

# *The Forum*

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## The *Citizens United* Election? Or Same As It Ever Was?

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## Abstract

In January 2010, the Supreme Court in *Citizens United v. FEC* overturned long-standing regulations governing the role of unions and corporations in sponsoring pro-candidate advocacy. Many predicted a deleterious effect on the electoral process. In the aftermath of the midterm elections, a number of questions deserve consideration. Was the observed level of outside spending abnormally high in 2010? What can we say about the potential effect of outside spending on the outcomes of House and Senate races? Moreover, what has the decision done to the power of parties and, most especially, their ability to compete with special interests in backing federal candidates? This paper investigates these questions using data from the Wesleyan Media Project, which tracked political ads in 2010. The initial evidence suggests that while interest groups were aggressive players in the air war, their impact may not have been as negative or as large as initially predicted.

**KEYWORDS:** campaign advertising, Citizens United, midterm elections

**Author Notes:** Michael M. Franz is associate professor of Government and Legal Studies at Bowdoin College. He is co-author of *Campaign Advertising and American Democracy* (Philadelphia: Temple University Press, 2007) and author of *Choices and Changes: Interest Groups in the Electoral Process* (Philadelphia: Temple University Press, 2008), the latter being an investigation of interest group electioneering from the mid-1970s until 2004. I owe a special thanks to Ken Goldstein at the University of Wisconsin for permission to use the data from his advertising project. I am currently co-director of the Wesleyan Media Project (<http://election-ad.research.wesleyan.edu/>) which affords me access to the most current cycle of data (and summary data for 2006). I am grateful to Travis Ridout and Erika Fowler, the other co-directors of the project, who are excellent collaborators.

The 2010 congressional elections featured an avalanche of television advertising, more than in any previous congressional election in modern American politics. Just between September 1 and Election Day, candidates, parties, and allied groups spent \$288 million dollars on televised political ads in House races and an additional \$277 million in Senate races. Outside groups played a critical role in this, sponsoring \$110 million of ads in the final 60 days of the campaign. Among others, 60 Plus Association, a non-profit group focused on senior citizens, aired ads in 16 House races, spending nearly \$4.4 million. American Action Network, a self-described center-right “action-tank,” put money into 19 House races and 4 Senate races, buying over \$10 million worth of air time. And the much discussed Chamber of Commerce spent over \$21 million touting Republican candidates in over two dozen House races and 12 Senate races.

On the one hand, \$110 million from interest groups sounds like a staggering number and will certainly provide fuel for the argument that outside interests are too big a player in American elections. This argument is premised on the notion that such spending is a potentially corrupting influence on the candidate who benefits. On the other hand, dollars spent by interest groups might not be the definitive benchmark, since their total tells us nothing about the actual effects on voters or their role in previous elections. To make such a judgment, the time series is particularly critical in this case.

The year 2010 was the first federal election post-*Citizens United v. FEC*, the Supreme Court case decided in January of 2010 that overturned long-standing regulations governing the role of unions and corporations in sponsoring pro-candidate ads. That decision prompted outrage across the country, including from President Obama who chastised the Court in his State of the Union. The argument of the president, and of those who agreed with him, was that *Citizens United* opened the door to unprecedented corporate investment in elections. Although corporations (and unions, who were also freed by the Court but spared the ire of the president) are still prohibited from contributing directly to candidates (except through regulated political action committees), the Court was persuaded that federal laws preventing corporate and union dollars from the general treasury from funding uncoordinated pro-candidate ads were unconstitutional on First Amendment grounds.

A correct evaluation of the ruling’s impact in 2010 must include a number of component analyses. First, was the observed level of outside spending abnormally high, as predicted by the prognosticators? Second, one provision of the decision was the permission for groups to advocate expressly for candidates in their ads: was this utilized by interest groups, and at what level? Third, what can we say about the potential effect of outside spending on the *outcomes* of House and Senate races? Finally, what has the decision done to the power of parties and,

most especially, their ability to compete with special interests in backing federal candidates?

I try to say something about all these questions here. To do this, I rely on data from the Wisconsin Advertising Project from 2000, 2002, 2004, and 2008, and I make use of Wesleyan Media Project data for the discussion of ads in 2006 and 2010. The paper is organized as follows. I begin with a review of political advertising by interest groups in the six congressional elections between 2000 and 2010. In particular, I focus on their level of investment in these six elections and the use of express advocacy messages in 2008 and 2010, the elections before and after *Citizens United*. Second, although still preliminary in scope and definitiveness, I attempt to leverage the question of whether interest groups made any difference on the outcome. This is a tricky task, but we can make a number of initial conclusions. Finally, I consider the impact of the decision on the role of parties, and I propose a few policy changes (admittedly borrowed from others) that could have the effect of minimizing the role of outside groups without imposing on these groups any new disclosure laws.

It should be noted that the paper does not focus on the role of political action committees (PACs) and their contributions to candidates. PACs have invested in candidates for decades, and their specific role in the electoral process is well understood. The main focus of the paper is the consideration of an effect from *Citizens United*. All told, my initial conclusion on 2010 is that it was a truly historic election, as much for what happened as for what did not happen. In that sense, we might say this: it was an election full of sound and fury, signifying not quite nothing but certainly not everything.

### ***Was Wisconsin Right to Life More Relevant?***

*Citizens United* was a landmark decision, of which there is no doubt. The Court overturned bans on express advocacy for corporations, unions, and non-profits, and the case set in motion a series of further decisions in the federal courts that overturned or challenged regulations on 527s and on certain types of PACs (i.e., *Speechnow.org v FEC*; *Emily's List v FEC*) as well as on state campaign finance laws (i.e., *McComish v. Bennett*). As for the ruling's direct effect on federal elections and the level of investment from outside groups, the evidence is just now available to analyze.

A bit of context is in order, however. *Citizens United* did not emerge out of thin air, but was one additional example of a Court increasingly willing to rethink campaign finance laws. In late June of 2007, for example, the Supreme Court ruled in *FEC v. Wisconsin Right to Life* that non-profit groups, as well as corporations and unions, could fund policy-based public messages that aired close to Election Day. The ruling challenged key provisions previously established by

McCain-Feingold in 2002 (officially known as the Bi-Partisan Campaign Reform Act) that prevented corporate and union investment in broadcast messages on television or radio airing close to an election (30-days before a primary and 60-days before a general) that mentioned or pictured a candidate running for federal office.

The reasoning behind the McCain-Feingold change was that the previous test of electioneering, the “magic word” test, was considered by Congress to be too broad. Magic words were first established in a footnote in the Supreme Court’s 1976 decision in *Buckley v. Valeo*. The court listed eight phrases that it believed clearly established an election message. These were: “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” or “reject.” By the 1990s, the presence of these phrases had developed into the legal bright line between regulated election ads by interest groups and non-regulated issue speech.

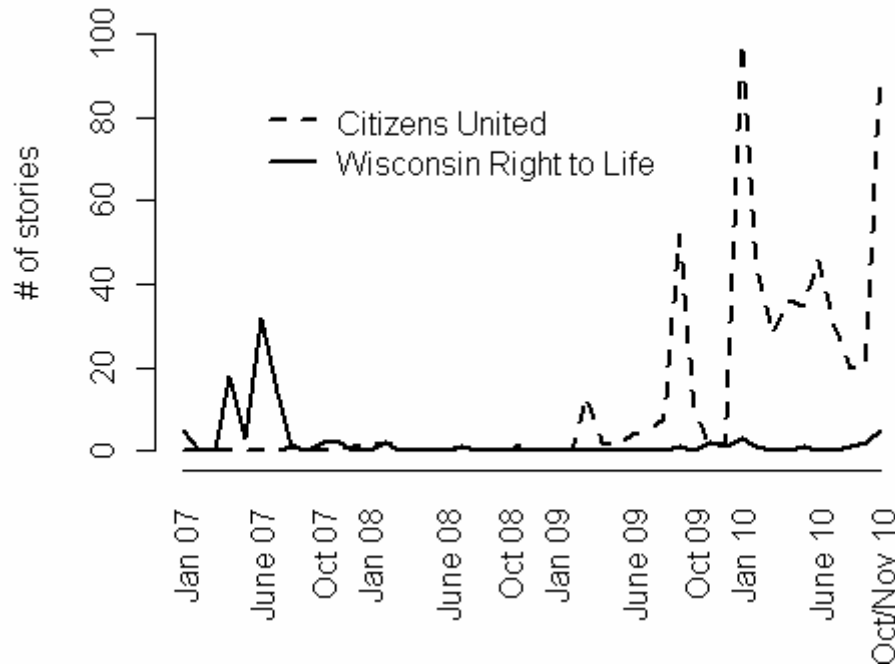
In *Wisconsin*, the Court said that McCain-Feingold’s magic word fix, the “candidate mention” test, was too narrow, potentially crowding out the rights of interest groups to lobby citizens on behalf of policies. Imagine, for example, that a group wanted to lobby the constituents of a wavering Senator on an immigration bill (or in the case itself, the abortion debate). If the group took corporate or union dollars to fund its lobbying, and it wanted to air ads timed to the bill’s debate in Congress, they would be prohibited from using their corporate or union donations if the ad—and the policy debate—happened to coincide with an election.

One challenge for the Court in *Wisconsin* was how to replace the candidate mention test with one that both protected outside lobbying but still allowed for congressional regulation of election advertising by interest groups, which the Court still endorsed as constitutional. The result was the “reasonable person” test, in that any broadcast advertising sponsored by outside groups that “a reasonable person” might conclude was principally about policy issues was now exempt from funding regulations. In that very sense, *Wisconsin* was historic. It essentially eviscerated the McCain-Feingold provisions and green-lit the efforts of nearly any group to fund pro-candidate ads close to elections. In summarizing the case, the Brennan Center for Justice said this in July 2007:

Practically, it is all but certain that corporations and unions will pour hundreds of millions of dollars in treasury funds into electioneering communications. We can expect a flood of ads aired immediately before federal elections that take care to take a position on an issue and exhort the public to contact elected officials. The shadings between attacks on candidates’ views on the issues and attacks on their character may be difficult to discern. If the FEC tries to enforce [McCain-Feingold], the

corporations and unions will claim that their ads are issue advocacy and assert as-applied challenges to [the law] in their defense.<sup>1</sup>

**Figure 1. Media Discussion of WRTL and Citizens United**



Source: LexisNexis search in “Major Papers”

The level of media dialogue surrounding *Wisconsin Right to Life*, however, was paltry in comparison to the discussion in 2010 surrounding *Citizens United*. In Figure 1, I plot monthly mentions of each case using the major papers search in LexisNexis.<sup>2</sup> The Figure shows a small spike in coverage for *Wisconsin* in June of 2007, and there is barely another mention. In contrast, *Citizens United* has been in the public spotlight for the entirety of 2010 (with at least 20 stories each month), along with prior spikes at points where the case was heard before the Court (March and September 2009).<sup>3</sup>

<sup>1</sup>[http://www.brennancenter.org/content/resource/summary\\_of\\_supreme\\_court\\_decision\\_in\\_fec\\_v\\_wisconsin\\_right\\_to\\_life\\_pdf/](http://www.brennancenter.org/content/resource/summary_of_supreme_court_decision_in_fec_v_wisconsin_right_to_life_pdf/). Accessed December 12, 2010.

<sup>2</sup> The search terms were “Wisconsin Right to Life” and then “Citizens United” AND “Federal Election Commission.”

<sup>3</sup> To be fair, *Citizens United* had a ripple effect on some political events this past year that influenced its coverage in the media. For one, the nomination of Elena Kagan to the Supreme Court raised questions about her stance on the ruling, since she argued the case as Obama’s Solicitor General. Second, Democrats in Congress responded to the decision by introducing legislation to expand the disclosure mandates of interest groups sponsoring pro-candidate ads.

**Table 1. Top 20 Interest Groups Airing Political Ads in 2010**

<b>Group</b>	<b>Party Lean</b>	<b>Spots</b>	<b>Cost (\$ mils)</b>	<b># of House Races</b>	<b># of Senate Races</b>	<b># of Gov Races</b>
Republican Governor's Association	Republican	38,623	\$28.17	0	0	16
US Chamber of Commerce*	Republican	21,991	\$20.23	28	12	1
Crossroads Grassroots Policy Strategies	Republican	14,914	\$14.27	7	10	0
American Action Network	Republican	10,701	\$10.70	19	4	0
American Crossroads	Republican	15,235	\$10.46	9	7	0
Citizens for Strength and Security	Democrat	3,492	\$4.91	7	4	1
SEIU	Democrat	5,030	\$4.72	6	1	2
60 Plus Association	Republican	5,955	\$4.39	16	0	0
American Future Fund	Republican	7,480	\$4.23	13	1	0
Club for Growth	Republican	4,900	\$3.70	1	6	0
Democratic Governor's Association	Democrat	4,480	\$3.35	0	0	6
Greater Wisconsin Political Fund	Democrat	7,595	\$3.29	0	0	1
Americans for Tax Reform	Republican	3,802	\$3.26	8	1	0
Bay State Future	Democrat	1,556	\$2.79	0	0	1
AFSCME	Democrat	3,942	\$2.73	5	3	1
NRA	Republican	5,857	\$2.66	0	5	3
Americans for Job Security	Republican	4,579	\$2.42	9	1	0
National Federation of Independent Business	Republican	3,682	\$2.29	7	0	0
Patriot Majority	Democrat	4,088	\$2.26	0	1	0
Commission on Hope, Growth, and Opportunity	Republican	3,218	\$2.22	12	0	0

Source: Wesleyan Media Project. Totals are for ads aired after August.

\*Totals for the Chamber do not include \$1.2 million spent on behalf of Democratic candidates

This disparity in media coverage would make sense if the level of political advertising were drastically different in 2010, or at least particularly high. In other words, if *Citizens United* had a unique effect on the role of interest groups in campaigns, the different levels of media coverage would be commensurate. At first glance, investments from top interest groups are clearly noteworthy. In Table 1, I list the top 20 interest groups who spent money on ads for House, Senate, and Gubernatorial candidates in the final 60-days of the election.<sup>4</sup> The totals from

<sup>4</sup> A word on the data. The totals here account for advertising in all 210 media markets, but only for ads aired on network stations or national cable. Local cable buys are excluded because the data are not tracked. By some estimates, local cable accounts for 20 percent of political advertising, making the totals in Table 1 underestimate.

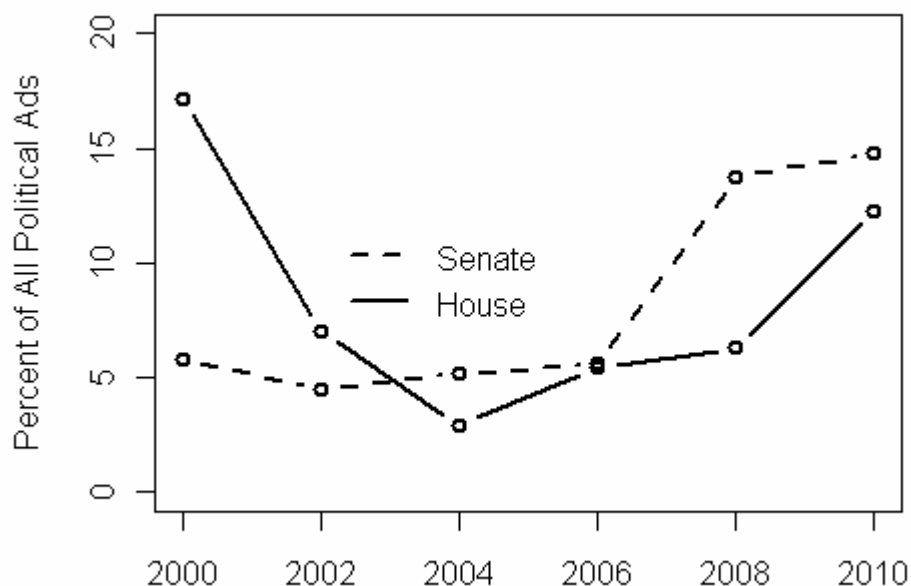
See [http://www.politico.com/blogs/bensmith/1010/What\\_the\\_ad\\_trackers\\_miss.html](http://www.politico.com/blogs/bensmith/1010/What_the_ad_trackers_miss.html)

(Accessed December 12, 2010). The data here also do not include radio ads, although we can gain some leverage over that later in the paper.

these 20 groups account for nearly 75 percent of all interest groups ads in this time-frame and 71 percent of the ads aired. The list ranges from the Republican Governor's Association at the top, with \$28 million on over 38,000 ads in 16 gubernatorial races, to the Commission on Hope, Growth, and Opportunity at the bottom, with over 3,000 ads costing \$2.2 million.

All told, interest groups in 2010 increased their advertising totals over 2008 by 168 percent in House races and by 44 percent in Senate races. These are dramatic spikes in airings. On the other hand, levels of advertising increased from other sponsors. For example, candidates in House races aired 26 percent more ads over 2008 and Senate candidates boosted their ad totals by 61 percent.<sup>5</sup>

**Figure 2. Interest Group Investments as a Percentage of All Ads**



*Source:* Wisconsin Advertising Project and Wesleyan Media Project.  
Totals include all ads aired in available markets from January 1 to Election Day.

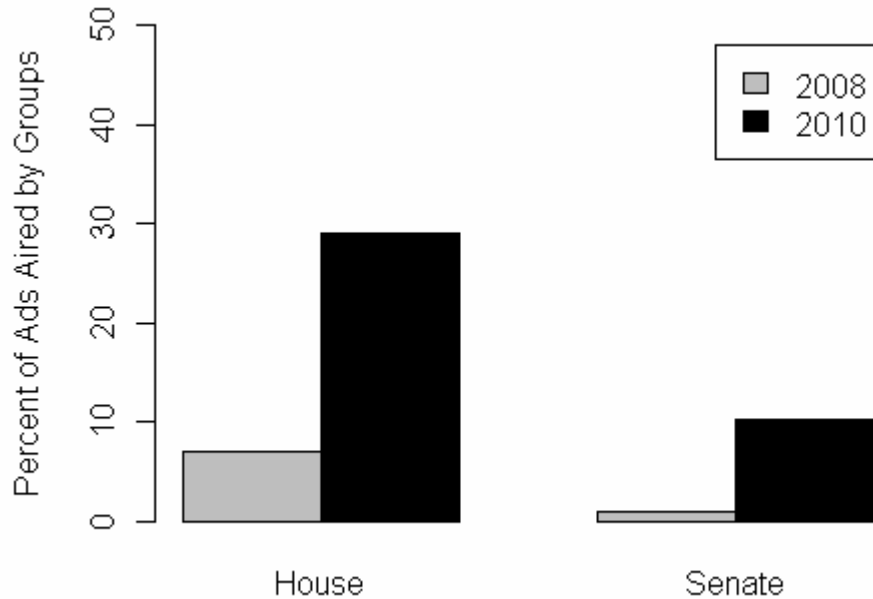
A better metric to evaluate outside spending totals this year is to look at the proportion of all pro-candidate ads sponsored by interest groups. We can do

<sup>5</sup> It should be noted that Senate comparisons over two-year election cycles are a bit misleading in that the class of candidates in any election year come from states with different sizes. If we look at Senate elections in 2004, for example, that gives us the best comparison with the candidates in 2010. We have to restrict that comparison in both years to the top 100 media markets to account for diminished coverage in 2004, but once that is done, candidates in 2010 aired 56 percent more ads this year.



that for each cycle back to 2000. This is shown in Figure 2.<sup>6</sup> The evidence is a mixed bag for a *Citizens United* effect. Look first at the House. It is true that interest groups sponsored a higher proportion of ads in 2010 than in 2008. The number jumped quite dramatically in fact, from 6 percent to 12 percent. And the 2010 number is the highest since 2002. On the other hand, in the 2000 election—before McCain-Feingold—interest groups sponsored 17 percent of pro-candidate ads. (In fact, it was partly this level of investment that finally motivated Congress to pass McCain-Feingold, which had been languishing in the House and Senate for a few years.) The major inference, then, is a matter of emphasis. Yes, the 2010 House elections were characterized by a much greater share of outside dollars, but not at historic highs.

**Figure 3. Use of Express Advocacy Words by Interest Groups**



*Source:* Wisconsin Advertising Project in 2008 and Wesleyan Media Project in 2010. These include all group-sponsored ads aired from January 1 to Election Day. The 2010 numbers exclude some ads that have not been coded as of this writing. Over 75 percent of the nearly 2.8 million ad airings in 2010 have been coded.

<sup>6</sup> The Figures are for the top 75 markets in 2000, the top 100 in 2002-2006, and all 210 markets in 2008 and 2010. It makes little difference, though, if we look only at the top 75 markets in all years, or if we restrict our focus to ads in the fall campaign. The proportions are roughly comparable in all years.

The Senate context offers a more definitive argument against *Citizens United*. On that score, while interest groups sponsored 15 percent of pro-candidate ads in 2010, the number is essentially flat over 2008. Both of these two recent elections are the highest in the time series, but the similarity between 2008 and 2010 suggests a *Wisconsin Right to Life* effect over a *Citizens* one.

Such an argument might not convince everyone. Tonnage—or at least proportionate tonnage—is not the only comparative factor worth looking at. As noted, *Citizens United* also cleared the way for groups to use express advocacy messages. That is, it allowed groups to tell voters explicitly how to vote, as opposed to couching the ad in more generic policy-language, as in “Call Senator X and thank him/her for their hard work.” We can look at this by comparing the proportion of ads sponsored by interest groups in 2008 and 2010 that made use of the “magic words” most commonly understood as triggering an express advocacy classification.<sup>7</sup>

The change in 2010 is apparent. The numbers for House races show a four-fold increase from 7 percent in 2008 to just under 30 percent in 2010. In Senate races, groups used express advocacy phrases in 10 percent of their ad buys, up from 1 percent two years earlier. The use of express advocacy varied quite a bit across groups. For example, 60 Plus Association used them in about 75 percent of their ads, and Americans for Job Security did so in over 80 percent. American Future Fund made reference to magic words in just under half of their ads aired. In contrast, American Action Network used them in only 7 percent, and the Chamber of Commerce made reference to them in only 5 percent of the 19,000 ad airings coded to date by the Wesleyan Media Project.

As the results make clear, *Citizens United* opened the door for a more explicit set of messages from outside groups about how to vote on Election Day. On the other hand, the jump in these percentages still leaves 67 percent of House ads from interest groups and 90 percent of their Senate ads without “magic words.” Why such low usage? Many groups avoided specific appeals to voters to avoid triggering their status as political committees who have to reveal donors to the Federal Election Commission, or to avoid having to report explicit political spending to the IRS, which might threaten their non-profit status.<sup>8</sup> On that score, there are a number of organizational options for an interest group. They could

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<sup>7</sup> Two points on this. First, the 2010 number is based on the coding of political ads as of mid-December. The Wesleyan Media Project has coded over 5,000 unique ads accounting for about 75 percent of the 2.8 million political ads aired in House, Senate, and gubernatorial races this year. The numbers in Figure 3 are unlikely to change much as we complete the coding. Second, “magic words” are not the only means by which an ad can be classified as express advocacy. If an ad has no other “reasonable purpose” but to advocate for a candidate’s election, it could be included as such, but those ads are not counted in the numerator for this Figure.

<sup>8</sup> See Michael Luo, “Groups Push Legal Limits in Advertising,” *The New York Times*, 10/17/10, p.A10.

form a PAC, which has to reveal donors and expenditures to the FEC, or they could organize as a 527, which reports the same to the IRS. Alternatively, a group could form a non-profit 501c4, which can spend on express advocacy, but must devote more than half of its outlays to non-political issue advocacy.

This latter point is critically important. The avoidance of express advocacy messages, either to sidestep disclosure or IRS scrutiny, belies an obvious *Citizens United* effect. Interest groups have been sensitive to the boundaries between political and non-political speech for many years. The result is that many pro-candidate ads in 2010 looked much as they always have, being policy-focused messages that almost everyone agrees are meant to influence voter choice at the ballot box, but that stop short of making that appeal explicit.

### **Measuring the Resource Advantage, and Assessing Impact**

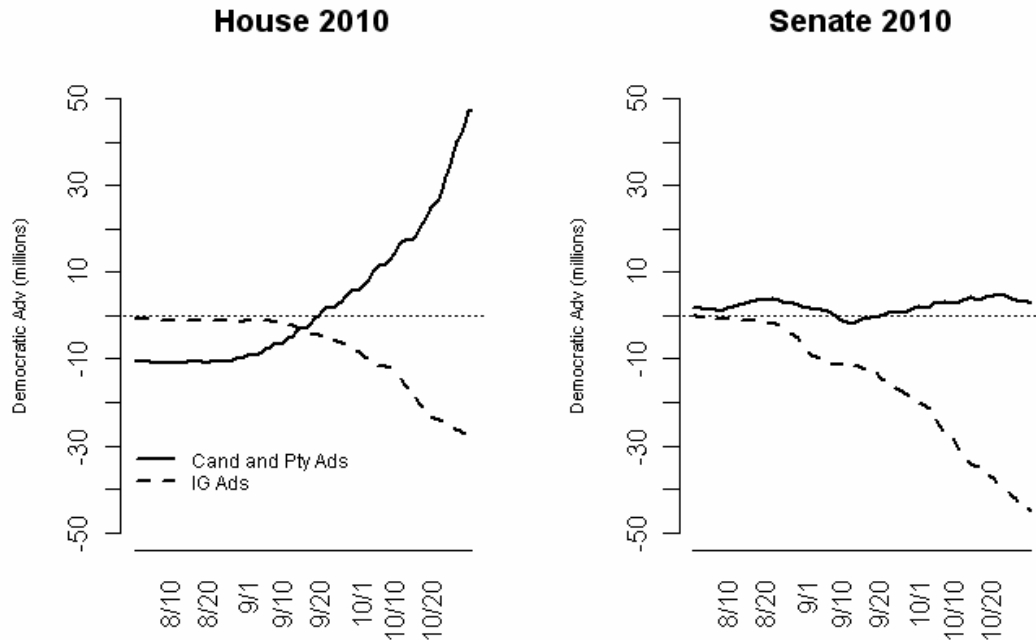
To this point, one might argue that while interest groups were major players in the 2010 elections, the form and rate of that involvement was not dramatically different from past participation. After all, candidates and parties in 2010 still sponsored 85 percent of all ads in Senate races and 88 percent of ads in House races. This is analogous to pointing out that while incumbents won re-election at a lower rate than in any congressional cycle in 40 years, 86 percent of House candidates were still re-elected in 2010.<sup>9</sup>

One other feature of the *Citizens United* decision that was much discussed was the supposed boost it would mean for Republicans who could now tap millions in corporate dollars for political advertising. The flipside was the concern that Democrats would be unable to compete by trying to mobilize the comparatively poorer labor unions. On that score, recall from Table 1 that of the top 20 outside groups, 13 were pro-Republican, and only two of the top 10 were pro-Democratic.

We can measure the partisan advantage a few different ways. First, we can look at the spending over time by candidates, parties, and groups in both House and Senate races, to see when ads were deployed in high numbers and what the resulting balance was by the date of the election. I do this in Figure 4 for the final 90 days of the election, plotting the cumulative Democratic (dis)advantage in spending. The solid line shows total spending by Republican candidates and party committees subtracted from Democratic spending by candidates and parties.

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<sup>9</sup> This point was made by John Sides on The Monkey Cage blog: [http://www.themonkeycage.org/2010/11/2010\\_was\\_a\\_pretty\\_good\\_year\\_fo.html](http://www.themonkeycage.org/2010/11/2010_was_a_pretty_good_year_fo.html) Accessed November 28, 2010.

**Figure 4. Daily Cumulative Totals of Political Advertising in 2010**

Source: Wesleyan Media Project

Accordingly, as of the beginning of August, Republican candidates (combining all primary and general election spending) had out-advertised Democrats by about \$10 million. This advantage was erased by the end of September when the Democrats, who had more cash-on-hand in their political committees,<sup>10</sup> flooded the airwaves in the final 5-6 weeks. By the end of the election, in fact, Democratic Party committees had combined with Democratic candidates to spend nearly \$50 million more than Republicans. The final total was \$159 million by Democratic House candidates and party committees and \$112 million for Republicans.

The dotted line in Figure 4 shows the cumulative interest group spending by day. As is apparent from the graph, interest groups spent very little through the beginning of September, but by the end of the election, pro-Republican groups had a nearly \$30 million advantage in ad dollars. If we combine the Democratic advantage from the candidate and party committees with the Republican interest

<sup>10</sup> According to the Center for Responsive politics, Democratic candidates for the House, both incumbents and challengers, raised on average \$830,000 each, compared to \$500,000 on average for Republican House candidates.

See <http://www.opensecrets.org/overview/incumbs.php?cycle=2010&Type=A&Party=S>. Accessed December 10, 2010.

group spending, there was still about \$20 million more in pro-Democratic ads aired in 2010.

Again, the major inference we can draw from this depends on perspective. On the one hand, the graph contradicts an obviously negative influence from *Citizens United* on the health of American democracy. If anything, pro-Republican groups helped keep Republican challengers competitive with the incumbent Democratic class. On the other hand, Democrats had a fund-raising advantage precisely because so many competitive Democrats were incumbents. In future cycles, when Republican incumbents reap the benefits of easier fund-raising and see also aggressive interest group mobilization, it might be difficult for Democratic challengers to keep pace.<sup>11</sup>

The right panel of Figure 4 replicates the analysis for the Senate. It is in this context that the extent of Republican mobilization is apparent. For the entirety of the campaign, GOP and Democratic candidate and party committees essentially matched each other in dollars—\$159 million for the Democrats and \$156 million for the Republicans—but pro-GOP interest groups that outspent their counter-parts, by over \$46 million. Of course, it was also the Senate that stayed in Democratic hands in 2010.

For the sake of comparison, I replicated the House and Senate totals for 2008, and these are displayed in Figure 5. In both the House and Senate case, Democratic candidates and party committees outspent the Republicans. Pro-Democratic groups slightly outspent Republican ones in the House as well, though in the Senate, Republican groups spent about \$8.5 million more than Democratic groups—\$22 million to \$13.5 million—a total which pales in comparison to the GOP advantage this past year.

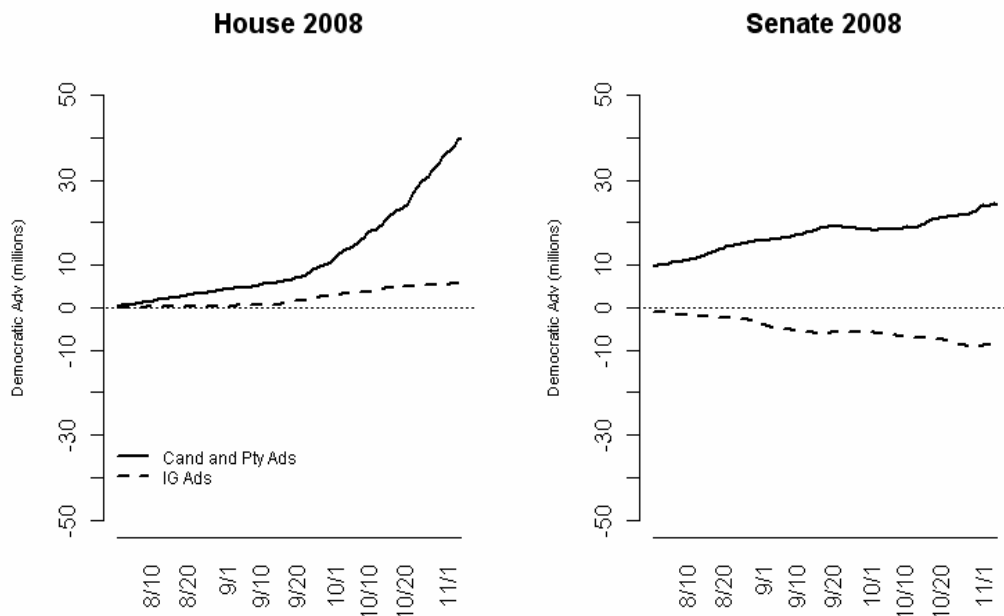
It is worth pausing here to note that the resource advantage for Republican interest groups cannot solely be attributed to *Citizens United*. The broader political environment benefited the Republicans, and the much-noted “enthusiasm gap” was clearly a major reason for the GOP advantage among interest groups. Political context matters a lot in that regard (Franz 2008), and we should be careful to avoid attributing dollar totals in a particular election solely to the nature of campaign finance laws. Thus if the Republican House majority looks fairly secure in 2012, while the Senate teeters on the edge—a reasonable expectation—the share of interest group spending in the latter case will be much higher than in the former. Likewise, if the presidential election is close, spending in that contest will dwarf the congressional one. In simple terms, politics is a driving force, and

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<sup>11</sup> In fact, there is already some discussion of how new Republican members, many of whom ran against Washington, are holding fund-raisers inside the Beltway to help erase their campaign debts. See Dan Egan, “New Republican lawmakers are hiring lobbyists, despite campaign rhetoric,” *The Washington Post*, 12/8/2010.

motivated interests on both sides of the aisle work to circumvent the campaign finance system when there is a potential political payoff. No amount of reform can stymie that incentive structure.

**Figure 5. Daily Cumulative Totals of Political Advertising in 2008**

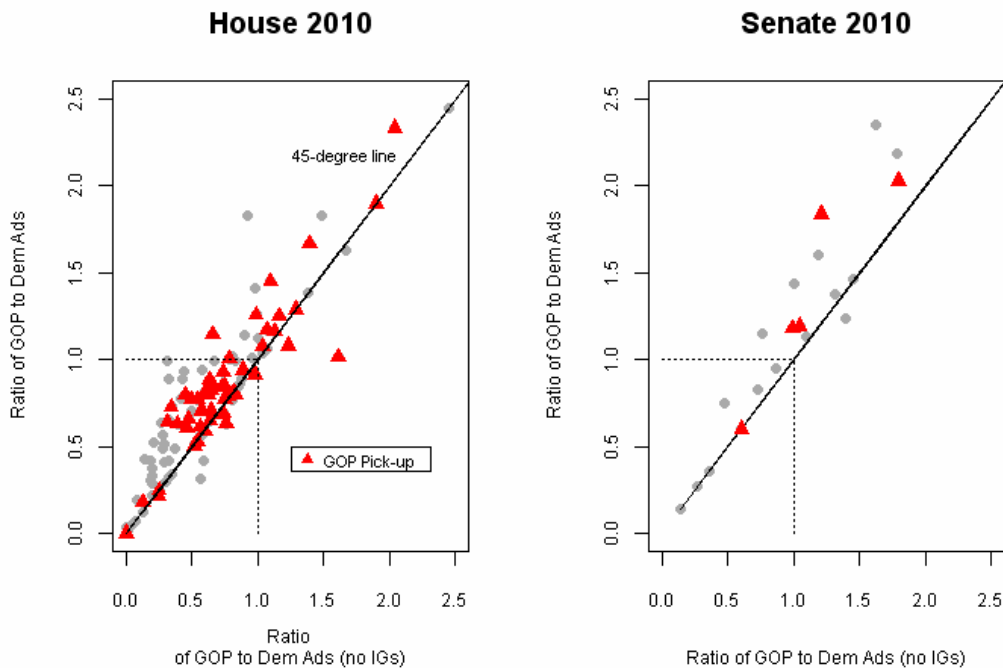


Source: Wisconsin Advertising Project

While Figures 4 and 5 show the aggregated daily totals across all House and Senate campaigns, it may be useful to consider spending by interest groups at the level of the campaign. For example, how much benefit did specific Republicans (or in some cases, Democrats) gain from interest group spending in 2010? One way to do this is to compare GOP to Democratic ad totals in each race when outside spending is excluded to the ratio of ads when interest groups are factored into the equation. I do this in Figure 6 for House and Senate races where at least 1,000 ads aired after August.<sup>12</sup> The x-axis is the GOP-to-Democratic ratio excluding interest group spending on both sides. The y-axis puts those ads back into the totals. Any race above 1 on either axis is a case where the Republican candidate had more ads than the Democrat.

<sup>12</sup> I also exclude a few outlying cases where one candidate spent 1,000 or so ads and the other side aired just a handful.

**Figure 6. Impact of Interest Group Ads on Partisan Ratios in 2010**



Source: Wesleyan Media Project, using ads aired from September 1 until Election Day.

Two results from the figure stand out. First, almost all of the plotted races fall above the 45-degree line, meaning that in almost every campaign in 2010, spending by interest groups benefited the Republican. It was not the case, then, that pro-GOP groups and pro-Democratic groups were putting resources into different races, each helping a different set of candidates. Indeed, Republican groups were boosting the efforts of a host of candidates. Despite that, though, the majority of House races fall below 1 on both axes, meaning that even with the additional interest group spending, Republican candidates were being outgunned by Democratic candidates. In just a handful of cases did the additional ad dollars push Republican candidates over the Democrat in total ads aired. On the Senate side, interest spending helped every Republican candidate but one, Christine O’Donnell in Delaware.

Can these plots tell us anything about the effectiveness of ad dollars from interest groups? One insinuation surrounding *Citizens United* was the electoral benefit that was assumed to come with additional advertising, and right after the election, many pro-reform groups listed different interest group “win

percentages.”<sup>13</sup> The Sunlight Foundation, for example, lists interest group and party expenditures in races both won and lost by supported candidates.<sup>14</sup> Americans for Job Security, a pro-Republican organization, spent \$2.7 million (50 percent of its total) in races won by Republicans, but \$2.7 million (50 percent) in races won by the Democrats. Crossroads GPS, another pro-Republican group, spent 75 percent of its dollars in races won by Republicans.

Does this indicate that GPS was more effective? Probably not, because the places where groups advertise are themselves strategic, and it is possible that Americans for Job Security put more dollars in the tightest of races, which means it backed candidates more likely to lose than groups investing in contests where the preferred candidate has a bigger lead in the polls. A proper assessment of group-level effectiveness, then, would have to leverage those different strategies, namely the goals of some groups being to help candidates win and the goals of other groups being to help candidates not lose.

Consider again the evidence in Figure 6. The races where the Republican won a Democratic seat are displayed as red triangles. Those races generally fall above the 45-degree line, but so do most races, including Democratic and Republican holds. And in lots of those Republican pick-ups, the final advertising totals still benefited the Democrat. Take, for example, the mean difference off the 45-degree line for races held by Democratic incumbents: 0.18. Compare that to the mean difference for all Republican pick-ups, which is 0.12. The two numbers are not statistically different, and, more importantly, the higher number is in places where the Democrat won.

On the Senate side, the ratio difference is higher in Republican pick-up seats compared to Democratic holds (0.24 to 0.09), but the effect is driven largely by Republican investments in Pennsylvania, where interest groups like Americans for Tax Reform, the Chamber of Commerce, the Republican Jewish Coalition, and the Club for Growth combined to air over 7,700 ads for Pat Toomey, compared to only 290 ads from Democratic groups for Joe Sestak.

A more visual set of evidence is shown in Figure 7, which replicates the analysis for 2008. There were a lot of Democratic pick-ups that year and just a handful of Republican gains. In this plot, the influence of interest group advertising is really a mixed bag with respect to winning. In some places where Democrats picked up House seats, interest group advertising worked to benefit the Democratic candidate, but in some places the benefit was to the Republican. Of particular interest is the right panel of Figure 7, which shows that in six of the

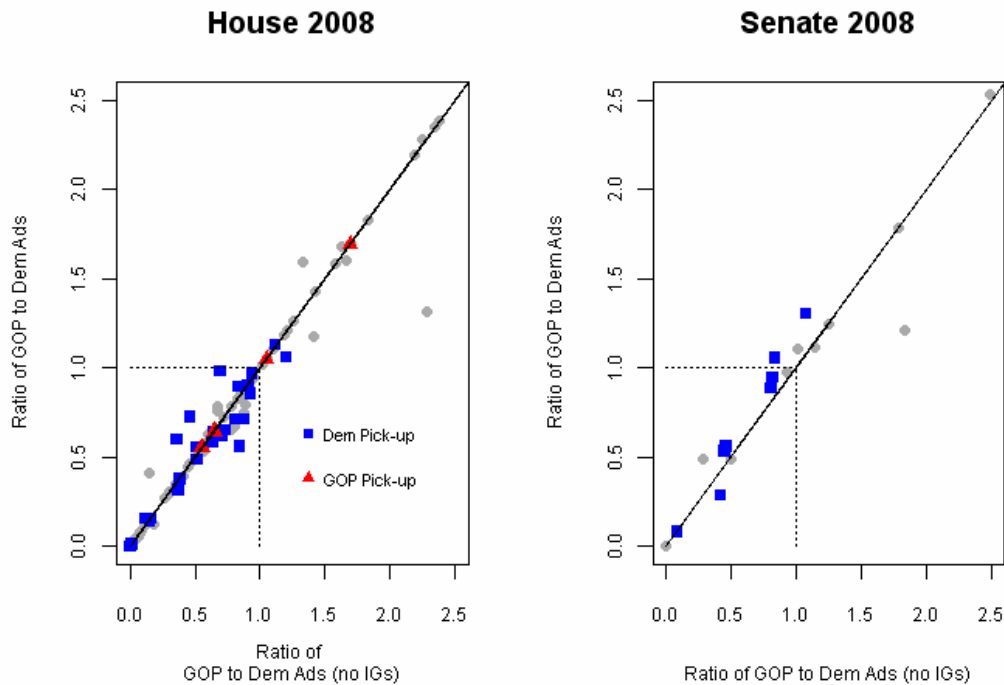
<sup>13</sup> See also: <http://thecaucus.blogs.nytimes.com/2010/11/04/who-got-the-most-bang-for-their-bucks/>. Accessed December 2, 2010.

<sup>14</sup> <http://reporting.sunlightfoundation.com/2010/did-outside-money-pay/>. Accessed December 10, 2010



eight Democratic Senate pick-ups in 2008, interest group spending helped the Republican candidate in terms of ad dollars.

**Figure 7. Impact of Interest Group Ads on Partisan Ratios in 2008**



*Source:* Wisconsin Advertising Project, using ads aired from September 1 until Election Day.

Winning and losing is really not the best metric to evaluate the success of certain investments, though. For example, perhaps a candidate did better than she otherwise would have (despite losing) because of the boost in support from Republican or Democratic interest groups. And we should really control for other factors relevant to predicting election outcomes. Evaluating such an impact is beyond the scope of this paper, but it should be noted that the scholarly literature on this question is very limited. There are only a handful of studies that investigate the impact of interest group-sponsored advertising, and there is no conclusive evidence that emerges from those studies.<sup>15</sup> My only point in that regard is to make the case for better studies of interest group effects in House and Senate races and (given Figures 6 and 7) to avoid the reflexive assumption that their impact is determinative.

<sup>15</sup> I have identified only five such studies: Garramone 1985; Groenendyk and Valentino 2002; Magleby 2004; Pfau, Park, Holbert, and Cho 2001; Pfau, Holbert, Szabo, and Kaminski 2002.

### A Digression on Data and Dollars

There is one key objection to the discussion and analysis so far, namely that I have looked only at spending on television advertising, while *Citizens United* affected a whole range of spending options for interest groups. For example, prior bans on express advocacy by corporations and unions affected all public communications, including get-out-the-vote efforts, radio ads, newspaper ads, phone-banking, and direct mail. How much spending was there on these tactics in 2010? Moreover, one argument that was common in the fall was that pro-Democratic groups were mobilizing to counteract the Republican advantage in television advertising with more intensive ground efforts amenable to the manpower of unions.

Can we get at this concern with any degree of confidence? The answer is yes, though in an incomplete way. For example, any group that spent on express advocacy has to report to the FEC on the nature of the expenditure. These are grouped as “independent expenditures,” which is an old term that formerly applied only to hard-money PACs but now extends to any group directly advocating for candidates. In that sense, if we look only at independent expenditure totals by party committees and PACs in 2008 and compare them to the totals for 2010, the number looks starkly higher: \$268 million for House and Senate candidates in 2008 to \$380 million this past year.

This is somewhat of an apples-to-oranges comparison, however, since much of the reported activity by interest groups in 2010 would have formerly been constituted as issue advocacy by the sponsoring organization and simply gone unreported to the Commission. In other words, before *Citizens United*, some groups might have funded canvassing efforts, GOTV, internet mobilization, and other actions that would be classified as issue advocacy, and therefore remained beyond the reporting requirements of campaign finance laws.

The independent expenditure file contains a line for each dollar outlay by a group spending on express advocacy.<sup>16</sup> I downloaded the file from the FEC in early December and categorized each reported expenditure into twelve large categories. These include television advertising (both production and placement costs), radio ads, direct mail, phone banking, GOTV/canvassing, internet mobilization/advertising, and a few additional categories. This process required some judgment calls in assignment. For example, one of my categories is simply “media advertising,” which could be for television, radio, the internet, etc; it was just not apparent from the group’s reporting where it fit. (As an example, one reported expenditure was listed as “Advertisement”; another was “Media Buy”.

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<sup>16</sup> The file can be accessed on the FEC’s Data Disclosure page: <http://www.fec.gov/data/>.

This contrasts with the more explicit, “Media Buy—TV ad” or “Production Cost for Radio Ads.”)

**Table 2. Independent Expenditures in 2010**

Money to support GOP or oppose Democrats			Money to support Democrats or oppose GOP		
Party or Group	Expenditure purpose	Amount (\$ thou)	Party or Group	Expenditure purpose	Amount (\$ thou)
Party	Media Advertising*	\$69,965.2	Party	Media Advertising	\$62,169.2
Group	TV ads	\$66,046.3	Party	TV ads	\$37,133.5
Group	Media Advertising	\$17,995.3	Group	TV ads	\$33,343.5
Group	Direct mail	\$17,270.1	Group	Media Advertising	\$16,069.4
Group	Radio ads	\$6,608.1	Group	Direct mail	\$10,401.1
Group	Internet expenses	\$3,960.8	Group	Radio ads	\$8,023.5
Party	TV ads	\$3,842.4	Group	Phone-banking	\$3,247.7
Group	Phone-banking	\$2,760.2	Party	Direct mail	\$3,148.1
Party	Polling	\$1,730.3	Group	GOTV/canvassing	\$2,742.9
Group	Miscellaneous	\$920.0	Group	Miscellaneous	\$2,479.2
Group	Newspaper ads/lawn signs/literature	\$683.6	Group	Salary/Travel/Office expenses	\$1,544.6
Party	Phone-banking	\$609.2	Group	Internet expenses	\$1,283.6
Party	Direct mail	\$565.7	Party	Radio ads	\$1,052.9
Party	Radio ads	\$553.8	Party	Internet expenses	\$623.3
Group	GOTV/canvassing	\$379.7	Group	Newspaper ads/lawn signs/literature	\$329.3
Group	Unknown	\$362.3	Group	Polling	\$323.5
Group	Salary/Travel/Office expenses	\$250.1	Group	Billboards	\$190.1
Group	Polling	\$200.4	Group	Unknown	\$76.9
Party	Unknown	\$64.6	Party	Phone-banking	\$76.6
Party	Internet expenses	\$50.5	Group	No listed purpose	\$20.8
Group	Billboards	\$32.6	Party	Newspaper ads/lawn signs/literature	\$14.6
Party	Newspaper ads/lawn signs/literature	\$7.8	Group	Food for staff or volunteers	\$7.9
Group	Food for staff or volunteers	\$2.2			
<b>Total</b>		<b>\$194,861,329.64</b>	<b>Total</b>		<b>\$184,302,189.50</b>
Party subtotal		\$77,389,465.62	Party subtotal		\$104,218,129.83
Group subtotal		\$117,471,864.02	Group subtotal		\$80,084,059.67

Source: Federal Election Commission and author classifications of expenditures.

\*Media Advertising is a generic category for reported expenditures that are not obviously for television, radio, or the Internet.

Once this assignment was complete, I aggregated spending on behalf of Republican and Democratic candidates by the twelve larger categories. These are

reported in Table 2.<sup>17</sup> The results point to some critical differences between the two parties. At the top of the left-hand column—the totals supporting Republicans or opposing Democrats—are nearly \$70 million in party expenditures for advertising, followed closely by \$66 million from interest groups on television and an additional \$18 million on advertising reported more generally. For pro-Democratic spending, though, the party committees account for the top 2 spots in the right column, with just under \$100 million in advertising, while pro-Democratic groups sponsor about half that total on television and media advertising.

As to the argument that the Democrats spent more on the ground game, the evidence is not apparent with these data. Pro-Republican party committees and groups spent more than their Democratic counterparts on direct mail (about \$18 million to \$13.5 million), though the Democrats did spend slightly more on radio ads and canvassing (those latter efforts only totaled \$2.7 million for the Democrats, however). At the end of the day, the Democratic party committees kept their candidates in the hunt, boosting the efforts from interest groups to an overall total of \$184 million. This was only \$10 million less than the Republican Party and allied interest groups for independent expenditures.<sup>18</sup>

There was also some discussion in the media as to the huge sums spent by labor unions, namely AFSCME. *The Wall Street Journal* reported in late October that AFSCME had plans to spend nearly \$88 million advocating for Democratic candidates, which would make the union the largest outside spender in the campaign.<sup>19</sup> This argument was oft-repeated in the waning days of the election. It appears that those reported totals were merely *targets* set by the union as opposed to actual expenditures, or were political expenditures not reportable to the FEC. These might have been ground efforts at issue advocacy that do not classify as independent expenditures or electioneering communications.<sup>20</sup> There is no evidence in any of the data seen so far (including the Wesleyan Media Project,

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<sup>17</sup> The totals include all primary and general election spending, but they exclude totals from any amended reports. This latter restriction is to avoid any double-counting in the file.

<sup>18</sup> The analysis in this digression does not account for the other key form of independent spending tracked by the FEC, electioneering communications (ECs). These are messages that: 1) do not expressly advocate for a candidate but are targeted to a wide audience on television or radio; 2) air within 60-days of an election or 30-days of a primary; 3) and feature or picture a candidate for federal office. The EC database includes a wider range of messages than the television ads tracked by the Wesleyan Media Project, but even in the FEC data, the large majority of EC spending benefited Republican candidates.

<sup>19</sup> Brody Mullins And John D. Mckinnon, “Campaign’s Big Spender ,” 10/22/10, *Wall Street Journal*.

<sup>20</sup> See the Sunlight Foundation for a discussion of this:

<http://blog.sunlightfoundation.com/2010/10/22/is-afscme-or-the-chamber-the-top-political-spender/>. Accessed December 1, 2010.

which captures express and issue advocacy television ads that mention or picture candidates at any point in the election year) to suggest that a pro-Democratic group was vastly outspending any Republican group.

### What of Political Parties, and What's Next?

The impact of *Citizens United* should not be minimized, especially with respect to its ripple effect on other regulations. Its hypothesized effect on elections and election outcomes, however, should be contextualized and tested. It is absolutely true that interest groups spent more on television advertising in 2010 than in any previous cycle, for example. But candidates also spent more, and the share of interest group advertising was still reasonably low. It is also true that Republican groups spent vast sums more than the Democrats, but Democratic candidates spent more and leveraged their incumbency advantage to raise more. The Democratic Party also helped to fill the void.

The real effect of *Citizens United* will probably be seen in 2012 and 2014. What sort of mobilization will groups make in the coming presidential campaign? Even the Obama camp has signaled to Democratic interests that they should try to compete with Republican groups.<sup>21</sup> And some argue that the real effect is “psychological,” where the mere threat of interest group mobilization will force all candidates to raise more, especially from PACs and wealthy donors. This could have the effect of raising the profile—and influence—of these regular donors.

As to whether an inherent advantage exists for one party, it is likely not a David and Goliath relationship. Democratic groups have the potential to accumulate a lot of money. For example, 25 percent of all pro-Kerry television ads in 2004 were funded by outside interest groups (Franz and Ridout 2010).

The question for now, though, is how to move forward. What reforms are possible? The goal of limiting or restricting the funding of express advocacy messages by corporations and unions, for starters, is a futile one. There is really no point in trying for tough spending regulations, especially with a Republican-controlled House and a conservative Court. Similarly, new disclosure laws seem to have a bleak future, as even large Democratic majorities in the 111<sup>th</sup> Congress failed to pass more encompassing rules with the DISCLOSE Act.

For what it's worth, greater disclosure seems a no-brainer. Even the strongest of reform opponents, like Senator Mitch McConnell, have argued for many years that disclosure regulations are not only fair but normatively good.<sup>22</sup>

<sup>21</sup> This was reported on Politico by Jeanne Cummings:

<http://www.politico.com/news/stories/1110/44868.html>. Accessed December 10, 2010.

<sup>22</sup> See <http://www.mcclatchydc.com/2010/08/02/98492/commentary-mcconnells-about-face.html>. Accessed on December 7, 2010

And the arguments against reasonable disclosure laws seem somewhat strained. For example, how is it that disclosure for outside groups can have a “chilling effect” on speech? Is there systematic evidence for such claims? 527s, which can accept large contributions from any source, have disclosed publicly to the IRS for over 10 years, and there has been no First Amendment outcry. (The same was true, by the way, in the 1990s when parties reported huge donations of soft money, and these were made public with little or no protest from donors.)

While the Courts have argued for years that some groups can be exempted from disclosure if there is a real fear of reprisal, it seems hard to make that case more broadly, most especially for interests aligned with the winning party. In one post-election symposium, election lawyer Stefan Passantino had this to say: “There will be anonymous speech. There has to be anonymous speech. Because if there’s not anonymous speech, the fundamental right to associate with people who believe in an unpopular thing can’t exist.”<sup>23</sup> The question of who deserves that protection is a legitimate one, but it does not obviously apply to all groups (or even most).

The DISCLOSE Act was Congress’s attempt to respond to fears of clandestine interest group electioneering. We should have a rational and balanced debate as to what new disclosure rules should look like. Political theater seemed to dominate the discussion in the fall, however. On one episode of *The Daily Show*, for example, Jon Stewart contrasted the views of political operatives like Karl Rove, who on the one hand demanded public disclosure behind the funding of a Ground Zero Mosque but on the other hand were indignant over attempts to pass campaign finance disclosure.<sup>24</sup> Overly charged claims of “chilled free speech,” especially in the absence of concrete evidence, seem counter-productive.

It seems important to note that despite the Democratic plea for greater disclosure of political spending, the lack of comprehensive disclosure rules is not really the consequence of *Citizens United*. After *Wisconsin Right to Life*, there was no disclosure of groups airing ads that attacked candidate policy positions but that stopped short of express advocacy. For example, the Chamber of Commerce spent over \$8 million in 2008 on over 17,000 ads attacking ten Democratic Senate candidates (and some House candidates), and there was barely a peep of concern in the mainstream press. Second, even before *Wisconsin*, many groups could fund clandestine ground efforts that stopped short of endorsing a candidate, or could air ads outside the 30-day and 60-day electioneering communication windows. Concerns about weak disclosure in those cycles were not nearly as salient.

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<sup>23</sup> See <http://www.wnyc.org/articles/its-free-country/2010/nov/30/after-citizens-united/>. Accessed December 10, 2010.

<sup>24</sup> The transcript is available at [http://www.livedash.com/transcript/the\\_daily\\_show\\_with\\_jon\\_stewart-eric\\_cantor/6732/COMEDYP/Tuesday\\_October\\_19\\_2010/321614/](http://www.livedash.com/transcript/the_daily_show_with_jon_stewart-eric_cantor/6732/COMEDYP/Tuesday_October_19_2010/321614/). Accessed December 1, 2010

So what is to be done if even new disclosure rules are no longer an option? I would propose to adopt a set of reforms by advocates of stronger party organizations. For example, current rules for party electioneering are at best outdated and at worst damaging. As it stands, party committees can only accept \$30,400 from an individual per year. These funds *can* be used to advocate for candidates, but if they are spent in coordination with a candidate, there are strict upper limits on outlays. This is intended to prevent party-coordinated expenditures from being a route around candidate contribution limits.

As a consequence, it has made far more sense for parties to spend on independent expenditures, because there are no upper spending limits. In 2008, for example, the party committees spent \$115 million on independent expenditures for House candidates and \$109 million for Senate candidates. They spent only \$22 million on coordinated expenditures with all congressional candidates. This has created an incentive structure for donors to give large checks to outside groups. Why, after all, give to the party committee if donor limits are low and there is no workable coordination rule? This empowers outside groups, who have far more generous campaign finance regulations than parties.

From the perspective of democratic theory, this may make sense for pluralists, but it works less well when the interests are essentially aligned with one of the two parties, or at least are run by former party insiders (Skinner 2005). On that last point, consider that Karl Rove and Ed Gillespie were influential forces behind American Crossroads and Crossroads GPS, and former Republican Senator Norm Coleman is the CEO of American Action Network.

If parties were allowed instead to raise larger sums from wealthy donors and work in consultation with their candidates on spending, donors might see the party as a better place to invest. Consider this: should I give \$200,000 to Crossroads GPS which has to work independently from its preferred Republican candidate, or should I give the same amount to the Republican Party, which could then spend those dollars with direct input from the candidate? By empowering parties, the incentive might shift away from clandestine outside interests to the more transparent party committees.

What should this look like? Peter Wallison and Joel Gora (2009) have made the case in *Better Parties, Better Government*, and their general goal is echoed by Ray La Raja (2007) in *Small Change*, both books written before *Citizens United*. First, raise the contribution limits to parties. I recommend \$200,000 for every two-year cycle (which is essentially a tripling of the current limit). Second, significantly raise or eliminate the limits on coordinated expenditures, allowing the candidate and the party committee to pay jointly for, and craft the form of, political campaigning. This simple change coincidentally requires no new disclosure mandates: parties are already required to disclose donors to the FEC. Large contributors would then face the trade-off between

making a larger donation to outside groups (>\$200,000) who cannot legally coordinate with a candidate or making a still-substantial investment with a party committee that the candidate can then help spend. One added feature is that the change requires no significant add-ons to campaign finance laws, simply a scaling back of existing rules.

Of course, the plan also raises concerns about the influence of large donors, and their potential to leverage policy-makers after the election.<sup>25</sup> But consider, if campaign finance reform advocates achieve their goal of more wide-ranging disclosure laws, we could face a situation where a contributor makes a publicly disclosed donation of some incredible size, which the organization—e.g, the Chamber of Commerce—in turn signals should be used to help Senator X. The Senator would presumably be quite grateful for the electoral boost. It only makes sense in this new regulatory environment, where the walls on dollars are fast falling, to empower the organizations most obviously designed to facilitate democracy (as opposed to securing particularized benefits), namely political parties.

### Final Word

The analysis offered here is but one of many to come that will evaluate the impact of *Citizens United* on American elections. The evidence offered in this paper is not a slam dunk for a dramatic and immediate effect, though. Questions of disclosure have percolated for many years. Many interest groups still avoided express advocacy so as to side-step threats to their non-profit status. Moreover, the overwhelming bulk of spending in campaigns still came from candidates and party organizations. Finally, any particular partisan advantage in spending has as much or more to do with the larger political context as it does with the current regulatory structure.

Again, this is not to suggest that the case was unimportant. It had dramatic and powerful effects on other regulations, helping to speed the momentum towards the overturning of many long-standing rules. One potential outcome in years to come, for example, may be the elimination of limits on candidate contributions. These developments are scary to many but would be victories for free speech in the eyes of others. Well-crafted arguments can be offered on either side of the debate.

As a political scientist, my only goal is to offer reasonable and informed analyses of the available evidence, to help determine if any changes in the law

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<sup>25</sup> One workable alternative, endorsed by the Campaign Finance Institute, is to allow parties and candidates to coordinate without limit using small donor contributions. The only hitch in that plan is that it does nothing to redirect the large donors into the party system. See [http://www.cfinst.org/about/events/2010\\_01\\_14.aspx](http://www.cfinst.org/about/events/2010_01_14.aspx). Accessed November 12, 2010.



pose a threat to the viability of American democracy. The results from 2010 might hopefully ease the concerns of some. Corporations did not obviously buy the aggregate outcome. In fact, no for-profit corporation even directly sponsored a pro-candidate ad in 2010. Moreover, there were more competitive House races this past cycle than any in the last generation.<sup>26</sup> Democracy survived, and even thrived, one might argue.

At the end of the day, the proper role of money in campaigns is not easily assessed. The definition of “good” reform is not clear and probably never will be. But the discussion is one of vital importance. More evidence and analysis, and less emotion and vitriol, would do much to help move the discussion forward.

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<sup>26</sup> To make this claim, I rely on *Congressional Quarterly*'s October assessment of congressional races. They listed 43 too-close-to-call contests in 2010. By comparison, there were 23 in 2008 and 18 in 2006. In 1994, *CQ* identified only 40 such races.

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