Campaign Finance

An Illustrated Guide

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It is hard to hear a good word these days about our campaign finance system. Average citizens along with journalists, politicians, party professionals, and major donors heap criticism on a system that seems to have careened out of control. We see candidates engaged in a continuous money chase, parties and policy makers applying intense pressure to rich contributors to give more and more, a host of "fast-buck artists" hanging around the political process to gain influence or make questionable deals, a corrosively negative atmosphere permeating both our elections and our policy debates, and a sense that no one is accountable for the campaigns or their financing.

Faced with these and other troubling questions, many citizens wonder about the root of the problems and whether anything can be done to solve them. What makes the system different today from what it was a decade or more ago? Are the problems really greater, or are they inflated by interest groups and the media? Would proposed reforms address the real problems, make little difference, or make matters worse?

While almost everyone can agree that problems exist, too often the agreement ends there—but it doesn't need to be that way. Some campaign finance questions are open to interpretation, and individuals with different perspectives on the political process will see them differently. Some basic information about the nature of the American campaign finance system, though, is undisputed. Knowledge about recent trends can help citizens form or alter their views about the nature of the problem and possible solutions. There is some common ground, a good place for people interested in this important issue to begin.

Hindrances to Understanding

Navigating the waters of campaign finance can sometimes be as intimidating as finding a route up the Amazon. Professionals fill their vocabulary with vague terms or words often put inside quotation marks to denote their odd nature: "soft money," "hard money," "independent expenditures," "bundling," "issue advocacy," "express advocacy," and "coordinated expenditures" head the list (see the glossary for an explanation of these terms).

Another hindrance to understanding the problems is context. Simply knowing that political parties spent $260 million in "soft money" in the 1996 election cycle gives no context in which to judge the expense. Candidates for the House and Senate spent over $670 million in the last election. Are these numbers significant when compared with past elections or with other kinds of spending? More important, how do numbers like this fit into the major trends of the past few years? Are we seeing small aberrations or meaningful changes?

This volume aims to answer some of the questions a nonprofessional might have about the campaign finance system, using both straightforward prose and graphics to illustrate the leading trends in contemporary campaign finance and spending. We have tried to isolate some of the most important statistics and present them in an easily understood format.

Readers may come away believing that dramatic reform is required or that no change is necessary. We are not neutrals in this area: we believe that significant, targeted, and practical campaign finance reform should be a top priority before it is too late to change things for the 1998 elections. (See the note at the back of the book for information on *Five Ideas for Practical Campaign Reform*.)

A Brief History of Campaign Finance

Campaign finance is a recent concern. Almost nothing was written about it before the Progressive Era of the early twentieth century. And although the Progressives tried to reform elections, they met with little success. Campaigns went largely unregulated until the reforms of the 1970s.

At the time of the Progressive Era, political parties controlled most campaign finance. Political bosses, often the real power within a party, divided the urban slums of the 1920s into precincts and then wards, which were ruled by a local hierarchy. Volunteers performed much of the party work, doling out political favors to different neighborhoods in hopes of their own advancement. Occasionally, a party would need large sums of money for a big campaign. That money was available from the candidates themselves (often a condition for running) or from rich benefactors, "fat cats" as they were called. One early scholar, Louise Overacker, estimated that around 70 percent of the party receipts in the 1928 election came from donations exceeding $1,000—when $1,000 was a huge sum of money (Sorauf 1992).

The Progressive Era, from 1890 to the 1920s, ushered in serious attempts to limit campaign funding and spending; the first successful federal reform came in 1907, when contributions from banks or corporations to congressional or presidential candidates were outlawed. A modest disclosure law was enacted in 1911, along with some spending limits for congressional campaigns. In 1925, legislation that reinforced disclosure and raised the spending limits passed. Contribution limits came for the first time in 1940, and labor union contributions were banned in the mid-1940s. But most of these limits and curbs were weak, filled with loopholes and exceptions, and—most important—unenforced. The system remained fundamentally unregulated until the 1970s.

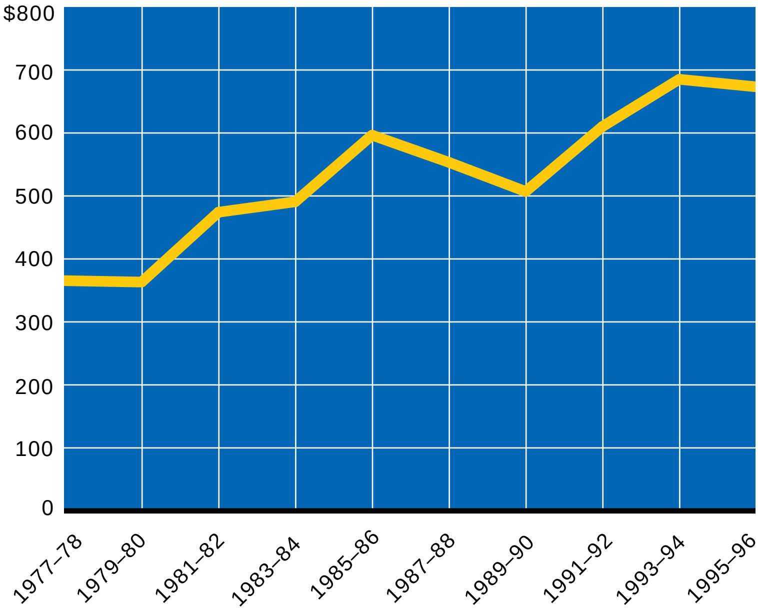
The contemporary American system of campaign finance was shaped by a series of reform laws Congress passed in the 1970s, combined with a series of Supreme Court cases, beginning with the seminal *Buckley v. Valeo* in 1976, that altered and reinterpreted the reforms. The late 1960s and early 1970s were a tumultuous era in American politics, one that precipitated a variety of political reforms. The 1968 election was a major impetus for reform. The wild and violent Democratic convention in Chicago led to party reforms that expanded primary elections and democratized the nominating process. The same year, wealthy businessman Clement Stone gave $2.8 million to Richard Nixon's presidential campaign, an individual contribution so large that it underscored the potential power of wealthy individuals and outside groups to bypass traditional party structures and directly influence candidates and the policy process. The Stone contribution came amid sharply increasing spending on campaigns, especially on media advertising, which left the Democratic presidential campaign of Hubert Humphrey more than $6 million in debt.

The first significant change came with the Federal Election Campaign Act of 1971, known as FECA. The heart of the 1971 act was a limit on the amount of money a federal candidate could spend on radio and television advertising, along with disclosure of campaign contributions and expenditures. But the law put no significant limits on contributions, left a number of loopholes in place, and failed to create an independent authority to oversee and regulate the election laws. The 1972

FIGURE 1

TOTAL HARD MONEY SPENT ON CONGRESSIONAL ELECTION CAMPAIGNS, 1977–1996

MILLIONS OF 1997 $



SOURCE: Ornstein, Mann, and Malbin 1997.

election was followed by the Watergate scandal, which had at its center corruption in the financing of the 1972 campaign. Watergate drove the pivotal campaign finance reforms of 1974. While the 1974 law was labeled as an amendment to the 1971 statute, in reality it was a much more sweeping piece of legislation that included strict spending limits for presidential and congressional elections; a ban on union and corporate direct contributions; tight contribution limits for individuals, political action committees (PACs), and independent groups; public financing for presidential elections; and creation of the Federal Election Commission (FEC), the agency to provide that crucial enforcement.

The 1974 law limited contributions from individuals to candidates to $1,000 per election, or a total of $2,000 for a primary and a general election. Individuals could give up to $20,000 to political parties in a year, within a total yearly limit of $25,000 for political contributions, including those to candidates. Political action committees, new creations of the reforms, could contribute only $5,000 per election per candidate and $15,000 to parties. These limits applied to what has come to be called hard money.

Less than two years after passage of the 1974 law, the Supreme Court rejected much of it in its *Buckley* decision. In *Buckley*, the Court said for the first time that campaign spending was a First Amendment issue, that money and speech were equivalent in the political arena. *Buckley* upheld the limits on contributions to political campaigns set out above but struck down the FECA-imposed spending limits except for those on political parties. The Court said that wealthy individuals could spend as much of their own money as they wished on their own campaigns or in independent expenditures. The Court also made sacrosanct contributions and spending for advocacy on issues as opposed to advocacy for or against candidates for office, saying that the law's contribution limits applied only to communications of "express advocacy" for or against candidates, defined as advertising that expressly used terms like *vote for* or *vote against* or *elect* or *defeat* a particular candidate.

Subsequently, other reforms were enacted in the 1970s: changes in 1976 limited individual and PAC contributions to political party committees, and in 1978 the FEC exempted some categories of state party spending from federal party limits to enhance the role of the parties. With the exception of the last rule, which blossomed into the soft money problem, those changes were minor; the campaign finance regime in place in 1996 was essentially the same one created by the 1974 law and the *Buckley* decision. But, of course, much about the campaign system has changed since 1976. The nature and use of soft money, the role of outside groups running so-called issue campaigns, independent expenditure efforts, independently wealthy candidates, and the actions of presidential campaigns operating under the public financing limits set by the law were all markedly different in 1996 from what they were twenty years earlier. And the $1,000 individual contribution limit, unchanged since 1974, is worth about $300 today, after adjusting for more than two decades of inflation.

Growth in the Money Supply

The most striking and obvious trend in campaign finance has been growth (see figure 1) in money raised and money spent in primaries and general contests. In constant dollars (in other words, adjusting for the effect of inflation), the amount of hard money spent on elections has almost doubled in just ten years.

To be sure, the trend has not been constant or uniform. In real terms, hard money spending on campaigns decreased slightly in the late 1980s, but that was followed by sharp increases in the 1992 and 1994 elections. At first glance, it may surprise us that such spending went down for 1996. After all, the media reported 1996 as the worst modern example of campaign fund-raising abuses, an election followed by House and Senate committees to investigate those alleged abuses. But a look at other figures makes the hard money trends more understandable.

A feature of the 1996 contest was a "shadow" campaign, in which subterranean activities of parties and outside groups superseded the traditional funding of the candidates and parties. Unprecedented amounts of money were channeled away from the customary routes to soft money, independent expenditures, and issue advocacy.

Nineteen ninety-six, of course, was an unusual political year, with a presidential race that all forces expected to be close and hard fought. After all, no Democrat had been reelected president since Franklin Roosevelt. Both houses of Congress were closely divided, and the majorities also hung in the balance, with many hotly contested seats.

Thus, the demand for money to influence federal elections was exceptionally high. The difficulties of raising hard money, with general election spending restrictions for presidential candidates and tough limits on contributions that had never been adjusted for inflation, meant that the supply of those funds would be constricted. With supply limited and demand skyrocketing, the process worked the way economists would have expected for any commodity: a black market of sorts evolved, with new channels of resources developing and growing to meet demand.

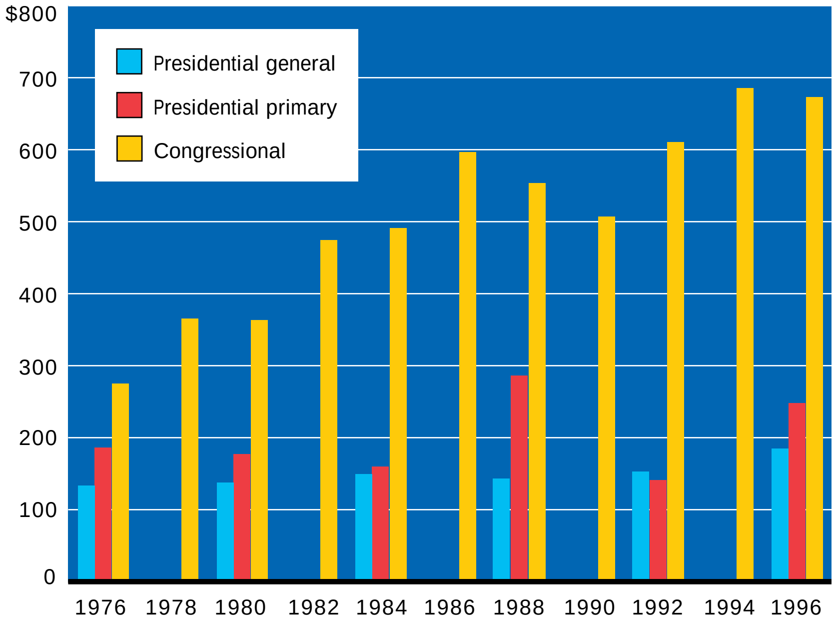
Presidential versus Congressional Elections

We elect presidents very differently from the way we elect representatives or senators. Since 1976, presidential elections have been partially financed through public funds. Candidates begin by preparing organizations to campaign in the primaries and caucuses (and they seem to begin earlier and earlier each cycle). Every four winters, the

FIGURE 2

TOTAL HARD MONEY SPENT IN PRESIDENTIAL AND CONGRESSIONAL CAMPAIGNS, 1976–1996

MILLIONS OF 1997 $



SOURCE: Ornstein, Mann, and Malbin 1997 and various FEC disclosure reports.

country focuses its attention on Iowa and New Hampshire to see who the early front-runners will be. To build this initial organization, a candidate must raise millions of dollars. In January of the election year, candidates become eligible for public support in the form of matching funds for contributions of $250 or less if they have raised at least $5,000 in such small contributions in each of twenty states.

Figure 2 shows the total amount of hard money spent in each campaign from 1976 to 1996, the sum of both private and public financing. Nineteen eighty-eight stands out as a year in which candidates spent more money because an open presidential contest attracted large numbers of aspirants from both parties; the year 2000 promises to be similar.

Spending on congressional elections has clearly risen much faster over time, while presidential spending remains relatively constant, with the one blip in 1988 and a slight increase in 1996. Spending for the year 2000 appears to be headed in the same direction. One Republican consultant recently predicted that presidential candidates would need $20 million going into the 2000 primary season, a substantial jump over previous years. Spending on presidential campaigns is not completely captured in this figure, though. Democrats under President Clinton, and through the influence of campaign adviser Dick Morris, used large amounts of soft money for "party building" to run television advertisements well before the campaign's more traditional beginning, when Bob Dole was still struggling through a divisive Republican nominating process. This tactic, a departure from typical campaign activity, was a centerpiece of the Clinton campaign strategy. The theory behind public funding of presidential campaigns was that such funding would sharply limit the use of private funds and the time spent by candidates and parties raising such money. In reality, very large sums of money leaked in through holes in the system in 1996.

The Soft Money Explosion

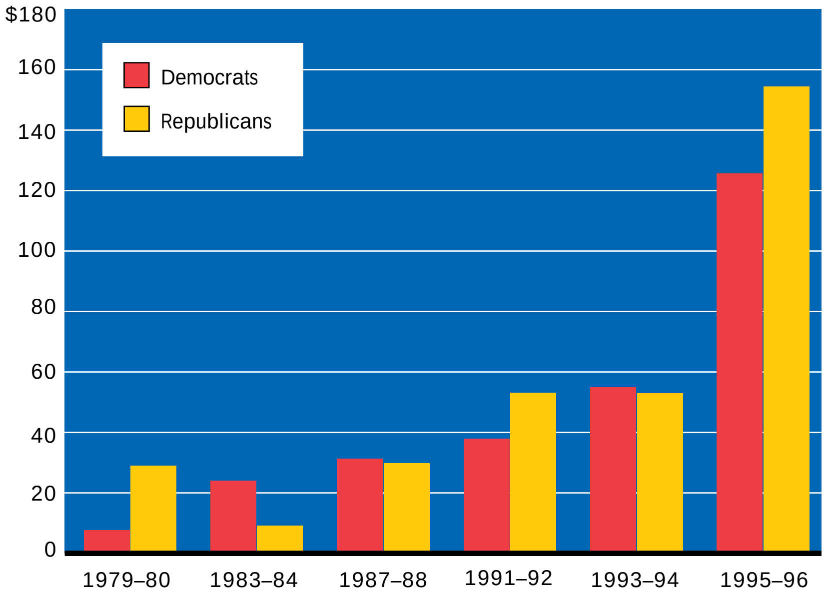
The reforms of the 1970s limited the contributions of individuals and PACs to candidates and parties, while reinforcing the prohibitions on union or corporation funds for elections (although members of those organizations were able to participate in elections by giving to political action committees). Some of the reformers who crafted the campaign laws worried that the restrictions on contributions would weaken or cripple political parties. In 1978 the Federal Election Commission issued a ruling designed to ameliorate that problem, allowing the Kansas Republican Party to use unrestricted contributions—including not just money subject to the limitations of the reform laws but also funds donated by unions and corporations or individuals in unlimited amounts—to pay for things like voter drives that would clearly help federal candidates. Congress reinforced that FEC ruling the next year, in 1979, with a statute that allowed more freedom for state parties in spending hard money in unlimited amounts in a presidential campaign for things like bumper stickers and buttons or voter drives. But it was the FEC ruling that created a whole new category of political funds for parties to draw from, what came to be called soft money.

On paper this change sounded harmless enough; states had their

FIGURE 3

TOTAL SOFT MONEY SPENT IN CONGRESSIONAL CAMPAIGNS, SELECTED YEARS, 1979–1996

MILLIONS OF 1997 $



SOURCE: Corrado 1997 and Jackson 1990.

own regulations for their parties, and it can be difficult to separate federal party building from state party building, or to segregate get-out-the-vote efforts between state and federal offices or elections. But if the intent of the law and the FEC ruling was to promote party building and not the election or defeat of specific candidates, the reality was ultimately something different.

Most of the federal soft money raised in the first few election cycles after the FEC ruling was distributed to state parties and used for such party building, broadly defined. But by 1992, and especially in 1996, the amounts of this type of money were staggering, and the impact was profound. Soft money expenditures virtually doubled from the 1988 to the 1992 election cycle (see figure 3) and then tripled from the higher base for 1996. The increase flowed largely into vast numbers of television commercials that were clearly designed to promote or attack candidates, especially the presidential candidates, while using carefully worded language to avoid the explicit appeals that would have triggered the disclosure and contribution limits that apply to hard money. And, of course, most of the publicity about fund raising in 1996, including illegal contributions, the frenzy to raise large sums of money, and the questions raised about the involvement of the White House, surrounded soft money.

Independent Expenditures

If an interest group (or now a political party) wishes to spend to influence an election, this money can fall into a few different categories. The first is called independent expenditure (see figure 4). An interest group like the AFL-CIO, the Sierra Club, the Chamber of Commerce, or the National Rifle Association can spend unlimited amounts of hard money on an election if it spends the money independently of the candidates in the election. The 1996 election saw a sizable increase in this type of spending to $16 million, with the increase particularly great for negative spending, that is, money spent to criticize and defeat a candidate.

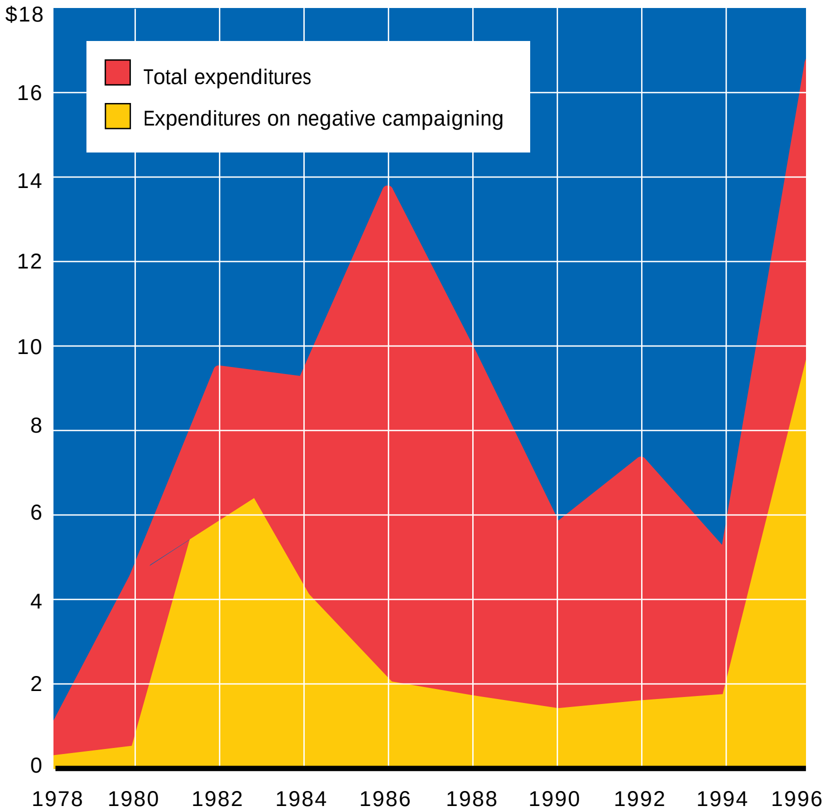
Another subset of independent expenditure became a serious factor in 1996. In June of that year, the Supreme Court issued its opinion in *Colorado Republican Party v. FEC*. In this ruling, the Court said that political parties could act in the same fashion as other interest groups and spend unlimited amounts to elect or defeat candidates as long as the parties remained independent of the candidates' own efforts. To most students of political parties, the idea of a party independent of its own candidates was hard to fathom. But the Court's ruling, based on that premise, in effect negated the statutory limits on party contributions to congressional candidates and unleashed a barrage of party-financed television ads in congressional districts across the country, mostly negative ones attacking the opposing party's candidates' ads for which the party's own candidates disclaimed any responsibility, because they were "independent."

Independent expenditures by groups or individuals have contribution limits and disclosure requirements that are the same as those for hard money contributions and expenditures by the parties and candidates. In both cases, the money is raised and spent to elect or defeat candidates for office. The most consequential story about the 1996 shadow campaign concerned yet another set of interest group

FIGURE 4

TOTAL INDEPENDENT EXPENDITURES ON CONGRESSIONAL RACES AND TOTAL EXPENDITURES ON NEGATIVE CAMPAIGNING, 1978–1996

MILLIONS OF 1997 $



NOTE: Negative campaigning is defined as money spent against a candidate.

SOURCE: Ornstein, Mann, and Malbin 1997.

expenditures, presumably geared not toward the election or defeat of candidates but toward issue advocacy. In its 1976 *Buckley* decision, the Supreme Court made a sharp distinction between campaign funding and nonpolitical money raising and spending. While saying that campaign *spending* limits were an unconstitutional infringement on speech, the Court allowed some limits on campaign *contributions*. But no limits were allowable for noncampaign speech, called issue advocacy—speech the Court defined as that which did not expressly advocate the election or defeat of a candidate by using words like *elect* or *defeat*, or *vote for* or *vote against*. Such issue communications could be financed in any fashion, including unlimited contributions from union dues, corporate funds, or individuals domestic or foreign, and they have no disclosure requirements whatsoever.

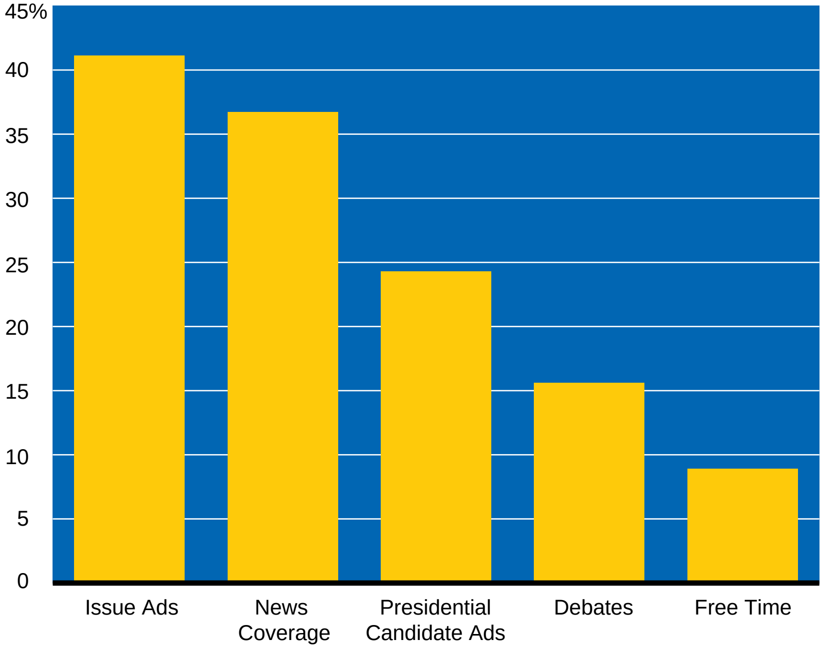
So-called issue advocacy messages, especially in the form of television and radio commercials, have been increasing steeply in recent years. But the volume of messages that fell under the issue advocacy rubric jumped dramatically during the 1996 election cycle. The clear leader during this election year was the AFL-CIO, which pledged $35 million in direct spending on television and radio advertising targeted at seventy key congressional districts, most of them held by junior Republicans. Several business-oriented organizations, including the Coalition: Americans Working for Real Change, and the Chamber of Commerce, responded with several millions of dollars in their own ads. And at least thirty other groups, ranging across the political spectrum, also spent heavily on issue advocacy during the latter stages of the 1996 campaign.

It is extremely difficult to assess the volume of issue advocacy. The complete lack of disclosure means that while estimates are possible, we have no systematic accounting procedure as we do for other forms of spending, such as hard money. One recent estimate by the Annenberg Public Policy Center found between $135 million and $150 million was spent in 1996 (Beck et al. 1997). The center based its accounting on press reports and the few admissions that groups made about their spending. These estimates were probably low. And the study did not try to examine the amount of issue advocacy related to ballot measures, crucial in some states. The grand total, then, is almost certainly higher.

If the dollars spent increased dramatically, the nature of issue advocacy ads has also changed in the past two election cycles. More and more ads framed as issue advocacy messages are clearly and blatantly designed to elect or defeat candidates, openly using the Court-based definition of express advocacy as a loophole to avoid contribution limits and disclosure. The same Annenberg study found that 90 percent of the advertisements referred specifically to candidates, and 60 percent used a candidate's picture. As figure 5 shows,

FIGURE 5

PERCENTAGE OF PURE ATTACK MESSAGES IN VARIOUS TYPES OF POLITICAL COMMUNICATION, 1996 ELECTIONS



SOURCE: Beck, Taylor, Stanger, and Rivlin 1997.

no other form of political communication is as negative as issue ads. In fact, that same study shows that less than 20 percent of issue ads merely advocate a position; the vast majority either attack or at least compare candidates, often just before an election, in communications that are nearly impossible to distinguish from the express advocacy ads subject to donor limits and disclosure. As Tanya Metaksa, executive director of the National Rifle Association's political unit, put it, "It is foolish to believe there is any difference between issue advocacy and advocacy of a politician. . . . [It's] a line drawn in the sand on a windy day" (Carney 1997). The content of the advertisements illustrates her point. What follows is the text from an advertisement run in a Washington congressional district. It clearly illustrates the partisan nature of these advertisements:

[Screen text] *A Senior Citizen on Medicare*

OLD WOMAN: When you're older and sick, Medicare is more than just health care; it's peace of mind.

[Screen text] *Newt Gingrich on Medicare*

SPEAKER GINGRICH (speaking at a press conference): Now we don't get rid of it in round one because we don't think that's politically smart, we don't think that's the right way to go through a transition, but we believe it's going to wither on the vine.

[*Pictures of the old woman flash up on the screen*]

ANNOUNCER: Last year Congressman George Nethercutt voted with Newt Gingrich to cut Medicare and give new tax breaks to the wealthy.

[Screen text] *George Nethercutt voted $270 billion in Medicare cuts.*

ANNOUNCER: Now comes another vote; they're after Medicare again.

The ad finished by asking voters to call Congressman Nethercutt and provided a number. This ad did have the virtue of stating clearly that it was paid for by the AFL-CIO. An analysis of this kind of advertising in the 1996 campaign prepared by the Business-Industry Political Action Committee noted that another ad run in the same district was more typical of the "issue" ads of 1996: it was paid for by the Coalition: Americans Working for Real Change, a group unknown to most voters or even election professionals.

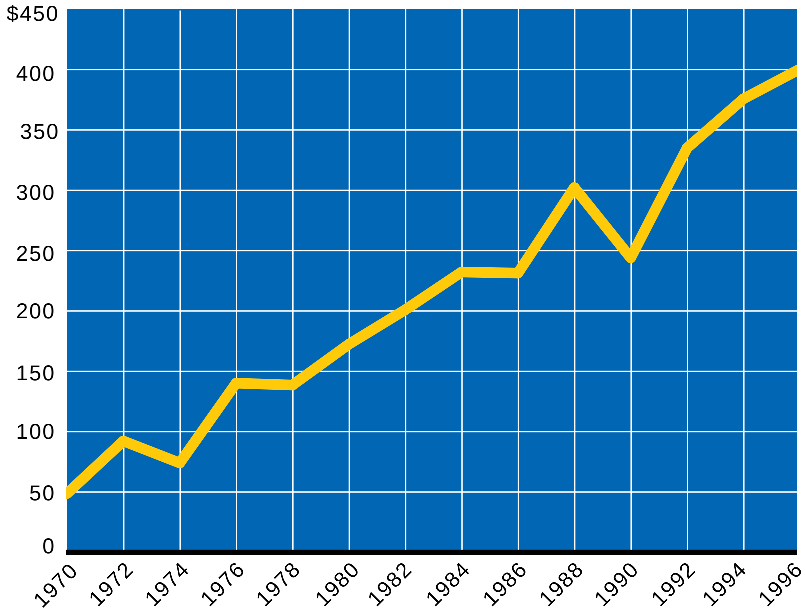
While many of the issue ad campaigns were carried out with the open sponsorship of an easily identifiable group, like the Sierra Club or the NRA, many others were sponsored by groups with names not easily identified or labeled. Americans for Tax Reform, for example, a conservative group, spent about $4 million on campaign-related issue ads in 1996. Other ads were run by groups with names designed to obfuscate the sponsorship.

The *Los Angeles Times* reported that in Montana's fiercely contested congressional race a group called Citizens for Reform ran a massive series of television commercials in the final two weeks of the campaign alleging that the Democratic candidate, Bill Yellowtail, was a wife beater (Bunting et al.1997). The issue had come up before in the primaries, including Yellowtail's admission that he had

FIGURE 6

EXPENDITURES ON TELEVISION ADVERTISING IN CONGRESSIONAL CAMPAIGNS, 1970–1996

MILLIONS OF 1996 $



SOURCE: Cantor, Rutkus, and Greely 1997.

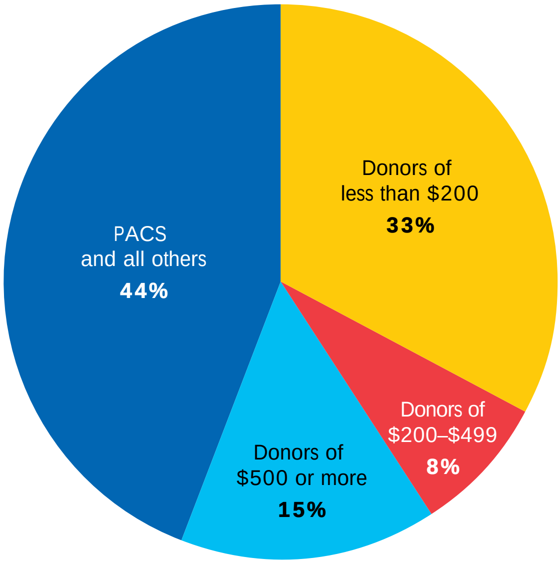
slapped his first wife in the 1970s. But the harshly negative advertisement from a largely anonymous and unaccountable group with no connection to advocacy on the domestic violence issue came too late for Yellowtail to respond and helped sway a close race against him. While it is too early to know whether 1998 and 2000 will see more of these groups, the incentives to use such tactics are already in place, and a decrease in their use would defy common sense.

The Rising Costs of Television

In the late twentieth century, television has become the center of political campaigns. Spending by candidates on television (see figure 6) has increased more than any other category in campaign finance. Studies

FIGURE 7

PERCENTAGE DISTRIBUTION OF SOURCES OF HOUSE CAMPAIGN FUNDING, 1979–1980



SOURCE: Lilly 1990.

have shown that spending on the electronic media is the largest single category of spending in elections. A Congressional Research Service (CRS) report found that in 1992 the average Senate candidate spent 43 percent of his or her total budget on advertising. House candidates averaged 30 percent, but television advertising costs still represented their largest single block of spending (CRS 1994).

The CRS report adds, "Broadcast media generally consume a larger share of the campaign budgets of challengers and open seat contenders than of incumbents. . . . The larger the state [in Senate races] and the more competitive the election, the more reliant on broadcast advertising candidates are likely to be." In 1996 the average challenger spent $286,582. But the average *successful* challenger spent almost $1.1 million, more of it on television than on anything else. Successful challengers do not generally need to equal the campaign spending of incumbents, but they do have to spend enough