

EVIDENCE OF SPENDING'S IMPACTS ON ELECTORAL AND LEGISLATIVE OUTCOMES

While there are many opinions and suspicions about the impacts of Money in Politics (MIP), it is important to find evidence of actual impacts in order to assess whether reforms in the current system are justified. The Supreme Court used over 100,000 pages of evidence in its deliberations in the case of *McConnell v. FEC* (2003), and the majority opinion found that the evidence supported most of the reforms that were passed in the 2002 Bipartisan Campaign Reform Act, commonly known as McCain-Feingold. Court majority opinions in the more recent *Citizens United* (2010) and *McCutcheon* (2014) cases have not relied upon systematically collected empirical evidence in their arguments. This issue paper examines evidence about possible impacts of MIP that meets standards for research quality.

Research on whether MIP has had impacts on election outcomes and legislative actions is extensive. This brief review focuses on 3 types of evidence about whether campaign contributions have negative effects on politics: public opinion surveys, recent experience of participants in the political process, and scholarly research in the political science literature. While some works cover data collected prior to the year 2000, the emphasis is on research available since the year 2000.

Public Opinion Surveys

Public opinion about the integrity of elections and the actions of elected officials is an important source of data in assessing whether campaign contributions create corruption or the appearance of corruption.¹ Public opinion relates to trust that the political system yields legitimate and fair policies that represent the will of the citizenry. Research prior to 2000 found that a substantial majority of citizens believed that large campaign contributions had significant negative impacts on officeholders' actions and led to corruption in government, according to an analysis of over 40 years of public opinion data.² For example, one survey found that 84% of respondents agreed that "Members of Congress will be more likely to listen to those who give money to their political party in response to solicitations for large donations."³

Public opinion since the 2010 *Citizens United* decision has indicated a high level of criticism for expanding the rights of corporations and other organizations to give unlimited contributions in campaigns. For example, a survey by Public Citizen in July 2014 found that 61% of likely voters opposed the Supreme Court decision, including 61% of registered Democrats, 58% of registered Republicans, and 62% of independents.⁴ Widespread concern about MIP has become clear. By May 2015, a poll conducted for the *New York Times* and CBS News found that 84% of the respondents believe that money has too much influence in politics. This view was held across the political spectrum, including 80% of the registered Republicans, 90% of registered Democrats, and 84% of independents.⁵ No studies were found that reported a high level of satisfaction with the current state of campaign financing.

Political Participant Experience

The 2003 *McConnell* Supreme Court decision used a substantial amount of testimony from Congressional hearings that had been given by participants in the political process in the 1990s.⁶ For example, the Court found that donors frequently gave to political parties in order to seek influence. Robert Rozen, an experienced lobbyist at the firm of Washington Council Ernst & Young, testified about the motivations of donors:

They give soft money because they believe that's what helps establish better contacts with members of Congress and gets doors opened when they want to meet with Members. There is no question that money creates the relationships. Companies with interest before particular committees need to have access to the chairman of that committee, make donations, and go to events where the chairman will be... The large contributions enable them to establish relationships, and that increases the chances they'll be successful with their public policy agenda. Compared to the amounts that companies spend as a whole, large political contributions are worthwhile because of the potential benefit to the company's bottom line.⁷

To update knowledge about the current state of opinion and experience of participants in the political process, Tokaji and Strause conducted a major empirical study of the views of recent participants in Congressional electoral and legislative arenas about the impacts of the “new soft money,” that is, independent campaign expenditures. This study focused on the 2012 election cycle and 2013 year in Congress. They interviewed a wide range of political actors across the political spectrum, including incumbents and former members of Congress, candidates who won and lost elections, campaign and legislative staff members, and representatives of various interest groups who played roles in the political process.⁸ The respondents in this study agreed that the substantial growth in the amount of independent campaign spending in the past few years has created significant impacts on campaign activities and some impacts on the legislative process.⁹

Tokaji and Strause identified three major findings about the impacts of independent spending on campaigns.¹⁰ The first relates to increasing pressure for fundraising because of the uncertainty about whether a campaign would be targeted for attention by outside groups, coupled with shifting preferences by donors to give to Super PACS rather than directly to candidates or to state and local political parties. Secondly, candidates and campaign staff complained that they often lost control of their message when a high number of independently funded ads dominated communication channels to voters. The content of independently funded ads is often negative and can reflect unfavorably on the candidate if voters do not know who is sponsoring negative ads. Lastly, the issue of coordination between campaigns and independent groups is murky. Explicit coordination violates FEC regulations, and no evidence of illegal coordination was admitted by the interviewees themselves. However, the respondents believed that candidates “do engage in cooperation through a tapestry of signals that allow them to pursue their electoral goals in concert.”¹¹

The legislative arena is the other place where the impacts of independent campaign spending raise concerns. Tokaji and Strause found both primary and secondary impacts from their interviews.¹² One primary impact is the implied and sometimes explicit threats made to

incumbents that independent spending will target them in the next election if they do not support a particular position of the donor. A second primary effect involves agenda-setting. The amount of campaign contributions can affect whether an issue is given attention or not in the next Congressional session. Secondary impacts relate to less time available for legislative and constituent work due to greater time spent in fundraising, increased partisan polarization because more funding comes from extreme right- and left-wing sources, and lower levels of public trust when citizens perceive that legislative activity is for sale.

Academic Research

While public opinion surveys and studies of participant experiences provide support for concerns about MIP, empirical research in the political science literature has not found much evidence of significant impacts. Regarding impacts on election outcomes, researchers have found that elections are very complex phenomena to study in the aggregate because many factors can influence who wins and who loses a particular campaign. Isolating the impacts of campaign financing is challenging, except for the basic finding that the more challengers spend, the more votes they receive, and in recent years, the more that incumbents spend, the relatively fewer votes they receive.¹³ This finding says nothing about the source of funds, nor does it mean that challengers necessarily win, but only that they are not likely to win unless they spend a significant amount of money.¹⁴

Many factors can have an effect on who wins and who loses an election, such as candidate characteristics (e.g., political ideology, age, gender, communication skill), constituency characteristics (e.g., political ideology, turnout, income, age, gender), and situational factors (e.g., competing candidates, perceptions of economic welfare, national political trends, endorsements). The most significant factor that has been correlated with who wins elections is incumbency, but this advantage has been declining in the House of Representatives over the 2004-2014 period compared to the past in districts that favor the challenger's party because these elections have become more highly partisan and "nationalized."¹⁵ It is likely that the increase in heavily financed campaigns of challengers in recent years has weakened the benefit of incumbency.

Regarding the impacts of MIP on legislative decisions made by officeholders, some empirical research found little evidence that links contributions to specific votes before the year 2000, except for low-visibility and often nonpartisan issues,¹⁶ after taking into account other factors such as party affiliation, political ideology, and constituent views and needs. But Stratmann identified some specific instances where business campaign contributions appeared to influence House members' votes in the 1990s.¹⁷ Political corruption is not uncommon in the U.S., especially at the state and local levels, but it typically occurs as bribery or extortion to receive a government contract or favorable treatment.¹⁸ The Supreme Court and most scholars agree that *quid pro quo* corruption related specifically to campaign contributions (that is, an agreement to give a campaign contribution in exchange for a specific vote or other favorable action) is relatively rare or rarely discovered. Exposure of *quid pro quo* bribery is believed to be rare so there are not enough cases for empirical research.

In terms of a broader definition of corruption beyond *quid pro quo* bribery, research has recently addressed whether distortion, undue influence, or misalignment occurs and might be related to wealthy donors giving campaign contributions. Research has focused on whose interests are served by a legislator's votes. In other words, are legislators responsive to the interests of their constituents or to their donors?

Strong evidence supports the view that legislators are more responsive to the interests of the upper-income segments of society but not responsive to middle-income and lower-income constituents.¹⁹ For example, Bartels found that the interests of high-income citizens are disproportionately favored in Senators' votes compared to preferences of middle-income and low-income citizens.²⁰ A study by Ellis reported that the "preferences of lower income citizens are significantly less well represented than those of wealthier citizens in the voting behavior" of their House representatives, even after taking into account levels of education and political engagement.²¹ Another study found a high level of congruent values at the extreme ends of the political spectrum between contributors and elected members of Congress.²² This fact alone is not surprising because one would not expect many donors to contribute to the campaigns of candidates with whom they disagree, but the fact that the more centrist political values of the general electorate are not congruent with their members of Congress helps to explain the misalignment between typical voters and their representatives. In addition, when taking into account the fact that the top 0.01% of citizens contributes over 40% of campaign contributions,²³ it is logical that legislators will be aware of wealthy donors' interests and how these interests will be affected by legislative proposals.

Gilens and Page in a recently published book presented evidence about how much influence average citizens, economic elites, and interest groups have on public policy across a very large number of issues (1,779) and over a long period of time (1981-2002).²⁴ They used public opinion data on specific public policy issues and then tracked what happened on these issues over a 4-year period following the public opinion survey. Their analysis found that average citizens and broad-based interest groups (such as the AARP, Christian Coalition, and Veterans of Foreign Wars) have little independent influence on U.S. government policy. By contrast, economic elites and interest groups representing business and the professions have substantial independent influence on public policy. This research documents that a misalignment exists between what the average citizen wants governmental policies to be on specific issues and what these policies actually are. In doing so, it raises questions about the interests to which officeholders are responding and whether the bias toward economic elites is related to Money in Politics.

¹ The appearance of corruption was included as a legitimate reason for regulating campaign contributions, in addition to actual corruption, at least as far back as the landmark *Buckley v. Valeo* (1976) decision.

² An analysis of 40 years of public opinion data on corruption in government and campaign finance, including data presented in the *McConnell vs. FEC* (2003) Supreme Court case, is provided in Nathaniel Persily & Kelli Lammie, 2004. "Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law." 153 *University of Pennsylvania Law Review*, 119-180.

³ Persily and Lammie, p. 140.

⁴ Public Citizen's survey results are available at <http://billmoyers.com/2014/11/21/majority-americans-want-money-politics/>

⁵ This survey is reported in the June 2, 2015 issue of the *New York Times*, available online at <http://www.nytimes.com/interactive/2015/06/02/us/politics/money-in-politics-poll.html>.

⁶ A careful analysis of how the Court used this testimony is found in Renata E.B. Strause & Daniel P. Tokaji, 2014. "Between Access and Influence: Building a Record for the Next Court." *Duke Journal of Constitutional Law and Public Policy*, 9(1), 179-221.

⁷ *McConnell v. FEC*, 540 U.S. 96, 148 (2003); *McConnell*, 251 F.Supp.2d at 492-93 (Kollar-Kotelly, J.).

⁸ Daniel P. Tokaji & Renata E. B. Strause. 2014. *The New Soft Money: Outside Spending in Congressional Elections*. The Ohio State University Moritz School of Law. Available at: <http://moritzlaw.osu.edu/thenewsoftmoney/wp-content/uploads/sites/57/2014/06/the-new-soft-money-WEB.pdf>. The careful research methodology for this study, including selection of the persons interviewed and interview methods, is described on p. 2-4.

⁹ Tokaji & Strause, p. 2.

¹⁰ Tokaji & Strause, Ch. 4 on "Campaigns."

¹¹ Tokaji & Strause, p. 60.

¹² Tokaji & Strause, Ch. 5 on "Governance."

¹³ See Gary C. Jacobson, 2015. "How Do Campaigns Matter." *Annual Review of Political Science*, 18, 31-47.

¹⁴ See Gary C. Jacobson, 2015. "How Do Campaigns Matter." *Annual Review of Political Science*, 18, 31-47.

¹⁵ See Gary C. Jacobson, 2015. "It's Nothing Personal: The Decline of the Incumbency Advantage in U.S. House Elections." *Journal of Politics*, 77(3), 861-873.

¹⁶ See the review of 36 studies of corporate PAC contributions in Stephen Ansolabehere, John M. de Figueirdo, & James M. Snyder, Jr. 2003. "Why Is There So Little Money in Politics?" *Journal of Economic Perspectives*, 12(1), 105-130.

¹⁷ Thomas Stratmann, 2002. "Can Special Interests Buy Congressional Votes? Evidence from Financial Services Legislation." *Journal of Law and Economics*, 45(2), 345-374; Thomas Stratmann, 2005. "Some Talk: Money in Politics. A (Partial) Review of the Literature." *Public Choice*, 124, 135-156.

¹⁸ For example, the Dept. of Justice Public Integrity sends an annual report to Congress about the number of individuals convicted of federal level corruption. More than 20,000 individuals were convicted in 2012.

¹⁹ See the review by Nicholas Stephanopoulos, 2015. "Aligning Campaign Finance Law." *Virginia Law Review*, 101, forthcoming.

²⁰ Larry M. Bartels, 2008. *Unequal Democracy: The Political Economy of the New Gilded Age*. Princeton. Princeton University Press.

²¹ Christopher Ellis, 2012. "Understanding Economic Biases in Representation: Income, Resources, and Policy Representation in the 110th House." *Political Research Quarterly*, 65(4), 938-951.

²² Bafumi & Herron found a highly bimodal distribution of ideal value preferences of campaign donors and members of Congress, compared to the normal distribution of non-donors. Joseph Bafumi & Michael C. Herron, 2010. "Leapfrog Representation and Extremism: A Study of American Voters and Their Members of Congress." *American Political Science Review*, 104, 519-542.

²³ Cited in Martin Gilens, 2012. *Affluence and Influence: Economic Inequality and Political Power in America*. New York. Russel Sage Foundation and Princeton University Press; Bonica, McCarty, Poole, & Rosenthal, 2013. "Why Hasn't Democracy Slowed Rising Inequality?" *Journal of Economic Perspectives*, 27, 103-124.

²⁴ Martin Gilens & Benjamin I. Page, 2014. "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens." *Perspectives on Politics*, 12(3), 564-581.