CAMPAIGN FINANCE AND PARTISAN POLARIZATION IN THE UNITED STATES CONGRESS

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The prevailing campaign finance system, as conceived under the 1974 reforms, makes candidates heavily reliant on the most ideological elements in both parties. Regrettably, the conventional frameworks for understanding the dynamics of campaign finance have boxed us into reform solutions that are likely to intensify rather than attenuate partisan polarization. The ongoing emphasis on anti-corruption instigates rules that set contribution limits at unrealistically low levels for candidates and political parties. This situation compels politicians to redouble efforts to raise money from ideological constituencies.

More critically, however, is a failure to see that the party system has strengthened to the point at which rules designed originally in 1974 for candidate-centered elections make little sense during a period when political parties are characterized by intense partisanship. The United States has a strong party system, but weak party organizations, in part, because of the candidate-centered design of campaign finance laws. The close seat margins for controlling government, as well as the policy distinctiveness of the major parties have dramatically raised the electoral stakes. Partisans therefore have strong incentives to mobilize collectively so as to maximize the likelihood of winning elections. In most democracies, party organizations are the essential vehicle for carrying out this task. In the United States, however, parties are constrained by campaign finance laws, among other institutional features. Ideological factions associated with the parties fill the breach in financing politics because both statutes and the Supreme Court's election law jurisprudence confer advantages to non-party groups relative to party organizations. The result is a politics in which

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ideological factions wield enormous influence in supporting favored candidates and setting the campaign agenda.

Using an approach that incorporates an understanding of the institutional flow of campaign money, this paper argues that strengthening party organizations by making them more central in financing elections should reduce ideological polarization between the major parties. While such reasoning may seem counterintuitive, it reflects the realities of organizational incentives in the political system. Party organizations are uniquely situated to raise funds from diverse factions and invest them in relatively moderate candidates. For this reason, a party-centered system may attenuate polarization, while simultaneously improving transparency and accountability in elections.

INTRODUCTION

Politics in Washington appear hopelessly polarized. Political scientists are still trying to determine the underlying causes pulling the political parties in Congress and many statehouses toward opposite ideological poles. The dynamic is naturally complex, with potential links to social, technological, and institutional changes in the United States.[1] One hypothesis gaining wide acceptance among scholars, is that partisan activists with strong policy preferences, rather than party professionals, have come to dominate political parties.[2] These activists have taken advantage of electoral institutions to recruit, nominate, and electioneer for like-minded candidates. As a result, public officeholders reflect the ideological position of often-extreme partisan activists rather than the more centrist preferences of rank-and-file party voters.[3]

This essay emerges from a similar strand of reasoning that attributes partisan change to the institutional advantages of party activists. Specifically, I argue that the most ideological elements in both parties have accrued significant power from American campaign finance laws and the jurisprudence interpreting them. Though such activists have always held disproportionate influence in party affairs,

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1. *See generally* Michael Barber & Nolan McCarty, Am. Pol. Sci. Ass'n, *Causes and Consequences of Polarization*, *in* TASK FORCE REPORT: NEGOTIATING AGREEMENT IN POLITICS 19–53 (Jane Mansbridge & Cathie Jo Martin eds., 2013), *available at* Http://www.apsanet.org/media/PDFs/Publications/Chapter2Mansbridge.pdf.

2. *See generally* SETH E. MASKET, NO MIDDLE GROUND: HOW INFORMAL PARTY ORGANIZATIONS CONTROL NOMINATIONS AND POLARIZE LEGISLATURES (2009).

3. This is the view espoused most notably in MORRIS P. FIORINA, SAMUEL J. ABRAMS, & JEREMY POPE, CULTURE WAR?: THE MYTH OF A POLARIZED AMERICA (2005).

the strategic benefits created by the campaign finance system, particularly since the reforms of the Bipartisan Campaign Reform Act of 2002 (BCRA), give them even greater leverage to pull parties towards their ideological poles.

It has not always been this way. Three decades ago, campaign finance laws seemed tailor-made for a semi-fluid politics that allowed officeholders to pursue personal policy agendas. Candidates were largely responsible for raising their own money from personal constituencies that included friends and neighbors. Incumbents, of course, could draw upon the well of money provided by Political Action Committees (PACs) in Washington. Such PACs were mostly business interests seeking favors, particularly in the process of crafting the small-bore details of legislation. For the most part the closed nature of the system, in which campaign money flowed almost exclusively through candidate committees, gave candidates a significant degree of discretion in both their election campaigns and their time in office.[4]

The political context in which the campaign finance system operates has changed a great deal. In the last decade, candidates have come to rely heavily on individual donors who often reflect the ideological outliers in American politics.[5] At the same time, the patchwork arrangement of money rules gives rise to outside campaigning by narrow issue groups that pull candidates away from the mainstream electorate. In this essay I will explain how we arrived at this point and try to direct the way forward to a new approach for regulating money in politics.

My diagnosis is that there is a severe mismatch between the design of the campaign finance system and the party system that has emerged in the past three decades. The current template for the campaign finance system comes from the 1974 amendments to the Federal Election Campaign Act.[6] This legislation assumed a world of

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4. I am not implying that this was a golden era of campaign finance. During this time, incumbents relied heavily on PACs to build campaign war chests in order to thwart potential electoral challenges. For this reason, it could be argued that system accountability was rather low during this period.

5. George Soros and Sheldon Adelson are notable examples of such individuals. *See* Thomas B. Edsall, *Sheldon Adelson: GOP's Answer to George Soros?*, HUFFINGTON POST, (Aug. 1, 2008), http://www.huffingtonpost.com/2008/07/25/sheldon-adelson-gops-answ_n_114899.html

6. *See generally* Federal Election Campaign Act Amendments of 1974 Pub. L. No. 93-443, 88 Stat. 1263 (1974) (codified as amended at 26 U.S.C.A. §§ 9031–9042 (West 2014)).

candidate-centered politics in which candidates largely controlled their electoral destinies through the self-management of campaigns.[7] This is no longer the reality. Today, parties and partisanship matter a great deal more than at any point in the last century. And yet our approach to campaign finance rules has not adapted to this new reality, a fact revealed by the outdated design of the most recent reforms of the Bipartisan Campaign Reform Act of 2002. Indeed, our conventional frameworks for understanding the dynamics of campaign finance have boxed us into reform solutions that are likely to intensify rather than attenuate partisan polarization.

In Part I, I elaborate my argument for how the current approaches to campaign finance have been based on wrongful assumptions about the nature of the party system and why a *party-centered* approach to campaign finance might attenuate partisan polarization. In Part II, I describe briefly how the party system has changed from a candidate-centered system to a strong party system and why this matters in the design of campaign finance laws. Part III then explains distortional consequences on the flow of money in a strong party system with a candidate-centered design of campaign finance laws. Part IV shows the different goals that motivate political groups and individual donors, and how ideological factions use their leverage in the campaign finance system to make political parties more extreme. Part V explains the consequences for partisan polarization of continuing on the same path of campaign finance reform, and turns to potential solutions to attenuate the influence of extremist factions in the political parties.

I. A FLAWED APPROACH TO CAMPAIGN FINANCE REFORM

My overarching proposition is that the party system has dramatically changed in ways that thwart the logic of the candidate-centered campaign finance system. Compared to the 1970s, the major parties today represent highly distinctive and almost diametrically opposed governing platforms. Moreover, any given election presents a realistic opportunity for either party to gain control of Congress.

7. The candidate-centered nature of political campaigns have historical roots dating back to colonial elections. *See* PAUL S. HERRNSON, COLTON C. CAMPBELL, MARNI EZRA, & STEPHEN K. MEDVIC, GUIDE TO POLITICAL CAMPAIGNS IN AMERICA 19–20 (2005). The successful Progressive attack against party organizations in the 20th century, against a backdrop of changing culture and technology, helped move candidates front and center in the management of campaigns.

These two dynamics—policy distinctiveness and tight party margins—can accurately be called a *strong party system*. Not surprisingly, such a system fuels intense partisan organizing to pursue majorities in the legislature.

Despite changes in the party system, the campaign finance rules restrain the most important partisan organizer—the party organization itself. For this reason, partisans organize outside the formal party structure through non-party groups such as Super PACs.[8] The arrangement tends to benefit ideologically extreme partisans who have the means and motive to pursue high-risk, high reward campaign politics, especially when the policy and electoral stakes are high. Not surprisingly, these factions are unrepresentative of the larger party coalition because they either tend to focus on narrow "hot button" issues (e.g., abortion, taxes, guns), or they hold extreme positions on policies relative to rank-and-file party voters. The views of these extreme factions receive disproportionate attention from candidates precisely because such constituencies can instill fear or gratitude in those running for office.

A recent example illustrates the problem. After a career in which Senator Pat Roberts behaved as a traditional Kansas Republican, seeking bipartisanship through compromise, Senator Roberts has begun aligning himself with the most conservative elements in the party after being threatened in the upcoming 2014 primary election by Tea Party activists armed with Super PACs.[9] His fear is that he will be "Lugared," suffering the fate of longtime Senator Richard Lugar (R-IN) who was deposed in a primary in 2012 by similar Tea Party factions.[10]

Good government advocates are understandably concerned about efforts by political groups to circumvent formal campaign finance rules by setting up lightly regulated Super PACs and 501(c)(4) organizations.[11] The primary response of reformers has been to devise

8. "Super PAC" is a popular name for a type of committee that spends money independently of candidates and political parties. Unlike traditional PACs, which have restrictions on fundraising and the amount they may contribute to candidates or parties, Super PACs have no limits on the source and size of money they raise, and may also spend unlimited sums on elections. Being an independent-expenditure committee means that Super PACs may not contribute money to candidates and parties, nor coordinate their activities with them.

9. Jonathan Martin, *Lacking a House, A Senator is Renewing His Ties in Kansas*, N.Y. TIMES, Feb 7, 2014, at A11, *available at* http://www.nytimes.com/2014/02/08/us/senator-races-to-show-ties-including-an-address-in-kansas.html.

10. *Id.*

11. *See* INTERNAL REVENUE SERVICE, *Types of Organizations Exempt under Section*

ways to extend conventional regulations to such groups—disclosure requirements and restrictions on government contractors for example.[12] Good government advocates have also promoted public financing schemes, such as "matching programs" to increase the number of small donors as a counterweight to large donors who finance outside groups.[13] Both these approaches are shortsighted for a variety of reasons, but my purpose is to focus on how such practices will likely stoke ongoing ideological polarization.

To address the problems posed by polarization it will be necessary to reconsider the orthodox regulatory approach—overwhelmingly focused on anti-corruption. Some legal scholars appear to be moving in this direction by broadening the meaning of corruption to incorporate goals beyond the prevention of quid pro quo corruption.[14] These efforts, however, will fall short of providing a necessary institutional perspective that takes into consideration how money actually flows through the political system. To be sure, conventional approaches are understandable given that campaign finance jurisprudence has revolved around conceptions of corruption. Nonetheless, I fear that viewing campaign finance through the lens of anti-corruption (however defined) leads to worn-out regulatory strategies that make the system hospitable to extremist party factions.

The logic of anti-corruption implies an overriding goal of making politicians less reliant on big donors. To achieve this, reformers typically pursue a "leveling" strategy. At one end, this means shaving off big donations by imposing limits on contributions to candidates and, by extension, the political parties supporting them. At the other end, reforms aim to broaden the base of contributions by cultivating small donors to stand against big money. This similarly involves

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501(c)(4), http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Types-of-Organizations-Exempt-under-Section-501(c)(4) (last updated Mar. 14, 2014). This type of organization is commonly referred to by the subsection under which it is formed—a "501(c)(4)."

12. *Keeping Politics in the Shadows*, N.Y. TIMES, July 27, 2010, at A22, *available at* http://www.nytimes.com/2010/07/28/opinion/28wed2.html.

13. *See* Fred Wertheimer, *Legalized Bribery*, POLITICO MAG. (Jan. 19, 2014), http://www.politico.com/magazine/story/2014/01/citizens-united-campaign-finance-legalized-bribery-102366.html#.U8mAfZRdXrQv.

14. There are several current healthy debates about the meaning of corruption. *See generally* LAWRENCE LESSIG, REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT (2011); Richard L. Hasen, *Essay: Is 'Dependence Corruption' Distinct from a Political Equality Argument for Campaign Finance Laws? A Reply to Professor Lessig*, (U.C. Irvine School of Law Research Paper No. 2013-94, 2013), *available at* SSRN: http://ssrn.com/abstract=2220851. See also, in this issue, Yasmin Dawood, *Classifying Corruption*, 9 DUKE J. CONST. L. & PUB. POL'Y 103 (2014).

setting contribution limits relatively low to force politicians to mobilize a broader swathe of donors, or to use some kind of matching system of public financing that leverages small donations. The regulatory strategy of using low contribution limits or publicly-financed matching programs makes candidates rely heavily on small individual donors who tend to be highly ideological.[15] In fact, when it comes to giving preferences, small individual donors tend to give to ideologically extreme candidates, in comparison to the mostly pragmatic PACs that typically give to incumbents, regardless of ideology.[16] Overall, then, the reform strategy of promoting small donors appears to make ideological donations even more salient in the political system.

A second problem beyond the anti-corruption perspective—and one to which I devote most of my attention here—is the faulty institutional framework applied to American elections and campaign finance. That framework is decidedly, if unconsciously, candidate-centered—it no longer reflects the realities of the modern party system. This incorrect theoretical picture leads to reform proposals that bear no relationship to the dynamics of contemporary partisan electioneering in a strong party system. The resulting laws crystalize a dense but highly *decentralized* and *fragmented* partisan network of campaign activity. This structure makes it extremely difficult for voters or the Federal Elections Commissions (FEC) to bring accountability to political campaigns. In most democracies with strong party systems, the party organizations manage elections. In the United States, there is a strong party system but weak party organizations, resulting in heavy reliance on satellite organizations that work on behalf of party candidates. The candidate-centered design of American campaign finance laws has done much to stunt this traditional role of party organizations.[17]

15. Adam Bonica, *Forum: Leadership, Free to Lead*, BOSTON REV., July 22, 2011, *available at* https://www.bostonreview.net/bonica-small-donors-polarization.

16. *See* Michael Barber, Ideological Donors, Contribution Limits, and the Polarization of State Legislatures 6 (Sept. 4, 2013) (unpublished manuscript), *available at* http://static.squarespace.com/static/51841c73e4b04fc5ce6e8f15/t/52275a92e4b03f583b4b4047/1378310802196/Limits.pdf.

17. I discuss the history of United States campaign finance reforms and their deleterious impact on the national parties in SMALL CHANGE: MONEY, POLITICAL PARTIES, AND CAMPAIGN FINANCE REFORM (2008).

The anti-corruption purpose (in combination with a candidate-centered framework) is understandably difficult to move away from because it resonates with the public and is rooted in constitutional doctrine.[18] On the other hand, my hope is that this essay will broaden the debate beyond purposes of anti-corruption—a strategy that has failed to improve accountability in the campaign finance system, much less attenuate fears that politicians are corrupted by big money. For those concerned about political integration and stability, an alternative reform agenda should balance concerns about corruption with an appreciation for the pivotal role of parties in generating broad-based governing coalitions that are willing to compromise internally among partisan factions and with the rival party.[19]

My approach is rooted firmly within a political science perspective dating back to Edmund Burke, which values a strong role for political parties in making constitutional democracy workable.[20] To some readers, my argument for strong political parties may appear odd when the very problem of polarization seems to be that parties are "too strong."[21] Paradoxically, I am arguing that strong party organizations are likely to *decrease* party polarization. The underlying theory is that financially secure and strong party organizations have centrist tendencies that will balance the voices of more ideological

18. Public opinion polls suggest that Americans believe corruption is the primary problem in the campaign finance system rather than inequality of influence (i.e., distortion) in the political system, although it is possible that voters fail to distinguish conceptually between the two. Regarding constitutional doctrine, the Court ruled in Buckley v. Valeo, 424 U.S. 1, 26–27 (1976), and affirmed in Citizens United v. FEC, 558 U.S. 310, 359–60 (2010), that the government interest in regulating campaign finance is limited to instances of preventing quid pro quo corruption or its appearance rather than addressing distortion issues.

19. To be sure, others can reasonably argue that the political system should give voice to ardent conservatives and liberals who fall distant from the mainstream. Without denying the importance of having strongly ideological and non-centrist positions articulated in a democracy, this essay takes the position that such views are currently over-represented in the American political system, and that the moderating influence of large, coalitional political parties is essential in a highly diverse democratic polity, and one that has a constitutional order with multiple veto points, (e.g., as a result of separation of powers) conferring strong influence to minority viewpoints.

20. *See* EDMUND BURKE, *Thoughts on the Cause of the Present Discontents* (1770), *in* SELECT WORKS OF EDMUND BURKE (E.J. Payne ed., Liberty Fund ed., 1990) *available at* http://www.econlib.org/library/LFBooks/Burke/brkSWv1c1.html.

21. Noted economists, R. Glenn Hubbard and Tim Kane, blame strong parties and their monopoly on campaign finance on the polarization situation. I think they have it exactly wrong, as I explain in this essay. There is no "monopoly" because resources are dispersed among factions with different goals who want to influence the direction of the party. *See* R. Glenn Hubbard & Tim Kane, *In Defense of Citizens United: Why Campaign Finance Reform Threatens American Democracy*, 92 FOREIGN AFF., no. 4, July/August 2013, at 126.

factions in the party coalition.[22] My argument makes sense if one conceives of parties as a network of partisan factions vying for influence to control the direction of the party coalition. Campaign finance rules allocate power within this coalition because they advantage some factions over others. Some factions, for example, have legal or election-related expertise that allows them to campaign independently of candidates, while political parties can no longer use soft money for similar purposes. Others have access to wealthy donors or organizations that can finance campaign advertising. Currently, the more extreme factions—many of whom have significant campaign resources and expertise—benefit from the party-constraining rules at the expense of the moderate factions that tend to control the party organizations.

II. THE CHANGING PARTY SYSTEM

Research clearly shows that there have been significant changes to the American party system in the past fifty years.[23] Specifically, the party system strengthened in ways that seemed unimaginable to close observers in the 1970s and 1980s who thought instead that political parties were becoming less meaningful in the political system. If anything, the evidence, even two decades ago, seemed to point in the direction of a weakening party system because Americans were affiliating less frequently with the parties. Parties seemed so irrelevant or unpopular that candidates often avoided using the party label in campaigns while party organizations seemed almost absent in elections.[24] It is fair to say that an overwhelming number of incumbents in both parties felt secure in their reelections by practicing a district "homestyle" that downplayed the importance of party and cultivated personal constituencies.[25] Given all these dynamics, this period could justifiably be called an era of candidate-centered politics.

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22. This theory is related somewhat to that of Anthony Downs, who claimed that parties in the two-party system tend to converge on the median voter. *See generally* ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY (1957).

23. Geoffrey C. Layman, Thomas M. Carsey, & Juliana Menasce Horowitz, *Party Polarization in American Politics: Characteristics, Causes, and Consequences*, 9 ANN. REV. POL. SCI. 83, 85 (2006).

24. DAVID S. BRODER, THE PARTY'S OVER : THE FAILURE OF POLITICS IN AMERICA 182 (1972); *see also* MARTIN P. WATTENBERG, THE DECLINE OF AMERICAN POLITICAL PARTIES, 1952–1980 (1984).

25. Bruce E. Cain, John A. Ferejohn, & Morris P. Fiorina, THE PERSONAL VOTE: CONSTITUENCY SERVICE AND ELECTORAL INDEPENDENCE (1987).

It was also an expensive form of politics, at least when compared to elections in most other democracies, where political parties managed campaigns. Without traditional party organizations to subsidize mobilization, candidates created their organizations from scratch. They relied heavily on costly private consultants, media advertising, and polling technologies. The expense of campaigns and ongoing pursuit of political contributions attracted the attention of emergent public interest groups. Common Cause and like-minded organizations pushed for political reforms to broaden citizen participation and limit the role of money in elections. The Watergate scandal provided the focusing event that put campaign finance reform on the national agenda. In 1974, Congress amended the Federal Election Campaign Act (FECA)[26] to impose stringent and enforceable rules to thwart the money chase and reduce the reliance of candidates on big donors.[27]

In many ways, the revised FECA was tailor-made for the prevailing candidate-centered elections. Contributions would flow directly to candidates who controlled their own election committees and took responsibility for reporting all transactions.[28] To prevent corruption, campaign contributions from individuals were restricted to $1000 per election, while interest groups could make a $5000 contribution through registered PACs.[29] Notably, a political party could contribute no more than a PAC to its candidates, although it could spend an additional limited amount through coordinated spending on behalf of the candidate.[30]

FECA institutionalized a candidate-centered campaign finance system that left parties with only a residual consultative role as service organizations.[31] Not surprisingly, the big winners in this system were incumbents who came to dominate election financing in the 1980s. They used the power of office to accumulate campaign war chests that gave them significant electoral advantages over

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26. Federal Elections Campaign Act, Pub. L. 92-225, 86 Stat. 3 (1971) (codified as amended at 3 U.S.C. §§ 431–455 (2012)).

27. FECA was amended in 1974 and this version of the statute forms the basis of my analysis. *See* Federal Election Campaign Act Amendments of 1974, Pub L. No. 93-443, 88 Stat. 1263 (1974) (codified as amended at 26 U.S.C.A. §§ 9031–9042 (West 2014)).

28. *See Id.* at §§ 101, 202, 204, 88 Stat. 1263, 1263–4, 1275–78 (describing candidate reporting requirements).

29. *Id.* at § 101(b)(2).

30. *Id.*

31. PAUL S. HERRNSON, PARTY CAMPAIGNING IN THE 1980S 24–25(1988).

challengers.[32] This financial firewall, however, could not forestall the underlying changes in the party system. In 1994, the Republicans surged to big victories by winning seats in conservative districts held by Democratic incumbents, mostly in the South and West.[33]

The 1994 elections were pivotal in transforming the dynamics of the party system. As Figure 1 shows, prior to 1994 the Democrats held at least a fifty-seat margin in the House for decades. Since then control of the House has always been within striking distance for either party. The close margins make the electoral outcome of each seat important for every member of the party because it determines majorities in Congress and all the legislative advantages and committee chairmanships that accrue with such majorities. Small margins encourage members to support collective efforts by party leaders to win close races across the country. In practice, members became intensely active raising money for the congressional party organizations and complied with leadership requests to contribute funds from their own campaign accounts to targeted races across the country.[34] The fundraising activities to help fellow partisans were added on top of their already prodigious efforts to raise money for their own campaign committees.[35]

Importantly, the changes during this period did not simply reflect greater party competition, but the *character* of that competition. These contests were increasingly between party candidates with starkly different views of governance. Theories about politicians hewing to the median voter seemed increasingly irrelevant as candidates who were much further to the right or left than the typical voter won.[36] Figure 2 uses the mean ideological scores (DW-Nominate,

32. Alan I. Abramowitz, Brad Alexander, & Matthew Gunning, *Incumbency, Redistricting, and the Decline of Competition in U.S. House Elections*, 68 J. POL. 75 (2006).

33. David W. Brady, John F. Cogan, Brian J. Gaines, & Douglas Rivers, *The Perils of Presidential Support: How the Republicans Took the House in the 1994 Midterm Elections*, 18 POL. BEHAV. 345, 345 (1996).

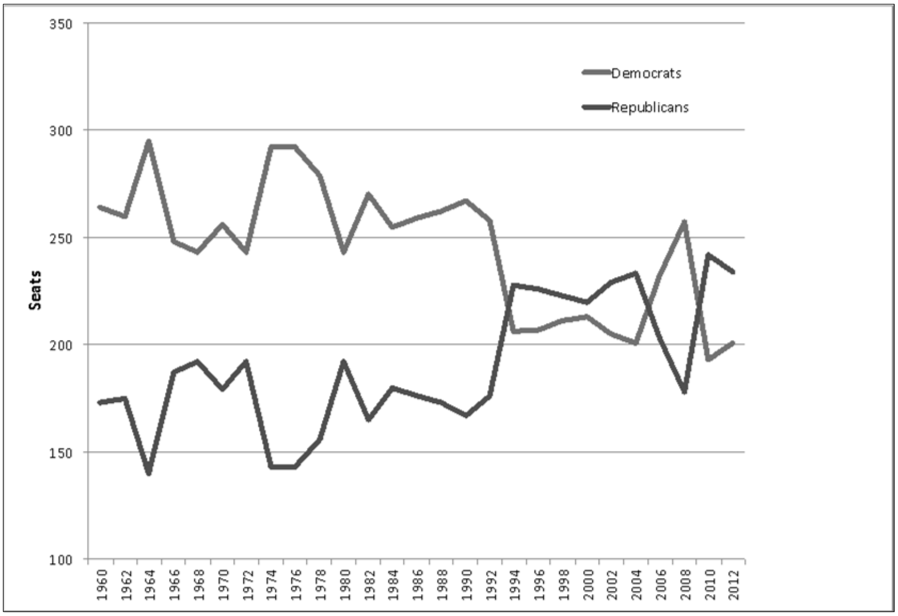
34. These organizations are the Democratic Congressional Campaign Committee (DCCC) and National Republican Campaign Committee (NRCC). This willingness to centralize resources and authority played out in a similar way in the legislative process, as members gave leadership greater power to shape legislation and sanction rank-and-file members who strayed from party goals.

35. *See* ERIC S. HEBERLIG & BRUCE A. LARSON, CONGRESSIONAL PARTIES, INSTITUTIONAL AMBITION, AND THE FINANCING OF MAJORITY CONTROL 40–41 (2012).

36. Indeed, a kind of 'leap-frog' representation became apparent as the same district might be represented by a very liberal or very conservative candidate over a relatively short period. *See* Joseph Bafumi & Michael C. Herron, *Leapfrog Representation and Extremism: A Study of American Voters and Their Members in Congress*, 104 AM. POL. SCI. REV. 519, 519–20 (2010).

first dimension) of party members in Congress from 1961 to 2013.[37] It shows that both parties were sloughing off moderates and becoming ideologically purer over time. This was especially true for Republicans—not just in the South, but across the entire nation. The growing differences between the parties provided clearer electoral choices for voters, with important consequences for governing.

Figure 1. Party Seats in the United States House, 1960–2012 Elections



Distinctive policy agendas combined with close margins in Congress increased electoral stakes dramatically. The United States moved closer to a strong party system—one positively envisioned by a commission of political scientists in a weighty report called *Toward A Responsible Party System*.[38] That report, however, failed to mention that such a system would also correspond to higher campaign costs. When policies hinge so greatly on which party controls legislative majorities, the value of each marginal seat increases significantly—

37. Royce Carroll, Jeff Lewis, James Lo, Nolan McCarty, Keith Poole, & Howard Rosenthal, *House Polarization 1st to 113th Congresses*, VOTEVIEW.COM (Feb. 17, 2013), http://www.voteview.com/dwnominate.asp.

38. *See* Am. Pol. Sci. Ass'n., *Toward a More Responsible Two-Party System*, 44 AM. POL. SCI. REV. 3 sup. (1950).

campaign expenditures rise sharply. Figure 3, which shows spending on House races, reveals that this is exactly what happened during this period of party system transformation. Spending starts increasing sharply in 1994, when the Republicans abruptly put an end to Democratic dominance. Before the 1994 elections, the average campaign expenditures of challengers had been flat since 1974, even as incumbents enhanced their financial advantages. After this point, however, both parties had intensely strong incentives to finance challengers in closely contested races. Thus, we observe challenger spending rising at the same rate as incumbent spending. (Note however that incumbents continue to have an advantage under the candidate-centered finance system.

Figure 2. United States House, Party Polarization, 1961–2013

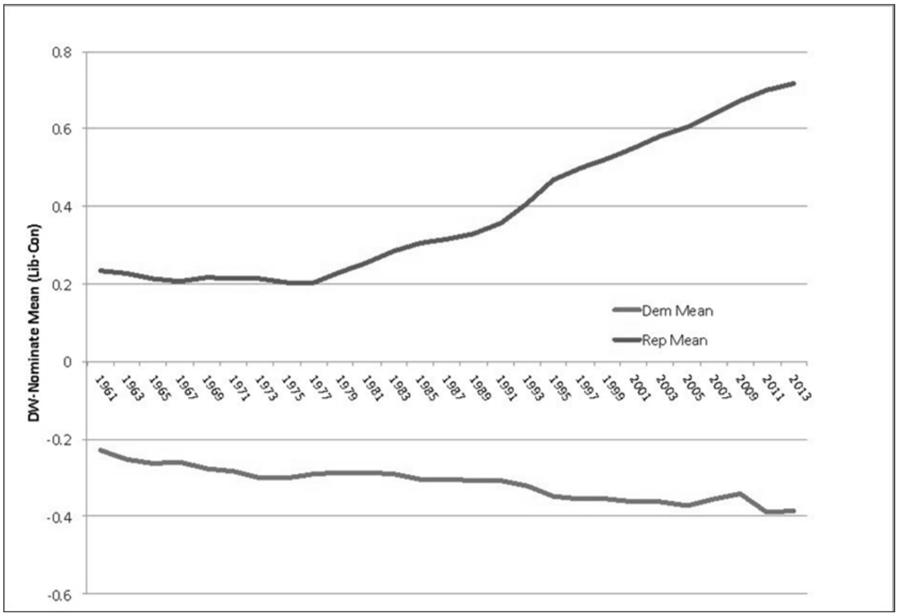
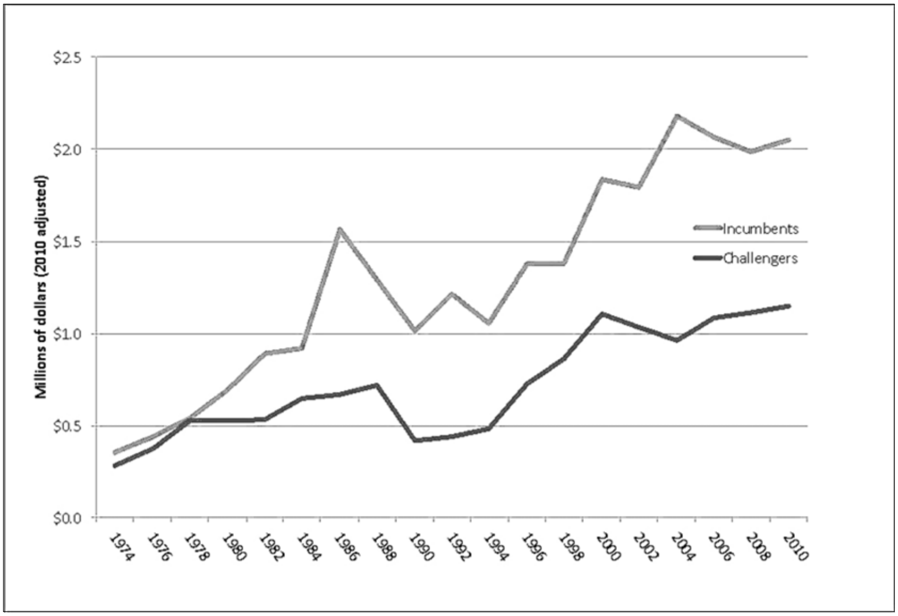


Figure 3. Average Campaign Expenditures of United States House Incumbents and Challengers, 1974–2010



III. WHY SOFT MONEY? WHY SUPER PACS?

With the stakes so high in this emergent party system, the incentives for organizing collectively grew. Party members needed a mechanism for channeling critical electoral resources to where they would be most effective for winning seats. The logical place for this activity is the party organization. However, FECA's constraints, with its restrictions on contributions and coordinated expenditures, made channeling resources to the parties themselves problematic. Typically, national parties provide no more than 5 percent of campaign funds to candidates, on average (which includes both party contributions and coordinated expenditures).[39] While political parties tend to focus their resources on close races, these direct contributions and coordinated expenditures never amount to a significant portion of total candidate financial support.

39. To be sure, parties help the candidates in other ways though consulting and mobilizing voters.

The challenge for political parties was that the campaign finance laws made their situation progressively *worse* over time, even as the demand for party organizing mounted. One major problem was the failure of FECA to include inflation adjustments for both contributions to the party and contribution transfers from the party to its candidates. At the adoption of the 1974 reforms the parties could receive an individual contribution as high as $20,000. Twenty years later, in 1994 when the GOP won control of Congress, the value of this top-level contribution was just $6,600 in 1974 dollars.[40] In other words, the party organizations had lost two-thirds of the value of a political contribution at the moment when the necessity of partisan organizing had become more urgent. The straightjacket of campaign finance laws designed with a candidate-centered framework proved costly as partisans sought new means to channel resources into key races.

The rise of party soft money in the 1990s was a logical reaction for partisans trying to sidestep the impracticable financial constraints of FECA.[41] Party soft money were funds that could be raised without source or size limits, so long as they were used for "party building" activities such as general overhead expenses, building voter files, and generic advertising to promote the party "brand." Using soft money to electioneer for specific candidates was prohibited under federal regulations, but parties figured out how to produce ads that helped candidates in all but name, without violating the law.[42]

Naturally, the flow of unrestricted soft money created anxiety among good government groups because the practice undermined the purpose of contribution limits. But rather than see the surge of soft money as a signal about institutional responses to a changing electoral environment, most reform groups responded by trying to put the

40. Based on BUREAU LABOR STAT., *CPI Inflation Calculator*, U.S. DEPT. LABOR, http://www.bls.gov/data/inflation_calculator.htm (last visited July 22, 2014).

41. At the time, soft money was also exploited to get around the inadequacy of the presidential public funding system which was too inelastic to deal with the frontloading of presidential party nominations. *See* Raymond J. La Raja, *Why Super PACs: How the American Party System Outgrew the Campaign Finance System*, 10 FORUM no. 4, Dec. 2012, at 91, 92.

42. To get around the statutes prohibiting electioneering, political parties simply avoided using terms such as "vote for" or "elect." This enabled them to claim legally that the ads were about issues rather than candidates. Nonetheless, the intent to help a particular candidate seemed obvious enough. A report from the Brennan Center for Justice found that "96% of all party ads mentioned a candidate's name or pictured a candidate's likeness or image." CRAIG B. HOLMAN, BRENNAN CTR. FOR JUSTICE, THE END OF LIMITS ON MONEY IN POLITICS 3 (2001), *available at* http://brennan.3cdn.net/f1b070cbd490336610_08m6bpvsf.pdf.

genie back in the bottle. In the reform rhetoric of the 1990s, soft money replaced PACs as the bête noire of campaign finance.

The thrust of subsequent reform efforts was to restore the status quo ante FECA by plugging loopholes. For this reason, the approach employed an anti-corruption rationale and applied the conventional—and outdated—candidate-centered framework. According to political scientist Tom Mann, who helped shape BCRA,[43] "[T]he new law is a relatively modest, incremental undertaking, not a revolution in campaign-finance regulation. Its major provisions would leave the system to operate largely as it did early in the 1980s. It is designed to repair the most egregious tears in the regulatory fabric . . . ." Reformers had failed to consider how much the party system had changed. By taking away party soft money and providing few alternatives for the party to finance candidates, BCRA squeezed party organizations *even more* than under the original FECA.[44]

The main point is that BCRA failed as a regulatory strategy because it was stingy—limiting party organizations' ability to raise and spend money precisely at a time when political parties as institutions mattered so much. Without party soft money, the natural response of partisans has been to devise other means to organize on behalf of party candidates. In the immediate wake of BCRA, soft money flowed to partisan factions, and the most aggressive ones sought to challenge the constitutionality of BCRA's constraints on advertising with soft money by non-party organizations.[45] Quickly and surely, the judiciary chipped away at restrictions on interest group advertising in a series of important cases that effectively started with a 2007 decision in *FEC v. Wisconsin Right to Life*.[46] *Citizens United v. FEC* in 2010 put the exclamation point on the Supreme Court's refusal to countenance restrictions on spending money in politics.[47]

The logical consequence of the anti-party design of campaign finance laws was an electoral environment rife with independent spending by partisan factions. As Figure 4 shows, the 2012 elections

43. Pub. L. No. 107-155, 116 Stat. 81 (2002) (codified at 36 U.S.C.A. § 510 (West 2014) & in scattered sections of 2. U.S.C.A.).

44. BCRA "increased" the original $20,000 limit to $25,000, which was worth only $6,850 in 1974 dollars.

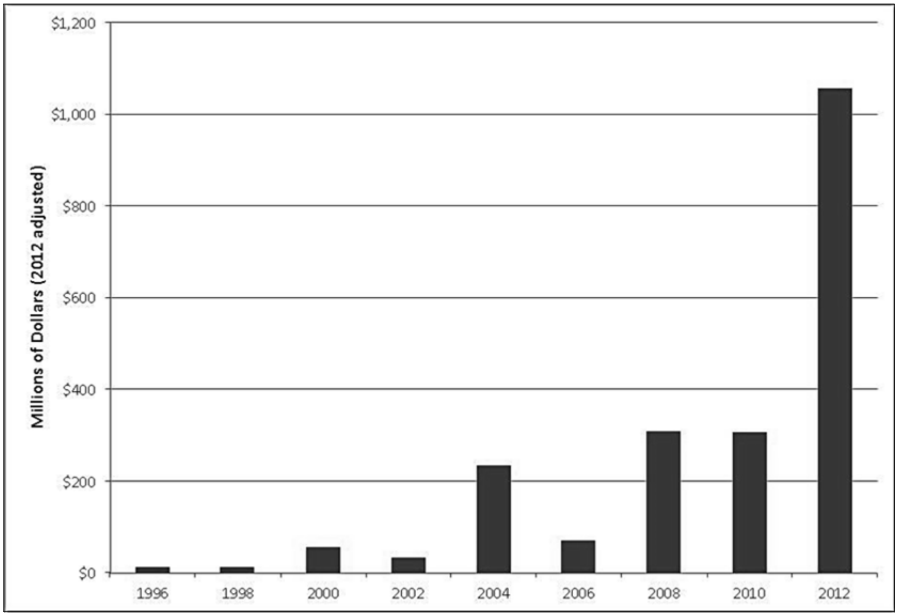
45. *See* McConnell v. FEC, 540 U.S. 93 (2003) (constituting multiple actions challenging the constitutionality of multiple BCRA provisions).

46. FEC v. Wisconsin Right to Life, Inc., 551 U.S. 449 (2007).

47. 558 U.S. 310 (2010).

experienced a wave of new spending. More than 800 groups spent roughly $1 billion on outside advertising. In comparison, parties spent just $255 million.[48] Notably, *Citizens United* was not the only cause of outside spending. Nonparty groups had started advertising substantially soon after passage of BCRA with as much as $234 million in 2004 compared to just $34 million in pre-reform 2002 (both in terms of 2012 dollars).

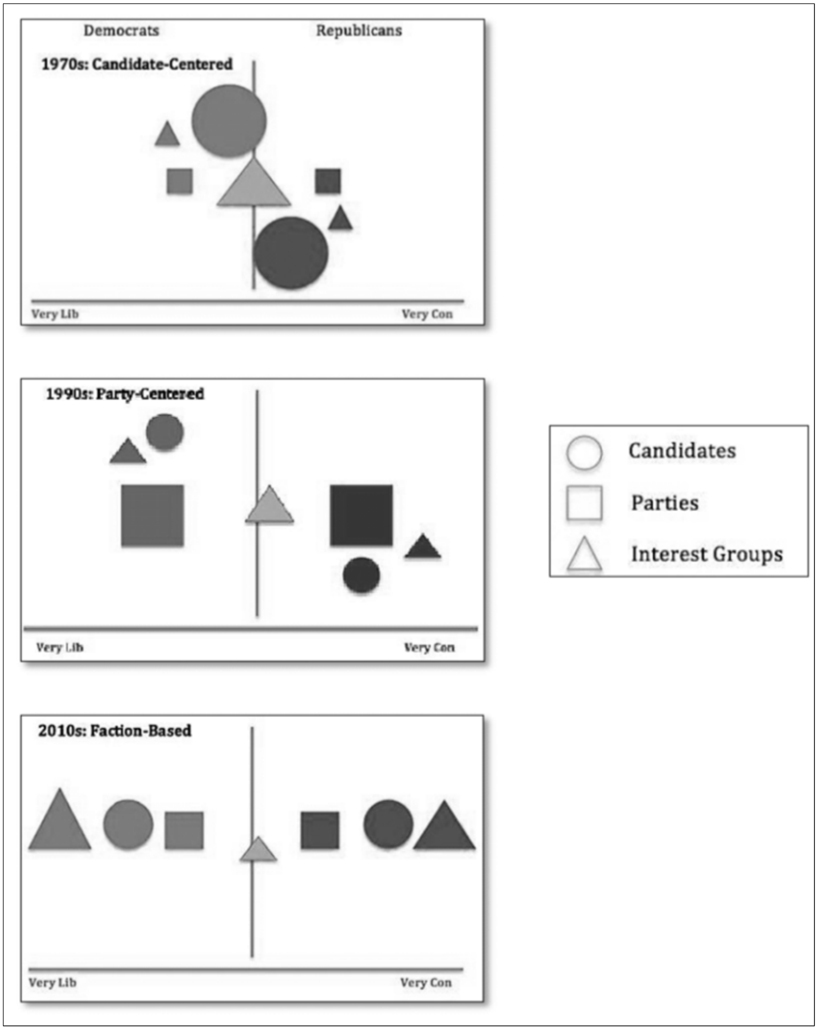
Figure 4. Non-Party Expenditures on Campaign Ads, 1996–2012.



To illustrate the interactive dynamic between the party and campaign finance systems, Figure 5 shows in stylized form how political committees adapted during three different periods since the adoption of the 1974 FECA Amendments. The circles represent candidate committees; the squares are party organizations; and triangles reflect interest groups. The x-axis indicates, theoretically, the ideology of different sets of political committees, ranging from very liberal on the left to very conservative on the right.

48. *See* Ctr. for Responsive Pol., *Outside Spending*, OPENSECRETS.ORG, http://www.opensecrets.org/outsidespending/fes_summ.php?cycle=2012 (last visited July 22, 2014).

Figure 5. Campaign Finance Dynamics: 1970s, 1990s, & 2010s.



The top panel represents the 1970s, with its relatively weak party system and candidate-centered elections. During this period, money primarily flowed to candidates directly (incumbents mostly), illustrated by the relatively large circles. The party organizations played a small role in financing elections. PACs, however, emerged as key financial supporters, especially business-related interests, which are shown in purple at the center because they plied incumbents in both parties. In 1980, for example, PACs provided almost half of the contributions to incumbent officeholders in the majority party.[49] The other triangles reflect issue groups, tied closely to the party and possessing strong policy preferences.

It is important to point out, once again, that the 1974 reforms institutionalized a widely acknowledged pattern of relationships in the party system. Candidates controlled their own campaigns with little interference from party organizations. Most members of Congress practiced their politics in the ideological middle, which allowed a good deal of bipartisan legislating. At the same time, however, incumbents faced minimal threats to their office because of their significant electoral advantage, not least of which included easy access to PAC money in Washington.

Then, in the second panel, we enter the emerging strong party system in the 1990s and an incipient period of "party-centered" financing. Note that candidates are no longer near the middle of the ideological spectrum, and ideological issue groups play a larger role in elections because candidates need more partisan support. The party organizations, however, loom large because they exploited soft money to establish a dominant role in elections. Business-related PACs in the middle continue to support incumbents in both parties.

Fast forward to recent years in the panel for years post-2010. The campaigns in this panel represent what I call "faction-based" campaigns. Partisan organizing remains salient because of high stakes elections, but instead of strong party organizations, we have strong factions (triangles at the extremes), wielding disproportionate power relative to other constituencies in the party. These partisan factions enjoy a larger role in the electoral system because soft money flowed to them rather than to the parties. To be sure, party organizations remain major actors within the network of partisan groups. Factional groups, however, have considerably more flexibility raising and spending money than the party organizations. Candidate reliance on ideological factions for electioneering affects the ideological distancing of the major parties (as I explain in the subsequent section). Notably, in my assessment the party organizations are more centrist than their associated factions.

49. Data comes from the Campaign Finance Institute. *See* Campaign Fin. Inst., *Campaign Funding Sources: House and Senate Major Party General Election Candidates, 1984–2012* at tbl. 3-8, http://www.cfinst.org/pdf/vital/VitalStats_t8.pdf (last visited July 22, 2014).

The panels in Figure 5 reflect a changing party system in an environment where campaign money streams went from being candidate-centered to party-centered, and then from party-centered to faction-based. I am not making the argument that the campaign finance system is the primary cause of political parties moving apart, but I am claiming that the legal environment for campaign finance advantages the ideological factions. In doing so, the rules make it very difficult for candidates to moderate their positions in the campaign and governing process. While party electioneering has always involved a network of partisan groups, the campaign finance system shrinks the role to the formal party organization (even if it remains the largest node) relative to partisan interest groups.

IV. GROUP MOTIVATIONS AND SUPPORT FOR IDEOLOGICAL CANDIDATES

The 1974 FECA Amendemts were the institutional embodiment of candidate-centered politics during that era. This same institutional design, incongruously paired with a strong party system, now abets faction-centered politics. Financial resources are now pushed to partisan factions and away from the formal party organization. Some experts seem to suggest that this situation does not matter. After all, the political party is not simply the formal party organization but includes interest groups that typically support the party in elections. This "extended partisan network" can do the work of a traditional party through sophisticated exchange of information and coordination on electoral strategies.[50]

However, being on the same party "team" hardly implies that coalition members agree on the direction of the party. Indeed, factions of the party might be united in their desire to wrest control of government from the opposing party, but they differ among themselves in their policy priorities. And because they have different concerns, they will have divergent electoral strategies. Factions with significant electoral resources will use them to push the party coalition in their preferred direction. A recent example is intra-party

50. Conceiving of parties as extended partisan networks has grown out of recent interest in studying social phenomena through the lens of social networks. *See*, e.g., Richard M. Skinner, Seth E. Masket, & David A. Dulio, *527 Committees and the Political Party Network*, 40 AM. POL. RES. 60 (2012); Kathleen Bawn, Martin Cohen, David Karol, Seth Masket, Hans Noel, & John Zaller, *A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics,* 10 PERSP. ON POL. 571 (2012).

squabbling in the GOP, reflected in the fierce primary fights between pro-business Republicans and Tea Party conservatives.[51]

To understand the different electoral strategies, consider the different motivations of groups vying for influence. The Venn diagram in Figure 6 indicates three kinds of donors based on three different political priorities. These priorities are gaining material benefits, influencing policy, and winning elections. Donors seeking *material benefits* from legislation typically reflect narrow economic interests such as businesses and trade and professional associations. The value of their donation is that it allows these groups to build personal relationships with members and their staff on bread-and-butter matters that are highly specific to the interest group. Most of the time such interest groups focus on shaping the technical aspects of policies (e.g., rules and regulations that might provide a competitive advantage) rather than changing the broad direction of policy. These organizations invariably receive the most attention from the media because they comprise the biggest bloc of interests, and because the pursuit of economic benefits through lobbying raises suspicions about quid pro quo corruption. Indeed, campaign finance reforms, which are based on the anti-corruption rationale, have been designed with the intent to limit the influence of groups seeking material benefits. Such groups are what most Americans picture when they think of corruption in politics.

The second group—*policy* donors—represent fewer organizations and donate less money overall. This group, however, is increasingly influential in the emerging party system because such organizations occupy key positions in the extended partisan network and willingly spend soft money to shape electoral outcomes. These donors want to fundamentally remake government policies on key social and economic issues. The group includes single-issue advocacy organizations that focus on issues such as abortion, guns, taxes, and the environment. In the Democratic Party it includes many labor unions.[52] Invariably, these factional organizations take positions that diverge from the median voter. Rather than using their donations to

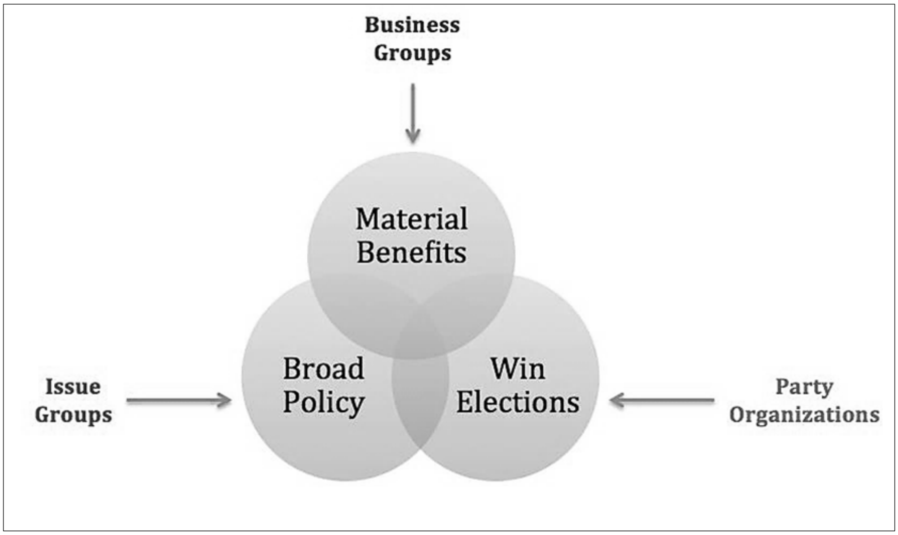
51. Janet Hook, *Tea Party Faces Test of Its Clout in Primaries*, WALL ST. J., Feb. 24, 2013, *available at* http://online.wsj.com/news/articles/SB10001424052702304834704579401480582653814?mod=WSJ_hp_LEFTTopStories.

52. Labor unions might be considered a hybrid group because they seek both broad policy change and material benefits. I associate them primarily with issue groups because their donor strategies are highly partisan, and they tend to support the most liberal members of the party who seek broad policy change.

persuade indifferent officeholders to champion their policy goals, they typically pursue an aggressive electoral strategy. In practice, this means they give to like-minded challengers as a way of putting legislators in office who support their minority views. It also means supporting incumbents who strongly believe in their goals.

The third group reflects donors who want to *win* elections. Though it contains the fewest number of organizations, this group is nonetheless central to the political system in the view of political scientists.[53] Organizations that focus on winning elections and holding power are associated with party organizations. They run candidates for office and organize partisan officeholders into a legislative caucus. Because the party is primarily concerned with holding power they want to maximize the chances of victory.

Figure 6. Donor Motivations.



The typology above reflects goals that will shape how groups behave in the campaign finance system.[54] With respect to supporting candidates, each type might prefer candidates with more or less

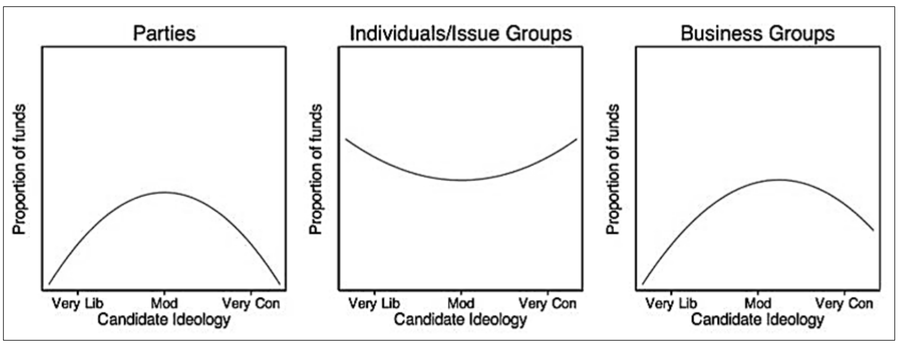
53. V. O. KEY, POLITICS, PARTIES, AND PRESSURE GROUPS (1964); E. E. SCHATTSCHNEIDER, PARTY GOVERNMENT (1942).

54. In reality, organizations pursue several goals at the same time. Partisan interest groups also want to win elections, and business firms or parties have policy preferences. Indeed, the overlapping circles in the Venn diagram imply as much.

ideological extremism. Figure 7 summarizes how the three group types might distribute their funds. The x-axis displays candidate ideologies from liberal to conservative, while the y-axis shows the proportion of group funds that would be allocated to candidates based on their ideology.

In the first panel, *political parties* are expected to give the greatest proportion of contributions to candidates in the middle of the ideological spectrum. This dynamic does not necessarily imply that party leaders naturally prefer moderate office holders. In fact, all things equal, parties might very well prefer to elect non-centrists. However, the overriding goal for parties is to win as many elections as possible. To do this, parties will concentrate their resources on the most competitive campaigns because their investments will have the highest payoff in these races. Since competitive districts tend to be ideologically balanced, strong candidates in such districts tend to be those who are able to appeal to moderate "swing voters." Thus, when parties prioritize candidates running in competitive races, they also tend to be prioritizing an investment in moderate candidates.

Figure 7: Expected Contributions Patterns Among Three Types of Donors



The second panel represents how *issue* donors are expected to distribute their funds across the ideological spectrum. These "policy-demanders" will focus resources at the tail ends of the ideological distribution where candidates match their own preferences, depending on whether they are liberal or conservative policy groups. These donors ideally want to support a candidate who comes closest to their preferences but still has a good chance of winning. In this way, policy donors are more willing to take risks than are political parties that put a premium on winning elections.

Finally, among *material benefit* donors we expect a distributional curve that gives most resources to moderates who are amenable to bargaining and persuasion. Strong ideologues on either side can threaten the kinds of compromise that these donors (who seek access for the purpose of negotiating benefits) would like from government. However, because these material-oriented donors largely reflect business interests, they are likely to have a bias toward conservative candidates who are more business-friendly (favoring free markets, limited regulation, etc.). For this reason, we expect to observe political contributions to be somewhat asymmetrical across the ideological distribution with a larger portion of funds going to conservative rather than liberal candidates.

In a separate paper, Brian Schaffner and I, using state-level data from the National Institute of Money in Politics, demonstrate that this is *exactly* how these three groups behave.[55] Donors who put a premium on policy issues give to extremists, while those who seek primarily to win or gain material benefits give to moderates. The policy-oriented groups have gained an upper hand in the extended party network because of campaign finance laws that hamper the political parties and keep benefit-seekers in check.

Policy issue PACs do not provide as much money *directly* to candidates as the access-oriented business PACS. Instead, they leverage their financial influence in two ways. First, they make *early* contributions and independent expenditures to favored candidates in coordination with other policy groups in the party network. These synchronized efforts during the initial stages of elections help ideological challengers win office.[56] Second, many of these groups now

55. Raymond J. La Raja & Brian F. Schaffner, Do Party-Centered Campaign Finance Laws Increase Funding for Moderates and Challengers?, Paper Presented at the 2014 Meetings of the Southern Political Science Association (Jan. 9, 2014) (available online at https://polsci.umass.edu/uploads/profiles/sites/la-raja_ray/SPSA-LaRaja-Schaffner-Parties.pdf).

56. A select set of challengers received support early and consistently from a core group of organizations. On the Democratic side, these groups included American Federation of State, County and Municipal Employees, Service Employees International Union, American Federation of Teachers, EMILY's List, Moveon.org, Defenders of Wildlife, and other organizations closely associate with the Democratic Party. On the Republican side they include the National Rifle Association, National Right to Life, Club for Growth, Americans for Tax Reform and the American Medical Association. There were no corporate PACs in these categories, although a few trade associations such as the National Beer Wholesalers were strong supporters of Republicans. *See* Bruce Desmarais, Raymond J. La Raja, & Michael Kowal, *The Fates of Challengers in US House Elections: The Role of Extended Party Networks in Supporting Candidates and Shaping Electoral Outcomes*, 58 AM. J. POL. SCI. (forthcoming 2014)

receive soft money from wealthy individuals to run abundant advertisements in both primaries and general elections, sometimes challenging the party organization, which cannot use soft money.

Consider, for example, the recent efforts by environmentalists to stop the construction of the Keystone XL pipeline, which would carry oil from the tar sands of Alberta, Canada through the central region of the United States. Environmentalists are a core constituency in the Democratic Party. Their most visible organizations include the Sierra Club and League of Conservation Voters. Lately, activists have assumed a more aggressive strategy than simply using their traditional PACs to support candidates. Hedge fund billionaire, Tom Steyer, declared it time for environmentalists to play "hardball" with Democratic politicians who favor the pipeline.[57] His super PAC "Next Gen" supports pro-environment candidates in Democratic primaries and has gone so far as to jeopardize Democratic control of the United States Senate by attacking Senator Mary Landrieu of Louisiana who faces a difficult general election race.[58] Steyer and his environmental allies believe it is worth scaring Democrats (even in an "oil state" like Louisiana where being pro-oil is good politics) in order to push the party to take stronger pro-environment positions.

It is easy to see why environmentalists in the Democratic Party are willing to take electoral risks. To them the policy stakes are extremely high. Indeed, from their perspective the stakes are potentially calamitous for the global climate. These partisans cannot fathom why the party leadership would continue to accommodate business interests that want to stifle pro-environment regulation. In contrast, the party leadership feels that the environmentalist strategy is shortsighted because it potentially gives Republicans control of the Senate, which is a worst-case scenario for advancing pro-environment policies.

The intra-party fighting and bargaining has always been part of American politics and its two-party system. What is particularly noteworthy in the contemporary campaign environment is how these fights take place in the open, in part, because partisan factions that champion policy issues have significant advantages in the campaign

(manuscript at 15 tbl. 4).

57. Alicia Mundy, *Environmentalists Democratic Donor Plays Hardball Over Keystone*, WALL ST. J., Feb. 14, 2014, *available at* http://online.wsj.com/news/articles/SB10001424052702304703804579383302200142502#.

58. *Id.*

finance system. In the 1990s, the parties accepted soft money—much of it from business interests. This apparently shaped its moderate positions on issues that party activists cared about deeply. According to former Speaker of the House, Dennis Hastert, "[w]hen all the money went into the parties, the parties [had] kind of a homogenizing effect. People didn't come out of there too far to the right or too far to the left." Now, Hastert says, members are "looking over their shoulders" and "neurotic" because they are afraid of being attacked by a primary opponent with soft money support from the right or left.[59]

In sum, partisan groups that champion issues have augmented power in a strengthened party system in which they can raise and spend unlimited money on elections. At the end of the day, the party coalition needs them, even if such factions tend to support more extreme candidates.

V. INDIVIDUAL DONORS AND PARTISAN POLARIZATION

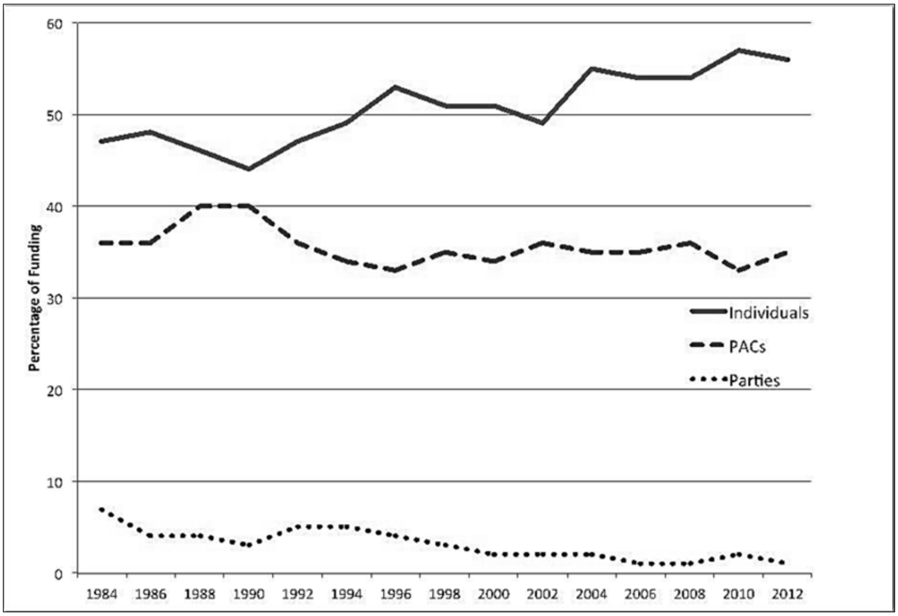
To combat big money and extremist politics, a common response from reformers is that campaign finance laws should encourage the broad participation of Americans in giving money. Drawing on the anti-corruption perspective, the proposed reforms attempt to "level the playing field" by setting contribution limits low enough to keep out "fat cats" and encourage "grassroots" donors. The contribution limits compel candidates to increase the number of donors, presumably creating a pool of contributors that more closely approximates the larger American electorate. By focusing on individual donors, moreover, the thinking is that PACs will have less influence on politicians.

There is little doubt that federal candidates have turned increasingly to individual donors over the past several decades. Figure 8 shows that candidates rely more heavily on individual donors today than during the 1980s. In 1984, for example, candidates received 47 percent of their money from individuals. This percentage has steadily increased following the 1994 elections. In the most recent election in 2012, 56 percent of candidate contributions come from individuals. The percentage of contributions from PACs has held steady, while the

59. Erica Ryan, *Hastert: Primary Challenges Making Congress "Kind of Neurotic"*, NAT'L PUB. RADIO IT'S ALL POLITICS BLOG (Oct. 8, 2013, 3:05 AM), http://www.npr.org/blogs/itsallpolitics/2013/10/08/230256554/hastert-primary-challenges-making-congress-kind-of-neurotic?sc=tw&cc=share.

percentage from political parties has declined.

Figure 8. Sources of Campaign Funds, US House, 1984–2012



One likely reason for greater reliance on individual donors is that the value of a PAC contribution has declined precipitously since 1974 when it was initially set at $5000 per election. Without inflation adjustments it is only worth a little over $1000 today.[60] Tellingly, 2002's BCRA inserted inflation adjustments for contributions from all sources, except contributions from PACs.[61] The goal may have been to diminish the importance of PAC contributions over time. Yet the unintended consequence may have been to encourage the formation of Super PACs, which are not constrained by contribution limits because they spend money independently.

Another reason for the increased reliance on individual donors is that incumbents have been pressured by party leaders to raise money for the party and candidates who need it. The dynamic has increased dramatically since the parties lost the ability to raise soft money.[62] The

60. Figures generated using CPI Inflation Calculator available from United States Bureau of Labor Statistics. *See supra* note 40.

61. *See* 2 U.S.C.A. § 441a (West 2014).

62. HEBERLIG & LARSON, *supra* note 35, at 41.

consequence is that members are part of a "dues-paying" system that puts onerous demands on officeholders to call potential donors practically every day. Some estimates indicate that officeholders spend up to 20 percent of their time on fundraising and related campaign work (and two-fifths of them said it was not nearly enough time).[63] Other studies suggest the amount of time dedicated to fundraising is a great deal more, especially for those facing competitive contests.[64] The pressure to raise money, even for incumbents in relatively safe districts, is increased by fears of outside groups spending money against the incumbent in her own district. For this reason, incumbents do double duty on fundraising by accumulating money for the party and augmenting funds for their own campaigns.[65]

This intense effort to mine individual donations adds to ideological polarization. Despite the desire to "broaden the base" of donors, the expectation that such efforts will make donors more representative of the American electorate rests on faulty assumptions about who is likely to give money. Regardless of the amounts they give, donors are rarified participants in American politics. Even expanding the pool significantly is unlikely to change its basic profile. Studies show that donors tend to be older, wealthy, educated, white, and male. Critically, donors also tend to be highly ideological.[66]

The consequence of pushing candidates to expand their donor pool is that politicians must spend more time interacting with highly ideological citizens in their quest for campaign dollars. A simple graph makes the point. Figure 9 compares the policy preferences of Americans who do not donate with those who do. The x-axis reflects an index created by combining the responses of citizens on a range of policy questions from the Cooperative Congressional Election Survey in 2012.[67] Those who are "very liberal" tend to take the most liberal

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63. *See* CONG. MGMT. FOUND. & SOC'Y. FOR HUMAN RES. MGMT., LIFE IN CONGRESS: THE MEMBER PERSPECTIVE 14 fig. 6, 24 fig. 8 (2013), *available at* http://www.congressfoundation.org/storage/documents/CMF_Pubs/life-in-congress-the-member-perspective.pdf.

64. *See* PAUL S. HERRNSON & RONALD A. FAUCHEUX, PEW CHARITABLE TRUSTS, CANDIDATES DEVOTE SUBSTANTIAL TIME AND EFFORT TO FUNDRAISING (2000), *available at* http://www.gvpt.umd.edu/herrnson/reporttime.html.

65. HEBERLIG & LARSON, *supra* note 35, at 41.

66. Raymond J. La Raja & David L. Wiltse, *Don't Blame Donors for Ideological Polarization of Political Parties*, 40 AM. POL. RES. 501, 509 (2012).

67. *See generally* Steven Ansolabehere & Brian Schaffner, *Cooperative Congressional Election Study Common Content 2012*, HARVARD UNIV.,

positions on various policies, for example abortion, wealth redistribution, taxes, and gun control. At the other end, the most extreme conservatives respond consistently to the most conservative positions on these issues. The distribution in the first panel shows that most non-donors are close to the middle on these issues, but have a decidedly liberal tilt. Importantly, the responses are normally distributed, suggesting that Americans who do not make contributions do not appear to be polarized.

The second and third panels look at both small and large donors. For purposes here, small donors are those who give less than $200 total in political contributions during an election season at the local, state or federal level. The results in both panels are starkly different than the results for non-donors. The distribution of donor policy preferences is clearly bimodal. Most donors are at the extremes of the distribution with a relatively small group of moderates giving money. Notably, small donors look almost indistinguishable from large donors in their policy preferences. My point is that reforms aiming to stimulate grassroots participation should consider that such efforts merely tap into similarly minded citizens, even those giving small donations. Emphasizing small donations, be it through matching funds or similar schemes, is going to leverage ideological dollars no matter how it is arranged. Small donors are not, in the main, ordinary Americans. They are sufficiently passionate about politics to part with their money, much like consumers who spend on products they like. And with passion comes extremism, at least relative to the rest of the American electorate.

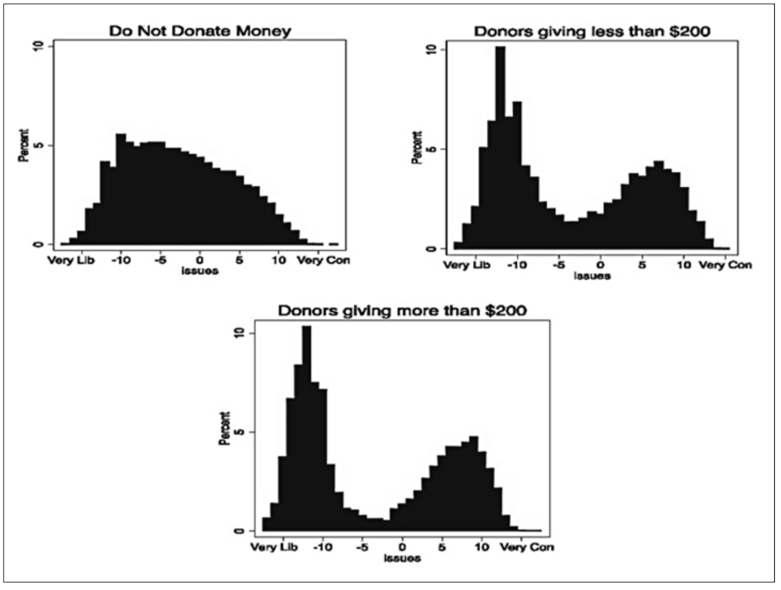
Politicians now rely more heavily than ever on ideological sources of money. And trying to collect this money means candidates must tailor their messages to attract the attention of people willing to donate. In these circumstances, it literally pays for candidates to tout extreme views. Studies show, for example, that ideological candidates in congressional elections fare comparatively better raising money from constituencies outside the district, and candidates may position themselves ideologically to attract additional donations from national constituencies.[68] When Congressman Joe Wilson shouted "you lie" at

http://projects.iq.harvard.edu/cces/home, (last visited, Aug. 24, 2014).

68. Bertram Johnson, *Individual Contributions: A Fundraising Advantage for the Ideologically Extreme?,* 38 AM. POL. RES. 890, 891–94 (2010); Michael J. Ensley, *Individual Campaign Contributions and Candidate Ideology*, 138 PUB. CHOICE 221, 222–24 (2009); James G. Gimpel, Frances E. Lee, & Shanna Pearson-Merkowitz, *The Check Is in the Mail: Interdistrict*

President Obama's 2009 State of the Union address,[69] donations flowed into his campaign coffers.[70] To be sure, this was a highly publicized event. Yet even less confrontational members of Congress understand the importance of making hot button issues salient in their campaigns and view small donors as very ideological and partisan. According to Senator Chris Murphy, a freshman Democrat from Connecticut, "[w]hen I send out a fundraising e-mail talking about how bad Republicans are, I raise three times as much as when I send out an e-mail talking about how good I am. People are motivated to give based on their fear of the other side rather than on their belief in their side."[71]

Figure 9. Policy Preferences of Non-Donors vs. Small and Large Donors



Funding Flows in Congressional Elections, 52 AM. J. POL. SCI. 373, 377 (2008); Woojin Moon, *Party Activists, Campaign Resources and Candidate Position Taking: Theory, Tests and Applications*, 34 BRIT J. POL. SCI. 611, 615–17 (2004).

69. *Rep. Wilson Shouts 'You Lie' to Obama during Speech*, CNN (Sept. 10, 2009), http://www.cnn.com/2009/POLITICS/09/09/joe.wilson/.

70. *Wilson Funds Reach $1 Million after 'You Lie" Cry, Aid Says*, CNN (Sept. 12, 2009), http://www.cnn.com/2009/POLITICS/09/12/wilson.fundraising/.

71. Ezra Klein, *Small Donors May Make Politics Even Worse*, BLOOMBERG (May 8, 2013), http://www.bloomberg.com/news/2013-05-08/small-donors-may-make-politics-even-worse.html.

VI. A NEW APPROACH

To summarize, the design of United States campaign finance rules appears hopelessly stuck in a candidate-centered perspective. This is problematic because the emergence of a strong party system raises the salience of partisan organizing. Yet party organizations, the logical place for such organizing, are severely hampered in raising and spending funds. The constraints on party organizations open opportunities for extremist party factions that now exploit independent spending, while simultaneously compelling candidates to forage for money from highly ideological donors, both large and small.

This dynamic seems to orient both parties in Congress toward the ideological poles of their coalitions. I focused on the House of Representatives but my arguments apply equally to the Senate. By elaborating an institutional, system-level perspective on how laws shape the flow of money, I hope to encourage others to rethink the purpose and design of campaign finance laws.

The dogged persistence in pushing for anti-corruption strategies seems misplaced when old-fashioned corruption is not really the problem.[72] Outside groups are engaging in intimidation tactics within their own parties. They are willing to punish politicians publicly for disagreeing with them. But this is the nature of party politics in a democracy. Indeed, policy activists already have considerable clout through their oversized role in nomination processes. However, the anti-corruption rules that push money away from parties confer additional favor on this narrow slice of activists who have the means and motive to browbeat party candidates through campaign advertising. Make no mistake, the campaign finance laws have conferred this advantage on them.

Anti-corruption strategies clearly favor factions that pursue ideological rather than material goals. This is an old and ongoing story of reform,[73] which echoes Progressive-Era efforts to rid the parties of

72. The prevalence of the "anti-corruption" approach is somewhat understandable given recent Supreme Court jurisprudence on campaign finance. The Roberts Court has moved steadily toward a position in which prevention of corruption is the only permissible justification for campaign finance laws.

73. *See generally* HERRNSON ET AL., *supra* note 7 (describing the general history of efforts to reform American election practices); Sidney M. Milkis, *Theodore Roosevelt, the Progressive Party, and the Transformation of American Democracy* (2009); Henry Jones Ford. *The Rise and Growth of American Politics; a Sketch of Constitutional Development* (1898).

patronage via civil service reforms. And it persisted through the era of the 1960s with reforms to bypass party bosses and open the nomination process to rank-and-file voters through primaries. It is hard to argue these reforms were "wrong" because, in theory, we should desire a democracy in which the pursuit of self-interest does not infect policies that are meant to promote the common good. Unlike lobbyists for industry, policy activists tend to make universal claims about promoting public welfare in pushing for their preferred outcomes. But there are costs to this strategy of giving preference to those who promote values rather than interests. The issue preferences of activists are not necessarily representative of broader constituencies, and may even run against the material interests of citizens who would benefit most from government action. Consider, for instance, the predominance in campaigns of social issues such as abortion, gay rights, and gun control, which displaces discussions on the political agenda about jobs and education.[74]

Campaign finance reform is an area in which the reformist impulse elevates issues and values over interests. The anti-corruption logic focuses on thwarting the influence of narrow material interests that could overshadow the public interest. This is not an apology for corporate interests, but a plea for making bread-and-butter issues—jobs, wages, economy, taxes, pensions, etc.—more salient on the political agenda. If nothing else, bread-and-butter issues promote the politics of compromise, which is necessary in a highly diverse nation.

VII. IMPLICATIONS OF PURSING THE OLD PATH

The implication of a campaign finance system weighted toward issues rather than interests is that polarization thrives (even if the campaign finance rules have not been the prime mover in creating such polarization). Politicians will be responsive to groups that have electoral resources and set the campaign agenda. There are several paradoxes here worth pointing out.

First is that polarization of the parties probably makes politicians more accountable for their policy stances, even as it hurts governance. When parties adhere to distinctive policy positions, it is easier for citizens to know what each party stands for. And when politicians are attached to strong party brands, they have less room to pursue

74. I am not arguing these issues are unimportant, but rather that the attention politicians give to them seems to be out of proportion with the preferences of most citizens.

personal agendas that stray from clearly-defined party positions. Democrats cannot easily cut deals through 'giveaways' to industry and Republicans cannot do the same with labor unions. Consider, for example, policy debates over the Keystone XL pipeline. Democratic politicians have been targeted in advertisements from their pro-environment faction for being corporate lackeys. Or, on immigration policy, consider how Republicans fear being accused of giving amnesty to illegals by strident elements within their own party. The dynamic has left little room for middle-ground positions.

Electorally powerful factions have helped create party brands with regard to policies on taxation, abortion, environment, and gun regulation. And their ability to make legislative deliberations highly transparent strips away the institutional insulation of deliberation found in most legislatures—insulation that politicians need in the process of finding bipartisan compromise. Politicians will have their tongues cut out for floating an idea that challenges the orthodoxy of an influential faction. The paradox, then, is that voters know clearly where parties stand on issues and can evaluate them accordingly. Nonetheless, the ability of parties to govern is diminished in a system of separation of powers that largely needs compromise to function. For this reason, we need to consider trade-offs in designing new reforms that balance accountability to party brands with the need for flexibility in governing.

The power of extremist factions raises a second apparent paradox in the party system. The system is more extreme precisely because party organizations have lost power. The party organization, with its incentives to win elections, seeks the Downsian middle of the electorate. I argue here that making party organizations stronger by pushing more money through them would moderate our politics. This position is contrary to recent arguments made by Hubbard and Kane who claim the party monopoly on campaign money has made the organizations rigidly ideological and out of touch.[75] That view is wrong because, as economists, they tend to view the party as a "black box," failing to appreciate its coalitional characteristics and how factions contend for influence by their control over electoral resources.

The third paradox of the current situation should animate the reform community to adopt a new approach. Politicians seem more beholden to big donors in the aftermath of political reforms in 2002

75. Hubbard & Kane, *supra* note 21, at 127.

that tried to do away with soft money. Studies show that it is not necessarily corporations that are exploiting Super PACs in the aftermath of *Citizens United*, but highly ideological and mega-wealthy donors such as the Koch brothers.[76] The Kochs, the Steyers and other moguls, did not need *Citizens United* to spend large sums in elections, although the decision may have given them more legal options. Regardless, politicians must be more sensitive than ever to the concerns of rich people who pour millions of their own money into election advertising.

Thus far, the ideological and risk-seeking activists in both parties have been the most keen to exploit Super PACs. This, however, may change. As outside activity becomes institutionalized, corporations may find it more necessary—indeed imperative—to use Super PACs. Certainly, candidates have already turned to Super PACs as a means of electioneering.[77] The ongoing movement to independent spending through Super PACs will shred any semblance of the closed system of campaign finance envisioned by reformers. The quaint contribution limits under BCRA will become almost meaningless.

All this is a recipe for chaotic party affairs. It means a weakening of the party leadership's ability to govern. Leaders cannot get members to commit to deals on tough votes because the members fear being attacked by outside groups, from which party organizations can provide little defense.[78] A similar dynamic is playing out at the state level where Super PACs have been active.[79] Fragmentation within the two major political parties, as Richard Pildes also argues, has negative consequences for governance.[80] Others may disagree,

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76. Charles and David Koch, Kansas industrialists who give heavily to conservative and libertarian political causes. *See, e.g.*, Nancy Benac, *Koch 101: Some Basics on the Billionaire Brothers*, (Aug. 23, 2014 9:25 AM), http://abcnews.go.com/Politics/wireStory/koch-101-basics-billionaire-brothers-25096137.

77. Jonathan Martin, *'Super PAC' Is Formed in Mississippi to Protect 6-Term Senator in G.O.P. Primary*, N.Y. TIMES, Jan. 30, 2014, at A16, http://www.nytimes.com/2014/01/31/us/politics/mississippi-super-pac-aims-to-protect-6-term-senator-in-primary.html

78. Carl Hulse, *Ads Attacking Health Law Stagger Outspent Democrats*, N.Y. TIMES, Jan. 15, 2014, http://www.nytimes.com/2014/01/15/us/politics/ads-attacking-on-health-law-stagger-outspent-democrats.html?hp&_r=0.

79. Byron Tau, *Last Call for State Parties?*, POLITICO, (Feb. 2, 2014, 6:57 AM), http://www.politico.com/story/2014/02/last-call-for-state-parties-103559.html.

80. Richard Pildes, *How to Fix Our Polarized Politics? Strengthen Political Parties*, MONKEY CAGE BLOG (Feb. 6, 2014, 12:00 PM), http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/02/06/how-to-fix-our-polarized-politics-strengthen-political-parties/. For counter-argument see Seth Masket, *Our Politics Are Networked, Not Fragmented*, MONKEY CAGE BLOG (Feb. 14, 2014, 10:00 AM), http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/02/14/our-political-parties-are-networked-not-fragmented/.

saying that parties are complex networks comprised of multiple coordinated interests. Proponents of this view appear to forget that not everyone in the network has the same goals. In many ways, parties are vehicles of convenience for interest groups. Groups in the party network stick together, not necessarily because they share the same goals, but because they believe sticking together increases the odds of achieving their particularistic goals.[81]

VIII. THE WAY FORWARD IS . . . GOING BACK

Is there a better way? At the risk of re-fighting arguments over the passage of BCRA, I would argue we should bring back party soft money. Perhaps in modified form, such as imposing caps of $100,000 per year on the amount that unions or corporations could give to the parties. In the United Kingdom, even with its strict political finance regulations, corporations and unions are allowed to give directly to the political parties.[82] Indeed, 75 percent of European nations permit corporate contributions, including such hotbeds of corruption as Norway and Sweden.[83] Similarly, more than 60 percent of European nations allow trade unions to contribute to parties. However, given the anti-corruption framework that has been used to mobilize the public around reform proposals, I am not optimistic about soft money returning to the parties. But it is worth considering if reformers also want to restore some transparency and accountability to the system.

Let me be clear that a party-centered system, with or without soft money, is not going to make outside money disappear. Now that groups have experimented successfully with Super PACs and other outside forms of organizing, the restoration of a closed system of campaign finance is highly unlikely. Even so, a party-centered campaign finance system can attenuate polarization by allowing party organizations to occupy more electioneering space than they do now. Opening the system to a dominant role for party organizations potentially diminishes the influence of ideological groups because candidates will be less dependent on them. My preliminary research with Brian Schaffner on campaign finance in the states suggests that

81. *See* JOHN ALDRICH, WHY PARTIES? THE ORIGIN AND TRANSFORMATION OF POLITICAL PARTIES IN AMERICA (1995) (explaining why members of a party network remain united).

82. Int'l Inst. for Democracy & Electoral Assistance, *Is There a Ban on Corporate Donations to Political Parties?,* POL. FIN. DATABASE (July, 18, 2012), http://www.idea.int/politicalfinance/question.cfm?field=248&region=50.

83. *Id.*

states where party organizations play a central role in financing elections appear to have less polarized legislatures.

If this dynamic applies to federal elections, then we should more seriously consider the trade-offs in our approach to campaign finance reform. Restoring party soft money conceivably invites additional corruption, depending on how corruption is defined. But restoring soft money might also lessen polarization because it elevates the preferences of "material" interests relative to those of strong policy advocates. We need to think hard about whether curbing the contributions of those seeking material benefits is worth it, if those regulations augment the role of ideological extremists in the political system.[84] A polarized system is one in which gridlock hampers government action and partisan rancor undermines public trust. One prominent study has argued that polarization is linked to greater inequality.[85] There are also recent examples of publicly-financed candidates in Arizona that have held extreme positions on immigration and discrimination against gays despite the opposition of business interests in their party.[86] The dynamics of party politics are obviously complex, but changing campaign finance rules to better reflect today's strong party system can reduce polarization by re-calibrating the balance of power within party coalitions.

84. For an interesting debate on these trade-offs, see Richard L. Hasen, *How the Next 'Citizens United' could bring more corruption—but less gridlock*, WASH. POST (Feb. 21, 2014), http://www.washingtonpost.com/opinions/how-the-next-citizens-united-could-bring-more-corruption--but-less-gridlock/2014/02/21/a190d1c6-95ab-11e3-afce-3e7c922ef31e_print.html, and Bob Bauer, *Rick Hasen on the Tradeoff Between Corruption and Better Governance*, MORE SOFT MONEY HARD LAW (Feb. 24, 2014), http://www.moresoftmoneyhardlaw.com/2014/02/rick-hasen-tradeoff-corruption-better-governance/.

85. NOLAN MCCARTY, KEITH T. POOLE, & HOWARD ROSENTHAL, POLARIZED AMERICA: THE DANCE OF IDEOLOGY AND UNEQUAL RICHES 71 (2006).

86. For a humorous and insightful column discussing how Main Street business interests have lost power in Arizona under the public financing system in which Republican candidates no longer have to rely on business contributions, see Gail Collins, *The State of Arizona*, N.Y. TIMES (Feb. 27, 2014), http://www.nytimes.com/2014/02/27/opinion/collins-the-state-of-arizona.html?_r=0.