

POLITICAL PARTY AND CAMPAIGN FINANCING IN THE UNITED STATES¹

*Herbert E. Alexander
Clyde Wilcox*

The American system of presidential elections is unique in many ways. First, the party's candidates are not standing party leaders, but rather individuals who win the most delegates at their party's nominating convention. These delegates are won through a series of party primaries, caucuses, and conventions in each of the 50 states and some territories, and serious candidates must compete in most or all of these intra-party elections. The general election always includes candidates from the two major parties and many candidates of minor parties, but the latter must qualify to be on the ballot in particular states and thus in some states there may be 8 presidential candidates on the ballot and in other states there may be 2 or 3.

The presidential election overlaps congressional elections and in many states also state and local elections. During any given presidential election there are elections for all 435 members of the House of Representatives, a third of the 100 Senators, several governors, and countless state legislative, mayoral, and other offices. Presidential campaigns often cooperate closely with other campaigns, holding common events, building common field organizations to mobilize voters, and even airing generic party advertising. Although we will focus this report on the presidential campaigns, these other contests are an important part of presidential campaign finance. The simultaneous state and local election campaigns are regulated primarily by state and local law, and these laws vary from some with strict limits on contributions and public financing to others with no limits on contributions and porous disclosure regulations. Moreover, candidate committees can transfer funds to party committees. If George W. Bush succeeds in his announced goal of raise \$175 million for his uncontested primaries and does not spend it all before the general election campaign, he may well give some or all of this money to the congressional party committees to help House and Senate candidates.

Political parties lack unified programs and discipline, and provide only a small portion of all funds for candidates. This means that each candidate must assemble her own financial coalition, and that coalition might include groups that are normally supportive of candidates of the other party. Elizabeth Dole, a Republican nomination candidate in 2000, received money from some feminists and gun control advocates who more commonly give to Democrats, for example.

There are many interest groups involved in elections – corporations, unions, environmental groups, religious groups, among others, all with different sets of resources that can influence elections. These groups often support candidates in intra-party contests in an attempt to influence internal party positions, and are willing to support candidates of both parties if those candidates back their policy agenda. Interest groups can contribute money, but they can also endorse candidates, or even conduct parallel campaigns that can help a

¹ The opinions expressed in this document do not reflect the official position of the Organization of American States.

candidate win election without explicitly endorsing him, airing advertisements on television and radio that are not coordinated with the candidate, nor approved by his campaign committee.

The financing of presidential elections is currently in flux, as candidates, parties, and interest groups adapt to the Bipartisan Campaign Reform Act (BCRA), a set of reforms passed in 2002 that modify key elements of the financing of campaigns. BCRA builds on a regulatory framework established in the early 1970s, the Federal Election Campaign Act (FECA), and much of FECA is unaffected by BCRA and is therefore still controlling law. Some campaign activity is also affected by the tax code, which specifies the sorts of activities appropriate for tax-exempt and non-profit organizations.

I. NATURE OF FINANCING

A) THE REGULATORY FRAMEWORK

The current regulatory framework for financing national elections consists of five elements: contribution limits, spending limits, public financing, disclosure, and enforcement (See Appendix 1 for copies of relevant laws). Here we will not dwell on the details of these limits, but rather lay out the broad outlines of the law.

- 1.) Contribution limits. Political parties are limited in the amount that they can give to candidates and the amount that they can spend in coordination with candidate's campaigns. Interest groups that wish to contribute to federal candidates or political parties must form political action committees (PACs), which raise funds in voluntary contributions from their members and use this money for all contributions. Prior to BCRA interest groups could also give unlimited sums from their treasuries (from member dues, corporate profits, etc) to political parties to help with party building and with state and local elections, but this "soft money" is banned by the new law. The law does not regulate communication between many types of groups and their members, even if that communication endorses a candidate, although groups that endorse candidates may not be entitled to tax exempt status in some cases. In practice, however, groups can easily signal their preferences without explicitly endorsing a candidate. Individuals are limited in the amounts that they can give to candidates, PACs, and parties. BCRA raises the limits for individual contributions to candidates and parties, but not to PACs.² In 2000, the maximum individual contribution to presidential and congressional candidates was \$1000 per candidate per election, and in 2004 it will be \$2000, the first increase in the limits since 1974.
- 2.) Spending limits. Although Congress sought to enact spending limits on candidates, parties, and interest groups in the FECA, the Supreme Court struck these limits down as violating the Constitutional protection of free speech. Candidates are therefore free to spend unlimited amounts on their campaigns, and

² BCRA also creates an unusual exception to contribution limits in races where one candidate spends large sums of his or her own money. The regulations governing this exception are Byzantine.

parties, interest groups, and individuals can spend unlimited amounts to advocate the election or defeat of a candidate, so long as that spending is not coordinated with the candidate. Prior to BCRA, interest groups could also spend unlimited amounts in “issue advocacy” ads that did not explicitly endorse a candidate but that were indistinguishable from campaign ads by most observers.³ BCRA bans most of these advertisements on television and radio in the period before an election, although groups and individuals can still spend money on other types of communications, including direct mail and phone banks, and can run issue ads on mass media before the start of the campaign.

Although the government cannot impose a spending limit, it can provide cash or services to candidates on the condition that they accept spending limits. In presidential nomination contests, the government provides funds to most candidates (discussed below), and candidates who accept those funds essentially sign away their rights to unlimited spending in exchange for a substantial infusion of cash. For candidates who accept matching funds, the law limits overall spending in the primary election as well as spending in each state’s nomination contest. In the general election, presidential candidates who accept a public grant must limit the official spending of their campaign, although in practice they routinely raised large sums for their parties, which can then spend that money to help elect the candidates. Moreover, presidential candidates work in loose coalition with interest groups who help to promote their candidacies in many ways.

- 3.) Public financing. During the primary elections, the first \$250 of contributions from any individual to any candidate are matched by the federal government, although candidates that do very poorly in several primary elections are not eligible for the funds. There is a maximum aggregate grant to candidates which is likely to be \$18.7 million in 2004. Three candidates opted out of the matching fund system in 2004, allowing them to spend unlimited amounts. President George W. Bush again refused matching funds, and set an ambitious fundraising goal of \$175 million for his primary election campaigns. Democratic candidates Howard Dean and John Kerry followed suit, in part to allow them to spend enough after the primaries to compete with Bush. The government also provides a flat grant to the parties to help finance their conventions. In 2004 that amount will be \$15 million, although there will be much more private financing than public financing. The government provides a flat grant to the two major parties to finance their presidential general election campaigns, and a smaller grant to minor parties that received at least 5% of the vote in the past election.⁴ Bush and Gore both received approximately \$68 million in public funds for the general elections in 2000, and that figure is expected to increase to \$74 million in 2004. To date, all of the presidential candidates of both major parties have accepted the general election grant, and in doing so they have agreed to limit their general election campaign

³ Magleby, David. 2000. “Dictum without Data: The Myth of Issue Advocacy and Party Building.” Published by the Center for the Study of Elections and Democracy, Brigham Young University. <http://www.byu.edu/outsidemoney/dictum/index.html>

⁴ The grant to minor parties is calculated as the percentage of the losing major party candidate’s vote received by the minor party. Thus if the losing major party candidate received 30 percent of the vote and the minor party received 15 percent, the minor party would be entitled to half of the major party grant in the next election.

spending. All public funding comes from a special account that is funded by voluntary check-offs by federal income taxpayers.

- 4.) Disclosure. All contributions to federal committees must be reported by the recipient (candidate, party, or PAC). Contributions by individuals of \$200 or less need not be itemized, although the aggregate amount of these contributions must be reported. PACs, parties and candidates report all contributions that they make to candidates, to PACs, or to party committees, regardless of their size. Spending is disclosed by federal committees as well, although this spending may not be reported in a common format and therefore is difficult for scholars to analyze.
- 5.) Enforcement. The Federal Election Commission (FEC) is responsible for administering and enforcing the law. The Commission is headed by six commissioners – three Democrats and three Republicans, and has a professional staff of lawyers, accountants, computer specialists, and others. The FEC maintains a disclosure database, audits reports, investigates complaints and other evidence of violation of the law, and can recommend that the Justice Department pursue criminal action.

Taken together, these rules mean that individual donors can make limited contributions to candidates, political parties, and interest group PACs, and they can spend unlimited amounts independently of candidates to urge their election or defeat. Only a tiny portion of the public contributes more than \$200 to political campaigns, and independent expenditures by individuals are rare.⁵

Interest groups can form PACs and raise money in voluntary contributions of limited amounts from their members, and these PACs can then make contributions of limited amounts to candidates, other PACs, or parties. PACs can spend unlimited amounts in independent expenditures to advocate the election or defeat of a candidate. Groups can spend their treasury funds to contact their members in communications that may include an endorsement and even encouragement for their members to volunteer to help a candidate. They can also spend unlimited amounts in certain types of communications with the general public or targeted non-members, although BCRA limits their ability to spend on television and radio advertising during the period of most active campaigning. Prior to BCRA they could also contribute treasury funds in unlimited amounts to political parties, and also to air advertisements that clearly encourage support for a candidate but fall short of an explicit endorsement. BCRA eliminates the “soft money” contributions and limits the issue advocacy spending in complex but important ways.

Parties can raise money from individuals or PACs, and can accept contributions from candidate committees as well. Parties can make contributions to candidates of limited amounts, and can also spend limited amounts in coordination with the candidate. They can mount voter mobilization drives, and air generic party advertising as well.

⁵ Peter Francia, John C. Green, Paul S. Herrnson, Lynda Powell, and Clyde Wilcox (eds.) *The Financiers of Congressional Elections: Investors, Ideologues, and Intimates*. New York, Columbia University Press, 2003.

In practice, there are three principle sources of funds in this private financing system. First, corporations and businessmen and women provide a large majority of funds, a finding consistent since the earliest studies.⁶ Companies, trade associations, and executives provided the large majority of soft money, and surveys show that a large majority of individual donors are members of business and professional associations. Second, unions have aggregated funds from dues to give soft money, to spend on issue advertising, and to mount voter mobilization campaigns. Unions have also sponsored large PACs. Finally, issue groups give money, advertise independently of candidates, and mobilize voters. Groups that focus on abortion, the environment, gun rights and gun control, and other highly salient issues are quite active in American campaigns. EMILY's List, a PAC that supports pro-choice Democratic women candidates, is among the largest committees in the US, even before the amounts that they bundle to candidates are considered.

B) EFFECTS OF THE FINANCING SYSTEM

The US campaign finance system has resulted in competitive levels of spending between the two major political parties over the years, although currently the GOP has a significant fundraising advantage. The Republican Party benefits from strong support from the business community because of its policy positions, and as the party in power it also receives more than its share of contributions from those who seek access to policymakers. Moreover, many observers believe that BCRA hurts Democrats more than Republicans by posing a more significant barrier to union money than corporate money⁷. Others have suggested that unions will find many uses for the money that they once contributed to parties as soft money, and thus the soft money ban will have less partisan consequences⁸.

Yet although the US system has produced rough parity between the parties, it has resulted in great inequality between incumbent politicians and those who challenge them. This is especially true in House elections, but it exists in most presidential elections as well. Incumbent presidents can raise and spend money for their uncontested pre-convention contests, and all incumbent presidents since the passage of FECA have accepted federal matching funds for these pre-convention contributions. Presidents can then spend this money to either boost their positive image among voters, or to attack potential candidates from the other party. Meanwhile, candidates who seek to challenge the president usually spend all of their primary election funds attacking each other in order to win their party's nomination. Because of the spending cap that comes with matching funds, challengers often must suspend their campaign in the early summer before federal funds come available for the general election. For the 2004 campaign, George W. Bush announced that he will forgo matching funds in order to avoid spending limits, and thus may be in a position to spend as much as \$175 million to help his general election prospects while his Democratic rivals spend all of their funds attacking each other. For this reason, Democratic candidates Howard Dean and John Kerry both opted out of the matching fund system. This allowed

⁶ Louise Overacker, 1932. *Money in Elections*. New York: Macmillan; Alexander Heard. 1960. *The Costs of Democracy*. Chapel Hill: University of North Carolina Press.

⁷ Bailey, Michael. 2003. *The Democratic Folly of BCRA*. Manuscript, Georgetown University.

⁸ Robert Boatright, Michael J. Malbin, Mark J. Rozell, Richard Skinner, and Clyde Wilcox, 2003. "BCRA's Impact on Interest Groups and Advocacy Organizations." In Michael J. Malbin (ed.) *Life After Reform*. Lanham, MD: Rowman & Littlefield.

Kerry and Dean to spend more than other candidates in the Iowa caucuses and the New Hampshire primaries.

This incumbent financial advantage is lessened or even eliminated if the incumbent faces a serious challenge from within his party. Jimmy Carter fought off a tough challenge from Ted Kennedy in 1980, and George Bush spent millions campaigning against Pat Buchanan in 1988. In both cases, the incumbent lost the general election.

C) THREATS TO THE FINANCING SYSTEM

In the US, hundreds of political scientists, sociologists, and economists have written papers and books that touch wholly or in part on campaign finance. There is sharp disagreement among these scholars about many aspects of the system, and about what might be threats to the system. The US case makes it clear that the thorniest questions about campaign finance are not simply a result of lack of information.

Over the past 25 years the key elements of the FECA regulatory system have all been eroded. Spending limits were almost entirely overturned by the Court, and remained in effect only for presidential candidates who accept public funds. Contribution limits were undermined by the rapid growth of soft money, outside of the federal contribution limits, which allowed interest groups and wealthy individuals to give unlimited amounts to the political parties. Presidential candidates quickly became their party's top soft money fundraisers, and they generally continued to raise these funds during the general election campaign. Political scientists disagreed over whether these large contributions were corrupting to public officials, and whether they helped or hurt political parties, but clearly they allowed groups and individuals to give more than the contribution limits would suggest.

Disclosure was undermined by issue advocacy spending by interest groups, where new organizations spent large sums in disguised electoral advertising, and were not required to disclose the sources of their funds nor the amount of their spending. Increasingly, campaign spending was channeled into non-disclosed activities: for example, George Bush held a fundraiser in 1992 to raise money for the Christian Coalition's voter guides, and the Coalition in turn coordinated the distribution of these guides with the Bush campaign, yet none of this money was captured in the disclosure system. In 2000, Planned Parenthood spent more than \$15 million in issue advertising against George W. Bush, apparently funded by a single donor. Yet this activity was also not captured by the disclosure system. BCRA requires greater disclosure of issue advocacy spending, although there will remain significant gaps in the transparency of this kind of campaigning.

Finally, the public funding was threatened when inflation eroded the value of matching funds and made it easier for candidates to raise maximum contributions. In 2000, George W. Bush became the first candidate to refuse matching funds and thereby avoid spending limits. In 2004, the Bush campaign aims to raise \$175 million for its uncontested primary election campaign – a figure that is more than four times what Clinton raised in 1996 in his renomination campaign. Some have even suggested that Bush could refuse the public grant in the general election as well, although most observers believe that this is unlikely. BCRA doubles the amount that individuals can give from \$1000 per candidate to

\$2000 per candidate but not the amount that is matched by the government, therefore increasing the incentive to bypass public funds.

Public funding is also threatened by declining revenues in the public funds. Many fewer citizens now check the box to direct portions of their tax revenue to the federal funds, and at some point the fund is likely to run short of funds. In 2004 the fund may have dodged a bullet when Bush announced that he would not seek matching funds, but even challenges to the solvency of the fund remain. Yet the fund is living on borrowed time, and without reform it is unlikely to remain viable in the long run.

In the US, there is a lively debate among all types of actors about whether these “threats” are a problem, or a blessing. Some argue that soft money helped to strengthen the parties, although others disagree. Issue advocacy spending provided interest groups with a way to inform the public of their agenda and issues, and to hold candidates responsible for their positions and performance on those issues. By allowing groups to tap their treasury funds and the financial resources of their wealthiest and most enthusiastic members, issue advocacy provided for more campaign spending, and some would argue that this would most likely lead to better informed voters⁹

Despite the generally robust disclosure system in the US, it is impossible to put know with precision the amount spent in presidential elections by all actors. Herbert Alexander estimates that the presidential campaign in 2000 cost about \$1 billion, and that this amount is roughly comparable with the amount spent in the 1960s after discounting inflation. Total spending varies across years according to whether the campaign is competitive, and the number of candidates running in each party’s nomination process. In 1996 there was only a single Democratic nomination candidate and the general election was not highly competitive, but in 2000 both parties had contested primaries and the general election was very close and hotly contested. Thus official real spending by presidential candidates increased some 26 percent between 1996 and 2000, but the 2000 figure was some 12% lower in real dollars than the amount spent by all candidates in 1988, the last election in which both parties had open-seat nominations.

Observers disagree over whether high campaign costs are a problem. There is some evidence that the high costs of campaigns deter some potential candidates from running for Congress, and that this effect is greater among women¹⁰. Yet American elections must convey a good deal of complex information – issue agendas differ from the federal to state to local level, parties are not unified, candidates take their own positions on issues, and the nature of the political process makes it difficult for citizens to understand politics and to assess credit or blame for policies. Thus knowing the position of the Democratic presidential candidate on government health care programs tells you little about the position of Democratic senatorial, congressional, or gubernatorial candidates on these issues. Even in presidential election years there is more money spent in the US to advertise many consumer products than to advertise politicians and parties. Moreover, there is evidence

⁹ John Coleman and Paul Manna. 2000. Congressional Campaign Spending and the Quality of Democracy. *Journal of Politics* 62, 3: 757-789.

¹⁰ See various publications from Sandy Maisel and Walter Stone’s Candidate Emergence Study.

that spending does increase information levels among the citizens¹¹ Thus high levels of spending are not evidence of a threat to the system, but rather of the informational demands of American campaigns.

D) QUANTIFICATION OF FINANCING

The FEC provides clear records of the receipts and spending of campaigns, political parties, and PACs. In the 1970s these records captured the vast majority of electoral costs, but by the 1990s there were many ways that money and support slipped through the disclosure network. This was primarily because the FECA defined electoral activity narrowly, and the law was never amended to broaden that definition as campaign professionals found ways to raise and spend money outside the system.

By the late 1990s, interest groups were engaged in substantial efforts that went unreported to the FEC. They engaged in issue advocacy campaigns on television and radio, and although scholars devised ways of tracking most of this spending by buying information on media buys, the data was not immediately available to the public. Groups flooded voter mailboxes, filled their voicemail, and even sent their members around the neighborhood to begin to fill up “face time,” and almost none of this activity was reported to the FEC. Activity by candidates and parties, however, were generally well documented.

E) IMPORTANCE OF THE ISSUE IN THE POLITICAL SYSTEM

Campaign finance reform has never been a high priority for Congressional leaders or Presidents. Incumbents benefit from a system that gives them significant financial advantages, and they are understandably not eager to reform the system. Indeed, BCRA passed over the strong objections of the Republican leadership in Congress, and the covert opposition of some Democratic leaders as well.¹² Democrats have tended to push campaign finance reform more than Republicans, although this probably has more to do with the way the issue resonates among Democratic constituencies than the way leaders feel about reform. Surveys show that campaign finance is the source of cynicism among citizens, and of lowered levels of trust in the fairness of the political system.¹³ Yet campaign finance ranks relatively low in the list of issues that concern Americans. Journalists, non-profit groups, and many academics have pushed for reform, however, and this has helped to keep the issue alive on the public agenda. And although few Americans list campaign finance reform as a top priority, there is widespread support for reforms that would limit the power of “special interests.”

II. MEDIA

American campaigns are conducted on television and radio, through the mails and phone lines, over the internet, and through many other media. These media are privately owned, and the government does not control or subsidize access. Free media time comes

¹¹ Coleman and Manna, op cit.

¹² Diana Dwyer and Victoria Farrar-Myers, 2000. *Legislative Labyrinth*. Washington, DC: CQ Press.

¹³ Anthony Corrado, Thomas E. Mann, and Trevor Potter (eds.) *Inside the Campaign Finance Battle: Court Testimony on the new Reforms*. Washington, DC: Brookings. 259-296

only from publicly staged events such as nominating conventions and debates, and from free media generated by campaign and other events.

Government officials cannot order the media to provide them with free coverage, but Presidents have a far greater capacity than their challengers to generate news and free media. This can be a distinctly mixed blessing, for breaking stories about incumbent scandals help sell advertising. Moreover, many challengers have developed gimmicks that attract substantial free media coverage. Minor party candidates have great difficulty in attracting free media, however.

Television is by far the most costly medium. Parties, interest groups, and candidates must compete with commercial enterprises to purchase television time, and stations are not required to sell time at the lowest available rate.¹⁴ During competitive campaigns, various campaign committees may buy blocs of time in advance, and the price of advertising time may soar. Indeed, it is not uncommon for parties, interest groups, and candidates on the same side to compete to buy television time, thus bidding up the price for each. In the heat of a campaign in competitive states, voters are barraged by television advertising. During the 2000 presidential election, Pittsburgh, PA citizens were subject to some 400 spot ads apiece per week by the Gore and Bush campaigns and their supporters¹⁵. Kenneth Goldstein, who has collected records of media buys in major markets in the 2000 presidential race, estimates that the airtime alone cost presidential candidates and their supporters more than \$200 million, not including costs of producing the ads or paying agents to purchase airtime.

Although television reaches a broad audience, in competitive races there is some evidence of audience fatigue. Potential voters who are barraged by scores of ads every evening can be forgiven for reaching quickly for the mute button on their remote controls. This is especially true in the increasing numbers of campaigns where the tone of the ads is quite negative. Moreover, television advertising reaches an undifferentiated audience, and this can sometimes mean that ads can backfire. In 1998, a limited GOP buy that promised to impeach Clinton was widely rebroadcast by television stations across the country, with a resultant mobilization of the Democratic base.¹⁶

Radio advertising can be more carefully targeted, and many campaigns spend significant sums on these cheaper advertisements. In 1992 George Bush bought significant radio time in the final weeks, with carefully targeted messages to farmers in Iowa and suburban mothers on the East Coast. As with television, however, candidates are not guaranteed the right to buy time. In recent years, the concentration of radio station ownership has become an issue in the US, and the prevalence of right-wing talk radio programs in the 1990s is credited by some as creating some of the backlash that led to the GOP takeover of Congress in 1994 and helped George Bush in 2000. Some observers credit

¹⁴ Stations are allowed to reject advertising based on various standards of decency or tone. Many stations have refused to broadcast pro-life commercials that include graphic images from abortions, for example.

¹⁵ Goldstein, Ken. 2004. "What Did They See and When Did They See." In *The Medium and the Message*, Ken Goldstein, ed., Prentice Hall.

¹⁶ Clyde Wilcox, "They Did it Their Way: Campaign Finance Principles and Realities Clash in Wisconsin 1998" in *Campaigns & Elections: Contemporary Case Studies*. 45-54, in Michael Bailey, Paul S. Herrnson, and Clyde Wilcox (eds.) *Campaigns & Elections: Contemporary Case Studies*. Washington, DC: CQ Press.

one chain of radio stations with helping increase support for Bush at critical points in his presidency.

Candidates, parties, and interest groups also mail appeals to potential voters that are carefully tailored to the interests of the voter. These mailings are not subsidized, although the government does provide commercial discounts to bulk mailings. Candidates also use phone banks to call potential voters, and this is especially used to encourage likely voters to go to the polls. Computerized messages have made this technique quite cheap for most campaigns, with the result that in contested areas voicemail boxes overflow. Some computerized call programs are designed to leave a message on answering machines, and to disconnect if a live person answers the phone.

In recent years, the internet has become a medium that is used by all serious presidential candidates. Although the internet is currently the medium of choice only for reaching young, highly educated professionals, its use has increased substantially in a short period of time. The cheap cost of the internet creates the possibility that minor parties and non-incumbent candidates might be able to reach more voters cheaply through the internet. Candidate web pages can contain video clips of advertisements, and campaigns can mail urls to those ads to select lists. Candidates often host chats with potential donors and voters: in 2000, Steve Forbes sometimes took time from \$1000 a plate fundraising dinners to “chat” with those who had given \$100 over the internet. Web pages can accept contributions, and e-mails can solicit those contributions. The recent success of Vermont governor Howard Dean in raising internet funds is but one case in point, echoing the success of John McCain in 2000. Dean’s fundraising on the internet allowed him to collect far more than the party’s Vice presidential candidate in 2000, the party’s House party leader in 2000, and one of the best connected east-coast Senators.

Finally, it is worth noting that the oldest medium of all – face-to-face communication – is making a comeback in the US. After spending tens of millions on television issue advertising, the AFL-CIO in 2000 returned to its roots and spent money mobilizing and training union members to talk to their neighbors and coworkers. Recent research suggests that personal communication is more effective than television, phone, or mail communications in stimulating turnout, although it is not yet clear whether personal space may also become crowded if all groups adopt this tactic.¹⁷

Candidates, parties, and groups are free to tailor their appeals as they see fit, regardless of the truth of these claims. In the past 10 years, television advertising has become increasingly negative, and many ads are misleading at best. Presidential nomination candidates often promise to air only positive ads, but these agreements usually fall apart in debates over the precise nature of “positive” advertising. In the general election, campaigns often use surrogates for their most negative advertisements. The famous “Willie Horton” advertisement was not run by the Bush campaign, but rather by a supporter through the auspices of a PAC that he had organized. Major media groups have in recent years issued “truth in advertising” reports on presidential advertisements, although there is no evidence of how many Americans see or pay attention to these ratings. There is also disagreement

¹⁷ Alan Gerber and Donald P. Green. 2000. "The Effects of Personal Canvassing, Telephone Calls, and Direct Mail on Voter Turnout: A Field Experiment." *American Political Science Review* 94: 653-664.

about political scientists about whether these negative advertisings increase voter distrust and perhaps decrease voter turnout, although most campaign professionals believe that the ads do both.

III. DISCLOSURE AND ACCOUNTABILITY

Although nearly every aspect of the campaign finance system is debated regularly, loudly, and with some vehemence, there remains a public consensus on the importance of disclosure. Even the most ardent critics of campaign finance regulation are at least publicly on record in support of disclosure¹⁸. In the early 20th century the Progressive movement pushed for transparency in government as a way to break up corrupt party machines in the inner cities, and the Watergate scandal in the early 1970s reinforced the view that “sunshine is the best disinfectant.”

Federal law requires that all party committees, PACs, and candidate committees disclose the identity, address, and occupation of all individual donors of more than \$200, although these records are often incomplete and it is often impossible to determine if a pair of contributions is made by the same person. Even when complete information is provided, it is difficult to determine if contributions are made by the same donor. Baseball star Henry (Hank) Aaron is listed in the FEC records as Henry and as Hank, sometimes with and sometimes without a middle initial. His employer is listed as both TBS and the Atlanta Braves, and the records do not make it clear that these two entities share a common owner.

Although campaigns are not required to disclose the identity of donors of less than \$200, they do provide this information when they seek matching funds and these lists are now available to the public. George W. Bush did not seek matching funds in 2000, but he voluntarily posted the names and addresses of his small donors on a web page.

All contributions by federal committees – from PACs, parties, and candidates – are reported regardless of the amount, although the contributing committee generally reports it on the date the check was issued, and the receiving committee may report it on the date that it was cashed. This makes it impossible to create a simple computer program to crosscheck these records, although with time and diligence they can be compared. All federal campaign committees must report all of their spending, but it is not required that spending be broken into specific categories, so that it is impossible from these reports alone to determine how much each candidate has spent on polling, for example. One candidate might report expenditures to a consultant who has subcontracted out the polling projects, but another might hire the pollster directly and report that expenditure separately.

Data for federal elections are available on the FEC web site, at the FEC office, and through the mail if requested by phone. A number of non-profit associations such as the Center for Responsive Politics take FEC data and make it more accessible on their own web pages. Major newspapers and other reporters dig through these reports seeking patterns, and opposing parties scrutinize each other’s reports. Taken together the FEC and

¹⁸ Bradley A. Smith, *Unfree Speech*. 2001. Princeton, NJ: Princeton University Press.

intermediaries make it possible for most voters to determine who has funded particular candidates, although few bother to do so.

Although the US disclosure system is widely believed to be the greatest success of the US campaign finance system, disclosure has never been complete and has become less so in recent years¹⁹. Congress made considered exceptions to disclosure in designing the FECA. The identity of small donors need not be disclosed, both to prevent chilling this activity and to avoid imposing a severe reporting burden on campaigns. Certain types of interest group mobilization – the encouragement of volunteers, the distribution of voter guides, and communication with group members, is not disclosed, although this activity can be significant.

By the 1990s, both parties had formed foundations and think tanks that were technically not directly involved in elections, but which could receive unlimited contributions from interest groups and wealthy Americans without disclosure. Candidates also sometimes formed their own foundations: many were used to advance political careers although some were genuinely charitable organizations. These foundations were required to disclose some of their activity to the IRS in order to qualify for tax-exempt status, but this disclosure was far less comprehensive and accessible than that mandated under FECA. Dogged journalists wrote stories of tangled webs of financial activity between these foundations and party committees, a testament to the complexity of campaign finance but also to the resilience of the disclosure system and the incentives to journalists to crack these kinds of stories

In the late 1990s, issue advocacy spending by tax-exempt committees (often called 527 committees after a provision in the tax code) occurred outside the disclosure system. Some of this spending is by easily identifiable groups – Planned Parenthood, the NAACP, and the National Federation of Independent Businesses. In other cases, the ads are paid for by newly organized “groups.” In the 2000 presidential primaries, for example, a group called “Republicans for Clean Air” ran ads in New York attacking John McCain’s record on the environment. This “group” was a front for two businessmen from Texas who most certainly did not have a record of environmental concern.

Despite these problems, the disclosure system is reasonably comprehensive, and certainly more complete than in most other countries. Much of the financial activity can be clearly measured with FEC data, and other activity can often be measured or estimated. Thus the Annenberg Center at the University of Pennsylvania has published studies of issue advocacy spending nationally, and scholars have also published studies of issue advocacy in the states²⁰. Reporters were able to track down the identity of the backers of “Republicans for Clean Air.”

The FEC is charged with auditing campaign finance reports. Although the FEC staff is large by international standards, the sheer volume of activity means that the Commission cannot fully audit all reports when they are received. The FEC does simply

¹⁹ Herbert E. Alexander, Janet M. Box-Steffensmeier, Anthony J. Corrado, Ruth S. Jones, Jonathan S. Krasno, Michael J. Malbin, Gary Moncrief, Frank J. Sorauf, and John R. Wright. 1997. *New Realities, New Thinking*. Los Angeles: Citizen’s Research Foundation.

²⁰ Magleby, David, 2001. (ed.) *Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections*. Salt Lake City: Brigham Young University Center for the Study of Elections and Democracy.

software audits on electronically filed reports immediately, but more careful audits are generally launched only when there is a complaint about a PAC or party committee. These audits can take months or even years. The Commission audits the reports of presidential pre-nomination candidates who accept federal matching funds, and of presidential general election candidates who accept the public grant. Other campaigns are audited if the Commission finds cause – but George W. Bush’s pre-nomination election campaign was not audited in 2000.

If the FEC cannot closely monitor campaign finance reports of most candidates and committees, it is important to note that other actors do pore over reports as they are filed. Both political parties send workers and student interns to the FEC to study their opponent’s reports, looking for irregularities. Non-profit associations look carefully at some reports. Reporters often scrutinize reports, and some have conducted in-depth studies of FEC reports.

Reports by parties, PACs, and candidates are required at specific intervals, and most campaigns file reports in a timely fashion. Party committees and PACs must file regular reports – either semiannually or quarterly in the non-election year, and either quarterly or monthly in the election year. In election years, PACs and party committees that file quarterly must also file pre-primary reports and pre and post-general election reports. Presidential candidates must also file regular reports, although small campaigns (those that spend less than \$5000) are exempt from disclosure. This applies to some minor party presidential candidates who are on the ballot in a single state.

Competitive presidential campaigns rarely miss filing deadlines, because the failure to do so might become an issue, either in the media or in the opponent’s campaign. The FEC requires all committees that raise at least \$50,000, including candidate committees, file reports electronically, which enables quick computerized audits and the posting of data.

Although the disclosure system has been a positive force in American politics, there have been problems. Disclosure of the identity of donors has resulted in greater solicitation of many individuals, and of pressure and even harassment in some cases. The Supreme Court has exempted the Socialist Workers Party from disclosing the names of their donors, because of evidence that these donors faced social or economic sanctions. In 2002, Republican campaign committees shared with committee chairs the donation records of various lobbyists, with the explicit idea that those who gave primarily to Democrats might be denied access²¹

IV. ENFORCEMENT

The Federal Election Commission is charged with enforcing campaign finance laws and administering public funding. The Commission is composed of three Democrats and three Republicans, a formula that is obviously is not optimized for aggressive regulation. The FEC maintains a staff of auditors, of computer and data specialists, and of lawyers.

²¹ Jim VandeHei, “GOP Monitoring Lobbyists’ Politics White House, Hill Access May Be Affected.” *The Washington Post* June 10, 2002, A1.

Critics charge that the FEC is a very weak regulatory agency, and that Congress consciously designed it to be so. The Commission generally interprets campaign law very narrowly, sometimes in ways that defy common sense. In 1988, for example, then-Vice President George Bush formed a PAC that hired a pollster, a media consultant, and a field director. The PAC focused its early operations in the states that held the earliest primary elections and caucuses. Yet because Bush had not announced his candidacy for the Presidency, the FEC permitted his supporters to make maximum contributions to his PAC, and then to later give again to his campaign committee when he announced his candidacy – because Bush was officially not yet a candidate.

The FEC lacks the staff to look for small violations of the law. On more serious violations, the FEC generally negotiates a fine. These fines are generally small, although in some cases they are substantial. When Bill Clinton and Bob Dole were found to have directed substantial party soft money spending to benefit their campaigns, neither campaign was fined. The Dole campaign reimbursed the government more than \$1 million in 1996, however, for funds that were spent in a manner that the Commission deemed improper.

Most importantly, however, the fines are administered after the campaign, sometimes long after the campaign. Many large campaigns just treat these fines as a campaign cost, and usually seek to win even if it means violating the law. Nearly all presidential candidates violate spending limits for various states; for example, Ronald Reagan's campaign paid a fine for violating the limit in New Hampshire in 1980, but used excess funds left over from the campaign to do so.²²

For egregious violations of campaign finance law, the FEC refers cases to the Justice Department for prosecution. This creates the possibility of political control of the decision to prosecute. Republicans objected to the decision by Clinton's Attorney General Janet Reno not to prosecute Al Gore for soliciting contributions on government property, claiming that this was a political decision.²³ Yet during the Clinton years, several top fundraisers went to prison for assembling an illegal network of foreign contributions to Clinton's reelection campaign, while Clinton was still serving as president.

It is worth noting that both parties and most large interest groups hire top lawyers who seek to find loopholes in campaign finance law. Many groups push the law to the limit, and try out new ways to spend their money. When new avenues of spending emerge – for example issue advocacy – political entrepreneurs quickly emerge to channel money through this path. By 1998 there were private companies in Washington that would help large donors establish issue advocacy groups that would permit them to spend unlimited amounts outside of the disclosure system. In summer, 2003, both parties were building 527 committees and other entities that might receive the “soft money” that previously came directly to parties.

²² Herbert E. Alexander, *Financing the 1980 Election*, Lexington, MA DC Heath and Company, 1983, pp. 174-175.

²³ Gore claimed to have believed that he was raising only soft money, which was not covered by the solicitation ban. Although the call sheet had a penciled comment that indicated that some of the money was hard money, it would have been difficult to prove that Gore was aware of this.

With a weak regulatory agency, cadres of lawyers seeking new avenues for cash, and generally modest ex-post-facto sanctions, it is remarkable that compliance is reasonably high in the US compared to other countries. Here the combination of attentive non-profit groups, aggressive journalists, and political consultants willing to use campaign finance irregularities as a campaign issue restrain candidates and parties from significant violations of the law.

V. OTHER ISSUES

The US has changed its campaign finance laws on average once a generation in the past century. BCRA is the first major law since FECA some 28 years earlier, but it did not create a carefully designed system of regulations. Instead, BCRA was aimed at fixing in the short run two problems that reformers saw as most important – soft money and issue advocacy. In the short term, the greatest problem remaining in the US is the financing of presidential campaigns. BCRA decreases the incentive for candidates to solicit small contributions because the value of matching funds has not increased in synch with the increase in contribution limits, and it also creates an incentive for top candidates to refuse matching funds and avoid spending limits. Moreover, the public fund teeters on the brink of insolvency. Currently Congress is considering legislation to reform the Federal Election Commission, although the US legislative process is cumbersome and subject to veto by minorities. Non-profits and academics are issuing studies, reports, and recommendations²⁴.

The U.S. legal system does not explicitly address gender and representation. Men and women are guaranteed equality before the law, but this is generally interpreted as equality of opportunity, not outcome. Despite the presence of a large and well-established feminist movement, women comprise fewer than 20% of the members of the House and Senate, and no woman has mounted a credible campaign for the presidency. In 2000 Elizabeth Dole sought the GOP nomination, but she had never held elected office. In 2003, Carol Moseley Braun ran for the Democratic nomination, but her career as a mediocre one-term Senator limited her appeal.

Although there are no laws that limit women's access to public office or to campaign funds, there are structural and cultural factors that help to explain women's lack of equality in elected office. The weak party system and system of internal primary elections mean that political parties cannot simply elevate women's names on the party list or assign them to safe constituencies. Indeed, parties are typically neutral in intra-party primaries. Instead, civil society organizations such as the National Women's Political Caucus and EMILY's List recruit women candidates and help them to raise funds. Although women remain a small portion of donors²⁵, women in fact raise slightly more money than similarly qualified men when they run for legislative office.²⁶ Yet many women fear that they cannot

²⁴ Notable are the reports and recommendations of the Campaign Finance Institute on disclosure and on the presidential finance system.

²⁵ Clifford Brown, Jr., Lynda Powell, and Clyde Wilcox, *Serious Money: Fundraising and Contributing in Presidential Nomination Campaigns*. New York, Cambridge University Press, 1995; see also Francia, Green, Herrnson, Powell, and Wilcox, op cit.

²⁶ Barbara Burrell, 1998. "Campaign Finance: Women's Experience in the Modern Era." In Sue Thomas and Clyde Wilcox (eds.) *Women and Elective Office: Past, Present, and Future*. New York: Oxford University Press.

raise money, and are deterred from running by the high cost of campaigns and the unpleasant process of raising funds.

This has consequences for women's candidacies for the presidency, because presidential nominees are typically chosen from the ranks of elected officials, especially governors and to a lesser extent Senators. When women constitute a small portion of the Senate and House and hold only a few governorships in large states, the odds that a major party will nominate a woman for president are significantly reduced.

In the US, civil society organizations both promoted and opposed BCRA and other campaign finance laws. Common Cause and the Sierra Club both backed BCRA, while the NRA and the American Civil Liberties Union opposed it. Many charitable foundations such as the Pew Charitable Trusts and the Joyce Foundation funded both advocacy activity, local experiments in practice, and scholarly activity. Other civil society organizations transform FEC data into a more usable form.

VI. CONCLUSIONS

The U.S. represents an exceptional electoral environment. The parties are weak and nominees are chosen by the voters in primaries. The separation of powers and federal system creates a huge number of candidates seeking to inform the voters of their unique and idiosyncratic issue positions. The Constitution is currently interpreted as prohibiting spending limits and some other regulations. Yet despite the uniqueness of the US experience, there are some lessons from the successes and failures of its campaign finance system.

One lesson is that episodic regulation inevitably results in a system that is a poor fit to campaign finance practice. Although some argue that the deterioration of the FECA regulatory regime is evidence that campaign finance cannot be regulated, during this same period the country changed its regulations in most areas many times, in some cases several times a year. If the tax code or environmental laws had not changed in 30 years they would have been as poor a fit to reality by the first years of the new millennium as were the campaign finance laws.

Second, the US case suggests the importance of non-governmental actors in campaign finance. Journalists, non-profits, and even academics play an important role in constraining violations, and without these actors the US system would be far less functional.

Third, the US case suggests that many of the key issues of campaign finance are not straightforward, and that additional data and more investigation will not automatically lead to societal consensus. Empirical research has reached contradictory findings about how much incumbent spending influences election outcomes, whether incumbent bank accounts deter challengers, whether contributions influence policy, and many other issues. During the large and multi-faceted lawsuit challenging the BCRA law, scholars served on opposite sides of almost every issue, and based their positions on well-conducted research.

Finally, the US case shows the importance of a solid disclosure system. Without disclosure, scholars and policy analysts cannot determine what works and why, or how various changes in law might influence different outcomes. Disclosure is the greatest success of the US system, and many elements of the disclosure system are worth careful study by countries adopting transparency regimes²⁷.

²⁷ For a discussion, see Clyde Wilcox, "Transparency and Disclosure in Political Finance: Lessons from the United States." Presented at the Democracy Forum for East Asia conference on political finance, June, 2001. Sejong Institute, Seoul, Korea.