

McCONNELL V. FEC, ET AL.
CIVIL ACTION No. 02-582 (CKK, KLH, RJL)
(D.D.C: ALL CONSOLIDATED CASES)

DEFENDANTS' EXHIBITS

VOLUME 3 - R

REDACTED DEFENDANTS' EXPERT REPORTS

TAB NO.	DOCUMENT DESCRIPTION
7	Amended Expert Report of Kenneth M. Goldstein

**AMENDED EXPERT REPORT OF
KENNETH M. GOLDSTEIN**

I. QUALIFICATIONS

I am an associate Professor of Political Science at the University of Wisconsin-Madison, where I specialize in the study of interest groups, political advertising, and survey methodology. I received my B.A. in Political Science from Haverford College in 1987 and my Ph.D. in Political Science from the University of Michigan in 1996. The focus of my Ph.D. studies was American politics and research methodology. I have served on the faculty at the University of Wisconsin-Madison since 2000, teaching courses and conducting research on American politics and survey research methodology. I was granted tenure at the University of Wisconsin-Madison during the last academic year.

I am on the Dean's Oversight Board of the Survey Research Center at the University of Wisconsin. In addition, I serve on the College of Letters and Science Human Subjects Committee, which approves all research involving human subjects within the college. I have also taught courses in survey research and served on the Dean's planning committee for the Survey Research Center at Arizona State University from 1996 to 2000. I have served on two planning committees for the National Elections Study, renowned as the premier survey research project on elections conducted in the scholarly community.

I am the author or co-author of 17 publications (books, book chapters, and refereed journal articles). The majority of my work has focused on studying the use and effectiveness of political advertising as well as interest group lobbying tactics. Attached as Appendix B is a copy of my curriculum vitae, which lists in more detail my academic background, positions, and publications.

I am being paid \$5,000, plus reimbursement of travel expenses, by the Brennan Center for Justice for my work in this litigation. I have also received a grant of \$508,000 (of which my salary constituted \$20,000) from the Pew Charitable Trusts to conduct research on political advertising during the 2002 election cycle. While that grant is unconnected with my work on this litigation, Pew has agreed to allow me to work concurrently on this litigation and the 2002 election project.

In the preceeding four years, I have testified as an expert in *Luetzow v. Guardian Pipeline*, a condemnation hearing in Jefferson County, Wisconsin. I have also been retained as a testifying expert by ANR Pipeline Co. in the case *Arentz v. ANR Pipeline Co.*, pending in Wisconsin Circuit Court in Waukesha. In both of these cases, I bill my time at \$300 an hour.

II. SUMMARY OF FINDINGS

I submit this report, describing the nature of political advertising in federal elections, to assist the Court in its assessment of the Bipartisan Campaign Reform Act (BCRA). BCRA's provisions focus on broadcast ads sponsored by parties and interest groups. My main focus in this report is on the nature of interest group advertising in the 2000 contest and, more specifically, the ads and sponsors that would be directly affected by BCRA provisions relating to ads that mention or depict a candidate and are broadcast within 60 days of a general election or 30 days of a primary election for federal office. A secondary focus is on the nature of advertising by political parties.

I draw primarily on a database of political television advertisements aired in the top 75 media markets, which serve 80 percent of the country's population. The data are compiled by the Campaign Media Analysis Group (CMAG), a commercial firm that tracks advertising for political clients.¹ University of Wisconsin-Madison graduate

¹ The scope of the CMAG data is discussed in Section IV below.

assistants and I processed the 2000 CMAG data. I have used these data in a series of reports and articles to describe the source, content, and targeting of political advertising in the 2000 elections. In this report, I set forth nine principal conclusions that emerge from my study of the CMAG data:

1. Advertisements sponsored by parties and interest groups comprised a significant and increasing portion of political television ads broadcast in federal races over the course of the entire year and especially during the last 60 days of the 2000 election.
2. The "magic words" defined in *Buckley v. Valeo* do not provide an effective way to identify political television ads that have the purpose or effect of supporting or opposing candidates for election to a public office.
3. Interest group financed ads that depicted or mentioned candidates for federal office were concentrated in the weeks immediately preceding the election and stopped on Election Day. Interest group ads that did not mention or picture candidates for federal office were distributed more evenly throughout the year, rising and falling with the ebb and flow of the legislative calendar.
4. Interest group ads that mentioned a candidate within 60 days of the general election almost invariably targeted House or Senate candidates in hotly contested races or presidential candidates in battleground states.
5. Ads that mentioned or depicted federal candidates for office differ from ads that did not mention or picture candidates in other ways, such as their content, their distribution over time, their geographic dispersion, etc.
6. Ads that did not mention or depict a candidate are readily distinguishable from quintessential electioneering ads (such as ads run by a candidate seeking election to public office) in numerous ways such as their content, their distribution over time, their geographic dispersion, etc.
7. Virtually all (97.7 percent) political television ads aired during 2000 that would have been covered by BCRA were perceived by project coders as having an electioneering purpose.
8. BCRA requirements would have applied to 3.1 percent of ads broadcast by interest groups during 2000 which were perceived as genuine issue ads by coders.
9. Broadcasting issue ads in close proximity to an election is not necessarily an effective way to inform voters about public policy issues or generate action on such issues.

To put these findings into context, I first summarize the salient characteristics of campaign finance regulations and how the information provided in this report is relevant. I also describe in more detail the major source of data used in this report and in my scholarly work on television advertising over the last six years.²

III. OVERVIEW OF CAMPAIGN FINANCE REGULATIONS AND BCRA

The Federal Election Campaign Act (FECA), passed in 1971, as interpreted in ensuing legal decisions—primarily *Buckley v. Valeo*, decided by the Supreme Court in 1976—has defined two classes of political money. *First*, money for express advocacy (commonly known as “hard money”) is money that pays for activities that directly advocate the election of a federal officeholder. Hard money is subject to FECA’s express advocacy regulations that require the disclosure of contributors and expenditures and contain certain limitations on the amounts of contributions and the eligibility of certain types of donors (*i.e.*, unions and corporations). *Second*, money to fund other political activities (such as general party building, educating citizens on issues or lobbying on legislation) is often described as “soft money.” “Soft money” is exempt from some of the disclosure requirements and source and amount limitations applicable to “hard money.”

A footnote in the Supreme Court’s *Buckley v. Valeo* decision defined express advocacy by reference to whether the ads used particular words or phrases such as “vote for,” “defeat,” or “Jones for Senate.” These words have become widely known in political science and legal circles as “magic words.”

BCRA generally proscribes soft money donations to political parties for any purpose, including financing advertising—almost always candidate-focused—that the

² Tables attached as Appendix A to this Report constitute an integral part of the Report whether or not referenced in the text.

parties sometimes call "issue advertising." BCRA also imposes certain requirements on interest groups that broadcast Electioneering Communications, which BCRA defines as ads broadcast on radio or television that mention or depict a candidate, are broadcast within 60 days of an election (or 30 days of a primary), and are targeted at a candidate's voters. Any interest group broadcasting Electioneering Communications is required to disclose its contributions and expenditures (above certain minimum thresholds), raise money under particular contribution limits, and refrain from accepting contributions from union or corporate treasuries.

IV. THE CAMPAIGN MEDIA ANALYSIS GROUP DATA

Until recently, the lack of comprehensive data on the content, timing, volume and targeting of political advertising has limited what policymakers, journalists and scholars can report about the magnitude, content and targeting of political television ads.

A technology marketed by Competitive Media Reporting (CMR) now tracks television advertising activity in the country's major markets. The ad tracking technology monitors the transmissions of the national networks (ABC, CBS, NBC and Fox) as well as 42 major national cable networks (such as CNN, ESPN and TBS). The system monitors local television advertising in the country's top 75 media markets (comprising approximately 80 percent of the nation's population).³ The system's software recognizes the electronic seams between programming and advertising. When the system first detects a commercial spot's unique broadcast pattern, it downloads the ad and creates a "storyboard" of the sort described below. Analysts at CMR classify the advertisements into particular categories by product for commercial clients and by

³ Lists of the markets and stations are included in Appendix G to this Report. CMAG data do not include ads broadcast on local cable channels.

candidate or sponsor for political clients. The ads are then tagged with unique digital fingerprints. Thereafter, the system automatically recognizes and logs that particular commercial wherever and whenever it airs. The ad tracking information is marketed to political clients by the Campaign Media Analysis Group (CMAG).

In 2000, the Brennan Center for Justice at New York University purchased the CMAG data through a grant from the Pew Charitable Trusts.⁴ The 2000 data were processed and coded by teams of graduate and undergraduate students working under my supervision at the University of Wisconsin-Madison.

CMAG supplied two different forms of data that were used in this project. First, for every political ad produced, CMAG created a storyboard, that is, a complete transcript of all audio and a still capture of every fourth second of the video. A nearly complete set of the storyboards for 2000 appears as electronic Appendix K to this report (other sample storyboards appear in other Appendices).

The second type of CMAG data involves tracking political ads in the nation's top 75 media markets, as well as all ads run on the major national broadcast and cable networks. The unit of analysis in these files is an individual broadcast, or "airing", of a unique ad. For each such airing, CMAG reported on the time, length, station, show, and estimated cost. For each ad, this frequency information was then merged with the coded content from the storyboards in order to produce a single, comprehensive data set. Appendix E contains an analysis describing in more detail the methodology used to code and process the CMAG data.

⁴ The Brennan Center published two reports, entitled *Buying Time: Television Advertising in the 1998 Congressional Elections* ("Buying Time 1998") and *Buying Time 2000: Television Advertising in the 2000 Federal Elections* ("Buying Time 2000"), which used databases prepared under my supervision, upon which I relied in part to prepare this report. These reports are attached as Appendices C and D.

I have great confidence in the CMAG data in terms of tracking the airings of particular ads at particular times. Appendix I contains a copy of an analysis, "Measuring Exposure to Campaign Advertising", that I have co-authored with two graduate students, Travis Ridout and Michael Franz, and a colleague at the University of Virginia, Paul Freedman. This analysis is currently under scholarly review at the journal, *Political Communication*. It provides a detailed explanation of the validity of the CMAG frequency data and the coding process.

The CMAG storyboards enabled us to undertake an extensive analysis of the ads and develop a database of information concerning political television advertising.⁵ Specifically, a team of students (the coders), working under my supervision, assessed the content of each of these storyboards on a wide range of topics, such as content, tone, issues addressed, whether the ads mentioned a political candidate or provided a toll-free number to call, etc. (see Appendix F for complete coding sheet). Multiple coders reviewed a subset of storyboards as a check on the reliability of the coding. I reviewed all ads financed by interest groups and broadcast within 60 days of a general election. I also reviewed and revised the coding where coding by the initial coders was in conflict or where I determined that an error had been made.

In addition to collecting certain specific information concerning each storyboard reviewed, the study also asked coders: "In your opinion, is the purpose of the ad to provide information about or urge action on a bill or issue, or is it to generate support or opposition for a particular candidate?" In this report, I refer to ads coded as providing information or urging action as "Genuine Issue Ads," and ads coded as generating support or opposition for a particular candidate as "Electioneering Ads."

⁵ The database is attached to this this report as electronic Appendix L.

V. THE SCOPE OF POLITICAL ADVERTISING

Advertising in the 2000 election was financed by three principal groups: (1) the candidates; (2) political parties; and (3) interest groups. Some interest groups formed political action committees (PACs), which are regulated under current election laws, and aired ads sponsored by these PACs. Most interest group ads, however, were not sponsored by PACs, and fell outside FECA regulation.

In the 2000 election cycle—*i.e.*, from January 1, 2000 through Election Day—the CMAG database collected 970,424 political television ad broadcasts, 838,169 of which applied to federal races, which were financed by candidates, political parties and interest groups at a cost roughly estimated at \$720 million. Thirty-six interest groups financed the broadcast of political television advertisements that would have fallen within BCRA's coverage. During the federal elections in 2000, interest group spending comprised 16 percent of all political television ads broadcast at an estimated cost of \$93 million; political parties paid for 27 percent at an estimated cost of \$162 million; and candidates paid for 52 percent at an estimated cost of \$338 million.⁶

These figures, in fact, underestimate television expenditures because the CMAG estimates only cover markets serving 80 percent of the nation's population and make no attempt to measure the increased cost of advertising during the peak season of political campaigns when the demand for television advertising time pushes up spot prices.

⁶ The remaining 5 percent of ads were coordinated expenditures in the presidential race, with almost \$30 million spent on those advertisements. Coordinated expenditures are those in which a candidate and a party jointly pay for the cost of the advertisement.

In the federal election of 2000, a total of 838,169 ads were broadcast, of which 36 percent (301,521) were aired in the presidential contest, 29 percent (241,497) in Senate contests, and 29 percent (240,490) in House elections.⁷

In House and Senate races, a total of 481,987 ads were broadcast in 2000, an increase of 64 percent over the 293,452 aired in 1998.

Interest group expenditures for political television ads increased most dramatically, rising from approximately \$11 million in 1998 to an estimated \$93 million in 2000.

Tables 1A and 1B set forth the breakdown of political advertising among candidates, political parties, and interest groups during the 1998 and 2000 election years (January 1 through Election Day):⁸

⁷ The remaining 6 percent of ads were coordinated expenditures.

⁸ Aside from the "All Political Ads" category, the numbers in the tables reflect only those ads that refer to a candidate, and thus omit certain ads which may have run in the presidential, Senate, or House races which did not mention a candidate.

Table 1A: Political Advertising Activity in the 1998 Election Cycle⁹

	Total		Candidates		Parties		IG—PAC		IG—Non-PAC		Coordinated Expenditures	
	Est. Cost	Count	Est. Cost	Count	Est. Cost	Count	Est. Cost	Count	Est. Cost	Count	Est. Cost	Count
All Political Ads in Federal Races	\$172,800,000	295,625	\$136,600,000	229,850	\$25,600,000	44,485	\$10,700,000	21,290				
Ads Referring to Federal Candidate	\$163,100,000	277,537	\$135,300,000	227,561	\$24,600,000	42,599	\$3,200,000	7,377				
Ads Referring to Presidential Candidate	-----	-----	-----	-----	-----	-----	-----	-----				
Ads Referring to Senate Candidate	\$99,100,000	133,718	\$83,600,000	127,004	\$14,800,000	25,274	800,000	1,440				
Ads Referring to House Candidate	\$64,000,000	123,819	\$51,700,000	100,557	\$9,800,000	17,315	2,400,000	5,937				

Table 1B: Political Advertising Activity in the 2000 Election Cycle¹⁰

	Total		Candidates		Parties		IG—PAC		IG—Non-PAC		Coordinated Expenditures	
	Est. Cost	Count	Est. Cost	Count	Est. Cost	Count	Est. Cost	Count	Est. Cost	Count	Est. Cost	Count
All Political Ads in Federal Races	\$624,218,204	838,169	\$338,443,584	433,811	\$162,353,178	230,368	\$2,073,436	3,688	\$90,461,349	129,647	\$29,166,553	37,938
Ads Referring to Federal Candidate	\$381,295,000	780,281	\$337,458,696	432,197	\$162,163,762	229,860	\$2,070,388	3,663	\$48,756,139	74,024	\$29,166,553	37,938
Ads Referring to Presidential Candidate	\$205,603,871	300,959	\$78,151,616	115,352	\$81,467,696	123,517	\$129,280	222	\$16,447,813	23,628	\$29,166,553	37,938
Ads Referring to Senate Candidate	\$216,422,636	239,891	\$168,021,425	171,713	\$37,656,530	52,953	\$1,113,163	2,061	\$8,520,989	11,522	\$0	0
Ads Referring to House Candidate	\$159,263,459	239,416	\$91,285,655	145,132	\$43,039,536	53,390	\$827,945	1,380	\$23,782,303	38,859	\$0	0

⁹ Figures taken from the expert report of Jonathan Krasno and Frank Sorauf.

¹⁰ "Total" column includes ads for which the sponsor was unknown.

VI. THE ROLE OF INTEREST GROUPS AND POLITICAL PARTIES IN POLITICAL TELEVISION ADVERTISING

As these tables demonstrate, political parties were the largest purchasers of television ads in the 2000 presidential campaign. Parties purchased 41 percent of such ads, candidates 38 percent and interest groups 8 percent.¹¹ Interest groups broadcast one commercial for every five broadcast by the candidates in the presidential election of 2000. Table 2 shows the breakdown by funding source of advertising in certain battleground states. In certain states, interest group advertising rivaled that of the candidates or parties. For example, in Missouri, interest groups ran almost three-quarters as many ads as candidates, while in Washington State, interest group ads exceeded 50 percent of the candidates' ads.

¹¹ The remaining ads were coordinated expenditures.

**Table 2:
Concentration of Interest Groups' Presidential
Candidate-Mention Advertising in Battleground States
Broadcast Within 60 Days of the 2000 Election¹²**

State in which Candidate Is Mentioned	Interest Groups		Political Parties		Candidates	
Florida	3,338	11%*	9,370	10%*	6,527	9%*
Missouri	2,967	9%	5,309	6%	4,104	6%
Pennsylvania	2,807	9%	5,289	6%	4,895	7%
Washington	2,339	7%	5,621	6%	4,357	6%
Wisconsin	2,067	7%	3,983	4%	3,361	5%
Michigan	2,000	6%	5,068	5%	4,411	6%
Ohio	1,669	5%	6,199	7%	5,351	7%
Oregon	1,446	5%	2,082	2%	1,801	3%
Nevada	896	3%	1,160	1%	1,546	2%
New Mexico	796	3%	1,913	2%	2,500	3%
West Virginia	786	3%	2,112	2%	1,754	2%
Minnesota	558	2%	671	1%	105	0%
Tennessee	377	2%	2,074	2%	955	1%
Iowa	379	2%	1,514	2%	1,297	2%
Arkansas	228	1%	2,266	2%	1,564	2%
Maine	157	1%	1,109	1%	1,119	2%
New Hampshire	75	0%	2,159	2%	1,142	2%
Other States	8,384	27%	34,833	38%	24,927	35%
TOTAL	31,269	100%	92,732	100%	71,716	100%

*Percentages may not total exactly to 100% due to rounding.

¹² I determined which states were battleground states based on my professional review of various media sources. See, for example, <http://www.cnn.com/interactive/allpolitics/0010/battleground.states/battlegroundstates.html>. In a few cases, a media market was capable of reaching viewers in multiple states. For example, ads aired in the Philadelphia market reached viewers in both Pennsylvania and New Jersey. In this Table, for media markets which reached more than one state, the number of ad airings are included in each of the states, resulting in a total which slightly overstates the total number of airings of candidate-mention ads within 60 days of the presidential election. This assignment of media markets to more than one state is also the reason why the Total numbers in this table do not correspond exactly to the numbers provided in Table 4's "Ads Referring to a Presidential Candidate Within 60 Days."

As a general matter, interest group ads that would have been defined as electioneering under the BCRA formulation were even more significant in House elections, accounting for 17 percent of total House ad broadcasts during the 2000 election cycle. Parties accounted for 22 percent of total television ads run in House elections and candidates, 60.6 percent.¹³

Party expenditures on television advertising were almost exclusively devoted to promoting their candidates. 99.8 percent of party financed television ads mentioned or depicted a candidate. Only 1.8 percent even mentioned the name of the party and many fewer promoted the candidate by virtue of his or her party affiliation.¹⁴

VII. THE BCRA UNIVERSE OF INTEREST GROUP ELECTIONEERING

The CMAG database presents an informative view of the interest group financed political television ads that are the focus of BCRA's Electioneering Communication regulations, that is, ads that mentioned a candidate and were broadcast within 60 days of the general election. As shown in Table 3, 35 interest groups broadcast communications on television that would have been defined as electioneering by BCRA during the 2000 elections. The top ten of those interest groups, listed below, sponsored 87 percent of the total amount spent by all interest groups on such communications during the 2000 election:

Citizens for Better Medicare
Chamber of Commerce
Planned Parenthood
AFL-CIO
Women Voters: A Project of Emily's List
Americans for Job Security
Business Round Table

¹³ The remaining 0.4 percent were financed by undetermined ad sponsors.

¹⁴ Virtually all ads contain a "tag line" which identifies the organization financing the ad, which may include the party name where appropriate.

Handgun Control
Sierra Club
League of Conservation Voters

The top twenty interest groups accounted for 90 percent of all monies spent on communications that would have come under the BCRA regime.

The principal sources of interest group financing for Electioneering Communications were for the most part readily recognizable forces in American politics. An exception is an organization unrevealingly described as Citizens for Better Medicare. Citizens for Better Medicare, which turned out to be the largest interest group financier of Electioneering Communications in the 2000 election, is an organization representing certain pharmaceutical manufacturers.

That would have been the BCRA universe:¹⁵ 59,632 broadcasts financed by 35 interest groups at an estimated cost of \$40,491,141.¹⁶

**Table 3:
Interest Group Broadcasts of Electioneering Communications as Defined by BCRA
(Ads Which Mention a Candidate and are Broadcast Within 60 days of the Election)
in the 2000 Election**

Organization	Cost	Airings
Citizens for Better Medicare	\$ 6,615,826	10,753
Chamber of Commerce	\$ 5,480,846	7,574
Planned Parenthood	\$ 5,340,506	5,916
AFL-CIO	\$ 5,142,962	9,779
Women Voters: A Project of Emily's List	\$ 3,635,178	2,645

¹⁵ That is, the BCRA universe revealed by the CMAG data, which covers television markets serving 80 percent of the nation's population. No comprehensive information is available for the balance of the markets or for ads airing on local cable stations, but based on my familiarity with political advertising I would estimate that there are few additional organizations which spent more than \$10,000 on political advertising in 2000.

¹⁶ In Table 4, there are 60,623 ads listed as aired within 60 days mentioning a candidate. The difference between that number and the 59,632 listed above and in Table 3 is due to the existence of ads for which the interest group sponsors were unclear.

Organization	Cost	Airings
Americans for Job Security	\$ 2,826,989	5,007
Business Round Table	\$ 2,685,977	4,571
Handgun Control	\$ 1,793,938	2,887
Sierra Club	\$ 1,112,387	1,707
League of Conservation Voters	\$ 900,601	1,705
Americans for Quality Nursing Home Care	\$ 803,195	980
Republican Leadership Council	\$ 707,660	601
Voters for Choice	\$ 699,024	683
American Medical Association	\$ 477,077	543
Emily's List	\$ 443,120	800
Campaign for a Progressive Future	\$ 410,983	863
Coalition for Future American Workers	\$ 241,001	172
NAACP	\$ 212,106	461
National Rifle Association	\$ 205,609	333
National Education Association	\$ 179,601	511
Citizens for Better America	\$ 137,337	72
Clean Air Project	\$ 127,602	191
National Association of Realtors	\$ 91,468	210
American Seniors, Inc.	\$ 65,607	111
Associated Builders and Contractors	\$ 39,428	95
NARAL	\$ 35,367	66
Americans for Limited Terms	\$ 26,699	195
Federation for American Immigration Reform	\$ 25,718	81
Americans for Victory Over Terrorism	\$ 7,782	8
US Term Limits	\$ 5,702	37
Conservative Leadership PAC	\$ 5,531	10
National Pro Life Alliance	\$ 4,338	24
Young Christian League	\$ 2,429	16
West Virginians for Life	\$ 1,326	24
Right to Work Committee	\$ 221	1
TOTAL	\$40,491,141	59,632

**VIII. THE MAGIC WORDS TEST FAILS TO IDENTIFY POLITICAL ADVERTISEMENTS
THAT HAVE THE PURPOSE OR EFFECT OF SUPPORTING A CANDIDATE FOR
POLITICAL OFFICE**

The vast majority of political ads broadcast on television fall into one of two distinct categories. Some plainly have the main purpose of persuading citizens to

vote for or against a particular candidate. Other ads have the purpose of seeking support for or urging some action on a particular policy or legislative issue.

Heretofore, the “magic words” test—derived from a footnote in the Supreme Court’s 1976 decision in *Buckley v. Valeo*—has been the legal standard for distinguishing between the two types of ads. This test defines express advocacy (ads with an election goal) as advertisements that contain words such as “elect,” “defeat” or “support.” Ads that do not contain magic words are technically not election ads under this test. Is this test effective?

As candidate sponsored ads are paid for by hard money and clearly fall within the realm of partisan electioneering, the magic word test does not apply to them. Still, precisely because all advertisements sponsored by candidates are electioneering by definition, they can provide a test for the current standard of express advocacy. If the use of magic words provided an accurate way to classify an ad, then advertisements clearly and obviously created and aired to influence elections would be expected to employ such magic words.

Of the 433,811 ads broadcast by candidates, 11.4 percent contained the magic words. Just under nine in ten (88.6 percent) of candidate ads in 2000, unarguably examples of partisan electioneering, were technically undetected by the *Buckley* magic words test and would not have been classified as electioneering. The data from 2000 demonstrate that magic words are not an effective way of distinguishing between political ads that have the main purpose of persuading citizens to vote for or against a particular candidate and ads that have the purpose of seeking support for or urging some action on a particular policy or legislative issue.

**IX. INTEREST GROUP FINANCED TELEVISION ADS WHICH MENTION A CANDIDATE
ARE CONCENTRATED WITHIN 60 DAYS OF AN ELECTION**

The two primary criteria by which BCRA defines Electioneering Communications are the ads' reference to a candidate and the proximity in time of their broadcast to the election. The CMAG database provides empirical evidence of a strong positive correlation between these two BCRA criteria and consequently of their validity as a test for identifying political television advertisements with the purpose or effect of supporting or opposing a candidate for public office.

As Table 4 demonstrates, interest group ads that mention or depict a candidate tend to be broadcast within 60 days of the election. Interest group ads that do not mention a candidate tend to be spread more evenly over the year. More specifically, 78 percent of interest group ads that mentioned a candidate for federal office were broadcast within 60 days of the election. Fully 85 percent of interest group ads mentioning a presidential candidate ran within 60 days of the general election. By contrast, only 18 percent of interest group financed ads not mentioning a candidate were broadcast within 60 days of the election.

Similarly, the distribution over time of interest group ads mentioning candidates is closely correlated to the distribution of electioneering communications broadcast by candidates and political parties.

As illustrated in Table 4, 76 percent of all interest group sponsored ads that mentioned a House candidate were broadcast within 60 days of the House of Representatives election, as were 79 percent of candidate ads and 94 percent of political party ads. Similarly, in the Senate election, 74 percent of interest group ads that

mentioned a candidate aired within 60 days of the election, as did 67 percent of candidate ads and 81 percent of political party ads.

Table 4: Advertising Activity By Interest Groups, Parties & Candidates in 2000

	Approximate Cost	Total Number*	Candidate	Sponsor Type		
				Party	Interest group	
All Political Ads						
Within 60 Days	\$624,218,204	838,169	433,811	230,368	133,335	
Outside 60 Days	\$404,208,353	538,404	275,281	152,084	70,384	53%
	\$220,009,851	299,765	158,530	78,284	62,951	47%
Ads Not Referring to Any Federal Candidate						
Within 60 Days	\$42,923,204	57,888	1,558	508	55,648	18%
Outside 60 Days	\$8,109,047	11,361	1,066	360	9,761	82%
	\$34,814,157	46,527	492	148	45,887	
Ads Referring to a Federal Candidate						
Within 60 Days	\$581,295,000	780,281	432,197	229,860	77,687	
Outside 60 Days	\$396,099,306	527,043	274,159	151,724	60,623	78%
	\$185,195,694	253,238	158,038	78,136	17,064	22%
Ads Referring to a Presidential Candidate						
Within 60 Days	\$205,603,871	300,959	113,352	123,517	23,850	
Outside 60 Days	\$110,254,205	161,257	44,035	58,784	20,198	85%
	\$95,349,666	139,702	71,317	64,733	3,652	15%
Ads Referring to a Senate Candidate						
Within 60 Days	\$216,422,636	239,891	171,713	52,953	13,583	
Outside 60 Days	\$149,622,206	169,971	115,432	42,898	9,999	74%
	\$66,800,430	69,920	56,281	10,055	3,584	26%
Ads Referring to a House Candidate						
Within 60 Days	\$159,263,459	239,416	145,132	53,390	40,239	
Outside 60 Days	\$136,217,861	195,800	114,692	50,042	30,411	76%
	\$23,045,598	43,616	30,440	3,348	9,828	24%

* Ads in "total number" column do not equal sum of sponsor type because the identity of a small number of ad sponsors could not be determined and coordinated expenditures are excluded.

**X. INTEREST GROUP SPONSORED TELEVISION ADS WHICH MENTION A
CANDIDATE ARE CONCENTRATED IN COMPETITIVE DISTRICTS**

The CMAG database shows that interest group financed television ads that mentioned a candidate and were broadcast within 60 days of an election were highly concentrated in states and congressional districts with competitive races. As shown in Table 5, during the 2000 senatorial elections, 89.2 percent of such interest group ads ran in states where the race was competitive.¹⁷ Four states accounted for 77 percent of the ads broadcast by interest groups; political parties broadcast 65 percent of their ads in these four states. Interest group ads were particularly important in Michigan, where interest groups broadcast 22 percent of the total ads broadcast in the race.

¹⁷ In determining which races were competitive, I relied on my professional judgment, as informed by various media sources such as the Cook Report, attached here as Appendix H.

**Table 5:
Concentration of Interest Groups' Candidate-Mention Advertising Broadcast
Within 60 Days of Elections in 2000 Senate Races ¹⁸**

Senate Race in which Candidate Is mentioned	Interest Groups		Political Parties		Candidates	
Michigan*	3,939	41%	6,114	14%	7,934	8%
Virginia*	1,651	17%	9,622	22%	11,354	11%
Washington*	1,094	11%	1,903	4%	8,370	8%
Florida*	661	7%	10,776	25%	11,492	11%
Rhode Island	434	5%	1,008	2%	2,692	3%
Missouri*	398	4%	2,695	6%	5,400	5%
Kentucky	384	4%	0	0%	0	0%
New Jersey*	348	4%	0	0%	6,463	6%
Delaware*	254	3%	787	2%	1,235	1%
Nebraska*	180	2%	3,000	7%	3,025	3%
Utah	123	1%	0	0%	597	1%
Pennsylvania	78	1%	1,978	5%	6,823	7%
New Mexico	38	0%	0	0%	722	1%
Minnesota*	16	0%	652	2%	3,672	4%
Wisconsin	9	0%	204	0%	2,776	3%
Nevada*	7	0%	1,305	3%	2,500	2%
Georgia	0	0%	722	2%	1,550	2%
Indiana	0	0%	136	0%	2,507	2%
New York*	0	0%	1,966	5%	22,357	22%
TOTAL	9,614	100%	42,868	100%	101,469	100%

* *Competitive races.*

The geographical distribution of interest group ads in Senate elections closely paralleled that of the political parties, which ran 90.6 percent of their ads in those competitive states. The same was true in House elections. As demonstrated in Table 6, during 2000, 85.3 percent of interest group financed ads broadcast within 60 days of the election were aired in congressional districts with competitive elections. Similarly, the political parties ran 98.2 percent of their ads in those districts.

¹⁸ Table includes only those states in which either interest groups or political parties, or both, ran candidate-mention ads within 60 days of the elections.

In certain key congressional districts, such as California 49 and North Carolina 8, interest groups broadcast more ads than candidates or the political parties. In 22 congressional districts, interest group ads exceeded the number of ads run by the political parties. Overall, interest groups aired 17 percent of all ads aired in races for the U.S. House of Representatives.

**Table 6:
Concentration of Interest Groups' Candidate-Mention Advertising Broadcast
Within 60 Days of Elections in 2000 House Races ¹⁹**

House Race In which Candidate Is mentioned	Interest Groups	Political parties	Candidates	
California 49*	3,133	10%	1,852 4%	2,012 3%
Kentucky 3*	3,112	10%	1,755 4%	3,477 5%
Kentucky 6*	2,175	7%	2,809 6%	3,182 4%
North Carolina 8*	2,129	7%	2,398 5%	1,457 2%
Arkansas 4*	2,084	7%	2,092 4%	1,693 2%
New Mexico 1*	1,784	6%	617 1%	2,167 3%
Washington 5*	1,755	6%	1,646 3%	1,822 2%
Pennsylvania 10*	1,430	5%	1,881 4%	3,481 5%
Florida 22*	1,169	4%	1,413 3%	3,579 5%
New Hampshire 2*	1,076	3%	130 0%	1,073 1%
Michigan 8*	1,001	3%	2,572 5%	2,794 4%
Florida 23	916	3%	0 0%	0 0%
Minnesota 6*	720	2%	687 1%	2,085 3%
Texas 12	568	2%	0 0%	0 0%
California 20*	548	2%	1,424 3%	2,438 3%
Ohio 12*	539	2%	926 2%	2,252 3%
Colorado 1	432	1%	0 0%	0 0%
South Carolina 1	423	1%	0 0%	0 0%
Florida 8*	371	1%	2,405 5%	1,245 2%
Nevada 1*	336	1%	752 2%	2,048 3%
Washington 2*	322	1%	1,321 3%	1,063 1%
Pennsylvania 4*	316	1%	1,817 4%	987 1%
New Jersey 7*	310	1%	354 1%	580 1%
Virginia 4	310	1%	0 0%	0 0%
Connecticut 5*	306	1%	393 1%	2,217 3%
Nebraska 1	267	1%	0 0%	0 0%

¹⁹ Table includes only those districts in which either interest groups or political parties, or both, ran candidate-mention ads within 60 days of the elections.

House Race In which Candidate Is mentioned	Interest Groups	Political parties	Candidates	
Georgia 9	262	1%	0 0%	0 0%
Virginia 1	261	1%	0 0%	0 0%
Minnesota 4*	247	1%	173 0%	964 1%
Wisconsin 9	229	1%	0 0%	0 0%
Florida 12*	194	1%	1,409 3%	1,742 2%
Indiana 8*	178	1%	406 1%	0 0%
Alabama 3	177	1%	0 0%	0 0%
Wisconsin 6	152	1%	0 0%	872 1%
Utah 2*	151	1%	2,104 4%	2,057 3%
Texas 25*	143	0%	186 0%	937 1%
North Carolina 11*	138	0%	1,033 2%	2,187 3%
Oklahoma 6	119	0%	0 0%	504 1%
Tennessee 6	117	0%	0 0%	419 1%
Missouri 3	111	0%	0 0%	2,514 3%
Rhode Island 2	109	0%	0 0%	923 1%
Arizona 3	98	0%	0 0%	0 0%
Iowa 5	81	0%	0 0%	0 0%
Colorado 6	40	0%	0 0%	1,387 2%
Missouri 2	7	0%	359 1%	556 1%
Arkansas 3	0	0%	99 0%	0 0%
California 10	0	0%	41 0%	0 0%
California 15*	0	0%	668 1%	7 0%
California 27*	0	0%	626 1%	268 0%
California 36*	0	0%	1,062 2%	618 1%
Connecticut 2*	0	0%	537 1%	2,046 3%
Florida 3*	0	0%	794 2%	696 1%
Florida 4	0	0%	179 0%	168 0%
Illinois 10*	0	0%	861 2%	902 1%
Kansas 3*	0	0%	1,518 3%	2,159 3%
Kentucky 1	0	0%	52 0%	0 0%
Minnesota 2*	0	0%	44 0%	761 1%
Missouri 6*	0	0%	2,381 5%	1,110 1%
New Jersey 12*	0	0%	1,317 3%	369 0%
New York 1	0	0%	181 0%	364 0%
New York 2*	0	0%	675 1%	136 0%
Oklahoma 2*	0	0%	1,729 3%	2,197 3%
Pennsylvania 13*	0	0%	278 1%	740 1%
Virginia 2*	0	0%	125 0%	2,343 3%
Washington 1*	0	0%	427 1%	1,550 2%
West Virginia 2*	0	0%	1,534 3%	3,787 5%
TOTAL	30,346	100%	50,042 100%	76,935 100%

* Competitive races.

The CMAG database provides strong evidence that the interest group ads covered by BCRA are targeted at competitive electoral contests and closely parallel political party ads in their geographic distribution.

XI. CODERS' PERCEPTIONS OF INTEREST GROUP TELEVISION ADS AS ELECTIONEERING COMMUNICATIONS PROVES THAT BCRA CAPTURES ADS WHICH HAVE THE PURPOSE OR EFFECT OF SUPPORTING CANDIDATES

Another useful perspective on BCRA's definition of Electioneering Communications emerges from the coders' assessments of the political television advertisements as being either "Genuine Issue Ads" or "Electioneering Ads." The coders were asked to classify the ads by reporting their perception of whether the purpose of an ad was to provide information about or to urge action on a bill or issue or to generate support or opposition for a particular candidate. Applying this criterion, the coders, working under my supervision, classified all political television ads broadcast by interest groups during 2000 as being either "Genuine Issue Ads" or "Electioneering Ads."²⁰

²⁰ Specifically, coders were asked whether the purpose of the ad was to "generate support or opposition for candidate," or to "provide information or urge action." Coders were also given the option of "unsure/unclear."

**Table 7:
Effect of BCRA on Interest Group Ads in 2000: Ads Perceived as Electioneering vs. Ads Perceived as Issue Advocacy**

	<i>Unique Ads</i>	<i>Airings</i>	<i>Unique ads numerator</i>	<i>denominator</i>	<i>Airings numerator</i>	<i>denominator</i>
Perceived as Genuine Issue Ads	133	45,001				
Perceived as Electioneering	233	88,106				
% Genuine Issue Ads over calendar year that are captured by BCRA	4.51%	3.14%	6	133	1413	45,001
% of ads captured by BCRA (60 days and candidate mention) that are Genuine Issue Ads	4.00%	2.33%	6	154	1413	60,623
% of ads captured by BCRA/FECA (magic words or 60 days and candidate mention) that are Genuine Issue Ads	3.90%	2.32%	6	158	1413	60,784

The coders' perceptions provide evidence that BCRA's definition of Electioneering Communications accurately captures those ads that have the purpose or effect of supporting candidates for election to public office. As shown in Table 7, the coders classified 97.7 percent of the 60,623 interest group sponsored political television ads that mentioned a candidate and were broadcast within 60 days of an election as Electioneering Ads. Only six distinct ads, which were broadcast a total of 1413 times, were classified as Genuine Issue Ads.²¹

For the year 2000 as a whole, the coders classified 33.8 percent (45,001) of interest group sponsored political television ads as Genuine Issue Ads and 66.2 percent (88,106) as Electioneering Ads. The fact that 97.7 percent of interest group ads that would have been classified by BCRA as Electioneering Communications were coded as having the purpose of generating support or opposition for political candidates, coupled with the coders' classification of a third of all interest group financed political television ads broadcast during 2000 as a whole as Genuine Issue Ads, are persuasive evidence that BCRA would capture political television ads that have the purpose or effect of supporting or opposing the election of electoral candidates.

Conversely, there is persuasive evidence that the BCRA definition of Electioneering Communications is not overbroad in the sense of applying to any

²¹ The storyboards for these ads appear in Appendix J to this Report. These six ads represent every unique ad ever coded as a Genuine Issue Ad by the coders of the 2000 data. In some prior publications, fewer than six ads covered by BCRA were treated as Genuine Issue ads (see, e.g., *Buying Time 2000*, and "The Facts about Television Advertising and the McCain-Feingold Bills" by Jonathan Krasno and Kenneth Goldstein). In those publications, certain of these six ads—particularly those as to which there was disagreement among the student coders—were ultimately treated as electioneering. In fact, my own judgment is that five of these six ads were clearly intended to support or oppose the election of a candidate (the lone exception being the Feingold/Kohl Abortion Ad). However, in this report, I have chosen to take the most conservative approach and count all six as Genuine Issue Ads.

meaningful number of advertisements that are perceived as Genuine Issue Ads. Using the coders' classifications, only 3.1 percent of the 45,001 Genuine Issue Ads broadcast by interest groups during the 2000 election cycle would have been covered by BCRA.²²

XII. OTHER CHARACTERISTICS OF THE ADS SUPPORT THE CODERS' CLASSIFICATION OF ADS AS GENUINE ISSUE ADS OR ELECTIONEERING ADS

To the extent that the coders' classifications are supported by other characteristics of the ads suggesting that the ads had the purpose or effect of supporting the election of candidates for office, these characteristics provide corroborative evidence of the validity of the coders' classifications of the ads as Electioneering Ads and of the utility of the virtually congruent BCRA definition of Electioneering Communications as a test for identifying these ads that have the purpose or effect of supporting a candidate.

Electioneering Ads financed by interest groups are concentrated in the two months before the election. As shown in Table 8, during the first six months of 2000, interest groups broadcast 72 percent of their Genuine Issue Ads, but only 7 percent of their Electioneering Ads. During the first eight months of the year, interest groups broadcast 35,413 of 45,001, or 79 percent, of their Genuine Issue Ads, while airing only 24,773 of 88,106, or 28 percent, of their Electioneering Ads. During the three months preceding the election, interest groups broadcast 23 percent of their Genuine Issue Ads while airing 82 percent of their Electioneering Ads, 72 percent of which were broadcast within the 60 days leading up to the November 7, 2000 election day.

²² In fact, this percentage overstates the proportion of all Genuine Issue Ads covered by BCRA, because it does not take into account the unregulated ads run in non-election years during a single Congressional Term, such as 1999.

**Table 8:
Distribution of Interest Group Sponsored
Electioneering and Genuine Issue Ads
During 2000 Election Cycle**

Month	Electioneering Ad		Genuine Issue Ad	
January	549	1%	3,397	8%
February	1,129	1%	2,861	6%
March	2,000	2%	1,992	4%
April	707	1%	7,294	16%
May	933	1%	6,250	14%
June	751	1%	10,731	24%
July	10,067	11%	2,114	5%
August	8,637	10%	774	2%
September	13,009	15%	5,142	11%
October/November	50,324	57%	4,446	10%
TOTAL	88,106	100%	45,001	100%

Interest group expenditures for Electioneering Ads in congressional races were heavily concentrated in districts where there were competitive electoral contests. Approximately 91 percent of interest group funded Electioneering Ads in the Senate general election were spent in competitive states (\$9,079,235 out of \$9,941,797).²³

The same is true of interest group expenditures directed at elections for the House of Representatives. Using sources such as the Cook Report, I determined that 45 House races were competitive.²⁴ Interest group Electioneering Ads ran in 41 House races covered by CMAG's top 75 markets. Ninety-one percent of interest group Electioneering Ads aired in House races were aired in races deemed competitive by the Cook Report.

²³ I used the Cook Report, attached as Appendix H, to identify the following senatorial elections as competitive races in 2000: Delaware, Florida, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Virginia and Washington.

²⁴ See Appendix H.

Political television ads coded as Electioneering Ads differed in content from those perceived as Genuine Issue Ads overwhelmingly in two aspects. First, 85 percent of Electioneering Ads mentioned a candidate; only 15 percent did not. Conversely, 94.2 percent of Genuine Issue Ads did not mention a candidate while 5.8 percent did. Second, Electioneering Ads broadcast by interest groups tend to be overwhelmingly negative in tone, while Genuine Issue Ads are not. During 2000, 60 percent of all Electioneering Ads broadcast by interest groups attacked a candidate; 2.9 percent of interest group sponsored Genuine Issue Ads were negative in tone.

Finally, Genuine Issue Ads differed from Electioneering Ads with respect to their publication of toll-free telephone numbers: 62.4 percent of Genuine Issue Ads contained toll-free numbers; by contrast, only 13 percent of Electioneering Ads contained a toll-free number.

To summarize, the information relating to the content of the ads, their timing, and their geographic distribution strongly corroborates the coders' classification of the ads as Electioneering Ads or Genuine Issue Ads.

XIII. ISSUE ORIENTED ADS BROADCAST BY INTEREST GROUPS ARE READILY DISTINGUISHABLE FROM QUINTESSENTIAL POLITICAL ADS

Interest group ads intended to inform the public concerning some issue, as opposed to supporting a candidate for elective office, are readily distinguishable. If we take interest group sponsored ads which do not mention or depict a candidate as a surrogate for quintessential issue oriented ads and compare them to ads sponsored by candidates or parties—a surrogate for quintessential electioneering ads—it becomes

readily apparent that issue oriented ads are markedly different with respect to timing, content, and coder perception.

First, as shown in Table 9, 63.5 percent of candidate ads and 66 percent of political party ads ran within 60 days of election; only 17.7 percent of group sponsored issue oriented ads were broadcast during that period.

Second, 45.0 percent of political party ads were negative in tone, whereas only 0.7 percent of group sponsored issue oriented ads were negative in tone. During the 15 days prior to election, negative political party ads rose to 68.4 percent of all party ads broadcast. Almost 69 percent of BCRA-regulated group ads were negative in tone. Similarly, 65 percent of group sponsored issue oriented ads contained a toll-free number whereas less than one percent of candidate or political party ads did so. Only 2.1 percent of BCRA-regulated group ads contained a toll-free number.

Finally, viewers perceived 99 percent of candidate ads and 100 percent of party ads as intending to generate support or opposition for a candidate. While 99.7 percent of BCRA-regulated group ads were perceived as supporting or opposing a candidate, none of the issue oriented interest group ads were so perceived.

Table 9: Comparing Quintessential Electioneering Ads and Quintessential Issue Ads in the 2000 Elections

	Quintessential Electioneering Ads	Quintessential Issue Ads	Interest Group Ads Mentioning Candidate 60 Days Before General Election (n=60,523)	Political Party Ads (n=230,368)
Candidate Mention				
% Naming Candidate	99.6%	100.0%	100.0%	99.8%
Magic Words				
% Using Magic Words	11.4%	100.0%	0.0%	2.2%
Timing				
% Run January through March	16.0%	0.0%	17.0%	0.0%
% Run April through June	6.4%	10.6%	45.0%	0.0%
% Run July through August	10.5%	15.3%	18.8%	0.0%
% Run 60 Days Before General Election	63.5%	74.1%	17.7%	100.0%
% Run 30 Days Before General Election	42.2%	51.0%	7.3%	72.9%
% Run 15 Days Before General Election	26.0%	40.1%	4.3%	44.2%
Information Provided				
% Giving Toll Free Number	0.7%	0.0%	65.0%	2.1%
Viewer Perception				
% Perceived as Electioneering	99.0%	100.0%	0.0%	97.7%
% Negative	12.3%	29.6%	0.7%	68.6%
% Negative for Ads Run 60 Days Before General Election	15.3%	24.8%	2.7%	68.6%
% Negative for Ads Run 30 Days Before General Election	18.2%	36.0%	3.7%	68.7%
% Negative for Ads Run 15 Days Before General Election	19.7%	37.8%	1.3%	66.5%

XIV. BROADCASTING ISSUE ADS NEAR AN ELECTION IS NOT AN EFFECTIVE WAY OF INFORMING VOTERS OR GENERATING ACTION ON THOSE ISSUES

One concern sometimes raised by those opposed to the BCRA regulations is that the restriction may harm interest groups by preventing them from advertising on their issues at a time when citizens are supposedly paying the most attention to politics. There is no reason to believe that BCRA would significantly hinder interest groups from effectively getting out their messages on public policy issues. Running genuine issue ads near an election does not increase the effectiveness of those ads; in fact, it is likely that the ads' effectiveness actually decreases.

First, while there is evidence that interest in politics and *elections* rises as Election Day approaches, there is absolutely no evidence to support the position that interest in *public policy* issues rises as well during that time.

Second, communication theory has concluded that advertising is likely to be most effective (at informing or persuading) when viewers are exposed to one-sided flows of information in isolation from other advertising. See William McGuire, "The Myth of Massive Media Impact: Savagings and Salvagings," *Public Communication and Behavior* 1:173-257 (1986); John Zaller, *The Nature and Origins of Mass Opinion* (Cambridge Univ. Press 1992). The last two months before an election is the time period of the most intense political advertising activity. In 2000, for example, 538,404 political ads, or 64.2 percent of all political ads run during the year, appeared during the last two months before an election. With the flood of advertising taking place during the last two months before an election, an individual interest group's message on a public policy issue is likely to become lost. *Id.*

Third, in conjunction with an increased interest in politics and elections, partisan attachments also harden during the last two months of a campaign. These hardened partisan attachments make it more difficult to persuade otherwise open-minded

viewers of the merits of an interest groups' policy stance. Zaller, *Nature and Origins of Mass Opinion*.

In addition to being less effective at conveying their messages, issue ads run close to an election are also less cost-effective, since the price of scarce television and radio air time is higher near an election than during the rest of the year.

Data from my study supports the conclusion that interest groups themselves understand that airing Genuine Issue Ads near an election carries no special advantage, and that it makes strategic sense to spread the airing of these ads over the course of the entire year. Of ads run by interest groups that do not name any candidate—quintessential issue ads—17.7 percent of those run within 60 days before a general election (Table 9). This approximates the 16.4 percent of issue ads which would have run if the ads had been equally distributed throughout the year. The frequency of issue ad broadcasts exceeds an even temporal distribution only in the April-June time frame. Forty-five percent of all issue ads were aired then, as against an expected percentage of 25 percent if the ads were spread evenly throughout the year (Table 9). This concentration of ads during April through June is a likely result of groups turning on the heat to pass or defeat bills before Congress adjourned for the summer. There is no concentration of these quintessential issue ads during the 60 days before a general election. This time—the most cluttered time for advertisements and a time with hardened partisan attachments—is probably the worst time for an interest group to educate the public on its particular issue.

K. M. Goldstein

Kenneth Goldstein

10/2/02

DATE _____