 DOI 10.1515/forum-2013-0009 — The Forum 2012; 10(4): 91–104

Raymond J. La Raja*

Why Super PACs: How the American Party System Outgrew the Campaign Finance System

Abstract: The growth of political spending by outside groups reflects the demise of a campaign finance system that was designed during an era when candidates largely controlled their electoral destinies. The original 1974 law assumed a candidate-centered framework in which political parties mattered less as sources of electoral support. Since the 1980s, partisan polarization and intense competition for control of government has pushed the candidate-centered framework to its limits. Partisans have strong incentives to organize collectively through party organizations and party allied groups to maximize opportunities for taking control government. The campaign finance system, however, is unsuited to the emergent party system because of its unwieldy restrictions on political parties and excessively low contribution limits, which have declined in value due to inflation. The current system induces a highly inefficient redistribution of regulated funds from incumbent officeholders to parties, and the escalating use of unrestricted funds by Super PACs and other weakly transparent campaign groups, which have strong legal protections in the wake of judicial decisions such as *Citizens United v. Federal Election Commission*.

***Corresponding author: Raymond J. La Raja**, Associate Professor, Department of Political Science,University of Massachusetts, 200 Hicks Way, Amherst, MA 01003-9277, USA,
E-mail: laraja@polsci.umass.edu

Why Super PACS

The 2012 elections produced some predictable handwringing with respect to campaign finance. An editorial in the *Washington Post* laments the “broken campaign finance system” and “flood of money into politics in the past two years.”[1] Over at the *New York Times*, critics complain about the “dark-money” groups financed by casino-magnate Sheldon Adelson and industrialists Charles and David Koch, even while exulting that these wealthy donors got nothing for their money since their candidates lost.[2] Writing at the editors’ blog of the *New York Times*, David Firestone bemoans the amount of spending in federal elections, and attributes particular blame to third party groups such as Super PACs, which can raise and spend money without limits: “The number,” he writes, “is both entirely expected and yet still shocking, so much larger than previous elections that it suggests the nature of campaigns has utterly and permanently changed.”[3]

The nature of campaigns has indeed changed, with increasing amounts of money being spent by nonparty groups rather than candidates and parties. But Firestone and others misdiagnose the underlying source of this change, and vastly overstate the flow of money in 2012 compared to previous elections. In fact, for all the talk about the surge of money in this election, it appears from initial estimates that *less money* was spent in this election than in the previous one. Figure 1 shows total spending in presidential and congressional campaigns going back to 1998.

The Center for Responsive Politics (CRP) estimates that spending for the presidential election in 2012 amounted to $2.89 billion, a decline of $12 million compared to the 2008 presidential election once the figures are adjusted for inflation.[4] Importantly, this decline came *after* the ruling *Citizens United v. Federal Election Commission*, a decision that allowed corporations and unions to spend in politics with minimal restrictions. Of course, a main reason the presidential contest was less in 2012 was because, unlike 2008, only one party had a contested nomination.

In Congressional elections, it is the same story. The CRP estimates expenditures of $3.37 billion in 2012, compared to $3.65 in the previous 2010 midterm, reflecting a *decline* of $280 million. The 2010 congressional election

1 Editorial Board, “Hidden Campaign Cash,” *Washington Post*, December 5, 2012. Available at http://www.washingtonpost.com/opinions/hidden-campaign-cash-through-social-welfare-groups/2012/12/05/565ee1dc-3974-11e2-b01f-5f55b193f58f_story.html.

2 Juliet Lapidos, “Saving Wealthy Donors from Themselves,” in Talking Note: The Editorial Page Editor’s Blog. *The New York Times*, November 7, 2012. Available at http://takingnote.blogs.nytimes.com/2012/11/07/saving-wealthy-donors-from-themselves/#more-10277.

3 http://takingnote.blogs.nytimes.com/2012/12/07/bad-news-for-campaign-finance/.

4 The difference could very well be even less if one makes the reasonable assumption that inflation with respect to broadcast and cable rates has been higher than the average-CPI which is used here. Campaigns spend the majority of their funds for purchasing advertising time.

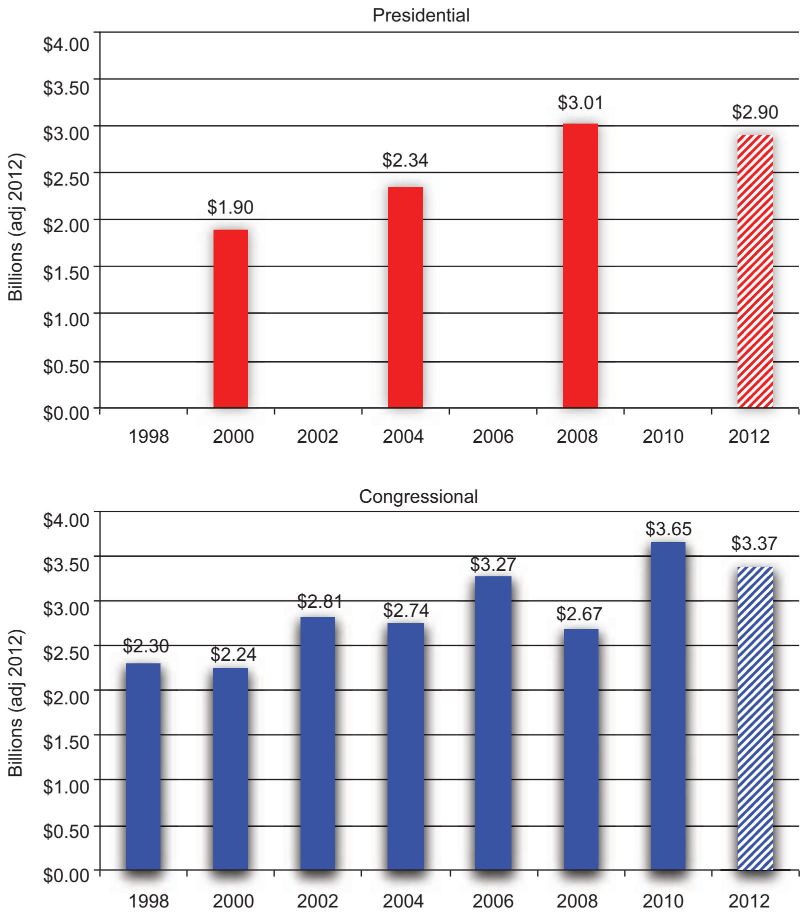

Figure 1 Cost of US federal elections, 1998–2012.
Source: Center for Responsive Politics.
Note: Figures are adjusted for 2012 collars using the average CPI.

was likely a record-breaking year for political spending because a national tide was brewing, which would plausibly alter the balance of power in Congress. The Republicans had a genuine chance to take over Congress, a possibility that mobilized campaign money among partisans in both parties. Most analysts did not believe a change in either chamber of Congress was likely in 2012, which depressed fundraising.

Despite the apparent drop in spending in the most recent election, the editorialists have a good point that non-party groups have assumed a bigger role in recent campaigns than previously. But the intensified activities of these organizations reflect a fundamental shift in American party politics during the past two decades, rather than simply the roguish efforts by wealthy donors to game the campaign finance system. The distortions we observe with the campaign finance system reflect a fundamental mismatch between a regulatory structure rooted in a candidate-centered paradigm and the institutional imperatives of the changing party system.

The Old World and the New

The current framework of campaign finance laws is outdated. It is rooted in the 1974 amendments to the Federal Election Campaign Act (FECA), which provided the first comprehensive rules on campaign money at the federal level. These anti-corruption measures came in response to the Watergate scandal, although their particulars also served electoral self-interests (Samples 2006). The FECA worked reasonably well for two decades because it played out in the context of a relatively slack party system.

During this time one party dominated the legislature, major policymaking was frequently bipartisan (Mayhew 2005), and elections appeared to hinge on the local and personal (Cain, Ferejohn, and Fiorina 1987). To be sure, there was an incentive for partisans to organize collectively – particularly for the minority GOP – but it was a relatively weak motivation, given the pluralistic character of policy-making and the seemingly unending dominance of Democrats in Congress during the postwar years.

This dynamic has changed considerably. In recent decades, the nation has experienced intense competition for control of Congress and a degree of ideological polarization between party elites not seen for more than a century. These two shifts – close margins to control government and policy distinctiveness between the parties – have made the stakes very high indeed. The transformation compels the kind of collective action in electioneering that kindles memories of a highly competitive, highly organized party-era in the late 19th century.

Contemporary partisan organizing is more fragmented, in part, because there are simply more groups vying for attention. But its dispersion also reflects a logical response to a campaign finance system that thwarts collective action through formal party organizations. Partisans today have powerful incentives to organize jointly and efficiently to maximize the likelihood of controlling government. This is why party-like organizations have burst through the weathered seams of campaign finance laws, which were designed initially to support the individualistic pursuit of office.

The changes in the party system were not foreseen in 1974 when reformers in Congress drafted the new campaign finance laws. The regulations implicitly assumed congressional candidates controlled their own campaigns. For this reason, the drafters designed accountability mechanisms, such as disclosure and contribution limits, with the focus on the candidate committee. Party organizations and political action committees (PACs) were seen as playing a supportive but circumscribed role in financing elections.

Indeed, it was expected that the largest share of money would come from contributions made by individual citizens who lived in the district. However, as political parties became more ideologically coherent, the candidate's financial support extended increasingly to national constituencies that really cared which party controlled Congress. The Internet, of course, has abetted this trend since 2000, with its efficient reach across geography (Gimpel, Lee, and Pearson-Merkowitz 2008).

With a shift toward more "responsible" parties, the very character of party organizing has been transformed. The prevailing view in political science has been that American political parties serve candidates and officeholders (Herrnson 1988; Aldrich 1995). As such, the "ambitious candidate" is the unmoved mover who shapes the party to fit his or her goals rather than the other way around. The party, in other words, plays a supportive campaign role by providing consultants, staff, and some additional financing.

As the party system has become increasingly taut, another model has emerged which places greater emphasis on the influence of partisan activists to shape the candidate selection process and governing agenda (Bawn et al. 2012). In this perspective, the party is not so much a collection of office-seekers using the party for individual and collective needs, but an extended network of partisan groups outside the legislature with narrow policy goals. The campaign finance system has strengthened the hand of partisan activists by limiting the flow of financial resources to the formal party organization and its technocratic staff.

The severe constraints on party organizational fundraising, precisely during a period of intense divisions between the parties, has led to a surge in campaign ads by non-party (but party aligned) groups. Super PACs exist primarily because partisans have the motive and means to create party-like structures to offset constraints on party committees. Rather than recount the recent contours of political money in the 2012 elections, this essay takes the longer view by trying to place the challenges of regulating money in the broader context of the party system. The goal is to highlight the basic strains on the regulatory structure, with plausible implications for reforms as Congress considers tinkering with campaign finance laws.[5]

In the next section, I briefly describe the "candidate-centered" logic of the campaign finance laws as conceived under the FECA. I then observe how the basic economics of inflation constricted the flow of political money over time in ways that inhibited collective action within the regulated system and led to pathologies such as "soft money." Next, I discuss how the changing party system warranted a stronger financing role for political parties but how this was thwarted under the Bipartisan Campaign Reform Act (BCRA) of 2002. The last part of the essay attends to the most recent election to explain why we have Super PACs and how some regulatory adjustments toward a party-centered campaign finance might restore accountability and transparency in the campaign finance system.

Regulating Campaign Money in the Era of Candidate-Centered Politics

In 1974, Congress passed amendments to the Federal Election Act of 1971. The original act dealt mostly with the growing cost of campaigns, providing public financing

5 Meredith Shiner, "John Cornyn Open to Campaign Finance Reform," *Roll Call*, Sept. 24, 2012. Available at http://www.rollcall.com/issues/58_24/John-Cornyn-Open-to-Finance-Reform-217768-1.html.

for the presidential elections beginning in 1976.[6] The 1974 amendments reflected the political realities of campaigning for Congress plus longstanding fears about the corrupting influence big donors. The circumstances surrounding the Watergate scandal provided exactly the kind of sordid narrative to support tough new laws.

The break-in was financed, in part, by funds supplied from President Nixon's reelection committee, as well as undisclosed funds from wealthy individuals and corporate donors.[7] Congress strengthened the original provisions for public financing of presidential elections, and went further by setting limits on how much money could be spent in the primaries and general election. In the general election, presidential candidates could receive a grant of $20 million ($95 million in 2012 dollars) in exchange for forswearing private financing.

For congressional elections, Congress approved new laws limiting the size of contributions and expenditures (though the latter was declared unconstitutional in 1976 with the 1976 Supreme Court decision, *Buckley v. Valeo*), and required disclosure of contributors giving more than $200. Notably, Congress did not approve public financing for congressional elections, a plank that was unpopular with many incumbent Democrats and ideologically opposed by most Republicans.

The logic of the system was that candidates would control their own campaigns. The FECA placed responsibility for candidate finances with one committee managed by the candidate. In the past, numerous "voluntary" committees sponsored by friends of the candidate had sprouted up to circumvent constraints on campaign financing dating from the Federal Corrupt Practices Act of 1925. The newly-established candidate committees could receive contributions of $1000 from individuals per election (which meant $2000 for a cycle that includes primary and general elections), and a $5000 maximum contribution from an interest group (or $10,000 for the cycle). Corporate and union contributions had been prohibited for decades, but the law allowed any interest group to establish a political action committee (PAC) though which members could donate up to $5000.

Not surprisingly, given the nature of the party system at the time, the party committees were relegated to a relatively minor role. Party organizations had been on the wane during the 20th century, as political reforms (e.g., the secret ballot, merit-based civil service, and primary nominations) reduced their ability to monopolize resources and candidate access to the ballot. In the 1960s and 1970s, the minority GOP tried to invigorate the national parties as a focal point for recruiting candidates and providing them with some campaign support (Herrnson 1988).[8]

However, under the 1974 FECA the parties were treated marginally better than interest groups. They could contribute $5000 to a candidate – the same as a PAC – although they could spend another $10,000 directly in the campaign on behalf of House candidates (and twice that for Senate candidates, with some adjustments for larger states). Importantly, individual donors were allowed to give only $25,000 *total* to all federal committees, which put the parties in direct competition with candidates for raising money from major donors. Overall, the FECA institutionalized a process of financing candidate campaigns directly through donations from individuals and interest groups, with the party playing a peripheral role. Since its inception, party contributions and spending on behalf of candidates has typically been in the range of 5%–6% for challengers and just 1%–2% for incumbents.[9]

The system-wide consequences of the 1974 were fairly predictable. First, interest groups, especially business-related organizations, exploited the use of PACs, which became a significant source of financing for congressional incumbents.[10] Between 1974 and 1990, the number of PACs increased from 608 to 4172 (the number of PACs operating in recent years has plateaued at roughly 4500).[11] Second and related, incumbents raised money from PACs to accumulate

6 Democrats were concerned they could not keep pace with the Republican fundraising in presidential campaigns. President Nixon opposed the legislation but acquiesced once the Democrats agreed to implement public financing in 1976. See La Raja (2008). Small Change: money, political parties, and campaign finance reform. Ann Arbor, MI: University of Michigan Press.

7 In the 1968 campaign Nixon received what may have been the largest single campaign contribution of $2.8 million from Clement Stone ($18.5 million in 2012 dollars), the Chicago insurance executive [see (Sorauf 1992)]. This amount appears to have been exceeded by Sheldon Adelson who gave $20 million to Newt Gingrich's Super PAC, Winning Our Future.

8 Republicans, generally, did not like most aspects of the 1974 FECA but had little choice given their diminished power after the 1974 elections and the dark stain of Watergate on the GOP. As the minority party, their objections were understandable. As much research suggests, limits on contributions and spending make it more difficult for challengers to unseat incumbents.

9 Campaign Finance Institute, "Campaign Funding Sources for House and Senate Candidates, 1984–2010," visited on December 10, 2012. Available at http://www.cfinst.org/pdf/vital/VitalStats_t8.pdf.

10 Prior to the 1970s, most registered PACs were labor unions, which had organized these committees in the wake of the Smith-Connally Act in 1943, which banned direct contributions from labor union treasuries [see (La Raja 2008)].

11 Data from the Federal Election Commission, "Number of Federal PACs increases," Press Release, March 9, 2009. Available at http://www.fec.gov/press/press2009/20090309PACcount.shtml.

almost insurmountable advantages over challengers with campaign funds. House incumbents started with a 1.5:1 advantage in 1978, which became a spread of 3.7:1 in 1990 (Sorauf 1992). In the postwar years, reelection rates of incumbents routinely exceeded 90%, much of this being the result of their financial advantages (Abramowitz 1991).

Despite these electoral dynamics, which greatly troubled good government groups, the federal campaign finance system was a model of transparency and accountability for more than two decades. Money flowed through the regulated channels. Moreover, it even appeared that the system had restrained the growth of campaign expenditures in congressional elections, as total amounts began to flatten in the mid-1980s (Sorauf 1992, p. 13).

In presidential elections, with widespread participation by the candidates in the public financing program, the increases in campaign spending stayed fairly close to the increases in the CPI, with minimal efforts to circumvent the system. The financing of American politics achieved a considerable degree of stability, albeit with a decidedly pro-incumbent bias. This stability, however, started to break down in the late 1980s due to the simple arithmetic of inflation and underlying changes in the party system, which became starkly clear by the 1990s.

Why the Campaign Finance System Disintegrated

One astounding miscalculation in the original FECA framework was the widespread failure to accommodate inflation.[12] The basic economic fact of rising cost of goods and services was never built into most aspects of the original law. The presidential public financing grants were uniquely tied to the average Consumer Price Index, but none of the contribution limits were so tied.[13] More than three decades later, reformers who helped pass the BCRA in 2002 might have improved significantly the functioning of the campaign finance system by simply restoring the original value of the contribution limits established in 1974. Remarkably, the BCRA contribution limits across the board were actually much *lower* than those established under the FECA.

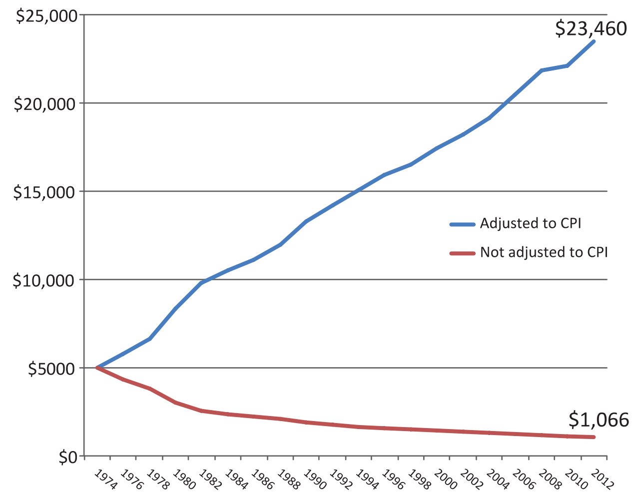

Figure 2 Value of PAC contribution limit, 1974–2012.

Figure 2 illustrates this point. It compares the value of a maximum PAC contribution (lower red line) with the amount if this limit was adjusted each election cycle for inflation (top blue line). A PAC limit of $5000 in 1974 is worth just $1066 in 2012. However, if the original level had been fixed to the CPI, the maximum contribution would be worth $23,460 today. That means a PAC could have contributed close to $47,000 to a candidate over the 2012 election cycle (both primary and general).

To put this in perspective, consider a comparison with the much-reviled party "soft money" that was banned under the BCRA. In a study I did using data from the 1998 elections, the median soft-money contribution was $25,000 among interest groups that also gave money through PACs (Apollonio and LaRaja 2004).[14] With adjustments for inflation, the value of a PAC contribution in 1998 would have been $33,000 per cycle, rather than its actual value of $3000 when viewed in terms of 1974 dollars. In other words, the top limit on a PAC contribution would have been *well above* the amount that the most active interest groups were giving in soft money. The inescapable implication is that the greatly reduced value of a PAC contribution was providing incentives for PACs, parties, and candidates to find alternative sources of money.

The same exercise can be done for individual contribution limits. A maximum contribution limit of $1000 from

12 I have not read the transcripts of congressional hearings to see the reasons for the decision not to adjust contribution limits for inflation. The presidential public funding program included such adjustments so clearly there was some thought given to inflation. Of course, it is entirely possible that the designers wanted expressly to diminish the value of contributions over time as a means of gradually reducing the role of large donors.

13 Even this adjustment for presidential campaigns is probably insufficient because inflation associated with purchasing spots on broadcast/cable media is likely higher than the CPI.

14 This figure represents the rarified group of 870 active interests groups that also gave hard money to politicians. In fact the median hard money contributions they gave was much greater at $78,295. Among all other groups the median soft money contribution was only $375.

individuals to candidates had diminished in value to just $274 at the time BCRA was passed 2002. BCRA doubled the original FECA threshold from $1000 to $2000. But a $2000 contribution limit, when viewed in terms of inflation since 1974, reflects a value of just $426. In simple terms, the value of a maximum contribution in 1974 was more than *double* what it is today ($426 compared to $1000). To fully restore the original 1974 value of an individual political contribution, the current maximum limit should be $4692 rather than $2000.

Extending the inflation analysis to limits on party contributions reveals a larger problem, and one that has direct significance for my argument about the mismatch between campaign finance rules and the party system. The value of a maximum contribution to parties has diminished significantly precisely during an era when motives to organize collectively as partisans are as strong as they have been historically. Figure 3 compares the current value of a party contribution with and without inflation adjustments, with 1974 limits as a baseline.

A $20,000 contribution limit in 1974 would now be worth almost $94,000 per year (or $188,000 per election cycle). This adjusted amount provides some new perspective on what policymakers might have done with the 2002 reforms, rather than banning party soft money. If you consider that only 1% of soft money contributors gave more than $100,000 in 1998 (Apollonio and LaRaja 2004), then a relatively easy and effective strategy to address concerns about mega-donors would have been to adjust party contributions for inflation based on the 1974 benchmark. The narrative of reform cast these contributions as corrupting. Yet the value of the overwhelming number of contributions fell well within the bounds of the original FECA's guidelines.

Proponents of BCRA had argued the new law did the party organizations a favor by increasing the original FECA threshold from $20,000 to $25,000 (Corrado and Mann 2004). Based on the 1974 baseline, this change merely increased the value of a party contribution from $4263, to just $5328. Effectively, the BCRA squeezes political parties even more than the FECA ever intended, and, as I mentioned previously, the original law was hardly kind to political parties.

How the Changing Party System Affects Campaign Finance

Adding to the vise-like effect of the diminishing value of contribution limits, the emerging party system has intensified pressure on a regulatory system designed for a different era of campaigning. The need to organize collectively as a party is stronger today than it was when the FECA was implemented. Back then, political parties played a weaker role in organizing campaigns. Candidates often self-nominated, raised their own money, and hired consultants to help manage campaigns. Local parties, once the focal point of campaign work, had become less relevant in a strategic environment that relied heavily on capital-intensive technologies such as television instead of labor-intensive

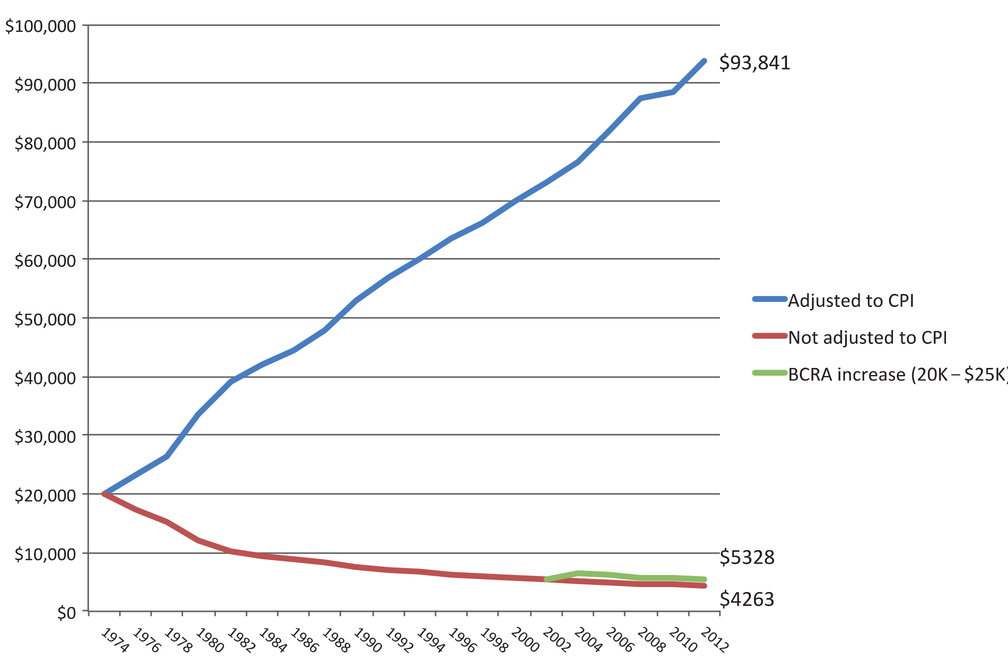

Figure 3 Value of party contribution limit, 1974–2012.

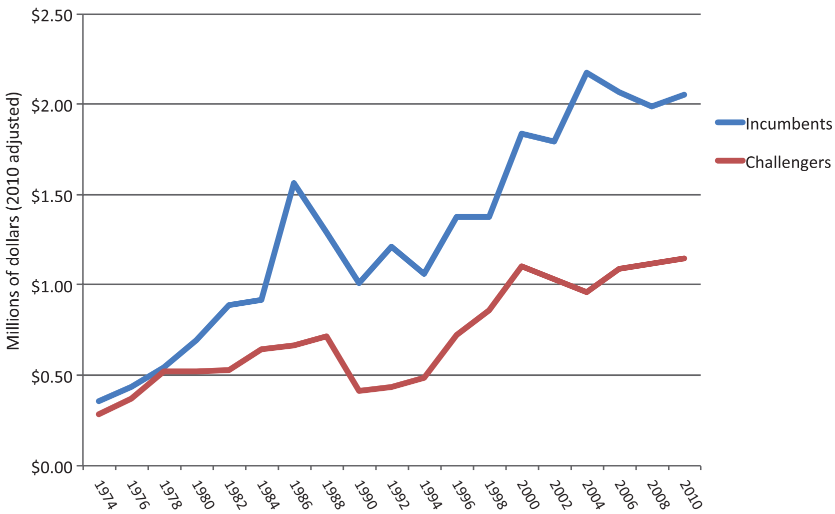

Figure 4 Expenditures of house incumbents and challengers, 1974–2010.
Source: Campaign Finance Institute.

mobilization efforts. Using new communication tools, candidates turned directly to personal constituencies for both cash and votes. Despite the ongoing importance of the party label, declining partisan loyalty among voters made the personal characteristics of congressional candidates more salient than previously (Cain, Ferejohn, and Fiorina 1987). While the American political system, with its district-based contests and separated system of government, has always focused on individual candidates more than other democracies, the 1970s appeared unusually focused on candidates rather than parties.

However, the nature of political campaigns in the 1970s masked underlying changes that would become fairly clear in the 1990s. Partisan elites were sorting into ideological camps, with the Republicans increasingly conservative and Democrats more liberal.[15] Within congressional parties, the dynamic created a stronger motivation for members to act collectively. As members became more ideologically similar to fellow partisans, they began to appreciate the benefits of coordinated action toward mutual policy objectives. This entailed giving party leaders greater power to control the legislative process (Rohde 1991; Sinclair 2006).

The growing ideological divide means that which party controls government matters considerably for policy outcomes. As the GOP made electoral gains in the South through the 1980s, it became a genuine threat to take over the US House, and gain potential supermajorities in the Senate. The turning point came in 1994 when the Republicans captured a majority in the US House after decades of Democratic control. This landslide election mobilized activists in both parties now that it was clear the House could tip toward either party in a given election.

With bipartisanship on the decline, policymaking potentially moves towards the preferences of the majority faction of the majority party, rather than the broader centrist coalitions permeating the previous Congresses. For activist partisans, the stakes for majority control became increasingly significant. This heightened partisan anxiety is then reflected in the sharp increase in election spending for the US House after the 1994 elections.

Using data from the Campaign Finance Institute, Figure 4 shows the average expenditures for House incumbents and challengers in races in which the incumbent won with less than 60% of the vote share. Election spending among challengers was relatively flat from 1974 to 1994. Incumbents during this period simply expanded their financial advantages by exploiting their unique position in the campaign finance system. After the 1994 elections, however, spending by both challengers and incumbents rises sharply in response to the majority-stakes dynamic.

The presidential election is a slightly different story but points to the same growing importance of collective action by parties. First, partisan polarization and intense competition for office provides incentives for the president to pursue policy objectives through partisan leadership strategies. These include advancing party doctrine, mobilizing grassroots support through partisan organizations, and raising money for the party and its candidates (Milkis, Rhodes, and Charnock 2012). The same dynamics affecting

15 These changes have been discussed prolifically elsewhere. For a review of the literature see Layman, Carsey, and Horowitz (2006). "Party Polarization in American Politics: Characteristics, Causes, and Consequences." *Annual Review of Political Science* 9:83–110.

the congressional wing of the party push the presidential wing to emphasize greater collective action and coordination across the separated system of government.

The second feature that pushes collective organizing is related to the structure of the presidential nominating contests. Relentless frontloading during the nominating process has created a situation in which the nomination is typically wrapped up several months before the late-summer conventions, which mark the official start of the general election. In 1992, roughly 45% of the delegates had been awarded by March; by 2004, this figure had increased to nearly 80% (Mayer and Busch 2004). With the winner all but anointed in March, the nominee faces a long post-primary stretch before he is eligible for public financing in the general election. Even if the candidate declines public funding (which all serious candidates must now do),[16] he cannot draw on campaign donations that have been contributed expressly for the general election.[17]

And yet during this post-primary, the party nominees have a strong incentive to define the opposing candidates and set the campaign agenda. The situation reflects a prisoner's dilemma, because the first candidate to strike has obvious advantages, but to do so before the convention ignites an arms race for money. In 1996 the Clinton campaign, which was locked into using public funds for the general election, began using party soft money before the convention to advertise against the GOP nominee Bob Dole (discussed at greater length below). The Dole campaign responded in kind, and soft money quickly became the bête noire of the campaign finance system.

The need for campaign support during the post-primary is particularly acute for the party out of power. The challenger, bruised and battered from the nomination process, finds himself with depleted cash in March. This is precisely what happened to Kerry in 2004 and Romney in 2012. The draining of challenger accounts means there is a role to play for other partisans in helping the candidate. When parties could no longer use soft money after the 2002 BCRA ban, partisans assembled other kinds of organizations to help their candidates. In 2012, for example, Romney got help from "independent" advertising by the RNC and a Super PAC called "Restore our Future" that was run by former campaign staff. He also received support from various allied groups such as Karl Rove's "American Crossroads" and ideological organizations dedicated conservative issues.[18]

The Obama campaign, facing no primary challenge, had the luxury of campaign cash to attack Romney with a barrage of advertising.[19] Moreover, the Obama campaign had worked closely with the DNC and state parties for more than two years in developing a grassroots infrastructure in swing states.[20] While the party-out-of-power has an incentive to set up campaign infrastructure early in the process, the task is obviously more difficult without a nominee to lead the organizational effort. National leaders did, in fact, try to develop campaign infrastructure through the RNC and other organizations (like Super PACs), but achieving minimal harmony is challenging while primary contests are raging, and party leaders in states have different preferences for who should be the presidential nominee.

The overall picture for both congressional and presidential elections is a campaign finance system that is wholly unsuited to how the party system has developed. In Congress, the party system produces hyper-partisan elections that are more competitive and pivotal. In presidential elections, the contests have also become much tighter and partisan. Additionally, the foreshortened nominating process in presidential elections necessitates greater coordination among partisans in anticipation of the general election. But the campaign finance rules constrain coherent, party-based organizing to such an extent that partisans have sidestepped the rules to create organizations such as Super PACs.

The Miscalculation of the Bipartisan Campaign Reform Act

In the past two decades, politicians and activists have pushed hard against the candidate-centered regulatory

16 Public financing with matching funds and voluntary limits is unsuited to the new contours of the presidential election campaign. That is why no serious contender participates in public financing in the presidential elections. In primaries, candidates get $250 in public funds for each private contribution up to $250. (So a $1000 private contribution nets candidates an additional $250.) In the primary, candidates also have state-by-state limits on spending. In the general election, the candidates receive a lump sum of $95 million and must not raise or spend private funds.

17 The major donors typically give a contribution for both the nomination and the general election. Under BCRA, they can give $2000 in each election.

18 See the *Wall Street Journal*, "How Much Are Super PACs Spending?" visited on December 5, 2012. Available at http://projects.wsj.com/super-pacs/?mod=e2fb#/2012/candidates/P80003353.

19 The Obama campaign could also purchase ads at much lower rates than other organizations because, under federal law, candidates must be offered the lowest advertising rates by broadcasters.

20 Gerald F. Seib, "The Unsexy Secret Behind Obama's Successful Ground Game," *Wall Street Journal*, Dec. 7, 2012. Available at http://blogs.wsj.com/washwire/2012/12/07/the-unsexy-secret-behind-obamas-successful-ground-game/.

framework to create new pathways for coordinated action. One response in the 1990s was to exploit party soft money, which is essentially money that is raised under state rather than federal campaign finance laws. This financing was allowed under 1979 amendments to the FECA as a way to permit party organizations to engage in traditional grassroots efforts associated with the presidential campaign, including voter registration drives and the distribution of lawn and bumper stickers.[21]

From 1979 through 2002, the national parties financed a range of "party-building" activities with soft money, including organizational housekeeping and voter mobilization efforts. A more brazen practice began earnestly in the 1996 election when the DNC ran campaign ads calling them "issue ads" that helped support the party brand. In truth, they were directly supporting President Clinton's reelection campaign, especially during the post-primary period. But by avoiding slogans such as "vote for," the party could legally claim that these were not electioneering ads. By 1998, the Senate and House campaign committees were doing the same with soft money in support of their candidates in closely contested races.

In response, a coalition of reformers galvanized successfully around legislation to ban party soft money, legislation sponsored by Senators John McCain (R-AZ) and Russ Feingold (D-WI) with Congressmen Chris Shays (R-CT) and Marty Meehan (D-MA). This legislation also sought to minimize the flow of soft money to nonparty groups by prohibiting them from airing ads that mentioned a federal candidate in the weeks leading up to a federal election. This was a risky constitutional strategy, given that it knocked directly against First Amendment case law such as *Buckley v. Valeo* (1976). The ban on nonparty issue ads survived the initial Supreme Court decision in *McConnell v. FEC*, but was eviscerated in a series of subsequent court cases.[22] However, the ban on party soft money remained because of the party's unique relationship with officeholders, which might facilitate corruption through large donations.

With BCRA, the political parties had lost access to resources that would make it easier to advance collective electoral goals. But the parties tried to adapt in two ways. First, party leaders leaned more heavily on members of Congress to raise "hard" money for the party. Prior to 1994, this was not always easy to do, since it was not clear to many members that the efforts of the party organization mattered to their own career goals. Kolodny and Dwyre (1998) report that rank-and-file members often resisted pleas from party to contribute to the party caucus. But in an era of hyper-partisanship and high stakes competition for majority control of government, the behavior of members changed substantially.

The same dynamics that encouraged the rank-and-file to sacrifice autonomy to the leadership in order to pursue legislative goals (Rohde 1991; Sinclair 2006) were also causing members to work on behalf of the party for electoral goals (Dwyre and Kolodny 2006). After 1994, the caucus leadership was given greater power to mobilize resources for collective action (Moscardelli, Haspel, and Wike 1998), turning to reward and reprimand structures that would spur members to give money. Leaders established dues schedules, monitored progress, used whips to spur fundraising, and chastised poor performers (Lee 2009; Heberlig and Larson 2012).

The results have been striking. The percentage of rank-and-file members willing to share their campaign funds increased sharply from a little more 50% in 1992 to 90% in 2006 (Heberlig and Larson 2012, p. 104). With the loss of party soft money under BCRA in 2002, the leadership intensified the push for member contributions of hard money. Figure 5A shows the sharp increase in contributions after BCRA from candidate campaign committees to the party committees, especially for the Democrats. In 2002, members contributed $21.8 million to the party from their own campaign accounts (when soft money was available to parties) but increased contributions by a factor of four to $84.7 million.[23] Republicans also increased contributions to the party, though not so dramatically. The difference likely reflects the fact that Democrats were trying to take back Congress and needed to finance many challengers through the party.

Leaders also encouraged members to set up Leadership PACs (LPACs). These are committees sponsored by incumbents to help finance political activities outside their own reelection campaign. They operate like regular PACs in that they can raise a maximum of $5000 per

21 Under the FECA of 1974 presidential campaigns discouraged participation by state and local parties, fearing that their in-kind efforts might violate contribution restrictions. The parties argued with the Federal Election Commission that their organizations served national *and* state elections. As such, they should be permitted to finance some activities with money they raised under state laws, which were often less restrictive than federal law, and these activities should not be counted against the presidential campaign. The FEC agreed and allow nonfederal (i.e., soft money) spending for "party-building" work.

22 These include *Wisconsin Right to Life v. FEC* (2006), *EMILY's List v. FEC* (2009), *SpeechNow.org v. FEC* (2010) and *Citizens United v. FEC* (2010).

23 Center for Responsive Politics, "Spreading the Wealth." Available at http://www.opensecrets.org/bigpicture/wealth.php?cycle=2000.

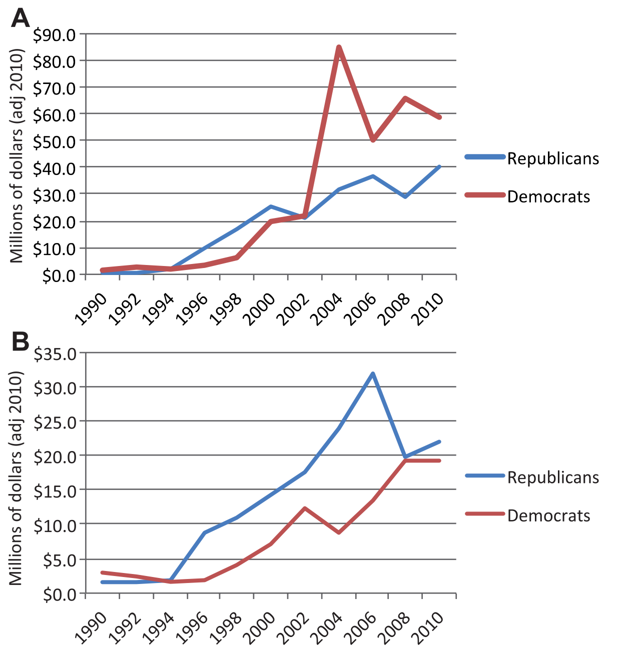

Figure 5 (A) Candidate committees to party committees. (B) Leadership PACs to other candidates.
Source: Center for Responsive Politics.

donor per election and contribute the same to other candidates or committees. In 1990, only 21 House members had LPACs, but by 2006, there were 206 members – close to 50% of the total membership (Heberlig and Larson 2012, p. 99), which makes the name "leadership" PAC appear to lose all meaning. LPACs give money to the parties, but they are limited to $5000 per election, unlike candidate committees which have no limits on the amount they can contribute to the party. A smarter strategy is to use LPACs for donating directly to other candidates. Figure 5B shows again the steady rise in the redistribution of money to serve collective party goals following the 1994 elections, and then an even sharper increase after BCRA in 2002. This time LPAC contribution increases were higher for Republicans, precisely because they were the majority party and members were helping to finance colleagues who faced a strong challenger.

Overall, the picture that emerges since 1994 is that members spend more time raising money for partisan goals (Malbin and Bedlington 2003; Herrnson 2004). Members do so because their individual goals are now more closely tied to party (Heberlig, Hetherington, and Larson 2006). This is especially true for members who have safe seats, and who are most likely to be the ideologues who benefit from majority party control. They use their fundraising to protect the moderates in the party who must take risky party votes (Heberlig and Larson 2012).

Increased Engagement of Partisan Organizations

The second partisan response - and the one most noted in editorial pages – is the use of nonparty campaign organizations, which can avoid the most onerous constraints on financing political activities.[24] After BCRA, when party soft money was banned, partisan groups operating under the tax code as 527 organizations continued to use soft money legally to finance issues ads outside the 6-week window before an election (Franz 2008). These consisted almost entirely of ideological advocacy and labor organizations, as well as campaign media operations managed by party consultants.[25]

During the 6-week window, they would switch to using "hard money" that was raised under the federal contribution limits. But successful challenges to the provisions against soft money financing started to erode the bright line that reformers drew to keep interest groups from spending this money to influence elections. The ruling in *Wisconsin Right to Life (WRTL) v. FEC* put a heavy onus on the government to prove beyond reasonable doubt that an advertisement was not, in fact, simply an issue ad rather than an electioneering ad. This interpretation enabled many nonparty groups to continue financing their ads with soft money right up to election day.

The *WRTL* decision was superseded by the now infamous *Citizens United v. FEC* (2010).[26] This Court ruling held that the government could not prevent any organization – corporations and labor unions included – from spending money on politics, so long as they did it independently from candidates and political parties. This decision removed uncertainty about whether nonparty organizations could use soft money in elections. Whereas *WTRL*

24 Nonparty groups have participated in campaigns throughout the history of the republic. In 1925 the laws putting in limits caused campaigns to set up candidate "voluntary" committees. Labor unions created political action committees in response to the Smith-Connally Act in 1943, which prohibited contributions and in-kind support that came from union treasuries.

25 In 2004, the most active organizations included America Coming Together (a coalition of liberal and labor groups doing mobilization activities), Joint Victory Campaign 2004 (an extension of the Kerry presidential campaign) and the Media Fund (which financed campaign ads from labor organizations).

26 In 2010, a group called Citizens United won an epic decision in the Supreme Court. *Citizens United*, an incorporated organization, argued that the FEC violated their First Amendment rights when it prohibited them from running ads to promote a scathing documentary about Hillary Clinton. The FEC claimed these ads, financed by corporate funds (i.e., soft money) violated the BCRA but the court ruled in favor of *Citizens United*.

allowed aggressive organizations to push against the law, *Citizen United* removed much of the legal risk in doing so. Shortly thereafter, a US Court of Appeals ruled in *SpeechNOW.org v. FEC* (2010) that any political committee could raise unlimited amounts of money from individuals for the purpose of influencing elections, so long as they operated independently of candidates and party committees.

When coupled with the *Citizens United* decision, the *SpeechNOW.org* ruling meant that *any* organization could give unlimited contributions to such political groups, including corporations and unions. All of these decisions drew on the logic of *Buckley v. Valeo* (1976), which claimed that corruption prevention is the only compelling argument for government regulations on political finance. The corruption premise is inoperative when groups do not contribute to a candidate or party, or do not coordinate with them.

The *SpeechNow.org* and *Citizens United* decisions have turned nonparty organizations into hospitable venues for political campaigning and given birth to the so-called "Super PAC." Without the fundraising restrictions of conventional PACs, Super PACs can raise and spend money relatively easily. For example, a Super PAC called "Winning Our Future" in support of the GOP presidential candidate, Newt Gingrich, received the vast majority of its $17 million financing from one megadonor, Sheldon Adelson. Several timely infusions of money from Adelson allowed the floundering Gingrich campaign to stay in the nomination race well into March.[27]

These independent campaigns are a second-best strategy for candidates, who would much prefer to have control of resources and campaign messages. Super PACs do not always respond quickly and appropriately to changing dynamics of a campaign. They also face higher advertising costs than candidate who, by law, must be offered the lowest available rates from broadcasters.

The formal party organization has joined in this game of independent spending.[28] However, the disadvantage for party committees relative to Super PACs is that party organizations may not use soft money (i.e., unrestricted contributions). Given these disadvantages, the congressional parties have set up Super PACs, which are legally separate operations from the party committees but managed by former party staff and working closely with allied interest groups. These organizations, now fueled by soft money, lack party labels, calling themselves the "Congressional Leadership Fund" (Republicans) and the "House Majority PAC" (Democrats).[29]

Given the favorable regulatory status of non-party organizations compared to party organizations, it is not surprising that partisans are putting more reliance on campaign vehicles such as Super PACs. Figure 6 shows total party funds relative to the amount that other organizations have been spending in political campaigns for several elections cycles. The party amounts include financing for administration, grassroots mobilization, and media, while data for other committees includes only media spending. The blue bar shows the increasing importance of political parties in financing elections through the 1990s because majority-stakes government and polarized parties made collective organizing more imperative. However, starting in 2004 (after BCRA), this role has been challenged by non-party groups. Party activity flattens, while interest group activity increases. In 2012, group spending surged due to the court decisions in Citizens United and the SpeechNow.org, which made it far easier to finance elections with Super PACs.

This shows that party organizations remain central players, but that total party funding is flat (and possibly declining). In contrast, non-party spending on media has surged (see Franz article in this issue of *The Forum*). Spending started rising steadily in the aftermath of the BCRA, and this year increased exponentially. These changes are the consequence of court decisions in combination with the high stakes elections that compel robust partisan organizing.

Concluding Remarks

There is little doubt that intense partisan campaigning will be a feature of American politics for many years. The policy preferences of the two parties are likely to remain far apart, with very few members of Congress occupying centrist positions. Given closely divided partisan loyalties in the electorate, it also seems clear that seat margins for controlling Congress will remain within striking distance

27 Amy Gardner, "Newt Gingrich's Super PAC receives another 'substantial' contribution from Sheldon Adelson," *Washington Post*, February 2, 2012. Available at http://www.washingtonpost.com/blogs/post-politics/post/newt-gingrichs-super-pac-receives-another-substantial-contribution-from-sheldon-adelson/2012/02/27/gIQA37VeeR_blog.html

28 In yet another court decision (again rooted in Buckley's logic), the parties may spend as much money as they want in political campaigns so long as they do not coordinate with the candidate (*Colorado Republican Federal Campaign Committee v. FEC*, 1996).

29 Jessica Taylor, "Democratic Operatives Launch SuperPAC," *National Journal*, April 14, 2011. Available at http://www.nationaljournal.com/blogs/hotlineoncall/2011/04/democratic-operatives-launch-superpac-13.

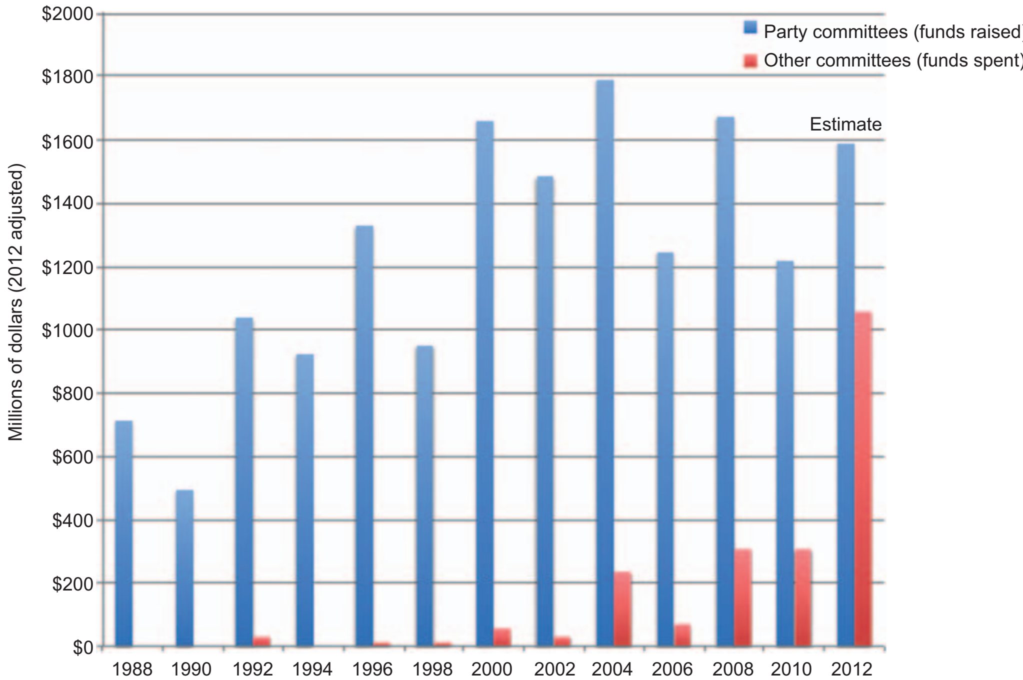

Figure 6 Partisan financing of elections, 1988–2012.

for the minority party, which will put party activists on high alert in most elections. These party-system dynamics will drive money into national politics and spur campaign innovations as parties try to gain a competitive advantage.

At the same time, the current candidate-centered regulatory framework will continue to squeeze money outside the system with negative repercussions. First, the campaign finance system loses transparency, which had been a chief virtue of the original FECA. As more candidates and interest groups take advantage of Super PACs, with names like “Restore Our Future,” voters will know less about who is waging campaigns. The situation worsens when interest groups use 501(c)4 organizations to raise and spend money. Under the tax code, these groups are considered social welfare organizations and have minimal requirements for reporting the identity of donors.

The ease with which various groups can establish activist organizations will raise the anxiety level of politicians, pushing them toward herculean efforts to raise money. Just as politicians exploited the use of Leadership PACs to raise money for colleagues and the parties, it will be difficult to resist the use of Super PACs, which have few limits on financing. The presidential candidates have already done so and members of Congress will not be far behind. Super PACs may become institutionalized in the system the way traditional PACs have.

The groups with the greatest incentive to establish permanent Super PACs are the ideological factions in the respective parties. These include the activists and their wealthy sponsors who tend to have absolutist positions on single issues related to taxes, government, environment, guns, abortion, and a variety of social causes. To the degree they control substantial electoral resources that shape campaigns, politicians will feel obliged to pay attention to them or risk well-funded challengers in the primaries. Over time, politicians may lean more heavily toward positions espoused by Super PACs or what Seth Masket might call the “informal party organization,” which includes activists with strong policy preferences (Masket 2009). If Masket is right, the electoral clout of informal party organizations, via Super PACs, will do little to attenuate partisan polarization and may even exacerbate it.

One major fear expressed in the nation’s editorial pages is that corporations would use their money to overwhelm elections. Despite these fears, corporate money was minimal. Just $75 million of the total $660 raised by super PACs through mid-October came from company treasuries, and almost all of this came from privately held businesses, whose owners had personal ties to the presidential candidates or strong ideological positions.[30] Currently, public corporations risk negative publicity in using or financing Super PACs. My suspicion is that the leaders

30 Michael Beckel and Reity O’Brien, “Mystery firm is election’s top corporate donor at $5.3 million,” Center for Public Integrity, Nov 5, 2012. Available at http://www.publicintegrity.org/2012/11/02/11689/mystery-firm-elections-top-corporate-donor-53-million.

or public corporations appreciate having strict limits on political giving, which prevents politicians from shaking them down for large sums.

That is why many corporations supported the ban on soft money under BCRA. The major corporations give through regulated PACs and can reply to begging politicians that they can do no more once they give the maximum $10,000 contribution and bundle additional individual contributions from corporate executives. Corporations prefer to invest in lobbying strategies that enable them to express preferences on highly complex and specific policies affecting their industry, without the jarring publicity that comes from political campaigns. However, it is entirely plausible that corporations will alter their strategies if Super PACs become normalized in campaigns, just as corporations grew comfortable using PACs in the 1980s.

I conclude with a few policy recommendations that may improve campaign finance system. First, the contributions limits for all committee should be restored to the original value of the FECA. This would diminish incentives for using campaign vehicles that operate largely outside the sphere of the formal regulatory structure. Second, I would incentivize political actors to channel money through the formal party organizations. Political parties are more transparent than Super PACs. They have clear, familiar labels to the average American voter. In theory, the influence of big donors is attenuated through donations to the parties, because they receive financing from a broader and more diverse base of donors than single Super PACs. Moreover, the party committees are structurally accountable to a broader constituency of officeholders and activists, including those at the state and local level. This wider accountability plausibly shifts the issue agenda away from narrow policy concerns of the most engaged activists that support Super PACs.[31]

To be sure, my propositions about political parties are empirical questions that warrant scrutiny. But the days of a purely candidate-centered campaign finance system are gone. Unless the rules are adjusted to move regulations in the direction of a party-centered system, it seems logical to conclude that the campaign environment will become more dominated by a narrow band of interest groups that are adept at electioneering and whose policy preferences will whet the polarization pervading American governing institutions.

Moving the system toward parties would mean not only raising the limits on contributions to the party, but also allowing parties much more discretion in spending money on behalf of their candidates. The restrictions on party coordination force parties to spend ‘independently” of candidates. This arrangement is not only a parody of what parties are about in most democracies, but encourages inefficient use of resources (hence ever-more money is needed), legal gamesmanship, and diminished political accountability. To the degree party organizations have more resources, their leaders will likely discourage non-party spending from interest group activists. In a certain sense, the party organization is itself an interest group, and will use its clout to thwart others from having influence.

It is important to act soon. As Super PACs become institutionalized, they will be harder to restrain. Indeed, they will become a widely accepted form of political action among elites, and the now-reluctant business community may begin to use them (at the urging of party leaders). My sense is that change will not happen because Democrats view the current, short-term situation as favoring their party, which is more accustomed to waging campaigns outside the party structure. The outcome of the recent elections may shore up their confidence on this point. Meanwhile the core of the Republican Party takes the untenable absolutist position that all restrictions on money should be eliminated. Such as it is, the arms race in money and organizational innovation will continue unabated as partisans push for electoral advantage.

Reference

Abramowitz, Alan I. 1991. “Incumbency, Campaign Spending, and the Decline of Competition in U.S. House Elections.” *The Journal of Politics* 53: 34–56.

Aldrich, John H. 1995. *Why Parties? The Origin and Transformation of Political Parties in America*. Chicago: The University of Chicago Press.

Apollonio, D. E. and Raymond J. LaRaja. 2004. “Who Gave Soft Money? The Effect of Interest Group Resources on Political Contributions.” *The Journal of Politics* 66: 1134–1154.

Bawn, Kathleen, Martin Cohen, David Karol, Seth Masket, Hans Noel, and John Zaller. 2012. “A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics.” *Perspectives on Politics* 10: 571–597.

Cain, Bruce E., John A. Ferejohn, and Morris P. Fiorina. 1987. *The Personal Vote: Constituency Service and Electoral Independence*. Cambridge, Mass.: Harvard University Press.

31 For a comprehensive argument in support of a party-centered campaign finance system, see Wallison and Gora (2009). **Better parties, better government: a realistic program for campaign finance reform**. Washington, DC: AEI Press.

Corrado, Anthony and Thomas E. Mann. 2004. "In the Wake of BCRA: An Early Report on Campaign Finance in the 2004 Elections." *The Forum* 2.

Dwyre, Diana and Robin Kolodny. 2006. "The Parties' Congressional Campaign Committees in 2004." In *The Election After Reform: Money, Politics, and the Bipartisan Campaign Reform Act*, edited by M. Malbin. Lanham, MD: Rowman and Littlefield.

Franz, Michael M. 2008. "*Choices and Changes Interest Groups in the Electoral Process*." Philadelphia: Temple University Press.

Franz, Michael M. 2013. "Interest Groups in Electoral Politics: 2012 in Context" *The Forum* 10.

Gimpel, James G., Frances E. Lee, and Shanna Pearson-Merkowitz. 2008. "The Check Is in the Mail: Interdistrict Funding Flows in Congressional Elections." *American Journal of Political Science* 52: 373–394.

Heberlig, Eric, Marc Hetherington, and Bruce Larson. 2006. "The Price of Leadership: Campaign Money and the Polarization of Congressional Parties." *The Journal of Politics* 68: 992–1005.

Heberlig, Eric S. and Bruce A. Larson. 2012. "Congressional Parties, Institutional Ambition, and the Financing of Majority Control." *Pp. 1 online resource (318 p.)*. Ann Arbor: University of Michigan Press.

Herrnson, Paul S. 1988. *Party Campaigning in the 1980s*. Cambridge, Mass: Harvard University Press.

Herrnson, Paul S. 2004. *Congressional Elections: Campaigning at Home and in Washington*. Washington, DC: CQ Press.

Kolodny, Robin and Diana Dwyre. 1998. "Party-Orchestrated Activities for Legislative Party Goals: Campaigns for Majorities in the US House of Representatives in the 1990s." *Party Politics* 4: 275–295.

La Raja, Raymond J. 2008. *Small Change: Money, Political Parties, and Campaign Finance Reform*. Ann Arbor: University of Michigan Press.

Layman, Geoffrey C., Thomas M. Carsey, and Juliana Menasce Horowitz. 2006. "Party Polarization in American Politics: Characteristics, Causes, and Consequences." *Annual Review of Political Science* 9: 83–110.

Lee, Frances E. 2009. *Beyond Ideology : Politics, Principles, and Partisanship in the U.S. Senate*. Chicago: University of Chicago Press.

Malbin, Michael and Ann Bedlington. 2003. "The Party as an Extended Network: Members Giving to EAch Other." In *Life After Reform: When the Bipartisan Campaign Reform Act Meets Politics*, edited by M. Malbin. Lanham, MD: Rowman and Littlefield.

Masket, Seth E. 2009. *No Middle Ground: How Informal Party Organizations Control Nominations and Polarize Legislatures*. Ann Arbor: University of Michigan Press.

Mayer, William G. and Andrew Busch. 2004. *The Front-Loading Problem in Presidential Nominations*. Washington, DC: Brookings Institution Press.

Mayhew, David R. 2005. *Divided We Govern : Party Control, Lawmaking and Investigations, 1946–2002*. New Haven: Yale University Press.

Milkis, Sidney M., Jesse H. Rhodes, and Emily J. Charnock. 2012. "What Happened to Post-Partisanship? Barack Obama and the New American Party System." *Perspectives on Politics* 10: 57–76.

Moscardelli, Vincent G., Moshe Haspel, and Richard S. Wike. 1998. "Party Building through Campaign Finance Reform: Conditional Party Government in the 104th Congress." *The Journal of Politics* 60: 691–704.

Rohde, David W. 1991. *Parties and Leaders in the Postreform House*. Chicago: University of Chicago Press.

Samples, John Curtis. 2006. *The Fallacy of Campaign Finance Reform*. Chicago: University of Chicago Press.

Sinclair, Barbara. 2006. *Party wars: Polarization and the Politics of National Policy Making*. Norman: University of Oklahoma Press.

Sorauf, Frank J. 1992. *Inside Campaign Finance: Myths and Realities*. New Haven: Yale University Press.

Wallison, Peter J. and Joel M. Gora. 2009. *Better Parties, Better Government : a Realistic Program for Campaign Finance Reform*. Washington, DC: AEI Press.

Raymond J. La Raja is an Associate Professor in Political Science at the University of Massachusetts, Amherst, and co-editor of *The Forum*. He is the author of *Small Change: Money, Political Parties and Campaign Finance Reform* (University of Michigan Press, 2008), and a forthcoming book, *Do Campaign Finance Laws Matter? Money and Politics in the American States* (University of Michigan Press, 2013), and an edited volume, *New Directions in American Politics* (Routledge, 2013). He serves on the Academic Advisory Board of the Campaign Finance Institute in Washington, DC. He wishes to thank Jesse Rhodes and Maryann Barakso for helpful comments for this article.