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8

Interest Group Television Advertising in Presidential and Congressional Elections

Michael Franz

Introduction

In early 2010, the Supreme Court of the United States issued a ruling in *Citizens United v. FEC* (2010) that fundamentally changed the campaign finance system for organized interests. The Supreme Court removed one of the main features of campaign finance law, namely restrictions on political ads funded by corporate or union treasuries that mention, depict, or expressly advocate a candidate for federal office. In the 5–4 vote, the Court sided with the claim of Citizens United—a nonprofit advocacy group that in 2007 had produced a documentary critical of Hillary Clinton—that pro- or anti-candidate messages are protected speech under the First Amendment.

In one sense, the Court ended a long debate among scholars, activists, and policy makers over what types of campaign messages from interest groups could be restricted or outlawed by Congress. Interest groups had been pushing the boundaries of these limitations for over fifteen years. To that effect, the Court said that so long as the messages were not coordinated with federal candidates, and absent a compelling and clear state interest, the First Amendment trumps federal regulation. In another sense, however, the Court's decision was merely a beginning, as it called into question a host of other restrictions and regulations on the flow of money in elections. Some predict that we are on a trajectory of campaign finance deregulation—that an election cycle with no restrictions on the flow of money in elections might be in our (near) future.

These developments are of primary importance to many policy makers and campaign finance reformers, many of whom worry that an expanded role for interest groups in elections will damage the health of American democracy. As it stands, interest groups participate in electoral politics in diverse ways, with everything from candidate contributions to get-out-the-vote efforts to endorsements and voter education. Many worry that such investments have the potential to corrupt legislators, who may feel drawn to put those interests ahead of their constituents. The potential is only exacerbated, the argument goes, in an environment where the restrictions

on interest groups are breaking down. President Barack Obama alluded to this in his 2010 State of the Union address, when he chastised the Supreme Court for its ruling in *Citizens United*. He said: “The Supreme Court reversed a century of law that I believe will open the floodgates for special interests—including foreign corporations—to spend without limit in our elections. I don’t think American elections should be bankrolled by America’s most powerful interests, or worse, by foreign entities.”¹

Such a deep-seated concern for the health of American democracy begs a few simple questions: Why are many interest groups aggressive sponsors of political advertisements, and how intense have these investments been in recent election cycles? What are the implications of *Citizens United* for future election cycles?

The chapter begins with a discussion of two powerful motivating forces for interest group advertising, the legal and political contexts surrounding elections. To that effect, the elections of 1994 through 2010 featured a range of political and legal contexts. Congress and the White House have been up for grabs in nearly every campaign since 1994, for example, and the legal dimensions over permissible electioneering altered in significant ways in 2002, 2007, and 2010. After laying out these changes, I then focus on the intensity of the “air wars” in the presidential elections of 2000, 2004, and 2008. Each cycle featured a different profile of interest groups, largely the consequence of different rules and circumstances in each year. Across all three presidential elections, interest groups sponsored about 12 percent of all pro-candidate ads, with the greatest investment coming in 2004. After that, I switch to a discussion of interest group advertising in the congressional elections of 2000–2008, for which interest groups have been responsible for nearly one in every ten campaign ads.² The chapter concludes with a discussion of key questions for scholars and policy makers in approaching future election cycles.

The Legal Context

Elections take place within highly particularized contexts that vary from cycle to cycle. For example, election forecasters have long noted that the state of the economy and the popularity of the incumbent president structure, to a large extent, the orientations of voters in an election year.³ To that effect, the economic recession of 2008 helped Barack Obama convince voters to take a chance on the Democrats, and forecasting models and even online political betting (on such sites as Intrade.com) predicted a Democratic victory long before the parties had even settled on their nominees. The issue context matters, too. The unpopular war in Iraq helped Democrats in 2006 (and 2008), for example, just as the 9/11 attacks moved voters toward Republicans in 2002 and 2004. For interest groups,

two other contexts are highly important in motivating particular forms of electoral investment: the campaign finance environment (that is, the nature and strength of regulations on certain forms of electioneering) and the political environment (that is, who controls Congress and the White House and whether that control is at risk).⁴

Consider first the legal context of electioneering. There have been five phases in the changing legal context for interest groups over the last thirty-five years. Box 8.1 summarizes these five phases. The first covers 1974–1994, initiated after Congress passed extensive regulations on interest group campaign efforts in the aftermath of Watergate. These included strict limits on contributions to candidates and political parties, as well as new rules on the funding of pro-candidate independent advocacy. This period was characterized in particular by a growth in political action committees (PACs).

Box 8.1 Timeline of Evolving Regulatory Context

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| Phase 1 | 1974–1994: Congress passes major reform in 1974. Political action committees (PACs) proliferate in late 1970s and early 1980s. |
| Phase 2 | 1994–2002: Courts enforce “magic word” test of issue versus express advocacy. Unregulated political advertising by interest groups skyrockets. |
| Phase 3 | 2002–2007: Congress passes major reform, the McCain-Feingold bill. The law puts new restrictions on how interest groups can purchase political ads on television and radio, essentially expanding the “magic word” test to a “candidate mention” test. The Federal Election Commission does not enforce these rules for certain Section 527s (those that only accept contributions from individuals), causing their explosion. |
| Phase 4 | 2007–2010: Supreme Court rules in <i>FEC v. Wisconsin Right to Life</i> that certain limits on interest group ads are unconstitutional. If an ad can be thought by “any reasonable person” to be about issues, it is protected First Amendment speech. This allowed any group to air pro-candidate ads so long as they had sufficient issue content. |
| Phase 5 | 2010–present: Supreme Court rules in <i>Citizens United v. FEC</i> that all limits on interest group ads are unconstitutional so long as they are uncoordinated with a candidate or party. |

PACs are formalized ways for corporations (banned from directly contributing to candidates since 1907), unions (similarly banned since 1947), and other interests to form transparent committees to contribute to candidates. Congress placed limits on the size of PAC contributions to federal candidates (\$5,000 per election) and parties (\$25,000 per cycle), and it mandated that the committees register with the Federal Election Commission (FEC), reporting receipts and expenditures on a regular basis and conforming to strict standards in the raising of campaign cash.⁵ Since the passage of campaign finance reform in the 1970s, PACs have had a consistent presence in campaigns. According to the FEC, there were 722 registered PACs in 1975. Their rate of growth was steep in the late 1970s and early 1980s and leveled off to slight increases each year thereafter. By 2007, there were over 4,200.

PACs are especially important in congressional elections. PACs directly contributed in total over \$320 million to House candidates and \$91 million to Senate candidates in 2010. These numbers were historic highs. In 2008, PACs contributed \$300 million to House candidates and \$80 million to Senate candidates (at that time a new high). In fact, since 1980 PACs have contributed larger amounts of money to House and Senate candidates in each successive election cycle.

PACs were the focus of many campaign finance reform efforts in the 1980s. To these reformers, PACs were nothing but a legalized channel for unions and corporations to curry favor with important policy makers. The focus of reform efforts changed critically in the mid-1990s, though, when a second period began that lasted through the 2002 elections. The impetus for this change was multifaceted (and intersected with the political context described below), but a number of federal court cases in the early and mid-1990s established more firmly what came to be called the “magic word” test of interest group candidate advocacy. These cases included *Faucher v. FEC* (1991), *Maine Right to Life Committee v. FEC* (1996), and *FEC v. Christian Action Network* (1996). In total, the courts clarified the boundaries between permissible and impermissible corporate and union election speech. The courts said that if parties and interest groups avoided the use of certain action words (such as “vote for” or “vote against”) in their public communications, the messages would be considered issue advocacy and not candidate advocacy. The ads could therefore be purchased with unregulated funds from corporate and union treasuries (or, in the case of the parties, with large—and unregulated—donations from wealthy individuals, unions, and corporations). Specifically, these magic words were “vote for,” “elect,” “support,” “cast your ballot for,” “[Smith] for Congress,” “vote against,” “defeat,” or “reject.”⁶ This meant in practice that corporations, unions, and other interests could advocate for federal candidates without having to jump through the regulatory hoops of forming and maintaining a PAC.

This simple distinction resulted in a proliferation of political ads on television and radio. The AFL-CIO, for example, spent over \$36 million on issue ads that supported Democratic congressional candidates in the 1996 elections.⁷ Consider an example in contrasts. The following is a transcript of an ad aired in 2000 by National Education Association:

As the teachers of the NEA, we know what's at stake in our schools. And Elaine Bloom has fought for our children's education her whole career. In Congress, she'll stand for Head Start for every eligible child, for smaller class size, and for increased teacher training. In Congress, Clay Shaw voted no to Head Start, no to smaller class size, and no to teacher training. The difference is clear. Elaine Bloom for Congress.

This ad was sponsored by the National Association of Realtors (NAR) in the same year:

Cal Dooley, protecting our families, protecting our values. Cal Dooley, a leader in helping Americans buy their very first home. Cal Dooley. Voting to make the dream of home ownership a reality for a record number of Americans. Cal Dooley, supporting a bill to help our teachers and police officers purchase a home. Cal Dooley, the courage to do what's right to protect our way of life. Call him, thank him for his hard work.

The first ad contained one of the critical “magic words”—[Elaine Bloom] for Congress—and was as a consequence paid for by the NEA's PAC. The second message contained no “magic word” and was paid for by the NAR's general treasury funds.⁸ While the content of this second advertisement (and others like it) was generally perceived by viewers as candidate advocacy, the lack of a specific exhortation on how to vote placed it outside the scope of federal election laws.⁹

To many in Congress, the “magic word” test was too big a loophole, and the Bi-partisan Campaign Reform Act in 2002 (known also as McCain-Feingold) attempted to rein in interest groups and parties, thus beginning the third phase in the evolving legal context with the 2004 elections. The new law made the following changes:

- It expanded the “magic word” test to include a “candidate mention” test. Now, any ad that featured a candidate (like the ad for Cal Dooley) would be considered an election ad, not an issue ad. This meant such ads could not be funded by corporate or union treasury funds.
- It applied this test to a particular time period, sixty days before the general election and thirty days before a primary election. Ads aired outside the thirty- or sixty-day windows were categorized by the old “magic word” test.

These changes were straightforward and seemed to compel groups to fund most election-time ads with regulated PAC funds. But a loophole was soon discovered. Wealthy individuals formed what are called 527s, referring to the section of the tax code where these groups are classified. Swift Boat Veterans for Truth, MoveOn.org, and Progress for America were some examples of major 527s active in 2004 with political advertisements.¹⁰ These groups argued that so long as they pooled funds (large and small) from individuals and not corporations and unions, and so long as they avoided “magic words,” the new law did not cover their ads. The Federal Election Commission, with its inaction on the issue in early 2004, signaled agreement.¹¹

In one sense, these 527s broadly behaved in line with the goals of regulators. McCain-Feingold prevented these groups from accepting corporate and union money for the purpose of airing pro-candidate television ads in the weeks before a federal election. On the other hand, 527s accepted huge checks from individuals and used those to air political ads. For example, in August 2004 Progress for America received a \$5 million contribution from real estate developer Alex Spanos. Businessperson Jay van Andel contributed \$2 million to the group in September 2004. On the Democratic side, businessperson George Soros contributed about \$1.5 million to MoveOn.org in late 2003, and film producer Stephen Bing donated nearly \$1 million. These contributions seemed to flout the intentions of congressional reformers, who wanted all groups airing ads that depicted federal candidates to be paid for with regulated and capped contributions.

The FEC responded in late 2006 and early 2007 by fining the Swift Boat Veterans, MoveOn.org, the League of Conservation Voters, and Progress for America for their activity in the previous presidential election, arguing that their ads and campaigning violated some sections of the 2002 McCain-Feingold reforms. The FEC’s newfound focus on regulating 527s was predicted to restrain their growth in the 2008 election, but enforcement proved less relevant than expected as a Supreme Court case in 2007 signaled the fourth phase of the evolving legal context. That case, *Federal Election Commission v. Wisconsin Right to Life*, loosened the rules established in McCain-Feingold. In short, the Court exempted from campaign finance laws any broadcast advertising sponsored by outside groups that “a reasonable person” might conclude was principally about policy issues. The Court essentially gave the green light to nonprofits, corporations, labor unions, and pro-business groups to use general treasury funds to air pro-candidate ads at any point in the campaign. The only stipulation in the ruling was that the message must contain some issue discussion—a relatively low bar for classifying an ad as issue over pro-candidate advocacy. Think again about the Cal Dooley ad—it clearly refers to the congressman’s policy preferences and would easily pass the “reasonable person” test.

The fifth and current phase in the regulatory context began in 2010 with the decision in *Citizens United v. FEC*, in which the Court further expanded on its ruling in *Wisconsin* and allowed corporations, unions, and all other interest groups to directly fund pro-candidate ads with no restrictions on content, such as the presence or absence of “magic words” or the presence or absence of issue discussion.¹² The Court essentially ended the debate over what public messages could be funded by interest groups and ruled that nearly all of these messages were acceptable. Coordination with candidates and parties on political ads is still impermissible, though.

A number of other cases in the pipeline have the potential to go farther. *EMILY’s List v. FEC* and *Speechnow.org v. FEC* concern unlimited contributions from individuals to nonprofit groups and registered PACs making expenditures on behalf of candidates, respectively. These cases address areas of the law not directly covered by *Citizens United*, but because that case was so sweeping in its defense of the First Amendment, most observers foresee the breakdown of numerous regulations on interest group electioneering. Moreover, the Court’s significant movement toward deregulation of campaign finance laws suggests little help for a reform community that has historically sought to severely limit the role of interest groups in the electoral process.

One important feature of this evolving legal context for interest group electioneering is its accelerating nature. It took nearly twenty years for interest groups to exploit the “magic word” loophole; it took just four election cycles after that for Congress to act with McCain-Feingold; there were only two elections (2004 and 2006) under the McCain-Feingold regulatory framework; only one election cycle (2008) transpired where *Wisconsin* set the rules.

The Political Context

An evolving legal context is of primary importance to understanding how interest groups participate in elections. It is not the sole—or perhaps—most important one, however. One might wonder, for example, what compelled many interest groups to pursue more aggressive electioneering and pressure the Courts for the “magic word” loophole. One answer lies in the polarized political context characteristic of the mid-1990s through today. Beginning with the Republican gains in the 1994 congressional elections, Washington, D.C., has featured an ever more polarized and partisan context.

One way to understand this is to examine the perceived stability of the majority party’s control of the House and Senate in the run-up to each election. It takes 218 seats to control the House and either 50 or 51 seats to control the Senate, depending on the party of the vice president, who breaks tie votes. In the fall of each election year, a number of political experts rank House and Senate races as competitive, safe, or leaning toward

one party. *Congressional Quarterly* has done this for over thirty years, which allows for a good comparison over time. Between 1978 and 1992, for example, the Democrats were expected to win anywhere between 241 and 272 seats in the House, excluding the most competitive races. Even if they had lost all of the too-close-to-call seats, they were expected to hold onto control by at least twenty-five seats. In 1994, though, their expected total, minus competitive seats, was 211, suggesting they could lose control of the chamber, which they did. After the Republicans took over in 1995, nearly every election has been characterized by tenuous control. The GOP was expected to win at least 217 House seats in 1996, 216 in 1998, 211 in 2000, 220 in 2002, 230 in 2004, and 207 in 2006. Except for 2004, where the GOP had more cushion, majority control of the chamber was essentially a jump ball.

In the Senate, majority control has been more volatile for a bit longer. Republicans won control of the Senate in 1980, for example, and lost it in 1986, but they regained it again in 1994. Between 1994 and 2006, though, the majority party in the Senate was only expected to win (minus the most competitive races) between forty-eight and fifty-two seats. This meant that every tight Senate race in those years proved critical to each party in its efforts to win or regain control of the chamber.

On their own, these tight majorities could motivate many interest groups to invest in competitive elections. Think of it this way. Just 5,000 to 10,000 votes in a handful of competitive House and Senate races had the potential in these years to determine whether a Republican or Democrat was Speaker of the House or Majority Leader in the Senate and whether Democrats or Republicans controlled all of the committees in both chambers. This helps to explain why so many interest groups took advantage of the evolving legal context for political advertising. Put simply: interest groups sought to persuade voters of the importance of voting for Democratic or Republican candidates by using political ads to paint these candidates in a negative or favorable light.

There is more to the story, though. These tightly contested races for partisan majorities were also taking place in a political environment that was increasingly polarized along ideological lines. As been long discussed in the political science literature, Democratic and Republican party elites have become more polarized in contemporary American politics than at nearly any other time in the last 100 years.¹³ Two political scientists, Keith Poole and Howard Rosenthal, have collected all of the roll-call votes on the floor of the House and Senate for every congressional session.¹⁴ They use the data to scale each Democrat and Republican on a liberal-conservative spectrum. Using these data, we can determine a score for Democrats in each congressional session that accounts for how liberal the party was and how much ideological diversity there was. We can do the same for Republicans.¹⁵

The pattern shows that ideological polarization between the two parties in the House has nearly doubled between 1978 and 2008. This has essentially occurred in a linear fashion, with more polarization happening every year. In the Senate, the two parties grew 67 percent more polarized in the same time frame. Anecdotal evidence backs up this conclusion. It has become harder and harder to find liberal Republicans or conservative Democrats roaming the halls of Congress, for example. And the vitriol between the parties and heated rhetoric during important policy debates, as with health care reform in 2009 and 2010, seems to grow each year.

So far, this characterization of polarization has focused only on Congress. But the presidential elections during this time were also serious business. The election of 2000 was the closest presidential election in American history, decided by fewer than 600 votes in Florida. Green Party candidate Ralph Nader made significant headway that year, arguing that the differences between Gore and Bush were negligible and amounted to a false choice. But the actions of the Bush administration after 9/11 seemed to belie the point, as the War in Iraq was a controversial foreign policy calculation that further split the two parties. To that effect, the 2004 election was also agonizingly close, decided by some 100,000 votes in Ohio.

Of course, it is important not to overstate the case. Not all interest group advertising in federal elections or on behalf of federal candidates is rooted in partisan agenda control. Putting issues *on* the agenda, more generally, is often a group's primary concern. That is, if the group can push the campaign dialogue to focus on particular issues, it may compel the elected candidate to devote more effort to those issues in the next congressional session. There is some evidence indeed that the issue debate between candidates in an election is often followed by legislative action on those issues.¹⁶ If a group can shift the focus of the candidate dialogue, then it can raise the chance of seeing subsequent legislative action on those issues.

Additionally, interest groups may be concerned less with helping elect Nancy Pelosi as Speaker (via the elections of competitive Democrats in other districts) than with helping particular members (friends and allies on relevant committees, for example) in a difficult race. For example, in 2010 the Pharmaceutical Researchers and Manufacturers of America (PhRMA)—a decidedly conservative advocacy lobby—aired ads on behalf of Democratic Majority Leader Harry Reid, who was in a tough reelection campaign against a much more conservative Republican.¹⁷ Reid had helped pass Obama's health care initiative in early 2010, which was supported by the drug lobby. Certain provisions in the bill seemed to favor drug companies, and the ads represented a thank-you for Reid's efforts.

Lots of reasons explain interest groups' electoral investments, then, but there is no denying that a polarized and balanced political environment—combined with a permissive legal context—has motivated

the commitment of resources for political advertising in close races in the last fifteen years. A growing literature in political science may reinforce this point. Increasingly, scholars have asked whether we should expand our understandings of parties—traditionally conceptualized as the party organizing committees at the national, state, and local level—to include a network of party organizations *and* pro-party interest groups. In other words, are 527s, nonprofit advocacy groups, labor unions, and pro-business associations so increasingly aligned with one of the two parties that they effectively become a component of the party? Political scientists Matt Grossman and Casey Dominguez located evidence for this in the electoral realm when looking at clusters of candidate endorsements and campaign contributions.¹⁸ They discovered that one set of groups tended to support and contribute to candidates of one party, while a different set of groups coalesced around the other party. Another study examined which groups shared donor lists, and here too a liberal and conservative cluster emerged.¹⁹ The larger theme, then, is that party polarization in Congress has migrated to many interest groups, which also seem increasingly polarized.²⁰

To this point, we have simply reviewed the contexts that may have been responsible for the emergence of interest group political advertising in the last fifteen years, but we have not seen how intense the “air war”—that is, the battle in advertising—was in elections during that period. The analysis now shifts to a more explicit review of this, with a focus on the number of groups advertising in presidential and congressional elections and the shift in intensity across election cycles.

Political Advertising in Presidential Elections

The data for the next two sections come from the Wisconsin Advertising Project.²¹ Since 1998, the Project has tracked all political advertisements in the top media markets in the United States. The number of tracked markets has shifted, however, from 75 in 1998 and 2000 (which covered about 80 percent of the US population) to 100 in 2004 and to all 210 markets in 2008. The data are the best available evidence of interest group investments on the airwaves. Interest groups can spend to influence elections in ways beyond television ads, of course, such as through candidate contributions, get-out-the-vote drives, voter education efforts, peer-to-peer persuasion, and telephone mobilization. These are powerful means of reaching voters, but it is also much harder to track systematically many of these efforts from year to year. As such, the analysis here is limited to a discussion of political advertising. Furthermore, for ease of comparison across time, the focus is restricted to the top seventy-five markets in all covered years.

Interest groups invest considerably more resources on political ads in some years than in others and in some races over others. Consider the 2000

presidential election. In total, interest groups in the general election phase aired over 20,000 ads in the top 75 media markets advocating for either Democrat Al Gore or Republican George W. Bush.²² From the discussion of the legal contexts earlier in the chapter, this election took place in the second phase, when any group could avoid regulation by simply avoiding “magic words” in the ad’s text.

Table 8.1 lists all interest groups that aired 100 or more ads for either candidate in the general election. Al Gore benefited from the help of seven groups: Planned Parenthood, the AFL-CIO, Handgun Control, Sierra Club, NAACP, American Family Voices, and the Clean Air Project. All told, these groups totaled 14 percent of all pro-Gore ads aired in the top seventy-five markets. Bush benefited from the investment of five groups—American Seniors, National Rifle Association (NRA), Coalition to Protect Americans Now, Republican Leadership Council, and Americans for Job Security—which accounted for just over 4 percent of all pro-Bush ads in the general election, or less than a third of Gore’s total.

Some groups in Table 8.1 are likely familiar to most readers (e.g., the AFL-CIO, the NRA, Planned Parenthood). Other groups, however, are not as easily recognizable (e.g., the Coalition to Protect Americans Now). One advantage for many individuals and interests seeking to help candidates is

Table 8.1 Interest Group Advertising in the 2000 Presidential Election

Interest Group	number of ads*	Candidate
Planned Parenthood	5,851	Gore
AFL-CIO	5,320	Gore
Handgun Control	2,742	Gore
Sierra Club	1,707	Gore
NAACP	468	Gore
American Family Voices	447	Gore
Clean Air Project	191	Gore
American Seniors	111	Bush
National Rifle Association	260	Bush
Coalition to Protect Americans Now	279	Bush
Republican Leadership Council	429	Bush
Americans for Job Security	4,215	Bush
Total	22,020	
Percent of all ads	8.96%	
Pro-Gore as percent of all Gore ads	14.05%	
Pro-Bush as percent of all Bush ads	4.18%	

Source: Wisconsin Advertising Project

*Totals for ad buys in top 75 media markets and for groups with 100 or more ads

the cloak of anonymity that often comes with unregulated candidate advocacy. Because Coalition to Protect Americans Now avoided the use of "magic words" in its ads, it was not required under the laws governing the 2000 elections to report donors to any federal regulatory body. And it was free to form and then dissolve after the election, which proved attractive to many organized interests.

This is precisely what motivated Congress to reform campaign finance laws with McCain-Feingold in 2002. But these reforms hardly stemmed the tide. In fact, the investments from groups in the 2000 presidential election paled in comparison to those in 2004, as demonstrated in Table 8.2. In that year, thirty-one groups aired 100 or more ads in the top seventy-five media markets, more than double the participation rate of 2000 with nearly five times the number of ads aired. As with 2000, the Democratic nominee received the disproportionate benefit. In fact, 25 percent of all pro-Kerry ads in the general election were sponsored by interest groups, the largest two being the Media Fund and MoveOn.org. The number is worth reflecting on. One in every four spots aired in the top markets that advocated for John Kerry (or attacked George Bush) came not from the Kerry campaign or the Democratic Party but from interest groups unaffiliated with either. Moreover, the 43,000 ads from the Media Fund alone constituted 30 percent of the total ad buy from the John Kerry campaign and 50 percent of the ad buy from the Democratic Party. Nearly one in ten pro-Bush ads was sponsored by allied groups, with the Swift Boat Veterans and Progress for American being the primary actors.

Many of these groups took cover as 527s, which were exempt from many of the new restrictions established under McCain-Feingold. Although groups can maintain a number of different campaign accounts (PACs, 527s, and other nonprofit classifications), it is sometimes difficult to link a particular ad buy to a particular campaign account. But it is notable that of the thirty-one groups in Table 8.2, all but six maintained active 527 accounts in the 2004 elections. Two of the remaining groups (Air Traffic Controllers and the National Rifle Association) aired their ads through their regulated PACs, and three of the other four groups (River Smart, Citizens United, Americans for Job Security) aired their ads outside the thirty-day and sixty-day windows.²³

The expansion of 527s in 2004, and the continuing search for loopholes in campaign finance laws, can seem dizzying at times. One clear lesson of this chapter, though, is that the political motivation to participate in the electoral process will often lead interest groups to locate points of entry that circumvent whatever legal barriers that Congress erects. In other words, the political context intersects with the legal context. As such, 2004 was a banner year for interest group television advertising, motivated by the perception of an incredibly tight presidential election. In contrast, the political motivation

Table 8.2 Interest Group Advertising in the 2004 Presidential Election

Interest Group	number of ads*	Candidate
Media Fund	43,750	Kerry
MoveOn.org	18,750	Kerry
AFL-CIO	9,764	Kerry
Communities for Quality Education	2,739	Kerry
League of Conservation Voters	2,523	Kerry
UAWVCA	1,883	Kerry
New Democrat Network	1,751	Kerry
Stronger America Now	1,599	Kerry
Service Employees International Union	1,121	Kerry
Citizens for Quality Education	693	Kerry
Sierra Club	501	Kerry
American Fed. of State, County, and Municipal Employees	476	Kerry
Compare Decide Vote	354	Kerry
Campaign Money Watch	290	Kerry
National Education Association	290	Kerry
Real Economy Group	283	Kerry
NRDC Action Fund	254	Kerry
The National Air Traffic Controllers Association	208	Kerry
River Smart Organization	152	Kerry
Win Back Respect	150	Kerry
Greater New Orleans Republican Fund	125	Bush
Citizens United	141	Bush
Save American Medicine	196	Bush
Americans for Job Security	248	Bush
Let Freedom Ring	252	Bush
National Rifle Association	502	Bush
Softer Voice Org.	468	Bush
Americans United to Preserve Marriage	598	Bush
Club for Growth PAC	1,576	Bush
Swift Boat Veterans for Truth	5,198	Bush
Progress for America	9,283	Bush
Total	106,118	
Percent of all ads	19.33%	
Pro-Kerry as percent of all Kerry ads	25.16%	
Pro-Bush as percent of all Bush ads	9.24%	

Source: Wisconsin Advertising Project

*Totals for ad buys in top 75 media markets and for groups with 100 or more ads

was not as dominant in the 2008 presidential election. Because Barack Obama opted out of general election public financing and raised over \$300 million to fund his campaign, many pro-Democratic interests did not participate in the presidential campaign.²⁴ And because McCain was historically opposed to interest groups' pro-candidate efforts, many conservative groups

stayed out of the contest as well. Add to this the fact that the campaign was not generally competitive: Obama won with more than 360 electoral votes and 53 percent of the popular vote. In 2008, groups aired over 23,000 ads (more than in 2000 but significantly less than in 2004), but they accounted for only 5 percent of all ads aired in the general election—the lowest proportion of the three elections (see Table 8.3). Still, 19 groups did air more than 100 ads for Obama and McCain in the general election.

It is worth perusing again the list of groups in Tables 8.1–8.3. Only one group—the AFL-CIO—is featured in all three elections, though it purchased only 127 ads in 2008, significantly less than its ad buys in 2000 and 2004. Nine additional groups invested in two of the three elections: American Federation of State, County, and Municipal Employees (AFSCME); Americans for Job Security; Let Freedom Ring; MoveOn.org; the National Rifle Association; Planned Parenthood; Service Employees International

Table 8.3 Interest Group Advertising in the 2008 Presidential Election

Interest Group	number of ads*	Candidate
Service Employees International Union	4,191	Obama
United Auto Workers	1,555	Obama
MoveOn.org	1,498	Obama
American Fed. of State, County, and Municipal Employees	782	Obama
VoteVets.org	646	Obama
Health Care for America Now	556	Obama
Defenders of Wildlife Action Fund	384	Obama
Planned Parenthood	202	Obama
United Food and Commercial Workers	199	Obama
PowerPAC	193	Obama
Bring Ohio Back	178	Obama
AFL-CIO	127	Obama
BornAliveTruth.org	543	McCain
Republican Jewish Coalition	963	McCain
Let Freedom Ring	1,112	McCain
American Issues Project	1,354	McCain
National Republican Trust PAC	1,448	McCain
Committee for Truth in Politics	2,051	McCain
Vets for Freedom	5,158	McCain
Total	23,140	
Percent of all ads	5.02%	
Pro-Obama as percent of all Obama ads	4.08%	
Pro-McCain as percent of all McCain ads	6.20%	

Source: Wisconsin Advertising Project

*Totals for ad buys in top 75 media markets and for groups with 100 or more ads

Union (SEIU); the Sierra Club; and the United Auto Workers. It is telling that of the fifty-one groups organizing to air ads on behalf of presidential elections, forty-one took part in only one election. If we could look deeper at the funding of many of these one-time participants (and we can look at the funders of PACs and 527s but not other groups—an issue discussed in more detail in the conclusion), we might see that there were many consistent funders, but the organizational form takes different shapes in different years. This is largely a function of the legal rules surrounding the election (for example, is it better to be a 527 this year or not?) and the desire of large funders to remain in the shadows.

Political Advertising in Congressional Elections

Interest groups have also devoted considerable resources to congressional races in the last twelve to fifteen years. As noted earlier, the congressional context has become far more competitive and polarized since the 1980s, and the two major parties in Congress now see every competitive House and Senate seat as crucial to securing or winning majority control of the chamber. But not every election features the same level of advertising from interest groups. The specific instances in each year create greater or lesser incentives for aggressive investment in pro-candidate television ads, and some groups make calculations that other types of electoral action (“get-out-the-vote” [GOTV] drives, direct mail, radio) might provide more bang for their bucks. For example, labor in the late 1990s calculated that peer-to-peer contact among union households might be more effective than television advertising.²⁵ Some groups thus go off the air, not for reasons related to the political or legal contexts, but because of strategic calculations related to the perceived effectiveness of certain electioneering efforts.

Having said that, one way to assess the level of investment in television ads from interest groups is to look at aggregate group involvement in specific House and Senate races. For example, Table 8.4 lists the top twenty Senate races by interest group involvement, ranked as a percent of all ads aired in the race. The analysis only covers the elections of 2000, 2002, 2004, and 2008, because the Wisconsin Advertising Project did not track advertising in the 2006 elections. In addition, the table only shows ads aired in the top 75 media markets and covers only races where candidates aired at least 1,000 ads. This allows us to look at interest group involvement in races where candidates were active participants.

The top race was the 2008 Colorado Senate contest between Democrat Mark Udall and Republican Bob Schaffer, where interest groups sponsored nearly 40 percent of the total ad buys in the primary and general election phases of the race. The election featured fourteen separate interest groups, seven for Udall and seven for Schaffer. Pro-Schaffer groups aired

Table 8.4 Top Twenty Interest Group Investments in Senate Elections (2000, 2002, 2004, and 2008)*

State	Year	Open seat	Dem. cand. ads	GOP cand. ads	Dem. Party ads	GOP ads	Pro-Dem. interest group ads	Pro-GOP interest group ads	Group ads as % of total
Colorado	2008	Yes	6,268	2,716	2,615	2,193	3,840	4,932	38.9
Maine	2008	No	3,842	4,994	1,642	0	804	2,398	23.4
Colorado	2002	No	2,367	2,616	2,639	2,699	2,133	921	22.8
Louisiana	2008	No	2,094	1,494	633	726	566	645	19.7
Oregon	2008	No	5,655	10,084	8,646	2,984	2,898	3,733	19.5
New Mexico	2008	Yes	4,755	4,928	0	0	908	1,149	17.5
Michigan	2000	No	5,156	7,502	4,172	3,733	1,847	2,395	17.1
New Hampshire	2008	No	2,561	654	3,190	1,750	614	989	16.4
North Carolina	2008	No	6,667	8,789	11,630	4,881	1,557	3,698	14.1
New Mexico	2000	No	1,018	174	0	0	0	184	13.4
Oklahoma	2004	Yes	6,507	7,656	3,546	2,412	1,138	1,945	13.3
Minnesota	2008	No	6,644	6,210	4,223	3,450	713	2,386	13.1
Georgia	2008	No	1,917	1,733	3,422	498	692	428	12.9
Missouri	2002	No	4,383	3,327	4,670	3,993	1,250	876	11.5
Colorado	2004	Yes	3,667	4,703	1,805	1,069	911	405	10.5
Kentucky	2008	No	16,036	18,782	3,130	0	1,658	2,700	10.3
Delaware	2000	No	581	657	999	0	0	254	10.2
Iowa	2002	No	1,746	1,469	1,528	1,238	253	417	10.1
Arkansas	2002	No	4,273	2,783	2,493	3,152	849	548	9.9
Washington	2000	No	9,658	2,717	270	1,633	402	1,160	9.9

Source: Wisconsin Advertising Project

*Totals only include races where the candidates aired at least 1,000 ads. Ad totals combine primary and general election ads in the top 75 media markets. Ad totals do not include 2006 or 2010 elections.

more ads than the Republican Party and even more than the candidate himself. Pro-Udall groups aired more ads than did the Democratic Party.

The second most significant involvement—as a percent of total ads aired—was in the Maine Senate election between incumbent Republican Susan Collins and Congressman Tom Allen in 2008. In that election, interest groups sponsored nearly one in every four ads aired. Collins benefited from almost 2,400 ads in the Portland media market, with support from the U.S. Chamber of Commerce, the National Federation of Independent Business, Mainers for Employee Freedom, the Coalition for a Democratic Workplace, the American Medical Association, and America's Agenda Health Care for Kids. Allen received help from the People for the American Way, VoteVets.org, and American Rights at Work.

As Table 8.4 demonstrates, top interest group involvement can account for 10–20 percent of ads aired in tight races. Of particular note is that ten of the top twenty races were in 2008. Four of the top twenty were in 2000, four were in 2002, and two were in 2004.²⁶ The aggressive ad buys in 2008 likely resulted from the resistance of the presidential candidates to interest group help, as described above. As a consequence, interest groups that had mobilized after the 2007 *Wisconsin Right to Life* case had substantial sums they could more freely invest in close elections below the presidential level. Although the Senate was safely in Democratic hands in 2008, there was some concern that a strong performance could propel the Democrats to a filibuster-proof sixty-seat majority. Indeed, Democrats did eventually get to sixty votes after the election of Al Franken in Minnesota was finally certified. The supermajority was short-lived, however, after Edward Kennedy of Massachusetts died and was replaced in a special election by Republican Scott Brown. The opportunity to capture sixty seats conferred on Senate races a particular relevance. A closer look at Table 8.4 also shows that pro-Republican interest groups aired more ads than their Democratic counterparts in nine of the ten races in 2008. This lessened the Republican Party's disadvantage in many of these races stemming from the fact that the Republican Party committees sponsored fewer ads than the Democratic Party in eight of the ten races.

This analysis is repeated for House races in Table 8.5. Again, it is restricted to the top seventy-five media markets and to races where the candidates sponsored at least 1,000 ads.²⁷ In this context, interest group investment is even greater than for Senate races, with the ad totals ranging from 20 percent of the total ads aired to nearly 50 percent of the total ad buys in New Hampshire's 2nd congressional district in 2000.²⁸ In that race, the AFL-CIO backed Democrat Barney Brannon, and Citizens for Better Medicare supported incumbent Republican Charlie Bass.

Note that, unlike Table 8.4, where half of the top races were in 2008, ten of the twenty top House investments came in the year 2000, with six in

Table 8.5 Top Twenty Interest Group Investments in House Elections (2000, 2002, 2004, and 2008)*

District	Year	Open seat	Dem. cand. ads	GOP cand. ads	Dem. Party ads	GOP ads	Pro-Dem. interest group ads	Pro-GOP interest group ads	Group ads as % of total
NH-2	2000	No	805	404	61	78	556	777	49.72
CA-49	2000	No	1,343	1,008	1,386	466	1,724	2,050	47.31
WA-5	2000	No	752	1,328	777	1,306	1,859	1,816	46.89
NC-8	2000	No	472	1,043	1,599	178	902	1,865	45.67
NM-1	2000	No	1,469	1,497	546	71	1,351	1,078	40.40
KY-3	2000	No	1,860	2,538	1,763	425	2,750	1,223	37.63
FL-22	2002	No	1,379	835	0	0	0	1,290	36.82
AR-4	2000	No	1,376	1,089	1,276	1,282	1,206	1,323	33.49
PA-10	2000	No	1,916	1,621	1,304	1,100	854	2,013	32.55
MI-15	2002	No	2,275	0	0	0	997	0	30.47
WI-4	2004	Yes	1,252	0	0	0	502	0	28.62
IL-19	2002	No	469	1,316	436	0	378	493	28.17
CO-4	2002	No	1,634	1,468	859	627	1,782	0	27.97
NC-8	2002	No	816	823	323	714	143	866	27.38
KY-6	2000	No	1,542	2,811	1,939	1,822	1,342	1,693	27.22
MN-6	2000	No	1,161	924	231	456	324	646	25.92
PA-17	2002	No	2,233	1,227	1,807	2,638	746	1,856	24.76
MD-1	2008	Yes	1,545	2,722	1,585	205	0	1,668	21.59
AZ-5	2008	No	1,472	819	1,696	0	0	1,069	21.14
MI-9	2002	No	904	753	0	0	0	412	19.91

Source: Wisconsin Advertising Project

*Totals only include races where the candidates aired at least 1,000 ads. Ad totals combine primary and general election ads in the top 75 media markets. Ad totals do not include 2006 or 2010 elections.

2002, one in 2004, and three in 2008. This makes sense given the political context. In the run-up to the 2000 elections, *Congressional Quarterly* projected that the Republicans were likely to win 211 seats, not counting the outcomes of 16 too-close-to-call elections. This was seven seats shy of the total needed to control the chamber. In 2002, the Republicans had a decent grasp on 220 seats, just 2 more than needed to retain majority control. These two very tight cycles likely explain why sixteen of the top twenty interest group-funded races came in those years. In 2004, the Republicans were likely to win 230 seats, giving them a decent advantage; moreover, in that year only 6 seats ranked as too close to call, the lowest total in a generation. As a consequence, there just was not much expected change in the seat margins that year. In fact, the one election from 2004 included in Table 8.5 concerned a primary. In Wisconsin's 4th Congressional District, EMILY's List backed Gwen Moore in her primary campaign against fellow Democrats Matt Flynn and Tim Carpenter.²⁹ In 2008, the Democrats had close to 241 seats secured in the final weeks before the election, also dampening the motivation to invest in tight races.

The EMILY's List ad buy in the Wisconsin congressional race is a good reminder that many interest groups invest in campaigns for reasons beyond agenda control. In Gwen Moore's case, she was helped by a group committed to electing female candidates to the House and Senate. Other groups may choose to support candidates who are strong allies for the group's issue agenda, whether it is education, health care, or foreign policy. There is no denying, though, that a \$1 million ad buy is a costly effort to help a single friend in need. The investment becomes more relevant if that race is crucial to a party's effort to win control of Congress.

The Future

Interest groups will continue to invest large sums of money in political advertisements in House, Senate, and presidential elections, and there are three key points of reference with respect to that future. The first is the legal context. This will continue to broaden. The current Roberts Supreme Court values First Amendment guarantees over congressional concerns about corruption or the appearance of corruption. As the flow of cases into the legal system challenges the regulated boundaries of interest group (and party and candidate) electioneering, more and more innovations will likely be permitted and with less and less regulation.

To that effect, 2010 was the first election cycle post-*Citizens United*, and the initial evidence indicates that many groups took advantage of these looser regulations. According to data from the Wesleyan Media Project, which tracked ads in 2010, interest groups sponsored 12 percent of all House ads and 15 percent of all Senate ads.³⁰ In terms of the count of ads

aired, interest groups sponsored 168 percent more ads in House races than they did in 2008 and 44 percent more ads in Senate races. It should be noted, though, that candidates also purchased far more advertising in 2010, given that so many elections were competitive. But, overall, interest groups were more active participants in the "air war" than in any previous cycle.

Outside groups, as in previous years, were highly active in specific races. For example, interest groups sponsored 27 percent of all ads aired in the last sixty days of the highly competitive Senate race in Nevada between incumbent Democrat Harry Reid and Republican Sharon Angle. Groups were responsible for 26 percent of the ads in the Senate race in Kentucky, 28 percent in the Missouri Senate race, and 32 percent in the Senate battle in Colorado. There were also twenty-eight House races where interest groups were sponsors of at least 20 percent of the ad buys in the final sixty days.

For many, the laxer rules that allow outside groups to raise millions in large donations for ad campaigns is troubling and portends worse things to come. As a consequence, the new campaign finance battleground concerns disclosure laws, which Congress is currently seeking to expand in the wake of *Citizens United*. Disclosure of campaign activity is seen by many as a crucial weapon by which citizens, as well as journalists and political opponents, can keep tabs on political participants. All funds raised and spent by candidates, parties, and PACs, for example, are tracked and made public by the FEC. Much candidate advocacy by interest groups outside of PACs, however, is not tracked. Money raised and spent by 527s is made public by the IRS, but after *Wisconsin* and *Citizens United*, group efforts are increasingly funded through organizational forms that are not subject to disclosure, such as through 501(c)(4) organizations.

501(c)(4) groups are tax-exempt, social welfare nonprofits that are allowed to sponsor pro-candidate ads, so long as that activity does not account for more than 50 percent of their budgets. Many interests in past cycles, including 2010, used the (c)(4) classification to shield their donors. In one postelection symposium in December 2010, for example, the political director of American Crossroads—one of the dominant players in the just-completed midterms—admitted that it had formed two organizations in 2010, one that disclosed donors to the FEC and a 501(c)(4) that raised money from donors who wanted their names kept private.³¹ This was such a concern that the Democrats tried to make it a campaign issue, hoping to embarrass Republican candidates, the primary beneficiaries of much of the outside spending that year.

Many worry that voters see an avalanche of ads from groups with important-sounding names but lack the means to track those groups' financial backing. And such disclosure is seen not simply as a public good.

Reformers posit that if they cannot stem interest group advertising efforts with content-based regulations, they may stymie the many groups worried about public distribution of their donor lists.³²

On the other hand, one legal argument currently asserts that disclosure of political contributions is an unconstitutional infringement on a right to political anonymity and that forced disclosure as a tactic to reduce money in campaigns amounts to a chilling effect on free speech.³³ It is unlikely that the Court will side with the more extreme claim of anonymity as a widespread right, and so disclosure may be the last barrier to completely unregulated campaign financing of elections (at least with respect to interest groups).³⁴ Nonetheless, efforts in Congress to expand disclosure face stiff opposition.³⁵

In the wake of a more permissive set of rules on the funding of political advertisements—increased disclosure notwithstanding—interest groups will remain aggressively involved in tight federal elections. Corporations, unions, and nonprofits will see little barrier to entry, and as issues enter the agenda, relevant groups will likely hit the airwaves to convince voters that certain candidates should be elected or defeated. The intensity of the advertising in 2010 may merely be prologue, then, as many interest groups saw the midterm elections as a testing ground for more intense mobilization in the coming presidential cycle.

This is all the more true given the second point of reference, the polarized political context. Indeed, the long-term political horizon suggests continued tight control over House and Senate majorities. For example, in the run-up to the 2010 elections, the Democrats controlled fifty-eight seats in the Senate but were projected to lose between four and eight seats. They ended up losing six seats, leaving their majority much smaller. A similar story was true for House elections. Democrats had 257 seats going into the election, but lost 63, along with majority control. In practical terms, this means that the 2012 and 2014 elections will remain hard-fought. Of the sixty-six Senate seats contested in both upcoming elections, for example, the Democrats are incumbents in forty-two of them (64 percent). Defending these races with only a three-seat majority will be motivation enough for liberal interests to wade into each competitive contest, and conservative groups will follow suit. Moreover, if President Obama's job approval continues to hover in the mid-40s, Republicans will see the White House as up for grabs. In the aftermath of the midterm elections, in fact, Senate Minority Leader Mitch McConnell indicated rather bluntly that Obama's defeat in 2012 should be the Republicans' primary objective.

Finally, a third point of reference could have a large influence on the level of interest group political advertising. This involves the changing nature of media in American elections. On the one hand, the 2008 elections featured more campaign advertising on television than in any previous election

cycle. Candidates, parties, and interest groups in the top 75 media markets aired nearly 600,000 ads in congressional races, a 37 percent increase from 2004.³⁶ And 2010 saw a further 36 percent increase over 2008. With fewer legal restrictions on interest group electioneering, we may see no abatement on the frequency of television advertising in future cycles. On the other hand, many features of Americans' media consumption habits suggest television ads are less effective than in previous years. For one, the fragmentation of the media market means that television audiences are spread out over more stations and online sources of news and entertainment, making larger audiences harder to reach.³⁷ The early period in which ads were broadcast to audiences watching a relatively small number of channels has been replaced by narrow-casted media delivered to shrinking audience share. This is further complicated by DVR and TiVo, which allow viewers to record shows to watch later while easily fast-forwarding through commercials. In this context, will it continue to be worth the cost to produce and air television ads at such high levels?

This is even more relevant given the potentially cheaper forms of electoral outreach that are increasingly popular. For example, online advertising and social networking cost less and may allow political actors to speak more directly to core supporters.³⁸ Moreover, online campaigning is generally unregulated by existing campaign finance laws, and reformers' attempts to impose new restrictions have fallen on deaf ears at the FEC.

Additionally, many campaigns, political parties, and interest groups are turning to microtargeting efforts in which peer-to-peer contacts, direct mail, and telephone mobilization are highly tailored to specific audiences, using sophisticated matching of registration records and consumer-purchasing data.³⁹ With complex statistical modeling, political operatives can send one message to one household and a slightly different message to their neighbors, all with the goal of eliminating inefficiencies inherent in macro-targeting, where lots of nonvoters and apathetic citizens see the message. With all of these developments in electoral strategy, one wonders how useful old-fashioned political advertising will be in coming years.

Final Word

All told, the message of the last fifteen years is clear: interest groups are very active in American elections, and that level of investment is likely to grow as the political context remains charged and the legal context expands to allow even more forms of pro-candidate advocacy. Television advertising is one of the primary means of helping candidates, and interest groups can account for 10–50 percent of all ads aired in competitive races or media markets. These ad buys can have decisive impacts on the outcome of close elections and potentially on the fortunes of each political party in its quest

for control of the policy-making agenda in Washington, D.C. The framers of the Constitution wisely anticipated the aggressive role of "factions" in the political life of America, and they knew that very little could stem the tide of group formation. They worried a great deal about the potential tyranny of a "majority faction," so one wonders what their reactions would be to a political scene with mass media, political elites, and voters increasingly polarized into two ideological camps, and a network of party and group allies working in concert to win the few seats essential to holding the reins of power over a massive central government.

Notes

1. Barack Obama, "Excerpts of the President's State of the Union Address," January 27, 2010, <http://www.whitehouse.gov/the-press-office/excerpts-presidents-state-union-address/>.
2. Interest group ad totals come from an analysis of data from Wisconsin Advertising Project. I am particularly grateful to the Project's Director, Ken Goldstein, for granting me access to the data for the 2000 through 2008 elections.
3. James E. Campbell, "Editor's Introduction: Forecasting the 2008 National Elections," *PS: Political Science and Politics* 41, no. 4 (2008): 679–82.
4. It should be noted that the legal context is largely constant for candidates. Rules for candidates on fundraising and expenditures have not really changed since major reform passed Congress in the 1970s. The political context does affect candidates, though. A favorable context for a candidate's party can make fundraising and recruitment much easier.
5. For instance, corporate-sponsored PACs can only solicit contributions from executive and administrative personnel, as well as from stockholders. Labor PACs can only solicit from dues-paying members and unions' executive and administrative personnel.
6. Magic words were actually first established in a footnote in the Supreme Court's 1976 decision in *Buckley v. Valeo*. The Court listed these eight phrases that it believed clearly established an election message. The ability to avoid these words and remain unregulated by the FEC was not really "discovered" until the 1990s. See Michael Franz, *Choices and Changes: Interest Groups in the Electoral Process* (Philadelphia: Temple University Press, 2008).
7. David Magleby, *Getting Inside the Outside Campaign* (Provo, UT: Brigham Young University Center for the Study of Elections and Democracy, 2001).
8. Such a distinction does not apply to candidate ads, since federal election laws consider any and all expenditures by candidates' campaigns as designed to affect election outcomes.
9. See David Magleby, "The Impact of Issue Advocacy and Party Soft Money Electioneering," in *The Medium and the Message*, eds. Kenneth Goldstein and Patricia Strach (Upper Saddle River, NJ: Pearson, 2004).
10. Ray La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* (Chicago: University of Chicago Press, 2007); see also Steve Weissman and Ruth Hassan, "BCRA and the 527 Groups," in *The Election After Reform: Money, Politics and the Bipartisan Campaign Reform Act*, ed. Michael J. Malbin (Lanham, MD: Rowman and Littlefield, 2006).

11. Thomas Edsall, "FEC Ordered to Rethink '527' Rules," *Washington Post*, March 31, 2006; Thomas Edsall, "GOP Creating Own '527' Groups: Unregulated Funds Can Be Raised," *Washington Post*, May 25, 2004.
12. One might argue that because *Citizens United* seemed to broaden the ruling in *Wisconsin Right to Life* that the difference between Phase 4 and Phase 5 is negligible. On the other hand, *Citizens United* seems to represent a transition in the orientation of the Court toward rethinking major sections of campaign finance law.
13. Nolan M. McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches* (Cambridge, MA: MIT Press, 2006).
14. The data are available at <http://www.voteview.com/>. The manipulation of the data to demonstrate increased polarization is available on request.
15. To do this, calculate the ideology of the median member for each party in the House and Senate and divide that by the standard deviation for all other party members in each chamber.
16. Tracy Sulkin, *Issue Politics in Congress* (New York: Cambridge University Press, 2005).
17. Timothy P. Carney, "Drug Lobby Showers Money on its Hero Harry Reid," *Washington Examiner*, July 7, 2010, <http://washingtonexaminer.com/news/business/drug-lobby-showers-money-its-hero-harry-reid/>.
18. Matt Grossman and Casey B. K. Dominguez, "Party Coalitions and Interest Group Networks," *American Politics Research* 37, no. 5 (2009): 767–800.
19. Gregory Koger, Seth Masket, and Hans Noel, "Cooperative Party Factions in American Politics," *American Politics Research* 38, no. 1 (2010): 33–53.
20. For a discussion of how the emergence of 527s corresponds to prevailing understandings of interest groups in American politics (and elections specifically), see Robert G. Boatright, "Situating the New 527 Organizations in Interest Group Theory," *The Forum* 5, no. 2 (2007): Article 5.
21. For information on the Project, visit <http://wiscadproject.wisc.edu/>.
22. In addition to counting the number of ads, there are two other ways that one could measure political advertising intensity. First, it might seem fruitful to talk about how many dollars were spent by interest groups to air pro-candidate ads. The estimates in the Wisconsin Advertising Project data are only estimates of advertising cost, however (see Michael G. Hagen and Robin Kolodny, "Finding the Cost of Campaign Advertising," *The Forum* 6, no. 1 (2008): Article 11.). Comparing across years would also mean adjusting these estimates for inflation. Second, it might be useful to discuss the number of gross ratings points (GRPs) purchased by interest groups. GRPs are estimates of the number of people who may have seen an ad. The Wisconsin data include the GRP value for each ad airing in some years but not in others. To best compare across time, then, the total count of ads is utilized here. It should be noted that ad counts and GRPs are highly correlated.
23. One other group, Let Freedom Ring, fell under a different loophole that this chapter has not discussed, the 501(c)(4) loophole. The justification for this comes from an important, though obscure, Supreme Court case from 1986: *Massachusetts Citizens for Life v. FEC (MCFL)*. In that case, the Court argued that some 501(c)(4) groups (tax exempt nonprofits who register in that section of the tax code) could sponsor express advocacy communications (without having to form a PAC) if the ads were paid for by individuals and the *primary purpose* of the group was not political electioneering or lobbying. The MCFL exemption was rarely used prior to 2002 because non—"magic word" ads were permitted by any group, including corporations and unions. After BCRA passed in 2002, 527s (as discussed) became the organizational vehicle used primarily for nonexpress advocacy. But with new focus on regulating 527s after 2004, the Court's twenty-year-old ruling in MCFL became particularly relevant for the 2006 elections. *Wisconsin Right to Life* and *Citizens United* made the MCFL classification less important, though registering as a 501(c)(4) helped groups shield their donors from public scrutiny. See the concluding section of the chapter for more information on this.
24. David C. Kimball, "Interest Groups in the 2008 Presidential Election: The Barking Dog That Didn't Bite," *The Forum* 6, no. 4 (2008): Article 2.
25. Peter Francia, *The Future of Organized Labor in American Politics* (New York: Columbia University Press, 2006).
26. If you look beyond the top 20 races, interest groups were active at some level in 54 of the 111 Senate races where at least one ad was aired by a candidate.
27. Because House races generally feature lower ad totals than Senate races, one might consider a lower threshold—perhaps 500 ads. Doing so does not generally change the look of Table 8.5. That is, even in these additional races, interest groups air a sizable percentage of the ads.
28. Of the 631 House elections where candidates aired at least one ad, interest groups were sponsors of ads in 142.
29. This also explains the totals for Michigan's 15th District race in 2002, when EMILY's List backed incumbent congresswoman Lynn Rivers against fellow Democrat and incumbent John Dingell in their primary fight after redistricting combined their districts.
30. See <http://election-ad.research.wesleyan.edu/>. The Project is a successor to the Wisconsin Advertising Project.
31. Kenneth P. Vogel, "SEIU, American Crossroads Look Back at 2010 Spending," *Politico*, December 13, 2010, <http://www.politico.com/news/stories/1210/46355.html>.
32. Carol Leonnig, "Political Ads are a Tough Sell for Image-Conscious Corporations," *Washington Post*, June 1, 2010.
33. Bradley Smith makes this argument in *Unfree Speech: The Folly of Campaign Finance Reform* (Princeton, NJ: Princeton University Press, 2001): 220–25.
34. In oral arguments for *Doe v. Reed* in 2010, even conservative Justices Scalia and Kennedy expressed concerns about a supposed right to anonymous political speech. This should mean that disclosure laws, even those broadened by Congress in future campaign finance legislation, should withstand judicial review.
35. Congress debated, but did not pass, one law in 2010 called (appropriately) the DISCLOSE Act. It would force any group airing ads that mention candidates to publicize their donor lists.
36. There was a more modest increase in the presidential race. Between June and Election Day, Barack Obama and John McCain aired over 780,000 ads nationwide. This was a 5 percent increase over the Kerry/Bush contest in 2004.
37. Markus Prior, *Post-Broadcast Democracy: How Media Choice Increases Inequality in Political Involvement and Polarizes Elections* (New York: Cambridge University Press, 2007).
38. Matthew Hindman, *The Myth of a Digital Democracy* (Princeton, NJ: Princeton University Press, 2008).
39. Sunshine Hillygus and Todd G. Shields, *The Persuadable Voter: Wedge Issues in Presidential Campaigns* (Princeton, NJ: Princeton University Press, 2009).