

Buying Time 2000: Television Advertising in the 2000 Federal Elections

Executive Summary

by

Craig B. Holman and Luke P. McLoughlin

Funded by The Pew Charitable Trusts

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Library of Congress Catalog Card Number: 2001 135640

ISBN 0-9654063-5-0

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Acknowledgments

The Brennan Center for Justice and the authors would like to express their appreciation to The Pew Charitable Trusts for their generous support of this timely and ground-breaking *Buying Time* series on political advertising and issue advocacy. Thanks especially to Sean Treglia, Program Officer at Pew, for his counsel on the significance of this project for public policy. The opinions expressed in this report, of course, are those of the authors and do not necessarily reflect the views of The Pew Charitable Trusts.

Thanks go to Professor Kenneth Goldstein of the University of Wisconsin and Jonathan S. Krasno, Ph.D, who pioneered the scholarly use of the Campaign Media Analysis Group data and developed the coding protocol. This work owes a debt to Professor Krasno and Daniel Seltz for their earlier work on the 1998 data in the first *Buying Time*. The authors are grateful to Professor Goldstein's research assistants Mike Franz and Travis Ridout, who were always willing to answer any questions we had. We also appreciate the crucial work of the undergraduate coders at the University of Wisconsin. And thanks to Evan Tracey and Harley Ellenberger of Campaign Media Analysis Group for their support and their insights.

The authors also express deep appreciation to Robert Biersack of the Federal Elections Commission for offering guidance and advice in developing the Brennan Center's soft money database employed in Chapter Seven.

Kirsten Hudson, Petter Ringbom, and Tsia Carson of Flat worked diligently to make the findings of our project clear and comprehensible to academics, lawyers, and other interested persons. Many thanks for their design and layout of this book.

The authors also would like to express special thanks to the following colleagues at the Brennan Center for their intellectual contributions to this study: Deborah Goldberg, Deputy Director of the Democracy Program, for her exhaustive yet expeditious reviews and editing of this report; Nancy Northup, Director of the Democracy Program, for overseeing and guiding the course of this study; Glenn Moramarco, Associate Counsel at the Brennan Center, whose skepticism made his insights all the more valuable; Scott Schell, Director of Public Affairs, whose enthusiasm for this study rivals that of the authors; Joshua Rosenkranz, President and CEO, for making this project possible; and Amanda Cooper, Communications Officer, for the ever-so-difficult task of trying to keep production of this report on schedule.

Campaign Finance Reform Resources from the Brennan Center

BOOKS & OTHER PUBLICATIONS:

Writing Reform: A Guide to Drafting State and Local Campaign Finance Laws
(Deborah Goldberg, ed., Brennan Center 2000).

Buying Time: Television Advertising in the 1998 Congressional Elections,
(Jonathan S. Krasno and Daniel E. Seltz, Brennan Center 2000).

If Buckley Fell,
(E. Joshua Rosenkranz, ed., Century Foundation 1999).

Buckley Stops Here: Loosening the Judicial Stranglehold on Campaign Finance Reform,
(E. Joshua Rosenkranz, Twentieth Century Fund 1998).

Five New Ideas: To Deal With the Problems Posed by Campaign Appeals Masquerading as Issue Advocacy
(Brennan Center for Justice Policy Committee on Political Advertising, Brennan Center 2000).

CAMPAIGN FINANCE REFORM SERIES:

Subsidizing Political Campaigns:
The Varieties and Values of Public Financing
(Elizabeth Daniel, 2000).

Gauging the Impact of Independent Expenditures in Issue Advocacy Campaigns
(Jonathan S. Krasno, 1999).

Regulating Electioneering: Distinguishing Between “Express Advocacy” & “Issue Advocacy”
(Glenn J. Moramarco, 1998).

Campaign Finance Reform & the Constitution: A Critical Look at Buckley v. Valeo
(Burt Neuborne, 1996).

A Survey of Efforts to Reform the Campaign Finance System
(Burt Neuborne, 1996).

The Values of Campaign Finance Reform
(Burt Neuborne, 1996).

The Flow of Money in Congressional Elections
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Television advertising has become the weapon of choice for the players in contemporary presidential and congressional campaigns. Broadcasters reap a bonanza from fierce competition among candidates, parties, and interest groups for scarce and increasingly expensive airtime in the weeks before Election Day. In large part, corporations, unions, and wealthy individuals who circumvent longstanding federal campaign finance laws supply the huge infusions of cash that make it possible to charge premium rates for television time. This study of political television advertising in the 2000 federal elections builds upon the Brennan Center's prior report on the 1998 congressional races to document the nature and magnitude of one of the most intriguing innovations in campaign law evasion: what is widely known as "issue advocacy."

The concept of "issue advocacy" dates back to 1976, when the U.S. Supreme Court decided *Buckley v. Valeo*. The *Buckley* court was concerned that the Federal Election Campaign Act (FECA) might improperly regulate political conduct that was not actually electioneering and that vague statutory language might chill speech by political players who were uncertain about the law. To save FECA, the court interpreted it to apply only to communications that "expressly advocated" the election or defeat of a federal candidate. The court listed examples of explicit words of electioneering—such as "vote for," "vote against," and "elect"—that would indicate express advocacy. Some lower courts then decided that *Buckley's* examples of express advocacy constituted a test of electioneering.

The result of this "magic words test" is that as long as parties and groups omit certain explicit words such as "vote for" or "cast your ballot for" in their ads, huge campaign advertising expenditures can escape legal constraints. Ads by parties and groups that eschew the "magic words" are considered issue advocacy under this standard, whether or not their intended purpose is electioneering.

Issue advocacy under this broad definition has become a major loophole in campaign finance law because electioneering issue ads are usually treated as genuine issue ads for regulatory purposes. Evading the law intended to govern them, campaign ads that avoid magic words masquerade as ads informing viewers about a public issue. As a result, parties and groups can skirt disclosure requirements, dodge contribution limits, and sidestep source restrictions prohibiting corporations and unions from spending treasury funds on federal campaigns. Even foreign agents may legally finance so-called issue ads.

The scope of electioneering issue ads has expanded dramatically in the last three election cycles. The amount spent by parties and groups on electioneering issue ads

swelled from \$30 million in 1998 to more than \$200 million in 2000. Viewers see more and more ads, but as long as the ads avoid using magic words, the electorate gets less and less information about who is behind them.

Many scholars, regulators, and politicians have for some time doubted the usefulness of the magic words test. This study sheds light on just how few advertisements exist today that use those magic words to communicate electioneering message. Data about the content of television ads in the 1998 and 2000 elections demonstrate that in modern-day ad campaigns, explicit words of advocacy are virtually non-existent. The magic words test appears to have been eclipsed by modern advertising techniques, though it remains in many corners the prevailing standard for express advocacy.

This is an executive summary of the full report of *Buying Time 2000*. The full report is available through the Brennan Center.

PURPOSE OF THE STUDY

The primary objective of this study is to establish a strong factual foundation which policy-makers, opinion leaders, and citizens can use to add depth and accuracy to the debate over political ads, especially issue ads. This project gives a systematic description and analysis of the political advertising in the 2000 elections, with special emphasis on the role issue ads have come to play in influencing elections. The major topic explored in this study is the extent to which parties and groups have used the issue ad loophole to shield their electioneering activity and avoid federal campaign finance law. In order to achieve this objective, three separate, powerful databases on campaign television advertising in 1998 and 2000 have been created. These data sets have been used to test assumptions about the purposes of political advertising and to chart the roles of candidates, parties, and special interest groups in providing the nation with the information that influences the body politic.

METHODOLOGY

Research for the *Buying Time* studies began in March 1999. Using satellite technology to capture all political commercials televised in the nation's 75 largest media markets, the Campaign Media Analysis Group (CMAG) compiled a massive database that could serve as the foundation for extensive analysis of the nature and role of television advertising in politics. The Brennan Center convened a group of political scientists and lawyers to devise a coding

protocol to analyze the ads captured by CMAG. The result was a 26-question protocol, which included questions on the tone of ads (whether they promoted, attacked, or contrasted candidates), the themes mentioned, whether a candidate narrated the ad, whether a party label was mentioned, whether the ad used supporting sources to bolster its claims, and more. Under the direction of University of Wisconsin Professor Kenneth Goldstein, university students coded over 2,100 unique ads (300,000 airings in all) from 1998 congressional elections, which was then merged with CMAG broadcast information. Broadcast information included data on timing, geographic markets, and number of airings. The study was replicated for the 2000 elections, with a much larger database of more than 3,500 unique ads that aired more than 940,000 times, and is reported here.

Buying Time 2000 also makes use of a third database on “soft money,” money that enters the electoral politics but escapes campaign finance regulation. Because soft money often funds electioneering issue ads, much of the policy debate on how to address issue advocacy in federal elections focuses on whether, and how, soft money should be regulated. To advance that debate, the authors compiled a comprehensive database of soft money expenditures in federal elections by national and state party committees in all 50 states. The soft money database consists of more than 375,000 records of how parties spend their soft money dollars.

SCOPE OF ADVERTISING

As in the *Buying Time* study of the 1998 congressional elections, federal campaigns are the exclusive focus of this study. But while *Buying Time 1998* was limited to congressional general elections, *Buying Time 2000* includes data on the congressional primaries and general elections, as well as the presidential primaries and presidential general election. As a result, this year’s report is broader in scope and can draw comparisons with the advertising activity of 1998.

The television advertising database shows that there were 940,755 airings of political commercials in federal, gubernatorial, and judicial elections over the 2000 calendar year in the nation’s top 75 media markets. These ads were aired at a cost conservatively estimated at \$672 million. In federal elections only, a total of 2,871 unique ads were aired 845,923 times at an estimated cost of \$629 million. Even in terms of exclusively congressional general elections, the number of ads and spending in 2000 increased by more than a third over 1998 levels.

Group-sponsored ads increased notably over 1998

levels. In 2000, there were a total of 142,421 airings of ads by independent groups at a cost conservatively estimated at \$98 million—about 55,000 of those ads were aired in the congressional general election alone at a cost of \$35 million. By comparison, in 1998 groups spent less than \$11 million to air 21,712 ads in the congressional general elections.

CONTENT OF ADVERTISING

Buying Time 2000 demonstrates that the magic words test has little foundation, if any, in advertising reality. Coders found that 96% of electioneering ads by groups lacked magic words and 98% of party ads lacked magic words. Most tellingly, 90% of candidate ads—which are by definition considered express advocacy whether they use magic words or not—did not employ magic words. The fact that so few candidate ads incorporate magic words highlights how unnecessary explicit words are to convey an explicit electioneering message. That parties and groups can also effectively convey their electioneering messages without express advocacy is thus not surprising, but the legal ramifications are enormous. Avoiding magic words has no value for candidates, but for parties and groups it means that ads can be paid for with funds that (i) would otherwise be illegal under federal campaign finance law, and (ii) oftentimes are not disclosed to the public.

THE PRESIDENTIAL ELECTION AND FLORIDA

The data show that the Bush campaign and the national Republican Party paid for nearly \$12 million in television buys in California in the general election, nearly as much as they spent on television in Florida. Gore and the Democratic Party all but ignored Republican efforts in California, spending just \$107,000 on television in that state. Instead they focused their efforts on the state of Florida, which in the final weeks appeared more and more like a toss-up than a Republican stronghold.

The spending of Republican campaign dollars in California enabled Gore to outspend Bush in several other key states. Despite being outspent nationwide on television time by Bush and the Republican Party \$86 million to \$64 million, Gore and the Democratic Party bought more airtime in Iowa, Michigan, New Mexico, Oregon, Pennsylvania, and Wisconsin—each one an important swing state that Bush narrowly lost.

In Florida, combined Bush and Republican Party spending was nearly even with Gore and Democratic Party

spending in the critical markets of West Palm Beach, Tampa-St. Petersburg, and Orlando. However, the Republican campaign was able to outspend the Democrats in the conservative media markets of Pensacola and Jacksonville, as well as in the crucially important Miami market. Overall, Bush and the Republican Party ultimately outspent Gore and the Democratic Party in Florida by more than \$6 million. Combined television spending by Bush, the Republican Party, and pro-Bush groups amounted to \$4.7 million more than the combined spending by Gore, the Democratic Party, and pro-Gore groups.

SENATE ELECTIONS

Spending \$176.5 million on TV time nationwide, the general election campaigns for the 34 U.S. Senate seats were even more costly (in total) than the presidential campaign. Candidates accounted for 72% of the spending, while parties accounted for 22% and groups just 6%. Republican candidates and Democratic candidates spent roughly the same on ads, \$62 million to \$65 million. But excluding the New Jersey Senate race from the equation leaves Democratic candidates trailing Republican candidates \$50 million to \$60 million in ad spending. The Democratic Party poured \$21 million into the Senate races compared to \$16 by the Republican Party; pro-Democrat groups spent \$4 million compared to \$6.5 million by pro-Republican groups.

HOUSE ELECTIONS

House candidates, combined, spent about \$80 million on television ads, followed by \$43 million by the parties and \$24.5 million by independent groups. Democratic candidates spent \$43 million compared to \$35 million by Republican candidates. The Democratic Party spent \$24 million compared to the \$19 million by the Republican Party. Democratic groups were outspent by Republican groups \$13 million to \$10 million. Surprisingly, the House elections drew more attention from special interest groups than any other type of election. Groups aired more than half of their ads in House elections, more than what they aired in the presidential and Senate elections combined.

COMPETITIVE RACES

As one might expect, the congressional races which analysts expected to be competitive attracted most of the spending on television advertising. In the Senate races,

candidates raised and spent on average four times more on advertising in competitive than in non-competitive Senate elections. Television spending by parties and interest groups was about 10 times higher in competitive than in non-competitive elections.

Television time in House general elections flowed to the hotly contested races. In the 2000 elections, about 10% of House races were considered competitive by election analysts. More than 74% of television advertisements aired within these 45 competitive races, and group spending also tracked closely with competitiveness. Interest groups ran ads in only 49 of the 435 House districts.

Party spending tracked closely with competitiveness as well. The parties aired ads in only 48 House races, and while they spent \$43 million on ads, a third of that spending (\$14.4 million) was directed at just six House districts: New Jersey's 12th, California's 36th, New York's 2nd, Florida's 22nd, California's 27th and Michigan's 8th.

MINORITY CANDIDATES

The data also cast doubt on a claim recently raised by some members of Congress: that soft money is used by the Democratic Party to increase voter turnout for candidates of color. The soft money database compiled by the Brennan Center reveals how the parties actually spent this money in the 2000 elections. Only 8½ cents out of every soft money dollar of the national and 50 state party committees was spent for any activity reasonably associated with get-out-the-vote, voter registration, or voter mobilization. The greatest bulk of soft money spending by the parties went to buy electioneering issue ads on television, radio, and direct mail. This suggests that the main goal of party soft money spending is to campaign for candidates in competitive districts, not to increase voter turnout nationally or in districts with candidates of color (see Figure 1).

TIMING

Candidate, party, and group ads shared similar advertising patterns over time. While candidate ads made up a larger percentage of ads overall, all three players meted out their messages in approximately the same proportions from week to week. In the final four weeks of the campaign, candidates aired 50% of their ads, parties aired 50% of their ads, and groups aired 60% of their ads.

Significantly, however, is the change in the nature of issue advocacy as Election Day nears. While genuine issue ads aired throughout the calendar year of 2000, and

almost all genuine issue ads aired before Labor Day when Congress casts nearly all of its key votes, electioneering issue ads aired mostly in the final two months before the election. This new breed of electioneering issue ads not only overwhelmed genuine issue ads shortly before Election Day, but it also changed the tone of the election itself. Electioneering issue ads right before the election were the most negative in tone and personal in their attacks.

TONE AND THEMES

The tone of ads depended heavily on the sponsor. Candidates relied mostly on ads that were positive, while parties and groups depended on negative ads, especially in the late stages of a campaign. In the final two months of the election, more than 50% of candidate ads were positive, while both party and group ads were 53% negative respectively. Electioneering issue ads by groups were the most negative of any type of ad.

Overall, ads by Democratic sponsors (i.e. candidates, parties, and groups) most frequently addressed the issue of health care, while the Republican sponsors' favorite issue was education. Surprisingly, the issue of taxes played somewhat infrequently among both parties. In the aggregate, among all ads sponsored by candidates, party committees, and groups, the issue of health care dominated. Education and social security also were frequent themes. While the major themes of electioneering issue ads more or less conformed to the themes of candidate ads, genuine issue ads tended to discuss decisively different topics, such as Medicare, abortion, and trade.

ISSUE ADS 60 DAYS BEFORE THE GENERAL ELECTION

In the two months prior to the 2000 election, very few of the group issue ads were aired to promote an issue; most group issue ads encouraged the election or defeat of candidates. Within 60 days of the election there were 50,950 group issue ads featuring candidates for federal office. Of these, 99% of the airings were electioneering in nature. Only 331 airings were genuinely about an issue or bill pending before Congress. Most of the genuine issue ads featuring candidates (about 80%) were aired before the 60-day mark. This is consistent with the general understanding of political debate: the weeks immediately prior to the election are the time for arguments and advertisements about candidates for office. Television spots also become increasingly expensive in the final weeks, driving many other potential advertisers temporarily off the air.

Ads referring only to issues and not to candidates are less likely to be found in the months immediately preceding a race.

In the 2000 election, the majority of group ads lacked magic words and thus were treated as issue ads, despite the fact that they promoted or attacked candidates, rather than raised awareness about an issue or pending legislation. Since most of the group issue ads had an electioneering purpose, the fact that 75% of the group issue ads aired within 60 days of the election should not be surprising. As in 1998, genuine issue advocacy sharply dropped off with the increased proximity to Election Day, being replaced very nearly in toto by group-sponsored electioneering issue ads.

SUMMARY OF KEY FINDINGS

1 Approximately \$629 million was spent on television advertising by all candidates, parties, and groups in the 2000 federal elections. This figure represents an all-time record spent on political advertising. Even when looking at just congressional races, the \$422 million spent in 2000 far exceeds the \$177 million spent on political television ads in the 1998 congressional elections.

2 The magic words standard that some use to distinguish express advocacy from issue advocacy has no relation to the reality of political advertising. None of the players in political advertising—candidates, parties, or groups—employ magic words such as “vote for,” “vote against,” “elect” or anything comparable with much frequency in their ads. Only 10% of candidates ads ever used magic words, and as few as 2% of party and groups ads used magic words.

3 Special interest groups increased their expenditures of political advertisements nine-fold since 1998, breaking all previous records. Conservatively estimated, special interest groups spent about \$98 million on political television ads in 2000—more than 58% of that spending went for electioneering issue ads.

4 Parties made record-breaking use of issue advocacy in the 2000 elections. In addition to spending more on television advertising relative to the presidential general election than the candidates themselves, political parties primarily aired issue ads rather than ads using magic words in

order to sidestep federal campaign finance laws limiting the amounts and sources of contributions.

5

All of the so-called party issue ads, bar none, were electioneering in nature. None of these party ads qualified as genuine issue ads. The proportion of party ads that were positive in tone dropped since 1998, from 28% to 24%.

6

Genuine issue advocacy by groups is overwhelmed in the final 60 days of an election and is replaced by electioneering issue ads. Approximately 86% of group-sponsored issue ads aired within 60 days of the 2000 general election were electioneering issue ads rather than genuine issue ads.

7

A legislative proposal (the Snowe-Jeffords Amendment) to establish a test for express advocacy based on whether an ad identifies a candidate within 60 days of the general election would be a substantial improvement over the magic words test. If the Snowe-Jeffords 60-day bright-line test had been in place in 2000, only a fraction (less than 1%) of ads subject to financial disclosure would have been genuine issue ads (see Figure 2).

Preserving the integrity of the American campaign finance system requires constant vigilance. Each election cycle brings new innovations in campaign finance evasion as parties, candidates and groups strive to bend the system to their benefit. At times the existing rules and regulations seem more like fiction than fact, and new reforms at the federal level seem doomed before they are even proposed.

However, public opinion has started to catch up with those who have for years taken advantage of the system in the pursuit of electoral success. Regardless of refined legal or policy distinctions in types of advertisements, the public is keenly aware that most political ads are indeed electioneering ads and that the political players are sidestepping federal campaign finance laws. The legal community has begun to catch up, recognizing the futility of the magic words test and taking steps to draft a more sophisticated standard for regulating electioneering. Political scientists, too, have drafted new laws and have responded to the dearth of information about the nature and scope of electioneering issue ads by conducting studies to shed light on this once-secretive tool.

Combining the insights from these three communities adds to the likelihood that public policy will emerge that is grounded in common sense, legal expertise, and scholarship. The shared effort of citizens, lawyers, and political scientists working hand-in-hand with legislators creates room for optimism about a system few deny is in dire need of repair.

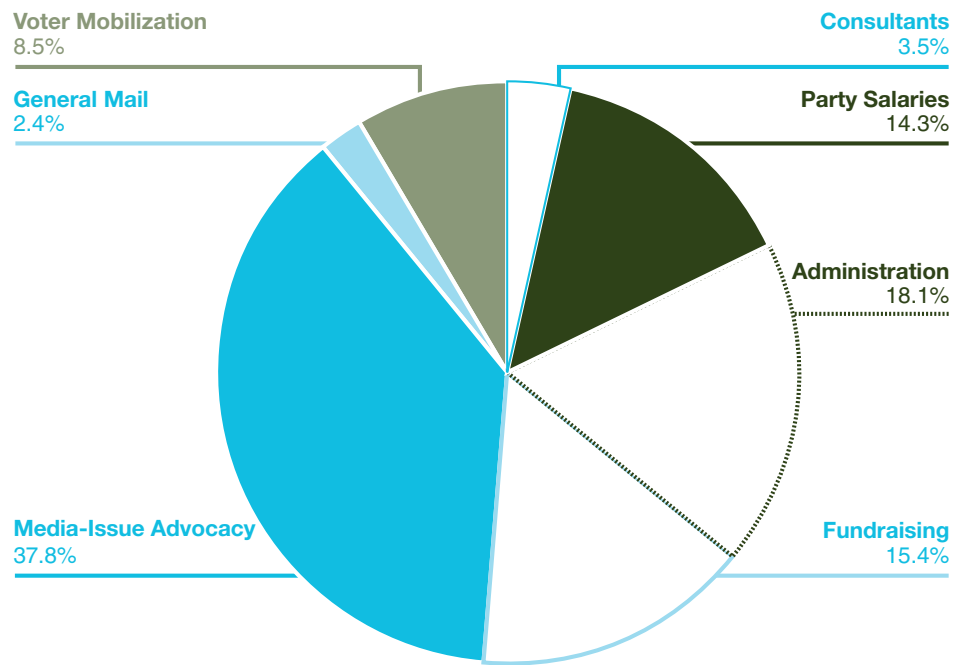


Figure 1. How the Parties Spent the "Soft Money" Dollar, 2000 Election Cycle

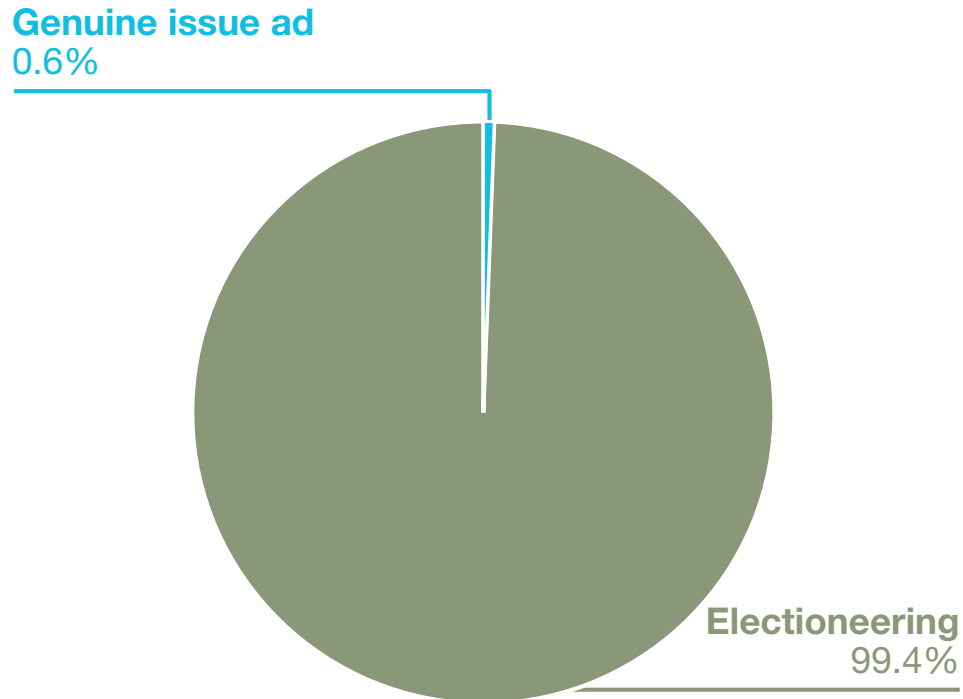


Figure 2. Genuine Issue Ads by Groups Aired Within 60 Days of the Election that Depict a Candidate, as a Proportion of All Group Ads that Depict a Candidate in the Same Time Period