32,885,265	100%

Republican: Bob Franks
Total FEC Spending: $6,609,425
Vote Percentage: 47.1%

Total Spending for Franks:

Candidate	$4,982,986	88.5%
Party	$0	0%
Group	$644,109	11.5%
Total	$5,627,095	100%



Percentage of All Ads Aired on Behalf of Franks vs. Corzine

1. David Beiler, "Jon Corzine and the Power of Money," *Campaigns and Elections* (Apr. 2001), Vol. 22, No. 2, at 36.

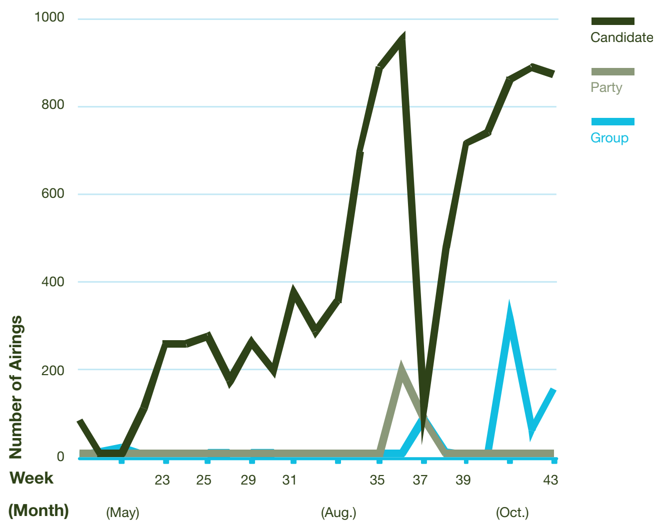
Washington

SENATE RACE: CANTWELL-GORTON

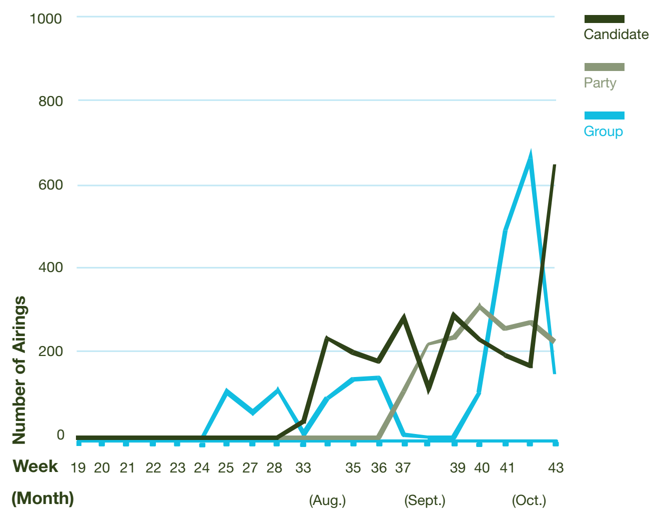
In an extremely close race between an incumbent Republican senator and a wealthy Democratic challenger, Washington voters may not have noticed the unique nature of the ad war taking place on their TV screens. While Maria Cantwell paid for more than $6 million worth of ads, compared to $160,000 by the Democratic Party and $543,352 by sympathetic groups, Slade Gorton's campaign spent just $1.55 million, the Republican Party $1.2 million, and pro-Gorton groups $1.5 million. Whereas the national Republican party committees spent heavily to promote Senate candidates in other states, in the state of Washington the Republican Party was outspent by both the candidates and outside groups.

The Cantwell-Gorton race saw an unusually large amount of independent group spending, and almost half of all group ads were negative in tone. Cantwell's candidate campaign maintained a predominantly positive message, as over 63% of her ads promoted her own candidacy and just 10% were negative. Ads by the Gorton campaign were 55% positive and 14% negative.

Most noticeable on the Republican side was how dramatically pro-Gorton group spending increased in the final weeks of the election. Group spending accelerated past party spending and was even more voluminous than Gorton's own spending until just two weeks before election day.



Pro-Cantwell Spending, by Sponsor



Pro-Gorton Spending, by Sponsor

Democrat: Maria Cantwell
Total FEC Spending: $11,571,697
Vote Percentage: 48.7%

Total Spending for Cantwell:

Candidate	$6,187,013	89.8%
Party	$159,371	2.3%
Group	$543,352	7.9%
Total	$6,889,736	100%

Republican: Slade Gorton
Total FEC Spending: $6,402,488
Vote Percentage: 48.6%

Total Spending for Gorton:

Candidate	$1,552,360.0	36.4%
Party	$1,213,613.0	28.5%
Group	$1,499,209.0	35.1%
Total	$4,265,182.0	100%

New York

SENATE RACE: CLINTON-LAZIO

The race to succeed retiring New York Senator Patrick Moynihan was one of the most closely watched in 2000. As the first First Lady ever to run for Senate, Hillary Clinton brought national attention to New York's Senate race. Initially running against New York City Mayor Rudy Giuliani, Clinton eventually faced Congress Member Rick Lazio in the general election after Giuliani withdrew from the race for health reasons.

More than 40,000 ads were aired as Lazio and Clinton battled across New York State. Voters in New York City, Albany, Buffalo, Rochester, and Syracuse saw heavy amounts of advertising by the candidates, parties, and groups. The tone of the race overall was mixed, with positive ads accounting for 48% of the airings and contrasting and attack ads amounting to 21% and 30%, respectively.

Clinton received significant air assistance from the party, while Lazio did not. Though Clinton's campaign spent $17.7 million on ads compared to Lazio's $21.9 million, the Democratic Party spent $4.7 million on ads supporting Clinton. The Republican Party stayed largely out of the ad war, spending just $67,840 on behalf of Lazio. This was far less than the $309,188 Republican groups spent to assist Lazio. The Democratic Party's assistance kept Clinton competitive on the air and allowed her campaign to husband resources for other uses.

Before signing a unique "soft money ban" which mandated that the parties not spend soft money to promote either of their candidacies, both Clinton and Lazio attempted to extract promises that outside groups would not spend soft money as well. Suggesting that outside groups may have honored their promises, outside groups did very little TV advertising in the Senate campaign. While there were fears that outside groups would spend millions to tip the balance in the election, groups accounted for just 2% of the total ads in the race. Clinton won by a larger than expected margin of 55%-44%.

Democrat: Hillary Rodham Clinton (D)
Total FEC Spending: $29,871,577
Vote Percentage: 55.0%

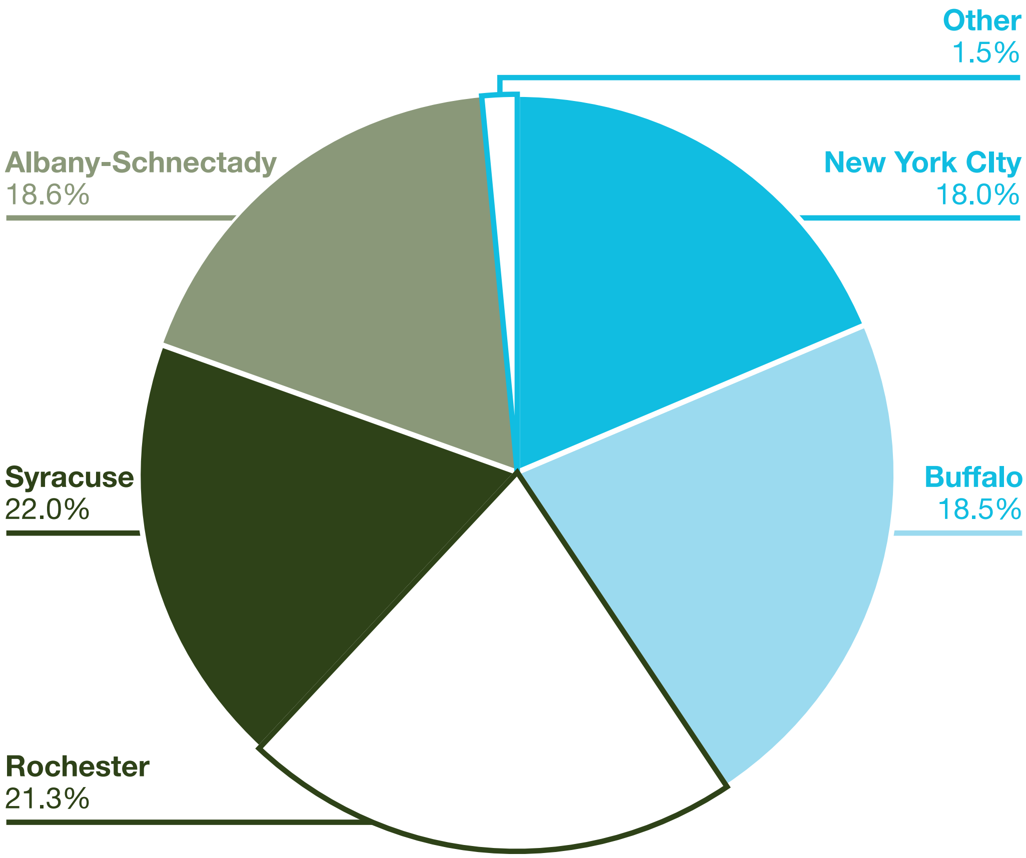
Total Spending for Clinton:

Candidate	$17,787,945	79%
Party	$4,761,588	21%
Group	$0	0%
Total	$22,549,533	100%

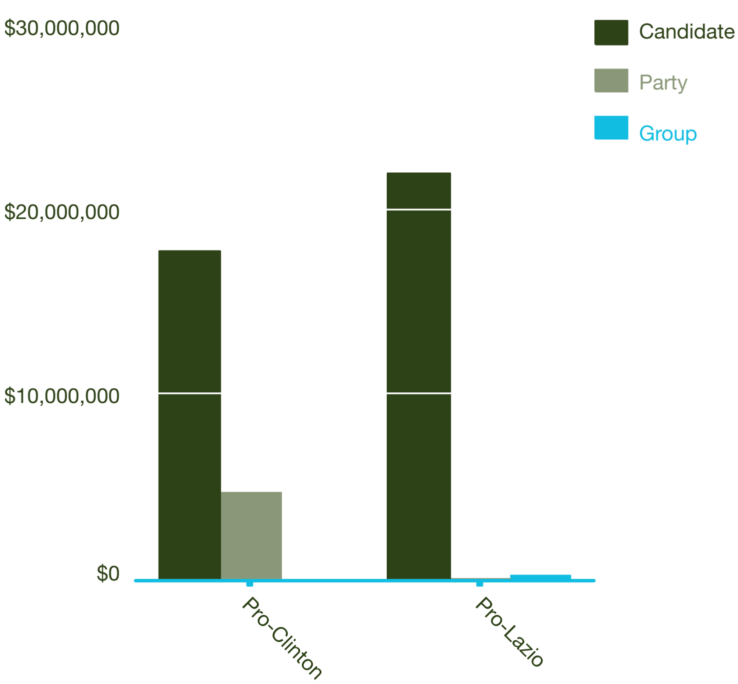
Republican: Rick Lazio
Total FEC Spending: $40,576,273
Vote Percentage: 44.0%

Total Spending for Lazio:

Candidate	$21,904,088	98%
Party	$67,840	.5%
Group	$309,188	1.5%
Total	$22,281,116	100%



Total Airings, by Market



Total Spending, by Sponsor

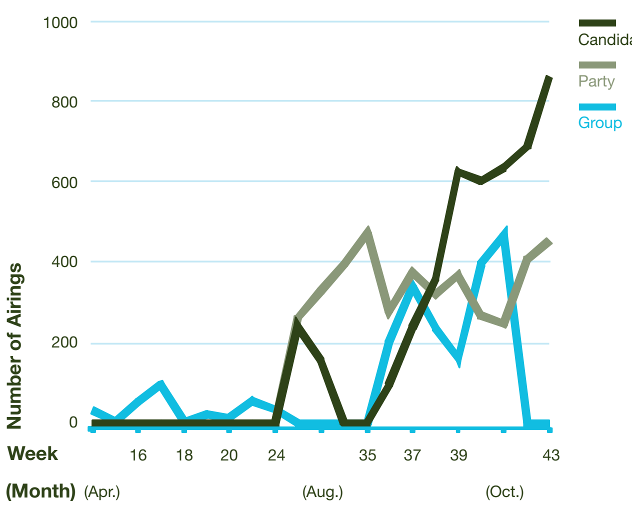
Michigan

SENATE RACE: STABENOW-ABRAHAM

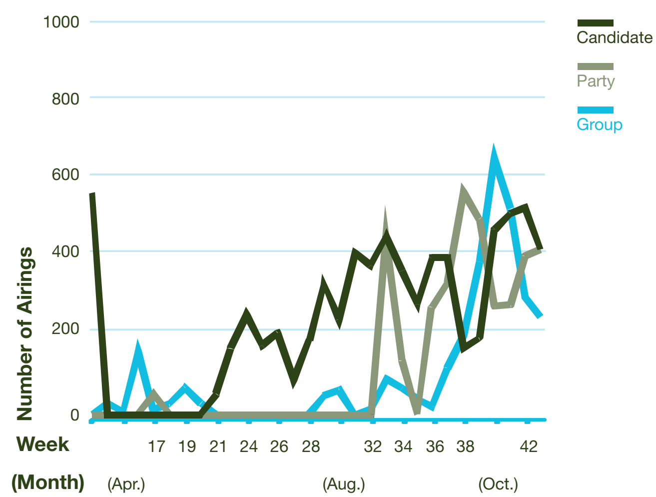
The 2000 Michigan Senate race saw Democratic Congress Member Debbie Stabenow come from behind in the polls to defeat incumbent Republican Senator Spencer Abraham in a race that saw large amounts of party and group advertising. Almost 25,000 ads were aired in the race and voters in the Detroit, Flint, and Grand Rapids markets saw the vast majority of these. The tone of the race was split roughly in thirds, as positive ads accounted for 35% of the airings, contrasting ads 29%, and attack ads 36%.

Michigan's race was unique in that groups successfully maintained their strength in the race as Election Day neared. As the overall volume of candidate and party ads increased, interest groups adjusted their outlays to keep up their share of the airings. Groups supported Abraham with 50% more ads than they did Stabenow, as Abraham's candidacy was helped by roughly 3,100 group-sponsored ads compared to 2,100 for Stabenow. Overall, groups aired 20% of the ads in the election, and their expenditures were competitive with party expenditures, equaling over 70% of the aggregate party spending.

The two political parties appeared to have spent themselves to a draw, with each spending $2.7 million supporting their candidate. However, the Democratic Party appears to have been extremely successful in timing their ads in order to allow Stabenow to conserve resources. On more than one occasion, party airings increased just as Stabenow's own airings decreased.



Pro-Stabenow Airings, by Sponsor



Pro-Abraham Airings, by Sponsor

Democrat: Debbie Stabenow
Total FEC Spending: $7,971,450
Vote Percentage: 49.5%

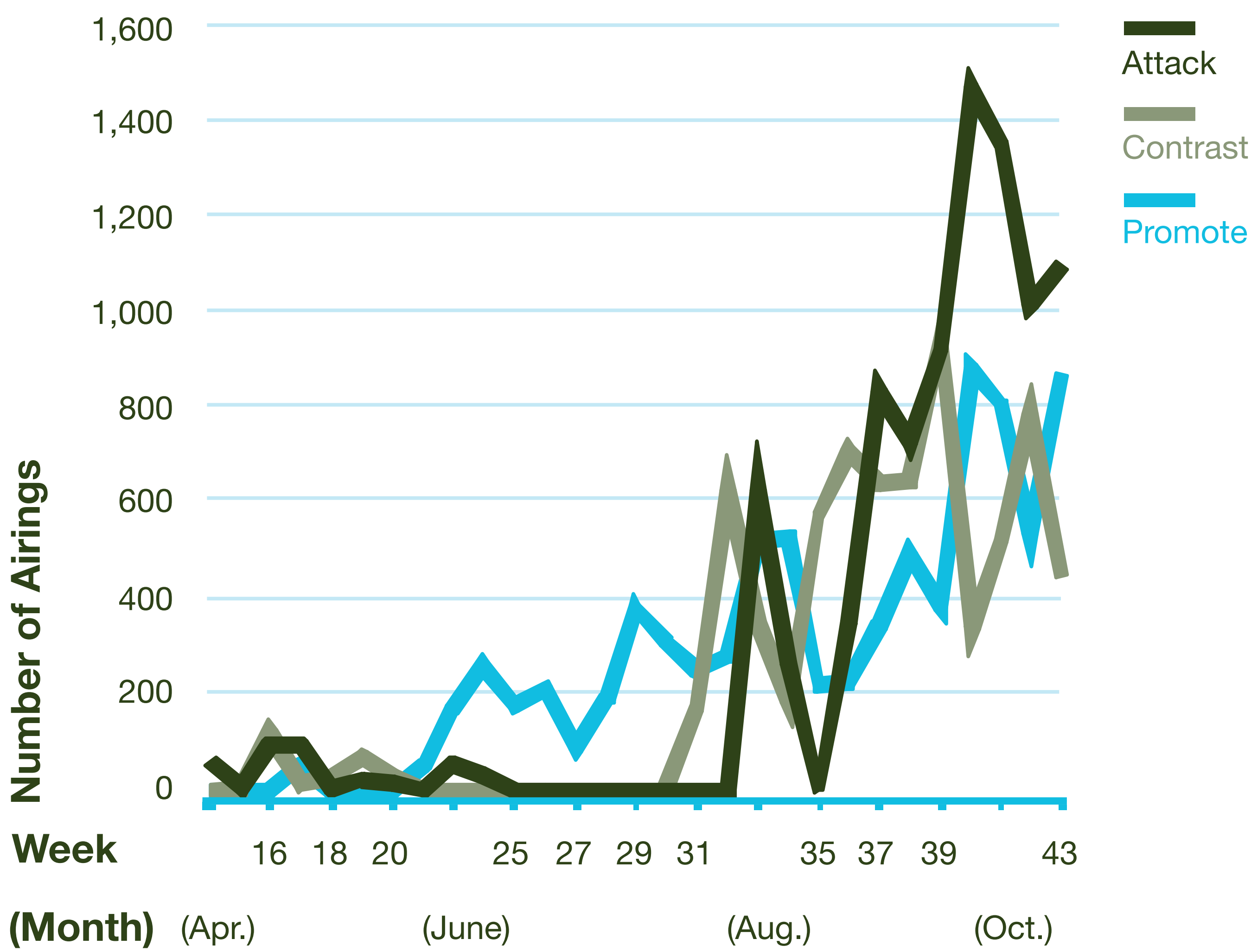
Total Spending for Stabenow:

Candidate	$3,565,324	44.6%
Party	$2,760,750	34.5%
Group	$1,675,836	20.9%
Total	$8,001,910	100%

Republican: Spencer Abraham
Total FEC Spending: $13,028,636
Vote Percentage: 47.9%

Total Spending for Abraham:

Candidate	$5,130,709	50.2%
Party	$2,776,958	27.2%
Group	$2,309,322	22.6%
Total	$10,216,989	100%



Tone of All Ads, by Week

New Jersey

12TH DISTRICT HOUSE RACE: HOLT-ZIMMER

In a race that remained too close to call weeks after the election, Congress Member Rush Holt eventually succeeded in retaining his House seat for a second term. Opposed by Dick Zimmer, a former Congress Member who represented the 12th District from 1990-1996, Holt had defeated Congress Member Mike Pappas in 1998 but was faced with a tough re-election fight in 2000.

The Democratic Party came to Holt's assistance with more than $2.8 million in TV advertising. The Democratic Party spent more on TV ads in Holt's race than in any other House race in the country. Notably, Holt's campaign itself did not air ads on his behalf that were captured by the CMAG satellite, meaning either that the campaign elected not to run ads or that the ads they ran were on cable television. Zimmer's campaign did run ads, but not nearly as many as the Republican Party did on his behalf. While the Zimmer campaign spent more than $600,000 airing 297 ads, the party spent $1.4 million airing 471 ads. Their combined effort, however, was not enough to match the Democratic Party ad buy, which included nearly 1,000 airings promoting Holt. Holt ultimately defeated Zimmer by less than 500 votes cast out of roughly 280,000 cast.

Democrat: Rush D. Holt
Total FEC Spending: $2,566,080
Vote Percentage: 48.7%

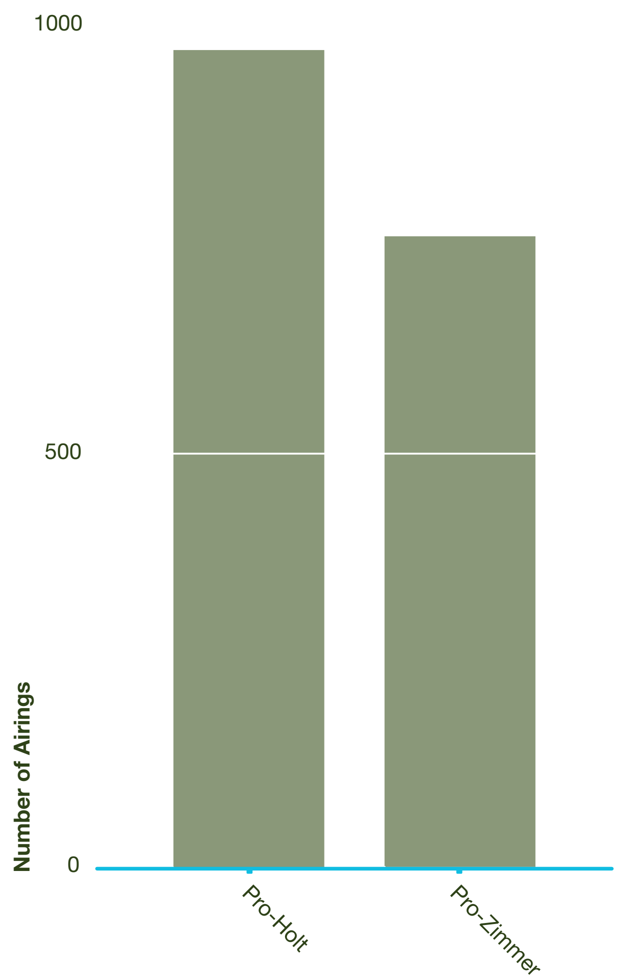
Total Spending for Holt:

Candidate	$0	0%
Party	$2,780,509	100%
Group	$0	0%
Total	$2,780,509	100%

Republican: Dick Zimmer
Total FEC Spending: $2,197,628
Vote Percentage: 48.5%

Total Spending for Zimmer:

Candidate	$611,869	31.1%
Party	$1,352,540	68.9%
Group	$0	0%
Total	$1,964,409	100%



Total Number of Ads Aired for Holt vs. Zimmer

California

49TH DISTRICT HOUSE RACE: DAVIS-BILBRAY

Having won the 1998 race to represent the 49th California congressional district by just three percentage points, Republican candidate Brian Bilbray was a natural target for the Democrats. State Senator Susan Davis succeeded in her challenge to Bilbray, defeating him by a margin of 50%-46%.

Bilbray depended on large amounts of group advertising in his race, as group-sponsored spending on ads accounted for 68% of pro-Bilbray ads compared to 21% aired by the candidate and 12% aired by the party. The 49th District saw more pro-Republican group spending than any other congressional district in California and in the country. By comparison, groups accounted for 38% of the pro-Davis spending, the party accounted for 30%, and the candidate 32%. Still, this group spending was the second largest of all pro-Democratic group spending in the House races.

Pro-Davis ads enjoyed a healthy lead in terms of total airings until the middle of October, when pro-Bilbray ads accelerated to more than 600 ads per week.

Democrat: Susan A. Davis
Total FEC Spending: $1,926,497
Vote Percentage: 49.7%

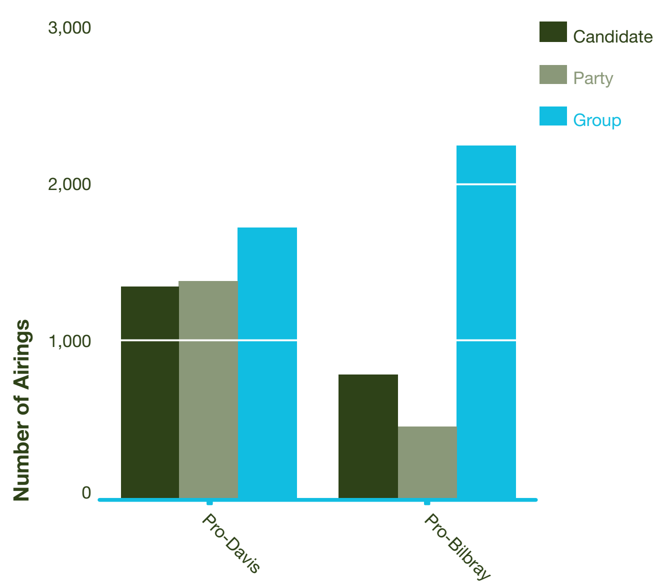
Total Spending for Davis:

Candidate	$1,259,441	32.1%
Party	$1,172,505	29.9%
Group	$1,489,387	38.0%
Total	$3,921,333	100%

Republican: Brian P. Bilbray
Total FEC Spending: $1,846,574
Vote Percentage: 46.2%

Total Spending for Bilbray:

Candidate	$684,281	20.8%
Party	$397,570	12.1%
Group	$2,213,364	67.2%
Total	$3,295,215	100%



Total Number of Ads Aired for Davis vs. Bilbray, by Sponsor

Kentucky

Congress Member Anne Northup faced a challenge from State Senator Eleanor Jordan in a race political prognosticators had defined as leaning Republican, despite the fact that 59% of 3rd District residents are registered Democrats. Having first won in 1996, and re-election in 1998 by a 52%-48% margin, Northup held a seat targeted by the Democratic Party.

3RD DISTRICT HOUSE RACE: JORDAN-NORTHUP

The campaign saw large amounts of candidate, party, and group spending. Pro-Jordan and pro-Northup ads by all sponsors were in close proportion throughout the race, but pro-Northup ads became significantly more frequent with three weeks remaining in the election. Pro-Northup group ads were markedly greater in volume than party ads, totaling 1,946 ads compared to 425 ads. Citizens for Better Medicare and the Chamber of Commerce were two groups that attacked Jordan with large advertising buys.

Democrat: Eleanor Jordan
Total FEC Spending: $$1,700,171
Vote Percentage: 44.2%

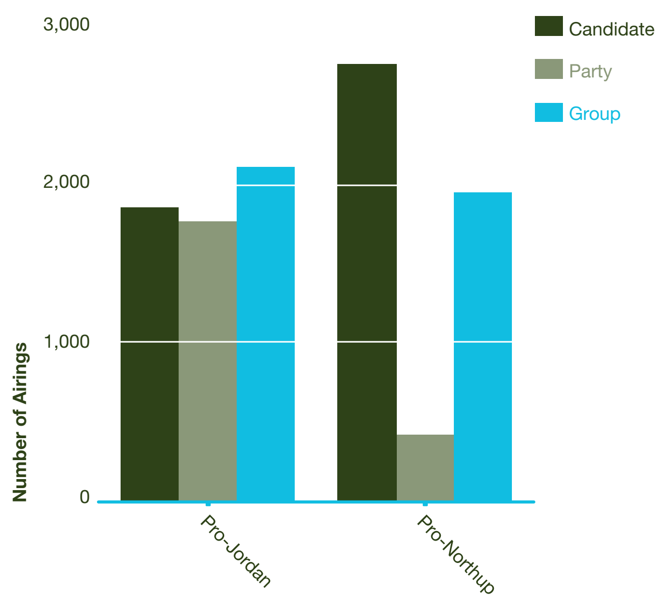
Total Spending for Jordan:

Candidate	$699,308	28.3%
Party	$821,837	33.2%
Group	$953,564	38.5%
Total	$2,474,709	100%

Republican: Anne Northup
Total FEC Spending: $2,904,751
Vote Percentage: 52.9%

Total Spending for Northup:

Candidate	$1,531,325	59.9%
Party	$236,655	9.3%
Group	$787,214	30.8%
Total	$2,555,194	100%



Total Number of Ads Aired for Jordan vs. Northup, by Sponsor

Pennsylvania

4TH DISTRICT HOUSE RACE: VAN HORNE-HART

Attempting to fill the seat left open by Ron Klink (D), who resigned to run for Senate, candidates Melissa Hart and Terry Van Horne battled in a race many thought would be extremely close. However, Hart ultimately won by a margin of 59%-41%, becoming the first female Republican Congress Member from Pennsylvania.

Both candidates received significant ad help from parties and groups. Van Horne received particularly strong assistance from the party: 80% of all pro-Van Horne ads were paid for by the party. Just 21% of spending on ads was by the candidate's campaign and only 1.5% by sympathetic groups. At the same time Hart's campaign accounted for 44% of spending on pro-Hart ads, the party 40%, and groups 17%.

The timing of ads was notable for the apparently different strategies at work. With two weeks left, pro-Van Horne ads and pro-Hart ads were roughly even in volume. But the pro-Van Horne ads, sponsored mostly by the Democratic Party, scaled down dramatically as Election Day neared. At the same time, ads promoting Hart escalated with groups, the Republican Party, and the candidate increasing their spending. These spending efforts were maintained, though at a slightly lower level, through the final week of the campaign.

Democrat: Terry Van Horne
Total FEC Spending: $673,346
Vote Percentage: 41.0%

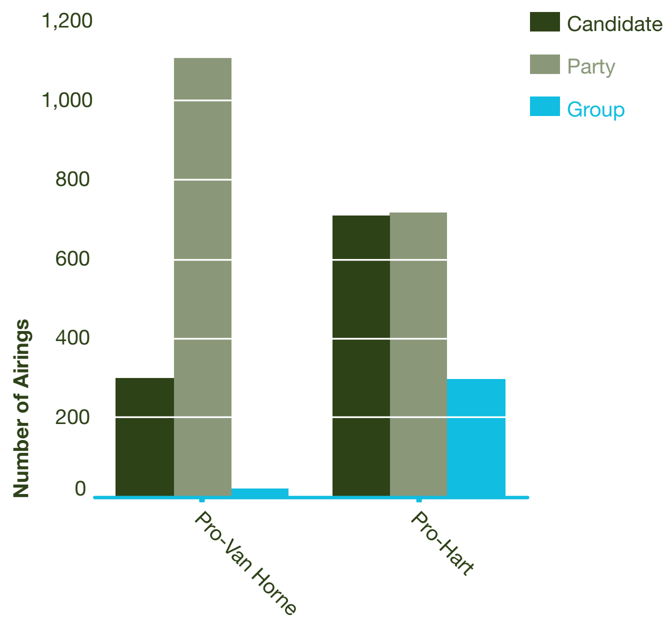
Total Spending for Van Horne:

Candidate	$219,212	18.4%
Party	$950,646	79.6%
Group	$23,835	2.0%
Total	$1,193,693	100%

Republican: Melissa Hart
Total FEC Spending: $1,724,048
Vote Percentage: 59.0%

Total Spending for Hart:

Candidate	$677,289	43.5%
Party	$617,501	39.7%
Group	$260,864	16.8%
Total	$1,555,654	100%



Total Number of Ads Aired for Van-Horne vs. Hart, by Sponsor appendix C

Coding the Commercials

4. Is the ad aired for a general election or a primary election?

1. Primary
2. General

5. What is the party of the favored candidate?

1. Democrat
2. Republican
3. Other

6. What is the seat's incumbent status?

1. Open Seat
2. Republican Seat
3. Democratic Seat
4. Other (Independent Seat)

7a. Does the ad direct viewer to take any action (as opposed to merely providing information)?

0. No
1. Yes

8. (If yes to #7) What is that action?

0. Not applicable
1. Other
2. To vote for someone
3. To support someone
4. To elect or re-elect someone
5. To write, call, or tell someone to do something
6. To reject someone
7. To urge action or attention to a particular matter
8. To defeat someone
9. To send a message or call someone to express yourself
10. To vote against someone

9. (If an ad asks people to contact a public official) Does it provide a specific bill number to discuss or urge action on?

0. No
1. Yes

10. (If an ad asks people to contact a public official) Does it provide a phone number or address to help them to do so?

1. Toll number listed
2. No
3. Toll-free telephone number listed
4. Address listed

11. In your opinion, is the purpose of the ad to provide information about or urge action on a bill or issue, or is it to generate support or opposition for a particular candidate?

1. Generate support or opposition for a candidate
2. Provide information or urge action
3. Unsure/Unclear

12. Is the favored candidate…

0. Not applicable
1. Mentioned
2. Pictured in the ad
3. Not identified at all
4. Both mentioned and pictured in the ad

13. Is the favored candidate's opponent…

0. Not applicable
1. Not identified at all
2. Both mentioned and pictured in the ad
3. Pictured in the ad
4. Mentioned by name in the text of an ad

14. In your judgement, is the primary purpose of the ad to promote a specific candidate ("In his distinguished career, Senator Jones has brought millions of dollars home. We need Senator Jones."), to attack a candidate ("In his long years in Washington, Senator Jones has raised your taxes over and over. We can't afford 6 more years of Jones.") or to contrast the candidates ("While Senator Jones has been raising your taxes, Representative Smith has been cutting them.")?

0. Not applicable
1. Attack
2. Contrast
3. Promote
4. Unsure/Unclear

15a. Does the favored candidate appear on screen narrating his or her ad?

0. No
1. Yes
2. Not applicable

16. Is the office at stake mentioned in the ad?

0. Not applicable
1. Yes – referred to in text of the ad
2. No
3. Yes – written in one of the visual frames of the ad
4. Yes – referred to in both the text and visuals of the ad

17. Is an opponent's commercial mentioned or shown on screen?

0. Not applicable
1. Yes – opponent's commercial is shown on screen
2. Yes – opponent's commercial is referred to in text and screen
3. No
4. Yes – opponent's commercial is referred to in text

18. Does the ad use any of the following adjectives to characterize the favored candidate? (first mention)

0. Not applicable
1. Common sense leadership
2. Independent
3. Innovative
4. Self made
5. Caring/Compassionate
6. Bold
7. Principled
8. Tough/Fighter
9. Proven/Tested/Experienced
10. Values (shares them, has American ones...)
11. No adjectives or descriptions of candidates
12. Protector
13. Moderate/Middle of the road/Mainstream
14. Conservative
15. Fiscally conservative
16. Hardworking
17. Friend of Clinton
18. Committed
19. Visionary
20. Reformer
21. Competent/Knows how to get things done
22. Honest
23. Family man
30. Other

19. Second mention (same as #18)

20. Does the ad use any of the following adjectives to characterize the opposing candidate? (first mention)

0. Not applicable
1. Dishonest/Corrupt
2. Dangerous
3. Friend of Pat Robertson/Religious Right
4. Reckless
5. Too risky
6. Turncoat
7. Incompetent
8. Taxing (or some version of liking taxes)
9. Hypocrite
10. Extremist/Radical
11. Career Politician
12. Heartless (may be used in reference to Social Security)
13. Friend of Newt Gingrich
14. Negative
15. Liberal
16. Reactionary/Right-Wing
17. Friend of special interests
18. No adjective or description
19. Friend of Clinton
30. Other

21. Second mention (same as #20)

22. Does the ad mention the party label of the favored candidate or the opponent?

0. Not applicable
1. No
2. Yes – opposing candidate's party
3. Yes – both candidates' party affiliations are mentioned
4. Yes – favored candidate's party

23a. Does the ad use technology to distort (i.e. morph) the opposing candidate's face?

0. No
1. Yes
2. Not applicable

24a. Is the ad funny or is it intended to be humorous?

0. No
1. Yes

25. Does the ad refer to newspaper stories or editorials?

1. Yes – in both the text and the visuals of the ad
2. No
3. Yes – in the visuals of the ad
4. Yes – in the text part of the text of the ad

26. Does the ad cite supporting sources (including in footnotes) to bolster various claims?

1. Yes – in the visuals of the ad
2. No
3. Yes – in the text part of the text of the ad

27. In your judgement, is the primary focus of this ad on the personal characteristics of either candidate or on policy matters?

1. Policy matters
2. Personal characteristics
3. Both
4. Neither

28. Does the ad feature a celebrity or a politician endorsing the candidate?

1. Celebrity
2. Politician
3. Neither

29. Is the ad in Spanish?

0. No
1. Yes

30. Is the ad directly targeted to appeal to a racial minority?

0. No
1. Yes

31. Are the people in the ad racially diverse?

0. No
1. Yes

32-35. Campaign Themes

1. Background
2. Political record
3. Attendance record
4. Ideology
5. Personal Values
6. Honesty/Integrity
7. Special Interests
10. Taxes
11. Deficit/Surplus/Budget/Debt
12. Government Spending
13. Minimum Wage
14. Farming
15. Business
16. Employment/jobs
17. Poverty
18. Trade/NAFTA
19. Other economic reference
20. Abortion
21. Homosexuality
22. Moral values
23. Tobacco
24. Affirmative Action
25. Gambling
26. Assisted Suicide
27. Gun Control
28. Other reference to social issues
30. Crime
31. Drugs
32. Death Penalty
33. Other references to law and order
40. Education
41. Lottery for education
42. Child Care
43. Other child-related issues
50. Defense
51. Missile Defense/Star Wars
52. Veterans
53. Foreign Policy
54. Bosnia
55. China
59. Other defense/foreign policy issues
60. Clinton
61. Ken Starr
62. Whitewater
63. Impeachment
64. Sexual harassment/Paula Jones
70. Environment
71. Immigration
72. Health Care
73. Social Security
74. Medicare
75. Welfare
76. Civil Rights/Race Relations
77. Campaign Finance Reform
78. Government Ethics
95. Other
99. None

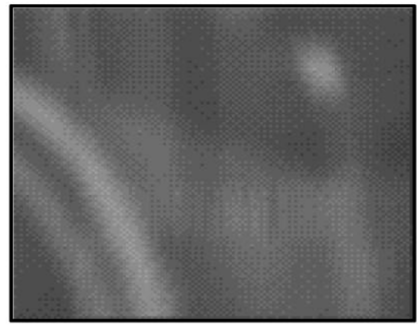
appendix D.

Sample Storyboard

The coding process was a key element of our study. A sample storyboard is presented here to demonstrate what the undergraduate students had available to them when coding the ads. Students utilized the coding protocol displayed in Appendix C to analyze the storyboards. The storyboard contains the full ad script and ad visuals captured every 4-5 seconds.

[Announcer]: There's a nursing home crisis in America. Despite record budget

surpluses Medicare has been cut by billions.



Seniors' access to quality nursing home care threatened.

[Woman]: "Caring for the elderly: it becomes your life.

But with Medicare cuts my job is much harder." [Announcer]:

Call. Tell Al Gore to fight to restore the Medicare cuts.

Keep the promise. [Woman]: "Help me help those who need it the most."