



BIPARTISAN POLICY CENTER

# Campaign Finance in the United States: Assessing an Era of Fundamental Change

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StanfordLawSchool



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## ABOUT THIS REPORT

The U.S. campaign finance system has undergone fundamental changes in the past 15 years. Relying on new research from several of the nation's foremost experts on the topic, this report attempts to assess these changes. The goal of this report and the larger research effort that produced it is to clarify the dynamics of the modern campaign finance system in the United States. The report examines the legal, political, and technological shifts that have combined to shape the current campaign finance regime.

The research summarized in this report is available at <https://bipartisanpolicy.org/campaign-finance>.

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## AUTHORS

### **Nathaniel Persily**

*James B. McClatchy Professor of Law  
Stanford Law School*

### **Benjamin L. Ginsberg**

*Partner, Jones Day*

### **Robert F. Bauer**

*Professor of Practice and Distinguished  
Scholar in Residence, New York University  
Law School*

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## CONTRIBUTORS

**Robert Boatright**

**Adam Bonica**

**Bruce Cain**

**Bruce Desmarais**

**Diana Dwyre**

**Erika Franklin Fowler**

**Keith Hamm**

**Paul Herrnson**

**Eitan Hersh**

**Robin Kolodny**

**Raymond LaRaja**

**David Magleby**

**Kenneth Mayer**

**Jeffrey Milyo**

**David Primo**

**Abby Wood**

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## DISCLAIMER

The findings and recommendations expressed herein do not necessarily represent the views or opinions of the Bipartisan Policy Center's founders or its board of directors.



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# Executive Summary

The U.S. campaign finance system has undergone fundamental changes in the last 15 years. ***The law has changed***, as the courts have sharply limited Congress's authority to regulate corporate and union election expenditures and have created new vehicles for money to flow into election campaigns. ***The politics of campaign finance has changed***, as these new actors, especially Super PACs, have grown in significance and redefined the roles of insiders and outsiders to the electoral system. ***The technology has changed***, as the internet, social media, and mobile devices have chipped away at television as the predominant mode of political campaigning.

Relying on the best political science available, this report attempts to assess these changes. The goal of this report is to clarify the dynamics of the current campaign finance system so that any discussion of the major changes that are occurring can be based on the best available evidence. This assessment points in several directions, many of which run counter to conventional wisdom.

- 1. Super PACs** — Created by a ruling from a U.S. District Court less than six years ago, Super PACs have quickly become critically important actors in the campaign finance system. As repositories of potentially unlimited funds from an array of sources, Super PACs have become the vehicle of choice for individuals wishing to make contributions in amounts beyond the limits imposed on other actors in the campaign system. Their prominence underscores one of the chief developments in campaign finance in recent years: the importance of a relatively small group of individuals in providing an increasing share of the money spent in campaigns.
- 2. Parties** — The prominent role played by Super PACs and other “outside” groups has reconfigured the party network for campaign finance and shuffled financial clout along a spectrum of groups ranging from alter egos of parties and candidates to truly independent groups that compete for attention from large donors.
- 3. Corporations** — The expected influx of corporate treasury money into the federal campaign finance system, following the U.S. Supreme Court's decision in *Citizens United v. FEC*, has not happened. The “new money” that has entered the system since that decision is largely from individuals, many of whom have business or corporate connections, but a very small share of campaign financing comes from corporate treasury funds. If anything, unions appear to have taken greater advantage of *Citizens United*, as they have spent more of their treasury money in this fashion.



4. **Disclosure** — The 2012 and 2016 elections have provided inconsistent evidence as to the share of money in the campaign finance system coming from undisclosed sources. Most undisclosed money comes into the system through 501(c)(4) organizations, with a smaller share coming through Super PACs. The amount of undisclosed money grew considerably in 2012 but declined in 2016, likely due to the unique features of each presidential campaign.
5. **New Media** — The 2016 election saw record campaign spending on the internet and social media. Television advertising continued to receive the lion's share of media dollars, but we may look back on 2016 as a watershed moment when campaigns began to invest more heavily in digital campaigns. This changing dynamic has implications for the campaign finance system. A great deal of the regulatory structure of the campaign finance system is predicated on television as the primary mode of campaigning. Moreover, digital tools for both raising and spending money change the cost structure of campaigns, enabling different types of strategies and candidacies.

# Preface

The research effort that produced this report and the accompanying studies grew out of the experience of the authors (Bauer, Ginsberg, and Persily) with a similar effort that produced the report of the Presidential Commission on Election Administration (PCEA). The PCEA brought together the nation's top experts on election administration to assist a commission composed largely of state and local election administrators and business leaders. That commission produced a set of recommendations and a bipartisan report on a subject that often features the greatest of partisan rancor. The goal of the present research effort was to achieve something similar: a set of studies and a bipartisan report drawn from the best social science relating to the changing dynamics of the U.S. campaign finance system.

Many people and institutions contributed to this effort. First and foremost, a top-flight group of political scientists produced the research that contributed to this report. The “raw” research is available at <https://bipartisanpolicy.org/campaign-finance>. Stanford University Professor Adam Bonica contributed his research on corporate spending on elections. California State University, Chico, Professor Diana Dwyre wrote both a literature review and a new study on political parties and campaign finance. Professor Erika Franklin Fowler and her colleagues in the Wesleyan Media Project, Travis Ridout and Michael Franz, produced literature reviews on campaign spending on television advertising and on media, and along with the Center for Responsive Politics, conducted a study of undisclosed money in the campaign finance system. University of Connecticut Professor Paul Herrnson provided an exhaustive study of Super PACs. Tufts University Professor Eitan Hersh conducted a unique study from a survey of donors to assess the reasons why people contribute money to campaigns. Temple University Professor Robin Kolodny produced a literature review on the state of knowledge concerning contributions, expenditures, and the costs of campaigns. University of Missouri at Columbia Professor Jeffrey Milyo and University of Rochester Professor David Primo conducted two surveys to produce a paper on public opinion and campaign finance that also included a literature review on the subject. Professor Raymond LaRaja and Zachary Albert, both from University of Massachusetts at Amherst, and Penn State Professor Bruce Desmarais produced a study of campaign finance and party primaries, and Albert provided a comprehensive report on trends in campaign financing from 1980 to 2016. Brigham Young University Professor David Magleby produced a study on interest groups and campaign finance. University of Wisconsin Professor Kenneth Mayer contributed a literature review on public funding. University of Southern California (USC) Gould School of Law Professor Abby Wood produced a literature review on campaign finance disclosure. Finally, the National Institute on Money in State Politics, led by Edwin Bender, produced a report on campaign finance and state political party organizations. Other scholars who participated in this effort by offering comments on the research or attending some of the conferences were Harvard University Professor Stephen Ansolabehere, Clark University Professor Robert Boatright, Stanford University Professor Bruce Cain, University of San Francisco Professor Kenneth Goldstein, University of Michigan Professor Richard Hall, Rice University Professor Keith Hamm, Princeton University Professor Nolan McCarty, and Massachusetts Institute of Technology Professor Charles Stewart III.



An advisory group of campaign finance experts also provided indispensable advice and comments. Its members included Duke University Law Professor Guy-Uriel Charles, University of California, Irvine, Law Professor Richard Hasen, Allison Hayward (Commissioner on the California Fair Political Practices Commission), New York University (NYU) Law Professor Sam Issacharoff, Professor Michael Malbin (Executive Director of the Campaign Finance Institute and Professor of Political Science at the University at Albany, State University of New York), Trevor Potter (President of the Campaign Legal Center), John Samples (Vice President of the Cato Institute), Professor Bradley A. Smith (Capital Law School Professor and Chairman of the Institute for Free Speech), USC Law Professor Franita Tolson, and Stetson University College of Law Professor Ciara Torres-Spelliscy. None of these commenters should be understood to agree with the conclusions in this report, but their expertise helped greatly to inform our work.

This research would not have been possible without generous support from several foundations, universities, and organizations. The William and Flora Hewlett Foundation was the primary sponsor for this research. The Democracy Fund also provided significant support. In addition, through support for Professor Persily's research, Stanford Law School, the Stanford University Cyber Initiative, the Andrew Carnegie Fellowship Program, the John B. and James L. Knight Foundation, and the Center for Advanced Study in the Behavioral Sciences made this research effort possible. NYU Law School (especially Dean Trevor Morrison and Christina Napolitano) provided indispensable administrative support and management of the various grants. The Bipartisan Policy Center's Democracy Project, led by John Fortier, provided a range of financial and logistical support, held meetings for the group, facilitated production of the report (under the able leadership of Michael Thorning), and now hosts the website with the research materials.



## Introduction

The 2016 election was unprecedented and unexpected in a number of respects. Political scientists are only beginning to come to grips with the lessons it may teach about political behavior, campaign strategy, and the resilience of the norms and institutions that had shaped electoral behavior to that point. Early analysis runs the gamut from those who see the election as a turning point, to those who see it as an exception to established rules of the discipline, to those who consider it validation of well-known trends.

The financing dynamics of the 2016 presidential campaign were as unprecedented as the election itself, and political scientists are likewise seeking to unearth any larger lessons the election teaches about long-term changes in the political system. Never before had the winning candidate been outspent to such a degree by his opponent. Never before had a campaign been so successful in relying on “earned” media and online communications. And never before had an “outsider” without prior political or government experience entered the presidential race with near-100-percent name recognition due to a lifetime in the public eye.

To be sure, one must be cautious in over-reading the single, unique data point of the 2016 election. Presidential elections, in general, are a poor guide for understanding the campaign finance system. Presidential candidates have higher name recognition than any other candidates in the political system. The drawn-out, staggered presidential primary process has no analog elsewhere in the U.S. political system. The full weight of the party apparatus, let alone all interest groups with a national reach, are fully engaged in the presidential election. Media attention to the presidential race is constant for months until Election Day.



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Even recognizing these caveats related to this presidential election and presidential elections in general, the 2016 election reflected several long-term trends related to the campaign finance system. The law, organization, and technology of campaigns have all changed since the last major debate over campaign finance reform 15 years ago. The Bipartisan Campaign Reform Act (BCRA) and the Supreme Court's decision in *Citizens United v. FEC*, along with court decisions in related cases and FEC rulings, have reshaped the legal terrain upon which campaign fundraising and spending is conducted. A principal consequence of this shifting terrain is the emergence of new institutions, such as Super PACs, with varying degrees of independence from the formal party organizations and candidate campaigns. Some exist as alter-egos of these institutions, while others openly compete with the parties and other political actors for money and attention. Finally, technological changes in the communications environment—principally, the ongoing transition from television to the internet as a major conduit for campaign communications—have affected both the raising and spending of campaign money.

This report seeks to assess the dynamics of the current system of campaign finance in the United States. It avoids suggestions for reform, both because the authors may disagree about the right path forward and because we believe that any future reform discussion must be built upon agreement about basic facts and well-documented trends of the system. We attempt to identify disagreements among political scientists, while also establishing what we consider to be the consensus view of major features of the system. As in so much of the analysis of the electoral system, moreover, add our voices to the chorus calling for better data and increased research in the area of campaign finance.

To summarize succinctly the voluminous research that was part of this effort presents a difficult task. Nevertheless, a few general empirical observations can be highlighted. First, we hope this report can provide a truce among opposing camps of political scientists concerning one of the principal debates revolving around parties and campaign finance. The first camp has argued that parties have evolved under the current system to become more diffuse but robust “networks” of party-affiliated interests, while the second has maintained that parties have become weaker relative to “outside groups.” However, both camps recognize that parties’ position in the campaign finance system has been transformed. In particular, parties must at least contend with the growing prominence of both Super PACs and tax-exempt 501(c) organizations that operate under what are—or what by their interpretation of the law the groups believe to be—more relaxed fundraising and spending restrictions. Some of these organizations are closely aligned with the parties; others are somewhat more, or very, independent. One mark of the significance of the change is the fact that some “outside groups” are, in fact, party-affiliated, in the sense that they are organized and run in a party’s interest and often by individuals with party experience and reputations. In other words, some partisans have thought it necessary or advisable to take their activities “outside” and conduct them with at least a claim of independence from the formal party.

Second and related, one of the chief changes in the campaign finance system is the shift toward fundraising and spending by a small group of individuals, particularly through Super PACs. These funding vehicles, as well as others such as 501(c)(4) organizations, have principally served as the repositories of funds given by individuals. It has been true since 1976 that well-to-do individuals could spend without limit if doing so independently of a candidate or party; this was seen as a dimension of their free speech rights. However, in the wake of the legal developments of the last decades, individuals with means can associate more freely and efficiently in collective efforts to influence the political process. Moreover, they may now do so with greater opportunity to arrange their participation with limited or no public disclosure.

Third, despite the Supreme Court's decision in *Citizens United*, corporations have not yet taken significant advantage of their newfound ability to engage in independent spending. Unions have been somewhat more active, but for the most part, *Citizens United*'s effect can be seen more in *SpeechNow.org*, the lower court decision which followed *Citizens United* and enabled individuals to give unlimited sums to certain organizations such as Super PACs.



*Despite the Supreme Court's decision in Citizens United, corporations have not yet taken significant advantage of their newfound ability to engage in independent spending.*

Fourth, recent elections have provided a mixed account as to the significance of spending from undisclosed sources. Of course, undisclosed money—that is, money for which the law does not require disclosure—is one of the hardest topics to study and estimate. We know that hundreds of millions of dollars have come into the system from undisclosed sources in each of the last two presidential election cycles. However, most of the money in the contemporary campaign finance system still comes from disclosed sources. The undisclosed portion is usually channeled through 501(c) organizations, with some making its way into Super PACs. Spending by non-disclosing sources grew significantly in 2012, only to decrease in 2016. It remains to be seen whether it is true, as conventional wisdom holds, that the 2016 election represents an aberration, due in large part to the unique features of that presidential contest and the fact that many prominent 501(c)(4) organizations decided to sit the election out.

Finally, among the unique features of the 2016 election was the apparent rise in spending on digital advertising. Television remained the predominant platform for spending on campaign communications, but spending on the internet and social media grew significantly. Accurate data regarding online spending is difficult to come by, but all the indicators suggest an unprecedented increase in online spending, at least in the presidential campaigns. This development is of more than academic relevance. The regulatory and disclosure system for campaign finance is largely unprepared for the communications revolution underway. The campaign finance statutes, regulations, and court decisions have had very little to say about the internet. Based on their various perspectives on campaign finance regulation, advocates might debate whether this is good or bad. But no one can doubt the significance of this development for both the study of the system of campaign spending and its fundamental dynamics.





## Why Care and Why Now?

For generations, campaign finance reformers have voiced an array of concerns about the effect of money on elections and governance. The courts have limited the set of permissible reasons for regulating contributions and expenditures to prevention of corruption and the appearance of corruption—concepts the recent caselaw has defined quite narrowly. Both in the United States and abroad, however, an array of other interests, such as providing an equal playing field for candidates regardless of fundraising potential or protecting representatives' time to dedicate to policymaking instead of fundraising, have motivated reform efforts. In the United States, as elsewhere, citizens continue to favor broad restrictions on campaign contributions and expenditures.

At the same time, the campaign finance system has reached a level of complexity that few but the most seasoned experts can understand. Words like “corruption,” “contributions,” and “expenditures” are terms of art in campaign finance caselaw. The regulatory scheme has the character of tax law and, in some contexts, substantially overlaps with it. Several of the relevant players, such as Political Action Committees (PACs) and Super PACs, are legal creations with no relevance outside of campaign finance. Moreover, the media coverage of campaign finance contributes to great confusion in the public both as to the existing law and the magnitude of certain phenomena.

In two national public opinion surveys conducted in 2015 and 2016 as part of this project, Professors Jeffrey Milyo and David Primo assess what the public knows about campaign finance, how concerned the public is about the role money plays in the political system, and what—if anything—can be done about it. Milyo and Primo find that the public is disenchanted with the campaign finance system and supports a broad array of reform proposals restricting both contributions and expenditures—positions that have been remarkably consistent over time, even as the campaign finance system has evolved significantly.

They reference a May 2015 *New York Times/CBS News* survey, in which 84 percent of Americans believed that money has too much influence in American political campaigns, and 85 percent believed that campaign finance is in need of fundamental changes or complete rebuilding. In their surveys, Milyo and Primo find that most specific reforms achieve majority support from respondents, though not reaching the same levels as support for reform generally.

Even as the public expresses great concerns about the system and support for campaign finance reform, they also exhibit great confusion and cynicism about money in politics. Given the complexity of campaign finance law, it should come as little surprise that large shares of the public either do not know or have erroneous beliefs about fundamental concepts, such as the precise legal limits on contributions to candidates and parties. Moreover, while favoring most proposed reforms, the public does not seem to believe that reform will make any meaningful difference in the workings of democracy.



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Campaign finance is far from the only issue about which the public is concerned, uninformed, and cynical. On many areas of important public policy—foreign and domestic—the public is not well-informed about policy design and details. Nor should we expect them to be. Campaign finance may exist at the far end of the policy complexity spectrum, but the intricacies of health care, environmental law, foreign aid, and fiscal policy are well-understood by only a small share of Americans. Moreover, trust and confidence in government, in general, has been waning steadily. So the skepticism that Americans may share as to the government’s ability to “solve the campaign finance problem” extends to other basic functions of government. Indeed, the lack of trust even extends beyond government, as Americans voice a lack of confidence in most established institutions (the media, churches, corporations, banks, higher education, etc.).

To the extent the public and the media misunderstand basic facts about the campaign finance system, political scientists should shoulder some of the blame. We have failed in many cases to bring to light the data and analysis that preoccupy experts in the field. To be sure, strong disagreement exists among political scientists over some basic questions as to the influence of money on elections and policy. However, consensus exists on other features of the campaign finance system. This report attempts to put forth that consensus, while recognizing that it leaves many important, but highly debated, questions unanswered.





## The “Known Knowns”: Basic Trends in Campaign Contributions and Expenditures

Campaign finance is one of the more complicated topics in the field of election law and policy. On the one hand, political scientists are awash in data, much of which is publicly available from the Federal Election Commission (FEC), as well as organizations such as the Center for Responsive Politics and the National Institute on Money in State Politics. On the other hand, the data are often deceptively complex and incomplete, leading to great variation in the basic descriptive statistics about spending, contributions, and transfers between different entities. How one “counts” certain types of expenditures may depend on contestable assumptions as to the intent of the spender, the nature of the spending (e.g., spending directed to a media consultant or for a television ad buy), and the identity of the beneficiary (for example, if the expenditure would benefit many different candidates on the party’s ticket). Especially in an age when one of the chief criticisms of the campaign finance system is the emergence of a “shadow” system in which campaign financing occurs in secret, scholars make definitive statements at their peril about the sources and amounts of money being spent, especially by entities other than the candidates, parties, and traditional PACs. As campaign spending moves away from television and toward an ever-growing array of digital communications platforms, moreover, old categories seem unable to capture certain campaign financing dynamics like they once did.

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With that caveat, certain basic facts about the campaign finance system are well-known. Robin Kolodny and Ken Mayer’s contributions (much of which are restated verbatim here) describe some of these basics in detail, depicted in the tables and figures below. For instance, overall spending has generally increased year over year, even accounting for inflation. Spending by the official presidential campaign committees declined for the first time in 2016 given the smaller amounts spent by the Trump campaign itself. However, overall spending still increased, given the continued rise in spending by “outside” groups. This is a development of considerable importance in recent years, as money formally outside of the campaigns and party structure has exceeded that spent by formal insiders. (We say “formally” to gesture toward a debate we take up later as to how reliably one can delineate insiders and outsiders in the modern campaign finance system.)

Table 1 shows federal election expenditures reported to the Federal Election Commission, in two separate classifications (all data in this table are current dollars). The top section—Campaign Type—shows totals for presidential and congressional elections, as calculated by the Center for Responsive Politics (CRP) based on FEC data. The totals include amounts spent by candidates, political parties (either the Democratic National Committee or Republican National Committee, convention spending for presidential elections, and spending by congressional campaign committees for congressional races), as well as spending by outside groups.

**Table 1. Federal Election Spending 1990–2016**

	1990	1992	1994	1996	1998	2000	2002
<b>Campaign Type</b>							
President	--		--		--	\$1,413,116,384	--
Congress					\$1,618,936,265	\$1,669,224,553	\$2,181,682,066
Total					\$1,618,936,265	\$3,082,340,937	\$2,181,682,066
<b>Committee Type</b>							
Presidential Candidates	--	\$330,352,810	--	\$455,978,309	--	\$527,193,267	--
Congressional Candidates	\$440,978,851	\$689,190,467	\$729,114,982	\$747,425,449	\$718,585,392	\$1,002,646,955	\$951,128,838
Party - Federal	\$306,284,681	\$412,968,395	\$365,713,790	\$628,854,567	\$437,434,732	\$707,271,607	\$647,771,259
Party - Nonfederal (Soft Money)	--	\$79,054,786	\$98,770,637	\$271,484,661	\$220,718,455	\$497,634,403	\$509,587,054
Super PAC	--	--	--	--	--	--	--
(OS) Independent Expenditures – Individuals	\$493,134	\$269,324	\$46,786	\$278,120	\$816,773	\$11,567,205	\$2,253,804
(OS) Independent Expenditures – Committees	\$5,206,145	\$10,793,451	\$1,618,039	\$21,408,325	\$10,965,547	\$25,790,046	\$17,970,318
(OS) Electioneering Communications	--	--	--	--	--	--	--
<b>Totals</b>	<b>\$752,962,811</b>	<b>\$1,522,629,233</b>	<b>\$1,195,264,234</b>	<b>\$2,125,429,431</b>	<b>\$1,388,520,899</b>	<b>\$2,772,103,483</b>	<b>\$2,128,711,273</b>

	2004	2006	2008	2010	2012	2014	2016*
<b>Campaign Type</b>							
President	\$1,910,230,862	--	\$2,799,728,146	--	\$2,621,415,792	--	\$2,386,733,696
Congress	\$2,237,073,141	\$2,852,658,140	\$2,485,952,737	\$3,631,712,836	\$3,664,141,430	\$3,845,393,700	\$4,057,519,568
Total	\$4,147,304,003	\$2,852,658,140	\$5,285,680,883	\$3,631,712,836	\$6,285,557,222	\$3,845,393,700	\$6,444,253,264
<b>Committee Type</b>							
Presidential Candidates	\$867,483,641	--	\$1,645,035,956	--	\$1,359,844,292	--	\$1,527,524,181
Congressional Candidates	\$1,157,357,149	\$1,422,657,505	\$1,383,924,751	\$1,833,648,052	\$1,847,228,622	\$1,615,044,920	\$1,596,986,907
Party - Federal	\$1,426,480,933	\$1,099,574,108	\$1,526,787,834	\$1,154,303,692	\$1,576,798,675	\$1,192,343,215	\$1,556,127,092
Party - Nonfederal (Soft Money)	--	--	--	--	--	--	--
Super PAC <sup>6</sup>	--	--	--	\$62,549,345	\$606,808,037	\$339,402,611	\$1,056,466,148
(OS) Independent Expenditures – Individuals	\$4,568,246	\$4,232,873	\$63,058,212	--	--	--	\$28,735,093
(OS) Independent Expenditures – Committees	\$325,257,683	\$253,178,753	\$359,366,910	\$388,644,468	\$1,250,522,291	\$787,844,281	\$1,631,002,075
(OS) Electioneering Communications	\$130,953,982	\$21,048,096	\$151,075,770	\$84,134,901	\$77,774,593	\$7,338,285	\$56,080,943
<b>Totals</b>	<b>\$3,912,101,634</b>	<b>\$2,800,691,335</b>	<b>\$5,129,249,433</b>	<b>\$3,460,731,113</b>	<b>\$6,112,168,473</b>	<b>\$3,602,570,701</b>	<b>\$6,396,456,291</b>

Source: Kenneth R. Mayer, Campaign Finance: Some Basics. Available at: <https://bipartisanpolicy.org/campaign-finance>.

Since 2000, spending on presidential elections rose from \$1.41 billion to \$2.39 billion in 2016, an increase of 66 percent. However, 2016 spending was down from 2008 (\$2.8 billion, the highest totals recorded) and 2012 (\$2.6 billion). Spending on congressional elections rose 143 percent over that same span, from \$1.67 billion in 2000 to \$4.06 billion in 2016. Congressional totals show a consistent increase over time; since 2000, overall spending has always increased over the previous cycle.

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*Since 2000, spending on presidential elections rose from \$1.41 billion to \$2.39 billion in 2016, an increase of 66 percent.*

In the lower section—“Committee Type”—the data are broken down for the various groups that engage in campaign expenditures: candidates, political parties, and different categories of independent spending. These categories are in theory exclusive, although committee-to-committee transfers could appear in more than one category, and can be double counted when money given from one committee to another is sometimes counted twice: as a disbursement when a committee makes a contribution to another committee, and again when some of that money is ultimately spent on a campaign by the recipient committee. These data extend further back than the campaign type, since they rely only on FEC data and not CRP aggregations. It is also important to note the change over time in real (inflation adjusted) dollars. Much discussion of campaign finance fails to do so, and as a result, exaggerates increases in the total amounts of contributions or expenditures.

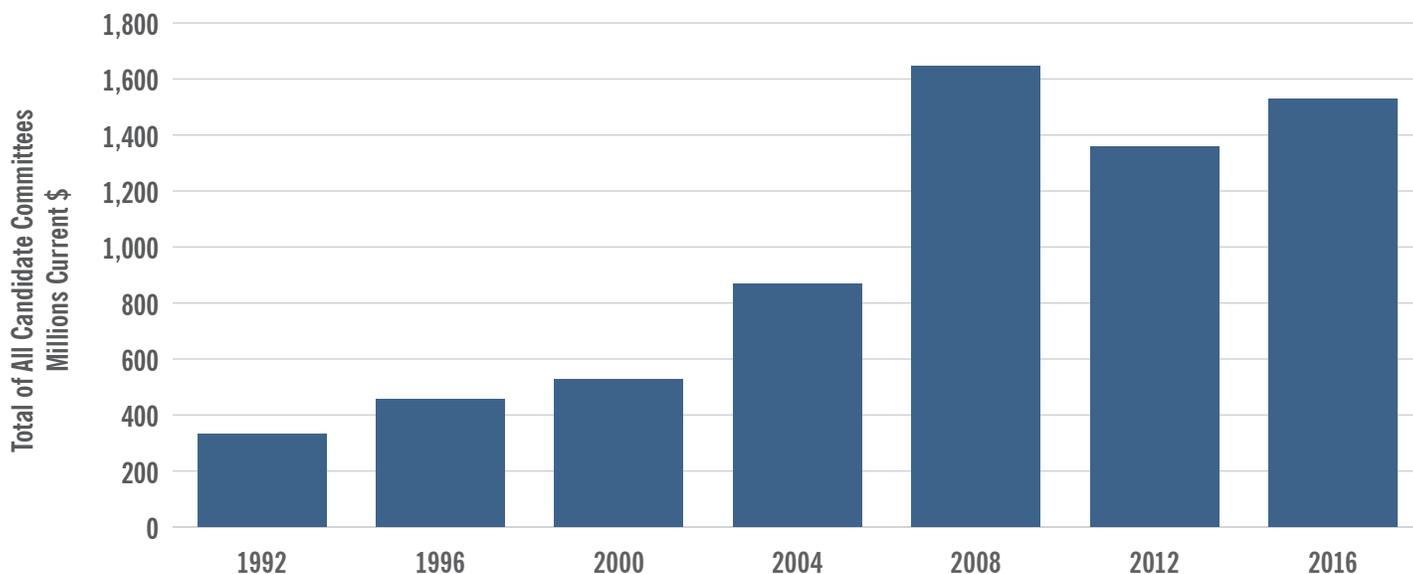
Spending by presidential *candidate* committees rose from \$330.3 million in 1992 to \$1.52 billion in 2016, an increase of 362 percent (172 percent in real dollars), although the historic maximum occurred in 2008, when candidates spent \$1.65 billion. Congressional candidate spending rose from \$689.2 million in 1992 to \$1.6 billion in 2016, an increase of a comparatively modest 132 percent (and only 36 percent in real dollars). The largest cycle-to-cycle jump in presidential candidate spending occurred between 2004 and 2008, when it nearly doubled from \$867 million to \$1.65 billion, even as the number of major candidates remained the same. The table below shows more clearly the jump that occurred in 2008. The key difference was that in 2004 most Democratic presidential candidates accepted public funding from the Presidential Election Campaign Fund, and both George W. Bush and John Kerry accepted it for the general election, triggering spending limits. In 2008, none of the contending candidates accepted it for the primary, and only John McCain accepted the general election grant. Barack Obama spent a total of \$760 million, almost single-handedly exceeding the total for all candidates in 2004. Hillary Clinton spent \$211 million in her unsuccessful primary campaign in 2008, and John McCain spent \$165 million in the primaries, five and four times, respectively, the overall primary spending limit of \$42 million for candidates who accepted public funding.

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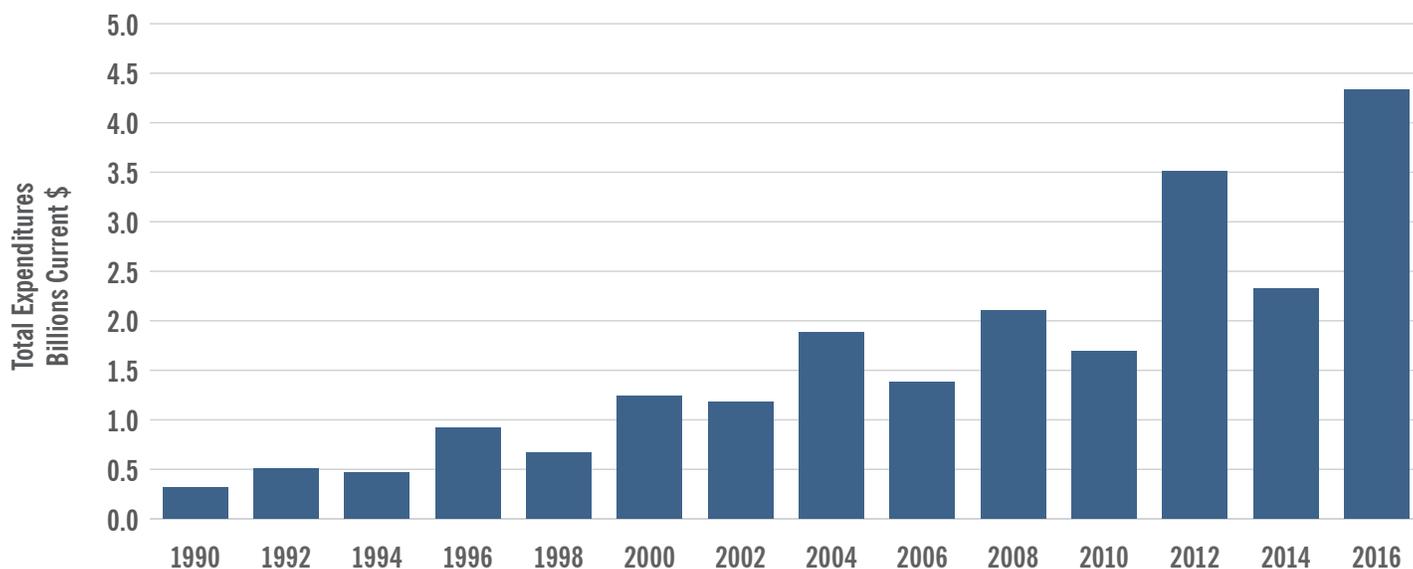
**Figure 1. Presidential Candidate Committee Spending**



Source: Kenneth R. Mayer, Campaign Finance: Some Basics. Available at: <https://bipartisanpolicy.org/campaign-finance>.

Over the same period, non-candidate spending jumped markedly beginning in 2012 (the first presidential election in the Super PAC era), increasing by 67 percent over 2008, and more than double the total from the 2010 midterm election. Between 2008 and 2016, this spending more than doubled, from \$2.1 billion to \$4.3 billion, with the largest increase occurring in Super PAC spending, which did not exist prior to 2010; from 2010 to 2016, Super PAC expenditures rose by nearly 17-fold, from \$62 million to \$1.1 billion.

**Figure 2. Noncandidate Expenditures**



Source: Kenneth R. Mayer, Campaign Finance: Some Basics. Available at: <https://bipartisanpolicy.org/campaign-finance>.



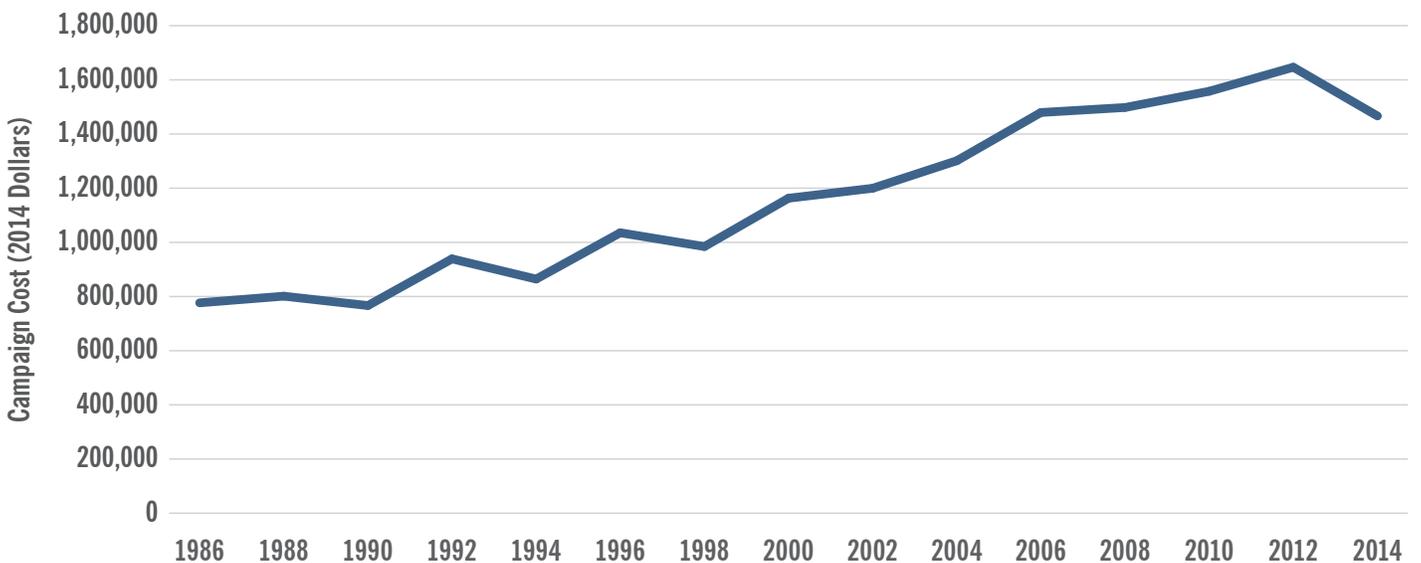
*Between 2008 and 2016, this spending more than doubled, from \$2.1 billion to \$4.3 billion, with the largest increase occurring in Super PAC spending, which did not exist prior to 2010; from 2010 to 2016, Super PAC expenditures rose by nearly 17-fold, from \$62 million to \$1.1 billion.*

Figures 3 through 6 show spending over time in House and Senate elections, and by candidate type between 1986 and 2014 (incumbent, challenger, and open seat). Figures 3 and 4 show the average spending by winners in House and Senate elections, respectively, in inflation-adjusted dollars according to data available from the Campaign Finance Institute. The average amount spent by a winner of a House seat in 2014 dollars rose from just under \$777,000 in 1986 to about \$1.47 million in 2014, an increase of 89 percent. (In nominal dollars the increase was 308 percent.) Senate totals vary much more, because of differences in the seats up in any one cycle. In constant dollars, winning a seat in 1986 cost \$6.6 million, which increased to \$9.7 million in 2014. But the average cost of winning in the 2002 cycle was \$4.9 million, the smallest amount over this period. Figures 5 and 6 reveal that the pattern of incumbents spending more than challengers, and open seat candidates usually spending more than incumbents, persists across time.



*The average amount spent by a winner of a House seat in 2014 dollars rose from just under \$777,000 in 1986 to about \$1.47 million in 2014, an increase of 89 percent.*

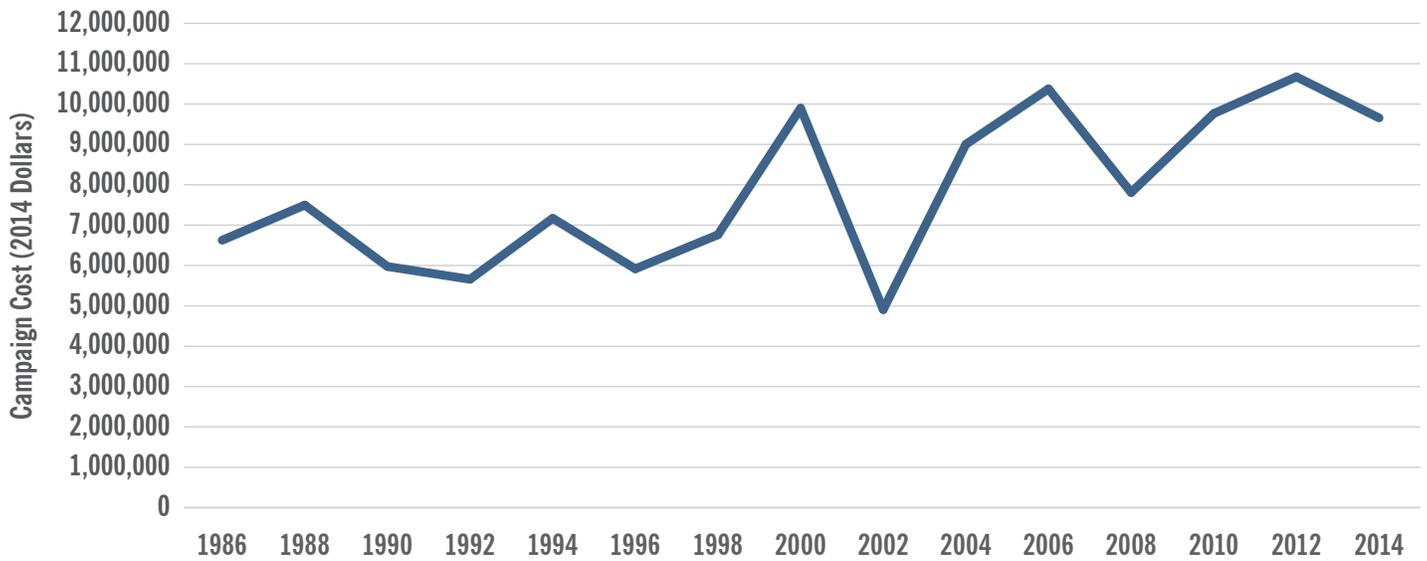
**Figure 3. Cost of Winning a House Election**



Source: Kenneth R. Mayer, Campaign Finance: Some Basics. Available at: <https://bipartisanpolicy.org/campaign-finance>.

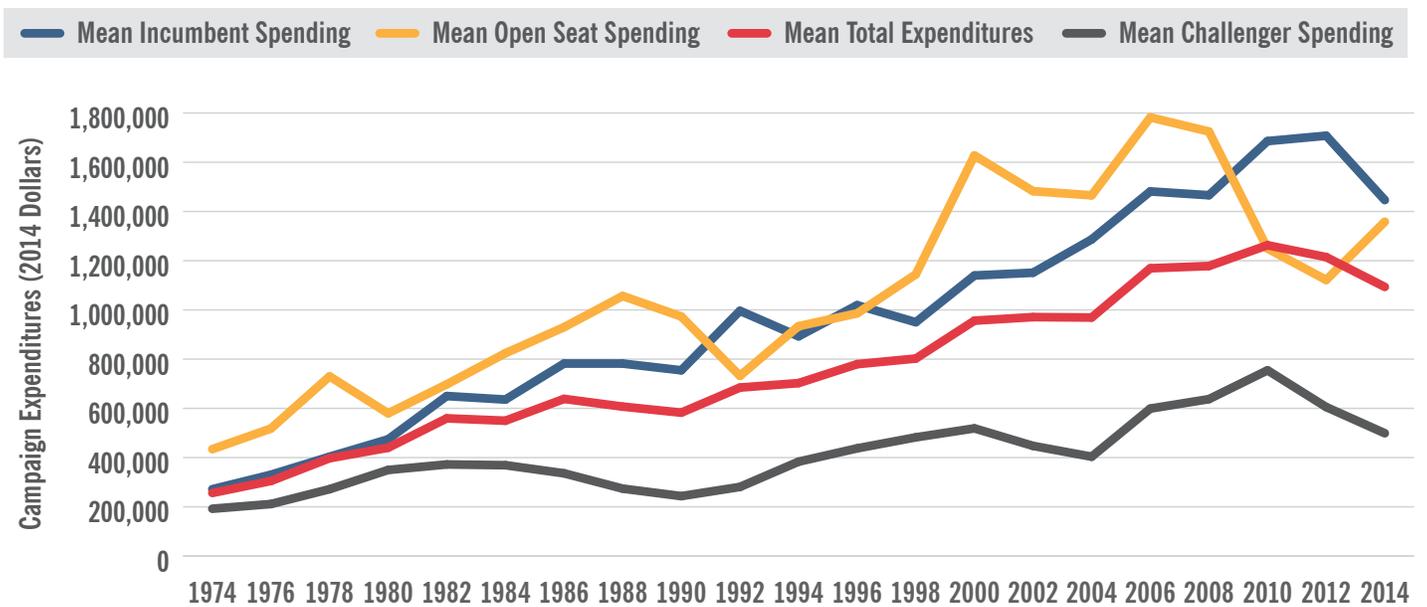


**Figure 4. Cost of Winning a Senate Election**



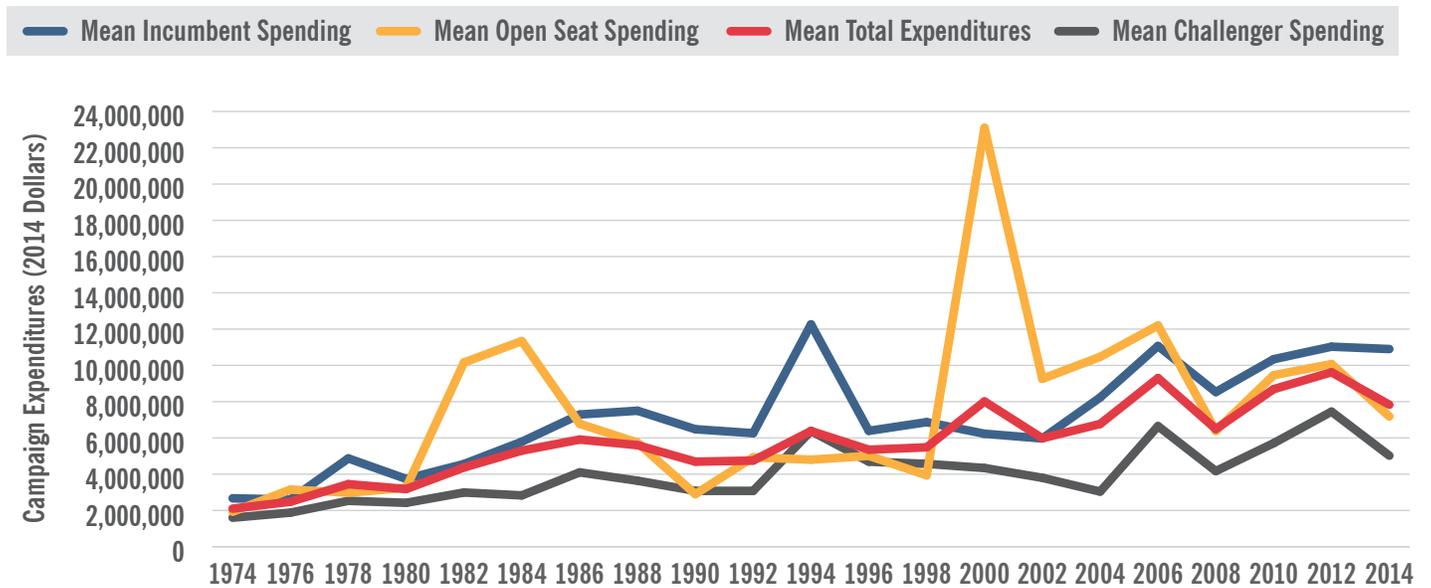
Source: Kenneth R. Mayer, Campaign Finance: Some Basics. Available at: <https://bipartisanpolicy.org/campaign-finance>.

**Figure 5. Average Spending by Candidate Type (House)**



Source: Kenneth R. Mayer, Campaign Finance: Some Basics. Available at: <https://bipartisanpolicy.org/campaign-finance>.

**Figure 6. Average Spending by Candidate Type (Senate)**

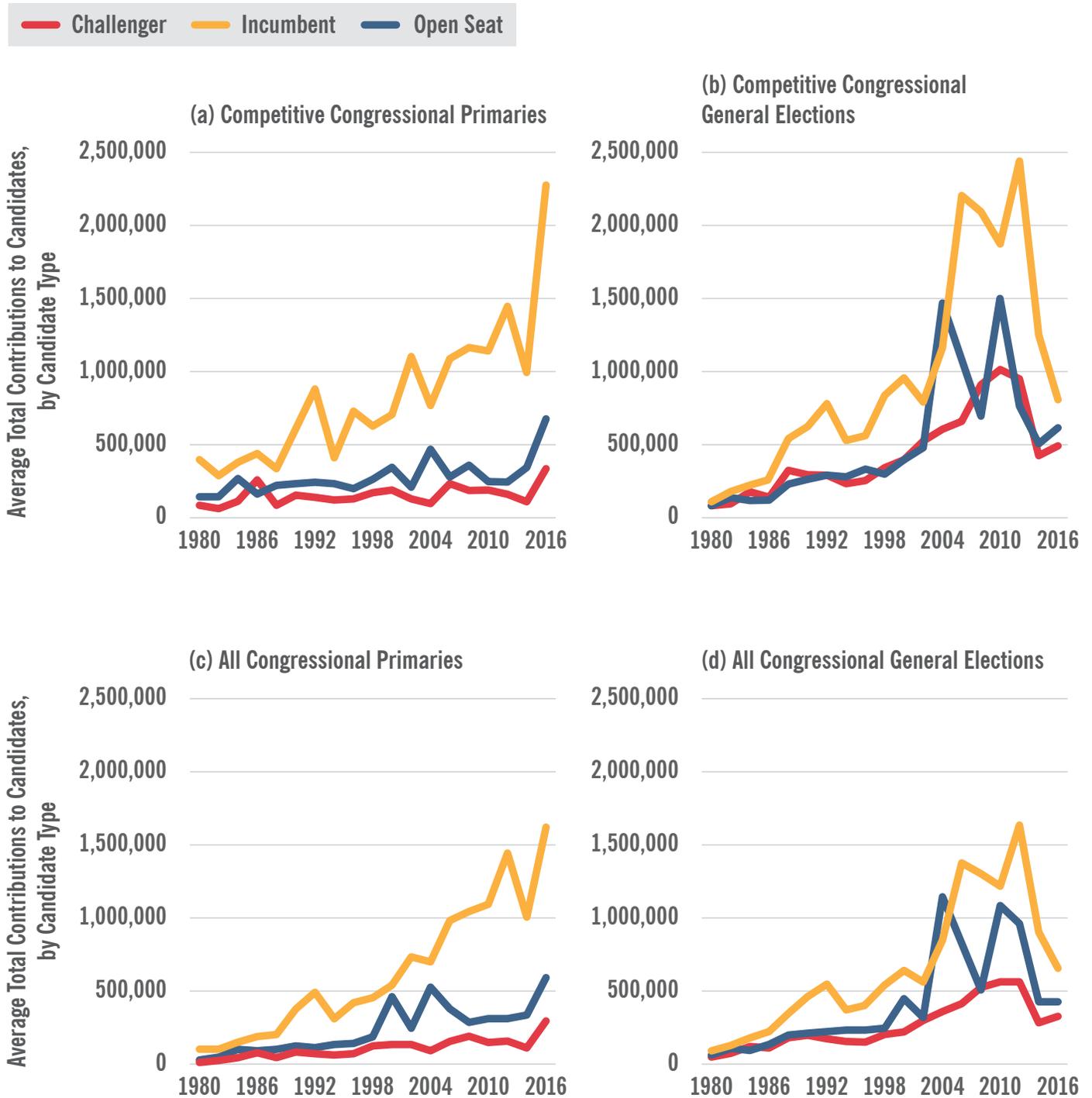


Source: Kenneth R. Mayer, Campaign Finance: Some Basics. Available at: <https://bipartisanpolicy.org/campaign-finance>.

The caution with which analysts describe certain phenomena in the campaign finance system arises from a recognition that campaign money will have different effects depending on the electoral context in which it is spent. Take, for example, the much-studied relationship between campaign spending and electoral competitiveness, which will differ for incumbents and challengers. As noted in Figure 7, incumbents spend more than challengers, and spending is (unsurprisingly) higher in competitive races than uncompetitive ones. However, as incumbents spend more, their vote share appears to decrease, whereas the opposite appears to be true for challengers. Seemingly perverse, this dynamic is explained by the fact that vulnerable incumbents must spend more to keep their seats when facing well-financed challengers. This is not to say, however, that all-else-equal, a candidate would not be in a better position with more money to spend. Rather, all else is often not equal, so simple aphorisms like “the more you spend, the more votes you receive” mischaracterize the complicated character of campaign financing for individual races.



Figure 7. Average Contributions to Candidates in Congressional Primary and General Elections



Source: Zachary Albert, Trends in Campaign Financing, 1980-2016. Available at: <https://bipartisanpolicy.org/campaign-finance>.

We also know quite a bit about the size of contributions and the number of donors participating in the campaign finance system. As Figure 8 below depicts, the number of donors contributing to candidate campaigns has increased steadily over the last decade, and the average donation has decreased in real dollars over that same period. Whereas only 65,970 people donated to candidate campaigns in 1982, more than 3.2 million did so in 2016 (which is still less than 2 percent of the adult population). However, donor activity has become more highly concentrated: In 2016, only 15,810 individuals accounted for half of all campaign contributions. By way of comparison, in the 2000 election, 73,926 individuals accounted for half of the donations.

The rise in the number of individual donors and the concentration of giving among a select group of them reflects a broader trend in the campaign finance system toward participation by individuals and ideological organizations chiefly funded by individuals, as opposed to other types of economic interests. The BCRA eliminated corporate and union donations to political parties (so-called “soft money”), although corporate and union PACs (funded by the individuals in those organizations) continued to give money in regulated amounts. As the papers by Zachary Albert, Raymond La Raja, and Bruce Desmarais show, in both the primary and general election campaigns, individuals and ideological PACs funded by individuals have grown in importance to the campaign finance system. As Paul Herrnson and David Magleby’s research on Super PACs further demonstrates, most Super PAC money comes from individuals—a topic we take up later in this report.

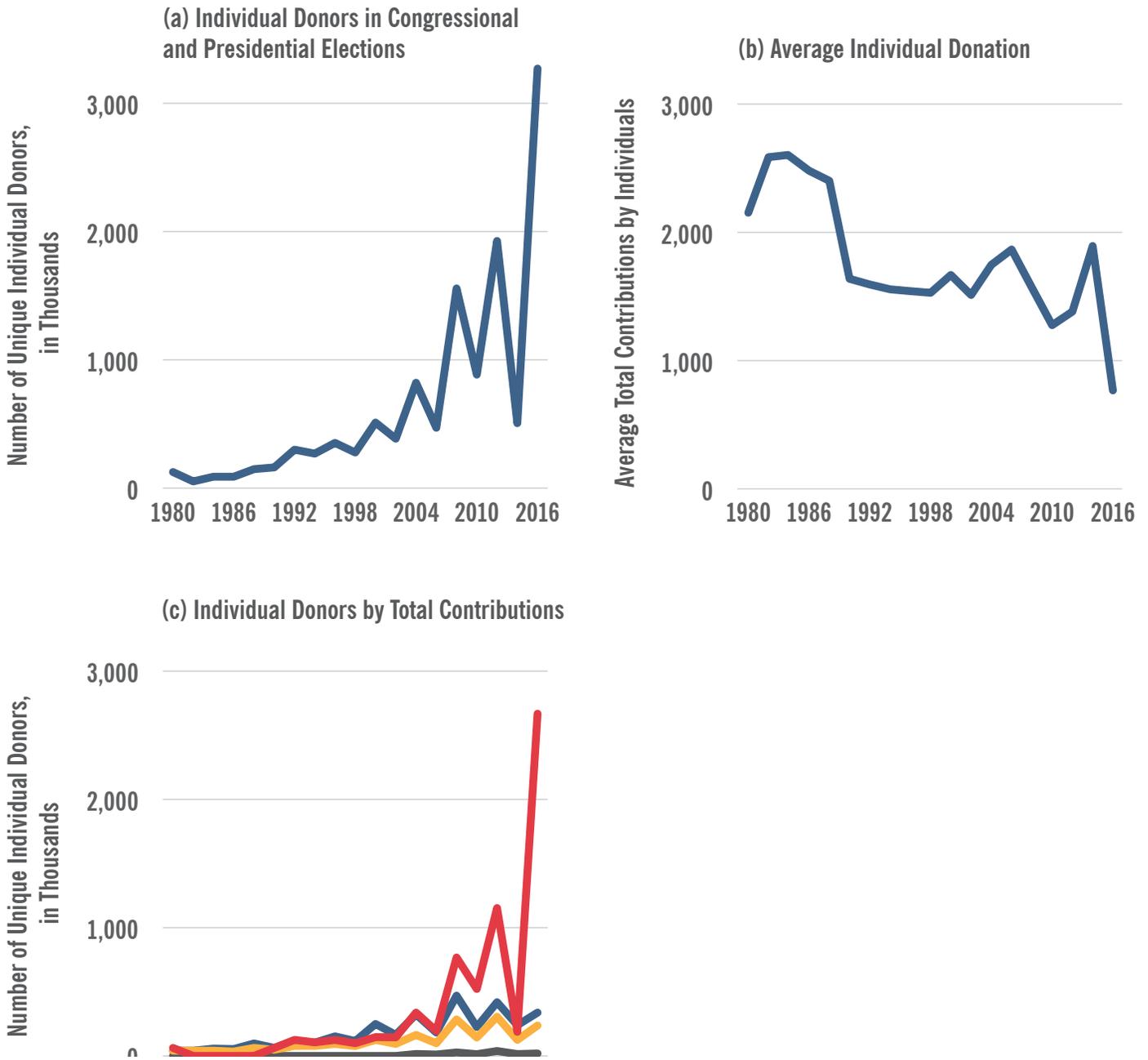


*Whereas only 65,970 people donated to candidate campaigns in 1982, more than 3.2 million did so in 2016 (which is still less than 2 percent of the adult population). However, donor activity has become more highly concentrated: In 2016, only 15,810 individuals accounted for half of all campaign contributions. By way of comparison, in the 2000 election, 73,926 individuals accounted for half of the donations.*



Figure 8. Individual Contributors

— < \$500   
 — \$500 to \$1,000   
 — \$1,000 to \$10,000   
 — > \$10,000



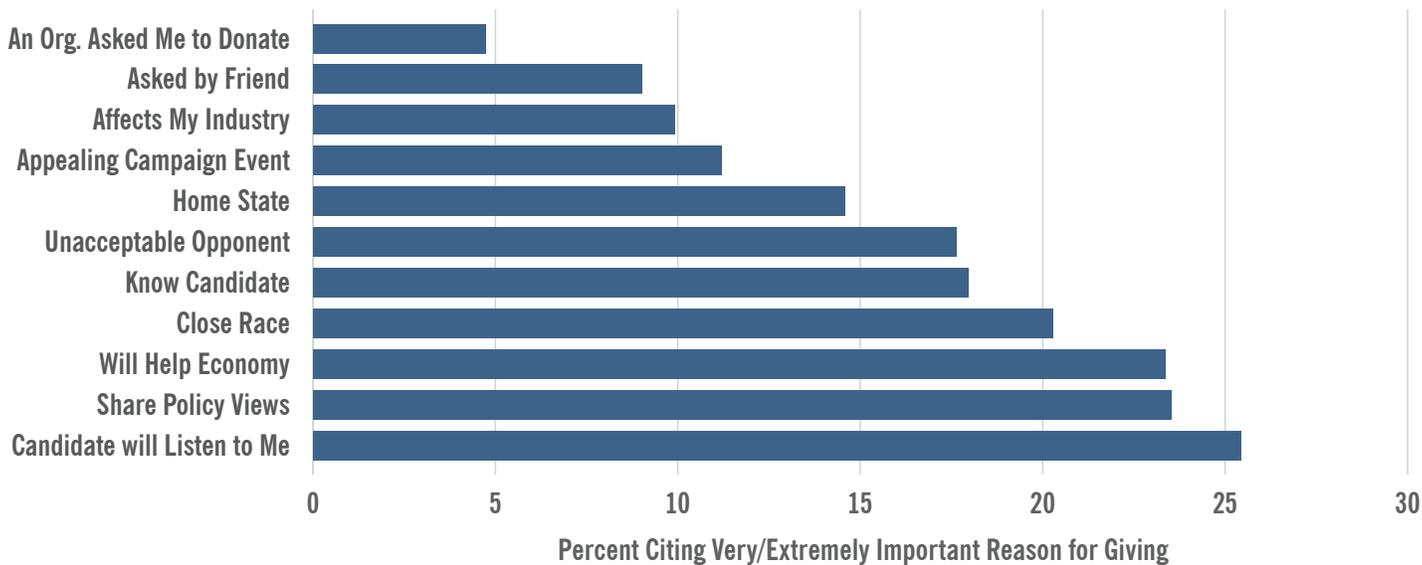
Source: Zachary Albert, Trends in Campaign Financing, 1980-2016. Available at: <https://bipartisanpolicy.org/campaign-finance>.

Of this small share of Americans who give money to campaigns, why do they do so? Some hope to gain influence and access or to curry favor; some give to support a candidate whose ideas align with their own; and others do so simply because they are close to the candidate for other reasons (e.g., family and old friends). In the most sophisticated study of donor motivations to date, Eitan Hersh’s contribution adds a twist on this last category. His research with Brian Schaffner suggests that political “hobbyism” plays an outsized role. By this they mean that for some large share of donors, politics and campaign-finance-related events are important features of their social network, just like other types of social, entertainment, or charitable activities. That subgroup of donors may be as motivated by campaign finance activities as a consumption good (e.g., being part of the club, going to the right parties) as they are by the potential for access and influence that any given contribution might earn. Data from their survey appears in Figure 9 below.



*For some large share of donors, politics and campaign-finance-related events are important features of their social network, just like other types of social, entertainment, or charitable activities.*

**Figure 9. Percent Reporting Very/Extremely Important Reason for Donating**



Source: Eitan Hersh, Motivations of Political Contributors: An Audit. Available at: <https://bipartisanpolicy.org/campaign-finance>.





## The Legal Context

Legal change accounts for a great deal of the innovation in the campaign finance system. Each new law, regulation, or court decision promotes entrepreneurship (or some might say, gamesmanship) among the actors involved to take advantage of the changes in the system to pursue their interests. Although a complete discussion of the legal terrain governing campaign finance might go back over a century, when the first federal campaign finance laws were enacted, the current era has been shaped most by the passage of the Bipartisan Campaign Reform Act of 2002 (otherwise known as BCRA or McCain-Feingold) and the Supreme Court's decision in *Citizens United v. FEC* (2010).

The BCRA targeted three phenomena: election-related spending by corporations and unions from their treasuries; “soft money” contributions by those entities to political parties which were also receiving donations from individuals beyond the limits established by law; and the solicitation of “soft money” for parties or other organizations by federal officeholders and candidates. (The reform also doubled the limits on what individuals could give to candidates and indexed those limits to inflation.) The BCRA provisions governing corporate and union electioneering and party “soft money,” were upheld by the Supreme Court's 2003 decision in *McConnell v. FEC*. However, in *Citizens United v. FEC* (2010), the court partially overturned *McConnell*, striking down the BCRA's electioneering prohibitions on the spending of corporate and union spending for certain election year advertising (while preserving disclosure requirements), and thereby establishing that the First Amendment protected campaign spending by corporations and unions.

This report is not primarily about these legal changes, except as they relate to debates over the dynamics of campaign funding. Political scientists, many of whom served as expert witnesses in the litigation challenging the BCRA, made certain predictions about the effect of the “soft money” ban in the BCRA, especially as the law might affect political parties at both the state and

federal levels. One group warned of a diminishing role of political parties in the campaign finance system, while another argued just as strenuously that political parties could make up any loss in “soft money” with additional “hard money” contributions (that is, contributions by individuals within limits established by law). Indeed, that debate continued long after the court had upheld the “soft money” ban. As we discuss later, one of the chief points of disagreement has become how to conceptualize political parties, in an age of a proliferation of groups formally and informally aligned with parties.

The court’s decision in *Citizens United* (as well as an earlier case, *Wisconsin Right to Life v. FEC* (2007) that pointed in the same general direction) complicated matters further. One of the central questions animating the predictions and evaluation of BCRA concerned the relative position of political parties vis-a-vis other groups, in achieving access to needed resources. *Citizens United* removed a barrier to direct electoral participation by corporations and unions. Moreover, following and extending the logic of *Citizens United*, the U.S. Court of Appeals for the D.C. Circuit issued its opinion in *SpeechNOW.org v. FEC* (2010), which established the legality of Independent Expenditure Committees, otherwise known as “Super PACs.” Super PACs are yet another type of outside group that can be independent, or more or less aligned with a political party or candidate, even if they cannot formally coordinate with them. The law had previously provided for, and the D.C. Circuit in 1976 extended constitutional protection to, independent political committees that could spend freely if they did not coordinate their activities with federal candidates. However, prior to *Citizens United* and *SpeechNOW*, those committees could not accept corporate funds, or individual contributions outside federal legal limits. Now, as a result of the 2010 decisions, they may, and that is how independent PACs came to be “Super.” To be clear, considerable debate exists over how independent Super PACs, in general, or certain Super PACs, in particular, are from candidates and political parties.



*Prior to Citizens United and SpeechNOW, those committees could not accept corporate funds, or individual contributions outside federal law limits. Now, as a result of the 2010 decisions, they may, and that is how independent PACs came to be “Super.”*

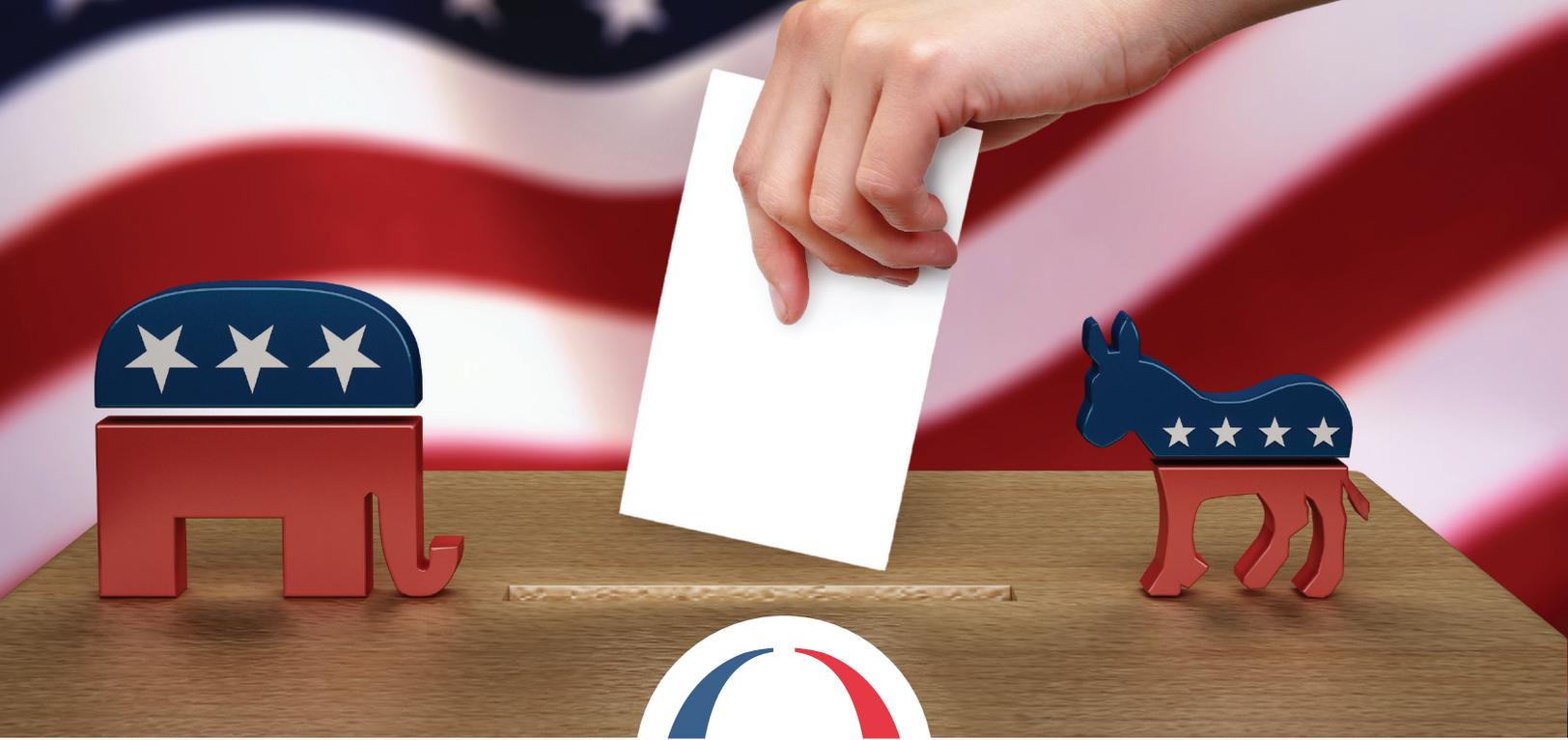
The point remains that the current system of campaign finance is one that is dramatically different from the one that jumps out from the pages of the statutes. The current system has been shaped by a combination of legislative, judicial, and administrative actions, and is not a system that, in its entirety, Congress ever established. So many changes have happened to that system in such a short period of time that it often becomes difficult to isolate a single cause for a particular phenomenon. Nevertheless, for certain types of changes, such as the creation and rise of wholly new institutions, such as Super PACs, a direct line can be drawn from court decisions to a particular campaign finance innovation. Whereas for other types of groups, such as 501(c)(4) organizations, their newfound prominence may result from changes in our politics that put a premium on the preference of donors for anonymity.





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As we discuss changes in the campaign finance system, we do not fix responsibility on legislative reforms or court decisions for any particular political developments. Rather, we seek to describe the current system that has emerged alongside these legal and political changes. The current system, however, is buttressed and constrained by a series of First Amendment decisions that have permitted spending without limits by an increasingly diverse array of campaign participants. These constitutional guidelines take off the table whole categories of reform. They also send a clear message, reflected in the institutional developments we describe, that independence from candidates and parties—the entities most accountable to the voters—leads to greater constitutional protection.



## Political Parties

Because the BCRA prohibited “soft money” contributions to political parties, in particular, it should come as no surprise that, among political scientists who study campaign finance, the question of political party financing has occupied an outsized role in both empirical and normative debates. We hope our discussion here bridges the divide between the two sides of this debate, which has become unnecessarily confused as a result of differing perspectives on what constitutes “political party strength.” The bottom line, we think, is that political parties remain competitive actors in the current system, but the *formal* party institutions have diminished in their relative competitive position in financing campaigns.



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The pro-party school of campaign finance scholars had warned for a generation that campaign finance restrictions were shifting power away from the classically most accountable actors in the system, namely candidates and parties (the “insiders”), toward a variety of less accountable “outside groups.” This criticism was not unique to the debate over the BCRA, even if it became more pronounced at the time. Going back to the 1974 Federal Election Campaign Act (FECA) Amendments and subsequent court decisions interpreting them, this argument has been made time and time again. For this group of scholars, regulating money flowing into and out of political parties will make them less powerful players in the campaign finance system. Because the ambitions of donors and political actors remain constant in the face of such regulations, money continues to find a way toward different institutional forms that face fewer regulatory constraints.



The 1974 FECA Amendments placed tight limits on both contributions and expenditures. In *Buckley v. Valeo* (1976), the Supreme Court (for the most part) struck down the limits on expenditures and upheld the limits on contributions. As a result, regulated actors such as parties, candidates, and PACs—that is those within the system operating under limits in both raising and spending their funds—were arguably disadvantaged by a system that allowed independent spenders the freedom to spend as they wished. Just as in the debate over BCRA, critics warned and feared that a system of unlimited independent spending alongside restrictions on “insiders” naturally empowered those groups and individuals at the expense of the more highly regulated entities. Whether the FECA or the Supreme Court deserves the lion’s share of the responsibility was of little consequence: the system as it emerged from *Buckley* favored some types of actors in the campaign system more than others.

This is not to say that insiders were neutered by the double punch of the statute and the court’s decision. On the contrary, as the reformist school of political scientists would frequently note, candidates and parties raised (and spent) record amounts even in the face of regulation—they simply needed to get those contributions from a greater number of people and adopt innovative and efficient means of raising and spending their funds. They remained powerful, and for most of the period in question, remained the central actors in the system, even if outsiders enjoyed relative freedom to spend greater amounts.



*Candidates and parties raised (and spent) record amounts even in the face of regulation—they simply needed to get those contributions from a greater number of people and adopt innovative and efficient means of raising and spending their funds.*

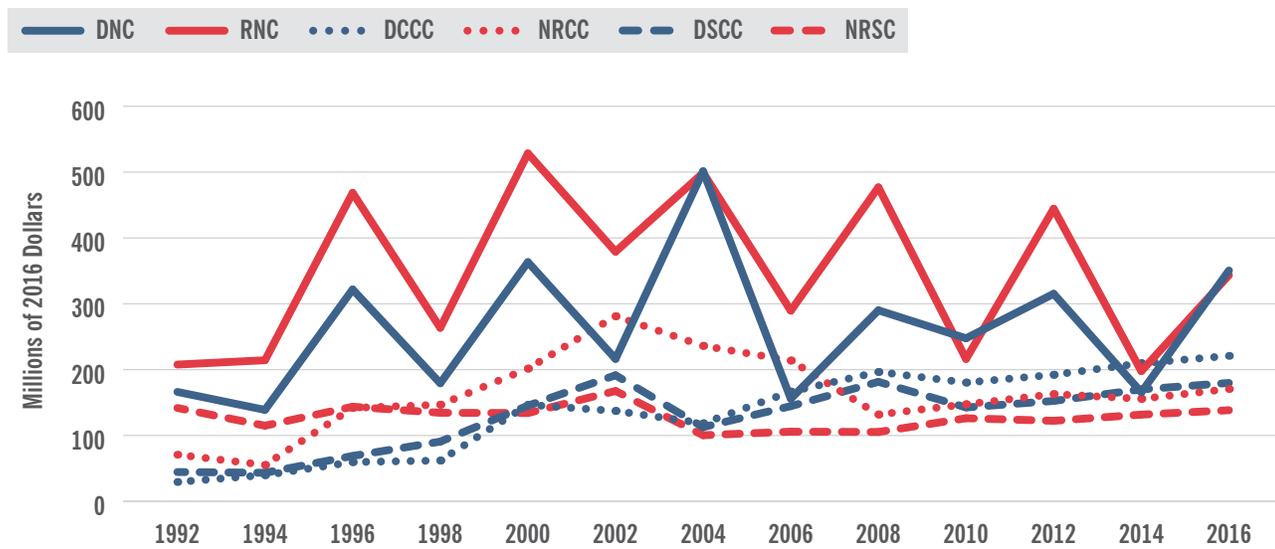
With the advent of “soft money” in the 1990s, this debate replayed. Leaving aside any disagreement as to when the “soft money” revolution began and whether it was true to the existing statutes or a violation of them, the proponents and critics of reform reinforced their positions as to the effect of regulation on the relative power of insiders and outsiders. This time, the opposing sides battled over whether clearly and definitively prohibiting corporations and unions from making contributions to the parties from their treasury funds (and individuals from making contributions beyond FECA limits) would hinder the fundraising by parties and reduce their importance in the campaign system. They also differed in their view of whether “soft money” strengthened parties (BCRA critics) or whether parties were largely used as a way for donors to pass through unlimited contributions to influence a small number of competitive races (reformers) with little lasting benefit to party structures. Because the BCRA tried to deal with the multi-headed nature of political parties, existing as they do at every level of government, critics also warned about the impact of the BCRA on state parties.

In her two contributions to this research effort, Diana Dwyre examines the trends in party fundraising over the past 25 years. She finds that contributions to all Democratic Party national committees slightly increased (in inflation-adjusted dollars) in the 2004 presidential election immediately after passage of the BCRA, while Republican Party receipts decreased only slightly as compared to the 2000 election. Parties were generally able to replace the resources supplied through “soft money” donations with limited contributions from individuals in the immediate aftermath of the BCRA. However, for the next two presidential election campaigns (2008 and 2012), party receipts never reached the same level as 2004. Democratic Party receipts only achieved 2004 levels in 2016, while Republican Party receipts were almost 40 percent lower from their highs. (See Figure 10 below.)



*Parties were generally able to replace the resources supplied through “soft money” donations with limited contributions from individuals in the immediate aftermath of the BCRA. However, for the next two presidential election campaigns (2008 and 2012), party receipts never reached the same level as 2004.*

**Figure 10. National Party Committee Receipts, 1992–2016 (in millions of dollars)**



Source: Diana Dwyre, Political Parties and Campaign Finance: What Role Do the National Parties Play? Available at: <https://bipartisanpolicy.org/campaign-finance>.



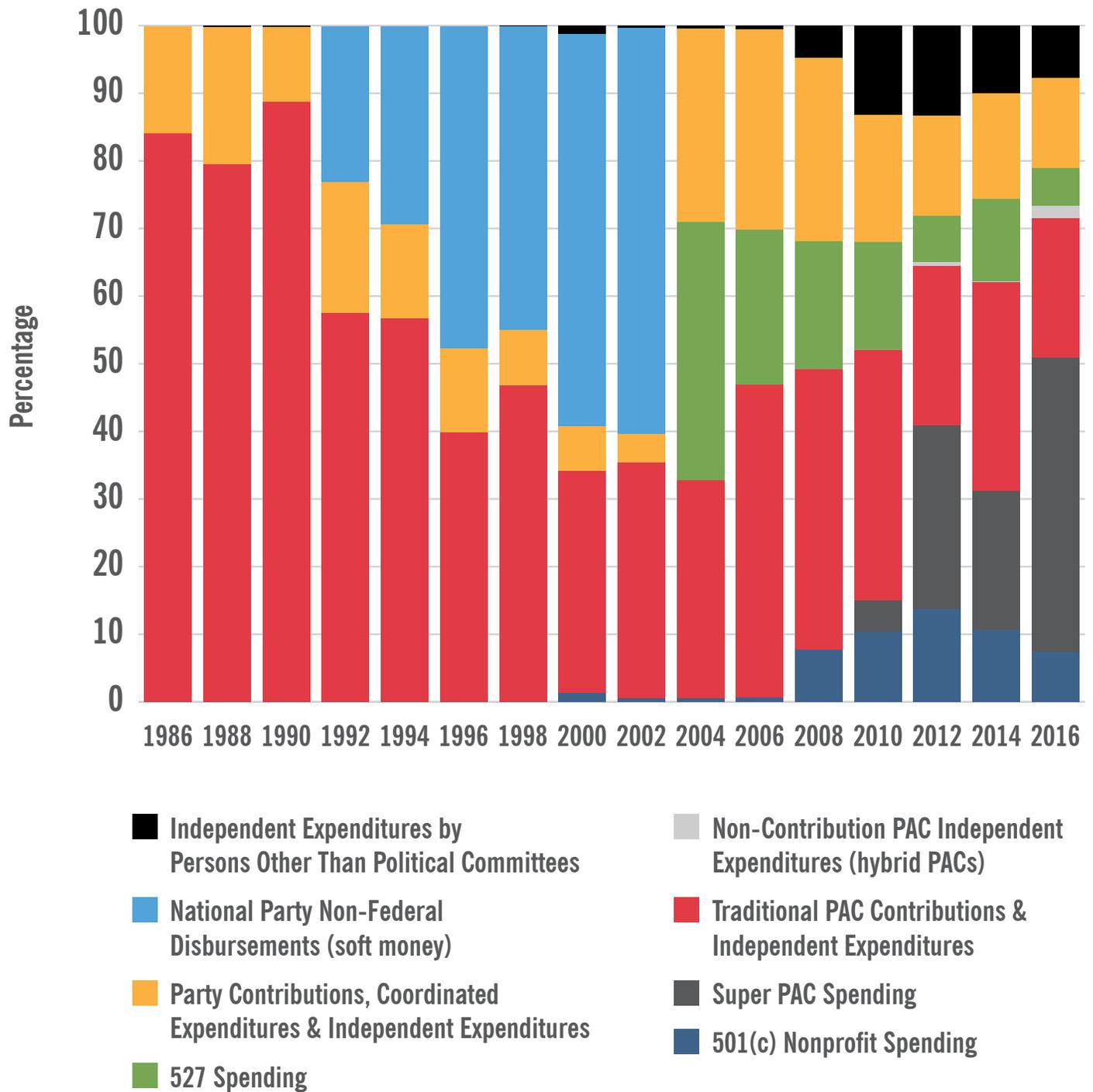
Given that the total amount of money in the system has generally increased over time, what offset this loss in party fundraising and expenditures? The answer is complicated and evolving, but mainly centers around the ascendancy of three different types of “outside” groups: 527 organizations, 501(c) organizations, and most recently, Super PACs. In the first six years following the BCRA’s passage, 527 organizations were the preferred outlet for such money. 527 organizations—so designated because of the part of the tax code, rather than the campaign finance laws, that classifies them—are defined simply as organizations claiming an exemption from tax on contributions received for electoral activity. By a controversial interpretation, a 527 would remain a political organization for tax purposes, but claim to be operating outside the requirement for registration and reporting to the Federal Election Commission as a fully regulated political committee subject to financing limits. They were the preferred vehicle for outside money in the immediate aftermath of the BCRA, but have been largely replaced in recent elections by 501(c) organizations and (once the court helped create them) Super PACs. As Figure 11 depicts, when “soft money” disappeared before the 2004 election, it was replaced by a combination of spending by 527 organizations and party expenditures of “hard money.” But those categories of spending have now been dwarfed by the combination of Super PAC and 501(c) spending.

**Table 2. Total Spending by Parties and Outside Groups, by Type**

	2010	2012	2014	2016
Super PACs	\$62,641,448 (13%)	\$609,417,654 (47%)	\$345,163,595 (45%)	\$1,104,481,088 (66%)
Nonprofits	\$173,803,881 (35%)	\$336,516,934 (26%)	\$163,259,319 (26%)	\$202,867,327 (12%)
Parties	\$189,637,206 (38%)	\$255,347,440 (20%)	\$199,941,201 (21%)	\$246,159,843 (15%)
Other	\$73,391,437 (15%)	\$92,878,372 (7%)	\$54,298,201 (7%)	\$128,863,700 (8%)
<b>TOTAL</b>	<b>\$499,473,972</b>	<b>\$1,294,160,400</b>	<b>\$762,662,316</b>	<b>\$1,682,371,958</b>

**Source:** Center for Responsive Politics and Wesleyan Media Project, Report on Outside Group Activity, 2000-2016: Assessing Dark Money Trends & Magnitude. Available at: <https://bipartisanpolicy.org/campaign-finance>.

Figure 11. Relative Spending by Different Groups in Federal Elections, 1986–2016



Source: Diana Dwyre, Political Parties and Campaign Finance: What Role Do the National Parties Play? Available at: <https://bipartisanpolicy.org/campaign-finance>.



In this way, the formal party organs have faced a new competitive landscape, with implications for their centrality in campaigns, in the wake of the BCRA as now modified by *Citizens United* and *SpeechNow*. However, a growing group of scholars draws attention to the fact that certain of these “outside” groups are not really outsiders after all. Rather, allied Super PACs and 501(c) organizations perform many of the functions that parties did in the heyday of “soft money.” In particular, personnel will often move between and among candidate committees, party organizations, and Super PACs, and the spending of party-allied Super PACs often mirrors spending by the political parties.



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The debate among political scientists revolves around whether party-affiliated “outside” groups, given their location on an extended party network, represent new incarnations of the party itself. Many of them are led by senior party figures and operatives, after all, and elected representatives will often openly support and associate with them, appearing at their fundraising events. Critics press on the question of whether there is really any difference between a donation to the DNC or RNC and one to an aligned outside group that will spend its money on similar television ads for the same party-supported candidate, for example, guided by experienced party operatives. Some argue that there is such a difference, assuming viable coordination rules, because a party necessarily suffers from the inefficiencies and other problems of attempting to function in part through Super PACs that must maintain for legal purposes at least some distance from the party’s own candidates and the party itself.

Whether one calls a party-aligned Super PAC “the party” is less important than identifying the effects of the proliferation of these various entities on the party and campaign finance system. Similarly, no one can doubt that some “outside” groups are further away from the party core than others. Some of these groups do, in fact, behave like alter egos of the party, while others behave in ways that the party leaders find counterproductive.

Irrespective of the conflict between these views, the effect of this proliferation of groups and organizations on the campaign finance system should be seen to vary between parties and over elections. For example, when a president runs for reelection, the official party organizations, the informal party organizations led by elected leaders, and the allied “outside groups” all tend to work in tandem toward a common goal. Whether or not their activities meet the legal definition of “coordination,” the different components of the reelection effort exist as allied operations with a shared purpose. The same might not be true for a challenger’s campaign or a campaign for an open seat. In those situations, especially if they come on the heels of a bruising primary fight, otherwise-allied outside groups may truly be at odds with the official party organization. Not only might they

refuse to work together, they might affirmatively act in ways that are counterproductive to the messaging and mobilization initiated by the formal party organizations. Similarly, the relationship of the allied groups to the party leadership, at any given time, may be different for Democrats and Republicans given a number of factors, including differences within respective donor communities in the strength of party commitment and the character of their ideological stances.

In short, the effect of this explosion of outside groups on the centrality of parties will depend on a number of other factors. For this reason, it seems unlikely, for example, that if the BCRA were suddenly repealed, we would return to a mythical position in which all money in the campaign system would suddenly flow into and out of the formal party organizations. No doubt, some such money (perhaps a great deal of it) that flows to different nodes on the party network would go to the formal party committees, but these outside groups have grown due to a range of factors and some have become sufficiently resilient and institutionalized.

We see a similar phenomenon at the state level, as the included study from the National Institute on Money in State Politics (NIMSP) attests. In the wake of the BCRA, NIMSP finds a precipitous drop in contributions to state parties from the national party committees, which has not been replaced by other sources of funds. This comes as little surprise in that much of the party “soft money” had been parked in the party’s non-federal accounts and shared with state parties, often for purposes of electing federal candidates. At the same time that state parties lost this money from the national parties, outside group independent spending (at least in the 10 states that track it) also went up. Some of the groups, such as the Republican and Democratic Governors Associations, are closely linked to the parties. Post-BCRA, a greater share of the contributions to state parties came from large contributions from individual donors, as compared to businesses or unions.



*At both the federal and state level, an increasing share of money in the campaign finance system has moved away from traditional party organizations and candidates, who are most directly accountable to voters, toward entities that are less directly accountable to the electorate and that are required to disclose less about their connections to campaigns and their ultimate source of funding.*

The NIMSP study concludes that idiosyncratic factors, such as the presence or absence of a statewide race in California or the unique gubernatorial recall election in Wisconsin, play an important role in distorting this movement of funding away from the state parties. However, the overall pattern is a familiar one to that existing in the federal system. Like their federal counterparts, the position of the formal state party organizations relative to outside groups has deteriorated. As a result, at both the federal and state level, an increasing share of money in the campaign finance system has moved away from traditional party organizations and candidates, who are most directly accountable to voters, toward entities that are less directly accountable to the electorate and that are required to disclose less about their connections to campaigns and their ultimate source of funding.





## Corporations and Unions

In the wake of the Supreme Court's decision in *Citizens United* striking down the BCRA's ban on corporate-sponsored electioneering activity, it was reasonable to expect that corporate and union treasury money would flow in great amounts into elections. That remains a real possibility, but it has yet to materialize. All the available evidence suggests that business corporations, especially publicly traded corporations, have not taken advantage of their newly established political spending rights post-*Citizens United* to the extent that many predicted.



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In the 2012 election, which was the first one held after *Citizens United*, corporate political activity remained modest. In his article published in the February 2017 edition of *Business and Politics*, titled "Avenues of influence: on the political expenditures of corporations and their directors and executives," Professor Adam Bonica explains that corporations in 2012 spent roughly \$75 million from their treasuries on federal elections, which is roughly 1 percent of the \$6 billion spent during that election cycle. Of that \$75 million, \$20 million came from shell corporations used by individuals, meaning that they were really individual contributions taking the corporate form. Even if one were to hypothesize that all undisclosed contributions to 501(c)(4) organizations came from corporations, that would add another \$318 million. As discussed and demonstrated in the section

dealing with undisclosed money below, however, the data do not support this hypothesis. As Bonica also notes, corporate electoral spending is dwarfed by the multiple *billions* those corporations spend on lobbying, suggesting that other avenues of potential influence are preferred by corporate managers.

This is not to say that corporations sit on the sidelines of electoral politics. Rather, most “corporate” giving is done by corporate PACs and by the individuals who run these corporations—practices that were legal both before and after *Citizens United*. Although preferring Republicans, corporate PACs tend to show some bipartisanship in their giving, somewhat spreading their bets between the parties over time, but giving more to incumbents of the party in control of Congress. Corporate leaders, on the other hand, are more ideological and partisan when they contribute their own money. Bonica theorizes that having corporate leaders contribute their own money, rather than that of the corporation, could insulate the corporation from possible political blowback were it to back the losing candidate or win with unpopular views in an election.

Perhaps the predicted effect of *Citizens United* will be realized over the longer term. In the six years since the decision, however, we have not seen an explosion in corporate independent spending. In his detailed report, “The Landscape of Campaign Contributions: Campaign Finance after *Citizens United*,” prepared for the Committee for Economic Development, Anthony Corrado confirms and extends Bonica’s findings through the 2016 election.

*[Citizens United]* was expected to produce a surge in business spending. We found little to support this expectation. In fact, few business corporations or associations have made independent expenditures in recent elections.

No major corporation has spent money independently in support of a candidate. Only two companies in 2014 and ten in 2016 made independent expenditures from corporate funds, and these companies spent relatively minuscule amounts.

A small number of business associations and professional organizations have spent money independently, with total spending of \$39 million by 7 organizations in 2014 and \$34 million by 10 associations in 2016. More than 85 percent of the total in each election was due to the spending of the U.S. Chamber of Commerce, which has been active in elections since long before *Citizens United*.

In all, monies spent independently by business companies and associations represented less than five percent of the monies that came from unlimited sources in 2014 and 2016.



*Perhaps the predicted effect of Citizens United will be realized over the longer term. In the six years since the decision, however, we have not seen an explosion in corporate independent spending.*



We cannot know with precision how much corporate money is making its way into Super PACs. Indeed, there are a few examples of substantial sums given by corporations to Super PACs, such as C.V. Starr & Co.'s \$10 million dollar donation to a Super PAC that supported presidential candidate Jeb Bush. As described in greater detail below, however, we know that most Super PAC money is coming from individuals. Corrado analyzed the source of Super PAC funds, and found that only 5 percent (\$25 million) of Super PAC receipts in 2014 and 6 percent (\$95 million) in 2016 came from corporations. In his words, "Major corporations have not been active participants in Super PAC financing. Publicly held companies were the source of less than 1 percent of total Super PAC funding and most of this money came from only a few companies." Even money spent by trade associations, like the U.S. Chamber of Commerce, which spent \$35 million in 2014 and \$29 million in 2016, may seem significant in absolute terms, but represents, according to Corrado, "less than 1 percent of the total monies raised and spent in the entire election cycle."

Perhaps unexpectedly, organized labor appears to have taken greater advantage of its capacity to spend in unlimited amounts following *Citizens United*. In the 2012 election, Bonica points out, "labor unions spent \$105 million on independent expenditures, more than the \$60 million labor PACs spent on federal elections or the \$96 million spent on federal lobbying efforts." When it comes to Super PACs, labor has also been more active than business corporations. They contributed \$81.6 million in 2014 and \$93 million in 2016. In the 2014 and 2016 elections combined, as Corrado explains, "labor union donations [to Super PACs] exceeded the total amount given by business corporations and trade groups by \$32 million."



## Super PACs

The shift to Super PACs as a dominant form of political activity by certain classes of contributors is perhaps the most dramatic development in the campaign finance system in recent election cycles. As noted above, Super PACs were born with the D.C. Circuit's decision in *SpeechNOW.org v. FEC* (2010), in that they could now accept contributions in unlimited amounts for their independent spending. They can spend this money without limit but must in general disclose their contributors. The disclosure picture is complicated by some Super PAC reporting of contributions from entities like LLCs or tax-exempt corporations that appear in disclosures only in their formal organizational capacities, with no indication of the underlying sources of their financial support.



*The shift to Super PACs as a dominant form of political activity by certain classes of contributors is perhaps the most dramatic development in the campaign finance system in recent election cycles.*

In the 2016 Election cycle, according to the Center for Responsive Politics (CRP), Super PACs received and spent record amounts. The CRP estimates the number of Super PACs in 2016 at 2,394. They raised approximately \$1.8 billion and spent \$1.1 billion—roughly 16 percent of total election expenditures. In 2012, by comparison, roughly 1,265 Super PACs raised \$828 million and spent \$609 million, which was itself a huge leap from 2010 when only 83 Super PACs made expenditures totaling \$63 million.



As Paul Herrnson explains in his research, however, the category of “Super PACs” includes a diverse array of organizations with different types of donors and motivations. Hundreds of Super PACs registered with the FEC for a given election cycle spend nothing at all; such organizations often register to take ownership of a potential name, such as “[state] Democratic Club.” Of those that make any expenditure, the modal Super PAC receives between \$10,000 and \$100,000, but 73 Super PACs (21 percent of the active Super PACs) received \$5 million or more, accounting for roughly two-thirds of all Super PAC receipts. Therefore, when observers speak of the Super PAC problem or phenomenon, they are usually referring to a small group of organizations that receive the lion’s share of Super PAC donations.

Super PACs vary not only in size but also in character. David Magleby categorizes them into three types—candidate-specific, party-centered, and interest-group-based—depending on both their election-related goals and independence from candidates and parties. They differ according to the number of candidates they support, their level of independence from candidate campaigns and other entities, their degree of permanence from one election to the next, and the types of elections (primaries or general, congressional or presidential) in which they engage. Some are “hybrid PACs,” meaning that they make both independent expenditures and contributions to candidates and other political committees.

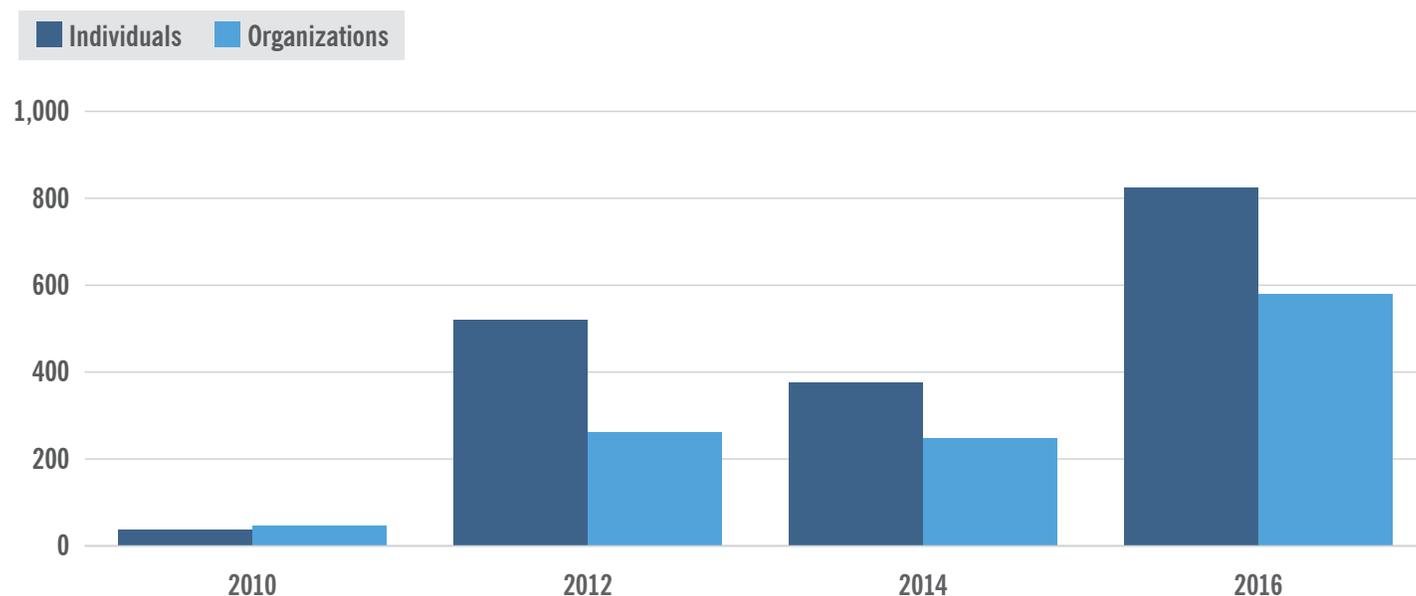
Multi-candidate Super PACs, which constitute the majority of Super PACs and Super PAC money, raise their own set of interesting empirical questions. Most centrally, do these entities, which are technically independent of candidates and the formal party apparatus, perform the functions typically reserved to political parties? The answer, as Paul Herrnson describes, is “sometimes” and “it depends.” As he writes, “some of these groups resemble think tanks, party committees, or leadership PACs in that they specialize in research, voter mobilization, or raising funds for redistribution to other organizations; others appear to spend their money primarily on fundraising, salaries, and other aspects of organizational maintenance.” Some exist as the alter egos of ideological interest groups, labor unions, or the business community, while others have no parent organization and more closely resemble actual campaign organizations operating independently of other affiliated or associated entities. As such, while a majority of active Super PACs engage in independent spending on persuasion messages directed to voters (primarily on advertisements, which are more often oppositional in tone), the institutional form of the Super PAC is used for all types of campaign-related activities. In the 2016 presidential election, research by David Magleby finds that Super PACs and 501(c)s were active in a wide array of activities typically the province of the candidates. For example, they managed candidates’ events and advance work, they provided rapid response to charges against their candidate, built lists of persuadable voters, and managed get-out-the-vote efforts. In short, in the 2016 presidential election, outside groups played a role much greater than mere funders of TV ads.



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In recent elections, individuals, rather than organizations, have contributed the bulk of Super PAC money (see Figure 12). The individuals who make large contributions to Super PACs are often the same people who make large contributions to all other actors in the campaign finance system (candidates, parties, PACs, 501(c)4 organizations). Consistent with the previous discussion of corporate spending following *Citizens United*, however, corporations are not big contributors to Super PACs from their treasury funds. That being said, individuals affiliated with businesses (including finance, real estate, insurance, as well as other businesses as presented in FEC reports) make up roughly 64 percent of Super PAC donations, according to Herrnson. Direct contributions from labor unions, in contrast, represent about 16 percent of Super PAC receipts.

**Figure 12. Donations to Super PACs from Organizations and Individuals, 2010–2016 (in millions of dollars)**



**Source:** Paul S. Herrnson, *The Impact of Organizational Characteristics on Super PAC Financing and Independent Expenditures*. Available at: <https://bipartisanpolicy.org/campaign-finance>.

The bottom line with respect to Super PACs is that their growth is one of the most significant developments in the campaign finance system in recent years (see Figure 11). For donors who have “maxed out” in their contributions to the statutorily specified actors (such as candidates, parties, and traditional PACs) or for those who prefer to give to groups one step removed from candidates and parties (as some but not all Super PACs are), Super PACs have become increasingly attractive vehicles for election-related spending. As discussed in the next section, 501(c) organizations have also gained prominence in recent years, but Super PACs have become the electorally dominant species of “outside” groups, eclipsing 527 organizations, which had previously occupied a significant role in election spending.



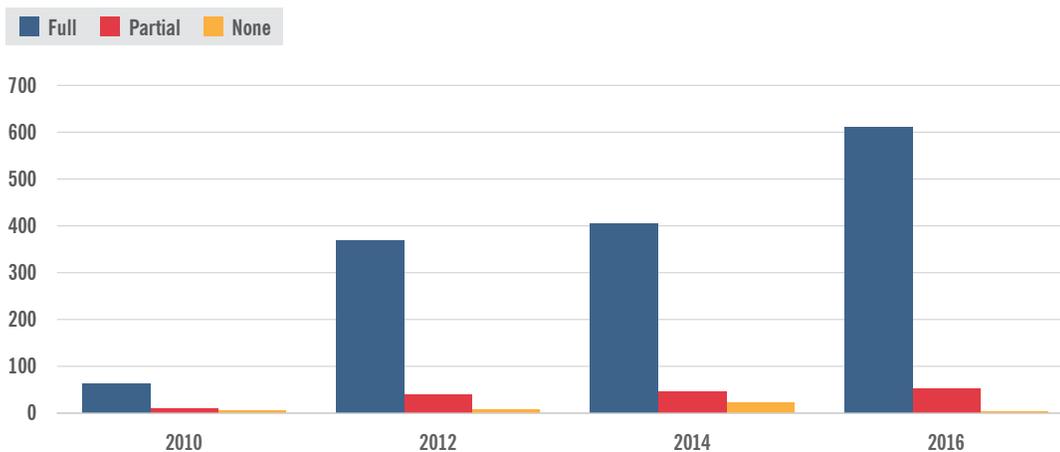


## 501(c) Organizations and Undisclosed Campaign Finance Activity

Contrary to conventional wisdom, most Super PAC money is fully disclosed. Like traditional PACs, they must report contributors who give \$200 or more to the FEC. Some of those contributors, however, are organizations or Limited Liability Corporations (LLCs) with money that is hard to trace back to its original source—that is, the name of the contributor to the Super PAC may be easy to identify, but the contributor to the contributor might not be. This phenomenon appears to be growing, but still, roughly 90 percent of Super PACs, according to Herrnson, fully disclose their contributions back to an original source, such that more than three-quarters of Super PAC money comes from identifiable sources.

Because Super PACs have become the most prominent vehicle for outside spending in recent years, and most Super PAC money is disclosed, most “outside money” comes from disclosed sources. Although undisclosed spending (as of 2012) had increased

**Figure 13. Share of Super PACs Engaging in Undisclosed Spending**



Source: Center for Responsive Politics and Wesleyan Media Project, Report on Outside Group Activity, 2000-2016: Assessing Dark Money Trends & Magnitude Available at: <https://bipartisanpolicy.org/campaign-finance>.

substantially, spending from disclosed sources also increased greatly. In other words, in absolute terms, undisclosed money increased, but relative to total spending it has decreased or remained relatively constant. In fact, the report from the Wesleyan Media Project and Center for Responsive Politics, from which Figure 14 is taken, indicates that the share of ad spending from non-disclosing sources has decreased in the last 15 years.



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Most of the undisclosed spending in the campaign finance system comes from 501(c) organizations. Some 501(c)(6) trade associations, such as the U.S. Chamber of Commerce or National Association of Realtors, are significant players, having spent roughly \$40 million in the 2016 campaign, down from \$55 million in 2012. For most donors who wish to remain anonymous, however, 501(c)(4) organizations are the vehicle of choice for their contributions. As David Magleby explains in greater detail, those organizations are technically “social welfare” groups under the tax code, and as such must be “primarily engaged in promoting in some way the common good and general welfare.” As a legal matter, their election-related work cannot be their primary purpose, but the test for “primary purpose” remains contested, and for critics, ineffective. Leaving aside the controversies related to 501(c)(4) organizations, though, their favorable position for undisclosed contributions has led to their greater prominence in the campaign finance regime.

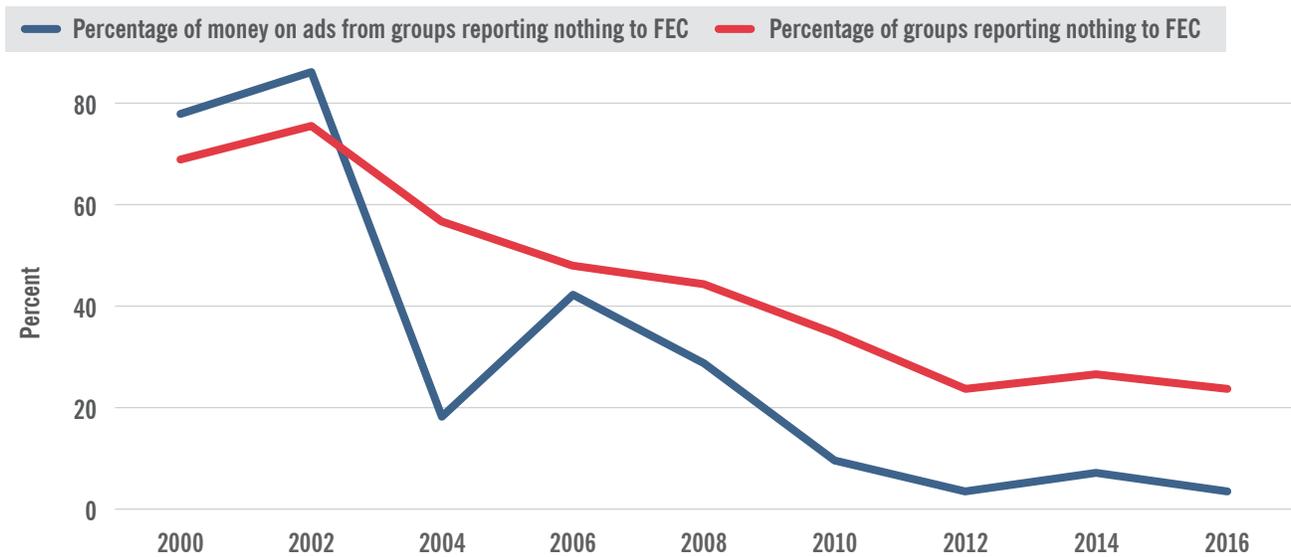
With that said, the 2016 campaign saw a reduction in 501(c)(4) spending. As Magleby notes, 501(c)(4) spending rose from a mere \$5 million in 2006, to \$69 million in 2008, to \$136 million in 2010, and to \$309 million in 2012. However, such spending dropped by more than half in 2016 to \$147 million. The same dynamic can be seen in the share of television ads broadcast by non-disclosing groups, which dropped from 383,375 ads in 2012 to 135,212 in 2016.

The precise reasons for this decline are not yet known. As the report provided by the Center for Responsive Politics and the Wesleyan Media Project suggests, the unique character of the 2016 campaign serves as one explanation. Many of the traditionally active 501(c)(4) organizations on the Republican side chose to sit the election out because their leaders may have not been enthusiastic about the Republican presidential nominee. Similarly, with the rise of the Super PAC, much of the money that may have gone to 501(c)(4) organizations may have gone into Super PACs, most of which fully disclose their donors. Moreover, all money contributed to Super PACs may be spent on electioneering activities, whereas electoral spending (as a legal matter) may not be the primary purpose of a 501(c)(4).



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**Figure 14. Groups Airing Television Ads**



Source: Center for Responsive Politics and Wesleyan Media Project, Report on Outside Group Activity, 2000–2016: Assessing Dark Money Trends & Magnitude. Available at: <https://bipartisanpolicy.org/campaign-finance>.

**Table 3. Television Ad Airings by Non-Disclosing Groups, 2000–2016**

Cycle	All Federal	Pres	Senate	House
2000	34,406	13,248	9,816	11,342
2002	6,633	-	4,740	1,893
2004	15,484	9,018	3,281	3,185
2006	15,540	-	7,294	8,246
2008	86,032	15,585	54,484	15,963
2010	126,123	-	61,655	64,468
2012	383,375	172,595	149,826	60,954
2014	215,014	-	171,075	43,939
2016	135,212	30,023	95,531	9,658

Source: Center for Responsive Politics and Wesleyan Media Project, Report on Outside Group Activity, 2000–2016: Assessing Dark Money Trends & Magnitude. Available at: <https://bipartisanpolicy.org/campaign-finance>.

What the future holds with respect to disclosure is hard to guess. If the growth in undisclosed spending seen in 2012 is the new normal, we should expect to see more donors in the future turn to 501(c) organizations as a preferred avenue for independent spending. The drop in undisclosed spending in 2016, however, highlights how donors' behavior and their relative preference for one funding vehicle over another can be highly contingent on the dynamics of a campaign. Contributors in the campaign finance system now have a range of options available to them that vary by their proximity to the candidates and parties, and the level of disclosure the law requires. Based on their relative preference for notoriety and independence, different contributors will choose different options, and some will spread their bets among the multiplicity of groups available.



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## The Changing Media and Campaign Landscape

Much of the elite commentary in the year since the 2016 election has focused on the effect of the internet on the presidential campaign and election. For some time, observers had noted the transformative power of online tools for campaign fundraising and political organizing. Even more recently, as in the 2008 and 2012 campaigns, the focus had turned to the marriage of big data and microtargeting with social media, enabling targeted messages even down to the individual level. With the 2016 campaign, however, the euphoria over the internet's capacity to enhance democracy gave way to a set of concerns about the potential for foreign intervention in U.S. elections, the power of a few platforms to affect political communications and voting behavior, and the ability of false stories to gain widespread traction online.



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Studying the effect of the internet on campaign finance is particularly difficult. So much of the campaign finance regulatory and disclosure regime is predicated on television as the primary mode of political communication. Moreover, data on television advertising are easier to acquire from non-governmental sources such as industry associations and the broadcasters themselves. Television or radio advertisements are also identifiable “things”—that is, usually a 30- or 60-second advertisement that plays on a channel at a particular time.

Online campaigning includes a broad array of activities beyond those typical of the offline world. In addition to TV-style 30-second ads, the range of online modes of paid political communication is potentially infinite. It extends to email and text messages, as well as social media posts, blogs, web pages, banner ads, search results, and even advertisements embedded in video games. The law requires disclaimers for campaign advertisements purchased on another entity's websites. However, scholars scouring FEC filings will search in vain for a complete accounting of a campaign's online spending. Often, online spending totals are pooled in official forms with other types of expenditures under generic categories such as "media" or "consultants." Thus, from official sources it becomes very difficult to disentangle online spending (let alone spending on particular platforms such as Google and Facebook) from other types of media spending. Moreover, industry associations analogous to those for the broadcasters that voluntarily provide data on ad buys do not exist among the main internet advertising platforms.

In many cases, we are left then with best guesses provided by industry observers or claims made by the campaigns themselves. For example, one media tracking firm, Borrell Associates, estimates total advertising spending for all races—federal, state, and local—in the 2016 election to be \$9.8 billion, a \$400 million increase over 2012. They also estimate that broadcast TV ad spending fell by 20 percent from 2012 to 2016, from \$5.45 billion to \$4.4 billion, whereas digital advertising grew almost eightfold from \$159 million dollars to \$1.4 billion, which is comparable to what was spent on cable television in 2016. Whereas in the 2012 election 57.9 percent of political advertising appeared on broadcast, 9.5 percent on cable, and 1.7 percent on digital, Borrell estimates that in 2016, broadcast dropped to 44.7 percent, cable increased to 13.9 percent, and digital increased to 14.4 percent of total political advertising dollars. Roughly 40 percent of digital ad dollars were spent on social media sites (with Facebook being the most dominant), and roughly 20 percent of digital ad spending was directed to mobile devices.



*Broadcast TV ad spending fell by 20 percent from 2012 to 2016, from \$5.45 billion to \$4.4 billion, whereas digital advertising grew almost eightfold from \$159 million dollars to \$1.4 billion.*

The campaigns themselves have provided additional nuggets of data about the levels of digital ad spending. At times, representatives from President Trump's campaign have suggested that half of their media dollars went to digital, which, if true, would be far out of step with previous campaigns. In their 2017 study, "Digital Advertising Expenditures in the 2016 Presidential Election," published in the *Social Science Computer Review*, Christine Williams and Jeff Gulati seem to confirm that statistic. They estimate that the Trump general election campaign spent \$83 million on digital, representing 47 percent of its media expenditures. In contrast, the authors claim that the Clinton campaign spent only \$20 million on digital, which represented only 8 percent of total media expenditures. The authors suggest that the presidential campaigns together spent about 33 percent less on traditional media in 2016 than they had four years prior. This trend was not limited to the campaigns themselves. The authors find that outside groups spent about three times as much on digital (\$164 million, almost all of which was spent by groups supporting Trump) than they had in 2012. However, this analysis of digital advertising is necessarily



incomplete, even if invaluable, as it relies on the campaigns' and groups' inclusion of words like “digital” or “internet” in their expenditure reports.

Whatever the regulatory regime, the digital campaign universe is one that is conducive to undisclosed political spending and will be increasingly difficult to assess comprehensively as it overtakes television in importance. The web is worldwide, after all, and spending related to an American election can potentially occur anywhere in the world, by any entity, on communication platforms that reach American voters. Russian government agents' now-infamous purchase of \$100,000 worth of Facebook ads during the 2016 election campaign was apparently unknown to Facebook itself until after the election. Much of this spending appears to have violated the ban on foreign electioneering and perhaps also violated existing disclosure laws, although a great deal of such spending appears to have been on issue advocacy—that is, advertisements that did not mention a candidate but conveyed messages and images about certain divisive topics. In addition, spending on coordinated social media campaigns by trolls and bots are activities for which existing disclosure and regulatory schemes are completely unprepared.



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Even apart from the issue of foreign spending, though, research on campaign spending patterns will be increasingly difficult in the coming years as campaign finance activity moves toward types of spending for which the disclosure regime (both that mandated by government and voluntarily entered into by media companies) is ill-suited. Although some platforms, such as Facebook, have recently volunteered to disclose future political advertising, it will be almost impossible to get a full picture of online spending comparable to what we have for television advertising. Many of these new technologies allow for targeted communication at the individual level, and potentially infinite variations on a single communication to perfect it for different audiences. Moreover, the line between “purchased” and “earned” media becomes increasingly blurred in the digital age, as campaigns and outsiders pay for armies of digital volunteers (let alone automated accounts or “bots”), who then surface content on social media that is functionally indistinguishable from other peer-to-peer communication.

In the campaign finance domain, the law lags far behind the technology, and legislative drafters concerned with these issues face considerable challenges in anticipating the character and variety of future online campaign communications. As a result, the platforms that dominate the field of digital advertising have enormous power to shape the rules of the campaign finance system. Their terms of service and community guidelines, let alone the less transparent algorithms that privilege certain types of communication over others, may soon prove as important as formal law in structuring how campaign-related money flows through the information ecosystem.



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These emerging technologies facilitate the larger phenomena we have described elsewhere in this report. The egalitarianism of the internet necessarily places on an equal footing speech by “insiders” and “outsiders”—whether referring to candidates and parties versus outside groups, or more literally, those inside and outside the country. Newsfeeds and search results often present very subtle distinctions between different types of communication (paid versus unpaid, candidate communication versus that of outside groups). Relative to their predecessors in the television age, today’s voters are at a disadvantage in evaluating messages or advertising by their source and context.

When it comes to paid advertising, moreover, the legally mandated practice of awarding the lowest unit rate for a campaign’s television advertisements has no online analog. Candidates have a leg up on outside groups when it comes to television advertising, in that they may pay less for similar spots. All advertisers are treated equally when it comes to digital. Furthermore, because the internet privileges and protects anonymity in so many contexts, any disclosure regime will face great headwinds in its attempt to capture all paid communications on the screens of American voters. This is not to say current legislative and FEC proposals are misguided, but rather that obstacles exist in cyberspace that may inhibit wholesale adoption of the analogous regulations for television, print, and radio.



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## Conclusion

In many respects, the modern campaign finance system began with the Federal Election Campaign Act Amendments of 1973. That law, as intended, envisioned a comprehensive set of restrictions on contributions and expenditures, from all identifiable sources of money in the system. The statute has been altered significantly by the courts, but the basic rules and actors in the system were familiar to the politics of the 1970s.

The current system of campaign finance would be almost unrecognizable to participants in the 1970s system. The governing law—both statutory and constitutional—has changed dramatically. It has produced a system in which all significant actors—candidates, parties, interest groups of whatever form, corporations and unions—can spend unlimited amounts on campaign-related expenditures. These legal changes have provided the framework for new campaign organizations (such as Super PACs) to form and for old actors (such as political parties) to adapt to meet different constituencies' electoral needs and ambitions.



*The current system of campaign finance would be almost unrecognizable to participants in the 1970s system. The governing law—both statutory and constitutional—has changed dramatically.*

At the same time, larger political forces have emerged in tandem with these legal changes to alter the dynamics of the campaign finance system. Political polarization and fragmentation have led to a proliferation of well-financed groups perfectly suited to the rules of the current system, which favor independence and individualized political organization. The newest online campaign technologies further this fragmentation as they allow for personalized targeting and less transparent forms of advertising and communication. We should not pretend that all the changes in the U.S. political system arise from or are chiefly produced by the dynamics of campaign finance. Similarities in the political movements arising across the globe, in countries with very different campaign finance rules and patterns to our own, should caution us from attributing campaign finance causes to every novel or undesirable political effect.



*The newest online campaign technologies further this fragmentation as they allow for personalized targeting and less transparent forms of advertising and communication.*

With that said, however, the rules and dynamics of campaign finance shape the political system and can strengthen, exacerbate or counteract some of these larger political forces. Moreover, these dynamics affect which candidates run, how parties organize and mobilize, and how all actors strategize to gain political power. For this reason, it is important to have an accurate and cautious assessment of the system as it has changed and currently exists. Such an assessment, we hope, can spur further research and data-gathering and inform any discussion of law and policy that might take place in the future.





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