

The Two Sides of Money in Politics: A Synthesis and Framework

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MONEY IN POLITICS is a two-sided coin. On its face, campaign spending is a constitutionally protected right vital to informing and mobilizing ordinary citizens. On the flip side, privately financed campaigns may induce politicians to favor wealthy special interests at the expense of those very same ordinary citizens.

The challenge for policymakers is to inhibit the negative effects of political money without undermining its beneficial aspects. Given the complexity of the political environment and the many layers of strategic interaction that accompany any regulatory regime, this is no easy task. An essential first step is to present a clear analytical framework that allows policymakers to assess who is affected by a law, what their interests are and, in equilibrium, what they will do.

This paper develops such a framework based on empirically motivated assumptions about political actors, their incentives and the good and bad purposes money can serve. The central point to emerge is that the effects of privately financed campaigns are highly conditional. The major corollary is that the effects are not always intuitive: it is possible, for example, for contributions to undermine responsiveness

even when there is no possibility of *quid pro quo* arrangements. Under the most empirically plausible conditions, however, the framework indicates that privately financed campaigns increase responsiveness on major issues at the expense of donor influence on minor issues.

This state of affairs is far from perfect and implies potentially chronic contributor influence on less prominent issues. I therefore use the framework to argue reform should enhance the credibility of campaign information and diversify the donor pool. I also raise concerns that limits on large contributors, such as the ban on party soft money in the Bipartisan Campaign Reform Act of 2002 (“BCRA”), may promote wealth bias by disproportionately constraining candidates representing the non-wealthy.

This paper proceeds as follows. The next part presents the costs and benefits of privately funded campaigns. The third part integrates these costs and benefits into an analytical framework, paying particular attention to the concepts of anticipated reaction and indirect competition. The fourth part discusses money and politics in practice, including a discussion of the likely effect of limits on very large contributions. The fifth part turns to a discussion of reform strategies that would promote fair representation in the face of vast inequalities of wealth. The sixth part concludes.

TWO SIDES OF THE COIN: THE COSTS AND BENEFITS OF MONEY IN POLITICS

The costs of money in politics

Money can distort policy in two ways. First, contributors may use a “legislative strategy” to

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buy votes or policy favors from elected officials.¹ Ascertaining whether this occurs is difficult: Do contributions change legislators' votes? Or, do contributions simply go to like-minded legislators? Some argue contributions do not buy votes based on simultaneous equation statistical models that find no statistically significant relationships. These results are not the final word, however: they have been criticized for focusing only on PAC contributions and for relying on statistical models that are particularly sensitive to specification problems.²

On the other side, there is important evidence that contributions can affect policy behavior. Stratmann's innovative approach examined voting on very similar financial services bills in two different years. He found that changes in voting could be clearly linked to contribution patterns.³ Hall focused on legislative participation. He found significant links between participation in committee work and contributions, results consistent with incentives for politicians to aid contributors in the shadows of committee work, rather than under the (relatively) bright lights of roll call voting.⁴ This finding reinforces journalistic accounts of policy provisions being included in legislation at the behest of contributors.⁵ Finally, the behavior of contributors indicates money influences policy. PACs, trade associations, lobbyists, and others often contribute in order to get to meet and interact with politicians.⁶ If such access did not, on average, provide these political professionals more of what they want relative to non-contributors, they are wasting their money. While such irrational behavior is certainly possible in isolated cases, it seems an unlikely explanation for an enduring pattern.

Even if legislative strategies work—at least probabilistically—they do not necessarily dominate politics. On major issues, there is consistent evidence that ideological, partisan and regional factors dominate and that money exerts little or no influence.⁷ For example, applying a time series approach similar to Stratmann's to a broader measure of ideology, Bronars and Lott find no effect of contributions on the ideological positions of legislators.⁸ As we shall see, the finding of real but limited policy effects is consistent with the framework developed below.

The second way money can distort policy is if contributors use an "electoral strategy" to affect who is elected. In this strategy, contributors do not seek access or *quid pro quo* arrangements, but simply give to candidates with whom they agree or who they think will advance their firm or organization's goals. This strategy is sometimes viewed as more benign,⁹ but can nonetheless potentially distort policy in two ways. If candidates who appeal to contributors have an electoral advantage, the di-

¹See reviews of the literature in Stephen Ansolabehere, John deFigueiredo & James Snyder, *Why is there So Little Money in Politics?* 17 J. ECON. PERSP. 105–130 (2003); FRANK SORAUF, *INSIDE CAMPAIGN FINANCE: MYTHS AND REALITIES* (1992); AND Bradley Smith, *Unfree Speech: The Folly of Campaign Finance Reform* (2001).

²See THOMAS FERGUSON, *GOLDEN RULE: THE INVESTMENT THEORY OF PARTY COMPETITION AND THE LOGIC OF MONEY DRIVEN POLITICAL SYSTEMS* (1995) and John Bound, David Jaeger & Regina Baker, *On Potential Problems with Instrumental Variables Estimation When the Correlation Between the the Instruments and the Endogenous Explanatory Variable is Weak*, 90 J. Am. Stat. Ass. (1995).

³Thomas Stratmann, *Can Special Interests Buy Congressional Votes? Evidence from Financial Services Legislation*, 45 J. LAW & ECON. 345–374 (2002).

⁴RICHARD HALL, *PARTICIPATION IN CONGRESS* (1996). For an opposing view see GREGORY WAWRO, *LEGISLATIVE ENTREPRENEURSHIP IN THE U.S. HOUSE OF REPRESENTATIVES* (2000).

⁵See, *inter alia*, Thomas Edsall, *Firm Saw Link in Favor, Donations; 4 Republicans Deny Aiding Utility for Contributions*, WASHINGTON POST, JUNE 6, 2003; JEFFREY BIRNBAUM, *THE MONEY MEN: THE REAL STORY OF FUND-RAISING'S INFLUENCE ON POLITICAL POWER IN AMERICA* (2000). Journalistic accounts are sometimes too quick to attribute outcomes to contributions; see *e.g.*, the critique to this effect in Thomas Mann, *A Plea for Realism in ARE ELECTIONS FOR SALE?* (David Donnelly, David, Janice Fine & Ellen Miller, ed., 2001).

⁶For an example of a politicians providing access in exchange for contributions, see Juliet Eilperin, *Fundraising Focus Earns DeLay Wealth of Influence*, WASHINGTON POST, JULY 22, 2003. For systematic evidence, see, *e.g.*, Randall Kroszner & Thomas Stratmann, *Interest Group Competition and the Organization of Congress: Theory and Evidence from Financial Services' Political Action Committees*, 88 AM. ECON. REV. 1163–1187 (1998) and Laura Langbein, *Money and Access: Some Empirical Evidence*, 48 J. POL. 1052–1062 (1986).

⁷See, *e.g.*, discussion in Ansolabehere, deFigueiredo & Snyder, *supra* note 1.

⁸Stephen Bronars & John Lott, *Do Campaign Contributions Alter How a Politician Votes?* 40 J. LAW & ECON. 317–50 (1998).

⁹Ansolabehere, deFigueiredo & Snyder *supra* note 1 argue that because most individual contributors receive no tangible benefit for their contributions, much money in politics should be viewed as akin to charitable contributions.

rect effect will be to increase the number of pro-contributor candidates who win. The indirect effect will encourage all candidates to *become* pro-contributor in order to increase their chances of electoral success.

The effects of money in this case will be very difficult to observe. The whole political system may be affected and the range of viable political competition may be limited. For example, even candidates who do not receive money may be more pro-contributor in order to limit the amounts their opponents can raise.¹⁰ Importantly, these distortions occur even if contributors are not seeking access or specific policy favors, but simply giving to candidates whom they favor ideologically.

A requirement for electoral strategies to distort policy is that contributors differ from the rest of the population. Is this true? Certainly the perception is that most contributors are older, white men. The fact is that, well, most contributors are older, white men: among congressional contributors who gave more than \$200 in 1996, 82 percent were over 46 years old (versus 42 percent of the population), 95 percent were white (versus 76 percent of the population), 82 percent were male (versus 48 percent of the population), 78 percent made more than \$100,000, and 38 percent made more than \$250,000 (in the general population, eight percent earned more than \$100,000).¹¹

Evidence on whether electoral strategies distort policies is limited—and mixed. Ferguson argues such distortions are at the heart of our political system.¹² On the other hand, quantitative work analyzing the relationship between campaign spending and policy in the U.S. states finds no evidence that increased campaign spending is associated with policies favorable to the wealthy.¹³ We do not attempt to resolve this question here; rather, the important point is that privately financed campaigns may impose costs on society even if contributors do not directly seek to buy votes or policy favors.

In summary, privately funded campaigns raise legitimate concerns. The money comes from a very small slice of the population, is often associated with access and, at times, appears to influence policy. It is also possible that non-access oriented contributions distort policy.

The benefits of money in politics

The story of money in politics is not simply about the costs it imposes, however. Money is crucial to the democratic clash of ideas. As the Court stated in *Buckley v. Valeo*: “virtually every means of communicating ideas in today’s mass society requires the expenditure of money.”¹⁴ Scholars studying money in politics have long emphasized this point.¹⁵

Campaign money is vital to information transmission because voters are unlikely to gather information on their own. Individuals are seldom pivotal in elections, implying that investing time and effort in learning about candidates will rarely yield tangible benefits for an individual. Campaigns, on the other hand, have an incentive to get information into the hands of voters, as favorable information for a candidate and unfavorable information about an opponent can change voters’ choices. Hence,

¹⁰For a game theoretic model in which contributions skew all candidates toward the preferences of the largest contributor, see David Austen-Smith, *Interest Groups, Campaign Contributions, and Probabilistic Voting*, 54 *PUB. CHOICE* 123–139 (1987). For a qualitative (and anti-game theoretic) argument to this effect, see Ferguson *supra* note 2 at 9.

¹¹PETER FRANCA, JOHN C. GREEN, PAUL S. HERRNSON, WESLEY JOE, LYNDA W. POWELL & CLYDE WILCOX, *THE FINANCIERS OF CONGRESSIONAL ELECTIONS* (2003). Other sources of money are also unrepresentative of the country: more than 80 percent of soft money came from business interests. Businesses also dominate PAC contributions and unregulated issue ad spending. Data on regulated spending are available from The Center for Responsive Politics at *Business-Labor-Ideology Split in PAC, Soft & Individual Donations to Candidates and Parties* (2000), at www.opensecrets.org/overview/blio.asp. Data on unregulated issue ad spending are available from Annenberg Public Policy Center of the University of Pennsylvania at appcpenn.org/political/issueads/.

¹²See Ferguson *supra* note 2.

¹³See Michael Bailey, *Do Campaign Contributions Lead to Policies That Favor the Wealthy? An Examination of Taxing and Spending in the American States* (2004) (unpublished manuscript, on file with the author).

¹⁴424 U.S. 1 (1976) at 19.

¹⁵Thomas Mann, *Linking Knowledge and Action: Political Science and Campaign Finance Reform*, 1 *PERSP. ON POL.* 69–83 (2003); see also LOUISE OVERACKER, *MONEY IN ELECTIONS* (1932); ALEXANDER HEARD, *THE COSTS OF DEMOCRACY* (1960); HERBERT ALEXANDER, *MONEY IN POLITICS* (1972); Bruce Cain, *Moralism and Realism in Campaign Finance Reform*, U. CHI. *LEGAL F.* 111–139 (1995); Smith, *supra* note 1 and Kathleen Sullivan, *Political Money and Freedom of Speech*, 30 *U.C. DAVIS L. REV.* 663–690 (1998).

when campaigns gather, package and disseminate information, the costs of information are being borne by those with the strongest incentives to do so. The more resources they have to do this, the more information voters will get.

Some dismiss this claim by arguing that campaigns are often little more than relentless repetition of half-truths and irrelevant facts.¹⁶ This objection is important—we come back to it later—but its force fades considerably under scrutiny. First, even if many campaigns are fatuous, the *potential* to inform voters in campaigns may be enough to encourage responsiveness. Candidates know that if they fail to take popular policy positions, their rivals will have a good issue on which to spend money and gain votes.¹⁷ The more a rival has to spend, the greater the incentive for a candidate to preemptively take popular stands (which, in turn, means rival candidates will be able to make fewer meaningful issue distinctions and campaigns may be more likely to degenerate into name calling and innuendo, masking the salutary effect of money on responsiveness).

In addition, empirical evidence indicates that campaign spending “improves the public’s ability to place candidates on ideology and issue scales, and encourages certainty about those placements. Rather than permit House members to mask their voting records, incumbent spending helps improve the accuracy of citizen perceptions of the incumbent’s ideology.”¹⁸ There is also substantial evidence that money helps mobilize voters.¹⁹ Research is not uniformly supportive of this contention, however, a point that we will revisit in the policy discussion below.²⁰

In summary, even though reformers are right to be concerned that money may skew policy, they also need to recognize that money plays a key role in democratic decision-making because it enables candidates to inform and mobilize voters.

AN INTEGRATED PERSPECTIVE ON PRIVATELY FUNDED CAMPAIGNS

Much of the writing on money in politics emphasizes one, but not both, of the above story

lines. In contrast, this section seeks to integrate both sides in a single analytical framework that can analyze equilibrium effects of changes in law. The strategy is to build from simple premises to a general model. The model is not realistic in many ways, but that is the point: let’s simplify the world enough to characterize the basic incentives in the system. Then we can examine the real world to see whether such incentives exist and, if they do, how important they are.

The first premise underlying the approach is that a system is more democratic the closer representatives’ behavior matches what voters would want if fully informed.²¹ The second premise is that actors are goal oriented: politicians seek office and contributors seek certain policy outcomes.²² For convenience, I focus on two candidate races as most races in the United States are effectively between two individuals.

¹⁶Ronald Dworkin, *The Curse of American Politics*, N.Y. REV. BOOKS, Oct 17, 1996 at 19.

¹⁷Madison provides an early recognition of such dynamics in *Federalist* 50 and 57.

¹⁸John Coleman & Paul Manna, *Congressional Campaign Spending and the Quality of Democracy*, 62 J. POL. 757–789 (2000) at 757. Others provide similar evidence; see, e.g., Smith, *supra* note 1 at 94; Sorauf, *supra* note 1 at 170; Paul Freedman, Michael Franz & Ken Goldstein, *Winning isn’t Everything: Campaign Advertising and Democratic Citizenship*, AM. J. POL. SCI. (forthcoming, 2004); THOMAS PATTERSON & ROBERT MCCLURE, *THE UNSEEING EYE* (1976).

¹⁹See, e.g., Gary Cox & Michael Munger, *Closeness, Expenditures and Turnout in the 1982 U.S. House Election*, 83 AM. POL. SCI. REV. 217–31 (1989); Robert Jackson, *The Mobilization of the Congressional Electorate*, 21 LEG. ST. QUART. 425–445 (1996); Peter Francia & Paul S. Herrnson, *Mobilizing the Masses through Local Campaigns*, 1 IN THE PUB. INT. 4 (Center for American Politics and Citizenship, Univ. of Maryland, 2002).

²⁰See, e.g., Jon Dalager, *Voters, Issues, and Elections: Are the Candidates’ Messages Getting Through?* 58 J. POL. 486–515 (1996).

²¹This is similar to, but not identical with Lowenstein’s “natural position” of legislators; see Daniel Lowenstein, *On Campaign Finance Reform: The Root of All Evil is Deeply Rooted*, 18 HOFSTRA L. REV. 318. For other possible criteria, see Cain *supra* note 16.

²²This assumption is the foundation for much research on Congress (see DAVID MAYHEW, *CONGRESS: THE ELECTORAL CONNECTION* (1974) for a seminal use of this assumption). It is not completely true (in most cases, at least), but serves to simplify analysis considerably. On other goals, see RICHARD FENNO, *CONGRESSMEN IN COMMITTEES* (1973).

Scenario 1. Politics without money is bad for responsiveness

As a baseline case, let us consider a world in which campaign spending is prohibited. As in the real world, most voters have only vague conceptions of candidates' policy positions. Unlike the real world, there are no campaigns that mobilize and inform voters with phone calls, mailers and television ads. This is not realistic, but helps us in our later efforts to isolate the effects of money on representation.

In this no-campaign world, politicians are disproportionately responsive to well-informed voters. Uninformed (and typical) voters do not know what politicians are doing, rendering them unable to reward or punish politicians for being responsive or not. Informed voters, on the other hand, recognize and reward policy responsiveness. Such voters are—almost by definition—atypical, constituting socio-economic elites or activists.

To make this claim concrete, suppose that well-informed voters favor using tax revenues to build an opera house, while more numerous poorly informed voters do not. Let us also assume (for the time being), that there is no other issue on the agenda. A candidate who favored the opera house would garner solid support from the well-informed voters, while not losing much support from typical citizens who—not having followed politics—would not know politicians' choices with respect to the opera. A candidate opposing the opera house, on the other hand, would lose many votes from the well-informed voters, while gaining little support from the uninformed voters. The incentive for candidates in this case is to be disproportionately responsive to well-informed voters, leading to a fundamental point about money in politics: *politicians are not responsive to typical voters when there is no money in politics.*²³

Scenario 2. If campaigns deceive voters, money (and elections) undermines responsiveness

Now let us consider what happens when we add money to the environment. Let us first consider a pernicious form of political money, one that can be used to “buy votes” in elections. That is, let us assume—for the moment—that

money sways voters irrespective of issue positions and qualifications. In this scenario voters are more likely to vote for the candidate who spends more even when these voters would be better off voting for the other candidate.²⁴

The consequences for responsiveness are dire. Candidates can raise vast sums by pursuing policies that benefit contributors and win election by using the money to buy votes from naive voters. In the opera house example, the candidate with more money can pursue either policy while winning the election based on dazzling ads that woo unwitting typical voters to his or her side. The naivete of voters severs the connection between the popular preferences and policy.

This scenario is extremely disturbing on several levels. Policy is for sale to the highest bidder, raising serious questions about political money. But the questions must run deeper: if voters can be swayed so easily by false information, why are they empowered to make decisions in the first place? Surely, campaign contributions are but one of many sources of manipulation.²⁵

Recent findings by political scientists save us from this abyss. A substantial literature indicates that voters can use shortcuts such as party affiliation, interest group endorsements

²³Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705 (1999) at 1730 argue that many campaign finance reforms “are suspiciously likely to increase” reformers’ power because they would increase the influence of the naturally well-informed voters such as civic activists in the reform movement. The media, of course, can provide information to voters, but this is unlikely to solve the problem on its own. First, few voters seek out and digest political news. Second, the media, especially local newspapers, do a very poor job of covering congressional politics, seldom even mentioning the incumbent, let alone providing detailed and usable information about candidates.

²⁴This assumption is common in game theoretic models; see, e.g., David Baron, *Electoral Competition with Informed and Uninformed Voters*, 88 AM. POL. SCI. REV. 33–47 (1994); GENE GROSSMAN & ELHANAN HELPMAN, *SPECIAL INTEREST POLITICS* (2001) and Dennis Mueller & Thomas Stratmann, *Informative and Persuasive Campaigning*, 81 PUB. CHOICE 55–77 (1994).

²⁵For more discussion along these lines, see Daniel Ortiz, *The Democratic Paradox of Campaign Finance Reform*, 50 STANFORD L. REV. 893 (1998).

or candidates' positions on "hot-button" issues to reasonably approximate the candidates' positions and capacities.²⁶ For example, even as both candidates claim to be "the environmental candidate," a voter can, with good reason, infer the candidate endorsed by the Sierra Club is more of an environmentalist (which may or may not be attractive to the voter).

Scenario 3. Anticipated reaction makes the positive effects of money difficult to observe

In light of the above, it is reasonable to consider what happens if campaign spending informs voters. First, we will treat money as manna from heaven, something that comes without strings (as might public funds, for example). In this case, money can be very good for responsiveness. This conclusion builds on the following principle of representation:

Anticipated Reaction Principle: Elected representatives respond to voter preferences in anticipation of how voters would respond if political rivals or the media were to inform voters about the actions of the representative.

Simply put, representation via anticipated reaction occurs when elected representatives know that if they do something their constituents do not like, political rivals will let voters know about such behavior. Strategic representatives pro-actively avoid this by doing what voters want, even though the voters do nothing to track politics.²⁷ The more money that is available to a rival, the more that rival would be able to mobilize voters. This increases the negative consequences to an incumbent of not being responsive, which in turn makes him or her more likely to be responsive.

To return to the opera example, if both candidates have big campaign budgets, advocating the opera house no longer is attractive because the politician advocating the opera house will invite his or her opponent to oppose it. This opponent can then win broad support by spending campaign funds mobilizing the heretofore uninformed typical citizens. The

first candidate will avoid getting into such a situation by opposing the opera in the first place, in marked contrast to the no-money scenario in which both candidates favored the opera house.

The link between money and responsiveness in this scenario is strong, but difficult to observe. Anticipated reaction induces both candidates to oppose the opera house. This means neither candidate would have a strong incentive to campaign based on the issue ("vote for me because, just like my opponent, I oppose the opera house" is unlikely to succeed as a campaign slogan). Hence, even though money helps push the candidates to be responsive toward typical voters, there are few obvious signs to that effect.

Scenario 4. If there is only one contributor, money undermines responsiveness

Now let us acknowledge the main cost of privately financed campaigns by incorporating the self-interest of contributors. To highlight key points, let us first assume that political money comes from a single contributor.

In this scenario, anticipated reaction works against responsiveness. Consider the opera house example and suppose that the only contributor is the building contractor for the project. The contractor will contribute only to a candidate who favors the project and, in turn, such a candidate will inform only voters who prefer the opera house. In this case, such a candidate can ignore the mass of typical and uninformed voters with little fear. Even if the opposing candidate were to oppose the opera house, he or she would not be able to raise the money nec-

²⁶See BENJAMIN PAGE & ROBERT SHAPIRO, *THE RATIONAL PUBLIC: FIFTY YEARS OF TRENDS IN AMERICANS' POLICY PREFERENCES* (1992); SAMUEL POPKIN, *THE REASONING VOTER: COMMUNICATION AND PERSUASION IN PRESIDENTIAL CAMPAIGNS* (1994); ARTHUR LUPIA & MATHEW MCCUBBINS, *THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW?* (1998).

²⁷See, e.g., DOUGLAS ARNOLD, *THE LOGIC OF CONGRESSIONAL ACTION* (1990); THOMAS MANN, *UNSAFE AT ANY MARGIN: INTERPRETING CONGRESSIONAL ELECTIONS* (1978); JOHN KINGDON, *CONGRESSMAN'S VOTING DECISIONS* (1973).

essary to let voters know about where the two candidates stand on the issue.²⁸

This scenario is even worse than the no-spending scenario. Politicians gain nothing from responding to uninformed voters and, instead their incentive is to support policies favored by the contributor. The implication is that having only a single contributor can undermine democratic responsiveness even when campaigns inform voters. The story would be the same if the single contributor were ideologically motivated (e.g., believed the opera house was in the best interests of the community). This implies that unified contributors are problematic in an otherwise benign seeming situation in which there are no *quid pro quo* arrangements and money is spent on informative speech.

Scenario 5. If contributors are diverse, money can increase responsiveness

It is far-fetched to assume there is only a single contributor. What happens when there are multiple contributors? First, suppose—as in classical pluralist accounts—that there is a contributor for each side of the issues. For the opera case, this implies one contributor favors the opera house (the contractor, as above) and another contributor opposes the opera house (for example, a developer who wants to use the land to build a shopping mall).

In this case, anticipated reaction impels candidates to oppose the opera house. If one candidate favors the opera house, the other candidate can raise money from the anti-opera developer and use the money to inform typical voters of his or her opposition to the opera house. A candidate who favored the opera house would possibly get money from the pro-opera house contractor, but would have only a small contingent of pro-opera voters to which to appeal. In equilibrium, anticipated reaction leads both candidates to oppose the opera house, the policy preferred by the uninformed ordinary citizens who have yet to lift a finger.

As before, the beneficial effects of money are hard to observe. The contributor that has the same preferences as the uninformed voters acts as a watchdog, funding opposition to incumbents who do not take uninformed voters' preferences

seriously. In anticipation of such watchdog behavior, both candidates converge to the same policy position, neither is able to raise money (neither contributor having an incentive to contribute to undifferentiated candidates) and typical voters are not mobilized.

Such a strong reliance on direct competition between interest groups is not realistic. We know that contributor capacity is not equally matched across policy positions: used car buyers do not rival used car dealers in their organization and contributions.²⁹ More generally, typical middle class voters provide almost negligible financial counterweight to businesses and the wealthy. Or, as Schattschneider put it, the “heavenly chorus” of pluralist competition “sings with an upper class accent.”³⁰

What, then, happens to responsiveness when there are multiple contributors who are unrepresentative of the electorate? To understand this case, we refer to a second principle.

Indirect Competition Principle: Because politicians can use money raised based on one issue to inform voters about another issue, interest groups indirectly compete with all other interest groups, even those with no relation to issues they care about.

The principle is that groups do not have to directly oppose each other on an issue in order to compete. To illustrate its logic, let us return to the opera house example. Suppose that the only contributor who cared about the opera house was the contractor. Suppose also that elected officials also had to decide who would provide phone service to the government. On this issue there was also only one contributor, a telecommunications firm pushing a gold-plated phone contract that typical voters do not want to pay for.

One might think that this is a particularly grim—if realistic—situation for democratic re-

²⁸If the single contributor has the same preferences as most ordinary voters, responsiveness increases. In general, this seems an unlikely scenario.

²⁹I am using the memorable example from Lowenstein *supra* note 23 at 334.

³⁰E.E. SCHATTSCHNEIDER, *THE SEMI-SOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA* (1960) at 35.

sponsiveness. The only way to raise money is from one of two narrowly self-interested contributors who have preferences out of line with most voters. Unlike the conventional pluralist account, there is no rescue by a contributor who shares the preferences of typical voters. And, on each issue, one might reasonably fear that the contributor could have his way over an unfunded opposition.

The logic of indirect competition leads to a different conclusion. Suppose that the incumbent supports the opera house and the gold-plated phone contract (the positions favored by the contributors). If a challenger were to oppose the opera house and gold-plated phone contract he or she would be unable to raise money and, therefore, unable to inform voters about the positions of the incumbent. However, if the challenger were to combine opposition to the opera house with even more support of the telecommunications firm than the incumbent, he or she could raise money from the telecommunications firm and spend it informing voters about his or her opposition to the opera house (in contrast to the incumbent's support for it). If the voters cared more about the opera house than the super gold-plated telecommunications contract, the challenger would have a strong case with the voters. If voters cared more about the telecommunications project than the opera house, the challenger could take the opposite tack, advocating an even bigger opera house (and getting contributions from the builder) and the low-cost phone contract.

Anticipated reaction implies the incumbent would preemptively seek to limit such opportunities for rivals. An incumbent in this case would have two non-exclusive options. He or she could preemptively respond to voter interests on the issue most salient to voters (which we are assuming is the opera house) in order to limit the challenger's ability to make persuasive appeals to voters, should the challenger be able to raise funds. Or the incumbent could preemptively move toward the contributor on the second issue (the telecommunications firm) in order to make it harder for the challenger to fund his or her campaign.

The crux of the matter is which incentive is stronger. If the stronger incentive is for the incumbent to move toward the popular position

(of opposing the opera house), campaigns funded by unrepresentative donors actually increase overall responsiveness. If the stronger incentive is for the incumbent to move toward the telecommunications firm to forestall challenger fundraising opportunities, privately funded campaigns decrease responsiveness. In other work, I formalize the above framework and show that the incentives to respond to voters dominate in most cases.³¹ Even though moving only toward contributors (option two) is desired by contributors, the contributions will be worth less because the platform the candidate would be publicizing would be less popular on both dimensions. That is, a candidate who can offer only unpopular positions preferred by special interests will have a hard time luring voters with informative campaign commercials.

In short, indirect competition enables politicians to match electorally popular ideas with viable fundraising. In this scenario, ignoring typical voters on an issue that voters care about (even though such voters know little about the politicians' positions on these issues) is seldom optimal, as opponents have the opportunity to find some contributor who does not care about that issue, advocate a policy favorable to that contributor and thereby raise money that can be used to appeal to voters on the issue voters care about.³²

The key condition for indirect competition to occur is that contributors have diverse interests. That is, candidates must be able to raise money based on another issue in order to counter contributor bias on the major issue. Such diversity does not require contributors to be representative, however. The contributors could be very different than the population, but as long as they care about different issues such

³¹Michael Bailey, *The (Sometimes Surprising) Consequences of Societally Unrepresentative Contributors on Legislative Responsiveness* (2004) (unpublished manuscript, Georgetown University, on file with the author).

³²For a seminal and related example of *indirect competition* (although they do not use the term) in which candidates seek funds from sources least objectionable to their constituents; see Arthur Denzau & Michael Munger, *Legislators and Interest Groups: How Unorganized Interests Get Represented*, 58 AM. POL. SCI. REV. 486-515 (1986).

that politicians can build coalitions with some, but not all of them, indirect competition is possible.

Empirically, contributors are diverse and, as PAC officials have made clear, willing to contribute based on candidates' positions on specific issues rather than broad, general philosophical stands.³³ Consider first the remarkably diverse set of issues and associated contributors involved in American politics. On agriculture, issues have included insecticide regulation, timber, water quality, Soviet embargo, food labels, and chicken inspection. On energy, issues have included nuclear waste, black lung disease, synthetic fuels, Federal Energy Regulatory Commission regulations, solar energy, and the gas tax. On health, issues have included drug patents, Federal Trade Commission regulation, National Institutes of Health authorization, student loans, HMO financing, taxes on benefits, and mental health benefits. Such lists extend to all issue areas.³⁴ In addition, there are also non-policy grounds for contributions, including family and personal ties and donors' interest in being neighborly or being able to socialize with politicians and celebrities.

A diverse contributor pool can have a profound effect on politics and policy through indirect competition. Consider a hypothetical effort by an incumbent from a moderate district to cut the EPA's budget. If we think of policy only in terms of one policy issue at a time, it might seem that the political contributions of those wishing to cut EPA funding (from industries that resist regulation) may surpass the contributions from EPA supporters (environmental groups, for example) and that, therefore, this politician would not suffer politically for such actions. However, the challenger could champion the cause of some relatively obscure contributor—and, by the evidence above, he or she would have many to choose from—to raise money from that contributor and use it to attack the incumbent on the EPA issue. To the extent that voters care more about the EPA than, say, FCC regulations, voters would respond well to such a challenger. Anticipated reaction would discourage the incumbent attacking the EPA, disciplined not by directly countervailing interests, but by potential contributors interested in the FCC. The potential

for a rival candidate to provide some kind of service to the potential contributor is, of course, problematic, but it is important to recognize how such service could fit into a broader context of vigorous democratic competition.

For indirect competition to occur at a minimal cost to society and to candidates' electoral chances, candidates need to find the sources of money that require the least effort or raise the fewest electoral issues. A candidate's personal wealth is an obvious excellent source. Friends, family and interests that overlap with the interests of the typical uninformed voters: (e.g., farm state legislators raise money from agricultural interests) are also excellent sources. Among potentially unpopular contributors, the more obscure their desires, the better.

Summary

The framework developed above integrates the two sides of money in politics and its predictions are consistent with the widely held view that contributors' influence is greatest on low-salience issues.³⁵ The various scenarios illustrate several fundamental aspects of money in politics: (1) without money (and the campaigns it funds), politicians have little incentive to respond to ordinary, poorly-informed citizens; (2) money undermines responsiveness if it can be used to deceive voters; (3) anticipated reaction makes it difficult to observe the positive effects of money on responsiveness; and (4) when contributors are diverse, increasing access to money can increase responsiveness because it increases the possible electoral coalitions whereby politicians can raise money and mobilize voters on popular issues. In the last and most empirically plausible scenario, access to money from diverse sources pushes candi-

³³DAN CLAWSON, ALAN NEUSTADTL & MARK WELLER, *DOLLARS AND VOTES: HOW BUSINESS CAMPAIGN CONTRIBUTIONS SUBVERT DEMOCRACY* (1998) 20.

³⁴JOHN HEINZ, EDWARD LAUMANN, ROBERT NELSON & ROBERT SALISBURY, *THE HOLLOW CORE: PRIVATE INTERESTS IN NATIONAL POLICY MAKING* (1993). See also the wide-range of favors sought from Democrats in the 1980s described in BROOKS JACKSON, *HONEST GRAFT: BIG MONEY AND THE AMERICAN POLITICAL PROCESS* (1988) at 129.

³⁵See Sorauf *supra* note 1 at 170 and Clawson, Neustadt & Weller *supra* note 33 at 20.

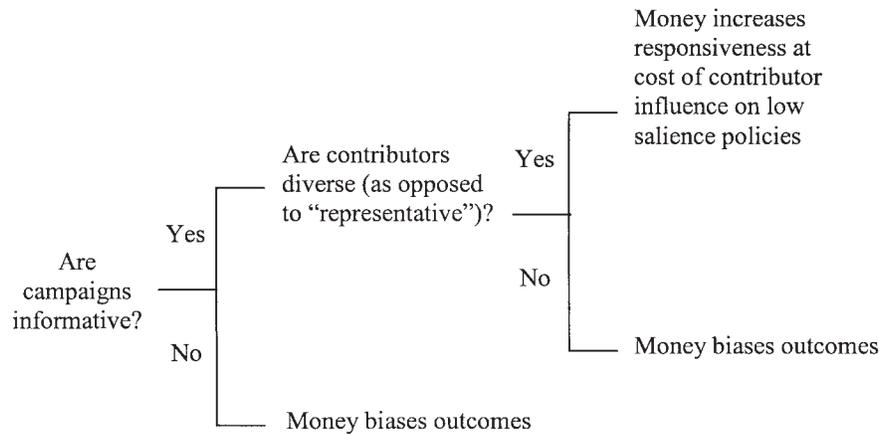


FIG. 1. Summary of argument.

dates to be more responsive to voters on the issues voters care most about at the expense of potential contributor influence on lower salience issues.

F1 → Figure 1 summarizes the argument. If campaign spending deceives voters, the anticipated reaction does not help responsiveness and campaign spending decreases democratic responsiveness and increases contributor influence. If campaign spending informs voters and comes from a unified source, money again can bias outcomes (even though it is spent informing voters!). However, if campaigns inform and contributions come from diverse sources—where diverse means only that the contributors either seek different outcomes or care about different issues—then money from self-interested contributors can increase net responsiveness, even as it provides some advantage to those who contribute. This rationalizes contributor behavior even as it explains their limited influence.

MONEY AND POLITICS IN PRACTICE

The framework (like any model) does not capture the full complexity of the real world. In this section I first explore whether the general patterns indicated in the framework hold true and, then assess the likely effect of limits on large contributions such as BCRA's ban on soft money.

Money and politics in practice

Bill Clinton is the archetype of a politician savvy in the use of indirect competition. His assiduous efforts to raise money are well-known (and often criticized). Often the central element was simply proximity to the President or power, as exemplified by White House coffees or stays in the Lincoln bedroom of the White House. There may also have been links to policies of one sort or another, perhaps with oil pipeline negotiations or with presidential pardons. These linkages rightly deserve scrutiny and, if true, condemnation. But at the same time, they fit in a context coalition building that enabled him to pursue policies not favored by the wealthy. Clinton used the money to fund vigorous ad campaigns on issues clearly favoring the non-wealthy: he opposed cuts in Medicare, Medicaid, education, and environmental protection, and defended his approach to balancing the budget.³⁶

For example, consider how indirect competition affected the debate over the "Patients Bill of Rights." Most voters supported increased regulation of health maintenance organizations (HMOs) but most of the money on the issue came from insurance companies opposed to regulation. If political competition occurred only on that issue, the HMOs would have had

³⁶DICK MORRIS, *BEHIND THE OVAL OFFICE* (1997) at 145.

the upper hand as they could fund their candidates more effectively. Indirect competition leveled the playing field. Democrats (and some Republicans) raised money based on other issues and used the money to fund a large-scale television campaign on the issue.³⁷ This meant the Democrats' soft money contributors (the White House coffee attendees and trial lawyers and so forth) were indirectly competing with the insurers on the HMO issue. This money raised profile of the issue, which in turn increased the incentives for all candidates to follow public opinion on the issue.

Clinton was by no means the first Democrat to follow such a course. Democrats in the 1980s relied on the fact that "business and professional PACs . . . cared more about particular bills than about any broad philosophy of free market economics."³⁸ One of their leaders was Tony Coelho. He was liberal on major issues, ranging from support of Medicare and Social Security to opposition to aid to the Nicaraguan Contras. He filled Democratic campaign coffers by providing contributors ego-stroking, innocent favors and—it would appear—policy consideration.³⁹ Another example is Willie Brown, former Speaker of the California Assembly. He was reliably liberal on major issues, including support for abortion rights, the state medical system, taxes on corporations, and requirements that businesses provide health care to workers.⁴⁰ Yet, he was a prodigious fundraiser; he raised so much money that he was able to be the single largest contributor to Assembly races for most of the 1980s.⁴¹ He balanced his liberal agenda on major issues with fund-raising by serving contributors on minor issues. For example, in 1985, then Speaker Brown fought aggressively to allow corporate franchises to sell eyeglasses, an act widely perceived as being "motivated by a concern for raising campaign funds."⁴² And, consistent with the theory, these politicians had to balance their fundraising with the electoral consequences, as fundraising played a role in races against both.⁴³

The marriage of progressive politics with big money is not limited to "wheeler-dealer" politicians such as Coelho and Brown. Consider a traditional liberal such as Senator Edward

Kennedy (D, MA). Kennedy advocates expanded government health care coverage, more money for public schools, and continued affirmative action, and opposed President George W. Bush on Iraq and judicial nominations, among other things.⁴⁴ Contributors gave him over \$11 million dollars for his 2000 campaign. The top twenty sources of funds included Verizon Communications, Raytheon Co, FleetBoston Financial, Time Warner, Fidelity Investments, AT&T, Vivendi, General Electric, and several law firms.⁴⁵ What Kennedy did to get these contributions is not clear, and it may well have involved service on lower salience issues that were not preferred by ordinary citizens. The key, from the perspective developed here, is that contributors were providing large amounts of money to Kennedy even as Kennedy was pursuing policies that were, if anything, against the economic interests of the wealthy on major issues. Or consider a "clean" politician such as former Senator Bill Bradley (D, NJ). He raised copious amounts of money, focusing on friends, admirers, and major employers in New Jersey, giving him the opportunity to simultaneously pursue constituent and donor interests in Congress.⁴⁶

³⁷Annenberg Public Policy Center, *Issue Advertising in the 1999–2000 Election Cycle*, at www.appcpenn.org/political/issueads/ (released February 1, 2001).

³⁸Jackson *supra* note 37 at 87.

³⁹Coelho viewed himself "as a sort of missionary, a political Robin Hood, taking campaign money from the rich and using it to build a financially secure party to help the poor;" see Jackson *supra* note 37 at 4.

⁴⁰RICHARD CLUCAS, *THE SPEAKER'S ELECTORAL CONNECTION: WILLIE BROWN AND THE CALIFORNIA ASSEMBLY* (1995) 21–23.

⁴¹*Id.* at 2.

⁴²*Id.* at 23.

⁴³See, e.g., JOHN BARRY, *THE AMBITION AND THE POWER* (1989) on how Republicans in the 1980s used Democratic ties to fundraisers as a central element in their campaigns against them.

⁴⁴Senator Edward M. Kennedy, Reaction of Senator Kennedy to President Bush's State of the Union Address (1/28/2003) at www.senate.gov/~kennedy/index_high.html.

⁴⁵Center for Responsive Politics, *Senator Edward M. Kennedy* (2002) at www.opensecrets.org/politicians/.

⁴⁶See BILL BRADLEY, *TIME PAST, TIME PRESENT* (1996) at 182–190.

And, many of the most progressive policies of the twentieth century were passed by politicians with close ties to big money.⁴⁷ Even as Franklin Roosevelt's New Deal expanded the federal government on behalf of middle and lower class Americans, "capital intensive industries, investment banks and internationally oriented commercial banks" were "at the center of this coalition."⁴⁸ While some take this as evidence that Roosevelt was not liberal, most would agree that the money raised did not prevent Roosevelt from pursuing policies that helped the working class and, in fact, the support may have been crucial for Roosevelt and liberals in Congress to get reelected.

In addition, some of the most successful Democratic candidacies have been some of the biggest money campaigns of all: the self-funded campaigns of wealthy individuals. This has been the route to office for liberals such as Maria Cantwell, Jon Corzine, Mark Dayton, Herb Kohl, and Jay Rockefeller.⁴⁹ It is unlikely that Democrats could have won all these seats without the large amounts of money provided by these candidates to their initial campaigns. It is an open question whether more Democrats could have won if more candidates could have tapped into such stores of wealth.⁵⁰

Republicans too make use of indirect competition. Evangelical Christians tend to be middle income and constitute a small portion of the Republican funding base.⁵¹ Yet, Republicans candidates frequently mobilize Evangelicals using funds raised from non-Evangelical donors (a group that is surprising cool toward Evangelicals: 51 percent of Republican donors rated the group low on a feeling thermometer question).⁵² If the mobilization of Evangelicals depended only on money raised from Evangelicals, they would be a less potent political force and politicians would have less incentive to respond to their preferences.

Bans on large contributions and responsiveness to ordinary citizens

The possibility that contributions affect policy is unsettling and makes reform a valid and ongoing enterprise. As I argue below, reforms such as public financing show considerable promise. But not all reforms are equally well

suited to reducing wealth bias in the political system. This section uses the framework developed so far to question whether limits on large contributions—a central component of BCRA—will reduce the influence of money on politics.

One complication in discussing bans on large contributions in light of BCRA is the uncertain status of some kinds of large contributions under BCRA. BCRA bans soft money contributions to parties, but (for the time being at least) individuals, unions and corporations can make unlimited contributions to so-called 527 groups. If big money continues being spent on behalf of favored candidates or parties, the primary effect of BCRA in this regard may be to change the scope and complexity of regulation.⁵³ Rather than getting bogged down in the question of if and how large contributions differ under BCRA, I focus here on the more general point of whether a binding ban on large contributions would reduce wealth bias in the political system.

The concern about the efficacy of bans on large contributions is based on a three part argument. First, Democrats have relied more on large contributions than Republicans. In 2000, the top 10 individual contributors *each* gave be-

⁴⁷Joel M. Gora, *Buckley v. Valeo: A Landmark of Political Freedom*, 33 AKRON L. REV. 7, 38 (1999).

⁴⁸See Ferguson *supra* note 2 at 117; MICHAEL WEBER, *NEW DEAL FAT CATS: BUSINESS, LABOR, AND CAMPAIGN FINANCE IN THE 1936 ELECTION* (2000) and WILLIAM DOMHOFF, *FAT CATS AND DEMOCRATS: THE ROLE OF THE BIG RICH IN THE PARTY OF THE COMMON MAN* (1972).

⁴⁹See Noam Scheiber, *The Green Party: Why Voters Love Democratic Millionaires*, THE NEW REPUBLIC, Nov. 27, 2000 at 12.

⁵⁰BCRA's "millionaires' amendment" targets this source of funding. The amendment increases contribution limits and party expenditure limits for candidates running against self-financed opponents. Paul Sanford of the Center for Responsive Politics argues that because of the amendment "it will be a lot easier for a Republican running against a self-financed candidate to go back to the well of his contributors than it would be for a Democrat running against a well-financed Republican." AP Press, *'Millionaire's Amendment' Could Help Burr in Senate Race*, CHARLOTTE OBSERVER, June 24, 2003.

⁵¹Francia et al *supra* note 11 at 30.

⁵²Francia et al *supra* note 11 at 64.

⁵³On the complexity of BCRA, see ROBERT BAUER, *SOFT MONEY HARD LAW* (2002).

tween \$840,000 and \$1.6 million.⁵⁴ All but one gave overwhelmingly to the Democrats. In 2002, 92% of contributions over \$1 million went to the Democratic Party and 50% of contributions between \$100,000 and \$1 million went to the Democrats. In contrast, over 61% of contributions under \$1000 went to Republicans, which allowed them to more than make up for Democratic advantages at higher contribution levels.⁵⁵ Big contributions kept Democrats financially competitive with the Republicans, as Democrats raised similar amounts of soft money as the Republicans even as they lagged in hard money.⁵⁶ In the most recent data for 2004, Democrats have raised considerable amounts of hard money, but, as before, their totals lag substantially behind Republicans.⁵⁷ Many believe that there is a structural issue underlying these patterns: there simply may be more Republicans who are wealthy enough to contribute \$2,000 per election. Democrats, on the other hand, do better, among the vastly smaller set of individuals who can contribute \$200,000.⁵⁸

Second, electing fewer Democrats will mean wealthy and corporate interests will be more likely to get what they want. Longtime campaign finance reformer Mark Green identifies airlines, autos, taxes, tobacco, energy and pharmaceuticals as policy areas where money is particularly influential.⁵⁹ In every one of these policy realms, Democrats led the resistance against policies favored by corporations and/or the wealthy. While not all Democrats took these positions, a majority of Democrats pushed for a smaller airline bailout targeted toward workers, pushed for more fuel-efficient cars, fewer tax cuts for the wealthy and more regulation of tobacco, energy and health care. Given the overwhelming evidence indicating that constituency and party factors determine legislator positions on such major legislation, any damage BCRA does to Democrats' ability to get elected will increase, not decrease, the likelihood that corporate interests have their way.

Third, banning large contributions may actually lead to more unseemly behavior, not less. In a world with indirect competition, candidates seek to combine the least objectionable fundraising coalition with the agenda most ap-

pealing to voters. With limits on contributions, candidates have fewer fundraising options. If Democrats were truly no longer able to receive six-figure contributions from Hollywood liberals or other big donors (e.g., large contributions to 527s were also banned), Democrats would have two options: they could choose to raise less money and be less successful electorally or, they could work harder to raise the money necessary to maintain the same level of campaign competitiveness. Working harder means either raising money that had been inefficient (i.e., requiring politicians to spend more time than it had been worth garnering each dollar) or unsavory (i.e., requiring service or attention that candidates had been unwilling to provide).

Consistent with this is evidence that BCRA has not curtailed the influence of corporations. For example, tax legislation ostensibly deigned to bring the country into compliance with world trade rules has become a grab bag of corporate tax breaks that shocks even hardened denizens of Washington, D.C.⁶⁰ And Democrats continue to seek close ties with business:

⁵⁴Center for Responsive Politics, *Election Overview, 2000 Cycle, Top Individual Contributors*, accessed May 3, 2002, at www.opensecrets.org/overview/topindivs.asp?Cycle=2000.

⁵⁵Center for Responsive Politics, *Gender Gap, GOP Edge in Small Donations Could Loom Big in 2004*, accessed June 30, 2003, at www.opensecrets.org/pressreleases/DonorDemog.asp.

⁵⁶In 1999–2000, Republicans raised \$715 million (both hard and soft money) versus the Democrats \$520 million. In 2001–2002, Republicans raised \$691 million (both hard and soft money) versus the Democrats \$463 million. See Center for Responsive Politics, [accessed January 20, 2004, at www.opensecrets.org/parties/index.asp. See Sam Barnes, *Armageddon for the GOP? Hardly*, WALL STREET JOURNAL, Feb. 20, 2002, on why, despite these facts, Democrats tended to favor and Republicans tended to oppose the legislation.

⁵⁷This outcome was quite predictable. See Nathaniel Persily, *Soft Parties and Strong Money*, 3 ELEC. L. J. (2004). Francia et al supra note 11 at 155 found that twice as many strong Republicans as strong Democrats said they would increase contributions if contribution limits were raised.

⁵⁸David Keene, *The Right Has Few Deep Pockets*, THE HILL, June 15, 2004.

⁵⁹MARK GREEN, *SELLING OUT: HOW BIG CORPORATE MONEY BUYS ELECTIONS, RAMS THROUGH LEGISLATION AND BETRAYS OUR DEMOCRACY* (2002) at 162–191.

⁶⁰Steven Pearlstein, *Tax Legislation Worth Only of the Trash Heap*, Washington Post, June 9, 2004.

in 2003, House Democrats created a Democratic Business Council which meets weekly with business lobbyists. Of this organization's head, Laurie Knight of the National Beer Wholesalers Association says "You can go to [him] with a problem, a request, asking with a hand out, and [he] will be more than willing to help you."⁶¹ In the Senate, Sen. Jon Corzine, chair of the DSCC, has recently created a Business Roundtable to meet regularly with business leaders.⁶² There are also signs that "intense competition" among members of Congress for funds has forced them "to work much harder to raise the same amount of money they did in the last election" and has "drained" PACs of resources.⁶³

Some argue that a ban on large contributions would not disproportionately harm Democrats because they can make up for the lost funds with increased small donor fundraising, perhaps building on Howard Dean's stunning success raising money from small donors. First, we should be clear that Dean's fundraising was not prompted in any way by BCRA. Nothing before (or after) BCRA prevented the parties from following suit (and it is hard to imagine that any party committee would not look seriously at small donor programs in light of Dean's experience). But the small donor strategy may be of limited success for the Democrats. As noted earlier, Democrats are substantially behind Republicans in hard money raised. And, the success of Democrats in raising more than in the past may be a function the highly polarized particular political environment of 2004. Experience shows that appeals to small donors have traditionally succeeded best in highly polarized environments (Dean, Senator Jesse Helms, and candidate Oliver North, for example).⁶⁴

Some may also argue that bans on large contributions do not hurt Democrats in the long term because the party's advantages in soft money were ephemeral and depended on Democratic control of the presidency. Under this line of argument, united control of government by Republicans would lead Democrats to fall behind in raising soft money, as well, thereby making moot the any short term disproportionately negative impact BCRA may have on the Democrats. This claim is unlikely in the face of evidence from 2001–2002, a period in which Democrats had only the narrowest of control over the Senate. In this period the

Democrats held even with the Republicans in soft money (raising \$246 million in soft money versus \$250 million for the Republicans; interestingly, these totals were virtually identical in 1999–2000 when Democrats raised \$245 million in soft money and the Republicans raised \$250 million).⁶⁵

In summary, a ban on large contributions appears unlikely to reduce the influence of money on politics. It would undermine indirect competition and make it harder for candidates representing the non-wealthy to compete. The net result could be policies that are more favorable to the wealthy and politicians forced to consider increasingly problematic funding sources.

LOOKING TO THE FUTURE: REFORMS

To raise concerns about one reform is not to deny the need for reform more generally. In this section, I use the framework to discuss three of the more serious dangers associated with money in politics and appropriate ways to deal with them.

Uninformative and/or deceptive campaigns

Money in politics is most corrosive if campaigns deceive voters. While substantial evidence indicates campaigns tend to increase voter information, the banality and borderline (or more) dishonesty of many campaign ads leads many to suspect that campaigns sometimes mislead voters.⁶⁶ If this happens, contributions and spending of any sort undermine representation. (Of course, it also needs stating,

⁶¹Juliet Eilperin, *Democrats Court Business Owners, Party Seeks Increase in Contributions*, WASHINGTON POST, June 15, 2003.

⁶²Ibid.

⁶³Alexander Bolton, *Life after McCain-Feingold: Scrambling for Money in a Tough Fundraising Climate*, THE HILL, May 14, 2003.

⁶⁴KENNETH GODWIN, *ONE BILLION DOLLARS OF INFLUENCE: THE DIRECT MARKETING OF POLITICS* (1988).

⁶⁵Center for Responsive Politics, *Soft Money Fundraising 1991–2002*, www.opensecrets.org/bigpicture/ptytots.asp [accessed January 20, 2004].

⁶⁶See e.g. Dana Milbank & Jim VandeHei, *From Bush, Unprecedented Negativity; Scholars Say Campaign Is Making History With Often-Misleading Attacks*, WASHINGTON POST, May 31, 2004.

that if campaigns deceive voters, campaigns are bad for representation under any system of campaign financing.)

Hence a top reform priority should be to minimize this possibility by increasing the credibility of campaign information. This should not be confused with a quixotic effort to get ordinary citizens to read policy briefs and watch C-SPAN. Instead, reform should ensure that politicians, media, activists and highly motivated voters have access to resources that can verify and contextualize the competing claims of politicians. The political process, with all its incentives for moving information, will take care of the rest. When a candidate is caught in a lie or unpopular position, the existence of credible outlets will make it easier for rivals to inform ordinary voters know about the issue.

A variety of efforts would increase the credibility of political information. Private efforts include so-called ad-watches that critique the content of political ads. These give voters a chance to easily recognize when candidates are using ads to mislead or distract. They need not be limited to back-page media analyses in top newspapers: civic organizations could air television ads highlighting misleading rhetoric and asking viewers to object to the campaigns directly. These ads could maintain their credibility by pointing out examples from both parties.

Public efforts include greater use of voter guides and encouragement of debates. The voter guides allow for competing visions to be placed next to each other, one of the surest ways to promote deliberation and to allow misleading claims to be challenged. Debates provide a similar, if more dramatic, contest of ideas.⁶⁷ Public funds would be well-spent on these efforts. For example, \$50 million could provide a \$100,000 bounty for participation in

debates in all congressional races. If both candidates participate, they split the money; if only one participates, the entire amount goes to the candidate willing to participate. This policy would make it less attractive for incumbents to duck debates (as most do now) and would also provide modest seed money to challengers.⁶⁸

Unified contributors

The second danger of money in politics is that contributions from a unified source can distort policy positions of all candidates. This concern is attenuated by the substantial evidence discussed earlier that indicates contributors have diverse—if unrepresentative—preferences. However, some recent efforts to punish interest groups that hire or work with Democrats (the so-called “K Street Project”) raise the specter of increasingly unified contributors.⁶⁹

Therefore, positive efforts to diversify the contributor pool are reasonable. An alternative that requires no public spending or regulations is for major foundations to endow a fund that contributes to candidates fighting for working class citizens. Public funding could also address this concern.⁷⁰ This is not easy; consider public funding of presidential elections as a cautionary tale. In 2000, the federal government provided \$83 million to Al Gore, \$63 million to George W. Bush, and \$16 million to Pat Buchanan. In light of Bush and Gore’s unrelenting fundraising efforts, it is not obvious that these funds cut ties to donors.⁷¹ The policy also wasted millions on the Buchanan campaign.⁷²

Tax credits for contributions provide a more promising avenue for public financing. They allow citizens to control the money and minimize possibility that rules are skewed to protect in-

⁶⁷Task Force on Campaign Reform, *Campaign Reform: Insights and Evidence* (Woodrow Wilson School of Public and International Affairs, Princeton) (1998).

⁶⁸See also Green *supra* note 60 at 288.

⁶⁹See, for example, Bruce Freed, *K Street Project Threatens Business*, THE HILL, December 11, 2002.

⁷⁰See Smith *supra* note 1 at 88–105 for concerns that must be addressed by any system of public financing. Unlike me, he concludes that no system will meet these concerns.

⁷¹Regarding public funding for presidential campaigns, see also Issacharoff and Karlan, *supra* note 26 at 1735.

⁷²If you need to be convinced of this, consider the following: Buchanan spent an astounding \$89 per vote compared to \$3.66 per vote for Bush, \$2.35 per vote for Gore and \$2.69 per vote for Nader. To top things off, in the mother of all unintended consequences, public funding may have tipped the 2000 presidential election to George W. Bush. It was public funding, after all, that put Buchanan and Nader on the ballot (Buchanan because he had funding; Nader because he wanted it), and it was the presence of these two individuals on the ballot that may have been decisive for Bush to carry Florida and the election.

cumbents or the major parties. Hasen, Ackerman and Ayres, Gora, and others have discussed such proposals.⁷³ A simple approach is to replace the tax checkoff for presidential campaigns with a single line on which voters would enter amount contributed (up to a limit) to a federal campaign and the coded number from a receipt issued by the campaign that is to receive the contribution. The administrative burden would largely fall on campaigns, something that is well within the capacities of major campaigns for federal office.

Low profile issues

A third danger is that contributions encourage politicians to do the bidding of donors on low-salience issues. This is a chronic problem for democratic decision-making, with or without money. How can voter interests be paramount on low profile issues about which voters care little? The conventional approach among reformers is to reduce temptations by limiting contributions. Even setting aside constitutional and practical concerns with such an approach, limiting contributions could actually do more harm than good.

First, the system has a built-in defense against service to contributors. Even on an issue where one side of the issue has far greater financial resources, political competition can punish candidates who push unpopular agendas for contributors. Indirect competition allows politicians to raise money from issues unrelated to the issue at hand and publicize any actions that are “too compliant” with the wishes of contributors.

Second, even if regulations inhibit money from entering the electoral arena, the regulations in no way make money disappear from political life. The low salience issues on which contributions may be exerting some effect will continue to be subject to massive lobbying which allows wealthy interests to buttonhole members, visit staff, monitor policy minutia, generate studies (the results of which are only reported if they are favorable), and mobilize constituents (in “astroturf” as opposed to true “grassroots” campaigns) and civic leaders (“treetop” campaigns).⁷⁴ Special interests apparently consider such lobbying to be more ef-

fective than campaign contributions, as they spend far more on lobbying in Washington than on campaign contributions.⁷⁵

In addition, wealthy interests can continue to use their financial power to provide legislators a financial stake in their position. At the state level, it is very common to see state legislators who have personal financial stakes in government policy pushing agendas of private interests. For example, insurance agents elected to state legislatures often are active on insurance policy.⁷⁶ At the national level, special interests hire the spouses and friends of lawmakers and, upon retirement, provide them with lucrative lobbying positions.⁷⁷

The crucial difference between these lobbying activities and campaign contributions is that at least campaign contributions also have a positive effect on representation of ordinary voters. Candidates provide the nexus for indirect competition to work; those who raise money on one issue will spend it raising voter awareness of issue positions that may not have well-heeled contributors behind them. In contrast, money that enters the political system via lobbying does so on an issue-by-issue basis. When this is the basis for political battles, the conventional critique about imbalanced interest group representation has greater force and the interests of ordinary citizens are less likely to be served.

Hence, rather than turning off the light and hoping politicians will behave, it seems better

⁷³See Richard Hasen, *Clipping Coupons for Democracy: An Egalitarian/Public Choice Defense of Campaign Finance Vouchers*, 84 CAL. L. REV. 1 (1996) and BRUCE ACKERMAN & IAN AYRES, *VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE* (2002) and Gora supra note 51 at 37.

⁷⁴*Grassroots Lobbying Trends and Techniques: Consultant Q & A*, CAMPAIGNS & ELECTIONS 45–49 (February 2003).

⁷⁵See Jeff Milyo, David Primo & Tim Groseclose, *Corporate PAC Contributions in Perspective*, 2 BUS. & POL. 83 (2000).

⁷⁶DIANNE RENZULLI & THE CENTER FOR PUBLIC INTEGRITY, *CAPITOL OFFENDERS: HOW PRIVATE INTERESTS GOVERN OUR STATES* (2002).

⁷⁷See e.g., ARIANNA HUFFINGTON, *PIGS AT THE TROUGH: HOW CORPORATE GREED AND POLITICAL CORRUPTION ARE UNDERMINING AMERICA* (2002) at 77–150; Judy Pasternak, *Ethics Review on Lobbying: Nevada's Reid Wants to Reevaluate Policies about Relatives who Work for Special Interests*, LOS ANGELES TIMES, January 29, 2004.

to promote as much democratic control as possible by expending efforts to ensure there are enough resources available for campaigns to credibly expose wrongdoing on low-profile issues. Or, as Justice Brandeis stated in a different, but relevant, context: “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”⁷⁸ This statement implies that instead of limiting contributions, the possibility that politicians serve contributors on low-salience issues should be addressed with public financing. Public financing—subject to the caveats raised above—can mitigate the service of contributors on low-salience issues by reducing the demand for contributions. It can also reduce long-term distrust of government that can be increased by the service of contributors on low-salience policies.

CONCLUSION

This paper has presented an integrated framework for thinking about both the costs and benefits of privately financed campaigns. The costs are hard to deny: candidates have incentives to favor donors. The benefits are also hard to deny: incumbents have to be responsive to ordinary citizens when they know that rivals can raise enough money to inform these citizens of non-responsive behavior by the incumbent.

The framework outlines conditions under which privately financed campaigns will be harmful or beneficial. Even when money is spent on political speech in its best sense (speech that informs voters) and contributions are not based on *quid pro quo* exchanges, privately financed campaigns can undermine responsiveness if contributions come only from a unified source. But when campaigns inform voters and contributions come from diverse contributors (who need not be representative of the population) democratic competition starkly limits the extent of service accorded to

wealthy contributors and can promote responsiveness to ordinary citizens on major issues.

The bottom line is this: disparities in the sources of political money need not undermine representation of non-wealthy citizens. The role of politicians—good ones, at least—is to build coalitions that allow them to have the resources to mobilize typical uninformed voters (who lack incentives to mobilize themselves) while advocating policies such voters truly support. This means that democratic politics are not incompatible with privately financed campaigns. It is not pretty, but in this kind of political system, politicians forge a coalition between ordinary citizens and contributors who either share these citizens’ preferences or are interested in narrow policy favors about which voters care little. This is how candidates from Franklin Roosevelt to Bill Clinton won office while pushing major policies that were strongly opposed by wealthy interests.

To say politics work better than we think is not to say that work as well as they should. Reform is necessary. But our efforts must recognize the complex interrelationship among campaign contributions, campaign spending and responsiveness. The framework here suggests that instead of getting mired in the constitutional and bureaucratic morass of limits and loophole plugging, reform should use public and private resources to make campaigns informative and vigorous enough to promote representation of all citizens, even those not actively drawn to politics.

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⁷⁸Whitney vs. California 274 US 357 (1927).

