



The Money Game

How 'Soft Money' Came to Dominate Elections, Policy

By Frank Clemente

Demands for campaign finance reform have been a recurring feature of American politics since at least the time of the Civil War — reflecting the basic contradiction in American society between the reality of economic inequality and the promise of political equality.

This signature issue is so important to Public Citizen and its members because it affects in large and small ways every other issue we work on — curbing the power of corporations and other special interests to determine government priorities; ensuring access of all Americans to affordable health care and safe prescription drugs; ending reliance on nuclear power and promoting safe energy alternatives; pursuing trade policies that promote decent wages, worker rights and environmental protection; maintaining strong government public health, safety and environmental protections; and, when all else fails, ensuring that citizens have access to the courts to seek redress when they have been harmed by wrongdoing.

From its early years, Public Citizen has consistently exposed the loopholes in campaign finance law and advocated public financing of presidential and congressional elections. That reform agenda began with some promise in the mid-1970s as the Watergate scandal embarrassed Congress into enacting progressive reforms, including limits on private contributions and full public financing for presidential candidates in the general election and partial funding in primaries. However, the reforms were partly undermined by actions of the Supreme Court and the Federal Election Commission, which was set up to enforce the new laws. As a consequence, special interest Political Action Committee (PAC) money, which comes primarily from corporations and to a far lesser extent from labor unions and ideological interest groups, became more important than anyone had anticipated.

The 1980s and 1990s saw some near success in achieving major reforms — such as partial public financing of

congressional elections, curbs on PACs and limits on unlimited “soft money” contributions to the political parties. But the intransigence of leaders in both major political parties on various bills doomed the reforms.

By the 2000 election, massive and unlimited “soft money” contributions from corporations, unions and wealthy individuals had made a farce of the contribution limits. Moreover, independent groups spent tens of millions of dollars on phony “issue ads” that promoted or opposed candidates but evaded the campaign finance law. By focusing on these two biggest problems, contemporary reformers have succeeded in putting together bipartisan majorities in both the House and Senate and could very well send legislation to President George W. Bush this year.

The founding of Public Citizen in 1971 coincided with the greatest political scandal of the modern era — Watergate. That year Ralph Nader established the Congress Project to present a comprehensive look at Congress. Guided by Robert Fellmeth, with the assistance of Joan Claybrook and others, the project led to publication of the 1972 book *Who Runs Congress?*. The meticulously researched book laid bare the iron grip that business interests had on members of Congress and exposed the hollowness of existing campaign finance laws.

Even before the book’s publication, Public Citizen filed a suit demanding strict enforcement of the law. The complaint was accompanied by a 92-page list of hundreds of alleged campaign finance violations. As the Watergate scandal revealed, existing campaign finance laws were full of loopholes and bereft of real enforcement. Investigations of Richard Nixon’s 1972 presidential campaign unveiled a stream of illegal corporate contributions, heavy reliance on big contributions, secret “slush funds” and a host of presidential and legislative favors for top donors.

Congress responded in 1974 by passing the Federal Election Campaign Act (FECA). This landmark legislation established strict limits on both contributions to and expenditures by candidates, parties and other political committees. It also reinforced the bans on corporate and union donations to federal candidates that were passed in

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1907 and 1947 respectively.

Moreover, FECA established today's system whereby presidential candidates can obtain partial public funding for the primary campaign and full funding for the general election if they voluntarily curtail their own spending. The draft legislation contained public funding as well for Senate candidates, but the House would not pass public funding and it was dropped for congressional candidates. Finally, the new law established the Federal Election Commission (FEC) to enforce the law and mandated extensive public disclosure of election finances. A historic legal challenge to this new system in the Supreme Court case of *Buckley v. Valeo* was both a blessing and a curse. On the one hand, the Court upheld contribution limits and presidential public funding as reasonable limitations on free speech and association. It reasoned that they were needed to fight real or perceived corruption.

On the other hand, the Court overthrew the law's limits on how much candidates and independent groups could spend. It reasoned that political spending involved real speech and should not be curtailed under the First Amendment, whereas political contributions consisted only of "symbolic" speech and could be regulated. The Court also determined that the Constitution did not allow Congress to promote the speech of the average person by preventing fat cats and organized groups from making unlimited independent expenditures.

Furthermore, in a casual and overly narrow attempt to make sure that normal discussion of political issues was not impeded by campaign finance law, the Supreme Court suggested — in a footnote — that certain campaign contributions for communications could escape regulation entirely if specific "magic words" like "vote for" and "vote against" were not used.

In retrospect, the Court's elimination of spending controls — subsequently taken advantage of by inventive political fundraisers and interest groups — has undermined the promise of FECA in the past 25 years. So has a

series of misguided rulings by the FEC. A Pandora's box of PACs, soft money loopholes and sham issue ads now dominate our campaigns.

During the late 1970s and throughout the 1980s, the biggest challenge facing campaign reformers was the explosive growth of special interest PACs. These committees, mainly corporate but also union and ideological, became much more important than anyone anticipated when the 1974 reforms were passed. With campaign costs rising and with no spending limits, politicians gravitated to the PACs, which could contribute up to \$5,000 to a candidate per election (\$10,000 per cycle) and independently spend an unlimited amount for TV ads and other items. Plus, PACs could collect contributions up to \$5,000 per individual per year, while individuals were limited to giving only \$1,000 to a particular candidate for each election.

From 1972 to 1992, PAC contributions to congressional candidates rose from \$8.5 million to \$179 million. PACs generally became major allies of incumbents (and enemies of challengers) for both Republicans and

Democrats, trading their contributions for legislative favors. Since 1992, PAC contributions have risen more slowly and have actually decreased as a percentage of candidate receipts, though they still supply a quarter of the total dollars raised.

The corrupting and anti-competitive influence of PACs has been detailed in numerous Public Citizen reports in the past two decades.

The 1990s brought us close to lawlessness, as the ban on corporate and union giving and the limits on individual contributions to political parties was shredded. The major parties, aided by their representatives on the FEC, evaded legal contribution limits by pioneering soft money. Using the fictional argument that contributions for "generic" party activities such as voter registration, get-out-the-vote activities and issue ads were different from contributions used to support candidates for federal office, the major parties

opened a huge loophole in the campaign finance law. Thus, soft money could be procured in large chunks — generally tens and hundreds of thousands of dollars —



(From left to right) Rep. Christopher Shays, Sen. Russell Feingold, Joan Claybrook, Sen. John McCain and Rep. Marty Meehan hold petitions from Public Citizen members. Thousands of petitions imploring Congress to pass campaign finance reform were delivered to Capitol Hill.

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from corporations, unions and wealthy individuals. In the 2000 election, Democrats and Republicans collected almost half a billion dollars in soft money.

Both major presidential candidates received \$67.5 million in taxpayer funds for the 2000 general election but ignored the prohibition on accepting private funds by raising unlimited amounts of soft money. Republican and Democratic national committees raised \$147 million and \$115 million, respectively, in soft money. According to New York University's Brennan Center, the majority of the \$80 million worth of TV ads purchased by the parties in the campaign was paid for with soft money. Separately, both parties had their congressional committees create soft money slush funds that raised an additional \$194 million in contributions that funded major activities benefiting candidates' campaigns.

Because soft money is raised in such large denominations, channeled to influential party leaders and — like PAC money — focused on specific industry agendas, it is devastatingly effective. For example, well-publicized Public Citizen studies in recent years have demonstrated how soft money enabled the tobacco industry to defeat a tobacco control bill that would have stemmed youth smoking, pharmaceutical companies to derail an affordable prescription drug benefit for senior citizens under Medicare, HMOs to avoid a strong, federal patients' bill of rights holding them accountable for denial of necessary care, and casino gambling firms to receive a \$310 million tax break.

Another new and major feature of election campaigns in the late 1990s was the explosive growth of phony "issue ads" purchased by independent groups. In recent years, independent groups have exploited the Supreme Court's narrow definition of campaign ads and collected unlimited corporate, union and other funds for ads that purport to discuss political issues but in fact promote or oppose specific candidates. These TV, radio and other ads, which air mainly in the thick of the election campaign, completely escape FECA's disclosure requirements and contribution limitations for independent groups. According to the Brennan Center, almost \$60 million was spent for TV time alone during the 2000 campaign by such groups as The Business Roundtable, the U.S. Chamber of Commerce, the AFL-CIO, Planned Parenthood, the NAACP and Citizens for Better Medicare. The latter group was a front for the drug companies, a recent Public Citizen study revealed.

Over the past two decades, Public Citizen has called for extending the voluntary public financing system to the presidential primaries and all congressional elections. (We

have also supported efforts to establish such systems at the state and local level.) Unfortunately, congresses and presidents have not been ready to consider a comprehensive solution to the campaign finance problem.

Taking account of the political dynamics in Washington and the urgency of constructive change, Public Citizen has backed and helped shape progressive incremental reform initiatives. Such support has included advocacy and advice on Capitol Hill, fostering national coalitions, working with national, state and local media and enlisting local citizens' groups in lobbying campaigns.

From the late 1980s through the mid-1990s, Public Citizen mobilized its resources to support bills in Congress that would have provided for partial public financing (including low-cost media), voluntary campaign spending limits, PAC restrictions (such as reducing PAC contributions below the current \$5,000 per candidate per election), and closing the emerging soft money loophole.

On at least two occasions, these bills nearly became law but fell short of satisfying enough of the different interests, whose futures could be affected by the legislation.

For instance, a 1992 House-Senate compromise passed by a Democratic Congress, which included voluntary spending limits, free and low-cost media benefits, and PAC and soft money restrictions, was vetoed by Republican President George Bush.

In 1994, when Democrats, who claim to be reform champions, held both branches of Congress and President Clinton sat in the White House, they muffed a chance to pass similar reform legislation. Clinton failed to make reform a priority. And House and Senate Democratic leaders delayed reaching a compromise on PAC limits until just before the end of the congressional session. The resulting House-Senate Conference Report was easily defeated by a last-minute Senate Republican filibuster.

With the Republican Party achieving majority status in the House and Senate in 1995, we have entered a new era of more modest, but still significant, reform effort. Sens. John McCain (R-Ariz.) and Russ Feingold (D-Wis.) and Reps. Chris Shays (R-Conn.) and Marty Meehan (D-Mass.) have led the way in consultation with Public Citizen and other reform groups.

This critical legislative chapter was propelled by the soft money and phony issue ad scandals during the 1996 election. Building on the public outrage over White House coffees and Lincoln bedroom sleepovers for big Clinton donors and secret groups promoting their candidates in massive TV buys, McCain and company proposed streamlined legislation to address the most urgent cam-

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paigned finance problems. The legislation would have banned soft money and spending for phony issue ads without disclosure requirements and contribution restrictions of campaign finance law.

A grassroots campaign led by Public Citizen and other groups achieved a major success in forcing then-House Speaker Newt Gingrich (R-Ga.) to bring up the Shays-Meehan reform bill, which the House passed by a decisive, bipartisan margin in 1998 and again in 1999.

Nearly all of the Democrats and a quarter of the Republicans supported

reform after helping us to beat back numerous “poison pill” amendments that would undermine the bill.

In the Senate, McCain and Feingold also put together a majority of 52 lawmakers (45 Democrats and seven Republicans) in 1998 but were stalled by a filibuster directed by Senate Republican leaders Trent Lott (R-Miss.) and Mitch McConnell (R-Ky.). Eight more votes were needed to break the filibuster. By October 1999, in part through grassroots pressure, McCain and Feingold attracted three additional Republicans for a version of



their bill that focused mainly on banning soft money. Subsequently, McCain and former New Jersey Sen. Bill Bradley raised the reform issue in the presidential primaries, successfully pressuring candidates George W. Bush and Al Gore to present their own reform proposals.

As a result of the 2000 election, McCain and Feingold are on the cusp of getting the 60 votes needed to break the filibuster and pass a significant reform bill. Indeed, they now seem to have enough reliable votes to tie up the Senate if Republican leaders continue to refuse action on their bill — creating enormous political pressure to move ahead. A solid majority in the House (although not the leadership) remains committed to the reform cause. So the outcome will depend on the position taken by President Bush.

McCain, who vows to bring up this bill early in the 107th Congress, knows that he has already helped get Bush to support a ban on corporate and union (but not individual) soft money. He is betting that strong public pressure and Bush's imperative to build bipartisan bridges following the controversial Florida outcome will cause the new president to accept, if not endorse, the most significant reform since the Watergate era.

As the issue moves to the forefront, Public Citizen will be where it has always been: in the middle of the fray, pushing for progressive legislation today and fundamental reform tomorrow. [lpc](#)