MONEY TALKS

Legal changes have opened the door to new kinds of political spending. What does the money buy?

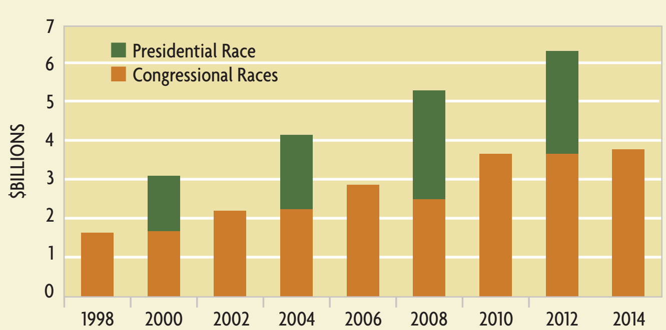
BY JESSIE ROMERO

"There are two things that are important in politics. The first is money and I can't remember what the second one is." So said Mark Hanna, a wealthy Ohio businessman, who became famous (or infamous) as William McKinley's campaign manager in 1896. Hanna — dubbed "Dollar Mark" by the press — set up a fundraising operation of unprecedented scale, going so far as to demand that banks and businesses pledge a percentage of their profits to McKinley's campaign.

More than a century later, Dollar Mark's words seem truer than ever. In October 2014, the North Carolina contest between Democratic incumbent Kay Hagan and the Republican challenger Thom Tillis became the most expensive Senate race in history and the first to cross the $100 million threshold; the eventual total was more than $120 million, including the primaries. (The previous record holder in real terms was the 2000 race in New York between Rick Lazio and Hillary Clinton, which cost $70.4 million, or $96.8 million in 2014 dollars.)

North Carolina wasn't the only pricey Senate race last year; the Colorado contest eventually crossed the $100 million line as well, and races in Iowa and Kentucky each cost around $90 million. These races are part of a trend toward more spending in general. In 2014, total spending on congressional races, including by the candidates, the parties, and outside interest groups, was nearly $3.8 billion, compared to about $2.8 billion in 2006, another midterm election year (see chart). The last two presidential races have cost more than $2.6 billion each, compared to $1.4 billion in 2000 and $1.9 billion in 2004.

Total Spending on Elections



SOURCE: Center for Responsive Politics, http://www.OpenSecrets.org

Many people attribute the rise in spending to a pair of 2010 court decisions, *Citizens United v. FEC* and *SpeechNow.org v. FEC*, which lifted some restrictions on spending by corporations and unions and enabled the formation of the so-called "Super PAC." But the relationship between those decisions and the current level and distribution of spending is far from certain. Even less certain is how much the money makes a difference.

Scandal, Reform, Repeat

In 1902, shortly after he became president following McKinley's assassination, Theodore Roosevelt directed his Justice Department to bring an antitrust suit against J.P. Morgan's Northern Securities Company. It was the first of many such suits that would earn Roosevelt a reputation as a crusader against big business, so it caused quite a scandal when it was revealed after his re-election in 1904 that three-quarters of his campaign funds came from railroads and oil companies — not to mention a secret $150,000 donation from J.P. Morgan himself.

Following the scandal, Roosevelt called for a ban on all corporate contributions to campaigns in his 1905 State of the Union address. Congress responded with the Tillman Act, which prohibited corporations and national banks from contributing to federal candidates. The Tillman Act became law in 1907, but, lacking any enforcement mechanism, it did little to actually curb contributions.

Over the next few decades, Congress passed several bills that increased disclosure requirements and barred unions from contributing to campaigns. These laws contained numerous loopholes, however, and like the Tillman Act, they were largely ignored anyway. The extent to which they were ignored became obvious in 1972, after Congress passed the Federal Election Campaign Act (FECA) in 1971. In 1968, congressional candidates reported spending $8.5 million. In 1972, under FECA's more stringent requirements, spending shot up to $88.9 million.

Also in 1972, five men were arrested trying to wiretap the Democratic National Committee's offices at the Watergate complex. Over the next two years, the public learned that the Committee for the Re-election of the President was responsible for the break-in, as well as for a massive program of spying on Democratic candidates and trying to sabotage their campaigns.

In response, a Senate committee recommended a variety of reforms to campaign regulations and contributions. Many of those recommendations were enacted as amendments to FECA in 1974, including stricter limits on contributions and spending and more reporting by election committees. The amendments also created the Federal Election Commission (FEC) to oversee compliance. (The spending limits were struck down in the 1976 case *Buckley v. Valeo*, in which the U.S. Supreme Court ruled that expenditures were a form of free speech, although limits on contributions to candidates and certain political groups were upheld.)

Twenty years later, scandal was once again the impetus for campaign finance reform. After the FECA amendments, donors circumvented the contribution limits by making donations to the political parties rather than to the candidates themselves. These "soft money" contributions were not subject to any limits on the amount or source of the donations as long as they were used for "party-building" activities, such as voter registration drives. But both parties took an expansive view of what counted as party building, and it wasn't long before soft money was being put to questionable use.

The soft-money system reached its apex in 1996, when the Democratic National Committee used soft money to run ads critical of Bob Dole and gave large donors lavish rewards, including overnight stays in the Lincoln Bedroom of the White House. A Senate committee report on the 1996 campaign also criticized Republican practices and recommended banning soft money and placing greater restrictions on corporate and union spending. These recommendations became law as part of the McCain-Feingold Act in 2002.

The 2010 Court Decisions

After a century of campaign finance legislation, individual donors, corporations, and unions were subject to a complicated set of rules about where they could donate money and how that money could be spent. For example, in addition to prohibitions on giving directly to candidates or parties, corporations and unions were barred from making "independent expenditures" — paying for advertisements that weren't coordinated with a campaign but that advocated for or against a specific candidate. They also were prohibited from spending on electioneering communications, which are ads that mention a candidate's name close to an election even if they don't expressly say "Vote for (or against) Jane Smith." Individuals also faced strict limits on how much they could donate to groups that made independent expenditures.

But in 2008, the conservative nonprofit corporation Citizens United produced *Hillary: The Movie,* a film critical of then-presidential candidate Hillary Clinton. The group wanted to run television ads for the movie, but the U.S. District Court for the District of Columbia ruled that the ads would be a violation of the rules against electioneering communications. The case eventually reached the U.S. Supreme Court.

In 2010, the Court ruled that corporations (and, by extension, unions) have the same right to political speech as individual citizens, and that limiting their expenditures is a violation of the First Amendment. Previous court rulings had maintained that the government's interest in preventing corruption justified the corporate restrictions, but the *Citizens United* decision stated that independent expenditures are not corrupting since they are uncoordinated with a candidate. Concern about possible favoritism short of quid-pro-quo corruption thus did not justify the suppression of free speech. (The decision did not address the prohibition on corporate giving directly to candidates, which remains in place.)

Just days after the U.S. Supreme Court issued its ruling in the *Citizens United* case, the U.S. Court of Appeals for the D.C. Circuit heard a case brought against the FEC by SpeechNow.org, a group created to make independent expenditures. SpeechNow.org argued that the limits on how much individuals could give to the group were a violation of the First Amendment, and the appeals court agreed, noting the Supreme Court's logic in *Citizens United* that independent expenditures did not raise concerns about corruption. In striking down the limits on contributions to groups like SpeechNow.org, the decision created the Super PAC — an organization that can raise and spend unlimited money in an effort to elect or defeat candidates. Since the decision, more than 1,300 Super PACs have been created. (Traditional PACs, or political action committees, give money directly to candidates and are subject to individual contribution limits.)

The Rise of Outside Spending

The *Citizens United* ruling sparked widespread concern about corporate influence on the political process. But "*Citizens United* did not create the flood of corporate money that a lot of people predicted, and decried, in the aftermath," says Jenny Shen, an attorney at the law firm Hogan Lovells who has studied campaign finance laws. During the 2012 Republican primaries, for example, only about 13 percent of Super PAC money came from privately held corporations, and less than 1 percent came from publicly traded corporations. And during the entire 2012 election cycle, corporations accounted for only about 1 percent of the $6 billion in total spending. (It is possible that corporations made large contributions to "social welfare" groups that don't have to disclose their donors. Stanford University political scientist Adam Bonica has estimated, however, that these donations could have totaled at most about another $320 million, still a small share of the total spending.)

What has changed is the share of spending by outside groups relative to spending by the candidates themselves.

Overall, candidate spending still outweighs outside spending; outside groups accounted for about 22 percent of the total in 2014. But outside spending is on the rise: A study by Daniel Tokaji, a professor at Ohio State University's Moritz College of Law, and Renata Strause, a clerk for the U.S. District Court of the Southern District of Texas, found that independent expenditures on express advocacy for all congressional campaigns increased from about $50 million per election cycle during the period 1980-2008 to $200 million in 2010 and $450 million in 2012, outpacing the increase in candidate spending.

In some races, outside groups spend far more than the candidates. Kay Hagan and Thom Tillis' record-breaking race was largely funded by outside groups, which spent more than $80 million. In contrast, the race between Hillary Clinton and Rick Lazio 14 years earlier was entirely funded by the candidates' campaigns. Hagan and Tillis weren't alone; in 2014, outside groups spent more than the candidates in 28 congressional races. In 2000, that was the case in zero campaigns, according to the Center for Responsive Politics, a nonpartisan research group that tracks political spending.

These independent expenditures appear to be disproportionately funded by a few wealthy individuals. In a recent paper, Ian Vandewalker of the Brennan Center for Justice at New York University's School of Law found that just 195 donors and their spouses contributed almost 60 percent of the more than $1 billion that Super PACs have spent on Senate races since 2010. During the 2014 elections, the average donation to the Democrat-aligned Senate Majority PAC was more than $170,000; the average donation to the conservative Ending Spending Action Fund was more than $500,000.

It's tempting to attribute the rise in outside spending — and the concentration of that spending — to *Citizens United* and *SpeechNow.org*. But the shift started before 2010. "The era of wealthy donors and outside spending was definitely underway pre-*Citizens United*," says Shen. That era may have been an unintended consequence of McCain-Feingold's ban on soft-money contributions to political parties. As Robert Kelner, a partner at the law firm Covington & Burling, argued in a 2014 *Harvard Law Review* article, the law put the national party committees in a "legal vice grip," while leaving

Corporations and K Street

Corporations might not spend much on campaigns, but that doesn't mean they don't care about politics. Economists have found that, particularly in countries lacking strong legal and regulatory systems, firms can receive substantial benefits from having politicians as large shareholders or top officers. Even in the United States, where there are strict rules regarding conflicts of interest, companies may benefit from having political connections. In a 2009 paper, Eitan Goldman of Indiana University, Jorg Rocholl of the European School of Management and Technology, and Jongil So, then at the University of North Carolina at Chapel Hill, found that a U.S. company's stock price tended to increase when a former politician joined the board of directors. The stock price also increased after the party of a politically connected director gained control of the presidency.

Corporations (and other interest groups) can also try to influence the political process through lobbying.

In theory, lobbying is a way for informed interest groups to share information with uninformed legislators, since it's not possible for them to be an expert on every issue. But in practice, there may be truth to the belief that lobbying is a way to gain preferential access to politicians. In a 2014 paper, Marianne Bertrand of the University of Chicago and Matilde Bombardini and Francesco Trebbi of the University of British Columbia studied these two different views of lobbying. While they found evidence on both sides, overall, lobbyists appear to be compensated more for their connections than for their expertise.

Whatever the motivation, lobbying is big business. In 2014, organizations spent $3.2 billion on official lobbying. (The Lobbying Disclosure Act of 1995, amended in 2007, requires lobbyists to register and file quarterly reports on their activity). Although official lobbying expenditures and the number of registered lobbyists have declined since the late 2000s, likely as a result of stricter regulations, a significant amount of lobbying activity occurs under other names. Some estimates put the total amount of lobbying, including unofficial lobbying, closer to $9 billion. American University professor of government James Thurber estimates there may be as many as 100,000 unofficial lobbyists, compared to the roughly 12,000 who were registered in 2014.

Lobbying also is concentrated in a relatively small number of organizations. In 2014, just 20 companies and trade associations accounted for 15 percent of the $3.2 billion spent on official lobbying that year. Research by William Kerr of Harvard University, William Lincoln of Johns Hopkins University, and Prachi Mishra of the International Monetary Fund and the Reserve Bank of India has shown that lobbying is highly correlated with firm size, and that the same firms tend to lobby from year to year.

This is not surprising; there are significant upfront costs to lobbying, and smaller firms have fewer resources to employ and would in theory receive a smaller payoff for the same investment. But the concentration may be cause for concern, says Luigi Zingales, an economist at the University of Chicago. "While there is definitely informational value in lobbying, the problem is that over the years the concentration of lobbying interests has increased so that congressmen and women hear only one side of the equation. The system is not balanced."

— Jessie Romero

certain outside groups free to raise and spend as much as they wanted. (Even before *Citizens United* and *SpeechNow.org*, certain groups not subject to FEC oversight, such as 501(c)(4) social welfare organizations and so-called "527" groups, were allowed to accept unlimited contributions and spend unlimited amounts on "issue ads," which were often thinly disguised political ads.) In 2000, according to Kelner, the national parties aired about two-thirds of all the ads in the presidential election. During the 2004 election, after McCain-Feingold, the share dropped to about one-third and to less than one-quarter in 2008.

Still, the trend accelerated after 2010; the parties aired just 6 percent of ads during the 2012 election. One reason could be that the rules surrounding 527s and social welfare groups had been murky. This "legal cloud" likely deterred both spending and contributions, according to Richard Hasen of the University of California, Irvine School of Law. By lifting that cloud and creating the entirely legal Super PAC, *Citizens United* and *SpeechNow.org* may have encouraged more donors and more spending.

Types of Advocacy Groups

501(c) Groups	Nonprofit, tax-exempt groups organized under section 501(c) of the Internal Revenue Code. 501(c)(4) groups are commonly called "social welfare" organizations and may engage in political activities, as long as these activities do not become their primary purpose.
527 Group	A tax-exempt group organized under section 527 of the Internal Revenue Code to raise money for political activities, including everything from voter mobilization to issue advocacy to ads asking the public to vote for or against a particular candidate.
Political Action Committee (PAC)	A political committee that raises and spends limited "hard" money contributions for the express purpose of electing or defeating candidates. An organization's PAC collects money from the group's employees or members and makes contributions in the name of the PAC to candidates and political parties.
Super PAC	Technically known as independent expenditure-only committees, Super PACs may raise unlimited sums of money from corporations, unions, associations, and individuals, then spend unlimited sums to overtly advocate for or against political candidates. Super PACs are prohibited from donating money directly to political candidates.

SOURCE: Center for Responsive Politics, http://www.OpenSecrets.org

Does Money Influence Elections?

In 1972, the late economist Gordon Tullock posed a provocative question: Why is there so *little* money in politics? At the time Tullock was writing, campaign spending totaled about $200 million, but the potential reward was the chance to control $230 billion in federal spending (about $1.3 trillion in today's dollars). If one viewed politics as a competitive marketplace like any other, Tullock conjectured, firms and individuals should have been willing to invest a great deal more than they were.

Campaign spending has increased dramatically since the 1970s, but so too has the size of the prize: In fiscal year 2015, the federal government will spend an estimated $3.8 trillion. So why aren't people spending more on campaigns?

One reason might be that it has been difficult to identify how, and how much, spending influences elections. While it would seem to be a straightforward question to answer — find out who spent more and see if they won — spending is influenced by a number of factors that muddy the cause and effect. Once campaign-spending data became available in the 1970s, for example, researchers identified a puzzling fact: The more challengers spent, the better they did, but the more incumbents spent, the worse they did. Eventually, researchers determined that challengers spent more when they had a high likelihood of winning, but incumbents spent more when they faced a significant threat. Rather than money influencing the outcome of the election, the likely outcome of the election changed the candidates' behavior.

A similar dynamic is at play with donors; people generally don't like to invest in losing causes, so challengers attract more donations when they're doing well. Safe incumbents tend to attract less. To the extent that expected votes influence donations, this can cause researchers' models to over- or underestimate the effects of spending, as Gary Jacobson, a political scientist at the University of California, San Diego, explained in a chapter of the 2006 book *Capturing Campaign Effects*.

Moreover, there may be a level beyond which spending ceases to affect election outcomes. "There's not much more you can do with your money after a certain point," Jacobson says. "You've bought up all the airtime, everybody has seen your ad multiple times, voters' mailboxes are next to the recycling bin and they're just throwing your fliers away." During the 2014 campaign, one TV station in New Hampshire actually ran out of airtime and had to cancel ads that had already been purchased.

An analysis by the advocacy group Americans for Campaign Reform found that once candidates reached a certain competitive threshold, additional spending did not increase the likelihood of winning an election. "It becomes an arms race," says Jacobson. "Both sides throw in so much money that the marginal returns are impossible to detect. They're vanishingly small."

Does Money Influence Politicians?

Regardless of how money influences the outcome of elections, it might affect how politicians act once they're in office. Some research suggests that politicians are more responsive to the views of high-income constituents than those of low-income constituents. In a 2012 book, for example, Martin Gilens of Princeton University showed that on policy questions where the views of more- and less-affluent voters diverge, the views of the more affluent are likely to prevail. If 80 percent of voters at the 90th income percentile support a change, it has a 50 percent chance of passing, versus a 32 percent chance when supported by 80 percent of voters at the 10th income percentile. While it's possible this could be because higher-income citizens are more involved in the political process, research by Larry Bartels of Vanderbilt University has found no correlation between politicians' responsiveness to higher-income voters and the election turnout or political knowledge of those voters.

Some legislators also might feel pressure to vote a certain way to avoid incurring the ire of groups that can spend large amounts of money to defeat them. Tokaji and Strause surveyed numerous members of Congress who spoke of threats, both direct and implied, about the consequences of their votes.

Votes are only one way a politician might show favor to a particular interest group; it's also possible that contributions could affect how legislation is drafted in the first place. While this is difficult to measure, research by Lynda Powell of the University of Rochester suggests there are circumstances in which contributions affect legislation.

Still, other research suggests that legislators are mostly influenced by their own beliefs and by the preferences of their party and voters. In a 2003 paper, Stephen Ansolabehere and James Snyder of Harvard University and John de Figueiredo of the Duke University School of Law examined the relationship between contributions and congressional votes. They concluded that contributions explained only a tiny fraction of differences in legislators' voting behavior. At the end of the day, politicians are unlikely to vote with moneyed interests if it will upset their constituents. Jacobson says, "Members of Congress care about money because they want to win elections. They're not going to sacrifice votes to get money."

Given the uncertainty surrounding political investments, Tullock might have asked why there is any money in politics. The answer might be that political contributions shouldn't always be viewed as an investment. Ansolabehere and his co-authors argued that political contributions by individuals are a form of consumption, akin to charitable donations. In their view, individuals give money not because they expect a specific return, but because they are excited about a particular election, they're ideologically motivated, or they're asked to participate by friends or colleagues. Viewing political spending as consumption might explain why wealthy donors are willing to spend so much even when it's not clear their spending affects the outcome of an election.

Super PACs and "Dark Money"

Regardless of the uncertainty surrounding money's influence on politics, many observers remain concerned about how much is being spent and who is doing the spending. Super PACs are a particular focus of criticism. Democratic congressmen David Price and Chris Van Hollen have introduced multiple bills that would significantly curtail Super PACs. Before the 2014 midterms, Harvard University law professor Lawrence Lessig and political strategist Mark McKinnon started MayDay, "the Super PAC to end all Super PACs," with the goal of electing candidates in favor of campaign finance reform. (Two of the eight candidates MayDay supported won.) Most famously, in 2011 comedian Stephen Colbert set up his own Super PAC, which purchased ads in several markets and was widely viewed as an apt illustration of campaign spending excess.

One possible reason for concern is that Super PACs might make it easier for donors to remain anonymous. Although candidates and political committees, including Super PACs, are required to disclose their donors, the same is not true for 501(c)(4) and 501(c)(6) organizations. But since these groups can make unlimited donations to Super PACs, they may be a way for donors to cloak their giving.

In his paper, Vandewalker calculated that nearly half of the money outside groups spent during the three Senate elections since 2010 was money from undisclosed sources, or what reform advocates refer to as "dark money." The public should know where the money comes from, says Shen. "If we want to be an informed democracy, disclosure is important. Disclosure holds people accountable. It raises the level of debate and helps to ensure that the public is making informed decisions." But some groups, including the American Civil Liberties Union, oppose stricter disclosure laws out of concern that they might deter people from donating to 501(c)s and thus violate free speech protections.

Colbert shut down his Super PAC after the 2012 elections (and donated the remaining money to charity). But the Super PAC as a political entity, and the era of wealthy donors more generally, is likely to continue — as is the debate about the effects on the political system. **EF**

Readings

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