

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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SPEECHNOW.ORG,		)	
DAVID KEATING,		)	
FRED M. YOUNG, JR.,		)	
EDWARD H. CRANE, III,		)	
BRAD RUSSO, and		)	
SCOTT BURKHARDT		)	
		)	
	Plaintiffs,	)	
		)	
	v.	)	Civil Case No. 1:08-cv-00248 (JR)
		)	
FEDERAL ELECTION COMMISSION		)	
		)	
	Defendant.	)	
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**PLAINTIFFS' SECOND MOTION IN LIMINE**

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For the reasons set forth in more detail in the attached memorandum of points and authorities, Plaintiffs respectfully ask that the Court exclude from evidence the report of Expert Witness Clyde Wilcox (FEC Ex. 1). Because the above-cited evidence is inadmissible, Plaintiffs further move that the Court reject the proposed findings that rely on that evidence and are contained in the following paragraphs of Defendant's Proposed Findings of Fact: ¶¶ 79, 80, 81, 82, 83, 84, 85, 87, 88, 90, 91, 92, 93, 94, 95, 97, 100, 106, 116, 117, 118, 119, 121, 122, 123, 124, 126, 127, 128, 129, 132, 133, 134, 135, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 156, 157, 158, 159, 163, 164, 165, 166, 176, 177, 181, 186, 190, 191, 192, 193, 194, 195, 196, 203,

208, 209, 210, 211, 212, 213, 214, 215, 217, 218, 219, 220, 222, 223, 226, 227, 228, 230, 237, 238, 240, 245, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 263, 264, 265, 269, 270, 271, 274, 275, 276, 309, 314, 315, 328, 339, 340, 341, 350, 351, 352, 358, 359, 361, 362, 363, 364, 365, 366, and 367.

Pursuant to Local Rule 7(m), counsel for Plaintiffs has conferred with counsel for the FEC concerning this motion. The FEC opposes this motion.

Plaintiffs further ask that the Clyde Wilcox Deposition Transcript, (FEC Ex. 18), be excluded from evidence and that the following Proposed Findings of Fact, based upon that transcript, be rejected: ¶¶ 131, 136, 185, 242, 244, 336, and 337.

Dated: November 21, 2008.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> Day of November, 2008, a true and correct copy of PLAINTIFFS' SECOND MOTION IN LIMINE was electronically filed using the court's ECF system and sent via the ECF electronic notification system to the following counsel of record:

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/s/ Steven M. Simpson

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**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF PLAINTIFFS’ SECOND MOTION IN LIMINE**

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For the reasons stated below, Plaintiffs by and through their attorneys respectfully request that the Court grant their motion to exclude from evidence the report and testimony of Defendant’s expert witness Clyde Wilcox, and further that the Court disregard all of the FEC’s proposed findings of fact based on Professor Wilcox’s report or deposition testimony.

**INTRODUCTION**

As explained in Plaintiffs’ first motion in limine, the FEC has demonstrated an almost total disregard for the requirements of the Federal Rules of Civil Procedure and the Federal Rules of Evidence. This disregard is especially manifest in its attempt to introduce as evidence the expert report of Professor Clyde Wilcox. Because that report is

unsworn and does not meet the reliability requirements of Fed. R. Evid. 702 and *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), Plaintiffs ask that the Court exclude it from the evidence in this matter. In their brief in response to the FEC's proposed findings of fact, Plaintiffs have noted several problems regarding the serious flaws in the report, and have addressed them both in their general objections and their paragraph-by-paragraph response to each proposed finding. Rather than repeat all of those observations (which are incorporated here by reference), Plaintiffs offer highlights of the problems that, standing alone, are sufficient to undermine the report's admissibility.

**I. The Report by Clyde Wilcox Is Unsworn Hearsay Testimony and May Not Be Considered by the Court**

The FEC does not offer any admissible evidence to support the allegations of its expert witness, Professor Clyde Wilcox. Instead, the FEC only offers, and repeatedly cites to, the *unsworn* report of the professor. But unsworn statements—even in the form of expert reports—are not competent evidence and cannot be considered by the Court. *Nnadili v. Chevron U.S.A. Inc.*, 435 F. Supp. 2d 93, 105 (D.D.C. 2006) (“unsworn expert report is not competent to be considered on a motion for summary judgment.”) (citing *Fowle v. C & C Cola*, 868 F.2d 59, 67 (3d Cir. 1989)); *see also Carr v. Tatangelo*, 338 F.3d 1259, 1273 n. 26 (11th Cir. 2003) (“Importantly, the alleged expert's report is unsworn. ... Unsworn statements ‘do[ ] not meet the requirements of Fed. Rule Civ. Proc. 56(e)’ and cannot be considered by a district court in ruling on a summary judgment motion.”) (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158 n. 17 (1970)); *Provident Life & Accident Ins. Co. v. Goel*, 274 F.3d 984, 1000 (5th Cir. 2001). Accordingly, Plaintiffs ask that the Court exclude the Wilcox report in its entirety.

Furthermore, a number of paragraphs in the FEC's Proposed Findings of Fact rely on Professor Wilcox's report for evidentiary support. Because a fact without any support is simply an assertion, the Plaintiffs ask that those proposed findings of facts that rely on the unsworn report also not be considered by the Court.

**II. The Wilcox Report Should Be Excluded, As It Does Not Meet the Reliability Requirements of Federal Rule of Evidence 702 and *Daubert***

But the fact that Professor Wilcox failed to provide a sworn declaration is not the only problem with considering his testimony. The more pressing concern is that, simply put, the Wilcox report is the report of an expert, but is not an expert report. Instead of employing the usual degree of rigor and critical inquiry that is required of an academic researcher and scholar, Professor Wilcox makes sweeping assertions (even some that actually contradict his prior research), relies wholesale on materials supplied to him by others rather than undertaking independent research, and does not support his conclusions with hard facts and information. At its core, his testimony (no matter what form it is presented in) is unreliable and, under its *Daubert* gatekeeping powers, the Court should strike it in full.

Under *Daubert v. Merrell Dow Pharmacies*, trial courts must act as gatekeepers in deciding whether proffered evidence is "(1) scientific[, technical, or other specialized] knowledge that (2) will assist the trier of fact to understand or determine a fact in issue." 509 U.S. at 592. In so doing, judges must "ensur[e] that the expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Daubert*, 509 U.S. at 598. Reliability, in particular, is vital, as the purpose of Rule 702 is to ensure "that an expert . . . employs in the courtroom the same level of intellectual rigor that characterizes the

practice of an expert in the relevant field.” *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999).

The *Daubert* court established a flexible inquiry for the trial judge in determining the scientific validity of an expert’s testimony. 509 U.S. at 592, 594-95. The Court enumerated several factors the trial judge might consider in making this determination: whether the theory or technique can be or has been tested, whether it has been subjected to peer review and publication, the known or potential rate of error of the technique and whether there are standards controlling the operation of the technique, and the acceptance of the technique within the scientific community. *Daubert*, 509 U.S. at 593-94. But “these factors are neither exclusive nor dispositive, and their application depends on the particular facts of each case.” *Groobert v. President & Dirs. of Georgetown College*, 219 F. Supp. 2d 1, 6 (D.D.C. 2002). Under any set of criteria, though, the Court’s determination of whether testimony is reliable must be based on the “principles and methodology” that the proposed expert used in formulating his opinions. *Ambrosini v. Labarraque*, 101 F.3d 129, 140 (D.C. Cir. 1996). Where an expert does not employ the same type of probing analysis that he or she would use in investigating a matter outside the litigation, the resulting opinions should be disregarded. *Freeland v. Iridium World Communs., Ltd.*, 545 F. Supp. 2d 59, 87 (D.D.C. 2008) (“Expert testimony may not be permitted where it is based upon speculation.”).

Here, the FEC has the burden of demonstrating by a preponderance of the evidence both that Professor Wilcox’s testimony is admissible and that he is qualified to testify. *Meister v. Med. Eng’g Corp.*, 267 F.3d 1123, 1127 n.9 (D.C. Cir. 2001). But it cannot do so because Professor Wilcox did not prepare his report with sufficient rigor.

All experts, including social scientists, must apply the same intellectual rigor in their work for the litigation that would be required of them in other professional settings.

*Groobert*, 219 F. Supp. 2d at 6 (citing *Kumho Tire Co.*, 526 U.S. at 152).

Simply put, Professor Wilcox's work on this matter was not the kind of rigorous, thorough analysis that one would expect of a veteran scholar and researcher. At his deposition, Professor Wilcox conceded that time pressures severely limited the attention he could give the report. At the same time he was preparing his expert report, he was halfway around the world teaching a course in "Interest Groups in American Elections" at the University of Tokyo. In addition, Professor Wilcox was under deadline, as he had to soon complete two different book chapters. As a result, "I had a lot of other things going on. So, you know, this was kind of a -- on academic standards, that's kind of a tight time frame." FEC Ex. 18, Wilcox Dep. at 74:21-75:6. Under these pressures, Professor Wilcox put together what amounts to a position paper: he simply cobbled together materials in an (unsuccessful) attempt to support his conclusions, relied on the FEC to direct his research, and put together a report containing broad, unsupported assertions.

**A. Professor Wilcox's Methods**

Professor Wilcox testified at his deposition about his approach to putting together his report:

Q. Okay. What process or procedure did you undertake to answer those questions?

A. You know, I thought about them for a while. I kind of reviewed in my mind various evidence that I had over the years. I reread some articles and I looked at the literature and I made a few interviews. You know, there really wasn't a lot of time, right.

FEC Ex. 18, Wilcox Dep. at 74:6-13; *see also* FEC Ex. 18, Wilcox Dep. at 108:8-10 (“With a relatively short amount of time, the question is what can you read and what you cannot read.”).

This approach was akin to putting together a position paper, not a scholarly report. Professor Wilcox simply reviewed materials that the FEC sent him and had his research assistant track down some additional newspaper and academic articles. FEC Ex. 18, Wilcox Dep. at 11:3-22; 100:7-11. At his deposition, he stated that, “if this were like a big long project, you would make a list of people to interview.” FEC Ex. 18, Wilcox Dep. at 90:16-17. Instead, citing time pressures, he interviewed only one politician, former Senate Majority Tom Daschle, who he knew was in favor of campaign finance regulation. FEC Ex. 18, Wilcox Dep. at 92:4-11. This lone interview took place two days before the expert report was due.

Professor Wilcox’s review of the relevant campaign-finance literature also deviated from what a serious researcher would have done in preparing to write an academic paper for publication. Professor Wilcox did not review the entire campaign finance literature, saying that would have taken too long under the time constraints he faced. FEC Ex. 18, Wilcox Dep. at 77:21-78:1 (“A. Reviewing the entire literature on campaign finance would be a six months job and you probably couldn't even keep up with it at that point, right?”). But what is more worrisome is that Professor Wilcox did not review even the most pertinent academic works. After the FEC sent Professor Wilcox the report of Plaintiffs’ expert Jeffrey Milyo, Professor Wilcox asked a research assistant to gather various articles Professor Milyo had cited. Declaration of Robert Gall in Support of Plaintiffs’ Second Motion in Limine [hereinafter Gall Decl.], Ex. A, Email

from Clyde Wilcox to Patrick Carr (Sept. 16, 2008, 09:57 PM). These articles, which include such works as Thomas Stratmann, “Contribution Limits and the Effectiveness of Campaign Spending,” *Public Choice* (2006), James Snyder, “Long-Term Investing in Politicians; or, Give Early, Give Often,” *Journal of Law and Economics* (1992), and Robyn Dawes, “Social Dilemmas,” *Annual Review of Psychology* (1980), are directly relevant to the topics at issue in this lawsuit. But during his deposition, Professor Wilcox admitted that he had not read any of those articles when he was putting together his own report, even though he knew of their existence. FEC Ex. 18, Wilcox Dep. at 140:1-6 (“Q. Okay. Just to be clear -- I apologize if I already asked this, but had you reviewed any of these articles in preparing your expert report? A. I did not review these specific articles before preparing my report, but I was aware of their existence.”).

Professor Wilcox also did not consider academic works that cast into doubt the conclusions of the articles he cited. For instance, Professor Wilcox cited an article by Hall and Wayman to demonstrate that there was a link between candidate contributions and “access.” But by not following up on the subsequent literature, Professor Wilcox failed to recognize that other articles have criticized the methodology Hall and Wayman employed, going so far as to say the paper’s findings are “almost surely biased.”

Rebuttal Declaration of Jeffrey Milyo at ¶ 26 (quoting Rebuttal Report of Professor James Snyder, Jr. from *McConnell v. FEC*).

#### **B. The FEC’s Direction of Professor Wilcox’s Work**

A scholar must maintain an independent mind when researching and drafting an academic article for publication. FEC Ex. 18, Wilcox Dep. at 64:21-65:2 (“Q. Do researchers typically obtain the evidence that they review from those who are paying for

their studies? A. Usually not in political science.”). But from the very beginning, Professor Wilcox’s approach was guided and shaped by the attorneys at the FEC. Given that SpeechNow.org is putting forward an as-applied challenge to various campaign-finance laws, one would think that the specific facts surrounding SpeechNow.org might be of some importance to Professor Wilcox’s research. But the FEC expressly told Professor Wilcox not to look at SpeechNow.org, an instruction he pliantly followed. FEC Ex. 18, Wilcox Dep. at 79:1-5 (“Q. Did you review any documents pertaining to SpeechNow.org itself? A. You know, I think I had the filing but, you know, they said, ‘We’re not really interested in the details of the case’ and so I didn’t read it.”).

Like the topics upon which Professor Wilcox was to inquire, much of the evidence Professor Wilcox cites to in his report were not the products of his own independent research. Instead, the FEC sent e-mail after e-mail to Professor Wilcox, each filled with documents for use in his report. They sent to him newspaper articles, Gall Decl. Ex. B, Email from Graham Wilson to Clyde Wilcox (July 11, 2008, 05:09 PM); results from opinion surveys, Gall Decl. Ex. C, Email from Robert Bonham to Clyde Wilcox (July 11, 2008, 03:06 PM); a motion for recusal and supporting documents, Gall Decl. Ex. D, Email from Steve Hajjar to Clyde Wilcox (July 24, 2008, 12:32 PM); and a hyperlink to the California Fair Political Practice Commission report on Independent Expenditures, Gall Decl. Ex. E, Email from Steve Hajjar to Clyde Wilcox (June 27, 2008, 05:50 PM). In all, FEC attorneys sent Professor Wilcox at least seventeen different sources that he eventually cited as support in his report.

**C. The End-Result: A Deficient Results-Driven Report Based on Unsupported Assertions**

Professor Wilcox produced a report that is vastly below the standards for research and scholarship that his profession demands. In many instances, he cites to or quotes from academic articles without disclosing to the Court that other portions of those same articles directly undercut his arguments. Other times, he makes assertions that are directly contradicted by his prior research. And finally, he offers conclusions without any evidentiary support. The end product of these methods is not a piece of reasoned scholarship, but a position piece that gathers whatever evidence it can to support its pre-ordained conclusion.

**1. Professor Wilcox's Discussion of Academic Articles Omits Significant Portions of Those Articles That Undercut His Conclusions**

As documented in the rebuttal declaration of Professor Jeffrey Milyo, Professor Wilcox completely ignores scholarly evidence when it is inconvenient to his position. Even in articles that he does cite, he provides the Court with only a partial and incomplete view of what those articles say. In quoting and focusing on only certain portions of academic articles upon which he relies, Professor Wilcox ignores other portions that undercut his claims about the efficacy of independent expenditures and their potential for corruption. The result is the false appearance that there is stronger academic support for Professor Wilcox's position than is actually the case. Below, Plaintiffs point out just a few examples of Professor Wilcox's omissions.

**a. Michael J. Malbin, *Rethinking the Campaign Finance Agenda*, 6 THE FORUM, Issue 1, Article 3 (2008) (Gall Decl. Ex. F)**

On page five of his report, Professor Wilcox makes the following statement about "rent seeking" by politicians:

When large contributions are permitted, policymakers have pressured potential donors to give large sums before their issues are addressed by government. Political scientist Michael Malbin notes that these efforts might be thought of as harassment or “rent seeking” by politicians, but “whatever the language, the record is replete with fully documented examples from 1972 onward. This is not about appearances. The problem is real, it cannot possibly be rooted out with disclosure, and it is stimulated by unlimited contributions.”

FEC Ex. 1, Wilcox Report at 5 (quoting Malbin, *supra*).

Based on this quotation, a reader would assume that Professor Malbin had concluded that unlimited giving to independent expenditure groups create a risk that politicians would extort funds from individuals and groups. But what is missing from Professor Wilcox’s report is an acknowledgement that Professor Malbin was not talking about independent expenditures when he made this statement. Instead, he was discussing the potential risk caused by *direct contributions* to candidates. Indeed, early on in his article Professor Malbin makes a crucial distinction between the two:

Even if we grant the questionable empirical claim that equates independent spending with contributions from the quasi-bribery perspective, the equivalency idea [between independent expenditures and contributions] fails to address the quasi-extortion side of the issue. From this perspective, the contribution is a unique form of transaction because office-holders ask directly for help [and it is] the office-holder’s ability to ask for help directly [that] creates the potential for shakedowns.

Gall Decl. Ex. F, Malbin, *supra*, at 3-4.

This quotation from Professor Malbin makes two separate points: 1) that he is skeptical of the idea that independent spending can be equated to contributions to candidates or political parties in terms of their potential to “bribe” politicians, and 2) that he feels no equivalency exists between independent expenditures and direct contributions to candidates or political parties when one speaks about politicians’ ability to extort rents. It thus directly undercuts Professor Wilcox, who says that “[l]arge contributions to

groups whose principal purpose is to make independent expenditures has the same potential for corruption as large direct contributions to candidates.” FEC Ex. 1, Wilcox Report at 5. Rather than confront such contradictory evidence, Professor Wilcox ignores it. As a result, those who have not read the entire Malbin article might conclude that Professor Malbin’s research solidly and completely supports Professor Wilcox’s position.

**b. Richard N. Engstrom & Christopher Kenny, *The Effects of Independent Expenditures in Senate Elections*, 55 POLITICAL RESEARCH QUARTERLY 885 (2002) (Gall Decl. Ex. G)**

Later on in his report, Professor Wilcox discusses the effectiveness of independent expenditures in influencing voters and the outcome of elections. In stating that “[s]cholars have *generally* concluded independent expenditures do help candidates,” Professor Wilcox cites to a single empirical work.

Statistical studies have concluded that these campaigns influence votes. Political Scientists Richard Engstrom and Christopher Kenny explore the limited reported spending in actual independent expenditures by PACs, and conclude that “we find that independent expenditures can significantly affect vote choice... In general, our results seem to conform to the conventionally accepted account of the 20-year history of independent expenditures in U.S. elections.”

FEC Ex. 1, Wilcox Report at 13 (quoting Engstrom & Kenny, *supra*).

Plaintiffs question whether a single study is sufficient support for the idea that there is “general” agreement among scholars. But that is of no great matter. The far larger concern lies in the fact that Professor Wilcox fails to consider other portions of the study in which the authors note that

[w]hile it is not infrequent for writers endorsing reforms in campaign finance laws to mention independent expenditures as one of many examples of the current system’s corruption, it is rare to find independent expenditures figuring prominently in more rigorous examinations of the role money plays in the political process.

Gall Decl. Ex. G, Engstrom & Kenny, *supra*, at 889.

This quote exposes as baseless Professor Wilcox's claim, on page 6 of his report, that "[t]here is *ample evidence* that candidates appreciate independent expenditure campaigns, and would be likely to reward those who fund them" (emphasis added). With that assertion falsified, it becomes clear that Professor Wilcox's argument that independent expenditures carry the same potential for corruption as contributions to candidates is rooted only in speculation.

**c. Gary C. Jacobson, *The Effect of the AFL-CIO's "Voter Education" Campaigns on the 1996 House Elections*, 61 THE JOURNAL OF POLITICS 185 (1999) (Gall Decl. Ex. H)**

Additional concerns arise when one looks at how Professor Wilcox quotes from other articles concerning the effectiveness of independent spending in specific races. On pages 13 and 14 of his report, Professor Wilcox writes as follows:

Political scientist Gary Jacobson, one of the leading experts on Congressional elections, concludes from his careful statistical analysis of the impact of the AFL-CIO's issue advocacy campaigns in 1996 that "labor can plausibly claim responsibility for defeating a majority of first term [Republican] losers. Thus, money spent outside the regular campaigns on 'voter education' can have a major effect on election results."

FEC Ex. 1, Wilcox Report at 13-14 (quoting Jacobson, *supra*).

But other portions of Professor Jacobson's article make it clear that independent spending is only a small determinant in who wins any particular race. For instance, in one section of his paper, Professor Jacobson notes from his previous research that

we also have abundant evidence that money, by itself, does not defeat incumbents. Only in combination with potent issues and high-quality challengers do even the best-financed campaigns have a decent chance of succeeding.

Gall Decl. Ex. H, Jacobson, *supra*, at 186 (citing Gary C. Jacobson, *THE POLITICS OF CONGRESSIONAL ELECTIONS* (4th ed. 1997)). Later, in looking at the specific races in his study, Professor Jacobson likewise concludes that independent spending was effective only in certain situations.

Labor’s ‘voter education’ drive achieved its goal only when the Democratic candidate conducted a vigorous local campaign, confirming the need for all three conditions—plenty of money, potent issues, and capable challengers—to defeat House incumbents.

Gall Decl. Ex. H, Jacobson, *supra*, at 193.

The quotes by Professor Jacobson therefore establish that electoral success is a tricky business, requiring a combination of factors. But Professor Wilcox’s selective quotations from the article do not reflect that nuance.

## **2. Professor Wilcox Ignores His Own Prior Research When It Undermines His Report’s Conclusions**

In addition to ignoring inconvenient information within the articles written by others that he cites, Professor Wilcox also ignores his own prior research in circumstances where it would significantly qualify or diminish his conclusions. Three examples are discussed below.

### **a. Clyde Wilcox et al., *THE FINANCIERS OF CONGRESSIONAL ELECTIONS: INVESTORS, IDEOLOGUES AND INTIMATES* 42 (2003) (Pls.’ Ex. 22)**

Both in his expert report and in the Defendant’s Proposed Findings of Fact, Professor Wilcox contends that while “[i]ndividuals make contributions to candidates for a variety and mixture of motives,” “[m]any are ‘investors’ who give in part or primarily to protect or promote their business interests.” FEC Ex. 1, Wilcox Report at 6; FEC’s Proposed Findings of Fact at ¶ 137. He then goes on to state that “[a] survey of

congressional donors of \$1000 or less in 1996 showed that nearly three in four admit that they give for business reasons at least some of the time . . . .” FEC Ex. 1, Wilcox Report at 6; FEC’s Proposed Findings of Fact at ¶ 137.

Reading Professor Wilcox’s report produces the impression that he believes that those seeking access are the largest group of contributors. But this is not the case. In his academic research on the topic, Professor Wilcox states that the vast majority of donors give for “ideological” reasons; that is, to effect changes in policy that have broad effects for the entire population:

Large majorities of contributors indicated that influencing elections is always important to them. . . . More than 60 percent maintained that influencing an election outcome or public policies is very important, and roughly 30 percent stated these factors are somewhat important. . . . That purposive goals are a major factor in the decision to contribute is not surprising.

Pls.’ Ex. 22, Wilcox et al., FINANCIERS OF CONGRESSIONAL ELECTIONS, *supra*, 45.

And in spite of the strong weight that Professor Wilcox gives to donors he says are seeking “access” in his report and testimony, his academic work indicates that “[f]ew donors indicated that material or solidary goals were very important” when deciding whether to contribute and that “[d]onors most often cited policy-related factors or personal connections when asked about the factors that motivate them to make individual contributions.” *Id.* Professor Wilcox’s failure to provide this information is yet another indicator that his report was result-driven, not data-driven, and thus unreliable.

**b. Clyde Wilcox, et al., *Interest Groups and Advocacy Organizations After BCRA*, in THE ELECTION AFTER REFORM: MONEY, POLITICS, AND THE BIPARTISAN CAMPAIGN REFORM ACT 112 (Michael Malbin ed., 2006) (FEC Ex. 55)**

Later on in his report, Professor Wilcox states the following:

The history of contributions to soft money committees and to 527 and 501(c) groups suggest that donors will make large independent contributions as a way to avoid contribution limits and to win the favor of policymakers.

FEC Ex. 1, Wilcox Report at 6.

Yet in an article he co-authored that actually compared soft money donations with 527 donations, the authors state, “[t]herefore, it follows that the considerations that stimulated soft money giving do not automatically transfer to 527 committees.” FEC Ex. 55, Wilcox et al., *Interest Groups, supra*, at 120. Indeed, the article makes clear that Wilcox’s claim that “[o]verall, individuals associated with the business community gave more to 527s in 2004 than they had given in party soft money in 2000” (Wilcox Report at 11) is a misleading half-truth. As the article states, “the net affect of the abolition of soft money, therefore, was not to reduce the role of all individuals who had earned their wealth in a business but to substantially displace the role of large, publicly owned corporations” with donors associated with smaller businesses who “are much freer, and more able financially, to pursue a personal political agenda.” FEC Ex. 55, Wilcox et al., *Interest Groups, supra*, at 120. One of the reasons for this, as the article states, is that “officeholders do not ask for the contributions to 527s, so the potential reward is no longer so direct.” *Id.* This is in stark contrast to Wilcox’s claim throughout his report that individuals who donate to independent groups will gain influence over candidates who are grateful for their support. Moreover, in the article, the authors express misgivings about even using terms like “individuals associated with the business community” as Wilcox does. They state “[w]hile we have significant reservations about treating an individual employee’s contributions as if they reflect the same concerns as an

employer's, we nevertheless find the grouping useful because of the question we are trying to answer." *Id.* at 114.

**c. Clyde Wilcox, *Designing Campaign Finance Disclosure in the States: Tracing the Tributaries of Campaign Finance*, 4 ELECTION LAW JOURNAL 371 (2005) (Gall Decl. Ex. I)**

Professor Wilcox also states that “[t]he danger of large direct contributions to candidates is well-established in political science.” FEC Ex. 1, Wilcox Report at 5. But in the above-reference article, he acknowledged that: “Debate persists in the United States about the meaning of ‘corruption,’ ... (and) ... the question of whether contributions lead to an ‘undue influence’ of donors on policymakers” (scare quotes in the original). Gall Decl. Ex. I, Wilcox, *Designing Campaign Finance Disclosure, supra*, at 373. He also states that it is “...it is exceedingly difficult to *prove* that corruption has occurred, and many observers doubt that corruption is common” (emphasis in the original). *Id.*; *see also* Milyo Rebuttal Decl. at ¶12.

Traditionally, scholars do not ignore their own prior work when undertaking a project that is relevant to that work. But Professor Wilcox omits discussion of his past conclusions and analyses that would harm the report he has prepared for the FEC; accordingly, the report is unreliable.

**3. Baseless Assertions**

In his report, Professor Wilcox frequently makes conclusory assertions for which he does not provide any evidence. *See, e.g.*, FEC Findings of Fact ¶¶ 93, (noting that Professor Wilcox supplies no evidence to support his claim that, in instances where candidates have asked groups to stop airing ads, the ads “have almost always been aired by ideological groups with unsophisticated advertising campaigns”), 116 (noting that Professor Wilcox asserts, without evidence, that there has been an increase in the quality

of independent expenditures and candidate-focused issue advocacy over time), 117 (noting that Professor Wilcox provides no support for his claim that “[m]ost independent expenditures and issue advocacy campaigns are designed by professionals, pretested by professionals, and their impact is studied by professionals in order to create more effective campaigns for the next election”), 163 (noting that Professor Wilcox’s assertion that “independent expenditures have a similar potential for corruption as large direct contributions to candidates” is offered with no support and against the weight of legal authority), 196 (noting that Professor Wilcox provides no support for his assertion that “access-seeking” donors will donate money to independent groups).

These unsupported conclusions—amounting to mere speculation—are simply unreliable. *See Freeland*, 545 F. Supp. 2d at 87 (“Expert testimony may not be permitted where it is based upon speculation.”); *Groobert*, 219 F. Supp. 2d at 6 (“Expert testimony that rests solely on ‘subjective belief or unsupported speculation’ is not reliable.”); *see also* Fed. R. Evid. 702 (requiring that expert opinion be based “upon sufficient facts or data”); Advisory Comm. Notes to 2000 Amendments, Fed. R. Evid. 702 (“The trial court’s gatekeeping function requires more than simply ‘taking the expert’s word for it.’”) (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 43 F.3d 1311, 1319 (9th Cir. 1995) (“We’ve been presented with only the experts’ qualifications, their conclusions and their assurances of reliability. Under *Daubert*, that’s not enough.”)).

#### **D. Professor Wilcox’s Report Lacks the Rigor Required by *Daubert***

It is improper for an academic researcher to first come to a conclusion as to an issue and then seek out evidence in support of that conclusion. As Professor Wilcox notes, in political science research, one gathers evidence in order to test a hypothesis.

FEC Ex. 18, Wilcox Dep. at 19:14-21 (“Q. Is it fair to say that one of the purposes of conducting research in political science is to ensure that theories or hypotheses are actually based on empirical evidence? A. Now, that's not quite the way I'd word it, but you gather empirical evidence to test the theory or hypothesis, right? So if you accept that rephrasing, then yes.”). But, in putting together his report, Professor Wilcox steered clear of evidence that would put his conclusions to the test. As Plaintiffs’ expert Jeffrey Milyo states:

Wilcox cites several articles published in edited volumes, but ignores selections from those same volumes that contradict his jaundiced view of large contributions. Similarly, Wilcox approvingly cites selected passages from an author, but Wilcox does not refer to other relevant passages from the same article that contradict his argument. Wilcox also ignores inconvenient evidence from a high profile article in his report, but he does include the same article in the required reading list for his seminar course on “Money in American Politics” at Georgetown.

Milyo Rebuttal Decl. at ¶ 52.

Professor Wilcox’s work is “riddled with logical errors and factual omissions. However, this sloppiness does not appear to be random; in every instance, these errors and omissions serve to support Wilcox’s argument.” Milyo Rebuttal Decl. at ¶ 50.

Perhaps his haste contributed to Professor Wilcox’s abandonment of research avenues he would otherwise walk and led him to accept research done by those with a stake in what conclusions he would draw. Of course, Professor Wilcox could have saved time by presenting a more focused, fact-based report. But saving time by wholly abandoning the methodological requirements that his discipline requires is unacceptable. *See, e.g., Wessmann v. Gittens*, 160 F.3d 790, 805 (1st Cir. 1998) (“The only excuse that Dr. Trent proffered for his failure to follow proper protocols was that a thorough study

would have required more time than he had available. That is unacceptable.”) (internal citation omitted).

As the Supreme Court said in *Daubert*, “the word ‘knowledge’ connotes more than subjective belief or unsupported speculation.” 509 U.S. at 590. And the Fifth Circuit, in deciding on the admissibility of expert evidence, noted that

many experts are members of the academic community who supplement their teaching salaries with consulting work. We know from our judicial experience that many such able persons present studies and express opinions that they might not be willing to express in an article submitted to a refereed journal of their discipline or in other contexts subject to peer review. We think that is one important signal, along with many others, that ought to be considered in deciding whether to accept expert testimony.

*In re Air Crash Disaster at New Orleans*, 795 F.2d 1230, 1234 (5th Cir. 1986). *See also Sheehan v. Daily Racing Form, Inc.*, 104 F.3d 940, 942 (7th Cir. 1997) (stating that, to admit expert evidence, a judge must “satisfy himself that the expert is being as careful as he would be in his regular professional work outside his paid litigation consulting.”). But even Professor Wilcox admits that what he submitted on August 15<sup>th</sup> does not meet the same standards as his academic work:

Q. Does it, in your view, meet the standards of what a scholarly work would be?

A. If by scholarly you mean something that I would submit for publication? No. But if you mean I might have seen to put it up on the Internet? No.

FEC Ex. 18, Wilcox Dep. at 71:11-15.

This admission squares with Professor Milyo’s conclusion that, “[b]ased on this pattern of errors and omissions, I conclude that Wilcox has not faithfully and competently utilized his expertise in producing his report.” Milyo Rebuttal Decl. at ¶ 54. The opinions Professor Wilcox puts forward in his report are conclusory and the fruits of a

slanted, poorly-developed body of evidence. Because Professor Wilcox has not displayed the level of intellectual rigor required by his profession in other settings, Plaintiffs ask that the Court grant their motion to exclude from evidence the report and testimony of Defendant's expert witness Clyde Wilcox, and further that the Court disregard all of the FEC's proposed findings of fact based on Professor Wilcox's report or deposition testimony. (The paragraphs that cite to the Wilcox report or his deposition testimony are listed in the accompanying motion.)

Dated: November 21, 2008.

Respectfully submitted,

/s/ Steven M. Simpson

Robert Gall (DC Bar No. 482476)

Steven M. Simpson (DC Bar No. 462553)

William H. Mellor (DC Bar No. 462072)

Paul M. Sherman (DC Bar No. 978663)

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*Attorneys for Plaintiffs*

\*Admitted Pro Hac Vice

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> Day of November, 2008, a true and correct copy of MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' SECOND MOTION IN LIMINE and ACCOMPANYING DECLARATIONS AND EXHIBITS was electronically filed using the court's ECF system and sent via the ECF electronic notification system to the following counsel of record:

Robert W. Bonham, III  
David B. Kolker  
Steve N. Hajjar  
Kevin Deeley  
FEDERAL ELECTION COMMISSION  
999 E. Street, N.W.  
Washington, DC 20463

/s/ Steven M. Simpson

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

SPEECHNOW.ORG, )  
DAVID KEATING, )  
FRED M. YOUNG, JR., )  
EDWARD H. CRANE, III, )  
BRAD RUSSO, and )  
SCOTT BURKHARDT )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
FEDERAL ELECTION COMMISSION )  
 )  
Defendant. )

---

Civil Case No. 1:08-cv-00248 (JR)

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**DECLARATION OF ROBERT GALL  
IN SUPPORT OF PLAINTIFFS' SECOND MOTION IN LIMINE**

---

1. I am an attorney representing the plaintiffs in the above-captioned matter. I am a member in good standing of the Bar of the District of Columbia and have been admitted to the United States District Court for the District of Columbia. I make this declaration in support of Plaintiffs' Second Motion in Limine.

2. Attached to this declaration are true and correct copies of the following documents:

- a. Exhibit A: Email from Clyde Wilcox to Patrick Carr (Sept. 16, 2008, 09:57 PM);
- b. Exhibit B: Email from Graham Wilson to Clyde Wilcox (July 11, 2008, 05:09 PM);

- c. Exhibit C: Email from Robert Bonham to Clyde Wilcox (July 11, 2008, 03:06 PM);
- d. Exhibit D: Email from Steven Hajjar to Clyde Wilcox (July 24, 2008, 12:32 PM);
- e. Exhibit E: Email from Steven Hajjar to Clyde Wilcox (June 27, 2008, 05:50 PM);
- f. Exhibit F: Michael J. Malbin, *Rethinking the Campaign Finance Agenda*, 6 THE FORUM, Issue 1, Article 3 (2008);
- g. Exhibit G: Richard N. Engstrom & Christopher Kenny, *The Effects of Independent Expenditures in Senate Elections*, 55 POLITICAL RESEARCH QUARTERLY 885 (2002);
- h. Exhibit H: Gary C. Jacobson, *The Effect of the AFL-CIO's "Voter Education" Campaigns on the 1996 House Elections*, 61 THE JOURNAL OF POLITICS 185 (1999);
- i. Exhibit I: Clyde Wilcox, *Designing Campaign Finance Disclosure in the States: Tracing the Tributaries of Campaign Finance*, 4 ELECTION LAW JOURNAL 371 (2005)

3. I certify and declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed: November 21<sup>st</sup>, 2008.

  
\_\_\_\_\_  
Robert Gall

GALL DECLARATION  
IN SUPPORT OF PLAINTIFFS'  
SECOND MOTION IN LIMINE  
EXHIBIT A

**Clyde Wilcox**

---

**From:** Patrick Carr [patrickcarr1720@hotmail.com]  
**Sent:** Tuesday, September 16, 2008 12:17 PM  
**To:** Clyde Wilcox  
**Subject:** RE: can you get  
**Attachments:** Long-Term Investing in Politicians\_Snyder\_Journal of Law and Economics.pdf; Milyo\_PublicChoice.pdf; Milyo, 1999, The Political Economics of Campaign Finance, The Independent Review.pdf

Patrick Carr  
Ph.D candidate, American Government  
Department of Government, Georgetown University  
[pjc83@georgetown.edu](mailto:pjc83@georgetown.edu)

From: cwilcox3@cox.net  
To: patrickcarr1720@hotmail.com  
CC: pjc83@georgetown.edu  
Subject: can you get  
Date: Tue, 16 Sep 2008 09:57:10 -0400

A Xerox of Randy Calvert, 1989, "Reciprocity Among Self-Interested Actors: Uncertainty, Asymmetry, and Distribution." In Peter Ordeshook, Models of Strategic Choice in Politics.

You could also just scan it to a pdf if that is easier. But a paper copy is fine.

The rest you can probably just grab pdfs.

Also, maybe see if we can get to Robyn Dawes, 1980, Social Dilemmas, Annual Review of Psychology 31: 169-193.

And then pull off pdfs of Freedman, Manz, and Goldstein, 2004, AJPS, Campaign Advertising and Democratic Citizenship,

Jeff Milyo, 1997, The Economics of Political Campaign Finance: Public Choice, 93: 245-270

Milyo, 1999, The Political Economics of Campaign Finance, The Independent Review, 3: 537-548

Milyo, 2002, Bribes and Fruit Baskets, What does the Link Between PAC Contributions and Lobbying Mean? Business and Politics.

Jim Snyder, 1992, Long Term Investing in Politicians, J of Law and Economics 35: 15-43

Thomas Stratman, 2006, Contribution limits and the Effectiveness of Campaign Spending, Public Choice 129: 461-474

Tripathi, Ansolabehere, and Snyder, Are PAC Contributions and Lobbying Linked? Business and Politics 4:  
article 2 (this is an online journal)

Clyde Wilcox  
Department of Government  
Georgetown University  
Washington, DC 20057  
202-687-5273; fax=687-5858  
<http://www9.georgetown.edu/faculty/wilcox/>

See how Windows Mobile brings your life together—at home, work, or on the go. [See Now](#)

GALL DECLARATION  
IN SUPPORT OF PLAINTIFFS'  
SECOND MOTION IN LIMINE  
EXHIBIT B



Graham Wilson/FEC/US

07/11/2008 05:09 PM

To "Clyde Wilcox" <Wilcoxc@Georgetown.edu>

cc Kevin Deeley/FEC/US@FEC, Robert Bonham/FEC/US@FEC, Steve Hajjar/FEC/US@FEC  
bcc

Subject RE: SpeechNow.org v. FEC

Professor Wilcox:

There were 13 PDFs attached to my last email. I'm attaching all 13 to this email again. Please let me know if they don't all come through.

-  Billboard Bonanza Lobbyist Stands to Make Millions if LA Lifts Freeway Ban.pdf
-  Nebraska Accountability and Disclosure Commission - In the Matter of Miller.pdf
-  The Effects of Independent Expenditures in Senate Elections.pdf
-  Nebraska Should Stand up for Integrity.pdf
-  Up the River - An Empirical Analysis of the Effectiveness of the Swift Boat Commercials.pdf
-  Fast Start for Soft Money Groups in 2008 Election.pdf
-  Milwaukee Journal Sentinel - Chvala reaches plea deal.pdf
-  Wisconsin v. Chvala - State's Sentencing Memorandum.pdf
-  Another Legal Victory for Tough Coal Boss.pdf
-  Caperton v Massey Coal Company INC - Motion of Respondent Corporations for Disqualification of Justice Benjamin.pdf
-  Bush's Backers Donate Heavily to Veteran Ads.pdf
-  Friendly Fire - The Birth of an Attack on Kerry.pdf
-  Democrats' Ads in Tandem Provoke GOP.pdf

Thanks again,

Graham M. Wilson  
Attorney  
Office of the General Counsel  
Federal Election Commission  
Phone: (202) 694-1571  
Email: gwilson@fec.gov  
"Clyde Wilcox" <Wilcoxc@Georgetown.edu>



"Clyde Wilcox"  
<Wilcoxc@Georgetown.edu>  
07/11/2008 05:04 PM

To <GWilson@fec.gov>  
cc

CW0153

GALL DECLARATION  
IN SUPPORT OF PLAINTIFFS'  
SECOND MOTION IN LIMINE  
EXHIBIT C



Robert Bonham/FEC/US

07/11/2008 03:06 PM

To wilcox@georgetown.edu

cc Kevin Deeley/FEC/US@FEC, Steve Hajjar/FEC/US@FEC,  
Graham Wilson/FEC/US@FEC

bcc

Subject SpeechNow.org v. FEC

Professor Wilcox,

Kevin Deeley asked me to forward the two attached files.

Should you have any questions, please feel free to call us.

Rob Bonham



Weighted Poll Results.doc Unweighted Poll Results.doc

CW0069

GALL DECLARATION  
IN SUPPORT OF PLAINTIFFS'  
SECOND MOTION IN LIMINE  
EXHIBIT D



Steve Hajjar/FEC/US  
07/24/2008 12:32 PM

To wilcoxc@georgetown.edu  
cc Kevin Deeley/FEC/US@FEC  
bcc  
Subject Manafort and Massey materials

Professor,

Here are the links and materials as promised. The Motion for Disqualification in Massey was faxed to us by the Court and is pretty grainy and difficult to read. Let me know if you would like me to fedex to you the original fax, although its quality is not much better.

[http://www.buyingofthepresident.org/index.php/interviews/paul\\_manafort](http://www.buyingofthepresident.org/index.php/interviews/paul_manafort)

<http://www.legalnewsline.com/news/209989-company-asks-benjamin-to-recuse-himself-again-this-time-with-poll-numbers>



Massey V. Caperton Mot. for Disqual.pdf

---

Steve N. Hajjar  
Attorney, Litigation Division  
Office of General Counsel  
Federal Election Commission  
Phone: (202) 694-1546

CW0436

GALL DECLARATION  
IN SUPPORT OF PLAINTIFFS'  
SECOND MOTION IN LIMINE  
EXHIBIT E



"Clyde Wilcox"  
<Wilcox@Georgetown.edu>  
06/27/2008 05:57 PM

To <shajjar@fec.gov>  
cc  
bcc  
Subject RE: FPPC Report

Confirmed, thanks.

**From:** shajjar@fec.gov [mailto:shajjar@fec.gov]  
**Sent:** Friday, June 27, 2008 5:50 PM  
**To:** wilcox@georgetown.edu  
**Subject:** FPPC Report

Professor,

Please find attached the link to the report of the California Fair Political Practices Commission that we mentioned to you, as well as a copy of the 2002 Mellman/Worthlin Report.

<http://www.fppc.ca.gov/ie/IEReport2.pdf>

Thanks

---

Steve N. Hajjar  
Attorney, Litigation Division  
Office of General Counsel  
Federal Election Commission  
Phone: (202) 694-1546

CW0036

GALL DECLARATION  
IN SUPPORT OF PLAINTIFFS'  
SECOND MOTION IN LIMINE  
EXHIBIT F

## *The Forum*

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*Volume 6, Issue 1*

2008

*Article 3*

HAS THE U.S. CAMPAIGN FINANCE SYSTEM COLLAPSED?

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### Rethinking the Campaign Finance Agenda

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## Rethinking the Campaign Finance Agenda\*

Michael J. Malbin

### Abstract

For one-third of a century, federal campaign finance debates have been stuck in a corruption rut. Whether in Congress, FEC or the courts, most of the action has been about limiting contributions and certain expenditures. After defending the ban of soft money contributions to national political parties and questioning the effects of electioneering regulations, the article argues that whatever one's positions on these issues it is time to rethink the agenda for future research and action. Rather than focus on corruption prevention, research and policy should move to such positive goals as increasing electoral competition, candidate emergence and promoting equality through small donors and volunteers. The article concludes with initial survey research findings from an ongoing project on donor participation.

**KEYWORDS:** campaign finance, elections, McCain-Feingold, BCRA, soft money, political parties, interest groups, small donors, equality, participation, reform

---

\*Michael J. Malbin is Professor of Political Science at the University at Albany, SUNY and director of its Semester in Washington program. He has also been Executive Director of the Campaign Finance Institute (Washington, DC) since he helped to co-found it in 1999.

For one-third of a century, debates over federal campaign finance have been stuck in a corruption rut. Whether in Congress, the Federal Election Commission (FEC), or the courts, most of the action has been about limiting contributions and certain expenditures. In each case, restrictions have been justified in the name of preventing corruption or the appearance of corruption. This article will argue that it is time to turn the page. Some readers will disagree about whether to tear out the old page or leave a bookmark. More important is the need to rethink the agenda for future research and action.

Let us begin with a simplification. Campaign finance laws in principle and practice can pursue two different kinds of objectives. Some involve preventing (or discouraging) behavior that lawmakers deem bad, such as corruption. Others involve supporting or encouraging positive outcomes or ends. In the spirit of simplification, therefore, this article first reviews the two major sections of the Bipartisan Campaign Reform Act (BCRA) or "McCain-Feingold" in light of the corruption rationale. It will argue that the law's ban on soft money for parties illustrates the value of some limits, though it will use the law's electioneering provisions to highlight the limits of limits.

The article then argues for moving the research and policy focus to more positive goals. Several will be mentioned, including competition and candidate emergence. But particular attention will be given to ongoing research by The Campaign Finance Institute (CFI) about promoting equality through small donors and volunteers. While the policy opinions in this piece are the author's alone and do not represent CFI, the organization's research does provide the backdrop for the framework presented here.

### **Soft Money – The Effective Side of Restrictions**

The phrase "McCain-Feingold" has become a symbol in the political arena, where criticisms of "reformers" and of "the failures of reform" are leveled without parsing the law's content. In reality, BCRA's prohibition on soft money for political parties was a simple extension of existing law. So while the next several paragraphs may seem like a rehash, some reminders about the legal history are needed to get at the underlying issue.

The Federal Election Campaign Act Amendments of 1974 (FECA) put two different kinds of limits on contributions to federal candidates, political parties, and other political committees. "Source limitations" followed decades-old law by prohibiting all contributions from labor unions, corporations, and others. "Amount limitations" put a ceiling on how much any person could give to a candidate, party, or political committee, as well as a cumulative ceiling for the amount individual contributors could give to all recipients combined. The 1974 law covered all contributions to national party committees, but later FEC regulations

said that since parties were amalgams of national, state, and local organizations, at least some party activities could be paid out of "non-federal" funds that could come from unlimited contributions.

At first, non-federal funds were used for buildings and infrastructure. But in 1988, Michael Dukakis began using soft money to pay for registration and get-out-the-vote activities in presidential swing states. By 1996, the parties were using soft money for candidate-specific television advertising. Through some legal twists not worth recounting here, the parties were able (with the FEC's sanction) to use non-federal funds to help pay for issue ads, relying on a narrow definition of "express advocacy" that the Supreme Court had originally written to protect *non-party* speech. As a result, federal office holders and candidates were raising unlimited amounts from all kinds of sources for soft-money accounts. By the end of the soft-money era, some of the money was even being deposited in accounts bearing the candidates' names. These accounts used money the candidates themselves helped to raise in order to pay for "non-electoral" issue ads that specifically praised or criticized the same candidates or their opponents. Functionally, therefore, soft money had become the equivalent of unlimited contributions to candidates.

The only way to defend this state of affairs is with an argument against all contribution limits to candidates as well as to parties. The reasons offered against contribution limits run roughly as follows. (1) The Supreme Court said in *Buckley* that the only permissible basis for even the indirect restriction on speech represented by a contribution limit is to prevent corruption or the appearance of corruption. (2) But, critics argue, the required allegations of *quid pro quo* corruption are bogus. Ideology and constituency explain more than contributions in multivariate analyses of roll-call voting (Samples 2006). (3) Finally, critics also say that attempting to prevent the appearance of corruption is a dangerous chase of a will-of-the-wisp that has failed to have the positive effects its sponsors had predicted in terms of the public's trust in government or feelings of efficacy (Primo and Milyo 2006).

My responses, in brief, are as follows. (1) The constitutional point is granted and is the basis for much of the rest of this article. (2) The corruption argument is misplaced. The last place we should expect to find a change in a Member's behavior would be on a public roll-call vote. Hall and Wayman (1990) showed contributions having an agenda-setting effect, which is where you expect to find something, and this is corroborated anecdotally by Members' court depositions in the case of *McConnell v. Federal Election Commission*. (3) Finally, it is true that some of the bill's sponsors, reformers, and newspaper editorial boards talked about contribution limits as if they would reverse the public's cynicism about government. But it was never plausible to expect changes in campaign finance law by themselves measurably to improve citizens' views about the government.

Even if we could demonstrate that a cynical citizenry's views about contributions were part of its negative picture of government, such a finding would not mean that limiting contributions should be enough to alter the public's picture of government.

So far, my comments have had the character of a counter-rebuttal. But there is a more basic question: what is the argument — from a constitutionally appropriate perspective based on corruption — *in favor of* limiting contributions? On this matter, I would draw attention to the fact that the focus above was on whether office-holders changed their behavior because of a contribution. But the concern about corruption is two-edged. Some donors seek to curry favor with office-holders, but office-holders can also put serious pressure on donors. While out-and-out extortion of a fully criminal variety is no more common than out-and-out bribery, we know that arm-twisting occurs.

If we were looking for an analogy, the office-seeker who twists a donor's arm looks like a harassing employer who makes advances toward an employee: a person in power who makes unwanted and repeated requests in the context of a business relationship in which the person doing the asking has the ability to grant or withhold benefits to (or cause troubles for) the person being asked. If one prefers the language of economists, think of the office-holder as a person with the power to extract "rent" — a term often used by public-choice theorists, many of whom overlook its obvious application to the situation. Whatever the language, the record is replete with fully documented examples from 1972 onward. This is not about appearances. The problem is real, it cannot possibly be rooted out with disclosure, and it is stimulated by unlimited contributions.

But, some would suggest, what is the point of limiting contributions when the Supreme Court says that individuals have a right to make unlimited independent expenditures? If an individual can spend an unlimited amount to help a candidate, does that not provide every bit as much of an opportunity as a contribution for earning the candidate's gratitude? (In practice, of course, most individuals do not have the political skill to make unlimited expenditures effectively, so they give to groups, a fact which raises other issues discussed in the next section.) These are legitimate questions, leading to two opposite recommendations (neither of which makes me personally comfortable.) On one side, some say that protection for independent spending should lead to the abolition of contribution limits. On the other, some say the Constitution should be amended to let Congress limit spending. This Janus-like choice is based on the view that quasi-bribery is the key form of corruption.

Even if we grant the questionable empirical claim that equates independent spending with contributions from the quasi-bribery perspective, the equivalency idea fails to address the quasi-extortion side of the issue. From this perspective, the contribution is a unique form of transaction because office-holders ask

directly for help. And if they or their agents raise unlimited soft money for the parties, this creates functionally the same issues as if they raised the money for their own campaigns. The office-holder's ability to ask for help directly is what creates the potential for shakedowns. The call for a repeal of all limits is often made in the name of liberty for donors, but the liberty in question would empower public officials to make donors less free. Constraining the ability to ask does not solve all of the world's problems, but it does deal directly and effectively with this one.

Finally, some have suggested that a ban on soft money is not wise because of other problems it would raise for the parties. (See comments before the law was enacted, *La Raja* 2003; and see the *La Raja* article in this issue.) In the first two elections after BCRA, political parties managed, with some unevenness across committees, to replace most of the money they lost from large contributions, by raising much more from small donors. This let them replace their soft-money spending with unlimited independent expenditures funded by hard money. I have supported letting the parties make unlimited coordinated expenditures, now that the contribution limits are under control, but that is a separate issue.

Of course, we do not know how the national party committees will fare in 2008 in the face of massive fundraising by the presidential candidates, particularly if the nominees opt out of public funding for the general election. But even if party receipts do drop, I would argue that the power of office-holders to pressure donors would justify contribution limits. One can disagree with that assessment because one has a different level of concern about, or feeling of repugnance toward, the underlying behavior. But that disagreement is not about whether contribution limits work. They work for this issue even if not for others, and even if they do not cover all forms of pressure that office-holders have been known to use. So the disagreement is about whether one considers the issue important enough to warrant a prophylactic remedy. I do.

### **Electioneering, Independent Spending and the Limits of Limits**

McCain-Feingold's electioneering provisions have been more problematic. Their main purpose was to prohibit corporate and labor funding for certain communications. However, the communications to be covered were circumscribed in the law, and the Supreme Court later constricted the law's effect further in an important 2007 decision. Along a parallel track, other parts of the 1974 FECA tried to restrict the effect of mega-donors by imposing a \$5,000 limit on individual contributions to non-party political committees. This has had the effect of channeling or diverting the behavior of politically committed rich individuals, but there is little evidence that it has reduced their participation.

*Electioneering:* As is well known, BCRA defined “electioneering” as including only broadcast, cable, or satellite communications, distributed to targeted audiences, naming or bearing the likeness of a candidate, within sixty days of a general election or thirty days of a primary. The sponsors acknowledged that any bright-line definition would necessarily be either over-inclusive or under-inclusive but argued (based on research interpreted differently by the law’s opponents) that this definition reasonably fit the contours of contemporary political speech and gave potential advertisers clear boundary lines to guide future behavior. After this definition, the law imposed two sets of regulations:

(1) Disclosure was required from any person who spent \$10,000 or more on electioneering. This included a public report of all spending as well as of all contributions above \$1,000.

(2) Labor unions and corporations (both for-profit and nonprofit) were prohibited from directly or indirectly making electioneering expenditures – just as they had already been prohibited under existing law from contributing to candidates and making independent expenditures. Because the law covered indirect as well as direct spending, it also prohibited electioneering by organizations that accepted contributions from corporations and labor unions, unless those organizations created separate, segregated funds supported entirely by contributions from individuals.

The Supreme Court upheld the electioneering provisions against a facial challenge by a 5-4 vote in the case of *McConnell v. FEC* (2003), with Justice Sandra Day O’Connor in the majority. But a new 5-4 majority four years later substantially constrained its application in *FEC v. Wisconsin Right to Life, Inc.* (2007), with Chief Justice Roberts and Justice Alito joining the three remaining dissenters from *McConnell*. In *Wisconsin Right to Life (WRTL)*, the Court held that the law’s electioneering rules could be interpreted to prohibit spending by a corporation *only* for an ad that is the “functional equivalent of express advocacy,” one “susceptible of no reasonable interpretation other than as an appeal to vote for or vote against a specific candidate.” While the exact application of these boundaries has been subject to substantial debate among lawyers, there can be little doubt that it expands the field for candidate-specific advertising supported by corporations and labor unions (see the Briffault article in this issue).

*Independent Spending, Associations, 527s, and Nonprofits:* Since 2002, individual mega-donors have been looking around for their best election vehicles under the new law. Before BCRA, rich donors could give unlimited contributions to parties or to advocacy organizations, to be spent on issue ads that fell outside of *Buckley’s* stringent, “express advocacy” definition of FECA’s coverage. After

BCRA, many began looking for alternatives. At first, they rushed toward “527” committees, which get that label from the section of the Internal Revenue Code for political entities (Weissman and Hassan 2006). Subsequently, the FEC fined some of the largest 527s for crossing a line that made them into a political committee and said that contributions to a political committee were subject to limits. For the future, these FEC decisions are likely to deter some 527 activity. Perhaps more consequentially, the decisions will provide a template for other 527s about how not to cross the FEC's line. Many rich donors are likely therefore to continue supporting some 527s, while others will gravitate toward other forms of nonprofit entities (Weissman and Ryan 2006, Weissman and Ryan 2007; see also the Clark Muntean article in this issue).

In a related development, a new group called SpeechNow.org has mounted a legal challenge to the \$5,000 contribution limit for individuals who give to certain political committees (see the Briffault article in this issue). SpeechNow wants to be exempt from political committee status, and free to accept unlimited contributions from individuals, as long as it only makes independent expenditures, accepts no corporate or labor money, and agrees to disclose. According to SpeechNow, individuals should be able to exercise the same right collectively as the Supreme Court offers them a right to do when they act by themselves. District Court briefs in this case are being filed as this article is being written. SpeechNow presents a good *prima facie* case; both sides have filed strong legal arguments; and there is at least a significant possibility that SpeechNow will win. If so, that would open up still other options for mega-donors, including the ability to fund express advocacy messages.

Some of the boundary lines just described may be affected by further interpretations or enforcement actions by the IRS or FEC. But the broader picture is not likely to change. The law's limits for various forms of independent spending are porous now and are likely to remain so. The provisions could conceivably be tightened, although Congress clearly will not have the political will to do so any time soon. But ultimately, the problem goes beyond drafting or enforcement to the underlying constitutional issues. Any constitutionally permissible line restricting spending on one side of the line is bound to leave significant room on the other side for speech or activity that can influence election results.

Wherever that line may fall, this space will be found and exploited by individuals and powerful organizations determined to do so. The line's exact location will have an impact on specific actors and elections (see, for example, the predictions and findings about differential organizational impact in Boatright et al. 2003 and 2006.) Nevertheless, I would argue that there is less to be learned from continuing to discuss the line's precise location than from turning our

attention to a larger set of questions. Aside from corruption, why else should anyone care about campaign finance policy?

### Turning the Page

Corruption and the appearance of corruption have dominated the federal debate on campaign finance largely because the *Buckley* Court said that these were the only constitutionally permissible bases for limiting contributions (Persily and Lammie 2004). But though the corruption rationale may be central to the *legal* debate, there is no good reason to make it equally central to a policy discussion that can and should rest on broader concerns. Among political scientists, campaign finance policy has traditionally been discussed in the name of many different types of objectives:

- (1) Corruption or the appearance of corruption is one. Yet others include:
- (2) Electoral competition, or at least contestation;
- (3) Candidate emergence, including the types of people who run for office;
- (4) Greater equality and participation of citizens in the political process;
- (5) And finally, operating through some of all of the above, affecting how:
  - (a) candidates campaign; (b) citizens learn during a campaign;
  - (c) candidates, office-holders, and citizens relate to each other;
  - (d) the institutions of government operate; and—at the furthest stretch down the causal chain—perhaps affecting (e) the governmental agenda or (f) the policies that governments might adopt.

The Supreme Court, as noted, has recognized only the first as a justification for limits. But the Court has never questioned a legislature's ability to pursue such other goals as competition or civic equality through methods that do *not* limit speech (or through ones that involve limits accepted voluntarily in return for a benefit). The key *policy* questions are: Can these goals in fact be enhanced through policy interventions on campaign finance? With what consequences? And how do the various proposed methods compare?

Political scientists have already begun significant research on the relationships between campaign finance law and a few of these goals, but much remains to be done. There has been a lot of work – too much to reference here – on competition in federal elections. But one unavoidable problem with all federal research is the

difficulty of introducing variation to see the effect of differing campaign finance laws. A still modest literature on state elections helps with this issue, but is not yet producing clear results. (For a good literature review, see Reichl 2006.)

For example, Stratmann and Aparicio-Castillo (2006) find an association between lower contribution limits and competition in state Assembly elections; Lott disputes their methodology and finds no such relationship in state Senate elections (Lott 2006); and the original authors in turn dispute Lott over methods (Stratmann and Aparicio-Castillo 2007). Meanwhile, Goidel and Gross (2003) fail to find a statistically significant relationship between contribution limits and competition in gubernatorial elections, while Hamm and Hogan find contribution limits affecting the number of state legislative districts left completely uncontested (Hamm and Hogan 2006).

Research on the impact of public funding has been even less determinate, partly because many of the older public funding programs (like the U.S. presidential system) have not been modified adequately to keep candidates participating, while the newer, full public funding systems at the state and local level are just beginning to attract serious research. One forthcoming article will be worthy of attention in this regard. It has always been difficult to distinguish the potential impact of a modest public subsidy from the effects of spending limits because the two typically go together in real-world programs. Panagopoulos and Green (2008) have looked at an in-kind subsidy (not typical of the ones in effect in most states) by conducting an experiment.

They selected matched pairs of cities in which incumbents were running against challengers in 2005 and 2006. One of each pair was chosen randomly for treatment and the other was a control city. In the treatment cities, nonpartisan radio ads were broadcast stating the names of the mayoral candidates, informing listeners of the date of the election, and urging citizens to vote. When compared to control cities, the analysis showed the treatment to have had a statistically significant effect on the challengers' shares of the vote (Panagopoulos and Green 2008). Interestingly for the perspective in this paper, the policy tested was one that introduced no new limits or restrictions into the system.

Finally, CFI is part of a team that has laid a 2006 baseline for a broad pre- and post-reform study of Connecticut's system of full public funding, set to go into operation in 2008 (see Hamm and Hogan 2007, La Raja 2007, Mayer and Werner 2007, Malbin et al 2007). Assuming the project receives support, data collection would occur during the 2008 elections with analysis and reports to follow.

### **Equality and Participation**

Aside from competition, little or no definitive research has been conducted on the list of affirmative goals associated rhetorically with campaign finance policy.

The one most central to the current research of the Campaign Finance Institute has been that of promoting equality, through participation by small donors and volunteers. It has long been known that campaign contributors tend to have much higher than average incomes and are not representative of the general population demographically. Previous research on this point is summarized in Clyde Wilcox's contribution to this symposium.

Yet to the extent this should be a matter of policy concern, the arguments made earlier suggest that what is needed probably has less to do with squeezing down the top than building up the bottom. The presence or absence of contribution limits may be an incentive affecting individual decisions by small donors to give, by helping to persuade them that their voices still matter. But no amount of constitutionally permissible restrictions can effectively remove determined rich people from the system, and no amount of restriction by itself can mobilize the inactive to act.

With nearly half of all people not even voting, and with our general knowledge about the difficulty of mobilizing the unmobilized, is it plausible to think about awakening enough participation among small donors to make a major dent in the system? The answer is, maybe. We know that a relatively small number of people contribute today. (About 8% say they do in surveys, but the numbers who show up in disclosure files suggest the survey results may be much too high.) But we also know that about one-third of the population is engaged in politics in some way beyond voting, and that this number climbs to half of the population if you add those who are engaged in the civic arena (Zukin, et al 2006).

We also know that the most effective forms of fundraising among small donors today interweave on- and off-line social networking with volunteering and giving to bring new people into the system (Trippi 2004, Graf et al. 2006). If one could persuade ten percent of the voting age population to make a small contribution, that could in turn have a huge impact in the political system.<sup>1</sup> The payoff for the system is not only about dollars. If giving and doing in fact are interwoven for small donors, the payoff should be seen in a higher level of participation across the spectrum of political activities beyond voting.

Are those kinds of numbers remotely attainable? Two of the essays in this symposium (by Hasen and Wilcox) point to the remarkable growth in Internet giving to the 2008 presidential candidates as a hopeful sign for the system. CFI estimates that Barack Obama had as many small donors through February as the previous record holders (George W. Bush and John Kerry) had months later in the 2004 cycle. In addition, the national party committees successfully shifted from a

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<sup>1</sup> CFI estimates that the average small donor to presidential campaigns gives about \$75. If 10% of the voting age population gave that much, it would total \$1.65 billion. One estimate for all spending in federal elections in 2004 was \$4.27 billion (Patterson 2006).

large-donor fundraising base to relying much more on small donors after BCRA. Small contributions under \$200 accounted for only 24% of the money raised by the national party committees in 1999-2002, the last two elections before BCRA. In contrast, the parties raised 48% of their funds from small donors in 2003-2006 (Malbin and Cain 2007).

On the other hand, fundraising sources moved in the opposite direction for congressional elections, partly because BCRA doubled the maximum contribution from individuals to candidates. Candidates for Congress raised 20% of their funds in unitemized contributions of \$200 or less from 1999-2002, compared to only 13% from 2003-2006 (Malbin and Cain 2007). The Internet has yet to penetrate congressional campaign management deeply. Some of this may stem from the complacency of safe incumbents. But the medium also may not be a perfect match for the office. The Internet knows no boundaries, and fundraising on the Internet has been most successful so far in races that can appeal to a national constituency. There are ways to prospect for donors and locate them geographically through the Internet, but the expense and organizational needs are still daunting for a smaller campaign. As a result, we suspect that something more, in the form of a policy incentive, may be needed to bring donors and volunteers into the system for most elections.

I say "we suspect" because we do not really know much about small donors. Federal surveys in the past have focused on donors whose names appeared in FEC disclosure files. Except for publicly funded presidential candidates in 2000, that means the surveys have concentrated on the small fraction of the donor pool who gave \$200 or more (who made up about one-eighth of the presidential donors in 2000, CFI 2003). But states typically have much lower disclosure thresholds, permitting survey researchers to reach further down into state donor pools. This simple difference between federal and state disclosure laws gave us an opportunity to launch a project that would ask the following questions:

- How are small donors different from large donors?
- What motivates donors (both small and large) to give?
- Can public policy make a significant difference to small-donor participation?
- Finally, and most interesting to us, what is the relationship between giving and doing? Does giving become a gateway to volunteering, and vice versa?

To get at these questions, we initially chose six states for intensive analysis of campaign finance data and for a series of surveys. The states included three with programs whose explicit goals, among others, were to stimulate participation from among those who might not have been active without the state's intervention. The

three program states were Minnesota (which provides a \$50 rebate to donors for contributions to publicly funded candidates), Ohio (which gives a 100% tax credit of up to \$50 for single filers), and Arizona (which has a voluntary program of full public funding after candidates raise a threshold amount in \$5 qualifying contributions.)

The paired states were chosen for their similarities along a number of demographic and participation measures, as well as for the compatibility of their election cycles and laws on campaign finance disclosure. They were Colorado (for Arizona), Iowa (for Minnesota), and Pennsylvania (for Ohio). Connecticut was added as a seventh state as part of the baseline study mentioned earlier. In the six paired states, we ran a survey of state legislative candidates immediately after the election. This was followed by parallel surveys in all seven states of a sample of non-donors (administered by Knowledge Networks), and samples of the donors to gubernatorial and legislative candidates, stratified to give adequate numbers in each state of small, medium, and large donors. The donor surveys in Arizona necessarily had to be restricted to those who give to candidates who did *not* participate in the state's full public funding system (since these by definition were the only private donors in the state). They were supplemented by an additional sample of those in Arizona who gave \$5 qualifying contributions to candidates who accepted public funding.

The study is ongoing. We expect to have more to report in coming months, but the preliminary results are intriguing. The first surveys completed were of the candidates. We learned from these that the candidates did consider their small donors to be a valuable source of volunteers, and they felt that a fairly high percentage of their small donors did volunteer, more so than their major donors (Malbin et al. 2007). Even more interesting for policy is what we are learning about how donor incentive policies work on the candidates.

We asked the candidates in Minnesota and Ohio whether they agreed that they had asked less affluent people to give because of the availability of the credit or rebate. Table 1 shows the dramatic results: very high proportions of incumbents and non-incumbents in Minnesota and Ohio agreed with the statement. The numbers are lower in Ohio than Minnesota, probably because the tax credit is available only on the long tax-return form in Ohio. In addition, the general level of voter knowledge about the credit in Ohio is low, and for that reason, use is typically lower among non-incumbents (see Boatright and Malbin 2005). Even so, the Ohio numbers are impressive.

Of course, these are the candidates speaking. What they have to say is important because our previous research has shown that candidates are the best mobilizers of donors, and their beliefs about donors will dictate their campaign strategies (Boatright and Malbin 2005). But the best primary sources for donor motivations are still the donors themselves. Based on early analysis—and this is

preliminary—the donor and non-donor surveys back up what we learned from the candidates. For example, it looks as if small donors are different demographically from large ones. Table 2 focuses on their income levels, and there are no surprises here. Almost half of the non-donors in our states have less than a \$40,000 household income per year, small and mid-range donors cluster in the middle-income ranges, and large donors (defined in our survey as those who gave \$500 or more cumulatively) typically have household incomes above \$250,000.

**Table 1. Did the candidate ask less affluent people because of the refund/tax credit?**

	Minnesota		Ohio	
	Incumbents (%)	Nonincumbents (%)	Incumbents (%)	Nonincumbents (%)
Strongly agree	48.6	61.0	22.2	33.3
Agree somewhat	32.4	26.8	50.0	16.7
Neither agree nor disagree	16.2	3.7	11.1	8.3
Disagree somewhat	0.0	0.0	0.0	25.0
Strongly disagree	2.7	8.5	16.7	16.7
	(n = 37)	(n = 82)	(n = 18)	(n = 24)

*Question text: People have different opinions about Minnesota's refund for political contributions. Please indicate whether you agree or disagree with each of the following statements. "Because of the refund, I asked for contributions from less affluent people who probably won't contribute if they can't receive the refund." (For Ohio candidates, the survey replaced the word "refund" with "tax credit." Source: CFI Survey of 2006 State Legislative Candidates, unweighted data.)*

More interesting, perhaps, is what we are beginning to learn about the issue preferences and motivations of donors. We do not see sharp differences in the issue preferences of small versus large donors. This parallels a finding reported by Wilcox in this symposium about Internet donors. A similar finding appeared in a survey of 2004 presidential donors conducted by the Institute for Politics, Democracy, and the Internet, in collaboration with CFI (Graf, et al. 2006). While previous work on direct mail had led us to expect small donors to be more extreme than large donors in their issue positions, this was not true in the 2004 surveys of presidential donors, nor does it seem to be true in our state surveys. But despite the similarities in their issue preferences, the two sets of donors seem to have different *motivations* for giving. While small and large donors both report being motivated by general or universalistic concerns, such as the state's economy and social issues, the large donors far more often say they are motivated to give because of a concern for their *own* business or industry.

Table 2: Household Income of Donors to Candidates for Governor and State Legislature in 2006

	Arizona, Colorado, Connecticut, Iowa, Ohio, Pennsylvania				Minnesota (Separated because of disclosure threshold)			
	Non- donors (%)	Small donors (%)	Medium donors (%)	Large donors (%)	Non- donors (%)	Low mid- tier donors (%)	High mid- tier donors (%)	Large donors (%)
<i>Household Income in 2006</i>								
Less than \$40,000	48.3	11.2	4.9	0.8	44.8	6.1	6.5	0.7
\$40,000 to < \$75,000	31.6	25.4	13.9	5.8	33.8	19.3	5.9	3.4
\$75,000 to < \$250,000	19.5	55.5	60.0	48.9	21.5	54.0	53.2	32.4
\$250,000 to < \$500,000	0.4	6.1	13.7	26.6	0.0	15.2	23.1	27.0
\$500,000 or more	0.2	1.7	7.6	17.9	0.0	5.4	11.3	36.5
	<i>n</i> = 2568	<i>n</i> = 2024	<i>N</i> = 1112	<i>n</i> = 744	<i>n</i> = 391	<i>n</i> = 409	<i>n</i> = 186	<i>n</i> = 148

Source: Campaign Finance Institute Survey on Participation in 2006 State Elections (weighted data).

Note: Percentages may not add up to 100 due to rounding.

Definitions: Small: \$100 or less, combined total, all major party cand. Medium: \$101-499 combined. Large: \$500 or More combined. In Minnesota, mandatory disclosure begins at \$101; Middle group was divided into Low mid-tier: \$101-150 and High mid-tier: 151-500.

We are also beginning to see some program effects in the study. Among people who knew about the rebate or tax credit in Minnesota and Ohio, the rebate or tax credit was substantially more important for lower- than upper-income donors. In addition, the program was *not* simply subsidizing contributions that would have been given anyway. It was bringing not only new money but new people, less affluent people, into the system. I should caution, however, that these results are still preliminary, and there will be more to report in coming months.

So we end by reminding readers that the work is a long way from finished. That is an appropriate way to conclude. Political scientists have always been interested in a broader research agenda than one dominated by restrictions and corruption. Whatever our disagreements, we typically have been interested in this subject for reasons that go beyond wanting to deter bad behavior, or wanting to critique reform proposals we see as counterproductive. We typically are sustained because we see a connection to positive goals, to a vision of what makes for a healthy democracy. Let us turn the page and get on with the job.

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## **The Effects of Independent Expenditures in Senate Elections**

Richard N. Engstrom and Christopher Kenny

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## The Effects of Independent Expenditures in Senate Elections

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Independent expenditures are designed to influence the preferences and behavior of the electorate. Like candidate expenditures, the money is generally spent trying to persuade voters to act a certain way on election day. Because of the continuous nature of the spending, the sophisticated techniques of influence it buys, and the absence of accountability, there is good reason to believe these expenditures are important determinants of the vote. Expenditures for the incumbent and against the challenger should help the incumbent, and expenditures for the challenger and against the incumbent should help the challenger. Using individual-level survey data, we develop a model of Senate vote choice that considers these independent expenditures as both exogenous and endogenous to the process. We then estimate this model in the 1984, 1988, 1990, 1992, and 1996 elections. We find that independent expenditures can significantly affect vote choice, especially when modeled as endogenous to the process. These effects depend, however, on the electoral context, the type of independent spending, and the type of candidate. In general, our results seem roughly to conform to the conventionally accepted account of the 20-year history of independent expenditures in U.S. elections.

Since the late 1970s, several politically motivated groups have launched “independent” electoral campaigns in support of, or in opposition to, candidates running for federal office. These campaigns are fully financed and coordinated by the groups, and thus are exempt from federal campaign finance laws limiting the amount of money groups can contribute to political campaigns. The history of these political expenditures is curious: initially independent expenditures seemed to be a potent political weapon indeed, but the early successes were never repeated. Spending on independent campaigns, nonetheless, continued to increase during the 1980s and 1990s, although somewhat erratically. Also, the character of the groups that chose to launch campaigns changed—the fiercely ideological conservative groups that made up over half of all independent

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spending in the early 1980s have been replaced by the more pragmatic and bipartisan trade associations and single-issue PACs. Finally, independent expenditures that at first seemed to be the perfect tool for negative campaigning, became an outlet of groups' advocacy more than its expressed opposition.

Such an erratic history makes the nature of independent spending difficult to grasp. Nonetheless, campaign finance reformers see independent expenditures as a "loophole" in the system of campaign finance regulation that must be closed (Novak and Cobb 1987). Others believe that independent expenditures contribute much needed political expression to the election process, and are therefore beneficial (Buckley 1981). Purging the election process of independent expenditures makes little sense if we know nothing of how they affect the electoral process. We must, therefore, understand the consequences independent campaigns have on the choices voters make before we undertake either endorsing or reforming the system.

The purpose of this article is to clarify the relationship between independent spending and the behavior of voters. We hypothesize that independent expenditures significantly affect voter preferences. Several observations support the hypothesis. First, interest groups, and PACs specifically, have spent and continue to spend a great deal of money conducting independent campaigns. This continued dedication implies that some return is being perceived by those who seek to influence elections. It is possible that interest groups do not always see winning elections as the only return on independent campaign activity. Several PAC officials have indicated that simply creating obstacles to a politically hostile incumbent's reelection attempts is sometimes the objective in their independent campaigns. Rather than expect to unseat some incumbents, PACs sometimes intend to "send a message" to other candidates that the PAC is willing to wage a large and expensive campaign against those who cross them (Cohen 1986). Securing a victory is not necessary, and the PAC gets its message across simply by running a campaign. However, independent campaigns send a message only on the assumption that the independent campaign can and will affect voters.

Second, the campaign techniques independent campaigners utilize are sophisticated and likely to be effective. Polling, product testing, and professional production work are all part of the modern independent campaign. Reports indicate that PACs carefully screen races to find those most likely to be influenced by additional campaign spending and that they run batteries of surveys to determine advertising strategies that would be most effective. Many PACs that run independent campaigns are well financed and have the latest gadgets designed to influence voters and win elections.

Third, there are advantages independent spenders have over official campaign organizations that may make their expenditures more effective. In what is perhaps the most often quoted phrase in the literature devoting space to independent spending, National Conservative Political Action Committee Chairman

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The Effects of Independent Expenditures in Senate Elections

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Terry Dolan says: "A group like ours can lie through its teeth, and the candidate it helps stays clean."<sup>1</sup> Independent spending, it seems, has all the advantages enjoyed by those who spend money on campaigns, and is free from the hindrance of accountability. One can reasonably expect that independent expenditures do indeed affect vote choice.

#### BUCKLEY AND THE RISE OF INDEPENDENT EXPENDITURES

The costs of campaigning for federal office rose dramatically in the 1960s. In an attempt to gain control over the increasing influence of money in American politics, Congress passed the Federal Election Campaign Act of 1971, followed by revisions to the law in 1974. The Act placed spending limits on campaign activity, established the Federal Election Commission, and created the system of publicly financed presidential elections. The 1976 case *Buckley v. Valeo* brought to the Court concerns over the constitutionality of several of the provisions in the Federal Election Campaign Act as amended in 1974. The result of the *Buckley* decision is a campaign finance law that limits political contributions and spending when official campaigns are involved, but that allows individuals and groups to express political opinions without limits.

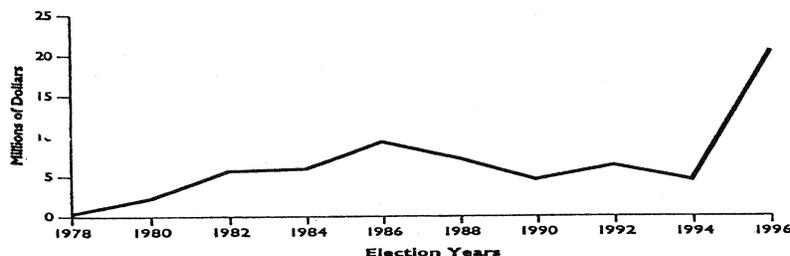
Since 1976, independent spending in congressional races has shown a general upward trend, as shown in Figure 1. In 1978 the National Conservative Political Action Committee (NCPAC) targeted Senator Dick Clark of Iowa, who lost his bid for reelection. In 1980 the same group targeted six incumbent senators in independent campaigns, four of whom lost their races that year. NCPAC never again emerged as a potent force, perhaps due to the poor Republican showing in the 1982 elections; but other groups began launching independent campaigns of their own. Trade associations such as the American Medical Association PAC and the Realtors' PAC substantially increased their independent activity during the 1980s. AMPAC's independent spending rose from \$450,000 in 1984 to over \$1.5 million in 1986. The Auto Dealers and Drivers for Free Trade Political Action Committee substantially increased their independent spending from nothing in 1984 to over \$800,000 in 1986. As trade and professional association PACs entered the independent campaigning business they adopted different strategies from those previously used by ideological PACs. They were much more likely to support candidates than oppose them. And their money was more likely to be spent supporting incumbents than challengers.

Independent campaigns are not an artifact of the political conditions of the 1980s. Spending continues to increase and the participation of trade associations ensures that a steady stream of funds will be available to those who participate in this sort of political campaigning. The 1996 independent campaigns launched

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<sup>1</sup> MacPherson, Myra. "The New Right Brigade." *Washington Post*, 10 Aug. 1980.

≡ FIGURE 1  
INDEPENDENT EXPENDITURES IN CONGRESSIONAL ELECTIONS, 1978-1996



Source: Maisel 1999: page 177.

by the AFL-CIO against Republican freshmen show that independent campaigning is an integral part of post-Buckley politics.

#### THE INFLUENCE OF INDEPENDENT EXPENDITURES ON ELECTORAL OUTCOMES

Campaigns exploiting the independent spending "loophole" have been implemented by numerous Political Action Committees. The spending, however, has generated almost no scholarly research regarding the role that this money plays in the electoral process. The question of how independent spending affects electoral outcomes is similar to the question of how campaign spending by the candidates themselves affect elections, which has been a subject of prolonged debate for well over a decade (Jacobson 1978, 1990; Green and Krasno 1988, 1990; Kenny and McBurnett 1994). Researchers have not yet attempted to determine whether independent spending benefits or hinders political candidates. Efforts to analyze independent expenditures have been limited to the reporting of the total amounts of money spent for and against candidates, and the total amounts spent by particular types of PACs and individuals. Observations of these patterns are certainly helpful in understanding the nature of independent campaigning in America, but they do not provide a very clear picture of what this spending contributes to the election process.

Independent expenditures draw the most attention in works concerned with campaign finance reform. In this context, independent spending is seen as a problem that campaign reformers must correct. Independent expenditures represent special interests' uncontrolled influence over both legislators and elections. Often the sums of money spent independently are all that are reported; large sums apparently being the necessary evidence of corruption and influence (Mankinson 1990; Novak 1987). The fact that millions of dollars are spent without restriction or accountability is enough to disturb the reform minded.

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The Effects of Independent Expenditures in Senate Elections

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However, dollars spent are not an accurate index of the effect that spending has on the electoral process. Spending totals tell us nothing of how, or to what extent, independent spending works; that is, whether or not independent expenditures influence voters' decisions on election day. While it is not infrequent for writers endorsing reforms in campaign finance laws to mention independent expenditures as one of many examples of the current system's corruption, it is rare to find independent expenditures figuring prominently in more rigorous examinations of the role money plays in the political process.

Latus (1984) attempts to explain ideological PACs' unique behavior. She reports that ideological PACs and independent expenditures are "well suited," because ideological PACs are built on fund raising, grass roots organizing and media expertise, conditions favorable for a successful independent campaign. Latus sees independent spending as a threat to the polity because of its negativity in the hands of ideological PACs. Though her work is an important contribution to the understanding of independent expenditures, many of her observations do not apply to the political world after 1982. Ideological PACs and independent expenditures hardly seem as "well suited" as they did just a decade ago now that non-ideological PACs have begun to embrace this form of campaigning. Also, the negativity that concerns Latus is no longer standard. Today's independent campaigning is much less negative, given the entry of non-ideological groups.

A theoretical examination of independent expenditures is part of a study by Malbin (1985: 80). He considers independent expenditures to be important because they are often "The first method for getting around limits that crosses most people's minds. . . ." He is pessimistic about measuring the effects of independent expenditures: "there is no way to begin estimating how much, or what the expenditures might mean politically" (1985:81). The problem, according to Malbin, stems from the fact that much of the money dedicated to independent campaigning is spent on activities other than campaigning. For instance: Non-connected PACs cover (overhead) costs themselves and declare them as part of the independent campaign. Also, unconnected PACs "spend" some of the money raising new funds—which perhaps further dilutes the dollars' effect on swaying voters. Connected PACs, on the other hand, have "parent" lobbying, businesses, or other organizations to cover many of these costs. These complications lead Malbin to the conclusion that the dollar figures available tell us very little about the nature of independent expenditures.

However, the difficulties Malbin finds so overwhelming do not seem that troublesome. The same lack of uniformity exists in official campaign spending. Incumbents, much like connected Political Action Committees, have overhead resources and staff needs provided for them, while challengers must spend campaign funds acquiring office space and paying staff to arrange speeches and meetings. Also worth mentioning are the other perquisites sitting members of Congress

receive such as franked mail and travel allowances, factors that undoubtedly enhance their prospects for reelection. The problems Malbin discusses are problems with the measurement of all campaign spending, not just independent campaign spending. Though these problems are real, they do not prevent researchers from measuring spending's effect on voters.

Sabato (1989: 20) worries about the cultural implications of independent spending, and calls independent expenditures "the least accountable form of campaign spending." Washington based lobbies maintain only "minimal contact" between the contributors and the PAC officials who make spending decisions; leaving them "unaccountable to their own donors in addition to the voters at large." Sabato also laments "The frequent use of negative, even vicious, messages and tactics." Such behavior, Sabato argues, "makes any sort of civility in politics much more difficult to achieve" (1989: 70).

Sorauf (1988: 111) notes that "Independent spending is only a small part of total PAC spending." Sorauf also recognizes the changes that have taken place since ideological PACs dominated independent spending, but his discussion of independent expenditures stops short of an inquiry into the implications of the changes he detects.

Nelson does not assume that the large amounts of money spent independently threaten the prospects of a healthy democracy. She notes that "NCPAC's use of independent expenditures in 1978 and 1980 is the only example of unequivocal success in using independent expenditures to elect or defeat a candidate" (Nelson 1990: 57). She also points out that independent spending is relatively minor when compared to the huge sums of money involved in official congressional campaigning. She concludes that "If the status quo remains, independent expenditures will remain a fairly benign form of campaign spending" (1990: 65). She does not, however, show that independent expenditures are as ineffective as she claims.

From this research several observations have been made: independent expenditures are usually pro-Republican and anti-Democrat, they are concentrated on presidential and senate races, and they vary widely in amounts spent. Also, non-connected PACs seemed to be the most frequent independent spenders, until 1984 and 1986 when connected PACs began spending large amounts. These observations are indeed important in understanding the role of independent expenditures in the electoral process. However, they do not address the question of independent expenditures' effect in influencing vote choice. Those who conclude that independent expenditures are benign, as well as those who conclude that independent expenditures jeopardize the integrity of the democratic process, argue without the most basic information. It is unknown whether or not independent expenditures influence voters. No previous empirical work has been done to determine the link between independent spending and the voter that spending is designed to influence.

#### A MODEL OF VOTE CHOICE AND INDEPENDENT SPENDING

This study examines the influence of independent expenditures by employing an individual-level analysis of congressional vote choice in Senate elections. We focus on Senate rather than House elections because very little money is spent independently in House races. We construct an individual-level model because too few contested Senate races exist in any one election year to allow for reliable estimation of an aggregate model.

An otherwise straightforward research design is complicated by the possibility that independent expenditures are endogenous rather than exogenous variables. Independent spending is done strategically; the location and amount of this spending depends on certain characteristics of the election, such as the vulnerability of the incumbent and the quality of the challenger. Independent spending is thus almost certainly endogenous to the process, and any estimation of its effects must take this endogeneity into consideration. Our strategy is to estimate an independent expenditure individual-level Senate vote model in two ways. The first considers independent expenditures as exogenous to the process and thus includes the actual expenditure terms in the model as independent variables. The second estimation takes into consideration the possible endogeneity of independent expenditures by constructing instrumental variables that are then used to estimate the structural parameters in the vote equation.

Independent expenditures can be for or against either of the two candidates in a race. Accordingly, we include four independent expenditure variables in the estimations. The four instrumental variables are created by regressing each of the four independent spending terms on a set of variables that include challenger quality, challenger party, challenger party strength, incumbent opposition in the primary, challenger opposition in the primary, number of incumbent terms, and seat safety. The predicted values from these reduced form estimations are then used in the second stage vote equations. Notice that we are not specifying a simultaneous system of equations (where individual-level vote influences independent spending), but rather, a system that is perhaps best described as hierarchical (Hanushek and Jackson 1977: 225). In such a system, the error terms are likely to be correlated across equations leading to biased and inconsistent parameter estimates for the structural equations (Hanushek and Jackson 1977: 229-230). The most common technique for estimating equations such as these is to use the instrumental variables approach described above (Ibid.: 234-36). The Federal Election Commission divides independent expenditures into three distinct categories. Communication costs include funds spent by corporations, labor unions, and other membership organizations to communicate candidate preferences to members. Spending by PACs on such things as media ads and get-out-the-vote drives constitutes the second category. Independent spending by wealthy individuals makes up the third category. In the analyses that follow we concentrate on PAC spending, since these expenditures make up the majority of

independent expenditures.<sup>2</sup> These variables are described in Appendix A, and the results of this estimation are shown in Appendix B. As can be seen from these tables, the independent variables do a fairly decent job of explaining variation in the independent expenditure terms. Most of the coefficients are significant and the R<sup>2</sup>s are generally reasonable. The predicted values from these estimations will be used as instrumental variables in some of the analyses that follow.

The data used in the analyses that follow are gathered from several different sources. The basic individual-level voting and other information utilized in the analyses are from the *1984 and 1996 American National Election Study (ANES)* and the *1988-1992 Senate Election Study*. Official campaign spending and independent spending figures are obtained from the *Federal Election Commission's Report on Financial Activity: Final Report* and are added to the survey data. Other variables such as the number of opponents in primaries, candidate party, and level of support for the challenger's party in the previous election are gathered from data in *America Votes*. The number of terms served by the incumbent was coded from information in *The Almanac of American Politics*. Finally, seat safety and challenger quality are based on information provided in *Congressional Quarterly Weekly Report: Election Special* from each relevant year (an issue in October generally).

## RESULTS

The main questions we address ask whether independent expenditure campaigns have statistically significant effects on vote choice in Senate elections and whether considering this form of spending as endogenous to the process improves the precision of these estimates. In addition, we seek to understand whether there is a difference in effect between positive and negative campaigns. We are also concerned with the question of whether incumbents and challengers benefit equally from this sort of spending. Finally, given the changing nature and uneven magnitude of these expenditures (see Figure 1), we are interested in the question of whether these effects vary from one election to the next.

Table 1 shows the results when the effects of PAC spending on vote choice are considered for the 1984 Senate elections.<sup>3</sup> The coding of these variables is described in Appendix A. Note that the candidate spending terms as well as the independent expenditure terms to be included shortly are corrected for differences

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<sup>2</sup> FEC Reports of Financial Activity: 1983-84 Final Report. U.S. Senate and House Campaigns.

<sup>3</sup> The small sample size is due primarily to the fact that we are investigating Senate races where an incumbent is running. More specifically, three factors contribute to this reduction in sample size. First, many respondents live in states where no Senate race was taking place. Second, additional respondents are lost because the Senate race in their state was for an open seat. Finally, of the remaining respondents, many have missing values on one or more of the variables used, particularly the dependent vote variable. A comparison of this subsample with the sample as a whole reveals very similar distributions of responses for the variables used in the analysis.

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The Effects of Independent Expenditures in Senate Elections

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≡ TABLE 1

LOGIT ESTIMATION OF RESPONDENT VOTE FOR SENATE CHALLENGER (1984) WITH INDEPENDENT EXPENDITURES (POLITICAL ACTION COMMITTEES) INCLUDED AS ACTUAL (EXOGENOUS) VARIABLES AND INSTRUMENTAL (ENDOGENOUS) VARIABLES FROM TABLE B2. T-VALUES ARE IN PARENTHESES

Independent Variables	Exogenous Independent Expenditures	Endogenous Independent Expenditures
Intercept	-2.78 (8.2)	-20.24 (3.7)
R is Same Party as Challenger	2.13 (7.5)	2.03 (7.2)
Reagan Approval	-0.39 (3.5)	-0.38 (3.5)
Reagan Approval × R is Same Party as Challenger	0.71 (4.1)	0.74 (4.3)
Senate Incumbent Expenditures	-0.0000011 (0.5)	-0.0000074 (3.8)
Senate Challenger Expenditures	0.0000091 (1.7)	0.000015 (4.0)
IEs Against Incumbent	0.00077 (1.6)	0.0018 (3.1)
IEs For Incumbent	-0.0012 (1.8)	-0.0026 (3.2)
IEs Against Challenger	0.003 (1.9)	0.0065 (3.3)
IEs For Challenger	0.0008 (3.6)	0.0011 (3.9)
n =	527	527
Model Chi-Square =	236.3	225.7

Dependent variable = 1 if respondent reported voting for the challenger; 0 if otherwise.

in state population by dividing these terms by a state cost factor described in Appendix A of Abramowitz and Segal (1992).<sup>4</sup> The first column considers this form of spending exogenous to the process, the second utilizes the instrumental variables constructed from the Table B1 results.

From this table it is easy to see that all four independent spending terms are significant in the endogenous model, whereas only one is significant when independent spending is considered exogenous. In addition, three of the four coefficients have the correct sign. Only spending against challengers behaves improperly, with the results indicating that this sort of spending significantly helps challengers. This result seems to imply that challengers have a better chance of winning when the campaign turns negative, and a worse chance of victory if the independent messages are of a positive nature. Mudslinging campaigns create an

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<sup>4</sup> We chose not to transform the candidate spending variables to account for diminishing returns (by, most commonly, taking the natural log) because the nonlinear nature of the logit estimation captures this restriction already. The probability of voting for the challenger goes up very little at high levels of challenger spending.

environment of doubt, giving the challenger an opportunity to close the gap with the incumbent. Feel good, positive campaigns, on the other hand, leave intact the prevailing status-quo climate of opinion that usually favors the incumbent. Hence, these sorts of campaigns are not as helpful to challengers, despite the fact that some of this spending is supposed to be for their benefit. This interpretation conforms to the attitude echoed by some political operatives. As one put it, "If you don't have anything bad to say about a politician, don't say anything at all."<sup>5</sup> It may also be the case that since challengers generally start out well behind incumbents in the polls, any sort of advertising that boosts name recognition helps them, even if the content of the message is unfavorable. Or perhaps independent spending against challengers is most prominent in races where the challenger is in a particularly strong position, and hence, shows up in the estimations as beneficial. The remaining three independent spending terms are correctly signed, with spending against incumbents and for challengers increasing the probability of a vote for the challenger, and spending for incumbents reducing the probability of a vote for the challenger. It is also important to note that candidate spending has a statistically significant effect only when PAC spending is considered endogenous.

As our previous discussion has shown, independent spending by PACs began to change after the 1984 elections. We now turn to an examination of more recent elections to see if the effects found in 1984 are evident in other years as well. Table 2 shows the results for the estimation of the model in the 1988 elections. We use the 1988-1992 Senate Election Study to take advantage of the larger sample size. From this table it is clear that independent spending by PACs in 1988 did not have nearly the effect that it had in 1984. The signs on the coefficients are wrong in three of the four cases in the exogenous model (only spending against challengers is correct) and two of the four cases in the endogenous model (spending against challengers and incumbents are correct). In addition, the only coefficient that is correctly signed and significant is the spending against the challenger in the endogenous model. Spending for the incumbent is also significant in both models, but has the wrong sign in each case. Clearly the changing nature of independent spending from the early eighties (less ideological, more positive, more pro-incumbent) has resulted in greatly reduced effects from these expenditures by the 1988 Senate elections.

We continue this investigation by examining the role of independent spending in the 1990 midterm Senate elections. These results are shown in Table 3. Again, independent expenditures by PACs are nowhere near as influential in 1990 as they were in 1984. Three of the four signs in each model are incorrect (spending against the challenger in the exogenous model and spending against

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<sup>5</sup> E-mail correspondence by Michael McBurnett with with Dudley Brown, director of the Rocky Mountain Gun Owners, April 27, 1998.

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 The Effects of Independent Expenditures in Senate Elections
 

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TABLE 2

LOGIT ESTIMATION OF RESPONDENT VOTE FOR SENATE CHALLENGER (1988) WITH INDEPENDENT EXPENDITURES (POLITICAL ACTION COMMITTEES) INCLUDED AS ACTUAL (EXOGENOUS) VARIABLES AND INSTRUMENTAL (ENDOGENOUS) VARIABLES FROM TABLE B3. T-VALUES ARE IN PARENTHESES

Independent Variables	Exogenous Independent Expenditures	Endogenous Independent Expenditures
Intercept	-2.35 (6.1)	2.96 (1.7)
R is Same Party as Challenger	1.85 (8.4)	1.80 (8.3)
Bush Approval	-0.26 (2.8)	-0.28 (3.0)
Bush Approval × R is Same Party as Challenger	0.49 (3.7)	0.48 (3.5)
Senate Incumbent Expenditures	-0.00000017 (0.1)	-0.00000094 (0.5)
Senate Challenger Expenditures	0.0000045 (3.0)	0.0000041 (2.8)
IEs Against Incumbent	-0.00002 (0.7)	0.0000041 (0.1)
IEs For Incumbent	0.000083 (4.3)	0.00018 (3.8)
IEs Against Challenger	-0.0012 (0.7)	-0.0047 (3.2)
IEs For Challenger	-0.00004 (0.4)	0.00032 (1.6)
n =	729	729
Model Chi-Square =	198.3	195.8

Dependent variable = 1 if respondent reported voting for the challenger; 0 if otherwise.

the incumbent in the endogenous model are correct). In addition, neither of the correctly signed coefficients is significant.

By 1992, however, PACs seemed to have figured out how to make independent expenditures work again. Table 4 shows these results. Three of the four coefficients in the endogenous model and two of the four in the exogenous model are correctly signed. Only spending against the incumbent in both models and spending against the challenger in the exogenous model are incorrect. In addition, two of the three correctly signed coefficients in the endogenous model are significant. Spending for the candidates works as expected, whereas spending against the candidates does not. It seems that by 1992, PACs had finally figured out how to make positive campaigns pay off.

The final year we investigate is 1996. These results are shown in Table 5. Because we are using the 1996 National Election Study rather than the Senate Election Study, the sample sizes are now greatly reduced. Still, we see evidence that independent expenditures by PACs in 1996 Senate elections are having the desired effect. All the coefficients in the endogenous model, and three of the four coefficients in the exogenous model are correctly signed (only spending against

TABLE 3

LOGIT ESTIMATION OF RESPONDENT VOTE FOR SENATE CHALLENGER (1990) WITH INDEPENDENT EXPENDITURES (POLITICAL ACTION COMMITTEES) INCLUDED AS ACTUAL (EXOGENOUS) VARIABLES AND INSTRUMENTAL (ENDOGENOUS) VARIABLES FROM TABLE B4. T-VALUES ARE IN PARENTHESES

Independent Variables	Exogenous Independent Expenditures	Endogenous Independent Expenditures
Intercept	-2.82 (12.1)	-2.75 (12.4)
R is Same Party as Challenger	1.76 (10.3)	1.70 (9.8)
Bush Approval	-0.48 (5.9)	-0.50 (6.1)
Bush Approval $\times$ R is Same Party as Challenger	0.71 (6.5)	0.72 (6.3)
Senate Incumbent Expenditures	0.000002 (1.9)	0.000002 (2.4)
Senate Challenger Expenditures	0.000005 (3.7)	0.000003 (2.8)
IEs Against Incumbent	-0.00013 (1.3)	0.0001 (0.7)
IEs For Incumbent	0.00006 (2.2)	0.00004 (0.7)
IEs Against Challenger	-0.00003 (0.9)	0.0015 (0.9)
IEs For Challenger	-0.0002 (2.2)	-0.0003 (1.6)
n =	1112	1056
Model Chi-Square =	309.0	285.1

Dependent variable = 1 if respondent reported voting for the challenger; 0 if otherwise.

challengers has the wrong sign). In addition, while only one of these coefficients is statistically significant (spending for challengers in the exogenous model), several others are approaching significance in each of the two models (t-value of 1.5 or higher). With a larger sample size, these coefficients may pass significance tests at conventional levels as well.

#### CONCLUSION

Our goal in this article is to begin the process of systematically examining the effects of independent expenditures on the Senate vote. Utilizing NES data from five elections in the 1980s and 1990s, we develop a model of these effects that considers the possibility that independent expenditures are endogenous variables in this process. Consequently, we model their effects in two ways: by including the raw variables in a vote model, and by including instrumental variables created from first-stage regression results. In general, we find that independent spending by PACs can affect the vote decision and that the effects are particularly evident when modeled as endogenous variables. These effects,

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The Effects of Independent Expenditures in Senate Elections

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≡ TABLE 4

LOGIT ESTIMATION OF RESPONDENT VOTE FOR SENATE CHALLENGER (1992) WITH INDEPENDENT EXPENDITURES (POLITICAL ACTION COMMITTEES) INCLUDED AS ACTUAL (EXOGENOUS) VARIABLES AND INSTRUMENTAL (ENDOGENOUS) VARIABLES FROM TABLE B5. T-VALUES ARE IN PARENTHESES

Independent Variables	Exogenous Independent Expenditures	Endogenous Independent Expenditures
Intercept	-1.67 (5.3)	-0.21 (0.3)
R is Same Party as Challenger	1.32 (6.4)	1.28 (6.1)
Bush Approval	-0.43 (4.8)	-0.45 (4.9)
Bush Approval × R is Same Party as Challenger	0.82 (6.5)	0.85 (6.7)
Senate Incumbent Expenditures	-0.00000095 (0.7)	-0.00000027 (0.2)
Senate Challenger Expenditures	0.00000055 (2.4)	0.00000026 (1.1)
IEs Against Incumbent	-0.00046 (1.8)	-0.000581 (1.6)
IEs For Incumbent	-0.00026 (1.5)	-0.00047 (2.5)
IEs Against Challenger	0.0017 (0.4)	-0.00019 (0.5)
IEs For Challenger	0.00017 (1.5)	0.00034 (2.7)
n =	694	676
Model Chi-Square =	189.2	188.5

Dependent variable = 1 if respondent reported voting for the challenger; 0 if otherwise.

however, depend on the electoral context, the type of independent spending, and the type of candidate.

The results seem to mirror the commonly given description of how independent spending has evolved during the 1980s and 1990s. For example, 1984 was seen as the tail end of the period of early successes of independent spending efforts. It was directed at incumbents and ideologically based to a large extent. The 1984 results support this anecdotal description: independent spending against the incumbent helps the challenger, but independent spending for the incumbent hurts the challenger. Independent spending towards the challenger (either for or against) always helps the challenger, perhaps because in 1984 the money spent against challengers was in races where the incumbent was seriously threatened, which then shows up empirically as incorrectly signed coefficients on the independent spending term. Indeed, in the two states in our dataset where much of this money was spent in 1984, the challenger was of high quality, reasonably well financed, and of a party that captured close to 50 percent of the vote in the previous election.

TABLE 5

LOGIT ESTIMATION OF RESPONDENT VOTE FOR SENATE CHALLENGER (1996) WITH INDEPENDENT EXPENDITURES (POLITICAL ACTION COMMITTEES) INCLUDED AS ACTUAL (EXOGENOUS) VARIABLES AND INSTRUMENTAL (ENDOGENOUS) VARIABLES FROM TABLE B6. T-VALUES ARE IN PARENTHESES

Independent Variables	Exogenous Independent Expenditures	Endogenous Independent Expenditures
Intercept	-3.09 (5.3)	-2.23 (1.2)
R is Same Party as Challenger	1.66 (5.1)	1.68 (5.0)
Clinton Approval	-1.17 (4.8)	-1.08 (4.8)
Clinton Approval $\times$ R is Same Party as Challenger	1.79 (6.3)	1.70 (6.1)
Senate Incumbent Expenditures	0.0000054 (3.3)	0.0000016 (0.8)
Senate Challenger Expenditures	0.0000097 (1.4)	0.0000014 (1.9)
IEs Against Incumbent	0.000044 (1.5)	0.00013 (1.9)
IEs For Incumbent	-0.00013 (1.7)	-0.000007 (0.1)
IEs Against Challenger	0.000013 (1.1)	-0.00006 (1.5)
IEs For Challenger	0.000076 (2.2)	0.00004 (0.6)
n =	373	373
Model Chi-Square =	198.5	198.7

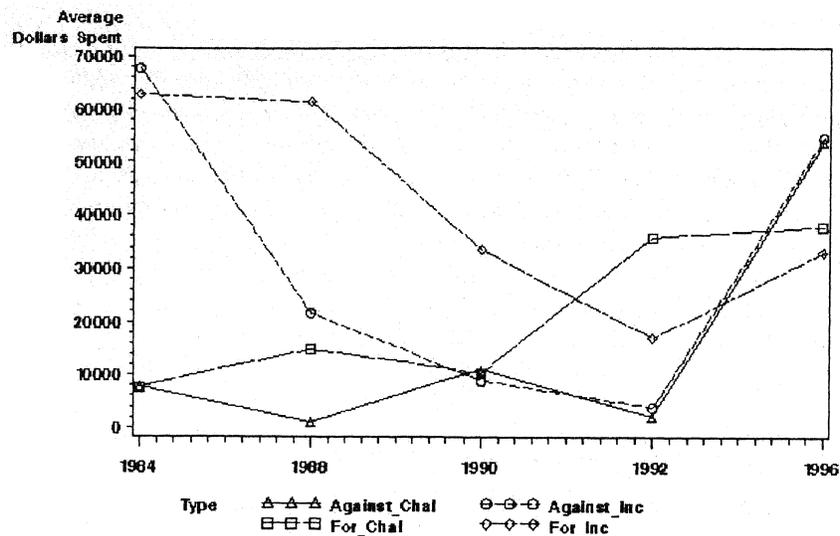
Dependent variable = 1 if respondent reported voting for the challenger; 0 if otherwise.

By the late 1980s and early 1990s, however, the situation had changed. Independent spending was less ideological and negatively directed at incumbents, and more pragmatic and bipartisan. This new trend in independent spending does not appear to have been as successful as the fiercely ideological spending of the early 1980s. In 1988 and 1990, few coefficients are significant and most have the wrong sign. If not all independent spending by PACs is influential, then a scenario where a host of new types of groups enter the independent spending arena might produce results such as these.

As we move into the 1990s, however, the trend seems to have changed again. The more positive pragmatic campaigns of the late 1980s and early 1990s gave way to the more ideological and negative campaigns of the mid 1990s. Organized labor and groups representing conservative causes spent large amounts of money targeting candidates and attacking their records. Figure 1 shows this general increase in spending in 1996, and Figure 2 shows the increase in negative spending in our data in the 1996 election cycle. As Maisel (1999: 177) puts it, "NCPAC's successful technique of twenty years ago has been used by other PACs—labor, association, and corporate PACs as well as nonconnected

## The Effects of Independent Expenditures in Senate Elections

≡ FIGURE 2.  
TYPES OF PAC INDEPENDENT SPENDING



Source: ANES and FEC.

PACs.” Again, this anecdotal description coincides generally with our findings. The 1992 and 1996 results are stronger than those of 1988 and 1990 both in terms of correct signs on the coefficients and statistical significance. In addition, it appears that the more positive campaigns of the late 1980s have moved their way up the learning curve and begun to bear fruit by 1992, as only spending for a candidate (rather than against) attains statistical significance. By 1996, however, the rise in negative spending described above seems to have an effect, as only the spending against a candidate is close to statistical significance. Given the small sample size in 1996, it is not surprising that these coefficients do not quite reach conventional levels of significance.

There are other tentative observations we can make when looking at these independent expenditure effects over time. First, the effects seem to be strongest when spending is increasing from the previous cycle. From Figure 1 it can be seen that, in the five election years we investigate, spending is increasing in 1984, 1992, and 1996. These also happen to be the years the model works best. Along the same lines, it seems that the effects are strongest when more money is spent. Figure 2 and the results from Tables 1 through 5 seem to suggest that larger amounts of spending are more likely to produce correctly signed and statistically significant coefficients. Again, the years 1984, 1992, and 1996 stand out. Perhaps

we get better statistical purchase when greater amounts of spending are evident. Interestingly, these also happen to be presidential election years, although since we have only one midterm year in the dataset, it's difficult to make too much of that result.

This study and future work of this sort also help inform questions about the state of present campaign finance laws and their implications for the political culture in general. With this knowledge, campaign finance reformers can creditably assert that independent expenditures combine a lack of accountability with a degree of effectiveness in influencing elections. Those who suspect that representatives cater more to those who have the power to fill campaign war chests than to constituents will hardly find the fact that effective political campaigns can be, and are, purchased by "special interests" comforting. Can a senator afford to cross a group with the resources and the will to launch an independent effort to unseat him or her? This study provides evidence that he or she cannot.

#### APPENDIX A

The independent variables are coded as follows:

R is same Party as Challenger = 1 if respondent party identification is the same as the challenger; 0 if otherwise.

Reagan Approval = Ranges from +2 if respondent strongly approves of Reagan to -2 if respondent strongly disapproves.

Challenger Expenditures = Actual dollars divided by a state cost factor described in Appendix A of Abramowitz and Segal (1992).

Incumbent Expenditures = Actual dollars divided by a state cost factor described in Appendix A of Abramowitz and Segal (ibid.).

IEs Against Incumbent = Actual independent expenditure variable or Instrumental variable (from Appendix B) in dollars divided by a state cost factor described in Appendix A of Abramowitz and Segal (ibid.).

IEs For Incumbent = Actual independent expenditure variable or instrumental variable (from Appendix B) in dollars divided by a state cost factor described in Appendix A of Abramowitz and Segal (ibid.).

IEs Against Challenger = Actual independent expenditure variable or instrumental variable (from Appendix B) in dollars divided by a state cost factor described in Appendix A of Abramowitz and Segal (ibid.).

IEs For Challenger = Actual independent expenditure variable or instrumental variable (from Appendix B) in dollars divided by a state cost factor described in Appendix A of Abramowitz and Segal (ibid.).

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The Effects of Independent Expenditures in Senate Elections

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## APPENDIX B

TABLE B1.

OLS ESTIMATION OF PAC INDEPENDENT EXPENDITURES INSTRUMENTAL VARIABLES FOR 1984—T-VALUES IN PARENTHESES

Independent Variable	Against Incumbent	For Incumbent	Against Challenger	For Challenger
Intercept	-545314 (23.8)	-391275 (28.8)	-4350 (1.9)	-30300 (18.5)
Challenger Quality	51270 (16.7)	37266 (20.4)	325.3 (1.0)	3442 (15.6)
Challenger Party	131166 (5.3)	198433 (13.6)	49434 (19.8)	-43319 (24.6)
Challenger Party Strength	2092 (5.1)	1654 (6.8)	76.7 (1.8)	1022 (34.6)
Inc. Primary Opposition	-208878 (21.1)	-150819 (25.7)	-716.8 (0.7)	-11524 (16.2)
Number Incumbent Terms	295729 (21.2)	185578 (22.4)	-10107 (7.1)	15697 (15.7)
Chal. Primary Opposition	49826 (13.5)	26921 (12.2)	-3158 (8.4)	3408 (12.8)
Seat Safety	42847 (9.2)	50537 (18.2)	9285 (19.6)	-2500 (7.5)
N =	894	894	894	894
R <sup>2</sup> =	.56	.70	.49	.70

Note: Dependent variables are independent PAC expenditures for and against challengers and incumbents.

TABLE B2.

OLS ESTIMATION OF PAC INDEPENDENT EXPENDITURES INSTRUMENTAL VARIABLES FOR 1988—T-VALUES IN PARENTHESES

Independent Variable	Against Incumbent	For Incumbent	Against Challenger	For Challenger
Intercept	-466637 (24.3)	253053 (9.0)	9000 (10.7)	39107 (4.8)
Challenger Quality	32252 (22.7)	22855 (10.9)	550 (8.8)	4649 (7.7)
Challenger Party	151242 (14.4)	-374581 (24.3)	-13816 (30.0)	32768 (7.3)
Challenger Party Strength	-9981 (26.8)	-621 (1.1)	-41.3 (2.5)	-430 (2.7)
Inc. Primary Opposition	2470 (1.3)	18849 (6.5)	-351 (4.1)	594 (0.7)
Number Incumbent Terms	-57243 (27.2)	-26693 (8.7)	-622 (6.8)	-11044 (12.4)
Chal. Primary Opposition	-31091 (23.6)	-10899 (5.6)	-158 (2.7)	-3946 (7.0)
Seat Safety	-22966 (11.4)	85628 (28.9)	2951 (33.4)	-6707 (7.8)
N =	1393	1393	1393	1393
R <sup>2</sup> =	.52	.59	.64	.13

Note: Dependent variables are independent PAC expenditures for and against challengers and incumbents.

TABLE B3.  
OLS ESTIMATION OF PAC INDEPENDENT EXPENDITURES INSTRUMENTAL VARIABLES FOR  
1990—T-VALUES IN PARENTHESES

Independent Variable	Against Incumbent	For Incumbent	Against Challenger	For Challenger
Intercept	-24326 (16.1)	-134599 (20.0)	-4194 (19.6)	-51377 (18.2)
Challenger Quality	956 (6.3)	405 (0.6)	137 (6.3)	4599 (16.1)
Challenger Party	18873 (20.3)	-24032 (5.8)	-3812 (29.0)	-20156 (11.6)
Challenger Party Strength	569 (18.4)	3569 (25.9)	124 (28.4)	1250 (21.6)
Inc. Primary Opposition	-6342 (14.8)	9456 (5.0)	732 (12.1)	9663 (12.1)
Number Incumbent Terms	910 (4.4)	8617 (9.3)	595 (20.1)	3420 (8.8)
Chal. Primary Opposition	2344 (11.7)	17768 (19.8)	779 (27.4)	4476 (11.9)
Seat Safety	-1271 (5.7)	-3034 (3.0)	554 (17.5)	-1297 (3.1)
N =	1983	1983	1983	1983
R <sup>2</sup> =	.47	.46	.68	.42

Note: Dependent variables are independent PAC expenditures for and against challengers and incumbents.

TABLE B4.  
OLS ESTIMATION OF PAC INDEPENDENT EXPENDITURES INSTRUMENTAL VARIABLES FOR  
1992—T-VALUES IN PARENTHESES

Independent Variable	Against Incumbent	For Incumbent	Against Challenger	For Challenger
Intercept	18042 (5.2)	-142222 (10.5)	14100 (6.1)	-295040 (13.3)
Challenger Quality	921 (5.0)	2800 (3.9)	1312 (10.7)	5115 (4.3)
Challenger Party	-15392 (13.1)	-34873 (7.6)	-13396 (17.2)	-65744 (8.8)
Challenger Party Strength	-55.3 (0.8)	2508 (9.1)	-220 (4.7)	5629 (12.4)
Inc. Primary Opposition	3395 (13.5)	17855 (18.2)	-457 (2.8)	20084 (12.5)
Number Incumbent Terms	-2066 (4.8)	29315 (17.6)	-2557 (9.0)	48236 (17.6)
Chal. Primary Opposition	-3481 (14.2)	-1088 (1.1)	1734 (10.7)	5977 (3.8)
Seat Safety	3911 (12.6)	-1461 (1.2)	3379 (16.5)	4432 (2.2)
N =	1191	1191	1191	1191
R <sup>2</sup> =	.31	.49	.49	.44

Note: Dependent variables are independent PAC expenditures for and against challengers and incumbents.

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 The Effects of Independent Expenditures in Senate Elections
 

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TABLE B5  
 OLS ESTIMATION OF PAC INDEPENDENT EXPENDITURES INSTRUMENTAL VARIABLES FOR  
 1996—T-VALUES IN PARENTHESES

Independent Variable	Against Incumbent	For Incumbent	Against Challenger	For Challenger
Intercept	-184947 (6.4)	-316799 (27.7)	4192 (0.1)	359199 (23.0)
Challenger Quality	39935 (16.7)	22183 (23.7)	54317 (18.7)	-10446 (8.2)
Challenger Party	195241 (8.2)	285225 (30.6)	652551 (22.6)	-162530 (12.8)
Challenger Party Strength	-773 (1.6)	2841 (15.1)	-5428 (9.3)	-4524 (17.7)
Inc. Primary Opposition	-5773 (0.5)	4135 (1.0)	-119365 (9.3)	-115024 (20.3)
Number Incumbent Terms	25160 (5.3)	37887 (20.3)	-65765 (11.4)	-29409 (11.6)
Chal. Primary Opposition	46790 (6.7)	-3285 (1.2)	62228 (7.4)	85923 (23.1)
Seat Safety	47528 (7.1)	47145 (17.9)	154269 (18.9)	895 (0.2)
N=	603	603	603	603
R <sup>2</sup> =	.54	.77	.62	.78

Note: Dependent variables are independent PAC expenditures for and against challengers and incumbents.

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GALL DECLARATION  
IN SUPPORT OF PLAINTIFFS'  
SECOND MOTION IN LIMINE  
EXHIBIT H

## *The Effect of the AFL-CIO's "Voter Education" Campaigns on the 1996 House Elections*

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Analysis of the effects of the AFL-CIO's "voter education" campaigns aimed at House Republicans in 1996 indicates that they were highly effective against targeted freshmen but not against more senior Republicans. Indeed, labor can plausibly claim responsibility for defeating a majority of the first-term losers. Thus, money spent outside the regular campaigns on "voter education" can have a major effect on election results, especially if it is spent against incumbents. Labor's efforts did not succeed in delivering the House to the Democrats, however, because too many of the Democratic candidates and campaigns fell too far short on their own for labor's help to put them over the top.

**T**he Republican takeover of Congress in 1994 provoked a swift defensive response from organized labor. Stung by a precipitous loss of influence, coming on top of years of waning political clout, and threatened by the Republican agenda for labor as well as for working people more generally,<sup>1</sup> the AFL-CIO began a campaign to retake the House even before the Republicans had finished their whirlwind first 100 days of the 104th Congress. By April 1995 it had initiated its first direct mail and broadcast campaigns attacking selected House Republicans for allegedly voting against workers' interests.<sup>2</sup> As the year wore on, the list of targets lengthened, and the focus of attack became the Republican plan for balancing the budget and the December government shutdown that House leaders had precipitated in a futile attempt to get Bill Clinton to accept their package of tax and spending cuts.<sup>3</sup>

In early 1996, newly elected AFL-CIO president John Sweeney announced plans to raise and spend \$35 million for television and radio ads to be run in Republican House districts in the coming election. Because the funds were not reported to the Federal Election Commission, it is uncertain whether the AFL-CIO met this ambitious goal; but according to one estimate, by late October the campaign had distributed more than \$20 million to pay for ads that had run in

<sup>1</sup> Republicans proposed, in addition to cutbacks in social welfare programs, repeal of the Davis-Bacon Act and Service Contract Acts and emasculation of the Occupational Safety and Health Act.

<sup>2</sup> Mike Hall, "Workers Push Congress on 100-Day Fiasco," *AFL-CIO News*, 8 May 1995, 1.

<sup>3</sup> Mike Hall, "Workers Move Budget Battle to the Grass Roots," *AFL-CIO News*, 18 December 1995, 1.

more than 60 districts.<sup>4</sup> Spending for the ads did not fall under the FEC's jurisdiction because the ads carefully avoided explicitly endorsing or opposing particular candidates, maintaining the legal fiction that their purpose was to educate union members and the general public about national issues. Voters were merely told who opposed the interests of old people, working people, students, and the environment (and, in some cases, who did not) and left to draw their own conclusions. These "voter education" campaigns also had the advantage that they could be paid for out of union dues. Republicans cried foul and tried to throw up legal roadblocks but failed to stop the effort. Their protest drew little sympathy, for it had been their own allies—including Newt Gingrich's GOPAC and the Christian Action Network—who had pioneered the strategy and won the court cases that confirmed its legality (Salant 1996).

What did the AFL-CIO's campaigns achieve? The answer is of more than passing interest, because "voter education" campaigns of this sort have become more common in recent years and will certainly proliferate if campaign finance reform chokes off other legal avenues for investing in electoral politics. Based on what we have learned about the effects of spending by candidates' campaigns (Ansolahehere and Gerber 1994; Erikson and Palfrey 1996; Jacobson 1980, 1985, 1990, 1997a), it would be surprising if efforts this lavish did not have some effect on the vote. But we also have abundant evidence that money, by itself, does not defeat incumbents. Only in combination with potent issues and high-quality challengers do even the best-financed campaigns have a decent chance of succeeding (Jacobson 1997a). Thus, if prior research is any guide, labor's campaigns should have reduced the vote for Republican incumbents but defeated them only when combined with vigorous campaigns by capable Democratic challengers.

Certainly the AFL-CIO's campaign had Republicans worried. One Republican consultant, interviewed in October 1996, thought it was "the single biggest factor in congressional races nationwide, far outstripping any impact the Clinton–Dole campaign will have on the political environment for individual congressmen. . . . The freshmen Republicans' numbers are 10 to 15% lower than where they should be on the so-called 'reelect' question."<sup>5</sup> Under the leadership of the U.S. Chamber of Commerce, the business community hastily assembled a pool of some \$4 million to defend targeted Republicans, and the National Republican Congressional Committee poured money into their cause as well. After the election was over and Republicans had retained control of the House, however, their assessment changed. As Representative Bill Paxon, chair

<sup>4</sup>Lloyd Grove, "The Union Army," *Washington Post*, 30 October 1996, sec. D. The AFL-CIO also dispatched 131 coordinators to 86 congressional districts to organize grassroots electoral activities aimed at Republicans. See Gary Younger, "In Midterm, Big Labor Tries to Win Back What It Lost . . .," *Washington Post National Weekly Edition*, 14–20 October 1996, 12.

<sup>5</sup>Grove, "Union Army"; the "reelect" question refers to the standard early polling item asking respondents if they think the (named) incumbent has done a good enough job to deserve reelection.

## The Effect of the AFL-CIO's "Voter Education" Campaigns 187

of the NRCC, put it, "I don't think they [the AFL-CIO] got a thing for their investment."<sup>6</sup>

## Data Analysis

Paxon's claim is testable. Shortly before the election, *Congressional Quarterly Weekly Report* published a list of the 64 Republican incumbents targeted by the AFL-CIO. The list categorizes the targets according to whether they were the subjects of "voter video guides," TV ads that made explicit comparisons between the issue positions held by the Republican and his or her opponent, or merely the subject of one or more ads that exposed the Republican's voting record but did not mention the challenger. The voter video guides were the heaviest weapons in labor's arsenal, and also the most controversial, for they were hardest to distinguish from ordinary political ads. The list also indicated whether the Republican was supported by the U.S. Chamber of Commerce's countercampaign ("Labor Targets" 1996, 3084). We do not know how much money was spent by the AFL-CIO in each district, but the total reached the neighborhood of \$1 million in several (Gruenwald and Kalb 1996, 2967).

Table 1 takes a first cut at assessing the efficacy of the AFL-CIO's campaigns by displaying their association with election outcomes. The table divides Republican incumbents into three categories depending on whether they were targeted by labor and, if so, whether they were targets of a voter video guide. It also distinguishes first-term members from more senior Republican incumbents. Clearly, targeted incumbents, freshmen or otherwise, won a much smaller share of the vote and lost much more frequently than those who were not targeted. Of the 44 freshmen who were targeted, 12 lost, while every one of the 27 who were not targeted won reelection. Senior Republicans were much less likely to be targets (14%, compared with 62% of freshmen), but they were only marginally less likely to lose when they were (20%, compared with 27%). Notice also that targets of voter video guides had the highest rates of defeat and won the lowest share of votes. Overall, 25% of the targeted Republicans lost, compared with little more than 1% of those not targeted.

Of course, this rather striking difference in success rates might have nothing to do with the AFL-CIO's campaigns. As sophisticated players in the electoral game, labor strategists would be expected to target vulnerable Republicans, wasting no money trying to defeat those who were securely entrenched (Endersby and Munger 1992; Gopoian 1984; Jacobson 1980). With ordinary Democratic campaign donors also contributing strategically, the AFL-CIO's targets may have been everyone else's as well. It would thus be no surprise to find that more-vulnerable Republicans won fewer votes and suffered higher casualties quite apart from the AFL-CIO's activities. There is no doubt about labor's strategic choice of

<sup>6</sup> Robin Toner, "G.O.P. Leaders Proclaim Victory over Labor," *New York Times*, 7 November 1996, sec. B.

TABLE 1

## The Fates of House Republicans Targeted by AFL-CIO Advertisements

	Freshmen	Nonfreshmen	Total
Not targeted by AFL-CIO	26	123	149
Losers	0	2	2
Percent losers	0.0%	1.6%	1.3%
Mean vote	62.4%	66.3%	65.6%
Target of at least one advertisement	23	17	40
Losers	5	2	7
Percent losers	21.7%	11.8%	17.5%
Mean vote	52.9%	61.6%	56.4%
Target of voter video guide	21	3	24
Losers	7	2	9
Percent losers	33.3%	66.7%	37.5%
Mean vote	50.9%	51.2%	51.0%

*Note:* The differences across categories of AFL-CIO targeting for both the percentage of losses and the mean share of the vote are significant at  $p < .01$  or better in all three columns; the vote is measured as the two-party vote in the district; uncontested incumbents are excluded from this calculation.

targets, as Table 2 demonstrates. The lower the vote for the Republican in 1994 and the worse the showing of Republican presidential candidates in the district (measured by George Bush's share of the two-party vote in the district averaged across his two contests), the more likely he or she was to become a target. Labor's targets were also clearly those of other Democratic contributors and more-experienced Democratic challengers as well.

Although correlated with one another, four of the five variables represented in Table 2—freshman status, the Republican's 1994 margin, the district's presidential voting habits, and total spending by the Democratic challenger (interpreted here as a measure of the expectations of other Democratic contributors)—are independently associated with the probability that a Republican would wind up on the list of targets when entered into an ordered probit model of targeting (results not shown). Plainly, the AFL-CIO did not choose its Republican targets at random; it went after those it (and everyone else) thought to have some plausible prospect of defeating. Nor did it systematically reward friends or punish enemies, other than collectively. Republicans could not avoid becoming targets by bolting the party on key votes. Neither level of support for the items on the Contract with America nor party support scores in 1995 or 1996, nor key votes on issues related to the budget were significantly related to the likelihood of being targeted once the variables in Table 2 are taken into account. Only the vote on the minimum wage approached statistical significance, but its coefficient displayed the wrong sign, an apparent anomaly I shall address later.

TABLE 2  
Strategic Targeting of House Republicans by the AFL-CIO

	Average Incumbent's Vote in 1994 (%)		
	Freshmen	Senior Incumbents	All
Not targeted by AFL-CIO	58.9	69.9	67.4
Target of at least one advertisement	54.5	68.1	59.7
Target of vote video guide	53.6	55.5	53.8
	$p < .001$	$p < .001$	$p < .001$
	Average Republican Presidential Vote, 1988–1992 (%)		
	Freshmen	Senior Incumbents	All
Not targeted by AFL-CIO	58.1	59.8	59.4
Target of at least one advertisement	53.0	50.4	51.9
Target of vote video guide	51.3	48.3	50.9
	$p < .001$	$p < .001$	$p < .001$
	Average Spending by and on Behalf of Democratic Challenger		
	Freshmen	Senior Incumbents	All
Not targeted by AFL-CIO	\$236,508	\$174,664	\$185,707
Target of at least one advertisement	\$691,669	\$280,195	\$522,859
Target of vote video guide	\$923,646	\$733,385	\$899,864
	$p < .001$	$p = .06$	$p < .001$
	Democratic Challengers Who Have Held Elective Office (%)		
	Freshmen	Senior Incumbents	All
Not targeted by AFL-CIO	20.0	14.9	15.8
Target of at least one advertisement	52.1	12.5	35.9
Target of vote video guide	42.9	66.7	45.8
	$p < .001$	$p = .06$	$p < .001$

*Note:* The significance levels are from analyses of variance among targeting categories; both the incumbent's 1994 vote and the average Republican presidential vote are percentages of the two-party vote. Spending includes the candidate's own spending, coordinated party spending, and independent spending reported to the Federal Election Commission for the Democrat or against the incumbent. It does not include the AFL-CIO campaign costs, which were not reported to the FEC.

Obviously, then, in order to assess the effect of the AFL-CIO campaigns, we need to control for other electoral circumstances that shaped the AFL-CIO's targeting choices and also influenced the vote. The regression equations in Table 3 do just that. The dependent variable is the Republican incumbent's share of the two-party vote in 1996. The control variables include the incumbent's vote in 1994, the district-level two-party vote for Bob Dole in 1996, whether the challenger had held elective public office, and the amount spent by or on behalf of the incumbent and challenger on their campaigns.<sup>7</sup> The variables of primary interest are the two categorical variables—the first designating members targeted for some ads but not the voter video guide, the second designating targets of the voter video guide as well as other efforts.

The results indicate that the AFL-CIO's campaign had a large effect on the vote, but only for first-term Republicans. The equation for senior Republicans indicates that the AFL-CIO campaign had no significant effect on their vote; only past district voting patterns, the challenger's experience, and the challenger's level of campaign spending predicted the vote. For this group, then, the relationship between electoral outcomes and labor's "voter education" drive displayed in Table 1 is largely spurious. The losers' basic problem was not with the AFL-CIO campaign, but with a poor district fit or personal electoral weaknesses that attracted strong local opposition.<sup>8</sup>

This is clearly not the case for Republican freshmen. Taking other electoral circumstances into account, the vote for freshmen who were targets of the voter video guides fell, on average, nearly 4.3 percentage points below those who were not targeted at all. Freshmen who were subjected to a less-than-full-scale labor effort also did substantially and significantly worse on election day (by about 4.1 percentage points) than those not targeted. These are large effects. For example, according to the coefficients in the freshman equation, it would take a difference of more than 12 percentage points in the incumbent's 1994 vote to

<sup>7</sup>I use the 1996 share of the two-party vote for Dole rather than the mean two-party vote for Bush in 1988 and 1992 to control for presidential preference because of its slightly greater explanatory power; the results are insensitive to this choice. The spending variables include coordinated party spending and independent spending in addition to the candidate's own campaign spending; these additional sources add an average of 13% to the totals. The data are from the Federal Election Commission's downloadable archives. Districts where the decisive election took place other than on November 5 (in Louisiana and Texas) are excluded, except for the 9th District of Texas, where the two-party vote in the special "primary" held the day of the general election and the December 10 runoff was nearly identical. I used the November 5 two-party vote (48.8%) rather than the runoff vote (47.2%); the results are insensitive to this choice. Also excluded are districts where the incumbent switched parties.

<sup>8</sup>Three of the losers were Peter Blute and Peter Torkildsen, both of Massachusetts, and Martin Hoke of Ohio, all of whom were 1992 victors over scandal-plagued Democrats in otherwise Democratic-leaning districts. Only the fourth, Gary Franks of Connecticut, represented a district with a favorable partisan balance, but he had never won more than 52% of the total votes cast in any of his previous three elections. Campaign spending by and for all of the victorious Democratic challengers exceeded \$689,000.

## The Effect of the AFL-CIO's "Voter Education" Campaigns 191

TABLE 3  
 OLS Regression Estimates of the Effects of AFL-CIO Targeting  
 on the Vote for Republican House Incumbents

Independent Variables	Freshmen Republicans	Senior Republicans
Intercept	25.27 (25.06)	49.77*** (8.17)
Republican incumbent's vote in 1994 (two-party %)	.34* (.13)	.37*** (.06)
Bob Dole's district vote in 1996 (two-party %)	.33*** (.09)	.21*** (.04)
Challenger has held elective public office	-.83 (1.11)	-1.85* (.81)
Natural log of spending by and on behalf of challenger	-2.16*** (.61)	-2.12*** (.26)
Natural log of spending by and on behalf of incumbent	1.86 (1.64)	.16 (.62)
AFL-CIO target	-4.12** (1.45)	-.67 (.93)
AFL-CIO target—video	-4.27** (1.62)	.22 (1.94)
Adjusted R <sup>2</sup>	.72	.80
Number of cases	69	103

*Note:* The dependent variable is the percentage of the two-party vote won by the Republican incumbent; candidates are assumed to have spent at least \$5,000 (spending below this total need not be reported); standard errors are in parentheses.

\* $p < .05$  (two-tailed test)

\*\* $p < .01$  (two-tailed test)

\*\*\* $p < .001$  (two-tailed test)

produce the equivalent effect of being the target of an AFL-CIO voter video guide ( $4.27 / .34 = 12.6$ ).<sup>9</sup>

By this reckoning, the AFL-CIO campaign had a substantial impact on the vote for Republican members of the class of '94. How reliable are these results? Insofar as the OLS equations are not fully specified, the coefficients on the labor targeting variables are subject to omitted variable bias, a problem akin to, but not identical with, simultaneity bias (Ansolabehere and Snyder 1996; Gerber 1993; Grier 1989). Specifically, to the degree that the control variables in the equations do not include all of the relevant information available to the AFL-CIO strategists for estimating the expected vote (and thus making their targeting

<sup>9</sup> In an earlier analysis of the 1996 elections, I estimated the effect of the AFL-CIO campaigns to be twice as large as reported here (Jacobson 1997b); the exaggeration was unavoidable because campaign spending data were not available in time to meet the deadline for that essay.

decisions), the errors in the equation will be correlated with the targeting variables, biasing their coefficients.

There are several reasons for believing that omitted-variables bias is not a serious problem in this analysis. Many of the targets were picked early (some as early as 1995), before cues more subtle than the district's past voting habits were available. The control variables do include the things best known to shape district-level voting outcomes. Most important, the controls include campaign spending by both candidates. The estimates of spending effects are clearly subject to the same omitted-variables bias, because spending also reflects electoral expectations not completely measured by the other control variables. But to the degree that the spending variables do incorporate the otherwise unmeasured information that observers used to estimate the expected vote, then they complete the specification of the OLS equation for the purposes of estimating the effects of the AFL-CIO's campaign. The spending coefficients may be biased, but their presence in the equation mitigates the omitted-variables bias for the targeting variables.

A look at the "sophomore surge" for Republican freshmen in 1996 increases confidence that the effects of the AFL-CIO's campaign are of the magnitude indicated by the OLS regression results. The sophomore surge (a popular measure of the incumbency advantage) is the average vote gain enjoyed by freshmen members running as incumbents for the first time, adjusted for their party's average vote change from the previous election (Erikson 1972, 1240). Republican freshmen running in 1996 who were ignored by the AFL-CIO enjoyed a 6.8-percentage-point sophomore surge; those who were targets of at least one broadcast ad surged a statistically insignificant 1.3 points; and those subject to the full voter video guide treatment got no surge whatsoever (0.3 percentage points). In effect, the AFL-CIO's campaign attacks, combined with well-financed challenges, canceled the targeted Republicans' sophomore surge, erasing the advantage normally conferred by incumbency status—and underlining how contingent the incumbency advantage is on the character of the opposition (Cox and Katz 1996; Jacobson 1997a).

### Discussion

Despite the effectiveness of AFL-CIO campaigns, they fell short of defeating most of the first-term Republicans they targeted. The most important reason that more of the campaigns were not successful was a shortage of high-quality, well-financed Democratic challengers positioned to take advantage of the electoral boost they could provide. The simple but reliable measure of challenger quality I use here is previous experience in elective public office. Although its coefficient was not significant in the equation for freshmen, experience, combined with ample funding, was still strongly related to the likelihood of actually defeating the incumbent. Experienced or not, none of the 24 Democrats who spent less than \$700,000 challenging first-term Republicans targeted by the

## The Effect of the AFL-CIO's "Voter Education" Campaigns 193

AFL-CIO was successful. Among challengers who exceeded this threshold, those without experience in elective office won two of seven races (28.6%), while experienced challengers won 10 of 13 races (76.9%). Labor's "voter education" drive achieved its goal only when the Democratic candidate conducted a vigorous local campaign, confirming the need for all three conditions—plenty of money, potent issues, and capable challengers—to defeat House incumbents.

The AFL-CIO's efforts did affect the vote, then—and quite substantially. The damage done to Republican incumbents was, in many cases, insufficient to put the Democrat over the top, because other conditions that shape the vote did not move the Democrat close enough to a plurality. But without labor's help, the 1996 elections would have been an even greater disappointment to the Democrats. If we subtract the additional vote for Democratic challengers opposing Republican freshmen attributed by the equation in Table 3 to the AFL-CIO's campaigns, only five of the 12 victors would have won.

What of the Chamber of Commerce's effort to counter labor by conducting campaigns on behalf of targeted Republicans? No matter how I massaged the data, I could find no evidence that it made any significant difference in terms of either votes or victories. This is not particularly surprising, because the Chamber's effort was only a small fraction of the money the business community spent to help beleaguered House Republicans. Private individuals, PACs, Republican Party committees, and independent campaigns together invested an average of more than \$1.1 million in defense of each targeted Republican incumbent. The coefficient for total spending by and for the Republican in the equation for freshmen suggests that this effort helped offset the AFL-CIO's campaign somewhat, although the estimate (subject to downward bias because of the omitted-variables problem) is too imprecise to tell us by how much.

The AFL-CIO got one more benefit from its campaigns: an increase in the minimum wage. I mentioned earlier that voting in support of the minimum wage was positively related to becoming a labor target. Republicans on labor's list were much more likely to vote in favor of raising the minimum wage both on final passage (59%, compared with 36% of those not targeted) and on an earlier key vote to kill an amendment limiting its coverage (37% opposed the amendment, compared with 15% of Republicans who were not targeted). This was not a consequence of labor punishing its friends, but of defensive voting on the part of Republicans already coming under assault from the AFL-CIO for alleged sins against working people. They could not risk taking another unpopular stand despite the deep ideological antipathy many felt toward the whole concept of a minimum wage.

### Conclusion

To recapitulate briefly: the AFL-CIO's campaign against Republican incumbents was highly effective against the freshmen they targeted, but not against more senior Republicans. Indeed, labor can plausibly claim responsibility for defeating a majority of the first-term losers. The campaigns fell short of delivering

the House to the Democrats because too many of the local Democratic candidates and campaigns fell too far short on their own for labor's help to put them over the top. Money spent outside the regular campaigns on "voter education" can have a major effect on election results, especially if it is spent against incumbents. Campaigns of this sort could easily become an important component of congressional election politics, particularly if campaign finance regulation closes off other avenues for investing in electoral politics.

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4 ELECTLJ 371  
4 Election L.J. 371

Page 1

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Election Law Journal  
2005

Campaign Disclosure Project Symposium

Part One

\*371 DESIGNING CAMPAIGN FINANCE DISCLOSURE IN THE STATES: TRACING THE TRIBUTARIES  
OF CAMPAIGN FINANCE

Clyde Wilcox [FNa1]

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ALTHOUGH the United States has recently enacted another round of national campaign finance reforms, controversy over most elements of the law remains. Eclectic coalitions of political actors challenged many aspects of the legislation--the ban on soft money, the provisions for electioneering, and the increase in contribution limits for hard money--and the Supreme Court's eventual decision upholding the core of the law has done little to dampen dissent. There is more agreement about reform among individuals who contribute to political campaigns; majorities favor bans on soft money and even caps on spending (Francia et al., 2003). Yet among all of the proposals for campaign finance regulation, only disclosure comes close to universal acceptance.

Almost all actors in the campaign finance debate at least acquiesce to disclosure, and most profess to support it with enthusiasm. Even many of those who oppose contribution limits and other types of regulation support more rigorous disclosure laws, or the more rigorous application of existing laws. Indeed, some argue that disclosure alone is often sufficient to deter any corruption or undue influence (Doolittle, 2001; Smith, 2001).

At the national level, disclosure of campaign funding has been a boon to journalists, academics, and political operatives. The federal disclosure process has been well documented, and has created a relatively complete database to allow scholars to study the behavior of PACs (Wright, 1995; Stratman, 1992), parties (Jacobson, 1985; Dwyer and Kolodny, 2003), candidates (Herrnson, 2004), and individual donors (Brown et al., 1995; Francia et al., 2003). Small wonder that a task force of scholars that evaluated the campaign finance system at the national level concluded that disclosure was the greatest success story (Alexander et al., 1997, 9). When issue advocacy opened a broad loophole in disclosure laws, scholars rapidly and almost universally called for reform (e.g., Campaign Finance Institute, 2001).

Yet federal disclosure rules apply only to elections for federal office-- state and local election finance is regulated by primarily the states and local jurisdictions. And in this policy area, state and local governments are true laboratories, with widely differing laws. Some states offer public funding for campaigns but most do not, some have strict contribution limits while others have no limits, and states vary widely in their requirements for disclosure, in the staffing and resources of their disclosure agencies, and in the types of data available to voters and scholars.

If states are laboratories of reform, few have experimented with full campaign finance disclosure. In their

comprehensive review of state campaign finance laws and regulations, Malbin and Gais (1998) concluded that “Disclosure--the simplest of campaign finance programs--remains an unfulfilled promise in most states. Most state agencies fall short of [the goal] of ... making useful information available electronically, in a timely fashion, before the election ... Their legislatures simply fail to provide the resources that agencies need to fulfill their most basic responsibility” (164). The weakness of state disclosure systems is a serious problem, \*372 for as Malbin and Gais note, “Disclosure is the basic foundation upon which all other regulations must rest” (68).

In the introduction to a set of case studies on campaign finance reform laws in the states, David Schultz (2002) reported three problems with disclosure in the twelve states examined in the volume. First, disclosure laws varied enormously in what was reported, and when the information was made available. Second, in many states important information about candidates, PACs, and individual contributors is not reported. Finally, some states either destroy data after a time, or change the format of reporting regularly in a way that inhibits overtime comparisons.

The case studies in the volume reveal significant holes in many state disclosure systems. In Texas, disclosure forms are not reviewed unless there is a complaint. Coordinated contributions need not be reported, in-kind contributions are not described, and loans are not reported. Incumbents do not disclose their cash on hand (Rausch, 2002). In Texas, Iowa and many other states, the record of contributions from individuals do not include their employer information, making it difficult to trace coordinated corporate giving (Mansfield and Smithson, 2002). In South Carolina, lax disclosure laws prevented Cooper and Nownes (2002) from even estimating the overall amount of independent expenditures. In Florida, substantial amounts of interest group electoral activity are not reported, leadership PACs in many instances do not need to report their donors, and disclosure laws that do exist are largely not enforced (Paulson, 2002). Oklahoma enacted and then repealed electronic disclosure, requiring individuals who want to scrutinize records to go through them by hand (Hardt, 2002).

More generally, most states do not require disclosure by out-of-state PACs, and the definition of these committees varies widely. Most states do not require disclosure of any electoral activity beyond express advocacy, and large contributions to non-profits that work closely with parties to mobilize voters go unreported. Enforcement efforts are often quite uneven: a recent report on Maryland's Campaign Finance Law found several candidates who had failed to itemize hundreds of thousands of dollars worth of contributions (Abbe and Herrnson, 2003).

If most states have inadequate disclosure laws, what should an ideal state disclosure system look like? What are the goals that disclosure is trying to accomplish? What are the potential problems with disclosure? How might states try to maximize the positive side of disclosure while minimizing these problems? To answer these questions, I begin with a discussion of the benefits and costs of disclosure, and considerations in balancing the two. Next, I consider what an ideal state disclosure system might look like--who should file, what information should be reported, and how should that information be disseminated? I conclude with some thoughts about efforts to compare campaign finance data across states.

### THE BENEFITS OF DISCLOSURE

Disclosure is thought to be essential to the enforcement of any system of campaign finance limits. Without disclosure, the task of determining violations of the law would be impossible. Even with disclosure, enforcement of limits is not easy. As Smith (2001, 215-227) notes, those who seek to avoid contribution limits are unlikely to disclose that fact on government forms. Yet if disclosure does not automatically lead to detection of campaign

finance violations, it does make the process of detection much easier. Disclosure also enhances compliance by reminding candidates and parties of regulations, and regular audits of reports can uncover inadvertent violations of the law. Disclosure can only aid enforcement, however, if campaign finance agencies have the mandate, will, and necessary resources to pursue violators.

Disclosure is also touted as a way to control corruption. Corruption corrodes the public's trust in government, and even in other citizens who they may fear are enjoying the fruits of corruption. Corruption also creates economic inefficiencies and unfairness in the distribution of public goods (Williams, 2000, 3; Rose-Ackerman, 1999, 127-141). Rose-Ackerman (1999, 133) notes, "Democratic political systems must \*373 find a way to finance political campaigns without encouraging the sale of politicians to contributors." Potential donors seek access to and policy from government officials, and policymakers seek money from donors to fund their parties and campaigns. This exchange creates a great temptation for corruption. Of course, in some states, corruption may still consist of direct gifts of cash, goods, or services to policymakers. But as these sorts of direct payoffs are controlled, the likelihood that the campaign finance system will become the locus of corruption increases.

Debate persists in the United States about the meaning of "corruption," and the public tends to think of corruption far more broadly than any legal definition (Hibbing and Theis-Morse, 1995). Even with disclosure, it is exceedingly difficult to *prove* that corruption has occurred, and many observers doubt that corruption is common. Indeed, perhaps one of the most useful elements of a disclosure system is the stimulus it provides for a useful societal debate over what constitutes corruption (Thompson, 1993; Smith, 2001). This debate has included academics, journalists, non-profit associations, politicians, and on occasion ordinary citizens, and has included not only the question of corruption but the related question of whether contributions lead to an "undue influence" of donors on policymakers.

If corruption may be in the eye of the beholder, then disclosure is said to allow the eyes of interested potential voters to see the sources of money coming to a candidate or a party. The voters then can determine for themselves whether there is a connection between particular contributions and policies supported by the recipient that benefit the donor. U.S. Supreme Court Justice Brandeis wrote: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." [FN1] Voters can hold policymakers responsible for any special policies or favors they provide for donors only if they have access to information about who has given to whom. Thus an additional virtue claimed for disclosure is that it is a necessary condition for accountability in campaign financing (Alexander et al., 1997, 9).

Disclosure also provides voters with key information that they can use to vote correctly. Voters face an overwhelming barrage of charges and countercharges during electoral campaigns. Candidates often try to disguise their records or blur distinctions on key issues. Interest groups may channel their funds through other organizations that help to mask their financial activity (Rozell et al., 2005; Garrett and Smith, 2005). This makes it difficult to sort out the arguments and advertisements, and to properly discount interested communications.

Effective disclosure can help voters sort through and evaluate campaign messages. By knowing which groups have contributed to candidates, voters gain a valuable cue about the relative positions of candidates. Contributions from an environmental organization can signal voters; contributions from oil companies and their executives can also signal voters. For disclosure to provide useful information, however, it must be complete. It is not enough to know that "Republicans for Clean Air" has run ads attacking John McCain in New York, for example. It is essential that voters also know who is funding "Republicans for Clean Air." The Supreme Court

noted that although “the public may not have been fully informed about the sponsorship of so-called issue ads, the record indicates that candidates and officeholders often were” (McConnell v. FEC, 17-18).

Disclosure can be especially helpful in providing information in state ballot initiatives and referenda, where parties may not provide suitable voting cues. The language of such measures is often purposefully confusing, and groups supporting and opposing initiatives may do so through conduit groups with misleading names (Garrett and Smith, 2005). In these cases, information on which groups have spent large sums for and against measures can be particularly helpful to voters.

Yet for disclosure to lead to accountability, voters must be able and willing to cast ballots based at least in part on campaign finance information.\*374 This may be true for ballot initiatives, but it is far less likely in elections involving candidates. This is unlikely to be true in state elections, where incumbents routinely face little or only token opposition. In Virginia in 2003, for example, a majority of seats in the lower chamber were uncontested, and another 20% were won by incumbents in landslides. Only a few incumbents drew challengers who voters might find attractive if campaign finance data made them less trusting of the incumbent. [FN2]

Regardless of whether or not citizens actually do hold their elected officials accountable, it is important that they have the information to do so if they choose. The fear that the political opposition can use campaign finance information in electoral appeals may be enough to deter certain types of behavior. Indeed, there are instances in the United States of Senators stopping legislation by making speeches on the floor of the chamber that link the proposal to campaign contributions by its sponsor (Fritsch, 1996). The deterrent effect of disclosure is also evident in the conduct of some campaigns. Some candidates have campaigned for office by refusing to take contributions from PACs, [FN3] and others have returned contributions from groups that they thought might prove embarrassing later. Clearly at least some candidates believe that there are electoral costs to being linked to certain financial interests.

Some argue that disclosure also increases trust in government. The most straightforward statement of this proposition is almost certainly false, for disclosure allows for the distribution of information about the campaign finance system that many citizens find distasteful. Yet Warren (2000) argues that transparency might enhance trust, albeit in a complex and indirect way. He argues that democracy institutionalizes distrust by providing mechanisms for the public to monitor and discipline elites if they do not act in the public interest. Disclosure provides information that enables that monitoring, but since most citizens do not actively monitor political money and government policymaking, some element of trust is required. Transparency procedures reduce the risks of trust, and this may increase public trust in government.

Yet disclosure systems also expose citizens to the gory details of politics, and this is not always a pleasant experience. Indeed, in the short or even medium run, a newly implemented disclosure regime may *decrease* trust as citizens come to see the financial constituencies of their political heroes, and as the magnitude of political money becomes apparent. Much as a hungry man may lose his appetite as he tours a sausage factory, so too those who inspect the details of policymaking may come out with greater distaste for politics. Hibbing (2001) argues that increased transparency of Congressional policymaking in the United States has led to decreased trust in the legislature, for citizens inherently dislike the tradeoffs and deals that are at the heart of politics. Thus, disclosure will not automatically enhance trust, but it does make it possible for political elites to earn the trust of its citizens. [FN4]

Finally, one benefit of disclosure that is not commonly mentioned in policy debates is that it permits the

study of the influence of money on policymaking, and may thereby lead to a greater understanding of the workings of a political system. At the national level, the disclosure of receipts and spending of congressional candidates has permitted political scientists and sociologists to study the impact of money on access to policymakers, to legislative activity such as committee action and roll-call votes, and to policy outcomes. These questions are complex and are not yet fully answered, but the interchange of ideas and evidence permitted by these data has clearly enhanced our ability to understand the workings of U.S. democracy. Disclosure might possibly alert political elites to significant shifts in the flow of political influence and money in time to adapt regulatory regimes to avoid any significant damage to the polity.

The disclosure of state campaign-finance data might help academics not only better understand\*375 politics in, say, North Carolina, but perhaps also build better theories of state politics. The uniqueness of many U.S. institutions (especially political parties) limits the value of international comparisons in the area of campaign finance, but 50 states provide a potentially interesting set of cases from which to compare the effects of campaign finance laws. Yet there are important barriers to comparing disclosure information across states, discussed later in this Article.

### THE DISADVANTAGES OF DISCLOSURE

Against these important advantages of disclosure are real disadvantages. Although disclosure is widely accepted as part of U.S. campaign finance regulation, it is not an unmitigated good. Indeed, the Supreme Court consciously weighed the advantages of disclosure against potential disadvantages, and concluded that, in the United States, the balance tipped toward the benefits of disclosure. This may not be true under all circumstances nationally, and the balance of benefits and costs of disclosure is likely to vary across states.

The principal disadvantage to disclosure that the Supreme Court has recognized is an invasion of the privacy of the donor. If contributions are disclosed on the Internet, then any citizen can look up the candidates, interest groups, or parties to which neighbors, employees, or friends have given. Democrats who live in heavily Republican neighborhoods (for example) may not want their neighbors inspecting the records of their contributions (McGeveran, 2003). Although most states forbid the use of disclosure donor lists for solicitations, these laws are increasingly difficult to enforce.

Second, disclosure creates the possibility that contribution records will be scrutinized by those who can pressure citizens to change their contributing behavior. At the national level, both Democratic and Republican party officials have identified individual and institutional donors and reportedly pressured them to change their patterns of giving, with the threat that they would lose access to policymakers unless they complied (see, for example, Jackson, 1990, 67-81). More recently, GOP leaders in the U.S. House have begun to examine the contribution records of lobbyists, and have threatened to deny access to those who give to Democrats. [FN5] Corporate PAC directors also at least occasionally talk to corporate executives about their individual contributions: one corporate executive told me of being harangued for giving to the “wrong” candidates. [FN6]

These costs may deter individuals and groups from supporting unpopular candidates or parties, and thus serve as a “chilling effect” on speech. This danger was explicitly recognized in *Buckley v. Valeo* (1976), where the Supreme Court ruled that the First Amendment prohibits the government from compelling disclosures by a minor political party that can show a reasonable probability that the compelled disclosures will subject those identified to threats, harassment, or reprisals. The majority opinion stated:

We are not unmindful that the damage done by disclosure to the associational interests of the minor parties and their members and to supporters of independents could be significant. These movements are less likely to have a sound financial base and thus are more vulnerable to falloffs in contributions. In some instances fears of reprisal may deter contributions to the point where the movement cannot survive. The public interest also suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within and without the political arena (*Buckley v. Valeo*, 424 U.S. 1 1976, 71).

In this case, the Court balanced the rights of freedom of association and freedom of speech with concerns about corruption. This balance is critically affected by the size of the political party. The Court ruled that because minor \*376 party candidates are unlikely to win elections, the government's general interest in deterring the "buying" of elections is reduced in the case of minor parties. In the case of major parties, the balance at the national level tilts toward the control of corruption.

In 1982, the Court made this exemption concrete in the case of the Socialist Worker's party, which sued in federal court for an exemption to disclosure because they feared that donors might face harassment. In *Brown v. Socialist Worker's '74 Campaign Committee*, 450 US 87 (1982), the Supreme Court ruled that the threat of reprisals against donors would mean that forced disclosure would limit the party's ability to raise funds. The district court found substantial evidence of harassment, including threatening phone calls and hate mail, the burning of SWP literature, the destruction of SWP members' property, police harassment of a party candidate, and the firing of shots at an SWP office. There was also evidence that in the 12-month period before trial 22 SWP members, including four in Ohio, were fired because of their party membership. In addition, the Supreme Court found evidence of government harassment, including an FBI program of surveillance and other activities designed to impair the ability of the party to function.

The 2<sup>nd</sup> Circuit used this precedent to exempt a Communist party campaign committee from filing disclosure documents later in 1982. The court exempted the party not only from disclosing the sources of its funds, but also from disclosing the recipients of its contributions (*Federal Election Commission v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416 [2d Cir. 1982]). In this case, the Court cited the standard from *Buckley* that "the party must demonstrate a 'reasonable probability' that compelled disclosure of the names of contributors would "subject them to threats, harassment, or reprisals from either Government officials or private parties." Such threats may be even more likely in state and especially local elections, and it is worth noting that some local political environments are sufficiently dominated by a single party that giving to the other party may have consequences.

Disclosure may also serve as a sufficient burden to be a barrier to entry to some candidates and groups. Potential candidates already face the real challenges of fundraising; if disclosure requirements are excessively burdensome some may not run for office. As campaigns become more successful, their compliance costs increase: most serious candidates hire accounting firms and many also retain law firms as well to deal with compliance issues. Similarly, if groups whose principale purpose is not political are required to disclose relatively minor campaign activity, they may eschew political involvement altogether.

Disclosure also permits policymakers to determine precisely who has contributed to their campaigns, thereby rewarding their supporters and punishing those who have not given. At the national level, candidates carefully scrutinize donor lists, and tailor their solicitations to fit the timing of legislative activity. Although reform advocates often characterize giving as a form of bribery, donors themselves often speak of extortion. Interest groups may be invited to attend a fundraising event held on the weekend before a legislative committee considers the details of regulations or taxes that might affect the group or company. Indeed, one fundraising profes-

sional described to me how to build a network of donors by “starting with the people who cannot say ‘no’ to you” (Brown et al., 1995, 60).

Because disclosure permits policymakers to collect their rents, Ayres (2000) has proposed to replace the U.S. disclosure regime with a system of anonymity. In this plan, donors would contribute their money through an intermediary institution--either a government agency or a bonded financial institution-- which would put the money into blind accounts and pass the money to candidates at regular intervals. Policymakers would receive all contributions but would not be able to trace them to particular individuals or interests, and thereby would be prevented from extorting contributions (because any individual or interest could claim to have already given), and deter groups and individuals from rent seeking. This proposal is infeasible, and relatively easy to circumvent (Brennan and Hamlin, 2000), but it is a useful tonic for notions that disclosure is a panacea for campaign finance regulation, and invites us to think creatively about alternatives.

### **\*377 BALANCING THE ADVANTAGES AND DISADVANTAGES**

Although the benefits of disclosure almost certainly outweigh the costs in each of the U.S. states, the benefits do not accrue uniformly across the states, nor do the costs accrue evenly in each state. [FN7] State electoral rules, party organization and competition, political culture, and other factors will affect the impact of a disclosure system.

The ability of disclosure laws to aid in enforcement of other regulations will depend on whether such regulations exist, and on whether the administrative agency charged with enforcing them has the resources and the will to enforce them. Disclosure is a necessary condition for enforcement, but it surely is not sufficient. The ability of campaign disclosure laws to limit corruption will depend on the extent to which potential corruption is concentrated in the campaign finance system. In those states where gifts of cash and goods are common, campaign finance might not be the principal avenue through which groups seek access to policymakers. The ability of campaign finance disclosure to increase government accountability will depend on the extent of two-party competition in the states. In many states, few elections are competitive, and even those voters who would like to punish incumbents for potentially corrupt behavior may flinch at the prospect of voting for a poorly qualified challenger.

In addition, disclosure will enhance accountability more in states where there are nongovernmental actors who help to collate and interpret disclosure data. Even the best-funded state agencies lack the mandate to interpret campaign finance data. Instead, political parties, the media, and non-profit associations must take on the burden of telling the stories behind the numbers. States with two institutionalized parties, with diverse media owned by diverse interests, and with a vibrant nonprofit sector are more likely to provide information to voters in a format that they can use. [FN8]

For disclosure to deter improper behavior by incumbents, there must be well-funded groups that can expose the impropriety in election campaigns. Political parties and candidates are the most likely conduits of information; it may be that states with partial public funding will be those in which incumbents are most deterred by the threat of a challenger. Interest groups also have the potential to inform voters during a campaign, so that the strength and diversity of interests within a state may be a factor.

It may also be that the disadvantages of disclosure are more likely to occur in some states than in others. The potential pressure to give to the “correct” party or candidates may be greater in some states than others--perhaps

in states where one party dominates all branches of government. Candidates and parties may be more willing or able to scrutinize donor lists to see who is giving to their opponents in some states than in others.

Malbin and Gais (1998) argued that for disclosure to provide accountability, the disclosure system must have all five of the following attributes:

1. Most candidates and political organizations must report what they do accurately.
2. Such reports must comprise most of the activities and relationships of importance to voters.
3. The reports must be available in a useful format, and accessible.
4. Interested, knowledgeable people must read and interpret reports and make useful information available in a timely way to voters.
5. Voters must be able and willing to use the information as a basis for making an election decision.

Thus voters need to be able to see the major sources of funds coming to candidates and parties, and to link that information to information about policies that are produced by government officials. They must know what interests donors represent in order to determine whether the donors were rewarded. They must see what becomes of the money--how much is left over at the end of the campaign, and what \*378 is done with the surplus. And voters need to be able to follow the money--from its original source through all intermediaries to its ultimate destination.

Malbin and Gais argue that *most* actors must file, and that the reports should show *most* of the money. Doubtlessly they mean in part that a disclosure system need not be perfect in order to give voters the information they need to make meaningful decisions. Yet their words point us to an important element in balancing the advantages and disadvantages of disclosure. Although academics may wish for a full accounting of every dollar spent, of every volunteer mobilized, and of every postcard mailed, we can achieve the goal of accountability (among others) if the most significant activity is reported, and some minor actors are excluded from disclosure. By excluding certain types of actors from filing (small community groups that pass out voter guides, candidates who run on a shoestring) and by excluding some activity from reports (small contributions, campaign volunteers) we can minimize the costs of disclosure while still getting most of the benefits.

### DESIGNING A DISCLOSURE SYSTEM

#### *Who should file?*

In almost all states, parties and candidates who mount significant campaigns must file reports. Most states broaden the list to include other political committees, such as PACs, and other types of interest groups such as corporations and unions that might make contributions. In some cases individuals who undertake major expenditures on behalf of candidates are required to file as well. It is difficult to imagine an effective disclosure system that did not require reporting by *at least* this set of actors, but it is important to keep in mind that filling out disclosure reports is not a simple proposition, and might serve as a deterrent to political activity.

This is especially true for non-incumbent candidates, many of whom lack the skills, and also the financial resources necessary to rent the skills, to file disclosure reports. Because state and local governments are an important source of entry into the political system for women, minorities, and other disenfranchised groups, it is important that disclosure requirements not deter potential candidacies. The FECA requires disclosure only after a candidate or committee has raised \$5,000--a figure that allows candidates to test the waters a bit and then raise enough money to hire someone to handle the books if their campaign takes off. This threshold requirement minimizes the deterrent to potential candidates, while assuring that serious candidates file reports. The most appropriate threshold may vary across states, but it is important to set it high enough not to frighten off citizen politicians but low enough to capture the activity of significant candidates.

Requiring political parties to disclose their donors and contributions is essential, although it is important to be sensitive to problems that might arise for minor parties, which may play an important role in local or even state politics. Regulators should be sensitive to the possibility that potential donors might be reluctant to give to a minor ideological party if their names and addresses are posted on the internet.

An additional problem with party disclosure lies in the definition of a political party, for at the national level, activists continue to create quasi-party committees organized in a variety of ways to avoid contribution limits. Here journalists, academics, and non-profits may be required to keep track of these committees, but the state governments should require sufficient levels of disclosure to trace transfers among these committees, which are often important ways for interest groups and lobbyists to curry favor with party leaders without making direct contributions to their campaigns. In some states (such as California), keeping up with these committees is a daunting task. Similarly, leadership PACs and other types of committees are important party conduits (Rosenthal, 1995; Gierzynski, 1992). Ideally, states should set their disclosure guidelines broadly enough to encompass the auxiliary party organizations that might otherwise launder contributions.

Interest groups (whether through PACs or not) that contribute to candidates must be required to file regular reports of those contributions.\*379 Many groups do not directly give money to candidates or political parties, but are nevertheless active in election campaigns. The Christian Coalition never formed a PAC and made only limited contribution to state campaigns from its corporate funds, but its voter guides were a major asset to GOP candidates across the country, and the magnitude of their intervention (the Coalition claimed to distribute 40 million guides in 1992) was far greater than the average PAC (Wilcox and Larson, 2005). Groups that provide networks of volunteers who go door-to-door or man phone banks can play an important role in elections, whether or not they make a contribution. Group communications with their members can be very important and constitute a major expenditure--especially for large organizations like labor unions and some citizen groups like the NRA. Groups can also run issue advocacy campaigns that are campaign ads in disguise, and often avoid disclosure of their spending and of their donors.

A disclosure system should seek to be as inclusive as possible of major players, for much of what groups do in campaigns is activity beyond a simple contribution. Yet it is useful to consider ways to avoid chilling the speech of small groups that might have minimal effects on campaigns. The precise threshold for filing may differ from state to state, but it is useful to distinguish between major mobilization efforts (say, the Christian Coalition distributing 2 million voter guides in the state) and small citizen efforts (say, a local PTA distributing 200 voter guides that show the positions of school board candidates on a local bond issue).

Finally, the missing element in many state disclosure laws are the middlemen--lobbyists and lobby firms that often are the aggregators of political money. Aggregation occurs at the national level and is not fully disclosed

there either, but this phenomenon creates a more serious problem in some states where a few firms or lobbyists are key bundlers, and account for significant portions of candidate revenue. Officials charged with updating state laws or regulations should monitor the financing of campaigns to see if new actors emerge whose activities should be disclosed.

*What kind of activity should be disclosed?*

Those who wish to hold their elected officials accountable must be able to trace contributions and advocacy spending from their original source to their ultimate recipient. Yet not all contributions pose an equal danger of corruption; larger contributions raise more troubling questions about corruption or coercion than small contributions (unless the former are aggregated by an intermediary). Moreover, since contributions of \$200 are principally the tools of the very affluent (Francia et al., 2003a; Francia et al., 2003b), many argue that small contributions should be encouraged to decrease the “participatory distortion” that comes from contributions. [FN9] Some states require disclosure of very small contributions--as little as \$25. This puts a burden on campaigns--often the cost of recording and tracking these small contributions may exceed their cash value. Clearly some campaigns might at the very least not actively seek such small contributions if they must be disclosed.

The federal level of \$200 for disclosure seems a reasonable balance between the control of corruption and the burdens of extensive recordkeeping. [FN10] This limit would work well for candidates, parties, and PACs. Enforcement personnel can be alert to the possibility of coordinated contributions of \$199 by an industry or group.

Committees (candidate, party, and PAC) should report the full name of the donor, along with any suffixes (Jr., Sr.), and the donor's permanent home address. Working with the FEC individual donor records is exceedingly complex, because an individual may be listed under many variations of his name and address. One major donor in 1990 was listed in more than 20 different variations of name and address\*380 (Wilcox et al., 1998). This makes it very difficult for anyone to determine how much an individual has given, and to whom. Requiring full legal name and permanent home address would vastly improve the ability of citizens, journalists, and scholars to understand the sources of campaign funds. To minimize the invasion of privacy, the FEC does not include street address in its computerized records, although this information is included in the microfilm reports. This exclusion does not appear to provide a significant increase in privacy, but it is a real barrier in research that seeks to match contributions to individuals.

In addition to the name of the donor, contribution records should also include the principal place of business. It is important to be able to trace the coordinated giving by corporate employees. Such coordination clearly occurs at the national level, although non-profits that lump together contributions from a company's PAC, from its employees, and their families may create the misleading impression that all employees give in coordination with a PAC. [FN11] In many states there is a requirement on the books for disclosure of principal place of business, but candidates are merely required to make a good faith effort to obtain the information, and “good faith” appears to be a highly variable concept. [FN12] It would be useful to require a full reporting of the name of the business, for it is difficult to trace multiple variations of company names.

Moreover, groups or individuals that bundle individual contributions should be required to disclose that activity. Disclosing the principal place of business may help to understand coordinated giving, but not all employees give in coordination. Moreover, at the national level, a substantial amount of bundling is done by ideological groups--something that would not be revealed by the principal place of business of the donor (Francia et

al., 2003).

Clearly, a local activist who invites three friends to a fundraiser and collects their checks is not a major player in politics, but groups and lobbyists that collect hundreds of contributions are vital conduits. George W. Bush voluntarily disclosed the names of his major fundraisers--the Rangers in 2000 and the Pioneers in 2004, but other candidates have not done so. Disclosure requirements for bundling are relatively easy to evade in many instances, but the role of bundlers in state politics makes it essential to try to draft comprehensive disclosure rules. Marshall (1997, 1999) reported that fully 80% of individual contributions to Texas legislative candidates were bundled in some way, as were a remarkable 43% of contributions of \$50 or less. These figures are all the more striking because Texas had no limits on PAC contributions. If these figures are approximated in other states, then efforts to understand the influence of interest groups on public policy by focusing only on PAC or direct treasury contributions will ignore much of the story.

Clearly all PAC contributions or direct contributions from the treasuries of unions, corporations, or membership groups must be reported. But PACs do not give only to candidates; they give to other PACs, and to party committees as well, and these transfers are quite common and involve substantial amounts in many states. Tracing such transfers can be tricky, because the donor may report the contribution on the date the check was written, and the recipient on the date that it was cashed. Requiring PACs and other interest groups to report both the date of the check and the date it was cashed would not pose an undue burden on most committees, but would facilitate the tracing of transfers.

To interpret the role of PACs, however, voters and scholars need to know the principal interest that a PAC represents. Many of the issue advocacy groups in recent years sport names like "Citizens for a Good Montana" or "Republicans for Clean Air"--titles that at best are uninformative and at worst are deceptive. When PACs are sponsored by corporations, unions, or membership groups, the sponsoring organization should appear either in the \*381 name or in another data field that is easily accessible.

Moreover, the donors to PACs and other organized interests must be disclosed. In recent years, deceptive group names have become far more common. Corporate groups frequently hide behind names that seem to signal citizens groups. In this way, voters do not properly discount the financial self interest that lies behind these communications. Other "groups" have formed to channel the funds of a single wealthy donor. For example, in the 2004 campaigns, "Let Freedom Ring" was primarily funded by a single patron (and later by some of his friends). The group spent money on behalf of Bush, and also gave money to other political organizations such as state chapters of the Christian Coalition. [FN13]

To truly enable a citizen to trace the impact of individuals and groups, other types of activity beyond direct contributions must be disclosed as well. Interest group spending on independent expenditures, issue advocacy, voter guide distribution, and other efforts should be disclosed. Without disclosure of this activity, increasing portions of the important money in elections will be channeled outside the disclosure system. At the national level, some of this activity falls outside the purview of the Federal Election Commission, because it is done by 527 committees, 501(c)3 and 501(c)4 committees, and other entities. Yet there seems no reason that states could not require that these committees disclose any activity that is conducted close to an election and that might influence the election outcome. To avoid chilling the speech of small citizen groups, a threshold could be set that triggers disclosure.

Requiring that campaigns disclose the "receipt" of coordinated volunteers would pose a burden on cam-

paings and might deter volunteers from offering their time. But large groups that coordinate volunteer efforts could be required to disclose that activity in some way. In some state elections, the role of the NRA, the Sierra Club, various Christian Right groups, or local unions can be critical, and the value of the coordinated volunteer effort can be substantial. Yet any disclosure requirement in this area should err on the side of not posing a barrier to voluntarism.

The trickier question is whether to require the disclosure of the source of funds that groups use for electoral activity beyond contributions. Without knowing the identity of the major donors, it is difficult to understand what a group like "Republicans for Clean Air" is really about. Yet disclosure of donors is less relevant in states where treasury funds are the source of contributions, voter guides, or other electoral activity. In that case disclosure might mean listing all members of the National Rifle Association or the Sierra Club, or perhaps the stockholders of a local company. In recent years, some interest groups such as Planned Parenthood and the NAACP have undertaken massive media campaigns funded by a few major donors. The identity of these donors may be less important in these cases, since the agenda of NAACP and Planned Parenthood are well known.

The disclosure of spending poses an even more difficult task. Clearly the spending by parties, PACs, and candidates must be disclosed, to help assure that all monies are used for legitimate purposes and none end up in the pockets of politicians. Yet how should the spending be categorized? Voters do not require detailed information about spending--how much went for advertising, polling, posters--but political scientists and journalists find such information invaluable. At the national level, disclosure of spending is haphazard, because the law does not provide specific categories of activity to be aggregated. Thus one candidate might break out polling, media consulting, and media buys, whereas another might simply report it all under a single expenditure for consulting. Clearly, scholars would benefit from solid information on when and how money is spent in elections, for this would enable them to investigate many important questions about the role of money and the choices that campaigns make in spending that money.

In the absence of detailed spending reports, political scientists have relied on surveys of campaigns, but the response rates of such surveys is dropping (Herrnson, 2000; Abbe and Herrnson, 2002). Well-funded candidates, parties, <sup>382</sup> and PACs could demand that consultants give them itemized invoices, although the most poorly funded candidates might find additional bookkeeping a burden. Thus states might experiment with requiring that spending be broken into meaningful categories, with an eye toward not burdening small campaigns.

Finally, transfers of funds are especially important to report. At the national level, transfers from candidates to parties and to other candidates are becoming increasingly common. Whereas once candidate contributions to parties and other candidates were relatively rare, in 2002 they constituted fully 12% of national Republican party receipts, and nearly 25% of those of national Democratic party committees, and were important sources of seed money to non-incumbent candidates (Wilcox, 1989; Bedlington and Malbin, 2003). Political parties may transfer funds to interest groups to help their voter mobilization efforts, and quasi-party groups may take contributions from interest groups and pass them to parties. In some states, party leaders receive a lion's share of all candidate contributions and redistribute this money to other candidates. To be able to fully "follow the money," all such transfers must be reported.

#### HOW SHOULD STATES DISCLOSE DATA?

Campaign finance information can do little to facilitate disclosure if it is difficult to obtain, or difficult for the public to understand. Disclosure forms should be as simple and as straightforward as possible, and disclosure

reports should be easily accessible and also easy to understand. Ideally, such information should be available through the Internet. Political parties, NGOs, the media, academics, and concerned citizens can use Internet sites to obtain information, and facilitate the dissemination of it to broader publics.

The Federal Election Commission issues regular press releases that guide reporters toward the most important trends in money, and also maintains a press office to answer queries and help guide reporters to explore the data. There is also an Office of Public Records that allows citizens to peruse documents or query the database. Individuals may request reports from the public relations office by phone or by mail. The Agency's online web page allows citizens to see who has given to a particular candidate, or which candidates have received support from a particular company or group. Scholars can download databases from any election cycle, and analyze them in various ways.

It is important that disclosure be made in a timely manner, so that intermediary institutions have time to interpret the results before an election. Electronic filing greatly enhances the ability of agencies to make data available quickly, for software programs can perform audits rapidly on these reports, flagging some for further inspection. Yet many potential candidates and even a few state PACs may lack the technical expertise to file electronically. The FEC requires electronic filing for committees that have raised at least \$50,000, under the assumption that committees with sufficient funds can hire a high school student to do it for them. Other states have experimented with lower thresholds, and as computers become more ubiquitous it seems possible to require that almost all filers report electronically, though special care should be made not to deter candidacy decisions.

Electronic filing requires secure servers, software that allows filing, and programs that perform internal audits of reports. Some states have implemented electronic filing with manageable costs (Malbin and Gais, 1998). The initial costs may be considerable, for software must be tailored to state laws, but in the long run the program may save the states money as they reduce their data entry contracts.

Yet electronic filing and prompt web updating should not entirely replace more integrative reports, including press releases and summaries of campaign finance activity. These types of activities have great value. Reporters often need assistance in wading through complex data, and summary reports at the end of election cycles can help policymakers trace the flow of money in elections.

## ENFORCEMENT

Any disclosure system without real sanctions invites abuse. Setting the level of sanctions is a fine art, for too mild a sanction invites \*383 candidates, parties, and interest groups to ignore the law, but too severe a sanction might pose a real barrier to campaigns that may inadvertently violate the law. As important as the degree of sanctions is their fair application. It is vitally important that violators from all parties face the same sanctions, and know with certainty that well-entrenched incumbents of either party cannot avoid sanctions.

The timing of the enforcement of disclosure laws presents a difficult choice. At the national level, the FEC releases a list of campaigns that are negligent in their filings before an election, but any sanctions are generally imposed after the election. Candidates and parties may use the fact that their opponent has not filed reports in their campaigns, but the lack of significant and timely penalties does allow some campaigns to defer their filings in the heat of campaigns.

Disclosure that is haphazardly made and haphazardly enforced may be worse than no disclosure at all, for it

invites cynicism and distrust of government, and weakens notions of the rule of law. Whatever disclosure system a state adopts, it must endeavor to ensure that regulated parties file required reports, and do so accurately. Inevitably legislatures and governors are stingy in allocating funds to regulating agencies that might pore through their disclosure reports, but adequately funded agencies are crucial to the success of disclosure.

#### WHAT WE WOULD NEED TO FACILITATE COMPARATIVE STATE CAMPAIGN FINANCE STUDIES

When policymakers design campaign finance disclosure systems, they rightly focus on the informational needs of voters more than those of academics. Yet truly cross-state campaign finance studies do not merely satisfy academic curiosity; they can also help policymakers truly learn from state experiments, and design more effective campaign finance laws (Mayer, 1997; Malbin and Gais, 1998).

Although scholars have been doing state campaign finance research for many years (Jones, 1981), most early studies focused on single states (Owens and Olson, 1977; Jones and Borris, 1985). There has recently been a renewed interest in comparing campaign finance activity across states, however. Thus while Thompson and Cassie (1992) examined party and PAC contributions in state legislative races in North Carolina, Cassie and Thompson (1998) explored PAC contributions in 17 states.

Such efforts are an important first step toward building theories of campaign finance in states (for a recent effort at theory building, see Gierzynski, 1998). Yet it is important to recall as we cull the disclosed information in various states that laws vary widely in what is allowed, channeling activity in different ways in different states. Moreover, weaknesses in disclosure laws and their enforcement vary across states, making the inclusiveness of the data quite uneven. The studies cited above have generally been sensitive to these problems, but other studies have not.

Consider, for example, the various ways that corporate activity can be channeled in various states. Treasury contributions can go directly to party leaders to be redistributed to other candidates; they can also go directly to a large number of candidates; to political parties, or to other interest groups that use them to mount issue advocacy or voter mobilization campaigns. Corporate PAC contributions can go to other PACs, to parties, and candidates; as can bundled individual contributions. In some states, strict limits give corporations an incentive to use more of these routes, in others there are no limits and thus money flows primarily through the large channels, not the small tributaries. Yet even in states with no regulations, political tradition may lead to complex patterns of transfers among actors.

Multiple routes exist also at the national level, but the existence of a common regulatory and disclosure framework makes the tracing of these various choices at least possible. At the national level, political theorist Gertrude Stein might reasonably observe that a PAC is a PAC is a PAC. At the state level, this is decidedly not true. More troublingly, it is quite difficult even to systematically understand how corporate activity varies from state to state, and how that might vary from the pattern of activity by, say, the Sierra Club.

The studies compiled by Schultz (2002) hint at a strategy for coming to understand the impact of different regulations and disclosure \*384 rules across states. Future research might attempt to compare the activity of a few organizations that are active in most states--a major corporation like AT&T, a major union like the NEA, conservative and liberal citizen's groups like the NRA and the Sierra Club. How do different state regulations channel the same type of activity? How do different disclosure formats lead to incomplete pictures of this activ-

ity in different states?

## CONCLUSIONS

Although disclosure is the centerpiece to any campaign finance regulation, and although it is commonly thought to provide important benefits, it also poses real costs. As states move toward more comprehensive campaign finance disclosure systems, they should seek to balance the costs and benefits by requiring complete disclosure by major actors but by excluding some minor actors and minor financial activity from reporting requirements.

Although we know that money flows in diverse ways across the states-- sometimes in the main channels, sometimes in the narrow and winding streams--we also know that holes in disclosure requirements and lax enforcement mean that we are often not able to fully understand the myriad ways that the money flows. Research that seeks to systematically compare campaign finance disclosure laws and systems can help us better understand the role of money in state politics, and can also help us develop a "best practices" model law that other states might adopt. It is important as we do this, however, that we are sensitive to the ways that political culture and regulation channel political money and the activity of campaigns.

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[FN1]. Clyde Wilcox is professor of government at Georgetown University.

[FN2]. L. Brandeis, *Other People's Money* 62 (National Home Library Foundation ed. 1933).

[FN3]. This problem exists also in US House and in many Senate races.

[FN4]. In most cases, the candidates accepted coordinated contributions made by the members and leaders of interest groups, however.

[FN5]. See also Primo and Milyo, 2003. For a critique of their analysis, see Joe, 2004.

4 ELECTLJ 371  
4 Election L.J. 371

Page 19

[FN5]. See Jim VandeHei, 2002, "GOP Monitoring Lobbyists' Politics; White House, Hill Access May Be Affected." Washington Post June 10, A1.

[FN6]. Author interview.

[FN7]. For a similar argument about countries, see Wilcox, 1989a, 1993, 2001.

[FN8]. Political scientists often disagree with the interpretations offered by media and non-profits, however.

[FN9]. Verba, Schlozman, and Brady (1995) report that the distortion from contributing is greater than for any other type of participation.

[FN10]. Both FECA and BCRA require disclosure of any contributions that aggregate to a total of more than \$200. This means that campaigns maintain basic information on small contributions such as name and address. When the totals aggregate above \$200, then campaigns are required to attempt to obtain information on the employer and occupation of the donor.

[FN11]. In fact, in some of my preliminary analysis, individuals who work for companies often offset the PAC contributions from that company.

[FN12]. At the national level there has been great variance also; some candidates appear to be unable to determine the principal place of business for many of their donors. And many donors fill in such information in a whimsical way--one business magnate in Ohio listed his occupation as farmer because he owned shares in a racehorse.

[FN13]. Author interview with group's director.

4 Election L.J. 371

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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SPEECHNOW.ORG,		)	
DAVID KEATING,		)	
FRED M. YOUNG, JR.,		)	
EDWARD H. CRANE, III,		)	
BRAD RUSSO, and		)	
SCOTT BURKHARDT		)	
	Plaintiffs,	)	
		)	
v.		)	Civil Case No. 1:08-cv-00248 (JR)
		)	
FEDERAL ELECTION COMMISSION		)	
		)	
	Defendant.	)	
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**DECLARATION OF JEFFREY MILYO, Ph.D.,  
IN SUPPORT OF PLAINTIFFS' RESPONSE TO  
DEFENDANT'S PROPOSED FINDINGS OF FACT**

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I, JEFFREY MILYO, Ph.D., declare under penalty of perjury that the following is true:

1. I am a citizen of the United States, a resident of the State of Missouri, and over the age of 18 years. I make this declaration in support of plaintiffs' response to defendant's proposed findings of fact. This declaration is based on my personal knowledge of the facts stated herein.

2. Attached to this declaration as Exhibit A is a reference list of works cited throughout the declaration.

3. There are four important points on which Wilcox and I agree in our respective reports:

- a. Wilcox argues that limits on contributions to groups that exist to make independent expenditures will result in fewer contributions to these groups and less spending by these groups. In my report, I also argue that contribution limits on groups like SpeechNow will have a negative impact on both i) the ability of individual donors to support independent groups of their choosing, and ii) the ability of independent groups to get their message out to the public by reducing the total amount of independent expenditures.
- b. Wilcox argues that independent expenditures are important political activities that have the potential to affect public policy debates; further, Wilcox argues that limits on contributions to groups that make independent expenditures will have a detrimental impact on the ability of independent groups to affect public policy debates. I also argue that independent expenditures by groups like SpeechNow are an important form of political participation and speech, and that limits on contributions will have a negative impact on the effectiveness of such groups.
- c. Wilcox does not cite any scientific studies of the treatment effect of independent expenditures on either political corruption or the appearance of corruption. This is consistent with my claim that there are no such studies.
- d. Wilcox does not cite any scientific studies of the treatment effect of campaign contribution limits of any sort on either political corruption or the appearance of corruption. This is consistent with my claim that there

are no such systematic studies, except for Primo and Milyo (2006), who examine the treatment effect of campaign finance laws on public opinion regarding political efficacy.<sup>1</sup>

4. The overall argument made by Wilcox is spurious.

5. A succinct outline of Wilcox's argument is: i) independent expenditures are valuable to incumbents, ii) incumbents might reward groups that provide things of value to them, iii) this has the potential to lead to activities that are corrupt or appear corrupt, iv) therefore, contributions to groups that make independent expenditures should be limited.

6. Wilcox makes no attempt to weigh the benefits and costs of independent expenditures. This is not a rational approach to public policy making! His argument is essentially that if unlimited contributions to groups that make independent expenditures might possibly be related to a corrupt activity, then they should be prohibited. This is akin to arguing that if motorists can use highways to violate the speed limit, then highways should be abolished—except that excessive speed is easily defined and measured (unlike political corruption) and motorists do not have a right to the highway (while the rights to speak, associate and petition government are protected by the Constitution).

7. The logic of Wilcox's argument can be extended to other political activities. For example, consider a group of community organizers that work to get out the vote in neighborhoods that are home to citizens that disproportionately support the incumbent.

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<sup>1</sup>There exist a handful of studies that superficially examine the association between limits on contributions to candidates and political corruption with mixed results (e.g. Stratmann 2003; Alt and Lassen 2003; Maxwell and Winters 2005); however, these studies do not convincingly identify the treatment effect of contribution limits because they do not examine changes in limits on changes in corruption within state/country. Wilcox does not mention any of these studies in his report.

Such activity would be valuable to the incumbent, and so by the logic of Wilcox's argument, should be limited. As another example, consider a group of campaign volunteers that go above and beyond what is expected in providing services to an incumbent's campaign (working late nights and weekends, engaging in enthusiastic voter outreach activities, etc.); such activities would also be valuable, and so according to Wilcox's logic should also be outlawed or severely curtailed. Finally, an incumbent politician may enjoy disproportionate popularity among environmentalists, or women, or union members, or residents of a certain geographical area, etc.; the votes of such interest groups are also valuable to the incumbent, and so, again, should be prohibited or restricted by Wilcox's argument.

8. The notion that non-monetary activities may have substantial value to a candidate is not just hypothetical. For example, celebrities often endorse candidates and sometimes appear or even perform at fundraisers. Further, recent scholarly studies quantify the effects of Oprah Winfrey's endorsement of Barack Obama and the value of a candidate's appearance on the "Colbert Report" (Garthwaite and Moore 2008; and Fowler 2008). For example, the "Oprah" endorsement is estimated to have been worth about 1,000,000 votes for Obama in the Democratic primary! Even ignoring this estimate, for a political candidate, time spent with Oprah is undoubtedly valuable. For example, in 2004 a 30 second national advertising spot on Oprah Winfrey's syndicated morning television program was priced at \$70,000 (CBS News 2004); so even a few minutes on Oprah's show can be conservatively valued at several hundred thousand dollars. By Wilcox's logic, candidates should not be allowed to appear on popular

television shows and celebrities should be forbidden from endorsing their preferred candidates.

9. Finally, studies of the electoral effects of newspaper endorsements indicate that such endorsements are typically worth between one and five percentage points to a candidate (Ansolabehere et al. 2006); again, by Wilcox's logic the New York Times and other newspapers should be prohibited or restricted from making such valuable endorsements, lest they open a door to possible corruption.

10. The absurdity of these arguments (that GOTV, volunteer campaign workers, endorsements and even voting itself are all suspect activities that should be drastically curtailed or prohibited) underscores the flaw in Wilcox's logic.

11. Wilcox refers to "corruption" and "undue influence" without either defining these terms or even acknowledging that political scientists and legal scholars have long recognized that these concepts are ambiguous and problematic (e.g., Lowenstein 1985, 1995, and 2004).

12. In contrast, in his scholarly writings Wilcox (2005) does acknowledge that: "Debate persists in the United States about the meaning of 'corruption,' ... (and) ... the question of whether contributions lead to an 'undue influence' of donors on policymakers" (scare quotes in the original). Further, Wilcox (2005) notes: "...it is exceedingly difficult to *prove* that corruption has occurred, and many observers doubt that corruption is common" (emphasis in the original). This discrepancy between Wilcox's scholarship and his expert report is disconcerting.

13. Wilcox summarizes his Section I by stating that allowing unlimited contributions to groups that make independent expenditures "...would in many cases lead

to preferential access and influence for donors, and poses a significant risk of corruption.” Even this summary statement is problematic in several respects.

14. First, “many cases” compared to what? How many is many? Wilcox never addresses whether this means most cases or 1% of those cases or something less. On page 4, Wilcox makes a similar statement, but substitutes “frequently” for “many cases”. Of course, no such frequency is ever calculated or referred to in his report. Instead, Wilcox really only argues that it is *possible* for independent expenditures to lead to access and influence. Consequently, Wilcox confuses the possibility of something occurring with the actual and frequent occurrence of that activity (this is a recurring problem in his report).

15. Second, “access and influence” is a more broad concept than political corruption; “access and influence” also describes the effect of political activities that are both legal and socially desirable. What would be the point of citizens’ rights to speech, association and petition if these activities don’t lead to access and influence? Moreover, it is quite informative that Wilcox does *not* claim that independent expenditures lead specifically to “political corruption” here, but rather he refers only to vague and general effects. Of course, Wilcox’s argument would be much stronger if he were to claim that independent expenditures or contributions to groups that make independent expenditures lead to corruption; the fact that he does not leads me to infer that Wilcox understands that there is no compelling and direct scientific evidence that independent expenditures or contributions to groups that make independent expenditures lead to political corruption. This point is reinforced by the fact that the next phrase references only the “risk of corruption.”

16. Third, “significant risk of corruption” implies some quantification of the probability of corruption; however, Wilcox does not make any such calculation, nor does he cite any studies that produce such a calculation. Thus this choice of words is misleading. Social scientists mean something very specific by statements like “significant risk,” but Wilcox here is not referring to any statistical result; instead, he is using “significant risk” in a more colloquial sense to convey that the risk is non-trivial in his opinion. Of course, Wilcox never describes how much of a risk is non-trivial in his opinion; would it be a 1% chance or a 0.0000001% chance? Who knows? As a result, this claim is meaningless except to convey that there exists some possibility that corruption might occur.

17. Putting these observations together, a clearer and more succinct summary for this section of the Wilcox report would be: “Allowing unlimited contributions to groups that make independent expenditures may or may not lead to some instances of illegal activities.”

18. Wilcox exhibits a similarly sloppy use of language in several places in his report.

19. For example, Wilcox states that “...candidates appreciate independent expenditures campaigns, and would be *likely* to reward those who fund them.... There is evidence that indirect contributions have been *associated* with corruption in the past” (page 6; emphasis added). When a social scientist uses words such as “likely” and “associated” they usually imply a statement based upon a statistical analysis. However, Wilcox has not conducted any assessment of the probability that candidates reward contributors (of any sort), nor does he cite any such assessment. Similarly, Wilcox does

not examine the empirical frequency of incidences of corruption over time and whether these are systematically related to independent expenditures. Instead, Wilcox really only argues that it is *possible* that candidates reward donors, and that it is *possible* for independent expenditures to be part of a corrupt activity. Consequently, Wilcox again misses the fundamental distinction between the possibility of some activity occurring and the actual frequent occurrence of that activity.

20. Another example of slippery use of terms is seen when Wilcox notes that some contributors give money to candidates for “business reasons” (page 6). What exactly constitutes “business reasons”? Who knows? But there’s no reason to assume this has anything to do with political corruption. There is nothing unseemly about supporting a candidate or party out of self-interest; indeed, many candidates make direct appeals to voters’ pocketbooks (e.g., “Are you better off now than you were four years ago?”).

21. It is also worth noting that Wilcox does not indicate any comparable frequency for other reasons for giving, such as an ideological motive. But since a minority of contributors indicates that business is a primary motive, it must be the case that other motives, like ideology, dominate the decision to give to candidates. However, Wilcox does not present any systematic evidence about the motivations of individuals that make independent expenditures or make contributions to groups that make independent expenditures. Are contributors to candidates more likely to give for “business reasons” than contributors to independent expenditure campaigns? Perhaps, but Wilcox does not present any such evidence. Yet, Wilcox concludes in his report that contributions to independent expenditure committees pose the same danger for corruption

as direct contributions to candidates. This equivalence is unsupported by any empirical evidence. Once again, Wilcox at best argues that it is *possible* that contributors to independent expenditure committees have similar motives as those that give directly to candidates; he then confuses this possibility with an actual equivalence.

22. In Section I of his report, Wilcox states that “the danger of large direct contributions to candidates is well-established in political science”; Wilcox then elaborates this danger as “special access and particularistic policy favors to donors... explicit and implicit quid-pro-quo relationships.” This statement gives the misleading impression that there is a consensus among scholars that there is strong evidence that contributions cause corruption. However, Wilcox does not provide any citations to empirical studies to support these statements, nor does he acknowledge that his own scholarship is inconsistent with this claim (Wilcox 2005; see ¶ 11 above).

23. Elsewhere in his report (p.21), Wilcox admits that there is little relationship between PAC contributions and roll-call votes (albeit, again without citation to actual studies); this admission is difficult to reconcile with his earlier assertion that there is a well-established connection between contributions and explicit quid-pro-quo relationships.

24. Wilcox then asserts that because studies of PAC contributions and roll-call votes do not include independent expenditures, such studies understate the effects of contributions. This is not necessarily so; if groups that make PAC contributions also make independent expenditures, then studies of the effects of PAC contributions on roll-call votes would overstate the effects of PAC contributions.

25. Wilcox then falls back on the claim that PAC contributions buy access to legislators; however, to the extent that access affects roll-call votes, this should also be manifest in the relationship between PAC contributions and roll-call votes (but it isn't).

26. Further, Wilcox cites Hall and Wayman (1990) in support of the claim that contributions to candidates buy access to legislators; however, the study by Hall and Wayman is methodologically flawed and hence "almost surely biased" (Snyder 2002). Beyond this, Wilcox ignores contrary evidence in Wawro (2000) that is more comprehensive and systematic than the three cases examined by Hall and Wayman.

27. Wilcox ignores scholars that argue that campaign contributions have a limited impact on policy outcomes (e.g., Ansolabehere et al. 2003, Milyo et al. 2000, Snyder 2002); this despite the fact that Wilcox assigns such studies (e.g., Ansolabehere et al. 2003) as required reading in his course on "Money in American Politics" at Georgetown.<sup>2</sup>

28. Wilcox also ignores or is unaware of a recent study by Ansolabehere and Snyder (2004) that is particularly relevant to his discussion of soft money and his assertion that donors benefit from making contributions. The authors of this study demonstrate that the share prices of firms that gave large amounts of soft money pre-BCRA were not adversely affected by BCRA. This strongly suggests that those firms were not receiving any important policy favors as a result of their soft money contributions.

29. Wilcox does cite an opinion-laden essay by Malbin (2008) in support of the broad claim that campaign contributions are a corrupting influence; however, Wilcox fails to note anywhere in his report that Malbin also argues that independent expenditures

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<sup>2</sup> Course syllabus viewed at: <https://www9.georgetown.edu/faculty/wilcox/Government%20374.doc>.

have less potential for corruption than direct contributions to candidates (Wilcox later takes a contrary position in his report).

30. Wilcox also fails to acknowledge that several scholars consider corruption from campaign contributions to be a “small societal problem” (e.g., Ansolabehere 2007; see also Ansolabehere et al. 2001 and 2003). Further, opinion surveys consistently reveal that respondents do *not* consider campaign finance reform to be an important issue (e.g., Mayer 2001).

31. Wilcox also argues that large contributions “lead to increased public perceptions of corruption” (page 5). The only empirical study cited in support of this claim is Shapiro (2003); however, Shapiro merely demonstrates that survey respondents have cynical attitudes about elected officials and the role of money in politics. Shapiro does not estimate the treatment effect of either contributions or limits on contributions on public opinion. It is therefore inaccurate to cite Shapiro in support of the claim that large contributions *increase* public perceptions of corruption.

32. In fact, Wilcox fails to cite a number of other recent and relevant studies on campaign finance and the appearance of corruption, all of which would contradict his argument that large contributions increase public perceptions of corruption.

33. In the same edited volume as the Shapiro study, Primo (2003) presents evidence that changes in trust in government over time do not support the notion that either campaign spending or contribution limits have an important impact on citizen trust.

34. In my original report, I note that Primo and Milyo (2006) is the only study to estimate the treatment effect of campaign finance regulations on public opinions about

government; in that study we find little support for the notion that contribution limits increase public trust in government.

35. Notably, Malbin (2008), who is cited approvingly by Wilcox in his report, discusses the findings in Primo and Milyo and argues in reference to BCRA: "...it is true that some of the bill's sponsors, reformers and newspaper editorial boards talked about contribution limits as if they would reverse the public's cynicism about government. But it was *never plausible* to expect changes in campaign finance law by themselves measurably to improve citizens' views about government" (emphasis added).

36. Persily and Lammie (2004) also examine perceptions of corruption; they argue that citizens' general views of government, social capital and demographic attributes appear to drive perceptions of corruption; they do not find evidence consistent with the notion that campaign finance is an important determinant of perceptions of corruption.

37. Persily and Lammie also question the extent to which public opinion about corruption is related to actual political corruption; they note that the public is notoriously ill-informed about even very basic campaign finance facts. It is therefore no surprise that perceptions of corruption are not strongly related to campaign contribution limits.

38. One explanation for the public's lack of knowledge about campaign finance is that the issue is considered unimportant by most citizens (e.g., Mayer 2001); further, newspaper reporting of campaign finance stories is notoriously sensationalized (Ansolabehere et al. 2005).

39. Despite the widespread and misinformed cynicism that exists about the role of money in politics, it is also well known that large numbers of survey respondents

frequently support eliminating all contribution limits. For example, Grant and Rudolph (2004) demonstrate that a majority of survey respondents support removing all contribution limits.

40. Finally, as I mention in my original report, Coleman and Manna (2000) also argue that there is little or no relationship between campaign spending and trust in government.

41. I find it disconcerting that in discussing the effects of campaign spending and contribution limits on the appearance of corruption, Wilcox fails to mention any of the studies cited above. Nor does Wilcox even raise a single caveat regarding his unsupported claim that large contributions exacerbate the appearance of corruption.

42. Wilcox claims that "...a large contribution to an independent expenditure campaign is *always* worth more to the candidate than a smaller, regulated contribution to the candidate." (page 14; emphasis added). This is an odd claim, since Wilcox does not base it on statistical estimates of the relative effectiveness of independent expenditures versus direct contributions, but I suppose "large" can always be defined close enough to infinity that the claim is trivially true (and therefore vacuous).

43. However, subsequently Wilcox claims that even though some independent ads do not help candidates, "more frequently" issue ads "are *more* valuable than a direct contribution to the candidate." (page 15; emphasis in original). This claim is unsupported; Wilcox has not analyzed the effectiveness of a representative sample of equal-sized independent expenditures versus direct contributions; he simply has no basis for making claims about the frequency with which independent ads are more valuable

than direct contributions. Again, Wilcox has confused the possibility of something occurring, with the actuality that it occurs frequently.

44. To his credit, Wilcox later states that “in some cases” an independent expenditure may help a candidate more than an equivalent amount given directly as a campaign contribution (page 15-16).

45. But, in the conclusion to his report, Wilcox again makes unsupported claims to the effect that a \$10,000 contribution to an independent expenditure committee “...will *most often* be more valuable than the maximum allowable direct contribution” and that a contribution of \$100,000 to an independent expenditure committee “...will *always* be far more valuable...” (pages 25-26; emphasis added). These may be reasonable surmises to Wilcox, but he has no evidence or expertise that allows him to state these claims as fact.

46. Wilcox asserts that “the value of independent expenditures is not substantially reduced by their lack of explicit coordination with campaigns.” (page 16). Once again, this claim is not supported by any systematic study which estimates the treatment effects of coordinated and uncoordinated expenditures. As before, Wilcox confuses the possibility of something with its actual occurrence in most or all instances.

47. Further, by making this assertion, Wilcox denies the possibility of truly independent expenditures, as defined by law. This point is underscored when Wilcox concludes that “the danger of corruption from unlimited contributions directly to independent expenditure committees is *the same* as that of unlimited contributions directly to candidates.” (page 4; emphasis added). Thus according to Wilcox, the independence of a committee is not a safeguard against corruption; this contradicts not

only the law, but as I describe in my original report, well-established results from game theory and human subject experiments on the efficacy of implicit cooperation.

48. The assertion that an independent expenditure committee like SpeechNow is functionally no different from a PAC that makes direct contributions is erroneous in other respects. First, connected PACs may have their overhead costs paid for by the connected organization; an unconnected independent expenditure committee like SpeechNow must pay all its overhead costs out of limited hard-money contributions (which presumably have a higher opportunity cost).

49. Second, compliance with campaign finance regulations is costly and burdensome, like any other regulation, although compliance costs are rarely studied in the campaign finance literature. A connected PAC may have a sponsoring organization that provides sufficient funds to employ a full-time professional staff; while independent groups like SpeechNow may not have the same resources.

### **Conclusion**

50. Overall, I find the Wilcox report to be riddled with logical errors and factual omissions. However, this sloppiness does not appear to be random; in every instance, these errors and omissions serve to support Wilcox's argument.

51. Wilcox articulates a grossly inaccurate and incomplete characterization of the relevant social science scholarship on the "danger" of large contributions; once again, Wilcox's report is strongly biased in support of his argument.

52. I also note that Wilcox cites several articles published in edited volumes, but ignores selections from those same volumes that contradict his jaundiced view of large contributions. Similarly, Wilcox approvingly cites selected passages from an author, but

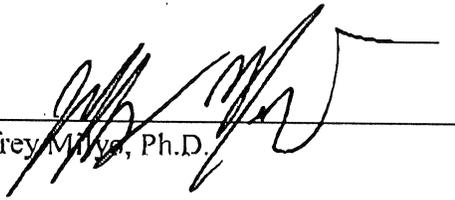
Wilcox does not refer to other relevant passages from the same article that contradict his argument. Wilcox also ignores inconvenient evidence from a high profile article in his report, but he does include the same article in the required reading list for his seminar course on "Money in American Politics" at Georgetown.

53. I note an important discrepancy in the way in which Wilcox discusses political corruption and undue influence in his scholarship versus his report. Wilcox recognizes that political corruption and undue influence are somewhat nebulous concepts and that the existence of corruption is nearly impossible to prove; that is, until he writes his expert report.

54. Based on this pattern of errors and omissions, I conclude that Wilcox has not faithfully and competently utilized his expertise in producing his report.

I certify and declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed: November 19, 2008.

  
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Jeffrey M. Myer, Ph.D.

**MILYO REBUTTAL DECLARATION  
EXHIBIT A**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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SPEECHNOW.ORG,		)	
DAVID KEATING,		)	
FRED M. YOUNG, JR.,		)	
EDWARD H. CRANE, III,		)	
BRAD RUSSO, and		)	
SCOTT BURKHARDT		)	
		)	
	Plaintiffs,	)	
		)	
	v.	)	Civil Case No. 1:08-cv-00248 (JR)
		)	
FEDERAL ELECTION COMMISSION		)	
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	Defendant.	)	
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**ORDER GRANTING PLAINTIFFS' SECOND MOTION IN LIMINE**

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For good cause shown, Plaintiffs' Second Motion in Limine is GRANTED.

Accordingly, FEC Exhibit 1, Report of Expert Witness Clyde Wilcox, shall be excluded from evidence.

Further, Defendant's Proposed Findings of Fact relying on Defendant's Exhibit 1 and contained in ¶¶ 79, 80, 81, 82, 83, 84, 85, 87, 88, 90, 91, 92, 93, 94, 95, 97, 100, 106, 116, 117, 118, 119, 121, 122, 123, 124, 126, 127, 128, 129, 132, 133, 134, 135, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 156, 157, 158, 159, 163, 164, 165, 166, 176, 177, 181, 186, 190, 191, 192, 193, 194, 195, 196, 203, 208, 209, 210, 211, 212, 213, 214, 215, 217, 218, 219, 220, 222, 223, 226, 227, 228, 230, 237, 238, 240, 245, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261,

263, 264, 265, 269, 270, 271, 274, 275, 276, 309, 314, 315, 328, 339, 340, 341, 350, 351, 352, 358, 359, 361, 362, 363, 364, 365, 366, and 367 shall not be adopted.

Further, FEC Exhibit 18, the Deposition Transcript of Clyde Wilcox, shall be excluded from evidence. Defendant's Proposed Findings of Fact relying on that exhibit and contained in ¶¶ 131, 136, 185, 242, 244, 336, and 337 shall not be adopted.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2008.

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James Robertson, United States District Judge