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This Is Reform?
Predicting the Impact of the New Campaign Financing Regulations

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McCain-style campaign finance regulation is the new campaign reality. But what exactly will this reformist utopia look like? Assessing the "reformed" campaign of the future against the stated desires and expectations of the principal campaign finance regulators and their media supporters, this paper predicts the most important changes in political campaigning, changes that will be experienced for the first time during the 2003–04 electoral cycle. Those changes include the following:

- The ban on soft money fundraising by the national parties will make our elections significantly less competitive.
- The federal soft money ban will reduce voter turnout by approximately 2 percent
- As a result of the soft money ban, both the parties and their candidates will lose influence over their own campaigns.
- The prescribed channeling of third-party advertising through political action committees (PACs), paid for only in hard money donations, will increase the number of PACs and the proliferation of PAC-run microcampaigns.
- The severe restrictions on independent advertising will inadvertently produce both longer and more negative campaigns.

Overall, the allegedly reformed campaign of the future will be less competitive, less controlled by candidates and their parties, and more influenced by the mainstream media and will involve fewer voters than the typical campaign of today. Most Americans support real campaign finance reform, but clearly this is not the future promised to them by the self-described reformers.

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Introduction

The addition of President George W. Bush's signature to the campaign finance bill passed by Congress amounted to an anti-democratic triple play for advocates of heightened regulation of political activity.[1] The new legislation, known as the Bipartisan Campaign Reform Act, will make future campaigns less competitive, strengthen the mainstream media's grip on political discourse, and run roughshod over the First Amendment's protection of freedom of speech. In practice, this hot political bat will turn into an outright victory for incumbency protection.

McCain-style campaign finance regulation is the new campaign reality. The ban on soft money (large and largely unregulated) donations to the national parties,[2] the increase in hard money (small, regulated, direct contributions to candidates), and the severe limitations placed on independent political advertising collectively constitute the most significant changes to campaign finance law since the post-Watergate regulations of 1974.[3]

But what exactly will this reformist utopia look like? What will political life be like now that the BCRA has poked a stake in the heart of the "nexus of corruption"[4] at the federal level? As described by pro-regulation Sen. Carl M. Levin (D-Mich.), the political campaign of the future will be better because "the political landscape . . . will be filled with more people and less influence, more contributors and smaller contributions, more democracy and less elitism."[5] Assessing the "reformed" campaign of the future against the stated desires and expectations of the principal campaign finance regulators and their media supporters, this paper predicts the most important changes in political campaigning, changes that will be experienced for the first time during the 2003–04 electoral cycle.

Principal Changes in Political Campaigning

Less Competitive Elections

The ban on soft money will have an anticompetitive impact on future electoral outcomes. Everyone (except perhaps members of Congress) favors more competitive elections. After all, in recent elections, 98 percent of incumbent members of the House successfully sought reelection. Of 435 congressional districts, only a few dozen experience truly competitive elections.[6] According to pro-regulation political columnist Albert R. Hunt, "The appalling lack of competition in Congressional elections is another void in the system."[7] In the long term, most analysts and electoral participants agree that this state of affairs is clearly incompatible with a healthy political system.

Unfortunately, the ban on soft money fundraising by the national parties will make our elections significantly more uncompetitive. How so? Both major parties currently use soft money to increase the competitiveness of individual congressional races. Without those partisan resources pouring into targeted districts, fewer incumbents will be threatened by serious challengers, which will further reduce political competition.

Current federal law bans the use of corporate- or union-donated soft money for advertisements that expressly advocate the election or defeat of a candidate for federal office. The new restrictions on independent advertising will further hamper the efforts of the average challenger. Overall, independent advertising campaigns funded by groups representing business, labor, or single-issue interests are disproportionately critical of incumbents. Generally, those groups advertise their frustrations with the voting record of particular elected officials, warning their respective memberships (and other potentially sympathetic segments of the electorate) about the likelihood of "more of the same," if a given incumbent receives another electoral endorsement.

Because the cumulative effect of the loss of soft money and constraints on independent advertising will be to reduce political competition, even fewer candidates will step forward to challenge incumbents in the first place, thereby further reducing political choice.

Fewer Voters

Campaign finance regulators decry public apathy, especially as reflected in low levels of voter turnout on Election Day. Senate Majority Leader Tom Daschle (D-S.D.) asks, "Is it good enough that in every election the amount of [campaign] money spent goes up and the number of people voting goes down?" According to Sen. John McCain (R-Ariz.), the principal force behind the new campaign finance law, the new regulations will "help to restore the public's faith in government."[8] Campaign finance regulators assert that the traditionally low levels of voter turnout in both presidential and midterm elections[9] are attributable, in part, to campaign advertising that is allegedly too negative in tone and too personal in nature. Hence the need, it is argued, to ban the soft money contributions that, for example, pay for party advertising campaigns that are disproportionately critical of incumbents.

What is ignored in this debate is the fact that the parties do much more with their soft money revenue than simply fund negative advertising campaigns. The parties also use soft money to register voters and conduct get-out-the-vote efforts, especially among minority voters. The inevitable reduction in financial transfers from the national to the state party organizations will handicap voter identification and mobilization efforts at the local level.[10] The best available research concludes that, because it costs a party organization $15–$20 to identify a new voter and then get that new voter to the polls on Election Day, the federal soft money ban, which will decrease party organizational expenditures by about 20 percent, will reduce voter turnout by approximately 2 percent.[11]

Parties and Candidates Lose Influence to Special Interests

The brazenly unconstitutional restrictions on third-party advertising during the 60 days preceding Election Day and the 30 days prior to primary day are intended to "return control" over campaigns to the candidates and their parties. However, as a result of the soft money ban, both the parties and their candidates will lose influence over their own campaigns. In fact, the BCRA arguably constitutes the unilateral disarmament of the major parties.

The national parties currently coordinate their advertising campaigns with their respective senatorial and congressional candidates. Once the implementation of the new campaign finance regulations occurs after the 2002 midterm elections, the parties will have less operational and strategic influence over the campaigns conducted in specific states and districts.

The pro-regulation editorial writers of the *Washington Post* naively assume that "lawmakers can wash some $500 million in big-money contributions out of the federal system: the cash from corporations, unions and wealthy individuals that was supposed to be banned from individual campaigns but that parties and officeholders have learned to use for the benefit of specific candidates."[12] That forecast is echoed by Sen. Daschle, who believes that "we have the first real chance in a generation to limit the access of special interests in the political process."[13]

On the contrary. Special interest groups, corporations, and labor unions will retain previously donated soft money funds. At an earlier point of the campaign, those groups will spend that money independent of the parties and candidates. In addition, prior soft money contributions from wealthy individuals will flow to these special interest campaigns instead of to their current destination—the national parties. For example, the role of the so-called nonpolitician 527 committees,[14] such as EMILY's List, will remain unregulated by the BCRA after November 6, 2002. Therefore, as those political committees will be able to continue to raise large amounts of soft money, their influence will expand significantly vis-à-vis the political parties.[15]

The *Washington Post* further predicts that the soft money ban "should take away some of the steam that drives the current, ever-expanding system. Those in business who say they feel obliged to contribute in order to protect their interests will have some insula-

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tion; donors who are aiming to curry favor or buy access will have less incentive to give."[16] That view ignores the fact that the most important factor driving campaign contributions and campaign spending upward is a government that grows ever larger in size and in scope. Taxes and regulations on society have increased the ambit of government at all levels. Increasing government activity leads to more efforts (including campaign contributions and independent campaign spending) to influence political decisions, a relationship confirmed by scholarly studies.[17] The 527 committees will provide receptive outlets for large donations that otherwise would be made to the parties themselves.

Political journalist Dan Balz reminds us that, "until 1996, proponents of campaign finance legislation had focused their energies on eliminating or sharply restricting the role of political action committees (PACs)."[18] Ironically, during the final eight and a half weeks of the general election campaign of the future, the prescribed channeling of third-party advertising through PACs, paid for only in hard money donations, will increase the number of PACs and the proliferation of PAC-run microcampaigns.[19] A large number of such microcampaigns will perform a series of one-time advertising attacks in specific races. These hit-and-run operations will all occur completely outside the control, but not the purview, of individual campaigns and the national parties.

The severe restrictions on independent advertising will inadvertently produce both longer and more negative campaigns.

Longer, More Negative Campaigns

Media supporters of campaign finance regulation regularly decry independent advertising campaigns, referring to the advertisers as specialists in "sham"[20] or "phony"[21] issue ads. Sen. McCain campaigned in favor of new campaign finance regulation in part to rid our election-time airwaves of such allegedly "misleading issue advertisements,"[22] advertisements sponsored by special interests, such as the National Rifle Association and the Sierra Club (private groups voluntarily supported by millions of ordinary Americans). The political elitism inherent in the anti-independent-advertising argument ignores scholarship that, according to political scientists Stephen Ansolabehere and Shanto Iyengar, finds:

> Voters . . . are not fools, nor are they fooled by political advertising. Although people command few facts about the candidates, they do hold strong beliefs about politics in general. . . . These attitudes temper the electorate's receptiveness to political commercials. . . . Advertising . . . affects the electorate unevenly and in ways that leave very little room for electoral manipulation.[23]

The severe restrictions on independent advertising will inadvertently produce both longer and more negative campaigns. Neither the incentive to advertise nor the resources to do so will be lessened by the new regulations. Instead, independent advertisers will be forced to begin running their ads sooner, on average, than is currently the norm. Debate surrounding the efficacy of a Clintonesque "permanent campaign" will become redundant, as most independent advertising will begin several months, even years, before polling day.

Both political scientists and political consultants generally consider negative ads one of the most relatively effective methods of influencing electoral outcomes.[24] To date, negative ads have been especially common among independent advertising campaigns because those campaigns generally represent the views of individuals who are organized and funded in opposition to a particular candidate, a current piece of legislation, or a proposed policy prescription. Hence, those groups disproportionately advertise *against* someone or something, frequently accentuating the negative in an incumbent's record or the current state of affairs nationwide or in a particular state, region, or district. A major contributing factor to the relative success of well-produced negative ads is that they tend to be more memorable than positive ads. Therefore, those groups advertising more than two months

prior to Election Day will view an even more negative approach as the most effective means of spending their advertising dollars within the new regulatory limits.

The major parties will be forced to respond in kind. They will devote more of their slimmed-down advertising campaigns to matching the independent ads' negativity. As a result, the parties will sacrifice a considerable portion of their positive advertising, which traditionally highlighted their own candidates' biographies and platforms, in order to spend a far greater share of their advertising budget on negative ads that draw sharper partisan and personal comparisons between candidates.

More Powerful Media

The mainstream media, whose support for campaign finance regulation is nearly unanimous, stands to benefit from the new restrictions on political speech. First, the broadcast media's political influence will increase under campaign finance regulation. During the latter period of a general election or a primary campaign, when the undecided swing voters who determine the outcome of most close elections decide how they will vote, the editorial influence of newspapers will be largely uncontested by other nonpartisan actors. Similarly, the image-enhancing or image-destroying impact of broadcast media reporting will not be offset, as commonly occurs today, by independent voices whose advertising during the final weeks of a campaign is frequently critical of media-dominated conventional wisdom in general and of careerist politicians in particular.

Second, the print media will be a financial beneficiary of campaign finance regulation. The constraints on independently sponsored broadcast advertising during the final 60 days of a general election campaign, for example, will transfer advertising spending during that period from the media of television and radio to newspapers and magazines. This "back to the future" development in the history of American political advertising is analogous to the situation in other Western nations where government intervention severely constrains otherwise voluntary, private behavior in the political sphere. In the United Kingdom, for example, a prohibition on paid broadcast advertising by the parties and candidates means that the only recourse for those political actors is paid advertising in the national newspapers—a relatively ineffective tool in the age of the Internet and digital, satellite, and cable television—and on roadside billboards, which is as inefficient a mode of contemporary political communication as print advertising. So the new political advertising reality will benefit the bottom line of such vociferous print media supporters of campaign finance regulation as the *New York Times*, the *Washington Post*, the *Los Angeles Times*, *USA Today*, *Time*, and *Newsweek* but will make it less likely that the electorate will have access to comparable levels of political information.

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Fundraisers Are More Influential

According to Albert R. Hunt, under the new campaign finance system "fundraising will be a slightly smaller political priority."[25] Incumbent politicians are frequently chastised for the disproportionate amount of time they spend attending fundraising events and making fundraising phone calls for their next campaign compared with the amount of time they spend performing the duties of the office to which they were elected. The *Washington Post* observed that "some officeholders wearied of the endless pressure to raise money."[26] Although that comment correctly assesses the imbalance evident in the average politician's day-to-day schedule, it ignores the fundamental cause of the electorally conscientious politician's attention to fundraising.

For almost 30 years, hard money donations were capped at a nominal $1,000 a year. As a result, the average incumbent spent increasing amounts of time chasing the relatively small contributions permitted by law to fund campaigns whose costs were not comparably capped and which frequently reach into the millions of dollars at the con-

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gressional level and into the tens of millions of dollars at the senatorial level.[27] According to House Minority Leader Richard A. Gephardt (D-Mo.), the new legislation will stop politics from being about "fundraisers for large TV advertising campaigns."[28] But the new campaign finance regulations only raise the cap on individual contributions to $2,000 a year. An inflation-adjusted increase would have seen the cap raised to approximately $3,500.[29]

Crucially, this deficient remedy for the average federal candidate's fundraising addiction will be offset by the loss of national party spending in the respective candidate's state or district. This loss of national party spending will directly result from the national parties' loss of soft money. The national parties' soft money would have been spent in races all across the country, especially targeted to the 45–55 most competitive congressional and the dozen most competitive senatorial races. The fact that politicians will spend more time fundraising to make up for the loss of national soft money also means that their fundraisers (especially the so-called bundlers, who put together thick envelopes of separate checks from a large number of individual contributors)[30] will gain further influence in the political system.

President Bush Sets Fundraising and Campaign Spending Records

Signing the new campaign finance legislation was clearly in President Bush's electoral self-interest. In 2000, Gov. Bush's primary campaign was so successful at collecting hard money donations that Bush could afford to refuse the matching funds available to qualifying presidential candidates under existing campaign finance law. In fact, Bush raised a record $113 million during the 2000 primary season.[31] As the new campaign finance regulations allow for a maximum $2,000, rather than $1,000, hard money donation, it is conceivable that, because Bush is a popular president seeking reelection with an unprecedented fundraising base, funds raised for his reelection campaign will surpass $200 million and, perhaps, reach $250 million.[32] Therefore, it is highly likely that Bush will also forego taxpayer funding of his 2004 primary campaign.[33]

Because it is unlikely that Bush will face a serious opponent for the Republican Party's presidential nomination, during the spring and summer months of 2004 his campaign will be able to devote its mammoth campaign war chest to defending Bush's record and excoriating the record and views of his projected Democratic opponent. By contrast, the eventual Democratic nominee will be the survivor of a bruising, costly primary contest. Consequently, he or she is likely to be left—after securing his or her party's de facto nomination in the spring of 2004 and the official Democratic Party's nomination at its convention in late summer—without sufficient funds to effectively combat the Bush campaign's anticipated record-setting pre–Labor Day advertising onslaught.

Of course, during the post–Labor Day general election campaign, the Democratic nominee will be able to avail him- or herself of the several tens of millions of dollars in taxpayer funding available to each major party's presidential candidate. It is likely, however, that President Bush will waive taxpayer funding (of both his primary and his general election campaigns) and will privately raise a far greater amount for his general election campaign. Therefore, as a direct result of the new campaign finance regulations, the 2004 presidential campaign may witness the most significant financial advantage held by one major party's candidate over another's since William McKinley, the establishment Republican candidate, out-fundraised populist reformer William Jennings Bryan, the Democratic standard bearer, in the 1896 presidential election. That situation will provide considerable historical irony for Sen. McCain. The political fallout surrounding the alleged influence of McKinley's corporate donors led McKinley's successor in the White House, President Theodore Roosevelt—Sen. McCain's political hero—to support the effort that made corporate donations illegal.

Conclusion

Overall, the allegedly reformed campaign of the future will be less competitive, less controlled by candidates and their parties, and more influenced by the mainstream media and will involve fewer voters than the typical campaign of today.

It appears, therefore, that campaign finance regulation's principal goals will not be realized. On the contrary, the unintended consequences of the new constraints on political speech will serve only to further the journey of American political campaigning down a path seemingly anathema to the stated desires of the leading campaign finance regulators. Most Americans support real campaign finance reform, but clearly that is not the future promised to them by the self-described reformers.

Notes

1. On February 14, 2002, the House of Representatives passed (by 240 to 189 votes) a campaign finance bill that subsequently passed the Senate (by 60 to 40 votes) on March 20, 2002. President Bush signed the bill into law on March 27, 2002.

2. While the BCRA does not ban soft money at the state level, it places limits on how state parties can raise soft money and on when they can spend it. The effect of this provision will be unevenly felt across the country, as some states ban parties from raising soft money while others allow unlimited soft money donations.

3. By late June 2002, the Federal Election Commission had adopted more than 300 pages of rules and definitions to implement the new law. The FEC is subject to a congressional requirement to complete all rule making by December 22, 2002. These regulations may be challenged either in Congress or in the courts. Advocates of campaign finance regulation allege that some of these regulations allow some soft money to be used to indirectly finance federal elections, thereby watering down the original intent of the legislation. The controversial regulations include the following: the adoption of a "grandfather" clause giving the national parties until November 6, 2002, to establish nonprofit organizations permitted to independently raise and spend soft money under the BCRA; allowing federal officeholders speaking at state or local fundraising events to "recommend" or "suggest"—but not "ask"—that a prospective donor contribute soft money to a state party; allowing state and local parties to raise and spend soft money on certain party-building activities (e.g., voter registration, voter identification, and get-out-the-vote campaigns on behalf of state and local candidates) that arguably have an indirect influence on the outcome of simultaneous congressional elections; and the exemption of the parties' use of Internet communications (e.g., e-mail messaging, streaming video) from the BCRA's provisions. For a more detailed discussion of these and other specific regulatory decisions, see Thomas B. Edsall, "FEC Proposing Tougher Rules on 'Soft Money,'" *Washington Post,* June 18, 2002, pp. A1, A10; Richard A. Oppel Jr., "Election Panel Rebuffs an Effort to Weaken Curb on 'Issue Ads,'" *New York Times,* June 20, 2002, pp. A1, A21; Thomas B. Edsall, "FEC Alters Rules for Campaign Finance," *Washington Post,* June 20, 2002, p. A9; Thomas B. Edsall, "FEC to Allow 'Soft Money' Exceptions," *Washington Post,* June 21, 2002, pp. A1, A13; Richard A. Oppel Jr., "Panel Allows Solicitation of Soft Money at Fund-Raisers," *New York Times,* June 21, 2002, p. A19; "Election Law Coup d'Etat," editorial, *New York Times,* June 24, 2002, p. A22; and Fred Wertheimer, "Soft Money's Big Comeback," *Washington Post,* August 2, 2002, p. A23.

4. Phrase used by Trevor Potter, general counsel of the Campaign and Media Legal Center and member of the legal team for the congressional sponsors of BCRA, to describe the preoccupation of advocates of campaign finance regulation in a speech to the New America Foundation, Washington, June 26, 2002.

5. Quoted in Helen Dewar, "Campaign Reform Wins Final Approval," *Washington Post,* March 21, 2002, p. A6.

6. For a more thorough examination of the problem, see John Samples and Patrick Basham, "Election 2002 and the Problems of American Democracy," Cato Institute Policy Analysis no. 451, September 5, 2002, pp. 6–10.

7. Albert R. Hunt, "Don't Stop at McCain-Feingold," *Wall Street Journal,* February 21, 2002, p. A19.

8. Daschle and McCain are quoted in "Senate Approves Campaign Finance Bill," CNN.com, March 20, 2002, www.cnn.com/2002/ALLPOLITICS/03/20/campaign.finance/index.html.

9. Turnout averages little more than one of two eligible voters in presidential contests and one of three in midterm contests.

10. See John Samples, "Making the World Safer for Incumbents: The Consequences of McCain-Feingold-Cochran," Cato Institute Policy Analysis

no. 393, March 14, 2001, pp. 5–6.

11. See Stephen Ansolabehere and James M. Snyder Jr., "Soft Money, Hard Money, Strong Parties," *Columbia Law Review* 100 (April 2000): 617.

12. "Armageddon," editorial, *Washington Post,* February 11, 2002, p. A24.

13. Quoted in Alison Mitchell, "House Backs Broad Change in Financing of Campaigns; Fast Senate Action Sought," *New York Times,* February 15, 2002, p. A1.

14. Those committees are named after a section of the IRS code. According to the IRS: "A political organization subject to 527 exemption is a party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function. The exempt function of a political organization is influencing or attempting to influence the selection, nomination, election or appointment of an individual to a federal, state, or local public office or office in a political organization." See www.irs.gov/charities/political/article/0,,id_96350,00.html.

15. See, for example, Thomas B. Edsall, "Study Suggests Law on Campaign Finance Will Benefit Liberals," *Washington Post,* June 10, 2002, p. A19.

16. "Squash the Jell-O," editorial, *Washington Post,* February 13, 2002, p. A26.

17. See Patrick Basham, "It's the Spending, Stupid! Understanding Campaign Finance in the Big-Government Era," Cato Institute Briefing Paper no. 64, July 18, 2001.

18. Dan Balz, "In Long Battle, Small Victories Added Up," *Washington Post,* March 21, 2002, p. A6.

19. For an examination of the business community's growing efforts to exploit this opportunity, see Greg Hitt and Tom Hamburger, "New Campaign Law Restores PACs' Appeal," *Wall Street Journal,* July 29, 2002, p. A4; and Jim VandeHei, "Campaign Finance's New Face," *Washington Post,* July 9, 2002, pp. A1, A4.

20. "The Ruses to Block Reform," editorial, *New York Times,* March 4, 2002, www.nytimes.com/2002/03/04/opinion/_04MON1.html.

21. "McCain-Feingold Goes to Court," editorial, *New York Times,* April 1, 2002, p. A22.

22. John McCain, "Only One Bill Means Reform," *Washington Post,* February 13, 2002, p. A27.

23. Stephen Ansolabehere and Shanto Iyengar, *Going Negative: How Political Advertisements Shrink and Polarize the Electorate* (New York: Free Press, 1995), pp. 63–64.

24. See, for example, ibid., pp. 63–98.

25. Hunt.

26. "Victory for Reform," editorial, *Washington Post,* March 21, 2002, p. A34.

27. For an analysis of the factors contributing to higher campaign spending, see Basham.

28. Quoted in Alison Mitchell, "House Backs Broad Change in Financing of Campaigns; Fast Senate Action Sought," *New York Times,* February 15, 2002, p. A18.

29. Calculation based on consumer price index, 1974–2001.

30. See, for example, Richard L. Berke, "The $2,000 Answer," *New York Times,* March 21, 2002, pp. A1, A30.

31. Associated Press, "Not All Winners of Reform Are Obvious," Fox News.com, March 20, 2002, www.foxnews.com/0,3566,48391,00.html.

32. See, for example, Associated Press, "2004 Candidates May Opt Out of Public Financing," CNN.com, May 31, 2002, www.cnn.com/2002/ALLPOLITICS/05/31/presidential.money.ap/index.html.

33. See, for example, Thomas B. Edsall, "Privatized Primaries?" *Washington Post,* July 10, 2002, p. A6.

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