From Bad to Worse: The Unraveling of the Campaign Finance System

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Abstract

This article argues that the campaign finance system has deteriorated under the Bipartisan Campaign Reform Act (BCRA). The system retains the vices of the former regime while jettisoning its virtues. Although successful at banning national party soft money, achieving this narrow goal has come at high cost. Significant problems remain or worsen including the time politicians spend fundraising, the unfair distribution of campaign money, and arrangements that weaken political parties and empower interest groups. Critically, public trust in the system has not changed at all since passage of BCRA. The essay closes by offering modest suggestions to improve the state of affairs.

KEYWORDS: campaign finance, BCRA, elections, political parties, interest groups

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Before a new campaign finance law was passed in 2002, political campaigns muddled through with a flawed set of rules called the Federal Election Campaign Act (FECA). Under this previous system, inaugurated in 1974, problems emerged quickly. Members of Congress, for example, spent countless hours chasing after contributions from interest group PACs, which then gave them enormous financial advantages over challengers. In presidential elections, the clunky system of public financing became increasingly obsolete, as the frontloading of primaries accelerated and pushed up election costs. By the 2004 elections, top-tier candidates simply avoided the system, choosing instead to raise private contributions of “hard” money in sums of $1000 or less for the nomination, along with unrestricted “soft” money for the political parties.

In spite of these defects, the FECA system possessed notable virtues. First, it was relatively easy for watch-dogs to follow the money, since the vast majority of organizations submitted timely finance reports to the Federal Election Commission (FEC). Second, campaign finance rules were not so complicated that running for Congress or establishing a political organization required an experienced Washington attorney. And finally, the availability of much-reviled soft money elevated party organizations to a formidable and healthy role in political campaigns.

This last point is important. Soft money provided uncommon glue in American elections, allowing parties to build national campaigns with state affiliates, candidates, and like-minded interest groups. It gave national parties an electoral heft that strengthened the partisan coalition and reinforced party-based themes across races. In spite of this—or maybe because of it—the news media and professional reformers focused on the alleged evils of soft-money contributions. For all the complexity contained in lengthy rules, the overriding goal of the Bipartisan Campaign Reform Act (BCRA) of 2002 was extremely narrow and short-sighted: purge federal elections of soft money.

Recent elections confirm that we have paid a high price for this latter-day “prohibition” law, especially when a more incremental and pragmatic approach could have addressed basic problems adequately. As a result, we currently possess a campaign finance system that manages to retain the vices of the former regime while jettisoning its virtues. To be sure, BCRA succeeded in its narrow goal: preventing federal candidates and national party operatives from soliciting and spending soft money. Yet this anti-corruption effort is a decidedly mixed blessing.

Soft money now flows to outside groups with opaque names like “Freedom Watch” or “Fund for America” with little accountability to the public. And candidates have been forced to rely more heavily on a different set of elites: “bundlers” who can tap into their networks of wealthy friends to raise cash in amounts up to $4,600 and very wealthy patrons with strong ideological agendas who are willing to donate millions to independent groups in support of favored
candidates. In spite of a surge in the number of small donors, it appears that they provide roughly the same proportion of total contributions as previously (Campaign Finance Institute 2008a).

The emergence of the Internet as a low-cost mechanism to raise money from small donors is a happy coincidence that has attenuated the harsher aspects of the contemporary law. Politicians, particularly factional candidates, have been able to mobilize an ideological core of citizens to support their candidacies (see the Wilcox article in this issue). Yet the public does not appear more pleased with the campaign finance system. Regretfully, the Supreme Court justified BCRA’s infringements on freedom of speech and of association in no small part to shore up public confidence in the campaign finance system. The expected dividend in improved public trust, however, did not appear. Thus, the promised benefits of stern reform have not been worth the restrictions on free speech and other costs to the electoral system.

In the following essay, I explain why BCRA has failed and offer modest suggestions to improve the state of affairs. My underlying argument does not differ significantly from political scientists of previous generations who have studied money in politics, including Louise Overacker, Alexander Heard, and Herb Alexander. Pace Lindblom (who did not study money in politics), we should be content with “muddling through” when regulating political finance (Lindblom 1959). Sometimes, “good enough” is the best solution when many values and goals are in conflict.

The Problem with BCRA

As BCRA unravels, many who supported it, including Senator McCain, have blamed its demise on the courts, for declaring aspects of the law unconstitutional, or on the FEC, for not enforcing the rules adequately. History, however, demonstrates that a prohibitionist strategy, imposing contributions limits and constraining election spending, has never worked for long in any democratic nation. It is particularly prone to failure in the United States, where the constitutional structure supports strong federalism and free speech rights. BCRA was nothing short of an effort to prevent leaks in a sieve, fashioned by 50 state laws on campaign finance, with one giant breach in the middle called the First Amendment.

The Supreme Court’s decision in Wisconsin Right to Life vs. FEC (2007) was certainly a blow to the law (see the Briffault article in this issue). This ruling declared that the government cannot ban political advertising that is funded with soft money at any stage of the election cycle when the ad is not obviously an appeal to vote for or against a federal candidate. (Under BCRA, organizations cannot pay for ads with soft money if the ad mentions a federal candidate within
30 days of a primary or 60 days of a general election). Many legal experts believe that the court’s decision leaves political groups unfettered in sponsoring “issue ads,” paid with soft money, that influence federal elections.

BCRA supporters have also accused the FEC of being feckless in enforcing the law. For example, Reps. Christopher Shays (R-Conn.) and Marty Meehan (D-Mass.) sued the agency to challenge its new regulations on campaign communications, communications that can be legally coordinated between candidates and outside groups (Schor 2006). Some advocates, including Senator McCain, have sought to abolish the FEC and start from scratch with a new enforcement agency.¹ Such criticisms reflect a refusal to acknowledge that campaign finance laws, particularly BCRA, leave a large footprint on the First Amendment. Moreover, enforcement decisions have the potential to influence the outcome of elections. Seen this way, it seems prudent—even commendable—for regulatory agencies to exercise caution when weighing in about rights involving freedom of speech and the democratic electoral process.

BCRA also rests on excessive optimism about the willingness of Americans of modest means to pay for politics through relatively small voluntary contributions. The collective action problems highlighted by Olson (1965) and others deserve attention here. Raising money for broad-based political causes is a formidable task and one that politicians have struggled with for a long time. In 1916, Woodrow Wilson, the political moralist, promised to pay for his campaign with small donations. The decision proved folly, and Wilson ended up relying on his old Princeton roommates to fund the campaign. Similar miscalculations befell other presidential aspirants, including reform-minded candidates from Robert LaFollette to Eugene McCarthy (La Raja 2008: 127-128).

To be sure, the Internet has reduced significantly the cost of getting highly engaged citizens to give money in smaller increments (see the Wilcox article in this issue). However, a study from the Campaign Finance Institute shows that the percentage of “small donors” for presidential races has not increased dramatically since passage of BCRA. Contributions of $200 or less accounted for 18% of all individual contributions in 1999, 22% in 2003, and 26% in 2007 (Campaign Finance Institute 2008a); this shift is meaningful though surprisingly small given

¹ Given Senator McCain’s current imbroglio over reneging on a commitment to accept public funds during the nomination, it is unlikely he will persist in claiming that the FEC fails to enforce the letter of the law. McCain originally sought public funds when his campaign was floundering last summer. He apparently used the promise of public funds to secure a private loan to his campaign while he waited for FEC approval. (He denies that he did this). But now that he is the presumed nominee, he wants to avoid the $50 million spending limit (which he has already reached) because he can certainly raise more private money than this amount. The FEC rules state that a candidate may withdraw from the Primary Matching Payment Program as long as he has not yet received any public funds from the system or received private financing based on the promise of getting public funds.
how much the presidential campaigns have been touting their reliance on small donors relative to previous campaigns. Moreover, factional candidates, such as John Edwards and Dennis Kucinich on the left and Mike Huckabee and Ron Paul on the right, tend to profit more than mainstream candidates from small donors, because they tap into the ideological passions of activists. For a candidate to rely too heavily on small and ideological donors would prove disastrous in the general election, because it would require him or her to take positions that deviate far from the center. The ideological candidate Barry Goldwater is a case in point. He surpassed all previous candidates with the number of small donors he attracted in 1964 and was trounced in the general election.

Turning to the demand side, an underlying—if implicit—premise of BCRA is that there is “too much” money in politics. The enormity of costs related to federal elections is rarely acknowledged by the reform community. In 2004 federal elections, expenses amounted to roughly $4 billion (Center for Responsive Politics 2004). Over the same two-year period, Wal-Mart spent the same sum on advertising its products (Advertising Redbook 2008). Whether politicians and political parties spend too much to mobilize Americans for elections is a difficult empirical question. Yet given an overwhelming normative consensus to encourage political participation, it would seem that reforms should focus more on figuring out ways to stimulate political activity, including the use of subsidies (see the Malbin article on changing the reform agenda in this issue).

Finally, BCRA seems to repudiate a salient strain of American political culture—individualistic, liberal—and its tradition of rough-and-tumble campaigns. Politicians and political activists in the U.S. are less deferential to norms of civility in campaigns than European and Commonwealth nations, with their communitarian ethos. Starting early with vitriolic attacks in newspapers between Hamilton’s Federalists and Jefferson’s Democratic Republicans, through campaign spectacles produced by 19th century political machines, the take-no-prisoners style continues to be embraced, for better or worse, by consultants such as Karl Rove. BCRA simply fails to acknowledge the combative nature of American politics and how this dynamic guarantees that political resources will flow inexorably through state election systems, interest groups, foundations, wealthy patrons and the like.

To be sure, Sen. Obama has done well with small donors, although they do not comprise as large a percentage of donors as the factional candidates mentioned here. My unconfirmed hunch, given his electoral support during the nomination, is that Sen. Obama’s small donors are, on average, more liberal than the average Democratic party donor, and certainly the average party identifier.

Citizens United is the most recent example of a group testing the boundaries of the law. This conservative group produced an anti-Hillary Rodham Clinton movie and wants to run advertisements promoting it in key election states during peak primary season. BCRA expressly forbids corporations and unions from paying for advertisements that run close to elections and identify candidates. Citizens United has argued in federal court that the advertisements promoted...
The Facts

So much for problems originating in the design of BCRA. I turn now to consequences on the ground for presidential and congressional elections. In the third federal election under BCRA, in 2008, the consequences of reform and how it has shaped the broader contours of the campaign finance system are becoming clearer. Here are five observations in the wake of BCRA:

1. **The money chase has intensified.** BCRA did nothing to ease fundraising by candidates and probably increased the obsessive pursuit of political contributions. This is especially true for congressional candidates who appear to spend more time raising money for the party caucus.\(^4\) Previously, congressional campaign committees (NRSC, DSCC, NRCC, DCCC) relied heavily on leadership to raise soft money.\(^5\) These funds were then channeled into competitive races for advertising and get-out-the-vote (GOTV) campaigns. Without access to soft money, party leadership now leans more heavily on rank-and-file members to generate funds from their personal campaign committees and PACs for the party. In 2002, Democratic Party leaders requested at least $10,000 from rank-and-file; in 2006, it was $100,000 (Carney 2004; Zeleny 2006). And those who aspire to lead committees are expected to provide $300,000.

   After BCRA, being a good fundraiser matters more than ever for members. Skilled fundraisers earn the favor of colleagues and move up the leadership ladder (Heberlig 2003). Ironically, members might be more immersed in an exchange that reformers so roundly condemn, putting themselves through a daily grind of attending interest group fundraisers and making phone calls at party headquarters with donor cue cards in-hand.\(^6\) The fundraising imperative has important

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\(^4\) In truth, there is no empirical evidence to demonstrate definitively that Members spend more time raising money. The doubling of hard money limits has surely helped Members raise more funds per phone call, but anecdotal evidence suggests that Members and congressional leaders do spend more time raising money.

\(^5\) The committee names are National Republican Senatorial Committee, Democratic Senatorial Campaign Committee, National Republican Congressional Committee, and Democratic Congressional Campaign Committee.

\(^6\) Members are not simply giving a greater percentage of their funds to the parties; they feel compelled to raise more money so the funds in their campaign accounts after donating to parties (and other candidates) stay at the same levels (Herberlig and Larson 2005).
institutional implications. As members spend more time telemarketing, they spend less with colleagues building personal relationships that support civility and trust.

Regarding presidential elections, BCRA reduced the incentive to participate in the public financing system for all but the desperate candidates. With the doubling of hard money contributions, no serious candidate will voluntarily restrict himself or herself to the $50 million spending limit for nominations that comes with accepting public funds. Senator McCain learned this firsthand when he sought public financing after his campaign stumbled and private funds dried up. With his resurgence in the New Hampshire primaries, he sought to extricate himself from his early commitment, because he knew that he could raise much more private money now that he was the likely nominee.

By any standard, fundraising in the 2008 presidential elections is extraordinary. Stimulated by an open seat at the White House, by frontloaded primaries, and by an intensely competitive Democratic contest, the presidential candidates raised $552 million in 2007, more than double the amount raised during a similar period in 2003 (Campaign Finance Institute 2008a). Early on, candidates relied on the usual mix of gala fundraisers with wealthy donors and direct mail to strong partisans. However, bundling and Internet donations have played a more prominent role than ever (see the Magleby article in this issue).

With frontloaded primaries, online donations become critical for refueling campaign budgets quickly. When candidates exceed expectations, as with an Obama or Huckabee win in Iowa, their campaigns get an adrenaline rush of contributions. Senator Obama’s fundraising surged after his Iowa victory, bringing him $2.50 for every $1 raised by Senator Clinton. This dynamic tends to transfer more power to the news media and away from party leaders. Old media (television news) and new media (Internet) interact to accelerate the momentum of “media-based” candidates. Insurgent candidates receive positive exposure from the traditional press, which, in turn, mobilizes thousands of donations on the Internet. This synchronicity between old and new media catapulted John McCain back into the race once he resurrected his underdog persona, one that attracts media attention. He smartly parlayed his free media into fundraising success with online donations.

Some observers may welcome the emergent dynamic between old and new media. After all, the party establishment candidates—Clinton and Romney—have been knocked off their pedestal. On the other hand, media influence on the selection process tends to emphasize the horse-race and candidate personality rather than political attributes such as experience and consensus-building skills that are arguably more germane to governing (Polsby 1983).

2. Congressional challengers are falling behind. Financial imbalances within this presidential story do not appear to be party-based, favoring one party
consistently rather than the other. Nor do they appear to differentiate among serious candidates in a regular way, year in and year out. The congressional story, on the other hand, looks very different. While incumbents reliably raise more money, challengers appear to fare additionally worse under BCRA.

Figure 1 shows that the financial gap has widened between officeholders and challengers. Incumbent fundraising increased 20% between 2002 and 2006, while challenger fundraising stayed flat during this same period. Incumbents simply exploit their powerful positions to raise additional money from PACs and their established networks of donors. Challengers, especially those in the 2nd tier of competitive races, the ones that are typically ignored by their national parties, just cannot keep pace with incumbents.

3. Parties are Weaker. Party organizations have been diminished relative to candidates and interest groups since BCRA has been in place. Supporters of BCRA argued that the “tough love” approach—taking away soft money—would force parties to re-connect with partisan donors at the grassroots. To be sure, parties have put additional effort into raising money from small contributors, while they aggressively seek money from wealthier donors who can give a maximum of $57,000 per cycle. But gathering money is a smaller part of the
problem. Instead, BCRA’s anti-circumvention statutes, designed to prevent backdoor conduits to soft money, have hobbled parties more than the ban on soft-money fundraising.

The chief problem is that firewalls erected to keep out soft money have corroded organizational ties among partisans. National committees, for example, are prohibited from coordinating their campaigns with any groups (including their state affiliates) that use such funds for electoral activity. So, for example, in the 2004 elections, labor organizations helped form a group called America Coming Together rather than join forces with the coordinated campaigns of the national Democratic Party, as they had done through the 1990s and up until BCRA.

State parties likewise have weaker ties to the national campaigns. In the 2004 elections, the national committees concentrated more than two-thirds of their hard money in the 15 most competitive states, in contrast to the period before BCRA, when similarly situated states received under half these amounts (La Raja 2008).\textsuperscript{7}

The availability of soft money, which was easier to raise, made it less imperative to target money efficiently in winnable states. More importantly, state parties could easily participate in federal elections because soft money they raised under state campaign finance rules could be used to support both state and federal candidates at the same time. Overall, Democratic state parties spent $30 million less in federal elections in 2004 than in 2000.\textsuperscript{8}

One of the worst outcomes in the wake of BCRA, however, is the divided relationship between parties and their candidates. Political parties rarely coordinate their campaigns with candidates anymore. Prior to BCRA, parties targeted soft money for ads and for GOTV in consultation with candidate campaigns. Since parties may no longer do this, they are stuck with pre-existing (and low) limits on “coordinated expenditures” of hard money. (It was precisely these low limits under the FECA that spurred parties to exploit soft money). To help candidates, parties campaign “independently” from them, in order to avoid running afoul of coordinated spending limits.

This bizarre arrangement means political parties behave more like ideological PACs, such as the NRA or Emily’s List, rather than like broad-based campaign organizations. Like ideological PACs, they make limited direct contributions to

\textsuperscript{7} Since 2004, Howard Dean has promised state leaders a 50-state strategy of spreading money around because the DNC ignored the vast majority of state parties. This policy has been criticized strongly by congressional leaders for wasting precious money in non-competitive states. It does not help Chairman Dean’s cause that the DNC trails the RNC in financing during election years that strongly favor Democratic fundraising. Whatever the merits of Dean’s 50-state strategy, it seems clear that it gave the DNC little clout in trying to prevent state parties from moving up primaries.

\textsuperscript{8} I removed all spending on advertising (roughly $106 million), because I assume these funds were earmarked funds for ads requested by the national party with no lasting impact on state party operations.
candidates and spend large sums on hard-hitting television ads (without consulting with the candidate) in a few races at the very end of an election. Independent spending by parties makes it more difficult for them to allocate resources broadly and flexibly, since independent campaigns tend to work more effectively with advertising very late in the campaign (as opposed to building a GOTV infrastructure).

What about national-party fundraising? It is fair to say that the political parties have done a good job replacing much of their soft money with additional hard money. Few—including this author—anticipated that the parties would rebound as quickly as they did. However, the soft money that would have gone to parties now flows to 527 and 501(c) groups, a flow which decreases transparency and accountability in the electoral system. In contrast to groups with short histories and vague-sounding names like Freedom Watch, the political parties are widely known entities—with a past and future—that voters can punish or reward.

Even though total party finances have rebounded, the timing of party receipts appears to have changed for the worse. Parties have been hurt because donations arrive later in the cycle than previously. These contributions flood into party coffers after the nominees choose to accept public funds in the general election. In contrast, soft money was relatively easy to raise in advance of the electoral season. Early money allowed parties to build GOTV infrastructure in the states well before the general election, whereas late money tends to go toward television ads. Howard Dean, Chair of the DNC, has tried to pursue an early “50-state strategy,” much to the concern of national party leaders who see this as an inefficient use of precious resources. Presently, the DNC finds itself well behind the RNC in fundraising and cash-on-hand, even though the political environment strongly favors Democrats.

Figure 2 shows that party receipts in off-election years have diminished for both the RNC and DNC under BCRA. For the RNC, the drop-off has been significant, falling from a high of $134 million in 2001 (just before BCRA) to $86 million in the 2007. For the DNC, which is typically less well-funded, the decline over the same period was from $68 to $55 million. If the nominees in 2008 do not accept public funds, it is unlikely that the parties will fare as well financially as in 2004, since they will in effect be competing with candidates for money.

In 2004 the RNC raised $392 million topping its 2000 mark by about $10 million even without soft money. Fueled by anti-war sentiments and a strong dislike of the president, the Democrats did even better, going from $260 million in 2000 to $394 million (Federal Election Commission 2005).

The parties may get donors who gave the maximum amount to the candidates, namely $4,600, so long as these donors have not reached their overall maximum contribution limit of $108,200 per two-year election cycle for all political committees.
If BCRA has been “good” at all for parties, it has been in serving the interests of legislative parties, precisely the level of party where the nexus between money and law-making seems most troubling. These parties serve, above all, the electoral interests of members of Congress who, of course, draft and amend bills that put much at stake for interests groups. Legislative parties also have the fewest direct ties to broader constituencies in the states and little incentive to develop the party grassroots. The relative fundraising success of these party campaign committees derives from two natural constituencies for bundling money, namely members and lobbyists.  

Figure 2. National Party Committee Receipts Non-Election Year

![Graph showing national party committee receipts non-election year]

Members of Congress can transfer unlimited amounts of money to the party committees from their personal campaign committees (PCCs) and up to $15,000

11 The Democrats have outshone their rivals in fundraising dramatically. This reversal seems unprecedented and could be attributed to the unpopularity of the president, to congressional scandals involving Republicans, and/or to demoralized GOP activists. Alternatively, the advantage of being in the majority could be more important today, given the polarization in Congress, which gives the U.S. something closer to a Westminster model of party government. In this, interest groups contribute predominately to the majority party, because the minority party is shut out of policymaking.
per year from their leadership PACs. According to Corrado (2007), members of Congress in 2006 gave $83.2 million to the party committees, a threefold increase since 2002. Thus, member contributions made up 16 percent—one out of every six dollars—of the total monies received by the four House and Senate campaign committees. In 2008, Rep. Chris Van Hollen, Chair of the DCCC, says that about one-third of party money will come from members (Mosk 2007). Less than a decade ago, Hill committees received just 4% of their total funding from members. Lobbyists, of course, have been especially helpful in bundling funds for congressional campaign committees (see the Steen and Hayward articles in this issue). The new ethics laws, which ban golf outings and trips, encourages lobbyists to organize Capitol Hill fundraisers to have clients meet with members (Dilanian 2008).

4. Electioneering by interest groups expands and institutionalizes beyond the reach of federal regulations. Electioneering by interest groups has been a factor throughout the twentieth century, with many attempting to skirt the campaign finance laws. In the 1928 presidential elections, for example, temperance organizations such as the Anti-Saloon League spent $2 million against the wet candidate, Al Smith (La Raja 2008: 131). Unlike party and candidate expenditures, these funds were outside the scope of campaign finance regulations. In the 1940s, church-based groups and labor unions both claimed they were exempt from campaign finance restrictions under the Corrupt Practices Act, because they spent money on political education rather than elections. When Congress passed the Smith-Connally Act in 1943, which (among other things) prevented labor unions from making direct contributions to federal candidates, Sidney Hillman of the Amalgamated Clothing Workers promptly organized a new kind of organization called a Political Action Committee to gather individual contributions of members (La Raja 2008: 134-35). Today, PACs are standard mechanisms for interest groups to channel political funds to federal candidates.

In much the same way, BCRA spurs the institutionalization of electioneering groups called 527 and 501(c) organizations, groups that will apparently remain a permanent fixture on the campaign landscape. These groups have the advantage of spending soft money in elections. Some 501(c) groups do not even have to report donors. Since BCRA, outside election spending has increased as groups gain experience. Politico quotes one Democratic operative saying, "Four years ago and eight years ago, people were just dipping their toes in, because it was all relatively new then. Now people understand the process, and it's much more mainstream" (Vogel 2008).

The financial figures support this claim. The Campaign Media Analysis Group estimates that outside groups spent just $1 million on communications during primaries in 2000. This amount increased to $9 million in 2004, and it has
already exceeded $18 million with the primaries not yet finished (Mullins 2008). These sums do not include millions of dollars that partisan groups spend to develop GOTV strategies in anticipation of the general election. *CQ MoneyLine* reports that Republican-leaning 527 groups have raised $56 million and Democratic groups $59 million.\(^{12}\)

In principle, electioneering by interest groups is good for democratic politics. Individuals, through interest groups, exercise constitutional rights of association and free speech by mobilizing fellow members and pushing for preferred policies. In practice, rules that encourage groups to campaign *independently* create difficult problems for the broader electorate. As candidates and parties lose control over political messages, the public confronts a cacophony of negative ads related to a variety of issues. Candidates avoid accountability by claiming they have no control over these groups (which is probably true in most cases), even though these ads potentially help them. No less than Senator McCain, co-sponsor of BCRA, received support from a group called Foundation for a Secure and Prosperous America, the same firm that produced the Swift Boat ads aimed at John Kerry. McCain publicly called for them to stop the advertising, but leaders of the organization dismissed his requests (Rutenberg and Kirkpatrick 2007).

The frontloading of primaries makes these groups more salient, because candidates may need help from outside supporters during an extended primary season when they run low on cash. To be fair, such groups would have emerged in a frontloaded primary with or without BCRA. But designers of the new system of campaign finance did not contemplate the massive resources required for a “national primary” like February 5, and thus consider ways to shore up the public financing regime. As a consequence, candidates strapped for hard money, like John Edwards, relied heavily on outside groups. Outside electioneering will intensify once the Democratic nominee emerges, especially if the selection comes well before the convention. During this interim, candidates and major parties will raise money but conserve it for final months of the general election, while allied groups fill the airwaves with ads funded by soft money.

5. **BCRA has not improved public trust and attitudes about money in politics.** For all the costs and unintended consequences imposed by BCRA, the new reform does not seem to make any difference where reformers hoped it would matter most, in restoring public confidence in the campaign finance system. When Americans are asked in a Gallup Poll about the state of nation’s campaign finance laws, more than 50% say they are dissatisfied and only 21% say they are satisfied (see Figure 3). These figures have not changed since before BCRA.

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\(^{12}\) See CQ Money Line http://moneyline.cq.com/pml/home
Reforming the campaign finance system is probably a weak reed on which to build public trust. As one study shows, confidence in governmental institutions appears related to the economy or to demographic factors rather than to changes in campaign finance laws (Persily and Lammie 2004). (While the same logic may apply, public trust in Congress has actually plummeted since the passage of BCRA). Furthermore, Americans do not pay attention to the workings of the campaign finance system, and they certainly cannot distinguish between scandals involving soft money versus bundlers. To most citizens, the imbroglio over soft-money contributors staying in the Lincoln Bedroom during the Clinton Administration is little different from the aggressive panhandling conducted by bundlers like Norman Hsu on behalf of presidential candidate Hillary Clinton.

Moreover, it is not clear what the public reckons to be a corruptible sum. Is $4,600 (the hard-money limit in this election cycle) corruptible? Or would $460 still seem like too much? Setting arbitrary limits on contributions or expenditures will not increase public confidence. Most certainly this strategy will not reduce the frequency of scandals. In recent years, scandals involving political finance have buffeted countries with very restrictive laws, such as Canada, France, and Italy.
For some advocates of reform, the greater imperative is to reduce “undue” influence by moneyed interests. What constitutes “undue” influence is an enormously difficult question, both conceptually and empirically. To be sure, research indicates that political contributions can purchase time and effort by politicians in the legislative process (Hall and Wayman 1990). This dynamic is no small thing, and worth trying to attenuate with institutional reforms. The ban on soft money, however, appears merely to alter the forms of moneyed influence. Without a rigorous study of how business interests changed their political strategies after BCRA, I can only speculate, but it does appear that they now invest additional money in lobbying. Figure 4 suggests this is plausible speculation: annual lobbying expenditures have risen steeply, even controlling for inflation, although the timing of these increases may not coincide exactly with the passage of BCRA. Notably, the amount of money devoted to lobbying per annum vastly exceeds the amount that PACs contribute to candidates over a two-year cycle.

Figure 4. Lobby Expenditures vs PAC contributions, 1998-2006
Looking Forward in the 2008 General Election

As of this writing, it appears that the nominations will go to Sen. McCain for the Republicans and Sen. Obama for the Democrats. If the Democratic nomination continues through the spring, however, both the Clinton and Obama campaigns will dip, once again, into their well of core supporters. For Obama, this includes liberal activists, in contrast to Clinton who tends to receive support from women and pro-business Democrats. Much to the delight of Republicans, Democrats will fight a war of attrition, as McCain gains time to raise money and unify party regulars behind his candidacy.

If the Democratic nominee emerges this spring, then the presidential election settles into an interregnum that lasts until the conventions. During this period, candidates will focus on raising money for the general election, while partisan organizations, operating independently, will broadcast negative advertisements against the opposition. Some of these organizations will also build voter mobilization programs in battleground states, alongside separate and parallel party efforts.

The money dynamic for the general election hinges on whether the nominees choose to receive public funds. Early in the campaigns, McCain and Obama both indicated they would participate in the public financing program if the opposition did so. If they do, each candidate can expect to receive roughly $80 million for the general election and must forego spending of private funds. If the nominees accept public money, then private money will flow heavily to parties and independent groups.

Obama may yet regret his early promise to participate in the public funding system. First, he appears to have a formidable advantage raising money (although surely Republican donors will rally to McCain in the coming months). Second, in agreeing to spending limits with public funds, he will rely heavily on the DNC and outside groups for the media campaign. In the past two elections, the RNC and Republican-leaning groups have appeared more adept at supporting their nominee through television advertising: think here of the Swift Boat Veterans and POWs for Truth against Sen. John Kerry in 2004. Fearful of wasting precious public funds to counter the Swift Boat ads, the Kerry campaign tried to ignore them for too long. Meanwhile, the Media Fund, a Democratic-leaning counterpart to the Swift Boat Veterans, seemed unsure whether and how to respond to such a deeply personal attack on the candidate. Can the Obama campaign trust outside groups and the DNC to run effective and timely ads?

My hunch is that both candidates will take public funds because failing to do so will undermine their respective campaign themes as agents of change and reform. Republicans tend not to care as much about campaign finance issues—indeed conservative Republicans disdain McCain’s sponsorship of BCRA—but...
McCain’s maverick image is already eroding from accusations that he is “gaming” the campaign finance system by reneging on public funds during the nomination. Undoubtedly, both campaigns will first poll heavily to see how much the issue matters for targeted voters.

Before Election Day, presidential candidates, parties, and outside groups will spend millions of dollars in the same battleground states. However much partisans try to coordinate without violating BCRA, it is almost inevitable, with so many groups operating separately, that some voters will be dialed multiple times a day while others are inadvertently ignored. Given the fragmentation of the campaign and lack of transparency over ad sponsorship, it would not be surprising if voters perceive that the campaign finance system has collapsed. Here are some alternatives for improving the situation in future elections:

1. **Do nothing.** On the positive side, despite problems I have cited in this essay, there is virtue in policy stasis. Political actors will have the opportunity to experiment, learn, and institutionalize practices. Eventually, the players will fall into reliable patterns of raising money and campaigning, as the system reaches equilibrium. At this point, familiarity with the rules and behavior reduces regulatory costs, allows new groups to emerge, and makes it easier for watch-dogs to monitor the system. To be sure, political entrepreneurs will try to innovate with campaign practices that make the system unstable, but these could be addressed piecemeal by judicious FEC rule-making, which should, above all, ensure that political financing is transparent and, to the degree possible, covered under the regulated system.

   On the negative side, doing nothing means major problems are left unaddressed, including the amount of time politicians spend fundraising, the unfair distribution of political money, and a highly fragmented electoral environment that tends to favor single-issue groups over broader coalitions of voters. In a fragmented electoral landscape, BCRA also gives greater weight to media elites in selecting candidates for two reasons. First, outside groups, like the Swift Boats, tend to tailor their ads to capture additional “free” media. The press must decide which ads merit broader attention. Second, with the candidate campaign split off from the party campaign, the overall partisan message gets diluted, which makes the media interpretation of events more salient for voters.

2. **Make adjustments at the margins.** This approach tries to achieve politically feasible changes to encourage funds to flow within a regulated system. To achieve this, policymakers should try to make the system more party-centered. Most centrally, this means discarding or increasing limits on coordinated expenditures, so parties can work closely with candidates. It would also mean allowing national committees to use some soft money for GOTV efforts, which
would permit them to organize broad campaigns with allied organizations and state parties. Even a relatively low cap of $50,000 on contributions of soft money to national committees would discourage the proliferation of campaigning by independent groups.\textsuperscript{13}

At the very least, the campaign finance laws should allow labor unions and membership groups comprised of individuals to give contributions directly to parties (up to some limit), so long as member dues do not exceed federal contribution limits. There is no logical argument to disallow such groups from giving so-called “soft money” because, in practice, these groups constitute an organizational mechanism to bundle individual contributions.

One relatively easy way to get these and other interest groups into the regulated system is to increase incentives for them to form PACs. Currently, PACs can contribute only $5,000 per election, with no adjustment for inflation. This was a short-sighted maneuver by BCRA supporters to diminish the influence of corporate PACs, but the strategy simultaneously undermines the goal of transparency and its contribution limits. Over time, the value of PAC contributions will decrease, which means fewer groups will use these them, and more money will flow through 527 and 501(c) organizations.

Overall, the campaign finance rules should encourage coalition-building and campaigning among like-minded groups through the political parties. Instead, we have a system that supports an illusion – inspired in part by the Progressive Era – that politics is based primarily on rational and individualistic choices rather than emotional and affiliative ties. Ideally, we expect millions of individual, small donors to give to their preferred candidate after careful weighing of pros and cons. To be sure, the Internet has helped increase the number of small donors and given them a wide range of choices (see the Hasen, Malbin, and Wilcox articles in this issue). However, the blessings of increased participation among small donors should not obscure the need for rules that support institutions which mediate and moderate group interests in the political process so that governing is not reduced to stalemate on major issues. In my view, BCRA weakens such linkages by augmenting the power of individual candidates and interest groups at the expense of political parties.

**3. Consider a Few Unrealistic Proposals.** Last come some suggestions that are politically difficult but seem commonsensical. Perhaps it is best to start with the easiest. The public funding system for presidential campaigns should be patched by increasing matching funds in the nomination process, as well as increasing its spending limits. At the same time, the political parties should be

\textsuperscript{13} In this scenario, interest groups and state parties that joined a coordinated campaign would have to limit their soft money contributions to the same amount required by political parties. Otherwise, the party contribution limits would not be meaningful.
urged to begin primaries and caucuses later in the process, which would diminish the amount of funds necessary to run a presidential campaign.

Next, Congress might also consider public subsidies for congressional elections. Subsidies might decrease the fundraising frenzy and help challengers, especially in districts that are typically written off as uncompetitive. At this point, I am unsure what kind of subsidy would work best, whether it be cash or “free” airtime from broadcasters. The current system of campaign finance involves a significant transfer of resources from individual donors to the broadcast industry, mediated by politicians begging for money. There ought to be some imaginative thinking about how to bring down the cost of campaign advertising. Perhaps Internet ads, which are less expensive, will become prominent for campaigns in the future, but it is hard to see that broadcast advertising will shrink anytime soon (see Michael Franz’s article in this issue).

Overall, policymakers should explore ways to attenuate the burden of raising campaign funds, rather than devise a system that imposes a costly regulatory yoke on candidates and, especially, political parties. Under BCRA, to deal with cash shortfalls, politicians will inevitably turn to outside organizations for help in mobilizing and persuading voters. Rather than micro-manage political finance, the laws should be minimalist, designed to increase transparency, participation, and collaborative political organizing. The tragedy of BCRA is that a much simpler set of reforms might have worked to achieve anti-corruption goals, without burdening the system with complicated rules that ignore the porous nature of American elections and weaken the party system.

References


