

Introduction: Clarifying a Muddled Debate

*“If God really wanted campaign finance reform,
he would have made it easier to understand.”*

Gail Collins

New York Times columnist¹

1. Gail Collins, “Personality Politics,” *Denver Post* (Mar. 3, 2001), at B7.

To the joy of some and to the disdain of many, campaigns for Congress and the presidency bring thousands of ads to American television screens, beginning in late summer and continuing through November. Having been in existence for more than 40 years, political commercials are now an entrenched part of presidential races, Senate races, House races, gubernatorial races, and even state Supreme Court races. Political ads have become the prime method for communicating with voters in geographically large districts and as such are potent tools for changing minds and ultimately winning elections. Advertising has been all-but-institutionalized in modern-day campaigns and has been professionalized by political and media consultants beyond what might once have been imaginable. Political advertising in 2001 is a mature cultural phenomenon with a distinct history, notorious examples, a reputation for deciding close races, and a debate raging about its role and its effects.²

The fact that television ads are so numerous in an election year indicates a consensus on the part of professional political consultants that television ads are a key element to a winning campaign. Yet despite this consensus, there has been grave public concern about the role television and particularly television ads play in elections. Each year—as candidates, parties, and groups attempt to convey their messages over the airwaves—familiar complaints about political ads are heard: there are too many of them, the ads are just soundbites, the ads are too negative, the ads are from an undisclosed source, the ads lack taste, the ads create cynicism and apathy. In short, there is considerable concern over the role of political advertising despite its deep roots in American political culture.

The debate over the role of political ads draws upon law, political science, social science, and viewers' visceral reactions to the ads they see. These overlapping bases for debate, however, make it difficult to find common ground upon which to base consensus and public policy, as everyday viewers, political scientists, and legislators move from drastically different assumptions and points of view. For example, vicious, negative ads may offend the sensibilities of the public but succeed in driving down approval ratings of the targeted candidate. Ads aired very early in a campaign may seem pointless to viewers yet accomplish the goal of scaring off potential opponents in a race. Likewise, scholars may be concerned about the impact of essentially anonymous advertising, while legislators feel that disclosure rules are already sufficiently effective. More-

KEY TERMS OF THE DEBATE

Throughout this report, several key terms will be used that need clarification from the outset. The most important are express advocacy and issue advocacy since the meaning of these terms is not only the focus of this study, but the meanings can and will change with adjustments in legislation or court interpretation.

Express advocacy is supposed to consist of campaign messages for or against the election of candidates, while issue advocacy is supposed to consist of non-campaign messages about political issues, public policies, or bills pending in Congress. The former may be subject to campaign finance laws regulating the amount and sources of campaign contributions, while the latter may not be subject to such regulation.

Under a common interpretation of the U.S. Supreme Court's 1976 decision in *Buckley v. Valeo* (addressing the constitutionality of the Federal Election Campaign Act), a magic words test determines whether or not a communication counts as express advocacy. Applying that standard, if a political advertisement contains such words as "vote for," "vote against," "elect," or other comparable terms, the message is viewed as express advocacy. If no such "magic words" appear in the message, it is then viewed as issue advocacy. As a consequence of this test, advertisements without magic words are often called issue ads.

This study examines the significance of the magic words standard of express advocacy in light of the real world of campaign advertising on television. The research shows that the standard has facilitated an abuse of the spirit, if not the letter, of federal campaign finance law. Parties and groups now saturate the airwaves with electioneering issue ads designed to influence votes in candidate elections by avoiding the use of magic words and thus obtaining the protection from regulation properly belonging only to genuine issue ads.

2. Bob Dole, presidential candidate in 1988, is believed to have lost the New Hampshire primary as a result of George H.W. Bush's "Senator Straddle" ad, which aired in the final weekend before the primary and which went unanswered by the Dole team.

over, whether or not an ad includes the words “vote for,” “vote against,” “elect,” or “defeat”—facetiously known as “magic words”—may seem inconsequential or even bizarre to viewers, but whether or not an ad contains such words can be crucial for determining how each ad must be paid for and regulated.

The result is a debate in which participants are in danger of talking past each other if they do not succeed in finding a shared factual basis for discussion. The purpose of this study is to establish a strong factual foundation which policymakers, opinion leaders, and citizens can use to add depth and accuracy to the debate over political ads. *Buying Time 2000* adds to the debate and to the policy-making process by providing statistical data and analysis of the television advertising in the 2000 campaigns for House, Senate, and president.

PURPOSE OF STUDY

The primary objective of this project is to give a systematic description and analysis of the political advertising in the 2000 elections, with special emphasis on the role issue ads have come to play in influencing elections. The major topic explored in this study is the extent to which parties and groups have used the issue ad loophole to shield their electioneering activity and avoid federal campaign finance law. In order to achieve this objective, three separate, powerful databases on campaign television advertising and issue advocacy have been created. The first two databases consist of televised political ads in 1998 and 2000. The third database documents how the parties have spent soft money in the 2000 election cycle. These data sets have been used to test assumptions about the nature of political advertising by candidates, parties, and special interest groups.

As in the 1998 publication of *Buying Time*, authored by Jonathan Krasno and Daniel Seltz, federal campaigns are the exclusive focus of our study. But while *Buying Time 1998* was limited to congressional general elections, *Buying Time 2000* includes data on the congressional primaries and general elections, as well as the presidential primaries and presidential general election. As a result, this year’s report is broader in scope, but it still can draw comparisons to the advertising activity of 1998.

THE RISE OF ISSUE ADVOCACY

As noted above and in our 1998 study, the use of electioneering issue ads is one of the latest and most intriguing innovations in campaign finance law eva-

sion. Parties and groups now routinely air ads that are intended to elect or defeat a candidate but which avoid “magic words” sometimes associated with express advocacy, allowing parties and groups to skirt campaign finance regulations. The message is nevertheless unmistakably clear in these ads, just as the message of a soda commercial is clear whether the slogan is “Drink Coke” or “Coke is it.”

Savvy political advertisers and the people who hire them have taken advantage of the magic words test. Corporations and unions now use treasury funds to pay for electioneering issue ads that are indistinguishable from candidates’ ads, despite decades-old federal laws banning the use of those funds for electioneering. Parties and interest groups have likewise fallen over each other to run ads directed at electing or defeating candidates under the

KEY PLAYERS IN THE DEBATE

For purposes of this study, there are three key players in political advertising. These players are:

Candidates: All ads run by candidates are assumed to be election-related, and so the money used to pay for them is subject to federal campaign finance laws.

Parties: All ads sponsored by political parties in federal elections are subject to reporting and disclosure requirements. Other restrictions may apply. Parties may pay for campaign ads coordinated with candidates, which are subject to spending and contribution limits; parties may pay for campaign ads that use the magic words but are aired independently of candidates, which are subject to contribution limits but not spending ceilings; and parties may sponsor “issue ads,” which are subject only to disclosure requirements.

Groups: As used in this study, the term “groups” includes individuals, organizations, corporations, labor unions, and PACs. When groups independently run ads that use magic words for or against candidates, the money that pays for the ads is subject to federal campaign finance laws, including disclosure rules. When groups run “issue ads”—whether genuine issue ads or electioneering issue ads—federal campaign finance laws under the “magic words” standard do not apply.

guise of issue ads. Stopping just short of calling for the election or defeat of a candidate allows these players to have an increasingly powerful impact on elections across the country.

Indeed, the scope of electioneering issue ads has expanded dramatically in the last three election cycles. The amount spent by parties and groups on electioneering issue ads swelled from \$30 million in 1998 to more than \$200 million in 2000. Viewers see more and more ads, but as long as the ads avoid using magic words, the electorate gets less and less information about who is behind them.

Many scholars, regulators, and politicians have for some time doubted the usefulness of the magic words test. But the data analyzed here shed light on just how few advertisements exist today that use those magic words to communicate an explicit campaign message. Data from the Brennan Center's study of the 1998 and 2000 elections demonstrate that in modern-day ad campaigns, magic words are virtually non-existent. Candidates, political parties, and interest groups rarely incorporate any of the magic words into their campaign ads.

KEY FINDINGS

In addition to confirming earlier findings, such as the deficiency of the magic words test in defining issue advocacy, this study documents many new and surprising results. Key findings in the 2000 study include:

- ▶ Independent groups spent, conservatively estimated, more than \$98 million on media buys for political television commercials in 2000. Political advertising by independent groups has sharply risen over 1998 levels in both the Senate and House races.
- ▶ For the first time ever, the major parties spent more on television ads in the presidential general election than the candidates themselves. The Democratic and Republican parties accounted for 49% of all the ad spending on the Bush-Gore battle, while the candidates themselves accounted for just 42%. Outside groups accounted for 9%.
- ▶ The magic words test for express advocacy has no basis in the reality of political advertising. In 2000, even candidates used terms such as “vote for” or “elect” in only about 10% of their ads; in 1998, only 4% of all candidate ads used such magic words.
- ▶ Electioneering issue advertising—ads designed to influence elections without using magic words—by the

parties grew dramatically from 1998 to 2000. Parties spent \$20.5 million on electioneering issue ads in the 1998 congressional races. In 2000, they spent \$79 million on electioneering issue ads in congressional races, and an additional \$80 million on electioneering issue ads in the presidential race.

- ▶ Electioneering issue advertising by groups grew dramatically from 1998 to 2000. In 2000, group electioneering issue ads totaled more than \$49 million, compared to \$10 million in 1998. Group electioneering issue ads in the congressional general elections amounted to more than \$32 million, compared to \$10 million in 1998.
- ▶ The parties moved from using attack ads to using contrasting ads. About 44% of the party ads were attack ads in 2000 compared to 60% in 1998. However, the percentage of positive ads dropped from 28% to 24%.
- ▶ Researchers determined that a majority of television ads (59%) sponsored by independent groups were electioneering ads. Within 60 days of the election, that figure grew to 86%.
- ▶ Specific congressional actions addressing the problems of soft money and issue advocacy can help close the loopholes without infringing on genuine issue advocacy. Restricting party soft money and replacing the magic words standard of express advocacy with a standard based on timing and candidate identification (the “60-day bright line test”) can better ensure that campaign finance regulations apply where appropriate. More than 99% of the group-sponsored ads that would be subject to campaign finance regulation under this test would have been appropriately captured.

Buying Time 2000 offers a unique look at the scope of advertising in the 2000 elections. The following chapters explain the advertising in the federal elections by examining in detail the timing, cost, number of airings, market locations, and tone of the ads aired, as well as other characteristics.

[Chapter Two details how the data analyzed in this report were collected. The study outlines the procedures used and explains the methods for coding each advertisement.](#)

[Chapter Three describes the historical events that led to the enactment of laws governing political advertising today. It gives a brief history of campaign finance regulatory efforts and discusses the recent evolution of federal law governing political advertising. It also outlines how](#)

those seeking to evade campaign finance rules have innovated their practices in a manner that allows them to utilize corporate and union treasury funds in a way campaign finance rules intended to prohibit.

Chapter Four identifies the different players in the 2000 elections and describes how each used political ads to meet their electoral objectives. Candidates, parties, and groups are examined as distinct categories and their ads are analyzed with respect to their tone, content, length, and timing.

Chapter Five looks at the different roles campaign ads played in races for the House, Senate, and presidency. The study notes the features of ad spending in competitive versus non-competitive races, as well as open seat races versus incumbent-contested races. It also explores the different ad strategies employed by Democrats and Republicans in the congressional and presidential races.

Chapter Six examines the timing of ads in all races with respect to variables such as sponsor and tone. Special attention is given to the timing of issue ads and the types of group issue ads aired within 60 days of a general election. Group issue ads featuring a candidate are examined for their timing as well.

Chapter Seven looks at the role soft money played in the 2000 ad fight. Using a newly developed database on soft money expenditures, information on the increased role of soft money in federal elections is presented.

Chapter Eight gives an overview of the legislative remedies currently proposed for dealing with electioneering issue advertising and soft money. A replacement for the “magic words” test currently used to shield electioneering issue ads from regulation is described and its potential impact is explored.

Appendix A is a case study on the presidential race, with particular attention paid to the state-by-state expenditures by the parties and the candidates over time.

Appendix B gets into the specifics of several closely watched 2000 races. Nine case studies are presented, consisting of the Senate races in Michigan, Virginia, New York, Washington, and New Jersey, and House races in Pennsylvania, California, New Jersey, and Kentucky. All are analyzed with respect to their ad quantity, tone, timing, and other factors.

Appendix C shows the coding format which provided the raw data for the *Buying Time* study.

Finally, Appendix D displays a sample storyboard which coders viewed.

Campaign advertising is at once a cultural phenomenon and a part of a larger body of political activity that is regulated by federal law. Political ads are therefore something most everyone has seen but which are governed by rules few understand completely. The policy conclusions that develop can be improved by detailed research into political advertising and a willingness to take a fresh look at the political tool which has come to dominate our perception of politics, politicians, and American elections.

