Expert Report of Adam Bonica, Ph.D.

Summary of qualifications: I am an Associate Professor in the Department of Political Science at Stanford University. My research has primarily focused on campaign finance and money in politics in the context of American politics. I have published extensively on the topic of campaign finance and the preferences and behavior of donors. I also maintain the widely used Database on Ideology, Money, and Elections (DIME), a public resource that combines data on campaign contributions and candidates from state and federal elections. In addition to my academic work, I am a co-founder of Crowdpac, a crowdfunding platform for politics.

Publications from the past 10 years: I have published a total of 22 articles in peer review journals, two law review articles, and 3 book chapters. I have listed below a set of selected publications most relevant to the report. For a complete list of my publications, see the attached CV.

> Bonica, Adam, 2016. "Avenues of Influence: On the Political Expenditures of Corporations and Their Directors and Executives." Business and Politics, vol. 18, no. 4, pp. 367–394.
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> Bonica, Adam. 2014. "Mapping the Ideological Marketplace." American Journal of Political Science, vol. 58, no. 2, pp. 367–387.
>
> Bonica, Adam, Nolan McCarty, Keith Poole, and Howard Rosenthal. 2013. "Why Hasn't Democracy Slowed Rising Inequality?" Journal of Economic Perspectives, vol. 27, no. 3, pp. 103–24.
>
> Bonica, Adam. 2013. "Ideology and Interests in the Political Marketplace." American Journal of Political Science, vol. 57, no. 2, pp. 294–311.
>
> Bonica, Adam, Nolan McCarty, Keith Poole, and Howard Rosenthal. 2015. "Campaign Finance and Polarization," updated chapter in Polarized America., 2nd Edition. MIT Press.
>
> Bonica, Adam and Jenny Shen. 2013. "Breaching the Biennial Limit: Why The FEC Has Failed to Enforce Aggregate Hard-Money Limits and How Record Linkage Technology Can Help." Willamette University Law Review, vol. 49, no. 4, pp. 536–602.

Compensation: I am being paid $200 per hour and have spent 22 hours on this report. I will also be compensated for my testimony. Reasonable travel expenses will also be covered.

Previous experience as an expert witness: I have not been an expert witness for any cases in the prior four years.

Background

I have been asked to examine whether candidates and parties have become more dependent upon the favor of Super PACs in American elections. Super PACs are a type of independent political action committee allowed to make "independent expenditures," which refers to spending that is not coordinated with candidates or parties and "expressly advocates the election or defeat of a clearly identified federal candidate."[1] Super PACs differ from traditional PACs in three important ways. First, there are no legal limits on the amount an individual or organization can give to Super PACs or the amounts Super PACs can spend to advocate for or against candidates. Second, Super PACs are allowed to raise funds from corporations and unions. Third, restrictions are placed on Super PACs to prevent directly coordinating expenditures with any candidate or party.

In this report, I provide a brief history of the rise of independent expenditures and outside spending groups, document relevant trends in state and federal elections, and address the existing evidence about the ways independent expenditures have influenced politicians.

The Escalation of Independent Expenditures In Federal Elections

The rise of independent expenditures is among the most significant trends in campaign finance in recent decades. This growth in part reflects a changing legal environment that has loosened restrictions on how outside spending organizations can raise and spend money. For much of the nation's history, political spending was largely unregulated. This began to change during the early twentieth century, first with the passage of the Tillman Act in 1907 which prohibited corporations from making campaign contributions and then with the Labor Management Relations Act of 1947 (Taft-Hartley) which did the same for labor unions. The original justification prohibiting corporate contributions had focused as much on the need to protect corporations from politicians pressuring them to contribute to their campaigns as it did on the corrupting influence of corporate interests.[2]

The regulatory framework governing campaign finance and political expenditures was set in place by the Federal Election Campaign Act (FECA) of 1971, which among other things, gave legal status for PACs. Amendments to the FECA passed in 1974 put contribution limits on the amounts individuals could give to PACs and candidates and the amounts PACs could give to candidates. Over the next two decades, PACs proliferated as candidates came to rely almost exclusively on "hard-money" contributions raised in limited amounts to fund their campaigns.

[1] Super PACs are officially known as "independent-expenditure only committees."

[2] Senator Benjamin Tillman wrote of the bill that banning corporate contributions "will lessen a very mean and sordid practice of blackmail... the great number of corporations that have suffered extortion through weakness and cowardice will have their backbones stiffened, and parties will be put to it to fill their coffers by really voluntary contributions." The New York Times of June 17, 1906.

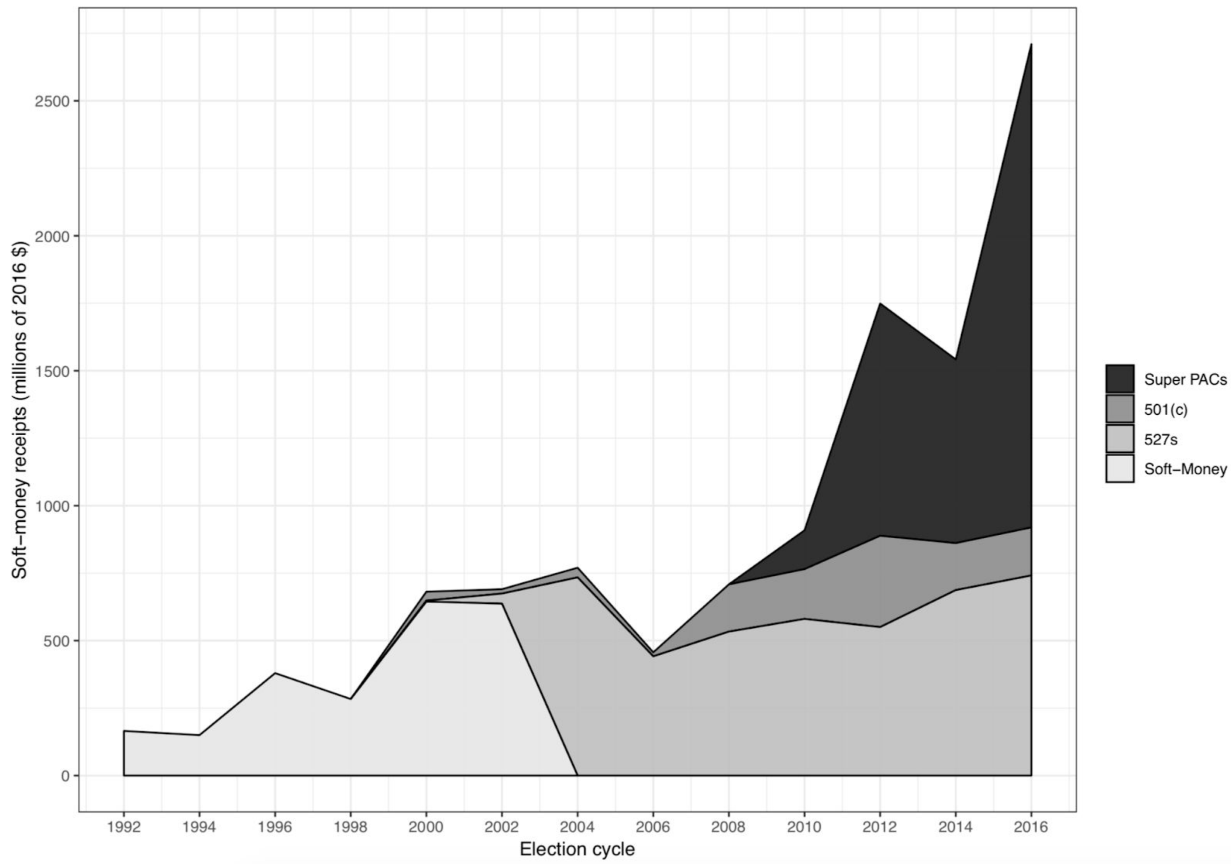

Figure 1: Total soft-money receipts to outside spending groups.
Sources: FEC (Super PACs and soft-money), IRS (527s), Center for Responsive Politics (501(c)).

Although Congress had placed limits on all forms of campaign contributions and expenditures, the constitutionality of these limits was challenged in the courts. The Supreme Court struck down limits on expenditures made independently of candidates on First Amendment grounds in *Buckley v. Valeo*, 424 U.S. 1 (1976). While the Federal Election Campaign Act (FECA) placed limits on the amounts individuals and PACs could give to the national party committees, it did not regulate contributions to state and local party committees. This created the so-called “soft-money” loophole that allowed corporations and unions to make unlimited contributions to these state party organizations for the purposes of “party building,” which could then be transferred back to the national party committees. The Supreme Court would later rule in *Colorado Republican Federal Campaign Committee v. FEC* (1996) that Congress could not restrict how much parties could spending on independent expenditures on behalf of federal candidates. The ruling corresponded with a sharp rise in independent expenditures, from $165.5 million in 1992 to nearly $637.0 million in 2002. Concerns about the corrupting influence of these unlimited soft-money contributions was a key factor in driving up support for campaign finance reforms, ultimately resulting in the passage of Bipartisan Campaign Reform Act (BCRA) in 2002, which closed the existing soft-money loophole.

Following the ban on soft-money contributions enacted in BCRA, 527 organizations emerged as the primary vehicle for independent expenditures. Spending by 527s increased sharply from $37.5 million in the 2001-2002 election cycle to $734 million in 2003-2004. Total spending by 527s declined in the following election cycles but remained the primary source of independent expenditures at the federal through until 2012. Spending on 527s, however, continued to grow in the subsequent election cycles, reaching $741.5 million in 2016.

The legal environment for independent expenditures changed again in 2010 following the Supreme Court ruling in *Citizens United v. FEC*, which struck down restrictions on spending by corporations and unions to support independent campaign expenditures and relaxed restrictions on political spending by 501(c) nonprofit organizations. The main development following the ruling was the creation of Super PACs, which have since become the primary vehicles for independent expenditures. By 2012, Super PACs raised $860.3 million, largely in support of presidential candidates. In 2016, the amounts raised by Super PACs had more than doubled to $1.79 billion. Spending through 501(c)--often referred to as "dark money"--increased sharply from $184.4 million in 2010 to $338.4 million in 2012 but fell back below $200 million in each of the following two election cycles.

	Soft-Money	527s	501(c)	Super PACs	Total Federal Spending	%IEs
1992	$165.5	$0.0	$0.0	$0.0	2325.9	7.1%
1994	$149.9	$0.0	$0.0	$0.0	2000.1	7.5%
1996	$379.6	$0.0	$0.0	$0.0	2781.5	13.6%
1998	$283.7	$0.0	$0.0	$0.0	2113.8	13.4%
2000	$644.8	$3.6	$33.0	$0.0	3352.3	20.3%
2002	$637.0	$37.5	$16.1	$0.0	2534.3	27.2%
2004	$0.0	$734.4	$35.7	$0.0	5260.2	14.6%
2006	$0.0	$441.9	$14.7	$0.0	3547.3	12.9%
2008	$0.0	$533.6	$175.0	$0.0	5875.0	12.1%
2010	$0.0	$580.6	$184.4	$143.7	3953.3	23.0%
2012	$0.0	$550.3	$338.4	$860.3	5985.8	29.2%
2014	$0.0	$687.4	$174.0	$680.3	3940.8	39.1%
2016	$0.0	$741.5	$178.0	$1,790.6	6701.6	40.4%

Table 1: Total independent expenditures by cycle.
Sources: FEC, IRS, and the Center for Responsive Politics.

Independent Expenditures Have Grown Sharply As A Percentage of Total Political Spending

The rise of independent expenditures has outpaced other forms of political expenditures in federal elections. In 1992, total independent expenditures account for just 7.1% of total spending in federal elections. This percentage grew sharply over the next decade, reaching 27.2% of total spending by 2002. Independent expenditures as a share of total spending was almost halved in the 2003-2004 election cycle and continued to decline as a share of total spending, reaching a nadir of 12.1% in the 2007-2008 election cycle. This trajectory reversed in the following election cycle as super PACs emerged on the scene and spending by 527s and 501(c)s continued to grow. Spending by IEs as a percentage of total spending soared in the following election cycles, account for 40.4% of total spending in 2016.[3]

The reasons why independent expenditures have grown so sharply as a percentage of total federal spending are two-fold. The introduction of Super PACs clarified much of the regulatory uncertainty surrounding 527s and thus likely made them a more attractive vehicle for both candidates and wealthy donors. However, the growth in independent expenditures also reflects the growing concentration of income and wealth more generally as economic inequality has increased.[4]

Independent Spending In State Elections

Spending on independent expenditures has similarly grown in recent years. According to data maintained by the National Institution for Money in State Politics, spending on independent expenditures increased from $125.2 million in 2008 to $465.3 million in 2016. This rate of growth is consistent with the claim that politicians at the state level have become more dependent on this type of spending. This is consistent with the trends observed at the federal level.

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[3] As of the time of writing, outside spending in the 2017-2018 election cycle is on pace to exceed the amounts spent in the 2013-2014 election cycle. Opensecrets.org reports that outside spending thru September totals $309.2 million, a 58% increase over the $195.8 million spent thru September of 2014. (See, https://www.opensecrets.org/outsidespending/fes_summ.php, accessed 9-11-2018.)

[4] See, Bonica, Adam, and Howard Rosenthal. *Increasing Inequality in Wealth and the Political Consumption of Billionaires*.

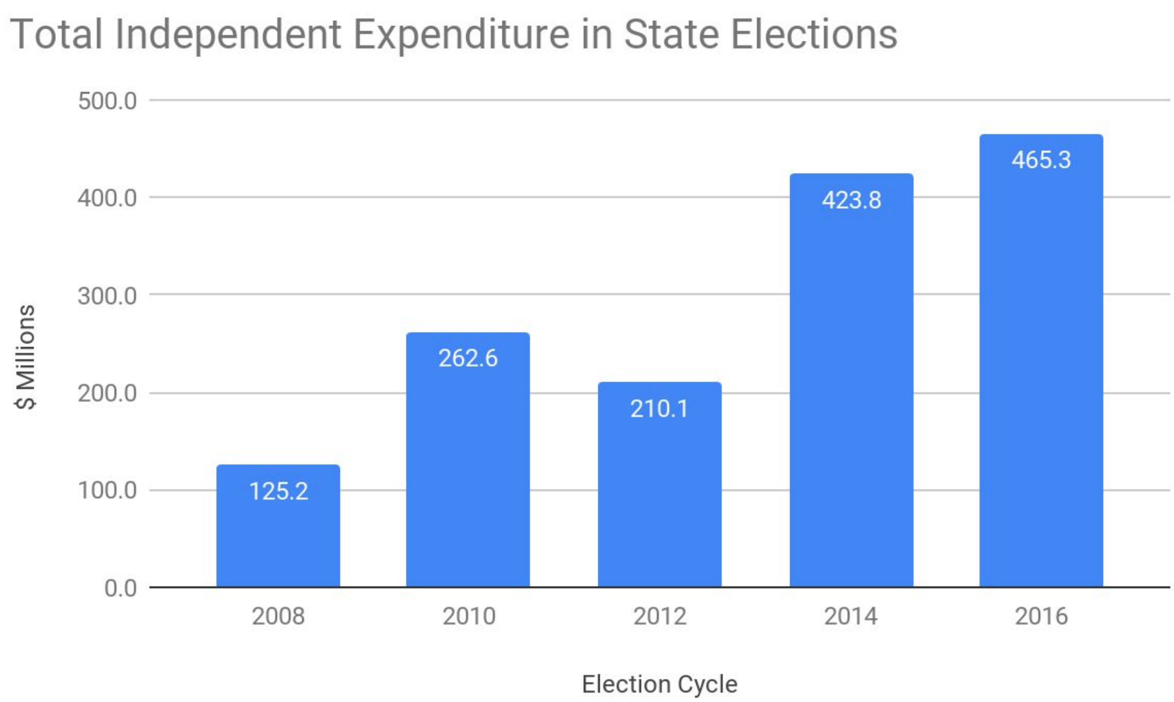

Figure 2: Total independent expenditures in state elections.
Source: The National Institute for Money in State Politics, Author's calculations.

Independent Spending In Alaska

Independent expenditures in Alaska state elections have increased both in total amount and as a proportion of total spending. The amounts spent on independent expenditures tend to be more variable from one cycle to the next, but as with federal and state elections more generally, the trend is increasing.[5]

Election Cycle	Total Spending	Independent expenditures	%IEs
2008	17,297,858.00	582,432.00	3.3%
2010	21,649,181.00	1,922,743.00	8.2%
2012	8,996,460.00	596,701.00	6.2%
2014	52,009,831.00	20,363,046.00	28.1%
2016	15,632,765.00	3,663,620.00	19.0%

Table 3: Independent expenditures in Alaska state elections.
Source: The National Institute for Money in State Politics, Author's calculations

[5] Much of the amounts spent on independent expenditures in 2014 were related to a ballot measure relating to the energy industry.

The Growth of Independent Expenditures Has Made Political Spending More Unequal

One concern raised by reformers is that permitting citizens and corporations to make unlimited political contributions exacerbates unequal access to the political process. The rise of independent expenditures corresponded with a commensurate increase in inequality in political giving, further concentrating political contributions among an elite group of wealthy donors. The top 1% of the 1% of the voting age population[6] accounted for between 9 and 15 percent of total contribution dollars during the 1980s and has risen steadily since then. By 2016, the share of total contributions from the top donors exceeded 40%.

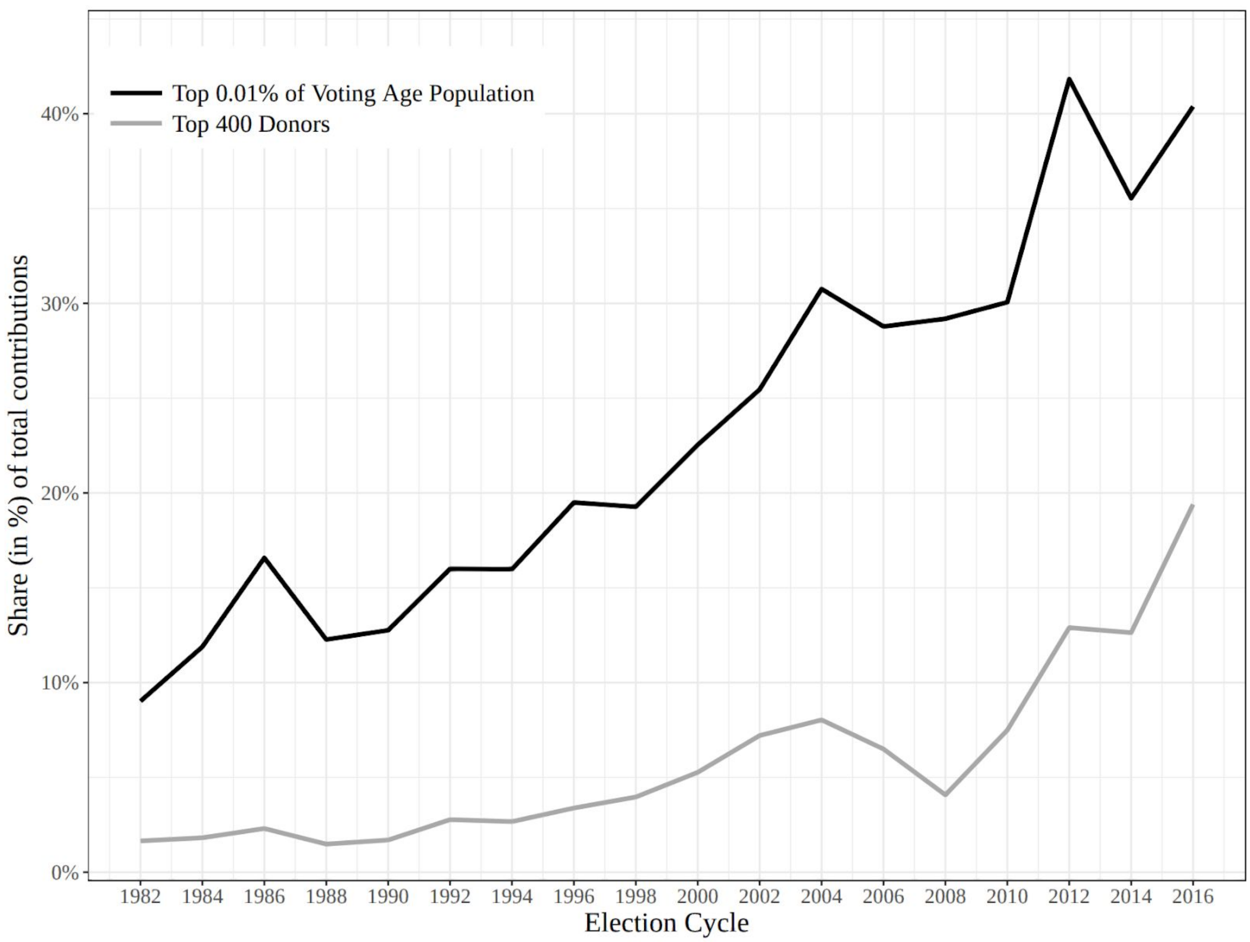

Figure 3: Shares of federal contributions from the top 1% of 1% of donors and the top 400 donors. Source: Database on Ideology, Money in Elections. Author's calculations.

An important development since the 2012 election cycle has been the further concentration of donations among the top 400 donors (or approximately the 0.00016% of the voting age population). Between 2012 and 2016, the share of contributions made by the top 1% of the 1% of the voting age

[6] This group includes the top 24,949 donors in 2016, or 1% of %1 of the 249,485,228 million adults of voting age according to the U.S. Census.

population ticked down slightly, from 42 percent in 2012 to 40 in 2016. However, the trend for the top 400 donors increased from 12.8% in 2012 to 19.3% in 2016. In fact, the top 400 donors accounted for nearly all of the growth in federal contributions between 2012 and 2016. Total donations from the top 400 donors increased from $772 million in 2012 to $1.3 billion in 2016, accounting for about 70% of the total growth in total federal contributions during that period. To help put the $1.3 billion in perspective, it is several times larger than the total amounts spent by corporate and labor PACs in 2016. It is also about exactly 10 times the total amount Bernie Sanders raised from the millions of small donors who gave to his presidential campaign.

Because these super donors have come to increasingly control access to the resources that candidates and parties require, this, in turn, is likely to create incentives for politicians to court these donors, thus inflating their influence.

Theory and Evidence of the Corrupting Influence of Big Money

The claim that large money donors directly influence politicians and political outcomes is notoriously difficult to establish empirically. The reasons for this have more to do with the availability of the types of data required to directly test these claims rather than a lack of evidence. Although claims regarding the corrupting influence of big money are hard to demonstrate empirically in a systematic fashion, most experts believe such influence exists. In fact, most theoretical models of campaign contributions and interest group influence developed by political scientists and economists are directly premised on the assumption that special interest groups engage political funding with the goal of securing favorable outcomes.[7]

The seminal model of Denzau and Munger (1986) views contributions as payments in a market for legislative services, votes, and access.[8] The main line of critique of the "investor" or "service-induced" models of campaign contributions is that legal limits placed on the size of contributions price most legislative services out of the market. In other words, a few thousand dollars is unlikely to be sufficient compensation for the electoral or reputational risk legislators would take on by doing their donors' bidding. In the words of *Milyo, Primo and Groseclose (2000),*

> *"Simply put, PAC contributions are not the only route by which interested money might influence policy makers and, given existing limits on the size of PAC contributions, neither are they the most likely route. The very idea of building a majority coalition by buying off individual members of Congress (a group not renowned for their fidelity or trustworthiness) with small campaign contributions and without an explicit contracting mechanism, as all the while competing interests work at counter purposes, sounds something akin to herding cats."* pp. 76.

[7] See, e.g., Baron, David P. "Service-induced campaign contributions and the electoral equilibrium." *The Quarterly Journal of Economics* 104.1 (1989): 45-72.
[8] Denzau, Arthur T., and Michael C. Munger. "Legislators and interest groups: How unorganized interests get represented." *American Political Science Review* 80.1 (1986): 89-106.

Even so, large contributions are widely viewed within the literature as a mechanism to secure access to legislators.[9] Access of this sort, at a minimum, provides an opportunity for interested parties to communicate their concerns and desires about specific policies. Absent competing voices, such access is likely to sway some politicians towards a donor's viewpoint. The cumulative effect of "buying access" is likely to make politicians more attuned to the interests and concerns of individuals and organizations that can afford to pay the price of admission. The main barrier to engaging in quid pro quo behavior, however, breaks down if donors are legally allowed to spend in unlimited amounts on elections.

Corporate and Labor Union Funding of Independent Expenditures

Although much of the attention following the ruling in Citizens United focused on corporate political giving, corporations have, as of 2018, contributed relatively little to the growth in independent expenditures. In 2010, the first election cycle in which Citizen United had taken effect, a handful of corporations spent just $15 million (to disclosed sources) from treasuries to fund outside spending groups. The amount given by corporations increased to $75 million during the 2012 election cycle.[10] This accounted for just 5% of total spending on independent expenditures and represented a tiny fraction of the $5.1 billion corporations spent on lobbying during that cycle.[11] According to data compiled by Center for Responsive Politics that covers from 2013 through 2016, corporate funding of independent expenditures has not significantly increased since 2012.[12] Total spending by corporations declined to $28 million in 2013-2014 and rebounded to $112 million in 2015-2016.

It is important to note that amounts reported above do not capture corporations giving to "dark-money" organizations. However, given the challenges large corporations face in keeping such spending secret, it is unlikely corporations are the main funding source for the roughly $100-300 million spent each cycle by dark-money groups.[13]

Labor unions, by contrast, spent significantly more on independent expenditures in the wake of *Citizens United*. In 2011-2012, labor unions reported spending $105 million from their treasuries to fund independent expenditures, slightly more than the $95 million spent by labor unions during the same cycle on federal lobbying.[14] In fact, the amount spent by labor unions to fund independent expenditures accounted for 40% of what organized labor spent at the federal level on political activity.[15] Although labor

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[9] Hall, Richard L., and Frank W. Wayman. "Buying time: Moneyed interests and the mobilization of bias in congressional committees." *American Political Science Review* 84.3 (1990): 797-820.

[10] Bonica, Adam. "Avenues of influence: on the political expenditures of corporations and their directors and executives." Business and Politics 18.4 (2016): 367-394.

[11] ibid.

[12] See, https://docs.google.com/a/crp.org/spreadsheets/d/138cCta_eIYHToVqDZdsV4mCM7qBYHEjWgCxvUU3sR6Q/

[13] Bonica, Adam. "Avenues of influence: on the political expenditures of corporations and their directors and executives." Business and Politics 18.4 (2016): 367-394.

[14] ibid.

[15] ibid.

unions have been more willing than corporations to take advantage of *Citizens United*, their spending still represents a relatively small fraction of total spending on independent expenditures.

This analysis is consistent with the claim that wealthy individuals, rather than corporations, are currently the main source of funding for independent expenditures. This is not to suggest that concerns about the corporate political spending are unfounded or that corporations will never spend large amounts on elections. Even if massive corporate spending in elections has yet to be realized, the potential remains. The 1896 presidential election provides some historical precedent that corporations are willing and able to spend enormous sums on politics if they believe their interests are threatened.[16]

Journalistic Accounts of the Corrupting Influence of Big Money

Where evidence of the potentially corrupting influence of independent expenditures has been more forthcoming is from accounts from journalists, politicians, and donors.

The demands placed on candidates and politicians to fundraise is well documented. For example, slides from a presentation delivered to incoming freshmen by the Democratic Congressional Campaign Committee that had been leaked revealed that party leaders recommended allocating 4 hours each day on "call time" devoted to fundraising.[17] To the extent that politicians feel pressure to prioritize fundraising, it is sensible to assume that politicians to have incentives cater to the interests of their donors. There are good reasons to believe that the combinations of fundraising pressures and repeated interactions with donors influence the beliefs and preferences of politicians. As former representative Barney Frank famously remarked about the constant pressure to raise money as a congress member,

> "People say, 'Oh, it doesn't have any effect on me. Well if that were the case, we'd be the only human beings in the history of the world who on a regular basis took significant amounts of money from perfect strangers and made sure that it had no effect on our behavior."[18]

There are many journalistic accounts of examples where politicians appear to have catered to donors' demands out of fear of losing out on their funding. One widely reported example was the response by congressional Republicans in late 2017 to a "revolt from their top donors" who had threatened to withhold contributions if their agenda did not move forward.[19]

Lastly, there is also the issue of opportunity costs. The time and effort politicians spend fundraising detracts from their official responsibilities. In almost any other context, if an employee was devoting half of their time to an activity unrelated to their official activities--for instance, playing online poker--it would be reasonable to conclude that this behavior had a corrupting influence on their job

[16] See, http://enikrising.blogspot.com/2012/03/more-spending-on-presidential-elections.html.
[17] See, https://www.huffingtonpost.com/2013/01/08/call-time-congressional-fundraising_n_2427291.html.
[18] See, https://www.npr.org/sections/money/2012/03/26/149390968/take-the-money-and-run-for-office.
[19] See, https://www.politico.com/story/2017/10/05/republican-donors-trump-mcconnell-anger-243449.

performance. This might not amount to a corrupting influence under a narrow conception of corruption that focuses on *quid pro quo* transactions. However, when politicians are deciding how much of their time and effort should be allocated to fundraising versus their official duties, they are, in effect, trading their time for contributions.

Conclusion

Independent expenditures have increased as a total share of political expenditures, both in total amounts and as a share of spending on politics. This has made candidates and parties more dependent on these sources of funding than had been the case in the past. The ability of individuals, corporations, and other groups to spend unlimited amounts to fund independent expenditures has empowered wealthy donors to become much more important to the fundraising ecosystem than had been the case in the 1980s when contribution limits applied more generally. The proliferation of independent expenditures has also increased political inequality as contributions have become increasingly concentrated among a relatively small group of individuals. This has likely influenced the behavior of politicians and focused their attention to a greater degree on the donors funding Super PACs. Taken together, the above offers evidence to suggest that donors do influence the behavior of politicians.