Campaign Finance Reform

By David A. Owen

This essay provides an overview of the current federal laws and regulations governing the financing of federal campaigns and suggests areas of possible reform. The discussion centers on funds raised and spent by candidates, as well as monies raised by parties and other independent groups and organizations, in their efforts to affect the outcome of elections for federal offices. Included is an overview of the major areas in which reforms are being pursued and the possible effects of these reforms on the federal campaign finance system.

INTRODUCTION

It doesn't take a high-paid pollster, or a top-notch political consultant to make the observation that by and large in recent years the American public has become increasingly detached from politics, and their confidence in the system by which we elect politicians is waning. A simple look at voter turnout numbers for the four most recent national election cycles (National Voter Turnout in Federal Elections: 1960-1996 n.d., 1) will illustrate that more and more Americans are interested less and less about politics and what takes place in our nation's capital.

This increased apathy towards our political process can be attributed to many factors. Some scholars argue that because our economy is doing so well, average Americans have less of a need to rely on politics to solve pressing issues in their lives. However, many others point to an increasing lack of trust in not only politicians (something that has been present ever since the invention of our political process) but also in the system by which they come to power. It is the contention of this paper that our current system of financing federal campaigns through the use of soft money and other loopholes has eroded public confidence in the process of electing leaders for our nation and that only through valid and proactive reform measures can we begin to undo this damage. I will begin by examining how changes in campaign financing led to the phenomenon of so called "soft-money" or non-federal contributions to party committees. I will also discuss another loophole referred to as the independent expenditure law.

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Table 1
'Soft Money' Growth

	Republicans	Democrats	
1992	$49.8	$36.3	(Millions)
1994	$52.5	$49.1	
1996	$141.2	$122.3	
1998	$131.0	$91.5	
2000	$244.4	$243.1	

Source: Federal Election Commission reports

SOFT MONEY

> The concept of soft money was developed in 1978 by a Federal Elections Commission ruling, but was not used to any great degree until the 1988 presidential campaign. Since that time, solicitations and donations have grown exponentially, especially during the last few election cycles. In recent years, soft money has been used to buy TV ads that are virtually indistinguishable from ads promoting a candidate (Hope 1999, 2).

The explosive growth in soft money can be seen in Table 1. While soft money was limited to $86 million in 1992, by 1996 Republicans and Democrats raised $263.5 million. The deluge continued in 2000, as both parties raised $487 million, nearly double the sums gathered in 1996.

"Soft money" is unregulated money donated to political parties, ostensibly for party building activities such as voter registration drives, as opposed to the highly regulated donations to specific candidates for federal offices. More specifically, soft money consists of donations to national and state party committees (i.e. the Democratic National Committee, Republican National Congressional Committee etc.) that is used for non-candidate party activities ranging from such things as generic get-out-the-vote drives to performing voter registration and voter identification initiatives. In addition to these "party building" activities, one of the most common and expensive uses for soft dollars is in airing issue advocacy advertisements on television and radio. These are political advertisements which do not specifically advocate the victory or defeat of any one candidate but rather attempt to "educate" the public about a specific issue. We will return to the topic of issue advocacy later in this paper, as it is at the center of the "soft money" reform debate.

Table 2
Federal Contribution Limits

Contribution	By a Person	By a Political Action Committee
To a candidate	$1,000 per election	$5,000 per election
To a political party (national committee)	$20,000 per election	$15,000 per year
To a political action committee	$5,000 per year	$5,000 per year
Overall limit	$25,000	No limit

Source: Ronald J. Hrebenar, Matthew J. Burbank, and Robert C. Benedict. Political Parties, Interest Groups, and Political Campaigns. Boulder, CO: Westview Press. 1999. p.136

The term "soft money" came about in response to the stringent limits placed by the Federal Elections Commission (FEC) on the amounts individuals, political action committees, labor unions, and corporations may contribute directly to federal candidates (commonly referred to as "hard money). Table 2 summarizes current FEC rules. An individual may contribute a maximum of $1,000 per cycle, which includes both the primary and general election, thus amounting to a total of $2,000 per election. However, individuals are prohibited from contributing an aggregate in excess of $25,000 per cycle unless it is to their own campaign in which case they can contribute an unlimited amount. Political Action Committees (PACs) that qualify as multi-candidate (meaning they meet certain heightened restrictions based on how many people contribute to them as well as how many candidates they contribute to) are able to donate up to $5,000 per cycle or a total of $10,000 an election to a federal candidate (Ortiz 1998, 64).

While it may come as somewhat of a surprise to most people who are unfamiliar with the specifics of campaign fund-raising laws, current Federal Elections Commission rules prohibit corporations from making direct donations to candidates for federal offices. The basis for our current system of campaign financing laws is the Federal Election Campaign Act (FECA) of 1974 which, among other things, created the Federal Elections Commission to regulate fund-raising activities by federal candidates. While this law specifically prohibited corporate contributions to candidates for federal offices, it contained one very important loophole which opened the door some 4 years later to the rise of "soft money": FECA prohibited any non-individual contributions to federal candidates and/or parties with the exception of donations to party apparatuses for the purposes of "party building" activities, as was mentioned above (Corrado 1999, 175). This alone, however, did not authorize unlimited contributions from corporations, unions, or individuals to national parties. The FEC in 1978, in a case involving the Republican Party of Kansas, reversed a previous decision and ruled that parties could use soft (or non-federal) funds to finance a share of their voter drives, so long as they allocated their costs to reflect the federal and nonfederal shares of any costs incurred. "The decision thus opened the door to the use of nonfederal money on election-related activity conducted in connection with a federal election" (Corrado 1999, 172).

Following the FEC's ruling in the case of the Kansas Republican Party, what constituted financing "party building" activities was interpreted on the basis of state campaign finance laws, which differed from state to state. In addition, campaign financing laws on the state level are notoriously more lax than on the federal level. For instance, under current Utah state code, not only are there no limits on the amount of contributions individuals may make to candidates for state offices, but there are also no prohibitions restricting corporate or labor contributions either. Utah has arguably the most relaxed campaign finance laws of any state in the nation. That being said, as of 1978, federal parties were allowed to pour soft "non-federal" dollars into the non-federal coffers of individual state parties, to be used according to state laws regarding campaign financing (which generally were very loose or, in some cases, non-existent). In fact, to date, the only federal laws on the books with regards to the practice of national party committees raising unlimited amounts of "soft money" were established after an arduous rule-making process in 1990 that,

> Included considerable consultation with political party lawyers and accountants. Under these rules, all party committees raising and spending soft money in conjunction with federal elections must file regular disclosure reports of their contributions and disbursements with the FEC. These reports must identify any contributors who give more than $200 to soft money accounts or party building-fund accounts. Monies raised and spent by state and local committees that are unrelated to federal election activity, however, do not have to be reported to the FEC. These funds remain subject to the reporting requirements of applicable state disclosure laws (Corrado 1999, 174-75).

Given the availability of virtually unlimited "non-federal" campaign dollars following the 1990 law, the major parties began raking in previously unseen and unbelievable amounts of soft dollars. The figures in Table 1 raise one essential question: where does all the money go? The answer is quite simple, and surprising. Flashback to the summer of 1996. President Clinton was running for reelection amid growing concerns about his personal life, his record on the economy, and on the heels of the massive Republican landslide in the 1994 midterm Congressional elections which switched control of Congress to the GOP for the first time in decades. Enter soft money, and loads of it. The Democratic National Committee spent millions of dollars of "non-federal" money promoting the "issue agenda" of the Democratic Party as well as touting many of the legislative victories of the Clinton White House, without actually mentioning or advocating the victory of President Clinton. There was just one catch: these so-called issue advertisements featured, as a commentator, none other then President Clinton. At no time during these advertisements did the President mention his own campaign or urge voters to consider him at the ballot box on election day. Despite this, the clear message to voters was that President Clinton was on television talking about the legislative victories he had won while in office. Under current Federal Elections Commission laws, this type of "issue advertisement" is completely legal and totally unregulated. In response to these advertisements, the Republican National Committee unleashed a barrage of ads featuring their own presidential candidate Bob Dole attacking popular Democratic Party and Clinton Administration positions on issues.

In response to the ballooning phenomenon of soft money, many members of Congress have called for some kind of reform. Two such members of the House of Representatives, Representative Christopher Shays (R-Conn.) and Representative Martin Meehan (D-Mass.) recently drafted a sweeping reform bill which, among other things, sought to ban the use of soft money by all federal and local parties. House Resolution 417 (referred to as the Shays-Meehan Bipartisan Campaign Finance Reform Act of 1999) would ban national party committees, including the political parties' national congressional campaign committees, from soliciting, receiving, directing, or spending soft money. In the fall of 1999, the Bipartisan Campaign Finance Reform Act (BCFRA) narrowly passed the House of Representatives and failed in the Senate by a razor thin margin. The bill attacks issue advocacy by defining "express advocacy" (i.e. advertisements specifically advocating the failure or victory of a given candidate and hence subject to regulation) as anything "using wording (phrases etc.) that could only be construed as specifically favoring a particular candidate, referring to a specific candidate in paid advertising within 60 days of the election, or expressing unmistakable, unambiguous support for or opposition to one or more clearly identified candidates" (Hope 1999, 5-6).

This bill, by far the most comprehensive and successful attempt at true campaign finance reform since the passage of the Federal Election Campaign Act in 1974, brings up several important legal issues with reference to the constitutionality of placing restrictions on political contributions. Opponents of Shays-Meehan claim that at its best, the bill is grossly unfair and at worst, unconstitutional. Much of the opposition stems from the provision of the bill which seeks to ban "sham issue ads" (Keller 1999a). Detractors say that such language is a gross restriction on groups' first amendment rights to communicate their opinions on specific issues of concern to the public and to their supporters. Opponents of Shays-Meehan to claiming that several Supreme Court landmark cases concerning campaign funding and the First Amendment right to free speech have emphatically held that all types of speech not specifically defined as "express advocacy" in campaigns are protected from restriction or regulation by the government.

Perhaps the most credible argument of Congressional Republicans working to defeat the Senate companion bill to Shays-Meehan, the McCain-Feingold Bill, named after Senator John McCain (R-AZ) and Senator Russ Feingold (D-WI) is that a ban on soft-money would be tantamount to unilateral Republican disarmament (Keller 1999b). This argument maintains that the Republicans advantage on soft-money fund-raising is balanced out by the labor unions' overwhelming volunteer, organizational, and financial support afforded many Democratic campaigns. Therefore, opponents of Shays-Meehan assert, without a valid attempt on the part of the government to regulate the ability of organized labor to draw campaign hard-dollars from members as well as advocate specific candidates' victories, a ban on soft money would unfairly harm the Republican Party's ability to get its message out.

Concerning the question of the constitutionality of restricting "non-express advocacy," the Shays-Meehan Bill clarifies the definition of express advocacy in simple terms: if it walks and talks like an "express advocacy" advertisement, it is one and should therefore be regulated under the umbrella of federal laws which govern all other campaign expenditures.

Shays-Meehan provides a solid base for reform by not simply shifting the soft money raising apparatus to state parties, as the Republican Party's reform plan would do, but by banning the use of "non-federal" dollars across the board, with specific exceptions on the state level for very clearly defined party building activities not relating to the election or defeat of any federal candidate (Van Natta 1999). The Shays-Meehan legislation closes the floodgates of unlimited, unregulated, and unaccounted for corporate and individual cash that flows right past federal elections regulations and into federal races. By forbidding national party committees from accepting, spending, or even directing the flow of soft money, this legislation deals a decisive blow to the wealthy and powerful special interests which have for so long eroded the public's confidence in their elected leaders.

Despite the obvious logic and overwhelming public support for meaningful campaign finance reform, its future is not by any means assured. In the fall of 1999, the Senate barely filibustered a mirror version of the Shays-Meehan legislation. Senator Mitch McConnell (R-Ky), known to some as "Darth Vader" because of his defiance to any campaign finance reform legislation, led the battle against the McCain-Feingold measure. McCain-Feingold called for a complete and immediate ban on soft-money dealings by national party committees, but did not address the topic of "issue advertisements" as a concession to conservative Republicans bent on defeating any measure for reform. While McCain-Feingold ultimately perished in the Senate in the wake of a filibuster, it did manage to gain a bipartisan majority of support, just 6 votes shy of the 60 needed to end a filibuster according to Senate rules.

A more important obstacle for reform than the minutiae of Senate rules is the Republican leadership's ardent opposition to any type of soft money regulation. The Republicans have long enjoyed a significant fund-raising advantage, given their generally more pro-business and lower tax policies that appeal to wealthy constituencies with plenty of money to donate. The proliferation of soft money has only exacerbated the inequity in fundraising between the two parties, and the Republican leadership in Congress is not about to give up that distinct advantage. As long as Republicans retain congressional control, their deeply entrenched opposition all but guarantees the failure of meaningful campaign finance reform.

The only meaningful solution to the infiltration of American politics by enormous sums of corporate, individual, and organized labor's money is to ban its use in federal electoral politics, which is congruent with the original intent of the Federal Elections Campaign Act of 1974. For the past 10 years, citizens' voices have become less and less important while interests such as, major corporations with nearly unlimited sources of money were given front row seats to every step of the policy formulation process in Washington. The clear and simple solution to the problem of unregulated soft money, is to remove the tumor of unrestricted non-federal money from federal campaigns and restrict independent issue advocacy in the same fashion as candidate advertisements. This is the first step in cleaning up America's battered political system. The Bipartisan Campaign Finance Reform Act (BCFRA) seeks not only to ban unregulated soft-money contributions from federal elections, but it also seeks to modernize the system. The other reform proposals involved in BCFRA will be addressed in the following section.

REFORMING AND MODERNIZING THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

The original Federal Election Campaign Act of 1971 laid out the basic rules and regulations by which federal campaigns have been run in the United States ever since. However, many inside and outside the system have argued that the current set of rules (with contribution limits that have not been altered in decades) is in need of certain forms of modernization. Several bills have been introduced in Congress recently to address the issue of updating the contribution limits and even abolishing them. In this section I will offer a brief overview of existing federal campaign finance laws and proposed efforts to reform them.

FECA laid the groundwork for our modern system of campaign regulations. Under FECA, as was mentioned in the last section, contributions to candidates and candidate committees for federal offices are strictly limited to individuals, or groups that represent contributions made by individuals. Under current law, as established in FECA 1971, individuals are limited to contributing $1,000 dollars per election cycle (both the primary and general cycles being considered separately) with a maximum of $25,000 in aggregate hard-dollar contributions per annum. The Bipartisan Campaign Finance Reform Act of 1999 (BCFRA) proposed amending those limits to compensate for inflation, and the loss of soft money. BCFRA would raise the yearly aggregate total an individual could contribute to $30,000.

Also, under current Federal Election Commission guidelines, an individual can only contribute a maximum of $20,000 to a national party or state party's federal account. (FEC Laws, 439a) The BCFRA would lower that limit, in the aggregate, to $10,000. The BCFRA also proposes significant reform in the area of reporting requirements.

Under current Federal Election Commission regulations, federal campaigns are required to report total amounts of monies raised and spent as well as individually itemize all contributions received that exceed, in the aggregate, $200 per calendar year. Further, campaigns for federal office are required to make the "best effort" possible to identify the occupation and employer of all persons whose contributions must be itemized (i.e. those contributions exceeding an aggregate of $200 per cycle). Title III of the Bipartisan Campaign Finance Reform Act seeks to lower the general reporting threshold from $200 to $50, while it would only require the reporting of the names and addresses of those persons making contributions between the amounts of $50 and $200.

INDEPENDENT EXPENDITURES

As was discussed in the first section, the definition of different types of advocacy is vital to determining whether or not an advertisement paid for by a national party committee should be counted as a coordinated expense (one where costs are shared between the party and candidate's committees) or an "issue ad" which can be used to bolster a candidate's position on a particular issue without actually stating "Vote for Candidate A." But what if the person or group of persons screening the advertisements are not affiliated with either the party apparatus or the candidate's committee? What are the rules and regulations governing these types of "independent expenditures?"

The answer is simple: there are very few rules and regulations which govern the use of independent expenditures. One might be surprised, even appalled to hear that should Bill Gates decide to spend millions of dollars running campaign advertisements against any given candidate, he is free and welcome to do so under current Federal Election Commission guidelines. There are however a few restrictions on how these ads can be run.

The name "independent expenditure," implies that these activities will be carried out separately from and free of any coordination with the national party committees, state committees, or the candidate's campaign. In addition, as with "soft-money" advertisements, independent expenditure ads may not expressly advocate the victory or defeat of a particular candidate. However, that is where the regulation of independent expenditures ends.

Upon learning about this loophole, many ask how this is possible. It is inconceivable to most average voters that their vote could be influenced as much by a television advertisement run by a non-profit group or an individual who has a stake in the election. Despite this general antagonism towards the notion of independent expenditures, the development of this phenomenon is fairly easily understood.

As every American school child learns early on in their education, they have the right to free speech and freedom of expression. Inherent in these rights is the ability to express one's beliefs unhindered by government intervention so long as their choice of expression is not deemed harmful or grossly inappropriate. To quote Senator Mitch McConnell (R-KY), "The First Amendment doesn't allow us the latitude to categorize certain kinds of speech as offensive and other kinds of speech as laudable." (Associated Press 1999, 5) Obviously, Sen. McConnell does not support efforts to limit or prohibit independent expenditures.

Because of this Constitutional guarantee, the use of independent expenditure by groups and individuals in recent elections has proliferated. During the presidential primary of 2000, several groups such as the Virginia Right to Life Group poured hundreds of thousands of dollars into races across the country to affect the outcome. An example much closer to home, can be found during a recent election for the Second Congressional District seat in Utah (then held by Republican Merrill Cook). Using the "independent expenditure" loophole in federal campaign financing laws, a group called Term Limits USA, which advocates limiting terms of federal officeholders, spent massive amounts of money in attack ads which criticized Representative Cook for reneging on an agreement he signed with them during an earlier campaign to limit himself to 3 terms. While these ads did mention in small print that they were paid for solely by the Term Limits organization, they were almost indiscernible from attack ads being run by Cook's opponent, Lily Eskelsen.

With reference to the "independent expenditure" loophole, the Shays-Meehan Bill (BCFRA) would require any organization that spends more then $50,000 during a calendar year on federal election activities to file a monthly statement with the FEC. While this would not necessarily close the loophole in current campaign finance laws, it would shed some light on who is behind these advertisements. Current law allows these advertisements to be funded entirely from wealthy individuals or corporations and does not require the groups airing them to reveal the sources of any of these contributions.

CONCLUSIONS

Having worked in and around campaign fund-raising now for the past 2 years, I have been introduced to many of these concepts on a very personal level. During this time I have formed some very strong opinions about the need for effective reform on several different levels. I will start with the area that I find most significant.

> Congress must ban soft money now before it overwhelms our campaign finance laws and our political process. Ending the soft money system requires more than changing the labels put on money. It is not acceptable to impose so-called "limits" on soft money which would simply continue to allow soft money to flow into federal campaigns under a new name. The clear lines walling off corporate and union treasury money from political campaigns should not be breached (Common Cause 1999).

This quote from Scott Harshbarger, the director of Common Cause, accurately reflects my opinion on the issue of soft money reform. Common Cause offers a three pronged solution to the crisis of soft-money in American politics: National parties, candidates, and most importantly, state party apparatuses should be prohibited from soliciting, spending, or directing soft-money in any way to a federal campaign. This notion is clearly embodied in the Shays-Meehan legislation and was also expressed accurately in the failed McCain-Feingold bill. This first step is integral in cleaning up the influence of wealthy individuals and large corporations affecting American elections and policies.

Beyond a ban on soft-money, many other beneficial changes can be made in the system of federal elections. As an intern in the fund-raising office of Massachusetts Senator John Kerry, I witnessed firsthand the constant need to "dial for dollars." For Senator Kerry, this need was enhanced tenfold by what I consider to be his honorable decision to forgo special-interest PAC donations. The current system of campaign financing in this country penalizes good public servants like Senator Kerry by forcing them to devote more time to selling themselves and their candidacy for contributions, while it rewards those who choose to cozy up to special interests and accept large PAC contributions. This malfeasance of logic in our current campaign financing system needs to end, and it can. Through legislation, such as the Bipartisan Campaign Finance Reform Act of 1999, we can take another step towards ridding our system of the special interest money that currently pervades every aspect of American politics.

However, I am not naive about the realities of campaigning in this day and age. It is expensive and many voters are turned off. Substantial amounts of money are required to communicate a message to the minority of the American population that is still listening. Because of these realities, I support public financing of campaigns on both congressional and presidential levels. Through providing public money for elections, we would effectively free candidates and incumbents from the vicious cycle of campaign fund-raising. However, public funding can not be mandatory. Given the restrictions of the Constitution, we may never be able to fully regulate the amount of money an individual chooses to spend out of his or her own pocket for an election. Hopefully by making public funding an option, we will appeal to those candidates who would rather spend their valuable time out meeting constituents and building a message, instead of sitting in a dark room calling strangers for money.

Also, as we examine efforts to reform the current campaign financing system in this country, we must conclude that the current contribution limits are outdated. I support congressional efforts to increase the amount an individual can contribute by at least $1,000 per cycle while lowering the amount a multi-candidate PAC may contribute by at least $1,500 per cycle. However, this legislation must be accompanied by strong legislation that bans the use of "soft-money" in American politics.

By banning the use of non-federal funds in conjunction with elections for federal office, some would argue that the effect would be a dramatic weakening of the role of the party in the current American political system. My response to that argument is two-fold. First, political parties existed in this country long before the rise of issue advertisements and $250,000 "soft-dollar" contributions. Banning the use of these monies for election-related activities would simply return the major parties to the status they enjoyed before the onset of the 1990's.

Secondly, an argument can be made that the institutional two-party system in the United States is changing in such a way as to de-emphasize the central role of the party in the process of electing public servants. This process can be observed by noting the decreasing importance of the two major-party conventions (which now serve a mainly ceremonial function in selecting the party's presidential nominee). This is not to say that the two major parties in the United States are becoming obsolete, but simply that their roles are changing. The time when the parties set the issue agenda for an election year has passed and that responsibility has fallen largely to the individual presidential campaigns.

It is possible to clean up our beleaguered political system. All it requires is the courage of a competent and responsible Congress to come out from hiding behind overly rigid constitutional arguments and special interest monies and agree to pass meaningful legislation that will restore to Americans some faith in their political system. A first step in that direction was the two weeks of Senate debate and recent passage of the McCain-Feingold reform bill in March 2001. Should this effort prove successful, it will do much to restore American's faith in their political system.

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