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## Partisanship Has a Price: Citizens United and Political Partisanship in the US House of Representatives

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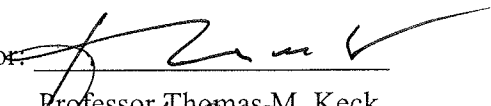
Partisanship Has a Price: Citizens United and Political  
Partisanship in the US House of Representatives

A Capstone Project Submitted in Partial Fulfillment of the  
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Syracuse University

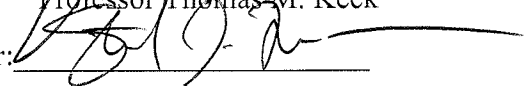
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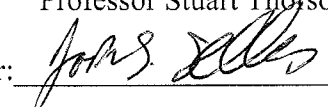
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## **Abstract**

This study aimed to determine whether or not a correlation between independent expenditure levels and political partisanship in the US House of Representatives exists, using the Congressional sessions from before and after the *Citizens United* decision to determine if the decision had any effect on political partisanship. Multiple factors were tested to determine levels of correlation and to adjust for any potential exasperating factors. The study concluded that a very strong correlation exists between aggregate levels of independent expenditures and distance between average levels of partisanship for the parties. However, no causal relationship could be established from the data alone, though the causal mechanism was hypothesized for further research.

## **Executive Summary**

The *Citizens United* decision fundamentally changed how political campaigns are financed in US politics. In the decision, a 5-4 majority of the Supreme Court held that the 2003 Bipartisan Campaign Reform Act's restriction of levels of independent expenditures, expenditures made on a candidate's behalf by outside organizations without coordinating directly with the candidate, as unconstitutional under the First Amendment. Furthermore, the Court held that the significant increase in expenditures did not give rise to political corruption or the appearance thereof. The case divides opinion sharply, as some view the decision as expansive of free speech, while others view it as corruptive of the US political system as favors are implicitly granted in exchange for independent expenditures placed for or against candidates. The case has become a rallying cry for those who advocate for campaign finance reform and has been the subject of discussion for many a political pundit. This project examined whether or not the *Citizens United* decision, through its introduction of a massive flood of new independent expenditure sources and through its providing of a legal framework for the independent expenditure-only committee, also known as the super PAC, has increased the levels of political partisanship in the US House of Representatives.

The literature surrounding the subject of partisanship centers on explaining the larger trend of increasing partisanship, a trend that is essential to keep in mind when examining the trends from before and after the *Citizens United* decision was handed down. Some sources claim that the trend in partisanship is a continuation of the realignment that occurred after the Civil Rights Era, some claim that gerrymandering causes partisanship in the House, while others strongly refute the notion that gerrymandering causes any form of political partisanship. On the

subject of independent expenditures leading to political partisanship through an implicit and indirect quid-pro-quo coordination, however, no existing literature covered the topic.

To examine the trends and begin to establish the correlation, this study used independent expenditure data collected both before and after the decision gathered from FEC filings and displayed on OpenSecrets, a division of the Center for Responsive Politics. This study also employed DW-NOMINATE scores to measure partisanship levels in the US House of Representatives over the time examined. The independent expenditures were divided into pro-Republican and pro-Democrat categories for each election cycle and then regressed alongside average partisanship for the subsequent Congressional sessions. This study also examined the total number of independent expenditures per election cycle versus the distance between the average partisanship scores per subsequent Congressional sessions. This study found that a very strong correlation exists between levels of independent expenditures and levels of political partisanship in the years before and after decision. However, a solid, definite causal mechanism to this correlation could not be determined beyond a reasonable doubt. This study then examined potential causal mechanisms as well as alternate theories that could possibly address the trend found. This study then examines the implications of such a correlation and the *Citizens United* decision, more specifically the potential for the appearance of corruption in light of recent indictments having to do with quid-pro-quo corruption and independent expenditures.

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## Chapter 1

### Introduction

*Citizens United v. FEC* [558 U.S. 310, 130 S. Ct. 876] has been one of the most controversial decisions handed down under the Roberts Court, and yet its practical implications are usually merely the topic of speculation by political pundits, bloggers, and news media outlets. President Barack Obama referred to the decision as "a major victory for big oil, Wall Street banks, health insurance companies and other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans" (Kang 3). The case that Senate Majority Leader Mitch McConnell praises while Senators Bernie Sanders and John McCain decry clearly divides opinion on the implications of the decision on campaign finance. But what effects has the decision had on the US political system? More specifically, in an atmosphere of increasing political polarization, has *Citizens United* contributed to the phenomenon?

I found that, in the US House of Representatives, the *Citizens United* decision likely did have an effect on average partisan distance between the two major political parties. Through a correlation between independent expenditure levels and average political partisanship for each respective party, and then through a correlation between aggregate independent expenditure levels and distance between average partisanship levels for the respective parties, in the years following the *Citizens United* decision, partisanship increased alongside independent expenditure increases. This particularly shows that the *Citizens United* decision is likely a factor in the increase in partisanship and distance between the two parties experienced in the most recent Congressional sessions. I first examined the exact text and implications of the decision. I then aggregated both independent expenditure data and partisanship level scores. I regressed the data,



identifying the correlation from multiple angles. I then concluded that the *Citizens United* decision is one of multiple factors that have fueled the increase in partisanship in the US House of Representatives in recent years.

This question is extremely relevant to the current political sphere. *Citizens United* marks both a departure from precedent and a significant change in how campaign finance functions. The effects of this change, however, have not been extensively documented by academics and often get lost in the rhetoric and accusations made by politicians on the topic. I believe that this may be the case in the House of Representatives for new candidates with relatively obscure political position records, especially if the importance of campaign finance campaign finance outweighs the need to resonate with a median voter in order to undermine an incumbent representative. Furthermore, the sheer amounts of money independent expenditure-only committees have been able to raise and spend for and against candidates makes the topic a significant question of interest. In the 2014 election alone, independent expenditure-only committees raised \$606,116,702 in independent expenditure funds and spent \$345,632,140 of the funds for or against particular candidates (“Outside Spending, By Super PAC”). Even though these independent expenditure-only committees are not legally allowed to coordinate with candidates, single-candidate independent expenditure-only committees have become important players in the campaign finance of particular candidates. This allows corporations, unions, and individuals to give unlimited amounts in support of particular candidates without violating election law, since these particular committees are “independent” of the candidate.

## **Methodology**

I first discuss the specifics of how the *Citizens United* decision changed the electoral process, what it legalized, and what has arisen in the wake of the decision, specifically the super

PAC. This is integral to understanding how independent expenditures work in the wake of *Citizens United*. I then examine trends in independent expenditures from the pre-decision and post-decision House election cycles. I then show how independent expenditures have significantly increased in the wake of the *Citizens United* decision. I then examine the trends in partisanship that coincide with the *Citizens United* decision. Using the data I have collected, I am able to analyze partisanship levels in relation to independent expenditure levels. I examine the correlation between average independent expenditure amounts and average partisanship level, determined by DW-NOMINATE score, on a party level. I then use average aggregate independent expenditure levels compared to distance between average DW-NOMINATE scores to compare how independent expenditures have affected the distance between the party's average partisanship levels. I then discuss the merits and limits of the alternate theories that have been proposed on the topics I have researched.

I utilize online databases such as OpenSecrets, FEC disclosures, studies and publications by the Sunlight Foundation, and other sources to gather the data necessary for testing this hypothesis. I use these databases in this case to determine which candidates have received increasingly larger amounts of independent expenditures. I also use the database to track the organizations where these independent expenditures are originating from in order to determine the ideological intentions behind the independent expenditure. I determine ideological stance behind organizations based on their stated intentions, organizational platform, important issues, and past donation and expenditure tendencies. I use this data to display how amounts of independent expenditures, their sources, and their beneficiaries have changed since *Citizens United* and to contrast post-*Citizens United* expenditures with ones that occurred before the decision, when independent expenditures were significantly more limited.

I use databases such as GovTrack and VoteView in order to determine levels of partisanship and to measure how these scores have changed over time with respect to independent expenditures. These databases allow me to gauge how degree of ideological extremism over time has changed and allow me to graph the change alongside increases in independent expenditures. I employ the R program for the statistical analysis portion of the project. I use the program to produce the correlation coefficients and to aggregate and analyze the data that I mine out of the aforementioned resources. I also use the program to produce visuals and graphs to display the data in order to facilitate analysis.

### **The Decision**

The decision of the Supreme Court in *Citizens United v. Federal Election Commission*, from hereon out noted as *Citizens United*, profoundly affected how federal elections are and can be financed and provided a new source of potential electoral funds for candidates. Before *Citizens United*, the Bipartisan Campaign Reform Act (BCRA), passed in 2002, prohibited “the broadcast, cable or satellite transmission of ‘electioneering communications’ paid for by corporations or labor unions from their general funds in the 30 days before a presidential primary and in the 60 days before a general election” (Liptak). Citizens United, a non-profit organization that describes itself as seeking “to reassert the traditional American values of limited government, freedom of enterprise, strong families, and national sovereignty and security,” sought to screen a political documentary entitled *Hillary: The Movie* during the 2008 presidential election cycle within the prohibited margins set out by the BCRA (“Who Are We”, Liptak). While Citizens United contended that the movie was “issue speech” and therefore did “not expressly say how a voter should vote,” the US District Court for the District of Columbia found that the movie “references the election and Senator Clinton’s candidacy, and it takes a position

on her character, qualifications, and fitness for office (*Citizens United v. Federal Election Commission*, US District Court for the District of Columbia). On these grounds, the US District Court enforced precedent set down in both *Austin v. Michigan Chamber of Commerce* and *McConnell v. Federal Election Commission* and denied Citizens United the right to both advertise and air the film. The case was then appealed for *certiorari* to the Supreme Court and was placed on the docket for early 2009.

The Supreme Court took a broad and expansive scope in deciding the case. In the decision authored by Justice Kennedy, the Court “recognized that First Amendment protection extends to corporations” and that “as a restriction on the amount of money a person or group can spend on political communication during a campaign,” the BCRA “prohibition on corporate independent expenditures is thus a ban on speech” (*Citizens United v. FEC* [558 U.S. 310, 130 S. Ct. 876] p. 22-25). In essence, while “corporations or unions may not give money directly to campaigns, they may seek to persuade the voting public through other means, including [advertisements]” (“Case Files: Citizens United v. Federal Election Commission”). This, in essence, is the definition of the term *independent expenditure*. The decision allows corporations, unions, or other similar organizations to spend money from their general treasuries on political speech for or against candidates in unlimited amounts and without time restrictions as long as the organizations do not directly coordinate with the candidate they are supporting. Furthermore, the Supreme Court held that any “anticorruption interest is not sufficient to displace the speech here in question” (*Citizens United v. FEC* [558 U.S. 310, 130 S. Ct. 876] p. 22-25). Justice Kennedy established that the BCRA seeks to limit First Amendment rights in the interest of “the prevention of corruption and the appearance of corruption” (*idem.* at 29). When examining cases involving restrictions on the First Amendment, the Supreme Court uses the “strict scrutiny” test,

which “requires the Government to prove that that the restriction [in question] ‘furthers a compelling interest and is narrowly tailored to achieve that interest’” (*idem.* at 23). The Court’s majority found that, in this case, the provisions of the BCRA banning “corporate independent expenditures” cited *Buckley v. Valeo* in finding that expenditure bans outside of the realm of direct contributions are “inadequate to justify” the restriction on First Amendment rights that the ban imposes (*idem.* at 40). In essence, the Court held that anticorruption in the “quid-pro-quo” sense, as Justice Stevens conceptualized, is not compelling enough of a governmental interest to warrant a restriction on free speech in the form of spending money (*idem.*). This decision legitimized a resource in campaign finance that, in comparison to today, was largely underutilized and relatively unimportant. Perhaps the most important implication of *Citizens United* was the inception of the super PAC.

The independent expenditure-only committee, commonly known as the “super PAC,” is a political action committee that “may raise unlimited sums of money from corporations, unions, associations, and individuals” and “spend unlimited sums to overtly advocate for or against political candidates” (“PACs: SuperPACs”). The super PAC entity was authorized in a US Court of Appeals for the District of Columbia, which held in *Speechnow.org v. Federal Election Commission* that, in the wake of the *Citizens United* decision and the holding that the “government has no anti-corruption interest in limiting independent expenditures,” “contributions to groups that only make independent expenditures cannot corrupt or create the appearance of corruption.” It further held that any contribution limits on such organizations “violate the First Amendment by preventing [individuals] from donating to [such organizations] in excess of the limits and prohibiting [such organizations] from accepting donations in excess of the limits” (“Ongoing Litigation: Speechnow.org v. FEC). This holding by the US Court of

Appeals for the District of Columbia affirmed the legal status of the independent expenditure-only committee, providing a new and increasingly important entity for politicians to employ while financing and administrating their campaigns. While the independent expenditure-only committee's legal existence was affirmed in *Speechnow.org v. FEC*, the legal basis for its existence can be found within the *Citizens United* decision, and the *Citizens United* decision is cited throughout the case. The Supreme Court denied the FEC's petition for a writ of *certiorari* in the *Speechnow* case on November 1<sup>st</sup>, 2010 and currently remains off of the Supreme Court's docket ("*Speechnow.org v FEC*"). This can be attributed as either an affirmation of the DC Circuit Court's ruling in the case or as merely a refusal to address the issue at the moment. Due to the denial of *certiorari* to the Supreme Court, the DC Circuit Court's holding remains the acting precedent, and independent expenditure-only committees continue to legally operate in the United States. As mentioned previously, the super PAC has evolved since 2010 to include single-candidate independent expenditure-only committees that are allowed to make unlimited expenditures for a particular candidate while maintaining legal independence from the particular candidate.

Though the super PAC is perhaps the most visible and significant effect of the *Citizens United* decision, the decision impacts campaign finance in other areas and expands the abilities of other organizations, such as unions, corporations, and nonprofit operations to independently expend on behalf of particular candidates, parties, or issues. Although super PACs have outspent both unions and corporations by about a 7:2 margin in both the 2012 and the 2014 election cycle, the *Citizens United* case specifically targeted the prohibitions in the Bipartisan Campaign Reform Act that "restricted corporations and unions from using their general treasury funds to make independent expenditures" ("*Outside Spending,*" *Citizens United v. FEC* [558 U.S. 310,

130 S. Ct. 876] p. 1). Also, some 501(c) nonprofit organizations have contributed independent expenditures for or against candidates even though the IRS forbids their primary involvement being politics.

### **Literature Review**

I have examined previous scholarship on the topic of the rise of partisanship in the contemporary political atmosphere and on the topic of *Citizens United*, yet there seems to be a missing connection between the two topics. Jens Grosser and Thomas R. Palfrey, Professors at Florida State University and California Institute of Technology respectively, have produced what they refer to as the “antimedean voter theorem” in order to address increasing partisanship among political candidates. Grosser and Palfrey have found that “in large elections, only the most extreme citizens will compete for office,” that “the result does not depend on the distribution of voter preferences,” and that “political polarization is an equilibrium outcome even if the citizenry is informed about candidates’ political leanings.” The theory addresses the “entry games” of political candidates, concluding that strong partisans are the most likely to run for office (Grosser and Palfrey). While this theory addresses what type of person is most likely to run for office, it does not explain why partisanship would continuously increase nor increase sharply over the period since *Citizens United*, which, according to the DW-NOMINATE data available on VoteView, has been the case (“The Polarization of the Congressional Parties”). Sanford Levinson, constitutional law professor at University of Texas at Austin, seems to believe that partisan gerrymandering contributes significantly to the recent spike in partisanship. Professor Levinson believes that the “most fundamental consequence of the 2010 elections may have been the opportunity they gave to Republican state legislatures...to redraw the political districts that would elect representatives to Congress.” This has made “the distribution of voters more

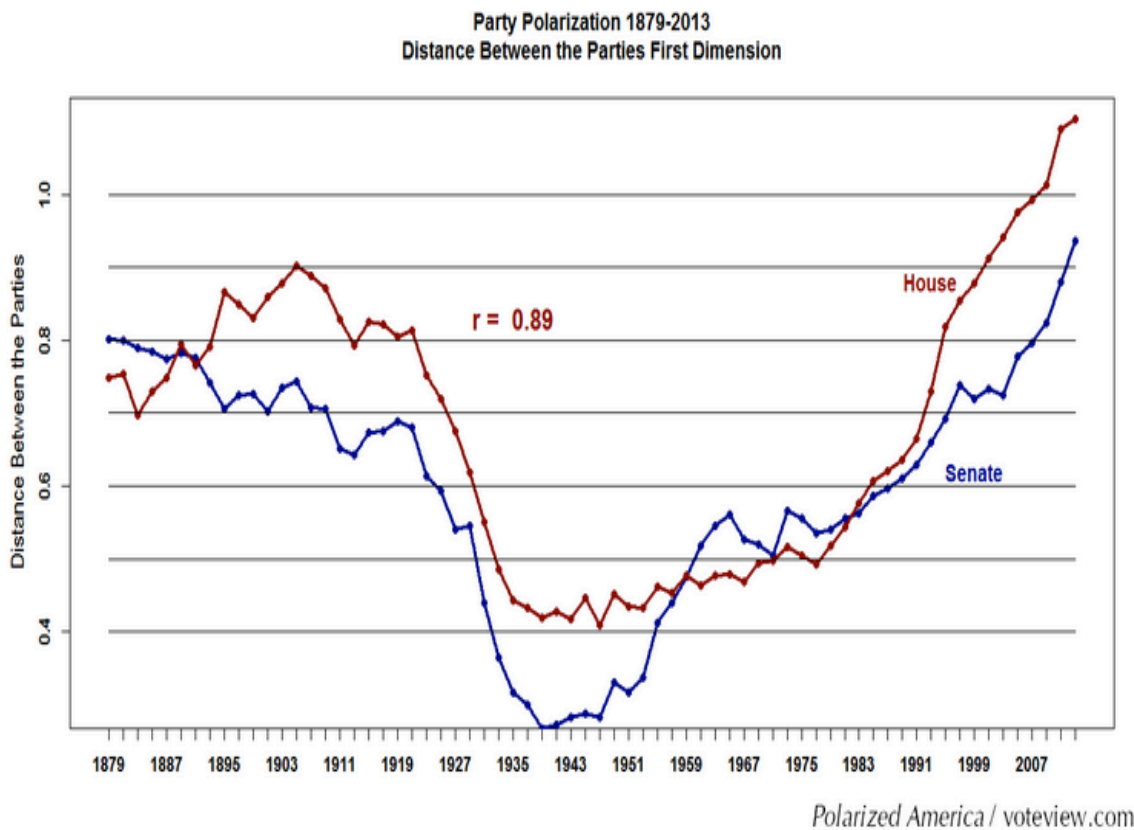
consequential than their raw number” and “render[s] general elections near-irrelevant” due to the fact that districts are drawn to favor particular parties (Levinson).

While gerrymandering is commonly pointed to as a significant factor in increasing partisan sentiments in the US House of Representatives, some political scientists have examined the issue and ruled out gerrymandering as a potential cause of partisanship. Coincidentally, the redrawing of congressional district lines took place in the same year that the *Citizens United* decision was handed down. Naturally, one may conclude that gerrymandering provides more secure seats for the incumbent party, allowing for the incumbent candidate to take on increasingly more partisan political stances without having to risk moderating himself or herself to appeal to a mixed district electorate. However, multiple scholars have already established that gerrymandering effects neither political polarization nor electoral competition. Indeed, McCarty et al. stated that “partisanship would appear to make a compelling circumstantial case for an increase in polarization,” as “politicians are observed engaging in raw power politics” while “simultaneously, electoral competitiveness declines in Congress.” However, they have found that the “increase in polarization is not primarily a phenomenon of how voters are sorted into districts” (McCarty et al.) Masket et. al, using the same DW-NOMINATE scores employed in my own research, compared the use of partisan redistricting commissions versus nonpartisan districting commissions in the wake of the 2000 census and subsequent redistricting. They concluded that, “partisan redistricting schemes are, if anything, associated with declining legislative polarization” (Masket et al.) Furthermore, as shown in the graphic below, the increase in political partisanship is not exclusive to the House of Representatives, but also affects the Senate (“The Polarization of the Congressional Parties”). If gerrymandering is the predominant cause of the increase in political partisanship in the US Congress, one would expect to only see



an increase in partisanship in the House, as the Senate cannot be gerrymandered due to its design. While gerrymandering's impact of partisanship is subject to debate, the gerrymandering debate still ignores the potential impact that the introduction of vast quantities of independent expenditures into the post-*Citizens United* election cycles has had on the significant increase in partisanship across the political spectrum, but particularly in the US House of Representatives.

Senator Tom Udall, in a policy essay in the *Yale Law and Policy Review*, discussed the



jurisprudence and the implications of the *Citizens United* decision on those who run and serve in Congress as well as a few ways that the decision could be overturned. Senator Udall asserts that “our elections no longer focus on the needs and interests of individual voters, but are instead shaped by multi-million dollar ad campaigns funded by special interest groups with seemingly limitless resources” (Udall 2). Senator Udall also discusses what he has referred to as the “endless campaign cycle,” where, due to the increase in campaign costs, “officials spend to much

far too much time engaged in fundraising rather than doing the work the American people elect them to do.” He quotes a joint op-ed published by “former US Senators Warren Rudman (R-NH) and Tim Wirth (D-CO),” who assert that “Congress is stuck in the mud of strident partisanship, excessive ideology, never-ending campaigns, and—at the heart of it all—a corrosive system of private campaign funding.” Furthermore, both senators assert that “if there’s one reason for leaving” the Senate that both candidates held in common, “it’s money” (*idem.* at 6). Senator Udall goes on to advocate that since “Congress can no longer constitutionally protect the integrity of the electoral process” due to decisions such as *Buckley v. Valeo* and *Citizens United v. FEC*, “comprehensive reform can only be passed if there is a constitutional amendment that provides Congress with the authority to regulate all aspects of the campaign finance system” (*idem.* at 8). The senators addressed in the essay have experience working within campaign finance legal structures both predating and postdating the *Citizens United* decision. All senators feel that both the need to incessantly campaign and ensure both donations and independent expenditures for oneself has been detrimental to the functioning of Congress. Furthermore, Senators Rudman and Wirth seem to believe that private campaign finance, which includes independent expenditures, is “at the heart of” the “strident partisanship” evident in both houses of Congress (*idem.* at 6). However, none of the three Senators have examined the data on this notion of increased partisanship resulting from changes in campaign finance laws in the wake of *Citizens United*. While undoubtedly all three Senators have experienced in their work what they feel to be increasing partisanship and what they feel to be increased pressure to align with special interests, these are merely feelings. I seek to further this notion by examining the data on this topic and establishing the correlation between *Citizens United* and the increase in partisanship in Congress.

Professor Richard Pildes, in the *California Law Review*, addresses the trend of increasing polarization and provides both short-term and long-term explanations of the trend. Pildes first shows how the “parties have become purer distillations of themselves” over time, explaining that in “1976, moderates constituted 30% of the House [of Representatives],” while in 2002, “This proportion had shrunk to 8%” (Pildes 277). Pildes then examines how “both parties tend to marginalize their more moderate factions” and the “individual personalit[ies]” of those elected to office, but ultimately concludes that explanations that solely implicate the personalities of those in office as the cause of polarization are “implausible” and that “forces larger than the personalities of particular political figures might well be at work” (281-287).

Pildes explains that the Voting Rights Act of 1965 “reflected and unleashed forces that, building on themselves over several decades, have caused a tectonic shift in the underlying foundations of American politics.” This shift, according to Pildes, “is perhaps the major cause of the hyperpolarized partisan politics we now have” (287). He explains that the “Democratic Party’s complete monopoly on the South” in the years predating the Voting Rights Act was not the “product of routine forces of political competition,” but instead the product of “a sequence of purposeful actions taken at the end of Reconstruction, which included violence, intimidation, informal manipulation, and fraud.” These changes had the effect of “drastically reduc[ing] African American electoral participation” and “destroying the foundation for any politically effective challenge to the Party’s domination” (Pildes 288). This changed the dynamic of both political parties. The “Democratic Party was a coalition of Southern Democrats [who were] extremely conservative on race” and “moderate to liberal Democrats from other parts of the country.” The Republican Party, on the other hand, consisted of “its own divided coalition of liberals and moderates, mostly from the Northeast and West Coast, and much more traditional,

old-line conservatives from the Midwest and other rural areas.” Since “none of these groups were large enough to pass legislation on their own...any significant legislation required compromise and bargaining across party lines” (*idem.* at 289).

According to Pildes, the Voting Rights Act “initiated the rise of a genuine political system in the South,” which in turn “reshaped the essential structure of the national political parties.” Since the Voting Rights Act and the Supreme Court opinions stemming from it ruled “literacy tests, poll taxes, manipulative registration practices, and durational residency requirements” unconstitutional, “a massive infusion of new voters,” who were on average “much more liberal than the median voting white Southerner had been before 1965,” inundated the Southern electorate, causing an electoral shift. Conservatives found themselves more aligned with the Republican Party, which became “highly conservative” while a “new, moderate-to-liberal Democratic Party that was more in line with the rest of the Democratic Party” was left in the wake. Due to a “self-reinforcing feedback dynamic,” the Democratic Party “became more liberal in the South, conservatives fled,” and the Democratic Party became increasingly more liberal while the “progressive strands on racial issues that had existed in the Republican Party diminished” (*idem.* at 290). The full effect of this shift “took about thirty years to come to fruition,” but set off a process of “party purification” that the United States is “probably still in the midst of” today (*idem.* at 293-294). Pildes’ analysis of the Voting Rights Act provides an excellent explanation of the long-term trend of increasing polarization in American politics since the enactment of the Voting Rights Act. However, while Pildes explains a larger driving force of the trend, he does not consider that the “party purification” he speaks of has increased exponentially rather than at a steady rate, as shown in the table below. Furthermore, in the period between the passage of the Voting Rights Act of 1965 to the Reagan Presidency in 1980, the

period in which this supposed party purification began to polarize the parties, partisanship significantly decreased for significant amounts of time, with sharp upticks in some areas. Finally, Pildes does not address the looming issue of whether or not independent expenditures, which have significantly increased in amounts alongside the recent increase in polarization, contribute to or exacerbate this trend. While Pildes' argument that the Voting Rights Act influenced the long-term increase in partisanship, he does not address the independent expenditure issue in relation to the short-term increase in polarization we are experiencing today.

### **Data Disclaimer**

Due to the nature of FEC filing and reporting requirements, the data available for each candidate contains a margin of error. For example, considering items such as electioneering communications, "several candidates can be listed on a report with no indication of how the money should be distributed among the candidates, or even if the money is being spent for or against candidates" ("Why Don't These Numbers Add Up?").<sup>1</sup> However, electioneering communications constitute a rather small amount in proportion to the entirety of independent expenditures. For example, in the 2012 election cycle, electioneering communications constituted \$15.4 million of the \$1.37 billion spent in total independent expenditures ("Outside Spending"). Clearly a margin of error exists within the data, and that standard error is displayed on the graphs exhibited in the analysis portion below.

Furthermore, the data used in this project is the most recent data available through FEC filings. However, through my experience with this data, as new FEC reports are filed, older

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<sup>1</sup> According to the FEC, "an electioneering communication is any broadcast, cable or satellite communication that fulfills **each** of the following conditions: 1) The communication refers to a clearly identified candidate for federal office; 2) the communication is publicly distributed shortly before an election for the office that the candidate is seeking; and 3) the communication is targeted to the relevant electorate (US House and Senate candidates only)" (Electioneering Communications").

reports are uncovered, and different organizations are required to disclose, the data on particular election years is subject to change. During the course of the research for this project, the independent expenditure totals reported by OpenSecrets increased from the \$998 million mark to above \$1 billion (idem.). OpenSecrets updates its data as it receives the reports from the FEC. Though the data contained on the OpenSecrets website is somewhat subject to change, it is the most accurate data available on independent expenditures available.

The data provided through the OpenSecrets and available in FEC filings only includes any candidate with over \$1000 in outside spending (“2014 Outside Spending, By Candidate,” see bottom of page). This is not ideal, as I would like to get as comprehensive of a picture of the actual amount of independent expenditures being made as possible. However, even when multiple candidates have received less than \$1000 in independent expenditures, the aggregate effect of including these expenditures if the data was available would likely be negligible on the outcome.

### **Analysis**

Using OpenSecrets as my data reference, I crossed the aggregate independent expenditure levels of the pre-*Citizens United* election cycles with the post-*Citizens United* election cycles, one of which is currently ongoing. I have found that, in the wake of the *Citizens United* decision, independent expenditures have increased from \$143.6 million in 2008 to \$205.5 million in 2010, over \$1billion in 2012, and \$572.9 million in the ongoing 2014 election thus far (“Outside Spending”). This shows a significant increase in the overall levels of independent expenditures in federal elections, and the decrease in the 2014 column from the 2012 column can be explained by recognizing that the election cycle is both not over and is not a year where a presidential election occurs.

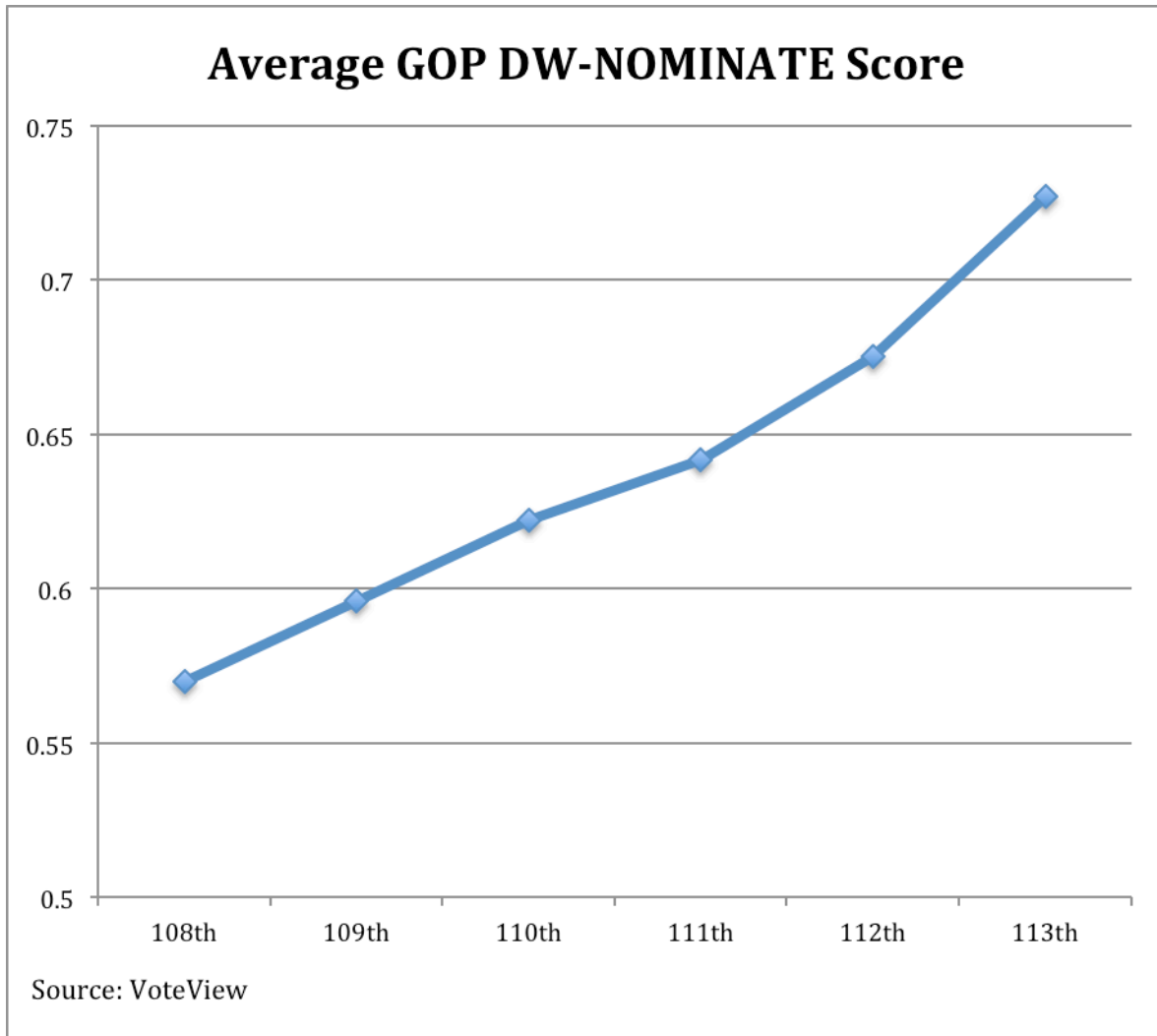
Examining exclusively the US House of Representatives, independent expenditure amounts from 2004-2014 follow a different trend from the overall rising amounts of independent expenditures in elections. As shown in the graph below, total independent expenditures in US House of Representative elections rose from 2004 election cycle to the 2006 election cycle and then dropped from 2006 election cycle to the 2008 election cycle. Considering that the 2010 election cycle was the first election cycle to apply the *Citizens United* decision to campaign finance, one might anticipate a significant increase in independent expenditures, as is reflected in the graph. In the immediate wake of the *Citizens United* decision, independent expenditures in US House of Representative elections rose from \$66,553,536 in the 2008 election cycle to \$253,918,012 in the 2010 election cycle and peaked at this number. It is also important to note that 2010 was not a presidential election year. The trend of increased independent expenditures in US House of Representative races in non-presidential election years is reflective of previous occurrences, as displayed in the chart. This trend is further reflected in the next election cycle, as from the 2010 election cycle to the 2012 election cycle, independent expenditures in House races decreased from \$250,918,012 in the 2010 cycle to \$173,668,799 in the 2012 cycle. However, interestingly, the trend of total independent expenditures continued downward in the next election cycle, dropping from \$173,668,799 in the 2012 cycle to \$152,655,009 in the 2014 cycle (OpenSecrets, Center for Responsive Politics). While this amount is certainly significantly more than the amount of independent expenditures being spent before the *Citizens United* decision, the data counters the popular notion that, at least in the case of the House of Representatives, more and more independent expenditures are being made on behalf of candidates. The expenditures seem to have peaked in the election cycle following the decision and have significantly decreased in the subsequent two election cycles.

Breaking down the total independent expenditures into pro-Democrat and pro GOP sections, a further interesting insight is made into independent expenditures made on behalf of House candidates. The pro-democrat section of the graph below is comprised of both expenditures identified by the Center for Responsive Politics and the expenditure's FEC filings as pro-democrat or against-GOP expenditures, while the pro-GOP section is comprised of expenditures identified as either pro-GOP or against-Democrats ("Outside Spending, By Candidate"). When broken down, the data trend reveals, interestingly, that in the 2010 election cycle in the wake of *Citizens United*, contrary to popular belief, more independent expenditures were made on behalf of Democrats than were made on behalf of Republicans, with Democrats receiving the highest amount in the data range. In the subsequent 2012-election cycle, however, Republicans outspent Democrats by almost \$35 million, with Democrats receiving significantly less independent expenditures and Republicans receiving the most of the data range. In the 2014 election cycle, the Democrats received slightly more than in the 2014 election cycle, while the Republicans received significantly less, with both parties receiving within \$11 million of each other, the closest amount since the pre-*Citizens United* era.

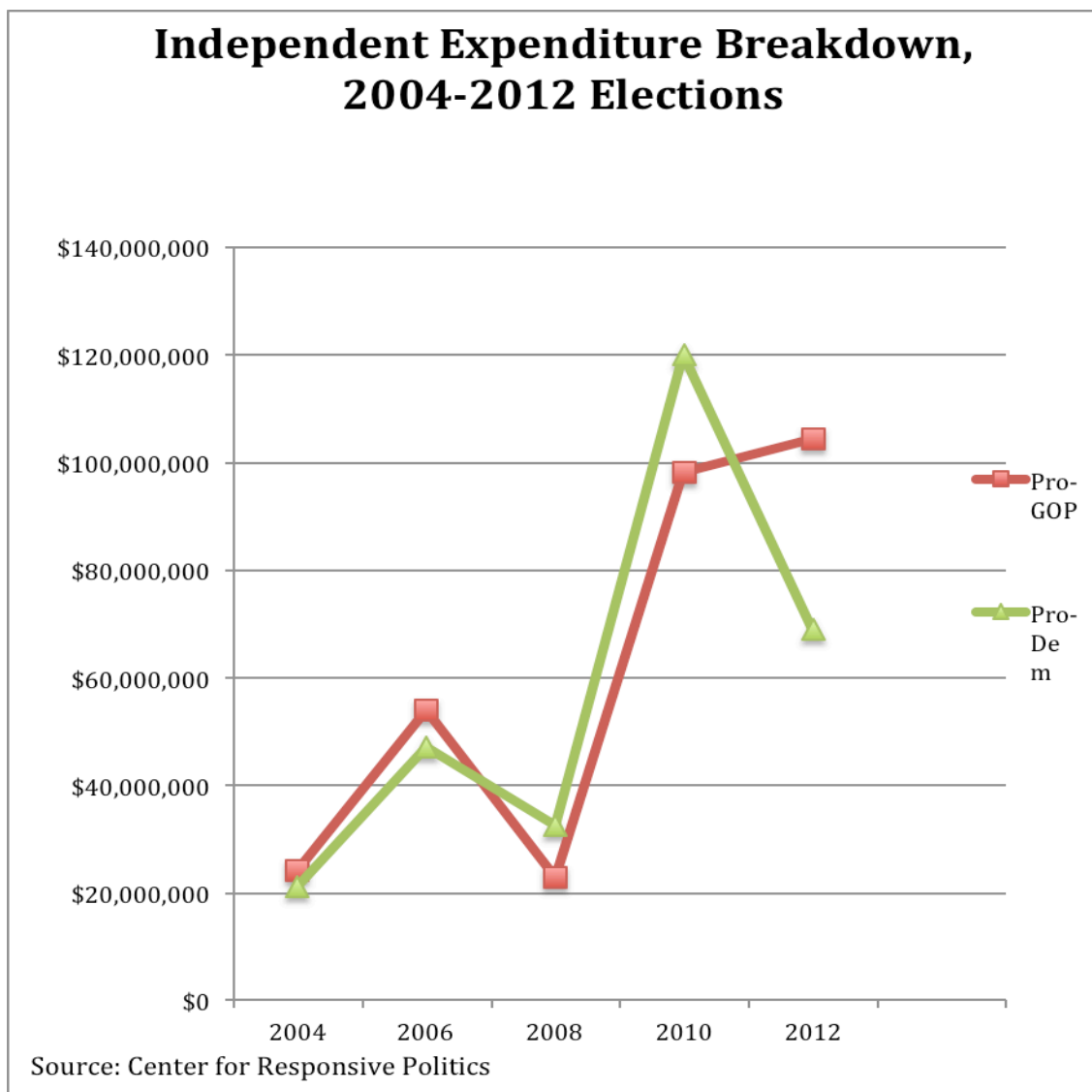
Furthermore, according to the DW-NOMINATE dimensions exhibited on VoteView, the distance between the parties' first dimension, while part of a steady trend of increasing distance, has risen quite sharply in the years since *Citizens United* was decided ("The Polarization of the Congressional Parties"). The two graphs below display the breakdown in average partisanship, based on DW-NOMINATE scores, of the Democratic and Republican parties from the 108<sup>th</sup> Congress to the 113<sup>th</sup> Congress. A chart associating the Congressional session with the election cycle year is provided above. While partisanship is increasing across both of the parties, as

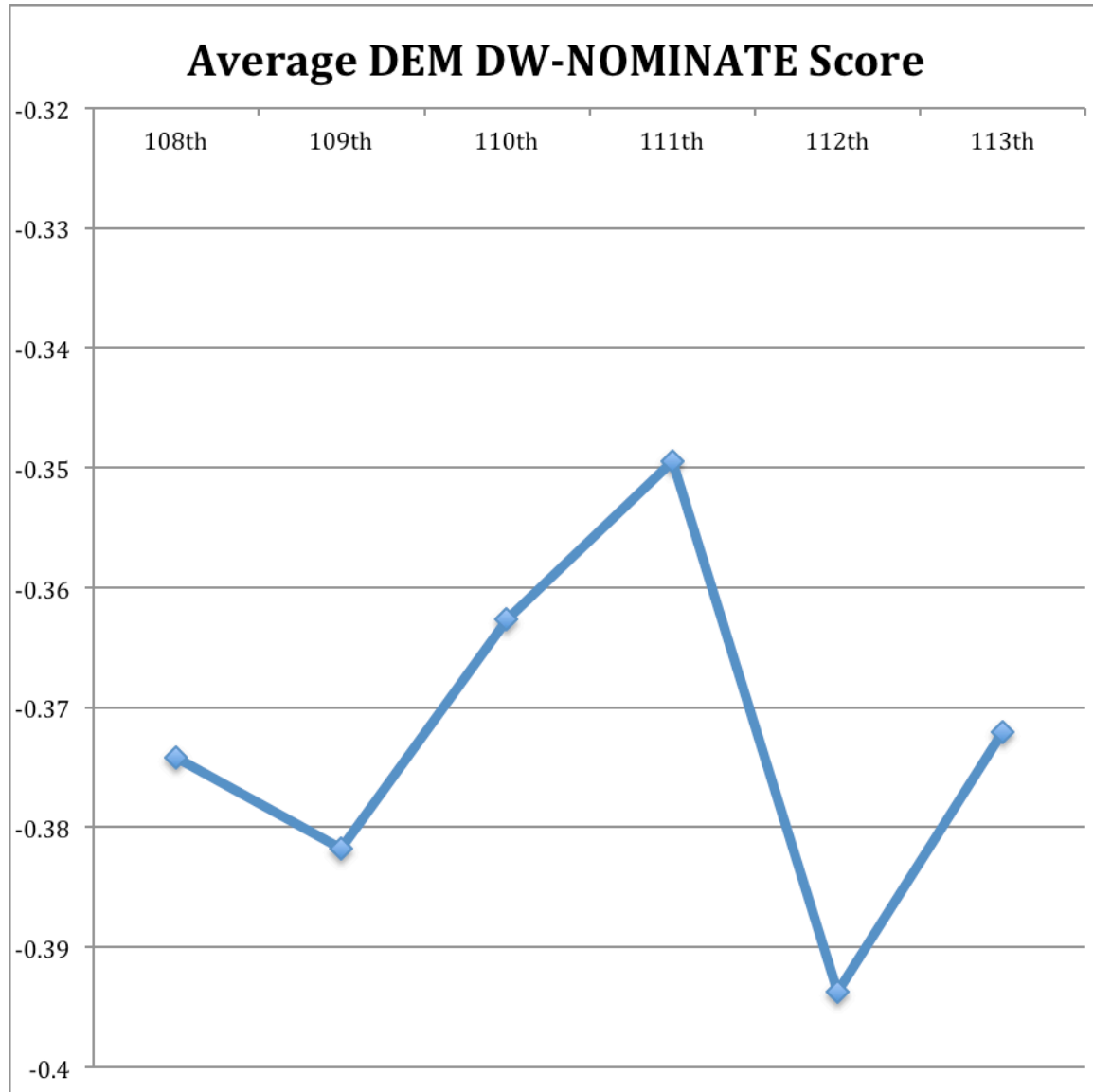


displayed previously, breaking down the two parties reveals some interesting trends about the dynamics of partisanship in the US House of Representatives.



The trend in GOP partisanship seems to be steadily increasing over the period of time examined. While the average GOP DW-NOMINATE score is further from the center than the average Democratic DW-NOMINATE score, the data trend does not exhibit any spikes or significant outliers over the period of time examined. Outwardly, it does not exhibit any interesting phenomenon that allows for inferences to be drawn from it.





Significantly more interesting, however, is the trend exhibited within the Democratic Party with respect to partisanship. The average Democratic score begins and ends at lower levels than the average Republican score. However, the average Democratic Party score does not follow the same steady, uninterrupted trend that the Republican Party's data set exhibits. At first, the Democratic Party's trend begins to modestly rise between the 108<sup>th</sup> and 109<sup>th</sup> Congressional sessions. Between the 109<sup>th</sup> and 111<sup>th</sup> sessions, however, the average DW-NOMINATE

partisanship rating drops drastically, from -0.382 to -0.349. However, following the 2010 election cycle in the 112<sup>th</sup> Congress, the Democratic Party's average partisanship score spiked drastically, from -0.349 to an all-time high of -0.394. The average score then began a downward slope, with the 113<sup>th</sup> Congress ultimately earning a score of -0.372. The Democratic Party's average DW-NOMINATE partisanship score does not follow the same gradual trend that the GOP's score does. Instead, the score spikes at a significant point in the data range.

The correlation coefficients of the data examined reveal that, over the years examined, a correlation of varying strength exists between amount spent in independent expenditures on campaigns and level of partisanship the US House of Representatives. The data is displayed on the tables below. The correlation coefficient is defined as a number between 1 and -1, where 1 indicates a perfect positive correlation between the two values, 0 indicates no correlation, and -1 indicates a perfect negative correlation between the values. A weak correlation is defined as the correlation coefficient being in the range of 0.1-0.3, with a medium strength correlation defined as being in the range of 0.3-0.5 and a strong correlation being in the range of 0.5-1.0 ("Pearson Product-Moment Correlation"). However, since the DW-NOMINATE score for Democrats is a negative number, the more negative the correlation coefficient for Democrats, the stronger the correlation. Examining the correlation coefficients after regressing aggregate pro-party spending compared to average DW-NOMINATE score, I find that there is a strong correlation between aggregate pro-party spending and partisanship, as denoted by DW-NOMINATE score. This trend is displayed on the graphs on pages 24-27.

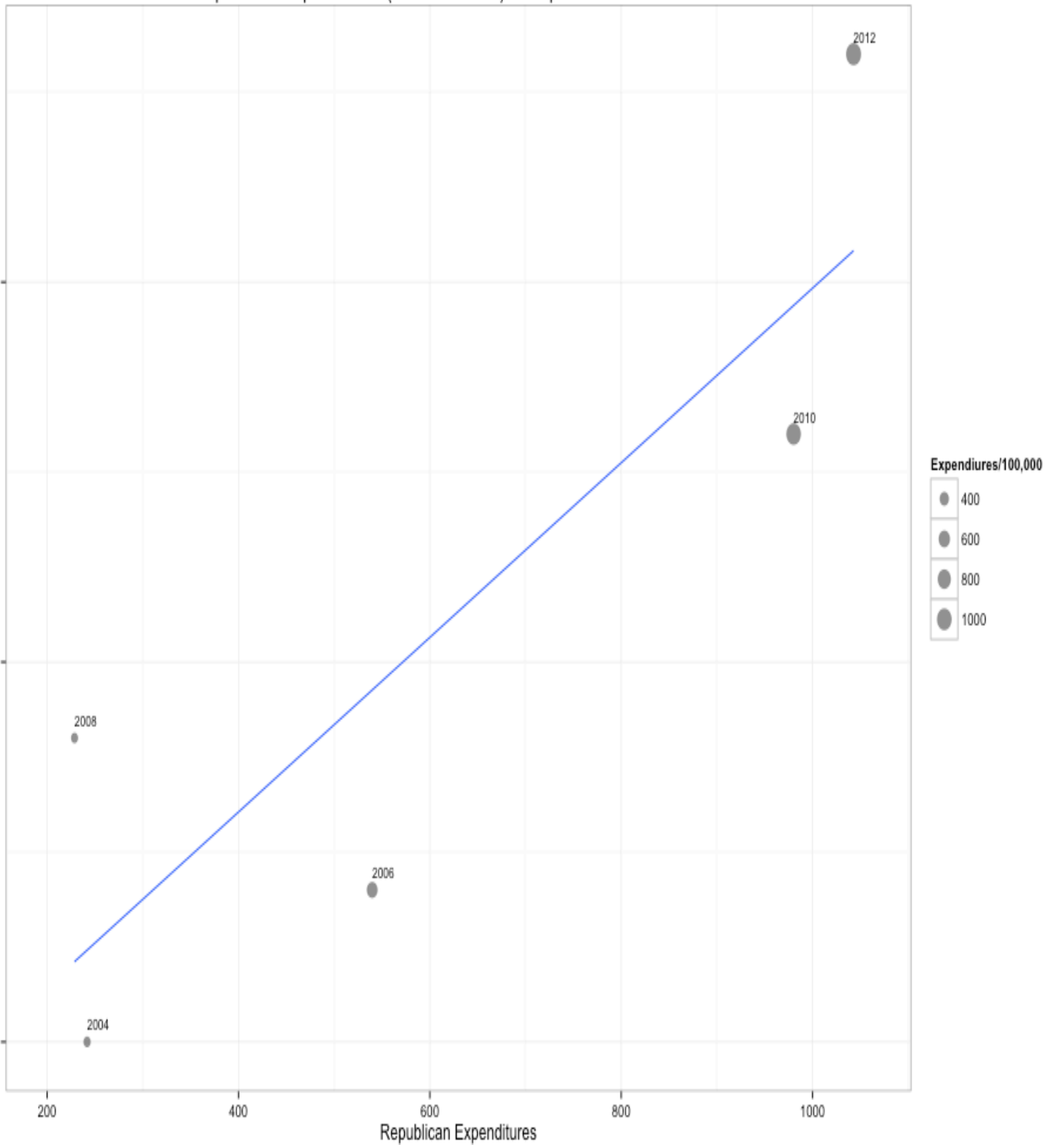
Examining the correlation in current dollars, I find that the correlation coefficient for aggregate pro-GOP independent expenditures per election cycle versus average GOP DW-NOMINATE score is 0.8670694, indicating a "very strong" correlation between the two

variables. Likewise, when examining the same variables but substituting pro-Democrat expenditures, the resulting correlation coefficient is -0.6048525, indicating a “strong” correlation between the two variables. The graphs of these relationships can be found on pages 25-28. Examining the correlation coefficients in constant dollars, I find that though controlling for inflation has a nominal mitigating effect on the correlation between independent expenditures and partisanship in the House, the “strong” correlation between the two variables still exists. Under the same variable definitions as used above, but using constant dollars for the independent expenditure levels, I found that the correlation coefficient for pro-GOP independent expenditures in constant dollars versus average DW-NOMINATE score is 0.8264963, indicating that a “very strong” correlation between the two variables still exists when controlling for inflation. Likewise, when controlling for inflation, the correlation coefficient for the Democratic party is -0.6192044, suggesting still that a strong correlation exists between average pro-Democrat independent expenditures in House races and average partisanship in Congress. The graphs of these relationships can be found on pages 29-32. Furthermore, the data for both parties remain within the standard error for both statistical analyses, so no significant outliers are present. In order to better analyze and visualize the data, I have included the graphs on the next two pages, which display the trends above.

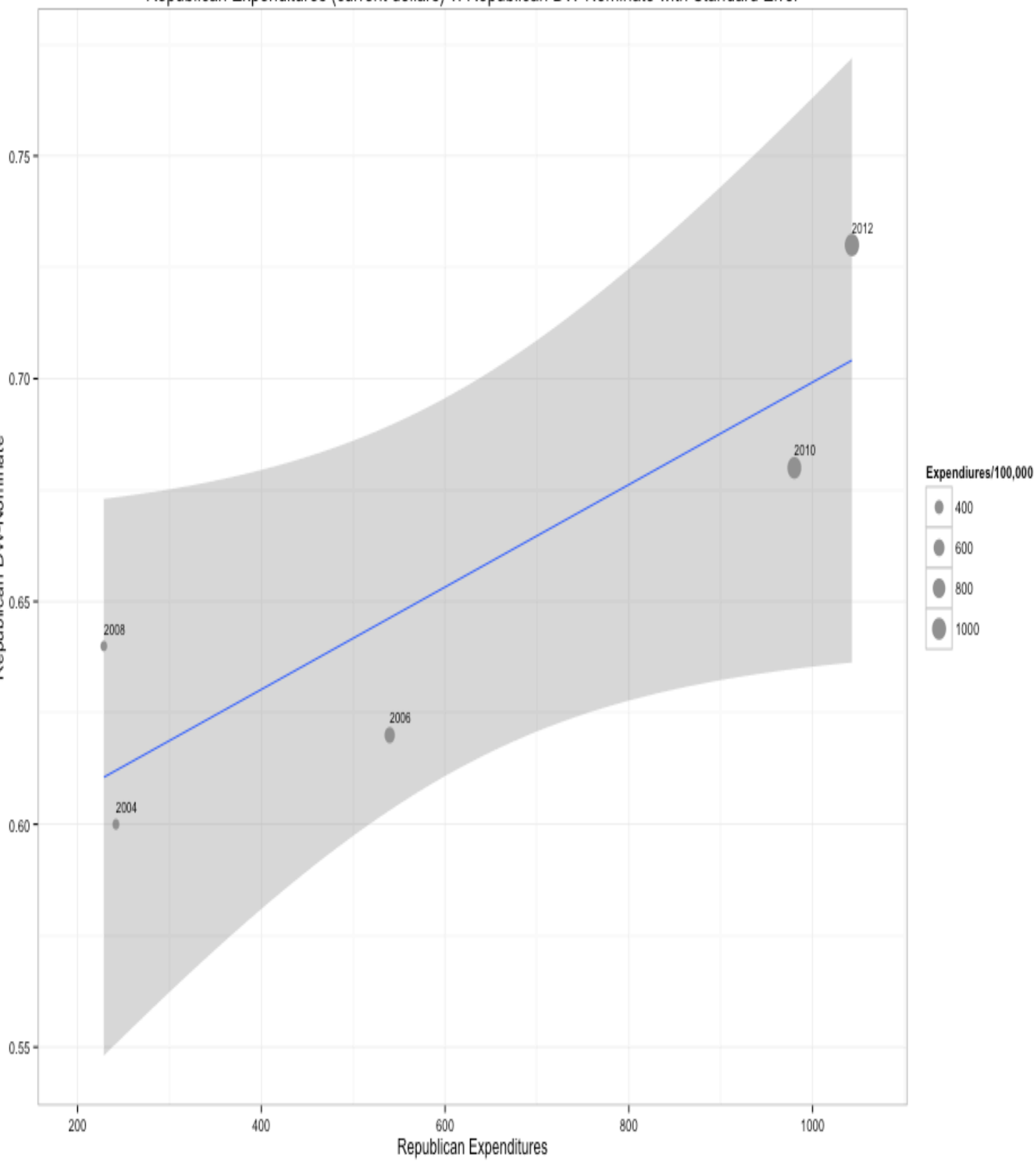
Perhaps the most significant relationship to analyze is the relationship between average level of overall independent expenditure and average distance between DW-NOMINATE scores. The average distance between the scores shows us how far apart the parties are from each other at any given time. The graph of this relationship is displayed on pages 33-34. The pre-*Citizens United* election cycles (2004, 2006, and 2010) are all located towards the bottom of the graph with little variance in average DW-NOMINATE distance when manipulating independent

expenditure levels. However, the two election cycles (2010, 2012) that occurred after the decision experienced both a significant increase in total expenditures and a significant increase in distance between average DW-NOMINATE score. This suggests that there is a correlation between total independent expenditure levels and average DW-NOMINATE score distance, indicating that independent expenditure amounts are correlated with increased partisanship in the US House of Representatives. Indeed, upon analysis of the data, the correlation coefficient for the respective variables is 0.8335487, indicating that there is a very strong correlation between total independent expenditure levels in an election cycle and the distance between party average DW-NOMINATE scores in the subsequent House session. This relationship is perhaps the most interesting. The above graph clearly shows the significant difference in the pre-*Citizens United* era and the post-*Citizens United* era in terms of independent expenditures and political partisanship. As more and more independent expenditures are made, the parties seem to be moving further and further apart on political issues. This seems to be particularly true for the House sessions immediately before and immediately after the *Citizens United*, as the most significant increase in both independent expenditure levels and distance between average party DW- NOMINATE score occurred in this span of time. This shows that the handing down of the *Citizens United* decision is in fact correlated with the increase in partisanship levels in the US House of Representatives.

Republican Expenditures (current dollars) v. Republican DW-Nominate

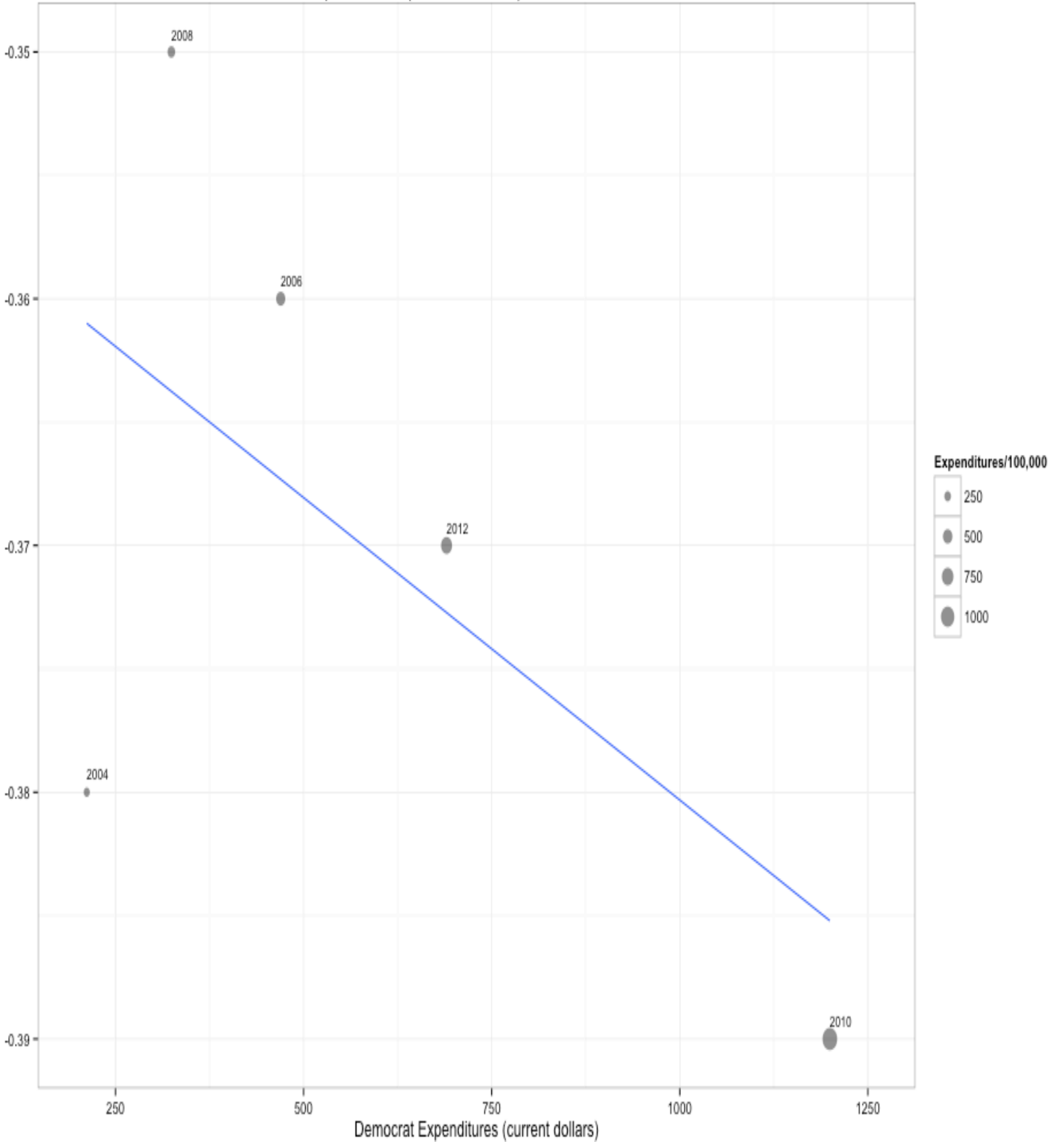


Republican Expenditures (current dollars) v. Republican DW-Nominate with Standard Error

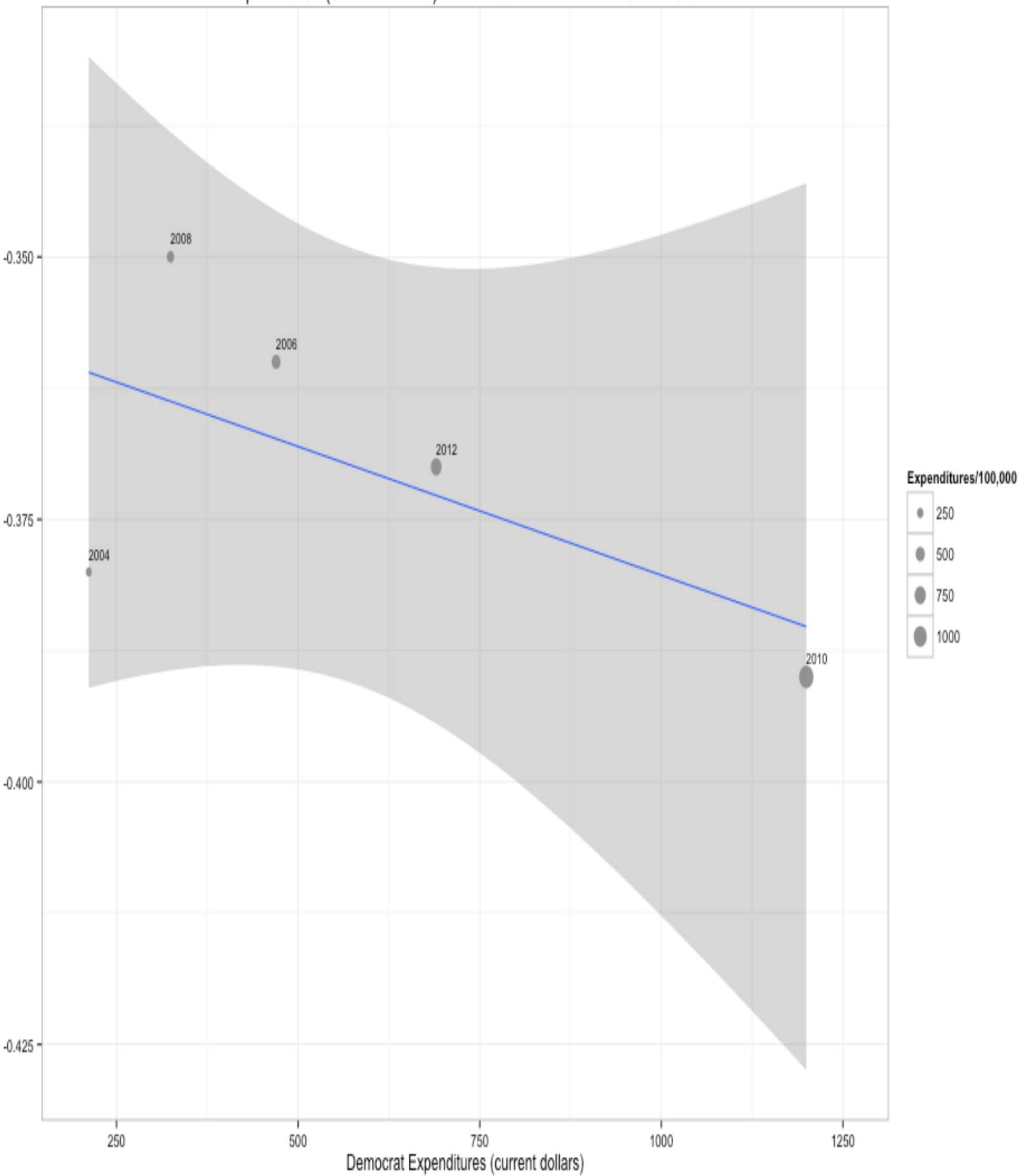


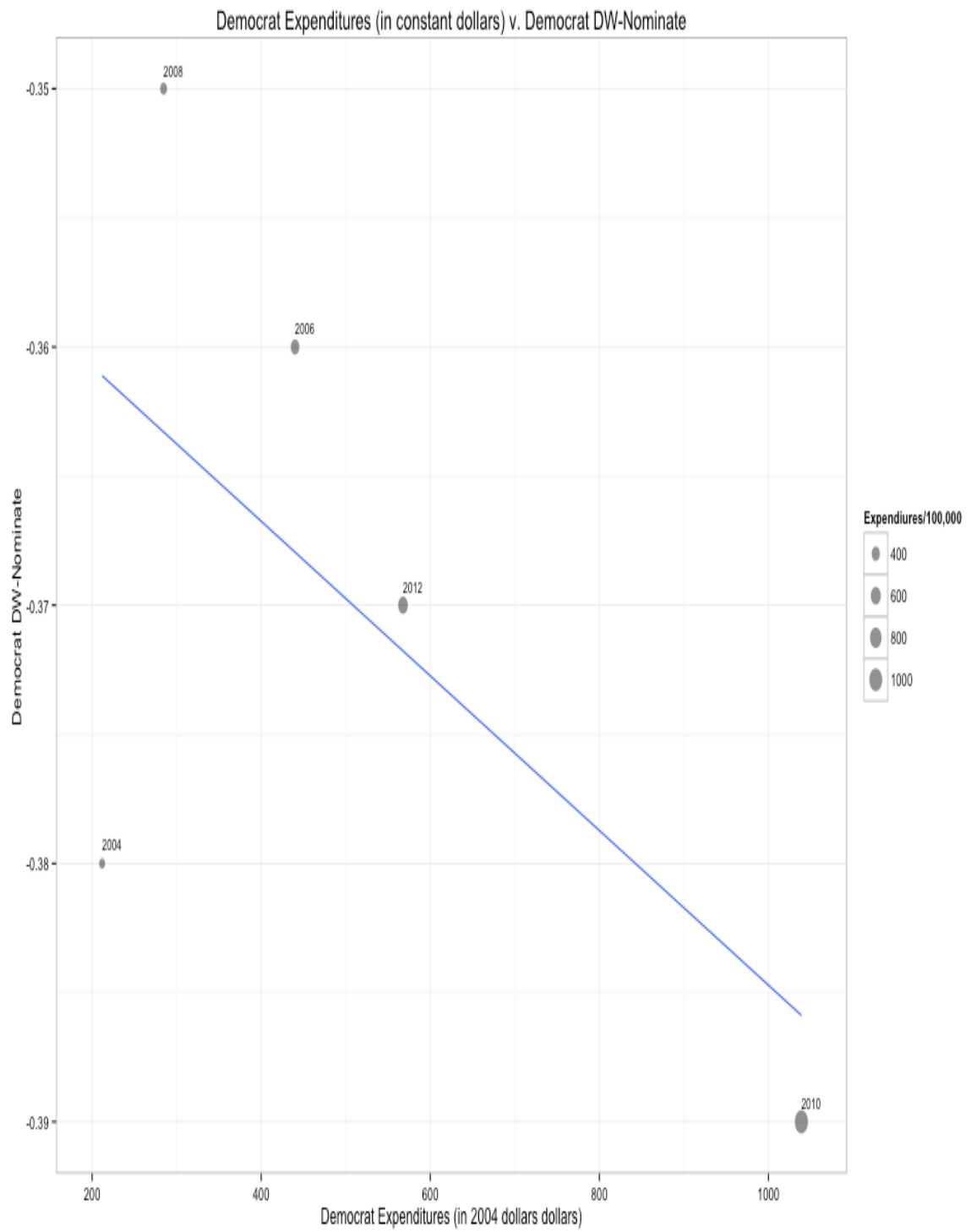


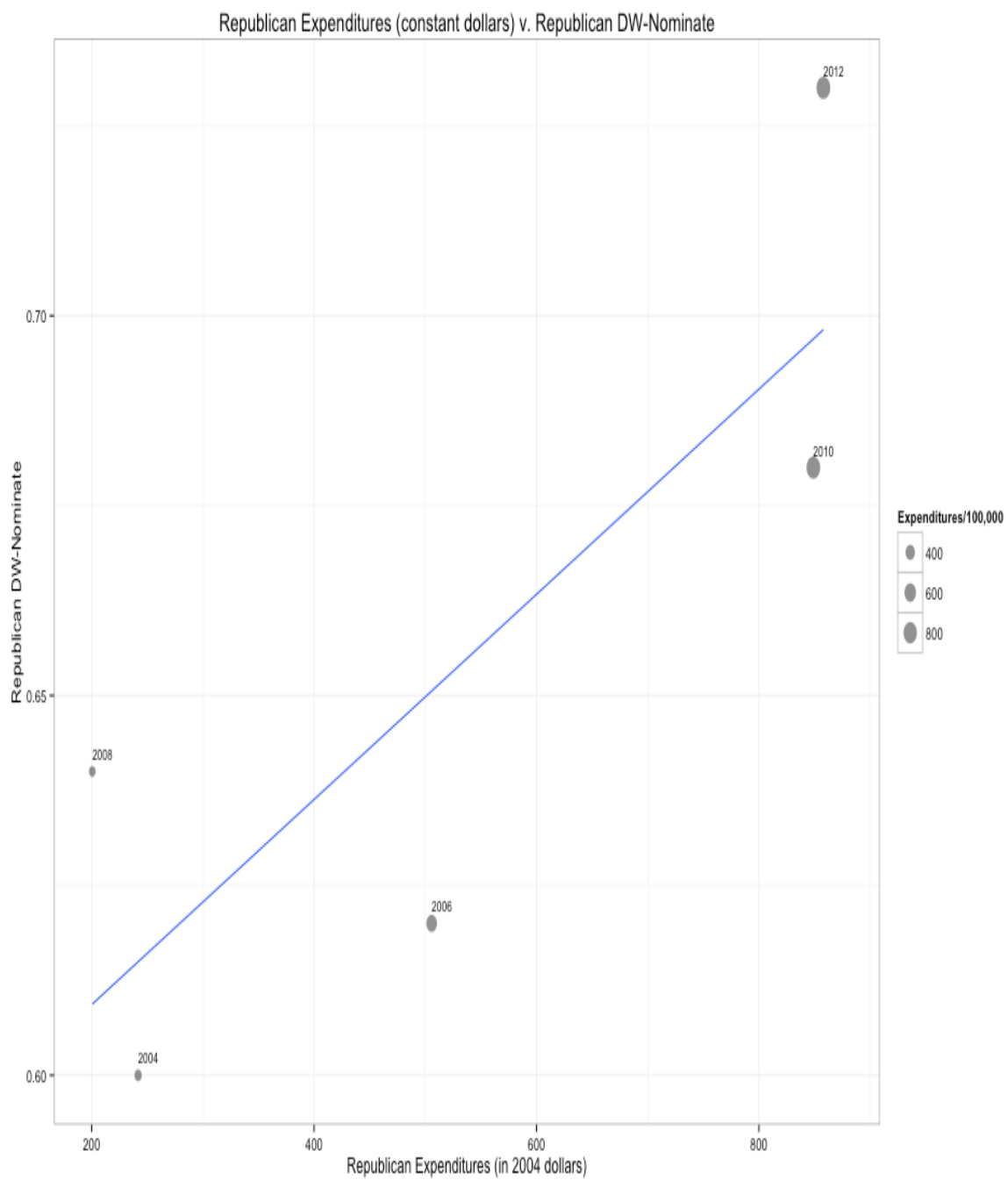
Democrat Expenditures (current dollars) v. Democrat DW-Nominate

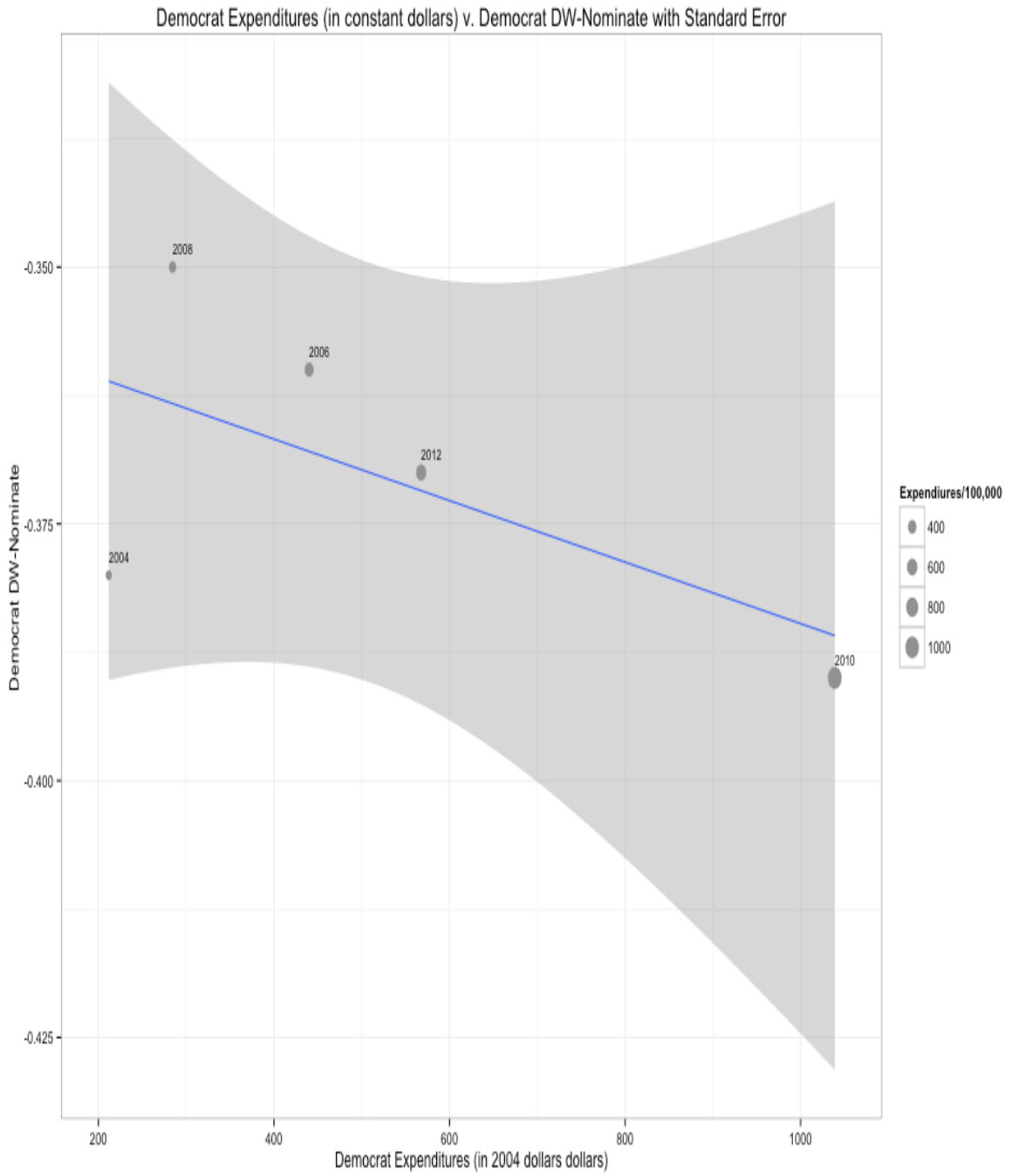


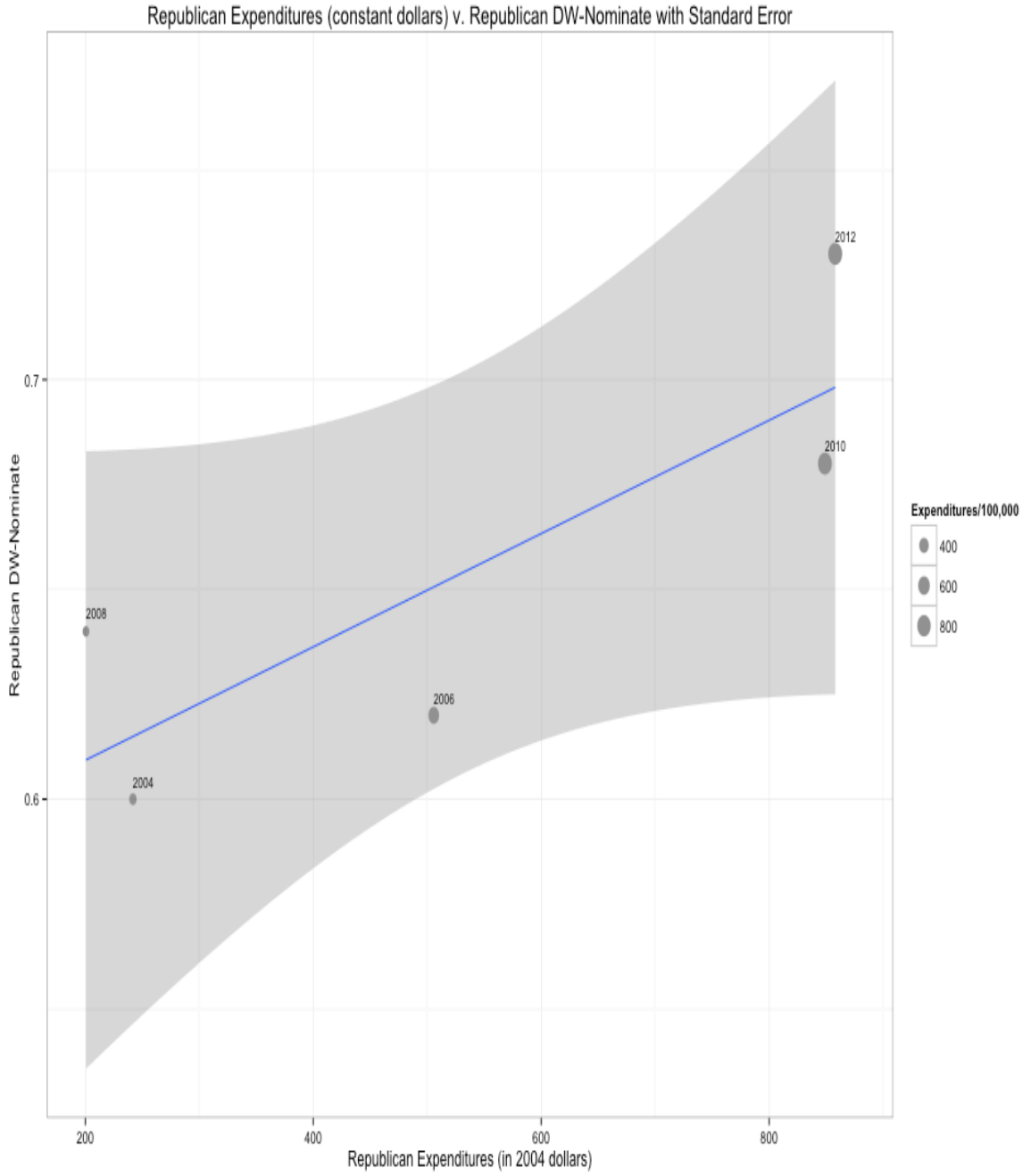
Democrat Expenditures (current dollars) v. Democrat DW-Nominate with Standard Error

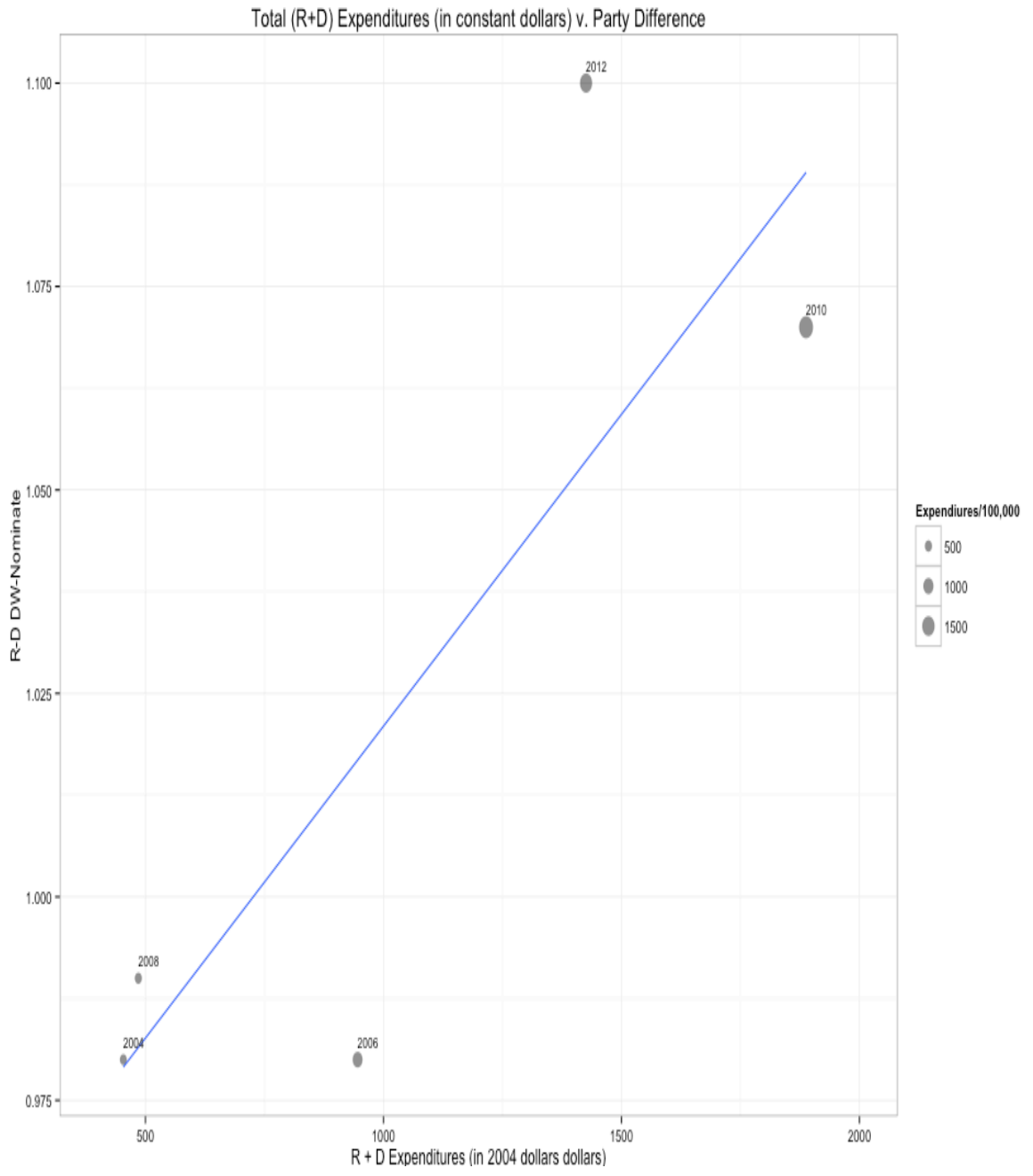


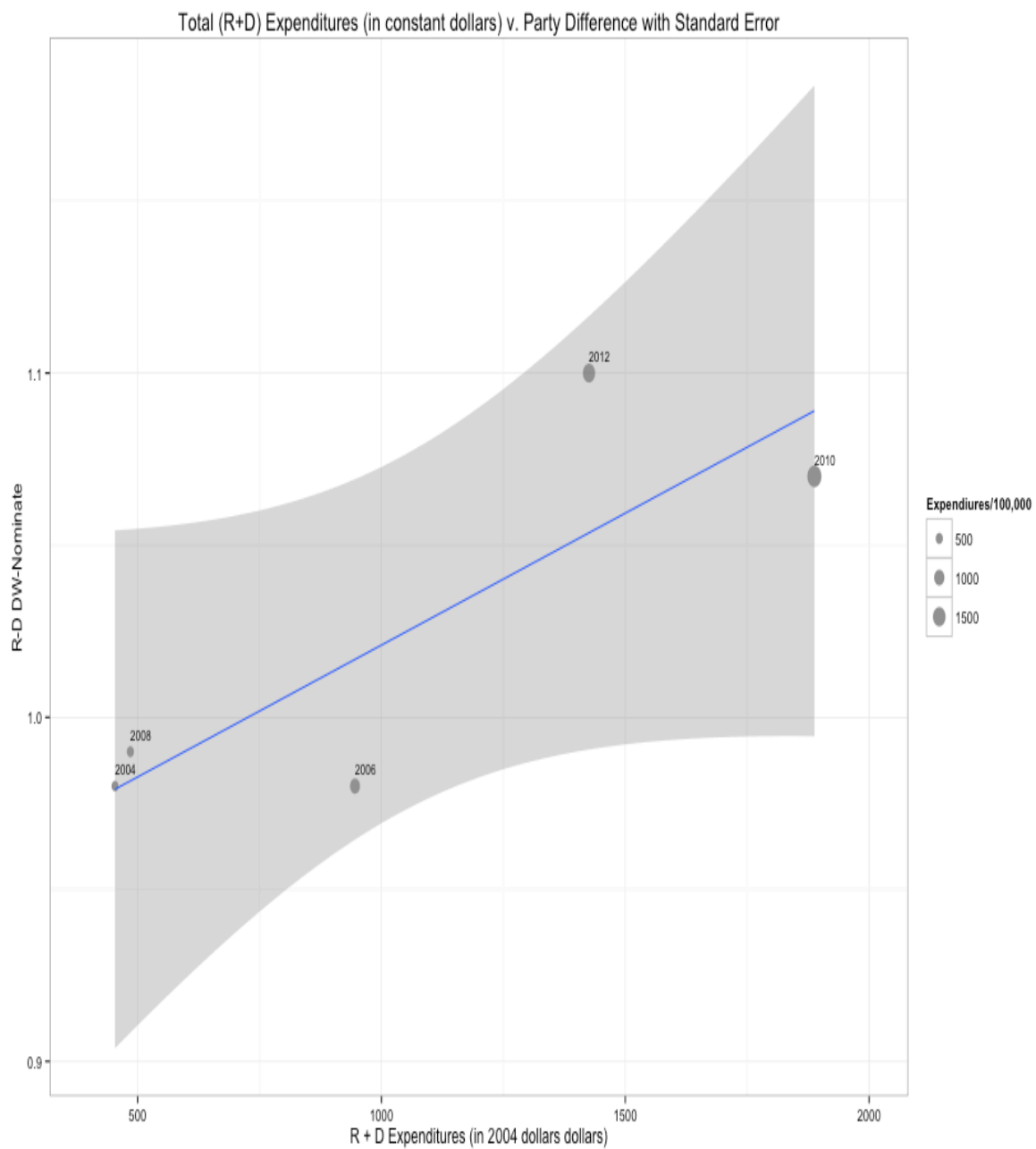














I posit that the *Citizens United* decision allowed significantly more independent expenditure money into the campaign finance system while simultaneously creating aggregating organizations in the form of super PACs. These super PACs tend to have significantly more partisan views than the electorate or the average politician, and those super PACs who tend to elicit the most donations tend to be the most partisan. The introduction of a new influx of independent expenditures and the rise of the super PAC means that those in Congress who appeal to the most powerful super PACs have an advantage in elections, as they will have more independent expenditures in their favor than their opponents who do not win the favor of the more powerful super PACs. Due to this need to win the favor of the most powerful super PACs, Congressional candidates must adjust their viewpoints to be more in line with the more powerful super PACs, which in turn causes a partisan shift in the Congressional electorate. This is further solidified by the looming threat that, if those in Congress solicit the assistance of particular super PACs during their election and do not espouse that particular super PAC's platform while in Congress, the solicited super PACs will then fund said member of Congress's opponent in the next primary. This makes each member of Congress beholden to the interests of the super PACs, and therefore increases partisanship across the board. While this may be a plausible causal mechanism, however, it may be incorrect or flawed.

While this correlation is very strong, and the causal mechanism I posit could possibly be true, it does not necessarily indicate that the *Citizens United* decision caused the increase of partisanship during this period, though it quite possibly could have contributed to it. Unfortunately, without direct evidence indicating causation, which is extremely difficult to manifest, it is impossible to conclude beyond a doubt that the *Citizens United* decision caused the increase in political partisanship during the period studied, particularly when this increase in

partisanship is also part of a longer trend of ever-increasing partisanship as previously described. However, this is still an interesting correlation to examine. Further research could give more insight into how the *Citizens United* decision has affected individual candidates. This could consist of case studies of individual members of Congress tracking their independent expenditure intakes, partisanship levels, and viewpoints on particular issues with respect to the viewpoints of those individuals or organizations that make independent expenditures on behalf of the member of Congress. This would allow insight into how particular members of Congress are affected by independent expenditures while controlling for other variables. A longer-term study into the effects of the *Citizens United* decision would also benefit the development of this thesis. The decision has only been in effect for five years at the time of this study, and the data pool is significantly restricted due to this fact. If *Citizens United* remains precedent for a significant period of time following this project, a longer-term study of its effects would assist in understanding the decision's effect on political partisanship and determining if this increase is a significant anomaly or just part of the greater overall trend of increasing partisanship.

### **Alternate Theories**

The change in levels of partisanship in the US House of Representatives since the *Citizens United* decision is probably not exclusively caused by the decision, and the correlation between independent expenditure levels and partisanship in the US House of Representatives could be explained by some other factors. In the literature review, I referenced Professor Richard Pildes' theory of increasing partisanship as a trend caused by the realignment of the two main political parties during and after the Civil Rights Era. Certainly after examining the overall trend of partisanship levels in the US, the current trend began its climb in the early-to-mid 1970s in the wake of the realignment. Pildes provides a fair argument and perhaps there is some merit to his

explanation of the trend, but while his explanation can explain the beginnings, he ignores a multitude of other factors that, in the years since the political realignment, could have influenced and furthered the trend of exponentially increasing political partisanship.

### **Implications**

The correlation between independent expenditure levels and political partisanship in the US House of Representatives reflect the real implications of the *Citizens United* decision on the legislative process in the United States and on the democratic process as a whole. Through unlimited independent expenditures and the introduction of the super PAC, groups and individuals with specific special interests are able to directly or indirectly influence how politicians vote on particular issues. Particularly in the House of Representatives, interest groups are able to easily sway how politicians vote on particular issues, for the money that they expend on the behalf or in opposition to particular candidates has the potential to decide both primaries and general elections for or against candidates. Furthermore, former representatives such as former Congressman Michael Arcuri have openly stated that they feel inclined to vote in line with those who expend on behalf of their campaigns, for, as Arcuri put it, “those who have the money need the favors done” (Arcuri). Though the Supreme Court declares that such expenditures do not cause “corruption or the appearance of corruption” in a quid-pro-quo sense, the notion that those with significant amounts of money to expend on behalf of particular candidates can create at least the appearance of some form of corruption. The effect that the increase of independent expenditures in the post-*Citizens United* era has had on political partisanship in the US House of Representatives gives credence to this notion. If independent expenditures can incline elected officials to hold increasingly more extreme views, seek less compromise, and align themselves more with those who possess the means to make independent

expenditures rather than all of those whom they represent, how can Congress still call itself a democratic legislature?

Indeed, many still view the lifting of limits on independent expenditures as potentially corrupting members of Congress. Recently, the United States Department of Justice indicted Senator Robert Menendez (D-NJ) on corruption charges. The charges stem from Senator Menendez's relationship with a Florida ophthalmologist who donated \$600,000 to a Democratic super PAC from his business, earmarking it to "be spent in New Jersey helping on the senator's re-election." In exchange, Menendez allegedly "intervene[d] in a Medicare billing dispute worth almost \$9 million" to his donor, among other alleged favors (Confessore and Apuzzo). Under the *Citizens United* decision, it would seem that neither Menendez's donor nor Menendez did anything illegal. However, the situation manifestly appears corrupt. This situation is a perfect example of how the residual effects of *Citizens United* can influence Congress. On one hand, the effects have the ability to further divide Congress, pushing candidates further to the extremes. On the other hand, they can clearly create the appearance of corruption in the Congressional election system in both chambers of Congress.

The Supreme Court has created a significant problem in the wake of its *Citizens United* decision. Justice Kennedy may have been correct when he stated that unlimited independent expenditures "did not give rise to corruption." However, he may have been incorrect in asserting that lifting the limits and restrictions on independent expenditures, equating money with speech, and enfranchising corporations with First Amendment free speech rights did not give rise to the "appearance of corruption" (*Citizens United v. FEC* [558 U.S. 310, 130 S. Ct. 876]). *Citizens United* significantly affected how the House of Representatives operated by contributing to the significant increase in partisanship following its deciding. Many, myself included, have viewed

this decision as influencing Congress to the point where Congress does appear to be corrupted and swayed by the amount of independent expenditure money spent in election cycles. While lifting the limits and restrictions on independent expenditures may only give rise to the “appearance of corruption,” the Supreme Court recognizes that avoiding the appearance of corruption is a compelling enough reason to impose restrictions on free speech (*idem.*). I have shown through my research that the lifting of independent expenditure limits and restrictions can have a powerful effect on the partisan tendencies of those who depend on maximizing financing to keep their jobs. Clearly, the *Citizens United* decision can have other residual effects that, though unintentional, serve to undermine the faith people have in the democratic electoral system that the US maintains. Though the Supreme Court may have never intended the *Citizens United* decision to give rise to this, the fact of the matter is that many US citizens now view the aftereffects of the decision as corruptive of the US political system. Perhaps the Court needs to revisit this issue in the near future, and sooner rather than later.

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