The debate surrounding the impact of the Bipartisan Campaign Reform Act of 2002 (BCRA) has focused largely on congressional campaigns, and the role of soft money and issue advocacy in them. It has largely (and to some extent deliberately) ignored presidential campaigns. Ironically, BCRA’s most immediate impact may be on presidential politics, beginning with the 2004 election cycle.

Four aspects of BCRA are directly relevant to the presidential finance system, and these are unlikely to be affected by the initial court challenges (Sandler and Reiff 2002). First, BCRA increases the maximum amount an individual may contribute per election from $1,000 to $2,000, and indexes this limit for inflation. This change will make it easier for presidential candidates to raise hard dollars for their campaigns. (Individual contribution limits to parties and the aggregate limit of individual contributions are also increased; see table 1.1).

Second, BCRA places new restrictions on the ability of party committees to spend money in support of their presidential nominees. The centerpiece of BCRA, the ban on soft money, will likely have the largest effect, since national parties will no longer be able to use soft money to finance activities that directly benefit presidential candidates before and during the general election. The use of soft money by state parties will also be restricted, with these committees allowed to spend soft money only on certain limited activities related to federal elections. The new law will thus prohibit state committees from using soft money on many of the activities that benefit presidential hopefuls, including broadcast advertisements that feature a candidate.

Third, an additional provision requires party committees to choose between
independent and coordinated expenditures on behalf of a presidential candidate once nominated; this change will influence how the parties allocate federally regulated (hard money) funds in connection with the race for the White House.

The fourth relevant aspect of BCRA is a set of lacunae in the law. While the new statute increases the individual contribution limit, it does not correspondingly increase or index the $250 ceiling for public matching funds during the presidential primaries. This means that the value of matching funds will decline relative to the maximum private contributions in the primary, falling from one-quarter ($250 of $1,000) to one-eighth ($250 of $2,000). A related problem is that BCRA does not expand the expenditure limits that are tied to public financing in the primaries or general election. This raises the prospect of a primary candidate reaching the allowable spending ceiling more quickly than in the past, thus reducing the amount of public funds the candidate will receive.

Taken together, these provisions are likely to exacerbate the existing problems with the presidential system, including stronger incentives for presidential candidates to forego public financing in the primaries (but probably not in the general election). This strategy is especially relevant to President George W. Bush, who opted out of the public financing system in the 2000 primary campaign; it may also appeal to at least one Democratic candidate in the crowded 2004 primary field. In the longer term, BCRA may alter the dynamics of presidential primaries in several ways: by generating two tiers of candidates, one privately and one publicly financed, and by making the “invisible primary” of early fund-raising even more important to candidate success. All such prospects reflect ongoing problems with the public financing system. Thus, a brief review of its structure is in order as a prelude to assessing the impact of BCRA.

THE STRUCTURE OF THE PRESIDENTIAL PUBLIC FINANCE SYSTEM

The creation of public financing for presidential elections was the most innovative aspect of the federal campaign finance reforms of the 1970s (Corrado et al. 1997). The reforms began with the 1974 amendment to the Federal Election Campaign Act of 1971 (FECA), which was quickly reviewed in federal courts, resulting in the landmark U.S. Supreme Court decision, *Buckley v. Valeo* (424 U.S. 1 [1976]). This decision motivated subsequent amendments to FECA in 1976 and 1979. These laws, plus a series of narrower federal court rulings and regulations from the Federal Election Commission (FEC), produced the basic structure of the presidential financing system that operated between 1980 and 2000. This structure will be substantially intact in 2004.

This system has three basic elements. First, presidential candidates must abide by the same limits on contributions from individuals, political parties, and interest group political action committees (PACs) that apply to all federal candidates.
These rules also regulate the activities of parties and PACs that expressly advocate the election or defeat of a presidential candidate, including coordinated and independent expenditures made by a party committee or PAC on behalf of a candidate. BCRA makes modest changes in this basic regulatory framework, principally in the form of higher individual contribution limits.

Second, eligible presidential candidates can receive public financing in the primary and general election campaigns if they voluntarily agree to abide by a set of regulations, including spending limits. Third, this legal structure creates a three-part calendar for major party presidential contests: a “preprimary season” in the year prior to the election (when eligible candidates can qualify for public funds and raise funds that can be matched with public money); a “primary season” beginning January 1 of the election year (when eligible candidates receive matching money and states hold presidential nomination contests); and a “general election season” after the candidates are nominated, which typically begins after the national party nominating conventions in July or August and extends through to the general election in November (during which period publicly funded candidates receive a general election grant and are prohibited from raising additional monies, except for funds used to comply with the law). Minor party and independent candidates follow a similar calendar, but with different rules. BCRA does not change the public financing rules or the presidential calendar assumed within campaign finance law.

**Preprimary and Primary Rules**

Candidates who wish to receive public financing for their campaigns must abide by the following rules (Corrado 1993; 2000, chap. 5).

**Eligibility**

In the prenomination period, candidates can become eligible for public matching funds by raising at least $5,000 in contributions of $250 or less in at least twenty states (for a total of $100,000).

**Matching Funds and Fund-Raising**

Once a candidate is eligible, the first $250 contributed by an individual donor is matched with public funds on a dollar-per-dollar basis. In raising such funds, candidates must abide by overall contribution limits ($2,000 maximum under BCRA, up from $1,000 under FECA; candidates may accept up to $5,000 from party committees and PACs, but these funds do not qualify for the match). In addition, candidates must agree to contribute no more than $50,000 of their personal funds to their own campaign.

Individual donations raised in the preprimary season qualify for matching funds. The first payments of matching funds to candidates are made at the begin-
ning of the primary season (January 1 of the election year). The law states that a candidate who ceases to campaign actively, or who fails to receive 10 percent of the vote in two consecutive primaries in which the candidate participated, is no longer eligible to receive matching funds after thirty days; a candidate may requalify by winning at least 20 percent of the vote in a subsequent primary (26 U.S.C. §9033[c]). The maximum amount of matching funds a candidate may receive is one-half of the overall primary spending limit.

Spending Limits

Candidates who accept public funding in the primary season must agree to abide by an aggregate spending limit as well as state-by-state spending limits. The aggregate spending limit has two parts: a base campaign expenditure ceiling and exempt expenditures. The base campaign expenditure ceiling was set in 1974 at $10 million, with a quadrennial adjustment for inflation using the Consumer Price Index (CPI). A fund-raising exemption permitted additional spending of up to 20 percent of the base ceiling to cover the costs of raising money. Under the original provisions of FECA, each candidate was also allowed to raise unlimited additional funds exempt from the spending ceilings to pay the legal and accounting costs incurred to comply with the law. However, in the 2000 election cycle, the FEC adopted regulations providing a “compliance” exemption of 15 percent of the overall ceiling while a campaign is active. Once the campaign is over and is winding down, all salary and overhead is considered exempt compliance spending and does not count against any spending limit (Federal Election Commission 2000b).

In 1976, the first election conducted with public funding, the base limit was $10.9 million, plus $2.2 million for fund-raising costs, for a total cap of $13.1 million. The maximum public subsidy was $5.5 million. By 2000, the base limit had reached $33.8 million, and with fund-raising costs of $6.7 million and compliance costs of $5.1 million included, the overall cap totaled $45.6 million (Federal Election Commission 2000b). The maximum public subsidy was $16.9 million. By 2004, assuming a 2 percent annual rate of inflation, the overall spending limit will rise to $36.6 million, the fund-raising costs to $7.3 million, and the compliance costs to $5.5 million, for a total cap of $49.4 million. Under these assumptions, the maximum public subsidy will be $18.3 million.

In addition to the aggregate spending limit, participating candidates must abide by state-by-state spending limits. The amount a candidate may spend in each state is based on a formula established in 1974 that allows 16¢ times a state’s voting-age population, plus adjustments for inflation, with a minimum limit per state of $200,000 in 1974 dollars, adjusted for inflation. In 2000, these state limits ranged from $675,600 in a low-population state such as New Hampshire to $13.1 million in California (Federal Election Commission 2000b). However, the FEC has regularly expanded the types of expenditures that are not subject to state
limits, and in 1991 liberalized its rules for allocating expenses to state limits, making these caps increasingly porous and less meaningful to campaigns (Federal Election Commission 1993). Since at least the 1988 election cycle, the state-by-state limits have been more of a nuisance or an accounting issue for candidates than a meaningful limitation on spending.

Outside Spending

Individuals, PACs, and parties are allowed to spend their own funds independently for or against candidates in the preprimary and primary seasons, and organizations are allowed to spend on internal communications with their members for or against a candidate. Such expenditures must be disclosed to the FEC. However, the disclosure regulations do not include much of the traditional grassroots campaigning by interest groups or the recent innovation of candidate-specific “issue advocacy” advertising (Potter 1997). BCRA will restrict broadcast, candidate-specific advertising by corporations and unions in a state or media market thirty days before that state’s primary election.

Parties have rarely contributed to presidential primary candidates, who are, after all, competing for the party’s nomination. However, since 1996, the Republican and Democratic National Committees have spent soft money to assist the presumptive nominee during the emerging “interregnum,” the period of time between the effective end of the primary season and the national convention, the beginning of the general election season. Although technically within the primary season, these expenditures are actually directed at the general election. Under BCRA, spending soft money for this purpose will not be possible.

General Election Rules

Candidates who wish to receive public financing in the general election campaign must abide by the following rules (Corrado 1993; 2000, chap. 5).

Eligibility

A major party nominee (defined in the law as a nominee of a party that received at least 25 percent of the vote in the previous election) is eligible to receive a public grant for the general elections.

Public Grant, Fund-Raising, and Spending Limits

The amount of the general election public funds grant is 100 percent of the spending limit. The limit was set in 1974 at $20 million, with adjustments for inflation using the CPI. By 2000, this subsidy had grown to $67.6 million per candidate. Assuming a 2 percent annual rate of inflation, it will equal $73 million in 2004.
As a condition of receiving this subsidy, a candidate must agree not to raise or spend additional private funds through his or her campaign committee. There is one exception to this prohibition: candidates may raise money to finance general election legal, accounting, and compliance costs (known as GELAC funds). The magnitude of these funds is unrestricted, but they must be raised from donations subject to federal contribution limits. In 2000, the Democratic and Republican general election candidates raised about $15 million in GELAC funds (Corrado 2001).

Outside Spending

As in the primary season, individuals, PACs, and parties are allowed to spend their own funds independently for or against candidates in the general election, and nonparty organizations are also allowed to spend on internal communications with their members for or against candidates. In addition, the national party committees are allowed a limited amount of coordinated expenditures, which are adjusted for inflation, on behalf of their nominees. In 2000, the Democratic and Republican National Committees (DNC and RNC, respectively) were each allowed to spend $13.7 million in coordinated expenditures on behalf of a presidential ticket (Federal Election Commission 2000a); assuming a 2 percent inflation rate, by 2004 the amount will be $14.8 million.

Under BCRA, the national parties may make coordinated expenditures (hard dollars subject to the above limitation) or independent expenditures (hard dollars not subject to limitation) for their presidential candidates—but not both. The initial interpretation of this provision of BCRA by the FEC found that this provision would not apply before a candidate was nominated, which does not take place until the convention has cast a formal vote approving a candidate as the party’s presidential nominee. Prior to BCRA, party committees could engage in both independent and coordinated expenditures on behalf of a presumptive nominee.

Party soft money and issue advocacy expenditures, financed by soft money, have become an important element of general election presidential spending in recent times, much more so than in the primaries. Prior to BCRA, these expenditures were not subject to any limitations. BCRA largely bans soft money and sets some limits on issue advocacy by corporations and unions within sixty days of the general election.

THE PRESIDENTIAL SYSTEM’S PROBLEMS

The public financing system was enacted just as the contemporary presidential primary system was developing. Indeed, the first presidential election held under FECA, 1976, was only the second election after reforms in the Democratic Party
made primaries the dominant mechanism for determining the major party presidential nominees (Hagen and Mayer 2000). The initial parameters of FECA fit the presidential process of the early 1970s fairly well. However, as the nomination process evolved, the public financing rules became increasingly problematic, providing candidates, their parties, and interest group allies with strong incentives to press the boundaries of the finance system.

**Front-Loading the Primary Schedule**

Unlike the presidential finance rules, which were established by federal law, the dates and other details of the primaries are matters of state law. Although the national parties have imposed some order on the schedule, they have not prevented state governments from moving their contests forward in the primary season, closer to its traditional beginning with the Iowa caucuses and the New Hampshire primary (Busch and Mayer 2002).

The results of such front-loading are quite dramatic. For example, in 1976 both major parties had not chosen 50 percent of the convention delegates by May 4, some four months after the primary season officially began. By contrast, in 2000 the Democrats had picked 50 percent of the convention delegates by March 11 and the Republicans by March 10—a little more than one month after the Iowa caucus and New Hampshire primary. The politics of front-loading is complex, but at bottom the goal is to increase a state’s influence by voting early in the process. Ironically, front-loading has increased the probability that the nomination will be settled early. What was a slow-starting and long-lasting process in 1976 (a “marathon”) has evolved into a quick-starting and sudden-ending campaign by 2000 (a “sprint”). Although the 2004 primary schedule has not been set at this writing, actions by the DNC suggest that the front-loading trend is likely to continue (Busch and Mayer 2002).

The financial consequences of front-loading have been threefold. First, front-loading has made the preprimary season crucial for fund-raising. Candidates have strong incentives to raise funds before the primary season begins, because there is little time to raise funds once the closely packed contests are underway. Second, front-loading has concentrated campaign spending in the early primaries, so candidates risk reaching the aggregate spending limit quickly. Third, front-loading has modified the election calendar by creating an interregnum between the effective end of the primary season and the national conventions, the beginning of the general election campaign (Ceaser and Busch 2001, chapter 4). In 1976, the interregnum was about two months long, but by 2000 it had grown to five months. The expanded interregnum requires additional campaign funds, a problem that has been most serious for a candidate emerging from a competitive primary to face a popular incumbent President who does not face a battle for renomination.
Other Financial Problems

Front-loading might have created financial difficulties in any event, but other problems with the presidential system have exacerbated the situation. One serious difficulty is that individual contribution limits have not been adjusted for inflation (that is until BCRA). The maximum individual contribution of $1,000, enacted in 1974, had lost substantial value by 2000, falling to approximately $380 in real purchasing power (measured by the CPI). The same erosion of purchasing power occurred with the $250 matching threshold, which had been reduced to about $95 in real terms by 2000. Although contribution limits were not adjusted for inflation, the aggregate and state-by-state spending limits were adjusted every four years using the CPI. Thus, in real terms, candidates were forced to raise the same sum of money in smaller and smaller amounts.

Although adjusted for inflation, the aggregate spending limit has not been adjusted to reflect the real costs of campaigning, which have increased much faster than the CPI. The escalation of costs has resulted in part from the increased use of modern communications technology, and in part from the need to wage campaigns in many states simultaneously. Also, the state-by-state spending limits failed to reflect the strategic importance of particular states. For example, New Hampshire is clearly the most important primary, and yet the spending limit was $675,600 in 2000—about 2 percent of the overall campaign ceiling of $33.8 million.

One final financial problem requires a brief mention. Over time, the federal income tax check-off that provides funding for the presidential system has failed to generate sufficient money to cover the matching funds obligations at the time they are due, particularly in the case of the initial payments owed to candidates on January 1 of the election year. This situation has arisen in part from the declining participation of eligible taxpayers, and in part because a decline in the number taxpayers eligible to participate (because changes in the tax code have reduced the number of individuals with a federal tax liability, a prerequisite for using the check-off). In addition, the law requires the government to set aside the funds for the general election grants and the national nominating conventions before it covers the primary matching funds (Corrado 1993). As a result, the FEC has been unable in recent elections to honor the full matching requests at the time they are made. So far these obligations have been covered within the calendar year as additional revenues become available. However, if present trends continue, the public funds may not be able to cover the primary matching funds within an appropriate time frame, which could affect the candidates.

Assessing the Impact of the System’s Problems

These financial problems have interacted with the effects of front-loading in a pernicious fashion, making the primary campaigns increasingly onerous. First,
candidates who do not have access to large donations or a large number of donors have increasingly fallen victim to the invisible primary in the preprimary season (Green and Bigelow 2002). Indeed, it is widely believed that candidates must raise a minimum of $20 million in the preprimary season to be competitive. Table 10.1 illustrates this trend by comparing the percentage of funds raised by the top two candidates in each major party in 1980 and 2000. In 1980, all of the candidates raised less than two-fifths of their total funds in the preprimary period. By 2000, three of the four raised more than one-half of their total funds before the primary season. John McCain is the exception that proves the rule in 2000: he raised less than one-third of his total receipts in the primary year. His success in New Hampshire gave him a boost to raise additional money in February to run a credible contest until March, when he lost a series of important primaries.

Table 10.1 also presents data on another facet of this problem: candidates increasingly have turned to large contributions to fund their campaigns. For example, in 1980, Ronald Reagan raised less than one-fifth of his funds in contributions of $750 or more (which includes the maximum donation of $1,000). But in 2000, George W. Bush raised three-quarters of his funds in such large donations, and the dependence on large contributions holds for the other candidates as well. McCain raised more than one-quarter of his funds in such large amounts as opposed to about one-sixth for George H. W. Bush in 1980. Such increases also occurred for the Democratic candidates between 1980 and 2000.

Second, the high cost of competing in the early contests means that competi-

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tive candidates reach the overall spending limit quickly, making it difficult to continue their campaigns. Figures 10.1 and 10.2 compare the spending over the primary season of the major Republican contenders in 1980 and 2000. In both years, candidate spending nears the aggregate spending limit by the end of the season. But in 1980, the candidates were well below the limit at the date when 50 percent of the delegates had been chosen. In 2000, this date occurred much

Figure 10.1 1980 Presidential Nomination Campaign Spending (as Percent of Spending Limit)

Figure 10.2 2000 Presidential Nomination Campaign Spending (as Percent of Spending Limit)
earlier than 1980 (due to front-loading). John McCain had essentially reached the aggregate spending limit before the end of March. This meant that, even if McCain had won the early March primaries, he could not have continued to campaign. Because Bush opted out of the system, he was not restrained by the spending limits.

Figures 10.3 and 10.4 show a similar pattern for the Democrats. In 1980, both Jimmy Carter and Edward Kennedy were still below the aggregate spending limit at the 50 percent delegate mark, but in 2000 Al Gore and Bill Bradley had reached the campaign ceiling and were headed toward the aggregate limit at this point in the campaign (which, of course, occurred much earlier in the primary calendar).

A third problem arises from the combination of the spending limits and high level of expenditures early in the primary season: the presumptive nominee may lack sufficient funds to campaign during the interregnum. For example, in 1996, Bob Dole emerged from a tough primary contest only about $10 million short of the primary spending limit, while President Clinton had about $25 million left to spend. This severely limited Dole’s ability to campaign in the five months leading up to the national convention, while Clinton could campaign vigorously (Corrado 1997; 1999). The shoe was on the other foot in 2000. Al Gore emerged from the primaries with about $11 million left in spending authority. George Bush, who faced no such restrictions, eventually raised and spent $27 million before the convention. In fact, one reason Bush opted out of the public financing system was to avoid Bob Dole’s fate (Green and Bigelow 2002).

Figure 10.3 Democratic Presidential Nomination, 1980–2000
Cumulative Candidate Expenditures through March (as Percent of Limit), and Delegates Selected through March 15 (as Percent of Total)
THE CANDIDATES RESPOND

Presidential candidates have responded to these problems in a number of ways. As the problems have become more serious, the scope of the response has expanded. One early response was to violate the system’s rules. For example, some candidates deliberately exceeded the state-by-state spending limits and were forced to repay public funds to the treasury (Corrado 1993). Others have created separate “delegate” committees to engage in additional spending (Alexander and Haggerty 1987). At least one aspirant, Republican Pat Robertson, acquired mailing lists and other financial resources that were later ruled illegal (Babcock 1987). Such tactics gave campaigns tactical flexibility at the cost of legal sanctions and poor publicity. These kinds of responses threaten the legal integrity of the public financing system.

Other responses operated within the legal framework of FECA, albeit in a fashion contrary to the spirit of the public financing system. For example, some candidates have formed “leadership PACs” to develop fund-raising lists and pay for campaign activities prior to the official beginning of a campaign (Corrado 1992). This tactic allows candidates to expend funds not subject to the spending limits.

Yet another response has been to rely on outside money (Corrado 2001; Green and Bigelow 2002). Such funds include independent public, and internal, communications costs from allied PACs (which are sanctioned by FECA), and in recent times, issue advocacy spending during the preprimary and primary sea-
sons (which pushes the boundaries of FECA). This strategy has been even more common—and more controversial—in the interregnum. An important example is national party soft money spending during the interregnum to rescue a presumptive nominee who had reached the aggregate spending limit. In 1996, the RNC announced a $20 million issue ad campaign in support of Bob Dole using soft money (Republican National Committee 1996). Similarly, in 2000, both major parties began spending substantial sums of money in June on issue advocacy advertisements designed to support their respective nominees, spending that was probably more important for Al Gore, the Democratic nominee, who was close to the aggregate spending limit.

Outside money has also become important in general elections (Corrado 2002). The major party nominees have increasingly relied on party operations to supplement their campaign spending. In every recent election, the national party committees have essentially spent the maximum permissible amount in coordinated expenditures to supplement the public funding given to their respective nominees. They have also taken advantage of the opportunity to raise and spend soft money on voter registration and mobilization efforts, spending tens of millions of dollars in support of their respective presidential nominees. Moreover, these efforts have allowed candidates to reduce their voter registration and turnout budgets, freeing public funds for advertising or other campaign expenses. Interest groups have also engaged in issue advocacy spending for and against presidential candidates, adding substantial spending (Magleby 2002a).

Outside money allows campaigns to expand their financial resources. For example, outside spending is estimated to have totaled some $22 million in the 2000 Democratic and Republican primaries (Green and Bigelow 2002). In the general election, Republicans, Democrats, and their interest group allies spent nearly $50 million more on each side in the presidential campaign than was specified by the public funds grant (Corrado 2002). Outside money thus threatens the structure of the public financing system—which is one principal reason that BCRA tries to restrict it.

A final response to the system’s problems is for candidates to forgo public financing altogether. This tactic allows candidates a maximum of flexibility: they can raise and spend money early to cope with front-loading, without worrying about spending limits. Then, if they win, they can raise more money for the interregnum. Because the public financing system is voluntary, this option is legal, but were it to become widespread it would render the public financing system less relevant to presidential politics.

There are also some costs to opting out from a candidate’s perspective. A candidate would be likely to forgo public funds in the primaries or general election if three conditions were met: (1) the candidate could replace the forgone public funds with private monies (or could finance a campaign from personal resources); (2) the candidate could substantially increase his or her funds above
the aggregate spending limit; and (3) the candidate could opt out without engendering substantial adverse publicity.

These conditions have rarely been met, and thus few candidates have chosen to forgo public funds. From 1976 to 2000 just 7 percent of the major party candidates that were eligible for matching funds opted out (six of eighty-six). All these candidates were Republicans, and all but one case occurred between 1996 and 2000, reflecting the increasing problems with the system. Among the six, three were serious contenders for the GOP nomination, one running twice. Publisher Steve Forbes opted against public financing in 1996 and 2000 largely so he could spend more than $50,000 of his personal fortune. He came close to meeting the first condition above, but not the second—he raised $41.6 million in 1996 (when the aggregate spending limit was $37.7 million) and $48.1 million in 2000 (when the spending limit was $45.6 million). To the surprise of some observers, Forbes also met the third condition: criticism for forgoing public funds apparently did not harm his campaigns.

The two other serious candidates, both former governors of Texas, decided to forgo public financing largely to avoid spending limits: John Connally in 1980 and George W. Bush in 2000. Connally raised $12.7 million, less than the maximum spending limit of $17.7 million. Thus, he failed to meet the first and second conditions above and may have failed to meet the third condition as well (Pomper 1981). Rightly or wrongly, Connally’s experience helped deter other viable candidates from forgoing public funds until 1996.

In 2000, George W. Bush raised $94.5 million, a little more than twice the aggregate primary spending limit of $45.6 million (Green and Bigelow 2002). In fact, his total in the prenomination period alone was larger than the combined maximum public funds available to a candidate of $44.5 million ($16.9 million in the primary and $27.6 million in the general election). Bush met all three of the above conditions handily: he more than replaced the amount he might have received in public matching funds; he raised additional funds beyond what was needed in the primaries; and he suffered no serious consequences from adverse publicity.

Bush’s 2000 primary fund-raising effort was extraordinary by any standard, surprising his campaign officials and outside observers alike. This feat may have resulted from Bush’s unique circumstances: he was simultaneously the sitting governor of Texas, the son of a former President and heir to his father’s immense fund-raising network, and the consensus choice of the GOP establishment desperate to win back the White House. It is possible that Vice President Al Gore could have performed a similar feat within the context of the Democratic primaries. However, given the liberalism of Democratic primary voters, adverse publicity might have harmed Gore in his contest against Bill Bradley.

In any event, Bush was the first candidate to forgo public financing and win his party’s nomination. Moreover, his large war chest proved helpful in the interregnum campaign. But like every major party nominee since 1976, Bush accepted
public funds for the general election. One reason for this decision was that Bush had spent more than $67 million securing the Republican nomination; also, raising another $67 million in contributions of $1,000 or less in five months was a daunting task. Finally, this effort would have taken hard dollars from other Republican Party causes, funds that were needed to effectively spend the prodigious amounts of soft money available to the RNC.

THE IMPACT OF BCRA IN 2004

In this context, how will the provisions of BCRA influence presidential campaigns? Simply put, BCRA is likely to exacerbate the problems of the presidential system by offering stronger incentives for candidates to opt out of the public financing system. We can assess the magnitude of this impact by using the 2000 campaign as a baseline and estimating the changes in candidate finances that might have occurred if BCRA had been in effect. We will also note how such changes may alter the dynamics of presidential primaries in the longer term.

Prospects for the Primaries

Estimates of Change

Table 10.2 presents estimates of fund-raising in 2004 dollars under four scenarios for the principal major party candidates in 2000: Bush and McCain for the GOP, Gore and Bradley for the Democrats. These estimates are, of course, speculation, and so it is worth carefully reviewing the various assumptions behind them.

All the estimates in table 10.2 take the funds raised in the 2000 campaign and the four candidates as illustrations of some of the main types of viable presidential candidates. Scenario 1, “2000 Replay” (Row 1 in table 10.2) lists the private funds raised by these 2000 candidates in 2004 dollars (assuming inflation at 2 percent per annum). This scenario also presents the matching funds received by the 2000 candidates, also adjusted for inflation (in italics). In this regard, one figure must be kept in mind, and that is the maximum matching funds in 2004, estimated to be $18.3 million (listed at the bottom of the table).

The next three rows (2, 3 and 4) in table 10.2 report estimates of the funds that would be raised by each candidate under varying assumptions. The first scenarios (rows 2 and 3) assume that the candidates have the same number of contributors in 2004 as in 2000, but are able to raise more money because of the increased individual contribution limits under BCRA. Scenario 2, “The Survey Scenario” (row 2) uses two sources of data: a very accurate count of the number of donors of $200 to each campaign (to which all the assumptions are applied),
Table 10.2. What If the 2000 Primaries Had Been Run under BCRA? (All estimates in millions of 2004 dollars)

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<tr>
<td><strong>Scenario 1: 2000 Replay</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assume no change in donors, and assume size of donations increases only for inflation. No additional impact because of BCRA.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funds Raised</td>
<td>102.3</td>
<td>33.0</td>
<td>36.7</td>
<td>32.2</td>
</tr>
<tr>
<td>Matching Funds</td>
<td>0.0</td>
<td>15.7</td>
<td>16.6</td>
<td>13.4</td>
</tr>
<tr>
<td><strong>Scenario 2: The Survey</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assume no change in donors. Assume doubled contributions from a percentage of each group of givers that equals the percentage who told the major donor survey that they would give more if the limits went up. Assume halved contributions from a percentage equal to those who said they would give less.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funds raised (private funds)</td>
<td>125.6</td>
<td>35.9</td>
<td>43.7</td>
<td>38.9</td>
</tr>
<tr>
<td><strong>Scenario 3: Double $1,000 Donors,</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Again assume no change in the donor pool, but double the contributions from half of the $1,000 donors reported in Federal Election Commission data. This assumes more people would give more than said they would in the donor survey.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funds raised</td>
<td>135.6</td>
<td>39.1</td>
<td>47.1</td>
<td>42.5</td>
</tr>
<tr>
<td><strong>Scenario 4: New Donors</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Add twice as many donors at all levels (except for Bush) and double the contributions from half of the $1,000 contributors, old and new.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funds raised</td>
<td>—</td>
<td>73.7</td>
<td>97.1</td>
<td>88.8</td>
</tr>
</tbody>
</table>

Note: Estimated 2004 maximum matching funds: $18.3 million.

and the 2000 presidential donor survey (see chapter 4 for details about this survey).

In the 2000 presidential donor survey, respondents were asked to predict their own behavior if the contribution limits were raised. Overall, 22 percent of the donors of $200 or more predicted that they would give more if allowed to do so by law (76 percent predicted their giving would not change and 2 percent claimed they would give less). Donors of under $200 were less likely to predict an increase; just 4 percent did so (and 8 percent predicted a decline). These figures are best thought of as a minimum estimate of how donors will respond to
increased limits, since they were asked to predict their giving in the abstract, before the passage of BCRA and in the absence of a real campaign.

The Survey Scenario estimate (row 2 in table 10.2) applies the survey responses of people who identified themselves as Bush, McCain, Gore, and Bradley donors. It takes the percentage of respondents who said they would give more, and applies it to the pool of actual 2000 donors of $1,000, $200 to $999, and under $200. It further assumes that donors who predicted increased giving would double their 2000 gifts, and that the donors who said they would give less would cut their gifts in half. For example, 33 percent of Bush’s $1,000 donors predicted they would give more, and so Bush’s 2000 funds (row 1) were increased by taking one-third of his $1,000 donors and assuming they would give $2,000. The same procedure was used for the other sizes of donations. Interestingly, a similar percentage of the $1,000 donors for Gore (32.5 percent) and Bradley (31.1 percent) said they would increase their giving, but only 18 percent of McCain’s $1,000 donors made the same claim, so the higher limits would have helped him less, under these assumptions.²

Scenario 3, “Double $1,000 Donors” (row 3 in table 10.2) is the same as the Survey Scenario, with one exception: it assumes that for each candidate one-half of the $1,000 donors would double their gifts to $2,000 (instead of what the survey predicted). All such assumptions are in some sense arbitrary, but campaign professionals believe that the 50 percent figure is a reasonable upper figure for 2004.³ It is tempting, of course, to assume that all of the $1,000 donors will double their donations in 2004, but there is no evidence this would actually happen.

Scenario 4, “New Donors” (row 3 in table 10.2) moves beyond the existing donors in 2000. The secret of Bush’s extraordinary fund-raising in 2000 was expanding the number of donors to his campaign. For example, his 59,279 $1,000 donors were almost four times Bob Dole’s 14,875 $1,000 donors in 1996 (and more than twice the 26,246 $1,000 donors to all the other Republican candidates in 2000). The increased contribution limits in BCRA will make it easier for future candidates to repeat Bush’s feat. For instance, a $2,000 limit would have allowed Bush to raise the same amount of money with a little over 29,000 maximum donors—only twice as many as Dole had in 1996. The new Donor Scenario assumes that each candidate would add twice as many donors of all types as he did in the 2000 campaign. (Because Bush already made this move in 2000, we did not calculate such an estimate for him. If Bush could expand his base once again, perhaps by mobilizing the donors to his 2000 primary rivals, he could substantially increase his total. Such a possibility would once again break precedent.)

Thus, scenarios 2, 3 and 4 in table 10.2 provide, respectively: a low estimate based on donors’ predictions of their own behavior in the abstract; a high estimate based on the first estimate plus the wisdom of campaign professionals on
the likely increase in $1,000 donors; and another high estimate, adding to the
second estimate a doubling of the number of donors in the 2000 campaign.

The Impact of the Change: Bush and McCain

The logical place to begin discussing these estimates is with George W. Bush,
the only one of the 2000 candidates who is likely to run again in 2004 (Associated
Press 2003). If Bush simply replicated his 2000 fund-raising (row 1), his primary
war chest would total $102.3 million in 2004 dollars. If all of Bush’s donors who
predicted an increase doubled their gifts (The Survey Scenario), then Bush would
raise $125.6 million. If, however, if the Double $1,000 Donors Scenario prevailed,
Bush would have $135.6 million. These figures are impressive, but less than the
$200 million some political observers have said they expect the Bush campaign
will generate in 2004 (Edsall 2003).

These estimates strongly suggest that Bush will once again forgo public finan-
cing in the 2004 primaries. After all, the lowest prediction of the funds he will
raise is nearly seven times greater than the maximum matching funds in 2004
($18.3 million), and is roughly one-third greater than the combination of matching
funds and the general election grant ($91.3 million). If Bush is unopposed in
the primaries (as often happens with an incumbent president), his campaign
could use the bulk of these funds for the interregnum and general election cam-
paign (see below). Of course, a large war chest is one way to ward off potential
primary challengers.

How would the new law affect a challenger to an establishment candidate,
such as John McCain in 2000? If the McCain campaign is any guide, then the
impact of BCRA is likely to be quite different than for an establishment candidate
like Bush. In the 2000 Replay Scenario, McCain raised $33 million, and he gains
relatively little in the Survey Scenario ($35.9 million) and Double $1,000 Donor
Scenario ($39.1 million). These gains are far less that the matching funds he
would be eligible for in 2004. The reasons for these low figures are straightfor-
ward. First, relatively few of McCain’s donors said they would give more (just 18
percent of his $1,000 donors). Given McCain’s focus on campaign finance
reform (which eventually resulted in the passage of BCRA), this reluctance to
give more by his donors makes some intuitive sense. Second, McCain had rela-
tively few $1,000 donors (just 10,040), having financed his campaign with a large
proportion of smaller donations (Green and Bigelow 2002). McCain has much
larger gains under the New Donors Scenario, with the assumption of doubling
the number of donors to the campaign. However, a challenger may not be able
to attract this kind of donor support, even in Republican circles.

It is likely, then, that candidates such as McCain will continue to accept public
financing under BCRA. Some of the new rules may well be beneficial: the large
contribution limits will make it easier to raise a large war chest in the preprimary
season. Other aspects of the new rules would be less advantageous, such as the
fact that the matching threshold of $250 is just one-eighth of the maximum donation of $2,000 (instead of one-fourth of the previous $1,000), and each $2,000 would count toward the spending limit. And such a campaign would still suffer from the system’s other problems, including front-loading and spending limits. Indeed, McCain’s apparent inability to raise a large amount of extra money would have been of little consequence in 2000, since he would have reached the aggregate spending limit in March in any event (Green and Bigelow 2002).

Taken as a whole, this analysis suggests that BCRA may encourage two tiers of primary candidates: privately financed establishment candidates (and self-financed millionaires) versus publicly financed challengers and insurgents. The latter will be increasing plagued by the presidential system’s other problems. Thus, while such candidates might prevail in the primaries, the window of opportunity for such a victory is likely to be even narrower than in the past.

The Impact of the Change: Gore and Bradley

Table 10.2 reveals a variation on these themes for the Democrats. Al Gore’s 2000 fund-raising performance equals $36.7 million under the 2000 Replay Scenario. The Survey Scenario would generate $43.7 million for Gore, and the Double $1,000 Donors Scenario produces $47.1 million. Both increases are substantial, but neither is larger than the maximum public matching funds ($18.3 million). So, by these estimates, Gore would have accepted public funds in 2004. Like McCain, he might have found it somewhat easier to raise funds due to the higher contribution limit, but would still have suffered under the system’s problems.

Once again, the big gains occur in the New Donor Scenario. The resulting $97.1 million is comparable to Bush’s $102.3 million (see 2000 Replay for Bush). The net gain of $60 million is three times larger than the maximum matching funds, allowing for a well-financed and flexible primary campaign, and then an adequate interregnum campaign. Under these circumstances, it would make sense for Gore to forgo public financing. And BCRA would make this strategy much easier. For example, he would have to expand the number of $1,000 donors from some 19,289 to 38,575—far less than Bush’s 59,279 (and about equal to Gore’s and Bradley’s combined $1,000 donors of 37,634).

If Gore is an example of an establishment Democrat, then Bill Bradley represents a well-funded challenger. The estimates for the Bradley campaign closely resemble those for Gore, because Bradley’s 2000 fund-raising was quite similar (for instance, Bradley had 18,345 $1,000 donors). As with the Gore campaign, the Survey and Double $1,000 Donors Scenarios estimates would allow for a more adequate campaign within the public financing system, while the New Donor Scenario would allow Bradley to forgo public financing. Indeed, Gore’s and Bradley’s fund-raising performances are close enough to suggest that a
strong challenger might decide to run a privately financed primary campaign against an establishment candidate who accepts public funds.

It is worth stressing that opting out of the public financing system would require a substantial expansion of Gore’s and Bradley’s 2000 donor bases. But would it really be possible for a Democratic candidate to expand the number of donors in this fashion? Some observers are quite skeptical of this possibility, arguing that there are simply not enough donors in Democratic circles for this purpose (Edsall 2003). The evidence certainly suggests that it would be difficult for all the major 2004 Democratic candidates to forgo public financing simultaneously. However, this same evidence also suggests a more nuanced view of the possibility of such a strategy for at least one of the candidates.

To begin with, the Republicans’ 1996 experience would have suggested that the 2000 Bush fund-raising effort was next to impossible: in that year the $1,000 donors to GOP candidates totaled only 41,927, far fewer than Bush’s 59,279 in 2000. Few candidates may be able to duplicate Bush’s spectacular 2000 effort, but due to BCRA, they have to perform only one-half as well in 2004. In addition, past Democratic primary fund-raising was premised on public funds, since no Democrat had ever opted out of the system. Indeed, some observers believe that Gore could have raised enough private funds to forgo public money in 2000 (although perhaps not the same amount of money as Bush).

Finally, the 2000 donor pool is only a small fraction of the number of people with high incomes who could make a significant contribution to a Democratic presidential candidate. For example, the 2000 Voter News Service exit polls found that 29 percent of voters with incomes of $100,000 or more were Democrats, and the 2000 National Election Study found that 37 percent of respondents with household incomes of $95,000 or more identified or leaned Democratic. Such figures reflect recent social and educational changes among upper status groups (Galston and Kamark 1998). While these percentages may seem small, when applied to the 14 million households with annual incomes of $100,000 or more found in the 2000 U.S. Census (DeNarvas-Walt, Cleveland, and Roemer 2001), they produce between 4 and 5.1 million potential donors. If one were to assume that 5 percent of such donors would make a donation of over $200 to a candidate if asked (about one-half of the percentage that reported making a campaign contribution in the 2000 National Elections Study), the size of the potential donor pool is between 200,000 and 255,000. These figures are more than twice the 68,488 actual donors of $200 or more to Democratic candidates in 2000. So, there is certainly room in the income structure of American society to expand the Democratic donor pool—much as Gore and Bradley in 2000 over the 1996 Clinton effort. The trick, of course, is for a candidate actually to find and obtain donations from such people.

Several of the initial Democratic candidates for 2004 might well be able to achieve this feat (Edsall 2002b). Among the establishment figures are former House Minority Leader Richard Gephardt (D-Mo.), who may be able to draw
on a large pool of donors from his years in Congress, and the 2000 Democratic Vice Presidential nominee, Senator Joseph Lieberman (D-Conn.), who may find a strong base of support in the Jewish community. Potentially well-funded challengers include Senators John Edwards (D-N.C.), whose connections with trial lawyers might produce sufficient funds, and John Kerry (D-Mass.), who may be able to rally progressive activists. One factor militating against such a strategy is the possibility that forgoing public funds could become a campaign issue, given the reform orientation of many Democratic activists and primary voters. Indeed at least one candidate, Howard Dean (D-Vt), has promised to pursue this issue vigorously should any candidate opt out of the public financing system.

If even one Democratic candidate successfully opted out of the public financing system, the invisible primary could become draconian. One candidate’s early fund-raising success could drive many rival candidates from the race for lack of funds. And if one adds to this prospect the absence of spending limits and the ability to finance an interregnum campaign, then opting out of the system could be very attractive. The fact that Bush may be especially well funded in 2004 may add additional pressure on less competitive Democratic candidates to drop out early so as to maximize the total funds available to the front-runner—as happened with the Republican candidates in 2000. And the absence of soft money for the national party committees may persuade Democratic leaders and activists that getting behind the most likely nominee will be necessary, under the circumstances.

Prospects for General Election Funding

Will BCRA provide incentives for candidates to forgo public funds in the general election? Here our assessment must be even more speculative than for the primaries, because no major party nominee has ever refused the general election grant. As before, Bush presents the most relevant case. In order to forego the general election grant, the Bush campaign would have to raise more than $73 million (a good estimate for the size of the grant in 2004). Even if we assume that the scenarios in table 10.2 could be repeated after the primary and interregnum campaigns have ended—a highly unlikely assumption—the new funds would fall short of the amount needed. For example, the Double $1,000 Scenario produces just $33 million over the Replay 2000 Scenario, and it is highly unrealistic to expect the large Bush donors to double their gifts twice in a single election year.

In addition, the Bush campaign will face other incentives to accept the general election grant. First, by accepting the general election grant (and not seeking additional private funds), the Bush campaign would not interfere with the Republican efforts to maximize hard-dollar fund-raising in the absence of soft money. Second, Bush could be actively involved in such fund-raising for the party and its candidates, and probably could raise more funds in aggregate. Finally, any funds left over from the primary and interregnum campaigns could
be transferred to Republican Party committees, which could use them for coordinated spending or other election activities. All such efforts would strengthen both the Republican Party and Bush’s position within it. Finally, if Bush has strong incentives to accept the general election grant, then surely the Democratic nominee will do so as well.

CONCLUSION

The estimates presented above strongly suggest that President Bush will once again forgo public matching funds for the primaries in 2004. It is also possible that at least one Democratic presidential contender in 2004 will forgo matching funds in the primaries, but this will require a dramatic expansion of the number of donors as well as an increase in the size of gifts from existing donors. Most Democratic candidates are likely to participate in the public financing system and face a mix of new advantages and old difficulties. Finally, it is unlikely that Bush will forgo general election public funds, and the Democratic nominee will certainly accept them.

Key provisions of BCRA are central to these assessments. The doubling of the individual contribution limit from $1,000 to $2,000 is critical; the lack of change in matching funds and the banning of soft money matter as well. In addition, the increasing problems with the presidential public finance system, such as the front-loading of the primary schedule, are important factors.

If nonparticipation in the presidential primary system becomes commonplace, especially among the prospective front-runners in each party, the public financing system will become less relevant to presidential politics. Under such circumstances, the system is unlikely to achieve the goals that motivated its enactment: enhancing competition, increasing participation, and limiting the influence of money in presidential politics.

In the longer term, BCRA may alter the dynamics of presidential primary campaigns. One can imagine a system with two tiers of candidates: privately funded establishment candidates (and self-financed millionaires) facing publicly funded challengers and insurgents. One can also imagine a more draconian invisible primary winnowing the field of potential candidates much earlier in the process, as party leaders and activists seek to maximize overall funds for the prospective nominee. In sum, BCRA is likely to exacerbate the existing problems in the public financing system.

NOTES

1. The campaign finance data come from a careful study of individual contributions of $200 or more in the 1996 and 2000 election cycles by Anthony Corrado and Heitor
Gouveia at Colby College, removing refunds and combining multiple donations from a single individual. This work was conducted with the support of the Pew Charitable Trusts, and the views expressed here are solely those of the authors.

2. For Bush, the assumptions used in row 2 yielded a 33 percent increase for $1,000 donors, a 17.3 percent increase for donors of $200 to $999, and a 7 percent increase for donors of under $200. For McCain, the comparable figures were 18, 10.5, and 3 percent, respectively; for Gore, 32.5, 12.8, and 0 percent, respectively; and for Bradley, 31.1, 13.9, and 0 percent respectively. One might reasonably ask why donors of less than $1,000 should be included. After all, they legally could have given more in 2000 and did not do so. We include an increase in their estimated giving because of an important feature of fund-raising: many solicitations and responses are keyed to the maximum contribution limit. For instance, if the maximum is $1,000, many personal requests and “ticket” prices for events will be set at $500 or $750. Likewise, when prospective donors are asked for $1,000, many routinely give less.

3. The authors shared the 50 percent figure with a dozen consultants who have been active in past presidential campaigns, and all agreed that it would be a worthy goal.

4. The 2000 donor survey found that 28 percent of presidential donors who gave $200 or more and had incomes of $100,000 or more identified with the Democratic Party.
Furthermore, BCRA provided campaign finance law in America with sharper teeth, enacting stiffer penalties for breaking the law. Obviously, a piece of legislation with the impact of BCRA carried with it some controversy, leaving politicos on both sides of the aisle crying out. The magnitude of the law and the controversy surrounding it brought a lawsuit to the U.S. Supreme Court in short order; in a five to four decision, BCRA was upheld in the 2003 case of McConnell v. FEC (CQ Almanac 2003). In the decision, the Court concurred with the 1976 decision Buckley v. Valeo, which upheld limits on contributions. The primary purpose of the Bipartisan Campaign Reform Act (BCRA) was to eliminate the increased use of so-called soft money to fund advertising by political parties on behalf of their candidates. Prior to the law’s enactment, money was considered “hard” if it was raised in accordance with the limits concerning sources and amounts specified by FECA as amended in 1974. Provisions. The BCRA attacked those loopholes in several ways. First, it raised the amounts of permitted, lawful “hard money” contributions by individuals from $1,000 per candidate per election, where it had remained since 1974, to $2,000 per candidate per... Campaign finance in the United States is the financing of electoral campaigns at the federal, state, and local levels. Learning Objectives. Assess the origins, scope, and impact of money spent on election campaigns. Key Takeaways. Key Points. In a 5 to 4 decision, the court held that portions of BCRA violated the First Amendment. Background. The Bipartisan Campaign Reform Act of 2002 prohibited corporations and unions from using their general treasury to fund electioneering communications within 30 days before a primary or 60 days before a general election. Also known as the Bipartisan Campaign Reform Act. Was enacted to regulate and amend previous acts. Created the FEC to enforce campaign finance laws. Put limits on contributions. Required contributions and spending to be made public information (full disclosure). Started public funding for presidential elections. Shortcomings. Impact. Today, campaign finance is through the roof. Between ads and spending and contributions, our campaign finance has sky-rocketed. Ads are constantly on TV to advocate for or oppose a candidate, but these ads can misinform voters. Also, individuals as well as groups make contributions to campaigns for many reasons, including the hopes of being remembered.