A NEO-MADISONIAN PERSPECTIVE ON CAMPAIGN FINANCE REFORM, INSTITUTIONS, PLURALISM, AND SMALL DONORS

By Michael J. Malbin[1]

ABSTRACT

This paper steps away from the speech-and-corruption debates that have dominated campaign finance conversations since *Buckley v. Valeo.* It offers a policy proposal that fits well within current constitutional law while being more effective at addressing systemic inequalities than alternatives requiring a constitutional amendment. The approach urges a bifocal lens that views the effects of any proposal on the institutions of government while, *at the same time*, bringing a more diverse range of voices into the process. It calls the approach "neo-Madisonian" because it begins from the Federalist vision of a multi-factional and deliberative Congress, tempered by two major departures relating to parties and pluralism.

The paper agrees with scholars who see parties as important but disagrees with shaping campaign finance to enhance the power of national party leaders. The way members spend their time raising funds instead of legislating, the use of member "dues" as a basis for selecting committees, and the repeated use of "message voting" to differentiate the two teams, are symptoms of a larger disease that hampers Congress's ability to perform its needed constitutional role.

With respect to pluralism, the paper argues that the large-republic framework has clear advantages but has left too many on the outside. Small-donor public financing is sometimes proposed as a remedy. The paper rejects empirical claims linking small donors to extremism but sees good reason to ask whether some currently active proposals would reinforce today's maladies. The paper, therefore, ends with an extended analysis of, institutionalist argument for, and new empirical evidence supporting a form of public financing that would empower within-district small donors.

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This is a paper about campaign finance reform shaped partly by surrounding events. The words are being written at a time of pandemic-inspired uncertainty, overlaid by concerns about racial inequality. Like global warming and structural budget issues, these matters will take years to address. Positive action will involve costs; inaction will cost more. None will be easy politically. Balancing and a sense of shared enterprise will be crucial. If the United States is to provide future generations with the opportunities of those past – indeed, if it is to provide better opportunities for a broader swath of its citizens – its representative institutions need to be repaired. Those institutions need to encourage thoughtful deliberation better than they do now. But they also need to incorporate more voices and their policies must be accepted broadly as legitimate. *All* of those features are important for healthy institutions in a democracy, and institutional health is a precondition for long-term success.

The paper, therefore, steps away from the speech-and-corruption debates that have dominated campaign finance conversations since the *Buckley v. Valeo* decision of 1976.[2] When considering policy, as opposed to constitutionality, it urges a bifocal lens that views the effects of any proposal on the institutions of government while *at the same time* striving to incorporate a full range of voices into the process in a manner that satisfies constitutional requirements. The need for an institutional lens may seem obvious but is not. A literature review of the justifications scholars and policymakers typically put forward when discussing money-in-politics shows a remarkably large number of goals. These include reducing corruption, equalizing political power, fostering greater diversity among donors and officeholders, heightening competition, and changing the conduct of election campaigns. (A compilation of these objectives, with citations, appears as an Appendix to this paper.) While a number of these goals can be thought of as important parts of the whole, it is nevertheless striking that almost none gives its primary emphasis to enhancing the performance of representative legislatures.

To counterbalance such relative silence, this paper puts forward an alternative perspective it calls neo-Madisonian. This vantage point is closely related to one that political scientists might describe as being neo-institutionalist. An institutional or neo-institutional approach is one that sees institutional rules and norms structuring both the way politicians gain office and the flow of decision-making within office. The rules and norms are seen as forces channeling the behavior of officeholders, along with certain aspects of the policies they produce. The approach is called neo-***Madisonian*** (to emphasize the second half of the phrase) because it begins from the self-described "new political science" that Madison and his colleagues put forward around the time of the Constitution's framing. Specifically, Madison and his colleagues wanted to create a legislative branch whose members felt an incentive to deliberate, bargain and compromise as they formed governing majorities out of a purposely complex multiplicity of factions. Among

[2] *Buckley v. Valeo*, 424 U.S. 1 (1976).

other things, this paper will argue for the importance of maintaining an eye on this goal, whatever else one may be trying to accomplish.

However, the approach is called ***neo***-Madisonian (emphasizing the phrase's first half) because of two major departures. The first involves a discussion of political parties in contemporary politics; the second is about correcting a flaw. With respect to political parties, this paper – like Madison himself in the 1790s – recognizes that the government's formal institutions had to be supplemented by parties to fill out the original design. In this respect, the paper shares much with modern party scholars who criticize some reformers' inattention or even hostility to the role parties can play. However, the paper parts company with many of these scholars over the vision of parties put forward. Many modern party scholars argue for strengthening national party organizations. This paper will argue that the strong local and state parties of the nineteenth and early twentieth century did help support Madisonian goals, but today's polarized and nationalized parties are helping to thwart them. For that reason, the second section of this paper will lay bare how current fundraising and committee selection practices undermine deliberation, with the power of nationalized parties and party leaders sitting at the heart of the malady.

The other departure from a purely Madisonian vision relates to one of its key side-effects. The paper will argue that precisely because of the large republic's positive qualities, it is important to acknowledge and work toward correcting a major problem it has helped to exacerbate. The system is designed to promote bargaining and compromise among a multiplicity of factions, but only among those who are represented at the bargaining table. Complexity makes majority tyranny less likely, but it also makes it harder for some citizens to be heard. The third and longest section of this paper, therefore, argues that accepting the benefits of Madisonian institutions should come together with an obligation to address this effect. The campaign finance system cannot resolve the problem by itself, but it can help further this end by giving citizens a stronger incentive to make small contributions and giving candidates a stronger incentive to mobilize small donors. Doing so is fully consistent with current constitutional law.

One concern has been that the emphasis on participation could well overshoot the mark because small donors are said to foster ideological extremism within the parties, making bargaining and deliberation across parties more difficult. After reviewing the evidence, the paper concludes that the evidence does not support the claims about extremism but nevertheless does point to a legitimate concern about something related. Closer to the heart of the problem is a nationalization of active interest groups and parties, sorted into hostile camps, with not enough play in the joints for a more flexible form of deliberation by legislators. As a policy response, the paper argues for pursuing institutional deliberation and broader participation at the same time. It analyzes several forms of public financing, with detailed analysis (including predictive modeling) of a new New York State law that will offer generous matching funds not to multiply internet-based national networks, but to enhance the importance of local small donors.

Finally, the paper draws boundaries around its argument. It does not claim that campaign finance policies by themselves are powerful enough to reverse the forces that have polarized legislatures. But they can help, and they can do so while taking a serious step to counter one of the otherwise valuable Madisonian framework's key flaws.

I. A NEO-MADISONIAN PERSPECTIVE

James Madison had nothing to say about money in politics. How can his views have had anything useful to tell us about it today? This paper argues that the Federalist perspective on institutions in fact offers a good vantage point. It will not present the historical Madison's views on free speech[3] or claim that he would have agreed with all of the policies to be put forward here. Rather, this is about the importance of institutions in shaping behavior in a democratic republic.

A. Madison

It is tempting to begin analyzing Madison by going straight to *Federalist No. 10*, but this would start in the middle. *Federalist No. 10* was a response to an argument made by opponents of the Constitution who shared many core principles with the Constitution's supporters.[4] Almost all of the Federalists and Anti-Federalists of 1787-89 agreed that a new government should be republican in form.[5] Or, as Madison stated forcefully in *Federalist* Nos. 46, 51, and 52, the government ultimately should be "dependent" upon the people.[6] The major disagreement was about what kind of democratic republic it should be. As is well known, Anti-Federalists generally accepted Montesquieu's classical view that liberty is best nurtured in a small republic. Madison rejected this in the Federalists' most original contribution to political thought, which appeared most fully in *Federalist* No. 10. In that paper Madison said the best way to prevent a durable and cohesive majority from running roughshod over the minority in a democracy is to extend the republic's sphere and encourage a multiplicity of factions to form, thus making it hard for one faction to dominate.

This part of Madison's argument is familiar but negative. It is about preventing or delaying bad outcomes. But prevention was not the Constitution's end goal. The animating spirit was to create a government powerful enough to act and with a will to do so. In this spirit, *Federalist* 10 shifted to the positive effects of a large republic. Large republics had to be indirect (rather than direct) democracies based on delegation or representation. This, in turn, would have independent effects on the system.

> The effect [of delegation] . . . is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country. . . . On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people.[7]

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[3] One recent article that does interpret the historical Madison on speech in a campaign finance context is Anthony J. Gaughan, *James Madison, Citizens United, and the Constitutional Problem of Corruption*. AMERICAN UNIVERSITY L. REV. 69:101 (forthcoming, 2020). Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3584394.

[4] HERBERT J. STORING, WHAT THE ANTI-FEDERALISTS WERE FOR: THE POLITICAL THOUGHT OF THE OPPONENTS OF THE CONSTITUTION (1981).

[5] GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787 (1969).

[6] ALEXANDER HAMILTON, JAMES MADISON, AND JOHN JAY, THE FEDERALIST, (Jacob E. Cooke, ed. 1961). Hereinafter cited as THE FEDERALIST.

[7] THE FEDERALIST, No. 10 (James Madison), *supra* note 6 at 62.

It is important not to be deceived by the first part of this description. Representation *will* refine and enlarge the public's views. But the word "refining" was being used in the sense of distilling or purifying. If done properly, this *may* serve the public good. However, Madison was also making clear that representation could refine (or distill) in a manner that betrayed the public interest. The job of a constitution-writer is to devise institutions that will lead the government to bend toward the better of these alternatives.[8]

This is pursued through what Hamilton described in *Federalist* No. 9 as a new science of politics. That science assumed office-holders (like most people) would act most of the time out of self-interest or ambition. The best-known statement is in the famous comment in *Federalist* No. 51 about relying on ambition to counter ambition to preserve the balance of political power across institutions. But structural rules were also meant to shape the incentives for behavior *within* institutions. For example, large congressional districts meant that representatives would likely have to appeal to many factions to be elected. Within the legislature, multiple factions meant that bargaining and compromise would be needed to enact laws. And because factions form around and across multiple interests, majorities would be fluid. This would be true from the outset but would become even more so as the commercial economy became more complex and interests coalesced around the different *kinds* as well as amounts of property.[9]

In the electoral sphere, terms of office were made long enough to give Senators and (to a lesser extent) House members enough time to have some breathing space between legislating and the next election. Consistent with this, the framers rejected proposals to give constituents the power to instruct their representatives or recall them midterm. Even though members of Congress (and especially House members) were to be "dependent upon" the people, they were not put in office merely to placate or reflect their constituents' immediate wishes.

Whether discussing the time between elections, the size of the legislature, or other issues, the key points repeatedly stressed were about structuring institutions to allow and encourage members to *deliberate* about the longer-term public interest. Indeed, it could be argued that fostering deliberation was the single most important goal for a Madisonian Congress.[10] At the same time, however, the Federalists knew they were building an inherent tension into the process. Deliberation may be the goal for the institution as a whole, but the fates of the individual members were to rest on the people who put them in office. Stretching the length of a term was not be likely by itself to produce the kind of legislature they wanted. The answer was not to berate politicians for looking out for themselves. Rather, it meant assuring there would be counter-incentives to support those who would look beyond the electoral imperative or personal greed to pursue longer-term national interests.

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[8] Michael J. Malbin, *Congress during the Convention and Ratification, in* THE FRAMING AND RATIFICATION OF THE CONSTITUTION, 185-209 (L. Levy and D. Mahoney, eds., 1987).

[9] See THE FEDERALIST Nos. 10 (James Madison), 36 (Alexander Hamilton), 60 (Alexander Hamilton), *supra* note 6. Also see Martin Diamond, *The Federalist, 1787-1788* in AS FAR AS REPUBLICAN PRINCIPLES WILL ADMIT: ESSAYS BY MARTIN DIAMOND 55-56 (W. Schambra, ed., 1992). Originally published in HISTORY OF POLITICAL PHILOSOPHY (L. Strauss and J. Cropsey, eds., 1963).

[10] JOSEPH M. BESSETTE, THE MILD VOICE OF REASON: DELIBERATIVE DEMOCRACY AND AMERICAN NATIONAL GOVERNMENT (1994).

This was a lot to be balanced, and not every institution was likely to get the balance right for all time. For example, several of the 1787 mechanisms to promotive collective deliberation involved bringing representatives together, away from their constituents, with enough time between elections to foster talking and thinking. But this was before social media, before year-round legislative sessions, before there was a full-time lobbying industry based in the capital, and before nationalized campaign contributions coupled with lobbying encouraged members to rely on forces outside their constituencies to help them stay in office. In today's world, therefore, creating an institution that promotes deliberation will be more complicated than giving the members more time in the capital. In light of the nationalizing pressures members now feel, one could at least entertain the thought that a new balance between national and local forces might help the institution perform its intended role. The point in this paper is not to claim that Federalist *means* would be sufficient in today's world to achieve the Federalists' *ends*. The point is to focus on the importance of their concerns as well as their reasoning.

B. Two Adjustments

Before applying this Madisonian framework to the laws governing campaign money, one should note two important ways in which the framework should be adjusted. The first relates to factions. The second recognizes the role of political parties.

1. Factions, Inequality, and the Limits of Pluralism: We have noted that the fundamental political or constitutional reason offered in *Federalist* No. 10 for extending the republic's sphere was to incorporate a multiplicity of diverse factions. The idea was that diversity would make it difficult for a cohesive majority to pass laws to oppress a minority. Of course, history shows that "difficult" is not "impossible", but let us take the claim at face value. It is essentially about what Congress likely would *not* do. If an organized faction tries to push its agenda, it should not be able to accomplish its goals without tempering its demands and enlisting others to its support. But does this negative claim, even if true, mean that Congress will depend upon and reflect the interests of the people *as a whole*?

In *Federalist* No. 35, Hamilton defended against the charge that the new republic would be ruled by the rich who would use government to serve their interests at the expense of the public. He argued that even though the Congress would probably be "composed of land-holders, merchants, and men of the learned professions [lawyers]," a representative is likely to act as an "impartial arbiter" when making policy.[11] The problem is revealed by the phrase "impartial arbiter." The image evoked is of a judge passively waiting for issues to be presented. But how are issues typically "presented" for discussion? Sometimes crises force themselves on to the public agenda. More normally in a modern large republic with a heavy public workload, it takes an organization and staff to have the capacity to present one's demands in a timely way to overburdened representatives. But building and sustaining an organization requires money. Most contemporary political scientists, therefore, see some merit in E. E. Schattschneider's oft-quoted

[11] THE FEDERALIST NO. 35, *supra* note 6 at 221 (Alexander Hamilton). Madison made a similar point at THE FEDERALIST NO.57, *supra* note 6 at 387.

comment that "organization is the mobilization of bias".[12] To put the point more strongly, Schattschneider said that because of the resources needed for effective organization: "The flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent".[13] Extending the sphere may well make it hard for one faction to dominate, but it does not assure that an unorganized majority can easily defend itself against a coalition of organized and well-placed minorities. In other words, it does not mean representatives automatically will feel dependent upon or responsive to the people "as a whole". The risk for most of the unorganized is not that they will be tyrannized overtly but that they will be ignored. One recent book (whose title references Schattschneider) emphasized this by repeating an old Washington maxim: "If you're not at the table, you're on the menu".[14]

It is important to recognize this issue as one that flows in part from deliberate, structural choices. Gaining political influence in the face of complexity will depend upon being organized, which in turn (and perhaps inevitably) means that the unorganized will find it harder to be heard. These comments are not put forward to reject Madisonian institutionalism but to expand it. Contrary to Federalist No. 10, the problem is not self-correcting. The question, therefore, is how best to address the flaw while also pursuing the Madisonian goal of deliberation. The perspective of this paper is that accepting the benefits of complexity should go together with an obligation to work toward correction.

<u>2. Political Parties</u>: Many scholars see political parties as the intermediary organizations best suited to balance these concerns. As is well known, the Constitution's framers were suspicious of parties. Despite this, James Madison made a case for them as early as the Second Congress.[15] Nevertheless, we shall skip forward. Many features of the political party system Martin van Buren developed to elect Andrew Jackson in 1828 remained salient through the middle of the twentieth century. At the national level, the parties were essentially weak federations built up from state and local power bases. They competed vigorously to win elections partly because winning brought patronage and jobs. With patronage came kickbacks and other forms of self-dealing. Early twentieth-century Progressives railed against the system's corruption, which some modern writers defend as being as an acceptable cost of doing business (Rauch 2015). However one evaluates the system, there seems little question that party workers (with material benefits on the line) expanded the electorate to bring farmers, immigrants and the urban poor out to the polls. Not everyone was mobilized, of course. Southern states denied African-Americans the vote after Reconstruction and the Constitution did not guarantee women the vote until 1920. On the whole, however, the parties of that era, acting in their electoral self-

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[12] E. E. SCHATTSCHNEIDER, THE SEMI-SOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA 69 (1960). Also see MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS (1965).

[13] SCHATTSCHNEIDER, THE SEMI-SOVEREIGN PEOPLE, *supra* note 12, at 34.

[14] KAY LEHMAN SCHLOZMAN, SIDNEY VERBA, AND HENRY E. BRADY, THE UNHEAVENLY CHORUS: UNEQUAL POLITICAL VOICE AND THE BROKEN PROMISE OF AMERICAN DEMOCRACY, VI, (2012).

[15] Joseph Postell, *The Rise and Fall of Political Parties in America,* FIRST PRINCIPLES, NO. 70 (2018). Available at http://report.heritage.org/fp70. Accessed July 29, 2019. Citing James Madison, *Consolidation*, NATIONAL GAZETTE, December 3, 1791, NATIONAL ARCHIVES, *FOUNDERS ONLINE,* https://founders.archives.gov/documents/Madison/01-14-02-0122. Also see JOHN H, ALDRICH, WHY PARTIES? A SECOND LOOK, at 70-101 (2011).

interest, brought more voices into the process while facilitating the government's ability to reach decisions.

Today's parties do not much resemble those of a century ago. Whether one sees the modern parties as service organizations tending to the needs of their candidates,[16] or as coalitions of "policy demanding" interest groups,[17] there is a consensus among scholars that national party *organizations* are stronger today while state and local parties have atrophied. The older system coexisted well with institutions that serve deliberative ends. This paper will argue that the strongly nationalized party system of today has been more problematic.

II. APPLYING THE FRAMEWORK: A CAMPAIGN FINANCE SYSTEM THAT UNDERMINES DELIBERATION

In attempting to show the utility of a neo-Madisonian framework, this paper will not attempt to discuss the dizzying variety of policies reformers have put forward in the name of serving one or more of the campaign finance goals in the Appendix. This would be a massive project duplicating previous work.[18] Instead, the paper will dig more deeply into three clusters that bear directly on the themes. The first two relate directly to deliberation by members of Congress: the time members spend fundraising and how members are appointed to serve on or lead their committees. By implication, both are also about the distribution of power between committees and party leaders. They slide directly into our third topic, the role of national political parties.

A. Fundraising Time

Any effort to improve deliberation has to make sure that members have the time to learn their subject matter and participate meaningfully in legislative activities. About 60 years ago new members were expected to attend committee hearings, not ask questions, listen, and learn. Then came a period when new members would attend and participate, sometimes to the frustration of senior colleagues. Such participation is less true today because fundraising steals time directly from attending committee meetings. This was the subject of a report issued jointly by the

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[16] ALDRICH, WHY PARTIES?, *supra* note 15 at 281-87.

[17] Kathleen Bawn, Martin Cohen, David Karol, Seth Masket, Hans Noel & John Zaller, *A Theory of Political Parties: Group Policy Demands and Nominations in American Politics* 10(3) PERSPECTIVES ON POLITICS 571 (2012).

[18] John C. Fortier & Michael J. Malbin, *An Agenda for Future Research on Money in Politics in the United States* 11(3) THE FORUM: A JOURNAL OF APPLIED RESEARCH IN CONTEMPORARY POLITICS 384 (2013); NATHANIEL PERSILY, ROBERT F. BAUER & BENJAMIN L. GINSBERG. CAMPAIGN FINANCE IN THE UNITED STATES: ASSESSING AN ERA OF FUNDAMENTAL CHANGE (2018). Available at https://bipartisanpolicy.org/wp-content/uploads/2018/01/BPC-Democracy-Campaign-Finance-in-the-United-States.pdf. Accessed August 8, 2019.

organizations R Street and Issue One, where several of the quotations in the next paragraphs appeared previously.[19]

In 2013, the Huffington Post obtained a slide from an orientation-session for newly elected members of Congress. The slide described the "Model Daily Schedule" as including four hours of telephone fundraising every day – twice what it allowed for legislative business.[20] This fundraising is not to be confused with rubbing shoulders with the rich and famous. It is time spent in a dreary room near the Capitol in a cubicle next to another cubicle in which is another member of Congress. When a reporter asked then-Rep. David Jolly (R-FL) how he managed to raise nearly $18,000 per day, Jolly said he did it:

> Simply by calling people, cold-calling a list that fundraisers put in front of you. You're presented with their biography. So please call John. He's married to Sally. His daughter, Emma, just graduated from high school. They gave $18,000 last year to different candidates. They can give you $1,000 too if you ask them to. And they put you on the phone. And it's a script…. It is a cult-like boiler room on Capitol Hill where sitting members of Congress, frankly I believe, are compromising the dignity of the office they hold by sitting in these sweatshop phone booths calling people asking them for money.[21]

Jolly was a relatively new member when he gave this interview, but the practice did not get better for others in later years. That is because members felt their future power depended on raising money they would then give to their parties (more on that below). U.S. Senator Chris Murphy (D-CT) said he spent four to five hours per day telemarketing during his six years in the House, describing the practice as "soul-crushing".[22] Former Rep. Steve Israel (D-NY) estimated that "I've spent roughly 4,200 hours in call time, attended more than 1,600 fund-raisers just for my own campaign and raised nearly $20 million in increments of $1,000, $2,500 and $5,000 per election cycle".[23] Nor does it stop when members leave the House for the Senate. Senators were given six-year terms to have a break between elections. That may work for four years, but former Senate Majority Leader Tom Daschle (D-SD) was quoted as saying that during the final two

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[19] MARIAN CURRINDER, MICHEL BECKEL & AMISA RATLIFF, WHY WE LEFT CONGRESS: HOW THE LEGISLATIVE BRANCH IS BROKEN AND WHAT WE CAN DO ABOUT IT 10 (2018). Available at: https://www.issueone.org/wp-content/uploads/2018/12/Why-We-Left-Congress-Report.pdf. Accessed August 22, 2019.

[20] Ryan Grim & Sabrina Siddiqui, *Call Time for Congress Shows How Fundraising Dominates Bleak Work Life*, HUFFINGTON POST (January 8, 2013). Available at https://www.huffpost.com/entry/call-time-congressional-fundraising_n_2427291. Accessed August 6, 2019.

[21] Norah O'Donnell, *Are Members of Congress Becoming Telemarketers?* 60 MINUTES. CBS NEWS. (April 24, 2016). Available at https://www.cbsnews.com/news/60-minutes-are-members-of-congress-becoming-telemarketers/. Accessed August 6, 2019.

[22] Paul Blumenthal, *Chris Murphy: Soul-Crushing Fundraising Is Bad for Congress,* HUFFINGTON POST (May 7, 2013). Available at https://www.huffpost.com/entry/chris-murphy-fundraising_n_3232143. Accessed August 6, 2019.

[23] Steve Israel, *Confessions of a Congressman*, NEW YORK TIMES (January 8, 2016). Available at https://www.nytimes.com/2016/01/09/opinion/steve-israel-confessions-of-a-congressman.html. Accessed August 6, 2019.

years of a six-year term Senators were spending two-thirds of their time raising money.[24] No wonder one article quoted retired House member Zach Wamp (R-TN) as saying: "I don't know of a single member that is leaving that does not include the pressures of raising money to advance and maintain your committee position as one of the contributing factors…. They all talk about it. It wears you out".[25]

Solutions to this problem seem as if they should be easy to imagine, even if not so easy to enact. More than a dozen states prohibit legislators from raising money while the legislature is in session, with more prohibiting contributions from lobbyists.[26] Of course, it is easier to forbid fundraising during a session if a legislature meets for only a limited time. Congress is more like a year-round legislature. Besides, forbidding all fundraising would reach further than the member's time. It would also prohibit campaign staff from arranging events attended by lobbyists and PAC managers. With PACs making up about 40% of incumbents' money, this would be a difficult pill for many members to swallow.

Another approach was put forward by election lawyer Jerry Goldfeder: Instead of prohibiting all fundraising during legislative sessions, simply forbid officeholders from soliciting contributions personally whether in or out of legislative session.[27] This is similar to an idea put forward in 2016 by Rep. Jolly and co-sponsors in the so-called "Stop" Act.[28] The Jolly bill would have allowed solicitations by campaign staff or through other fundraising methods but would not have prevented challengers and open-seat candidates from fundraising. The bill would have reshaped how members use their time, but incumbents might worry that it would put their campaigns at a disadvantage. Rep. Richard Nolan (D-MN) introduced a bill the following year that might have addressed the incumbents' concern by going further in some respects and less far in others. Nolan would have prohibited both direct and indirect solicitations by all congressional candidates and their campaign staffs, but only on days when Congress was in session.[29] This would have reached non-incumbents as well as incumbents even though the ostensible concern is with how incumbents spend time in office. The problem with the Nolan bill thus is the opposite of Jolly's: it would tilt the balance toward the incumbents by restricting the challengers who typically are much less well known and therefore need more time to get their campaigns off the ground. A more straightforward approach might be to combine the erstwhile Jolly and Nolan

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[24] Shane Goldmacher, *Former Senate Leader Says Senators Spent Two-Thirds of their Time Asking for Money*, NATIONAL JOURNAL (January 16, 2014). Posted at https://www.nationaljournal.com/s/63463/former-senate-leader-says-senators-spent-two-thirds-time-asking-money (pay wall).

[25] Kate Ackley, *House Committee Leadership Is Becoming a Game of Musical Chairs,* ROLL CALL (March 13, 2018). Available at https://www.rollcall.com/news/politics/house-committee-leadership-becoming-game-musical-chairs. Accessed August 6, 2019; quoted in CURRINDER, ET. AL., WHY WE LEFT CONGRESS, *supra,* note 19.

[26] PRATEEK REDDY, STATE-BY-STATE PROHIBITIONS ON CAMPAIGN CONTRIBUTIONS TO LEGISLATIVE CANDIDATES FROM LOBBYISTS (Public Citizen, 2011). Available at https://www.citizen.org/wp-content/uploads/state-lobbyists-contribution-restrictions.pdf. Accessed August 7, 2019.

[27] Jerry Goldfeder, *Ban Candidates from Soliciting Campaign Dough*, NEW YORK LAW JOURNAL (November 14, 2017). Available at https://www.stroock.com/wp-content/uploads/2019/03/BanCandidatesDoughNYLJ.pdf. Accessed August 7, 2019. Cited by Ciara Torres-Spelliscy, *Time Suck: How the Fundraising Treadmill Diminished Effective Governance*, 42(2) SETON HALL LEGISLATIVE JOURNAL 271 (2018).

[28] H.R. 4443, 114th Congress (2016)

[29] H.R. 6433, 115th Congress (2017)

bills by only prohibiting office-holders (and not their staffs) from making solicitations, and only on days Congress is in session.

B. Committee Assignments and Leadership

Any discussion of fundraising time quickly leads to the distribution of power within Congress. Since the early nineteenth century, members of Congress have realized they needed something more than a party system to do its job properly. They also needed a system of permanent standing committees to permit members to develop the expertise to process the full body's workload. Two very different views have been articulated commonly about the role committees should play within the chamber. Under one, the committees' job is simply to develop and report policies the majority party wants to enact. Under the other, committees reflect the role of the majority by their partisan composition, but the committees' members develop independent expertise which at least sometimes is put to work across party lines.

These two views conflict in some respects but share a key feature. Under both views, committee leaders would be chosen because of a chair's ability to help a committee make policy. As a historical counterpoint, neither theory could justify choosing leaders automatically because of their seniority. While developing expertise and judgment takes time, the most senior person is not necessarily the most skilled. The seniority custom developed as a practical alternative to having committees controlled by the majority's party leaders. It maintained itself over time because of the split between northern and southern Democrats. The practice reflected the realities of political power but could not be explained under a coherent theoretical view of the role of committees.

A similar point could be made today when fundraising is used as an important criterion for appointing members to committees and selecting committee chairs. The criterion has nothing to do with the actual job of chairing a working committee. Some background helps explain how the practice developed. Through the late 1980s, the leaders would mostly be ignored if they pleaded with members to contribute to their parties' congressional campaign committees or support non-incumbents in close races. In 1990, House Republicans contributed a total of about $300,000 to the National Republican Congressional Committee (NRCC). Democratic giving to the Democratic Congressional Campaign Committee (DCCC) was only a rounding error above zero.[30] Two developments caused this to change during the 1990s. First, the Republicans' winning majority control in the election of 1994 for the first time in 42 years made it clear to every member that the majority could flip and he or she had a substantial personal stake in the outcome. Second, both parties – but especially the Republicans – centralized the power to name committee members and chairs in the hands of the top party leaders. The leaders quickly began to use the members' financial contributions to the parties as measures of whether the applicant

[30] Anne H. Bedlington & Michael J. Malbin, *The Party as an Extended Network: Members Giving to Each Other and to Their Parties*, in LIFE AFTER REFORM: WHEN THE BIPARTISAN CAMPAIGN REFORM ACT MEETS POLITICS 121, 134 (M. Malbin, ed., 2003).

would be part of "the team". By the late-1990s, being a part of the team meant contributing money to win majorities and deferring to the party on policy. Legislating was secondary.[31]

In recent Congresses, the system has reached a level dwarfing the early 2000s. Both parties instituted "dues" systems – specific amounts that members were expected to contribute if they wanted to serve on various committees. Certain committees are considered "A-Level" or top committees. These have broad jurisdictions that presumably help their members raise money from lobbyists and others with business before the committee. Dues are lower for members of the other committees. On all committees, the chairs and ranking minority members give more. There is nothing subtle about this. According to Rep. Thomas Massie (R-KY), "They told us right off the bat as soon as we get here, 'These committees all have prices and don't pick an expensive one if you can't make the payments'".[32] Rep. Jolly (R-FL) said that his two-year dues were $200,000 for the Committee on Transportation and Infrastructure and $400,000 for Appropriations.[33] Others put the figures higher for getting and staying on a committee, and still higher for becoming chair. A 2017 book by Rep. Ken Buck (R-CO) revealed the price for committee chairs as being $875,000 for a B committee and $1.2 million for an A Committee.[34] For perspective, safe incumbents in 2018 spent an average of about $2 million during the election cycle and these large transfers to the parties were part of the $2 million.[35] Most of the top dues payers are in safe seats.

We need to be clear about how this money is being raised. These are the members sitting in call booths and attending lunch-time fundraising events while Congress is in session. During those sessions, they are directly seeking contributions of up to $2,800 (the contribution limit in 2020) from lobbyists and other access-seekers who have business before their committees. The transactional nature of the relationship is clear on both ends, even if only implied. To be sure, there are some positive side benefits for challengers and open-seat candidates that come from this transfer process. In most recent elections, corporate and trade association PACs gave more than 90% of their money to incumbents and were responsible for nearly half what House incumbents raised.[36] Their goal is to gain access for lobbying. In contrast, the party committees support challengers and open-seat candidates in competitive races. As congressional elections scholar Gary Jacobson has written, sending what started as PAC money from the incumbents' campaign committees to the parties results in a major "redistribution" that helps non-incumbent candidates who would not have gotten support from the original donors.[37]

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[31] For good accounts of these developments, see MARIAN CURRINDER, MONEY IN THE HOUSE: CAMPAIGN FUNDS AND CONGRESSIONAL PARTY POLITICS (2009); ERIC S. HEBERLIG & BRUCE A. LARSON, CONGRESSIONAL PARTIES, INSTITUTIONAL AMBITION, AND THE FINANCING OF MAJORITY CONTROL (2012).

[32] Quoted in ISSUE ONE, THE PRICE OF POWER 7 (2017) at 7. Available at: https://www.issueone.org/price-of-power/. Accessed August 7, 2019.

[33] *Id.*, p. 10.

[34] KEN BUCK, DRAIN THE SWAMP: HOW WASHINGTON CORRUPTION IS WORSE THAN YOU THINK 38 (2017); also quoted in ISSUE ONE, THE PRICE OF POWER, *supra* note 32, at 11.

[35] MICHAEL J. MALBIN & BRENDAN GLAVIN. CFI'S GUIDE TO MONEY IN FEDERAL ELECTIONS: ESSAYS AND TABLES COVERING THE ELECTIONS OF 1974-2018 (2020) at 11. Available at http://www.cfinst.org/pdf/federal/2016Report/CFIGuide_MoneyinFederalElections.pdf. Accessed Feb. 16, 2020.

[36] *Id.*, at 61, 63.

[37] Gary C. Jacobson, *A Collective Dilemma Resolved: The Distribution of Party Campaign Resources in the 2006 and 2008 Congressional Elections*. 9(4) ELECTION L. J. 381 (2010).

However, it is premature to say, as Jacobson does, that "laundering donations through the parties may diffuse and soften whatever effect interested contributions have on individual members". Jacobson qualifies his statement by saying "we don't really know because the research has not been done."[38] This author thinks the point probably is wrong. The system is not one that merely launders contributions passively. Members are pressured by the party leaders to raise the money in exchange for preserving or enhancing the members' power in the institution. The relationship between donor and recipient occurs before the money is transferred or laundered. Both the chairperson who sets the committee's agenda and the party leaders who set agendas for the full chambers are engaged in these relationships, which in turn affect what is placed on the docket for Congress to decide. If the same contributions and transfers were to occur without pressure from the leaders, then the laundering argument might hold. But that would not be likely. It belies the members' complaints that the dues structure *causes* them to spend more of their time fundraising.

Several proposals have been put forward to respond to these practices. All, except the first, come from the Issue One report cited earlier.[39]

- A member's ability to transfer an unlimited amount from a campaign committee to a party committee rests on a clause in the current law that specifically exempts such transfers from contribution limits. It would be easy technically (although not politically) to take these few words out of the law. However, this probably would not accomplish enough. In some states that do not allow transfers, the leaders pressure the members to raise money for the party committees directly.[40]
- Party rules could be changed to make "it clear that party leaders and steering committees cannot take party dues into account when determining whom to recommend for committee chairs".[41] However, that strikes this observer as a rule or norm that cannot be enforced. It feels a bit like the situation in a courtroom when a jury is told to ignore something a witness said.
- The most promising approach probably would be to let committee members choose their chairs. The party's influence over committees would still be substantial because the parties ultimately control who is appointed to each committee. However, one would want to see this coupled with safeguards so leaders would not stack committees just before each chair is elected. This selection method would have the major advantage of decoupling a member's fundraising from selecting committee chairs. It should also help increase the independent role of committees in the legislative process.

These proposals for strengthening committees, like the previous ones for fundraising during session, may not reduce the amount of money in politics. That is not their point. They are

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[38] *Id.,* at 397.

[39] ISSUE ONE, THE PRICE OF POWER*, supra* note 32.

[40] LYNDA W. POWELL, THE INFLUENCE OF CAMPAIGN CONTRIBUTIONS IN STATE LEGISLATURES: THE EFFECTS OF INSTITUTIONS AND POLITICS (2012) at 62.

[41] ISSUE ONE, THE PRICE OF POWER*, supra* note 32 at 18.

targeted at preserving the members' time for legislation, and at improving the work units best designed for that work. If adopted, some of them could well have a positive impact. However, none of them gets at the more basic issue.

C. The Role of Political Parties Today

Fundraising time and committee selection are symptoms of something larger. They are about the role of political parties in Congress and elections. Some think parties should be treated in campaign finance law as if they were nothing more than interest groups or factions. The Federal Election Campaign Act essentially took this perspective, giving contribution limits to parties that were similar to those of an interest group. Despite this legal slight, it would be a mistake to think of FECA as having harmed a previously strong party system. At the time the post-Watergate reforms became law in 1974, the congressional campaign committees were described in one scholarly book as being "largely invisible".[42] Also in the early 1970s, state and local parties had atrophied, voters were disaffected and identifying as independents, and the parties were reforming the presidential nomination process to take power away from insiders.[43] Despite these conditions, party professionals in the 1970s learned how to use FECA to turn the national party organizations into being major players in federal elections.[44]

This growth in the importance of national party committees preceded "soft money". Soft money is a term that refers to the funds that parties were able to raise outside the law's contribution limits because it was set aside for activities that technically were not deemed to be federal election activities. While the practice had its start in the late 1970s, it accelerated in the late 1980s and then became all-but-indistinguishable from election spending in the 1990s. As a result, soft money receipts "rose from $86 million in 1992 to about $260 million in 1996 to more than $495 million in 2000".[45] Much of this came from the treasuries of corporations or labor unions in amounts of $100,000 or more.

The Bipartisan Campaign Reform Act of 2002[46] (BCRA, better known as McCain-Feingold after its principal sponsors in the U.S. Senate) required the national parties to raise all of their funds within "hard money" contribution limits. BCRA also required state parties to use hard money governed by federal contribution limits for what the law defined as "federal election activities". This included voter registration and voter mobilization during even-numbered election years. The law also prohibited corporations and labor unions from using treasury money

[42] ROBIN KOLODNY, PURSUING MAJORITIES: CONGRESSIONAL CAMPAIGN COMMITTEES IN AMERICAN POLITICS (1988) at 127.

[43] DAVID BRODER, THE PARTY'S OVER: THE FUTURE OF POLITICS IN AMERICA (1972); BYRON E. SHAFER, QUIET REVOLUTION: THE STRUGGLE FOR THE DEMOCRATIC PARTY AND THE SHAPING OF POST-REFORM POLITICS (1983); MARTIN P. WATTENBERG, THE DECLINE OF AMERICAN POLITICAL PARTIES, 1952-1988 (1990).

[44] Xandra Kayden, *The Nationalizing of the Party System*, in PARTIES, INTEREST GROUPS, AND CAMPAIGN FINANCE LAW (M. Malbin, ed., 1980), at 257; XANDRA KAYDEN & EDDIE MAHE, JR., THE PARTY GOES ON: THE PERSISTENCE OF THE TWO-PARTY SYSTEM IN THE UNITED STATES (1985); ALDRICH, WHY PARTIES?*, supra* note 15, at 255-95.

[45] Anthony J. Corrado, *Money and Politics: A History of Federal Campaign Finance Law*, in THE NEW CAMPAIGN FINANCE SOURCEBOOK, (A. Corrado, T. Mann, D. Ortiz, and T. Potter, eds., 2005), at 33. Also see Anthony J. Corrado, *Party Finances*, *Id.* at 161.

[46] Pub. L. 107–155, 116 Stat. 81, enacted March 27, 2002.

to pay for "electioneering" spending, although they could use hard money raised by their corporate and labor PACs for these expenditures.

Differing views about BCRA divided political party scholars into roughly two groups, with the divisions persisting. Unlike those who would treat the parties as interest groups, both of these camps agree that a properly functioning political party system is crucial to modern democracies. But the disagreements have strong policy implications. The following bullet points broadly characterize the perspectives of those who would emphasize strengthening the national parties. While not all of the authors make all of these points, there is a strong overlap. The authors include Bruce Cain, Samuel Issacharoff, Raymond La Raja and Brian Schaffner, Nathaniel Persily, Richard Pildes, and Jonathan Rauch.[47] Among the key claims are the following:

- Imposing contribution limits on the parties did not drive unlimited money out of the system. Because of the "hydraulics" of campaign finance (a term introduced by Issacharoff and Karlan in 1999)[48], donors prevented from giving one way simply found other ways to influence the outcome of elections.
- Even if BCRA did not hurt the parties directly, the floodgates opened after the *Citizens United* decision of 2010. Since then, the parties may not have lost income, but they have lost power *relative* to independent spending groups which have raised more money from one election to the next.[49] (There is probably a consensus on this one point among all party scholars.) What is worse, these non-party groups have tended to favor unyielding extremism over coalition-building and compromise.
- These scholars would argue that the way to bring more power back to the parties is to give them more money to counter the resources now held by ideologically extreme groups. This is most easily done by sharply increasing or removing the limit on contributions to the political parties.
- Giving the parties more money in elections will give the party leaders more power to enforce party discipline inside Congress. It will help them "whip recalcitrant members into line".[50] The problem with American parties, writes Pildes, is not that

[47] BRUCE E. CAIN, DEMOCRACY MORE OR LESS: AMERICA'S POLITICAL REFORM QUANDARY (2015); Samuel Issacharoff, *Outsourcing Politics: The Hostile Takeovers of Our Hollowed Out Political Parties*, 54(4) HOUSTON LAW REVIEW 845 (2017); RAYMOND J. LA RAJA & BRIAN F. SCHAFFNER, CAMPAIGN FINANCE AND POLITICAL POLARIZATION: WHEN PURISTS PREVAIL (2015); Nathaniel Persily, *Stronger Parties as a Solution to Polarization*, in SOLUTIONS TO POLITICAL POLARIZATION IN AMERICA 123 (N. Persily, ed., 2015); Richard H. Pildes, *Romanticizing Democracy, Political Fragmentation, and the Decline of American Government,* 124 YALE L. J. 804 (2014); JONATHAN RAUCH, POLITICAL REALISM: HOW HACKS, MACHINES, BIG MONEY AND BACK-ROOM DEALS CAN STRENGTHEN AMERICAN DEMOCRACY. (2015).

[48] Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEXAS L. REV 1705 (1999).

[49] See Diana Dwyre, *Everything is Relative: Are Political Parties Playing a Meaningful Campaign Finance Role in U.S. Federal Elections?* In THE STATE OF THE PARTIES 2018: THE CHANGING ROLE OF CONTEMPORARY AMERICAN POLITICAL PARTIES 233 (J. Green, D. Coffee & D. Cohen, eds., 2018).

[50] Persily, *supra* note 47.

they are polarized but that they are fragmented. "Our political parties are not parliamentary-like enough".[51]

- With more money, the party leaders will have the leverage to pressure members from safe districts whose only current electoral fear is of being challenged by an ideologically extreme candidate in a primary.
- Disciplined parties led by strong leaders, knowing they will be judged on their records by the voters, will be more restrained, more willing to cut deals, more willing to compromise, and more likely to deliberate. In short, they will reduce polarization and gridlock.

Political scientists who have challenged these points include Thomas Mann, Anthony Corrado, Norman Ornstein, and the author of this paper.[52] They question both the first perspective's empirical claims and its policy prescriptions. With respect to the empirical claims, they have made the following points:

- Any limits placed on contributions and spending clearly will produce some "hydraulic" effects, but we should not expect redirection to occur equally for all donors. Business corporations, for the most part, have not redirected their pre-BCRA treasury money from parties to independent spending because they were asked to contribute by the leaders and gave to preserve access. They have been perfectly happy not to be pressured to give.
- Most of the increase in independent expenditures (IEs) has not come from people who were giving at the same rate to the party before BCRA. Much is new money or money from donors who upped their giving substantially. These typically are individual donors who are highly motivated for ideological, issue-based, or partisan reasons.
- Ideological and issue organizations (and their donors) have an incentive to preserve their identities and not submerge their agendas into the parties'. Recent research on the states shows that the amount these entities put into independent expenditures is *not* influenced by the presence or absence of contribution limits. Their donors have

[51] Pildes, *supra* note 47, at 809.

[52] THOMAS E. MANN & ANTHONY J. CORRADO. PARTY POLARIZATION AND CAMPAIGN FINANCE (2014). Available at: https://www.brookings.edu/wp-content/uploads/2016/06/Mann-and-Corrad_Party-Polarization-and-Campaign-Finance.pdf. Accessed August 13, 2019; THOMAS E. MANN & E.J. DIONNE, JR., THE FUTILITY OF NOSTALGIA AND THE ROMANTICISM OF THE NEW POLITICAL REALISTS: WHY PRAISING THE 19TH-CENTURY POLITICAL MACHINE WON'T SOLVE THE 21ST CENTURY'S PROBLEMS (2015). Available at: https://www.brookings.edu/wp-content/uploads/2016/07/new_political_realists_mann_dionne.pdf. Accessed August 13, 2019; ANTHONY J. CORRADO, MICHAEL J. MALBIN, THOMAS E. MANN & NORMAN J. ORNSTEIN. REFORM IN AN AGE OF NETWORKED CAMPAIGNS: HOW TO FOSTER CITIZEN PARTICIPATION THROUGH SMALL DONORS AND VOLUNTEERS AT 48-53. (2010). Available at: http://www.cfinst.org/books_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf. Accessed August 13, 2019; MICHAEL J. MALBIN & CHARLES R. HUNT, PARTY CONTRIBUTION LIMITS AND POLARIZATION: THE LEVEL OF TOXICITY IS SERIOUS BUT CONTRIBUTION LIMITS ARE NOT THE CAUSE (2017). Available at: http://www.cfinst.org/pdf/papers/PartyContributionLimits_Polarization.pdf. Accessed August 16, 2019.

> not and would not be likely to redirect their money away from IEs to give to the parties.[53]

However, the main point of this paper is not to litigate the empirical claims. Advocates and reform organizations who have opposed the idea of removing contribution limits for the political parties usually have done so in the name of preventing corruption or the appearance of corruption. The scholars who advocate for strengthening the national parties object that excessive concern about corruption is harming the key institutions needed to make legislatures work well. These party scholars deserve recognition for asking that campaign finance proposals face up to their institutional consequences. The paragraphs to follow in this paper do the same to their proposals. This is a conversation taking place on appropriately Madisonian terms.

Let us assume that party contribution limits were removed. giving the national party leaders control over more money. How should we expect them to use their new resources? It seems highly unlikely to this observer that they would use campaign funds to pressure a member to follow the party's line on legislative issues. In a closely divided Congress, every seat is important to a majority. Withholding campaign funds, therefore, is not an effective means for influencing how a member behaves inside Congress. Control over the institution's internal sources of power, from committee leadership to agenda-setting, seems more useful for rewarding and punishing members inside the institution. But the current leaders already have these powers. Our question is, what would they do with more of it? Would Congress be more deliberative? Would it produce better long-term policy outcomes as a result? There is good reason to be skeptical.

In her book *Insecure Majorities*, Frances Lee connects polarization in recent Congresses to the historically rare but recently persistent fact that the chambers are controlled by only narrow majorities, subject to reversal in almost any given election.[54] This helps give party leaders an incentive to promote what she described (in an earlier book) as cleavage issues: "Cleavage issues enable parties to present a clear alternative to their opponents. Democrats and Republicans have a vested interest in preserving established conflicts." Agendas are "biased in favor of particular kinds of issues and against others, compared with the agendas that would emerge in bipartisan committees or committees of the whole". These agendas preserve unity within the parties while dividing the parties from each other. They are signaled by persistent and repetitive "message voting" through which the leaders are more interested in developing a message to use in the next election than in sharing the credit to make public policy.[55] Gary Jacobson offered a parallel assessment: "Strong party leadership contributes to collective accountability, but it also sharpens partisan acrimony in the House and Senate, with problematic consequences for a bicameral legislature in which a cohesive minority in one chamber usually wields an effective veto".[56] We see no reason, therefore, to assume that handing more power to

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[53] Hunt, Charles R., Jaclyn J. Kettler, Michael J. Malbin, Brendan Glavin, and Keith E. Hamm. *Assessing Group Incentives, Independent Spending, and Campaign Finance Law by Comparing the States*." ELECTION LAW JOURNAL, forthcoming. Available upon request.

[54] FRANCES LEE, INSECURE MAJORITIES: CONGRESS AND THE PERPETUAL CAMPAIGN (2016).

[55] FRANCES LEE, BEYOND IDEOLOGY: POLITICS, PRINCIPLE, AND PARTISANSHIP IN THE U.S. SENATE at 163-64 (2009).

[56] Jacobson, *A Collective Dilemma Resolved*, *supra* note 37, at 397.

the leaders will make the leaders more likely to encourage committees to deliberate, or make the leaders less likely to spend their time on message voting.

Finally, we do not have to guess about the institutional effects of doing away with contribution limits for the parties. The country has now gone through two federal election cycles in which the parties have operated in effect without contribution limits. This occurred in several steps beginning in 2014. The Federal Election Campaign Act of 1974 and the Bipartisan Campaign Reform Act of 2002 placed limits on how much a donor could give to candidates or political committees. As of March 2014, individuals could give no more than $32,400 per year to a major national political party committee and another $10,000 (unindexed) to a state or local party. More significantly for the parties, the law also said individuals could give no more than a combined two-year total of $123,200 to all candidates, parties, and PACs combined, no more than $74,600 of which could go to parties.

On April 2, 2014, the Supreme Court struck down aggregate contribution limits in the case of *McCutcheon v. Federal Election Commission.*[57] After *McCutcheon*, an individual was free to give the maximum legal contribution to as many candidates, political party committees, and PACs as the donor wished.[58] After a few more months, contributions were allowed to go even higher because of a provision tucked into the federal budget at the end of 2014.[59] Combining *McCutcheon* with the provisions in the budget bill had the effect of permitting a donor to give Democratic or Republican parties up to a combined two-year total of $2.6 million. This was 35 times the $74,600 aggregate limit before *McCutcheon.*[60]

But the hard money contribution limits are only part of the story. After *Citizens United,* close associates of the four congressional party leaders formed Super PACs and nonprofit advocacy organizations to collect unlimited contributions and make unlimited independent expenditures (IEs) to support their parties' candidates. Everyone in politics understands these to be arms of the congressional leaders. In 2014 they made $128 million in IEs. In 2018 their IEs were up to $458 million. This was in addition to $232 million in IEs by the four formal congressional party committees. Together this meant the formal party committees and related leadership committees spent nearly half again as much on IEs in 2018 as all of the non-party

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[57] 572 U.S. 185 (2014).

[58] This would mean parties and presidential candidates could ask for a single contribution to a joint fundraising committee that could include $32,400 per *year* (indexed to $33,900 for 2017-18 and $35,500 for 2019-20) for each the national party committees and $10,000 (unindexed) for each of the fifty state party committees. These party limits are all annual limits, doubled for the two-year cycle. Thus, the combined *post-McCutcheon* total for 2015-16 theoretically was $597,200 per year, or $1,194,400 for a two year election cycle. Indexed for 2019-20 this would be $1,213,000 for all Democratic or Republican parties combined.

[59] P.L. 113-225, 128 Stat. 2130, 2772. The law was known awkwardly as "CRomnibus" because it combined a continuing appropriations resolution or CR with an omnibus budget reconciliation package. It let each of the six national party committees set up two special accounts for legal fees and building funds plus one additional account each for the national committees for the national party conventions. Thus, individuals could give $100,200 per year in 2016 (indexed) to seven Democratic or Republican accounts, for a combined annual maximum of $701,400 (or $1.4 million for two years) for the special accounts alone. Adding this to the numbers in the previous footnote gives a grand total of $2,597,200.

[60] The preceding two paragraphs appeared first in Malbin and Glavin, CFI'S GUIDE, *supra,* note 35, at 18-19.

ideological and issue spenders combined.[61] This should not surprise us. In light of the Federal Electoral Commission's weak enforcement of any restraints on "coordination" between the committees and leaders, the "hydraulic theory" should lead us to expect leakage.

This is not simply a transfer of old money. In the 2018 election cycle, the four major congressional party leadership Super PACs raised 93% of their $544 million from donors who gave $100,000 or more, 75% from donors who gave $1 million or more. The million-dollar donors were not in the system at remotely this level before either BCRA or *Citizens United.* This is a development that exacerbates the system's inequalities whatever it might be doing for (or to) the parties.[62]

It is worth revisiting the original argument in light of this funding. We were told that if parties could raise and spend unlimited amounts, this would counter external group spending, increase the power of the party leaders, promote bargaining and compromise, and thereby reduce polarization in the system. Obviously, polarization has not gone down since Donald Trump became president. That would be too much to ask of one campaign finance reform. It would be too much to ask from a contribution limit no matter who was the President.

Among congressional scholars, there is a consensus in support of one or another form of the Conditional Party Government theory (CPG), which was first articulated in 1991.[63] In this theory, the leaders are agents of the members, who are the principals. The leaders can pressure members only as much as the members collectively are willing to accept. The members' willingness to delegate, in turn, rests on their electoral interests (as individuals and as teams) as well as their policy goals. One of the bigger electoral fears incumbents have expressed in recent years has not been about home-grown opposition. The fear is about national organizations bankrolling their opponents, or nationally-funded IEs parachuting into their districts at the last minute when they have little time to react. In the current campaign finance environment, these members have to stockpile extra money in their campaign committees "just in case", or they must depend on their parties' IEs to counter the ones helping their opponents. That is, they rely on national parties to counter the national forces they fear might come against them. They put up with a system that has them spending hours doing "call time" to turn "party dues" money over to the congressional campaign committees because they see little alternative to support them against a sudden attack. The members raise their money from national donors and interest groups and then turn a significant part of the money over to polarized national party committees as an insurance policy against the possibility that they or their vulnerable colleagues might need their national party committees to counter IEs from the other side's national parties and its interest group allies.

[61] *Id.* at 83.

[62] Michael J. Malbin and Brendan Glavin, "Million-Dollar Donors Fuel Congressional Leadership Super PACs," CAMPAIGN FINANCE INSTITUTE/NATIONAL INSTITUTE ON MONEY IN POLITICS, Aug. 8, 2020. Available at https://www.followthemoney.org/research/institute-reports/cfi-million-dollar-donors-fuel-congressional-leadership-super-p. Accessed Aug. 26, 2020.

[63] DAVID W. ROHDE, PARTIES AND LEADERS IN THE POSTREFORM HOUSE (1991).

One interesting book on the nationalization of politics is Daniel Hopkins' *The Increasingly United States.*[64] Hopkins offers compelling documentation of how state and local politics have come to be influenced (if not dominated) by nationalizing forces and interests. This has had profound consequences for the government:

> [L]egislators have little incentive to bargain for benefits targeted to their constituents. Rather than asking, "How will this particular bill affect my district?" legislators in a nationalized polity come to ask, "Is my party for or against this bill?" That makes coalition building more difficult, as legislators all evaluate proposed legislation through the same partisan lens.[65]

If the underlying institutional problem stems from the presence of two nationalized teams fighting for domination, that will not be resolved by giving heavier weapons to national party leaders so they can beat back the nationalized ideological factions. The presence of two clearly and mostly unified teams runs counter to promoting a multiplicity of factions. The desire to defeat an all-consuming opponent in a one-on-one contest leaves little room for creative, substantive, or effective deliberation. It is important to emphasize that this is not a criticism of party organizations *per se*. It is a criticism against relying on *national* parties and their leaders in the expectation that this will change the underlying dynamic. While there is a good case to be made in favor of strengthening state and local party organizations,[66] relying on unlimited contributions to national parties would do little to weaken polarization, or strengthen deliberation, or address pluralism's bias.

III. ADDRESSING THE LIMITS OF PLURALISM IN A MADISONIAN FRAMEWORK

Earlier, this paper described the "mobilization of bias" as a concern that is organically connected with a democratic republic's complexity. In this author's view, accepting the benefits of complexity should go together with helping to ameliorate its costs. Doing do so would call for an effort not only to extend the sphere, as the Framers did, but to deepen it through participation.

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[64] DANIEL J. HOPKINS, THE INCREASINGLY UNITED STATES: HOW AND WHY AMERICAN POLITICAL BEHAVIOR NATIONALIZED (2018). See also Joel Sievert and Seth C. McKee, "Nationalization in U.S. Senate and Gubernatorial Elections". 47(5) AMERICAN POLITICS RESEARCH 1055-1080 (2019); Joshua Zinger and Jesse Richman, "Polarization and the Nationalization of State Legislative Elections". 47(5) AMERICAN POLITICS RESEARCH 1036-1054 (2019).

[65] Hopkins, *supra* note 64 at 7.

[66] For menus of worthwhile ideas, see IAN VANDEWALKER AND DANIEL I. WEINER, STRONGER PARTIES, STRONGER DEMOCRACY: RETHINKING REFORM, The Brennan Center for Justice (2015); Raymond J. La Raja and Jonathan Rauch, *The State of State Parties – and How Strengthening them Can Help Improve Our Politics,* THE BROOKINGS INSTITUTION (2016). Also see the citations in Danial Stid, *Could Stronger Parties Be Part of the Solution?* THE ART OF THE ASSOCIATION (July 5, 2020). https://www.theartofassociation.org/blog/could-stronger-parties-be-part-of-the-solution. Accessed July 15, 2020.

A. WHY LIMITS DO NOT ADDRESS THE ISSUE

One way campaign finance reformers have tried to address this concern is by regulating how much a person can give or spend in politics. This has run up against major constitutional, definitional, and practical barriers. The constitutional barriers are best known but only the first. FECA in 1974 imposed mandatory limits on both spending and contributions. The Supreme Court rejected mandatory limits on candidate spending and IEs in *Buckley v. Valeo* (1976).[67] It accepted contribution limits, but only in the name of deterring corruption or the appearance of corruption. The *Buckley* Court explicitly rejected the pursuit of equality as a permissible justification for limits – a position it reaffirmed in 2010 and 2014.[68]

As a response to these judicial decisions, some have urged amending the Constitution. However, even aside from the long political odds, there is a serious question whether an amendment, if adopted, would accomplish this goal. Even though contribution limits have a role to play in deterring corruption, regulating big spenders to produce more equality among those who currently give money is not likely to affect the structural conditions behind the phrase "mobilization of bias". For one thing, the line between political and issue speech is too permeable to prevent wealthy and highly motivated spenders from buying effective issue ads that affect elections.[69] More importantly, the solution would do nothing to bring new players into the process. There is more to be gained (to borrow another of Schattschneider's ideas) by expanding the field. Moreover, this can be done within current constitutional law.[70]

Of course, there is a good reason why most candidates and political organizations rely on donors who write large checks. Raising funds takes organization, serious seed money, and a precious part of one's time. As a result, candidates and others typically go where they think the money will be. They engage in what Schlozman, Verba, and Brady called "rational prospecting".[71] They do so, as the bank robber Willie Sutton once said: "Because that's where the money is".[72] But what is rational can change if either the costs or benefits of seeking small contributions change.[73] Technology has made it feasible to raise large amounts over the Internet without the candidate having to invest personal time. ActBlue has developed a platform that has lowered the transaction costs for Democratic donors and recipients. WinRed is a new platform whose goal is to accomplish the same for Republicans. While it has taken time, ActBlue's success is shown by the fact that more money to candidates and liberal causes passed across its

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[67] *Buckley* v. *Valeo*, *supra* note 2.

[68] *Citizens United v. Federal Election Commission* 558 U.S. 310 (2010); *McCutcheon v. Federal Election Commission* 572 U.S. 185 (2014).

[69] For a related argument see RICHARD L. HASEN, PLUTOCRATS UNITED: CAMPAIGN MONEY, THE SUPREME COURT, AND THE DISTORTION OF AMERICAN ELECTIONS (2016) at 166-68.

[70] The Supreme Court explicitly reaffirmed the constitutionality of public campaign financing in *Arizona Free Enterprise Club's PAC et al. v .Bennett, Secretary of State of Arizona, et al.*564 U.S. 721 (2011) in a case that overturned one aspect of Arizona's public financing law.

[71] SCHLOZMAN, VERBA, AND BRADY, THE UNHEAVENLY CHORUS, *supra* note 36, at 459-79.

[72] U.S, Federal Bureau of Investigation, *Willie Sutton,* in *Famous Cases and Criminals.* Available at: https://www.fbi.gov/history/famous-cases/willie-sutton. Accessed March 6, 2020.

[73] Michael J. Malbin, *Small Donors: Incentives, Economies of Scale, and Effects* 11(3) THE FORUM: A JOURNAL OF APPLIED RESEARCH IN CONTEMPORARY POLITICS 384 (2013).

platform in 2018 than all of the independent expenditures on both sides of the aisle combined.[74] Technology has lowered the organizational and financial cost of fundraising; candidates, causes, and donors have responded. Nevertheless, most congressional candidates *still* get most of their money from that small part of the individual and interest group population that can afford to write checks of $1,000 or more; an overwhelmingly large percentage of the public continues to give nothing.[75]

B. SMALL-DONOR PROPOSALS, CRITIQUE, AND RESPONSE

One policy response has been to invest public money into making it more worthwhile for candidates to reach out to small donors. Two approaches have gained attention in recent years. New York City has had a matching fund system in place for more than twenty years, with more generous matching rates over time. In the most recent citywide elections of 2017, the city was giving six dollars in public matching funds for each of the first $175 a candidate raised from each donor. (The rates were increased for future elections in 2018.) Research by this author and colleagues has shown clearly that the city's system has (1) increased the participating candidates' reliance on small donors, (2) increased the number of small donors, and (3) created a more economically and racially diverse donor pool.[76] Other local jurisdictions have imitated this approach.[77]

The city of Seattle, Washington, has gone beyond matching with the world's first-ever voucher system. This kind of approach has stirred interest among scholars for some time.[78] Under it, the government takes the initiative of giving each eligible donor four $25-vouchers which potential donors may then give to the candidate(s) of their choice. (Some of the academic authors would also allow vouchers to be given to parties or PACs.) To keep the program affordable, there is a budget cap on the number of vouchers that may be redeemed in an election. Seattle's initial results seemed promising. A study by Brian McCabe and Jennifer Heerwig of the program's first election in 2017 found that voucher users were less likely to have high incomes

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[74] Michael J. Malbin, *What Can We Learn from the Money in 2018?* Presentation at a Forum held by the U.S. Federal Election Commission. February 21, 2019, slides 5-6. Available at http://www.cfinst.org/pdf/presentations/Malbin_FEC-talk_21Feb2019.pdf. Accessed August 20, 2019.

[75] MALBIN AND GLAVIN, CFI'S GUIDE, *supra* note 35, at 13-14 and 61-62.

[76] Michael J. Malbin & Michael Parrott, *Small Donor Empowerment Depends on the Details: Comparing Matching Fund Programs in New York and Los Angeles*, 15(2) THE FORUM: A JOURNAL OF APPLIED RESEARCH IN CONTEMPORARY POLITICS 219 (2017). Also see Michael J. Malbin, Peter W. Brusoe and Brendan Glavin; *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11(1) ELECTION L. J. 3 (2012)

[77] MICHAEL J. MALBIN, CITIZEN FUNDING FOR ELECTIONS: WHAT DO WE KNOW? WHAT ARE THE EFFECTS? WHAT ARE THE OPTIONS? (2015), at 1. Available at: http://www.cfinst.org/pdf/books-reports/CFI_CitizenFundingforElections.pdf. Accessed August 20, 2019.

[78] For the main scholars on the subject, see DAVID W. ADAMANY & GEORGE E. AGREE, POLITICAL MONEY: A STRATEGY FOR CAMPAIGN FINANCING IN AMERICA (1975) at 189-201; Edward M. Foley, *Equal-Dollars-Per-Voter: A Constitutional Principle of Campaign Finance,* 94 COLUM. L. REV. 1204 (1994); Richard I. Hasen, *Clipping Coupons for Democracy: An Egalitarian/Public Choice Defense of Campaign Finance Vouchers*, 84(1) CALIF. L. REV. 1 (1996); BRUCE ACKERMAN AND IAN AYRES, VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE (2002).

and more likely to come from poor neighborhoods than cash donors.[79] These results were similar to New York City's. While there is much more to be learned about long-term effects, both programs bring a more diverse set of donors into the system. In other words, they begin to address one of pluralism's key flaws.

But that success does not automatically mean the models should be applied directly to national elections, without modification. A bill passed by the U.S. House of Representatives in 2019 would do that by adopting matching funds and tax credits, along with an experimental voucher program, in federal elections.[80] However, "scaling up" to the federal level raises serious questions. From the perspective of the framework in this paper, the most serious criticism publicly leveled so far is that using public money to multiply the value of small donors would fan the fires of ideological extremism, further undermining deliberation. The essence of the argument rests on two claims. The first is that small donors are ideologically more extreme that large donors. The second is that small donors favor and help elect candidates who are ideologically more extreme than their cohorts. These claims have been put forward most forcefully by Richard Pildes,[81] who in turn relies on research to be referenced below. Concerning donors, there have been four separate lines of scholarly research the weight of which, we argue, does not support there being an ideological difference between individual donors who give small and large contributions.

- Most scholars who have written about federal donors have not had access to donors who gave a candidate $200 or less because of federal disclosure rules. As a result, they have unable to talk about small donors. Michael Barber, for example, found that individual donors tend to be more ideological than organizational donors as PACs or parties, but this applies to all individual donors and does not speak at all to the ideology of independent spenders.[82] The finding for donors is not controversial but also not useful for the issue at hand.
- A few studies have compared small and large donors. Of these:
    - The two that raise the fewest methodological questions find no ideological difference between individuals who give large and small contributions.[83]

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[79] Brian J. McCabe & Jennifer Heerwig, *Diversifying the Donor Pool: How Did Seattle's Democracy Voucher Program Reshape Participation in Municipal Campaign Finance?* 18(4) ELECTION L J 323-41 (2019).

[80] H.R. 1, 116th Congress (2019)

[81] Richard H. Pildes, *Participation and Polarization*, 22(2) U. PA. J. CONSTL. L. 341-408 (2020). See also Richard H. Pildes, *Small-Donor-Based Campaign-Finance Reform and Political Polarization.* 129 YALE LAW JOURNAL FORUM 149-170 (2019).

[82] For example, see Michael J. Barber, *Ideological Donors, Contribution Limits, and the Polarization of American Legislatures*, 78 J. POL. 296 (2015). Note that the comparison being made is between PAC and individual contributors. Most PAC *contributions* come from corporate or trade association PACs, which tend to seek access to incumbents. However, the other prominent, non-individual actors – most importantly independent spending organizations – are more likely to be issue groups, ideological organizations, or partisan surrogates.

[83] DAVID B. MAGLEBY, JAY GOODLIFFE & JOSEPH OLSEN, WHO DONATES IN CAMPAIGNS? THE IMPORTANCE OF MESSAGE, MESSENGER, MEDIUM, AND STRUCTURE (2018) at 193-95, 353; Raymond J. La Raja & David L. Wiltse, *Don't Blame Donors for Ideological Polarization of Political Parties: Ideological Change and Stability Among Political Contributors, 1972–2008*, 40 AM. POL. RES. 501 (2012).

  - One study did find a difference that ran contrary to the claimed expectations. In a survey-based study of donors to candidates in state elections, the authors (who included this author) found small donors on almost all issues and in their ideological positioning to be *less* extreme than large donors, falling somewhere between the large donors and general public.[84] However, one should feel hesitant about concluding too much from this because the state-based survey is more than ten years old and therefore not likely to reflect small donors in federal elections today.

- With respect to candidates, one published study found that small donors gave to more ideologically extreme candidates than large donors, but that study was based on a quirky definition that called anyone who gave $1,500 or less a small donor. Even in this study, there is only a slight visible difference in the general ideological patterns for donors who gave less than $1,500 and those donors who were among the country's top 0.01% in their income. [85]

Aside from this study one mostly sees anecdotes. It is certainly fair to point out that some very well-known progressive Democrats and Tea Party Republicans receiving a lot of small-donor money. But so have many others and the generalization does not hold up when the full list of recipients is considered. In 2013, this author published the following, based on the elections of 2012. The analysis was limited to winners to allow one to consider their ideological positioning on congressional roll call votes.

> Fifty-two Democratic candidates and 24 Republicans raised $250,000 or more from small donors in 2012…. [A]lmost exactly half [of the ones elected] had liberalism (or conservatism) scores above the median for all members of their own party and the other half fell below their full party's midpoint. That is, the top 5% of all incumbents in small-donor receipts (i.e., the 28 incumbents above $250,000) were randomly distributed within their own parties ideologically. The parties may be polarized for many reasons, but these incumbents were no different in their policy positions from their large-donor-funded cohorts.[86]

This admittedly was not a sophisticated multi-variate study with controls and therefore is not decisive empirically. However, it is better than a few anecdotes and helps us return to a point that ran through the earlier discussion of nationalized politics.

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[84] Wesley Y. Joe, M. J. Malbin, C. Wilcox, P. Brusoe, and J. Pimlott, *Do Small Donors Improve Representation? Some Answers from Recent Gubernatorial and State Legislative Elections*, CAMPAIGN FIN. INST. (2008). Available at http://www.cfinst.org/pdf/books-reports/APSA_2008_SmallDonors.pdf. Accessed March 6, 2020.

[85] Adam Bonica, Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Why Hasn't Democracy Slowed Rising Inequality?* 27(3) J. OF ECONOMIC PERSPECTIVES 103 (2013) at 115.

[86] Malbin, *Small Donors: Incentives, Economies of Scale, and Effects, supra* note 73, at 396-97. The author repeated the process for this paper by checking the ideological scores of Members of the 116th Congress in 2019 against their small-donor receipts in 2018. The results were the same. There was no relationship.

One reason small donors seem not to track ideological differences within the parties is that polarization is not simply about ideology or policy. Frances Lee's work, cited earlier, shows that when the parties in Congress divide into rigid camps, the specific issues between them often have little to do with ideology. Inattentive voters, we know from the work of David Broockman, may have strongly felt policy views without their issue positions being consistently liberal or conservative.[87] At the elite level, however, the members of Congress and their supportive interest groups behave more like two national teams battling for control of the government.[88] The teams indeed have different centers of gravity on policy and those distances have widened. Nevertheless, partisan polarization is not the same thing as ideological distance. Republican members of Congress have remained distant from the Democrats even as they have changed their policy positioning under President Trump. Members of Congress support strong leaders because they want to be part of a winning team. They care what the team stands for, but they also care about being in the majority so they can turn what they stand for into policy.

And so it is with many of the individual donors who currently give to federal candidates, including small donors. We have already noted how successful ActBlue has been at facilitating contributions for Democratic candidates and progressive organizations. According to its website, contributions raised through ActBlue doubled from $335 million in the 2014 election cycle to $782 million in 2016 and then doubled again to $1.7 billion in 2018.[89] Many of ActBlue's donors (including small donors) give to candidates at some distance from where they live, and many are giving to influence the battle for national party control. Unlike the local donors at house parties or rallies, they may know little about the candidates before their first contributions other than what they can read on a website, along with the crucial fact that the candidates are touted as being in competitive races. The candidates' messages undoubtedly matter to them, but they were *not* drawn to the polar extremes when choosing among the candidates on Team Blue. The main goal was to win a majority for the team. In 2018, as in past years, ActBlue's donors supported moderate Democrats in swing districts just as they supported progressives in districts safe for their party.

What ActBlue is doing, and WinRed will do, is not so much underwriting ideological extremism or purity. Rather, the platforms are two of the many powerful forces paving the paths of nationalization in American politics. To the extent that nationalization equates with polarization, it has been about the divisions *between* two teams fueled more by intense animosity toward the opposition[90] than by purely ideological or issue differences. This is not a criticism of the platforms. We part with some critics in that we see much to favor in the technology that enables small donors. Nevertheless, we acknowledge the separate question of whether, how much, or under what conditions to multiply these donors' value with public funds, especially in national elections. Some critics have questioned using public funds in this way because it is

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[87] David E. Broockman, "Approaches to Studying Policy Representation," LEGISLATIVE STUDIES QUARTERLY 41(1): 181-215 (2016).

[88] LEE, *supra* notes 54 and 55.

[89] Emily Dong and Dave Stern, "Q4 2018: Closing a Historic Cycle", ACTBLUE, Blog, January 8, 2019. https://blog.actblue.com/2019/01/08/q4-2018-closing-a-historic-cycle/. Accessed July 20, 2020.

[90] PEW RESEARCH CENTER, PARTISAN ANTIPATHY MORE INTENSE, MORE PERSONAL (October 2019). Available at: https://www.people-press.org/2019/10/10/partisan-antipathy-more-intense-more-personal/. Accessed March 6, 2020.

likely to fuel ideological extremism *within* the two parties. We are also skeptical, but for a different reason – because it could help underwrite a further nationalization of the forces that have created the Congress of today. This is a Congress organized by two hostile parties whose members are willing to give up the time they should use for legislating to raise party dues that, in turn, will be used to weaken committees by making dues-paying the basis for assignments and chairmanships. Those tendencies do not need reinforcement.

C. GEOGRAPHY AS A COUNTERWEIGHT

Such skepticism, however, does not require turning one's back on the key issue that lends support to small-donor matching funds and vouchers. Pluralism still leaves too many off to the side. So the question becomes whether one can address pluralism's flaw while also countering, or at least not worsening, the forces that weaken deliberation. A recent law suggests one possibility. On December 1, 2019, the New York State Commission on Public Campaign Finance Reform recommended a set of proposals that became law on January 1.[91] (The law was declared an unconstitutional delegation of legislative authority on March 12.[92] It was quickly reenacted verbatim by the legislature and signed by the Governor on April 3, 2020.[93]) While the law's future remains enmeshed in an unrelated controversy over ballot access for minor parties, the provisions for financing state legislative elections deserve attention. The commission began with a proposal to replicate New York City's public financing program, which had provided a six-to-one matching grant for the first $175 of any contribution from city residents to participating candidates. (As previously noted, the rates were increased in 2018 for future elections.) The state commission rejected the idea of matching the first $250 from donors who gave larger amounts, deciding to offer matching only for donors who give a candidate no more than $250 in the aggregate. It retained a six-to-one match for statewide candidates but made the following major departures for legislative candidates.

- First, the only contributions to be matched will be ones from residents of the legislative district the candidate is running to represent.
- Second, to make up for the lost money to candidates, the commission came up with more generous, tiered rates for donors who give an aggregate of $250 or less.
    - The first $50 will be matched at a twelve-to-one rate;
    - From $51 to $150 will be matched nine-to-one;
    - From $151 through $250 will be matched eight-to-one.

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91 New York State Campaign Finance Reform Commission, Report to the Governor and Legislature, Dec. 1, 2019. Available at https://campaignfinancereform.ny.gov/system/files/documents/2019/12/campaignfinancereformfinalreport.pdf. Accessed March 6, 2020.

92 *Jastrzemski, et al. v. Public Campaign Financing and Election Commission of the State of New York, et al.* New York State Supreme Court, County of Niagara, March 12, 2020, Index 169561/2019; *Hurley, et al. v. Public Campaign Financing and Election Commission of the State of New York, et al.* New York State Supreme Court, County of Niagara, March 12, 2020, Index 169547/2019.

93 New York State. "Budget Bill", Senate Bill S07508B (identical to Assembly Bill A09508B). Available at https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=S07508&term=2019&Summary=Y&Actions=Y&Text=Y. Accessed May 1, 2020.

    - Thus, an eligible contribution of $250 will be worth $2,550 of which $2,300 would be public matching money. (Under the city's six-to-one match for the first $175, a $250 contribution was worth $1,300.)

- The system does not impose spending limits but does cap the amount of public money any one candidate may receive. This is meant not only to protect the public purse but also to prevent a candidate from building up an insuperable margin from matching funds.
- To respond to the concern that it will be hard to raise money in a poor district, the commission made it easier in districts with below-average incomes for the candidates to qualify for the program and start bringing in public funds.

Thus the New York State law – in addition to rebalancing small versus large contributions – is deliberately structured to focus public money on strengthening the ties between candidates and the small-donor constituents. It is about making the matching funds into being about something more than money. These matching funds can also help the candidates build local networks to withstand potential attacks from outside. And it is worth noticing how the law attempts to accomplish this. Previous work critical of "outside" contributions has tried to reel them in with limits.[94] There is good reason to question whether such an approach would be constitutional.[95] More fundamentally, there is reason to doubt that it would do the main job that interests us here. As with some of the other limits discussed earlier, geographically-based restrictions would do nothing to bring new participants to the table. In contrast, the law's incentives are structured to help correct the defects of unmoderated pluralism in a way that runs counter to the nationalizing forces prevalent in American politics.

Because the New York State system has not yet been put into effect, there is no experience to back up or refute these claims. However, the present author was also co-author of a report that modeled the likely effects by creating simulations with methods drawn from their previous peer-reviewed work on New York City and other jurisdictions.[96] The scenarios built out from the following assumptions: (1) the same candidates would run as had run in the most recent state elections (2018), (2) the candidates would attract the same donors, and (3) the donors would give the same amounts, up to the new contribution limits. Subsequent steps in the analysis ran "what if" scenarios to cover the likelihood that new donors and new candidates would be brought into the system. For new donors, it developed scenarios in which the number of donors doubled, with each new donor giving $50. Because of New York States' low rate of donor participation, doubling would merely bring the donor participation rate up to the level of New York City's, which in turn is about average for all states. It would certainly be plausible to imagine a higher

[94] David Fontana, *The Geography of Campaign Finance Law*, 90 S. CAL. L. REV. 1247 (2017).

[95] See *Thompson v. Hebdon*, 909 F.3d 1027 (9th Cir. 2018) (2–1 decision), overturning an Alaska law that limited how much a candidate may accept, in the aggregate, from out-of-state residents.

[96] Michael J. Malbin and Brendan Glavin, SMALL DONOR PUBLIC FINANCE IN NEW YORK STATE: MAJOR INNOVATIONS – WITH A CATCH. (Campaign Finance Institute, January 2020). 35 pp. Available at: http://cfinst.org/pdf/state/ny/Small-Donor-Public-Finance-in-NY_Jan2020.pdf. Accessed July 23, 2020. For the previously published work on New York City, see *supra* note 76.

rate. Tripling the number of donors would still only barely bring New York up to the top quartile of states.[97] But the results were dramatic enough without tripling.

To estimate the law's impact the analysis geo-coded each of the state's donors and only applied matching money for contributions to candidates running to represent the donor's residential district. Because the law only matches contributions from donors who give up to $250 in the aggregate, the scenarios also assumed that donors within the district who gave between $251 and $2500 would stop at $250. That is because the matching funds will make a $250 contribution worth as much as an unmatched contribution of $2,550. Donors who gave between $2,501 and the new contribution limit were assumed to continue giving at the same level as in 2018.

The first set of concerns about New York State's approach is whether restricting matching funds geographically would give candidates a strong enough incentive to recruit more small donors into the system. Whether the incentive is strong enough will depend upon the matching rate. New York State's is significantly higher than those offered in other jurisdictions. The scenarios showed that (a) almost all candidates would be better off with the system's new contribution limits and matching funds than they were under the status quo, (b) they would raise almost the same amount under the tiered matching system as under a six-for-one match for contributions statewide, assuming no new donors in the system, and (c) with at least some new donors, the candidates would do better under within-district matching.[98]

The following table shows how this can shift the balance of funding for candidates. It summarizes three different scenarios. The first (or status quo) scenario shows the actual sources in 2018. The second shows what the same donors would have generated under the new law. The third shows the results if the number of donors doubled. The rows do not add to 100% because some funding sources are omitted from the table. In each case, the percentage from donors who give $1-$250 *includes* the value of the matching funds they generate.[99]

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[97] For the percentage of each state's adult population that contributes, see Michael J. Malbin & Brendan Glavin, "Large Donors and PACs Continue to Dominate Fundraising in Most of the 50 States," especially Table 2, "Percentage of Each State's Adults Who Made Contributions to Gubernatorial or State Legislative Candidates". National Institute on Money in Politics. July 8, 2020. Available at: https://www.followthemoney.org/research/institute-reports/large-donors-and-pacs-continue-to-dominate Accessed July 23, 2020.

[98] Malbin & Glavin, SMALL DONOR PUBLIC FINANCE IN NEW YORK STATE, *supra* note 96 at 10.

[99] For bar chart representations of the data in this table, see *Id*. at 21-22.

Sources of Candidates' Funds Under Three Scenarios						
	New York State Assembly			New York State Senate		
	Individuals, $1-$250	Individuals, $1,000 up	Non-party organizations	Individuals, $1-$250	Individuals, $1,000 up	Non-party organizations
Actual, 2018	14%	44%	48%	8%	18%	50%
New law, same donors	62%	7%	25%	45%	10%	31%
New law, double donors	73%	5%	18%	56%	8%	25%
SOURCE: Campaign Finance Institute/National Institute on Money in Politics						

The table makes it clear that donors who gave $250 or less made up only a small fraction of the funding for Assembly and Senate candidates in 2018. This was not unusual. In the median state in 2016-19, donors who gave $1-$250 were responsible for about 12% of legislative and gubernatorial candidates' funds.[100] This is comparable to the percentages for the U.S. House and Senate.[101] But the picture turns around when you add matching funds for within-district donors and restrict matching to donors who give $250 or less. The percentage of Assembly candidates' funds from small donors (including matching funds) would be 62% of the total, assuming no new donors. This is comparable to the 63% figure for New York City Council candidates under the city's 6:1 match for contributions citywide in the elections of 2009 and 2013[102]. Doubling the donors would heighten the effect. Instead of being an afterthought in the candidates' financial constituency, these donors would become by far the most significant, even without doubling.

During the debates over this policy, considerable concern was expressed by those who were familiar with the city's system as to whether non-incumbent candidates could raise enough from within-district donors to mount a credible campaign, especially if they came from poor districts. The concern seems plausible but is not borne out by the data. One good test would be to compare how well potentially competitive candidates would fare under the new system compared to the status quo. The data show that Assembly challengers who received at least one-third of the vote in the general election of 2018 (as well as the incumbents they faced) would have received substantially more under the new system. They would also have more with the state's system than with a straight 6:1 match for all contributions statewide. The same conclusions held for viable challengers from poorer districts as for all viable challengers: the challengers from poorer districts would fare better with public matching funds than without, and they would do at least as well with a high matching rate limited to contributions within the district as with a program that spent the same amount of public money to match contributions from anywhere in the state at a lower rate.[103]

D. COMPARING PROGRAMS, ADDRESSING QUESTIONS, BALANCING GOALS

We began this section by noting that small-donor public financing is often proposed as a means to help make the donor pool more representative. It is proposed, in other words, as one

[100] See Malbin and Glavin, "Large Donors and PACs". *supra* note. 96, Table 3: "Sources of Funds in Gubernatorial and Legislative Elections, 2016-2019.

[101] See Malbin and Glavin, CFI'S GUIDE, *supra* note 35 at. 64-65.

[102] Malbin & Parrott, *supra* note 76 at 233.

[103] Malbin & Glavin, SMALL DONOR PUBLIC FINANCE IN NEW YORK STATE, *supra* note 96 at 10-12.

method to help redress one of the weaknesses of Madisonian pluralism. However, these proposals have been subject to the charge that they would undermine the Madisonian system they are trying to correct by fostering ideological polarization. We have questioned the claims about ideological pluralism but agreed with the concern that using matching funds to multiply the value of a national pool of small donors could help further rigidify the nationalization of two teams whose collective electoral interests are served too often by substituting message voting and position-taking for legislating.

By acknowledging this concern, however, we are not saying that one has to make a zero-sum choice. Instead, this paper put forward a form of small-donor public financing that is intended both to make the donor pool more representative and to act as a counterweight to nationalized rigidity. The policy option is one that would multiply the financial importance of small donors who live in the district a candidate seeks to represent. Because this option seeks to balance two goals, it raises two questions. (1) How effective would it be at redressing pluralism's imbalances when compared to other campaign finance policies? (2) What is the theory of change under which such a program would support the deliberative goals of Madisonian representation?

***1. Correcting Pluralism*:** We noted earlier that New York City's matching fund system has brought more donors into the system. The small donors have come from virtually every one of the city census block groups, making the donors' neighborhoods indistinguishable economically and demographically from the city as a whole.[104] But there is one respect in which New York City's results do not look as strong as Seattle's. In 2019, approximately 6% of Seattle's adults returned vouchers, which is a substantially higher percentage than the cash donors in New York City.[105] Moreover, as reported earlier, McCabe and Heerwig found the voucher users to be more representative of Seattle's population than its (unmatched) cash donors.

However, comparing Seattle's 6% voucher users to New York City's small donors does not tell the full story. It is not obvious that Seattle outperformed New York if the goal is to bring about a durable change that results in having more diverse elements of the city remaining engaged long enough to influence legislatures. The combined findings tell us that a larger (and more representative) pool of small donors contributes when matching funds give candidates a financial incentive to find and mobilize them. They also tell us that even more donors will give if they can use "free money". But these observations do not tell us about long-term effects. It seems reasonable to suspect (or speculate) that those who give at least some money of their own might remain more attentive than the ones who use vouchers. Maintaining small donors' attention between elections may also depend upon intermediary organizations mobilizing them, both in the donating and governing phases of a typical cycle. These speculations seem likely, but no one has

[104] This was a stronger result than Los Angeles', which showed neither the same bump in participation nor in demographic representation. Los Angeles is the only other major jurisdiction so far with multiple-matching funds in effect for more than one election. It matched contributions at at significantly lower rates the New York. For both cities, see Malbin & Parrott, *supra* note 76.

[105] The number of adults returning vouchers in 2019 was 38,096. See Seattle Ethics and Elections Commission, DEMOCRACY VOUCHER PROGRAM: BIENNIAL REPORT (2019) at 10.Available at https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/2019_Biennial_Report.pdf. Accessed August 2, 2020. Seattle's adult population (18 and older) was 639, 870. See U.S. Bureau of the Census, "Quick Facts, Seattle City". The city's full population was estimated at 753,679 in 2019. Available at https://www.census.gov/quickfacts/fact/table/seattlecitywashington,US/PST045219. Accessed July 28, 2020.

done the research to confirm it. Such research requires tracking the political and organizational networks within communities along with tracking whether first-time donors remain engaged over several cycles both as donors and in other capacities.

Even with the appropriate research for these cities, one would still have to extrapolate the findings beyond cities to larger jurisdictions. The policymakers in New York State thought it unlikely that the neighborhood fundraising methods used to mobilize small donors in city elections would become the norm statewide. Their skepticism seems plausible. The same problem would be even more obvious if one tried to extrapolate from Seattle to a national stage. The city of Seattle has almost exactly the population of one congressional district.[106] It is a jurisdiction manageable enough for a candidate to raise funds through face-to-face meetings set up by networks of supporters. One should not expect this kind of fundraising to be the norm if the donors could steer vouchers where ever they wish. It seems more likely that the candidates, parties, and donors would use web-based platforms to steer money to tossup races that would determine national majorities. As previously argued, it is not problematic *per se* to have donors giving small contributions to influence national results. The policy question is whether to use public matching funds or vouchers to multiply this tendency. It would not be difficult in principle to structure a voucher system with geographic restrictions parallel to the ones in New York State. That would make the two systems parallel in this respect. If one then had to choose between them, the issue would then turn on research about the spillover participation effects, along with issues of administration and compliance.

Skeptics could always argue, of course, that no such program should be adopted without conclusive research behind it. But that argument would cut against most policy changes in most issue domains. The claim that either multiple matching funds or vouchers would be likely to address the problems of pluralism seems powerful based on the evidence available so far. The question then is whether this approach would also bring about collateral damage, or whether it is likely to help rather than harm the deliberative process.

2. Theory of Change: When we move from the donors to legislative behavior, it is worth dwelling for a moment to consider how programs such as these might help to accomplish what has been claimed. No one would suggest that within-district matching funds or vouchers could resurrect Madisonian deliberation by itself. Rather, the claim is that within-district programs can help. They would work by strengthening the financial ties between representatives and their geographic constituents with the idea that this, in turn, will affect legislative institutions.[107] As of this writing, the policy claims have little empirical validation. [108] However, we can present why we consider the expectations plausible.

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[106] See U.S. Bureau of the Census, *supra* note. 105.

[107] To be clear, this is not about whether local, state, or national governments are better positioned to serve one or another public need. It is not about federalism. It is about the connections between representatives, the constituents they serve, and legislatures, at all levels of government.

[108] But for suggestive analogies, see Anne E. Baker "Getting Short Changed? The Impact of Outside Money on District Representation." SOCIAL SCIENCE QUARTERLY 97(5): 1096-1106 (2016); Anne E. Baker, "The Partisan and Policy Motivations of Political Donors Seeking Surrogate Representation in House Elections." POLITICAL BEHAVIOR. Published online February 2019. https://doi.org/10.1007/s11109-019-09531-2.

Earlier we suggested that potentially threatened officeholders' fears of nationally-funded attack ads lead them now to see party, party-related, and national issue or interest group support as their only effective responses. But many candidates who accept within-district matching funds are likely to use them to build local networks of campaign supporters and volunteers to find local donors.[109] It seems likely that these networks will help inoculate officeholders against outside money. While not dispositive, city council candidates who participated in Seattle's voucher system in 2019 withstood massive independent spending against them by Amazon.[110] Similar local networks may or may not be sufficient in a congressional race. Party support might still be needed. But the local networks at a minimum would be valuable additions to spending by the party and national interest groups.

We have already presented evidence to show this would be likely to change the economic and demographic mixture of donors. People with less money and from more diverse backgrounds could afford to give. Candidates would have an incentive to mobilize them. However, unlike the donors to ActBlue and WinRed, the donors responding to these incentives would be mobilized locally. If the fundraising occurred largely in face-to-face local meetings, there would be reason to believe the donors would be less ideologically uniform and more diverse in their issue positions than the current donor pool. They could perhaps even be more like the small donors in the earlier study of donors in state elections, who were less extreme ideologically than large donors,[111] although it would be a stretch to expect that based on a single outdated study. But whether less extreme or not, they would probably be more diverse and less likely to fit neatly in two vitriolically opposed camps.

Let us assume at least some of this is true about the donors. How might this translate into changes that could affect the balance between backbenchers and leaders in a manner helpful to deliberation inside Congress? One should expect backbenchers who depend on a mobilized constituent base to be less likely to cede quite so much of their policymaking power to the leadership and its staff. They would have an interest in pursuing their own policy goals through formal committees and other means. Over time, as the next generation of potential leaders bargains with members to win their leadership positions, one could also imagine – not predict, but imagine – members demanding more autonomy for their committees, perhaps even including the right to have committees elect their chairs. Well short of this, members are likely to be more inclined to make space for a more meaningful role to be played by Congressional Member Organizations (such as the bipartisan Problem Solvers Caucus) to develop, promote, and push for floor votes on serious legislative alternatives (or supplements) to the leaderships' preferred packages.[112] None of this could be accomplished through reforms delivered from on high. In line

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[109] Related to this expectation is recent work by Charles R. Hunt on the importance of local roots to a member's reelection. Hunt found that "deeply-rooted legislators require significantly less campaign spending than similarly-situated legislators without deep local roots." Charles R. Hunt, HOME FIELD ADVANTAGE: ROOTS, REELECTION, AND REPRESENTATION IN THE MODERN CONGRESS. Ph.D. Dissertation, University of Maryland, College Park, MD (2019). The quotation is from the abstract.

[110] Nick Nyhart and Adam Eichen, "Grassroots Money Beats Amazon in Seattle". THE AMERICAN PROSPECT, Nov. 15, 2019.

[111] Joe, *et al., supra,* note 84.

[112] For an example, see Lindsey McPherson, "Problem Solvers Propose Bipartisan Benchmarks for Economic Recovery", ROLL CALL, April 20, 2020. Available at https://www.rollcall.com/2020/04/20/problem-solvers-propose-bipartisan-benchmarks-for-loosening-restrictions/. Accessed May 3, 2020. The article is referring to,

with the conditional party government theory, the expectation has to be that institutions will be restructured to follow the needs of members and that members will be responding to the needs of their constituents.

It is important not to go overboard here. First, the claim is not that buttressing local ties through campaign finance law would itself reverse the powerful forces that have led to centralized leadership in Congress, weaker committees, and a heightened sense of negative partisanship.[113] The incentives behind these institutional developments run deep. The tides against nationalized interests run more in a global than local direction. But ideas such as these could lean against the prevailing winds by creating constituency-based backstops to support a politician's willingness to stand up to national issue groups.

Second, it could be argued against this point of view that the leaders would simply create an end-run around it, making the innovation worthless. The leaders could react to constituency-based matching funds by increasing the dues payments demanded of members for desirable committee positions. The reply to this objection is that the leaders already pressure the members to raise money for the party. The hope – admittedly with no guarantee – is that diversifying the sources for campaign funds creates counterpressures in the larger system. This cannot be done with contribution or spending limits. It also requires something more than handing public grant money to candidates. It calls for giving candidates and local parties the incentive to build local political organizations in the expectation (or hope) that this will in turn give the members at least one degree of separation from the national forces that dominate political finance today.

Finally, this is not an argument for a Congress with chaotically weak parties. Any basic understanding of legislative behavior teaches us that it is easier to provide short-term benefits than to accept short-term costs in return for longer-term benefits. Political parties make it possible for members to join ideas in a package and then create procedures both to protect members from exposure and assure those who join the bargain that their interests will not be jettisoned on the floor. However, there must be a middle ground between hopelessly weak parties and today's parties that so strongly favor messaging over deliberation. One reason to consider emphasizing constituency-based fundraising is to create more play in the joints for these middle grounds to be explored.

U.S. House of Representatives, Problem Solvers Caucus, REOPENING AND RECOVERY "BACK TO WORK" CHECKLIST," April 20, 2020, Available at https://problemsolverscaucus-gottheimer.house.gov/sites/problemsolverscaucus.house.gov/files/wysiwyg_uploaded/PSC%20Reopening%20and%20Recovery%20Back%20to%20Work%20Checklist%20%5BFinal%20-%20April%2020%2C%202020%5D.pdf. Accessed May 3, 2020.

[113] For an example of how deeply these forces run, consider the connections between broadband access, self-selection by audiences of their information sources, and partisan hostility, in: Yptach Lelkes, Gaurav Sood, and Shanto Iyengar, ""The Hostile Audience: The Effect of Access to Broadband Internet on Partisan Affect", AMERICAN JOURNAL OF POLITICAL SCIENCE 61(1):5-20 (2017).

IV. CONCLUSION

This paper has cast a metaphorical net in two directions. It has urged campaign finance reformers to take institutional concerns seriously. Representative democracies depend upon deliberative institutions to make decisions that serve the long term good. Today's nationalized teamsmanship has harmed Congress's deliberative capacities. Doing more of the same will not produce different results. This point applies most clearly to the idea that the institutions of government will be improved with unlimited contributions to the national parties. But a similar point could be applied to policies that would multiply the value of web-based contributions that would be mobilized by essentially the same national parties and issue groups. The political battle between these two ideas is about which factions should have more power. Neither improves institutional performance.

At the same time, however, the paper has also urged institutionalists to listen to those who have been left aside. Just as wisdom requires deliberation, so does legitimacy require citizens of all backgrounds to have the sense they can be heard. These goals are not contradictory; they belong together. Public resources can help to correct pluralism's flaws, but that correction can and should be designed simultaneously to serve institutional goals. It is certainly possible, with a broad enough vision, to look in both directions. The coming years will require no less.

Appendix
Selected Campaign Finance Reform Goals

The opening pages of this paper referred briefly to a sampling of the goals often put forward as being among the primary objectives of campaign finance reform. The following is a non-exhaustive survey grouped under three headings: reforms intended to prevent or deter certain relationships between policy-makers and donors; reforms intended to promote a more egalitarian democracy, and reforms designed to effect election campaigning. Sources for a more complete discussion of each goal are cited in the footnotes.

- Goals that relate to preventing or deterring undesirable behavior by public officials:
  - Reduce or deter corruption[114];
  - Reduce the appearance of corruption or impropriety[115];
  - Reduce undue influence on the part of major donors[116];
  - Reduce the financial dependence of candidates and parties on major donors (sometimes called "dependency" corruption)[117].

- Goals aimed at equality, descriptive representation, and related goals:
  - Promote greater equality of among those who put money into the system[118];
  - Promote greater policy alignment between the preferences of the median citizen and legislative outcomes[119];
  - Enhance financial participation by a larger and more diverse set of donors[120];
  - Open the candidate pool to a more diverse set of potential office holders[121];
  - Increase candidates' financial dependence on their geographic constituents[122].

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[114] *Buckley* v. *Valeo*, *supra* note 2 at 25-32, 67-68. For histories of the concept of corruption in campaign finance law, see: KURT HOHENSTEIN, COINING CORRUPTION: THE MAKING OF THE AMERICAN CAMPAIGN FINANCE SYSTEM (2007); ROBERT E. MUTCH, BUYING THE VOTE: A HISTORY OF CAMPAIGN FINANCE REFORM (2014); ZEPHYR TEACHOUT, CORRUPTION IN AMERICA: FROM BENJAMIN FRANKLIN'S SNUFF BOX TO CITIZENS UNITED (2014). For a review of the variety of definitions put forward for "corruption" in campaign finance decisions, see Deborah Hellman, *Defining Corruption and Constitutionalizing Democracy*, 111 MICH. L. REV. 1385 (2013).

[115] *Buckley* v. *Valeo*, 424 U.S. 1 (1976) at 25-32, 67-68. For a critique of the "appearance" standard, see Daniel Hays Lowenstein, *On Campaign Finance Reform: The Root of All Evil is Deeply Rooted*, 18 HOFSTRA L. REV. 301, 326 (1989).

[116] *Buckley* v. *Valeo*, *supra* note 2 at 53, 70, 76. Also see Lynda W. Powell, *The Influence of Campaign Contributions on Public Policy*, 11(3) THE FORUM: A JOURNAL OF APPLIED RESEARCH IN CONTEMPORARY POLITICS 339 (2013).

[117] LAWRENCE LESSIG, REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS – AND A PLAN TO STOP IT, 15-20, 125-30, 230-46 (2011).

[118] HASEN, PLUTOCRATS UNITED, *supra* note 70 at 84-103.

[119] Nicholas O. Stephanopoulos, *Aligning Campaign Finance Law*, 101 VA. L. REV. 1425 (2015).

[120] Spencer Overton, *The Participation Interest*, 100 GEO. L.J. 1259 (2012); Michael J. Malbin, Peter W. Brusoe and Brendan Glavin; *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11(1) ELECTION L. J. 3 (2012); Malbin, *Small Donors: Incentives, Economies of Scale, and Effects*, *supra* note 72.; Malbin and Parrott, *Small Donor Empowerment, supra* note 76.

[121] Justin Miller, *The New Public Option*, THE AMERICAN PROSPECT 2015 (Fall). Available at https://prospect.org/article/can-campaign-finance-be-reformed-bottom. Accessed Sept. 21, 2019. See also Laura Albright, *Not Simply Black and White: The Relationship between Race/Ethnicity and Campaign Finance in State Legislative Elections* (SSRN Working Paper, August 4, 2014). Available at: https://ssrn.com/abstract=2475889 or http://dx.doi.org/10.2139/ssrn.2475889. Accessed Sept. 21, 2019.

- Goals aimed at altering the quality of elections:
    - Increase competition[123];
    - Affect the character (and diversity) of those who choose to seek office[124];
    - Encourage candidates to spend more time on direct voter contact[125];
    - Deter blatantly misleading or scurrilous advertising[126]; and
    - Help voters make informed choices[127].

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[122] Fontana, *The Geography of Campaign Finance Law*, *supra* note 94.

[123] For one book that lists competition as being first among the desired goals, see FRANK J. SORAUF, MONEY IN AMERICAN ELECTIONS (1988), 361-62. For reviews of the empirical literature on the relationship between campaign finance reform and competition, see Jeff Milyo, *Campaign Spending and Electoral Competition: Towards More Policy Relevant Research*, 11(3) THE FORUM: A JOURNAL OF APPLIED RESEARCH IN CONTEMPORARY POLITICS 437 (2013); Fortier and Malbin, *An Agenda, supra* note 18 at 459-61. See also: Neil Malhotra, *The Impact of Public Financing on Electoral Competition: Evidence from Arizona and Maine*, 8 ST. POLITICS & POLICY Q. 263 (2008); Kenneth R. Mayer, Timothy Werner & Amanda Williams, *Do Public Funding Program Enhance Electoral Competition?*, in THE MARKETPLACE OF DEMOCRACY: ELECTORAL COMPETITION AND AMERICAN POLITICS 245 (Michael P. McDonald & John Samples, eds., 2006); Costas Panagopoulos, *Leveling the Playing Field: Publicly Financed Campaigns and Electoral Competition*, *in* PUBLIC FINANCING IN AMERICAN ELECTIONS 176, 182 (Costas Panagopoulos ed., 2011) [citing Costas Panagopoulos & Donald Green, *Field Experiments Testing the Impact of Radio Advertisements on Electoral Competition*, 52 AM. J. POL. SCI. 156 (2008)].

[124] Keith E. Hamm & Robert E. Hogan, *Campaign Finance Laws and Candidacy Decisions in State Legislative Elections*, 61 (3) POLITICAL RESEARCH QUARTERLY 458 (2008) found a positive relationship between more stringent campaign finance laws and candidates emerging to challenge incumbents; Michael G. Miller, SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE, 80-107 (2014), found a connection between public financing and the emergence of "a different kind of legislator" (107). Contrary conclusions are drawn by Raymond J. La Raja & David L. Wiltse, *Money that Draws No Interest: Public Financing of Legislative Elections and Candidate Emergence*, 14(4) ELECTION L. J. 392 (2015); Mitchell Kilborn, *Public Campaign Financing, Candidate Socioeconomic Diversity, and Representational Inequality at the U.S. State Level: Evidence from Connecticut*, 18(3) STATE POL. & POL'Y Q. 296 (2018).

[125] MILLER, SUBSIDIZING DEMOCRACY, *supra* note 124 at 46-63, finds that candidates in states with full public financing spend more of their time in direct contact with voters.

[126] This connection was made by Rep. David Price (D-NC) when he introduced the "Stand by Your Ad" provision that became part of the Bipartisan Campaign Reform Act of 2002. His statement at the time is quoted in Michael M. Franz, Joel Rivlin & Kenneth Goldstein, *Much More of the Same: Television Advertising Pre- and Post BCRA*, in THE ELECTION AFTER REFORM: MONEY, POLITICS, AND THE BIPARTISAN CAMPAIGN REFORM ACT (M. Malbin, ed., 2006), 145. In 2019 the same Rep. Price introduced a bill called "Stand by Every Ad" to expand this provision. See David Price, *Rep. Price Says 'Take Back our Politics' with Introduction of Democracy Reform Bills*, press release, July 25, 2019. Available at https://price.house.gov/newsroom/press-releases/rep-price-says-take-back-our-politics-introduction-democracy-reform-bills. Accessed Sept. 21, 2019.

[127] *Buckley* v. *Valeo*, *supra* note 2 at 14-15, 66-76, 8, 83. For a review of the scholarly literature on the informational value of disclosure see Abby Wood, *Campaign Finance Disclosure*,14 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 11 (2018).