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Issue Advocacy in a Changing Discourse Environment

Kathleen Hall Jamieson

Representative government requires that voters be able to learn about the candidates who seek to represent them. As Madison noted in his 1798 report to the General Assembly of Virginia on the Sedition Act,

The right of electing the members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits of the candidates respectively.¹

Indeed, in their discussions of what would become the First Amendment the founders even considered giving citizens the power to bind the votes of their representatives (see debate on August 15, 1789). That proposal was not adopted, in part because the founders believed that "Representation is the principle of our Government; the people ought to have confidence in the honor and integrity of those they send forward to transact their business" (Gales and Seaton 1834, p. 762). Such confidence is presumably the by-product of knowledge about the individuals who would serve.

Discussions of the nature and importance of representation occur throughout the *Federalist Papers* (see, for example, numbers 10, 56, 57, 63). Because ours is a representative system of government, the law recognizes that the public has the need to hear the messages of candidates. As a result, the candidate's message is given a privileged space in broadcast law. Specifically, the speech of the candidate is given special treatment not afforded other noncandidate speech (note that

the comparable access and lowest unit rate provisions of the FCC apply to candidate speech) and unlike other forms of speech (including issue advocacy and commercial speech) is protected from censorship by stations.

By contrast and without altering any of these FCC provisions, *Buckley v. Valeo* presupposed that all speech is valuable and has a right to be heard. As a result, it refused to give privileged status to the speech of candidates over the speech of issue advocates. That presupposition makes sense in a prebroadcast age when speech was delivered in open-air spaces from the stump or soapbox. But the world has changed dramatically since the day in 1789 when Mr. Sedgwick argued against inclusion of freedom of assembly in the Bill of Rights. In moving to strike "assemble and," he said that such an amendment "would tend to make them appear trifling in the eyes of their constituents." "[S]hall we secure the freedom of speech," he asked, "and think it necessary at the same time, to allow the right of assembling? If people freely converse together, they must assemble for that purpose; it is a self-evident, unalienable right which people possess" (Gales and Seaton 1834, p. 760). In Sedgwick's time, each advocate could claim his own podium without denying others a space from which to speak or the ability to attract an audience.

That presupposition doesn't translate well to television or radio, however, because neither has unlimited air time available to reach the intended audience. When the amount of desirable time (i.e., that time that reaches the intended audience) available for purchase is finite — as it is on television and radio — it is no longer either practical or possible to assume that all voices carry comparable rights, hence the FCC regulations privileging candidate speech.

Whereas in the prebroadcast age candidates and advocates moved about the country delivering the same message to different audiences, in the broadcast age candidates and advocates more often deliver the same message repeatedly to the same audience. The candidate or advocacy group that purchases the largest number of gross ratings points can magnify the power of a given message through repetition. When a group outspends one or both candidates, it is more likely that the audience will remember its message than the message of the candidate.

Because viewers' interpretations of messages is in part a function of the context in which they appear, *Buckley* has spawned two very differ-

ent types of issue ads. Exploring their character, uses, and impact is the purpose of this chapter. The first, which I call "legislative issue advocacy," addresses pending legislation in a context in which an election is not on the immediate horizon. The second, which I label "candidate issue advocacy," addresses an issue but in the context of a forthcoming election vote. The distinction between the two types is important because communication theorists hold as a basic premise the notion that meaning does not exist in messages but rather in the intersection of a message and an audience.

From the time of Aristotle, scholars of communication have known that audiences draw on their cultural and biographical experiences as well as their knowledge of the conventions through which a society communicates in order to interpret messages. "[O]f the three elements in speechmaking – speaker, subject, and person address –," wrote Aristotle (1358a–b) in the *Rhetoric*, "it is the last one, the hearer, that determines the speech's end and object."

Audiences routinely invest messages with unarticulated premises in order to draw conclusions. When doing so, the assumptions or premises they bring to the message create what Aristotle called *enthymemes*. The process was so critical that Aristotle called the enthymeme the soul of persuasion. Contemporary theorists capture the same notion in the commonplace expression "meaning is in people." Argument theorists convey it with the notion that "we normally do not make explicit mention of all premises implicit in an argument, especially if they are obvious or noncontroversial" (Kelley 1988, p. 211). "There may be unexpressed premises but also unexpressed conclusions." Unexpressed premises "throw, as it were, an invisible bridge between the explicit premises and the standpoint that is being defended" (van Eemeren and Grootendorst 1992, pp. 60, 141).

Linguists make the same assumption when they note that

1. All utterances are subject to semantic collaboration to establish their effective meaning.
2. In communication, only effective meaning matters: literal translations of utterances could be imposed linguistically but have no intrinsic communicative status.
3. Our ability to use or to understand a wide variety of figurative, indirect, and colloquial forms of language (metaphor, humorous, polite requests, etc.) depends on the process of semantic collaboration (Roberts and Bavelas 1996, p. 143).

The same notion undergirds Grice's (1989) maxims of conversational implicature. These maxims suggest, for example, that when a speaker juxtaposes two seemingly unrelated ideas, the fact of the juxtaposition encourages audiences to assume that they are somehow related.

This fundamental human phenomenon means that an ad that asks you to call a candidate to articulate your approval or disapproval of a position can be interpreted in one context as an invitation to cast a vote while being read in another simply as a request to call and express an opinion on legislation. While legislative issue ads are likely to be regarded as requests to make a call – the cigar is just a cigar – the candidate issue ad is more likely to be regarded as an invitation to factor the information in the ad into one's voting decision. In other words, an issue ad does not have to contain such words as "vote for" or "vote against" for an audience to assume that that is the behavior sought by the ad.

The reasons are straightforward. Among the factors that contextualize messages are the other cues in the environment. When lawn signs, bumper stickers, news accounts, and candidate ads signal that an election is in process, for example, viewers are likely to assume that messages relevant to a voting decision – such as negative information about one candidate or positive information about another – are asking them to use the information in making a voting decision. Enthymematically, such messages solicit a vote when an audience member links the explicit content of the message (the praise or blame) to the context (an election) and recognizes the similarities between the structure of the so-called candidate issue ad and the ads produced for candidates themselves.

BACKGROUND

In the wake of the disclosures known as Watergate, in 1974 the U.S. Congress amended the Federal Election Campaign Act (FECA) of 1971 to limit contributions to a candidate running for a federal office and to limit expenditures made to support such a candidate. Under the amendments, individuals were limited to contributions of \$1,000 per candidate in a primary or a general election; political action committees (PACs) were limited to \$5,000. Limits were also placed on expenditures by campaigns, by candidates from their personal wealth, and by independent groups that did not coordinate their expenditures with the campaign.

As part of the package, those who agreed to spending limits in a presidential campaign and who qualified by raising a set amount of money in a set number of states from a set number of individuals would receive federal financing for a period in which they garnered a set level of votes in the primaries and for the entire general election period if they were nominated by one of the two major parties. The Federal Election Commission (FEC) was established to administer the law.

The constitutionality of FECA was challenged on the grounds that it violated the First and Fifth Amendments. Among the plaintiffs were Senator James Buckley (R. NY) and former Democratic presidential candidate and Minnesota Senator Eugene McCarthy. The plaintiffs argued that restricting political use of money constituted "a restriction on communication violative of the First Amendment, since virtually all meaningful political communications in the modern setting involve the expenditure of money." The Supreme Court upheld the limits on PAC and individual contributions to a candidate but said of limits on expenditures: "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money."

At the heart of the *Buckley* ruling is the claim that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed to secure 'the widest possible dissemination of information from diverse and antagonistic sources,' and 'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'"

In *Buckley*, the Court stated, "For the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest." The Court sidestepped the resulting problem by limiting regulations by the government to "explicit words of advocacy of election or defeat of a candidate."

In the process, it held that reporting of independent political expenditures under Section 434 (e) of FECA be limited to those funds used

for communication "that expressly advocate the election or defeat of a clearly identified candidate"². In a footnote (108), the Court said that "[t]his construction would restrict the application of [that section] to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'vote against,' 'defeat,' 'reject.'"

The Court has literally looked for words "exhorting the public to vote" when determining whether an ad did or did not constitute "express advocacy." In *FEC v. Christian Action Network* a televised ad that aired during the 1992 general election was determined not to constitute issue advocacy on those grounds. "It is beyond dispute," wrote the Court, "that the advertisements were openly hostile to the proposals believed to have been endorsed by the two candidates. Nevertheless, the advertisements were devoid of any language that directly exhorted the public to vote. Without a frank admonition to take electoral action, even admittedly negative advertisements such as these, do not constitute 'express advocacy' as that term is defined in *Buckley* and its progeny."³

LEGISLATIVE ISSUE ADVOCACY

The first large scale use of legislative issue advocacy ads occurred during the health care reform debate of 1993-4. From September 1993 through August 1994, the public was subject to the largest, most sustained advertising campaign to shape a public policy decision up to that point in the history of the Republic. Between September 8, 1993, when the first "Harry and Louise" ad began airing and the end of the July 4th congressional recess, a total of forty-nine groups had pledged in excess of \$50,000,000 to produce and air more than sixty different broadcast ads and print and distribute more than 100 pieces of print including ads, direct mail, and brochures. By early September, the dollar amount spent on producing and gaining an audience for ads exceeded that expended on ads by any one of the presidential contenders in the general election of 1992.

ADS AS A SURROGATE FOR LOBBYING

Ostensibly an effort to influence the public, the ad campaigns of the health care reform debate were more clearly an effort to persuade print and broadcast reporters that the sponsors were players worthy of coverage and to persuade legislators, particularly those whose votes could

be swung on key committees, that risk exceeded advantage in opposing their interests.

The issue-advocacy ads in the health care reform debate forecast two features that continue to characterize this genre: disproportionate use of fear appeal and attack, and use of pseudonymous groups as the source of the message. It is these features that make ads problematic as a surrogate for lobbying. If legislators do not accede to an issue group's agenda, that group can tacitly threaten the legislators with an ad campaign that will attack them and their issue agenda; alternatively, legislators who go along with the group can be rewarded with ads that thank them for their fine legislative records. Because issue advocacy ads are not subject to disclosure requirements, the press and public have no way of knowing who is funding the campaign or how much is being spent. At the same time, funders can camouflage their actual agenda behind an innocuous group label, making it difficult for the public to assess the group's motives and credibility and complicating the rhetorical task for legislators who wish to unmask the group that is opposing them or favoring their opponent.

LEGISLATIVE ISSUE ADS CAN RAISE THE VISIBILITY OF PENDING LEGISLATION AND SYNOPSIS THE ARGUMENTS OF ALTERNATIVE SIDES

If there is a type of issue advocacy that should gladden the hearts of the majority that decided *Buckley*, it is the multisided legislative issue advocacy that occurs when voices not in the national media agenda are added to the national debate on a topic that is pending before Congress. The debate over flag burning is illustrative. At issue is a proposal to amend the U.S. Constitution, authorizing the Congress to prohibit the physical destruction of the flag of the United States. Proponents of the legislation sought Congressional action in the wake of the 5-4 1989 Supreme Court decision in *Texas v. Johnson*,⁴ which held that "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." The Court also noted that "nothing in our precedents suggests that a State may foster its own view of the flag by prohibiting expressive conduct relating to it."

Public opinion is a function of how the question is framed. In their issue ads, proponents framed the issue as one of desecration of a national symbol; opponents, as support for freedom of expression. Polls indi-

cated that a majority favors a ban on flag burning, but support is weaker for the vehicle that would accomplish that end: an amendment to the U.S. Constitution. A majority thinks that "it should be legal or illegal to burn the American flag": 79 percent said it should be illegal; 17 percent thought it should be legal; 4 percent had no opinion (Roper Poll 1998). However, when asked if "the U.S. Constitution should be amended to make it illegal to burn the American flag as a form of political dissent," the results were equally divided: 49 percent thought it should be amended, and 49 percent thought it should not (Roper Poll 1998).

The House passed such an amendment on June 12, 1997, by a 310-114 vote. On June 24, 1998, the proposal was placed on the Senate Legislative Calendar under General Orders. On September 1, 1998, Senator Hatch of the Judiciary Committee filed a written report (no. 105-298). Senate Majority Leader Trent Lott had promised a vote before the elections in November. Once again in 1999, the House approved the amendment, but it died in the Senate.

In an effort to influence the votes of undecided members of the Senate, two groups have aired issue advocacy television ads and one aired radio ads. The Citizens Flag Alliance and American Renewal favor the bill; the People for the American Way opposes it.

In 1994, the Citizens Flag Alliance was founded by the American Legion. It is a coalition of 123 organizations, mostly national groups that favor a constitutional amendment to protect the flag. The group is based in Indianapolis and reports almost 200,000 members. American Renewal is a conservative group headed by activist Gary Bauer.

The brainchild of television producer Norman Lear, People for the American Way (PFAW) was "founded in 1980 by a group of civic and religious leaders concerned with the rising tide of intolerance sweeping our nation." The group, which both opposes censorship of books and a constitutional amendment to ban physical desecration of the flag, claims a membership of 300,000.

One ad for the Citizens Flag Alliance featured the actor who played a character in the prime time hit *Dukes of Hazard*, who said: "I'm John Schneider. Remember learning the difference between right and wrong? I do. Respect for others is right. Violent acts are wrong. Respect for our flag is right. Desecrating the American flag is wrong. You can right a wrong. Call your senators and urge them to vote yes on the Flag Protection Amendment. Find out where your senators stand and what you can do to help. Call 1-800-530-9444. Call now. It is the right thing to do."

Schneider speaks directly to camera throughout the ad. On screen,

Schneider is identified as "Bo Duke on the Dukes of Hazzard." "Mr. Schneider's endorsement is not compensated," notes print on the screen under his image. The appeal to "call your senators" is reinforced in print, as is the phone number. The ad is tagged, "Paid for by the Citizens Flag Alliance, Inc."

An ad for the People for the American Way also used personal testimony but from a Vietnam war veteran who had been held as a prisoner of war (Figure 15.1).

Adding to the advocacy was American Renewal, a conservative group headed by Gary Bauer that aired radio ads urging people to call their senators expressing support for the bill.

DROWNING OUT COMPETING VOICES DURING LEGISLATIVE DEBATES

One reason that the ads over flag burning are useful is that the opposing points of view were backed by comparable funding. Both sides were heard. The playing field was level. The clash of ideas could inform viewers' judgments. That is not the case when one side has a large ad budget and the other side has a miniscule one. A test case for this principle occurred when the protobacco industry forces outspent the antiindustry side more than twenty to one on broadcast and cable ads about a proposed settlement with the tobacco industry.

Senate Bill 1415, authored by Republican Senator John McCain of Arizona and supported by President Bill Clinton, was voted out of the Senate Commerce Committee in April 1998 by a nineteen to one vote. The bill would have settled the lawsuits brought by the attorneys general against the major U.S. tobacco companies with provisions that: elicited \$516 billion from the industry over 25 years; increased the price of a pack of cigarettes at the manufacturing level by \$1.10 over a five year period; increased the regulatory authority of the Food and Drug Administration over the manufacturing, sale, and marketing of tobacco products; imposed up to \$3.5 billion in annual financial penalties on the tobacco companies if youth smoking failed to drop at least a specified amount; provided \$10 billion over a five-year period to help those, such as tobacco growers, whose livelihood was negatively affected by the agreement; and placed a \$6.5 billion annual cap on the amounts cigarette companies could be assessed in damages. The funds raised by the bill would have funded medical research as well as a large-scale campaign to reduce youth smoking. The McCain bill would also

KATHLEEN HALL JAMIESON

<p>Audio:</p> <p>I'm Jim Warner. I served in Vietnam and was a prisoner of war for five and a half years. Our battle for freedom was hard fought every day of our captivity.</p> <p>Once during an interrogation, an officer showed me pictures of American kids burning an American flag.</p> <p>"This proves your country's wrong," he said.</p> <p>"No," I said. "Those pictures prove that we're right and our country is strong.</p> <p>"We're not afraid of freedom, even when we disagree."</p> <p>The officer flew into a rage. But behind the anger I could see fear in his eyes. It was a victory for me and for freedom.</p> <p>Now, some folks want to amend our constitution's bill of rights to ban flag burning. That's wrong. I don't want to see my flag burned. I offered my life for it and I'd do it again. But I also fought for the rights and freedoms that it represents, and I'm still fighting to protect it. And you can join me.</p> <p>Call your Senators at (202) 224-3121. Tell them to vote against the flag amendment.</p> <p>Don't let them burn our freedom.</p>	<p>Visual: Mr. Warner speaking to camera.</p> <p>Text: "James H. Warner, Former POW"</p> <p>Text: "Paid For By People for the American Way"</p> <p>Visual: File footage of "Hanoi Hilton"</p> <p>Text: "Hanoi Hilton-POW Camp"</p> <p>Visual: File footage of anti-war protest</p> <p>Visual: Warner</p> <p>Visual: File footage of protests and demonstrations</p> <p>Visual: Warner</p> <p>Visual: Still photo, American POWS released</p> <p>Visual: Warner</p> <p>Visual: Statue of Liberty</p> <p>Visual: Children raising flag</p> <p>Visual: Warner</p> <p>Visual: Waving flag</p> <p>Text: "Tell Your Senators to Vote No Call: (202) 224-3121"</p> <p>Visual: Warner</p> <p>Final Slide: "People for the American Way (logo)-1 (800) 326-PFAW-www.pfaw.org"</p>
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Figure 15.1. Television ad for the People for the American Way. Source: Author's transcription of television ad.

have banned billboards advertising tobacco within 1,000 feet of schools and banned human, animal, or cartoon characters in ads for cigarettes. The Commerce Committee bill included financial aid to any tobacco farm owners who experienced a drop in demand as a result of the bill. A related bill was introduced in the House.

After supporting an earlier version of the bill with an issue ad, the five largest tobacco companies in the United States – Philip Morris Inc., R.J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, and The United States Tobacco Company – lost the protection from liability that they had brokered in the original settlement and initiated a cross-country broadcast campaign against the legislation.

The estimated \$40 million issue advocacy campaign by the five largest tobacco companies in spring and summer 1998 was more than two and a half times more expensive than the widely discussed “Harry and Louise” ads sponsored by the Health Insurance Association of America (HIAA) in 1993–4. While the “Harry and Louise” ads were aired for almost a year intermittently in New York, Washington, DC, and in the districts of swing members of committees with legislative jurisdiction over the health care reform legislation, the tobacco industry ads were run at higher intensity in more places for three months. Where the “Harry and Louise” ads ran almost exclusively on cable, the tobacco industry ads were run on both local broadcast and cable. Where the makers of the “Harry and Louise” ads invited media coverage by placing them in the DC and New York City markets, the tobacco industry ads minimized media attention by not concentrating buys in those markets.

The campaign that aired exclusively in the Washington, DC, market was sponsored by a group the public considers more credible than the tobacco industry: The U.S. Chamber of Commerce. Although a much smaller, more narrowly targeted campaign, the U.S. Chamber of Commerce’s ads drew more media attention than did the larger-scale campaign by the tobacco industry.

The campaign by the tobacco companies was unprecedented for a number of reasons, including the fact that there was not a week between early April and early August in which industry ads were not being aired; this was the first time in which a large-scale, long-running, nationwide broadcast ad campaign on a piece of pending legislation had run with negligible broadcast response from those on the other side; the only television ad aired by proponents of a “tough bill” against “Big Tobacco” was aired by the American Cancer Society for a single week in May in five states and nationally on CNN. The tobacco industry’s ads aired widely (in between 30 and 50 markets); the ads aired on both cable and local spot broadcast; the focused message of the campaign had been consistently reinforced; and the campaign had continued

after the demise of the McCain bill. This was the first large-scale issue advocacy campaign with the potential to set the issue agenda for a November election with a nationwide campaign on the air in spring and summer.

The scope of the campaign and the imbalance in the amount of advertising information available meant that a large audience was repeatedly exposed to misleading and uncorrected claims. The most deceptive claims appeared not in the ads sponsored directly by the tobacco industry but by an industry-sponsored group, The National Smokers Alliance. These ads were run not on television but on radio. The argument that the ads were deceptive was made in an Annenberg Public Policy Center report issued in August 1998 and is available on the Annenberg Web site, as is a survey by APPC, which found that those in markets with high exposure to the industry ads were significantly more likely to believe their claims than were those in markets with little industry ad play (APPC 1998).

CANDIDATE ISSUE ADVOCACY

The second type of issue advocacy occurs in the context of an election campaign. In the 1996 election season, more was spent on issue ads than on the ads of three major presidential campaigns combined. A comprehensive review of issue advocacy, conducted by Deborah Beck and Douglas Rivlin for the Annenberg Public Policy Center, found that between \$135,000,000 and \$150,000,000 was spent airing issue advocacy ads.

Candidate issue advocacy can serve a variety of functions, including agenda setting, mobilizing subgroups, spending in support of presidential candidates outside the caps set by FECA, at key moments altering the balance of messages in favor of the side with the largest amount of issue advocacy money, and occasionally creating a campaign in which the candidates' voices are not the dominant ones on the air waves. Here I will illustrate each use.

AGENDA SETTING

The ads aired by the AFL-CIO in spring 1996 set the agenda in key congressional races by magnifying the salience of the Democratic message that unlike Gingrich-Dole and their congressional supporters, Clinton and his allies would protect Medicare, increase the minimum wage, and preserve pension protection. The early issue advocacy by the

Democratic National Committee (DNC) for Clinton, which ran from summer 1995 through the primaries, performed the same agenda-setting function in key electoral states.

MOBILIZING SUBGROUPS

The ads aired by Republican groups such as the National Right to Life Committee were designed to mobilize subgroups of Republicans with messages too controversial for use in the ads of the party nominee. So where Dole soft-pedaled his prolife position out of concern that featuring it would alienate moderate Republican women, issue ads reminded "true believers" that so-called partial birth abortion was an issue that should be at the center of their voting agenda. Part of what is interesting about this process is that the Republican National Committee (RNC) provided some of these groups with funding for their ad campaigns.

SUBVERTING SPENDING LIMITS

Both the ~~Democratic and Republican National Committees~~ used issue ads to make the case for their prospective nominees. Because it is unlimited, this form of spending in effect eliminates the spending caps to which presidential candidates agree in return for accepting federal financing of their primary and general election campaigns. So, for example, when Dole became the presumptive nominee of his party but headed a cash-poor campaign that had spent to the limits specified by FECA, the RNC stepped in with issue ads to make his case until his campaign received federal funding at its convention.

Except for the disclaimer, most of the ads aired in 1996 by the Democratic and Republican National Committees were indistinguishable from candidate ads. The candidates recognized the similarity between the party ads and ads directly supporting their candidacy. Speaking on a satellite transmission to ABC affiliates meeting in Orlando in June 1996, the presumptive Republican nominee Bob Dole said, "We can, through the Republican National Committee, through what we call the Victory '96 program, run television ads and other advertising. It's called generic. It's not Bob Dole for president. In fact, there's an ad running now, hopefully in Orlando, a 60-second spot about the Bob Dole story: Who is Bob Dole? What's he all about? It never says that I'm running for president, though I hope that it's fairly obvious, since I'm the only one in the picture!" (Kurtz 1997).

Increasing the likelihood that the Democratic ads – both by the

Democratic National Committee and the state Democratic parties – would reinforce key Clinton themes was the fact that the ads for all three groups were produced by the same ad team. Reporters for the *New York Times* explained the process this way, “The money the committee [the Democratic National Committee] transferred to state parties also came with specific instructions on how to spend it, state party officials say. Within days of receiving the transfers, the state parties sent checks to the consulting team hired by the Clinton–Gore campaign and the national party. The \$32 million transferred went to 12 key battleground states.” This sort of procedure made it possible for both the Dole–Kemp and Clinton–Gore campaigns to effectively circumvent the \$62 million spending limit each had accepted as a condition of receiving federal funding. A Clinton team member told the *Times*, “The whole issue of the ads was the language and on ways to get around the law . . . If you changed a few words, then you could produce them as DNC ads and not as Clinton–Gore ads. It was the nuttiest thing.”

Nor did the issue ads necessarily increase the number of voices heard by the electorate. In October 1997, Democrats on the Senate Governmental Affairs Committee obtained documents showing that the Republican National Committee had directed more than one million dollars to other groups in 1996, including the National Right to Life Committee and the American Defense Institute. In the words of reporters for the *New York Times*, “For both parties, the friendly non-profit groups have become the political equivalent of Swiss bank accounts: places where donors can make contributions that are hidden from public view but still help Democratic and Republican candidates and causes” (Abramson and Wayne 1997).

ALTERING THE MESSAGE BALANCE

The group with money for issue advocacy can set an agenda by airing ads early in the precampaign season but also can follow the polls to determine when issue-advocacy spending would be most useful to its preferred candidate in the election itself. In 1996, RNC head Haley Barber held a large portion of his resources until the final week of the election and then poured them into radio ads in the districts that had experienced the AFL-CIO blitz. In that final week and weekend, the message balance in those districts swung decisively toward the Republicans. The RNC followed the same strategy in the special election to fill the seat vacated by Republican Susan Molinari in the Staten Island district in New York. The race was a dead heat as the final week

approached. In that week, the RNC dropped what some estimated to be one million dollars in televised issue advocacy and direct mail. It is impossible to know whether that expenditure should be credited with the Republican win – after all, the seat had been held by a Republican. What is clear is that in the final week, the Republican message received substantially more air play than the Democratic one.

DROWNING OUT THE VOICES OF THE CANDIDATES DURING ELECTION PERIODS

In some instances, candidate issue-advocacy advertising also has altered the rhetorical structures of campaigns by depriving the candidate for office of the privileged position necessary if the electorate is to determine whether the candidate is worthy of elected office.

Because they explicitly advocated the election or defeat of a candidate, the outside group ads in the California 22nd Congressional District race to fill the seat vacated by the death of Democrat Walter Capps were PAC, not issue-advocacy, ads and as such were subject to public disclosure. However, some have argued that this campaign portends a future in which the ads of competing groups will so dominate a campaign that the voices and agendas of the candidates will be drowned out. I would argue that it is plausible to suppose that that was what happened in at least ten Congressional races in 1996.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a labor organization consisting of 78 unions with 13.1 million members. In 1996, the AFL-CIO spent \$25 million to air broadcast ads primarily in forty-four Congressional districts. In at least fourteen of those districts, an analysis of the station logs in the districts reveals that the AFL-CIO outspent one of the congressional contenders. In ten of the fourteen, the AFL-CIO outspent both congressional candidates combined. The AFL-CIO is just one of the issue advocacy groups airing material in these districts. Where the Democrats in these districts focused ads on the same topics as the AFL-CIO (i.e., against corporate tax breaks, for pension protection, support of public education, the minimum wage, and Medicare), the issue advocacy drowned out the voice of the Republicans and any independents in the race. Where the Democrats focused on other issues, the AFL-CIO's message drowned out both.

If a plausible case can be made that issue advocacy is drowning out the voices of candidates, then the Supreme Court might reconsider its ruling in *Buckley*. There is precedent for restricting speech that drowns

out competing voices. In *Kovacs v. Cooper*,⁵ the Supreme Court held that a Trenton, NJ, ordinance forbidding "the use or operation on the public streets of a 'sound truck' or of any instrument which emits 'loud and raucous noises; and is attached to a vehicle on the public streets'" did not infringe on the right of free speech. In a concurring opinion, Mr. Justice Jackson wrote that "No violation of the Due Process Clause of the Fourteenth Amendment by reason of infringement of free speech arises unless such regulation or prohibition undertakes to censor the contents of the broadcasting. Freedom of speech for Kovacs does not, in my view, include freedom to use sound amplifiers to drown out the natural speech of others."

PROBLEMS CREATED BY THE RISE OF SOME FORMS OF ISSUE ADVOCACY

THE RISE OF PSEUDONYMOUS AND UNACCOUNTABLE GROUPS

The legislative issue ads of 1993-4 and some of the candidate issue ads of 1996 carried forms of self-identification that concealed more than they revealed. Deliberation thrives both on full disclosure and on accurate information about the nature of the problem and the proposed solutions. Knowing who is bringing us the message is important in assessing its substance.

The enthymematic nature of communication means, as well, that audiences may draw inaccurate inferences about the source of a message from its content. Since Aristotle, Western theorists have known that the credibility of a message is determined in part by the credibility of the source, hence the concern in classical rhetorical theory with building what the ancients called the ethos of the speaker and what contemporary communication scholars call source credibility.

Persuasion theorists have found that messages attributed to a source with high ethos are generally more persuasive than those attributed to a source with low ethos (Anderson and Clevenger 1963). The finding is summarized by saying,

We know an individual's acceptance of information and ideas is based in part on "who said it." This variable, the source's role in communication effectiveness, has been given many names: ethos, prestige, charisma, image, or, more frequently, source credibility. Whichever label is used, research consistently has indicated

that the more of "it" the communicator is perceived to have, the more likely the receiver is to accept the transmitted information. (Berlo et al. 1969)

The advertising groups whose identities were unclear in the health care reform debate included: Empower America, the Health Care Reform Project, Citizens for a Sound Economy, Alliance for Managed Competition, Families USA, and Christian Coalition. What, one might ask, distinguished the American Conference for Health Care Workers from America's Health Care Workers Coalition? Or the Campaign for Health Security from the Corporate Health Care Coalition? Who speaks through The Independent Institute or the National Center for Policy Analysis?

In the 1996 campaign the pseudonymous groups included: Citizens for Tax Reform, Child Protection Fund, Citizens for Reform, Citizens for the Republic Education Fund, Citizens for a Sound Economy, The Coalition, Coalition for Change, Coalition for our Children's Future, Arthur S. DeMoss Foundation, Human Rights Campaign, Tobacco Accountability Project, United Seniors Association, United States Catholic Coalition, and Women for Tax Reform. At worst, such labels trick citizens into misidentifying the source of the message; at best, these labels fail to tell the citizen whose self-interest is served by the message.

THE ABSENCE OF DISCLOSURE IN ISSUE ADVOCACY UNDERCUTS CITIZEN ASSESSMENT

Knowing who is paying for an ad helps viewers determine whether the sponsor is a credible source; part of what makes this possible is knowing the self-interest of the sponsor. Audiences take the possible self-interest or bias into account in evaluating messages. In one study, for example, the "vested interest" of an "expert mechanic whose hobby is the repair and modification of sports cars" was manipulated by describing him to some subjects as a friend of the seller of a car, to some as the friend of the buyer of a car, and to some as an independent person with no relation to buyer or seller. When the "expert" told subjects that the car was worth \$500, those who saw him as a friend of the seller interpreted the message to mean that the car was worth \$470; those told that he was a friend of the buyer put the value at \$530; those who were told that he was independent thought the car was worth \$500 (Berlo et al.

1969). In short, knowing who is speaking to us in any form of communication including mass media advertising is consequential to audiences.

Deliberation thrives on disclosure. Knowing who is bringing us the message is important in assessing its substance. If, for example, a Catholic viewer believes that the 1996 ad by The United States Catholic Coalition is actually sponsored by the Catholic Church rather than by a priest and his backers in Montana, that viewer will credit the ad with a level of credibility it would be denied if the viewer knew the actual funder behind the cassock. Disclosure requirements are now on the books in several states. And in one instance a panel of the Sixth Circuit Court of Appeals has upheld them on the grounds that the state's interest in revealing the source of campaign expenditures and the desirability of preventing perceived and actual corruption should prevail.⁶

While legislative issue advocacy backed by comparable funds on the opposing sides of the issue can raise the visibility of important issues and synthesize the positions of the advocates, legislative issue advocacy becomes worrisome when one side substantially outspends the other, a problem magnified when the claims in the issue ads are deceptive. Under that circumstance we should worry with the founders that people will be "misled by the artful misrepresentations of interested men" which may prompt the public to "call for measures which they themselves will afterwards be the most ready to lament and condemn" (*Federalist* 63).

Whether for good or ill, candidate issue advocacy can be used to set the agenda for a campaign and mobilize subgroups. But, when issue ads subvert spending limits and when supporters of one side substantially outspend the other on them, they too become problematic, problems compounded when an outside group drowns out the competing voices of the candidates or dramatically tilts the balance of messages in the closing days of a campaign. If as *Buckley* held, money equals speech, then perhaps our concern here should be that of Hamilton, who wrote in *Federalist* 57 that the electors of federal representatives should be "Not the rich, more than the poor."

NOTES

1. New York Times Co v. Sullivan, 376 U.S. 254, 275 n 15 (1964) quoting Elliot's Debates on the Federal Constitution (1876), 575.
2. 424 U.S. at 80.

3. 894 F. Supp. 946 [1995].
4. 491 US, 105 L Ed 2d 342, 109 S Ct. (1989).
5. 336 U.S. 77; 69 S. Ct. 448; 1949 U.S. LEXIS 3034; 93 L. Ed. 513.
6. Kentucky Right to Life Inc v. Terry. 108 F3d 637 (6th Cir.), cert. denied.

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