The McCain-Feingold bill in the U.S. Senate and its House counterpart, sponsored by Representatives Christopher Shays and Marty Meehan, are universally regarded as the most significant campaign finance legislation under serious consideration by Congress in a generation – perhaps since the 1974 amendments to the Federal Election Campaign Act (FECA). This legislation would not expand on the 1974 reforms but instead *restore* them by regulating the two mechanisms that have developed in the intervening decades to circumvent FECA – so-called "soft money" and "issue advocacy." Together and separately, soft money and issue advocacy have become an enormous part of many federal campaigns, in some cases even eclipsing the efforts of candidates operating under FECA's rules.

That popularity, naturally, has created a powerful group of donors and recipients who have exploited these loopholes and now oppose any attempt to close them, even as some contributors have begun to complain of the relentless pressure to give money. These political forces, coupled with the putative relationship between soft money, issue advocacy and several core constitutional values, have made McCain-Feingold among the most controversial bills facing Congress.

This paper uses a unique source of data about television commercials to examine some of the most important issues raised in connection to this proposal. It is appropriate that we focus on television advertising since it is the largest – and most discussed – single category of expenditures by candidates, parties and interest groups in federal elections.[1] McCain-Feingold's chief impact would surely be seen on the nation's airwaves – on the hundreds of thousands of issue ads paid for with soft money. Indeed, many of the arguments for and against McCain-Feingold are rooted in different interpretations of those very ads.

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For its critics, the huge outlay on issue ads is a dangerous scam perpetrated on democracy, a scam predicated on twin falsehoods that issue ads promote issues and soft money builds parties. For its defenders, the spending on issue advertising is a sign of democracy's vitality and any attempt to limit issue ads or soft money is inherently ham-handed and dangerous. Fortunately, many of these claims are empirical questions; given the proper data they can be carefully dissected and weighed. That is precisely what we do here, by using the most extensive data set on television advertising ever developed, to explore some of the core assumptions invoked by proponents and opponents of McCain-Feingold.

Monitoring the Airwaves

The sheer amount of television advertising – on approximately 1300 stations in the nation's 210 media markets during the 15 or 16 most popular hours in the broadcast day – makes

[1] See a series of reports about "outside money" by Professor David Magleby of Brigham Young University, http://www.byu.edu/outsidemoney/.

commercials extremely difficult to study. Fortunately, using satellite tracking first developed by the U.S. Navy to detect Soviet submarines, a commercial ad tracking firm, the Campaign Media Analysis Group (CMAG), is able to gather information about the content, targeting and timing of each ad aired. CMAG tracks commercials by candidates, parties and interest groups in the nation's top 75 media markets. Together, these markets reach approximately 80 percent of all households in the U.S. CMAG's technology recognizes the seams in programming where commercials appear, creates a unique digital fingerprint of each ad aired, then downloads a version of each ad detected, along with the exact time and station on which it appeared. The company later adds estimates of the average cost of an ad shown in the time period.

With funding from the Pew Charitable Trusts, CMAG's data for 1998 and 2000 were purchased. These data are literally a minute-by-minute view of political advertising across the country – along with a "storyboard" (a frame of video every 4-5 seconds plus full text of audio) for each ad detected during these two election cycles. The storyboards were then examined by teams of graduate and undergraduate students at the University of Wisconsin (2000) and Arizona State University (1998), who coded the content of each commercial.[2]

Some of the questions – such as whether an ad mentioned a candidate for office by name or urged viewers to "vote for" or "defeat" a particular candidate – were objective. Others were subjective. These included items asking coders to assess the purpose (to support a particular candidate or express a view on an issue) and tone (promote, attack or contrast) of an ad. Both types of questions elicited nearly identical responses from different students who assessed the same ad, indicating a reassuring degree of intercoder reliability. In addition, we also took special care to examine the disclaimer in each commercial, the written portion appearing usually at the end of each commercial noting its sponsor ("Paid for by..."), where possible.[3] From this, we were able to determine whether an ad is sponsored by a candidate, party or interest group, and, if paid for by a party or group, whether it is an issue ad or not.

Most of the 39% upsurge in congressional election ads from 1998 to 2000 came from parties and interest groups.

Coders ended up examining approximately 2,000 different federal ads (eliminating ads referring to state and local candidates or ballot propositions) in 1998 and nearly 3,000 similar ads in 2000. As Table One shows, these ads fell into different campaign-finance categories and appeared on the air hundreds of thousands of times. Most of the astonishing growth from 1998 to 2000, of course, is attributable to the presidential election. But the number of ads in congressional elections also rose in this two-year period from 302,377 to 468,206, and expenditures nearly doubled. Most of this upsurge came from parties and interest groups.

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[2]We thank particularly Daniel Seltz, NYU (1998), Lee Bradford, Arizona State (1998), and Travis Ridout and Mike Franz, UW-Madison (2000) for their work with the storyboards.

[3]A fair number of disclaimers were either missing or illegible in each year, perhaps appearing against a dark background or in the seconds between frames pictured in the storyboards.

Whose Ox is Gored?

The first question the professional politicians in Congress are asking about McCain-Feingold is, "Who it will affect?" Such questions are always perilous, since advertisers will undoubtedly try to adapt to any new regulations, searching for new loopholes to exploit. Which direction their search will eventually take them is at best an educated guess. What is more than guesswork, however, is the matter of how much money has already been spent on issue ads by the parties and their allies over the last two cycles.

Figure One (next page) breaks down the issue ads in Table One by party, showing the total number run by various Democratic and Republican party committees and their allies.[4] While Republicans had a noticeable advantage in issue ads in 1998, Democrats claimed a small lead in 2000. This modest reversal illustrates the unpredictability of soft money. Since contributions (to either parties or interest groups) for issue ads are unlimited, the generosity of a relatively small number of well-heeled donors alone may shift the tide. But equally striking is the near equality between the parties. Total soft money spending for the Democrats and Republicans was separated by no more than $5 million in either year, a relatively small amount among the hundreds of millions spent on political advertising in both years. That is not to say, of course, that no candidates would have been particularly helped or hurt had McCain-Feingold been in effect earlier – only that the Democrats' and Republicans' gains and losses come fairly close to balancing out across the country.

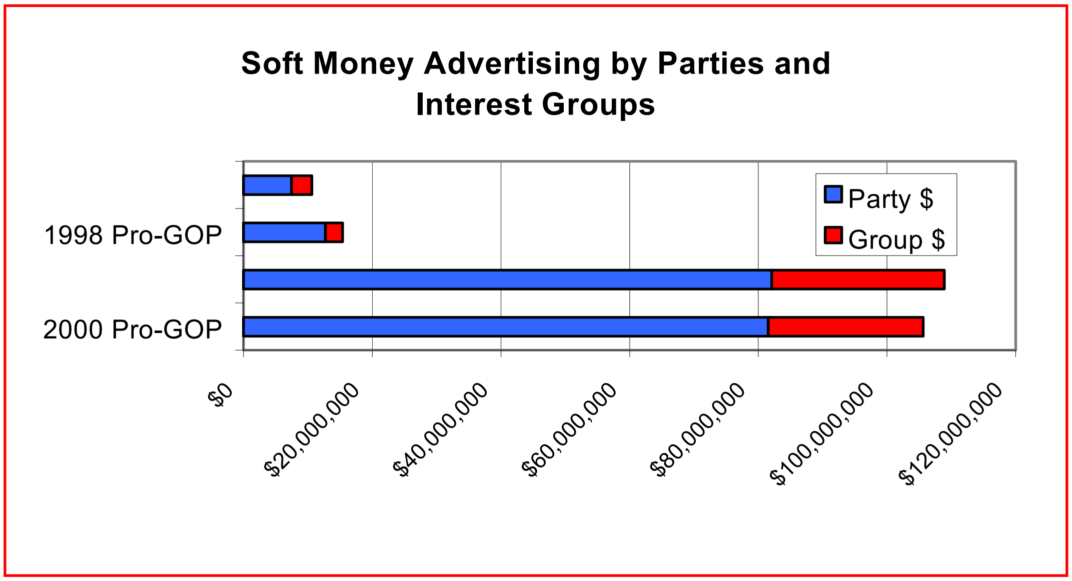
Table One
Television Advertising in Top 75 Markets

(Estimated cost/Number of spots in parentheses)

		1998	2000
Candidates:			
	Total	$140,617,427 (235,791)	(429,747)
Parties:			
	Issue ads	20,526,340 (37,386)	163,586,235 (231,981)
	Hard $ ads	5,296,318 (7,488)	29,166,653 (37,938)
Interest Groups:			
	Issue ads	10,371,191 (20,431)	95,893,837 (139,577)
	Hard $ ads[*]	421,222 (1,281)	-
Total:		$177,232,508 (302,377)	$623,217,897 (839,243)

[*]The vast majority of commercials sponsored by interest groups were issue ads. We are continuing to examine the data to determine how much groups spent on hard money ads (independent expenditures) in 2000.

[4]Each ad was coded according to which party's candidate, if any, was favored. It is worth noting that almost all groups, both established organizations and obscure entities formed to purchase issue ads, supported one party's candidates or the other's.



Regulating Issue Advocacy

The working definition of issue advocacy comes from a footnote in the Supreme Court's seminal decision in *Buckley v. Valeo* (1976) that limited FECA's impact by defining campaign communications as those "expressly advocating" the election or defeat of a particular candidate by using words such as "elect", "defeat" or "support." The purpose behind the footnote was to protect speech about "issues" – lobbying on bills before Congress, pronouncements or debate over public policy – from the financial regulations affecting partisan electioneering. The need to distinguish the two is obvious, but whether use of specific words of express advocacy (now widely known as "magic words") is an effective way to do so is less clear.

We sought to evaluate this standard by looking at ads purchased by candidates' campaigns. Candidates are a perfect test case since the purpose of their advertising is so obviously electioneering that the magic words test does not apply to them. Thus, candidates must live with FECA whether or not they use magic words. That might lead one to assume that candidate ads unabashedly urge viewers to vote for one person or defeat another, but it turns out that such direct advocacy is exceedingly rare. In 2000, just under ten percent of the nearly 325,000 ads paid for by federal candidates directly urged viewers to support or oppose a particular candidate or used a slogan like "Jones for Congress," or any of the full list of magic words in *Buckley*. Earlier, we found just four percent of 235,000 candidate ads in 1998 used any of the verbs of express advocacy; 96 percent did not ask viewers to vote for or against any candidate. Any device that fails to detect what it was designed to find nine times out of ten is clearly a flop. The magic words test simply does not work.

The failure of the magic words test does not mean, of course, that all issue ads are necessarily electioneering. But several things suggest that a great majority of them are. To begin with, the issues raised in commercials by candidates and those in issue ads are virtually identical. Table Two lists the top five themes appearing in both types of ads in 1998 and 2000. While occasional variations occur, the overwhelming impression is that issue ads mimic the commercials that candidates run. This may be mere coincidence, but it is a suggestive one. At the very least, it contradicts the argument that issue ads by parties and interest groups introduce policy matters into the political arena that are otherwise ignored. The truth is that candidates' agenda is generally the only thing addressed by any advertiser, particularly in the final hectic weeks of the campaign.

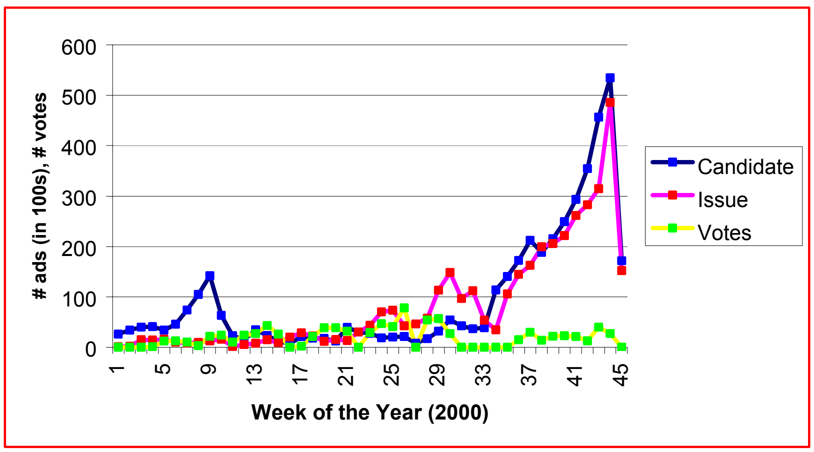
Table Two

Comparing the Issues in Candidate Ads and "Issue Ads"

	1998		2000
Candidate Ads			
Taxes	28%	Health Care	34%
Education	26	Education	31
Social Security	23	Taxes	26
Health Care	14	Social Security	24
Crime	9	Candidate background	24
Issue Ads			
Taxes	31%	Health care	30%
Social security	23	Medicare	21
Health care	20	Social Security	16
Education	14	Education	16
Defense	10	Taxes	16

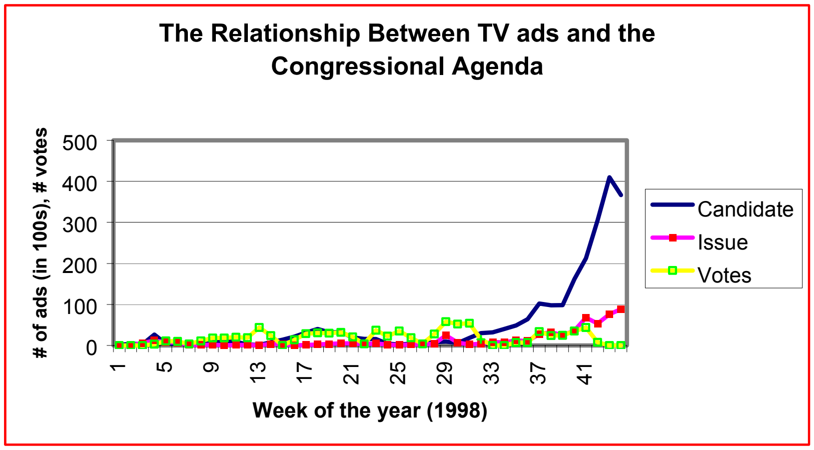
Note: Ads may mention multiple themes so percentages do not sum to 100.

There is also the matter of timing. If issue ads were intended only to pronounce on important policy matters, we would expect to see them spaced throughout the year or concentrated in periods when Congress is most active. As Figure Two demonstrates, however, that is far from the case. While in both 1998 and 2000, members of Congress cast a steady stream of votes and a series of what *Congressional Quarterly* labels as "key votes" throughout the year, the greatest deluge of issue ads did not begin appearing until after Labor Day (about week 36).[5] Indeed, even the most casual inspection of the number of issue ads that appeared each week indicates that this line is much more closely related to the activity of candidates, not the activity of Congress. This relationship between issue advertisers and candidates, repeated over two years, is far too strong to be coincidental. There is no doubt that issue ads are largely inspired by the same cause that motivates candidates, the slow approach of Election Day.



[5]Most of the key votes in each year occurred well before Labor Day, yet most of the issue advertising appeared after.

Despite the overwhelming evidence that the vast majority of issue ads are a form of electioneering, there were commercials in each year that our coders took to be genuine discussions of policy matters (22 percent of issue ads in 1998, 17 percent in 2000). Would the definition of electioneering created by McCain-Feingold – any ad mentioning a federal candidate by name in his or her district within 30 days of the primary or 60 days of the general election – inadvertently capture many of these commercials? We addressed this question by comparing the issue ads that would have been classified as electioneering under McCain-Feingold to the coders' subjective assessment of the purpose of each ad. In 1998, just seven percent of issue ads that we rated as presentations of policy matters appeared after Labor Day and mentioned a federal candidate. In 2000, that number was less than one percent. Critics may argue that chance of inadvertently classifying seven percent, or even one percent, of genuine issue ads as electioneering makes this bill overly broad. In contrast, these percentages strike us as fairly modest, evidence that McCain-Feingold is reasonably calibrated. In addition, our examination suggests that these errors may be reduced with some small additions to the bill.[6]



Party Soft Money

Just as the rules on issue advocacy are intended to safeguard free speech, soft money is also intended to achieve a worthy goal, in this case to strengthen political parties. Parties are a frequently underappreciated fact of political life in democracies. Political scientists have sought ways to buttress them for years, to augment their ability to communicate with and mobilize the public, and to magnify their impact as political symbols.

The most obvious place to start assessing the value of parties' advertising is with a simple objective question: Does the ad mention either political party by name? It is hard to imagine how a commercial might strengthen a party if it neglects to praise its sponsors or at least malign the opposition. Yet, party ads are remarkably shy about saying anything about "Democrats" or "Republicans"; just 15 percent of party ads in 1998 and eight percent in 2000 mentioned either political party by name. By contrast, 95 percent of these ads in 1998 and 99 percent in 2000 did name a particular candidate. It seems fairly clear that these ads do far more to promote the fortunes of individual candidates than the fortunes of their sponsors.

[6]The seven percent of genuine ads broadcast that would have been affected by McCain-Feingold is actually composed of just two different commercials that received fairly heavy play. See "Five New Ideas to Deal With the Problems Posed by Campaign Appeals Masquerading as Issue Advocacy", Brennan Center for Justice (2000), for several suggestions about adjusting the proposal to deal with these two ads. In addition, we think it is likely in the future that sincere lobbying efforts could find a way to broadcast an appeal that avoids McCain-Feingold by omitting the name of specific members of Congress.

Ads by parties were much more likely to be pure attack ads than ads by candidates.

A piece of supporting evidence for this conclusion comes from the perceived negativity of each ad. Coders found ads by parties to be much more likely to be pure attack ads (60 percent in 1998, 45 percent in 2000) than ads by candidates.[7] While we remain agnostic about whether attack advertising is somehow better or worse than other forms, we do note that there is little hope that this flood of negative commercials magically strengthens either party.

Finally, some defenders of party soft money also argue – in conflict to the claims about building parties – that these commercials help provide vital information to voters in various places and about various candidates which they would not otherwise receive. This is a complicated assertion to unravel. It is obviously debatable whether any particular ad conveys much information to viewers. If we assume – quite charitably – that all political ads help educate voters, then the question becomes a matter of allocation. Do party ads appear for candidates about whom little is known or in otherwise neglected districts and media markets? If the answer is yes, then it is fair to conclude that party ads may play an important role in informing the public.

"In both years, the majority of party ads appeared in just three Senate races and a dozen House contests."

The truth, however, is that the best predictor of the number of commercials aired by parties in a particular contest and media market is the number of ads aired by candidates in the same location. There are exceptions – the RNC sponsored all of the pro-Bush advertising in California this year and neither party ran commercials in New York after the two Senate candidates agreed to forgo soft money. But parties overwhelmingly concentrated their efforts in swing states and districts, the very places already saturated by the candidates. One indication of how focused party advertising in congressional races is, is that in both years, the majority of party ads appeared in just three Senate races and a dozen House contests, even though the CMAG system tracks advertising in scores of states and districts. As a result, the educational value of party ads is inevitably limited, as is any effect they might have on the competitiveness of elections.

Conclusion

Our examination of television commercials in 1998 and 2000 shows that the current campaign finance system is unmistakably flawed. The magic words test supposed to distinguish issue advocacy from electioneering is a complete failure. The rules allowing parties to collect unlimited amounts of soft money to build stronger parties have instead allowed parties to spend on activities unrelated to that goal, and perhaps even in conflict with it. The evidence for both of these conclusions is, in our view, overwhelming. The plain fact is that any contention that most

[7] Parties were the most negative advertiser in 1998, interest groups in 2000. Candidates in both years tended to emphasize positive information about themselves.

issue ads are motivated by issues or that most soft money builds political parties must ignore a veritable mountain of conflicting evidence. We find such claims completely unsustainable.

Whether that conclusion should translate automatically into support for McCain-Feingold and Shays-Meehan is a different matter. These decisions inevitably involve a number of factors, starting with the judgment whether these bills are the best response to the manifest weaknesses of our campaign finance laws. We cannot be sure that it is, but our analysis suggests two important facts in its favor. First, the experience of the last two elections suggests that neither Democrats nor Republicans would be disproportionately harmed by a ban on soft money or a stricter definition of issue advocacy. Indeed, neither party stands to gain or lose much against their counterparts, since the Democrats' relative financial weakness is proportionately smaller in soft money than in hard, and their allies outspent Republicans in both years. Past experience suggests that neither party would gain an advantage on TV if the McCain-Feingold bill becomes law.

"There is no reason not to conclude that the definition of electioneering in McCain-Feingold is, at the very least, an excellent start."

Second, we found no evidence that the new dividing line between issue advocacy and electioneering in McCain-Feingold is overly broad and would affect many commercials that we found to be genuine attempts to advocate issues, not candidates. Some critics will surely complain that we have no objective standards for determining which commercials are genuine issue advocacy, but that is untrue. The standards offered in McCain-Feingold are objective. The fact that they perform so well against the subjective judgment of our coders, each of whom examined hundreds of ads, is extremely reassuring. We are always eager to consider improvements, but there is no reason not to conclude that the definition of electioneering in McCain-Feingold is, at the very least, an excellent start.

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www.polisci.wisc.edu/tvadvertising

THE FACTS ABOUT TELEVISION ADVERTISING AND THE MCCAIN-FEINGOLD BILL

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