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The Money Chase: How Proposed Changes to Campaign Finance Laws Could Impact Female Candidates

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THE MONEY CHASE: HOW PROPOSED CHANGES TO CAMPAIGN FINANCE LAWS COULD IMPACT FEMALE CANDIDATES

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Abstract: In their book, Madam President: Shattering the Last Glass Ceiling, Eleanor Clift and Tom Brazaitis shed light on the various reasons why a woman has yet to ascend the political ladder and occupy the Oval Office. While the authors do include some mention of female candidates' difficulty with fundraising, the authors fail to address a key component of any political analysis: Campaign finance reform. Reforming the federal election laws could have a profound influence on the prospects of current and future female politicians. Two reform proposals, including banning or restricting soft money and banning or restricting the practice of bundling, have consistently appeared on the short list of suggested changes to campaign finance laws. This Book Review explores these reform proposals and explains why banning soft money or bundling would take away two essential sources of campaign funds for women, thereby hindering their ability to rise through the political ranks.

In their book, Madam President: Shattering the Last Glass Ceiling, Eleanor Clift and Tom Brazaitis use contemporary female politicians to chronicle the difficulties of women in politics, particularly the difficulty of a woman ascending to the presidency.1 The authors chronicle the recent failures of female candidates, including Elizabeth Dole's (R) aborted bid for the 2000 Republican nomination and Geraldine Ferraro's (D) fall following her 1984 Democratic vice-presidential nomination, to highlight the challenges female candidates face in their pursuit of higher office.2 In addition, the authors parse the resumes and future prospects of current high-ranking female politicians, from Arizona Governor Jane Hull (R) to California

1 See generally ELEANOR CLIFT & TOM BRAZAITIS, MADAM PRESIDENT: SHATTERING THE LAST GLASS CEILING (2000).
2 See id. at 62–84, 143–61.
Senator Dianne Feinstein (D), ultimately concluding that because of the hurdles female candidates face, both Hull and Feinstein as well as most other current female politicians, are not likely to wind up in the Oval Office.\(^3\)

The authors briefly acknowledge that one major setback for female candidates is their difficulty raising money.\(^4\) Harriett Woods’ (D) near-defeat of incumbent John Danforth (R) in the 1982 Senate race in Missouri is an apt illustration.\(^5\) The authors also detail the success of Emily’s List, a group that funds pro-choice Democratic women running for office, explaining that an endorsement from the group goes a long way in legitimizing a female candidate and improving her chances for election.\(^6\) Unfortunately, the authors’ discussion of female candidates’ fundraising difficulties fails to raise the subject of campaign finance reform.\(^7\) In an age in which campaign finance reform receives considerable press, and in which various proposals as to how to alter the system sit on Capitol Hill, the authors’ omission of an assessment of these proposed changes and, in particular, their effect on female candidates, is notable.\(^8\)

Proposals abound for ways to alter campaign finance laws.\(^9\) Two proposed changes—banning or restricting soft money and banning or

\(^3\) See id. at 19, 141-42, 176-77.

\(^4\) See id. at 24-25, 87.

\(^5\) See id. at 86-87. The authors note that "party leaders had so little confidence in [Senate candidate Harriett Woods] that she received only token financial help. A woman running for the Senate was such an oddity in 1982 that the mostly male leadership could get away with their cavalier attitude." Id. at 87.


\(^7\) See generally Clift & Brazaitis, supra note 1.

\(^8\) See Hans Johnson, Cleaning Up: Missouri, Oregon Consider Campaign Finance Initiatives, In These Times (Chi.), Sept. 4, 2000, at 3 (detailing plans for major campaign finance initiatives in two states that would establish public funding similar to the system already established in Maine); Proposals at a Glance, Roll Call (Washington, D.C.), May 28, 1998 (detailing numerous bills that deal with campaign finance reform). See generally Clift & Brazaitis, supra note 1. Given the fact that campaign finance reform proposals exist on a state and national level, it seems as though a book focusing on elective office and the difficulty of raising money would mention such reform proposals. See generally Clift & Brazaitis, supra note 1.

severely restricting the practice of bundling—would negatively affect challenger candidates.¹⁰ Since few women hold federal elective office, most female candidates tend to be challengers.¹¹ Women are, therefore, most susceptible to the effects of these proposed changes to


¹¹ Mary Lynn F. Jones, A Big Leap Year; Women Candidates Capture Greatest Number of Seats Since 1992, CHI. TRIB., Nov. 15, 2000, at 3 [hereinafter Jones, Leap Year]; Mary Leonard, Transfer of Power/The Female Contingent; Women’s Status Grows in Senate, Legislators Hope Influence Expands with Larger Presence, BOSTON GLOBE, Jan. 19, 2001, at A28. After the 2000 election, there were a total of five female governors, thirteen female senators and sixty-one House members, which includes fifty-nine voting members, and two non-voting delegates from the District of Columbia and the U.S. Virgin Islands. Jones, Leap Year, supra, at 3; Leonard, supra, at A28; CTR. FOR AM. WOMEN & POLITICS, Eagleton INST. OF POLITICS, RUTGERS, THE STATE UNIV. OF N.J., Election 2000: Summary of Results for Women, at http://www.rcri.rutgers.edu/~cawp/facts/Summary2000.html [hereinafter cited as Election 2000]. Although there were five female governors after the 2000 election, that number did not last long: Governor Christine Todd Whitman (R) of New Jersey left her gubernatorial post before her term ended to serve as head of the Environmental Protection Agency in the Bush administration. See David M. Halbfinger, DiFrancesco Sworn in as Acting Governor, N.Y. TIMES, Feb. 1, 2001, at B5; Glen Johnson, A Divided Panel Backs Ashcroft, Key Opponents of Bush Choice Hoping for 40 Votes Tomorrow, BOSTON GLOBE, Jan. 31, 2001, at A1; Election 2000, supra. With Whitman’s departure, Senate President Donald T. DiFrancesco (R) became the next governor of New Jersey, reducing the female gubernatorial total to four. See Halbfinger, supra, at B5. However, the number will return to five should Massachusetts Governor Paul Cellucci (R) be confirmed as the U.S. ambassador to Canada, a post he was nominated for in February. See Frank Phillips & Anne E. Kornblut, The Cellucci Nomination; Cellucci Set to ‘Serve the Country’ Says He’ll Leave Massachusetts in Good Hands, BOSTON GLOBE, Feb. 14, 2001, at A1. Cellucci, whose confirmation as ambassador, and thus resignation as governor, should come by the end of April, will be succeeded by Lieutenant Governor Jane M. Swift (R), the first female governor to serve in Massachusetts. See id. The numbers following the 2000 election represent an increase of two female governors, three female congresswomen and four senators over the number of women in office before the 2000 election. See Jones, Leap Year, supra, at 3; Leonard, supra, at A28. Clift and Brazaitis correctly note that in 2000 there were three female governors and nine women in the Senate. CLIFT & BRAZAITIS, supra note 1, at 17–18. However, the authors also claim there were “65 women among the 435 members of the House,” a claim that is false. Id. at 18; see Jones, Leap Year, supra, at 3. In 2000, there were 56 voting members out of the 435 members of the House, not 65 as the authors suggest. CLIFT & BRAZAITIS, supra note 1, at 18; see Jones, Leap Year, supra, at 3.
campaign finance.\footnote{12} Part I of this Book Review provides an overview of the current laws governing campaign finance. Part II explains proposed changes to soft money and applies those changes to the prospects for challenger candidates, and by extension, female candidates. Part III assesses proposals to close the bundling loophole and its impact on female candidates. This Book Review concludes that two popular proposed changes—banning soft money and the practice of bundling—would damage the prospects for challenger candidates and, in particular, female challenger candidates.

I. OVERVIEW OF CURRENT CAMPAIGN FINANCE LAW

The Federal Election Campaign Act of 1971 (FECA), which Congress heavily amended in 1974 in the post-Watergate era, governs federal campaign finance law.\footnote{13} The current system sets specific per-election limits on both individuals and political action committees (PACs) during an election cycle.\footnote{14} Buckley v. Valeo, the 1976 watershed

\footnote{12} See Ansolabehere & Snyder, supra note 10, at 608; Briffault, supra note 10, at 652; Wertheimer & Weiss Manes, supra note 10, at 1128; Jones, Leap Year, supra note 11, at 3; Leonard, supra note 11, at A28; ELECTION 2000, supra note 11.
\footnote{14} 2 U.S.C. § 441a(a). An individual cannot contribute more than $1,000 to any candidate or authorized committee of the candidate with respect to any federal election. Id. Individuals can contribute up to $20,000 per year to political committees maintained by the national party. Id. Individuals can also contribute up to $5,000 a year to any other political committees, with a total contribution limit for individuals of $25,000 per year. Id. Multicandidate political committees shall not make contributions to any candidate or to their committee in any federal election that exceeds $5,000, and not more than $15,000 in a calendar year to any political committee maintained by a national party. Id. The term “multicandidate political committee” means “a political committee which has been registered under section 303 [U.S.C.S. § 433] for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.” Id. § 441a(a) (4). The term “election” with regard to the above statute is defined as:

[A] general, special, primary, or runoff election; a convention or caucus of a political party which has authority to nominate a candidate; a primary election held for the selection of delegates to a national nominating convention of a political party; and a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

\textit{Id.} § 431(1)(A)–(D). This means, for instance, that the contribution limit of $1,000 per person to any given candidate per election allows a donor to give $1,000 in the primary and another $1,000 in the general election and in any special or runoff election that includes that candidate. See \textit{id.}; 2 U.S.C. § 441a(a). Political action committees are multicandidate political committees that do not have ties to the national parties or to a particular
U.S. Supreme Court case in the area of campaign finance law, upheld the individual contribution limits, the disclosure and reporting provisions of the Act, and the public financing scheme for presidential elections. In contrast, the Court found limitations on campaign expenditures, independent expenditures by individuals and groups, and limits on expenditures by a candidate from his personal funds, to be unconstitutional. The decision had a far-reaching and immediate impact on campaign funding. The decision, in emphasizing contribution limits but not a general cap on overall campaign expenditures, served as a catalyst for escalating campaign costs. The practical effect of the Buckley decision has been to put a greater emphasis on PAC contributions because of their $5,000 limit, as opposed to the $1,000 limit for individuals, igniting an explosion in the number of PACs.


15 See Buckley v. Valeo, 424 U.S. 1, 143 (1976). The Act requires each political committee to register with the Federal Election Commission and keep detailed records of contributions and expenditures. 2 U.S.C. §§ 433, 432(c), (d). Each committee and candidate also must file quarterly reports with detailed financial information and personal information of the donors. Id. § 434(a), (b). In general, the term "political committee" in the statute refers to:

[any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year; or any separate segregated fund under the provisions of section 316(b) [2 U.S.C.S. § 441b(b)]; or any local committee of a political party which receives contributions aggregating in excess of $5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined in section 301(8) and (9) aggregating in excess of $5,000 during a calendar year, or makes contributions aggregating in excess of $1,000 during a calendar year or makes expenditures aggregating in excess of $1,000 during a calendar year.

Id. § 431(4)(A)–(C).

16 See Buckley, 424 U.S. at 143.


18 See Levit, supra note 17, at 473.

19 See 2 U.S.C. § 441a(a); O'Connor & Sabato, supra note 14, at 336. The number of PACs grew to 4,079 in 1996, more than six times the number in 1974, just two years before Buckley. O'Connor & Sabato, supra note 14, at 336; Wertheimer & Weiss Manes, supra note 10, at 1131–32. The authors argue that Buckley, combined with the failure of the 1974 reforms to include public financing, left candidates with no choice but to rely on special-interest money. See Wertheimer & Weiss Manes, supra note 10, at 1132; Wardle, supra note 10, at 539.
A. The Bundling Loophole

One FECA provision, 2 U.S.C. § 441a(a)(8), and its accompanying Federal Election Commission (FEC) interpretation, has enabled a growing number of PACs to raise large amounts of money for specific candidates that is not subject to the $5,000-per-candidate PAC limit.20 This loophole, known as bundling, requires certain reporting criteria for “earmarked” donations.21 Earmarked donations are those in which there is “a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized committee.”22 Reporting of such earmarked contributions requires that the conduit or intermediary report to the FEC and the recipient candidate the donor’s name and mailing address, and for individuals making contributions over $200, their occupation and employer.23 The recipient then must report any conduit that provided one or more earmarked contribution over $200, the total amount of contributions from the conduit, and the information identifying individuals giving more than $200.24

The FEC regulations alter this structure if it is determined that the conduit exercised “direction or control” over the choice of the recipient candidate; if no “direction or control” exists, then there is no effect on the conduit’s contribution limit to the candidate; however, if the FEC determines there was “any direction or control,” the contribution will count against the limits of both the individual and the conduit.25 The term “direction or control,” however, appears meaningless in light of the District of Columbia Court of Appeals de-

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20 See 2 U.S.C. § 441a(a)(2)(A), (8); Wardle, supra note 10, at 535. The statute states:

For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

21 See id.; FEC Contribution and Expenditure Limitations and Prohibitions, 11 C.F.R. § 110.6 (2000); Wardle, supra note 10, at 535.

22 11 C.F.R. § 110.6(b)(1).

23 Id. § 110.6(c)(1)(i)(iv)(A).

24 Id. § 110.6(c)(2)(i)–(ii).

25 Id. § 110.6(d)(1)–(2).
cision in *Federal Election Commission v. National Republican Senatorial Committee*, in which the court found no “direction or control” when a national party helped a small, defined number of candidates. In this case, the National Republican Senatorial Committee (NRSC) pre-selected four 1986 Senate candidates and proceeded to solicit donations on their behalf. The Committee sent out letters saying it would divide the money equally among four candidates, only giving their states and not their names. The court said this was not “direction or control.” Since this decision, there has been an increase in the number of political interest organizations that have supported federal candidates by bundling. This loophole has been one target of proponents of campaign finance reform.

**B. The Soft Money Loophole**

Another loophole that reformers target arose out of the 1979 amendments to FECA, which Congress amended to include regulations that exclude state and local party building activities from the federal contribution limits. The Federal Election Commission has since decided the 1979 amendments allow individuals and organizations to give unlimited amounts of money to the national parties’ state and local party building campaign accounts. The money—referred to as soft money—is generally supposed to be used for party building expenditures at the state and local levels, and cannot be spent in conjunction with federal candidates. Soft money provides a vehicle

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26 See 966 F.2d 1471, 1478 (D.C. Cir. 1992); Wardle, *supra* note 10, at 541–42.
27 *Nat’l Republican Senatorial Comm.*, 966 F.2d at 1473.
28 *Id.*
29 See *id.* at 1478.
33 Ansolabehere & Snyder, *supra* note 10, at 598. Because the 1979 amendments excluded state and local party-building expenditures from contribution limits, contributors can give unlimited amounts of money to the national parties’ state and local party-building accounts, dubbed “non-federal” accounts. *Id.*
34 *Id.*
through which wealthy individuals and groups can help influence policy by contributing unlimited amounts of cash to the national parties.\textsuperscript{35} Soft money has grown increasingly more influential in elections across the country, growing at an exponential rate from 1992 to 1996 and from 1996 to 2000.\textsuperscript{36}

Both political parties have turned to "issue advocacy" as another means of utilizing soft money.\textsuperscript{37} Issue advocacy ads, which advocate or oppose the cause of a candidate, can be partially paid for with a party's soft money so long as they do not contain "magic words," including "vote for," "elect," "cast your ballot for," "vote against," or "defeat."\textsuperscript{38} Through this new method, parties have increased the usefulness of soft money and now can use these funds to pay for ads that directly aid federal candidates.\textsuperscript{39} Because of the potential for abuse, and the significant increase in donations of this variety, soft money has become one of the largest targets of campaign finance reform.\textsuperscript{40}

II. THE EFFECTS OF BANNING SOFT MONEY ON FEMALE CANDIDATES

Commentators and reform-minded politicians attack the heavy role of the two major political parties through the use of soft money, arguing that "parties [through soft money and other mechanisms] are

\textsuperscript{35} See id. at 601. The authors explain that soft money opponents believe that because the donations are so large, they may influence policy by putting pressure on congressmen, senators and the president of a particular party to adhere to the wishes of a large donor. See id.

\textsuperscript{36} See Alison Mitchell, Bush and McCain Meet on Campaign Finance, N.Y. TIMES, Jan. 25, 2001, at A20. The 2000 election found the parties raising the highest amounts of soft money ever, with the Democrats' party committees taking in $243.1 million and the Republicans collecting $244.4 million, for a total of $487.5 million. Id. In 1996, the two national political parties raised $263 million, nearly three times as much as was raised in 1992. Steve Campbell, Campaign System Riddled with Loopholes; They Render Existing Finance Restrictions Virtually Meaningless, THE PORTLAND PRESS HERALD (Me.), Sept. 16, 1997, at 1A.

\textsuperscript{37} See Briffault, supra note 10, at 632–33.

\textsuperscript{38} Id. at 631–32. The author notes that an FEC Advisory Opinion in 1995 that allowed the Republican National Committee to criticize President Clinton by name while discussing issues led to the widespread use of such "issue" advertising in the 1996 election. Id. at 632. The Advisory Opinion also stipulated that issue advocacy ads cannot be paid for exclusively through soft money; only a specified portion of the cost can be funded through soft money, a ruling that is being challenged in the courts by both parties, but has not yet been resolved. Id. at 633.

\textsuperscript{39} Id.

\textsuperscript{40} See S. 27, 107th Cong. (2001); S. 1816, 106th Cong. (1999); S. 26, 106th Cong. (1999); H.R. 417, 106th Cong. (1999); Briffault, supra note 10, at 633; Wertheimer & Weiss Manes, supra note 10, at 1128.
eroding the basic elements of our campaign finance system." While those same commentators will admit that the parties play a pivotal role in elections and should continue to do so, the use of soft money is seen by many to be in need of reform. As a result, many are calling for the effective ban of soft money by subjecting all party money used in federal elections to regulation. Senators John McCain (R) of Arizona and Russell Feingold (D) of Wisconsin have put forth one of the more popular, much touted, reform plans that would ban soft money. Their proposed legislation would eliminate soft money by subjecting all party money to the limitations, prohibitions and regulations established in FECA. Although this legislation has been proposed and has failed in past years, the McCain-Feingold bill has gained supporters since its last defeat and has a better chance of passage in 2001.

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41 See Briffault, supra note 10, at 652 (stating that limits on party spending for a candidate might as well not exist because they can easily be circumvented).

42 See id. at 653.

43 See id. at 659; Wertheimer & Weiss Manes, supra note 10, at 1128; Proposals at a Glance, supra note 8. Soft money has long been on the legislative agenda: In the 105th Congress, Representatives Christopher Shays (R-Conn.) and Martin T. Meehan (D-Mass.) proposed a bill to prohibit national parties from raising and spending soft money among other things (the House counterpart to the McCain-Feingold bill in the Senate); Representative Charlie Bass’ (R-N.H.) bill would ban national parties from raising soft money; Representative Sam Farr’s (D-Cal.) bill would ban soft money; Representatives Asa Hutchinson (R-Ark.) and Tom Allen’s (D-Me.) bill would prohibit national parties from raising and spending soft money; former Representative Vince Snowbarger’s (R-Kan.) bill would prohibit any soft-money donations from unions and corporations to political party committees; and Rep. John F. Tierney’s (D-Mass.) bill would ban soft money. See Proposals at a Glance, supra note 8.

44 See S. 27.

45 Id. at Title I, § 101. If passed, the proposed legislation would amend FECA to include:

(1) IN GENERAL—A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

Id.

46 See Larry Bivins, Thompson Pushes Bill Banning ‘Soft Money’: Bipartisan Support Could Expedite Vote on Reform, THE TENNESSEAN (Nashville), Jan. 23, 2001, at 6A. With the additional support of senators like Republican Thad Cochran of Mississippi, a previous opponent of the bill, the legislation has a better chance of passage in 2001. See id. In addition, Republican Senator Fred Thompson (Tenn.) recently stated, “We have a better chance than ever before to get something done.” Id. (quoting Senator Thompson); Mitchell, supra note 36, at A20. Mitchell notes that the House version of the bill has passed in that body two years in a row, but has “repeatedly died in a Senate filibuster.” Mitchell, supra
While soft money has been used by both political parties to help many different kinds of candidates, a ban on such funds likely would have the most serious impact on challengers.\textsuperscript{47} In general, incumbents have an easier time than challengers in raising money and therefore would not be as adversely affected if soft money were to dry up.\textsuperscript{48} In fact, some argue that reducing the fundraising abilities of the political parties would reduce challenger vote shares in the electoral process, mainly because non-incumbents have a much easier time attracting party money than they have attracting PAC money.\textsuperscript{49}

Challengers have a particularly difficult time raising adequate funds to mount competitive campaigns.\textsuperscript{50} Compared to both individuals and PACs, parties are much more likely to invest in challengers because parties are trying to spread their money strategically to either gain control or maintain control of Congress.\textsuperscript{51} If soft money were to be banned, parties would be greatly restricted in their ability to help these challenger candidates, thus drying up an essential source of campaign funds.\textsuperscript{52} Therefore, a ban on soft money would affect challengers more than incumbents.\textsuperscript{53}

A dearth of females hold elective office today: Although there were increases following the 2000 election, only five female governors, thirteen female senators and sixty-one female House members held office at the beginning of 2001.\textsuperscript{54} This represents a severe numerical

\textsuperscript{47} See Ansolabehere & Snyder, \textit{supra} note 10, at 608; Briffault, \textit{supra} note 10, at 661.

\textsuperscript{48} See Ansolabehere & Snyder, \textit{supra} note 10, at 608; Briffault, \textit{supra} note 10, at 661.

\textsuperscript{49} See Ansolabehere & Snyder, \textit{supra} note 10, at 608, 611. Although the authors admit that a large reduction in party money would reduce challenger vote shares by 2.5\%, they conclude this would not "change competition in the national elections appreciably" because the typical challenger only receives 35\% of the vote. \textit{See id.} at 611. However, one could argue a 2.5\% vote loss could impact some challengers in tight elections. \textit{See id.} As Clift and Brazaitis point out, challenger candidate Harriett Woods lost by a mere 27,000 votes to incumbent John Danforth in the 1982 Missouri Senate race in which she received inadequate party support; 2.5\% certainly would have helped her win the race since she lost by about 1\%. \textit{See Clift & Brazaitis, supra note 1, at 87.}

\textsuperscript{50} See Briffault, \textit{supra} note 10, at 660.

\textsuperscript{51} \textit{See id.} at 661.

\textsuperscript{52} \textit{See id.}

\textsuperscript{53} See Ansolabehere & Snyder, \textit{supra} note 10, at 608; Briffault, \textit{supra} note 10, at 660–61.

\textsuperscript{54} Jones, \textit{Leap Year}, \textit{supra} note 11, at 3; Leonard, \textit{supra} note 11, at A28; \textit{ELECTION 2000}, \textit{supra} note 11. The number of female governors quickly dropped to four following the 2000 election because of the departure of New Jersey Governor Christine Todd Whitman (R) to head the Environmental Protection Agency. \textit{See Halbfinger, supra note 11, at B5; Johnson, supra note 11, at A1. However, the number will return to five should Massachusetts Governor Paul Cellucci (R) be confirmed as U.S. ambassador to Canada; he would be
inequality in each chamber of Congress and in the governors' mansions across the country. For these numbers to improve, more female challengers will have to either win open seats or beat incumbents. However, in order to do this, female candidates will have to overcome historically great odds and raise a significant amount of money, an element of running for office that former California Secretary of State March Fong Eu (D) once called, "the greatest barrier to the election of more women." Therefore, because female candidates are underrepresented, and tend to be under-funded challenger candidates in need of party support, banning soft money would have a negative impact on female candidates.

For these reasons, many female candidates and female political operatives oppose the elimination of soft money. One high-profile example of this general view was on display in the 2000 New York Senate race in which Democrat Hillary Rodham Clinton faced Republican Rick Lazio. While Mrs. Clinton is a somewhat unusual case study for campaign finance and female candidates in general because of her high name recognition and ability to incite strong feelings in voters, her agreement to ban groups from using soft money to buy advertising, although perhaps a helpful political strategy, was seen as potentially financially dangerous. The New York Times noted that


See Leonard, supra note 11, at A28. The 13 women out of a total of 100 senators and the 59 voting congresswomen out of a total of 435 members is very far from being on par with the U.S. population: fifty percent of the country is comprised of women. See id. The U.S., when compared to governments around the world, ranks fiftieth in women elected to office. Id.

See id.


See Clift & Brazaitis, supra note 1, at 141–42; Ansolabehere & Snyder, supra note 10, at 608; Briffault, supra note 10, at 660–61; Jones, Leap Year, supra note 11, at 3; Leonard, supra note 11, at A28.

See Pat Swift, Gender Gap Plays a Role in Campaign Funding, The Buffalo News, Mar. 18, 2000, at 7C. The article details the challenges of female candidates in raising money to run for elective office. See id. The author notes that "women’s views of campaign finance reform are colored by their preference for fund raising networks and issue groups. They tend to oppose eliminating soft money contributions." Id.


See id.; Dean E. Murphy, Candidates Back 'Soft Money' Ban in New York Race, N.Y. Times, Sept. 24, 2000, at 1. The deal included a ban on television and radio advertising paid for by political parties with soft money. See id. In addition, both sides agreed to ask independent groups not to advertise on each candidate’s behalf. See id.
Clinton, in accepting the ban, "said her campaign would suffer because of the ban. . . . 'Well, I made a commitment to this principle over a year ago, and disadvantaged or not, I will honor it because it is the right thing to do.'"62 Because of Lazio's greater ability to attract hard money campaign donations from across the country by running against the much-maligned First Lady, the soft-money ban left even this famous female candidate scrambling for cash like many other female candidates.63

Clift and Brazaitis, while highlighting the difficulty for female candidates in attracting campaign donations, fail to address the further difficulty female candidates for the House and Senate—important positions in the line to the presidency—would face should a ban on soft money become a reality.64

III. THE EFFECTS OF BANNING OR RESTRICTING BUNDLING ON FEMALE CANDIDATES

Banning bundling has not occurred very often in the states; only three states, Oregon, Missouri and Washington, have banned bundling outright through ballot initiatives.65 However, banning bundling by PACs (or at least significant restrictions on the practice) is a popular idea for those advocating a reform of the current campaign finance system.66 Past bills in Congress that have attempted to address the issue of bundling have failed.67 The 103d Congress attempted to regulate the practice of bundling: Senate Bill 3 (S. 3) proposed a ban

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62 See Murphy, supra note 61, at 1 (quoting Hillary Clinton).
63 See Levy, supra note 60, at A1; Adam Nagourney, Bush and Gore Vie for an Edge with Narrow Electoral Split; Hillary Clinton Goes to Senate; Big Victory for First Lady in Contest with Lazio, N.Y. TIMES, Nov. 8 2000, at A1. Despite the setback caused by the soft money ban, the First Lady won the election for Senate in New York on November 7, 2000. See Nagourney, supra, at A1.
64 See generally CLIFT & BRAZAITIS, supra note 1. The authors detail the troubles of raising money, especially the trouble Harriett Woods had in her bid to unseat John Danforth in the 1982 Missouri Senate race. See id. at 87. The authors acknowledge that because she lost by only 27,000 votes, more money could have made the difference. Id. The authors also note that women were angry that the Democratic Party did not fully support her candidacy. See id. Since that time the parties have become more active in supporting all candidates, and a ban on soft money would return challengers, women included, to the position Woods was in with little party support. See id.
66 See Ayres & Bulow, supra note 31, at 869; Wertheimer & Weiss Manes, supra note 10, at 1128; Wardle supra note 10, at 573; Proposals at a Glance, supra note 8.
67 See Wardle, supra note 10, at 545–46.
on PACs and on bundling, but was unacceptable to the House.\textsuperscript{68} House Bill 3 (H.R. 3) regulated bundling but also contained an important exemption: political committees not engaged in lobbying activities would have been exempt from the new bundling regulations.\textsuperscript{69} The exemption was inserted to help Emily’s List continue to raise money for female, Democratic, pro-choice women, because the group does not technically engage in lobbying.\textsuperscript{70}

Emily’s List, mentioned throughout Clift and Brazaitis’ book, is dedicated to raising money to help usher female politicians into elective office.\textsuperscript{71} To achieve this end, the group engages in the practice of bundling, soliciting money for candidates, combining the donations and then sending the money to candidates that the group endorses.\textsuperscript{72} Ellen Malcolm, the group’s founder, is a large proponent of bundling and pushed for the exemption for non-lobbying PACs in the 1993 House legislation.\textsuperscript{73} Malcolm has gone as far as to claim that politicians who support proposals to outlaw bundling are voting against women.\textsuperscript{74}

Some have suggested that the Emily’s List exemption, had it passed, would have created a new loophole immediately, whereby most PACs could just rearrange themselves as non-lobbying PACs to circumvent the law.\textsuperscript{75} Indeed, some female political activists agree and do not support such exemptions.\textsuperscript{76} Margery Tabankin, former executive director of the Hollywood Women’s Political Committee, says that bundling will not close the gap between female and male candidates, and instead advocates closing all the loopholes instead of partially closing only the bundling loophole.\textsuperscript{77} Fred Wertheimer and Susan Weiss Manes, former president and former vice president for issue development, respectively, of Common Cause, write, “The bundling loophole poses a serious threat to the integrity of existing federal contribution limits . . . .”\textsuperscript{78} And professors Ian Ayres and Jeremy Bulow

\begin{footnotes}
\item \textsuperscript{68} See id. at 548.
\item \textsuperscript{69} See id. at 550–51.
\item \textsuperscript{70} See id.
\item \textsuperscript{71} See CLIFT \\ & BIZAITIS, supra note 1, at 79.
\item \textsuperscript{72} See Jon Friedman, The Founding Mother, N.Y. TIMES, May 2, 1993, § 6 (Magazine), at 50; Schwinn, supra note 6, at A10.
\item \textsuperscript{73} See Friedman, supra note 72, at 50.
\item \textsuperscript{74} Bundling Makes Emily’s List, LEGAL TIMES (Washington, D.C.), Apr. 26, 1993, at 5.
\item \textsuperscript{75} See, e.g., Wardle, supra note 10, at 551.
\item \textsuperscript{76} See Wertheimer \\ & Weiss Manes, supra note 10, at 1142; Schwinn, supra note 6, at A10.
\item \textsuperscript{77} Schwinn, supra note 6, at A10.
\item \textsuperscript{78} Wertheimer \\ & Weiss Manes, supra note 10, at 1126, 1142.
\end{footnotes}
content that bundling "allows groups of individual contributors to buy access or influence." 79

However, the more popular position among female activists is that cutting out bundling as an option for PACs without an exemption for non-lobbying PACs will have a disproportionately negative impact on female candidates. 80 Representative Rosa DeLauro (D-Conn.), a former head of Emily's List and Herbert Alexander, former director of the Citizens Research Foundation at the University of Southern California, both strongly support the continuation of bundling. 81 In addition, Malcolm wrote in a New York Times op-ed column that because groups like Emily's List are merely trying to help elect certain candidates, and not lobby these members once elected, such groups help open up the political system. 82 Malcolm wrote, "The last thing Emily's List wants is a loophole that would pour special-interest money into campaigns. That would take us back to the very system that kept women out of office." 83

Clift and Brazaitis certainly discuss Emily's List's participation in various elections, from Harriett Woods' 1986 Senate race in Missouri to Barbara Mikulski's (D) 1986 Senate race in Maryland. 84 The authors discuss numerous other elections leading up to the group's present prowess, noting that by 1998 Emily's List had grown to 50,000 members in fifty states with total contributions of $7.5 million, all of which helped elect seven new pro-choice Democratic women to the House in 1998. 85 But despite the heavy mention of the group as having "established itself as a player in American politics," the authors fail to address the practical result of campaign finance laws that would limit bundling, and by extension, Emily's List's ability to help female candidates. 86

Little question exists, given the nature of the fundraising by Emily's List and other groups like the Republican counterpart,

79 Ayres & Bulow, supra note 31, at 869.
80 Friedman, supra note 72, at 50; Schwinn, supra note 6, at A10.
81 See Schwinn, supra note 6, at A10. DeLauro said the practice allows individual voices to be heard in Washington. Id. Alexander said, "I don't call it [bundling] a loophole. Blacks and women are underrepresented in Congress. They hit on a way of networking and now they're told, 'You can't do that.'" Id.
83 Id.
84 See CLIFT & BRAZAITIS, supra note 1, at 88, 93.
85 Id. at 99. This is the largest increase of Democratic women in the House in a non-presidential election year. Id.
86 Id.
Women in the House and Senate (WISH) List, that banning bundling would handicap these groups.87 Some even have called the bundling loophole Emily's List's "life blood."88 Without Emily's List and similarly minded groups' ability to generate funds, female candidates, who already struggle to raise enough campaign money, would be stripped of one of their few financial advantages and thereby would be placed in an even more unenviable position.89 Indeed, the 2000 election shows the continued strength of Emily's List: The group doled out almost nine million dollars to female candidates.90

Proponents of a ban on bundling sometimes make the argument that because there have been numerous failed bids by female politicians to upset incumbents, bundling has not enabled women to rise above the bias in the system.91 This argument has obvious flaws; the number of women elected has risen since Emily's List was founded, and the mere fact that the playing field for men and women is not equal in politics does not mean that this group's ability to donate heavily has no effect.92 Although this money is not the ultimate panacea to cure the financial schism between male and female politicians, it has helped in slowly raising the number of women in elective

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87 See Wardle, supra note 10, at 565; Swift, supra note 59, at 7C.

88 Bundling Makes Emily's List, supra note 74, at 5. The author notes that it is somewhat understandable that Emily's List would fight any legislation that would discontinue their ability to bundle donations given that this method of helping candidates is their life blood. Id.

89 See Schwinn, supra note 6, at A10. The author describes the bundling loophole as "a loophole that means big bucks for women candidates and others." Id.; Collins, supra note 10, at 54; see also Brown, supra note 57, at 1. The author quotes former California Secretary of State March Fong Eu as saying, "Male donors don't see women as politicians. They see women as wives who should be at home and not in politics. They often do this unconsciously, but the bottom line is that they do not deal with female candidates in the same way that they do male candidates." Brown, supra note 57, at 1.

90 Jones, Leap Year, supra note 11, at 3.

91 See Wardle, supra note 10, at 565.

92 See CLIFT & BRAZAITIS, supra note 1, at 18–19, 91. Since 1969, the number of women in state legislatures has increased fivefold. Id. at 19. Also, when Barbara Mikulski was elected to the Senate from Maryland in 1986 (the first year of Emily's List), she became only the nineteenth woman to serve in the Senate in the country's 200-year history. Id. at 91. At the beginning of 2001, there were thirteen women in the Senate. Collins, supra note 10, at 54; Leonard, supra note 11, at A28; see also Mary Lynn F. Jones, Moving Up: 'Trailblazing' Panel Looks at Progress, Problems of Women, CHI. TRIB., Mar. 22, 2000, at 2 [hereinafter Jones, Moving Up]. "In politics, women have gone from holding congressional offices only by succeeding husbands who had died to winning a record number of seats in their own right . . . ." Id.
office. Gail Collins, an editorial writer for the *New York Times*, weighed in on funding for female politicians, noting:

CAMPAIGN FINANCE REFORM KEEPS RECEADING, AND SOME CONTRARIANS SAY THAT EMILY'S LIST IS ONE OF THE REASONS. THAT'S NEAR-HERESY: EMILY'S LIST, A POLITICAL ACTION COMMITTEE THAT "BUNDLES" DONATIONS FROM BACKERS INTERESTED IN PROMOTING DEMOCRATIC WOMEN IN POLITICS, HAS DONE MORE THAN ANY GROUP TO PUT WOMEN'S CAMPAIGNS ON AN EQUAL FINANCIAL LEVEL WITH MEN'S. STILL, NEARLY ANY DISCUSSION OF FINANCE REFORM INEVITABLY RAISES THE QUESTION OF WHAT SUCH REFORM WOULD DO TO EMILY.

While Clift and Brazaitis address Emily's List's influence in elections, and the difficulty female candidates have in raising money, the authors fail to note that female candidates could have another serious setback should banning bundling become a reality.

CONCLUSION

In their book *Madam President: Shattering the Last Glass Ceiling*, Eleanor Clift and Tom Brazaitis do an admirable job describing the pitfalls that line the road to political office for female candidates. While the authors address the challenges female politicians face when attempting to attract campaign donations, they do not touch upon campaign finance reform and the effects possible alterations in the law could have on aspiring female politicians. Banning soft money and closing the bundling loophole are proposals that have been and likely will continue to be presented as viable, meaningful campaign

93 See Collins, supra note 10, at 54; Jones, *Leap Year*, supra note 11, at 3; Leonard, supra note 11, at A28. The 2000 election brought a record number of female governors, senators and congresswomen. Jones, *Leap Year*, supra note 11; Jones, *Moving Up*, supra note 92, at 2; Jill Lawrence, *Women's Numbers Improved the Most in State Elections*, USA TODAY, Nov. 11, 1998, at 6A; Leonard, supra note 11, at A28; *ELECTION 2000*, supra note 11. Women won the top five state offices in the 1998 election in Arizona, and in Washington, forty-one percent of the legislature following the 1998 election was comprised of women, a record for any state legislature. Lawrence, supra, at 6A; see also Jones, *Leap Year*, supra note 11, at 3. The almost nine million dollars in contributions Emily's List made during the 2000 election is likely to have had a significant impact on a large number of female candidates. See Jones, *Leap Year*, supra note 11, at 3.

94 Collins, supra note 10, at 54.

95 See generally Clift & Brazaitis, supra note 1.

96 See generally id.

97 See generally id.
finance reforms. Furthermore, each of these reforms could have a serious impact on challenger candidates, particularly female candidates. As Gail Collins says, "The issues that women gravitate toward in politics—day care, education, child protection—do not attract a lot of big donors." Given this reality, and the fact that any change in the current campaign finance laws could have a serious effect on female candidates, Clift and Brazaitis should have addressed this topic in a book that purports to probe all the reasons why women have a hard time rising through the political ranks.

98 See sources cited supra note 10.
100 Collins, supra note 10, at 54.
101 See sources cited supra note 10. See generally CLIFT & BRAZAITIS, supra note 1.