



The End of Limits on Money in Politics: Soft Money Now Comprises the Largest Share of Party Spending On Television Ads in Federal Elections

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“Soft money”—money in federal elections that would otherwise be illegal, such as direct corporate or union contributions or contributions in excess of legal limits—has now become the primary source of funding for party ads that promote the election or defeat of federal candidates. Though expressly prohibited by campaign finance laws, federal regulators have recently begun to allow the influx of some soft money into party coffers with a wink and a nod. Money given directly from corporate or union treasuries or from wealthy individuals to party committees has been deemed not in violation of federal laws by the FEC so long as the funds are not used for “express advocacy”—directly promoting the election or defeat of federal candidates. Instead, soft money is to be used for party-building activities, such as voter registration drives and strengthening the image and infrastructure of party organizations.

Findings from a new study conducted by the Brennan Center for Justice at NYU and Professor Ken Goldstein at the University of Wisconsin show that in the 2000 elections quite the opposite has occurred: television advertising sponsored by the parties to support or oppose candidates has been primarily financed through soft unregulated money. In the one area of campaign activity most considered off-limits to soft money—television electioneering ads for and against candidates—direct corporate and union monies and contributions far in excess of federal limits now are the principal source of funds behind these ads sponsored by the political parties. Party soft money has rendered federal campaign finance laws meaningless in the real world of politicking.

Using data from the Campaign Media Analysis Group (CMAG) to monitor political advertising in the nation’s top 75 media markets, researchers at the Brennan Center and the University of Wisconsin have documented the frequency, content and costs of television ads in the 2000 election. The study is funded by the Pew Charitable Trusts.

Among the key findings regarding soft money and party politics in this study are:

- Soft money has flooded into party coffers in recent years, beginning in earnest in 1996 and reaching unprecedented levels in 2000.

- Awash in a new source of funds, party committees have reduced the importance of candidate spending in federal campaigns; party spending has even surpassed candidate spending in the 2000 presidential general election.
- While total soft money spending by the Democratic and Republican parties is roughly comparable, Democrats made much more use of the FEC loophole in the federal law, funneling most of its soft money to state party committees where it was used for television campaign ads. Republicans also exploited this loophole, but relied somewhat more on hard money to finance its television ads.
- Only a small fraction of soft money spending on advertisements by the parties went for party-building activities. Almost 92% of party television ads did not even mention the party name.
- All party ads aired in the 75 major media markets surveyed were designed as electioneering ads to promote the election or defeat of candidates. None of the ads were perceived as genuine issue ads designed to discuss important pressing issues. In fact, more than 95% of party ads focused instead on specific candidates for federal office.
- These “electioneering” party ads were primarily financed by soft money at all levels of federal races, spelling an end to limits on money in politics.

A. Party Spending and Soft Money Are gaining On, and Sometimes Overtaking Candidate Spending

With the new influx of unlimited funds from business interests, labor unions and wealthy individuals, spending by party committees on television at all levels in the 2000 election reached \$163 million, more than \$81 million of which was spent on advertising in the presidential election alone. Although party spending accounted for about a quarter of all political advertising budgets in the year 2000, much of the spending activity centered on the presidential election. For the first time in history, party spending surpassed candidate spending in the presidential general election. This represents about a 60% increase over party spending in the 1996 elections (*see* Table 1).

According to FEC records, this increase in party spending was largely boosted by a dramatic rise in soft money. National and congressional party committees broke all previous records in soft money fundraising and, for the first time as well, Democratic party committees were on par with Republican party committees in terms of raising and spending soft money. Republican party committees spent about \$244 million in soft money for all purposes, not just television advertising, while the Democrats raised and spent about \$243 million. This new influx of soft money began in earnest in 1996, reached record levels in the last election, and shows no sign of slowing its momentum unless federal campaign finance laws are modified this year (*see* Table 2).

B. Party Ads Have Little To Do with Party-Building and Everything To Do with Candidates

Under the direction of Professor Ken Goldstein, students at the University of Wisconsin/Madison viewed each of the 3,327 unique political ads that aired a total of 940,755 times in various markets across the nation and coded each of the ads for content. Most of the content codes were objective in nature: Did the ad use any of the “magic

words” of express advocacy such as “vote for (candidate X),” “reject (candidate X),” or “(candidate X) for Congress”? Was a candidate identified or pictured in the ad? What action, if any, did the ad encourage viewers to take? Some of the content codes were subjective in nature, the most important of which being: In your opinion, is the primary purpose of this 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? As such, the study applies a “reasonable person” standard to the content of the television ads.

Television ads sponsored by the political parties, like most campaign ads by candidates or special interest groups, tend to avoid using the “magic words” of express advocacy. Only about 2.3% of party ads concluded with such express advocacy terms as “vote for” or “elect.” If not defined as express advocacy by the “magic words” test, these ads are defined as issue advocacy: designed to further important political issues or legislation and even to strengthen the party organizations, but they are not intended for electioneering purposes to promote the election or defeat of federal candidates. As issue advocacy, the money that pays for these ads is treated differently under the law. Money that would otherwise be illegal for electioneering purposes—money from corporate and union treasuries or in excess of legal contribution limits (“soft money”)—can be used to finance these types of ads.

Whether or not party ads pass the “magic words” test of issue advocacy, the ads aired in the 2000 election by the parties universally failed the “reasonable person” test of this study. Coders at the University of Wisconsin viewed all 231,000 party ads as electioneering in nature—that is, designed to campaign for or against candidates. Not a single genuine issue ad was to be found among party-sponsored advertisements. The findings of the coders were confirmed by objective accounts of the content of these ads: almost 96% of all party ads mentioned a candidate’s name or pictured a candidate’s likeness or image. These ads were not concerned about issues; they were focused on electing candidates (*see* Table 3).

More so, party ads in the 2000 election also were not concerned about party-building activities. Only about 8% of all party ads mentioned a party. Almost 92% of party ads never even identified the name of a political party, let alone encourage voters to register with the party, volunteer with the local party organization or support the party. The idea that soft money should be awarded to political parties as an important means to strengthen the party as an organization has little, if any, relevance to the reality of party politics (*see* Table 4).

Party ads, like those sponsored by special-interest groups, tend to be very negative and attack the character of candidates. Nearly half of party ads denigrate candidates, while only 16% of candidate ads do so. Apparently, without a specific name of a person behind the ad, parties and groups feel freer to go negative and to attack candidates on their personal histories or character. Given that nearly all party ads focus on candidates, this amounts to a lot of negative political commercials saturating the airwaves (*see* Table 5).

C. Exploiting the FEC Loophole Through State Party Committees

In the late 1970s, Congress amended the Federal Election Campaign Act (FECA) to allow the national parties to finance some party-building activities with soft money.

But the soft money loophole did not really come into existence until the FEC developed regulations applying an “allocation ratio” to state party committees in the late 1980s. In response to a request from the Kansas Republican party on how to allocate expenditures that evenly benefited federal and state election activities, the FEC ruled that the party could use soft money to pay their estimate of nonfederal costs.¹ A 1988 federal court order, in a case pursued by Common Cause, required the FEC to develop specific allocation formulas for hard money and soft money to prevent parties from abusing their new soft money privileges. The FEC issued an “allocation ratio” regulation that permits national party committees to use soft money to pay for 35% of various activities, including ads, that do not expressly advocate the election of a federal candidate. The regulation is based on the assumption that a portion of national party “issue advocacy” will support generic party-building activities and state and local party activities. In the same regulation, the FEC offered a formula that permits state party committees a much higher ratio of soft money to hard money in airing their “issue ads” on the assumption that ads sponsored by state parties would accrue a greater benefit to state election activity than to federal election activity. The allocation ratio is a complicated formula based on number of state and federal candidates on the state ballot and other criteria. State ratios of soft money to hard money generally average about 60% soft money to 40% hard money.²

In 1996, the Clinton campaign staff cooperated with the National Democratic party in making full use of these allocation ratios. The national party transferred at least \$32 million in soft money to state Democratic committees in key electoral districts. The money reportedly came with specific instructions from the national party on how to spend it. Within days of receiving the transfers, state party committees often hired campaign consultants working with the Clinton campaign and the national Democratic party to design, produce and distribute the state party issue ads.³

The 2000 database of the Brennan Center and the University of Wisconsin shows that both national parties have dramatically escalated their abuse of the allocation ratio loophole. The Republicans made somewhat less use of the loophole in 2000, but the Republican party is quickly catching on and will likely match or surpass Democratic efforts in the next election cycle. Corporations and business interests provide the largest share of soft money contributions—labor unions comprised roughly 15% of the top 50 soft money contributors in 2000⁴—and with an incumbent Republican administration, these funds are expected to flow decidedly to Republican party coffers. With what will prove to be critical congressional contests in 2002, the Republicans will increasingly take advantage of the soft money loophole (*see* Table 6).

D. Party Ads Promoting or Attacking Federal Candidates Are Primarily Financed Through Soft Money

Financed largely by \$274 million in soft money transfers from the national parties to state parties in the 2000 election—Democrats transferred \$145 million in soft money

¹ Federal Election Commission, AO 1978-10.

² Federal Election Commission, 11 CFR §106.5.

³ Jill Abramson and Leslie Wayne, “Democrats Used the States to Bypass Limits,” *New York Times* (Oct. 2, 1997), p. 1.

⁴ Common Cause, *Soft Money Donor Profiles* (2000).

and Republicans \$129 million⁵—the Democrats and Republicans buy more television time in relationship to federal elections through their state party committees. Overall, 77% of party-sponsored political commercials relating to federal elections in the 2000 election were paid for by state parties. The national party committees and federal congressional committees combined purchased about 23% of the party airwaves that addressed federal elections. Not surprisingly, most of this state party spending activity took place in the nation's most competitive states: Florida, Pennsylvania, California, Michigan, Washington and Ohio.

These percentages vary considerably depending on level of office and party. More than 92% of media buys relating to U.S. Senatorial elections, for instance, were purchased by state party organizations, with Democratic state parties accounting for more than 96% of such buys and the Republicans 88% (*see* Table 7). The top five states of state party committee advertising for U.S. Senate elections were: Virginia, Florida, Michigan, New York and Missouri.

Applying the soft money allocation ratios for each state, a reasonably clear picture of party soft money spending on television advertising emerges. This study has found that—contrary to the spirit if not the letter of federal law—soft money in the 2000 elections comprised the single largest source of funding for party ads promoting the election or defeat of federal candidates. More than 56% of funds that paid for party ads across the nation was soft money; only 44% of the funds paying for these ads came from hard money raised within the limits of federal law (*see* Table 8).

Soft money is the primary source of funding for party ads at all levels of federal elections—House, Senate and Presidential (*see* Table 9). In House races, state party committees spent \$17,825,893 in soft money to buy party television commercials, or 66% of the total spent by state parties on such ads. In Senate races, state party committees spent \$21,622,159 in soft money on party television advertising, or 62% of the total spent by state parties on such ads. And in the presidential race, state party committees spent \$36,663,636 in soft money on electioneering ads designed to promote the election or defeat of presidential candidates, or 63% of all such spending by state parties. Even when combined with soft money spending by the national party committees, unlimited and unregulated soft money remains the primary source of funds for federal electioneering campaign ads sponsored by the parties.

E. Conclusion: End of Limits on Money in Politics

In the 2000 elections, the flood of soft money into party coffers—and the way in which the parties have learned to use this unlimited and unregulated new pool of money—spells the end of campaign finance law at the federal level. Not only has soft money risen like a sea-tide in party politics, exempt from contribution and source limitations, but it is also being used by the parties explicitly for the purposes that federal law intended to prevent: direct electioneering for and against federal candidates. Contrary to some claims, the parties are not using soft money for party-building activities. Instead, the funds are being used to saturate the nation's airwaves with television commercials that usually denigrate the character of opposing candidates or, less often, promote endorsed candidates—but in all cases, soft money is being used to finance electioneering

⁵ Federal Election Commission, Press Release (Jan. 12, 2000).

advertisements on behalf of federal candidates and to undermine the integrity of federal law.

Table 1

Overall Spending by Candidates, Party Committees and Groups in the 2000 Election

	Count	Sum	Col %
Candidate	557935	\$407,226,090	59.9%
Party	231026	\$163,055,054	24.8%
Group	143194	\$98,303,365	15.4%
Table Total .00	940755	\$672,045,453	100.0%

Television Spending by Party Committees Exceeds All Spending by Candidates in the Presidential General Election

Presidential-General

	Count	Sum	Col %
Candidate	101880	\$70,839,767	41.2%
Party	123360	\$81,439,726	49.9%
Group	21966	\$15,198,074	8.9%
Table Total .00	247206	\$167,477,567	100.0%

Spending in the Presidential General Election, by Candidates, Parties and Groups

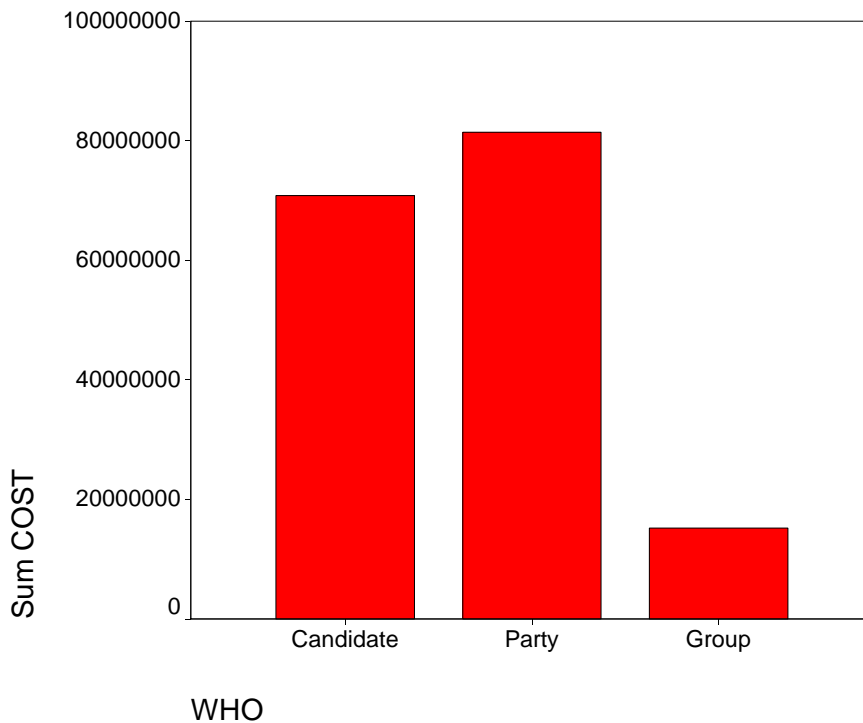


Table 2
Total Soft Money Expenditures
by National Party Committees

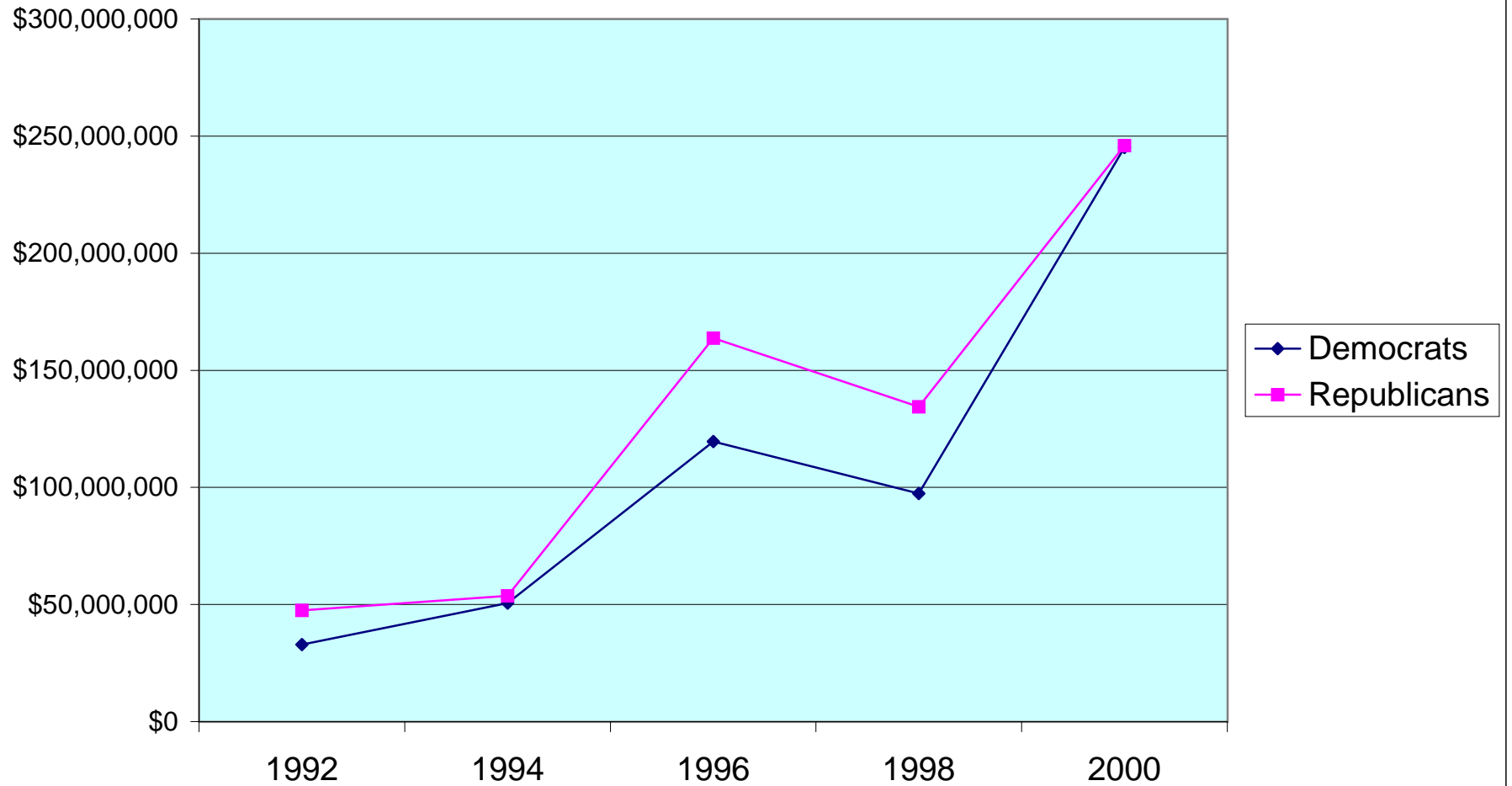


Table 3

Political Parties Dominate the Category of Issue Ads that Avoid Regulation

	Magic words		No magic words	
	Count	Col %	Count	Col %
Party	6988	70.4%	227502	62.7%
Group	2936	29.6%	135535	37.3%

Meanwhile All Party Ads Are Perceived as Electioneering Rather than Genuine Issue Ads

	Electioneering		Genuine issue ad	
	Count	Col %	Count	Col %
Party	234490	74.0%		
Group	82534	26.0%	55937	100.0%

Party Ads Nearly Always Depict a Candidate Whether or Not the Ad Is Classified an "Issue Ad"

	Electioneering			
	Magic words		No magic words	
	Count	Col %	Count	Col %
No mention	233	3.3%	511	.2%
Mention	6755	96.7%	226991	99.8%

Table 4

Party Ads Rarely Make Any Mention of Party-Building Activities or Even Identify the Name of the Party

	No		Yes opposing candidates party		Yes both candidates party affiliations are mentioned		Yes favored candidates party	
	Count	Row %	Count	Row %	Count	Row %	Count	Row %
	215200	91.8%	3115	1.3%	230	.1%	15945	6.8%

Graph

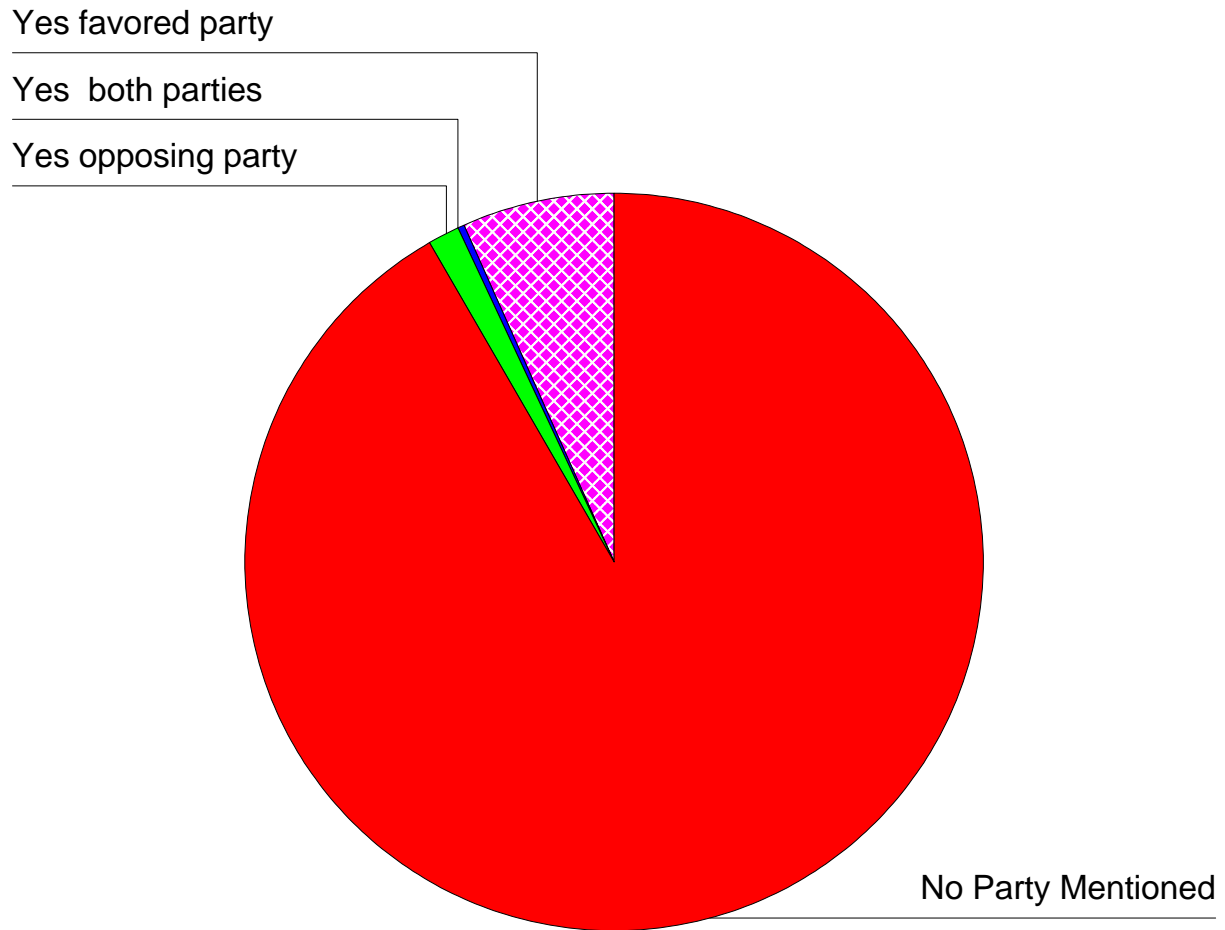
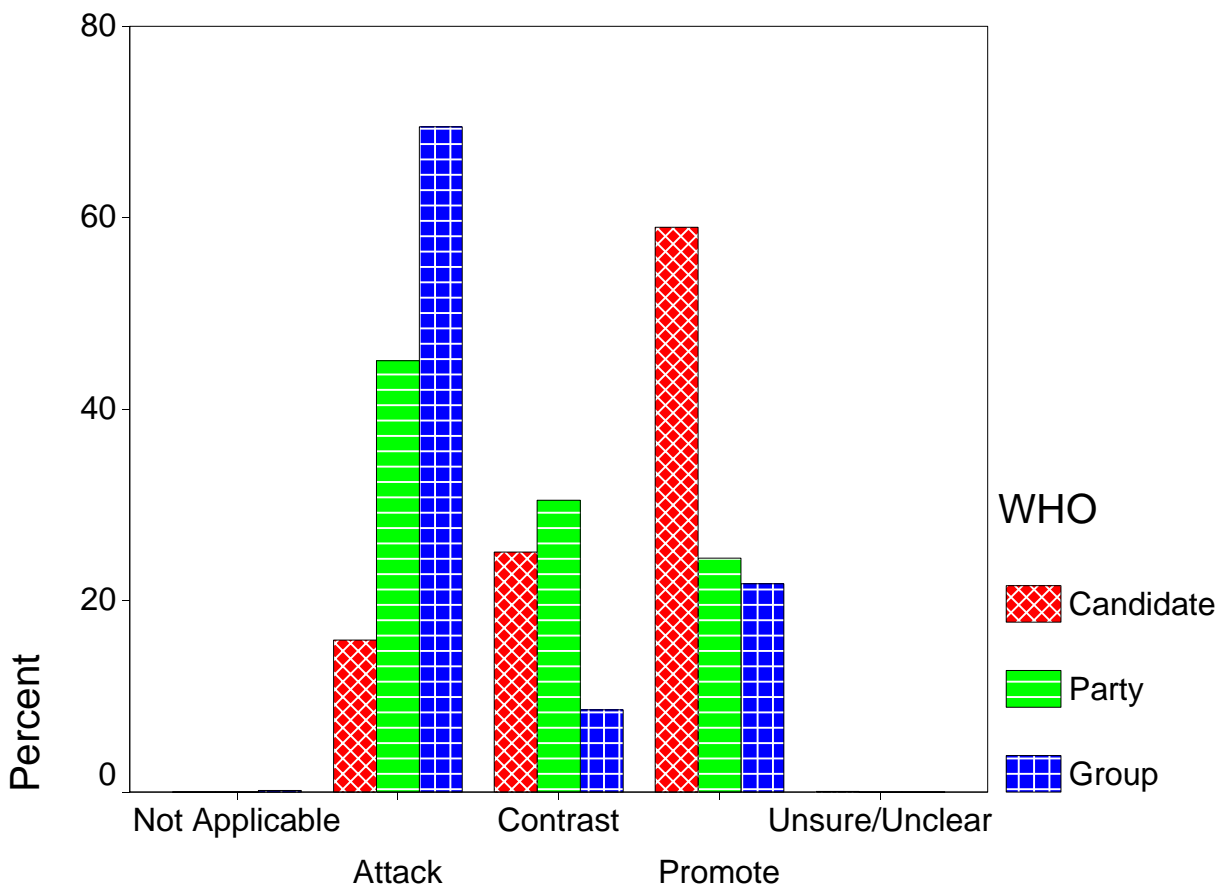


Table 5

Electioneering Ads by Candidates, Parties and Groups that Attack, Contrast or Promote Candidates

	Attack		Contrast		Promote	
	Count	Row %	Count	Row %	Count	Row %
Candidate	85729	15.9%	135531	25.1%	318798	59.0%
Party	104133	45.1%	70401	30.5%	56467	24.4%
Group	54671	69.5%	6752	8.6%	17117	21.8%
Table Total	244833	28.8%	212863	25.0%	392992	46.2%

Graph



Q14

Table 6

Television Spending by the Major Parties in Federal Elections Is Comparable, But Democrats Rely Much More Heavily on State Party Organizations

	National Party	State Party	Group Total
	Sum	Sum	Sum
Democrat	\$15,093,941	\$66,216,221	\$81,310,162
Republican	\$27,080,036	\$53,655,980	\$80,736,016
Group Total	\$42,173,977	\$119,872,201	\$162,046,178

Graph

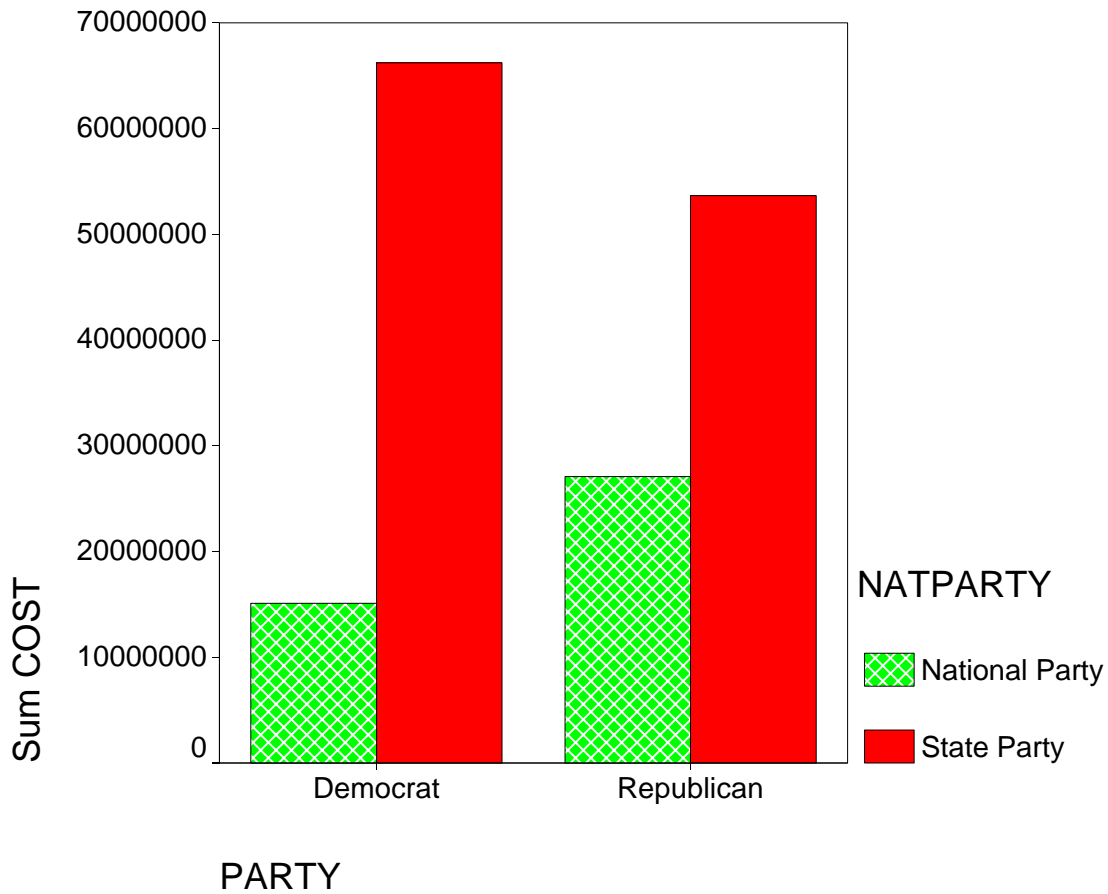


Table 7

Spending by the National and State Committees of the Major Parties, by Election Type

Presidential-General

	Democrat		Republican		Group Total	
	Sum	Col %	Sum	Col %	Sum	Col %
National Party	\$8,330,385	23.1%	\$15,314,767	35.1%	\$23,645,152	29.6%
State Party	\$27,206,355	76.9%	\$30,588,219	64.9%	\$57,794,574	70.4%
Group Total	\$35,536,740	100.0%	\$45,902,986	100.0%	\$81,439,726	100.0%

Senate-General

	Democrat		Republican		Group Total	
	Sum	Col %	Sum	Col %	Sum	Col %
National Party	\$505,602	3.6%	\$2,200,488	12.1%	\$2,706,090	7.2%
State Party	\$21,226,107	96.4%	\$13,587,157	87.9%	\$34,813,264	92.8%
Group Total	\$21,731,709	100.0%	\$15,787,645	100.0%	\$37,519,354	100.0%

House-General

	Democrat		Republican		Group Total	
	Sum	Col %	Sum	Col %	Sum	Col %
National Party	\$6,257,954	15.5%	\$9,564,781	32.6%	\$15,822,735	23.2%
State Party	\$17,768,608	84.5%	\$9,238,343	67.4%	\$27,006,951	76.8%
Group Total	\$24,026,562	100.0%	\$18,803,124	100.0%	\$42,829,686	100.0%

Group Total

	Democrat		Republican		Group Total	
	Sum	Col %	Sum	Col %	Sum	Col %
National Party	\$15,093,941	16.1%	\$27,080,036	29.9%	\$42,173,977	22.9%
State Party	\$66,216,221	83.9%	\$53,655,980	70.1%	\$119,872,201	77.1%
Group Total	\$81,310,162	100.0%	\$80,736,016	100.0%	\$162,046,178	100.0%

Table 8
Overall Party Spending on Television Ads
in Federal Elections:
Soft Money v. Hard Money

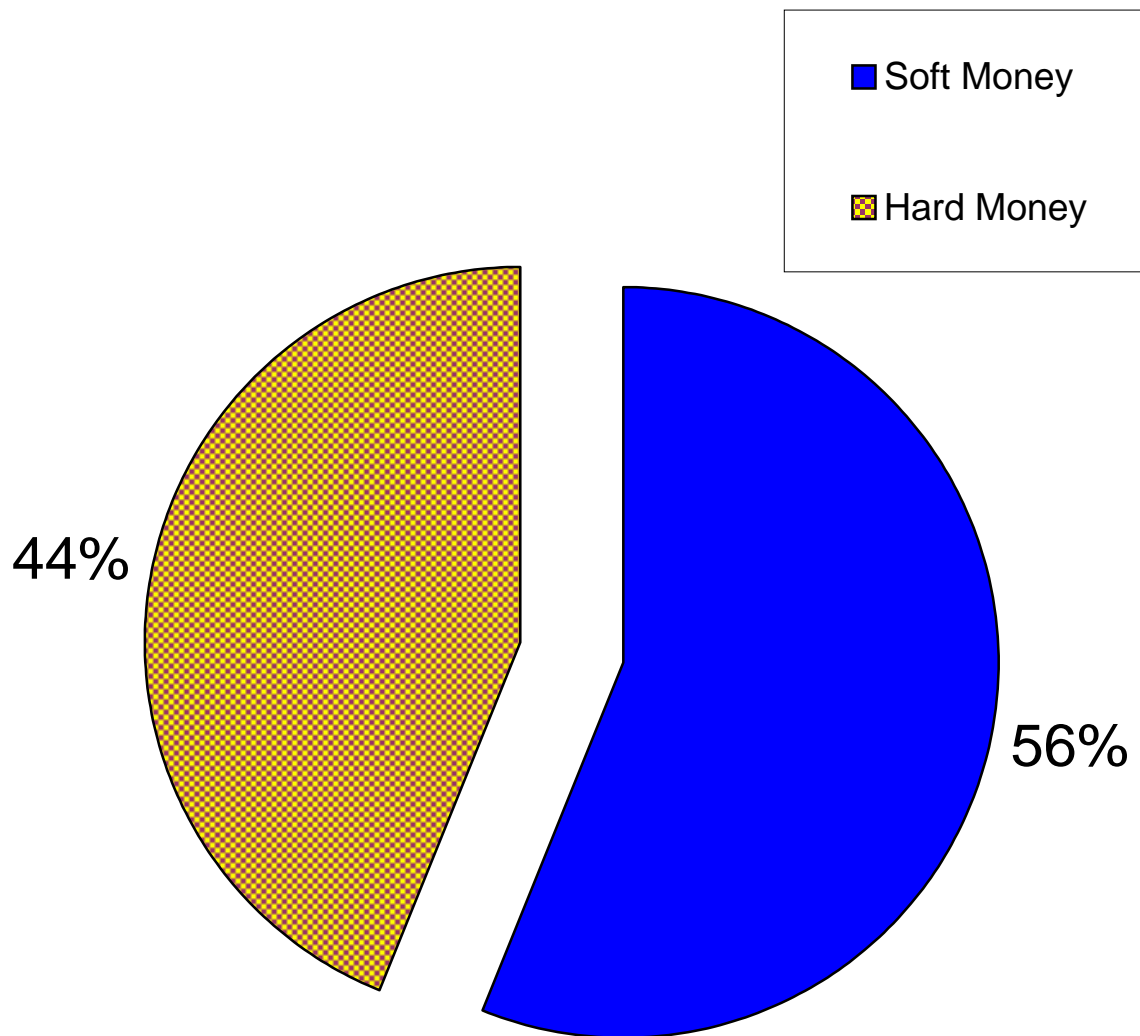


Table 9
State Party Soft Money v. Hard Money for Media Buys
in Federal Elections

