

**JANUARY 2003 POLITICAL SCIENCE CONFERENCE
HOSTED BY THE UNIVERSITY OF UTAH**

ORGANIZED WITH THE CAMPAIGN AND MEDIA LEGAL CENTER

Sunday, January 12

- 6:45 PM Welcome Reception and Museum Tour
- 7:30 PM Dinner and Keynote Speaker David Magleby, *Museum of Fine Arts*

Monday, January 13

- 9:40 – 10:30 **Radio Panel I, 2002 Elections: The National Story**
Participants include: Nancy Tate, David Magleby, Paul Herrnson, Tom Mann
- 10:45 – 11:35 **Radio Panel II, 2002 Elections: The Utah Story**
Participants include: Kelly Patterson, Dan Jones, John Swallow
- 12:00 – 1:00 **Student TownHall, Senator John McCain Event**
- 2:30 – 5:00 **Working Session I: Next Reform Agenda**

Tuesday, January 14

- 9:00 – 12:00 **Working Session II: Alternative Funding Mechanisms.**

“CAMPAIGN FINANCE REFORM: PAST, PRESENT AND FUTURE”
KEYNOTE ADDRESS BY DR. DAVID B. MAGLEBY

Professor David B. Magleby, dean of the College of Family, Home and Social Science and director of the Center for the Study of Elections and Democracy at Brigham Young University, introduced the themes of the conference in a keynote speech during the opening reception and dinner at the Utah Museum of Fine Arts on the University of Utah campus. Speaking on the subject of campaign finance reform, Magleby focused mostly on the present and future, while noting that important lessons need to be learned from the past. His main goal was to introduce campaign finance reform (CFR) as an ongoing process in which corrections and adjustments will need to continue to be made regardless of the outcome of the litigation challenging the Bipartisan Campaign Reform Act (BCRA). The following is an abridged version of this speech.

The Past

My interest in the topic of campaign finance in candidate elections started out of necessity. I had been named an American Political Science Association Congressional Fellow for 1986-87. Lacking the policy expertise that most members wanted from prospective fellows, I found a way to get on the staff of Majority Leader Robert C. Byrd as a way to better understand the U.S. Senate. Luckily for me, Byrd had just decided to cosponsor S-2, the 1987 version of Campaign Finance Reform (CFR). The task of working with this issue quickly fell to me. What unfolded was a great opportunity to learn about Congress and about this important policy question.

It is useful to reflect on why CFR was needed: lack of competition, incumbents' heavy reliance on political action committees (PACs), growing amounts of time devoted to fundraising, declining public confidence in elections and democracy, a deadlocked regulatory agency. I also learned that every member of the Senate saw himself as an expert on this topic.

In 1987 and for the next fifteen years, legislation was blocked in one house or the other, by filibusters, delay tactics, and even a presidential veto. There were sound reasons to doubt that congress and the President could agree on legislation.

My year working with members in 1987 was broadened as I worked with Candy Nelson and Tom Mann at Brookings in an effort to identify a bipartisan consensus on the issue in 1988 and 1989. The hope was that in small group discussions we could identify areas of agreement and construct a compromise. We had a disappointing outcome, but learned important lessons about the campaign finance reform project. We learned that there was a deep partisan divide on this issue; members did not feel enough urgency around the issue to risk their perceived self interest; there was agreement that the FEC was weak but disagreement over whether that was bad; the supply side of money and politics would fight hard for the status quo.

Things took a dramatic turn for the worst in the 1996, the watershed year for both soft money and issue advocacy. Soft money was used for specific candidate promotion or, more often, to attack a candidate. In the three elections since 1996, the party committees have expanded this activity through transfers to state parties and the use of Joint Fundraising Committees. As for issue advocacy, the AFL-CIO began by spending \$35 million to aid House Republicans. Now scores of groups have used this tactic, often in combination with conventional campaign investment strategies. The rule of thumb since 1998 is that the parties and interest groups will in the aggregate equal or exceed what the candidates spend in competitive races.

The ability of parties and interest groups to use soft money and issue advocacy for candidate-specific electioneering fundamentally undermined the Federal Election Campaign Act (FECA), reinforcing public cynicism about money and politics.

Soft money and issue advocacy undermined the FECA by removing any sense of limitation on large donors to candidate campaigns. The potential corrupting influence of large contributions has been a motivating factor for legislation and recognized by the courts as important. Aside from independent expenditures and candidate self-financing, which à la Buckley could not be limited, we existed for twenty plus years without large donors in our federal election campaign finance system. Issue advocacy and soft money invited large

donors to come to play and it is fair to say they have. Jane Fonda, for example, made a large contribution to Planned Parenthood in 2000, permitting them to spend \$10 million in issue advocacy. In 2002 she was not able to give and their budget for issue advocacy electioneering was \$2 million. Another large donor gave even more to the National Association of the Advancement of Colored People (NAACP) Voter Fund in 2000 but also gave much less in 2002. The pharmaceutical industry played the same game, giving substantial sums to Citizens for Better Medicare in 2000 and United Seniors in 2002.

The example of the pharmaceutical industry illustrates a second way that the soft money exemption undermined FECA and nearly 100 years of federal law. Corporations and unions were permitted to give general or treasury funds to the parties as soft money and to spend these same type of funds in election issue advocacy.

Another cornerstone of FECA was disclosure, which was substantially or entirely violated by election issue advocacy and soft money.

But soft money and issue advocacy have changed the environment on the Hill. Outside money was a wild card that incumbents did not control. Their work raising hard money for their campaigns could be instantly matched with outside money through the opposing party or an expenditure from a high sounding group. If there is one thing incumbents of both parties agree on, it is the desire to control their own campaigns.

The raising of soft money became another scandal in the series of campaign finance scandals, and although it did not trigger legislation, it reinforced public opinion that there was something seriously wrong with the system.

The Present

Several factors converged to make the passage of BCRA possible. These include:

- The vigilant sponsors, Senators McCain and Feingold and Representatives Shays of Connecticut and Meehan of Massachusetts.
- The 2000 election outcome and the subsequent loss of the ability to sustain a filibuster in the Senate due to the 50/50 and, later, the 50/49/1 split in favor of the Democrats.
- Heightened awareness of the ruse called issue advocacy after Republicans for Clean Air.
- The Enron scandal and the issue of corporate governance in general.
- The willingness of the media, foundations, academics and other interested groups to participate in the debate and provide coverage of the issue.

This last factor is of particular importance. The research and communication effort of groups such as Common Cause, the League of Women Voters, Democracy 21, the Brookings Institution and others, often funded by foundations, clearly influenced the legislative history of BCRA and have become a central part of the ongoing litigation.

As we have all observed, the story of lawmaking does not end with the presidential signature. The Federal Election Commission (FEC) has demonstrated the power of administrative agencies to reshape legislation through the rule-making process. The FEC's treatment of BCRA provides an unrivaled example of administrative agency rule-making. Fundamental reorganization of the FEC must now become a top priority.

Similar agency-related problems include the IRS's unwillingness/incapacity to report on Section 527 group activity in a timely and accessible manner. We still lack meaningful disclosure of Section 527 group activity. When people advocate deregulation and full disclosure, we must be aware of the ruse they are employing. What will be disclosed? When? Does the disclosure include election issue advocacy? Who will enforce the disclosure requirements?

Another important factor in the life of BCRA involves the courts and the *McConnell v. FEC* litigation. It will be very interesting to see how the courts respond to the record in this case. There is no shortage of data in the record in this case illustrating the uses of soft money, the sources and intent of soft money donors, the fiction that it is not targeted to specific races, and the fact that Election Issue Advocacy is indistinguishable from candidate and party electioneering communications in the eyes of voters and campaign professionals. How the courts rule on BCRA will provide data for us in the academic and foundation worlds on areas that need greater attention.

Assuming it is upheld, BCRA will make a difference in many ways. First it will eliminate soft money fundraising by national parties. This will increase the distance between the candidates and monetary donations. Second, BCRA will restore long-standing limitations on corporate and union treasury fund use in campaigns, except for direct communications to their members. These long-standing prohibitions were lifted to facilitate soft money, which in retrospect, was a huge mistake. BCRA also institutes a more realistic definition of electioneering and bans the use of these funds for electioneering. BCRA will require disclosure of all groups that engage in broadcasting electioneering issue advocacy and meet the new bright line test. Parties and candidates will be encouraged to give a higher priority to individual donors. Finally, BCRA will push some of the soft money and broadcast issue advocacy to the “ground war” of mail, phones and get out the vote efforts.

The Future

The reform community needs to anticipate the implications of different judicial decisions regarding BCRA and be prepared to take action.

Aside from the defense of BCRA, the most obvious agenda item is FEC reform. The FEC is a weak and ineffective entity, but still has enough power to botch the implementation of BCRA. We know from past experience that “interested money” has a way of surfacing in unexpected ways. Research and careful monitoring needs to occur in real time so decision-makers can understand how the new world is actually operating. We need to answer the following questions: What will large donors do? What will parties do? How will the intent of BCRA be circumvented?

On other fronts, we must return to the larger questions and concerns that preceded BCRA. Competition jumps to the forefront. Free airtime is one way to address the problem of invisible challengers and incumbency advantages. Disclosure rules, as mentioned above, must also receive considerable attention. The public financing system, particularly the check off, must be reworked to maintain vitality and avoid collapse. Continued monitoring and documentation of issue advocacy is necessary. Education of opinion leaders, in the judiciary, among civil libertarians and others, must be an ongoing effort. Of course, if the court strikes down BCRA, in whole or in part, there will be even more work to do.

This is an enormous task, but success is possible. We must avoid the trap of cynicism among the public, the media and the legislators—after all, the cynics were proven wrong by the passage of BCRA. That being said, it would be a mistake to see campaign finance reform as anything other than an ongoing effort and interactive process.

RADIO PANEL ONE: THE NATIONAL 2002 ELECTIONS STORY

The Hinckley Institute for Politics hosts a Coffee & Politics series. In conjunction with the Political Science Conference, reporter Doug Fabrizio from Radio West on KUER FM90 in Salt Lake City led a discussion with Nancy Tate, executive director of the National League of Women Voters, David Magleby, dean of the College of Family, Home, and Social Sciences at Brigham Young University and director of the Center for the Study of Elections, Paul Herrnson, professor of Political Science at the University of Maryland, and Thomas Mann, senior scholar in Governance Studies at the Brookings Institution. The following are some of the questions addressed by participants.

How do American citizens feel about the current campaign system?

Paul Herrnson first responded by stating that recent polls indicate a 20% decrease in voter turnout since the 1960s points to the growing feeling of exclusion among American citizens. The majority of voters believe that the current system is corrupt but disagree about how to repair the problems.

Thomas Mann noted that another factor contributing to the public’s low confidence in the campaign system is the tremendous lack of competition in most races. He stated that currently, nearly 90% of all races are non-competitive while the remaining 10% are extremely competitive and attract tremendous amounts of soft money and issue ads. The voters in these competitive races are bombarded with an intense, negative barrage of advertising and other campaign efforts by parties and interest groups.

What have been the effects of soft money on the national dialogue? What is the quality of that dialogue?

In the eyes of Nancy Tate, no such dialogue exists. Voters are tiring of the negativity in campaigns and suffer from a lack of reliable information. One symptom of this trend, she contended, is the low voter turnout in the 2002 elections. Turnout was appallingly low in light of the major issues (such as possible war with Iraq, terrorism, and the struggling economy) that characterize the current national situation.

According to David Magleby, soft money as used by interest groups has a notable potential to mute debate over important issues. A shining example of this, he stated, is found among pharmaceutical companies who created United Seniors Association as a shell organization through which an estimated \$14.5 million worth of soft money was channeled to the Republican Party. The innocuous appearance of this organization, he claimed, effectively masked the real motives and interests of the pharmaceutical companies it represented.

That being said, the role of money in elections should not be overemphasized. Mann noted that other factors, including the candidates themselves, also contribute to the quality of the national debate. As evidence of this, Mann pointed to President Bush's successful efforts to shape the 2002 Republican campaign agenda, and the corresponding inability of Democrats to effectively respond. Any discussion of campaign reform, he urged, must remember that money is not the only factor in the system; BCRA does not represent a fix-all solution, but rather a correction of certain flagrant problems.

How has the soft money system affected the quality of political leaders in the US? What kind of system are we creating?

Magleby noted that the soft money system has placed a premium on self-financed candidates. These candidates free up the soft money assets of the party, allowing that money to be focused on other key races.

Herrnson agreed. He stated that another effect of the soft money system is that fundraising ability has largely replaced seniority as the determining factor in leadership appointments. Important leadership positions are often awarded to the top fund-raisers, rather than those who are most qualified for the job. This does not mean that the leaders are necessarily inept—good fund-raisers are often excellent politicians as well. The more likely problem arises out of distraction. Because of the emphasis placed on fundraising, leaders spend large amounts of time engaged in fundraising activities. They also conduct regular activities with an eye to fundraising potential—contributing to the development of permanent campaigns.

Furthermore, he stated that the vast quantities of money involved in campaigns, either through fundraising or personal fortunes, has resulted in an enormous disconnect between politicians and voters. Voters perceive that politicians are too rich to be in touch with everyday realities. Furthermore, strenuous fundraising requirements often intimidate or preclude would-be challengers from running for office.

As to what kind of system BCRA is creating, the amount of time spent by politicians in fundraising activities will probably increase, thereby worsening the situation in this regard. If the abolition of soft money is upheld, incumbents will begin fundraising earlier and work more aggressively than before to maintain their advantage. To compensate, Herrnson recommended that additional reform measures such as Free Air Time and a modified public financing system must be enacted.

What if we moved to a system that combined complete deregulation with total disclosure? Would that solve the problem?

Magleby responded by asserting that a state of nature or a free market campaign system simply would not work. Not only is there no precedent of success under such conditions, there is also evidence that such a system would be deleterious to the democratic principles of this country. If all regulations were lifted, he claimed, the general public would be at a tremendous disadvantage. Their voice would be lost in the subsequent clamor of moneyed interest groups. Even if actual corruption remained miraculously absent, the perception of corruption would certainly continue.

Mann added that as for disclosure, most proposals are inadequate and misleading, despite their initial allure. Too often the information disclosed leaves a great deal undisclosed, allowing various shell organizations to act as conduits for powerful interest groups. He argued that any disclosure proposal must carefully account for the who, what, when, how much and why of political donations.

Herrnson conceded that although there are plenty of examples of bad or inadequate disclosure, there are in the current system several examples of good disclosure practices. Emily's List, for example, requires very transparent disclosure and is all the more effective because of it.

Will any unintended consequences or loopholes arise from BCRA?

Mann asserted that political actors will always try to get around limitations. PACs will almost certainly gain in importance. Already, he claimed, political parties are attempting to seed "independent" groups whose role will be to replace soft money. Magleby added that because the Levin Amendment allows soft money to continue at the state level, voters will be subject to a greater amount of mail, phone calls and other grass roots type campaigning. These things, unlike broadcasting, are not regulated by the law and will need to be addressed in future legislation.

Mann noted that perhaps the most worrisome effect of BCRA is the strain it will place on the already crumbling presidential public financing system. Because of deep flaws that have developed over the years, candidates are increasingly opting not to participate in the public financing system. BCRA could possibly make things worse. If that system is not reformed quickly, Mann argued that it could collapse altogether.

What other problems should be considered?

Tate mentioned that a great deal of consideration should be given to how we vote in America. She mentioned several reforms that need to occur with regard to outdated voter machines, and other similar issues. In addition to buying the machines, all fifty states must begin training their staff to operate and repair them. She also expressed that thought must be given to ways of providing for voters who do not feel comfortable with the new electronic machines. Although 90% of voters who used such machines said they felt very comfortable, an alarming 10% remained very uncomfortable. Lastly, she argued, Congress must appropriate funds for the implementing of voting machine upgrades. Without Congressional financial support, any bill demanding upgrades would come as an enormously unwelcome federal mandate at a time when most states are already strapped for funds.

What changes will voters observe in 2004 as a result of BCRA?

Mann predicted that before the election, there will be an increase of grass-root ground activities. Individual voter donations will increase, as will the mail requesting such donations. Magleby mentioned that predictions of exact changes will be hard to make until the Supreme Court hands down its ruling. Herrnson agreed and speculated that if the soft money ban is upheld and the issue advocacy regulations are stricken, then voters could expect a sharp increase in surrogate interest groups and donation requests.

RADIO PANEL II: THE 2002 ELECTIONS UTAH STORY

Ted Wilson, director of the Hinckley Institute of Politics at the University of Utah moderated a second panel that was recorded for public radio and was broadcast multiple times in subsequent weeks. Participants included Kelly Patterson, chair of Political Science at Brigham Young University, Dan Jones Political Science professor at the University of Utah and John Swallow, 2002 Republican candidate for Utah's 2nd District House seat. This panel focused on the 2002 elections in Utah, particularly the competitive Second Congressional District race in which Swallow ran, Patterson studied, and Jones conducted polling on throughout the election cycle. Also discussed were the effects BCRA, if upheld by the Supreme Court, will have on the state in 2004. Although the topics discussed and opinions expressed were specific to Utah, the insight and perspective they provide is potentially applicable to many local communities nationwide.

The discussion began with an evaluation from the panel of the role that soft money played in Utah's 2nd District Congressional race in 2002, when John Swallow (R) lost to incumbent Jim Matheson (D). According to Swallow, the influence of soft money in 2002 was not as significant as it had been in 2000, when Republican Derek Smith challenged Jim Matheson for the then-open seat. In 2000, Kelly Patterson

argued that the use of soft money was extensive and contributed to extremely negative campaigning on both sides. In 2002, much of that negativity was alleviated because soft money expenditures were not as prevalent.

Even so, Swallow noted that soft money still played an important role in the race. He made the point that *when* a candidate receives money (soft or hard) is almost as important as *how much* he/she receives. An example of this, he claimed, was that Matheson received the majority of his funds early in the race which helped him to build support in many of the rural areas in the District. Swallow, on the other hand, received most of his money late in the race. Although both candidates received virtually the same amount of money overall, Swallow admitted that Matheson, being the incumbent, may have had the advantage in the race due to the fact that he already had the benefit of name recognition and could be more conservative and selective in his spending. Swallow, being an unknown challenger, was not afforded the same luxury. Instead, he was forced to spend most of his budget on building name identification and introducing himself to the voters. Because late arriving funds forced him to do most of this towards the end of the race, it is possible that the election could have ended differently had the funding come earlier.

Swallow also pointed out that soft money, at national and local levels, is raised and spent by outside interest groups who have no connection with the candidates whatsoever, thus altering and, at times, perverting the message the candidate is trying to sell.

At one point in the discussion, the panel was asked what changes will occur in the 2004 election if BCRA is upheld by the Court. Swallow stated that he would be forced to rely less on national party money and more on his own fundraising abilities. He stated that BCRA will only increase the difficulty of the fundraising process, posing tremendous challenges to challengers and unknowns. Patterson agreed. He predicted that not only will candidates be forced to spend more time fundraising, they will also have to dig deeper into the grass-root levels to do it. He predicted that interest groups will inevitably get more involved in the process as well.

Although the panel members discussed at great lengths the role soft money played in the 2002 election in Utah, they also discussed several other factors that influenced voters last November. One was the Utah redistricting issue. Following the 2000 census, the largely Republican Utah State Legislature redrew the state's district boundaries. As a result, Salt Lake City, Utah's largest and most populated urban center, was split between the state's three predominantly rural districts. This move left many voters confused as to which district they belonged to. Jones noted that last November, many went to the polling station they had gone to for years only to discover that they had gone to the wrong place.

Swallow argued that the changes were equally challenging for the candidates in those districts. For example, Matheson handily won his race in the 2nd District in 2000. In 2002, however, due to the new boundaries, he was forced to campaign to an almost completely different constituency. During an open-mike Q&A period, former Utah Representative Karen Shepard asked the panel whether these the new boundaries affect loyalties and representation. Jones responded by declaring that yes, indeed they do. "In [Utah's] 1st Congressional District," he stated, "it will be almost impossible for a Democrat to win." Patterson recounted how Matheson, after being hounded to get tougher on environmental issues for several hours by a number of Salt Lake Democrats during a fundraising event, finally responded by saying that he just could not satisfy their requests, because of the overwhelmingly negative response such an action would induce among his more rural constituents.

Another issue discussed was the closed Republican Primary. In 2002, the Utah Republican Party, fearing possible sabotage by Democrats and third parties, closed its Primary election to anyone not registered with the party, thus preventing any unaffiliated voters from casting a ballot. The closed primary, according to Dan Jones, left a bad taste in the mouths of many citizens and possibly contributed to the low Utah turnout in the general election last November.

The final issue discussed by the panel was the impact media had on the last election. When asked if stories such as the Elizabeth Smart kidnapping, the Washington D.C. sniper, the 9/11 Anniversary, and the impending war with Iraq overshadowed the elections, there were several unexpected responses. Swallow responded by saying that those stories actually worked to his advantage. Because he received most of his money late, he was not able to spend much in the early stages of the race. With the media focused on other issues, he was able to lay low, fundraise and save money without being missed. Jones argued that since

most voters decide late in the process anyway, such stories had little impact on the outcome of the election. Patterson noted that media attention was low in 2002 because there was no statewide race to report on. He argued that coverage will increase almost exponentially in 2004 simply because there will be a Senate and Governor's race that year, in addition to the Presidential race. When asked if mandated free airtime for candidates would improve the races in Utah, all three panelists agreed that it would. Swallow noted that in 2002, the free air-time they received was deeply appreciated. Of the sixteen debates he had with Matheson, nine were televised. Such broadcasts, he stated, assisted his campaign immensely in building his name identification throughout his district. According to Swallow, free air-time would be an invaluable asset to all candidates in all races nationwide.

WORKING SESSION I: THE NEXT REFORM AGENDA

The first working session of the conference focused on what needs to be done in the next few months while waiting for the Supreme Court's ruling on BCRA, as well as the tactics, strategies, and reforms that need to follow that decision. Congressman Thomas Petri of Wisconsin addressed his legislative proposal that would force political phone bank services to disclose their clients. Paul Taylor of the Alliance for Better Campaigns addressed a bill on free airtime for federal candidates sponsored by Senator McCain and Senator Russell Feingold of Wisconsin. Norman Ornstein, political pundit and campaign finance expert at the American Enterprise Institute addressed a tax credit proposal for small political contributors. And Fred Wertheimer of Democracy 21 discussed the need for reform within the regulatory agency that oversees campaign finance practice, the Federal Election Commission.

The Big Picture and Reforming the Federal Election Commission

Fred Wertheimer began the session with a brief report on the current status of *McConnell v. FEC* and where it stands in the DC District Court. He reported that oral arguments were heard on December 7th of last year and that a decision is expected any day now. Although most BCRA supporters feel that the case was argued well, the chances for a victory from this lower court are slim. However, even if BCRA is completely struck down by the lower court, supporters are confident that the case before the Supreme Court is strong and has an excellent chance of being upheld.

The conversation then shifted to what many feel is the next step in campaign finance reform – reforming the FEC. It is no secret that the Commission did not support the McCain/Feingold legislation while it was being debated in Congress. In fact, three of the Commission's current commissioners have expressed nothing but disdain for the new law. This was clearly evidenced by the many loopholes the Commission added to BCRA's provisions during the rule-making process. Realizing that the Commission would be weak in its enforcement of the new provisions, both parties have already begun pushing, testing and occasionally blatantly violating the limits of the law. Trevor Potter, general counsel of the Campaign and Media Legal Center in Washington DC and former FEC commissioner and chairman, conceded that without significant structural reform of the FEC, adequate enforcement of BCRA will be virtually unattainable. Congressman Petri was asked how a bill proposing FEC reform would be received in the current Congress. His response, though disheartening, was not surprising. He predicted that without overwhelming support from outside interest groups and large-scale citizen involvement, the bill would most likely not even make it out of committee. Wertheimer reminded that getting BCRA passed was a seven year battle and that it will most likely take another seven years to make it effective, assuming that it is upheld by the Courts. Mann agreed. He said that proponents of BCRA cannot expect the new law to work immediately. Enforcement will require hard work and vigilance on the part of everyone who has worked so hard to get the reform process this far. Mann also countered the previous statement that the parties are not giving BCRA proper deference. He argued that many candidates take the law seriously—they are just watching each other to determine at what level BCRA will be enforced.

Taking courage in this, Norman Ornstein suggested that reformers talk to Republican Senator Susan Collins

from Maine about calling for hearings in Congress on the actions of the FEC commissioners during rulemaking. He suggested that members' dislike for executive agencies that consistently ignore their mandates could outweigh their dislike for BCRA. He also argued that the hearings not be limited to the FEC alone, but be expanded to include other executive agencies as well, in an effort to gain wider support. This tactic may be an effective indirect way to get FEC reforms without having to specifically target the FEC.

After Ornstein's suggestion, the question was posed to the participants as to how reformers should react if the Supreme Court only partially upholds BCRA. Herrnson shared his opinion that the panel should have a common understanding of what would need to be said in such a scenario. Wertheimer affirmed that reformers will need to remain strong and vigilant if such an event occurs. He encouraged the participants to remain bold, strong, and hopeful when the lower court's decision is handed down—a decision that will most likely swing in opposition to BCRA. In response to such a decision, a movement may begin in Congress to repeal the rest of BCRA before it reaches the Supreme Court. It will be the responsibility of the reformers and the many organizations that made BCRA possible to keep that from happening.

Another issue addressed in the session was, if BCRA is upheld by the courts, would Democrats adhere to it even if it's not enforced by the FEC? The response was, unfortunately, only a "maybe." Anthony Corrado claimed that it will be very hard for Democrats to abide by BCRA when running against the very popular George W. Bush who, as demonstrated by the 2000 election, will have almost unlimited resources. To abide by BCRA, he argued, would put Democrats at a disadvantage equivalent to political suicide. However, the response of Democratic supporters of BCRA will be vital to the law's credibility and survival. It was generally agreed that presidential hopefuls Senator Kerry, Senator Lieberman and Congressman Gephardt, each of whom supported BCRA, need to be contacted and persuaded to abide by BCRA's provisions.

Another important problem reformers might soon face was brought to the panel's attention. Sean Treglia of the Pew Charitable Trusts indicated that campaign finance reform could start losing its funding among institutions if it does not acquire additional help. He suggested that reformers begin soliciting major celebrities, media moguls, and academic powerhouses to join the cause. Economic downturns have shrunk trust funds, limiting available resources. Furthermore, resentment for the money granted in favor of CFR is growing rapidly among other special interests whose petitions are denied. Larry Hanson of the Joyce Foundation agreed. He called for a group to meet and develop several five-year plans based on different court outcome scenarios. Such plans, he said, will help tremendously in convincing the various Boards of Directors across the nation to stay the course and continue to finance those seeking reforms. He argued that the piecemeal, improvisational method reformers have used so far is beginning to make several Boards nervous, especially with the slowing economy. If five-year plans were developed, much of that nervousness can and would be alleviated.

In response to Treglia's suggestion to appeal to the media and pop culture to solicit support for CFR from the general public, Tate said that getting support from members of her organization is easy, whereas winning the support of the general public is much more difficult. "It's too hard," she said, "it's too complex – even when it's done on the West Wing." Rick Davis, however, disagreed. He made the argument that the public already "gets it" and that a public education campaign is unnecessary. "You don't need an education campaign to tell people the system doesn't work. They already know," he said. He warned the panel that underestimating the general public is dangerous and foolish. He also warned reformers not to pat themselves too hard on the back. Although he conceded that the movement has indeed come a long way, he reminded the panel that there is still much more that needs to be done before a real victory can be claimed. "Until the public gets a manifestation that the system has been fixed, we haven't won anything," he said. Tate observed that it will become more difficult to acquire support from the already cynical public if all the worst case scenarios come to pass in the courts.

Tax Credit Proposal

The panel discussed two viable and potentially successful reforms aimed at winning public support by providing the "manifestation" of success mentioned by Davis. The first suggestion was to provide tax credits for campaign donations. Ornstein said reformers could push to make hard money political donations tax deductible to the general public. This reform would help broaden the individual donor base and help candidates in their fundraising efforts. He also mentioned that as an additional incentive, TV

vouchers could be offered to those candidates who specifically solicit these types of donations. Despite its appeal, the tax credit idea has two disadvantages. First, it would reward people who already give without the credits. Second, low income families may not participate, due to the fact that the credits would not take effect until after the New Year, a lag period too long to make it worth their while. A cost benefit analysis of the tax credit idea, however, outweighs these concerns. Corrado expressed that he felt the timing is right for such a proposal in Congress. Congressman Petri also felt that the tax credit proposal is a good idea and expressed that it was certainly worth a try in this session of Congress. “You can’t take the money out of politics,” he said “but this is a good way to make that money less interested.” Potter suggested that the idea be pitched to California Representative Bill Thomas to gauge if he would be willing to include it the new tax bill he was planning to introduce this spring. The panel agreed that that was certainly an avenue worth considering.

Phone Bank Disclosure Proposal

The second suggestion made by Congressman Petri to win public support for CFR was to introduce legislation that would begin regulating push polling. Much of the discussion on this topic focused on what would need to be done in areas of disclosure and polling to make the idea viable. Many suggestions were given as to how the callers could and would need to be disclosed. Suggestions were also given to include language that would apply regulations to internet polling as well as telephone calls. Several obstacles exist in the realms of enforcement and differentiation between push polling and advocacy. In the end, four conclusions were drawn: 1) reform needs to occur, no matter how difficult it will be; 2) more research needs to be done on the current FCC regulations to determine what can be done with regard to push polling; 3) elements of the current system that need reformation need to be identified; and 4) the punishments attached to reformed regulations need to be swift and severe in order to deter push polling.

In conclusion, the overall sentiment of the session was that the work on campaign finance reform as only just begun – that it will be up to those who are currently involved in its plight to ensure its survival both in the courts as well as in the minds and hearts of the voters.

Unfortunately, the conference ran long on the first day and one of the presenters, Paul Taylor, was unable to address the Free Air Time legislation proposed by Senators McCain and Feingold. He made his comments the following day, but his remarks are included here, in the first working session, where they belonged: as part of Next Reform Steps.

Free Air Time Proposal

Paul Taylor opened the session by reporting that in the current system, extremely high campaign costs choke the access to the political system by creating an un-level playing field. The system of public financing attempts to compensate for the high costs of campaigns, but is rapidly becoming obsolete. Because the matching funding comes with antiquated expenditure limits, well funded candidates are increasingly choosing to forego public funds in order to have unlimited spending ability. Candidates who rely on public funding can rarely compete with the unlimited expenditures of their opponents. Many challenger candidates simply cannot afford the high costs of purchasing airtime for campaign ads. Because of this, incumbents retain their strong advantage.

Senator John McCain’s Free Air-Time bill represents a reform perspective that differs from and compliments BCRA. Whereas BCRA focuses on the sources of campaign funding, the FAT bill addresses where that money goes, namely the broadcasters.

Each broadcaster uses a portion of airwaves, known as spectrum, to broadcast its media, observed Trevor Potter. He stated that broadcasters are not charged for their use of spectrum, which belongs to the taxpaying public. Instead, they are expected to fulfill a public interest obligation in their broadcasting. One way of filling this obligation is to provide coverage to candidates during elections. Over the years, however, broadcasters have largely ignored their public interest obligations, raking in millions of dollars each election cycle for political campaign ads.

Taylor agreed. He contended that free air-time is a form of public funding. Rather than raise taxes to provide candidates with increased public funding, the bill seeks to reclaim the spectrum—a public asset—and make it available to candidates. Broadcasters would be required to donate time on their spectrum to

candidates. Candidates would receive air-time vouchers corresponding to the amount of small dollar donations they raise. The FCC would be responsible for enforcing the new law, with revocation of broadcasting licenses as the ultimate sanction against violators.

The results of free air-time for candidates would be numerous. Taylor argued there would be an increase in public confidence and participation in the electoral system. Competition would increase, doubling or tripling the 30 to 40 competitive races nationwide. Political speech would be enhanced and parties strengthened. The access to airtime would be particularly helpful to minor parties and independent candidates. The measure will also help save the presidential public funding system. The current benefits of matching funds would be enhanced by the addition of broadcast vouchers.

The bill itself was introduced late last session as a possible amendment to BCRA and will be reintroduced independently in January 2003. Wertheimer argued that although the Congressional majority seemed rather supportive of this idea in 2002, the current Senate would most likely impede the bill's release from committee. Because of this, he said, it is unrealistic that the bill will pass this session. The goal instead must be to use this time to hold hearings and pursue a public education campaign.

Potter responded by stating that in educating the public about free air-time, the point must be driven home that the public owns the airwaves. Recent polls show that voters, in a 7 to 1 ratio, believe that broadcasters have a public obligation when they learn that the spectrum belongs to the taxpayers. He also stated that the public education should start among the interested segments of the population, with columnists and other media outlets.

Potter also revealed that at the same time the bill is introduced, reform groups will challenge the licenses of the top five Chicago broadcasters. The Campaign and Media Legal Center will conduct research on the extent to which the broadcasters are failing to meet their public interest obligation and then file suit with the FCC. Potter conceded that although it is doubtful that the suit will prevail at the FCC, it will bring the issue to the forefront and help ignite public discussion, which could result in helping proponents gain support for the bill.

Truman Anderson commented that the current world of broadcasting is in a state of ferment and argued that the status quo cannot be maintained much longer. Ownership cap rules, originally designed to promote localism and diversity, have been routinely chipped away. As these and other regulations continue to fall, we will witness a large-scale media consolidation. Furthermore, he argued, technological advances continually affect the scarcity of spectrum. Originally considered a finite resource, digital technology renders spectrum virtually infinite. These developments, he urged, signal a need to revisit and rework the original spectrum policy.

Anderson also made the statement that in reworking the spectrum policy, several important issues must enter into consideration. First, he said, as scarcity is eliminated, traditional grounds for regulation become less apparent. Although he cautioned that care must be taken when charging broadcasters a fee for spectrum use, he did agree that the philosophy behind McCain's Free Air-Time bill, which configures spectrum as a public asset, is vital to the democratic process. The fee the bill will require will constitute less than 1% of broadcasters' gross income—hardly sufficient to develop feelings of ownership among broadcasters.

Wertheimer reiterated the importance of taking into consideration the climate of support the bill will have in the current Congress. When the notion of free air-time was first introduced by former New Jersey Senator Torricelli as a surprise amendment to BCRA, support was overwhelming. Free from the fear of the National Association of Broadcasters (NAB) and the broadcasting lobby, the amendment triggered an outpouring of senatorial resentment toward broadcasters whose exorbitant fees necessitate constant fundraising. At that time no one, not even Senator McConnell, spoke in opposition to free air-time. The new bill, however, should not expect a similar welcome. The initial reaction was spontaneous—this time, Wertheimer argued, NAB will be much better prepared.

Rick Davis pointed out that one of the principle objections to free air-time is the fear that the reform will ultimately equate to an increase in negative campaign ads. He urged that recognizing the difficulties involved with this, reformers must give it careful thought. To curtail negativity, broadcast vouchers could be made available only for a certain proportion of the candidate's small dollar funds raised. Also, the stations could be encouraged to provide other types of airtime, including debates and interviews, in addition

to traditional campaign ads. Another option he suggested is to make the vouchers the only way candidates can advertise. He also cautioned that a public education effort could improperly emphasize that most negative campaigns come from outside groups rather than the candidates themselves. Increasing candidate ads and reducing electioneering ads, he suggested, could actually reduce the overall negativity we experience in the current system.

Wertheimer responded to this by stating this last approach to combating negativity points up another important role of free air-time. If the Supreme Court strikes down the issue advocacy provisions of BCRA, candidates will increasingly become bit players in their own campaigns. Subject to expenditure limitations, they will be at the mercy (or lack thereof) of unregulated outside interest groups. This measure, he argued, could work to counter this effect by giving candidates a venue to advance their own campaign ads.

Anderson concluded the discussion by making the argument that reformers may need to first address FEC and FCC reform in order to secure proper enforcement before free air-time for candidates can be realistically considered. Otherwise, he argued, Congress could end up passing just another symbolic law with no hope of ever being properly enforced.

WORKING SESSION II: ALTERNATIVE FUNDING MECHANISMS

The Reform Act represents only one part of the overall reforms needed in the realm of campaign finance. One area of crisis is the presidential public financing system. As discussed in the introduction, the presidential funding system will be bankrupt in 2008 unless reforms are made. Professor Anthony Corrado of Colby College provided the big picture in terms of why the presidential public financing system will face financial problems in the future. Rick Davis, former campaign manager to Senator McCain's 2000 presidential bid discussed his first-hand experience with the benefits and limitations of the public funding system. Clay Mulford, former Reform Party general counsel, discussed the difficulties minor party candidates face in becoming qualified for public funding. Bob Stern, president of nonprofit Center for Governmental Studies addressed specific reform proposals made by his organization and others.

Presidential Public Financing System

Anthony Corrado opened this portion of the session by reporting that the problems addressed by BCRA are symptoms of a larger malady in the presidential public financing system. The principal causes of this malady lie in antiquated spending/donation limits and structural imbalances.

He argued that the current financing system has allowed spending limits to increase according to inflation, while donation limits have remained unchanged. Campaigns that once cost \$13 million now cost \$50 million or more. Candidates must spend more time fundraising to stay abreast of the cost.

The current system also forces candidates to begin fundraising earlier and earlier. The date of release of matching funds currently falls too late in the election cycle. Front-loading of primaries has pushed the bulk of campaigning earlier in the year. Once the primaries begin candidates have no time to fundraise. Fundraising must therefore take place during the year preceding the election year. Most leading candidates now raise 80% to 90% of their funds during the pre-election year, immediately targeting the \$1,000 donors rather than seeking smaller donations.

After the primary cycle ends in March, the publicly funded candidate is left with no campaign money until after the national party convention and the official nomination. During this time candidates are extremely vulnerable. They risk losing their competitive edge and often rely on the party to fill the gap. In recent elections Dole, Gore and McCain all faced this problem; none of them ever fully recovered before the general election. This structural flaw in the public financing system was one of the major contributing factors to the development of soft money. In 1996, parties began filling the gap with issue ads. By 2000 the amount of soft money spent between the primaries and the post-convention release of matching funds rose from \$20 million to over \$48 million.

BCRA does not repair the public financing system and may actually exacerbate the situation. Although it

raises the donation limit to \$2,000, thereby easing the strain, BCRA does not fully compensate for inflation induced expenditure increases or modify the percentage of matching funds granted. The system presently provides only a meager 12.5% in matching funds. Furthermore, the ban on soft money will require parties to use hard money in support of their candidates—money that is strictly regulated by the public financing system. In light of these developments, argued Corrado, the current movement of candidates away from matching funds and their accompanying limitations is likely to gain speed, jeopardizing the continuing existence of the public financing system.

After some discussion between Wertheimer, Mann, Davis, Potter, Clay Mulford, and responses by Corrado, four core problems in the presidential public financing system were identified:

1. Spending limits. Although spending limits have increased somewhat to compensate for inflation, they do not reflect the realities of campaigns. Additional problems are created by the complicated system of state-by-state spending limits.
2. Financial health of the Presidential Election Campaign Fund. This fund loses revenue each cycle. At present, only 12 million voters use the check off on their tax returns. In 2004, it is anticipated that the fund will hold only \$55 million—an amount insufficient to support the system. The only reason the system did not collapse in 2000 is that George W. Bush did not accept public funds. Assuming he does the same in 2004, the system could hold until 2008. At that point it will collapse if no modifications are made.
3. Increasing numbers of voters ineligible to donate. In order to participate in the check off donation system, a voter must have a tax liability. This means that one in four tax-filing Americans (or 25 million) cannot participate.
4. Allotment of funds. Money is allotted first for the general election, then for party nominating conventions, and last for matching funds. The first two categories take the majority of the money, leaving only a fraction to reach the candidates.

In light of these problems everyone on the panel agreed that the public financing system must be saved to prevent a reversion to the days of across-the-board privately funded campaigns. Six ideas were advanced and accepted by the participants; a seventh issue was raised but remained unresolved. These seven ideas were to:

1. Eliminate convention funding or otherwise modify the allotment formula.
2. Increase matching rates as spending rates increase.
3. Change donor eligibility requirements. Make the check-off apply to all tax returns.
4. Disburse matching funds after January 1 of year prior to election.
5. Increase or remove expenditure limits and remove state limits to presidential funding system.
6. Allow greater access by independent and minor party candidates.
7. (Unresolved) Establish a clear funding source. Possibilities are:
 - a. Increase check off amount. Studies indicate two shortcomings of this option. First, as the check off amount increases, participation plunges. Second, the more the public learns about the check off system, the less likely they are to contribute.
 - b. Direct public grants. A method successfully established in California and New York.
 - c. National lottery. This option would effectively span the growing schism between political and popular cultures.

Potter suggested that as reformers develop these reform measures, they should consider using various already-existing state programs as models. He suggested direction towards programs that include a provision granting increased funds to candidates facing privately funded multi-millionaires.

With these agenda points in mind, concluded Potter, the next major question is when to start. Obviously, he stated, the reform community must maintain vigilance on the BCRA case, lest it fare poorly in the courts and the FEC remain unchanged. FEC reform and BCRA must remain the top priorities. That being said, much can be done to start winning politicians to the cause of public funding reform. In order for incumbents to willingly pass legislation that benefits challengers, they must realize that the public supports such reform. Not only is campaign finance reform good for the country, is it also good politics. Future allies can be courted during the 2004 campaign cycle from among the Democratic presidential candidates. This, he stated, will set the stage for broader bipartisan support in 2008.