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Campaign Finance in the 2000 Federal Elections: Overview and Estimates of the Flow of Money

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Campaign Financing in the 2000 Federal Elections: Overview and Estimates of the Flow of Money

Summary

Federal election law regulates money in federal elections through a ban on union and corporate treasury money, limits on contributions, and uniform, periodic disclosure of receipts and expenditures. Money raised and spent under these laws to directly influence federal elections is commonly known as *hard money*. Money that is largely outside the restrictions and prohibitions of the federal regulatory framework—but raised and spent in a manner suggesting possible intent to affect federal elections—is commonly known as *soft money*. Of the three major elements of current federal regulation, the prohibition on union and corporate treasury money is perhaps the most important and best helps to explain the divide between hard and soft money activities. Just as interest groups, typically corporations and unions, are the key source of funding activities in the soft money arena, individual citizens are the primary sources for funding in the hard money arena.

Based on Federal Election Commission (FEC) data, it appears that \$1.82 billion in federally-regulated (hard) money was spent to communicate with voters to influence federal elections in 2000. This includes:

- ! All candidate activity and communications: \$1.61 billion
- ! Independent expenditures (by PACs and parties): \$26 million
- ! Coordinated expenditures by parties (under 2 USC § 441a(d)): \$51 million
- ! National party hard money transfers to state/local parties (federal accounts): \$133 million

On the soft money side, a rough 2000 estimate of between \$582 - \$683 million includes one reported FEC figure—for national party non-federal account transfers—and an amalgam of estimates by academic studies, experts, observers, and the best judgment of the author. The estimated total consists of:

- ! Issue advocacy by parties and interest groups: \$208-\$309 million
- ! Exempt union/corporation activities aimed at members: \$100 million
- ! National party non-federal (soft money) transfers to state/local parties: \$274 million

The overall estimate of \$2.4 - \$2.5 billion spent on federal elections in 2000, while serving to put these activities in some context, should be used with caution, as it comprises soft money estimates as well as hard and soft money data. It also omits some types of spending other observers believe should be included.

Aggregating nationwide data may also mask the true impact of interest group and party spending, which tends to be concentrated in a relatively small number of competitive races. Hence, the findings in this report should be weighed against recent academic studies which more closely examine the flow of money in the most competitive races. That closer scrutiny, combined with the broad overview herein, can best lead to a more accurate understanding of money in today's elections.

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Campaign Financing in the 2000 Federal Elections: Overview and Estimates of the Flow of Money

This report summarizes the major players, types of activities, and financing in contemporary federal elections, examining federally regulated activities (*i.e.*, financed with so-called *hard money*) and those that are largely not subject to federal election law (*i.e.*, financed with so-called *soft money*).¹ The big picture on the flow of money is presented in figure 1, which shows the key players and channels through which hard and soft money is donated and spent, and where they overlap. The figure is explained in the report's text, which focuses on the financial levels of that activity, form of spending or donating, or participant's role in the 2000 federal elections. This is accomplished through the latest available data from the Federal Election Commission (FEC) or, where no official data are available (primarily in the soft money arena), based on the best available estimates by scholars and observers.

Hard versus Soft Money

The three fundamental aspects of the regulation of money in federal elections are: (1) the ban on union and corporate treasury money; (2) limitations on contributions to candidates, political parties, and political action committees (PACs); and (3) uniform, periodic disclosure of receipts and expenditures. These provisions apply to all activities on the hard money (federally regulated) side of the figure.

Of the three cornerstones of current federal regulation, the prohibition on money from the treasuries of labor unions and corporations (*i.e.*, union dues money and corporate profits) is perhaps the most important; it is certainly the longest-standing element of federal regulation. The corporate ban has been in effect since 1907, and the union treasury ban was implemented provisionally in 1943 and then permanently in 1947. More than anything else, these prohibitions explain the divide between the activities on the hard versus soft money sides of the figure. Interest groups (typically corporations and labor unions) are the key source of funding for activities in the soft money arena, just as individual citizens form the primary basis for funding on the hard money side.

¹ One form of soft money, that which is raised and spent by national parties, has been subject to FEC regulations since 1991, but only insofar as requiring its disclosure. It is not regulated, however, by the prohibitions and restrictions of federal election law. This aspect makes the party soft money unique among the soft money activities described in this report.

Money in the 2000 Federal Elections

Hard Money. Based on FEC data, it appears that \$1.82 billion in federally-regulated (hard) money was spent to communicate with the electorate to influence federal elections. This includes the following amounts and categories of spending (for activities in the ovals on figure 1):

- ! All candidate activity and communications: \$1.61 billion
- ! Independent expenditures (by PACs and parties): \$26 million
- ! Coordinated expenditures by parties (under 2 USC § 441a(d)): \$51 million
- ! National party transfers to state/local parties (federal accounts): \$133 million

The inclusion of the last item may inflate the total figure, because state parties may have spent some of the transferred money on such other forms of party spending as independent expenditures and coordinated expenditures. The state parties also presumably used transferred funds for party issue advocacy, although for purposes of figure 1 and this report, all of that spending is counted as a soft money activity (even though a share of party issue advocacy must be funded with hard money).

Soft Money. On the soft money side, this report's estimate is based primarily on estimates by academic studies and experts and other observers. As a result, the overall estimate is a less authoritative figure than is the hard money figure, just as the spending figures related to its component elements are less authoritative than the various hard money components. A compilation of the estimates for the various soft money components yields an overall total of between \$582 - \$683 million, which include the following:

- ! Issue advocacy by parties and interest groups: \$208-\$309 million
- ! Exempt union/corporation activities aimed at members: \$100 million
- ! National party non-federal transfers to state/local parties: \$274 million

The first two categories are based solely on estimates; in fact, the second item (exempt activities) reflects a considerable degree of conjecture on the author's part, absent any generally agreed-upon estimates by academic and other experts. Those figures could, in fact, considerably understate the actual spending involved. In contrast, the third figure—party non-federal transfers—is an official FEC number, because party soft money, unique among the three major soft money categories, is fully disclosed. However, while the number is more solidly based than the previous two, its inclusion in the overall soft money estimate undoubtedly contributes to an inflation of the overall total, as it is likely that a substantial amount of soft money transferred to state and local parties is then spent on issue advocacy. The likelihood of double-counting resulting from this, however, may well be offset by the estimates in the issue advocacy and exempt activity categories, which likely err on the conservative side.

No aspect of the financing of the 2000 federal elections engenders so much controversy and confusion as the soft money activities. It is that confusion and the relevance of the soft money issue to the public policy debate that prompts this attempt to estimate its value, despite the many pitfalls involved. The double-counting resulting from state party transfers referred to above is just one of those pitfalls. An

even more fundamental one is the nature of using estimates and conjecture from a variety of sources, with the attendant potential for magnifying errors in any resulting grand total.

A third caveat deserves particular mention here, involving the impressions one can draw from taking the “big picture” view. The soft money estimates in this report suggest that non-federally-regulated money comprised roughly one-fourth of the money spent to influence the 2000 federal elections. That is a considerable share, but it does not support the view that non-candidate and non-regulated funding is coming to dominate the financing of today’s elections. But one recent study provides substantial evidence that the outside money tends to be heavily concentrated in a relatively small number of targeted, competitive races, where their investment can have a more substantial payoff.²

This February 2001 study by the Center for the Study of Elections and Democracy at Brigham Young University is significant because of the intensive scrutiny it devoted to 17 competitive House and Senate races, compiling data from on-site monitoring of television and radio ads, direct mail, and telephone and personal contacts utilized by candidates, parties, and interest groups. The actual monitoring of communications was augmented by extensive interviews with nearly all the major players, as well as by other media tracking and other sources. This most complete, intensive look to date at the whole gamut of activities involved in today’s federal elections concluded that spending by political parties and interest groups typically equals the level spent by the candidates’ own campaign organizations, at least in highly competitive races. As the study noted:

Competitive congressional elections have seen a dramatic change in campaign communications since 1996. Non-candidate campaign spending—party soft money, election issue advocacy, independent expenditures, and internal communications in organizations—now rivals and often exceeds candidate spending in these contests. These outside money campaigns use all modes of communication, almost always involve campaign professionals, and are concentrated in competitive races. The candidates in these contests generally spend record-setting amounts of hard money on their own campaigns.³

What this and other close examinations suggest is that the big picture overview may mask important developments in today’s elections. To fully understand the flow of money in contemporary elections, one must examine not only the aggregate data and overall trends, affecting all races, as this report does, but also the most competitive races, whose outcome is critical in determining which party controls the House, the Senate, and the Presidency. The latter examination is important because in any election year, the outcomes of most House races, and to a lesser extent Senate races, are not a matter of any appreciable doubt prior to the election, due to strong party or incumbency advantages in most races. Hence, interest groups and parties

² Center for the Study of Elections and Democracy (Brigham Young University). *Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections*, David B. Magleby, ed. (2001). [<http://www.byu.edu/outsidemoney/2000general/index.htm>]

³ *Ibid.*, p. 5.

tend to concentrate their resources in a relatively small number of elections. The big picture view alone may greatly understate the importance of their activities in shaping the larger outcome, in terms of party control of Congress and the White House. Hence, in taking the big picture look at money in the 2000 elections, the present study does not tell the complete story, and the reader would be well advised to consult the additional sources cited herein as well.

Methodology and Organization of Report

Figure. Figure 1 displays the “big picture” of the flow of money and the major players in contemporary federal elections.

Rectangles. These represent the major sources of funds and spending agents in elections, including individual citizens, political action committees (PACs), political parties, candidates’ campaign organizations, the U.S. Treasury (for public funding in presidential elections), candidates’ personal funds, and interest groups (corporations, unions, trade associations, etc.).

Ovals. These represent the six forms of spending which, in all but one case, finance direct communications with the electorate (or portions thereof). These include all candidate activity and communications, independent expenditures, coordinated expenditures, issue advocacy, and exempt activities to members of unions and corporations. The sixth form, transfers to state parties, involves very substantial sums of money, but is not itself a form of communication with the electorate, but rather an intermediate step in that process.

Lines and Arrows. These represent the actual flow of money, whether donations to agents which will in turn spend it for voter communications or disbursements directly for such communications.

- ! **Heavy, solid lines.** These represent expenditures or disbursements for voter communications.
- ! **Light, solid lines.** These represent contributions, donations, or transfers of money to intermediate agents, who, in turn, will spend it for voter communications.
- ! **Broken line.** This represents overhead costs (administration and fundraising) of separate segregated funds (PACs) sponsored by unions or corporations.

The figure and the accompanying discussion do not purport to encompass all activities and avenues of financing elections. Activities which had a less direct impact or role on communicating with the electorate were excluded. Inclusion of the full extent of activities and transactions would detract from the desired simplicity of presentation. Because of that and a need to focus on those areas of greatest interest to policymakers, the figure conveys the major players and activities only.⁴

⁴ Among the activities or transactions omitted are: U.S. Treasury subsidies to parties for presidential nominating conventions; the substantial sum of PAC money that is spent on neither contributions nor independent expenditures, but rather on fundraising and overhead
(continued...)

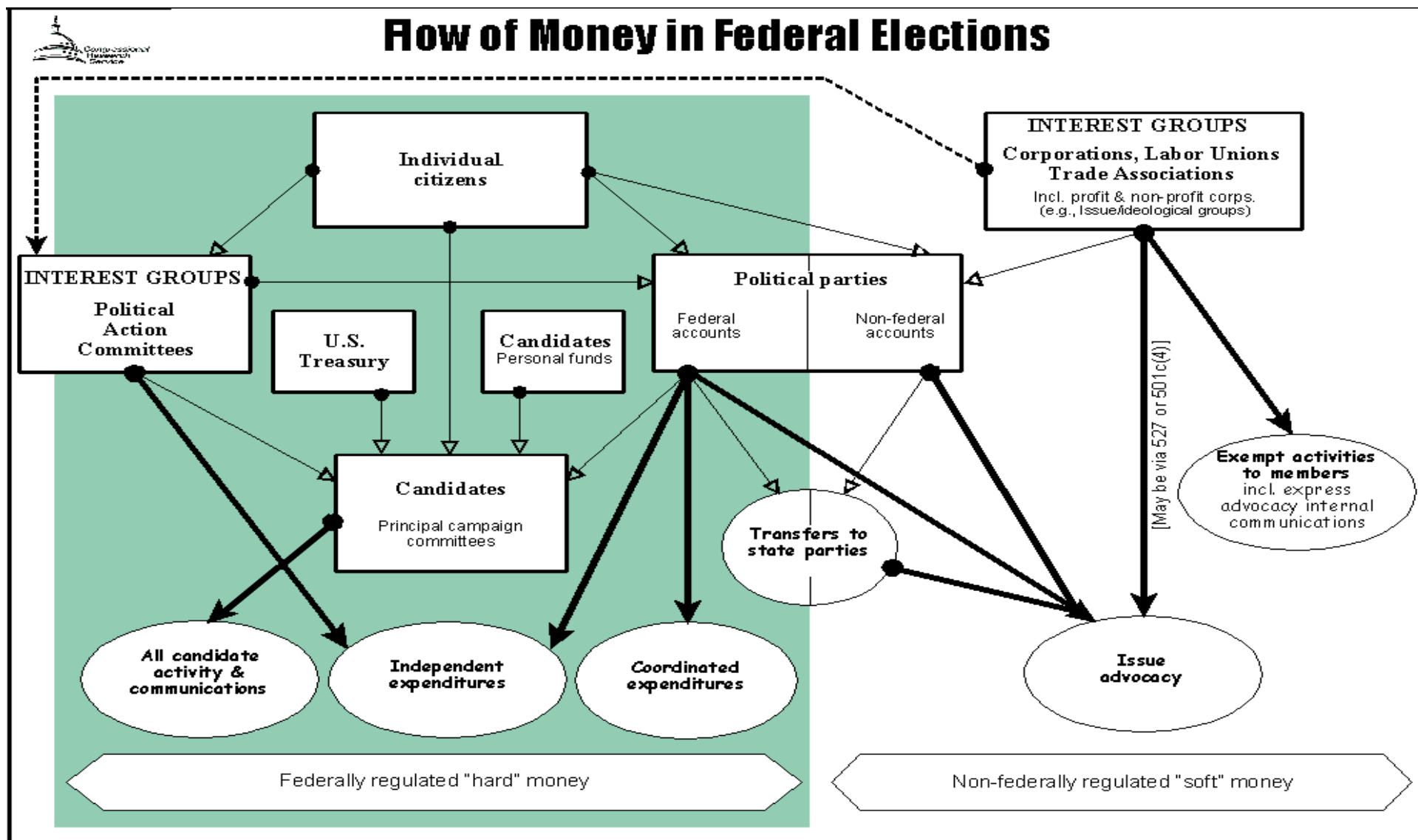
Discussion. The text that accompanies figure 1 explains what is known about the flow of money in the 2000 federal elections. While it focuses on presenting available data or estimates, it also provides an explanation, where appropriate, of the context of the particular activity or participant. On the hard money side, data were provided (except where noted) by the Federal Election Commission's Data Systems Division during the last week of February and first two weeks of March 2001. On the soft money side, there are no disclosure requirements in all categories and certainly not in any uniform manner. Hence the data reflect available estimates, scholarly studies, discussions with campaign finance experts, and the author's best judgment. Such a methodology was necessitated by the absence of required disclosure in most of the soft money categories.

There are three sections of this report, each focusing on an arena of activity, whether hard money, soft money, or mixed (hard and soft money). Each of these sections is arranged by participant, and under each participant, by what is known about receipts and sources, contributions made, and disbursements of funds on voter communications.

Because of the organizational structure of this report, certain data are presented in each of two different sections, once as a contribution to a particular source, listed under the type of donor, and again as a receipt from that donor, listed under the type of recipient.

⁴(...continued)

costs (especially relevant to unaffiliated PACs); party nominating conventions' host committee spending; state and local party spending on activities that indirectly benefit federal candidates; and independent expenditures by individuals (a rare occurrence).



Hard Money

The focus of hard money activity is on the candidates for office, through their principal campaign committees. Most spending on the hard money side emanates from the candidate committees. But parties and PACs also engage in some spending aimed directly at the electorate. Candidate committees are funded by five main sources: individual citizens contributing directly to candidates are the most important source; PACs and political parties are, respectively, the second and third largest source of candidate funds; candidates' own resources (through donations and loans from personal and immediate family funds) may play an important role in some races; and public funding is available in presidential elections to participating candidates through the U.S. Treasury.

Individual citizens

Individual citizens, giving money directly, are by far the largest source of contributions to federal candidates, political action committees, and political parties.

Contributions.

To Candidates. According to the FEC, individuals contributed \$822.3 million to candidates for federal office in the 2000 election cycle. This included \$255.1 million to presidential candidates, \$252.2 million to Senate candidates, and \$315 million to House candidates.

To PACs. According to the FEC, individuals contributed \$557.6 million to political action committees in the 2000 election cycle.

To Political Parties—Federal Accounts. According to the FEC, individuals contributed \$712.4 million to federal accounts of political parties (at the national, state, and local levels) in the 2000 election cycle.

PACs

The term *political action committee* is colloquial and comprises two types of committees as defined in law: either a *separate segregated fund*, if it is sponsored by an organization, or a *political committee*, if it is not.

Of the 3,907 PACs registered with the FEC at the end of 2000, 74% were separate segregated funds. Such a fund is essentially a bookkeeping arrangement, wherein an organization prohibited by law from using its treasury funds for direct campaign donations pays the administrative and fundraising costs of a separate entity, that, in turn, seeks voluntary contributions from its members for expressly political purposes. Organizations that maintain such funds include unions, corporations, trade and health associations, membership groups, cooperatives, and corporations without capital stock.

The remaining 26% of today's PACs are not sponsored by organizations and do not constitute separate segregated funds. These PACs, referred to as *nonconnected*

by the FEC, are organized merely by meeting the law's definition of *political committee*—a group that raises or spends \$1,000 or more in a year. Unlike separate segregated funds, these PACs are not required to limit fundraising appeals to specified persons; however, nonconnected PACs must pay their administrative and fundraising expenses out of contributions, lacking sponsors to underwrite these costs. The nonconnected PACs largely comprise ideological and single-issue groups.

According to the FEC, PACs raised \$619 million in the 2000 election cycle.⁵

Receipts.

From interest groups. This refers to the overhead costs related to a separate segregated fund, *i.e.*, a PAC sponsored by a union or corporation; as noted, this category comprised 76% of all PACs. Costs include those associated with fundraising and administration. Federal election law does not require that these expenses be disclosed, and there are no available estimates. While all receipts of non-connected PACs are reported, fundraising and administrative costs are paid out of those receipts. For sponsored PACs, those costs are paid by the sponsor; hence all PAC receipts may be used for election advocacy.

From individuals. According to the FEC, individuals contributed \$557.6 million to political action committees in the 2000 election cycle.

Contributions.

To candidates. According to the FEC, PACs contributed \$246.7 million to candidates for federal office in the 2000 election cycle, including \$2.5 million to presidential candidates, \$50.2 million to Senate candidates, and \$194.0 million to House candidates.

To political parties—federal accounts. According to the FEC, PACs contributed \$28.7 million to federal accounts of political parties (at the national, state, and local levels) in the 2000 election cycle.

Expenditures.

Independent Expenditures. Federal law recognizes a particular type of campaign expenditure, wherein an individual or group communicates a message to voters without coordination with any candidate. 2 U.S.C. § 431(17) defines *independent expenditure* as an expenditure:

by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

⁵ This figure does not include any overhead costs absorbed by sponsors of segregated funds, for which there are no data or estimates.

Such expenditures have typically been undertaken by a small number of PACs to support or oppose candidates to a greater extent than permitted by the contribution limits. Because independent expenditures use express advocacy, *hard money* is required, but this should not be confused with *issue advocacy*. As an *expenditure*—and not a contribution—total spending is not limited, based on the *Buckley v. Valeo* ruling.

According to the FEC, PACs made \$20.6 million in independent expenditures in the 2000 election cycle, including \$5.9 million for or against presidential candidates, \$7.0 million for or against Senate candidates, and \$7.7 million for or against House candidates.

U.S. Treasury

Since 1976, candidates for President have been able to receive public funding in their campaigns, on a voluntary basis, conditioned on their agreement to specified limits on campaign expenditures. Financed through a checkoff on federal tax returns, funding is available to primary and general election candidates, as well as to political parties for their quadrennial nominating conventions.

In 2000, eligibility for matching funds in the pre-nomination phase was subject to acceptance of a nationwide spending limit of \$33.8 million, plus \$6.8 million for fundraising, and to raising a threshold level of small donations. In the general election, the spending limit was \$67.6 million, with major party candidates eligible for public funds equal to the limit, and minor party candidates who met established criteria eligible for an amount proportionate to the vote received in prior elections.

Subsidies.

To candidates. According to the FEC, candidates for President received \$208.4 million in public funds for their primary and general election campaigns in the 2000 election cycle. This included \$60.7 million to 10 primary candidates (\$25.7 million to four Republicans, \$29.3 million to three Democrats, and \$5.7 million to three minor party candidates) and \$147.7 million to three general election nominees (\$67.6 million each to Bush and Gore and \$12.6 to Buchanan, of the Reform Party).⁶

Candidates (From Personal Funds)

While the vast majority of candidates do not contribute substantial amounts to their own campaigns, there is a relatively small number of candidates who do make substantial contributions or loans from personal wealth in any election. While some of these loans are eventually repaid, much of the loan money is never repaid. Data here reflect contributions and loans that have as yet not been repaid.

⁶ \$29.5 million in public funds were also provided to parties for nominating conventions (\$13.5 each to the Democrats and Republicans and \$2.5 to the Reform Party). These figures are not reflected in this study.

Contributions/Loans.

To candidates. According to the FEC, candidates gave or loaned their campaigns \$194.7 million from personal and immediate family funds in the 2000 election cycle. This included \$40.1 million from presidential candidates, \$102.1 million from Senate candidates, and \$52.5 million from House candidates.

Political Parties – Federal Accounts

According to the FEC, federal accounts of political party committees raised \$850 million in the 2000 election cycle.

Receipts.

From individuals. According to the FEC, individuals contributed \$712.4 million to federal accounts of political parties (at the national, state, and local levels) in the 2000 election cycle.

From PACs. According to the FEC, PACs contributed \$28.7 million to federal accounts of political parties (at the national, state, and local levels) in the 2000 election cycle.

Contributions/Transfers.

To candidates. According to the FEC, political parties contributed \$3.7 million to federal candidates in the 2000 election cycle. This included \$.9 million to Senate candidates and \$2.8 million to House candidates.

To state parties (transfers). According to the FEC, \$132.5 million was transferred from the national party federal accounts to those of state and local political parties.

Expenditures/Disbursements.

Independent Expenditures. In *Colorado Republican Federal Campaign Committee v. Federal Election Commission* [116 S. Ct. 2309 (1996)], the Supreme Court ruled that parties, like PACs and others, may engage in this form of spending.

According to the FEC, political parties made \$5.0 million in independent expenditures for or against federal candidates in the 2000 election cycle. This included \$1.7 million for or against presidential candidates, \$.6 million for or against Senate candidates, and \$2.7 million for or against House candidates.

Coordinated Expenditures. Aside from direct contributions, national and state party committees may make coordinated expenditures on behalf of their general election nominees, subject to limits (adjusted for inflation every two years). In 2000, parties could spend \$33,780 in House races in multi-district states, \$67,560 in House races in single-district states, and from \$67,560 to \$1.6 million in Senate races (depending on population). Those amounts were doubled, in effect, by the ability of

state parties to designate the national committee as its expenditure agent in House and Senate races. In 2000, each party could spend \$13.7 million in the 2000 presidential race.

According to the FEC, parties made \$50.7 million in coordinated expenditures on behalf of their candidates for federal office in the 2000 general elections. This included \$26.2 million on behalf of presidential candidates, \$15.9 million on behalf of Senate candidates, and \$8.6 million on behalf of House candidates.

Issue Advocacy. For a discussion of party issue advocacy, see the section in this report on *Hard and Soft Money: Mixed Activities; Political Parties—Federal and Non-federal Accounts* (p.17). Because of different allocation rules for national versus state and local parties and the uncertainty about which of these entities financed the various party ads, no attempt is made here to estimate the hard and soft money shares of this overall estimate.

Candidates

Receipts.

From individuals. According to the FEC, individuals contributed \$822.3 million to candidates for federal office in the 2000 election cycle. This included \$255.1 million to presidential candidates, \$252.2 million to Senate candidates, and \$315 million to House candidates).

From PACs. According to the FEC, PACs contributed \$246.7 million to candidates for federal office in the 2000 election cycle. This included \$2.5 million to presidential candidates, \$50.2 million to Senate candidates, and \$194.0 million to House candidates.

From U.S. Treasury. According to the FEC, candidates for President received \$208.4 million in public funds for their primary and general election campaigns in the 2000 election cycle. This included \$60.7 million to 10 primary candidates (\$25.7 million to four Republicans, \$29.3 million to three Democrats, and \$5.7 million to three minor party candidates) and \$147.7 million to three general election nominees (\$67.6 million each to Bush and Gore and \$12.6 to Buchanan, of the Reform Party).

From candidates' personal funds. According to the FEC, candidates gave or loaned their campaigns \$194.7 million from personal and immediate family funds in the 2000 election cycle. This included \$40.1 million from presidential candidates, \$102.1 million from Senate candidates, and \$52.5 million from House candidates.

From political parties. According to the FEC, political parties contributed \$3.7 million to federal candidates in the 2000 election cycle. This included \$.9 million to Senate candidates and \$2.8 million to House candidates.

Expenditures.

For all candidate activity and communications. According to the FEC, candidates for federal office spent \$1,609.9 million in the 2000 election cycle. This included \$605.1 million by presidential candidates, \$434.4 million by Senate candidates, and \$570.4 million by House candidates.

Soft Money

Although union and corporate money has long been prohibited directly in federal elections, three methods have evolved through which union and corporate treasury money may affect federal elections in less direct but arguably effective ways. These disbursements are allowed because they are aimed (at least nominally) at non-federal races (as donations to parties), at restricted classes (as exempt activities), or at the public, but without express advocacy language (as issue advocacy). While corporations and labor unions are the dominant participants in the soft money arena, individuals and parties also play key roles.

Individual Citizens

Donations.

To political parties—non-federal accounts. According to the FEC, individual citizens donated \$177.3 million to the non-federal accounts of national political party committees in the 2000 election cycle.

Political Parties—Non-federal Accounts

According to the FEC, non-federal accounts of political parties raised \$495 million in the 2000 election cycle.

Receipts.

From individuals. According to the FEC, individual citizens donated \$177.3 million to the non-federal accounts of national political party committees in the 2000 election cycle.

From interest groups. According to the FEC, entities other than individual citizens donated \$317.7 million to the non-federal accounts of national political party committees in the 2000 election cycle. This primarily comprised donations from corporations, labor unions, and trade associations.

Transfers.

To state parties. According to the FEC, \$274.2 million was transferred from national party non-federal accounts to the non-federal accounts of affiliated party committees at the state and local levels in the 2000 election cycle.

Disbursements.

Issue Advocacy. For a discussion of party issue advocacy, see the section in this report on *Hard and Soft Money: Mixed Activities; Political Parties—Federal and Non-federal Accounts* (p. 17). Because of the different allocation rules for national versus state and local parties and the uncertainty about which of these entities financed the various party ads, no attempt is made here to estimate the hard and soft money shares of this overall estimate.

Interest Groups

Donations.

To political parties—non-federal accounts. According to the FEC, entities other than individual citizens donated \$317.7 million to the non-federal accounts of national political party committees in the 2000 election cycle . This primarily comprised donations from corporations, labor unions, and trade associations.

Disbursements.

Issue Advocacy. Several sources are available which can serve as the basis for an overall estimate of election-related issue advocacy spending by interest groups in 2000. One is the study on political advertising by the Campaign Media Analysis Group (CMAG), for the Brennan Center for Justice at New York University (NYU) Law School. Using satellite technology, the CMAG monitored political advertising on television in the nation's top 75 markets, reaching over 80% of the U.S. population, between June 1 and November 7, 2000. They found that \$56.5 million was spent by interest groups during this period, including \$16.1 million relating to presidential candidates, \$10.6 million to Senate candidates, and \$29.8 million to House candidates.⁷

The Brennan Center's interest group data are limited by their inclusion of television only; while that may well have been the principle medium used, radio, print ads, direct mail, and phone banks were also used by interest groups in issue advocacy. The Brigham Young study, in fact, concluded:

A focus on soft money and issue advertising that only catalogs 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.⁸

⁷ Brennan Center for Justice, New York University School of Law. *2000 Presidential Race First in Modern History Where Political Parties Spend More on TV Ads than Candidates*, press release, Dec. 11, 2000. [<http://brennancenter.org/tvads2000.html>].

⁸ Magleby, *Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections*, p. 3.

Even the TV data probably understate the extent of broadcast issue advertising alone. First, the data do not reflect spending on TV ads reaching the remaining 20% of the U.S. population. Second, the data do not reflect costs of producing or placing the ads. Finally, the data assign a dollar value for ads based on the candidate rate, whereas interest groups (and parties) are not eligible for the lowest unite rate discount.⁹

While the \$57 million figure may be the most precise one available, scholars who have examined this issue believe that it considerably understates the actual level of spending. In a report by the Task Force on Disclosure of the Campaign Finance Institute (a public policy organization established in 2000 to attempt consensus recommendations on changes in the nation's campaign finance laws), these experts concluded:

Undisclosed election related communications represent a large, and rapidly growing, part of the election scene. If you add up what the major groups were doing in media advertising, direct mail and telephone banks in 2000, without public disclosure, the documented total has to be substantially more than \$57 million, which is the amount the Brennan Center catalogued for radio [sic] and TV advertising in major media markets alone. *For all we know, the amount could well double that, once direct mail, phone banks and other activities across the whole country are included* [emphasis added]. Whatever the exact figure, it is clear that the order of magnitude of these undisclosed communications puts them in a league that rival the amount raised and spent by any one of the four Democratic or Republican major party congressional campaign committees – and the party committee numbers include administrative overhead and fundraising costs. These undisclosed interest group communications are major forces in U.S. elections, not little oddities or blips on the screen.¹⁰

In a press conference announcing this study, political scientist Anthony Corrado, a co-chair of the Institute, asserted that the actual value of interest group issue advocacy related to elections “could easily push \$100 million.”¹¹

The Annenberg Public Policy Center at the University of Pennsylvania has tracked issue advocacy since the 1996 election, and, for 2000, it estimated that \$509 million was spent by parties and interest groups.¹² While the usefulness of these data are limited by coverage of the full two-year period and the lack of differentiation

⁹ Furthermore, even candidate rates have not been suppressed as originally intended by the lowest unit rate rule, according to a recent study of political broadcast costs. See: Alliance for Better Campaigns, *Gouging Democracy: How the Television Industry Profiteered on Campaign 2000*. Mar. 6, 2001 [<http://www.bettercampaigns.org/Doldisc/gouging.htm>]

¹⁰ Campaign Finance Institute, Task Force on Disclosure, *Issue Ad Disclosure: Recommendations for a New Approach* (Washington: February 2001), p. 6. [http://64.14.117.231/issue_ads_toc.htm]

¹¹ Anthony Corrado, press conference remarks, Willard Hotel, Washington, Feb. 22, 2001.

¹² Annenberg Public Policy Center, University of Pennsylvania, *Annerg Public Policy Center Tracks Over \$509 Million in Reported Expenditures on Issue Advocacy*, press release, Feb. 1, 2001. [<http://appenn.org/issueads/index.html>]; see report.

between campaign-related and non-campaign-related advertising, the Annenberg study contains some CMAG data for March 8 (Super Tuesday) through the general election date, a longer period than that covered by the Brennan Center. During this period, \$248 million was spent on TV ads in the top 75 markets, \$156 million by the parties and \$92 million by interest groups. While the longer period increases the chances that non-election-related advertising is included, the figure understates the rates charged to interest groups and the cost of reaching 100% of the TV audience. Thus, while there are limitations to the Annenberg data, taken with other estimates, they suggest greater likelihood that the interest role could be fairly valued at over \$100 million.

One additional useful source in estimating interest group issue advocacy (and available for the first time) concerns political organizations with section 527 tax-exempt status under the Internal Revenue Code (“527 organizations”). The express purpose of these groups is to influence elections, but, because many do not use express advocacy in their communications, they have been unregulated by federal election law. In 2000, Congress enacted Public Law 106-230, requiring such groups not disclosing financial activity to the FEC to make periodic reports to the Internal Revenue Service. The law took effect on July 1, 2000 and required disclosure of relevant information after that date.

The Associated Press (AP) compiled data on 527 organization filings by more than 1,800 groups that reported spending money between July 1 and late October 2000; their computer analysis showed a total of \$132.6 million spent during that period.¹³ While this figure does not take into account spending right up to the November 7 election (the last weeks invariably involving high spending), it includes spending by groups that focused their activities at state and local, not national, levels.

There are two key differences between the data sources in this area. First, not all interest group issue advocacy was conducted by 527 organizations; many 501(c)(4) tax-exempt groups and others were known to have conducted issue advocacy campaigns in 2000. Second, the official 527 organization disclosure reports reflect all spending by the groups involved, whereas the other studies were confined to TV advertising. The inclusion of all activity in the 527 organization reports make them more comparable to the data for parties and candidates, which also include overhead, fundraising costs, etc. Taken together, with an understanding of the strengths and limitations of each, they help justify an estimate that issue advocacy spending related to the 2000 federal elections likely exceeded \$100 million, and probably by a significant margin. In fact, only the uncertainty over how much of the \$132.6 million reported by the AP was state and local related makes one hesitant to suggest that it may well have approached \$150 million (given that the \$132.6 million did not include the final weeks of the election).

Based on an examination of the findings of these studies and commentary from reputable experts, it can thus be estimated conservatively that interest groups’ issue advocacy spending totaled between \$100 and \$150 million in 2000.

¹³ John Solomon, *Tax-Exempt Groups Inject over \$130 Million into Elections*, Associated Press, Nov. 3, 2000.

Exempt Activities to Members. While banning direct corporate and union money in federal elections, 2 U.S.C. § 441b(b)(2) exempts three types of spending from its contribution and expenditure definitions, if aimed only at certain “restricted classes”: for a union, its members, officials, and families; for a corporation, its executive and administrative personnel, stockholders, and families. The exempt activities are: establishing, administering, and soliciting money for a PAC; get-out-the-vote and registration drives; and internal communications on any subject. Communications with restricted classes may involve express advocacy, which is permitted only because of the limited, affiliated audiences receiving the messages.

Absent solid data, it is generally believed that exempt activities are a more important tool for unions than for corporations, even though corporations have the same rights as unions in all soft money activities. Not only do unions have a restricted class that included some 16.3 million union members and their families in 2000,¹⁴ but they have a ready infrastructure (phone banks, office space, etc.) and volunteer pool to make their internal communications and voter drives an especially potent force in mobilizing their base of support.¹⁵

As exempt activities, sources and recipients of union and corporate funds are generally not disclosed. The one exception is for internal express advocacy communications, but only when they exceed \$2,000 per candidate per election; furthermore, communications primarily devoted to other subjects are excluded.¹⁶ According to the FEC, some \$17.25 million in internal communications with restricted classes was reported for the 2000 election cycle; over \$13 million of that was by labor unions.

While unions must file annual financial reports under the Labor Management Reporting and Disclosure Act of 1959 (73 Stat. 519), these reports are arranged by type of expenditure (*e.g.*, salaries, administrative costs) rather than by functional category (*e.g.*, contract negotiation and administration, political activities). In 1992, under President Bush, the Department of Labor proposed regulations to require classification of reported spending data by functional category.¹⁷ In a proposed rulemaking notice of September 23, 1993, the department, under President Clinton, rescinded the change to functional categories.¹⁸

Due to the limits of public disclosure, one must look to estimates of the total value of labor soft money. Few appear willing to even make such estimates, which amount to educated guesses, such as a \$56 million estimate for the 1992 presidential

¹⁴U.S. Dept. of Labor, Bur. of Labor Stats., *Employment and Earnings*, Jan. 2001.

¹⁵ A corporations’ stockholders, in contrast, while a large group, lack the proximity to the corporate structure that union members have with their unions, making the corporate restricted classes far less easily or effectively mobilized.

¹⁶11 C.F.R. §100.8(b)(4) and 104.6.

¹⁷U.S. Dep. of Labor, “Labor Organization Annual Financial Reports,” *Federal Register*, vol. 57, Oct. 30, 1992, p. 49282.

¹⁸U.S. Dept. of Labor, “Labor Organization Annual Financial Reports,” *Federal Register*, vol. 58, Dec. 21, 1993, p. 67595.

election by campaign finance scholar Herbert Alexander.¹⁹ Estimates may also be influenced by the observer's political orientation, as seen in the disparity between the \$70 million claimed by union leaders²⁰ and the \$300-\$500 million critics estimate²¹ as the value for total labor soft money in a presidential election year.

Undoubtedly, the \$17.25 million reported to the FEC for internal communications (one of the major components of the exempt activities) greatly understates the total level of union and corporate spending on election activities aimed at their restricted classes. Estimates of the value of union activity (the predominant component here) in a presidential election year have ranged anywhere from tens of millions to hundreds of millions of dollars. To a great extent, the real value of this activity may be unknowable, even with enhanced disclosure requirements, as much of it may not be easily quantified (*e.g.*, the value of volunteer time). In truth, no estimate has gained any kind of consensus or credibility as even a proximate dollar figure in this area. Thus, determining the value of labor/corporate exempt activities remains perhaps the most elusive goal in estimating a total for all three types of soft money activity that affect contemporary elections.

If pressed for a dollar figure, one might suggest \$100 million as a conservative estimate of actual dollars spent, but this would not reflect the value of volunteer services. The safety of this estimate appears bolstered by the \$57 million estimate for 1992 by Professor Alexander, abundant evidence of increased labor activity since then, and the evidence reported in the recent Brigham Young University study that the Chamber of Commerce had devoted much of its \$15 million campaign budget to this area in 2000.²² The figure could conceivably be well more than \$100 million, but it seems highly unlikely, based on all available data, evidence, and anecdotal information, that it was any less.

¹⁹Herbert E. Alexander and Anthony Corrado, *Financing the 1992 Election* (Armonk NY: M.E. Sharpe, 1995), pp. 20, 115.

²⁰ John Mintz, "McCain's 'Soft Money' Pledge Alarms GOP," *Washington Post*, Feb. 22, 2000, p. A6.

²¹Estimates by Prof. Leo Troy, Rutgers Univ. (\$300-\$500 million) and Reed Larsen, National Right To Work Comm. (\$410 million), in: U.S. Congress, House Oversight Committee, *Influencing Elections: Political Activity of Labor Unions*, hearings, 104th Cong., 2nd sess., Mar. 19, 1996 (Washington: GPO, 1996), pp. 32, 36.

²² Magleby, *Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections*, p. 39.

Hard and Soft Money: Mixed Activities

Political Parties—Federal and Non-federal Accounts

Disbursements.

Issue Advocacy. Issue advocacy communications may be made by political parties, using a mixture of hard and soft money.²³ Under FEC Advisory Opinion 1995-25, 65% of the cost of such communications by a national party committee in a presidential election year must be derived from hard money, with soft money making up the remaining 35%. (In a non-presidential election year, 60% of the cost must be paid with hard money, with the remaining 40% from soft money. For their issue advertising, state and local parties must use the same allocation formula—the ballot composition method—used for administrative and generic activities.) While national party committees disclose receipts and disbursements from both federal (hard) and non-federal (soft) accounts, disbursements are not identified as issue advocacy *per se*, making any aggregation difficult using FEC disclosure reports.

The best available data on television political advertising in the 2000 elections was compiled by the Campaign Media Analysis Group (CMAG), in a study for the Brennan Center for Justice at NYU Law School, as cited earlier in this report. Using satellite technology, the CMAG monitored political advertising on television in the nation's top 75 markets, reaching over 80% of the U.S. population, between June 1 and November 7, 2000. They found that \$158.6 million was spent by political parties on TV advertising during this period, including \$79.9 relating to presidential candidates, \$39.2 million relating to Senate candidates, and \$39.5 million relating to House candidates.²⁴

Although the \$158.6 million is the best available figure on party advertising on television, its usefulness for the purposes of this report is limited by several factors. First and foremost, there is no way of knowing to what extent those advertisements were issue ads as opposed to express advocacy ads; the latter could have been made as party coordinated expenditures. FEC data note that parties spent \$50.7 million on coordinated expenditures for their general election nominees in 2000. While the CMAG study's author stated his belief that the vast majority of party spending was on issue ads, it is conceivable that as little as \$107.9 million (\$158.6 million minus \$50.7 million) or as much as \$158.6 million was spent on parties' TV issue ads.

Other factors limiting the reliability of these data include the coverage of television only, as radio, print ads, direct mail, and phone banks were likely used by parties in issue advocacy. Furthermore, as noted earlier in this report, the data do not reflect spending on even TV ads reaching the remaining 20% of the U.S. population;

²³ Because of different allocation rules for national versus state and local parties and uncertainty about which of these entities financed the various party ads, no attempt is made here to estimate the hard and soft money shares of this overall estimate.)

²⁴ Brennan Center, *2000 Presidential Race First in Modern History Where Political Parties Spend More on TV Ads than Candidates*.

nor do they reflect costs of producing or placing TV ads. Finally, the data assign a dollar value for ads based on the candidate rate, and parties are not eligible for the lowest unite rate discount. For these reasons, any estimate based on the Brennan Center/CMAG study probably understate the extent of party issue advertising.

Thus, in estimating spending by parties of between \$107.9 and \$158.6 million, this report may well err on the conservative side.

Conclusion

This section restates some principal findings of this report regarding the spending of money to influence. Corresponding to the oval figures on Figure 1, they reflect the five categories of spending and party transfers, which constitute an intermediate step in the spending of money.

All Candidate Activity and Communications

According to the FEC, candidates for federal office spent \$1,609.9 million in the 2000 election cycle. This included \$605.1 million by presidential candidates, \$434.4 million by Senate candidates, and \$570.4 million by House candidates.

Independent Expenditures

According to FEC data, \$25.6 million was spent on independent expenditures in the 2000 federal elections. This included \$20.6 million spent by PACs (comprised of \$5.9 million for or against presidential candidates, \$7.0 million for or against Senate candidates, and \$7.7 million for or against House candidates). It also included \$5.0 million spent by political parties (comprised of \$1.7 million for or against presidential candidates, \$.6 million for or against Senate candidates, and \$2.7 million for or against House candidates).

Coordinated Expenditures

According to the FEC, political parties made \$50.7 million in coordinated expenditures on behalf of their federal candidates in the 2000 general elections. This included \$26.2 million on behalf of presidential candidates, \$15.9 million on behalf of Senate candidates, and \$8.6 million on behalf of House candidates.

Party Transfers

According to the FEC, \$406.7 million was transferred from national to state and local political party committees in the 2000 election cycle, including \$132.5 million within federal accounts and \$274.2 million within non-federal accounts.

Issue Advocacy (Election-related)

Based on an examination of available data, studies, and commentary, it is estimated that between \$207.9 million and \$308.6 million was spent on election-

related issue advocacy in the 2000 elections. This includes an estimated \$107.9 - \$158.6 million spent by parties and \$100 - \$150 million spent by interest groups.

Exempt Activities Aimed at Members

To a great extent, the real value of this activity may be unknowable, even with enhanced disclosure requirements, as much of it may not be easily quantified (*e.g.*, the value of volunteer time). In truth, no estimate has gained any kind of consensus or credibility as even a proximate dollar figure in this area. Thus, the labor/corporate exempt activities remain the most inestimable of all three of the soft money categories of activity that affect contemporary elections. If pressed for a dollar figure, this report suggests \$100 million as a conservative estimate on actual dollars spent; while it may conceivably be much higher, there is little reason to believe it might have been any lower.