Chapter 8

Attack of the Super PACs?

Interest Groups in the 2012 Elections

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In the fall of 2012, voters in Wisconsin were asked to fill a Senate seat to replace the retiring Democrat Herb Kohl. Democratic Congresswoman Tammy Baldwin went up against former Republican Governor Tommy Thompson in the general election. In the 67 days between September 1 and Election Day (November 6), voters in the state were exposed to over 49,000 ads on broadcast television. Of those ads, 31%—over 15,000—were sponsored by interest groups. This included over 7,500 ads from the affiliated Crossroads GPS and American Crossroads (both of which had ties to former George W. Bush aide Karl Rove), 1,700 ads from Majority PAC (run by the former chief of staff to Senate Majority Leader Harry Reid), and almost 2,000 ads from the labor unions AFSCME and SEIU. Wisconsin was not unique, however. Across the country, voters in states with competitive Senate races were exposed to a deluge of spending from interest groups. This included Montana, with over 70,000 ads in the fall re-election campaign of Democrat Jon Tester, 24% of which were from outside groups; Indiana, where over 40% of 40,000 ads were from groups; and Virginia, where 35% of over 39,000 ads were group sponsored.

Most of this advertising can be traced to changes in campaign finance laws in the five years before the 2012 elections. The Supreme Court in 2007 in *Wisconsin Right to Life v. FEC* overturned parts of a 2002 campaign finance law that put limits on how interest group television ads could be funded. The Court expanded the scope of the case in 2010 in *Citizens United v. FEC.* A series of lower court cases and regulatory actions in 2010 and 2011 expanded the reach of the Court's decision in *Citizens United,* and by the fall of 2012, interest groups were largely unfettered in the way they could raise and spend money to advocate for federal candidates. This is in comparison to the fairly rigid fund-raising rules that remain in place for candidates and political parties.

By almost any measure, as will be demonstrated in this chapter, the role played by interest groups in 2012 exceeded anything witnessed in prior elections. But interest groups were not absent from previous elections, and the first goal of this chapter is to place 2012 in its proper context. First, citizens in 2012 have heard a lot about the development of "Super" PACs, which were sanctioned by the Federal Election Commission in the aftermath of *Citizens United.* But PACs—short for political action committees—have been around for decades. Traditional

PACs can contribute directly to candidates, something Super PACs cannot do, and they make up a non-trivial percentage of many candidates' war chests. This has concerned campaign finance reformers for years. Second, Super PACs are not the only means of trying to influence voters with campaign ads. In many senses, they are merely the latest in a long line of developments, from "sham" issue advocacy in the 1990s (where groups used gaps in existing election law to sponsor unregulated ads that bolstered candidates) to 527s in the 2004 elections (a type of group that collected large donations for the purpose of promoting candidates). Both prior developments (which are discussed in more detail later in the chapter) raised concerns about excessive influence of wealthy individuals and interests.

The chapter will also explore two key concerns surrounding the role of interest groups in elections. First, what effects have interest group ads had on the outcome of close elections? Can Super PACs and other groups tip close elections with their advertising efforts? Second, what types of issues do interest groups focus on when they advertise in an election? Does their issue focus diverge from what the candidates discuss? If so, this would suggest that interest groups have the potential to shift issue debates in an election away from the issues preferred by the candidates.

The development of Super PACs in 2011 and 2012 highlights once again the importance of elections to many organized interests, especially in a deeply polarized political environment where the outcome of these close elections determines who shapes public policies. And the rules that exist for Super PACs demonstrate that the Court may be willing to reduce the restrictions that currently remain for candidates and political parties. In that sense, 2012 was truly a momentous election, but it may only be the beginning.

Traditional PACs, 1976–2012

The role of interest groups in the funding of federal candidates is not new to the post–*Citizens United* context. Since the progressive era in the early twentieth century, activists and citizens have worried about the influence of money in politics. Major campaign finance reform efforts passed Congress in 1907, 1946, 1971, 1974, 1976, and 2002.[1] All of these efforts put fresh restrictions on the electioneering efforts of organized interests.

Since the campaign finance reform of the 1970s, campaign finance rules have allowed corporations, trade associations, membership groups, and unions to contribute to federal candidates but only through highly regulated political action committees (PACs). These traditional PACs are funded only by contributions from a group's members: union members for union PACs, for example, and corporate employees for trade association and corporate PACs.[2] Each donation by an individual is capped at $5,000 total per donor. PACs can contribute these pooled funds to candidates but with a maximum of $5,000 per election.

PACs are often viewed with suspicion, as tools of the corporate and union sponsor, for example. But it is important to remember that all PAC funds come from voluntary donations by individuals, and the total value of a single PAC contribution to a federal candidate is quite small. The average winning House member spent $1.4 million in 2010, and the average winning Senate candidate spent nearly $9 million.[3] The marginal value of a $5,000 maximum contribution then is not much to worry about. (Moreover, the average PAC contribution is much smaller. In 2012, it was a little less than $1,800.)

On the other hand, some candidates rely on PAC money more than others, and collectively, PAC contributions can provide substantial electoral benefits. As one might expect, incumbents tend to leverage their positions on important committees to raise a greater share of their war chests from PACs. The upper limit for contributions from individuals in 2012 was $2,500, meaning that a maximum PAC contribution was worth twice as much as an individual's.

To get a sense of how incumbents rely on a greater share of PAC dollars than challengers or open seat candidates, Figure 8.1 plots the percentage of donations that came from PACs for House and Senate candidates in 2012.[4] The graph shows the range separately for incumbents, challengers, and open seat candidates. The reported dots on the graph show the median candidate within type, and the shaded box shows the range from the 25th to 75th percentile.

It is clear from the graph that incumbents generally accept a far higher share of their overall totals from PACs. Challengers and open seat candidates for both the House and Senate generally cluster between 0% and 10% from PACs. Indeed, the median for both combined set of candidates is 0% and the mean is 6%. PAC contributions to such candidates are almost irrelevant then to these candidates' budgets. The mean and median for House incumbents, however, is 47%. And the vast majority of House incumbents raise between 35% and 60% of their

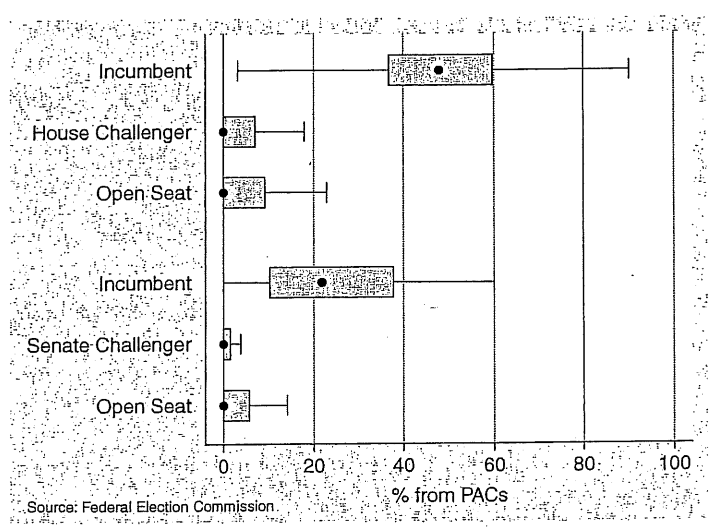


Figure 8.1 PAC Contributions to Congressional Candidates in 2012

campaign funds from PACs. Senate incumbents rely to a far lesser extent on PAC money—the mean and media for them is 22% and 24%, respectively—but they still accept a far higher share of PAC money that challengers and open seat candidates.

The efforts of PACs in funding incumbents has been a serious source of anxiety for many campaign finance reformers, and it does raise concerns that incumbents find it far easier to ride the fund-raising circuit in Washington, DC, than to raise contributions from constituents back at home. On the other hand, there is also nearly three decades of political science research in this area, and the consensus is that PAC contributions are not responsible for purchasing much more than access to the candidates.[5] That is, the money seems to flow from PACs to candidates that already share a similar position on public policies. It is very rare, in other words, for a corporate PAC to contribute to a liberal Democrat with the hopes of buying their vote. PAC contributions more often make securing a meeting with a candidate much easier. Meetings are valuable, of course, but they are not a guarantee that an interest group's public policy goals will be implemented. Indeed, any change in the status quo, whether for corporations, unions, or big lobbying efforts, is hard to initiate, regardless of how much campaign cash or lobbying pressure is applied.[6]

At the end of the day, the influence of PACs on candidates is a matter of some debate. It might be troubling that incumbents seem to have a built-in fund-raising mechanism that can facilitate the accumulation of a war chest, and that they grant more time to large donors. On the other hand, the money is rarely tied to the outcome of votes in the House and Senate, and the cap for each PAC is very low in comparison to what it costs candidates to run for office.

Beyond Traditional PACs to Super PACs

PACs do more than contribute to candidate coffers, however. Traditional PACs are also allowed to spend their resources on pro-candidate advocacy efforts. These are called independent expenditures, and Congress sanctioned them for PACs in 1974. Moreover, whereas contributions to a PAC are capped,[7] the group can spend an unlimited amount of these funds on independent expenditures. This means that PACs have the potential to invest considerably more in an election beyond their $5,000 contributions.

PAC independent expenditures were quite small, however, prior to the mid-1990s. Table 8.1 sums the amount of PAC contributions to candidates and their independent expenditures from 1980 to 1994, a time span covering eight elections. In that time period, PACs spent just below $100 million on independent expenditures, in comparison to over $1 billion on candidate contributions. (All totals in Table 8.1 are in nominal dollars.) It is quite clear that in the 1980s and early 1990s, PACs preferred the more limited efforts of candidate contributions.[8]

Since the mid-1990s, though, the role of outside groups has expanded considerably. This is a complex story to tell. It involves changes initiated by Congress and the government's election law regulator, the Federal Election

Table 8.1 Interest Group Contributions and Electioneering, 1980–2012

	PAC contributions to candidates	*Independent expenditures*	*Electioneering Comm.*	*IG "Issue ads"**	*Ratio of Contributions to Expenditures*
1980–94 (8 elections)	$1,083,314,457	$99,322,733	n/a	n/a	$10.91 to $1
1996–2002 (4 elections)	$994,147,217	$68,849,580	n/a	$136,964,189	$4.83 to $1
2004–06 (2 elections)	$700,663,702	$107,264,094	$89,883,644	n/a	$3.55 to $1
2008–10 (2 elections)	$865,044,459	$365,439,674	$168,548,353	n/a	$1.62 to $1
2012	$435,357,578	$1,137,598,645	$26,371,598	n/a	$1 to $2.67

*Estimates for 1996 are from Deborah Beck, et al., 1997. "Issue Advocacy Advertising During the 1996 Campaign," Philadelphia: Annenberg Public Policy Center; totals for 1998–2002 are from the Wisconsin Advertising Project. All other totals in the table are from the Federal Election Commission. Dollars are not adjusted for inflation.

Commission (FEC). It involves changes in the law as mandated by the federal courts. And it involves changes in the way interest groups tried to test the limits of the law. It might be easiest to tell the story chronologically.[9]

In the early 1970s, Congress passed a series of campaign finance changes, in part triggered by the Watergate crisis. A 1974 law that updated a much weaker 1971 reform put in place much of the system we have today: imposing contribution limits for candidates, parties, and groups; formally legalizing PACs; and creating the Federal Election Commission to regulate the new law. Some changes were challenged and overturned in the 1976 Supreme Court case *Buckley v. Valeo*, and Congress responded in 1976 and 1979 with necessary tweaks in the law.[10]

For much of the 1970s, 1980s, and early 1990s, however, the campaign finance environment was somewhat quiet. Reformers moaned about the establishment and influence of PACs, but as noted above, much of the action for interest groups in elections concerned limited candidate contributions.[11] By the mid-1990s, however, politics in Washington started to become far more polarized. The Republicans in 1994 captured both houses of Congress for the first time since 1952, and the two parties moved apart ideologically.[12] Elections, as it were, became critically important to determining control of Congress. The cries of excessive partisanship that have been so characteristic of the Obama presidency really started back in the 1990s.

With such polarization came incentives for organized interests to invest more resources in elections. Contributions, as suggested, had too little "bang-for-the-buck" when it came to tipping the outcome of close contests. And independent expenditures had a single weakness: they had to be funded by the capped donations to the PAC.

Lurking just below the surface for much of the 1980s, however, was a loophole that opened the door to more resources for electioneering. The loophole was what came to be called the "magic word" test of electioneering. The justices in *Buckley v. Valeo* had struggled to answer an important question: When is an ad designed to influence vote choice, and when is it designed to influence voters' opinions about public policies? This was important because the Court argued that the former could be regulated by Congress, but the latter could not.

That is, the former was considered an avenue by which to influence and potentially corrupt elected officials; if a candidate were to win an election in part because of interest group support, for example, might it not create an opportunity for the group to leverage that influence for help in the passing of public policies? Issue-related ads, however, were considered protected First Amendment speech. Indeed, urging the public to support or oppose a policy is a right that lies at the heart of the First Amendment. The justices provided a list of words and phrases that they thought would clearly designate an election ad from an issue ad. These "magic words," as they came to be colloquially identified, were: "vote for," "elect," "support," "cast your ballot for," "[Smith] for Congress," "vote against," "defeat," or "reject."

As organized interests in the 1990s looked for ways to invest in elections, the absence of "magic words" in ads seemed to offer a lot of potential. If a group aired an ad that did not tell people how to vote, for example, could the ad be bankrolled by much larger contributions to the group? A number of lower court rulings opened the door for this, and interest groups started to spend more resources on such "issue advocacy."[13] During this time, the tagline of an ad might not say "Vote for John Smith," but instead "Call John Smith and thank him for his hard work on the environment." The two ads—but for the tagline—might be identical, and the clear implication might be to help elect John Smith, but the absence of "magic words" meant the issue ad was outside the purview of federal election laws.[14]

Table 8.1 shows PAC candidate contribution and pro-candidate expenditures between 1996 and 2002, a timeframe of four elections. The expenditures in this period cover both regulated independent expenditures from traditional PACs and unregulated "issue advocacy" efforts by other groups.[15] Most notably, in these four elections, the candidate contribution efforts no longer outpaced electioneering by 11 to 1, but by less than half that. The growing role of organized interests in the conduct of campaigns grew considerably in this time period.

All of this inspired Congress to reform campaign finance again in 2002. The legislation was the Bi-Partisan Campaign Reform Act (known also as McCain-Feingold), and its single impact on interest group electioneering was to broaden the "magic word" standard to include a "candidate mention" standard for ads airing close to an election. Under this definition, if an ad mentioned or pictured a candidate for federal office, regardless of whether it featured magic words, the ad was considered an election-related ad if it aired within 30 days of a primary and 60 days of a general election.[16] Congress said also that such ads could not be funded with corporate or union money.

The reform was a relatively simple fix to what had emerged as a glaring gap in the law. But as with most things involving campaign finance, a new loophole emerged in the elections following the law's passage. McCain-Feingold had been silent on whether a collection of individuals could pool their resources to air issue ads. Congress had redefined all such ads as "electioneering communications" and mandated that the Federal Election Commission track them. But it was not clear whether a group could accept unlimited contributions from individuals (without accepting union and corporate funds) and use those for electioneering communications without having to form as a traditional PAC.

With such loopholes, a number of groups in the 2004 elections (and to a lesser extent in 2006) formed as 527s under a section of the IRS tax code and flooded the airwaves with ads that were not regulated. The Section 527 option allowed a group to claim some interest in elections, freeing them to advertise about candidates. By not also filing as a PAC with the FEC, however, such groups could argue that their major purpose was not those candidates' election or defeat. Such groups included MoveOn.org, the Swift Boat Veterans for Truth, and the Progress for America Fund. Table 8.1 shows the collective electioneering efforts of these and other groups in 2004 and 2006 compared to the PAC candidate contribution totals in the same elections. Despite the efforts of Congress to slow the electioneering of organized interests, the expansion continued. In 2004 and 2006 PAC contribution totals only outpaced electioneering communications and independent expenditures by 3.55 to 1.

At this point in the story, the focus shifts from interest groups angling to uncover gaps in the law to a story where the Supreme Court modifies its perspective on the constitutional reach of campaign finance laws. This started in 2007 when the Supreme Court ruled in *Wisconsin Right to Life v. FEC* that part of the McCain-Feingold restrictions on issue advocacy were too broad. Recall above that Congress had broadened the "magic word" test to a "candidate mention" test, but the Court argued in *Wisconsin* that the new test was too inclusive. That is, some ads that mention federal candidates might not be intended to influence how voters cast ballots, but how constituents urge action on public policies. In other words, perhaps the "Call John Smith and thank him" ads were really about thanking Congressman Smith for his advocacy on a particular issue. Why should campaign finance laws govern the funding of such ads?

Such an argument is compelling, but the justices provided little guidance on how to implement the decision. How would one know if an issue ad was intended to influence an election or not? The justices posited a "reasonable person" test, in that if any reasonable viewer could consider the ad about policies and not elections, it would apply to the former. In practice this eviscerated the McCain-Feingold changes and allowed corporations and unions to fund issue advocacy.

The Court understood, however, that its decision was hard to implement, and so they went further in their 2010 *Citizens United v. FEC* decision. The case revolved around whether a documentary that was highly critical of presidential candidate Hillary Clinton and was produced by the group Citizens United (which solicited and received corporate donations) amounted to a campaign ad funded illegally with corporate funds. The justices could have decided the case on narrow grounds (e.g., exempting documentaries from campaign ad laws), but they chose instead to make a broad ruling. In their final decision, a 5–4 one, they overturned all restrictions on how interest group ads could be funded, even ones featuring "magic words." Table 8.1 shows the effects of these decisions in 2008 and 2010. The gap between candidate contributions and interest group electioneering continued to shrink, such that \$1.62 in contributions produced \$1 in independent expenditures and electioneering communications. These elections were dramatically different from the campaigns before 1996, when the ratio was nearly 11 to 1.

The decision in *Citizens United* was only the opening salvo, however. Much needed to be sorted out in terms of what was permissible in light of the decision. The Federal Election Commission devoted considerable effort to offering guidance on what interest groups could do with their resources. In a series of Advisory Opinions in 2011 and 2012, for example, they sanctioned what have come to be called "Super" PACs. These were PACs that registered with the FEC and that had no interest in contributing to federal candidates. Their sole goal was to advocate independently for federal candidates. The FEC allowed these groups to raise unlimited contributions from any individual (excluding foreign nationals), union, trade group, or corporation. They were identified as "super" because prior to *Citizens United*, such groups would have been required to raise limited contributions for their independent expenditures. That fund-raising limitation was no longer in place beginning with the 2010 elections.

The only requirement for Super PACs was that they register with the FEC and disclose their donors publicly. Another type of group, however, was not forced to be so transparent. 501(c)(4) non-profits are tax-exempt groups whose stated purpose is to advance the social welfare. They too were freed to spend their resources on campaign ads, though the IRS mandates that such groups spend less than the majority of their budget on such ads. The advantage to 501(c)(4) groups is that their donors are not released publicly. This means that a collection of wealthy investors (individuals, corporation, unions, etc.) can help bankroll an advertising campaign that attacks or promotes a federal candidate (or slate of candidates), and they can do so without having their name attached publicly to the organization. This type of shadow electioneering is a serious concern for many.[17]

By 2012, the limits on interest group electioneering had disappeared. There was almost no threat of legal sanction on any ads a group would air, and groups could form with the singular goal of electing or defeating a candidate; indeed, there was no need to pretend that issues or public policies were at the center of a group's mission.

As such, 2012 featured an unprecedented level of spending on independent expenditures and electioneering communications. As Table 8.1 shows in the last line, the ratio of contributions to candidate advocacy finally flipped in 2012, such that $1 in contributions now saw over $2.60 in pro-candidate advertising. It is no exaggeration to assert 2012 as a truly unparalleled election in terms of interest group participation.

One other concern in the aftermath of the 2010 *Citizens United* decision focused on whether corporate wealth would dwarf the efforts of liberal groups in advocating for federal candidates. The decision seemed to unleash wealthy investors (i.e., conservative corporate power) to spend on elections. Such a wealth-gap was fairly well contained in the 1980s and early 1990s when traditional PACs were the chief concern of campaign finance reform advocates. With no limits on corporations or business trade associations, however, it was possible that the collective efforts of pro-business, small government interests could overwhelm unions, which have been in decline in America.[18]

To some extent, the balance of spending by groups in 2010 and 2012 did favor the Republicans. Table 8.2 shows the efforts of pro-Democratic and pro-Republican groups in the congressional elections of 2010 and 2012 and in the presidential election of 2012. Using data from the Wesleyan Media Project—which tracks political ads on local broadcast stations in all 210 media markets in the country—the table shows television ads as a percentage of all ads aired in each race, and as a percentage

Table 8.2 Partisanship in Interest Group Television Advertising, 2010–2012

	% of all ads	*% of ads in party*
2010		
House		
Dem Groups	3.83%	7.31%
GOP Groups	9.17%	19.48%
Senate		
Dem Groups	3.82%	8.71%
GOP Groups	10.56%	19.81%
2012		
House		
Dem Groups	6.68%	13.69%
GOP Groups	11.07%	21.83%
Senate		
Dem Groups	8.55%	19.56%
GOP Groups	18.76%	33.95%
President		
Dem Groups	6.13%	11.86%
GOP Groups	24.92%	51.61%

Source: Wesleyan Media Project

of ads for each party. In all instances, pro-Republican groups dwarf the efforts of pro-Democratic interests, often at a rate of 3 to 1. Note specifically the efforts on behalf of Mitt Romney. Pro-Romney groups aired about 1 in every 4 ads in the entire general election campaign and more than half of all pro-Romney spots. This was a huge investment from interest groups, a presence in size and scope not before seen in American elections.[19]

On the other hand, we do not yet know how much of these pro-Republican efforts were backed by corporations or corporate wealth. For one, no corporation in 2010 or 2012 took advantage of the *Citizens United* decision to directly sponsor a pro-candidate ad. Corporations do not want to risk backlash from the public or shareholders for being too partisan in an election. This is what makes the limited disclosure required for 501(c)(4) groups so attractive, however. Corporations or corporate executives can donate significant sums to groups that can shield their identity. The inability to track such efforts limits what we can say about how much corporate money enters (and entered in 2012) federal elections.

Effectiveness of Outside Spending

The efforts of organized interests in the last few elections beg the question: Did any of this make any difference? There was much talk in the media following the 2012 election, for example, about whether the significant efforts of pro-Republican groups were for naught. Obama won a second term, after all, and Democrats gained eight House seats while also expanding their majority in the Senate. Dave Weigel at the online magazine *Slate* titled his article on the day after the election, "Take the Money and Lose." He asked, "Why did Republican [S]uper PACs waste so many millions on bad TV?"[20] That sort of macro-level assessment is suggestive, but it is not enough to declare ads from organized interests as ineffective.

There are really two ways to think about the efforts of organized interests on election outcomes. One is to count ads from groups as uniformly equal in power to ads from candidates or parties. In this approach, interest group expenditures in a campaign are added to all other pro-candidate dollars to assess the relationship between campaign spending and election results. We know from work on campaign effects that the outcome of elections—especially high profile ones like presidential contests—is in many cases highly predictable.[21] This suggests that campaigns do little to change voters' minds, except perhaps at the margins. And campaigns have their strongest marginal effects when one candidate can marshal more resources than the opposition.[22] In this first approach to measuring the impact of interest group efforts, interest group expenditures are counted in the overall pro-Democratic or pro-Republican totals to assess their role in shifting more resources to preferred candidates.

Consider the congressional elections of 2012. Figure 8.2 aggregates ad totals on behalf of House and Senate candidates by media market and state or congressional district for ads airing between September 1 and Election Day (November 6).

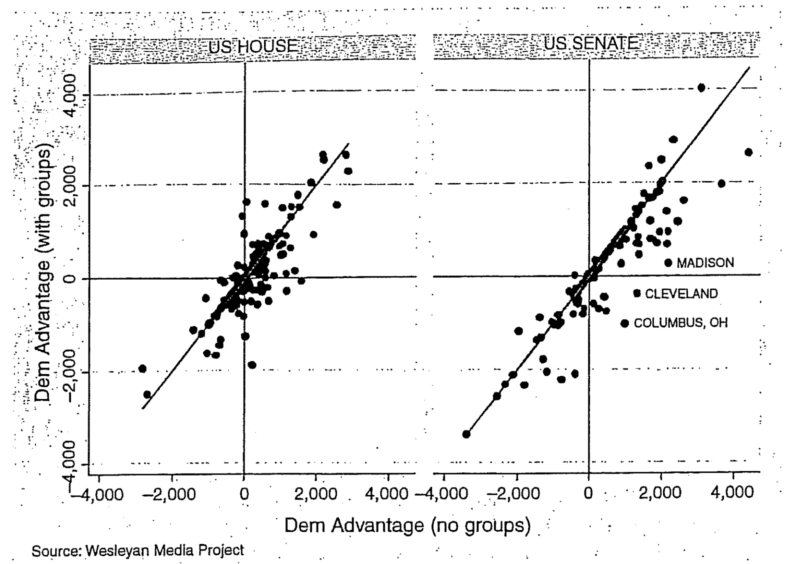


Figure 8.2 Advertising in 2012 House and Senate Media Markets

The x-axis counts all ads sponsored by candidates and parties and graphs the Democratic minus Republican totals in the market. That is, if the Democratic candidate and party aired 3,000 ads in the market but the Republican sponsored only 1,000, the advantage of ads aired is 2,000 for the Democrat. The y-axis adds interest groups into the totals, such that the balance of ads in the market now accounts for the level of support each candidate received from organized interests. In the plot, any point above the shown line is a market where interest group ads helped the Democrat with more ads on television; and any point below the line is one where pro-Republican groups moved the balance of ads in their candidate's direction.

The figure does not show these ads' impact, but shows merely how organized interests can help candidates in the overall tally of ads aired. There are lots of instances indeed where interest group ads tip the balance in the direction of their preferred candidate.[23] In some instances, in fact, the Democratic candidate might have more ads on the air than the Republican, but pro-Republican groups move the overall total to benefit the Republican. (Two media markets from the Ohio Senate race are highlighted on the graph. In Madison, Wisconsin, Democrat Tammy Baldwin heavily out-advertised Republican Tommy Thompson, but when the groups are included in the totals the candidates were at near parity.) To the extent that interest groups move the overall balance of resources in a race toward the candidate they prefer, they are able to likely move vote totals.[24] Indeed, research

that measures the effect of ad advantages in presidential elections demonstrates the ability to influence overall vote share in just this fashion.[25] The effect is also present in congressional races, though it is rare that ad imbalances account for enough of an effect to determine the actual winner.[26]

This approach to measuring potential impact makes the strong assumption, though, that all ads in a market are similarly powerful. This is a strong assumption and probably a wrong one. As any close watcher of campaign ads (and commercial advertising, more generally) knows, ads can vary in their quality and appeal. Getting a good handle on what one would count as a persuasive or effective ad is very difficult, however. And the research is not clear on sorting out differences across ad types. Scholars of campaign advertising have committed considerable resources, for example, to addressing the tone of ads. From this rich scholarship we know less than we might expect, as evidence on whether negative or positive ads are more persuasive is simply inconclusive.[27]

Some scholars have exploited the increase in interest group advertising to test some specific hypotheses about advertising effects. For example, we know that the credibility of message senders can aid or inhibit a message's influence.[28] That is, the more credible a source is, the more likely receivers are to accept the underlying message. For interest group ads, this suggests that their ads might be more effective than candidate ads, in part because candidates are viewed as less credible (i.e., they want to win an election) than an unaffiliated interest group with ostensibly more sincere goals.[29] However, the success of group-sponsored ads may be moderated by how much information voters have about the group or its financial backing, such that groups known for being partisan or relying on large donors may lose credibility.[30]

All of this points to important differences in ad effects across ad types and ad sponsors. But more work is needed to sort out what makes an ad "powerful" or not. Much of this research often relies on experimental work to test for very specific manipulations in ads, but this can leave many other features untested. We often lack bigger sets of data that point to voters' perceptions of ads.

There is one exception, though, albeit an imperfect one. In 2012, a new iPhone app, SuperPACapp, allowed viewers to use their phones to identify the funding sources of ad sponsors. A user could point their phone at an ad on television or a video on YouTube, and the voice recognition software of the application would search for a match. If one was located, the app showed the user any campaign finance information reported by the video sponsor (if there was any). The application also asked users to rate the video on a four-point metric from "fail" to "fishy" to "fair" and "love." The resulting data set was made available on the application's website, and this allows one to aggregate average rankings by sponsor.[31]

I aggregated the tens of thousands of rankings into six sponsor types—the Romney and Obama campaigns, the two party committees, and pro-Democratic and pro-Republican interest groups. The mean rankings on the four-point scale are reported in Figure 8.3. The results point to important perception differences among the application's users.

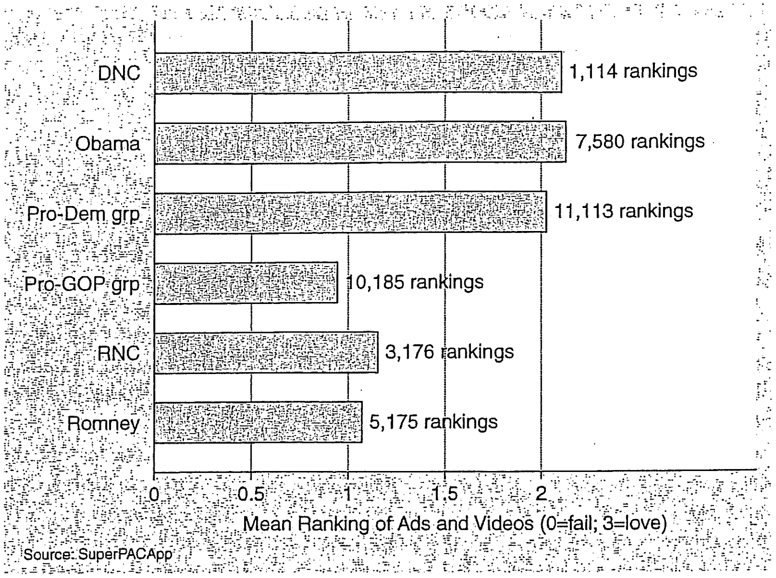


Figure 8.3 Rankings of Ads and Videos by Users of SuperPACapp, 2012

First, the Democratic ads and videos were consistently rated higher than the Republican ones. All three pro-Democratic ad sponsors scored on average above 2 on the 0–3 point scale. These were about 1 point higher than all of the pro-Republican sponsors. This is a substantively large difference and suggests that viewers were much more favorable to ads and videos that supported Obama or attacked Mitt Romney. Moreover, pro-Republican groups scored the lowest of all sponsor types (0.94 to 2.12 for Obama's ads); this finding is in line with the argument suggested earlier from media reports that Republican Super PAC money was wasted on ineffective ads.

One weakness in the data, though, is that the sample of users who rated ads is not random but self-selected. And it is likely that the universe of users was already pro-Democratic. Of the 59,000 user sessions that were identified by their state of residence, nearly 45,000 were from states that voted for Obama in 2012.[32] Excluding battleground states won by Obama still shows a blue state advantage, 21,000 sessions to 15,000 in red states.

Despite the limitations, however, the small differences within each party's set of sponsors are still instructive. All pro-Democratic ads and videos were rated high, including the DNC (2.10) and pro-Democratic groups (2.02). Users did not sort Obama's ads as being dramatically more effective than his allies. Similarly, Romney's ads were rated almost as low as pro-Republican groups (1.07 to 0.94). This suggests that there were some perceived differences in the ads within each party but not large ones. This might indicate more broadly that interest group ads are not uniformly more or less effective than candidate or party ads.[33] Message effectiveness, one might infer, is tied less explicitly to the sponsor of the ad. Of course, a data set with more pro-Romney users would help bolster the point. All told, it may not have been the case that Republican Super PAC ads were a drag on Romney, any more than if he had been able to sponsor all of the ads himself.

Issue Focus of Outside Spending in 2012

The discussion above leaves out one other issue: the content of the ads. What do interest groups bring to campaigns when they advertise? Do they introduce new issues into the debate or do they reinforce the discussions among candidates? There are positive and negatives to both potential outcomes. Interest groups could introduce new issues for consideration by voters, ones candidates might hope to avoid. Or they could be talking about a broader issue (i.e., the economy) in a way that candidates are not. This could be considered healthy from the perspective that "more debate is better." To that effect, one analysis of candidate and interest group advertising argued:

> In the post-*Citizens United* environment, an issue or theme has greater potential to be promoted even where a candidate might prefer not to raise that issue. *This would suggest that meaningful political speech is in fact more open and more accessible than it once was. While the results may be messy for individual campaigns, they do auger well for political speech.*[34] (Emphasis added).

On the other hand, interest groups might be introducing a sort of cognitive dissonance that makes it harder for voters to sort out what the election is really about. Too many issues, that is, might be too much for voters to process. This can complicate interpretations of election outcomes. Did voters elect a candidate because of attacks on the opposing candidate that were initiated by outside groups? Without such attacks, would the other candidate have won? If so, then the outcome of the election is not an affirmation of the campaign as waged by the candidate but a consequence of the issues raised by unaffiliated interest groups. Does that not complicate the candidate's hope that elections are referendums on their own campaign efforts?

Most scholarship on the question of issue debates in campaigns focuses on what opposing *candidates* talk about. One theory suggests that candidates in each party are advantaged on a set of issues—the Democrats on entitlements and the Republicans on taxes, for example.[35] If campaigns play to these strengths, we should witness issue divergence between opposing campaigns. Neither side would raise the issue on which they are perceived to have less of an advantage. The evidence for this expectation is weak, however. It seems that opposing campaigns often talk about a similar set of issues,[36] albeit from differing perspectives.[37] This is seen as healthy, in that voters are often asked to choose among candidates who are debating the direction of a similar set of public policies.

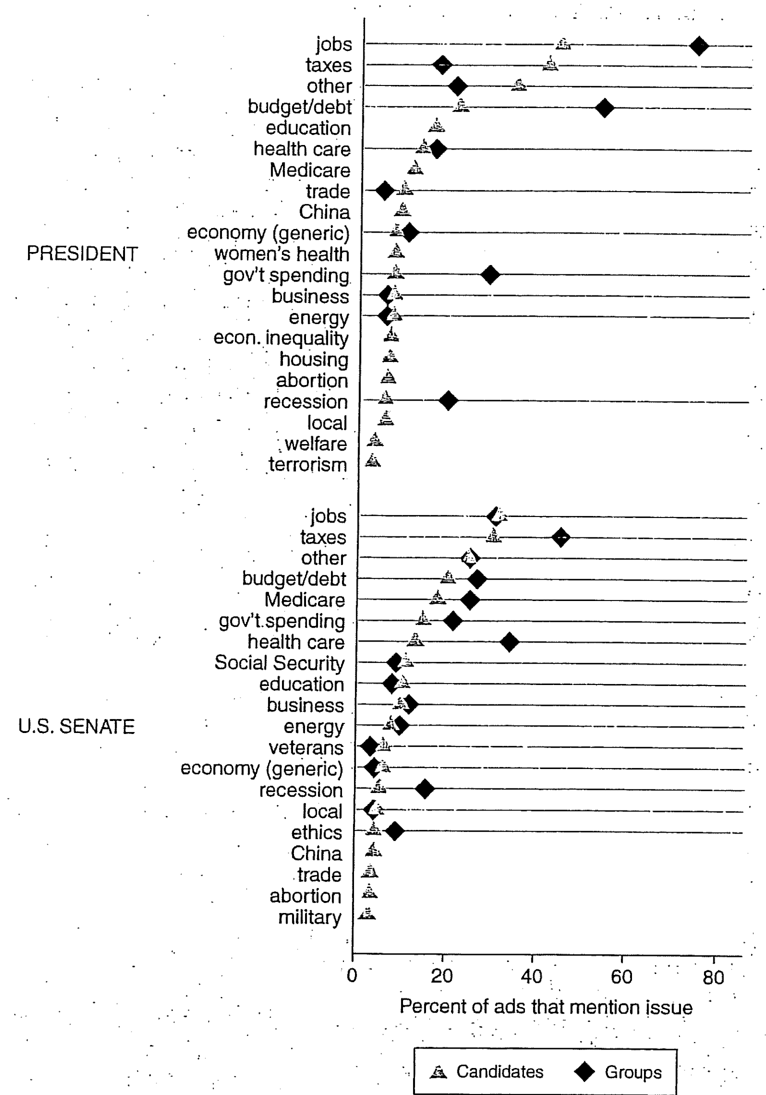
What happens when we put interest groups into the mix, however? Do they engage candidates on their terms? Or do they introduce new issues? The Wesleyan Media Project data are ideal for investigating this. The Project codes each ad aired in congressional and presidential elections on the issue content of the ads. Coders choose among a list of over sixty issues and identify as many issues in the ad that are mentioned.[38] Figure 8.4 aggregates the issues used in the 2012 presidential election as well as the 2012 Senate elections. Both graphs examine ads aired between May 2012 and Election Day in November. For the presidential election, this is essentially the entire general election period, since Romney was the presumed nominee after former Senator Rick Santorum dropped out in late April. The Senate graph lumps ads aired in all 30-plus Senate races. It would be more accurate to look at each Senate race separately, but the aggregation gives a general sense of whether any major disparities in issue focus are apparent.[39]

The graphs sort issues in descending order of mention by candidates, and they exclude any issue on the list of 60 that were not mentioned by either candidates or groups in at least 3% of their ads. An issue with a line is one where both candidates and groups devoted at least 3% of their ads to it; any issue without a line is one where only candidates or groups advertised at such levels.

The results suggest some notable differences. In the presidential election the candidates devoted significant attention to jobs and taxes, but interest groups devoted far more time to the former as opposed to the latter. Groups also focused more than half of their ads on the budget and federal debt, whereas the candidates devoted only about 1 in every 5 ads to the issue. (The heavy presence of pro-Romney interest groups—see again Table 8.2—is the primary culprit for these differences. Republican groups were far more active than Democratic groups, and the former was partial to an economic debate focused on government debt and slow job growth.) There were also disparities in the mention of government spending and the 2008 recession, where interest groups put more emphasis on both. The two candidates also made note of a host of issues that barely or did not register for groups, including education, Medicare, China, and women's health. Notably, however, we see no instances where interest groups spent considerable efforts promoting divisive social issues such as abortion or welfare. Indeed, it seems that interest groups in the presidential election put more spotlight on different types of economic questions, such as spending, the budget, and jobs.

There is a bit more consistency in the analysis of Senate ads. Here, it was interest groups that put more disproportionate focus on taxes than the candidates; and they also devoted more time to health care. But across most of the other top issues, there was a roughly proportionate level of attention for candidates and groups.

The evidence, all told, is perhaps comforting. Interest groups in 2012 injected new perspectives on some issues, namely the economy, while talking a lot about the issues on which the candidates were focused. In putting more attention on different aspects of the economy, then, interest groups may also have forced the candidates to engage with and respond to questions they may have wished to avoid. Such trends may not hold in future elections, or even if we disaggregate to



Source: Wesleyan Media Project; Only issues >3% are included

Figure 8.4 Issues Mentioned by Candidates and Groups in Ads, 2012 individual House or Senate races, but from this initial look at the data, we may have less reason to charge outside groups with upending campaigns and confusing voters with ads on random or less relevant issues.

Looking Forward

The role played by organized interest in federal elections is likely to be (and frankly, should be) a major topic of conversation in years to come, not only among scholars and policy-makers but among citizens as well. In just the last generation, the scale of interest group investments in elections has skyrocketed. It has also shifted in profile from an overwhelming focus on limited, regulated, and disclosed campaign contributions to an onslaught of campaign ads and candidate advocacy efforts often funded by large donors and with little disclosure. On the one hand, this may not represent a troubling or damaging impact on American elections. For one, as noted here, their effect on election outcomes is not yet known, but it is probably not the case that they determine the outcome of many elections. Additionally, while the ads from outside groups did refocus a lot of the debate in the 2012 presidential election, it was to other areas of the economy and fiscal matters (jobs and the debt) than it was to social issues or hot-button cultural issues.

There are reasons to be concerned, though, and they are significant. Two stand out in particular. First, many of these groups register as 501(c)(4) non-profits, and they do not disclose publicly their donors. Even Super PACs, who do disclose, can avoid it rather easily by accepting contributions from non-profits. Imagine the Center for American Democracy Super PAC claiming to be 100% transparent but accepting all of their contributions from the Center for American Democracy 501(c)(4).

Transparency is important because voters should be able to identify with some degree of precision the primary financiers of candidates, political parties, and political advocacy groups. This is primarily because democracy can only function efficiently and voters can only truly hold their elected leaders accountable if there is an abundance of information available to voters. Similarly, the existence and accessibility of these campaign finance reports can help diminish the appearance of corruption. When voters think that office holders are granting special access to large contributors, or making quid pro quo deals—all perceptions that are likely to skyrocket with fewer campaign finance laws on interest groups—voters could easily become demoralized.[40]

It should be noted that transparency is a widely accepted norm in American politics. Indeed, only one form of direct political advocacy is universally accepted as anonymous, the right to a secret ballot. Even this is not enshrined in the Constitution of the United States, however. Many other forms of campaign activity do not allow for anonymity: opinion columns and letters to the editor (which would almost never be published without author attribution), door-to-door campaigning (which requires the volunteer to appear in person),

and party caucuses (which require supporters of a candidate to visibly stand with other supporters). Even candidates' aggressive use of voters' consumer data, which they purchase from credit card companies with the hopes of better targeting likely voters, represents a form of voter identification that no voter can reasonably hope to prevent.[41] All of these forms of identification are widely accepted in American politics, and are unlikely to change. What makes campaign contributions, simply another way for volunteers and interested voters to signal support for a political cause, unique enough to demand special protections?

There is another concern worth noting. The oversized presence of interest groups in many campaigns threatens to squeeze out the roles played by candidates and political parties. There is a long debate in political science about whether parties or candidate should be at the center of our electoral process. The proponents of parties envision the Democrats and Republicans as two opposing forces, where candidates fall in line as the foot soldiers in an ideological struggle for power. Under this argument, voters have a simple choice: a liberal or conservative direction in public policy. The candidate-centered theory argues that voters should be able to mix and match their preference to reflect the strengths of individual candidates. This is the "vote the person not the party" mantra, and it accepts that voters might want a Republican Congress and a Democratic president.

These two opposing democratic theories of elections stand in stark contrast to an emerging interest group-centered electoral process, where the party committees have fewer resources than interest groups and where candidates can be drowned out by the flurry of ads coming from numerous different groups. This interest group-centered system has little to recommend it, especially when so many groups disclose little to nothing about their donor base. The results from Figure 8.4 notwithstanding, the potential is there for shadow groups to drive the issue debates in a campaign, alter the balance of ads in a race, and even help elect candidates, all without providing the voting public any evidence for what it really hopes to accomplish. The goals of parties and candidates are crystal clear: win elections and implement a fairly transparent political philosophy. But what groups with generic names like Priorities USA, the Center for Individual Freedom, and American Crossroads hope to accomplish is simply unknown. Is it a set of public policies that run counter to the interests of the larger electorate? Only with a deeper discussion among the voting public can the influence of interest groups be sorted out. Are Americans comfortable with such groups being a large presence in elections, for example?

The 2012 election was a truly momentous one. In no election in modern times have interest groups been so involved in persuading voters to cast a ballot one way or the other. Only time will tell whether the groups' donors see this sort of investment as worthwhile. So long as the parties are polarized, however, and each side sees control of Congress and the White House as within grasp, we are likely to see heavy levels of interest group spending in the coming years. In that sense, 2012 may only be the beginning of a new phase in American elections.

Notes

1 For a review of these and other campaign finance laws, see Anthony Corrado. "Money and Politics: A History of Campaign Finance Law," in *The New Campaign Finance Sourcebook*, ed. Anthony Corrado, Thomas Mann, Daniel Ortiz, and Trevor Potter (Washington, DC: Brookings Institution Press, 2005).

2 Another type of PAC is a "non connected" PAC that does not have a union, membership, corporate, or trade association sponsor. They can accept contributions from the general public.

3 Values from a Campaign Finance Institute report: "The Cost of Winning a House Seat, 1986–2010," http://www.cfinst.org/data.aspx.

4 The reported amount from PACs also includes any contributions received from leadership PACs, which are maintained by other elected officials. These are not rightly understood as traditional PACs. However, these leadership PACs abide by the same $5,000 contribution limit, and so excluding them does very little to change the appearance of the graph. All figures here are from reports to the FEC at the beginning of 2013. Some figures will change as candidates amend their reports. The graph excludes any outside values from the visualization.

5 Stephen Ansolabehere, John M. de Figueiredo, and James M. Snyder, "Why Is There So Little Money in Politics?" *Journal of Economic Perspectives* 17, no. 1 (2003): 105–30.

6 Frank Baumgartner, Jeffrey Berry, Marie Hojnacki, and Beth Leech, *Lobbying and Policy Change: Who Wins, Who Loses, and Why* (Chicago: University of Chicago Press, 2009).

7 They remain capped for union, corporate, and trade association PACs. However, non connected PACs can run what are called "hybrid" PACs that accept limited donations for the purpose of contributions to candidates and unlimited contributions for the purpose of independent expenditures. This "hybrid" operation was first allowed in 2011.

8 This point is notwithstanding the presence of some high-profile independent expenditures in the 1980s, most especially from one group, the National Conservative Political Action Committee, which invested resources in some competitive Senate races in 1980 and 1982.

9 See also Michael Franz, *Choices and Changes: Interest Groups in the Electoral Process* (Philadelphia: Temple University Press, 2008).

10 Some of the overturned elements involved spending limits for candidates and PAC independent expenditures.

11 There were a number of court cases in the 1980s that involved the parameters of campaign finance laws. But these cases were not in response to a particularly large amount of spending by outside groups in the elections of the 1980s.

12 Nolan McCarty, Keith Poole, and Howard Rosenthal, *Polarized America: The Dance of Political Ideology and Unequal Riches* (Boston: MIT Press, 2006).

13 Some of these cases included *FEC v. Christian Action Network, Inc.* (1996, Fourth Circuit Court of Appeals) and *Maine Right to Life Comm. v. FEC* (1997, First Circuit Court of Appeals).

14 Parties used the same loophole, but to ostensibly fund party branding messages. As with interest groups, parties crafted pro-candidate messages funded with unregulated money that stopped short of directly calling for that candidate's election.

15 Traditional PACs were not the vehicles for issue advocacy in this time period. These groups, in registering with the Federal Election Commission, conformed to restrictions on all of their fund-raising. As a result, PACs' parent groups would often fund issue advocacy efforts—for example, trade associations, business leagues, and unions.

16 There were exceptions for ads distributed via mail or print media, and for peer-to-peer mobilization and Internet communications. These forms of voter outreach were still governed by the "magic word" test.

17 Two other non-profit classifications are relevant here as well: 501(c)(5) unions and 501(c)(6) business leagues. They follow the same set of rules for non-profit classification as the social welfare 501(c)(4)s.

18 For a nuanced take on union power in American elections, see Peter Francia, "Do Unions Still Matter in U.S. Elections? Assessing Labor's Political Power and Significance," *The Forum* 10, no. 1, Article 3 (2012).

19 With respect to Table 8.2, it should also be noted that many campaigns feature almost no ads from outside groups. These are mostly for races where the outcome is not very competitive. As such, the presence of groups in competitive campaigns can often be quite larger than the percentages indicated in the table. But conversely, interest groups are essentially absent from a majority of campaigns.

20 http://www.slate.com/articles/news_and_politics/politics/2012/11/gop_super_pacs_republican_donors_spent_millions_on_tv_ads_and_got_almost.single.html

21 See, for example, the research on presidential forecasting. For a forecast of the 2012 election, see James Campbell, "Forecasting the Presidential and Congressional Elections of 2012: The Trial-Heat and the Seats-in-Trouble Models," *PS: Political Science & Politics* 45, no. 4 (2012): 630–34.

22 Michael D. Jones and Jorgensen D. Paul, "Mind the Gap? Political Advertisements and Congressional Election Results," *Journal of Political Marketing* 11, no. 3 (2012): 165–88.

23 The graph does not scale the markets to reflect population size, and it should be remembered that not all media markets have similar numbers of voters.

24 Interest groups boost candidates, however, somewhat inefficiently. Interest groups essentially drive up election costs because they generally pay more for ads than candidates do. Federal candidates are required by law, specifically Section 315(b) of the Communications Act of 1934 (as amended), to get a discount on radio and television ads: the "lowest unit rate." This applies to ads aired by candidates within 45 days of a primary and 60 days of a general election. Interest groups do not similarly benefit, and it is understood that broadcast stations can use competitive elections to charge very high rates on interest group ads.

25 See, for example, Michael Franz, "Interest Groups in Electoral Politics: 2012 in Context," *The Forum: A Journal of Applied Research in Contemporary Politics* 10, no. 4 (2012): 62–79 Michael Franz and Travis Ridout, "Political Advertising and Persuasion in the 2004 and 2008 Presidential Elections," *American Politics Research* 38, no. 2 (2010): 303–29.

26 Jones and Jorgensen, "Mind the Gap?"

27 Richard Lau, Lee Sigelman, and Ivy Brown Rovner, "The Effects of Negative Political Advertisements: A Meta-Analytic Reassessment," *Journal of Politics* 69:4 (2007): 1176–1209.

28 David Sears and Richard E. Whitney, *Political Persuasion* (Morristown, NJ: General Learning Press, 1973).

29 Deborah Jordan Brooks and Michael Murov, "Assessing Accountability in a Post-Citizens United Era: The Effects of Attack Ad Sponsorship by Unknown Independent Groups," *American Politics Research* 40, no. 3 (2012): 383–418.

30 Christopher Weber, Johanna Dunaway, and Tyler Johnson, "It's All in the Name: Source Cue Ambiguity and the Persuasive Appeal of Campaign Ads," *Political Behavior* 34, no. 3 (2012): 561–84; Amber Wichowsky and Conor M. Dowling, "Who's Behind the Curtain? Interest Groups and Anonymity in Political Advertising" (paper delivered at the Annual Meeting of the Midwest Political Science Association, 2011).

31 The data are available also from the author on request.

32 54,000 uses of the application could not be identified by the state of the user. Not all users rated an ad. Only about 37,000 users rated an ad or video.

33 There are differences within the interest group categories when looking at specific ad sponsors. Among pro-Romney groups, American Crossroads' ads and videos scored the highest, with 1.11 on the 0–3 scale. The N for each sponsor declines significantly, however, when the data are disaggregated in this way.

34 Kenneth Goldstein, David A. Schweidel, and Mike B. Wittenwyler, "Lessons Learned: Political Advertising and Political Law," *Minnesota Law Review* 96, no. 5 (2012): 1753.
35 John R. Petrocik, William L. Benoit, and Glenn J. Hansen, "Issue Ownership and Presidential Campaigning, 1952–2000," *Political Science Quarterly* 118, no. 4 (2003: 599–626.
36 Noah Kaplan, David K. Park, and Travis N. Ridout, "Dialogue in American Political Campaigns? An Examination of Issue Convergence in Candidate Television Advertising," *American Journal of Political Science* 50, no. 3 (2006): 724–36.
37 John Sides, "The Origins of Campaign Agendas," *British Journal of Political Science* 36, no. 3 (2006): 407–36
38 If a coder noted an issue that was not on the pre-populated list of 60, they could enter it manually in a separate column, after selecting "Other." The data reported below use only the list of 60 issues, however. Coding of the 2012 election is not complete, though over 90 percent of the ads have been coded as of early 2013.
39 One could also separate out the candidates by party and compare against pro-Democratic and pro-Republican groups separately.
40 Such claims, of course, require evidence. The relationship between disclosure laws and trust in government or political efficacy is murky, and any positive effects are likely small. See, for example, David Primo and Jeffrey Milyo, "Campaign Finance Laws and Political Efficacy: Evidence from the States," *Election Law Journal* 5, no. 1 (2006): 23–39. Most studies on the question focus on state campaign finance laws, however. With the dramatic expansion of outside spending at the federal level in 2012, it is probably important to study the question more.
41 This is called "micro-targeting." See Sunshine Hillygus and Todd G. Shields, *The Persuadable Voter: Wedge Issues in Presidential Campaigns* (Princeton, NJ: Princeton University Press, 2008).

Chapter 9

When Does Money Buy Votes?

Campaign Contributions and Policymaking

Christopher Witko

In the midst of the Senate debate over the Patient Protection and Affordable Care Act (aka "Obamacare") in late 2009, Ben Nelson, a Democratic senator from Nebraska, was wavering on whether to support the bill. In what some humorously called the "Cornhusker Kickback," Nelson obtained federal funding for Nebraska to cover its Medicaid expansion required by the bill. Less notoriously, Nelson also bargained for a provision that resulted in Nebraska insurance companies paying tens of millions of dollars less in fees than they otherwise would have. A story on the website *The Huffington Post* pointed out that in the last several years Nelson's campaigns received $650,000 from the insurance industry.[1] The implication was clear—Ben Nelson rewarded his campaign contributors with millions of dollars in financial benefits. Did Ben Nelson make this deal because he received campaign contributions from the insurance industry? More generally, when and how do campaign contributions influence policy-making?

How campaign contributions influence government decisions and policy outcomes is a critical question. News stories suggesting that politicians exchange votes or other policy benefits for campaign contributions are common in the media and in the public consciousness and many critics view the system of campaign contributions as little more than "legalized bribery." If campaign contributions are simply legalized bribery, then a fundamental restructuring of the system of campaign finance is called for, since this makes a mockery of the ideal of political equality embodied in legal doctrines like "one person, one vote." But empirical studies of campaign contributions show that the effect is complex and inconsistent across different issues, decisions, and stages of the policy process. Campaign contributions are clearly not simple quid pro quos. In the Ben Nelson example discussed above, Nelson's help of home state companies can be viewed as helping out constituents, since large insurers provide many jobs. Considering the fact that Nelson decided to retire without another reelection campaign and therefore had no reason to continue to need insurance company money, it is extremely unlikely that he fought for this legislative provision because of campaign contributions. Nevertheless, based on numerous studies, it seems clear that campaign contributions can influence government decisions under some conditions, and I consider how campaign contributions may influence policy in this chapter.