BCRA: MAKING A DIFFERENCE

By Anthony Corrado

The Bipartisan Campaign Reform Act (BCRA), the McCain-Feingold law, is the most important piece of campaign finance legislation since the adoption of the 1974 Federal Election Campaign Act. BCRA addressed the two biggest problems in the campaign finance system by banning the use of soft money in federal elections and placing new restrictions on candidate-specific issue advocacy advertising. Its passage marked a new era of campaign finance regulation, and was heralded as a major victory by reform advocates.

But would the law fulfill its promise? Would it work to diminish the role of unregulated contributions and their corruptive influence in the political process?

When BCRA first took effect after the 2002 election, the law's future was uncertain. At that time, the statute was facing legal challenges brought by an array of plaintiffs that were consolidated into *McConnell v. Federal Election Commission*. Plaintiffs took issue with almost every major provision of the law, in most cases arguing that the new restrictions violated the rights of freedom of speech and association guaranteed by the First Amendment. This court challenge represented the first major test for BCRA, since most observers felt that the court must uphold the law's central pillars—the ban on soft money and the rules governing the financing of candidate-specific issue advocacy—for BCRA to be effective. In December 2003, the Supreme Court did just that, ensuring that the 2004 federal elections would be conducted under new campaign finance rules.

With those initial constitutional questions resolved, supporters of reform faced the practical question: Would BCRA improve the system or fall victim to unintended results? Critics claimed that the law would not work. They made dire predictions, declaring that the law would only weaken parties and discourage participation, while encouraging big money to find other, less accountable ways to enter the electoral process.

Since the law was not suspended during the court proceedings, candidates, parties and political groups have operated under the new rules for more than a year, and the initial impact of the law is becoming clear. The early results demonstrate that the law is functioning as its supporters expected, and producing dramatic changes in party finance and in the ways money is raised in national politics. In fact, political parties and candidates are adapting to the rules more quickly and efficiently than supporters imagined. Parties are conforming to the new contribution restrictions, investing in grassroots outreach programs and replacing a large share of the soft money "lost" under the new rules with tens of thousands of contributions from small donors. Candidates are raising more money than ever before, and are abiding by new disclosure requirements. And there is little evidence of widespread circumvention of the law or of efforts by most soft money donors to evade contribution limits by funneling donations to interest groups and other organizations.

Reducing Corruption

The principal goal of BCRA was to reduce the potential for corruption in the political process by severing the links between elected officials and soft money donors. The law bans soft money at the national level, and prohibits federal elected officials and national party leaders from raising, spending, transferring or controlling any funds not governed by federal contribution limits. State parties must use federally regulated funds to pay for all federal election activities, including voter registration and turnout efforts that feature federal candidates and broadcast ads that "promote, support, attack, or oppose" a federal candidate. Thus, BCRA sought to end the buying of access and other privileges in exchange for large soft money gifts.

BCRA's early success is best seen not by looking at what is taking place in Washington, but by focusing on what is *not* taking place. Members

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of Congress and national party officials are no longer appealing to major corporations, labor unions and wealthy individuals for large contributions and offering preferential treatment for these gifts. Million-dollar contributions to national party committees have become a thing of the past. The White House is no longer being used as a reception facility for coffee klatches and other special events put together to woo soft money donors. And, for the first time since 1980, all of the monies raised by national party committees have come from limited contributions. This represents a major step forward in reducing the influence of money in politics, and demonstrates how BCRA has helped to enhance the integrity of the electoral process.

The Parties Respond

Many reform opponents contended that parties would be weakened without their $500 million of soft money and would no longer play a major role in elections. BCRA supporters claimed that the law would strengthen parties by giving them a powerful incentive to seek new donors and expand their grassroots efforts. The past year's experience suggests the parties are doing just that. They are placing greater emphasis on donor outreach and expanding participation.

Even before BCRA took effect, Democrats and Republicans began to alter their practices. Both parties invested heavily in grassroots fundraising, including direct mail and Internet-based solicitations. They created new programs to take advantage of BCRA's higher party contribution limits, whereby an individual donor can give up to $25,000 to each party committee subject to an aggregate limit of $57,500 in party contributions every two years. The result: instead of struggling to raise funds for 2004, both parties are achieving financial success.

In 2003, the national party committees raised a total of $301.8 million in hard money alone, which was more than the $266.3 million in hard and soft money *combined* raised in 1999. Overall, party funding was up by 14 percent compared to 1999, and greatly exceeded the sums raised in every previous off-election year, except 2001, the last year soft money was permitted. Both parties significantly increased their hard money fundraising compared to four years ago. The Democrats almost doubled their total, raising $95.2 million compared to $55.4 million, and the Republicans more than doubled their funds, raising $206.6 million compared to $96.9 million.

The parties displayed impressive financial strength compared to 2001, their most successful off-election fundraising year ever. The total raised by the parties in 2003 is 83 percent of the combined hard and soft money raised in 2001, a year when soft money made up 46 percent or almost $169 million of the parties' total funding. The parties were thus able to replace a large share of the soft money raised in the past by raising additional hard dollars. If they maintain this pace through the end of 2004, they will have at least as much money to spend in 2004 as they did in any election prior to 2000.

Perhaps more important than the amount of money being raised is the way the parties are raising it. Instead of focusing on a relatively small group of soft money donors for a big chunk of money (in 2001, the top ten soft money donors to the Democratic and Republican national committees, twenty donors in all, gave more than $70 million in soft money alone), the parties are reaching out to tens of thousands of small donors. By October of 2003, the Republican National Committee reported that it had recruited more than 1 million new donors since President Bush took office. The National Republican Congressional Committee reported more than 400,000 new donors by year's end, and the National Republican Senatorial Committee raised

more hard money in an off-election year than at any other comparable point in its history.

The Democrats also are transforming their fundraising. This change is particularly noteworthy, since the Democrats in recent years have been especially dependent on soft money and are coming from behind to match the Republican's emphasis on small donor fundraising. By the end of 2003, the Democratic National Committee had increased its number of direct mail donors from 400,000 to more than 1 million. Consequently, almost three-quarters of the committee's funding, $32 million out of the $44 million raised in 2003, came from contributions of $200 or less. This represents a dramatic change from 2002, when more than half of the committee's funding came from unregulated soft money gifts. Similarly, the Democratic Congressional Campaign Committee has added 170,000 new donors to its rolls this year, and raised almost twice as much hard money as it did in 2001.

And these figures represent only the financial efforts of the national parties. They do not include any monies raised by state and local party committees, which will also be actively involved in raising money to support federal candidates. Both parties will thus be able to conduct well-funded campaigns in 2004, despite the ban on soft money.

Looking Ahead

Changes in party finance are not the only signs of success to emerge so far. Candidates are also doing very well. The law increased the amount an individual is allowed to give to a federal candidate from $1,000 per election to $2,000. This change makes it easier for candidates to raise the sums needed to share their views with the voters and carry out meaningful campaigns. According to reports released by the Federal Election Commission, congressional campaign fundraising was up by 32 percent at the end of 2003 as compared to 2001, with candidates raising a total of about $390 million. The amount that came from individual donors, almost $268 million, was 40 percent higher than the amount donated by individuals at a comparable point in the 2002 election cycle.

Similarly, Democrats running in this year's presidential race raised more money, on average, than candidates in previous Democratic contests. By the end of January, the Democratic presidential hopefuls had raised approximately $25 million more in campaign funding than they would have received in prior elections as a result of the higher contribution limit. However, the single biggest beneficiary of the higher contribution limit has been President George Bush who had added $44 million to his coffers by the end of January, just from donors giving $2,000, rather than the old maximum $1,000.

Even parts of the law receiving less public notice during the legislative debates are starting to have a big impact. The new disclosure rule, known as the "Stand By Your Ad" provision, which requires a candidate to appear in an ad and attest support of the broadcast message, is widely recognized by voters as improving their ability to hold candidates accountable for their campaign broadcast messages. Some experts have also observed that the more positive tone of ads aired by Democrats in the presidential contest might be partially due to this new rule. Put simply, candidates are likely to be less willing to appear in harsh negative ads. Whether the "Stand By Your Ad" rule will continue to promote more civil campaign dialogue as the elections heat up remains to be seen, but the early indications are hopeful.

It is still too early to predict any long-term consequences of BCRA or how all of the candidates and political groups in federal elections will respond to the law. One important unresolved issue is whether interest groups or other nonparty organizations, such as the tax-advantaged political committees organized under Section 527 of the Internal Revenue Code, will be able to raise and spend large sums of unregulated money on campaign activities benefiting federal candidates. The answer will ultimately depend on the regulations the Federal Election Commission establishes in defining this aspect of the law.

BCRA has passed its first major tests and is making a difference in the financing of national elections. While further reform is needed to improve the campaign finance system, including reforms that provide greater incentives to small contributors and greater candidate access to the public airwaves, BCRA is proving its value as a vital and necessary step in enhancing the quality of our democracy.

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VOTER LINKS

- *The Brookings Institution offers information on the implementation and effects of BCRA, http://www.brookings.edu/gs/cf/cf_hp.htm.*
- *The Campaign Finance Institute's basic guide to BCRA and the McConnell case, http://www.cfinst.org/eguide/index.html.*
- *The Center for Responsive Politics offers easy online methods for researching the flow of money in federal elections, http://www.opensecrets.org.*