Report of Thomas E. Mann

I. Qualifications

My name is Thomas E. Mann. I am the W. Averell Harriman Chair and Senior Fellow at the Brookings Institution. I served as Director of the Governmental Studies Program at Brookings between 1987 and 1999 and as Executive Director of the American Political Science Association from 1981 to 1987. I earned my Ph.D. in political science at the University of Michigan in 1977, specializing in elections, parties, public opinion, Congress, and American political behavior. A copy of my complete CV is attached.

I have written or edited numerous books and articles on these and related subjects. I have taught at Princeton University, Johns Hopkins University, the University of Virginia, Georgetown University and American University and delivered invited lectures at many other colleges and universities and at scholarly meetings. I was elected a Fellow of the American Academy of Arts and Sciences and presented with the Charles E. Merriam Award (for "a significant contribution to the art of government through the application of social science research") and the Frank J. Goodnow Award (for "distinguished service") by the American Political Science Association.

Over the last decade, much of my research and writing has focused on campaign finance in the United States and in other countries. In 1995, I assembled a Brookings Working Group on Campaign Finance Reform to evaluate alternative approaches to reform (Brookings 1996). I also started a campaign finance reform Web site at Brookings, which is regularly updated with materials on campaign finance law, administration, and politics (www.brookings.edu/campaignfinance). After the 1996 elections I joined several other scholars in analyzing the most serious problems with the campaign finance regulatory regime and in formulating a strategy to deal with those problems. We produced a report entitled "Five Ideas For Practical Campaign Reform," which was widely

circulated in the policy community (Ornstein et. al. 1996). Based on this work, I took an active role in the public debate on campaign finance reform over the last six years. In 1997, I co-edited *Campaign Finance Reform: A Sourcebook*; in 2002, I co-authored a reformatted and updated edition of this volume, which is being published by Brookings as *The New Campaign Finance Sourcebook*. I have not testified as an expert at trial or by deposition in any other case within the last four years.

II. Introduction and Summary

My primary purpose in preparing this statement is to provide a description and analysis of the development of federal campaign finance law and practice leading up to the enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA). I will briefly review the major laws passed by Congress to regulate the flow of money in federal elections during the first half of the 20th century – most importantly the bans on corporate and union treasury funding of federal elections – as well as the central features of the regulatory regime defined by the 1974 amendments to the Federal Election Campaign Act (FECA). I will then discuss how that regime was undermined by the emergence of party "soft money"[1] and of electioneering under the guise of issue advocacy. Finally, I will discuss how the collapse of the FECA regime has transformed the role of political parties, elected officials, corporations and unions in the electoral process and created glaring conflicts of interest and a widespread perception of corruption in the policy process.

III. Early Legislative History

Financing campaigns for federal office has been a concern of party and elected officials

[1]Soft money is an informal term that refers to "nonfederal" funds raised by political parties outside of federal limits on the source or size of contributions and ostensibly used for purposes other than influencing federal elections. Hard money refers to federal funds raised, spent, and publicly disclosed according to terms set by federal law.

since mass suffrage emerged in the Jacksonian era of the 1820s and 1830s. The need to communicate with a growing number of voters required parties to raise increasing amounts of campaign funds. For the next half-century, party leaders relied primarily upon an extensive patronage system for campaign money (Pollock 1928). But the passage of the Pendleton Civil Service Act of 1883, which outlawed party assessments on federal officeholders, initiated the end of one political financing era and the start of another. Soon political parties turned to the private sector, particularly corporations, for campaign funds. By the election of 1896, under the direction of William McKinley's legendary campaign strategist Mark Hanna, corporations were called upon to provide the bulk of campaign funds (Overacker 1932; Thayer 1973).

Critics charged that corporations and other wealthy donors were corrupting government and gaining special favors in return for their campaign gifts. In 1904, Democratic presidential nominee Alton B. Parker charged that corporations were providing President Theodore Roosevelt large campaign donations to buy influence with the administration. Roosevelt denied the charge but subsequently issued calls for campaign finance reform in his 1905 and 1906 messages to Congress. In 1907 Congress passed the Tillman Act, which prohibited corporations and national banks from making contributions in connection with federal election campaigns (Corrado 1997).

Subsequent reforms were enacted to require disclosure of campaign receipts and expenditures (1910), to limit expenditures in federal campaigns (1911), to broaden disclosure and raise spending limits (1925), and to limit contributions to federal candidates and national political parties (1940). But in each case, Congress failed to establish an effective enforcement mechanism or to close obvious loopholes, rendering the practical consequences of the legislation much less significant than the stated objectives (Overacker 1932; Sorauf 1988; Corrado 1997). Political

parties remained the major financial intermediaries throughout the first half of the century, relying heavily on a relatively small number of large individual donors (Overacker 1932; Heard 1960).

The growth of organized labor as a political force in national politics led Congress in 1943 to enact a ban on union treasury contributions in federal elections comparable to the corporate ban in the Tillman Act. Because this measure was adopted as a war measure, it automatically expired six months after the end of the war. It was made permanent by the Taft-Hartley Act of 1947 and, like the ban on corporate donations, has been a permanent feature of federal election law ever since (Corrado 1997).

The rise of television and the increasingly candidate-centered nature of federal election campaigns after World War II led to a substantial increase in campaign costs and growing concerns about political financing. But it was not until the early 1970s that Congress began to wrestle seriously with the shortcomings of the old system and the challenges of the new. The Revenue Act of 1971 created a presidential public financing system funded with an income tax check-off, but its effective date was delayed until the 1976 election. Congress also passed the Federal Election Campaign Act of 1971 (FECA), which strengthened reporting requirements and repealed existing limits on contributions and expenditures that had proven ineffective. But it retained the ban on corporate and labor union contributions. It also put new limits on the amount candidates could contribute to their own campaigns and on expenditures for media advertising in presidential, Senate, and House elections (Sorauf 1988).

The fundraising scandals associated with Watergate and the committee to reelect President Richard Nixon – featuring attaché cases stuffed with thousands of dollars, illegal corporate contributions, and conduits to hide the original source of contributions – led Congress to return to the campaign finance drawing board (Sorauf 1988). In 1974, they produced major amendments to

FECA, which constituted the most serious and ambitious effort ever to regulate the flow of money in federal elections.

IV. The FECA Regulatory Regime

The 1974 amendments scrapped the 1971 limits on media advertising but replaced them with an elaborate set of limits on contributions and expenditures. The amendments also provided for public financing of presidential elections and created a new agency, the Federal Election Commission (FEC), to administer a strengthened disclosure system and to enforce the other provisions of the law. Barely a year after the 1974 amendments to FECA were signed into law, the Supreme Court in *Buckley v. Valeo* upheld the constitutionality of the contribution limits, disclosure requirements, and the presidential public financing system. But it struck down the limits on expenditures (by a candidate's campaign, by a candidate with personal funds, or by others spending independently), except for voluntary limits tied to public financing in presidential elections, and narrowed the class of political communications by independent groups subject to disclosure and limits on the source and size of contributions. For the purposes of this report, two sets of provisions are particularly germane: those governing the role of corporations and labor unions, and those governing political parties.

A. Corporations and Labor Unions

The new regulatory regime included one very familiar element: a ban on corporate and union contributions and expenditures in connection with a federal election. FECA added some enforcement bite to these decades-old prohibitions by also making it unlawful for anyone to accept such contributions. Two exemptions from this ban were included in the law. The first, the press exemption, specified that the term "expenditure" does not include "any news story, commentary, or editorial distributed through the facilities of any

broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." The second, the internal communications exemption, permits corporations to communicate with their restricted class (i.e. stockholders and executive and administrative personnel and their families) and unions to communicate with their members without any limitations. Finally, while continuing the ban on the use of general treasury funds of corporations and unions in connection with a federal election, the new law allowed thse organizations to set up political committees as separate segregated funds. These funds, one form of political action committee (PAC), whose administrative and fundraising expenses may be paid for by their parent corporation or union, raise voluntary contributions from their restricted classes and are subject to federal limitations (Potter 1997).

The intent of Congress as revealed by these provisions in the 1974 amendments to FECA was to ensure that corporate and labor union treasuries not be tapped to finance general federal election campaign activity. Decades of disappointing experience with earlier bans on corporate and union funding led not to a repeal of such bans but to a more rigorous regulatory strategy to make them enforceable.

B. Political Parties

The 1974 amendments to FECA treated political party committees as a type of "political committee" that is required to register with the FEC and is subject to federal limitations on amounts and sources of contributions. The latter included a prohibition on donations from corporations and labor unions. But party committees, as part of the official political party structure at the national, state, or local level, were treated differently than other political committees in several respects. Individuals could contribute up to $20,000 per year to national party committees and an additional

$5,000 to a state party committee. Party committees could transfer unlimited sums to other party committees, without such transfers being treated as contributions. The national committees of each party could together contribute $17,500 during an election cycle to a candidate for the U.S. Senate. And national and state parties could make limited "coordinated" expenditures on behalf of their federal candidates. The expenditure amounts varied by office and state population, and were indexed to inflation.

With one exception, no reference was made in the law to different types and purposes of party accounts, one subject to the limitations of federal law, the other not. The text of the law includes no mention of "federal" or "nonfederal" accounts, much less "hard" or "soft" money. The sole exception to the law's limitations on contributions to party committees was that donations to building funds of national or state parties were exempt.

C. Groundwork for Soft Money

As soon as these limits on party funding went into effect in the 1976 elections, two sets of concerns – dealing with grassroots activity and the federal system – arose about the interpretation and impact of the law as it applied to political parties. The first – that traditional grassroots party activity was inappropriately and harmfully being subjected to limits on coordinated party spending – led Congress in 1979 to amend FECA. The 1979 revision is widely but inaccurately believed to have created soft money. Instead, soft money resulted from the response of the FEC to a second concern arising out of the federal system: how best to accommodate the fact that party organizations have roles in both federal and nonfederal election activity.

1. The 1979 Amendments to the FECA

One important feature of the 1979 amendments to the FECA was designed to allow state and local parties to spend unlimited amounts of funds raised under the act for grassroots campaign

materials and activities. Much of the traditional party paraphernalia and volunteer activities was reduced in the 1976 elections on the presumption that the FECA required them to be treated as in-kind contributions from the parties to federal candidates and therefore subject to limits. Congress in 1979 narrowly defined three sets of election-related activities by state and local parties that were exempt from the limitations on party contributions to and coordinated spending on behalf of federal candidates. These included grassroots campaign materials (e.g. yard signs and bumper stickers), slate cards and sample ballots, and voter registration and get-out-the-vote (GOTV) activities on behalf of the party's presidential ticket. Congress specified that these exempted sets of activities did not include the use of any broadcasting, newspaper, magazine, billboard, direct mail or other general public communication or political advertising. Moreover, to qualify for these exemptions from limitations on contributions and coordinated spending by parties, funds for these exempt activities had to be raised in compliance with FECA. In other words, the 1979 amendments did not authorize national party committees to accept unlimited contributions or to accept corporate or union treasury funds. They simply expanded the use that state and local parties could make of their federal (hard money) funds (Corrado 1997a).

2. FEC Rulings on Federal and Nonfederal Funds

An entirely separate set of administrative actions was laying the predicate for national parties to begin raising funds not subject to federal source and amount restrictions. The FECA limited party financing of activities conducted in connection with federal elections. But what of state and local elections? Parties clearly have interests in elections for state and local office. Many state campaign finance laws are more permissive than federal law, allowing contributions from corporations and unions and higher or unlimited donations from individuals and PACs[2]. (Some,

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[2]Table 1 summarizes the provisions of each state's law governing contributions to political parties, based on information available from the Federal Election Commission as of 2000.

albeit many fewer, are more restrictive.) To what extent do federal restrictions apply when party activities have an impact on both federal and state and local elections? The FEC began grappling with this question soon after it was established. In a series of advisory opinions, the Commission sought to ensure that a portion of state party activities benefiting both federal and nonfederal candidates be paid for with hard money. In Advisory Opinion 1975-21, the Commission ruled that a local party committee had to use hard dollars to pay for a part of its administrative expenses and voter registration drives, on the grounds that these functions have an indirect effect on federal elections. It used this opinion in regulations it issued in 1977 governing allocation of administrative expenses between federal and nonfederal accounts. The allocation was to be made "in proportion to the amount of funds expended on federal and non-federal elections, or on another reasonable basis" (11 CFR 106.1(e) 1978).

The next year the Commission took an even tougher position on the use of nonfederal funds for voter registration and GOTV activities by party committees. In response to a request for guidance from the Illinois Republican State Central Committee, the Commission in Advisory Opinion 1976-72 approved the allocation of party overhead and administrative costs between federal and nonfederal accounts, based on the proportion of federal to state races being held that year. But it prohibited the use of nonfederal funds to finance such federal election-related activities as voter registration and GOTV: "Even though the Illinois law apparently permits corporate contributions for State elections, corporate/union treasury funds may not be used to fund any portion of a registration or get-out-the-vote drive conducted by a political party" (FEC AO 1976-72).

Less than two years later the Commission reversed its position. The Kansas Republican State Committee requested permission to use corporate and union funds, which were legal under

Kansas law, to finance a portion of their voter drive that would benefit federal and state candidates. This time the Commission agreed, concluding in Advisory Opinion 1978-10 that expenses for voter registration and GOTV should be allocated between federal and nonfederal accounts in the same manner as party administrative costs.

At this point the FEC rulings on party financing had been made in response to state party requests for guidance on how the financing of their traditional activities was affected by the new federal election law. What emerged was that state parties had to maintain both federal and nonfederal accounts and allocate funds from the two accounts in a manner consistent with federal law. Direct assistance to federal candidates must be financed exclusively with federal funds. Comparable assistance to state and local candidates could be funded entirely with nonfederal funds. State party overhead and administrative expenses were to be allocated proportionately between federal and nonfederal accounts. Initially voter registration and GOTV were treated in the same way as aid to candidates – as a federal election activity requiring exclusively federal funds – but then the FEC reversed course and allowed state parties to allocate the costs of voter drives between the two accounts (FEC AD 00-95 2000).

Soon national party officials argued that the Commission rulings recognizing federal and nonfederal state party roles and financing arrangements should apply to them as well. They contended that national parties assist candidates for federal, state and local office; that they work with state and local party organizations on a variety of party-building and campaign activities; and that, therefore, they too ought to be able to maintain separate federal and nonfederal accounts, finance their nonfederal election activity with nonfederal funds, and allocate administrative and other expenses for joint federal/nonfederal activities between the two accounts. The Commission agreed. In Advisory Opinion 1979-17, it stated that a national party committee could establish a

separate account "for the deposit and disbursement of funds designated specifically and exclusively to finance national party activity limited to influencing the nomination or election of candidates for public office other than elective 'federal office'" (FEC AO 1979-17). The Commission thereby permitted the national parties to raise corporate and union funds and solicit unlimited donations from individuals "for the exclusive and limited purpose of influencing the nomination or election of candidates for nonfederal office" (FEC AO 1979-17).

V. The Rise of Soft Money

Thus, at the same time Congress permitted state and local party organizations to spend unlimited amounts of federal funds on certain grassroots activities that benefited federal as well as state and local candidates, the FEC allowed parties (including national party committees) to pay for a share of the costs of these joint activities with funds not subject to federal limits. The convergence of these two regulatory changes set the stage for the solicitation and expenditure of so-called "soft money" in the 1980 election cycle. Soft money could be raised by national, state or local party committees, under limits, if any, set only by state, not federal law, and used to finance the ostensibly nonfederal share of the costs of these joint federal/nonfederal party activities.

A. Developments in the 1980s

The national parties quickly took advantage of this opportunity. They solicited funds for their nonfederal accounts from corporations, unions, and individuals who had already given the maximum amount permitted by federal law. The parties used these soft dollars to cover a portion of their administrative and fundraising costs as well as to finance a share of GOTV activities in states targeted for their presidential ticket or for crucial Senate races. The national parties often took the lead in raising the requisite amount of hard and soft dollars, which they then transferred to the state

party committees that were conducting the voter drives (Alexander 1983; Alexander and Haggerty 1987; Alexander and Bauer 1991; Corrado 1997a).

Soft money became an important part of national party finance beginning in the 1980 election. Just what amount of soft money activity the parties pursued in the 1980s is less certain. "Nonfederal" funds were not subject to federal disclosure requirements, only to the disclosure laws in states where soft money was spent. Many of these state requirements were nonexistent or ineffective. Thus, we have to rely on estimates of soft money activity in the 1980s rather than official reports of receipts and expenditures. Herbert Alexander, then director of the Citizens Research Foundation, is widely acknowledged as the most authoritative source of party campaign finance data during this period. Starting with the 1992 election cycle, when the FEC first began collecting and reporting data on nonfederal as well as federal accounts of national party committees, we can use official FEC data. Building on Alexander's work and FEC data, Anthony Corrado has assembled the best available data on national party spending between 1976 and 1998. I have updated his table with FEC data on the 2000 election cycle, added a column that computes soft money spending as a share of all national party spending, and reproduced it as Table 2 in this report. Chart 1 graphically displays the changes between 1976 and 2000. Table 3 presents party hard and soft money expenditures adjusted for inflation.

In 1980 the national Republican party spent roughly $15 million in soft money, the Democrats $4 million. This constituted 9% of total spending by the two national parties. In 1984 the amount of soft money spent by the national parties increased marginally to $21.6 million but it constituted a smaller share (5%) of total national party activity. In 1988, however, that pattern was altered. Party soft money spending more than doubled to $45 million, which was 11% of national

party totals, and the Democrats reached parity with the Republicans on the soft money side of the ledger.

During this decade the national party committees explored the most efficient methods of allocating expenses between federal and nonfederal accounts and the most advantageous ways of spending soft money. The FEC approved alternative methods of allocation but gave party committees wide leeway in using "any reasonable basis" (11 CFR 106.1(e) 1978). Naturally, the parties found most attractive those allocation methods that allowed them to pay for as much of their expenses as possible with soft money. Priority in spending soft money was given to GOTV programs conducted by state party committees in presidential battleground states. The national parties also came to rely on soft money to cover an increasing share of the costs of their staff and operating expenses. By 1988, both parties had developed effective means of courting large soft money donors. After the election, Republicans revealed that they had received gifts of $100,000 each from 267 donors; Democrats counted 130 donors contributing $100,000 or more (Alexander and Bauer 1991).

The rise of soft money did not go unnoticed or unchallenged. In 1984, Common Cause petitioned the FEC to issue new rules relating to the use of soft money, based on the charge that party committees were unlawfully using nonfederal funds to influence federal elections. The Commission denied the petition in 1986, but Common Cause challenged that denial in the U.S. District Court. The court rejected the group's argument that no allocation method is permissible under FECA but agreed that the Commission's policy of allowing state party committees to allocate expenses for certain joint activities on "any reasonable basis" was contrary to law. It directed the Commission to replace this permissive standard with more specific allocation formulas. As part of that directive, the court stated that the Commission could "conclude that no method of allocation

will effectuate the Congressional goal that all moneys spent by state political committees on those activities permitted in the 1979 amendments be 'hard money' under the FECA" (*Common Cause v. FEC* 1987).

After an arduous rulemaking process and a return to the District Court by Common Cause with a petition for enforcement of the court's order, the Commission issued new soft money rules in 1990, effective January 1, 1991 (FEC 1990). The rules placed no restrictions on the sources or size of contributions to party nonfederal accounts, and they did not limit the amount of such soft money that could be spent. They did require all national party committees to file regular reports of their nonfederal receipts and disbursements with the FEC, and they required state party committees to report their soft money disbursements made in connection with federal elections. The regulations also replaced the "any reasonable basis" standard for allocating the costs of activities that influence both federal and state and local elections with a set of specific allocation methods. They also specified that the method to be used by party committees depended on the type of committee incurring the expense and the type of activity for which expenses were to be allocated.

National party committees were required to allocate a minimum of 65% of their administrative and generic voter drive expenses in presidential election years to their federal accounts, 60% in nonpresidential years. For state and local parties, the allocation of these expenses was determined by the proportion of federal offices to all offices on the state's general election ballot. This provision produced a large range among the states in the percentage of hard money required, but the average was substantially lower than that applying to the national committees. Joint fundraising expenses for all party committees were allocated based on the amount of federal and nonfederal funds raised. The cost of party communications was allocated according to the relative time or space devoted to federal and nonfederal candidates.

These soft money regulations effectively routinized the raising and spending of soft money by the national parties (Corrado 1997a). The FEC rules gave the parties explicit guidelines on how to spend soft money on activities that benefit federal as well as state and local candidates without risking an enforcement action. They also provided the national parties with ways of increasing the share of their costs that could be paid for with soft money. One such method -- transferring federal and nonfederal funds to state parties to take advantage of more favorable allocation formulas -- would become a major element of national party funding strategy in the years ahead.

B. The 1992 Election

It was no surprise, therefore, to see soft money activity proceed apace in the 1992 election. (Since this was the first election in which soft money contributions and expenditures were reported to the FEC, the soft money figures reported below for the 1992 election cycle and after are based on FEC data.) Spending almost doubled again over the preceding presidential election cycle, from $45 million to $80 million, although this time with the Republicans outpacing the Democrats. (See Table 2 for nominal figures, Table 3 for inflation-adjusted figures.) Soft money as a share of total spending by the national parties jumped five percentage points to 16%. Both parties sought contributions of $200,000 or more from their top donors and put a high priority on soliciting corporate gifts. Table 4 lists the top 50 soft money contributors in the 1992 election cycle, with donations ranging from $206,207 to $1,374,500. (This table, as well as those reporting comparable data for the 1996 and 2000 election cycles, displays total amounts contributed and breaks those amounts down by party and by the percentage contributed from the organization's treasury.) Three of the four congressional party campaign committees – the Democratic Congressional Campaign Committee (DCCC), the National Republican Campaign Committee (NRCC), and the National Republican Senatorial Committee (NRSC) began to mount serious soft money operations. Together

they raised more than $20 million in the 1992 election cycle. The fourth – the Democratic Senatorial Campaign Committee (DSCC) – continued to raise soft money only for its building fund (Alexander and Corrado 1995).

The national parties exerted firm control over the ways in which soft money was spent. The primary goal was to support the election of federal, not nonfederal, candidates. Barely $2 million of the $80 million in "nonfederal funds" spent by the national parties in the 1992 elections was contributed directly to state and local candidates. The two national parties transferred almost $15 million to state party committees; each party directed two-thirds of its soft money transfers to ten presidential election battleground states. The bulk of these funds was used to finance voter identification and GOTV phone bank programs, typically according to a plan approved in advance by the national party. These voter mobilization activities benefited state and local as well as federal candidates in the targeted states, and state parties receiving these transfers were also able to use some of the funds to hire party workers, update voter lists, and pay for fundraising expenses. But the primary focus of these efforts orchestrated by the national parties was unmistakably the federal election (Alexander and Corrado 1995).

Another major use of soft money in the 1992 elections was "generic" party advertising. These mostly television ads, run in key states to reinforce the message of the presidential candidates, were financed on the party-building rationale of the FEC's allocation rules for joint federal/nonfederal activities. Around $14 million was expended for this purpose. The ads did not mention the names of the candidates. (The assumption was that only hard money could be used for such candidate-specific ads, as part of the parties' coordinated spending budget.) Instead they urged viewers to "Vote Republican" or "Vote Democratic" or stressed themes articulated in the presidential campaigns (Alexander and Corrado 1995).

By the end of the 1992 election cycle, students of political parties and campaign finance came to recognize that important elements of party financing of federal elections were at variance with the FECA and with the initial rulings of the FEC that allowed the national parties to raise and spend soft money for limited purposes. Congress had sought to keep corporate and union money out of federal elections and to limit the size of individual contributions. Both objectives were undermined, however, by the growing role of soft money, which allowed national party officials and federal officeholders to solicit unlimited contributions and steer them in ways that would benefit their federal election campaigns. Initially, the Commission approved only the use of nonfederal or soft money accounts of the national parties "for the exclusive and limited purpose of influencing the nomination or election of candidates for nonfederal office" (FEC AO 1979-17). Yet later the FEC allocation rules allowed much more generous shares of nonfederal or soft money than could be justified by the state and local campaign activity they financed. Only a trickle of soft money was directly contributed to or spent on behalf of state and local candidates. Some soft money helped state party organizations mobilize support for state and local candidates and expand their staffs and activities. But a major share of these "nonfederal" funds raised by national parties was spent to influence the outcome of federal elections. Soft money had become primarily a component of federal election financing, not a means of funding state and local election activity (Alexander and Corrado 1995; Sorauf 1992).

C. The 1996 Election Cycle: The Soft Money System Transformed

The accommodative regulatory environment, the failure to index for inflation the FECA limits on contributions to candidates and parties, and competitive pressures in presidential elections combined to increase demand for soft money. Between 1980 and 1992, the parties became more adept at raising nonfederal funds from corporations, unions, and wealthy individuals and directing

them toward locations and activities that would advance their presidential and congressional tickets (Alexander and Corrado 1995). But no one had yet questioned that there were still limits to what the parties could accomplish with soft money. While soft money was growing in importance, it remained a relatively small part of national party committee budgets. (See Table 2 and Chart 1.)

The increased activity of the national parties during this period was largely accomplished with hard money. The parties adapted well to the new environment of modern campaigning and FECA financing, in important part by becoming repositories of professional expertise and building effective networks linking candidates with donors and consultants (Herrnson 1988). Relatively generous coordinated spending limits gave them license to provide substantial direct assistance in elections, financed by contributions raised under the FECA. It was clear that effective campaigning required a large component of candidate-focused communications. And that, everyone assumed, required hard money.

1. Issue Advocacy

That view changed in the next presidential election cycle, thanks to the audacious move by then President Bill Clinton and his political consultant, Dick Morris, to finance an ambitious political advertising campaign under the guise of "issue advocacy." Starting in the fall of 1995 and continuing through the middle of 1996, Democratic party committees spent an estimated $34 million on television ads designed to promote Clinton's reelection. While the ads prominently featured the President, none of these costs were charged as coordinated expenditures on behalf of Clinton's campaign. Instead the party paid the entire cost, based on a legal argument never before made: that party communications which did not use explicit words advocating the election or defeat of a federal candidate could be treated like generic party advertising and financed, according to the FEC allocation rules, with a mix of soft and hard money. Such communications were forms of

issue advocacy, it was argued, and neither subject to the spending limits that apply to presidential candidates accepting public funding, nor wholly subject to the limits on the source and size of contributions to political parties (Green 1999; Corrado 2000).

This argument, and the embrace of issue advocacy as a form of electioneering, had its genesis in *Buckley*. In that decision, the Court established an express advocacy test as a way of narrowing the scope of disclosure requirements and contribution limits for independent expenditures in light of a concern that the language crafted by Congress in the 1974 amendments to FECA was unconstitutionally vague and overbroad (Potter 1997a). The standard was defined by the Court as communications that "in express terms advocate the election or defeat of a clearly identified candidate for federal office." The Court elaborated in a footnote examples of express advocacy, which became known as the "magic words" test.

This express advocacy standard was constructed to determine which communications by individuals and groups independent of any candidate or party would be subject to regulation. The Court did not require express advocacy in candidate and political party ads for their financing to be subject to federal campaign finance laws. *Buckley* stated that spending by candidates and political committees (including parties) is "by definition, campaign-related." Students of campaign finance thought it an extraordinary leap for a presidential candidate, especially one accepting public funding, and a national political party to argue that the express advocacy standard gave them license to craft and broadcast unlimited political ads and to finance them in large part with soft money (Green 1999; Corrado 2000; Citizens Research Foundation 1997; Mann 1999).

2. Parties, Issue Advocacy and Soft Money

The express advocacy standard had little noticeable effect on the conduct and financing of federal campaigns for almost 20 years after it was set by the Court. It took the creativity and

bravado of Morris and Clinton and the failure of the FEC to challenge their use of party soft money to finance television ads promoting the President's agenda and accomplishments to open the flood gates (Corrado 2000). In May of 1996, the Republican National Committee announced a $20 million "issue advocacy" advertising campaign. Its purpose, in the words of the chairman, would be "to show the differences between Dole and Clinton and between Republicans and Democrats on the issues facing our country, so we can engage full-time in one of the most consequential elections in our history" (Corrado 2000). These presidential candidate-specific ads, like the Democratic ones, were targeted on key battleground states and financed with a mix of hard and (mostly) soft money. Both parties were now financing a significant part of the campaigns of their presidential candidates outside of the strictures of the FECA and well beyond the bounds of the 1979 FEC ruling that national parties may raise corporate and union funds and solicit unlimited donations from individuals "for the exclusive and limited purpose of influencing the nomination or election of candidates for nonfederal office."

Very quickly the parties began to use the same funding strategy to campaign on behalf of their congressional candidates; outside groups did likewise (Green 1999; Corrado 2000). For groups, the advantage of electioneering through "issue advocacy" rather than through FECA "independent expenditures" was that the former could be conducted without disclosure and could be financed with soft (i.e. unregulated) rather than hard money. This meant that both political parties and groups could solicit contributions from corporations and unions as well as from wealthy individual donors to finance candidate-specific electioneering communications. Moreover, those same corporations and labor unions could tap their own treasuries to run such electioneering communications themselves or through convenient, largely anonymous intermediary organizations. Research on the 1996 election revealed extensive and elaborate efforts by parties, candidates,

unions, corporations and groups to exploit this new issue advocacy loophole to avoid the strictures of federal election law (Annenberg Public Policy Center 1997; Green 1999; Corrado 2000).

This research also suggested some degree of coordination among parties, groups and candidates in creating and broadcasting these issue advocacy electioneering communications. Published accounts by former White House insiders and the report of the Senate Committee that investigated campaign finance practices in the 1996 election contain detailed information about President Clinton's personal role in authorizing the "issue ad" campaign, editing the ads, selecting locations for their broadcast, and raising the funds needed to pay for them (Morris 1997; U.S. Senate Committee on Governmental Affairs 1998). Similar reports have been made of possible coordination between parties and outside groups regarding the strategic use of issue advocacy electioneering communications to shape the outcome of federal elections (AFL-CIO v. Federal Election Commission 2001). The Supreme Court's distinction between independent advocacy and advocacy coordinated with a candidate was critical to its finding that limits on independent expenditures were unconstitutional. Yet as issue advocacy emerged as a tool for electioneering communication in the 1996 election, it threatened to undermine a central feature of the FECA: that communications designed to help a candidate but not treated as contributions must be made independent of that candidate.

3. Demand for Soft Money Intensifies

The increased demand created by this novel interpretation of nonfederal election activity led to more than a threefold increase in national party soft money activity between 1992 and 1996 – from $80 million to $272 million. (See Table 2.) Soft money as a share of total national party spending jumped from 16% to 30%. Both parties and their elected officials worked hard to solicit soft money donations from corporations, wealthy individuals, and labor unions. During the 1996

election the national party committees received nearly 1,000 contributions from individuals in excess of $20,000 (the annual federal party contribution limit) and approximately 27,000 contributions from federally prohibited sources (Corrado 2000). Table 5 contains the top 50 soft money donors in the 1996 election cycle; their contributions ranged from $530,000 to $3,287,175.

Less than $10 million of the $272 million was contributed directly to state and local candidates in the 1996 cycle, only 3.5% of the soft money spent by the parties. The two parties transferred a total of $115 million in soft money to state party committees, which financed two-thirds of state party soft money expenditures. The national Democratic party managed to finance two-thirds of its pro-Clinton "issue ad" television blitz by taking advantage of the more favorable allocation methods available to state parties. They simply transferred the requisite mix of hard and soft dollars to party committees in the states they targeted and had the state committees place the ads. State party soft money expenditures for political communication/advertising jumped from less than $2 million in 1992 to $65 million in 1996 (La Raja 2001). State parties enjoyed positive spillover effects from this national party campaign strategy, in terms of covering some of their staffing and administrative costs. But there is no doubt that they were used by national party officials as vehicles for implementing their newly-developed strategy of federal electioneering under the guise of issue advocacy (Green 1999; Corrado 2000).

After the 1996 election, the FEC audit division concluded that the party issue advertising campaigns should have been treated as campaign expenses of the two presidential candidates and thereby subject to spending and contribution limits. The Commission rejected the finding and unanimously declined to take any punitive action against the parties or their presidential candidates. The Commission also rejected the general counsel's recommendation for an enforcement proceeding, based on the conclusion that the party's issue ads were coordinated with the Clinton

campaign and therefore constituted illegal campaign contributions and expenditures (Corrado 2002). What had seemed a daring test (if not outright violation) of the boundaries of federal election law in 1996 had now received the de facto blessing of the Federal Election Commission. There remained few effective constraints on the ability of parties and other political actors to campaign for and against specific candidates for federal office with unlimited amounts of soft money.

D. The 1998 and 2000 Elections: A Regulatory Regime in Disarray

The 1998 midterm election cycle saw the parties focus their soft money strategy on Senate and House elections. The total amount of soft money spent -- $221 million -- was less than in 1996 but more than double the previous midterm election. And soft money as a share of total spending by the national parties jumped to 34%. (See Table 2.) The congressional party campaign committees put a premium on raising and spending soft money to advance the election prospects of their candidates. The two Senate campaign committees effectively abandoned formal coordinated expenditures on behalf of their candidates and delegated this financing tool to state parties. The DSCC made $12.3 million in coordinated expenditures in the 1994 midterm elections; that amount dropped to $8,424 in 1998. The NRSC spent $10.9 million of hard money in coordination with their candidates in 1994; the comparable amount in 1998 was $36,775. Both national party committees had discovered they could finance campaign activity on behalf of their senatorial candidates with soft money in the form of "issue advocacy." The same pattern, more pronounced with the Democrats than the Republicans, was evident in the House campaign committees (FEC 1999).

This was also the first election cycle in which scholars systematically monitored the issue advocacy campaigns of parties and groups, on television and on the ground (Krasno and Seltz 2000;

Magleby 2000, 2000a; Krasno and Goldstein 2002). Anecdotal evidence had previously suggested little difference in purpose and content between express advocacy and candidate-specific issue advocacy communications financed by parties and groups. This research by political scientists soon confirmed that suspicion. The evidence of the explicit electioneering purpose of candidate-specific issue advocacy near the election was overwhelming. Such electioneering issue ads run by parties and groups were largely indistinguishable from the campaign ads of candidates. Very few candidate ads used words of express advocacy; virtually all party issue ads mentioned the name of a federal candidate, mostly in an attack mode, but few mentioned the name of the party; and almost every issue ad featuring the name of a candidate and running near an election was clearly designed to support or attack a candidate, not to express a view on an issue. Voters were unable to differentiate candidate-specific issue ads (broadcast and print) sponsored by parties and outside groups from campaign ads run by candidates. Parties and outside groups used issue advocacy as a cover to finance campaigns for and against federal candidates in targeted races.

Given the breakthrough in the use of soft money to fund candidate-focused campaign ads in 1996, the FEC's decision not to pursue this apparent violation of law and regulation, and the emergence of issue advocacy as the campaign weapon of choice in the 1998 congressional elections, it is no surprise that soft money financing of party campaigning exploded in the 2000 election cycle. Soft money spending by the national parties reached $498 million, now 42% of their total spending. (See Table 2.)

Raising a half billion dollars in soft money took a major effort by the national parties and elected officials, but they had the advantage of focusing their efforts on large donors. That focus paid substantial dividends: 800 donors (435 corporations, unions and other organizations and 365 individuals), each contributing a minimum of $120,000, accounted for almost $300 million or 60

percent of the soft money raised by the parties (Rogers 2001). The top 50 soft money donors, displayed in Table 6, each contributed between $955,695 and $5,949,000. Among the many soft money donors who gave generously to both parties were Global Crossing, Enron, and WorldCom (Makinson 2001).

The Republican and Democratic National Committees provided the soft and hard money needed to boost the campaigns of their presidential candidates in key battleground states. Electioneering issue ads were a central component of the political strategies of both presidential candidates and were fully integrated into the campaigns (Magleby 2002; Corrado 2002). One estimate based on monitoring television ads in the 75 largest media markets between June 1 and election day suggests the parties spent $3 on issue advocacy communications in the presidential campaign for every $1 they spent on express advocacy communications (Holman and McLoughlin 2001). Once again, the transfer of funds to state parties, which then placed the ads, provided the most efficient allocation method.

The House and Senate party campaign committees were especially active in the soft money arena. Together they spent $219 million in 2000, more than ten times their soft money activity in 1992. As in 1998, they largely abandoned the hard money coordinated expenditure route to assisting their candidates and focused their campaign activity on issue advocacy and GOTV, both of which could be financed with a large portion of soft dollars. For the first time, the two Democratic campaign committees actually raised and spent more unrestricted soft money than regulated hard money (FEC 2001; Corrado 2002; Magleby 2002). Research monitoring national party campaign activities in the 2000 election cycle confirms a massive increase in party federal electioneering activities – over the air and on the ground – in targeted states and districts and financed largely with

soft money (Krasno and Goldstein 2002; Magleby 2002; Magleby 2003; Holman and McLoughlin 2001).

A total of $280 million in soft money – well over half the amount raised by the six national party committees – was transferred to state parties, along with $135 million in hard money. By contrast, the national parties contributed only $19 million directly to state and local candidates, less than 4% of their soft money spending and 1.6% of their total financial activity in 2000 (FEC 2001).

By the end of the 2000 election cycle, it simply was not credible to argue that soft money was exclusively or even primarily being used for state and local election activity. Nor was it credible to argue that "issue ads" run by national and state parties were anything other than communications intended to influence the outcome of federal elections. The evidence that national parties were raising soft money, not subject to federal limits, and using it by working through state parties to influence federal elections was decisive. The language in *Buckley* that spending by parties is "by definition, campaign-related" was given powerful empirical support. Scholars might differ about how best to change the campaign finance system, but they could not avoid the conclusion that party soft money and electioneering in the guise of issue advocacy had rendered the FECA regime largely ineffectual.

VI. Potential Corruption of the Policy Process

The developments in campaign finance law and practice reviewed in this report altered the behavior of private groups, political parties and elected officials in ways that raised serious concerns about potential corruption of the policy process. Those concerns led Congress to enact BCRA, which repairs the tears in the regulatory fabric and in many ways reinstates the campaign finance system in operation after the 1974 FECA amendments and *Buckley*.

A. Corporations and Unions

With the collapse of the firewall between corporate and union treasuries and federal election campaign activity, corporations and unions have assumed a financial role in the electoral process that is contrary to long-standing intentions of Congress. The FECA provided that corporations could participate in federal elections through voluntary PACs, internal communications with their shareholders and administrative employees, and individual contributions to candidates and parties from company executives. Each of these avenues of participation is well traveled. But corporations now draw directly on their treasuries to provide the largest share of soft money raised by both political parties, which in turn finances federal campaign activity (Makinson 2001). They finance extensive "issue advocacy" electioneering communications, directly and indirectly through other groups, in targeted federal races (Krasno and Seltz 2000; Annenberg Public Policy Center 1997, 2001; Holman and McLoughlin 2001). As a consequence, contrary to the objective specified in law by Congress as far back as 1907 and recodified and strengthened several times since, corporations today are major players in U.S. federal elections. And that, in turn, alters their relationship with those who hold and seek public office.

Beginning in the 1940s, Congress acted to constrain labor union participation in federal elections in a manner similar to that for corporations. Unions can form voluntary political action committees. In fact, the Congress of Industrial Organizations (CIO) formed the first such political organization in 1943, shortly after Congress acted to ban unions from spending treasury funds on federal elections (Sorauf 1988). Perhaps most importantly, the internal communications exemption allows unions to allocate substantial resources from their treasuries to mobilize their members in key federal elections (Alexander and Corrado 1995). But like corporations, they now use treasury funds to make soft money contributions to political parties and to finance electioneering

communications under the guise of issue advocacy. While unions overall provide a relatively small share of party soft money receipts, five individual unions were among the ten largest soft money donors in the 2000 election cycle. (See Table 6.) The AFL-CIO was one of the first nonparty groups in 1996 to seize the opportunity to broadcast electioneering ads under the guise of issue advocacy (Dwyre 1999); they continue to avail themselves of that opportunity today (Magleby 2002). So labor unions too have taken a more direct role in federal elections than was traditionally contemplated by federal law.

B. Political Parties

Political parties play an indispensable role in democratic societies, aggregating public preferences, organizing teams of candidates and elected officials, and providing a means of democratic accountability. Political scientists have also traditionally valued parties for nurturing volunteer grassroots political participation, fostering broader electoral competition by supporting challengers to incumbents, and diluting the influence of organized interests.

The rise of soft money has led many scholars to question whether these comparative advantages of political parties have been compromised by developments in campaign finance practice (Kelley 2002; Sorauf and Krasno 1998; Brennan Center 2001a; Mann 2002). Do parties dilute the influence of large donors, or facilitate their access to policymakers? Do parties operate independent of incumbent officeholders, or are they largely instruments of those incumbents? Does soft money support party-building and grassroots activities, or is it used primarily to finance communications about specific federal candidates? Are state parties independent actors in the soft money era, or are they more agents of national parties and politicians? While no scholarly consensus exists on the answers to these questions, the preponderance of evidence from recent research supports the position that the relationship between party soft money, private interests, and

federal candidates and officeholders has created serious concerns about the integrity of the policy process and respect for the rule of law.

Most importantly, soft money has led the parties to become the avenue by which elected officials and large private donors frequently come together. The national party committees are dominated by elected public officials -- the president or presidential candidate in the case of the Republican and Democratic National Committees, the top House and Senate party leaders for the congressional campaign committees (Shea 1995; Dunn Tempas 1997; Sorauf and Krasno 1998; Corrado 2000; Dwyre and Kolodny 2002). There is no meaningful separation between the national party committees and the public officials who control them. As described above, the congressional party campaign committees have become very large soft money operations in recent elections. This party fundraising depends crucially on the active involvement of each party's highest-ranking elected officials. As inducements for large contributions, policymakers grant access and provide opportunities for face-to-face discussions in intimate settings with the party's most prominent public officials. Presidents and congressional party leaders devote a significant amount of their time to raising soft and hard money for their party committees as well as to assisting candidates directly. And top elected officials and their political strategists determine how party resources – including importantly soft money -- are allocated in presidential and congressional elections.

Parties also provide an instrument for individual politicians to raise and spend funds for their own campaigns that would not otherwise be permissible by law. The final report of the Senate Committee on Governmental Affairs on the *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns* chronicles the extraordinary lengths to which Democratic and Republican elected officials went to raise party soft money for their "issue advocacy" advertising blitzes in the 1996 election cycle. The tactic of choice for many 2000 Senate

candidates was the "joint fundraising committee." These candidate/party committees gave candidates an opportunity to solicit contributions, often from the same donor, for three campaign pots: up to $2,000 for the candidate's campaign committee, an additional amount of up to the maximum of $20,000 for the party committee's hard money account, and then any additional individual contribution (or donation from a corporation or union) to the party's soft money account. The latter two could be transferred to the candidate's state party and used for issue advocacy or GOTV activities that would benefit that candidate's campaign (Corrado 2002).

Since the soft money-financed campaign activities of the parties must be mixed with some portion of hard dollars, the party committees also work assiduously to raise the requisite matches. Here too congressional party leaders have played a crucial role, by encouraging their colleagues in Congress, especially those representing relatively safe seats, to transfer funds from their personal campaign committees and leadership PACs to candidates in tight races and to party campaign committees. This encouragement has lately taken the form of party fundraising quotas on members of Congress. Federal election law permits unlimited transfers from members' campaign committees to party committees. In the 2000 election cycle, 15% of the hard money receipts of the House party campaign committees came from member contributions (Malbin and Bedlington 2002).

National party links to elected officials and large private donors are mirrored in their ties to state parties. Whatever the positive spillover effects on state party-building and voter mobilization (La Raja 2001; Ansolabehere and Snyder 2000), the evidence summarized above supports the conclusion that since the advent of soft money, national parties have used state parties primarily as vehicles for advancing federal election campaign objectives. The state parties have been willing partners with their national counterparts in seizing the opportunities presented by the soft money system to boost their federal candidates. "The relationship between the national parties and their

state parties has never been closer than it is today" (Morehouse 2000). From a reform perspective, however, this means that any successful attempt to limit national party soft money activity must perforce prevent easy evasion through surrogates such as state and local parties.

There are some who have argued that parties will be weakened by the elimination of soft money and that electoral competition will suffer (La Raja 2001). It is true that substantially more money is crossing party books and that they have a major presence in battleground states and districts across the country. But the evidence suggests that soft money has created as many or more problems for parties and done little to nurture grassroots participation or electoral competition (Brennan Center 2001; Magleby 2000, 2003; Corrado 2002). In fact, the period in which the party soft money system exploded has coincided with a decline in competition in congressional elections (Ornstein, Mann, and Malbin 2002). I am aware of no evidence supporting the proposition that party soft money activities counter or reduce the advantages of incumbency. This may be because the two parties – dominated by elected officials consumed with the immediate goal of winning the marginal seat that might determine which party controls the majority – concentrate their "issue advocacy" spending in the same handful of targeted contests rather than looking to the medium or long term by investing in a somewhat larger number of potentially winnable seats (Krasno 2003). The provision in BCRA increasing hard money contributions limits to parties will in any case cushion if not entirely match the absence of soft money.

C. The Policy Process

These new and altered roles in the electoral process for corporations, unions and political parties raise troubling questions about the integrity of the policy process. Congress banned corporate contributions in federal elections out of concerns that concentrated wealth and the advantages of incorporation could distort and corrupt democratic government. Labor unions were

subjected to comparable regulation to neutralize the political benefits that might result from their publicly-facilitated organizational strengths. Large and unlimited individual contributions were proscribed by Congress to prevent the buying of access to or special treatment by government officials. Yet each of these pillars of federal election law has been undermined by the rise of the soft money system and electioneering issue advocacy in U.S. elections. Very large institutional and individual donors have returned to Washington.

No single motivation can possibly explain the behavior of all of these large soft money donors. Some enjoy being viewed as "players" in their parties; some hope to help one of the parties hold or gain the White House and Congress; some bank on better access, a more sympathetic hearing, or more favorable treatment from federal officials; others give defensively in response to aggressive solicitation by party and elected officials – a cost of doing business in Washington. But since most of the largest soft money donors had high stakes in decisions made by Washington policymakers, the public has a substantial basis for its concerns about conflicts of interest and corruption of the policy process (Magleby and Patterson 1994).

Since the Supreme Court's *Buckley* decision, corruption or the appearance of corruption has been the dominant legal rationale for regulating campaign finance. Scholars have sought to measure whether campaign contributions corrupt the policy process by buying votes in Congress. Most of this research has examined the connections between PAC contributions (a surrogate for interested money) and votes in the House and Senate (Sorauf 1992; Wright 1996). There is little statistical evidence that campaign contributions to members of Congress directly affect their roll call decisions. Party, ideology, constituency, mass public opinion and the president correlate much more with voting behavior in Congress than do PAC contributions. When these variables are less significant, there is evidence that interest group contributions, particularly to junior members of

Congress, have influenced roll call votes – for example, on financial services regulation (Stratmann 2002). The targets of influence are less often victories on final roll-call votes than assistance, sympathy or access at some earlier stage of the legislative process (Hall and Waymann 1990).

In any event, this literature is often used to buttress the argument that political contributions do not corrupt the policy process. This is an odd inference, since it is based on studies of contributions that are limited as to source and size for the very purpose of preventing corruption or its appearance. PAC contributions are capped at $5,000 per election, an amount whose real value has shrunk by two-thirds since it was enacted in 1974. Are we to assume that studies of contributions of $50,000 or $500,000 or $5 million from corporations, unions and individuals would produce the same generally negative findings? What if the route of influence is not through individual members or on roll call votes? What if large soft money donors give generously to both political parties?

A more sophisticated understanding of the organizational features of Congress and of the multiple forms of political contributions leads one to take seriously the potentially corrupting effects of political contributions. Initial work along these lines suggests a myriad of ways in which groups receive or are denied favors beyond roll-call votes (Hall and Wayman 1990; Hall 1996; Beckmann and Hall 2002). Members can express public support or opposition in various legislative venues, offer amendments, mobilize support, help place items on or off the agenda, speed or delay action, and provide special access to lobbyists. They can also decline each of these requests. Beyond the chamber floor, venues include rules governing floor consideration, party leadership, party caucuses, standing committees and subcommittees, conference committees, and other collections of members inside the House and Senate. Groups may use their campaign contributions in conjunction with their lobbying operations to reinforce or activate rather than convert members. They may also try to

curry favor by running helpful electioneering issue advocacy campaigns for or against particular federal candidates. Moreover, in the executive branch, influence can be sought over appointments and access to decision-making forums, as seen in recent revelations about the Enron Corporation.

The currency of campaign contributions extends well beyond PAC contributions to members' campaign committees. These include brokered if not bundled individual contributions, contributions to leadership PACs controlled by members, contributions to parties and candidates in targeted races and informally credited to members, soft-money contributions to parties and section 527 committees connected to members, and direct expenditures on "issue ad" campaigns. The ways and means of potential influence (and corruption) are much more diverse than those investigated in the early scholarly research.

The dramatic growth of soft money and the intimate involvement of elected officials in raising and spending that money to influence federal elections makes that potential influence and corruption all the more serious. That potential for abuse is most vividly illustrated by the series of reports issued by the Center for Responsive Politics tracking patterns of soft money contributions by groups with a strong interest in pending legislation (Keen and Daly 1997; Corrado 2000). Prominent examples include the tobacco, telecommunications, and oil and gas industries. In each case millions of dollars in soft money contributions were made to the national and congressional party committees of both parties as Congress was considering legislation that would significantly affect those industries. These are only several of the most noteworthy examples of a widespread phenomenon: most corporate soft money donors have a major stake in federal policymaking and many contribute to both major parties.

Seen from this practical vantage point, parties do not dilute the influence of large donors or insulate elected officials from direct connections with those donors; they instead facilitate and

broker such connections. The rise of soft money and of electioneering in the guise of issue advocacy has put parties in the unfortunate position of middleman between large private interests seeking public favors and ambitious elected officials aggressively soliciting large political contributions from those private interests. The FECA and its legislative predecessors banning corporate and union funding of federal elections were designed to reduce the glaring conflicts of interests that arise when those with high stakes in congressional and regulatory agency actions make large political contributions. That purpose has been undermined by the developments reviewed in this report.

Whatever the mix of motivations, parties, elected officials and private interests have been linked in a deceitful game – one based upon the transparent lie that soft money is being raised and used for purposes other than influencing federal elections. That game has been characterized by a constant search for funding conduits and rationales that allow political actors to evade the strictures of federal election law. It has exacerbated conflicts of interest among policymakers. It has encouraged politicians to engage in heavy-handed solicitation of large donations. And it has reinforced the unfortunate public perception that public policy decisions are bought and sold in Washington.

VII. Conclusion

This review of the development of campaign finance law and practice leads me to conclude that Congress had ample justification for crafting the provisions of BCRA to deal with the problems of party soft money and electioneering communications in the guise of issue advocacy. The weight of scholarly evidence supports the view that the FECA regime was undermined by the emergence of soft money and "issue advocacy," raising serious concerns about potential corruption in the policy process and disrespect for the rule of law. In my view BCRA is an incremental step to repair these

egregious tears in the regulatory fabric. The new law accomplishes this objective by updating existing provisions that limit contributions to political parties and that prohibit corporate and union treasury spending in federal elections to take into account contemporary realities of campaigning.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on ________________

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Thomas E. Mann

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Chart 1: Soft Money Spending by National Parties, 1976-2000

Table 1. State Limits on Contributions to Political Parties by Donor, 2000

State	Individuals	PAC	Corporation	Unions
Alabama	Unlimited	Unlimited	$500/election to any party	Unlimited
Alaska	$5,000/year to a party	$1,000/year to a party	Prohibited	Prohibited
Arizona	Unlimited	Unlimited	Prohibited	Prohibited
Arkansas	Unlimited	Unlimited	Unlimited	Unlimited
California	$5,000/year to party	$5,000/year to party	$5,000/year to party	$5,000/year to party
Colorado	$2,500/year to party	$2,500/year to party	$2,500/year to party	$2,500/year to party
Connecticut	$5,000/year to party state central committee; $1,000/year to party town committee	PACs formed by organizations subject to limits of $5,000/year to state central committee; $1,000 to a town committee; no limits for business PACs and PACs formed by 2 or more individuals	Prohibited	Prohibited
Delaware	$20,000/cycle* to party	$20,000/cycle* to party	$20,000/cycle* to party	$20,000/cycle* to party
District of Columbia	$5,000/election	$5,000/election	$5,000/election	$5,000/election
Florida	Unlimited	Unlimited	Unlimited	Unlimited
Georgia	Unlimited	Unlimited	Unlimited	Unlimited
Hawaii	$50,000/election year	$50,000/election year	$50,000/election year	$50,000/election year
Idaho	Unlimited	Unlimited	Unlimited	Unlimited
Illinois**	Unlimited	Unlimited	Unlimited	Unlimited
Indiana	Unlimited	Unlimited	$5,000/year to all state party committees and $2,000/year to all other party committees	$5,000/year to all state party committees and $2,000/year to all other party committees
Iowa	Unlimited	Unlimited	Prohibited	Unlimited
Kansas	$15,000/year to state party committee; $5,000/year to any other party committee	$5,000/year to any party committee	$15,000/year to a state party committee; $5,000/year to any other party committee	$15,000/year to state party committee; $5,000/year to any other party committee

State	Individuals	PAC	Corporation	Unions
Kentucky	$2,500/year to a state party executive committee and its subdivisions/affiliates	$2,500/year to a state party executive committee and its subdivisions/affiliates	Prohibited	$2,500/year to a state party executive committee and its subdivisions/affiliates
Louisiana	$100,000/four years to a party committee or its subsidiaries	$100,000/four years to a party committee or its subsidiaries	$100,000/four years to a party committee or its subsidiaries	$100,000/four years to a party committee or its subsidiaries
Maine	Unlimited	Unlimited	Unlimited	Unlimited
Maryland	$4,000/four years (but unlimited if directed to segregated fund to be used only for nonelectoral purposes)	$6,000/four years (but unlimited if directed to segregated fund to be used only for nonelectoral purposes)	$4,000/four years (but unlimited if directed to segregated fund to be used only for nonelectoral purposes)	$4,000/four years (but unlimited if directed to segregated fund to be used only for nonelectoral purposes)
Massachusetts	$5,000/year to all committees of a party	$5,000/year to all committees of a party	Prohibited	$15,000 or 10% of gross revenues, whichever is less, per year to all committees of a party
Michigan	Unlimited	Unlimited	Prohibited in certain instances	Prohibited in certain instances
Minnesota	Unlimited	Unlimited	Prohibited	Prohibited (unless from a separate political fund)
Mississippi	Unlimited	Unlimited	$1,000/calendar year to a party committee	Unlimited
Missouri	Unlimited	Unlimited	Unlimited	Unlimited
Montana	Unlimited	Unlimited	Prohibited	Unlimited
Nebraska	Unlimited	Unlimited	Unlimited	Unlimited
Nevada	Unlimited	Unlimited	Unlimited	Unlimited
New Hampshire	$5,000/election to a party committee, but $1,000/election to support a candidate who does not agree to spending limits	Unlimited	Prohibited	Prohibited

State	Individuals	PAC	Corporation	Unions
New Jersey	$30,000/year to state, county, or legislative leadership committee; $5,900/year to municipal committee	$30,000/year to state or county, or legislative leadership committee; $5,900/year to municipal committee	$30,000/year to state or county, or legislative leadership committee; $5,900/year to municipal committee	$30,000/year to state or county, or legislative leadership committee; $5,900/year to municipal committee
New Mexico	Unlimited	Unlimited	Unlimited	Unlimited
New York	$76,500/year to state party committee for election purposes; unlimited as to party housekeeping expenses	$76,500/year to state party committee for election purposes; unlimited as to party housekeeping expenses	$5,000/year for election purposes; unlimited as to party housekeeping expenses	$76,500/year to state party committee for election purposes; unlimited as to party housekeeping expenses
North Carolina	Unlimited	Unlimited	Prohibited, except independent, non-profit corporation that promotes social, educational, or political ideas	Prohibited
North Dakota	Unlimited	Unlimited	Prohibited	Prohibited
Ohio	$5,000/calendar year to county political party for party's state candidate fund or to legislative campaign fund and $16,000/calendar year to state political party for the party's state candidate fund	$5,000/calendar year to county political party for party's state candidate fund or to legislative campaign fund and $16,000/calendar year to state political party for the party's state candidate fund	Prohibited	Prohibited
Oklahoma	$5,000/year from individual or family to all affiliated party committees	$5,000/year to all affiliated party committees	Prohibited	$5,000/year to all affiliated party committees
Oregon	Unlimited	Unlimited	Unlimited	Unlimited
Pennsylvania	Unlimited	Unlimited	Prohibited	Prohibited

State	Individuals	PAC	Corporation	Unions
Rhode Island	$1,000/year to a party committee and $10,000/year to all party committees for organizational or party-building activities	$1,000/year to a party committee and $10,000/year to all party committees for organizational or party-building activities	Prohibited	Prohibited
South Carolina	$3,500/year to a party committee, but unlimited if donated to a party operating account	$3,500/year to a party committee, but unlimited if donated to a party operating account	$3,500/year to a party committee, but unlimited if donated to a party operating account	$3,500/year to a party committee, but unlimited if donated to a party operating account
South Dakota	$3,000/year to any political party	Unlimited	Prohibited	Prohibited
Tennessee	Unlimited	Unlimited	Prohibited	Unlimited
Texas	Unlimited	Unlimited	Prohibited for election purposes; unlimited for administrative purposes	Prohibited for election purposes; unlimited for administrative purposes
Utah	Unlimited	Unlimited	Unlimited	Unlimited
Vermont	$2,000/cycle	$2,000/cycle	$2,000/cycle	$2,000/cycle
Virginia	Unlimited	Unlimited	Unlimited	Unlimited
Washington	Unlimited	$3,000/year to a party committee for election purposes; unlimited if used for administrative expenses and certain non-candidate-related purposes	$3,000/year to a party committee for election purposes; unlimited if used for administrative expenses and certain non-candidate-related purposes	$3,000/year to a party committee for election purposes; unlimited if used for administrative expenses and certain non-candidate-related purposes
West Virginia	$1,000/year to a state party executive committee; $1,000/election to other party committees	$1,000/year to a state party executive committee; $1,000/election to other party committees	Prohibited	$1,000/year to a state party executive committee; $1,000/election to other party committees
Wisconsin	$10,000/year to all political committees	$6,000/year to a political party	Prohibited	Prohibited
Wyoming	$25,000/cycle	Unlimited	Prohibited	Prohibited

State	Individuals	PAC	Corporation	Unions

Source : Edward D. Feigenbaum, J.D. and James A. Palmer, J.D. "Chart 2-A: Contribution and Solicitation Limitations," in *Campaign Finance Law 2000: A Summary of State Campaign Finance Laws with Quick Reference Charts (Washington, DC: Federal Election Commission, 2000). A* vailable at the Federal Election Commission Web site, http://www.fec.gov/pages/cfl00chart2A.htm.

* A "cycle" in this context refers to a 2-year election cycle.
** Information on Illinois law comes from Kent Redfield, "Sunshine and the Shoe Box: Money and Politics in the Unregulated State of Illinois," in *Money, Politics, and Campaign Finance Reform Law in the States* , ed. David Schultz (Durham, NC: Carolina Academic Press, 2002), p. 60-1. No information was available through the FEC Web site on Illinois.

Chart 1.
Soft Money Spending by National Parties, 1976-2000

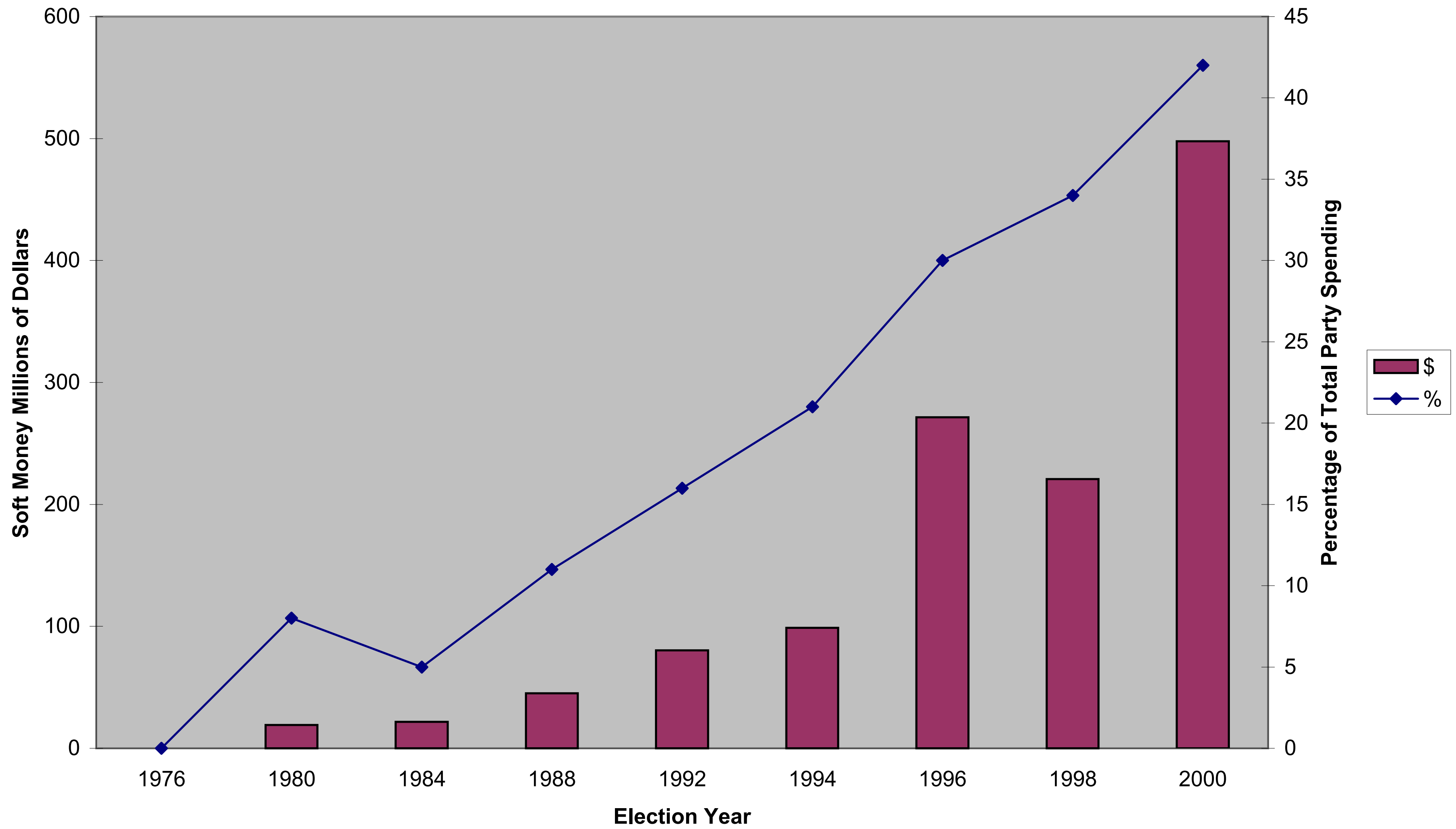

Table 6.
Top 50 Soft Money Donors in 2000

Organization	Total ($)	Total to Dems ($)	Total to Reps ($)	% to Dems	% to Reps	% from Treasury	% from Affiliated Individuals
American Fedn of St/Cnty/Munic Employees	5,949,000	5,949,000	0	100	0	100	0
AT&T	4,398,920	1,776,269	2,622,651	40	60	95	5
Service Employees International Union	4,288,096	4,257,696	30,400	99	1	100	0
Carpenters & Joiners Union	2,873,500	2,873,500	0	100	0	100	0
Freddie Mac	2,398,250	1,025,000	1,373,250	43	57	100	0
Philip Morris	2,383,453	296,641	2,086,812	12	88	100	0
Communications Workers of America	2,355,000	2,355,000	0	100	0	100	0
Microsoft Corp	2,317,226	966,792	1,318,384	43	57	75	25
United Food & Commercial Workers Union	2,146,450	2,146,450	0	100	0	100	0
Global Crossing	2,083,195	1,161,652	921,543	56	44	40	60
SBC Communications	1,862,228	876,621	985,607	47	53	100	0
Intl Brotherhood of Electrical Workers	1,780,000	1,780,000	0	100	0	100	0
Bristol-Myers Squibb	1,740,951	213,250	1,527,701	12	88	85	15
Enron Corp	1,671,555	532,565	1,138,990	32	68	70	30
American Federation of Teachers	1,668,000	1,668,000	0	100	0	100	0
MGM Mirage	1,563,086	713,086	850,000	46	54	100	0
Pfizer Inc	1,558,817	160,000	1,398,817	10	90	99	1
Citigroup Inc	1,509,010	763,806	745,204	51	49	86	14
Saban Entertainment	1,496,000	1,496,000	0	100	0	21	79
National Rifle Association	1,489,222	0	1,489,222	0	100	100	0
Verizon Communications	1,473,451	573,800	899,651	39	61	99	1
Williams & Bailey	1,365,000	1,365,000	0	100	0	42	58
FedEx Corp	1,327,600	475,478	852,122	36	64	100	0
Loral Spacecom	1,291,800	1,291,250	550	100	0	0	100
American Financial Group	1,280,000	620,000	660,000	48	52	12	88
Sheet Metal Workers Union	1,255,854	1,255,854	0	100	0	100	0
Buttenwieser & Associates	1,252,500	1,252,500	0	100	0	0	100
MBNA Corp	1,235,905	200,000	1,035,905	16	84	60	40
Ness, Motley et al	1,230,500	1,230,500	0	100	0	100	0
Vyyo Inc	1,207,500	1,207,500	0	100	0	0	100
Angelos Law Offices/Baltimore Orioles	1,197,900	1,172,900	25,000	98	2	22	78
Fannie Mae	1,188,650	610,800	577,850	51	49	96	4
Credit Suisse First Boston	1,185,450	443,000	742,450	37	63	36	64
Vivendi Universal	1,172,238	640,219	532,019	55	45	60	40
Lockheed Martin	1,152,350	457,500	694,850	40	60	100	0
Amway/Alticor Inc	1,138,500	0	1,138,500	0	100	32	68
Goldman Sachs	1,133,350	757,250	376,100	67	33	5	95
Slim-Fast Foods/Thompson Medical	1,113,000	1,093,000	20,000	98	2	2	98

Organization	Total ($)	Total to Dems ($)	Total to Reps ($)	% to Dems	% to Reps	% from Treasury	% from Affiliated Individuals
Blue Cross/Blue Shield	1,104,415	236,250	868,165	21	79	100	0
Limited Inc	1,080,100	300,000	780,100	28	72	88	12
United Parcel Service	1,072,871	195,662	877,209	18	82	100	0
America Online	1,061,205	452,750	608,455	43	57	35	65
Milstein Properties	1,044,515	1,044,515	0	100	0	0	100
UST Inc	1,041,570	53,000	988,570	5	95	99	1
American International Group	1,036,760	554,010	482,750	53	47	100	0
Association of Trial Lawyers of America	980,200	974,850	5,350	99	1	100	0
Anheuser-Busch	968,281	413,256	555,025	43	57	100	0
Metabolife	963,000	558,000	405,000	58	42	100	0
AFLAC Inc	961,325	453,000	508,325	47	53	100	0
GlaxoSmithKline	955,695	80,900	874,795	8	92	99	1

Source : Based on an analysis provided by the Center for Responsive Politics on September 19, 2002. "Totals" include funds donated from organization treasuries and funds given by individuals affiliated with the organization.