Introduction—Political Scientists in *McConnell v. FEC*

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The Supreme Court's sweeping decision in December, 2003, in *McConnell v. FEC* was as unexpected as it was dramatic. For months the conventional wisdom had been that the Court was certain to overturn one and possibly both of the main parts of the McCain-Feingold law, or otherwise substantially narrow the statue. Instead, the justices, by a slim 5-4 majority, did just the opposite; not only upholding the law but doing so in terms that virtually echoed the defendants' arguments. Proponents were stunned and thrilled. Opponents were appalled; Justice Scalia called it the "opening act of a national tragedy." Both sides agreed, however, that the decision in *McConnell* stands as one of the most important campaign finance *and* First Amendment precedents in several decades.

One of the less reported aspects of the litigation was the heavy involvement by political scientists both for and against the statute. At least 14 members of APSA testified as expert witnesses, producing affirmative reports and rebuttals, data sets, exhibits, and other evidence, and several others worked behind the scenes.[1] The three-judge panel that initially heard the case devoted well over a hundred pages to reviewing this material in their findings of fact, and the Supreme Court cited political scientists several dozen times in their decision.

This is a notable development. No political scientists testified in *Buckley v. Valeo*, the 1976 case that became the controlling precedent in campaign finance law. That so many participated in *McConnell* reflects a variety of factors, beginning with lawyers' and judges' appreciation of political scientists' credibility and our traditional expertise in campaigns and elections, public opinion, and political parties, as well as our growing knowledge of various facets of campaign financing. This latter enterprise has gained momentum over the last quarter century as better data have become available (thanks mainly to governmental regulation) and scholars have sought to incorporate them into a widening variety of inquiries. It is worth noting that some of this momentum and some of the most ambitious projects came about because of the encouragement of a group of foundations that supported reform, including the Pew Charitable Trusts, Open Society Institute, and Joyce Foundation.

Ultimately, none of this would have mattered had not the lawyers on both sides decided that political scientists could help them make their case. The potential for unintended consequences is one of the objections frequently wielded against reform (e.g., Smith 2001). Here and in earlier litigation, plaintiffs emphasized the alleged collateral damage inflicted by reform: weakened parties, lower voter turnout, decreased electoral competition, and so on. The defense was forced to counter these claims as well as push its own argument that soft money and issue advocacy have the potential to corrupt the policy-making process or create the appearance of corruption, the twin standard established by the *Buckley* court to preserve the "integrity" of the electoral system. Political scientists, of course, have written extensively on all of these areas.

In addition, political scientists were involved in the long struggle to write and pass McCain-Feingold. One of its main provisions, the "bright line test" demarcating issue ads and electioneering, was inspired by a study group chaired by two political scientists, Thomas Mann and Norman Ornstein. Work by a number of other scholars was cited in the congressional debate over the bill (Ornstein et al. 1997). The result was a sort of perfect storm culminating in *McConnell v. FEC*: a combination of political scientists' traditional expertise combined with recent research funded by supporters of reform, scholars' involvement in the run-up to the case, and the growing use of expert witnesses in campaign finance cases. Litigation is a highly competitive, contact sport. As in politics, combatants search for any edge and work to nullify their opponents' advantages. In *McConnell*, scholarly experts became a major part of that process.

By any standard, political scientists' level of participation in this landmark case was extraordinary. It is especially remarkable for a discipline engaged in such soul-searching about its "public role" (e.g., Putnam 2003). Under the circumstances, several of us who worked as defense witnesses—Donald Green, Thomas Mann, Frank Sorauf, and I—began discussing whether and how to bring this episode to the attention of our colleagues, and the idea for this symposium was born. Its purpose is not to replay the conflict of the

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litigation, since that is a matter of public record and has been discussed elsewhere.[2] Rather, we hoped to focus on the broader issues that face academics when they participate in this sort of litigation, such as the balance between scholarship and advocacy, the challenge of writing for different audiences, the novelty of working with lawyers, and the professional consequences of testifying.

The first two of this symposium's three essays tackle these questions from the perspective of different participants in this litigation. Ray La Raja and Sidney Milkis testified separately for the Republican National Committee on the value of political parties and the potentially harmful impact of the ban on soft money. Their essay reveals some of the themes that infused their writing to the judges, and is fundamentally reassuring about their dealings with their employers despite some initial concerns. Sorauf and I discuss our work for the Federal Election Commission defending the statute, the third such case we had worked on together. Our experience supports La Raja and Milkis on many key points—notably the lack of pressure from lawyers to tailor our testimony—though we take a sharply different view of the impact that political scientists had on the judges who heard this case.

Finally, Kenneth Prewitt takes a global view of this topic. Prewitt, a noncombatant in the litigation, considers how scholars' involvement in this sort of public debate fits into the broader goals of political science and discusses the appropriate professional consequences of this work. Such analysis serves as an appropriate role for Prewitt because of his record as a scholar and because of his extensive experience outside the academy. His essay recounts the history of political science, emphasizing its original mission and audience, and it places the *McConnell* case within this proud tradition. This account suggests that there is no inherent conflict between scholarship and advocacy, so long as the former informs the latter, and the underlying research measures up to the professional standards of the discipline.

Notes

1. This testimony was presented during the initial phase of the litigation before a three-judge panel in the D.C. circuit. This phase of the trial yielded a decision, later overturned by the Supreme Court, that partially upheld McCain-Feingold (it, too, was considered surprisingly sympathetic to reformers) and an extensive set of findings of fact that became part of the record in the argument before the Court. For a concise and manageable sample of the expert testimony see Corrado, Mann, and Potter 2003. To view the briefs, opinions, and an array of other legal documents see www.campaignlegalcenter.org.

2. In addition to sources cited in note 1, the *Election Law Journal* devoted its spring 2004 issue to this case.

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SYMPOSIUM AUTHORS' BIOS

Jonathan S. Krasno *is associate professor of political science at Binghamton University. He has written on congressional elections, campaign financing, political parties, and television advertising, and is currently working a project on TV commercials' impact on voter turnout.*

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Kenneth Prewitt *is the Carnegie Professor of Public Affairs, School of International and Public Affairs, Columbia University. His non-university positions include president of the Social Science Research Council, senior vice president of the Rockefeller Foundation, and director of the U.S. Census Bureau.*

Frank J. Sorauf *is Regents Professor Emeritus at the University of Minnesota. He is the author of* Money in American Elections *(Scott Foresman/Little Brown,1988) and* Inside Campaign Finance *(Yale University Press,1992). He retired from the University in 1996 and with this piece finally achieves complete retirement.*

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