chapter 7

Political Parties and Soft Money

The role of the players in political advertising—candidates, parties, and groups—has been analyzed in prior chapters. However, the newly changing role of political parties in the world of advertising requires additional scrutiny. With the new influx of unlimited funds from business interests, labor unions, and wealthy individuals, spending by party committees on television for all federal offices in the 2000 election reached $162 million, more than $81 million of which was spent on advertising in the presidential election alone. This represents about a 60% increase over party spending in the 1996 elections.[1] According to FEC records, this increase in party spending was largely boosted by a dramatic rise in “soft money.”

This chapter examines the unique role that political parties now play in political advertising. Particular attention is given to the sources of “soft money,” and what the flow of this money into the parties has meant for party politics.

1. “2000 Presidential Race First in Modern History Where Political Parties Spend More on TV Ads than Candidates,” Brennan Center Press Release (Dec.11, 2000) [www.brennancenter.org].

THE CONCEPT OF "SOFT MONEY"

As discussed in greater detail in Chapter Three, the concept of "soft money" arises by contrast with the concept of "hard money," the latter of which refers to funds raised under the restrictions of campaign finance law. The federal restrictions include bans on contributions from certain sources—corporate and union treasuries, and foreign nationals, for example—and monetary limits on the amounts of contributions from all others. Political parties and groups that raise money for television advertising that expressly advocates the election or defeat of a clearly identified federal candidate must comply with those restrictions. But political parties and groups that seek to influence federal elections generally treat any advertisement that lacks magic words as if it were issue advocacy, which is exempt from campaign finance regulation, so soft money has become a major source of funding for electioneering issue ads.

There are, of course, important differences in how federal laws and regulations treat the use of soft money by party committees as opposed to by unaffiliated groups. The single most important difference is that parties, unlike groups, must disclose the sources and expenditures of soft money. Party soft money is supposed to be spent on generic party-building activities, get-out-the-vote drives, voter registration, and the like. Used for these purposes, soft money helps mobilize people into the political process. Indeed, until recent years much of the academic political science community defended soft money for this reason. But as more and more studies have documented how soft money is actually raised and spent by the parties, this enthusiasm has waned. Indeed, prominent political scientists signed onto a Supreme Court *amicus* brief calling for enforcement of party fundraising and spending restrictions, and many more have signed a "scholars' letter" in support of congressional efforts to ban soft money.[2]

THE RISE OF PARTY SOFT MONEY

In the 2000 election cycle, national and congressional party committees broke all previous records in soft money fundraising and, for the first time, Democratic party committees were on par with Republican party committees in terms of raising and spending soft money. National Republican party committees raised $249.9 million in soft money and spent $252.8 million in soft money, while national Democratic party committees raised $245.2 million in soft money and spent $244.8 million. These national committee soft money expenditures were for many political purposes, not just television advertising (*see* Figure 7-1).[3] This was a banner year for soft money, which totaled five times the amounts raised and spent in 1992.

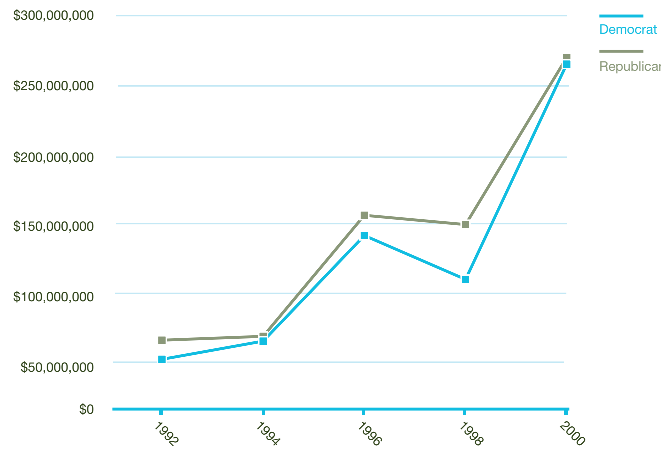


Figure 7-1. Soft Money Receipts by National Parties

Democratic party committees managed to close the gap with Republicans in raising and spending soft money for the first time in the 2000 election cycle, but the parity is not likely to persist for long. Republicans have historically developed better hard money fundraising techniques, and thus gave less emphasis to soft money. Although the Republicans made somewhat less use of the loophole in 2000, the Republican Party is quickly catching on and will likely surpass Democratic efforts in the next election cycle. Party disclosure reports for the first half year of the 2002 election cycle show that the national Republican committees are already outraising their Democratic counterparts in soft money. The national committees of the Republican Party have raised $65.8 million in soft

2. In *Federal Election Commission v. Colorado Republican Federal Campaign Committee,* decided in 2001, the U.S. Supreme Court found constitutional a longstanding law restricting the amount of money that political parties can spend in coordination with their candidates. The Court recognized that coordinated spending of money donated to a party is "tailor made to undermine contribution limits" and has the "power to corrupt." The Brennan Center filed an *amicus* brief on behalf of 14 prominent political scientists urging the Court to uphold the restrictions on political party spending. The brief is available at [www.brennancenter.org]. *See also* "Top Scholars Say Shays-Meehan Legislation Will Benefit Political Parties, Strengthen Grass-Roots Activities," Brennan Center Press Release (July 10, 2001) [www.brennancenter.org].

3. David Magleby, ed. "Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections," Paper prepared for The Pew Charitable Trusts (Feb. 26, 2001), at 16, available at [www.byu.edu/outsidemoney]

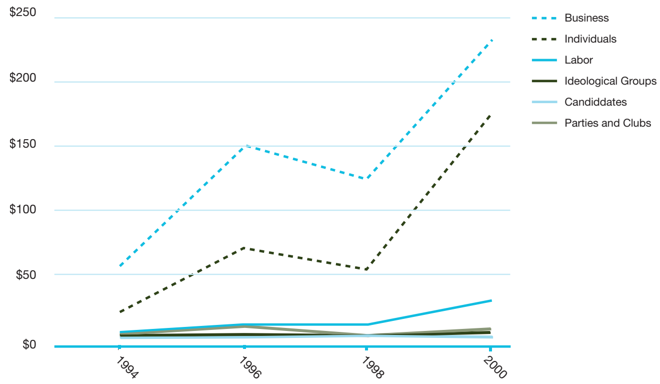


Figure 7-2. Sources of Soft Money Contributions to National Party Committees

money in the first six months of 2001—doubling its previous records for a six-month period—while the national committees of the Democratic Party have raised $38.1 million in soft money over the same period.[4]

The fact that Republicans can outraise Democrats in soft money should not be surprising. Corporations and business interests provide the largest share of soft money contributions—labor unions comprised roughly 15% of the top 50 soft money contributors in 2000[5] —and with an incumbent Republican administration, corporate funds are expected to flow decidedly to Republican Party coffers (*see* Figure 7-2). With what will prove to be critical congressional contests in 2002, the Republicans will increasingly take advantage of the soft money loophole.

THE "ALLOCATION RATIO" AND TELEVISION ADVERTISING

The soft money loophole for television advertising did not really come into existence until the FEC developed regulations applying an "allocation ratio" to state party committees in the late 1980s. In response to a request from the Kansas Republican Party on how to allocate expenditures that benefited both federal and state election activities, the FEC ruled that the party could use soft money to pay for the nonfederal share of costs. A 1988 federal court order, in a case pursued by Common Cause, required the FEC to develop specific allocation formulas for hard money and soft money to prevent parties from abusing their new soft money privileges. The FEC subsequently issued a regulation that permits national party committees to make all disbursements that affect both federal and non-federal elections with a fixed allocation formula in which a share of the costs may be paid for with soft money. In presidential election years, the national parties are permitted to spend 35% soft money and 65% hard money on their joint federal/nonfederal expenses, while in non-presidential election years the national parties are permitted to pay up to 40% of joint expenses using soft money. The parties have used these allocation formulas when purchasing electioneering issue ads that refer to federal candidates. The parties have reasoned that these ads, although typically mentioning only federal candidates, nevertheless support state and local candidates and party-building activities.

In the same regulation, the FEC offered state party committees more favorable allocation ratios than the national party committees, under the reasonable assumption that more state party sponsored activity is non-federal activity. State party allocation rules are complicated, based on criteria like the number of state and federal candidates on the ballot or the amount of space or time devoted to state and federal candidates. On average, state party allocation ratios have been about 60% soft money to 40% hard money.

In 1996, the Clinton campaign staff cooperated with the Democratic Party in making full use of these allocation ratios. The national party committee transferred at least $32 million in soft money to state Democratic committees in key electoral districts. The money reportedly came with specific instructions from the national party on how to spend it. Within days of receiving the transfers, state party committees often hired campaign consultants working with the Clinton campaign and the national Democratic party committee to design, produce, and distribute state party electioneering issue ads.[8]

4. Editorial, "GOP Doubles Soft Money Over Last Election Cycle While Democrats' Receipts Increase 40%," *Money & Politics Report* (Aug. 27, 2001), at 1.

5. Common Cause, Soft Money Donor Profiles (2000) [www.commoncause.org]

6. Federal Election Commission, AO 1978-10.

7. 11 C.F.R. § 106.5.

8. Jill Abramson and Leslie Wayne, "Democrats Used the States to Bypass Limits," *New York Times* (Oct. 2, 1997), at 1.

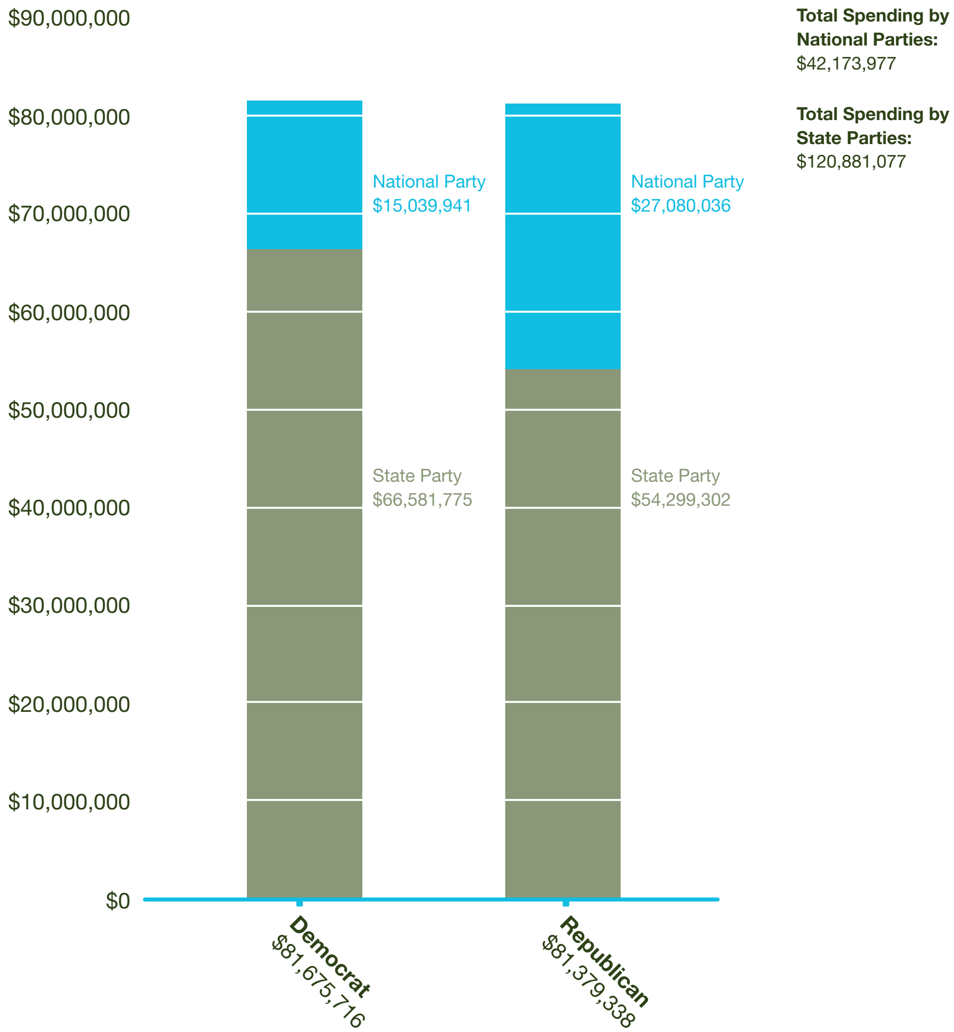


Figure 7-3. Television Spending by the Major Parties in Federal Elections

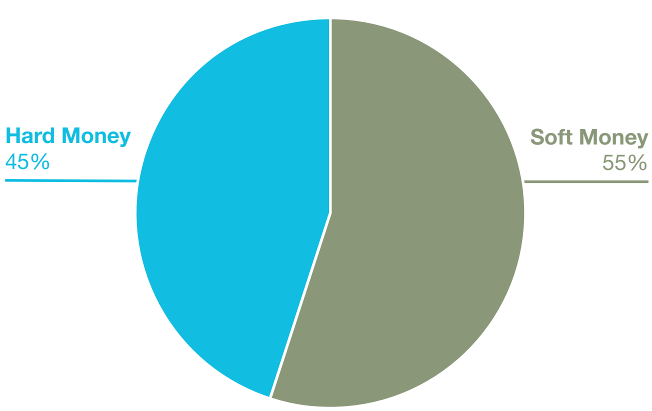


Figure 7-4. Overall Party Spending on Television Ads in Federal Elections: Soft Money vs. Hard Money

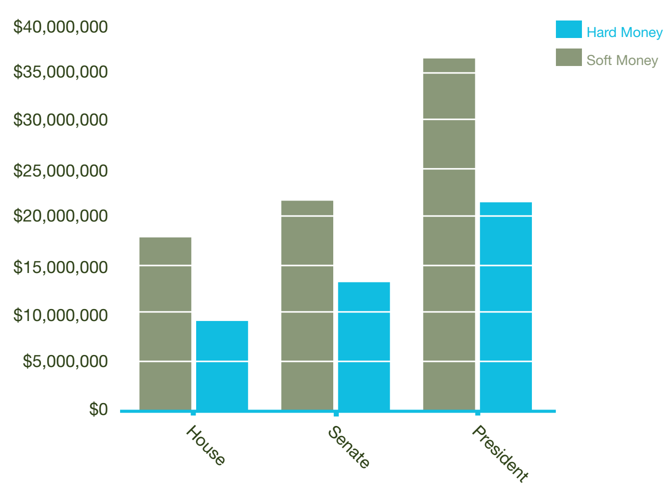


Figure 7-5. State Party Soft Money vs. Hard Money for Media Buys in Federal Elections

The 2000 television advertising database shows that both national parties have dramatically escalated their use of state parties and their more favorable soft money ratios. According to FEC reports, both national parties transferred the bulk of their own soft money revenues to their respective state party committees.

Using $274 million in soft money transfers from the national parties to state parties in the 2000 election—Democrats transferred $145 million in soft money and Republicans $129 million[9] —the Democrats and Republicans bought more television time in relationship to federal elections than ever before through their state party committees. Overall, 77% of party-sponsored political commercials relating to federal elections in the 2000 election were paid for by state parties. The national party committees and federal congressional committees combined purchased about 23% of the party airwaves that addressed federal elections. Not surprisingly, most of this state party spending activity took place in the nation's most competitive states: Florida, Pennsylvania, California, Michigan, Washington, and Ohio. The consequence is clearly visible in party spending patterns on television ads, where both major parties rely primarily on state party committees to pay for their television ads, but with Democrats relying even more so on the state parties (*see* Figure 7-3).

These percentages vary considerably depending on office and party. Nearly 93% of media buys relating to U.S. senatorial elections, for instance, were purchased by state party organizations, with Democratic state parties accounting for more than 97% of such buys and the Republicans 86%. The top five states of state party committee advertising for U.S. Senate elections were: Virginia, Florida, Michigan, New York, and Missouri.

Applying the soft money allocation ratios for each state—controlling for the actual amount of soft money transferred from the national party committees to state party committees in each state—a reasonably clear picture of party soft money spending on television advertising emerges. This study has found that—contrary to the spirit if not the letter of federal law—soft money in the 2000 elections comprised the single largest source of funding for party ads promoting the election or defeat of federal candidates. More than 55% of funds that paid for the airing of party ads across the nation were in the form of soft money; only 45% of the funds paying for these ads came from money raised within the limits of federal law (*see* Figure 7-4). When broken down by office, soft money spending on television spots was particularly focused on the Senate and presidential races—with soft money accounting for 60% and 58% of total television spending, respectively—and provided just short of half the funds in House races (48% of total television spending).

Soft money has also provided the means for the national parties to dominate state party activities. A sign of the "nationalization" of the state parties appears when looking at television spending by the state parties in federal elections. At all levels of federal elections—House, Senate, and President—the state parties spent more on television advertising in soft money, which is largely transferred from the national parties, than in hard money, which comes primarily from state sources (*see* Figure 7-5). In House races, state party committees spent an estimated $17,825,893 in soft money to buy party television commercials, or 66% of the total spent by state parties on such ads. In Senate races, state party committees spent an estimated $21,622,159 in soft money on party television advertising, or 62% of the total spent by state parties on such ads. And state party committees spent an estimated $36,336,091 in soft money on airing ads designed to promote the election or defeat of presidential candidates, or 62% of all television spending in federal elections by state parties. In the aggregate, unlimited and unregulated soft money remains the primary source of funds for federal electioneering ads sponsored by the parties.

PARTY ADS HAVE LITTLE TO DO WITH PARTY-BUILDING AND EVERYTHING TO DO WITH ELECTIONEERING

Whether or not party ads used magic words—and only 2.3% of party spots did—coders at the University of Wisconsin perceived all 231,000 party spots as electioneering in nature—that is, designed to campaign for or against candidates. Not a single genuine issue ad was to be found among party-sponsored advertisements. These ads—96% of which mentioned or depicted a candidate—were not concerned about issues; they were focused on electing candidates.

Nor were party ads in the 2000 election aimed at party-building. Almost 92% of party ads never even identified the name of a political party, let alone encouraged voters to register with the party, to volunteer with the local party organization, or to support the party. The idea that soft money is an important means of strengthening the party as an organization has little, if any, relevance to the reality of party politics and television advertising (*see* Figure 7-6).

Party ads, like those sponsored by special interest groups, tend to be very negative and to attack the charac-

9. Federal Election Commission, Press Release (Jan. 12, 2000).

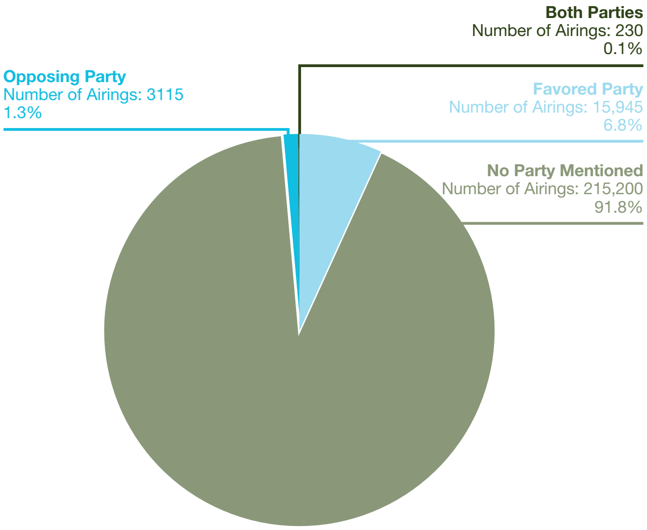


Figure 7-6. Party Ads Mentioning the Name of a Party

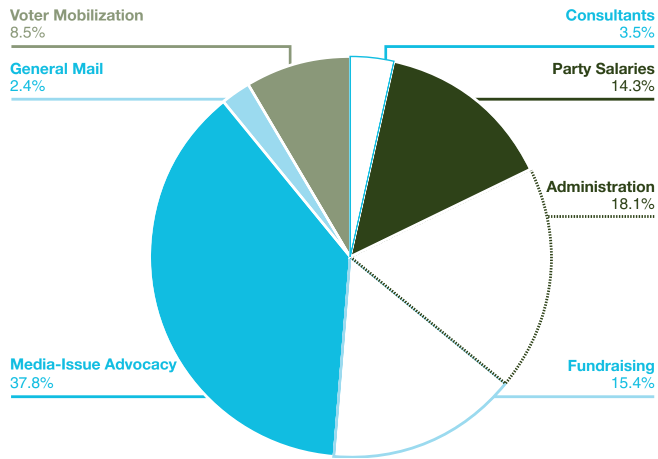


Figure 7-8. How the Parties Spend the "Soft Money" Dollar, 2000 Election Cycle

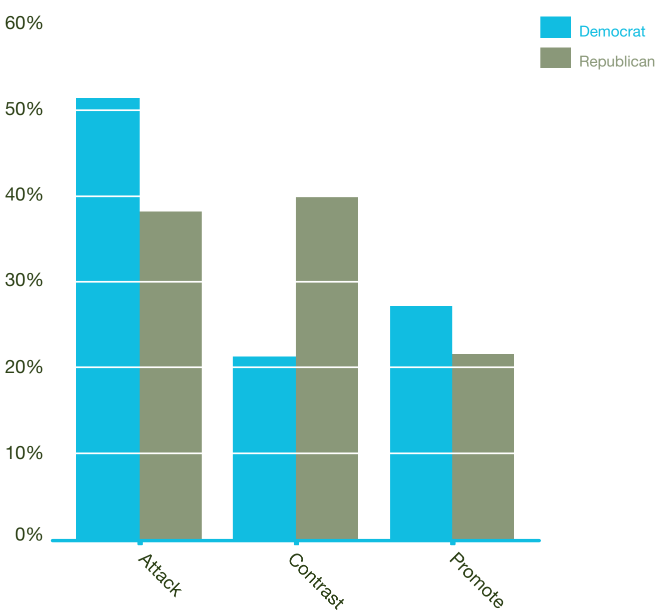


Figure 7-7. Tone of Party Ads, by Democrats and Republicans

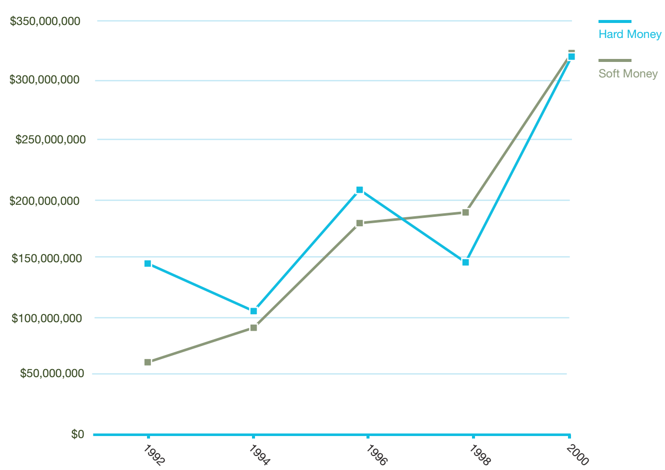


Figure 7-9. Hard and Soft Money Spending in Federal Elections by State Parties

ter of candidates. Nearly half of party ads denigrate candidates, while only 16% of candidate ads do so. Apparently, without a specific name of a person behind the ad, parties and groups feel freer to go negative and to attack candidates on their merits or character. Given that nearly all party ads focus on candidates, this amounts to a lot of negative political commercials saturating the airwaves.

Interestingly, there was a significant difference in the tone of party spots between the two major parties in the 2000 elections. While 51% of Democratic Party ads attacked the merits or character of Republican opponents, only 38% of Republican Party ads did so. Republican ads were far more likely to contrast and compare candidates than those of Democrats, although this technique can also be fairly negative in tone. Both parties aired roughly equivalent proportions of positive ads promoting their own respective candidates (*see* Figure 7-7).

PARTY SOFT MONEY AND VOTER MOBILIZATION

As shown in the soft money database, just as soft money spent on party television spots is primarily used for electioneering rather than party-building purposes, soft money spent by the parties on all activities in general also focuses on electioneering at the cost of party-building. In fact, only 8½ cents out of every soft money dollar is spent by the parties on activities associated with mobilizing voters, such as get-out-the vote drives, party registration efforts, absentee ballot mailings, party slate mailings, phone banks, and other activities intended to fortify a party's electoral base. By far, the single greatest share of soft money dollars spent by the parties relative to federal elections goes into electioneering advertising for or against candidates.

The Brennan Center has developed a unique soft money database that tracks soft money expenditures by all national and state parties relative to federal elections in the 50 states. The data show that voter registration, getting voters out to the polls, and other voter mobilization activities are not a priority of soft money spending by the parties. Instead, the largest bulk of party soft money is allocated to buying the television ads discussed above, radio ads, and direct mail electioneering issue ads. Running distant second, third, and fourth places behind electioneering ads in soft money spending are administration, fundraising, and party salaries, respectively (*see* Figure 7-8).

Most of this spending originates from transfers of soft money from the national parties to the state parties, which have greater liberties in spending soft money in federal elections.[10] As soft money spending by the state parties matches or exceeds hard money spending by the state parties, the state parties grow increasingly dependent on the national party leadership, at least with regard to television advertising. As shown in Figure 7-9, such a nationalization of the state parties is also becoming apparent in all other areas of spending activity relative to federal elections.

In accordance with the desire of the national party leadership, the soft money transferred to the states is poured into media and direct mail advertising for and against federal candidates. What little of the soft money the national parties reserve for themselves is mostly budgeted for fundraising, administration, and staff salaries (*see* Figure 7-10).

Democratic and Republican party committees in the aggregate spent roughly comparable amounts of soft money in the 2000 election cycle for all activities—approximately $243 million by the Democrats and $229 million by the Republicans. Third party committees spent a fraction of the major parties' soft money budgets—a mere $2 million over the same period.

However, some significant differences in soft money spending were apparent between the major parties in the 2000 election cycle. Consistent with the findings on television advertising discussed above, Democrats were more likely to spend their soft money through state party organizations than the Republicans (*see* Figure 7-11). Democrats made more extensive use of soft money allocation ratios in the last election, and Republicans had greater access to hard money resources.

Similarly, while both major parties spent the bulk of their soft money dollars on media electioneering advertising, Democratic soft money spending was somewhat more inclined toward media spending and Republican soft money spending was more inclined toward administration, salaries, and fundraising (*see* Figure 7-12). The differences in soft money spending by the parties in the 2000 elections may be noteworthy, but indications are that such differences may not persist in future elections.

10. Some co-mingling of state soft and hard money occurs with the national party transfers, which explains why the numbers in the soft money database do not exactly match FEC records of total soft money transfers. Some of the federal soft money may be exchanged for state hard money; some state parties will pump their own soft money into the equation; and other state parties may use the federal soft money for exclusively state election purposes. Nevertheless, the data are very closely comparable to the recorded FEC totals of national party soft money transfers, indicating that the national parties have substantial discretion, if not control, over the monies used by the state parties relative to federal elections.

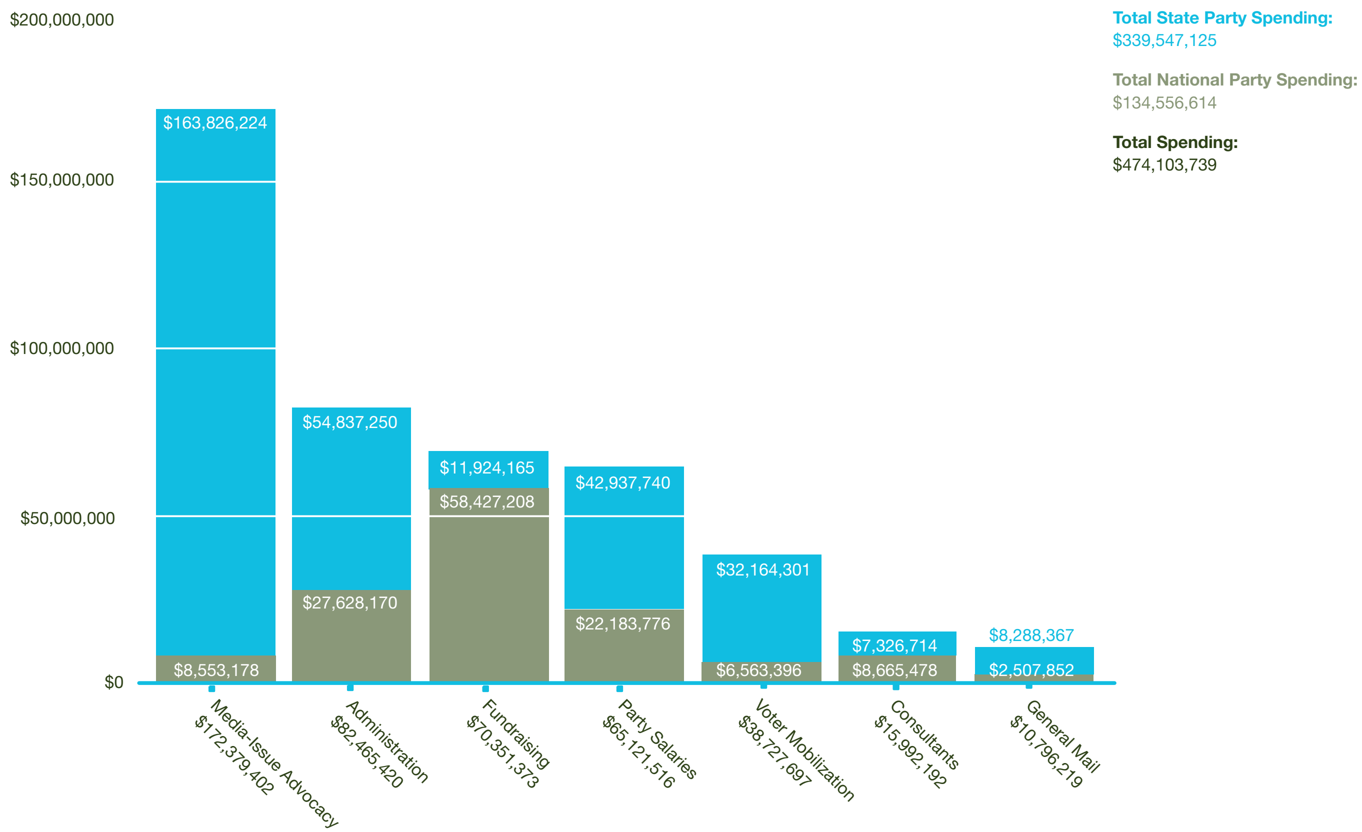


Figure 7-10. National Party vs. State Party Soft Money Spending, 2000 Election Cycle

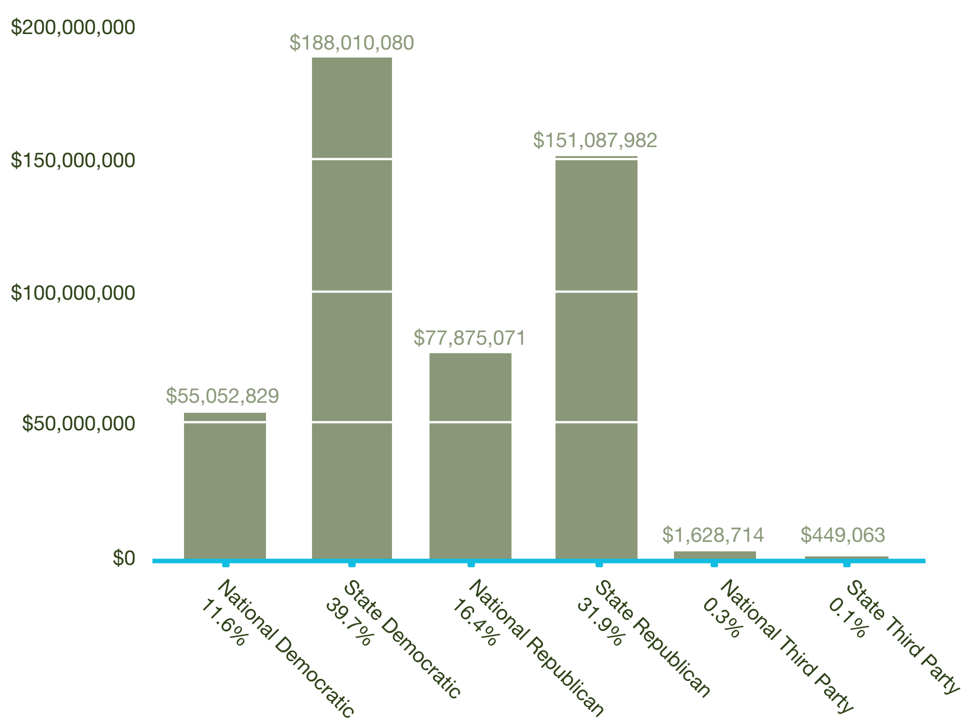
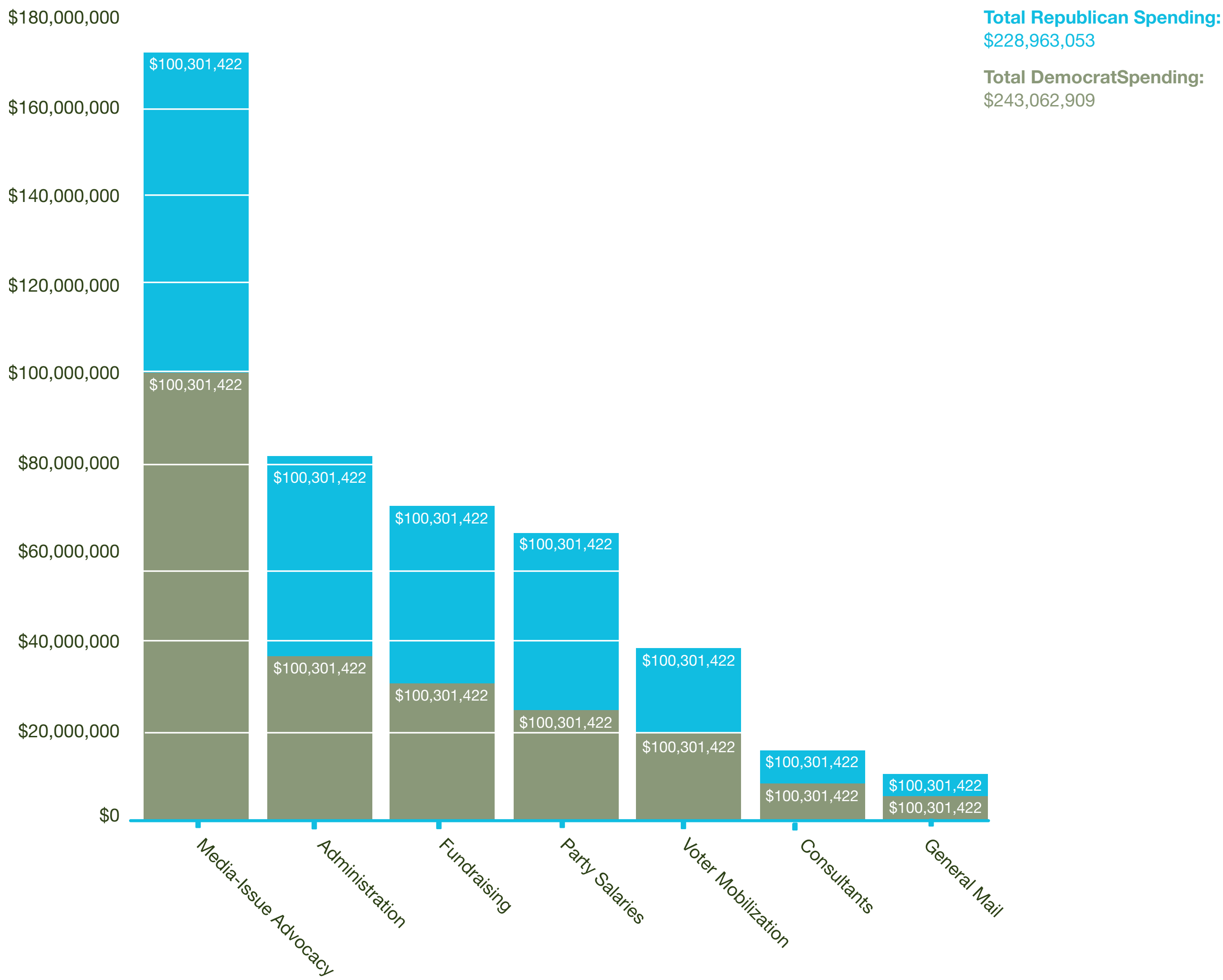


Figure 7-11. Aggregate Direct Soft Money Spending in Federal Elections by All State and National Party Committees, 2000 Election Cycle



	Democratic		Republican	
	Sum	**Col Sum %**	**Sum**	**Col Sum %**
Media-Issue Advocacy	$100,301,422	44.3	$72,050,484	31.7
General Mail	$5,612,418	2.5	$5,135,318	2.3
Voter Mobilization	$19,544,266	8.6	$18,961,972	8.3
Consultants	$8,443,216	3.7	$7,496,579	3.3
Party Salaries	$24,778,417	11.0	$39,601,116	17.4
Administration	$36,693,720	16.2	$44,956,334	19.8
Fundraising	$30,822,279	13.6	$39,421,358	17.3
Table Total	$243,062,909	100.0	$228,963,053	100.0

Figure 7-12. Soft Money Spending by All Party Committees: Democrats vs. Republicans, 2000 Election Cycle