

**Election Daze:
From the Primaries Through the U.S. Supreme Court's
Decision Favoring George W. Bush**

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The results of the 2000 presidential election divided the country along political party lines and generated tremendous acrimony among the supporters of each major party's candidate. Rumors of disenfranchisement ran rampant. Accusations ranged from tampering with absentee ballots to racial discrimination at polling places.irate voters claimed that their votes were credited to the wrong presidential candidate. Registered voters in the Florida Panhandle claimed that they did not vote because the major television networks incorrectly declared Al Gore the winner of Florida's 25 electoral votes while polling places in the western part of the state were still open. Although Florida was the focal point for these charges, many other states had similar problems. Nationwide, 4 to 6 million votes were improperly cast or lost, and therefore not counted ("Caltech-MIT" 1). Florida's political and electoral processes were placed under a microscope only when it became apparent that its electoral votes would decide the next president.

This essay scrutinizes the campaign tactics employed by supporters of Al Gore and George W. Bush beginning with the primary skirmishes through the 36-day battle for Florida's 25 electoral votes. It also looks at how the print media and the television networks covered Election Day and its aftermath. It highlights common threads that surfaced during the primaries and weaved themselves right through the election's final disposition in the courts, including public arguments for "doing what's best for the country" while privately acting in a purely

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self-interested way. Both parties fought long and hard to disseminate their political and public relations messages within the legal framework of campaign finance law as well as state and federal election law.

This paper will address the following questions: Given that political campaigns are partisan and adversarial by nature, do they also have to be mean-spirited and sometimes dishonest? Does the country benefit from a continuous campaign from one Election Day until the next? Did the news media present a balanced view on Election Day and during the 36-day legal battle? It also examines techniques used by both sides in attempting to win at the polls, and later in the courts, including strategies once used predominantly by radicals attempting to seize power rather than win it. Practical remedies for the glaring deficiencies in our electoral process are proposed. The paper is divided into four separate, but related sections:

1. The Long Campaign - identifies communication tactics used by both major candidates. It examines how the media portrayed both campaigns and how a frustrated media attempted to predict a winner before Election Day, when every public opinion poll indicated an extremely tight race. It briefly touches on statistical techniques such as sample selection and margin of error that were unable to divine a winner in this virtual dead heat of an election.

2. Election Day – analyzes each television network’s frantic attempt to be the first to name the next president and how television’s rush to judgment may have affected the election’s outcome. It explains the futility of trying to be first when every network relied on the same company for its exit poll data, even though more accurate information was available. It also describes change in tactics by both parties once they understood that Florida was a dead heat. It argues that Democrats were more proactive than Republicans in developing “battle plans” for several swing states, including Florida, well before Election Day.

3. 36 Days - During the protest and contest phase of Florida’s election, Democrats and Republicans attempted to win on two fronts: public opinion and jurisprudence. This section details the incredible

difference between what candidates and their supporters told the public and what they did in court, such as maintaining a public posture of wanting all votes counted while asking the courts to invalidate ballots favorable to their opponents or forcing selected counties to include invalidated ballots favorable to their side. It also evaluates the impact of ridicule and name-calling in the post-election process.

4. Fix it – Argues that Florida’s problems are also the nation’s problems. This section evaluates recommended changes to the election process on a national level, including elimination of the Electoral College, improved voting methods and campaign finance reform. Major campaign finance reform would directly impact what candidates, political parties and the media could say and how much money they could spend during a political campaign. This section argues that the most sought after changes in campaign finance reform are most likely unconstitutional on First Amendment grounds.

THE LONG CAMPAIGN

The 2000 presidential election should have yielded an easy victory for Al Gore. For nearly eight years he had been second in command of the most powerful country in the world. America’s economy was riding a crest of good news. As a key player in the Clinton Administration, Gore boasted of a strong dollar, a string of stellar Gross Domestic Product increases, rising stock prices and record low unemployment rates. Consumer confidence was at an all-time high. United States’ military troops were relegated to peacekeeping roles and did not appear to be in harm’s way. Gore also held a clear edge over Bush in governing experience. Before becoming vice president, he represented Tennessee in the U.S. Senate and House of Representatives. He grew up on his father’s “senatorial lap” in Washington D.C. Bush’s public service experience was limited to the governorship of Texas. His well-known problems with the English language and his youthful indiscretions gave Gore supporters easy weaknesses to exploit.

So what happened? Bush’s razor-thin victory over Gore was

due in a large part to a Republican superiority in communicating ideas to the public and a better “packaging” of their candidate. Bush stayed on message while Gore’s image was like quicksilver. Nearly every Bush message screamed: “I’m a moderate.” His detailed position papers on topics such as healthcare, the environment and education were described as “Real Plans for Real People” (Chait 1). These packaging and communication themes reappeared throughout the campaign, from the Democrats’ rapid response to voting irregularities on Election Day, to their public relations debacle on absentee ballots, right through the post-inauguration publication of numerous books by apologists for both candidates.

Early Mudslinging

After Super Tuesday, the remaining primaries were effectively meaningless. Gore had dispatched of Bradley with relentless political and personal attacks during their ten debates while anonymous attacks by issue advocacy groups proved fatal to Senator McCain’s campaign. It was going to be Bush versus Gore in a “loser leaves town match” for the presidency. Supporters of both candidates didn’t waste any time starting smear campaigns against their opponent. They published books and articles whose main purpose was to ridicule and embarrass the opposition’s candidate. This tactic was succinctly described 30 years ago by Saul Alinsky: “Ridicule is man’s most potent weapon. It is almost impossible to counterattack ridicule. Also it infuriates the opposition who then react to your advantage” (Alinsky 128).

Paul Begala, a senior strategist for Clinton–Gore 1992 and a top aide to President Clinton in 1997, convinced Simon and Schuster to publish his diatribe against Bush. Although Begala insists that the book is not a product of the Gore for President campaign, he spends much of it singing Gore’s praises whenever he is not insulting and demeaning Bush’s intellect, career, veracity and governing skills. (Begala “Is?” 15). “W., you’re going to hate me when someone reads this to you. But you don’t have what it takes to be president. Even your most loyal defenders say you’re a few beans shy of a full burrito intellectually. And your whole career has been a case study in the art of falling upward” (14). This tactic is well known to Democratic strategists. They did it to

Dan Quayle in the early 1990s after his misspelling of potato and after each of his frequent malapropisms. They made fun of Gerald Ford's clumsiness and Ronald Reagan's governing by delegation.

The Republicans counter punched with a book against Gore. The 92-page paperback was mailed to potential voters sympathetic to Republican ideas. *Al Gore – America in the Balance* was produced by the American Conservative Union and its authors pictured Gore in the most distasteful light possible. "Al Gore is a child of television. In an earlier age he could never have become a player on the national political scene, much less the nominee of the Democratic Party this fall. And his election could well mean the end of America as we know it...He is more ideological than Hilary and more careless with the truth than Bill. He is the nation's worst nightmare" (Houston and Fava 5).

Having surrogates do their dirty work enabled both candidates to maintain a respectable, civilized demeanor. Both were still able to issue a generic statement denying any responsibility for the hatchet jobs: "Mr. or Mrs. So and So is an independent thinker and can say whatever he or she thinks. This is a free country. I have no control over his or her thoughts or speech." The assault is committed with neither candidate's fingerprints left at the crime scene.

Candidates as Non-durable Goods

On a more official level, both sides were capable of launching huge public relations (advertising) campaigns at a moment's notice. The concept of packaging a candidate through the use of television can be traced back to the 1968 presidential election, *Nixon v. Humphrey* (McGinnis 22). Joe McGinnis was given access to the inner workings of Nixon's brain trust during this election. He recorded his observations in *The Selling of the President*. Contemporary campaign managers have built upon these observations to launch full-scale advertising campaigns for a candidate or against an opponent. The public usually derides these campaigns as being underhanded, insulting and avoiding major policy issues. But these campaigns will not cease, because they work.

"The television celebrity is a vessel. An inoffensive container in which someone else's knowledge, insight, compassion, or wit can be presented. And, we respond like the child on Christmas morning who

ignores the gift to play with the wrapping paper...Television seems particularly useful to the politician who can be charming but lacks ideas...Print is for ideas. On television it matters less that he does not have ideas. His personality is what viewers want to share...He need be neither statesman or crusader; he must only show up on time" (29).

Each candidate tried to cultivate television to his advantage; Bush seemed to reap the better harvest. Republican campaign workers generated position papers from abortion to foreign policy to tax reform. They published these in manuscript form and on the Internet (print is for ideas). Even if Bush did not actually write these papers, they were there for anyone who doubted his "gravitas". Republicans used television to reshape the public's opinion of Bush from one of an "over-exuberant youth, failed businessman" to that of a man with limited experience in Washington D.C. having many good ideas about running the country. His lack of Washington exposure was portrayed as a plus instead of a minus.

In contrast, Gore is a policy wonk with command of every major (and minor) problem that may befall the country in the foreseeable future. But his handlers recognized that many people considered him stiff, pretentious, boring and probably a liar. They used television to "humanize" their candidate, to make him seem like a regular guy, not a child of privilege who had spent virtually his entire life inside the Beltway — attending private schools, living in luxurious hotels and enjoying the perks of a privileged few. It was up to his campaign staff to reshape his stiff image into one of a family man who cared for the little people. At the same time they sought to undo the damage to his veracity that resulted from a 1996 Buddhist temple fund-raiser and from merely being associated with President Clinton (Oliphant 1). If Bush needed gravitas, Gore needed veritas (Tapper "And The Winner Is" 1).

"Potential presidents are measured against an ideal that's a combination of leading man, God, father, hero, pope, king, with maybe just a touch of the avenging Furies thrown in" (McGinnis 26). "Advertising is a con game, too. It is not surprising that politicians and advertising men have discovered one another. And, once they recognized that the citizen did not so much vote for a candidate as make a psychological purchase of him, it is not surprising that they

began to work together. You sell your candidates the way a business sells its products” (27).

Campaigners for both sides understood the task at hand — determine the needs of the marketplace (voters) and present their candidate as the “product” that meets those needs. Experienced campaign workers also understood how best to appeal to their target audiences. “When we argue with him (the viewer) we demand that he make the effort of replying. We seek to engage his intellect...this is the most difficult work of all. The emotions are more easily roused closer to the surface, more malleable” (38). The way to the audience’s vote is not through a barrage of facts, but through an appeal to their emotional needs. A candidate cannot discover his audience’s needs until he identifies that audience. Naming “all voting age citizens of the United States” as an audience is much too broad. Although candidates speak for all the people, they are really only interested in wooing a majority in a two-person race and a plurality in a multi-candidate race. If that fails, a win in the Electoral College will suffice. President Clinton won 43 percent of the vote in 1992 and 49 percent in 1996 (“U.S. Election Maps” 1).

It is my observation that, in keeping with the idea of candidates as products, media people from both major campaigns surveyed potential voters to uncover the character traits of the ideal candidate. They then tried to mold their candidate without appearing to pander to the audience’s desires.

Roller Coaster Polls

Bush became a serious candidate for the presidency with his landslide reelection as Texas governor in 1998. The major polling companies gave him double-digit leads over Gore through most of 1999. To close this gap, the Gore team looked “outside the box” for help. In October 1999 they retained feminist author, Naomi Wolf, at \$15,000 a month to reshape the vice president from a “beta male” into an “alpha male.” A beta male is a subordinate male while an alpha male is viewed as the leader of the pack. Alpha male was a vague description of the man who gets the respect of other men and still gets the girl — all the time (Walczak 1). Unfortunately for Gore, when word got out

that Wolf's monthly salary was more than the vice president's, the press had a field day. Media analysts derided the Gore camp for this attempt to reinvent its candidate based upon sexual attractiveness (Ponte 6). This public relations disaster was one of the election's paradoxes. Instead of reshaping him into a man's man (Gore did not poll well among male voters), this attempt only reinforced another stereotype that it sought to eliminate — that Gore would do anything, say anything or become anything to win an election. His need to be viewed as a strong truthful man remained unfulfilled.

If the vice president had patiently waited until after the New Hampshire primary, he would have understood that Bush's double-digit lead was illusory *and* he could have saved his campaign a bundle of money. After John McCain trounced Bush in the Granite State's primary, national polls showed that the Texas governor led the vice president by an average of only 5 points right up until the Republican National Convention (Gigot and Shields 1). Bush got another bounce in the polls after choosing Dick Cheney as his vice presidential running mate at the convention. His lead over Gore surged to 17 points, but once again the lead failed to last ("Battleground 2000" 1).

When Gore's poll numbers were their lowest (just prior to the start of the Democratic National Convention), he unleashed a secret weapon: the Kiss! His over-affectionate assault on his wife's lips and body on prime time national television was just the tonic his campaign needed. Suddenly, Gore was ahead of Bush by 6 percentage points (1). He overcame the Bush lead not by reciting endless facts, but by working on the emotions of his targeted audience, women.

The fickle public seemed to change its mind weekly. During the last six weeks of the campaign, more than two thirds of the television news stories were related to the closeness of the race rather than on the candidates' points of view on policy issues (Smith 1). Instead of expanding coverage on the candidates' philosophical differences, television chose to dwell on the nail biting aspects of the campaign.

Unconventional Debates

Before the three presidential debates were held in October 2000, conventional wisdom gave Gore a big edge. He destroyed Bradley in

the primary debates, just as he had destroyed Jack Kemp in the 1996 vice presidential debates. Bush was an inexperienced debater and not a very good talker. He didn't seem to think on his feet too well either. Bush's shortcomings turned into advantages while Gore's legendary forensic prowess would come back to haunt him. After the three televised debates, Bush was back on top, according to most major polls (Newport 1). Bush came out ahead among the audiences, not because he was perceived as the winner of these debates, but because he came across as a nice honest man who didn't quake at the sight of big bad Gore. Substance placed second to style. In debate one, Gore acted like a petulant child, rolling his eyes or huffing and puffing while his opponent spoke. Bush remained unflappable during these theatrics. The vice president transformed himself into a nice guy for debate two, but audiences thought Bush won that debate on substance (Goldberg "Election" 1). The aggressive Al reappeared in debate three. His invasion of Bush's "personal space" on stage and Bush's humorous, dismissive nod in response might have cost Gore the presidency (1). It certainly changed the dynamics of the election. Bush gained political weight by going the distance with Al Gore in these three debates. He carried this weight well, right into the campaign's final week.

For all of the cries for a substantive interchange of ideas, the fate of both campaigns seemed to hinge on the basis of a few non-verbal tics (Gore's kiss, his eye rolling, his invasion of Bush's space and Bush's response) that were more reactive than planned.

The Final Push

Although most polls predicted Bush as the winner a few days before the election, Gore's team did not give up. It launched a furious "get out the vote" campaign in hotly contested states until the polls closed (after they closed in Missouri). A tight race became a dead heat because Gore had identified his target audiences: blacks, union members, working women with children, part-time workers, urban residents, working women and non-gun owners. These were the seven sub-groups of polled voters giving Gore more than 50 percent of their vote (Gallup "Demographic" 1). He did not waste much time on white male gun owners or married people in general, since homemakers, gun

owners, suburban men churchgoers, men, rural residents, marrieds, whites and couples with children under eighteen all gave Bush more than fifty percent of their vote (3). He didn't try to "convert" Bushites (The Silent Majority?); he just tried to get more of his followers to vote. In these final days he ignored those states where he was far ahead or far behind, opting instead for those states that were too close to call. It almost worked.

The Gore camp made a last minute effort to attract the undecided voter by releasing negative information about Bush on the Thursday before the election. It was then that a Gore supporter dropped the story of Bush's Driving Under the Influence (DUI) arrest in 1976 into the laps of the American public. A Maine newspaper had uncovered this story in June 2000, but Democrats waited to release it until the week before the election to maximize its exposure and, hopefully, its damage ("Democratic Leak" 2). Although The Gallup Organization reported: "Most Voters Say that Bush DUI Incident Will Have No Effect on Vote" (Gallup "2000 Election" 3), it would be a mistake to believe that this tactic did not hurt Bush. In *Rules For Radicals*, Saul Alinsky explains: "Once the battle is joined and a tactic is employed, it is important that the conflict not be carried on over too long a time" (Alinsky 159). The story's effect was heightened due to the closeness of the election. The Democrats knew that its effect would not be large, but by this time they were nibbling at the edges. With such a tight race, any defections from the Bush camp would help Gore. Ten percent of independents polled said that this information made it less likely that they would vote for Bush (4). If even half of these independents switched sides or just stayed home on Tuesday, they would have a tremendous effect on the election's outcome.

The stage was set for the Big Show. After 18 months of position papers, public relations hits and misses, dirty tricks and more than \$2 billion spent on campaigning (it is estimated that issue advocacy groups spent \$347 million, political parties spent another \$487 million in soft money and federal candidates spent \$1.5 billion for the 2000 election cycle), both major party candidates were ready to watch the results unfold on national television ("Soft Money" 4).

ELECTION DAY

A glimpse at the final results for the 2000 presidential election from 10 polling services shined little light on the election's outcome. For clarity, the table below shows results only for Gore and Bush ("Final Poll Results" 1-3).

Table 1
Final Poll Results for Election 2000 Gore v. Bush
(Polls were conducted from November 3 – 5, 2000)

Pollster	Prefer Gore	Prefer Bush	Margin of Error (+/-)
Reuters/MSNBC/Zogby*	48%	46%	3%
CBS News	45	44	3
Newsweek (Registered Voters)	44	41	4
Fox News/Opinion Dynamics	43	43	3
Newsweek (Likely voters)	43	45	4
CNN/USA	45	47	2
ABC News Tracking	45	48	2.5
Washington Post Tracking	45	48	3
Battleground	45	50	3.1
Portrait of America	40	49	1.6

Of the 10 polling organizations surveyed for this report: six predicted Bush as the probable winner; three gave Gore the nod and one called the race a dead heat. Adding to the confusion, eight of these polls predicted victory for one candidate by a level that fell within the margin of error for their samples.¹ After under-representing minority voters and misjudging the effects of absentee voters, the pollsters weren't sure who was going to win.²

Television analysts and anchors relish down-to-the-wire contests. The public stays glued to the screen, ratings soar and the talking heads get a chance to demonstrate their brilliance. Unfortunately, no one looked very smart the day after 2000's presidential election. The major networks not only flip-flopped on Tuesday evening, but they stood accused of using faulty incomplete data, jumping to

conclusions and possibly affecting the contest's outcome.

Voter News Service

For the 18 months of campaigning before Election Day 2000, media analysts relied on readily available public opinion polls to frame their stories, but once the electorate began voting on November 7, the analysts relied on a different type of survey – the exit poll. The major difference between exit polls and polls taken before Election Day is control. Dozens of organizations take pre-election polls, but every television network relied on only one company for exit poll data – Voter News Service (VNS). Until 1988 each television network hired its own exit poll service to perform this function. They all realized that the work performed by these independent services was redundant and unnecessarily costly. VNS survived to serve every television network (ABC, CBS, CNN, NBC and Fox News Channel) plus the Associated Press in this area (Greenfield 45). VNS's methodology has been placed under a microscope because of Florida's fiasco. Every client was informed that VNS's methodology was inherently biased. The computer model employed, over-predicts Democratic turnout in most exit polls. VNS has been unable to determine why this pattern occurs, but they do adjust their model to account for this bias. A possible explanation for this bias is that non-voters tend to be younger, poorer, people of color and less well educated than voters. These groups of non-voters are more likely to prefer Democrats, so if the sample doesn't weed them out, the survey results will be skewed in favor of Democrats (Greenfield 46).

VNS's sampling also underrepresented absentee ballots. Historically, absentee ballots favor the GOP, since many are from military men who tend to vote Republican. Before the election, VNS projected that 7 percent of Florida's votes would come from absentee ballots. It turned out that absentees accounted for 12 percent of Florida's votes in the presidential election. This translated into 300,000 more votes with a net 22-percentage point advantage for Bush that was not anticipated by VNS. These 66,000 net votes for Bush threw VNS's projections out the window. This was their biggest mistake. If more than one exit poll service had been employed, this mistake might have

been uncovered earlier or eliminated entirely (58). Sprinkle these errors among an anxious group of television icons *needing* to be first to predict a winner (even though all networks used the same data) and you have Election Night 2000.

VNS's method of exit polling randomly selects polling places throughout the country and stations polltakers outside each of these points. The pollsters obtain voting and demographic information from people who have just voted. This is the first information shipped to VNS headquarters in New York City for dissemination to its clients. VNS also employs other pollsters, called stringers, to report on-site data tabulation after the polls are closed. Since most polling places ship their untabulated votes to county election headquarters, they are ineligible for selection by VNS at this stage. Stringers are stationed at these *non-randomly* selected polling places where votes are tabulated on-site. After the polls close, VNS's stringers take available voting information as it is tabulated and relay it to New York. Headquarters then jams this data into its computer, massages it with proprietary software and gives the results to the individual decision desks of each client (television networks and the Associated Press). Network consultants further analyze the data and try to divine a winner (Sammon 34). "A team of network analysts reviews the VNS reports hoping to call states minutes or even seconds before others" (Mnookin 96). This process served everyone well since 1988, with only a single miscall in a New Hampshire Senate race (97). It is now under attack because of the Florida miscall. If this were the only data available to the networks, perhaps they could be excused. But other, more complete information was available from the Associated Press.

Because the Associated Press was also retained by local counties to report on local elections, this news service had pollsters stationed in the election headquarters of each of Florida's 67 counties. "The AP apparatus, which was faster and more accurate than VNS, began tabulating hard votes as soon as the first polls closed at 7 p.m. These numbers were updated every few minutes as returns streamed in from across the state. The AP data showed Bush ahead of Gore at the stroke of 7 p.m. and at every interval for the next full hour. Although the networks all subscribed to the AP, they ignored its hard

numbers...and focused instead on the tainted VNS numbers showing Gore ahead” (Sammon 36). A VNS insider reported, “We normally use AP as a backup. It was supposed to be built into our system in a very sophisticated way so that you could actually call it up and look at it in a direct comparison to VSN numbers. But it wasn’t there. Our systems department never got it completed on time” (49).

Early Calls

Although Republicans were apoplectic over the early call in Florida, there is no evidence that the network calls were made with the intention of handing Gore the presidency. But by announcing Gore as the winner of Florida’s 25 electoral votes while polls were still open in Florida’s heavily Republican Panhandle, the networks most likely cost Bush a substantial number of votes. Studies conducted by Democrats, Republicans and independents show that the early call cost Bush about 10,000 votes in the Florida Panhandle (40).

Besides the early Florida call, the television networks were declaring a winner in states where Gore was leading more quickly than they were in states where Bush was leading. In states with comparable leads, it seemed as if the networks more readily gave Gore a win than they gave Bush a win. The table on the next page was adapted from CNN data (Sammon 40 - 43).

Even a casual examination of this table indicates the network’s double standard. CNN called every state where Gore was leading far faster than it did in states where Bush was leading by a comparable margin. Each network followed a similar script. Gore was declared the winner much earlier than Bush, whenever the projected margin of victory was the same or nearly the same. Whether these early calls were the result of some inherent Democratic bias by television anchor people or merely a coincidence has not been established. However, the combination of a wrong call in Florida coupled with early calls for Gore in states such as Pennsylvania led network analysts to predict, if not an outright victory for Gore, at least an almost impossible hurdle for Bush to overcome.

CNN’s analyst Jeff Greenfield observed, “With Florida, Pennsylvania and Michigan in his column, Vice President Al Gore begins

to build the foundation that could get him to 270 electoral votes. And it begins to look like, well, the missile defense shield. The Governor has to hit every state with a laser beam-not miss any of them.”

Table 2
*Comparison of CNN Calls for Gore and Bush
In States with Comparable Margins of Victory*

STATE	Margin of Victory (%)	Time Called For Gore	Time Called For Bush
Minnesota	2 points	37 minutes	
Tennessee	3 points		3 hours 33 minutes
Pennsylvania	4 points	48 minutes	
Missouri	4 points		2 hours 6 minutes
Maine	5 points	36 minutes	
West Va.	6 points		2 hours 46 minutes
Arkansas	6 points		3 hours 33 minutes
Illinois	12 points	1 minute	
Georgia	12 points		33 minutes
Delaware	13 points	3 minutes	
N. Carolina	13 points		34 minutes
New Jersey	15 points	1 minute	
Alabama	15 points		26 minutes

Greenfield added that Bush had a better chance of winning the lottery than being elected president (Greenfield 96). “The states begin to close around the hopes of George W. Bush. There are simply fewer and fewer places where he can pick up enough votes to get to 270...” (96). Greenfield offered a weak defense of himself and other pundits: “What we did *not* do was assume that Gore had the race won. We *did* do was assume the accuracy of our call, even as the Bush campaign and its partisans were loudly questioning the call...did anyone at the networks take these complaints seriously? No. After all, what were partisan voices against the cool, objective certainty of the numbers and the models and the system that had worked so well for so long? *Go Challenger, up full throttle!*” (59).

Bill Sammon observed, “Such dire pronouncements had a

profound impact on voter turnout in the West and elsewhere in America...tens of millions of would-be-voters suddenly learned that it was essentially impossible for Bush to win, since Gore had already swept the trifecta (Pennsylvania, Michigan and Florida). The news hit just as huge numbers of citizens on the West coast were leaving work and heading for the polls. California Republicans...reported precipitous drop-offs in turnout shortly after news of the Gore juggernaut. Voters were getting out of line and going home..." (Sammon 44). Although these reports of lessened turnout are anecdotal and not supported by hard documentation, it could be argued that the early calls for Gore combined with the incorrect call in Florida caused Bush to lose votes throughout the country. When the Florida call was made, three of four registered voters in America still had time to cast their ballots (36). Democrats might easily argue that just as many Democrats stayed home from voting once the networks gave Gore the key battleground states of Michigan, Pennsylvania and Florida, since their votes would no longer matter. Whether these early network calls for Gore kept more supporters of Bush or Gore from voting is speculative and, so far, not substantiated by empirical evidence.

On the charges of using faulty incomplete data and a rush to judgment, I believe that the networks can be judged guilty. But, even though nine in ten television reporters preferred a Democrat to a Republican to be in the White House (27), this does not prove that there was a conspiracy to elect Gore. The major motivating factor behind early network calls seems was simply a mad rush to be the first anchor to proclaim the winner. Martin Plissner, former political director at CBS News: "The principal beneficiaries of the entire exercise...would be the egos of the news executives; hardly anyone in the world of media and politics, knew, let alone cared about this rat race among the networks" (Plissner 73).

How Gore Closed the Gap

Republican campaign workers had reason to be more confident of Tuesday's outcome than their Democratic counterparts, since a majority of pollsters predicted that Bush would be the next president (even, if only by a narrow margin). However, early exit polls on "game

day” revealed that Gore’s Herculean, down to the wire campaigning effort had eroded Bush’s advantage. Gore did not stop campaigning in Florida until 5:30 A.M. Election Day. Bush effectively wasted \$10 million campaigning late in California, a state that Gore won without breaking a sweat (Greenfield 7). He was confident of his lead and had retreated to Austin after campaign stops in Iowa, Wisconsin, Arkansas and Tennessee on Monday. The latter two states were symbolic, being the home states of Bill Clinton and Al Gore, respectively. Bush sauntered into these “must win” states for Gore and promised his supporters a win in both. It was part of his campaign’s “inevitability strategy” (47). GOP campaigners behaved as if Bush was a guaranteed winner and that he was now striking at the heart of Gore territory. He entrusted Florida to his brother Jeb, the state’s governor. Gore’s team knew it was closing fast and sensed an upset, while Bush’s team remained overconfident. Almost too late, Bush supporters realized they were in a deteriorating situation. One top aide was quoted, “We were seeing deterioration in key states...and in national polls...on the basis of Bush’s old drunk-driving arrest...Gore did a better job of closing, working twenty-four hours a day. That had a clear impact on the markets where he went” (14).

Gore and Bush finished campaigning before the first vote was cast, but the electioneering and gamesmanship continued until well after the polls closed in Hawaii. For this final battle to “get out the vote,” both parties used a variety of communication techniques, including Election Day television and radio spots in target areas, old-fashioned telephone blitzes and walking trips through key neighborhoods. Democrats seemed better prepared for this phase of the campaign than Republicans. They were also better organized at both the national and the grass roots levels.

Michael Whouley was one senior Gore strategist who anticipated and planned for a cliffhanger. Three weeks prior to the election, Whouley assembled a group of legal advisers to study the recount laws in key states, including Florida, Michigan and Pennsylvania. At this time, he reflected, “We are barely going to make it in the Electoral College” (Simon 19). Whouley wielded tremendous power. He had the ability to quickly generate 1 million telephone calls to Gore loyalists.

He had access to nearly every major Democratic supporter, including Jesse Jackson and Clinton. They only needed a phone call from Whouley and they were off to do his bidding by attending rallies or doing radio and television spots throughout the day (27). When Whouley saw that Pennsylvania was not going as hoped, he called Jackson and asked him to fly to Philadelphia from Racine, Wisconsin to get out the black vote. Jackson later said, "The stakes were high, the votes were essential, I have gone to 250 cities in the course of this campaign. I have never traveled this many miles before, frankly" (20). Whouley enlisted the aid of 70 big-name surrogates, including Tipper Gore, her three daughters and the entire Clinton Cabinet. He used computer software of his own designed to gauge where to move scarce Democratic resources. While most young campaigners preferred employing more modern communication techniques such as "message strategies" and television commercials, Whouley was an old-fashioned door-banging field operator able to make full use of the major advantage that Democrats had over Republicans — the ability to mobilize armies of people to get out the vote. Between the NAACP and the AFL-CIO, the Democrats controlled 100,000 people in targeted states doing "The Pull" or "Getting souls to the polls." In part, it was the efforts of these people that made the election so close. In the 1996 presidential election blacks represented 10 percent of the vote in Florida even though they were 15 percent of the population. In 2000 they accounted for 16 percent of Florida's total vote, a 60 percent increase. (40).

While Republicans raised more money than Democrats, they were severely outnumbered in the "get out the vote" ranks and apparently lacked grass roots organizers of Michael Whouley's caliber. Democrats were also better prepared for any impending legal battles in key states predicted to be tossups; they had already developed public relations strategies to counteract negative publicity that might crop up from their legal challenges to election results (Tapper 62). These differences became more apparent as Election Day wore on. Gore was in his campaign headquarters in the Loews Vanderbilt Hotel in Nashville, Tennessee. At about 4 p.m. anxious to help his own cause, the vice president descended to the hotel's mezzanine where he performed 16 live satellite television interviews into markets throughout

the country that had been identified as critical by his “Boiler Room.” Still looking to do more, he followed the television spots with 17 live radio interviews (Simon 27). The overall picture of Gore’s campaign was that of a tenacious group of dedicated people fighting endlessly for the same cause. Brandon Thomas was the 25 year old in charge of Gore’s Internet webcasting operation. From July 1 to Election Day, Thomas put Gore on 869 satellite television interviews and 300 talk radio interviews. Surrogates did another 200 radio interviews on Election Day. Thomas summarized the Gore campaign’s philosophy, “Our ferocity was unmatched” (28).

The scene was much calmer in Austin, Texas. When Bush’s campaign chairman, Karl Rove, told him that that he might lose the election, Bush accepted the information, told his family the news and went about his business as usual, including a strenuous physical workout. He did no extra satellite television or radio interviews, nor did he ask Rove what could be done (26). Where Gore was warrior-like, Bush was pacific. Where the Democrats were proactive, anticipating problems before they occurred, the Republicans were reactive (aside from preparing for a legal challenge to the Electoral College if Bush won the popular vote and lost the electoral vote). They seemed to have no other Election Day strategy than retreating to Austin to await the day’s results.

Problem Ballots

While working to get out the vote in Florida, Gore’s team became aware of certain irregularities at the polling places. There were reports of faulty ballots in Palm Beach County, blacks being kept from voting in Tallahassee and defective punch-card voting machines throughout the state. By 3 p.m., Whouley decided to change tactics. He ordered TeleQuest, the telemarketing firm that operated the Democratic phone banks, to place thousand of calls to registered voters in Palm Beach, Florida with the following message: “Some voters have encountered a problem today with punch-card ballots...they believe they may have accidentally punched the wrong hole for the incorrect candidate...If you have already voted and think you may have punched the wrong hole for the incorrect candidate, you should return to the

polls and request that the election officials write down your name so that this problem can be fixed” (Sammon 78). This telephone campaign was aided by a Gore supporter’s talk radio show. Randi Rhodes claimed that she may have “voted for a Nazi” by mistake (a reference to candidate Pat Buchanan). Rhodes gave out a phone number to hear voters’ complaints and even provided an attorney to assist her listeners in filing affidavits (Tapper *Down and Dirty* 20). These actions stirred up the public enough to be picked up by the national television networks, which eagerly interviewed elderly Jewish women in Palm Beach. The cameras focused on several elderly women in housecoats holding up butterfly ballots and claiming to be outraged by their unfairness. About the same time, multiple reports of black disenfranchisement were also making their way to national television. The Bush camp attempted to dismiss these allegations as campaign rhetoric and Democratic dirty tricks, but the stage had been set for protesting the election in Florida. Gore’s persistence and tenacity eclipsed Bush’s dismissiveness and complacency. Perseverance gave the Democrats two advantages for the trying days ahead. First, was a public relations’ advantage — the country would be more predisposed to enduring a recount if these charges of disenfranchisement and faulty ballots were proven true. Second, by showing that they cared for minorities, the elderly and the oppressed, Democrats solidified their hold on these voting blocs (the little people) for the foreseeable future.

After 18 months of media bombardment by Democrats, Republicans, Greens and Naderites, by issue advocacy groups representing every hue in the political spectrum and by a myriad of pollsters asking every possible question and predicting every possible outcome, voters gave their ambiguous response – a marginal popular vote victory for Gore topped by a four vote Electoral College victory for Bush.

The ensuing 36-day battle for Florida’s twenty-five electoral votes would be fought not only in state and federal courts, but also in the living rooms of a deeply divided America. It would be just as much a media battle as was the long campaign. It would be a war of two camps seeking victories on three separate fronts – legal, political and public opinion. Bush’s philosophical acceptance of Tuesday’s results

vanished and was replaced by a tenacity equal to Gore's. Both men believed they had won. Both parties felt the need to communicate their message to the American people in the best possible light while using every judicial weapon available to win the legal struggle and, with it, the presidency.

36 DAYS

Even before the United States Supreme Court ruled that George W. Bush was entitled to Florida's twenty-five electoral votes, legal opinions proliferated. This section of the paper will leave the legal quagmire that was post-election Florida to constitutional scholars. It will focus on the tactics employed by each camp during the protest and contest phases of Florida's election. The protest phase of an election is meant for the selection of administrative remedies prior to the Secretary of State's certification of the election. The contest phase begins only after the protest phase is over. It deals with fraud, bribery, eligibility, receipt of illegal votes or rejection of legal votes, or any other cause or allegation which, if sustained, would show that a person other than the successful candidate was the person duly elected to the office in question (Sunstein and Epstein 30). Legal maneuvering will be discussed only in terms of how each party handled the attendant public relations problems. While legal filings and appeals to state and federal courts dominated these 36 days, both groups believed that public relations and political battles also had to be fought. Both parties worked feverishly to project an image of calm wisdom and dignity in the face of escalating stress and confusion.

Different Strokes

The Republicans had the lead, so they sought to maintain the status quo. They (1) fought against all recounts; (2) wanted any court-ordered recount to be as narrow as possible; (3) did not want to initiate any court battles; (4) fought to maintain a demeanor of inevitability, just as they had tried to do during the campaign, when Bush led Gore in opinion polls; (5) pursued a legal strategy urging the strict interpretation of election laws as these laws existed on Election Day;

and (6) suggested that Gore was trying to steal the presidency.

The Democrats were desperate to find additional votes. Their motto could have been: “We will either find a way or make one.” (Hannibal, “Notable Quotes” 1). They (1) fought to delay the certification of Florida’s election results; (2) used this delay to find enough Gore votes or invalidate enough Bush votes to overcome Bush’s slim Election Day lead; (3) viewed election law as broadly as possible and sought some legal authority to interpret the law in their favor; (4) embraced the spirit, not the letter, of these laws; and (5) tried to convince the American people that these legal challenges were for the good of the country, for the sake of justice and that the Republicans were the bad guys.

Until Election Day, Democratic and Republican activities were geared to harvesting votes for their candidate within the legal constraints of federal and state election law. This changed with the deadlock in Florida. Some type of judicial or legislative intervention was going to decide the 2000 presidential election, no matter how unpopular this intervention might be. Although both parties fought long and hard to win the public’s favor for their actions in post-election Florida, in the end, only a legal victory mattered. Time was the ally of Bush and the enemy of Gore. The firm date for certification of Florida’s election was less than two weeks away. If Gore could not stop this certification while Bush held on to his miniscule lead, Bush would be handed the presidency with 271 electoral votes.

How Long is Too Long?

Gore got his first delay without having to ask for it. Florida election law required a recount of all the ballots because the initial outcome found the difference in vote totals to be less than 0.5 percent (Sutin 1). This bought Democrats enough time to assemble a legal team and decide on their next tactic. Everything that the Democrats did in Florida during these five weeks centered on delay and a very liberal interpretation of election law. Once the mandatory recount was underway, Gore’s team brought the butterfly ballot to center stage. Democrats rounded up the Florida voters who had been initially contacted by TeleQuest on Election Day and encouraged them to file

affidavits claiming that the butterfly ballot was confusing (Sammon 65). They assembled a group of elderly Jewish voters in front of a black Baptist Church and encouraged the media to report stories of Holocaust survival and voter disenfranchisement, hoping to link the two incidents. Jesse Jackson led hundreds of disenfranchised Democrats on a march to the Palm Beach county office to express outrage at the ballot. This collage of elderly, black and Jewish voters was assembled to generate sympathy among American people for Gore's claim to victory. They did not tell the American people about the thousands of TeleQuest telephone solicitations on Election Day, nor did they mention that many of the protestors had worked for Gore's Florida election team during the campaign (66). They relied on the public's ignorance of these two facts for the plan's success. They hoped that the rally's appearance of spontaneity might win them additional public support. In these early days of Gore's protest, the country seemed willing to wait for a just outcome. By a three to one margin, Americans preferred to remove all reasonable doubt that the Florida vote count was "fair and accurate" as opposed to resolving the matter as quickly as possible ("The Long Count" 20).

Gore's inner circle probably knew that the likelihood of having a new election held because of disenfranchised Palm Beach voters was close to zero, but this unsolicited delay gave them time to devise a better legal plan to assure a Gore victory and, hopefully, one that would not outrage America's sense of justice or fair play. The magnitude of this battle was indicated by the army of lawyers circling the wagons in Florida and whom each candidate chose as his lead spokesmen.

Who's in Charge Here?

Gore's campaign chairmen, William Daley, and Bill Clinton's Secretary of State, Warren Christopher, were picked to champion a Democratic cry of "justice for all." They were entrusted to win over the American people to Gore's side. Ironically, public relations mistakes by these heavy guns may have done irreparable damage to Gore's claim on the prize in the eyes of most citizens. On November 9, (Thursday evening), Daley spoke too candidly to the nation, "Here in Florida, it also seems that more voters went to the polls believing that they were

voting for Al Gore than for George Bush. If the will of the people is to prevail, Gore should be awarded a victory in Florida and be our next president” (Sammon 86). In Daley’s presumptive wake, even newspapers supporting Gore came out against this arrogance. The Washington Post spoke for many Americans, “To imply that Mr. Gore’s narrow lead in the popular vote somehow gives superior status — if not quite a partial claim to the office, then a greater right to contest the electoral outcome in Florida. But that’s false and they know it. The electoral vote is what matters” (87). Daley’s public relations blunder overshadowed legitimate Democratic complaints about the Palm Beach butterfly ballot, which contributed to a disproportionate number of votes for Pat Buchanan — 12,000 double-punched ballots and several thousand under-punched ballots. Nearly half of the country (48 percent) believed that the entire county of Palm Beach should be allowed to vote again because of problems with the ballot (82).

To help his cause, Bush enlisted the help of his father’s secretary of state, James A. Baker III. Just as he did during the campaign, Bush let his underlings do most of the heavy lifting. Baker quickly pointed out that the Democratic supervisor of the Palm Beach Elections Office, Theresa LePore, designed this ballot (86). She published the ballot in local newspapers, invited comments from both Democrats and Republicans and mailed it to the voters of Palm Beach County (Tapper *Down and Dirty* 6). Baker also had a legal rejoinder to Christopher and Daley’s lament against the ballot. “Guess what? There were no complaints until after the election” (Sammon 86). In other words, the time to complain about the ballot was before the election. Since no complaints were raised, it was properly prepared and introduced to the public. Regarding double-punched ballots, he was not afraid to remind the nation that elections in our democracy are not always perfect. “There’s not a jurisdiction in this democracy that doesn’t discard ballots where a voter votes twice for two different candidates for the same office. If that’s what happened here, I don’t see how you can count those ballots” (Sammon 87). But hardball politics is about winning the big prize and Daley had no problem sacrificing one of his own. “A party official...doesn’t have the right to disenfranchise thousands of voters in a county in Florida” (86). Christopher was more to the point:

“The ballot was confusing and illegal” (86).

Next, with one voice, Democrats began attacking our very method of electing a president. In texts prepared by the Gore team, Bill and Hillary Clinton maligned the Electoral College and suggested that the popular vote should determine the next president. This attempt to delegitimize Bush’s impending victory dovetailed with the views of 60 percent of American voters, who favored choosing a president by popular vote rather than through the Electoral College (“The Long Count” 22). This 60 percent figure has held fairly constant for at least 30 years (22) although getting a constitutional amendment passed would be an uphill battle due to the effect this would have on the smaller states. Ironically, the Republicans had also developed a plan to undermine the status of the Electoral College if Bush had won the popular vote and lost the electoral vote. It was nearly identical to the argument made by Democrats after Gore won the popular vote, but not the electoral vote (Sammon 90). Of course, Republicans felt no need to denigrate the Electoral College as long as it anointed Bush president. Instead, they expressed outrage that the Democrats would stoop so low to get their candidate elected.

A recurring Democratic theme that Gore would win if all the votes were counted conflicted with the Bush team’s refrain that all the votes had been counted, at least twice. It is important to understand the semantic difference between the two parties interpretation of what constituted a counted vote. To paraphrase Bill Clinton: It depends on what the meaning of “counted vote” is. Republicans argued that a counted vote was one *tabulated* after the voter filled out a ballot. If the voter made a mistake while voting and the vote was thrown out, it was *counted as an over-vote or under-vote*, but it was not placed in either candidate’s column. James Baker knew that the way to win was to *resist* all attempts to recount votes. Republicans also contended that all the laws necessary for the country to elect Bush were on the books before Election Day and any change in these laws would be *ex post facto* and, in direct conflict with the Constitution. Democrats spoke of counted votes more in the terms of fair play and disenfranchisement. Their mission was to convince the American people that the votes of certain segments of the population didn’t count (as in “didn’t matter”) during the 2000

election. They worked tirelessly to convince the nation that they were interested in justice for the “little guy” and not merely in getting Gore elected. Republicans countered by waving copies of Florida election statutes overhead.

In these early days of the deadlock, 62 percent of the public did not view a delay in determining the next president as a problem for the country and more than half believed that the ballots should be recounted even if it took several weeks to declare a winner (“The Long Count” 13).

The Gloves Come Off

However altruistic each team tried to present itself, the bottom line was Florida’s 25 electoral votes. Public relations were relegated to second place whenever the choice was between appearing to be fair and putting their man’s election chances at risk. If that meant Republicans had to file a lawsuit in federal court after complaining that Democrats were trying to get Gore elected through the courts, so be it. If that meant Democrats had to sacrifice a party loyalist or launch a vicious campaign of ridicule and smear tactics against Florida’s Secretary of State for the good of Gore, then so be it. Both parties understood that, in the end, only an electoral victory mattered. As the legal venue shifted from county election officials, to Florida’s Secretary of State, to the Florida Supreme Court and ultimately to the United States Supreme Court, so did each party’s targets. Friends one day became enemies the next.

Democrats quickly turned on Theresa Le Pore as soon as she made a decision hurting Gore. They attacked Katherine Harris, Florida’s Republican Secretary of State, and later, the five “conservative” members of the United States’ Supreme Court, the same people who would rule on their legal challenges. No pretense of doing what was best for the country was made during these personal attacks and character assassinations. Before Harris rendered her decision regarding a deadline for ballots to be returned to her office for certification, Gore’s Florida chairman, Bob Butterworth, praised her. “There is no way Secretary of State Harris would certify election results if she had any doubt at all they may not be in perfect order” (Sammon 125). Once

it became evident that Florida's chief elections officer could be an impediment to Gore's ascension to the presidency, the vice president personally instructed his team to discredit her. Referring to her as Cruella De Vil, the puppy-stealing villainess of *101 Dalmatians*, Gore instructed his deputy campaign manager and his press secretary to plant damaging press stories that would discredit her as a Bush partisan (126). Gore's press secretary, Chris Lehane, dutifully compared her actions to a Soviet Commissar (127). Harvard law professor Alan Dershowitz called her corrupt and a crook. He also accused her of "having laundered money" (Dershowitz 35). Paul Begala called her a "dilettante debutante" and a "partisan political hack" (Begala, "Katherine Harris" 1). Christopher accused Harris of arbitrarily setting the 5 p.m. Tuesday deadline for counties to get their vote totals into her office even though her "interpretation" was actually reading the law as written ("Transcript: Florida" 1). Instead of objective journalism, *The Washington Post* ridiculed Harris's makeup. Regarding her eyelashes, "they were lashes of Tammy Faye...cartoon lashes...she seems to put on her makeup with a trowel" (Givhan A14). Although these attacks made television headlines for weeks, the American people had their own opinion on Harris. In a Today/Gallup Poll conducted November 26-27, 49 percent of respondents approved of her actions while 40 percent disapproved. Eleven percent of those surveyed had no opinion of the Florida Secretary of State ("The Long Count" 5). Americans were reaching their own conclusions in the face of heavy political onslaughts from both parties.

In the Eyes of the Beholder

Both camps wielded double-edged swords. They unabashedly claimed a patriotic motive for every action that furthered their cause while attributing evil intent to the most innocent activity that might help the opposition. Euphemisms described supporters' activities while the opposition's motives were sketched in the darkest shade possible. For Democrats, incorrectly marked ballots meant disenfranchised minorities, or unfair treatment of the elderly. For Republicans, these same ballots had been counted and were void; counting improperly completed ballots would be destructive to the electoral process.

Republican disdain for Democratic lawsuits did not end with their own plea in federal court to dismiss the recounts under the equal protection section of the United States Constitution. They saw this appeal as necessary to uphold the Constitution.

Democrats crowed about counting all the votes, but they only requested hand recounts in four counties heavily favoring their party. Sixty percent of Americans believed that these votes should have been included in the final count (8). Meanwhile, the Democrats clandestinely sought to invalidate absentee ballots, which probably favored Bush. Attempts to throw out absentee ballots of United States servicemen and servicewomen became another public relations disaster for Gore. Mark Herron, a Tallahassee lawyer, was assigned to lead the Democratic public relations team in Florida for the protest phase of the election. To aid Gore's cause, Herron sent a five-page memo to Democratic lawyers in each of Florida's 67 counties (Sammon 143). The memo outlined a procedure to invalidate absentee ballots throughout the state. The memo was intended for Democrats' eyes only, but one recipient of the memo sent it to the Santa Clara county attorney, Tom Dannheisser, in advance of his examining absentee ballots at the Santa Clara county office. When this memo reached the desk of Ed Flemming, a Bush lawyer, the Democrats' cover was blown (144). This public relations fiasco reinforced distrust of Gore. When direct questions that have "yes or no answers" are instead answered in evasive, legalistic terms, the American public tends to lose faith in the speaker. Gore's team had failed to prevent this preemptive strike by Bush supporters and when they finally tried to address the problem, they only made matters worse.

Bush's team insured itself of a major public relations victory by dominating the airwaves and print media with this story before the Democrats could stop the bleeding. Democrats sent Joe Lieberman onto the Sunday morning talk shows for damage control. His performance only exacerbated the Democrats' problems. When asked about this strategy to disallow absentee ballots from being counted, Senator Lieberman threw away the Democratic playbook. He had been briefed the night before to explain that the Democratic attorneys were simply following Florida election law when assessing the validity

of the absentee ballots. Instead, he told America that he had not seen the memo before this Sunday; he never mentioned that he had consulted with Herron the night before. He told Tim Russert of "Meet the Press", "If I was there, (at the county office) I would give the benefit of the doubt to ballots coming in from military personnel generally. Al Gore and I don't want to ever be part of anything that would put an extra burden on the military personnel abroad who want to vote" (Sammon 151). Russert pointed out that nearly half the absentee ballots had already been voided. This would not sit well with most Americans. Russert asked Lieberman: "Will you today, as a representative of the Gore campaign, ask every county to re-look at those ballots that came from armed services people and waive any so called irregularities or technicalities which would disqualify them?"(151). Lieberman responded evasively, "I don't know that I have that authority. I don't believe I do legally or any other way" (152). This answer elicited memories of Gore's reply when he was quizzed about making illegal telephone calls from the White House to raise money for Democratic campaigns. "There is no controlling legal authority that says this was in violation of law" (Krauthammer A27).

The Republicans piled on with a public relations blitz, painting Democrats with a very unpatriotic brush. They dominated the news cycle for several days. They found a serviceman with the perfect name, Chad, who voiced outrage on national television at having his vote disallowed through no fault of his own (Sammon 149). A letter to the editor of the *Miami Herald* asked: "How can felons be allowed to vote, while the men and women in the armed services cannot?" This was in reference to the *Miami Herald's* finding that 39 felons, including rapists and murderers, voted illegally in the 2000 election (149). Karen Hughes, a Bush spokeswoman, said on the national news broadcasts, "No one who aspires to be commander-in-chief should seek to unfairly deny the votes of men and women he would seek to command" (150). Herron's memo was never meant for public distribution, since it could portray the Democrats as trying to subvert the voting rights of America's military men and women (Hogan 1). But with the proliferation of office and home copy machines, very few secrets remain so for long and Democrats only compounded their mistake once the memo was

discovered. Instead of a quick decisive response, either condemning the memo (it was unauthorized; it was a mistake) or explaining their reasons for issuing it (we were upholding the law), Gore's team equivocated. Americans do not like being played the fool. They embrace liars even less, especially when the accused liar has a history of changing his version of history to feed his political appetite. In an attempt to calm the waters, Bob Butterworth, Gore's campaign manager issued another memo to the 67 canvassing boards asking them to reconsider the disqualified military votes, but it was too late. The damage had already been done.

This catastrophe demonstrates the delicacy of the Democrats' position. They needed change, either more votes for Gore or fewer votes for Bush, but to bring about any change, they had to affect the status quo. Although most Americans were willing to wait for a correct vote tally, they did not appreciate perceived attacks on America's armed forces. Since their activities might incense the average citizen, they performed their deeds in secret, or at least misled the public about their reasons for seeking change.

This five-week blend of a legal and political marathon was choreographed by the election's foggy outcome and the personalities of Bush and Gore. Gore believed he deserved to be president and that more Floridians intended to vote for him than Bush. He probably spearheaded this 36-day expedition into uncharted political territory with noble intentions; somewhere along the way he got lost. He showed himself to be a bare-knuckled fighter who could have borrowed a quote from the late Green Bay Packer football coach, Vince Lombardi: "Winning isn't everything, it's the only thing" ("Notable Quotes" 1). Bush was far less visible for most of the 36 days. His early gaffe two days after the election of trying to act "presidential" by urging Gore to concede even as his lead shrunk to 327 votes was ill timed and poorly received, but he didn't venture very far from his ranch again (*36 Days* 28). He learned his lesson: stay above the fray; don't whine; state your beliefs and trust the system, unless the legal war turns against you

FIX IT

In this section, I will comment on the proposed changes to several aspects of our electoral system including campaign finance reform, voter education, recording and processing votes. The shape of future elections will be molded by whatever reforms are enacted. For better or worse, communicating a candidate's position will never be the same if current campaign finance legislation becomes law.

Even after the smoke cleared and the outcome was finalized, this election obviously resulted in a statistical tie. With more than 105 million votes cast nationwide, Gore held a 500,000 popular vote margin over Bush, while Bush received one more electoral vote than the 270 needed to be elected president. Bush's slim, certified lead of 537 votes in Florida ruled the day.

Recount

Certification of the election's results and Bush's subsequent inauguration as president did not stop the recounting. Two independent recounts were undertaken to determine the "true winner" of Florida's 25 electoral votes. Democrat heavyweights salivated over the probable outcome of these tabulations. Terry McAuliffe, Chairman of the Democratic National Committee: "You'll see soon, that we also won the electoral vote. Many of the newspapers will be out soon that Al Gore actually got the most votes" (quoted in Alt 1). Clinton strategist, James Carville: "Everybody knows who won the election...we're not going to get over it" (quoted in Alt 1). Jesse Jackson referred to Florida as "the scene of the crime," and "the evidence is that Bush lost the vote in Florida" (quoted in Alt 1). Joseph Lieberman, in a February 2001 speech in a Florida temple, referred to himself as "vice president of the government in exile," and stated: "I believe you brought Al Gore and me to victory in the state of Florida" (quoted in Alt 1). Since the election results were certified and Bush had already been sworn in as president, this rhetoric was apparently intended to undermine Bush's presidency and lay the groundwork for Democratic victories in future battles. Another political/public relations battle was underway.

The re-tallies were predicted to show that Gore won Florida, but they ultimately reinforced the idea of a tie. The *Miami Herald* and *USA Today* conducted the first recount, applying the standard requested by Gore (all dimpled chads and hanging chads were counted) to the ballots in the four disputed counties of Palm Beach, Broward, Miami-Dade, and Volusia. To nearly everyone's surprise, Bush's lead expanded to 1,665 votes after this recount (Merzer 9). A consortium of newspapers and news services (led by *The New York Times*, *The Washington Post* and *CNN* at a cost of more than \$1 million) examined more than 175,000 disputed ballots. In the different scenarios examined by this venerable group, Bush again won according to Gore's four-county standard and also according to both of the Florida Supreme Court's recommended standards. Gore won when a free for all recount was used and when different dimple standards were applied to the 175,000 votes. Ironically, Gore's team had an early opportunity to ask for a statewide manual recount, but decided against it. In the consortium's nine unofficial recounts, Gore's largest margin of victory was 171 votes, and Bush's largest margin was 493 votes — as opposed to his official 537-vote victory (Podhoretz 1). Statisticians say that the error rate for any recount would be higher than the final, miniscule vote differential between the two candidates (Rusin 1). Any hand tally of the Florida ballots could not guarantee a count more accurate than the one used for the official results. While the remedies suggested below would have produced a more accurate count if they had been in place at the time of the election, the election was a virtual tie under current election law and current vote tabulation methods (1). Changing the law after the fact in order to change the results would set a dangerous precedent and do irreparable harm to the country.

What would have changed if the final certified count had shown Gore the winner? Probably just the party affiliation of the angry and disillusioned. The contentious outcome to 2000's presidential election is unfortunate, but not tragic. The cloud over our country can be lifted if reasonable, common sense recommendations leading to more accurate, efficient election processes are incorporated into our nation's laws. Our constitution prohibits the creation of *ex post facto* laws under Article I, Section 9; it does not prohibit laws from being changed

for future elections. As unpopular as the Electoral College appears to many Americans at the moment, it is the law of the land. There is a constitutional remedy for what many people perceive as an antiquated way to elect a president — a constitutional amendment requiring the approval of three quarters of the states for implementation.³ Passage of any such amendment is unlikely, since many of the less populous states would fight this change, believing that their importance in presidential elections would diminish under such a change in the law.

Proposed Changes in the Way We Vote

Simpler, easier to execute solutions that will immediately effect how we choose our national leaders are available. These suggestions for improvement can be separated into two categories:

changes in the way this country votes and records these votes, and changes in the way political parties run elections and how the media cover these elections.

Changes in the physical way we vote should be considered for immediate implementation. In any system or organization, if several people violate a rule, violators can usually be blamed for their own disobedience; if many people violate a rule, the rule itself should be examined for shortcomings. The same logic can be applied to discarded ballots. If only a few voters had failed to properly fill out their ballots, we could point to these voters as the problem. But with 175,000 votes for president invalidated in Florida and 4 to 6 million thrown out across the nation, there appears to be a defect in system by which we record, collect and tabulate votes (“Caltech-MIT” 1). Five types of voting equipment are used in our country: mechanical lever machines, hand-counted paper ballots, optically scanned paper ballots, punch-card ballots and electronic machines (2). An evaluation of the votes tallied by these five methods reveals a significant variation in their error rates, according to the Caltech-MIT study. Optically scanned paper ballots had the lowest error rate. The report suggested doing away with punch cards and mechanical lever machines because of their inefficiency. Internet voting was not considered as a near-term solution due to the threat of computer hacking. The report recommends two immediate reforms that could reduce lost votes in the 2004 presidential election:

1. Installing voting machines that scan paper ballots at the precinct level. Scanned paper ballots have the lowest error rate, but when paper ballots have to be transferred to district headquarters to be scanned and counted, the chance for error or loss became much greater. Precinct level screening would also yield more rapid results (6).

2. Making voter registration data available at polling places. This will help alleviate the problems of eligible voters being turned away on Election Day. Having questionable voters fill out “provisional ballots” when registration questions arise will also reduce lost votes, since they could be verified or disqualified after the fact (7).

These two recommendations will reduce mistakes (lost votes) by at least half. In this case, the simplest solution is also the best solution. Congress has made funding available to implement these suggestions before the 2004 presidential election. Even after more efficient voting methods are instituted, additional improvements must be made at the polling places. It is not as easy to put faces on fraudulent voters as it is on disenfranchised voters, but they do exist. By breaking the one-person one-vote rule, multiple votes cast by individual voters or votes cast by dead people are just as damaging as voided or lost ballots. Voters filing multiple ballots disenfranchise legitimate voters on a one-for-one basis. The Caltech-MIT report recommends a new registration system to reduce fraud and other problems associated with the registration process (lost registrations, voters moving in and out of districts, multiple votes by one voter and dead people voting are problems considered). “Registration is basically an honor system. You’re supposed to be a citizen right? Nobody ever checks your citizenship when you register. Many people have duplicate registrations, but the officers have no way of purging your name from the roll unless you call them up and tell them to do it” (6). Scientists suggest a state centralized registration system with verification of citizenship and with access given to every polling place via CD-ROMs or laptop computers used in conjunction with provisional ballots for those who have difficulty with their registration on Election Day. Once these provisional ballots are collected, officials could verify these votes later in the day, by checking the centralized registration databank.

An analysis of Florida's results indicated that poor and minority voters were disenfranchised more than others. "In predominantly black precincts, 136 out of every 1,000 ballots went uncounted, a rate three times higher than in predominantly white jurisdictions. One particular mechanism might have done much to mitigate this problem. Polling booths equipped with machines that immediately check whether a ballot is marked properly give voters a chance to fix errors" (Jolma 1). Although the media reported race as a major factor in voter error, education and age were the major demographic factors in determining the rate of failed ballots. For example, a voter with a less than ninth grade education is ten times more likely to mess up a ballot than is a college graduate. Polling places in "high risk" areas will require additional manpower to help the poorly educated and the elderly prepare a usable ballot. Some type of impartial Election Day ombudsman could be available for those voters encountering difficulty at the polling place. Areas getting this type of voter assistance will also need more voting machines to alleviate the expected time delay involved in educating voters "on the spot". This personal support coupled with a second chance ballot should reduce mistakes in these communities by more than half (Caltech-MIT 8). These suggestions are easily put in place and will substantially reduce invalidated ballots. One bright sign of impending change was evidenced online: "Palm Beach to Unload Voting Machines on eBay" ("Palm Beach" 1).

The next suggestion would require a major change in the way we tabulate votes, but its author claims that it would ensure that the winner would get the majority vote in any given state. This instant runoff is being used in other democracies, including Australia. "Voters indicate their first, second and third choices for president. If no candidate receives more than 50 percent of the vote, the weakest candidates are eliminated. Those voter's second or third choices are then counted" (Livingston n. pag.). If this procedure had been in place for the 2000 election, Al Gore would most likely have won the presidency, since Ralph Nader supporters were more likely to prefer Gore to Bush. However, the 1992 election may have had a different outcome also, with more Perot voters preferring Bush to Clinton.

Newspaper columnist and political commentator, George Will,

has proposed a hybrid version of popular and electoral voting as a common sense solution to this problem. "All states have a total of electoral votes equal to their number of senators and congressional districts" (Will "The Great Divide" 1). He proposes that the winner of a state's popular vote be given two electoral votes for its two senators, but that the remaining electoral votes be allocated according to whoever wins each congressional district. Since the allocation of electoral votes on a winner-take-all basis is not required by the constitution, this change could be enacted by a statewide voter referendum (1).

These last two suggestions are more philosophical than practical and would be difficult to implement, but they provide good reference points for citizens who believe that the Electoral College should be abandoned. The earlier suggestions can be in place before the 2004 presidential election at a very moderate cost with a great increase in efficiency. They might not insure a perfect election, but they will guarantee a more accurate one.

Target Audiences

Long before any ballots can be cast, candidates aggressively seek the elusive majority of voters that will bring them victory, power and fame. In the simplest terms, elections are about a candidate pleasing enough people of varying viewpoints to get elected. That's where money comes into play. The world is much more complex than it was at the dawn of our Republic. Our population has grown from less than 4 million in 1790 to over 280 million today. The popular vote was not used in presidential elections until 1824. That year, white, male, landowners cast approximately 350,000 ballots (Leip 1). Today, there are 200 million potential voters, countless special interest groups and a myriad of opinions on every subject from abortion to zoo subsidies. Everyone is fighting for a seat at the overcrowded political banquet table. Both major parties have a solid base of voters who will vote Democratic or Republican solely because of party affiliation, but this loyal group does not usually yield a margin of victory. The problem for each presidential candidate is getting enough additional votes to win. How do they appeal to the different needs of these potential voters? Consensus building takes a great deal of money. This

heterogeneous group is usually identified as the undecided. How do candidates learn whom these people are, what their needs are and what it will take to get their votes? The answer is with money to pay for research, focus groups and advertising.

Campaign Finance Reform

Major newspapers including *The New York Times* and *The Washington Post*, as well as many respected members of House and Senate, increased their clamor for campaign finance reform before Bush's hand left the Bible during his inauguration. Calls for reform often cite the 2000 presidential election as a reason for change, although the correlation between the two is not evident. Campaign finance reform, in its several incarnations, is an attempt to change how and what candidates and their supporters are allowed to communicate to potential voters. Arguments for and against campaign finance reform are probably more philosophical than practical, since these attempts to amend the current system with new regulations and restrictions on spending and what can be said during campaigns ignore two facts: (1) current laws that reformers find so offensive are the result of prior campaign finance reform; (2) the Supreme Court has written extensively of the severe limits they have placed on money and speech as they relate to campaign finance reform.

I will briefly describe the main targets of campaign finance reformers and the Supreme Court's position on this issue. I believe these restrictions on campaign spending will severely limit citizens' First Amendment rights and result in a less free society, dominated by government regulators and media conglomerates. Reformers believe too much money undermines the election process. Specifically, they believe that wealthy individuals, large corporations and special interest groups shackle elected officials with chains of gratitude to these big money supporters of their campaigns. They see money offered as a quid pro quo for later favors, and argue that the only way to save the system is through severe restrictions on what citizens can do (spend) and what they can say (advertise) to get a candidate elected. While this rallying cry to ban soft money is targeted at big business and multinational corporations, it will also inhibit the environmental

movement, the civil rights movement, the anti-war movement, unions, the National Rifle Association and thousands of other groups from getting their message out to the American people.

Proponents of campaign finance reform list three main areas of political life as targets for elimination:

1. Soft money – money not regulated by Federal Campaign Spending Laws. It encourages “party building” and cannot be used to promote specific candidates. It is technically used only for state and local activities such as issue advocacy, voter registration, voter mobilization campaigns and television ads for party platforms. But soft money winds up paying for office overhead, computers, etc. Reformers consider soft money a loophole created by the Federal Election Commission that allows individuals, corporations and unions to give unlimited money to political parties (Pilon “Constitutional Issues” 6)

2. Political Action Committees or PACs – can be formed by corporations, labor unions, or associations to raise money for political activity. They grew in number after election reform in 1974, which limited individuals to donating \$1,000 per candidate. PACs grew more rapidly once this legislation also allowed individuals to donate \$5,000 annually to a PAC and \$20,000 annually to a political party (6).

3. Issue advertising – usually takes the form of attack ads, as in the South Carolina Republican primary, or push polling, which paints an opponent in a bad light. It is money outside of federal election law and limited only by whatever the PAC spends (7).

A major complaint of reformers concerns the corrupting influence of money on political candidates and elected officials. They support the current strict restrictions imposed on individuals and PACs to specific candidates (\$1,000 and \$5,000 respectively) and are fighting to impose similar restrictions on the money that can now be legally raised outside the reach of federal election law. Reformers tend to minimize the First Amendment implications of their reforms, but the United States Supreme Court has consistently ruled against further spending restrictions on individuals, groups and corporations. “Most soft money activities already have been approved by the Supreme Court as exercises of First Amendment rights” (Mason “Why Congress” 1).

The Supreme Court also ruled that any additional reforms must be made in the “least restrictive” way possible and focused only on preventing fraud and corruption. “Regulation of the soft money activities of non-party groups and individuals is both subject to the strictest constitutional scrutiny and nearly always constitutionally invalid. Regulation advertising because it includes the name or likeness of a public official, for example, is clearly unconstitutional” (2). The footnoted description of strict judicial scrutiny was taken from the *Lectric Law Library* online.⁴

A Minnesota law dealing with state judges and elections illustrates how restrictive reformers can get. Minnesota elects its judges and restricts candidates from: announcing their views on disputed political issues; seeking, accepting or using endorsement from any political party or organization; and attending political gatherings or speaking at political party gatherings. Candidates seem to be prohibited from saying anything that might enable voters to make informed decisions. Defenders of the law say that these restrictions “guarantee the independence” of the judiciary from political, economic and social pressure (Will A17). The Supreme Court will decide this case.

Since, in their search for “clean” elections, reformers seem intent on restricting the First Amendment rights of many citizens, we might question the motives of those calling for reform. Campaign laws and regulations tend to favor incumbents by limiting what their opponents can do and say. Overcoming the inherent advantages of incumbency (name recognition, government paid staff, franking privileges and travel expenses) usually requires the challenger to outspend the incumbent during the campaign. “Money is a proxy for political speech, enabling political information to be widely disseminated and increasing the probability of competitive elections” (Basham 1). In the landmark case of *Buckley v. Valeo*, the Supreme Court stated that a major purpose of the First Amendment was to “protect the free discussion of governmental affairs.” In this regard, contribution and expenditure limitations “operate in an area of the most fundamental First Amendment activities” (Pilon September 25, 1997 1). Congressmen seem eager to suppress criticism of their actions. “In other words, it appears that some politicians are trying to use public dissatisfaction

with their own actions as an excuse to expand government regulation of, and reduce participation in, the political process” (Mason 1). Fortunately, these proposed limitations are subject to strict judicial scrutiny. They must serve a “compelling state interest” and employ the “least restrictive means” (Pilon July 22, 1999 1).

Another vocal group of campaign finance reformers can be found throughout the Fourth Estate. No restriction proposed in the campaign finance bills currently under consideration in the House and Senate would restrict what newspapers could print or what television reporters could say during an election campaign. This is in keeping with the media’s First Amendment rights. But one component of the McCain-Feingold Senate Bill 27 would prohibit labor unions, for-profit corporations and tax-exempt non-profit organizations from funding broadcasts referring to federal candidates within 60 days of a general election or 30 days before a primary. The Shays-Meehan bill in the House contains a similar proposal. Targeted groups would not have the same First Amendment rights as those enjoyed by newspaper and television journalists. The dark side of such proposals would reveal themselves whenever the media heavily favored one political party or candidate over another. While supporters of each candidate would be banned from most types of advertising for the two months before an election, journalists could say and print whatever they wanted with little fear of contradiction. When a presidential candidate is portrayed only from the media’s viewpoint during the last 60 days of a campaign and the candidate’s supporters or opponents are limited in how they can respond to this portrayal, the ultimate effect will be to have the media elect our nation’s top leaders.

Just because a candidate does not win, it does not mean that the system is corrupt. It also cannot be assumed that suggestions for campaign finance reform are selfless acts of patriotism, since most people act in their own self-interest. Proposed reforms do not guarantee a better system, only a different one.

Campaign finance reform might reduce the turnout in national elections, since there would be less money available to persuade people to vote. In times of peace and prosperity, as in the 2000 election, major parties tend towards the center with similar ideas that differ only

in degree or magnitude. As Election Day approaches the target audiences for most campaigns are the undecided and since both parties are selling similar ideas, the fight for the undecided becomes crucial

According to Jude Wanninski, in *The Way the World Works*, all change takes place at the margin (Wanninski 42). Most political advertising is aimed at the margin, since this is where the voters are. The political messages that candidates send out nearer to Election Day are geared to those potential voters still weighed down by apathy. They have not been convinced that their votes might make a difference. They have yet to decide whether to vote, or for whom. They are “marginal.” What type of appeal will reach these people? Certainly not simple statements of fact; the facts have been out for months or even years in most campaigns and both parties are selling a similar message. America is besieged by advertisements and continuous political coverage. Something stronger is needed to move the intransigent, agnostic margin into the column of the faithful, true believers. This something has evolved into issue advocacy and negative advertising. Last-minute campaigns have two interrelated goals:

1. “Get marginal voters to vote for our candidate” e.g., getting blacks in Florida to vote for Al Gore. Or,

2. “Get marginal voters to vote for a third party candidate instead of our main opponent.” Ralph Nader took more votes from Gore than he did from Bush, just as Ross Perot took more votes from Bush’s father than he did from Clinton and both victors were elected president with less than 50 percent of the votes cast. In 2000, Bush actually lost the popular vote and would have lost the election if just a few of the Floridians who voted for Nader had chosen Gore instead.

In economic terms, each incremental voter is less elastic than the one before. That is, each one is more difficult to move, has more inertia and will cost more to convert from a non-voter or an undecided to a voter. How can a campaign sway them? While actual tactics may vary, the closer to Election Day that a campaign spot is aired or the telephone call is placed, the more impact it has on the undecided or marginal voter. 2000’s election was much closer than predicted by most polls because Gore’s team convinced more undecided voters to turn out and choose Gore instead of Bush. This “convincing” came in the

frantic, last few days before November 7, 2000. It included a tremendous get out the vote movement in key states coupled with an effective negative advertising assault by issue advocacy groups concerning Bush's DWI arrest in 1976 (Sammon 13). The Democrats' strategy was to identify marginal voters with the greatest potential of voting for Gore and energize them by bringing them to the polls in large numbers prepared to cast a valid ballot. In Florida, blacks accounted for 16 percent of the state's vote, but only 11 percent of its population, and more than 90 percent of blacks voted for Gore (White 1). This massive effort to mobilize black voters almost earned Gore the presidency.

Proposed changes in campaign finance reform laws would have prohibited these activities from taking place. Banning soft money donations and limiting speech by certain groups 60 days before an election, will weaken the First Amendment and most likely be declared unconstitutional when challenged in court.

More than 75 percent of the money raised for the 2000 elections by federal candidates and nationwide political parties was hard money, that is, money under federal regulation. The McCain-Feingold bill addresses only soft money, accounting for approximately 20 percent of all funds raised in 2000's national election cycle ("Hard Money" 1). Considering that \$225 million was spent of television advertising during the four hours of Super Bowl XXXVI, \$480 million of soft money spread over two years of campaigning doesn't seem that huge a sum ("Campaign Finance" 1).

Some questions are left unanswered by reformers. If money corrupts, how are government-sponsored elections different from privately funded ones? If the person getting elected might act in a way beneficial to an individual, an organization, or a corporation giving him or her money, why would that person getting elected not act in a way beneficial to the government for giving him the same money? Would this official act in any way to expand government powers? How is money from one source different from money from another source? While additional money allotted to the mechanics of conducting elections will definitely decrease the percentage of miscast ballots and disenfranchised voters, proposed restrictions on campaign finance are probably unconstitutional and may hasten the day when governments

or the news media control elections by deciding who gets to run for national office.

CONCLUSION

The closeness of 2000's presidential election and the ensuing judicial battle gave critics more ammunition to fire across the bow of the current electoral system. Most current arguments for reform have been made before. Some have merit, while some would weaken the basic structure of our country.

Voting Reform

An unexpected byproduct of the deadlocked election is the realization that the way the country conducts elections must be modernized, especially for national campaigns. If no ballots were invalidated because of under punching or over punching, Gore would likely be president. He is not the first candidate damaged by a faulty and confusing voting process. Hopefully, he will be the last. Modern, more reliable voting machines can be developed and installed in time for the 2004 presidential battle. Onsite tabulation and second-chance ballots will render fairer and more accurate outcomes. Superior voter registration and identification techniques, including local access to statewide databases and photographic voter identification, will add to every outcome's credibility.

Campaign Finance Reform

Supporters of campaign finance reform have made impassioned pleas to our country's legislators to implement their suggestions, citing the ugliness of the election's aftermath as another reason for reform. These pleas did not fall upon deaf ears, and Congress has recently passed a major reform bill. This attempt by legislators to save themselves from themselves will not stand. Court challenges on First Amendment grounds will likely gut much of the proposed legislation, including the 60-day gag order and the elimination of soft money. The Supreme Court has already affirmed the right of private spending in elections as an extension of free speech (Pilon "Constitutional Issues" 4). Previous

campaign finance laws, now called convoluted, corrupt and unfair, were also the product of campaign finance reform thirty years ago. Old arguments for reform have been resurrected with scant attention paid to what the seeds of previous reform have yielded.

In an attempt to eliminate negative campaigning, advocates appear too willing to whittle away the First Amendment rights of our citizenry. Limiting what can be said, who can say it, and when it can be said by making certain behaviors illegal seems contrary to those fundamental rights fought for by our ancestors and enumerated in the Bill of Rights. A nearly universal theme sung by opponents of negative advertising and “mean-spirited” campaigning is that they are referring only to actions by their opponents and not to actions by their side. Unfortunately, one man’s negative is another man’s positive. Mean-spirited is truly in the eyes of the beholder. While Republicans lamented the revelation of Bush’s decades old DUI, Democrats felt justified in revealing this character flaw to America’s voters. Democrats were similarly offended when Republicans alerted voters to Gore’s fund raising affair at a Buddhist Temple. Of course, Republicans felt justified in enlightening voters on this embarrassing event. What august body will decide what campaigning is negative? Will this country really be better off adopting the “Minnesota Rules” for clean campaigns? Will such rules withstand court challenges?

By accepting negative ads, I do not support an “anything goes” campaign. Just as defendants have a right to know their accusers, so should politicians have the right to know their defamers. Anonymous attacks funded by unknown benefactors have no place in a society that boasts of free and open elections. Immediate and full disclosure of all monies given to any campaign within 24 hours as well identification of every advertisement’s sponsors will go a long way to strip away the secrecy of the present elaborate system of donations and issue advocacy ads.

What is wrong with financing those candidates that reflect your point of view? How else can a group or organization plead its case, especially if incumbent legislators are not listening? If it is money that corrupts, how are government-sponsored elections different from privately funded ones? If the person getting elected might act in a way

beneficial to an individual, an organization, or a corporation giving him money, why would that person getting elected not act in a way beneficial to the government giving him the same money? Would this official act in a way to expand government powers? If money corrupts every candidate, how is money from one source different from another source? Today, it is fashionable to criticize those who contribute to presidential campaigns just as it is fashionable to disparage candidates for carrying the water of those contributors. With government-funded elections, the needs of citizens will be placed beneath the needs of those supplying the money – the government.

The Continuous Campaign

Given that certain people will always vote for one party and others will never vote at all, the candidate must identify undecided voters, learn their needs and ultimately convince these prospects that he or she is looking out for their best interest. This daunting task must be done in the cacophony media overload. American's seem busier than ever before. The necessity of two wage earners in many families has shrunk leisure time for millions of Americans. We are assaulted by thousands of television commercials, countless telephone solicitations and innumerable print ads for every imaginable product and service. This is the atmosphere in which every politician struggles to survive. The nature of our society dictates that a well-stocked campaign treasure chest is necessary for a serious attempt to win political office.

Naïve scenarios of a finite number of structured debates held near Election Day, without any nasty, mean spirited campaign ads does not offer a viable alternative to the current process of extremely long and expensive campaigns. If challengers cannot blow their own horns, except in debates, the public will never hear or see their messages. Incumbents have a built in advantage simply by doing their job. The media report an incumbent's day-to-day tasks as news, not as political advertising. Limits on campaign spending will hurt the challenger more than the incumbent in nearly every case. The combined trends of limiting private funding and government funding will severely hamper challengers, ensure incumbency, expand government's role in selecting our leaders and by extension expand its intrusion in our daily lives.

For all of its bad press, for all of the predictions of democracy's end, and for all of the rancor it created, the 2000 presidential election has ultimately strengthened our country and forever changed the way we select our leaders. It has revealed serious deficiencies in the voting process. It has exposed faults in the way campaigns are managed and exposed the participants in this process as being all too human. The quest to shorten a campaign's length, restrict what can be said, and limit how much can be spent will reduce our freedoms and narrow the diversity of opinions championed by the opposition. If the Shays-Meehan Law survives the forthcoming judicial challenges, it will matter very little how potent a candidate's message or how cogent his or her policy. Once supporters of political candidates are prohibited from expressing their views 60 days before a federal election, incumbents will reign supreme and our Republic will be considerably weakened.

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NOTES

¹ Since these surveys only sample a fraction of 1 percent of the entire population, they can only predict results to a certain accuracy level. Statistical theory can determine this level only within a degree of confidence. For example, a statistician might say: Using a 95% confidence level, the results of this survey are accurate within +/- 3%. So a Bush lead of 48%-45% actually means Bush has between 45%-51% while Gore has between 42%-48% : not very convincing either way. If this sample was taken 100 times, in 95 such samples the results would be within three percentage points of this sample's results. In other words, five times out of one hundred the results could be outside

this margin of error. Approximately two-thirds of telephone calls to potential voters go unanswered or yield a refusal. This non-response can also render the sample inaccurate, since the tendency is to reduce sample size to cut costs associated with non-response.

²The margin of error also assumes that the sample was taken correctly and that the results represent the population being studied (every person in the population has a known chance of being selected and each segment of the population is represented proportionally in the sample). For example if African-Americans vote differently than white voters and they will make up 10 percent of the final vote, they should be 10 percent of the sample. If they are not represented proportionally, the sample will be inaccurate relative to the voting population. Or if absentee ballots will account for 12 percent of the vote and VSN projects 7 percent absentee voting, the results will be inaccurate if absentee voters vote differently than those voters going to the polls on Election Day. Under-representing blacks tends to hurt Democrats while under-representing absentees tends to hurt Republicans. VNS was guilty of both mistakes in its Election Day sampling and exit poll projections.

³ Article 5 of the Constitution reads: "The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

⁴ Not every governmental regulation implicating First Amendment or other fundamental rights is subject to strict judicial scrutiny. On the contrary, it is only when there exists a real and appreciable impact on, or a significant interference with, the exercise of the fundamental right that the strict scrutiny doctrine will be applied. When the regulation merely has an incidental effect on the exercise of protected rights, the First Amendment is not implicated and the regulation need only be reasonable. In order to satisfy strict scrutiny, a law must be neither

vague nor substantially over- or under-inclusive. It must further an overriding state interest yet be drawn with narrow specificity to avoid any unnecessary intrusion on First Amendment rights. “When a law burdens core political speech, we apply ‘exacting scrutiny,’ and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest. “Contributions by individuals to support concerted action by a committee advocating a position on a ballot measure is beyond question a very significant form of political expression.” Often, it is the only means for individuals or private entities to influence the political process in any meaningful way. “The practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process...The tradition of volunteer committees for collective action has manifested itself in myriad community and public activities; in the political process it can focus on a candidate or on a ballot measure. Its value is that by collective effort individuals can make their views known, when, individually, their voices would be faint or lost.”

However, government action need not amount to a total ban on concerted activity before giving rise to heightened scrutiny. In *Meyer v. Grant*, supra, 486 U.S. 414 [100 L.Ed.2d 425], state legislation prohibited the use of paid signature gatherers for qualifying an initiative measure. The court applied strict scrutiny despite the fact the legislation did not preclude the use of independent signature gatherers (providing they were not paid for their services) or the gathering of signatures. It was enough that the legislation placed a more than incidental burden on protected activity (“Strict Judicial Scrutiny” n. pag.).

[Editor’s Note: Just before this volume went to press, the U.S. Supreme Court ruled (by a vote of 5-4) that the Minnesota law discussed on p. 153 was in fact unconstitutional.]