

# **Influence for Sale? Campaign Finance Reform And the Role of Wealth in Politics<sup>1</sup>**

“A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.”

United States Supreme Court, *Buckley vs. Valeo* (1974)<sup>1</sup>

“Giving corporate campaign donors everything that's been on their tax wish list for decades...raises disturbing questions for all the ordinary Americans who can't afford to contribute to campaigns, but who pay their fair share of taxes come April 15.”

Nick Nyhart, Executive Director of Public Campaign<sup>2</sup>

## **Introduction**

One of the basic requirements of democracy is free and equal opportunities of access to the political process. Most Americans would agree that any system which granted undue access or influence to particular groups over the election of political candidates or the substance of policies would violate the ideal of popular government. However, for many years some politicians and public advocacy groups have worried that the American system of campaign fundraising does exactly that, giving a small number of very wealthy Americans a dominant role in the political process. Consequently, there have been periodic efforts to regulate the ways campaigns are financed.

The issue of campaign finance reform raises a number of important questions about the viability of American democracy. If political equality is a requirement for democracy to thrive, what happens when money makes some people effectively more powerful than others? Does the ability to donate large sums of money to political campaigns give wealthy Americans advantages of political access and influence that far exceed anything the middle class or the poor will ever enjoy? Is placing a limit on these donations, and by extension the influence they seem to purchase, a necessary step in the safeguarding of the political process? Are such limitations needed to ensure that all Americans, not just the very wealthy, have a voice in the political process? At the same time, however, is contributing to the financial support of a political party or candidate a form of political expression that deserves protection under the First Amendment? And is it not generally accepted in America that people can spend their own money as they see fit, without being subject to significant government

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interference? Furthermore, have the specific laws intended to regulate this financial activity done more harm than good by providing advantages to incumbent candidates and large, well organized interest groups?

In March of 2002, after several years of debate, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), also known as the McCain-Feingold or Shays-Meehan Act.<sup>3</sup> This act represents the latest in a series of efforts by reformers over the last 32 years to alter the system of campaign finance in the United States and reduce the influence of money in American politics. While the bill that became BCRA had been under debate in Congress since the late 1990s, the issue of campaign finance reform once again reached the national stage during Arizona Senator John McCain's bid for the 2000 Republican presidential nomination.

BCRA is meant to strengthen and replace the Federal Election Campaign Act of 1971 (FECA), which, after significant amendment in 1974, formed the principal basis for national regulation of political campaigns for federal office. In the 31 years between FECA and BCRA, spending on political campaigns skyrocketed mostly due to increased reliance on communicating through the mass media. Thus, concern over the influence of the wealthy, corporations, and special interest groups in politics has only increased. Supporters of reform believe that FECA and its successor acts have been hamstrung by several U.S. Supreme Court rulings that created firewalls against efforts to limit the size and sources of campaign donations in the name of protecting free speech, and the BCRA is the latest attempt to break through, at least partially. Only through careful and efficient regulation, argue the supporters of campaign finance reform, can democracy be safeguarded from those who wish to purchase political influence and power.

### **From FECA to BCRA: A Brief History of Campaign Finance Legislation**

In order to understand the basic issues of the debate over campaign finance reform, it is necessary to first review the basic legislation that governs campaign fundraising, up to and including BCRA. The federal government has made a number of efforts to regulate campaign finance over the years, some dating back to the late 19<sup>th</sup> century. Most of these simply required candidates to publicly disclose the amounts and sources of their campaign donations, but were not widely enforced. It was not until the 1970s, when FECA was passed by Congress and then amended, that an organized system of campaign finance regulation was established and enforced on the national level.

FECA, passed in 1971, established strict disclosure requirements for candidates running for federal office. It limited the amount candidates could directly contribute to their own campaigns and set spending limits for media advertising. In 1974, in the wake of the Watergate scandal, which in part involved the illegal use of funds from Richard Nixon's 1972 re-election committee, FECA was amended and significantly strengthened. The FECA amendments established the Federal Election Commission (FEC) to enforce campaign finance regulations, and established individual contribution limits.

Under these rules, individuals could give a maximum of \$1000 to any individual candidate during an election cycle, and a maximum of \$20,000 to any political party. Additionally, individuals could donate up to \$5000 to political action committees (PACs), but their total campaign contributions during a single election cycle could not exceed \$25,000. PACs in turn were limited to contributing \$5,000 to individual candidates, \$15,000 to party committees, and \$5,000 to any other political committee, with no annual limits.<sup>4</sup>

The FECA amendments also established public financing for presidential candidates, which would be paid for through a voluntary \$1 donation on individual income tax return forms. (Today this voluntary donation is \$3.) This public funding system, which was first used in the 1976 election, provided eligible primary candidates with “matching funds,” meaning the Federal Election Campaign Fund would match the first \$250 of every individual contribution provided the candidates agreed to obey certain spending limits. In the general election, the candidates would then receive a lump sum in exchange for agreeing not to raise additional private money.<sup>5</sup>

The 1974 law also restricted individual spending on behalf of the candidate but independent from the official campaign to \$1000. It set limits on what an individual candidate could spend for his or her own campaign, at both the Congressional and presidential level.<sup>6</sup> These provisions in particular quickly came under challenge in the federal courts.

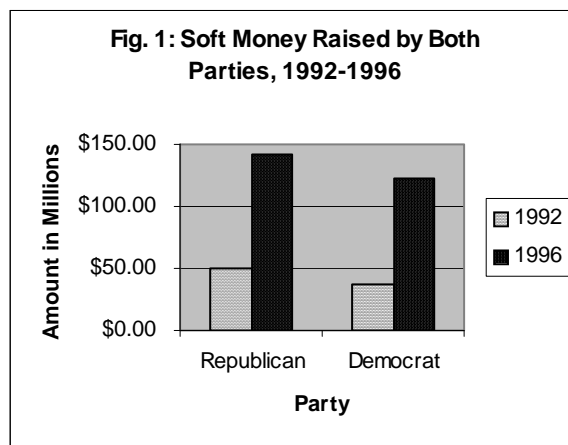
In 1976, in the case of *Buckley vs. Valeo*, the United States Supreme Court declared significant portions of FECA unconstitutional. In particular, the spending limits on federal campaigns, the limits on independent expenditures on behalf of a candidate, and limits on how much of a candidate’s personal money could be spent on a campaign were thrown out as violations of free speech. Essentially, the Court’s position was that the government did not have an interest in limiting the amount of money spent on campaigns because that money was generally used to advance political speech, not buy votes. “Presumably dollars are not stuffed in ballot boxes...The mediating factor that turns money into votes is speech. More money leads to more communications supporting the candidate. More communications supporting the candidate means more votes...”<sup>7</sup>

The court did uphold the limits on the size of individual donations in the interest of “preventing the appearance of corruption.” Unlimited donations could perhaps create the appearance that large donors were purchasing an election, which could cause people to lose faith in the government. The end result of the *Buckley* decision was that “Congress and state legislatures can limit the amount an individual or entity can give to a campaign and can require disclosure of campaign donors and expenditures. However, Congress cannot limit the amount a campaign spends, nor can it limit the amount individuals or organizations spend on their own to support a candidate’s campaign so long as these expenditures are made independent of the campaign.”<sup>8</sup> In addition, no limits can be placed on the amount of a candidate’s own money can be spent on his or her campaign. An extremely wealthy individual like Ross Perot, for example, cannot be prevented from spending vast sums of his own money in a bid for political office.

In 1979, Congress again amended FECA to bring it more closely into line with the *Buckley* decision. The most significant change enacted at this time was to allow political parties, PACs and individuals to spend unlimited amounts of money as long as it was not used to directly to support an individual candidate. This money could be used to promote issues rather than candidates, or in get-out-the-vote and party-building activities.<sup>9</sup>

PACs have been around since the 1940s, and were created as a means of getting around federal prohibitions against direct campaign donations by corporations or labor unions.<sup>10</sup> Corporations and unions could create PACs to funnel funds to candidates indirectly; they could donate their money to the PAC, which in turn donated the money to specific campaigns. In the wake of the FECA amendments, there was a boom in the growth of corporate and union-sponsored PACs. Between 1974 and 1979, the number of corporate PACs increased more than ten times, from 89 to 950, while the number of union PACs increased from 201 to 240.<sup>11</sup>

Unregulated, or “soft” money, has become the focus of recent efforts to amend campaign finance laws, and is at the heart of BCRA. “Hard” money is the money raised through individual donations to specific candidates, limited under FECA to \$1000 per person. Soft money, however, can be raised in essentially unlimited amounts, and over time was used to circumvent the restrictions intended by FECA. The allure of soft money was exacerbated by a 1996



Source: *Washington Post* Sept 4, 1998

Supreme Court decision which ruled that parties could also spend unlimited soft money on Congressional races as long as it was spent independently of any individual campaign.<sup>12</sup>

As a result, the 1990s saw a dramatic growth in the use of soft money in political campaigns. Between 1992 and 1996, the amount of soft money raised by both parties tripled. (See Figure 1.) While in theory this money could not be used to support a specific candidate, both parties began to violate the spirit, if not the letter, of the law. In the 1996 presidential campaign, \$262 million in soft money was raised, and of that \$120 million

was used to pay for so-called “issue ads,” which theoretically do not support a specific candidate, but frequently contained their images, footage from their campaigns, and even biographical information.

The distinction between “issue ads” and campaign ads was originally made by the Supreme Court in 1979. Issue ads are meant to focus on an individual issue, like social security, crime or national defense, and should not explicitly advocate the election or defeat of one specific candidate. Any ad that contains words like “vote for” or “support” or specifically advocated the defeat of a candidate were defined by the Court as campaign ads, which could not be funded by unregulated soft money. The Clinton campaign began a \$44 million issue ad series in 1995 that was funded by soft money but was nearly indistinguishable from campaign ads. The Dole campaign in 1996 ran one ad paid for by soft money that was produced by the Dole campaign and spent 56 seconds talking about Dole’s record and 4 seconds discussing an “issue.”<sup>13</sup>

Many such ads get around the distinction between campaign ad and issue ad by avoiding directly asking the viewer to vote for a specific person even while showing their picture or citing a candidate’s record in supporting or opposing the “issue” of the ad. These often take the form of negative attack ads; for example, in an “issue ad” claiming to be about social security, viewers may be exhorted to “Call Congressman Smith and tell him to stop destroying social security.”<sup>14</sup> Such ads are thinly disguised efforts to advocate the election or defeat of a specific candidate, but as issue ads they can be paid for with soft money, the sources of which need never be disclosed to the FEC.

BCRA was passed in response to this loophole in campaign finance regulation. Its key provisions include a ban on soft money contributions to political parties, and a ban on questionable “issue” advertisements by independent individuals or groups that favor the election or defeat of a specific candidate. Such ads would not be able to use a candidate’s name or image within 60 days of a general election or 30 days of a primary unless funded by hard money. As part of a compromise to pass the bill through the Senate, however, the limit on individual, hard money contributions was raised from \$1000 to \$2000, and the limit of \$25,000 in total contributions annually per individual was replaced by a \$95,000 limit for each two-year election cycle.<sup>15</sup>

The *New York Times* called BCRA the “biggest reform in a generation,” and “a victory for all Americans.”<sup>16</sup> Yet no sooner had it passed than it was immediately challenged in federal court. Senator Mitch McConnell (R-KY) and Representative Ron Paul (R-TX), the most outspoken opponents of BCRA in Congress, led a group of plaintiffs that includes the National Rifle Association, the AFL-CIO, the U.S. Chamber of Commerce, the American Civil Liberties Union and the National Association of Broadcasters in filing a suit alleging that the law, by banning particular types of advertisements and donations, violates freedom of speech. In April of 2003, a 3-member federal district court declared portions of BCRA unconstitutional. In particular, the court weakened the soft-money ban by allowing political parties to continue to raise unlimited contributions provided the money is not spent in support or opposition to a specific candidate.<sup>17</sup> This is a familiar refrain, as the courts have consistently tried to draw a distinction between general party-building and issue-advocacy

efforts and actual campaign activity, which was the original source of the soft-money loophole. Most other provisions were left intact. The district court's ruling has been appealed to the Supreme Court, but at the time of this writing the Court has not yet ruled on the case.

The debate over BCRA centers on the questions of soft money and issue ads versus campaign ads. However, a significant feature of the bill is its increase in the hard money contribution limit from \$1000 to \$2000; the first such increase since 1974. Despite the rapid increase in the use of soft money in the 1990s, the majority of campaign funds are still raised in the form of hard money, which can be used directly by candidates. In the election of 2000, of the \$2.9 billion raised by all parties and candidates, \$2.2 billion was in the form of hard money.<sup>18</sup> This has led some advocates of campaign finance reform to question whether BCRA will do anything to stop the rising costs of running a campaign or stem the influence of wealth in politics. As the next presidential election draws near and candidates begin their major fundraising efforts, it seems likely that new records for fundraising and campaign expenditures will once again be set.

### **The Costs of Running a Campaign**

With the 2004 election season underway, one of the most important factors in determining who will be the Democratic Party presidential nominee, and who may ultimately win the election, is the candidates' abilities to raise large sums of cash quickly. Since 1984, every candidate who raised the most money the year **before** a presidential election went on to become his party's nominee.<sup>19</sup> Fundraising ability, therefore, plays a huge role in determining the viability of different candidates. Democratic presidential candidate Howard Dean, for example, has risen in the first half of 2003 from a dark horse candidate to a frontrunner who has received broad media coverage, largely because he was able to very quickly raise a large sum of money. Dean was the leading Democratic fundraiser in the second quarter of 2003, and now ranks third in overall funds raised by a Democratic candidate. (See Table 1) Most campaign analysts predict that potential Democratic challengers to President Bush will need to raise between \$20-25 million in 2003 to make a serious run at their party's nomination. That works out to about \$60,000 a day, every day of the year.<sup>20</sup> Table 1 lists the Democratic candidates and their fundraising totals for the second quarter of 2003.

**Table 1: Democratic Presidential Candidates' Fundraising Reported to the FEC for Second Quarter 2003**

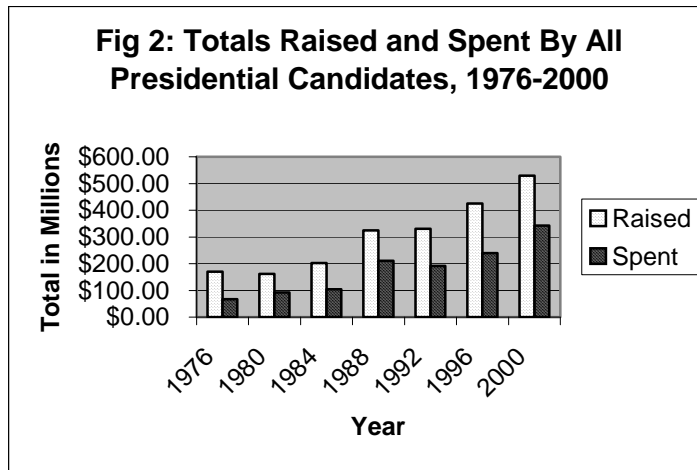
<b>Candidate</b>	<b>Total Raised</b>
John Kerry	\$16,028,266
John Edwards	\$11,936,277
Howard Dean	\$10,547,980
Dick Gephardt	\$9,750,802
Joe Lieberman	\$8,151,975
Lyndon H. LaRouche Jr.	\$4,755,882
Bob Graham	\$3,136,326
Dennis Kucinich	\$1,718,354
Carol Moseley Braun	\$217,109
Al Sharpton	\$184,415

Source: <http://www.opensecrets.org/presidential/index.asp>

It is possible by glancing at this table to separate the contenders from the pretenders, long before any primary votes have been cast. It is not difficult to pick out the front-running candidates for the nomination, based not on their ideas or their popular appeal, but on their ability to raise large sums of money quickly.

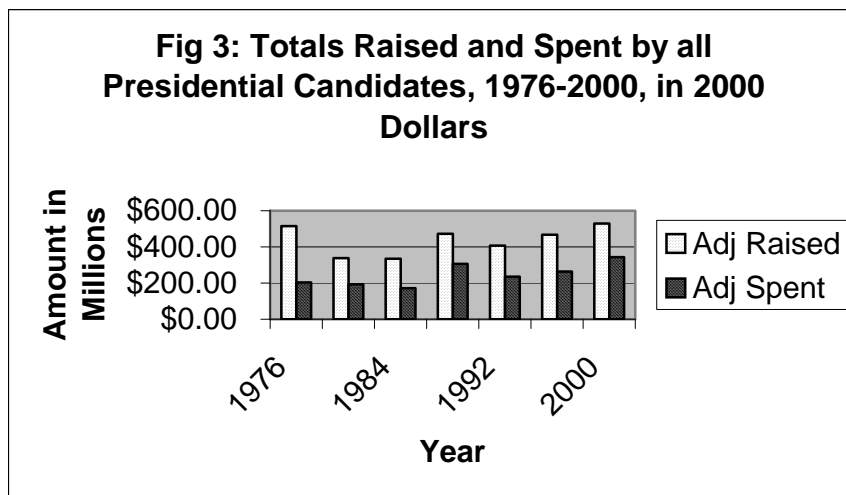
And based on current projections, it is likely that any candidate who hopes to mount a serious challenge to President Bush will indeed need to be a gifted fundraiser. In the summer of 2003, the Bush campaign raised \$35,109,600, or nearly as much as the top three Democrats combined.<sup>21</sup> By the time of the general election in 2004, Bush's campaign advisors expect to have raised over \$200 million, which would beat the national record Bush himself set with his 2000 campaign.<sup>22</sup> (See Appendix)

If this amount seems staggering, it is also not terribly out of step with recent trends in campaign fundraising. Since the 1970s, there has been a consistent rise in the cost of running a presidential campaign. In 1976, all presidential candidates (including all primary candidates) raised a total of \$171 million and spent \$66.9 million. In 2000, all candidates raised \$528.9 million and spent \$343.1 million.<sup>23</sup> (See Figure 2.)



Source: Center for Responsive Politics.

Supporters of campaign finance reform point to evidence such as this to demonstrate that campaign fundraising has spun wildly out of control. However, when the figures are adjusted for inflation, the increases seem far less dramatic or consistent. Figure 3 shows the same data in constant (2000) dollars.



Data deflated using CPI Inflation Calculator at <http://www.cjr.org/resources/inflater.asp>

While much of the attention in discussing campaign finance reform focuses on presidential contests, reformers point to similar trends in elections for the Senate and House of Representatives. In 2002, all candidates for the 435 seats in the House spent over \$600 million, while for the 34 seats up for election in the Senate, all candidates spent over \$320 million. The average winning candidate in the House spent \$898,184, while the average winner in the Senate spent \$4,812,159.<sup>24</sup> In 1990, the average winning candidate in the House spent \$407,566 while the average winner in the Senate spent \$3,870,621 on their campaigns.<sup>25</sup> Once again, however, much of the apparent increase in cost seems due at least in part to inflation. In constant dollars,

the average senate victory was actually more expensive in 1990, at \$5,269,822, while the average House victory cost \$562,160.<sup>26</sup>

Even so, it is clear that a great deal of money is required to run for federal office. In the 2000 election cycle alone, all federal candidates raised \$2.9 billion.<sup>27</sup> Are these numbers a cause for alarm? Advocates of campaign finance reform believe they are, and argue that the trends reveal a dramatic rise in the influence of the wealthy over politics and public policy. In a democracy based on the principle of equal access to the political process, is it cause for alarm when candidates for office must spend much of their time seeking large sums of money from the super-rich? There has long been a connection between wealth and political activity in the United States. Does the current system carry that connection too far?

### **Who Contributes to Political Campaigns?**

Despite the vast sums of money now required for most political campaigns, 96% of Americans give nothing at all to candidates running for office.<sup>28</sup> Under BCRA, the limit for individual contributions to a single candidate is \$2000; the top four Democratic candidates for the 2004 presidential nomination have raised 60 percent of their funds from \$2000 donations.<sup>29</sup> Needless to say, individuals who contribute at that level tend to be quite wealthy.

This ultimately has the effect of forcing candidates to concentrate much of their time on a particular segment of the population with clearly defined economic and even geographic boundaries. Most primary candidates spend most of their time in the year before an election campaigning in New York, Los Angeles, and Washington, D.C. Donors living in just 10 zip codes in those cities contributed over \$120 million to federal campaigns in 2002, amounting to about 6% of all money raised in that election cycle.<sup>30</sup> In order to raise the amount of money needed to run a modern political campaign, the candidates have to go where the money is.

Beyond that, they need to know who has access to large sums that can be legally donated to their campaigns. Most candidates seek wealthy donors who engage in “bundling” individual contributions. These are frequently top corporate executives, who collect \$2000 individual contributions from their fellow executives and their families on behalf of the candidate. In the election of 2000, for example, the MBNA Corporation was the largest single donor to the Bush campaign. MBNA CEO Charles Cawley directly gave Bush only the \$1000 then allowed by law, but he bundled over \$100,000 from his family, friends, and fellow executives at MBNA on behalf of the Bush campaign. Overall, MBNA executives, their families, and the company’s PAC contributed \$240,700 to the Bush campaign fund.<sup>31</sup> Only the very wealthy are capable of raising and contributing money on this scale. While only 4 percent of Americans contribute any money to political campaigns at all,

only one-quarter of one percent of the population are “large” donors, defined as contributing \$200 or more. Roughly 80% of all campaign contributors have incomes of \$100,000 or more.<sup>32</sup>

These facts have raised concerns that under the present system, America is developing into a plutocracy—a government not of the people, by the people and for the people, but of the rich, by the rich and for the rich. If the very wealthy can raise vast sums of money to elect candidates they favor, are those candidates more likely to favor issues important to the rich at the expense of the poor? And is it dangerous for the wealthiest Americans to have unprecedented access to politicians, allowing them to influence policy directly in a way unimagined by ordinary Americans?

During Bill Clinton’s 1996 Presidential campaign, large campaign donors were permitted to spend the night in the White House’s Lincoln bedroom. Aside from raising ethical questions about renting out the Executive Mansion to the highest bidder, in the quest to raise money the Clinton Administration bypassed some of the normal background check procedures required by the Secret Service for anyone staying overnight in the White House. In their urgent desire to raise ever more money for the campaign, the Clintons allowed several individuals of questionable backgrounds to spend the night in the White House because they were offering large sums of money to the campaign.<sup>33</sup> While this is perhaps an extreme case, it is not unusual for most candidates to hold extremely expensive dinners, luncheons and even coffee meetings with large campaign contributors, granting them face-to-face access with the candidate. This raises additional concerns because frequently these contributors, like MBNA’s Charles Cawley, who for his campaign fundraising efforts was named a “Pioneer”-level fundraiser for the 2000 Bush campaign, represent powerful business interests or industries that have dealings with the federal government.<sup>34</sup>

### **Do Campaign Donations Translate into Direct Policy Influence?**

It is clear enough that large campaign donations can purchase access and attention from politicians and candidates.<sup>35</sup> What is less clear is whether those donations can directly purchase changes in government policy. Supporters of campaign finance reform often point to what appears to be a significant correlation between certain policy changes, particularly when it comes to tax policies affecting major industries and wealthy individuals, and campaign donations. Opponents, however, are quick to point out that there is a chicken-and-egg dilemma involved in evaluating such information: Do politicians support policies to please their campaign donors, or do donors support candidates who vote for policies that are important to them?

There is at least circumstantial evidence to suggest that large campaign contributors have some influence over policy. In 2001, a joint report by Citizens for Tax Justice (CJT), the Institute on Taxation and Economic Policy (ITEP), and Public Campaign revealed that the House version of the 2001 economic stimulus bill

contained hefty tax breaks for corporations that were known to be significant campaign donors.<sup>36</sup> The House version of the stimulus bill originally included a repeal of the corporate Alternative Minimum Tax (AMT), a tax which is intended to guarantee a minimum tax level for corporations regardless of other tax breaks they may receive. The AMT repeal ultimately failed in the Senate, but is something a number of powerful corporations have been seeking for a number of years. According to the report, the House version would have given \$7.4 billion in immediate AMT rebates to companies that combined to donate \$45.7 million to federal campaigns since 1991. The report goes on to list 41 companies that have donated \$150 million to campaigns since 1991 and received \$55 billion in tax breaks between 1996 and 1998 alone.<sup>37</sup>

In addition, many corporations that are well-known for taking advantage of loopholes in the tax code to avoid paying taxes are also large contributors to members of the House Ways and Means committee and the Senate Finance committee, the two congressional committees directly responsible for making tax policy. Members of these two committees have received \$9.7 million since 1991 from companies that the report by CJT, ITEP and Public Campaign lists as top tax avoiders, including General Electric, Walt Disney and Microsoft. The evidence also suggests that these companies will donate generously to whichever party is currently in power in Congress, as donations from tax avoiders increased sharply to Republicans after they took control of Congress in 1994.<sup>38</sup>

Some industries that donate large sums to federal campaigns also benefit from a substantial number of tax breaks and regulatory changes even when public opinion is opposed. While polls indicate that most Americans consider protection of the environment and energy conservation important issues, the energy industry and heavy polluters have benefited from numerous tax breaks and easing of environmental regulations in recent years.<sup>39</sup> For example, in April of 2003, the House of Representatives passed an energy bill that gave \$18.7 billion in tax breaks to the energy industry. The oil and gas industries alone would receive 55% of these breaks, and those two industries gave \$24 million to both parties during the 2002 election cycle. Overall, oil and gas companies have contributed \$154 million since 1989.<sup>40</sup>

The bill is also loaded with tax breaks for the utilities industry, which has contributed \$78.5 million since 1989, but includes very few incentives for energy conservation. While there are some incentives to develop renewable energy sources, these exclude clean solar and geothermal power and include garbage incineration, which is highly polluting. The waste management industry has given \$14.5 million to federal campaigns since 1989, more than half of it to the Republican Party.<sup>41</sup> (See Appendix for information on campaign contributions of major industries.)

Vice President Dick Cheney's energy task force, charged with developing future energy policy for the United States, has also been strongly linked to the energy industry and campaign contributors. From January to September of 2001, the task force had 714 direct contacts with representatives of the energy industry and only 29 non-industry contacts. The companies contacted gave \$85.7 million to federal campaigns between 1999 and

2001, nearly 2/3 of which went to Republicans. The activities of the energy task force were conducted in secret, and a federal court had to order the Department of Energy to release documents relating to the task force to environmental lobbying groups. These documents “reveal that while forming the National Energy Policy, the Bush administration collaborated heavily with utility, oil, gas, coal and nuclear energy industries, incorporating their recommendations almost verbatim into its energy plan.”<sup>42</sup>

There have also been accusations that the Bush administration has used the war in Iraq to reward campaign contributors. In February of 2003, before the war began, the United States Agency for International Development (USAID), the agency charged with overseeing the reconstruction of Iraq, asked only 6 U.S. companies to bid for a lucrative set of contracts to rebuild the Iraqi infrastructure. The total value of these contracts was \$900 billion. The U.S. government came under criticism for asking for bids from so few companies for such a large set of contracts. It may be coincidental, but the 6 companies—Bechtel Group Inc., Fluor Corp., Halliburton Co. subsidiary Kellogg, Brown & Root, Louis Berger Group Inc., Parsons Corp. and Washington Group International Inc—combined to give \$3.6 million in individual, PAC and soft money contributions to federal campaigns in the three years between 1999 and 2002.<sup>43</sup>

At first glance, it appears that evidence such as this is hard proof that government policy is for sale to the highest bidder, and that the average American, who gives little or nothing to political candidates, has practically no influence. But while these examples show a *correlation* between campaign donations and favorable policy shifts, they do not prove a *causal* relationship. Many corporations give money to political campaigns, and many government policies may be seen to favor one corporation or one policy. It is difficult to prove a quid pro quo, however, and to link favorable policy changes directly to campaign donations. It is possible, for example, that campaign donations are an effect of policy changes, rather than a cause; individuals or corporations may simply reward politicians who support policies they favor by donating money to their campaigns. There is little if any hard evidence that government policy is directly purchased by campaign donations. Furthermore, it is unclear to what extent recent campaign finance regulation would change the situation.

### **Will BCRA Reduce the Influence of Money in Politics?**

It is too early to assess the effect of BCRA on the political system, as it only officially went into effect after the 2002 elections and parts of it may yet be invalidated by the courts. However, there are some supporters of campaign finance reform who argue that BCRA does not go far enough and may even make matters worse. At the same time, some critics of campaign finance reform argue that all reform legislation from FECA forward impinges on civil liberties, give unfair advantages to incumbents and create the endless cycle of fundraising that now typifies American electoral politics.

As has already been seen, one of the provisions of BCRA included an increase in the individual hard money contribution limit from \$1000 to \$2000. The main focus of BCRA was to eliminate soft money, which had been on the rise throughout the 1990s. Raising the hard money contribution limit, however, may have more significant consequences in the long run than the ban on soft money. Big contributors who engage in “bundling” hard money contributions will now be able to raise significantly more money, giving them greater influence and power. In the election of 2000, 75% of all money raised was in the form of hard money, and hard money contributions increased by \$555 million compared to 1996. During the same period, soft money increased by \$232 million.<sup>44</sup>

In addition, most of the hard money raised in 2000, roughly 70% came in the form of individual donations greater than \$200. As has already been described, only a very small minority of the population contributes at this level. The majority of these donors tends to be older than the average voter and is generally white males.<sup>45</sup> Increasing the hard money limit increases the influence and importance of these donors. Even if large campaign donations do not directly purchase specific policy changes, they do give the very wealthy undue influence over who becomes a candidate in the first place, because it is hard money from individual donors that is most important in the early stages of a campaign.<sup>46</sup>

Moreover, the change in the hard money limit is likely to heavily favor incumbent candidates, who already have lists of wealthy donors to rely upon. In the election of 2000, Senate incumbents were able to raise three times as much hard money from contributions of \$1000 than were their challengers, and House incumbents more than twice as much.<sup>47</sup> Incumbents are better positioned to take advantage of the new hard money limit, and are likely to have an even greater advantage over challengers under the new law.

### **Is Campaign Finance Reform Undemocratic?**

In spite of evidence that fundraising activities are a source of disproportionate influence for the wealthy, some Americans remain opposed to any form of campaign regulation. Bradley Smith, in a study for the Cato Institute, concludes that campaign finance legislation has served to make American politics less democratic. Smith argues that “efforts to regulate campaign finance have been little short of disastrous. They have distorted the political process, hindered grassroots political involvement, infringed on First Amendment rights, and helped to entrench incumbents in office while doing nothing to address the allegedly corrupting influence of money in politics.”<sup>48</sup>

The most significant feature of campaign finance legislation has been the individual and group contribution limits, which were supported by the Supreme Court in the *Buckley* case. However, in 1976 Chief Justice Warren Burger issued a partial dissent from the majority decision in *Buckley* in which he condemned the idea of contribution limits as harmful to the political process. Burger argued that “contribution limits would

restrict the amount of political speech and have a ‘chilling’ effect on grassroots political activity. The loss of ‘seed money’ in the form of large, early donations would, he argued, discriminate against many candidates. He further argued that the legislation [FECA], and in particular its provisions for public funding of presidential campaigns, would be used by incumbents to disadvantage challengers, third parties, and independent candidates.”<sup>49</sup>

Absent money, incumbent candidates have tremendous advantages over challengers, particularly at the federal level. They have the benefit of name recognition, and their public position grants them a great degree of free press coverage for their positions on various issues. In addition, through the “franking” system, under which Members of Congress can send out mail to their constituents free of charge, incumbents enjoy a great advantage in communicating their positions to potential voters. These mass mailings can of course be targeted to different sub-sets of important groups. Challengers, on the other hand, usually start off with a small group of dedicated supporters, and lack the previously established fundraising connections of incumbents. To overcome the advantages of incumbency, a challenger may need to spend more money, and has only a small support base from which to raise it. The limits on individual donations, therefore, work against challengers and in favor of incumbents.<sup>50</sup>

Furthermore, since the 1970s, campaign fundraising has become a full-time occupation for most candidates, and particularly for incumbents. In order to take full advantage of the benefits of incumbency and to discourage challengers, incumbents spend much of their time on fundraising, taking away from the time they spend doing their jobs. Challengers, also, must spend enormous amounts of time and effort on fundraising, as can be seen from the example of the Democratic Party candidates for the 2004 presidential nomination, several of whom currently hold elected office, but must, as mentioned above, raise about \$60,000 a day in order to remain competitive in the race. As a result of the demands of the current system of campaign fundraising, candidates and politicians spend more and more of their time raising money and less doing the jobs they have been elected to do. As Smith says, “In the end, the 1974 FECA amendments were something of a Faustian bargain for incumbents. In return for higher reelection rates, they are now subjected to a seemingly endless parade of fund-raisers.”<sup>51</sup>

In addition, critics of campaign finance reform argue that it violates civil rights. In a campaign, money pays for advertising and publication of campaign materials, which are a form of political speech. More money is not necessarily a bad thing, because it is used to create more speech. At the same time, the act of contributing money to a candidate whose views you support is an act of political expression, protected by the First Amendment.<sup>52</sup> The Supreme Court has supported this interpretation, within limits, since the *Buckley* case.

But while the Court has acknowledged that to some degree, campaign donations need to be protected as political speech, it has created a convoluted set of interpretations and tests to determine what violates this protection. The result has been a highly confusing set of restrictions on campaign activity. As Smith argues,

“the First Amendment was based on the belief that political speech is too important to be regulated by the government. Campaign finance laws are based on the directly contrary assumption—that campaigns are so important that speech must be regulated. The result has been a series of Supreme Court decisions making largely arcane, questionable distinctions between different types of entities, campaigns, and campaign activities.”<sup>53</sup>

## **Alternatives to Current Campaign Finance Regulations**

The current set of campaign finance regulations has drawn criticisms from both supporters of finance reform and its opponents. There are a few alternatives, however, to the path that campaign finance reform has in fact taken. Two alternatives that deserve brief treatments here are public funding in combination with voluntary spending limits, and complete de-regulation.

Public funding of campaigns has existed in one form for presidential campaigns since 1974, as was explained above. A number of states, however, have begun to experiment with a new form of public funding for all offices, and some campaign finance reform advocacy groups like Public Campaign have begun to advocate similar reforms at the federal level. This is generally called the “Clean Money, Clean Elections,” campaign.

New Mexico, Arizona, Massachusetts, North Carolina, Maine and Vermont have all implemented the Clean Money, Clean Elections system. Under this system, candidates who agree to abide by strict spending limits and raise no private money can qualify for public funds. The level of funding is determined by the cost of running a competitive campaign for the same office in the previous election cycle. Candidates qualify for public funding by collecting a large number of very small donations, often limited to \$5 per person or less. The purpose of this rule is to force candidates to seek many small donations from average people, rather than the well-off. If they are opposed by a big-spending privately funded candidate, they can apply for additional public funds based on the number of the small contributions they were able to raise.<sup>54</sup>

For example, in Arizona, first-term Governor Janet Napolitano had to collect \$5 each from 4000 voters during her 2002 campaign, in order to qualify for \$400,000 in public funds for her primary campaign and \$600,000 for the general election. When she was opposed by a free spending privately funded candidate, she was able to apply for an additional \$1.3 million in public funds to match him. Using this system, Napolitano won the Arizona gubernatorial election.<sup>55</sup>

Applying this system to presidential elections would involve only some alterations in the current system of public funding used by nearly all qualifying candidates. Currently, a candidate from a qualified party needs to raise at least \$5000 from 20 different states in order to qualify for funds matching the first \$250 of every individual donation. Instead of requiring a specific dollar amount, a presidential Clean Money, Clean Elections system would require a very large number of small donations, like the \$5 donations required in the Arizona

gubernatorial race. Candidates would then have to keep to a spending limit during the primaries and the general election, and not raise any more private money.<sup>56</sup> This would theoretically shift the focus of presidential campaign fundraising from large donations from the wealthy to these small, affordable donations by middle class or poorer Americans.

Critics of public campaign funding point out, however, that it would be far more difficult to apply to congressional elections. In order to provide \$300,000 in public funding to each of 870 major-party candidates in the House of Representatives, it would cost \$260 million every two years. It may be difficult to raise this money, as only 20% of Americans currently check the box on their income tax forms to donate to the presidential election fund. Public financing would also benefit incumbents, since it involves voluntary spending limits, and incumbents already possess significant advantages in visibility and name recognition. The spending limitations would hurt challengers, who may need to spend more to publicize their names and messages.<sup>57</sup>

At the same time, however, it should be noted that while public funding for federal campaigns would not be cheap, the amount of money required—even the \$260 million for House elections every two years, cited above—would make up a very small percentage of the roughly \$1.7 trillion federal budget. Furthermore, the reluctance of most Americans to check the Presidential Campaign Fund box on their income tax return may be due in part to the misconception that checking the box actually adds to their taxes, and in part to the fact that the best time to ask for a voluntary contribution to a public campaign fund may not be the moment that people are calculating what they have paid, or will owe, the government in taxes. This does not constitute hard evidence that Americans disfavor public campaign funding.

At the opposite end of the spectrum is the idea of deregulation of campaign finance. Supporters of deregulation argue that the basic assumptions of campaign finance regulation are flawed: Candidates do not spend too much money on campaigns, and money does not unduly influence policy. Even it did, the cure necessarily entails the violations of civil rights, and is thus worse than the disease. Deregulation, they argue, would benefit grassroots organization and help challengers overcome the natural advantages of incumbency.<sup>58</sup>

While it is certain that the cost of running a campaign has steadily increased, supporters of deregulation point out that campaign expenditures must be considered in context. In the two-year election cycle ending in 1994, for example, all congressional candidates spent \$590 million. This works out to about \$3 per eligible voter. Proctor and Gamble and Phillip Morris, Co., the two largest consumers of commercial advertising, spend roughly as much on their annual ad programs as all candidates and parties spend running for office.<sup>59</sup>

Campaign finance reform advocates warn that deregulation would lead to out of control campaign spending. However, the closest private-sector analogue to political campaigns is the advertising industry, which effectively regulates itself through market forces. It is possible that political campaigns would do so as well. Furthermore, while some special interest groups would certainly increase their donations to political candidates,

these may be cancelled out by ideologically opposing groups that would increase their donations as well, preventing a small set of interest groups from dominating campaign fundraising.<sup>60</sup>

The basic assumption behind deregulation, however, is that the influence of money in politics is not necessarily a bad thing. Even if money does have some influence over the actions of public officials, the thinking goes, this is nothing new in American politics. There has never been a “golden age,” when all Americans participated in the political process equally regardless of wealth, and it is not necessary, desirable or possible to bring about such a situation through legislation that infringes on personal freedoms.<sup>61</sup> People have a right to do what they want with their own money, and to express political preferences through financial contributions.

Supporters of public funding or campaign finance reform laws like BCRA, however, believe that it is necessary to take steps to limit the influence of money and wealth in politics to ensure the free operation of democracy. They believe the democratic process is threatened when a small minority of the population exercises undue influence over who becomes a candidate, which candidates are successful and what policies they support while in office. Sacrificing a small degree of personal freedom through limits on donations, spending, or specific campaign activities are, in this view, an acceptable price to pay for a freer and more open democratic process.

## Appendix

### Campaign Fundraising in the Presidential Election of 2000<sup>62</sup>

#### George W. Bush

Total Raised: \$193,088,650  
From Federal Funds: \$67,560,000  
Total Spent: \$185,921,855

#### Al Gore

Total Raised: \$132,804,039  
From Federal Funds: \$83,016,084  
Total Spent: \$120,031,205

### Fundraising for Key Members of Congress in 2001-2002<sup>63</sup>

#### Dennis Hastert (R-ILL) Speaker of the House

Total Receipts: \$2,995,170  
Total Spent: \$2,970,554  
53% raised from individual contributions  
44.1% from PAC contributions  
2.9% from other sources

#### Nancy Pelosi (D-CA), House Minority Leader

Total Receipts: \$978,261  
Total Spent: \$966,946  
43.8% from individual contributions  
55.8% from PAC contributions  
0.5% from other sources

#### Bill Frist (R-TN) Senate Majority Leader

Total Receipts: \$7,465,627  
Total Spent: \$5,810,706  
Individual contributions: 72.4%  
PACs: 19.6%  
Self-financing: 0.1%  
Other: 7.9%

#### Tom Daschle (D-SD) Senate Minority Leader

Total Receipts: \$7,364,382  
Total Spent: \$6,210,808  
Individual: 61%  
PAC: 32.9%  
Other: 6.2%

### Total Fundraising of Major Party Committees, 2001-2002<sup>64</sup>

Democratic Party: \$466,095,255  
Republican Party: \$652,098,012

## **Campaign Contributions of Select Major Industries, 2002<sup>65</sup>**

### **Defense**

Total Contributions: \$15,045,941  
% To Democrats: 37%  
% To Republicans: 63%  
Soft Money Contributions: \$3,750,755

### **Transportation**

Total Contributions: \$45,520,503  
% To Democrats: 29%  
% To Republicans: 71%  
Soft Money: \$14,635,724

### **Energy**

Total Contributions: \$56,400,582  
% To Democrats: 27%  
% To Republicans: 73%  
Soft Money: \$22,164,564

### **Labor**

Total Contributions: \$96,529,105  
% To Democrats: 93%  
% To Republicans: 7%  
Soft Money: \$35,862,806

### **Lawyers/Lobbyists**

Total Contributions: \$111,022,716  
% To Democrats: 71%  
% To Republicans: 29%  
Soft Money: \$23,268,487

### **Finance/Insurance/Real Estate**

Total Contributions: \$227,191,916  
% To Democrats: 42%  
% To Republicans: 58%  
Soft Money: \$90,382,356

## Notes

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- <sup>1</sup> Quoted in Dan Franklin, "Money Troubles," *Washington Post* September 4, 1998.
- <sup>2</sup> "Buy Now, Save Later: How Generous Corporate Campaign Donors Save Billions in Taxes," Public Campaign Press Release, November 7, 2001. <http://www.publiccampaign.org/buynowsavelater/pr11-7-01.htm> May 21, 2003.
- <sup>3</sup> Senators John McCain (R-AZ) and Russ Feingold (D-WI) and Representatives Christopher Shays (R-Conn.) and Marty Meehan (D-Mass.) are the sponsors of the bill.
- <sup>4</sup> "Important Dates: Federal Campaign Finance Legislation," Hoover Institution Public Policy Inquiry: Campaign Finance History. <http://www.campaignfinancesite.org/history/financing1.html> 1-2, (5/21/2003), Dan Franklin, "Money Troubles," *Washington Post* Sept. 4, 1998.
- <sup>5</sup> *Washington Post* Sept. 4, 1998.
- <sup>6</sup> "Important Dates: Federal Campaign Finance Legislation," 2.
- <sup>7</sup> Brief of the United States in *Buckley vs. Valeo*, quoted in Bradley A. Smith, "Campaign Finance Regulation: Faulty Assumptions and Undemocratic Consequences," Cato Institute Policy Analysis No. 238 (Sept. 13, 1995), 3-4.
- <sup>8</sup> Smith, 4.
- <sup>9</sup> "Important Dates," 2.
- <sup>10</sup> "Important Dates: Federal Campaign Finance Legislation," Hoover Institution Public Policy Inquiry: Campaign Finance History. <http://www.campaignfinancesite.org/history/financing1.html> (5/21/2003)
- <sup>11</sup> Federal Election Commission Media Advisory, Aug. 2, 1995, cited in "A Brief History of Money in Politics," Center for Responsive Politics <http://www.opensecrets.org/pubs/history/history7.html#fn29>
- <sup>12</sup> *Washington Post* September 4, 1998.
- <sup>13</sup> *Ibid.*
- <sup>14</sup> *New York Times* April 1, 2002.
- <sup>15</sup> *New York Times* March 21, 2002.
- <sup>16</sup> *Ibid.*
- <sup>17</sup> Nick Nyhart and Joan Claybrook, "The Dash for Cash," *Los Angeles Times* April 27, 2003.
- <sup>18</sup> "Why the Battle Over Hard Money Matters: Hard Facts on Hard Money," Public Campaign Press Release, <http://www.publiccampaign.org/hardfacts/>, 1. 5/21/03
- <sup>19</sup> "Statement on Presidential Money Chase: First Quarter Results from Public Campaign," Public Campaign Press Release, Jan. 29, 2003. <http://publiccampaign.org/>
- <sup>20</sup> *Nyhart and Claybrook.*
- <sup>21</sup> "2004 Presidential Election," <http://www.opensecrets.org/presidential/index.asp> (Aug. 11, 2003)
- <sup>22</sup> Matthew Cooper and Michael Weisskopf, "Bush's Brigadier of Bucks," *Time* (July 7, 2003) See Appendix for breakdown of Bush and Gore 2000 fundraising.
- <sup>23</sup> Center for Responsive Politics, <http://www.opensecrets.org/presidential/index.asp>, July 10, 2003.
- <sup>24</sup> "Election Overview: 2002 Cycle Stats at a Glance," Center for Responsive Politics, <http://www.opensecrets.org/overview/stats.asp?cycle=2002&display=T&type=A> July 10, 2003.
- <sup>25</sup> "Election Overview: 1990 Cycle Stats," Center For Responsive Politics, <http://www.opensecrets.org/overview/index.asp?Cycle=1990> July 10, 2003.
- <sup>26</sup> House and Senate numbers are in 2002 dollars, using <http://www.cjr.org/resources/inflater.asp> .
- <sup>27</sup> "Why the Battle Over Hard Money Matters," 1.
- <sup>28</sup> *Nyhart and Claybrook.*
- <sup>29</sup> *Ibid.*
- <sup>30</sup> *Ibid.*
- <sup>31</sup> *Ibid.*
- <sup>32</sup> "Guns and Tax Cuts, But Where's the Butter? Part I" Public Campaign *Ouch* #114, (April 3, 2003) <http://www.publiccampaign.org/ouch114.htm> (May 21, 2003). Also "CPI #18: Who Gives, Who Gets," May 31, 2001. <http://www.publiccampaign.org/publications/ouch-cpi/061-080/ouch077.htm#4>
- <sup>33</sup> *Washington Post* Sept. 4, 1998.

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- <sup>34</sup> *Nyhart and Claybrook.*
- <sup>35</sup> *Washington Post* September 4, 1998.
- <sup>36</sup> Citizens for Tax Justice describes itself as a nonpartisan, nonprofit research and advocacy organization dedicated to fair taxation at the federal, state, and local levels. The Institute on Taxation and Economic Policy describes itself as a non-profit, non-partisan research and education organization that works on government taxation and spending policy issues. Public Campaign is a campaign finance reform advocacy group that supports public financing of all state and federal campaigns.
- <sup>37</sup> “Buy Now, Save Later.”
- <sup>38</sup> *Ibid.*
- <sup>39</sup> “Gold vs. Green: Money, Politics and the Environment,” Public Campaign Factsheet, (September 2002)
1. <http://www.publiccampaign.org/publications/factsheets/greenvgold/index.htm> (May 21, 2003)
- <sup>40</sup> “Energy In-Security: Guns and Tax Cuts, Part II,” Public Campaign *Ouch* #115 (April 15, 2003), <http://www.publiccampaign.org/ouch115.htm> (May 21, 2003).
- <sup>41</sup> *Ibid.*
- <sup>42</sup> “Gold Vs. Green,” 4.
- <sup>43</sup> “Rebuilding Iraq: The Contractors,” Center for Responsive Politics Press Release (April 28, 2003) [http://www.opensecrets.org/news/rebuilding\\_iraq/index.asp](http://www.opensecrets.org/news/rebuilding_iraq/index.asp) (May 21, 2003).
- <sup>44</sup> “Why the Battle Over Hard Money Matters,” 1-2.
- <sup>45</sup> *Ibid.*
- <sup>46</sup> Adam Lioz, “What \$2000 Buys,” *New York Times* Op-Ed column, March 20, 2002.
- <sup>47</sup> “Why the Battle Over Hard Money Matters,” 2.
- <sup>48</sup> Smith, 1-2.
- <sup>49</sup> *Ibid.*, 4.
- <sup>50</sup> *Ibid.*, 15.
- <sup>51</sup> *Ibid.*
- <sup>52</sup> *Ibid.*, 19.
- <sup>53</sup> *Ibid.*, 22.
- <sup>54</sup> Nyhart and Claybrook.
- <sup>55</sup> *Ibid.*
- <sup>56</sup> *Ibid.*
- <sup>57</sup> Smith, 21.
- <sup>58</sup> *Ibid.*
- <sup>59</sup> *Ibid.*, 5-6.
- <sup>60</sup> James C. Miller, III. “Taking the Campaign Reforms to Court,” Hoover Digest (Spring 2003). <http://www.campaignfinancesite.org/structure/opinions14.html> (June 25, 2003)
- <sup>61</sup> Smith, 7.
- <sup>62</sup> “2000 Presidential Race: Total Raised and Spent,” <http://www.opensecrets.org/2000elect/index/AllCands.htm> (Aug. 11, 2003)
- <sup>63</sup> <http://www.opensecrets.org/politicians/index.asp> (Aug 11, 2003)
- <sup>64</sup> <http://www.opensecrets.org/parties/index.asp> (Aug. 11, 2003)
- <sup>65</sup> <http://www.opensecrets.org/industries/index.asp> (Aug. 11, 2003)