

TURNING MONEY INTO SPEECH:
CAMPAIGN FINANCE, POLITICAL ADVERTISING, AND THE CIVIC SPHERE

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Doctor of Philosophy

by
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TURNING MONEY INTO SPEECH:

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ABSTRACT

In this dissertation, I trace the history of campaign finance reform's influence on political advertising. I track the discourses held within Congress and court hearings to uncover what I call the money-speech paradigm, the ideological principles behind the construction of the marketplace of ideas. I then examine how the relationship between money and speech impacts the production of political advertisements to evaluate the strength of speech within presidential elections from 1976 to 2016.

My findings show that campaign spending is being increasingly reregulated to serve interest groups rather than the public. While more opportunities to engage in independent speech emerged, the number of truly autonomous groups has seen little change. In contrast, the number of political advertisers coordinating with one another regularly grows. This came about through a view competition that assumes diversity will naturally occur, resulting in the deregulation of political speech by emphasizing that political advertisers be independent from the government and not each other while expanding who can produce advertisements. As a result, the U.S. government left the diversity of speech unprotected. I use this data to suggest the use of a new metaphor for campaign finance reform. Specifically, I suggest that viewing campaign finance reform as the creation of icebergs-large dense networks of political power that are only partially visible is more apt than the hydraulics used by some legal scholars in the past.

CHAPTER 1: INTRODUCTION

Every four years, the United States goes through the same collective trauma: the presidential election. The race to determine who will lead the nation finds its way into every nook and cranny of our lives, from classrooms to personal discussions, to social media, and of course, to television. With the use of television comes, to put it eloquently, bucketloads of cash, much of which is for political advertising. While spending on online political advertising has risen, so has the amount of money spent on television, making it far from being a dead medium or one of dying relevancy.

But why can this happen? What gives candidates, political parties, interest groups, and the occasional concerned citizen the right to flood the airwaves with advertisements that Americans outwardly despise? The core justification is rooted in the ideals of deliberative democracy and freedom of speech. The conceptualization of freedom of speech determines engagement in the democratic process. The right to speech allows people to have their voices heard and ideas presented within the public sphere, challenging the positions of others to strengthen polity and policy. In electoral politics, campaign finance reform, the regulation of money used in the democratic process, wrestles with the relationship between money and speech. As legislation changes, so too does the relationship between money and speech, impacting regulations on political advertising.

It is not just the advertisements themselves that are speech. The *Buckley v. Valeo* Supreme Court decision legally defined money as the equivalent of speech. But the relationship between the two is not static. The ability and justification for using

rights, including the right to speak, mask the reinforcement of power and political domination (Bob 2019). Many efforts to establish reforms have focused on producing the “best speech” possible. But who receives the right to the “best speech” is suspect. While scholars have acknowledged the link between campaign finance reform and political advertising (Alexander 1976; 1992; Franz et al. 2008; Fowler et al. 2021; Jamieson 1996; West 2014; 2018), there is little in terms of in-depth analysis centered on the relationship between the ideology that guides campaign finance reform, notions of freedom of speech, and the production of political advertisements. The principles central to these relationships are well-known, but scholars have not fully uncovered the finer details. If free speech and the plurality of ideas are central to a strong democracy, but many of the organizations providing messages to the public are tied together, how strong truly is modern U.S. democracy?

POLITICAL ADVERTISEMENTS AND CONTROL OVER SPEECH

The public often sees political advertisements as some sort of strange perversion of the democratic process that is inherently misleading, generative of polarizing politics, and a threat to the health of a democracy (Franz et al. 2008; Ridout et al. 2018). While the reasoning of those who hold a more cynical view toward political advertisements is more than understandable, it may be an overstatement. Ansolabehere and Iyengar (1995) gained a great deal of attention for suggesting that negative advertisements demobilize the electorate, but the project had critical flaws. As Jamieson et al. (2000) pointed out, Ansolabehere and Iyengar (1995) relied on public reporting of advertisements to gauge negativity, and the media often overstates negative advertising

and understates the positive. In recent years research (Ridout and Franz 2011), including multiple meta-analyses (Lau et al. 1999; 2007), has shown the opposite. Negative advertising is as likely to mobilize voters as positive advertising. While the reason for this is not entirely known, Ridout and Franz (2011) suggest a simple and compelling answer: those who create advertisements are competent, meaning they understand what makes for effective political ads. Political advertisements are, overall, not particularly effective for mobilization (Coppock et al. 2020). However, political victories are won on the margins (Farrar-Myers and Vaughn 2015), meaning those differences should not be dismissed.

The question of effective mobilization is separate from the question of informativeness and how much voters truly learn about candidates and policies from advertisements. While political advertisements should not be the primary source of political knowledge, they do help voters learn more about candidates (Freedman et al. 2004; Franz et al. 2008). Policy-oriented political advertisements, particularly negative advertisements, help people learn about policies and candidate positions (Greer 2006). Young people learn a great deal about candidates and their policies through political advertising, though this does not necessarily translate into candidate favorability (Kaid et al. 2011). Most importantly, political advertisements generate public interest in the democratic process and allow the public to learn about candidates and policy (Faber 1992; Freedmen et al. 2004; Ridout and Holland 2017; Valentino et al. 2004). As people become more engaged with political advertisements, they also become more inclined to research candidates and policies (Housholder et al. 2018). Political advertisements

bolster previously obtained information helping voters with higher levels of political knowledge make sense of what they have learned about politics (Valentino et al. 2004). However, how much voters learn from advertisements and the merit of the information is very much contextual. The informative power of advertisements relies on finding the right tone, cues, and appeals to resonate with watchers (Dunaway et al. 2018). While ads are informative, high information voters tend to get more out of advertisements, expanding the knowledge gap among voters (Valentino et al. 2004). Additionally, just because advertisements discuss policy does not mean that the policies presented are accurate, and the most persuasive ads are those with misinformation (Allen and Stevens 2018; Kaid 2004).

Political Advertising as Speech

A common conceptualization of freedom of speech is likening it to a marketplace of ideas. The free exchange of ideas allows people to engage in their right to free speech and benefits the audience by providing more information (Peritz 1996; Redish 1984). At the center of debates on campaign finance reform is the issue of power and who can influence the democratic process (Dawood 2015; Mutch 1988). Many of these arguments, particularly from supporters of equating money and speech, focus on questions of liberty and property. Because the arguments centered around liberty, they focus on the right to act outside government constrictions, and efforts to reform spending laws become acts denying citizens' rights (Mutch 1988; Peritz 1996). In the context of political advertisements, this means that spending money on and airing political advertisements is a form of speech, with those who fund advertisements being

participants in the marketplace of ideas. This then makes campaign finance reform a way to regulate speech within a marketplace of ideas. Limiting campaign spending is, therefore, a form of censorship. If anything, more spending would arguably show the strength of democracy, as it shows far more public participation and investment (Alexander 1979; Redish 2001). By preventing individuals from expressing their ideas and limiting speech, legislation harms democracy by “frontal[y] assault[ing] the right of free expression, without a compelling, value-neutral justification” (Redish 2001:146).

Those who oppose the idea that money is the equivalent of speech are often concerned with issues of political equality and argue that money is simply an avenue to obtain speech, not speech itself. Excessive levels of campaign funding will favor the powerful and inevitably hurt democracy. When discussing media outlets, Klinenberg (2007) notes that deregulation is actually re-regulation, allowing economically powerful groups to consolidate, reducing public access to the airwaves. The same is true of political advertising. Even with over 1,000 television channels available, there is a limited amount of space for political advertising. Allowing larger groups to produce more advertisements and consolidate their messaging leaves smaller groups with fewer avenues for speech themselves. For those who advocate for some level of campaign finance reform in the name of fairness, these restrictions are perfectly reasonable limitations that help to protect democracy (Farrar-Meyers and Dwyre 2008).

Providing as many voices as possible access to the public involves ensuring a plurality of voices and transparency in media control (Perrin 2014). The ideal construction of democratic speech may be to have a larger number of voices espousing

different ideas (McCoy and Scully 2002). However, other scenarios exist. For example, it is possible to have a large variety of voices with little diversity in content or a few speakers discussing a broad set of issues (Baden and Springer 2017). These outcomes may be particularly true in more mediated approaches to speech, where media access can create major financial barriers.

Because political advertisements are key to political engagement, changes in who produces them influences public knowledge. Funding influences the diversity of speech, relationships among actors, and constrictions on advertising content. Control over funds can also influence the power dynamics of speech and political advertising. The rise of interest groups and consultants has been framed as a threat to political campaigns and parties, taking away their ability to maintain control over messaging (La Raja and Schaffner 2015). However, political advertisements from interest groups tend to discuss the same issues as the candidates they support, particularly candidate-specific outside groups (Franz et al. 2016). There are, however, other consequences of interest group activity. According to Coate (2004), when parties receive fewer campaign contributions they are more likely to be stringent with their advertising production and back fewer nominees. When deregulation occurs, outside spenders under less legal scrutiny become an increasingly favorable route for political expenditures (Dwyre 2020). As a result, the sponsorship of advertisements changes, which then in turn influences the public's response to the content of political advertisements (Dowling and Wichowski 2013; 2015; Nesbit 1988).

The legal system's ability to regulate political advertisements to ensure transparency takes the form of altering disclosure requirements, attempts to channel funds, and on occasion, the content of advertisements themselves. As disclosure regarding campaign spending increases, so too does public knowledge of those engaging in speech. Soft money, money that is not easily traceable from groups such as unions or business organizations due to limited disclosure requirements, regularly used for political advertising. In recent years dark money, money from organizations that do not need to reveal their donors, has gained prominence (Fowler et al. 2021; OpenSecrets n.d.; West 2000b). This lack of transparency impacts public knowledge about the source and merits of the information provided. The various groups producing advertisements come forth with a variety of agendas. In the 1990s issue advertising gained prominence through third-party sponsors under the guise of general education. In these advertisements, organizations could not specifically endorse or condemn candidates but would often allude to their allegiances (Fowler et al. 2021; West 2000b). In 2002, the Bipartisan Campaign Reform Act (BCRA) created Stand by Your Ad (SBYA) legislation, the source of the "I am _____, and I approve this message" and "paid for by _____" slogans in advertisements to create some semblance of transparency. This seemingly minor change held the potential for major ramifications for the public interest. Gale et al. (2005) found that having an SBYA statement resulted in voters having more confidence in the content of a political advertisement. However, this study excluded PACs and was done before the existence of Super PACs.

The independence of the rising number of outside interest groups is questionable. However, focusing on changes in sponsorship and its influence on the public says nothing about the influence of any particular piece of legislation, the interpretive understanding of money and speech, or coordination between candidates and outside groups. This returns us to the fundamental question: How do the discourses surrounding the relationship between money and speech evolve, and how do these evolutions influence political advertising?

A DISCURSIVE INSTITUTIONALIST ANALYSIS OF CAMPAIGN FINANCE

If reforms determine the organizational setup of the airwaves, then what determines reforms? I argue that at the heart of reforms are the ideas surrounding money and the right to free speech. In the United States, freedom of speech is embedded within the constitution as a fundamental right. Yet ideas develop over time leading to reinterpretations about the role of speech in society. These ideas about speech are established within the legal system and then move outward toward the public. This is not to say that the ideas emerge spontaneously on the floor of the Senate. External forces such as think tanks, lobbyists, social ties among politicians, and even elected officials' personal experiences all contribute to the ideas considered for legislation. Rather, ideas are refined, finalized, and placed into action within the state and the legal system. A discursive institutionalist framework provides a solid understanding of these relationships. Discursive institutionalism is an interpretive and ideational approach to neo-institutionalism centered on discourse and deliberation. Discursive institutionalism sees actors as driven by the ideas that shape their worldview,

providing them the ability to reshape political institutions and social behavior (Cartensen and Schmidt 2015; Peters 2012; Schmidt 2008).

Neo-institutionalism focuses on the establishment and use of procedures founded through rational action to keep some level of order, analyzing how said organizations develop and operate (Jepperson 1991; Meyer and Rowan 1991). According to Schmidt (2010a:57), discursive institutionalism focuses on “who talks to whom about what when how and why, to show how ideas are generated, debated, adopted, and changed as policymakers, political leaders, and the public are persuaded.” The discursive institutionalist approach examines social interactions where agents carry forward and enact different ideas (Schmidt 2010b; 2011). Discursive institutionalism draws upon other neo-institutionalist traditions, particularly historical and sociological institutionalism to focus on how actors shape, discuss, and use ideas to push society forward (Cartensen and Schmidt 2015; Schmidt 2008; Schmidt and Radaelli 2004).

One key institution is the public sphere, particularly when analyses focus on deliberation and discourse (Jepperson and Meyer 1991; Schmidt 2008). Wood and Warren’s (2002) conceptualization of the public sphere has three components: the lawmaking process and governing bodies, “political society”—the realm of politicians, lobbyists, and political elites, and the civic sphere, all linked through institutional bridges¹ (Wood and Warren 2002). These components find themselves connected in a linear fashion, where lawmakers dictate information to political society, who then use

¹ Schmidt (2008) argues that there are two aspects of the public sphere, the coordinative sphere and the political sphere. Combined, lawmakers and political society shape the coordinative sphere, while the political sphere is akin to the civic sphere.

these regulations to guide how they communicate within the civic sphere. However, influence comes from all directions, including the civic sphere placing pressure on lawmakers guiding policy initiatives (Schmidt 2010a; 2011). For example, when thinking about the relationship between campaign finance reform and political advertising, the discursive institutionalist approach looks at how ideas can change how different elements of the public sphere inform one another restructuring the free market of ideas. Lawmakers make the rules and create the meaning behind behavior in the market of ideas. Political society shapes the actors within the market, and the civic sphere is where the public consumes information. What links elements of the public sphere together are social carriers: individuals and groups that can communicate rules and their ideological justifications between areas of the public sphere (Kalberg 1994; 2012; Peters 2012; Schmidt 2010a; 2010b).

Discursive institutionalism's reliance on social carriers is fit for analyzing the relationship between campaign finance, media, and the democratic process. If campaign finance reform is to be for the purpose that Post (2014) and Hasen (2016) say, that it is, an issue of political inequality, then the new institutionalist family of approaches is ideal due to their attention to political processes with a sensitivity toward influences both on and within the state. This differs from the more elite and class domination-based approaches mapped out by Domhoff (2014) and Peoples (2019) that look at campaign finance reform as a question of "who wins" and their argument that institutionalist approaches frame outcomes as random and inconsequential. While the class dominance approach provides tremendous insight, I disagree with this understanding of

institutionalism. The new institutionalist approach does see consequences as important. However, new institutionalism focuses on understanding the normative processes and conditions that shape the fundamental and ideological nature of the relationships between money, politics, and society to reach that point. This comes not just from donations and the larger elite networks espoused by those from a more Domhoffian tradition, as those networks face constraints by state-based decisions that are allegedly bound to the rule of law and not necessarily under their complete control. In other words, a discursive institutionalist analysis of campaign finance focuses on the ideas, settings, and processes that generate inequality rather than a mere execution of power.

The discursive institutionalist approach frames institutions as social settings where actors can develop philosophies and rules and attempt to enforce them (Schmidt 2008; 2011; Zucker 1991). These philosophies restrain and enable different forms of social action (Schmidt 2010b). At the level of lawmaking, debates over how and why to regulate campaign spending occur. Opinions on whether it is or is not acceptable to regulate campaign spending range from justifying limits to preserve the largest number of voices possible (Hasen 2016) to arguments that any sort of reform is censorship and an attack on the First Amendment (Redish 2001). The debates' resolutions determining the values used to justify regulations are encoded into a systemized law, providing the power and legitimacy to attempt to enforce these ideologies on political society and the civic sphere (Schmidt 2010b; Scott 1991; Weber 1922[1978]). When successful, the result is a direct reshaping of political institutions, redirecting and restructuring the use of campaign funds, and as a result, the democratic process (Issacharoff and Karlan 1998;

Kang 2005; 2006; Ray 2003; Stiglitz 2012). Through the regulation of donations and expenditures, the financing of politics contributes toward the restructuring and organization of political society and the civic sphere, changing how the public engages in the democratic process.

Lawmakers: The Ideological Component

Lawmakers hold the legal legitimacy necessary to regulate campaign spending, which influences other elements of the public sphere, something central to the ideational power of discursive institutionalist thought (Schmidt 2010a). This allows for the ability to shape and formulate the free market of ideas, determining if and when it has merit, how money helps to engage with the public, and who has the right to do so. Through control over ideational power, political actors influence the prominence of different ideas and conceptions of democracy necessary for society to function and progress (Cartensen and Schmidt 2013; Ray 2003). As the power of social institutions finds itself in jeopardy, the interactions within them become visible, making for noticeable moments in time where institutional changes can occur, in part due to new social contexts and perceptions of situations held by the actors involved (Block 1987; Schmidt and Radaelli 2004). It is also at these moments where the government is subject constitutional capture, wherein actors can lock in ideological positions for their own gain and nondemocratic purposes (Starr 2019). The discursive institutionalist approach looks at the interactions and discourses within these key moments to see which ideational concepts can take control, reshaping the framing of future social action. This is particularly key as these critical moments allow new ideas to come

forward, solidify, and guide future behavior (Cartensen and Schmidt 2015; Schmidt 2008; 2011). In the context of campaign finance reform, these discourses focus on ideas such as equality, transparency, and freedom of speech.

Schmidt (2010b) notes that institutionalist ideologies transmit text and context developed through ideological concerns. Control over said ideas allows for the power to shape ongoing discourses and future discourses, determining what actions are acceptable and how they are interpreted (Cartensen and Schmidt 2015; Kalberg 1994; 2012; McCann 1999). While this may not necessarily force them to act in a certain manner, it does contextualize behavior, allowing legal interpretations to influence political action's rationality and significance (McCann 1999). New interpretations of the law and what constitutes "speech" impact what lawmakers communicate to other elements of society.

The reform process is similar to Weber's (1922 [1978]) concept of the systemization of the law, where the legal system attempts to incorporate and operationalize a wide series of values into regulatory action. Among the challenges within the systemization of law is the need for the legal system to be "gapless," or at the least appear to be so, reducing the number of loopholes (Weber 1922 [1978]). Reform efforts focus on attempts to limit the number of gaps. In many cases, doing this involved limiting the government's interest in regulation. Dwyre (2015) refers to campaign finance reform as being in a state of policy drift, wherein there is a lack of alignment between the rules and regulations on how spending occurs. This state of policy drift ties campaign finance reform back to discursive institutionalism. Notably, reforms

attempting to rectify policy drift pay attention to the normative interests of a democratic body and the cognitive ideas of how to ensure that the democratic process works. As opposition challenges regulations, new pushes for reform emerge, building a path-dependent process wherein legal changes can serve as critical junctures shaping future developments (Capoccia 2015; Heerwig and Shaw 2014; R. Smith 2008).

When policies are not gapless, crises moments for reforms emerge (Schmidt 2008). Some political actors push for campaign finance reform because they wish to create a fairer system. However, in many cases, political and economic actors utilize the gaps in campaign finance law to maintain power and have little incentive to push for significant reforms. Other regulatory decisions focus on expanding the justifications for spending (Alexander 1976; Clawson et al. 1998; Hasen 2016; Mutch 2014). The utilization of these gaps must garner the most attention in the discursive institutionalist approach to campaign finance. These gaps help create the critical moments that allow for new reforms, only to create future gaps setting off a new wave of reforms.

Political Society: Donations, Involvement, and Influence

Not only is the legislative component of campaign finance reform ideological, but the enforcement of the ideology via systemized law results in structural changes to other elements of democracy, notably political society. These structural changes alter the distribution of resources, particularly money, within the electoral process (Ansolabhere et al. 2003; Clawson et al. 1992). Political society's involvement with campaign finance is often associated with major donations to candidates. These can influence electoral outcomes and help establish long-term relationships between

politicians and other members of political society, influencing policy (Hacker et al. 2015; Peoples 2010; 2019; Starr 2019). Whether speech or not, political society's expenditures are a tool for indicating social carriers by pointing out which groups are attempting to push their ideological concerns on both politicians and the public through media.

The Civic Sphere: Expenditures and the Structure of Democracy

The institutional changes pushed upon political society by lawmakers also have consequences for the civic sphere. Political society spends money on political ads to reach the public. On the one hand, this meets one of the key duties of political institutions regarding the marketplace of ideas: reducing the time, energy, and cost of exposing the public to ideas (Blocker 2008). By developing and airing political advertisements, political society exposes the public to a plethora of ideas, potentially shaping the decisions made by the public (Atkin et al. 1973; Freedman et al. 2004; Fowler et al. 2021; Jamieson 1996; Smythe 1977). On the other hand, this presents a problem for the civic sphere, as political society can use media systems to infiltrate civic life, potentially altering deliberative outcomes (Schmidt 2010b; Westby 1966).

When thinking about campaign finance reform and its relationship to the civic sphere, I see expenditures as the ultimate product of reform. Regulations on expenditures determine how politicians and other actors can spend money to influence the electoral process (Corrado 2014; Franz et al. 2008; Kang 2005). This spending is how the public meets its potential representatives and ensures some form of political victory. From a discursive institutionalist perspective, this also shows the ability to maintain power over ideas, determining what information the public receives (Cartensen and

Schmidt 2015). Campaign finance reform results in the redistribution of funds within political society, influencing who produces advertisements (Fowler et al. 2021; Jamieson 1996). How candidates attempt to use these resources determines how they interact with voters, their support team, and political opponents.

For this reason, expenditures are the “felt consequences” of the electoral process for most citizens. As “felt consequences,” expenditures can alter electoral results, assuming candidates are perceived as viable and competitive (Bowler and Donovan 2011; Trumm et al. 2017). This also reflects the ability for institutional decisions to alter the structure of the democratic process, as regulating campaign spending influences when and how the public interacts with campaigns (Kang 2005).

The stories of campaign finance reform and political advertising are inseparable. Understanding political advertisements means it is necessary to root ads in their cultural and historical context, including the regulation of airtime, the perceived role they play in the democratic process, and how they affect the public (Kaid and Hotlz-Bacha 1995; Johnston and Gerstlé 1995; West 2014). Fowler et al. (2021) argue that campaign finance reform creates the “rules” for political advertising and Heard (1960) points out that political advertising is one of the few areas of campaign finance that is easy to regulate. By ensuring disclosure, dictating which groups can spend money, and changing advertisements’ content, these pieces of legislation can also influence what people think and say, a key aspect of ideational power (Cartensen and Schmidt 2015).

Regulating campaign expenditures relies on a systemized ideology driven by different conceptions of money, often treating it as equivalent to speech. These

regulations influence public involvement in the democratic process by influencing what is said to the public and who can say it (Redish 2001; Hohenstein 2007; Urofsky 2005). Campaign finance reform changes who can “speak” within the public sphere via media, impacting how the public receives their knowledge and their relationship with who provides it (Altheide 1985; Dowling and Wichowsky 2013; 2015; Schudson 1999).

Schudson (1997) argues that the “speech” that makes up democracy comes not from the ground up but stems from institutions and media organizations’ ability to distribute information. This is certainly true when considering political advertisements as a form of speech. Changes in spending regulations influence who can produce advertisements; following this line of reasoning, there is a compelling interest not only to regulate access to airwaves but also the cost to air advertisements. Controlling the cost of advertising allows more groups to have potential access to the airwaves, a concern for many politicians as a lack of resources can lead to the inability to respond to candidate criticisms (Alexander 1976; Allen and Stevens 2018).

Advertisements construct the civic sphere by informing the public on policy positions, current events, and how candidates will govern, allowing people to express their political concerns to the public (Jamieson 1996; Kalberg 2014). Political advertising shares political ideals and cultivates audiences, attempting to influence whom the public pays attention to, potentially influencing content (Smythe 1977). The very fact that it costs money to engage with television advertising limits how free and open speech can truly be (Price 1995). Therefore, the cost of political advertisements, both in terms of production and purchasing airtime, makes inequality of access to airwaves a central

challenge for the civic sphere, leading to some groups and candidates gaining disproportionate attention (Alexander 1976; Patterson and McClure 1976). However, legislative efforts can protect some level of openness (Alexander 1976; 1979).

METHODS

The creation of the public sphere is an ongoing process in need of continuous maintenance (Dahlgren 1995). This project looks at the active maintenance of the public sphere through an analysis of how changes in campaign finance law influence televised political advertising in presidential elections from 1976, the election first impacted by *Buckley v. Valeo*, which determined the money was the equivalent of speech, to 2016, the second election impacted by the *Citizens United v. FEC* ruling.

To analyze the relationship between campaign finance reform, freedom of speech, and political advertising, I utilize a comparative sequential analysis that would fall into the category of what Skocpol (1986) considers interpretive historical sociology. Particularly, I seek to understand the concepts and make sense of political actors' meaning, following their evolutions and influence. Relying on a discursive institutionalist approach, I treat ideas as influential causal factors to indicate institutional behavior and search for how different ideas may produce different outcomes (Schmidt 2008; Skocpol 1986; Somers 2008).

The comparative sequential method highlights a series of cases, with similar but comparable aspects within each case, drawing contrasts and tracing changes. Within each of these cases are occurrences, which are moments in time that are unique to each specific case (Falleti and Mahoney 2015; Haydu 1998). I define cases through major legal

decisions in campaign finance legislation, wherein new legislative decisions shape social action. This aligns with discursive institutionalism's focus on ideas and discourses, which rely on individual social carriers to move forward (Haydu 1998; Schmidt 2008; 2015). Breaking events into smaller blocks allows for the ability to make sense of the different ways that a single problem is regularly being addressed, highlighting switchpoints that indicate new and different ways of approaching problems (Haydu 1998). These switchpoints serve as what Schmidt (2011) identifies as critical moments in a crisis-driven approach to institutional and policy change: points in time where discursive shifts occur, allowing for new sets of ideas to emerge and reshape future behavior. At these points in time, there is the opportunity for political change either reifying ongoing views or allowing for new paths to be taken and explored (Starr 2019). As a result, a causal relationship emerges, where each unique set of legal rulings shapes campaign communications as the ideas that emerge within previous cases help inform future ones (Falleti and Mahoney 2015). This project examines five key sequences based on crisis moments identified through changes in campaign finance law:

1. 1976 (FECA 1971-1976/*Buckley v. Valeo*)
2. 1980-1988 (FECA 1980/*Boston v. Bellotti*/*FEC v. NCPAC*)
3. 1992-2000 (*Austin v. Michigan*)
4. 2004-2008 (McCain-Feingold)
5. 2012-2016 (*Citizens United*)

Within each of these discursive shifts is a series of occurrences. If each case is the reign of different campaign finance legislation, then Presidential elections can serve as

occurrences. While this may seemingly stand in contrast to what Falleti and Mahoney (2015) outline as occurrences, as they focus on phenomena that only happen once, no two presidential elections are identical. Each election comes with its own scandals, controversies, and advertisers in their distinct political moments. For this reason, I treat Presidential elections as regularly occurring irregular occurrences.

Combined, this data creates larger temporal sequences that are not just comparable to one another. Past cases inform future ones, highlighting each case's uniqueness and significance within the larger narrative (Falleti and Mahoney 2015). This involves three key steps. First, identify the discursive process that helps create campaign finance reforms that (re)shape the meaning of the relationship between money and speech. Second, identify who within political society creates advertisements that engage in the civic sphere. Third, determine the interconnecting relationships among these members of political society and their implications for political communication. This provides the ability to cover how all three aspects of the public sphere presented by Wood and Warren (2002) are tied to public discourse. If only a few groups produce advertisements, or there are many tightly connected groups producing ads, then the idealization of creating a greater amount of free speech may not be a reality.

Discursive shifts are also subject to additional temporal influences in need of consideration (Falleti and Mahoney 2015). Within this project, these factors influence both the reform and campaign process: questions of who is working to shape policy outside of government, the nature of partisan politics, and the makeup of the Supreme Court all play critical roles in discursive shifts. Additionally, it is important to note the

“drift” of different political ideas, wherein ideas are introduced early on but do not gain influential power until later stages in the historical process (Hacker et al. 2015).

Data on Lawmakers-Legal Records

The data for this project that maps out the ideas and influence of lawmakers primarily consists of legislation, congressional debates and hearings, and Supreme Court hearings (hereby collectively referred to as “legal records”) to uncover the ideologies and discourses shaping the construction of campaign finance law. These legal records highlight what ideas are presented within the foreground of political debates, examining the values and meaning behind ideas proposed within legislation. These ideas come from a multitude of actors external to the state. Notably, right-wing think tanks, activist groups, and other noteworthy research institutes have all helped inform Congress and lawyers who make appeals to the Supreme Court. I identify many of these influences via primary sources, notably government reports (particularly from the FEC) and archival records at various presidential libraries. I also utilize secondary sources.

As time progresses, the range of acceptable and utilizable ideas narrows, limiting future decisions as undoing past actions becomes increasingly costly and actors are conditioned by previous choices (Pierson 2004; Starr 2019). These then produce a series of causal chains, serving as the direct mechanism shaping social action. Causal chains are stronger when fewer links allow for fewer spurious factors (Gross 2018; Pierson 2004). The discursive institutionalist process lends itself to more direct approaches as the ideas that shape reform efforts directly influence political society, guiding how they interact with the public.

Data on Political Society and the Civic Sphere-Making Sense of Spending

When looking at political advertisements as a form of speech, it is important to identify who is “speaking,” i.e., producing political advertisements. Finding sources for this data and putting the pieces together is more complex than looking at legal records. At first glance, it may appear that the best way to do this would be to go to the Federal Election Commission’s (FEC) archives and look through expenditures made by groups, conveniently marked as being “for” or “against” a particular candidate. There are, however, problems with this method. The early FEC records are not sortable by the type of expenditure made with political actors’ records stored across multiple rolls of microfilm. If one were to look at the FEC records without a pre-created list of known advertisers, it would be equivalent to attempting to navigate through a labyrinth made of microfilm while blindfolded. FEC records are often vague, making them potentially misleading. While there are cases where groups are explicit about using the money for television time, other times, they merely claim expenditures are for “media” or “production,” making it unclear if it is for television, radio, or print. Additionally, the FEC does not keep track of undisclosed expenditures, meaning large amounts of information on spenders is missing, particularly for elections post-1996. The alternative is to use archival databases of political advertisements that include ads from interest groups that do not report to the FEC. But no archive holds every advertisement made, meaning approaching different archives may produce different results. In addition, these archives often exclude information on production expenditures and when and if ads aired.

My solution to addressing the shortcoming of these archives is simple but ambitious: combine information from each archive and FEC records to create a comprehensive list of speakers. I combine four archives within this project: the Kanter Media Archive at the University of Oklahoma, the Wisconsin Advertising Project (WiscAds), and its spiritual successor, the Wesleyan Media Project (WMP) (Fowler et al. 2017; 2020; Goldstein and Rivlin 2007; Goldstein et al. 2002; 2011)²³⁴⁵⁶.

²The data was obtained from a joint project of the Brennan Center for Justice at New York University School of Law and Professor Kenneth Goldstein of the University of Wisconsin-Madison, and includes media tracking data from the Campaign Media Analysis Group in Washington, D.C. The Brennan Center Wisconsin project was sponsored by a grant from The Pew Charitable Trusts. The opinions expressed in this article are those of the author(s) and do not necessarily reflect the views of the Brennan Center, Professor Goldstein, or The Pew Charitable Trusts.

³ The data were obtained from a project of the University of Wisconsin Advertising Project includes media tracking data from TNSMI/Campaign Media Analysis Group in Washington, D.C. The University of Wisconsin Advertising Project was sponsored by a grant from The Pew Charitable Trusts. The opinions expressed in this article are those of the author(s) and do not necessarily reflect the views of the University of Wisconsin Advertising Project or The Pew Charitable Trusts.

⁴ The data were obtained from a project of the University of Wisconsin Advertising Project includes media tracking data from TNSMI/Campaign Media Analysis Group in Washington, D.C. The opinions expressed in this article are those of the author(s) and do not necessarily reflect the views of the University of Wisconsin Advertising Project.

⁵ The data were obtained from the Wesleyan Media Project, a collaboration between Wesleyan University, Bowdoin College, and Washington State University, and includes media tracking data from Kantar/Campaign Media Analysis Group in Washington, D.C. The Wesleyan Media Project was sponsored in 2012 by grants from The John S. and James L. Knight Foundation and The John D. and Catherine T. MacArthur Foundation. The opinions expressed in this article are those of the author(s) and do not necessarily reflect the views of the Wesleyan Media Project, Knight Foundation, MacArthur Foundation or any of its affiliates.

⁶ The data were obtained from the Wesleyan Media Project, a collaboration between Wesleyan University, Bowdoin College, and Washington State University, and includes media tracking data from Kantar/Campaign Media Analysis Group in Washington, D.C. The Wesleyan Media Project was sponsored in 2016 by a grant from The John S. and James L. Knight Foundation. The opinions expressed in this article are those of the author(s) and do not necessarily reflect the views of the Wesleyan Media Project, Knight Foundation, or any of its affiliates.

I gathered additional information from Eric M. Appleman's *Race for the White House* records (democracyinaction.us. n.d.), which identified not only additional advertisements aired but also a small number of political advertisers and the airdates of specific advertisements. I used two supplementary sources: *Packaging the Presidency* by Kathleen Hall Jamieson (1996) and a report on soft money spending from the Annenberg School (Beck et al. 1997). Political advertisers that qualified for analysis fell into one of the following categories:

1. Major candidates: Presidential candidates that made it to the debate stage. Normally, this meant simply the Democratic and Republican nominees. However, this also includes Ross Perot in the 1992 election.
2. National-level parties that produced political advertisements: The Democratic and Republican Party.
3. State-level parties that produced political advertisements independently: State-level parties with unique expenditures on advertisements "for" or "against" candidates. However, those who only produced advertisements solely bankrolled by national parties are excluded.
4. Outside political advertisers: This category consists of all "other" political advertisers, ranging from issue advocacy groups to Super PACs. Essentially, any non-candidate, non-party political advertiser.

In total, I identified 192 non-candidate/non-national party political advertisers.

Appendix A is a complete list of these groups and the elections they participated in.

To analyze data from 1976 to 1996, I use records from the Kanter Archive, the FEC, and the aforementioned works by Jamieson (1996) and Beck et al. (1997). The Kanter Archive maintains records of who produced and sponsored advertisements in Excel spreadsheets. However, these lists are incomplete. To complete them and further identify non-candidate, non-party groups that produce them, I went to the University of Oklahoma during the Summer of 2019. With the aid of a research assistant, we coded all advertisements under a minute in length for their sponsors and any information provided regarding production. For the sake of time management, we did not watch and code every advertisement. We skipped any pre-identified advertisements that could be associated with parties or primary races⁷, Spanish advertisements without translations⁸, duplicate ads⁹, and ads identified as being unaired.

1996 saw the beginning of the rise of soft money in political advertisements, which then took off to new extremes for the 2000 election (Beck et al. 1997; Dwyre 1999; Franz et al. 2008; Mutch 2016). For this reason, the WiscAds and WMP databases provided records for the 2000-2016 elections. These databases provide storyboards or videos of each advertisement aired in 80% of the U.S.'s media markets. I cross-referenced this with data from the Kanter Archive to see if any data that may be missing or misfiled in the WiscAds and WMP datasets were available elsewhere, further

⁷ For instance, ads involving Steve Forbes, who ran in the 1996 and 2000 Republican primaries.

⁸ Due to my own lack of fluency in the language. However, most advertisements in Spanish found were from political advertisers with English advertisements or an already identified sponsor.

⁹ As defined by having identical names, consulting firms, or if identified as “duplicate” or “near duplicate” in the notes within their records.

providing robustness of data. In addition, I included political advertisers that produced advertisements airing between July 1st and Election Day of any given cycle, either identified through expenditures within the identified date range or record of airdates. However, while comprehensive in data analysis, this on its own does not fully explain how to address the limitations of archival work involving political advertising.

The Issue of Archives

Archives of political advertisements in the United States are imperfect. They are often subject to missing advertisements and may not note if advertisements were produced but unaired. This is particularly true of the Kanter Archive, though the WiscAds/WMP databases have also faced criticisms (Geer 2006; Jamieson et al. 2000). The Kanter Archive's major criticisms stem from Jamieson et al. (2000) and are threefold: the risk of missing advertisements, the fact that the archive does not specify the airdate of advertisements, and the fact that the archive does not differentiate between aired and unaired advertisements. In the following paragraphs I address these criticisms to the fullest extent possible.

First, while the Kanter Archive is incomplete, Jamieson's critique of the archive is rooted in looking to make generalizations about the negativity of advertisements and the frequency at which negativity occurs (Jamieson et al. 2000). However, the concerns remain the same: groups that produce advertisements may be missing from the Kanter Archive. Jamieson et al. (2000) propose the use of an alternative dataset, The Annenberg/Pew Public Archive of Campaign Disclosure (2000), stemming from Jamieson's (1996) seminal book, *Packaging the Presidency*. However, this dataset does

not include data on third party advertisements, removing its usefulness for this project. According to Geer (2006), the Kanter Archive is still the most comprehensive dataset for pre-2000 advertisements. However, when there are known missing advertisements, it requires consideration. Hence the inclusion of political advertisers identified through FEC archives, *Packaging the Presidency*, and the work by Beck et al. (1997).

The use of FEC data on campaign expenditures helps to address the second concern. FEC data allows for the ability to unveil when groups spent money on advertisements. I combine expenditure data with news coverage (as FEC records allow for a fair amount of vagueness in their reporting) to identify the date of advertisement production. If there were expenditures made during the presidential electoral cycle (which I define as ranging between July 1st to Election Day) or news coverage of advertisement production/airing/unveiling, I assumed that these groups ran advertisements. If I found no records, I included ads based on advertisements' content (for instance, does it explicitly discuss the primary? Does it talk about presidential and vice presidential picks?). I excluded advertisements if there were no indicators that they were for the general election, or they appeared to be explicitly devoted to primaries.

The third challenge of unaired advertisements is also an issue. While it is, in part, addressed through FEC records and news coverage, there are cases where groups pay for advertisements but said ads do not end up airing (Franz et al. 2008). For the sake of this project, these groups are still making a serious effort to engage within the public sphere due to their right and ability to purchase airtime, even if the advertisements themselves never reached any viewers. To further account for this, I incorporated

Jamieson's methodology when possible, relying on personal correspondence to verify ad production (Jamieson 1996; Jamieson et al. 2000). I found potential contact information for two groups, Rural Americans for Fairness and American Women for Supporting the President but could only reach Rural Americans for Fairness. If there were no records of airing or production and the advertisements appeared designed for the presidential election, I noted this in the analysis.

1996 marked the beginning of a turn toward using soft money, which took off in the 2000 election, which holds two implications. First, the Kanter Archive becomes more susceptible to incompleteness. Second, because issue advocacy groups do not have to report their expenditures to the FEC, the records showing which groups are spending money during the primary or during the general election become more limited in scope. However, the switch to additional datasets and reporting on top of the Kanter Archive overcomes these shortcomings. For 1996 I used the Annenberg School's report on issue advocacy groups (Beck et al. 1997) to point to additional political actors involved in said election, and from 2000 onward, I used the WiscAds/WMP datasets. This switch allows for the ability to best account for the boom in soft money. The advanced tracking capabilities of these datasets allow for the accumulation of more advertisements and records of airdates. This means that the data provided post-2000 by the WiscAds and WMP datasets better accounts for the major historical turn and the rise in soft money and removes the risk of including unaired advertisements. This does not mean that the Kanter Archive is no longer useful, as it still contains records on ad production not found within WiscAds and WMP, particularly regarding consulting firms. When available and

relevant, I used this information. At first, it seems as if there may be a disparity between these datasets and the Kanter Archive. Notably, they will have a larger record of advertisements. However, the development of these datasets aligns with pre-established historical changes in campaign advertising and provides a stronger account for the last five elections within this study. The new era called for a newer dataset that was more fitting for said historical change. Though these archives, too, are not without criticism, as they cover the overwhelming majority—but not all— media markets in the United States, meaning once again, there is some missing data. However, it is still more accurate and a better reflection of post-2000 advertising.

There is a need for extreme caution when doing historical research on political advertising and the ability to generalize based on said information (Jamieson et al. 2000). However, when limitations are accounted for and handled with care at both the empirical and theoretical levels, insights are possible.

AN OUTLINE FOR THIS PROJECT

The remainder of this project consists of the empirical findings and their larger implications for the relationship between campaign finance, political advertising, and the public sphere from a discursive institutionalist perspective. Chapter two explores the operational principles of the free market of ideas, which I call the money-speech paradigm. Chapter three examines the initial establishment of the ideas that created the basis between money and speech in FECA, and *Buckley v. Valeo*.

Chapter four looks at the 1980s and the influence of *Boston v. Bellotti* and *FEC v. NCPAC*. These cases further solidified the relationship between money and speech,

reinforcing the marketplace of ideas in the process. With this came the first emergence of major coordination among candidates and outside groups. Chapter four also highlights the introduction of soft money into the electoral process. Chapter five, an analysis of the 1990s, highlights the beginning of a new wave of reformation efforts via *Austin v. Michigan*, though the Supreme Court chose to maintain the status quo. As a result, political advertisements' structure and organization follow the logic established in the previous decade, resulting in a radical expansion in soft money.

While there was no change in campaign finance law within the 1990s, discontent with the state of soft money was growing. Chapter six tells the story of Congress's frustration with soft money and their attempt to reimagine campaign finance law through the development of BCRA. After BCRA was signed into law, a conservative backlash undid many of Congress's regulatory efforts. As a result, political advertisers began to reorganize with new engagement opportunities.

Chapter seven highlights the *Citizens United v. FEC* case and *SpeechNow.org v. FEC*, which combined reworked campaign finance law. These decisions reconfirmed the importance of the free market of ideas changing whom the legal system benefits and allowing for the creation of Super PACs. Finally, chapter eight concludes this project, reviewing the previous chapters, exploring their meaning for speech, the free market of ideas, and what policy solutions may remedy the ongoing challenges within U.S. democracy.

CHAPTER 2: THE FREE MARKET OF IDEAS AND THE MONEY-SPEECH PARADIGM

Because of their *potential* informativeness, rather than treating political advertisements as an anti-intellectual endeavor or a supplementary material, I view the production of political advertisements is an exercise in the free market of ideas (also referred to as the marketplace of ideas). The concept of a free market of ideas rests heavily on the free and open exchange of information from a diverse group of sources, with as little government involvement and regulation as possible. Moreover, the free market of ideas holds ideological components associated with economic and democratic theories, though the emphasis on the democratic aspects has radically decreased (Napoli 1999).

In terms of economic theory, the free market of ideas heavily relies on the notion that competition allows the best ideas to emerge and reign supreme, providing an efficient mechanism to support public information (Blocher 2008; Napoli 1999; Peritz 1996). Approaching markets sociologically brings attention to both concerns over exchange and competition. These two components link markets to society, highlighting the impact of the social structure of markets and the role of politics in their creation (Fligstein 1996; Swedberg 2003). However, the free market of ideas does not operate completely in parallel with markets for physical goods. Notably, people do not actively go out to consume new ideas, and rarely do they voluntarily consume and adapt them (Brazeal 2011). As a result, it makes more sense to look at the market of ideas not in terms of exchange and competition but exposure and competition. That is, which organizations and agendas are the public exposed to, and how do they relate to one

another? In the context of a free market of ideas, prioritizing exposure instead of exchange emphasizes political actors' opportunities to engage with the public and one another.

In terms of democratic theory, the free market of ideas highlights the ability to produce and distribute knowledge to the public (Napoli 1999). The ability to share knowledge freely makes the free market of ideas central to the democratic process. Therefore, protecting the free market of ideas becomes a way to protect the First Amendment and the deliberative processes fundamental to democracy (Post 2014; Schroeder 2018). In the free market of ideas, the public makes sense of the ideas presented, giving them the power to decide what ideas receive legitimization (Schmuhl and Picard 2006). As a result, there are two competition levels within the free market of ideas: competition for public space and attention and competition for acquiring a secondary market. Stucke and Grunes (2001) highlight these two markets within media as the market for editorial attention and the ability to amass advertising. However, when considering the role of the free market of ideas in the democratic process, the secondary market becomes not the ability to gather advertising money but rather to gather votes.

This conception of the free market of ideas parallels the pluralist approach to democracy. Competing interests with shifting power sources can obtain some level of representation (Dahl 1961; Dow 2018). This approach to markets often treats their emergence as naturally occurring (Somers 2008). It should come as no surprise that advocates of deregulation invoke the free market of ideas in relation to economics and

the strength of democracy (Napoli 1999). Nevertheless, the notion of a free market of ideas is highly flawed. Critics of the pluralistic approaches to power concerning money, politics, and voting question the model's success in delivering the opportunities it promises (Clawson et al. 1992; Dow 2008; Piven and Cloward 2000). Not only is there the issue of the cost of entry, but the marketplace of ideas favors political elites rather than simply garnering discourse (Ingber 1984). Also troubling is the issue of truth. The public is often subject to making sense of misinformation when they cannot discern fact from fiction (Schmuhl and Picard 2006). For political advertising, this would mean that a strong public would be one where a large variety of political opinions could emerge through the sharing of political advertisements. As more political advertisers gain access to the airwaves, the public should become more exposed to a larger variety of opinions.

There is also a question of the impact of institutions on power consolidation within the marketplace of ideas. According to Lei (2018:215), “[i]nstitutions also influence what kinds of social networks actors form, as well as how likely it is that multiple networks will overlap.” In the context of campaign finance reform, this means that as lawmakers rework the conceptualization of campaign finance law, members of political society change their participation and forms of coordination. This influences how political advertisers share resources and information, locking them together, resembling a larger, more consolidated entity (Bagdikian 2004). This consolidation poses multiple problems that can distort a marketplace of ideas. The concentration of ownership prevents a large number of diverse actors from becoming involved. As a result, the interest groups that slowly dominate the airwaves may not truly be

independent, making the free market of ideas less representative of a free market and more representative of a multi-pronged effort of the political elite. Far more damaging is that the consolidation of power results in similarity in ad content presenting the public with fewer ideas (Schmuhl and Picard 2006).

The pervasive power of ads is not just about the ability to inform. Successful advertising campaigns often generate news coverage, extending the use of advertisements (Jamieson 1992). Here too, we see the notion of a free market of ideas in action. Even though the ads did not necessarily create political knowledge, they help establish media dominance. This provides advertisements with both of the powers of media as established by Weber (1998): advertisements can help shape both the subjective personal experiences and the seemingly objective nature of reality via media dominance. Therefore, the free market of ideas political advertisers engage with occurs on two levels: influencing individual voters and structuring larger media narratives.

The notion of a free market of ideas is somewhat paradoxical. On the one hand, the ability to engage with the public by whatever means with the right to express political opinions, whatever they may be, is a moral good. On the other hand, the market is hardly “free.” Like all markets, the free market of ideas is embedded within government regulation and political action and forces both within and outside of the state influence market organization (Fligstein 1996; Polanyi 2001). There is also a literal financial cost of entry to any free market that relies on technology for communication. Television advertising is perhaps one of the most expensive forms of said communication. As a result, the open and free exchange of televised ideas is very much,

by default, exchanging ideas among those with large amounts of capital. Nevertheless, in theory, there should be some form of the exchange of ideas among elites with large financial microphones.

THE MONEY-SPEECH PARADIGM

If the public sphere is considered an institution constructed to manage discourse and political action as proposed by Jepperson and Meyer (1991) and outlined in the previous chapter, then the rules and regulations of the marketplace of ideas serve as the basis for the creation and maintenance of the public sphere. Markets are historical constructs, as earlier regulatory setups influence later ones (Fligstein 1996). But how exactly is the free market of ideas structured? Åsard and Bennett (1997) highlight four key components to shaping marketplaces of ideas: political finance, partisanship, the influence of interest groups, and media systems. These factors all work toward the social construction of ideas and their exchange. The discursive institutionalist perspective emphasizes ideas as a causal and structuring force, highlighting the ideas that guide market creation. These are identifiable through the discourses surrounding the creation of legislation. Policy discourses are rooted in the norms and values used to ensure the health of democracy based on cognitive (what to do and how to solve problems) and normative (moral and ideological concerns) ideas (Schmidt 2008; 2014). In the context of campaign finance, cognitive ideas would be those that map out solutions to the technical aspects of legislation, while normative ones would be those dealing with the “spirit of democracy” and how to keep a democratic system as democratic as possible.

This brings up two concerns. First, there is the question of who and what is allowed within the marketplace of ideas. In this sense, the cognitive and normative ideas facilitate political discourses that can express many public opinions. The second challenge is to identify where ideas come from and who benefits from their institutionalization. Policy crafters shape ideas within both the foreground and the background. Background ideas are those drawn upon to help construct and maintain institutions, while foreground ideas are those that reach the overall public. As these ideas come into play, discursive shifts occur, where the structure of institutional ideas alters, potentially influencing behavior along with them (Schmidt 2008).

In this project, background ideas are within the legislative process and beyond it. This project looks at what is directly said on the Senate floor or in Supreme Court hearings and the ideational legacies and external forces such as think tanks that may influence debates. As the importance of establishing and maintaining the free market of ideas evolves, discursive shifts occur, changing how and why it is important to engage in campaign spending. Examining legal records makes it possible to map out the ideas and arguments used to structure new policies regarding the free market of ideas. Eventually, these ideas will become the background ideas and form the basis of the foreground ideas—those that reach the public and shape action in the public sphere.

Within discursive institutionalist frameworks, not only can different organizations coalesce around ideas (den Besten et al. 2014), but different overarching ideological positions can emerge as well (Sivesind and Wahlström 2017). The second form, focusing on overarching ideological positions, allows those working to regulate

the market of ideas to create structural and cultural codes to dictate what speakers present to the public (Åsard and Bennett 1997). This is what happened in the campaign finance debates of the 1970s, wherein politicians constructed what I call the money-speech paradigm. The money-speech paradigm is a set of principles designed to create the ideological framework for the free market of ideas, linking together campaign finance regulations and the speech rights of political actors.

As a result, when campaign finance reforms change, so too do the cultural codes that make the money-speech paradigm. The institutionalizing process helps create opportunities for different political actors to engage with the public and are justified through ideological criteria (Ferree et al. 2002). Five key discourses were central to creating the money-speech paradigm: accessibility, accountability, autonomy, acceptability, and authorization. These discourses, as defined in table 2.1, serve as the guiding principles for creating and maintaining future decisions regarding the free market of ideas during the institutionalization process. Each discourse highlights different practices and ideas necessary to create a free market of ideas with a solid speech that reaches the public.

Table 2.1 Core Concepts of the Money-Speech Paradigm	
Accessibility	How and why channels are operated to ensure some level of openness
Accountability	How and why people should be held responsible for what they say
Autonomy	How much government control should there be over the democratic process
Acceptability	Concerns over the content of speech, ensuring it is constructive
Authorization	Who holds the right to make expenditures on advertisements

Accessibility discourses focus on making sure there is some level of access for everyone running for office. As a normative idea, accessibility highlights the openness and importance of free speech, embracing the competitive aspects of the marketplace

of ideas, and linking candidates to the public. Cognitive solutions often focus on finding ways to ensure some amount of airtime for all candidates. *Accountability* discourses focus on transparency—ensuring the public knows who is speaking. The advocacy for transparency is perhaps the least controversial aspect of the money-speech paradigm (Sheingate 2016). It is often the go-to position for more right-leaning politicians who argue it is sufficient in itself, leaving moneyed interests free to do as they please. While some Congress members link accountability to normative ideas, particularly the importance of transparency, it is far more associated with cognitive ideas.

The cognitive ideas of accountability find themselves linked to the normative ideas of *autonomy*, the desire to ensure that campaign practices are not overly institutionalized by the government. As a cognitive idea, autonomy focuses on ensuring minimal regulation. Through inaction, the government ensures independent speech in the free market of ideas. The *acceptability* of speech, however, is much more of a normative idea. The acceptability of speech has to do with the content of speech itself. Notably, the desire is to make sure ad content is constructive, as identified through honesty and informativeness. Frequently concerns over acceptability are rooted in Congress members' ideas, about negative advertising, and in some cases, issues of overt racism and violence. Those who harp on acceptability see political advertisements as spitting in the eye of democracy. As a result, the cognitive ideas related to acceptability emphasize controlling advertisements' time limits and creating content standards.

The final concept, *authorization*, is the question of who has the right to speak. Unlike the first four concepts within the money-speech paradigm, authorization was not

part of the paradigm's initial founding. Rather, authorization first appeared with the *Boston v. Bellotti* Supreme Court case. As a normative idea, it focuses on speech rights regarding candidates and PACs, unions, corporations, and other interest groups. While related to accessibility, accessibility emphasizes the fair use of channels of speech. At the same time, authorization asks who has a right to use the channels in the first place—defining who can participate in the free market of ideas. While normative ideas use authorization as a fundamental right, as a cognitive idea, it is about processes, rules surrounding the allocation of funds, and their purposes, i.e., the right paperwork to allow for participation.

Each idea within the money-speech paradigm carries different ideological interests for the free market of ideas. Balancing these concepts serves as the foundation of the relationship between money and speech, identifying what is essential to have the strongest public discourse possible and how money can obtain this. It is inaccurate to draw these discourses on strictly partisan lines. Politicians, both liberal and conservative, tap into each concept with varying justifications. The common conception of the partisan divide is that the Democratic Party favors limiting expenditures while the GOP advocates for deregulation. However, the truth is slightly more nuanced. First, the Republican party has not always been a completely unified force. There are many times where members of the GOP split on legislative decisions. However, there is a much stronger rightward slant among those pushing for deregulation, as seen through its strongest advocates in Congress, the Supreme Court Judges, and those filing lawsuits.

IS IT REALLY ABOUT DEMOCRACY?

Critics of campaign finance reform, both in and outside of Congress and the Academe, argue that reform efforts are self-serving processes. Politicians work to prevent newcomers from achieving political success (Smith 2006; Souraf 1992). These critics treat efforts to limit or curtail campaign spending that would regulate the free market of ideas as efforts to perpetuate inequality and amplify the incumbency advantage, where incumbents have so much additional access to media and fundraising that campaign regulations simply serve as a tool to help them win. Campaign finance reforms are never purely altruistic, but Congress members do have a desire to maintain a working and healthy democratic system (Clawson et al. 1998; Souraf 1992). While it is easy to discount, it is important not to overlook these concerns. Many politicians loathe the amount of work needed to raise capital for campaigns and political advertising, meaning they have a vested interest in meaningful reform, even if it may not always play to their favor. Campaign finance reform being a matter of personal gain or for the good of democracy is not a binary choice. Policies may very well be self-serving, but with a first-hand understanding of what it takes to run a successful campaign, politicians know what can help both themselves and democracy at large.

This chapter shows that the underlying concepts behind the regulation of the free market of ideas help construct its regulatory environment, which I call the money-speech paradigm. Efforts to change regulation come from political actors seeking reform by arguing for what spending regulations result in the “best” speech. The money-speech paradigm serves as the regulatory framework for the ideological basis for a free market

of ideas. Rather than simply identifying money as being speech and having the right to participate, treating the relationship between money and speech as a shifting paradigm highlights the different ideological objectives of the marketplace of ideas and how different objectives may evolve at different paces. Thus, this project explores the development of the money-speech paradigm, its ideological basis, partisan influences, and overall effectiveness. The remainder of this project sets out to track the changes within the money-speech paradigm and its impact on political advertising and the free market of ideas, starting with its creation in the Federal Election Campaign Act of 1971 and ending with the *Citizens United v. FEC* Supreme Court hearing in 2010.

CHAPTER 3: SAVING DEMOCRACY AND BOB HOPE, 1976

This chapter explores the ideological basis for the creation of modern campaign finance law. The initial establishment of the money-speech paradigm comes from the Federal Election Campaign Act of 1971 and the *Buckley v. Valeo* Supreme Court case. Together they create the framework the state uses to make sense of political advertising in the context of a free market of ideas. In the late 1960s, two problems emerged. First, the rising cost of political campaigns, particularly through media expenses, was gaining public attention, resulting in a demand for reform (Alexander 1976; Alexander and Haggerty 1981). Second, from the mid-1960s to the mid-1970s, the concept of the free market of ideas gained popularity with regulators, academics, and the Supreme Court (Brazeal 2011; Napoli 1999; Owen 1975; Smolla 2019). However, what sparked the Federal Election Campaign Act was not the normative ideas of speech, but the cost of advertising and its impact on public faith in the democratic process (Alexander 1976). Opponents of reform efforts, particularly those who saw campaign spending as a form of political participation, believed the root problem was not spending but quid pro quo corruption (Hohenstein 2007). Three political organizations would be central to the forthcoming debates, shaping the root of the ideologies on how to handle campaign finance reform: the Nixon administration, the right-wing think tank the American Enterprise Institute, and the watchdog group Common Cause.

Nixon's Corruption

The Nixon administration was one of the most significant hurdles for reformers. While there are different accounts of who Nixon's earliest supporters were, whether

they be small business owners or major donors from the oil industry, both Ambrose (1987) and Waldron (2012) note that his supporters opposed the New Deal. As a result, opposition to the New Deal and political action committees that had come to be associated with the FDR administration fueled Nixon's ideology (Ambrose 1987).

Along with a predisposition to New Deal-type policies, Nixon had a distinct understanding of corruption. Nixon understood what power was and how to use it, but he saw few needs for justifications or restraint (Costello 1960). For something to qualify as political corruption, a candidate would need to have direct and personal gain from contributions (Hohenstein 2007). Nixon's interpretation of corruption differs from past presidents, as Nixon saw little importance in who was the source of funding. If political expenses went toward campaigns and did not line the pockets of politicians, there was corruption (Alexander and Haggerty 1981; Hohenstein 2007). This would serve as a driving factor for both his executive decisions and Supreme Court picks. Because Nixon was able to choose four Supreme Court members¹, judges with similar views to his interpretation of corruption heavily skewed the Supreme Court. This marked a turn in the Supreme Court, making it a body more interested in advancing freedom of speech on an individualist level (Hohenstein 2007).

Think Tank Power

The 1970s also saw the emergence of right-wing think tanks pushing ideas of corporate autonomy void of government oversight (Rich 2004). Among their many strengths, think tanks linked academics—in this case, right-wing academics—with

¹ Justices Warren Burger, Harry Blackmun, Lewis Powell, and William Rehnquist.

policymakers and the public to influence policy reform (Medvetz 2012). Like Nixon, many think tanks such as the Brookings Institute and the American Enterprise Institute (AEI) hold roots in anti-New Deal, anti-federal oversight, pro-philanthropic, and pro-capitalist sentiments. Frequently these groups are intertwined not only in their ideas but also in membership (Krastev 2000; Plehwe 2015). Both the Brookings Institute and the AEI brought together and empowered academics advocating for deregulation and the dismantling of the New Deal, placing their ideas in the foreground. Advocacy for campaign finance deregulation shifted to the AEI by 1975 as the Brookings Institute became more associated with liberal policies (Mayer 2017; Plehwe 2015; Weidenbaum 2009). The AEI was particularly notorious regarding campaign finance. Lewis H. Brown founded the AEI in 1938 to oppose New Deal price-fixing, allowing for more corporate control over the economy in the name of freedom and “democratic capitalism.” The AEI began to flourish in the 1970s and 1980s (Medvetz 2012; Phillips-Fine 2009; Plehwe 2015; Weidenbaum 2009:23). William J. Baroody, an employee of the AEI in the 1950s, argued that “the climate of a particular society is, to a substantial degree, the product of ideas emanating from its thought leaders—and ideas are the most powerful of forces” (quoted in Phillips-Fein 2009:63). Baroody, in the process, advocated for the discursive institutionalist notion of power through the control of ideas (Cartensen and Schmidt 2015). By dominating the ideas held by politicians, the AEI mapped out a path to push for more corporate-friendly policies.

Central to the AEI’s efforts to link money and speech is Ralph K. Winter. In the early 1970s (including during the earliest campaign finance reform hearings), Winter

worked for the Brookings Institute, but he later moved to the AEI (Federal Judicial Center n.d.). During his time at the AEI, Winter, along with Yale Law student John Bolton, would write the first piece of work defending the right to spend money on the grounds of free speech, in which they argued that price controls are antithetical to the marketplace of ideas as they unconstitutionally limit political activity (1973). Winter's work with Congress shows a direct attempt to influence the ideas held by politicians to promote the AEI's agenda. The AEI was also not truly independent. Nixon's earliest supporters may have been anti-New Deal small businessmen, but his presidential administration indirectly supported the AEI (Domhoff 1983; Mason 2004).

The Uncommon Sponsors of Common Cause

While conservatives overwhelmingly supported Nixon and his anti-New Deal ideology, there were some exceptions. In the 1970s, Common Cause became the first organization that advocated for campaign finance reform to gain mainstream attention (Mutch 2014; Urofsky 2020). Common Cause's founder, John W. Gardner, was a Republican, albeit one with more centrist tendencies, even serving in the Johnson administration (McFadden 2002). While many of Common Causes' donors were overwhelmingly frustrated with the state of campaign finance, Gardner founded the group by relying on wealthy friends and media campaigns to gain attention, resulting in a large amount of support from the Democratic Party (Berry 1999; Skocpol 1999). Common Cause pushed for reform by lobbying Congress to stop individuals from creating multiple PACs as a workaround to contribution limits. While often unsuccessful

in policy reform, they would bring problems with campaign finance law into the public spotlight (Mutch 2014; Urofsky 2005).

FECA 1971: ESTABLISHING THE MONEY-SPEECH PARADIGM

To meet the public demand for reform, Congress began crafting the Federal Election Campaign Act (FECA). FECA marks the beginning of a new era of campaign finance reform, creating the basis for the background ideology of future reforms. The main efforts for cost control targeted broadcast media regulation, attempting to curtail and influence the way candidates could access the public, directly impacting the structure of the free market of ideas. What proceeded was a series of coordinative discourses to determine and identify the best practices for communicative discourses. Congress was, however, not going into this with no understanding of their opposition. From 1968 to 1970 Congress made multiple attempts to enact campaign finance reform, including a push for the public funding of elections and limiting broadcast expenses. Nixon vetoed these proposals, as he believed these limitations were not comprehensive enough to cut costs and would only prevent the public from receiving information (Alexander 1976).

Airtime Rules: Accessibility v. Autonomy

First and foremost, candidates needed to have access to speech, and as a result, the free market of ideas. Sen. John Pastore (D-RI) opened one of the first Senate hearings on FECA, claiming that a key goal of the legislation was to provide Senators with more media access (U.S. Congress 1971j). By doing so, Pastore highlighted the benefits of having more candidates reach the public and the self-interest of politicians.

With greater accessibility, candidates would reach as many people as possible, hopefully influencing electoral results. One prominent idea was to rewrite section 315 of the Communications Act of 1934, removing the equal time provisions, something that Nixon vetoed in the previous campaign finance reform efforts (Urofsky 2020). The basis for these provisions was to ensure all candidates received media coverage. However, this turned out to be antithetical to the free market of ideas as “equal time” often became “no time,” undercutting the use of broadcasting for political outreach. This met resistance within the House of Representatives, as Rep. Lionel Van Deerlin (D-CA) pointed out that unlike Senate and presidential campaigns, those running for office in the House often had single television stations providing coverage due to the number of minor parties running in House races. This was not a unanimous feeling among House members as Rep. John Anderson (R-IL) believed maintaining the equal time amendment increased the number of spot ads (those lasting 30-60 seconds), which held little value for democracy (U.S. Congress 1971i).

Ideas about the accessibility of speech aligned with attention to the issue of cost. When proposing an earlier amendment on campaign finance reform, Sen. Hugh Scott (R-PA) argued that limiting the cost of advertisements would ensure all candidates media access, something he deemed a necessity (U.S. Congress 1971e). Efforts to limit what media outlets could charge candidates often proposed broadcasters only charge the lowest unit rates for airtime. This prevented broadcasters from charging different rates to different candidates, preventing broadcasters from gaining additional profits or making advertising more accessible to preferred candidates. The justification for

enacting these limitations was that because broadcast stations held public licenses, they had a public duty to ensure that candidates could speak (U.S. Congress 1971b). Sen. John Tunney (D-CA) framed this as a normative idea, arguing that doing otherwise was antithetical to free speech by preventing campaign expenditures from having the maximized level of efficiency (U.S. Congress 1971j). Sen. Ted Kennedy (D-MA) argued this also prevented discrimination against any candidate due to fears of unequal surcharging. The most common proposal was to enact these limitations 45 days before primaries and 60 days before general elections, bringing down campaign costs and discouraging candidates from running too many advertisements early on. However, enacting cost controls however contradicts conservative arguments over deregulation. As a result, conservative members of Congress made accusations of price-fixing and claimed that the regulations were unfair to broadcasters, particularly smaller stations that would face a financial disadvantage. Advocates of reform countered these claims by pointing out that it is not price-fixing, as stations could still set their rates and that the federal government holds the right to regulate its property (i.e., the airwaves), placing it within federal jurisdiction (U.S. Congress 1971i).

The ability to limit campaign spending altogether was another major discourse. This came in two forms: first, a limit on media spending, and second, overall expenditures. Both proposals faced resistance on the grounds of autonomy. While many Senators, such as Winston Prouty (R-VT), relied on cognitive ideas, questioning the enforceability in the first place, Sen. Howard Baker (R-TN) parroted the ideological concerns emerging from think tanks. Relying on normative ideas of democracy, Baker

argued that limiting spending institutionalized campaigning, undercutting the purpose of electoral races (U.S. Congress 1971b; 1971k). By dictating how candidates could spend their money and speak to the public, the federal government controlled how candidates could campaign.

While there was some consensus that it was permissible to limit campaign spending, opposition relied on normative ideas of autonomy to suggest that it would result in a decrease in candidate airtime, and as a result, information. Sen. R. Vance Hartke (D-IN) pointed out that the equal time provisions of the Communications Act already limited media access, making the argument against new limitations less than compelling (U.S. Congress 1971i). Rather than media spending limits, congressional debates often focused on the idea of “interchangeability,” which would determine what portion of a candidate’s expenses they could spend on media. The most commonly proposed limit on expenditures was the rate of 10 cents per eligible voter, with differing opinions on how to divide the 10 cents. The strictest reformers believed it should be a fifty-fifty split: 5 cents for broadcast media and 5 cents for non-broadcast media. Those who argued for interchangeability felt more leeway was necessary (example: 7 cents/voter to television, 3 cents/voter to non-broadcast). The idea of interchangeability relied on both cognitive and normative ideas. As a cognitive idea, the flexibility allowed for meeting the demands of each unique campaign. As a normative idea, a lack of interchangeability infringed on the rights of candidates. Both Pastore and Sen. Howard Cannon (D-NV) opposed interchangeability and that the fifty-fifty split was a reasonable limitation. Without it, more political advertisements would bombard television near the

end of electoral cycles. Pastore (1971b: 29024) went so far as to argue that political ads would consume the airwaves and the public would “have to kiss “*Bob Hope*”... “*Bonanza*”... [and] “*I Love Lucy*” goodbye.” This argument has an immediate flaw. Most people do not watch television for advertisements, particularly political ads. But this flaw also signifies the strength of the ideas behind the need to regulate advertisements. By arguing that political ads would usurp primetime, Pastore highlights how he and many others see political advertisements: an intrusion upon private life.

Baker may have seen ads as an intrusion as well, but if so, not as much as Pastore. To Baker, the lack of interchangeability prevented members of Congress from speaking and restricted access to the free market of ideas. It was impractical on cognitive grounds as it did not fit the needs of every state, let alone individual campaigns. This would also infringe on the autonomy of both campaigns and candidates, determining whom they could speak to and how. Sen. Norris Cotton (R-NH) expressed concerns over a lack of interchangeability in media expenses. Many smaller states (such as his own) have few, if any, local television stations. If candidates wish to advertise, they must pay stations in neighboring states, which increases their campaign costs (U.S. Congress 1971c). This highlights both the struggles of campaign finance reform and the fact that personal gain and the importance of democratic reform are not binary concerns. While Cotton acknowledged that paying stations in neighboring states increases his campaign costs, he also acknowledged that it is a problem larger than self-interest. Limiting interchangeability prevented Cotton and other Senators from controlling whom they could speak to, as half of their expenses would end up paying to

show advertisements to people unable to vote for them. To Cotton this was a denial of the right to freedom of association. Pastore would eventually offer a compromise, where no more than 6 cents could go toward media broadcasting, though it is unclear if anyone found this satisfactory (U.S. Congress 1971c).

Is There a Need to Limit Donating and Spending? Accountability and Autonomy

Those who favored overall limits on spending found the ever-growing demand to continue fundraising corrosive to the legislative process. One of the regularly expressed concerns of reform advocates, the ability for some candidates to outspend others, relied on the normative idea that it contradicts the free market of ideas, preventing everyone from being heard. These concerns not only pertain to television advertising but all spending. Rep. Bertram Podell (D-NY) argued that limiting broadcast expenses was pointless without limiting all other forms of expenditures. Candidates could easily spend their money elsewhere, and not all campaigns were entirely media reliant (U.S. Congress 1971i). Those in favor of a more autonomous system opposed these limitations due to a fear of *underexposure*, particularly for newcomers. Sen. Harry Byrd (I-VA) went so far as to say it would discourage people from challenging incumbents (U.S. Congress 1971c).

Norris Cotton showed some of the boldest opposition to these regulations, as expressed through the ideas of the AEI. While normative ideas pertaining to the spirit of democracy served as the center of regulations, Cotton embraced the normative concepts of freedom and liberty (U.S. Congress 1971a). Not only would he cite earlier testimony of Winter's to prove this point, but the same arguments emerged in Winter

and Bolton's (1973) work on how money was the equivalent of speech. Cotton continued reiterating Winter's arguments, saying all limitations go against the First Amendment, as they bar people from political engagement. Regulation was overly difficult and discriminatory, preventing those with more funds from fully engaging in the civic sphere (U.S. Congress).

As an alternative, Cotton, along with other conservative Congressmen, favored greater accountability to protect the electoral system. This argument creates the foundation for opposition to both spending and donation limits. The core idea is that transparency creates a fairer electoral process. However, the overwhelming popularity of transparency efforts also makes it the absolute minimum of possible reforms, as no politicking was necessary to do anything more substantial (Sheingate 2016). Those aligning with corporate power saw disclosure as a way to keep the government off the backs of the wealthy, and those desiring reform saw disclosure as necessary to keep democracy working. When discussing donation limits during a Senate hearing deputy attorney general Richard Kleindienst made a case for greater disclosure instead of donation limits (U.S. Congress 1971k:59):

I think anything that we can do to encourage and increase the public dissemination of views and attitudes with respect to not only candidates but political issues serves our way of life and, unless you found situations where it was abused, I would believe that you would want to do everything to encourage this kind of political dissemination.

Kleindienst's claim reflects the core argument of transparency: with greater transparency, the public will make more informed decisions due to the improved speech and the free market of ideas. This supports the normative goals of restoring faith in

democracy without impeding the importance of freedom for political donors and protects the rights of candidates and third-party spenders. Transparency also prevents candidates from being “bought” as they could not hide behind secret deals, preventing money from being a corruptible influence (U.S. Congress 1971a).

Yet, some wished to go beyond the bare minimum of campaign finance regulations. According to Sen. William Spong (D-VA), while disclosure requirements can generate transparency, individuals could still donate as much money to outside organizations as they wish. Said outside groups could then funnel the money to campaigns, a fatal loophole in the minimalist arguments (U.S. Congress 1971g). Additionally, some of the transparency efforts did not make it past the early drafts of the bill, further limiting its usefulness. To offset this, Baker suggested that outside spenders be required to end each advertisement with a statement about how to get disclosure information. However, this too was not incorporated into the end legislation, making both Baker and Prouty feel the disclosure efforts rang hollow, as the public was unaware of how to get this information or that it even existed (U.S. Congress 1971a).

Unions were also influential in the creation of the money-speech paradigm. The AFL-CIO saw campaign finance reform as critical for protecting workers’ interests and combatting the Nixon administration’s anti-union practices. Reps. John Anderson (R-IL) and Orval Hanson (R-OH) coordinated with the AFL-CIO to push for an amendment allowing unions to use their funds to solicit campaign contributions for explicitly political purposes (Mutch 2014). However, Sen. Paul Fannin (R-AZ) attempted to keep unions out of public discourses, targeting the practice of using dues to support political candidates.

To Fannin, this was an issue for the health and wellbeing of democracy. Preventing unions from using their dues to back candidates would protect the rights and liberties of union members as unions could not spend their money to back candidates they did not support (U.S. Congress 1971c; 1971d).

Additionally, unions could already provide both monetary and non-monetary resources to campaigns, making them disproportionately powerful. The government curtailed large corporations in the past, and now Fannin saw a need for similar restrictions on unions (U.S. Congress 1971C; 1971d). However, Sen. Mike Gravel (D-AK) accused Fannin of turning FECA into a piece of anti-labor legislation as the language of his proposed changes would prevent union members from making any contributions. Lastly, the legislation did not target corporations who can donate far more money (U.S. Congress 1971c).

What About Third Parties? Early Thoughts on Autonomy and Advertising Sponsorship

While by no means central to FECA 1971, concerns over the autonomy of outside spenders did receive some attention. With the reforms of the Communications Act of 1934 at hand, Sen. Charles Mathias (R-MD) pointed out an odd contingency: all advertisements that might benefit the candidates or campaign representatives would ultimately need candidate approval, regardless of sponsor. Under the legislation as written, candidates could prevent political advertisers from airing issue advertisements, denying them their right to speech. This setup would also increase the level of coordination between candidates and outside spenders. And if candidates do not approve of advertisements, the government would not require broadcasters to charge

the minimum cost to air them (U.S. Congress 1971f). This brings into question what qualifies as the best speech practices, as on the one hand, there is a desire to keep the public's right to speech open. On the other hand, there is an acknowledgment of the potentially destructive nature of outside spending, or arguably, an attempt to ensure that candidates hold greater control over messaging at the cost of the rights of the public.

Acceptability vs. the World

The desire to ensure civility in campaign discourse is a longstanding concern in American politics, with television being a core source of negativity. As a result, concerns over ad content go back to the beginning of television advertisements. In 1952 Democratic presidential nominee Adlai Stevenson II refused to use television advertisements, finding them faddish and destructive to democracy. After his defeat in 1952, he ran again in 1956, begrudgingly embracing political advertisements, only to lose again (Jamieson 1996). His reluctance and disdain for political advertising may have left an impression on his son, Sen. Senator Adlai Stevenson III (D-IL), one of the biggest proponents of restricting acceptability on normative grounds. Stevenson saw political advertisements as filled with misinformation. With support from several broadcasters, Stevenson insisted on longer advertisements, no less than 5 minutes in length. Five-minute advertisements would decrease the affordability of political advertising, increase the burden on broadcasters, and further remove the autonomy of campaigning, all of which are central concerns for the free market of ideas (U.S. Congress 1971a; 1971c). Stevenson was not alone in this concern. Hartke believed that spot advertising

cheapened the electoral process, emphasizing image over policy substance (U.S. Congress 1971c).

Pastore questioned the usefulness of limitations through cognitive ideas. Candidates can say little more than “I am running for office” in 10-second advertisements. Steven also failed to account for the skill of candidates and production companies. A strong orator can provide more information in 60 seconds than a weak one can in 5 minutes. Additionally, there were no regulations over what qualified as acceptable material, meaning 5-minute advertisements could be continuous nonsense, resulting in 5 minutes of destructive content instead of one minute of constructive material. These policies would also be harmful to poorer candidates and smaller parties, contradicting the accessibility that Pastore placed at the center of reform efforts (U.S. Congress 1971c; 1971j). While no regulations regarding length passed, it would end up being unnecessary. Broadcasting stations had control over what timeslots were available. Many broadcasters had similar feelings to Stevenson and Hartke, preventing candidates from purchasing airtime (Alexander 1979; U.S. Congress 1971a). However, here too, motive comes into question. Media outlets have shown reluctance to allowing political speech on their platforms out of fears of being held accountable for radical claims made during airtime (Starr 2004). By increasing the minimum airtime for political advertisements, broadcasters would increase their costs, increasing their profitability and potentially preventing radical and fringe candidates with fewer resources from having access.

Baker pointed out the racial dimensions to acceptability, proposing that broadcasters not air advertisements that were so racially inflammatory that they could cause controversy, something that occurred within his district. While there were concerns over free speech limitations, Baker felt that the way he crafted his amendment to the bill was incredibly narrow. It was, however, not narrow enough for others. Pastore (U.S. Congress 1971d) felt that it was still too much of a risk of a free speech violation. While important, it would hopefully be addressed at a later date, once again removing concerns over acceptability and leaving the idea out of the legislation.

Decisions: A Return to the Foreground

On February 7th, 1972, President Richard Nixon signed the Federal Election Campaign Act of 1971. Nixon supported the policy changes, believing it was fair and effective legislation. The ideas about autonomy, particularly autonomy from government control, were not an area of total victory for the pro-business think tanks that worked with him. The equal time provisions of the Communications Act of 1934 remained. However, this was of little consequence for presidential elections as it would have allowed for presidential debates, something Nixon refused to do in the first place (Alexander 1976). Other aspects of accessibility were more successful, notably the idea that it was antithetical to speech to charge higher broadcast rates to politicians. As a result, broadcasting stations would charge comparable rates to other advertisers early on in the electoral process, and 45 days before primaries and 60 days before general elections, candidates would be charged the lowest possible rates for airtime.

Outside spenders were to have extremely limited autonomy in terms of broadcasting, something else that opposed the desires of the AEI and its ilk. The limitations on broadcasting were lump sums applying to any and all broadcasts designed to favor candidates (FECA 1971). If outside spenders wished to run advertisements to benefit candidates, candidates would have to approve them, a practice solely benefitting those running for office. Not only would candidates be less constrained by the money raised, but they would maintain total control over the information within advertisements, leaving the public with no real say in the free market of ideas. If a candidate did not approve of negative advertisements, they would run them with a disclaimer stating there was no association. This too, placed a great deal of control in the candidate's hands. Rather than focusing on acceptability, the discourses surrounding the legislation focused on cost control and control by candidates. This suggests that FECA 1971 was once again more concerned with autonomy than acceptability, different from later regulations, notably the Bipartisan Campaign Reform Act.

The area where the AEI's wish for lack of government intervention and Nixon's loose definition of corruption thrived was the issue of autonomy. While those who wished for total autonomy may not have been pleased with media spending limits, they could take solace in the removal of overall spending and contribution limits (Mutch 2016). This is arguably a much greater win, allowing for greater fundraising for candidates and parties. In this way, the goals of right-wing think tanks working to both deregulate campaign finance were wildly successful. The one exception was that a presidential candidate's direct family member could give them no more than \$50,000.

These donation reforms came with greater levels of transparency. Both candidates and outside spenders were to disclose all their expenditures and donations over \$100, submitting records to the General Accounting Office (GAO), who would keep open public records of the information. In addition, there was an enactment of the ever-popular demand for donors to disclose their names and a ban on individuals donating on behalf of others. All of these would help to preserve and improve the free market of ideas. However, there were no requirements for outside spenders to disclose the availability of records within advertisements (FECA 1971), which undercut the overall level of transparency.

FECA 1971 ultimately became an expression of the importance of transparency and accessibility, with some limitations for candidates and major barriers for outside spenders, making the practices identifiable as transparent, affordable, and dominated by candidates. The right to speech was unlimited, but the use of airwaves was not the equivalent of speech. Rather, the right to the airwaves was an issue of public resources, making it regulatable. While FECA 1971 was ultimately a compromise, reformers saw it as a major step in the right direction, setting the groundwork to improve the democratic process in future elections... and then Watergate happened.

FECA 1974: A RADICAL INTERMISSION

The 1972 election did not mark the settling of a crisis moment. Instead, issues with both the cost and, more importantly, political corruption continued to emerge. 1973 saw the landmark Watergate scandal, in which Common Cause accused Nixon of changing his political position after receiving a million-dollar donation from the dairy

industry in return for promising to raise the price of milk (Associated Press 1974; Jamieson 1996; Hasen 2016). The public also learned about the inner workings of the Committee to Re-Elect the President (CRP), an organization set up by Nixon to aid his election that regularly pressured businesses into donating to his campaign, threatening the risk of greater regulations if they refused. Additionally, campaign costs had continued to rise since the 1972 election due to campaigns hiring an abundance of lawyers and consultants to navigate the new legal system (Alexander 1992; Sheingate 2016). It became clear that new regulations were necessary to reinsure the public's faith in democracy (Hasen 2016).

Limiting Autonomy, Expanding Accountability

Due to the increasing costs and the Watergate scandal, the need for reform continued. The Select Committee Congress formed to investigate the Watergate scandal created a list of suggestions on improving campaign finance law. The Select Committee's recommendations, along with Senate hearings, would be the foundation for FECA 1974, centering on expenditure limits, accountability, and autonomy. The Select Committee advocated for a Federal Election Commission to regulate all political expenditures and donations and for limited contributions and expenditures from candidates and PACs, all in the name of combatting corruption (U.S. Congress 1974b). To further promote transparency, the Select Committee suggested that every presidential and vice presidential candidate have a central PAC, and for new requirements regarding disclosures of all donations over \$100 (U.S. Congress 1974b). In addition, the Select Committee proposed other limitations, suggesting strict limits on donations and

expenditures: no more than \$100 in cash and a maximum of \$3,000 total contributions to increase accountability and curtail corruption. Each candidate would also maintain one PAC for all their funds (U.S. Congress 1974b). While seemingly breaching autonomy, this did reinforce the importance of accountability within the free market of ideas.

The Select Committee acknowledged the importance of autonomy, openly opposing federal financing due to its impeding citizens' right to voluntarily represent themselves (U.S. Congress 1974b). Baker argued that public financing of campaigns would lead to excessive regulation over spending practices (U.S. Congress 1974c). Yet proponents of federal financing deemed it necessary and in need of full consideration as a cognitive idea (Mutch 2016). Sen. Phillip Hart (D-MI) believed that public finance was the only way to ensure campaigns had public accountability, justifying any restrictions on autonomy it may produce (U.S. Congress 1974c).

Altering Accessibility

Pastore returned once again to lead the Senate hearings on the reformations of FECA, fighting for spending limitations due to Congress's inability to limit the corrupting influence of money (U.S. Congress 1974c). Pastore saw FECA 1971's overwhelming focus on political advertising as an oversight. By only paying attention to one form of media, Congress had ignored other avenues for the free market of ideas, only for them to frustrate the public. Pastore's solution was to place similar limitations on other forms of media. This was met with resistance, as Sig Mickelson of Northwestern University testified that it would further limit speech (U.S. Congress 1974c).

Congress also revisited accessibility. Broadcasters saw charging the lowest unit rate for airtime as a subsidy on electoral campaigns that impeded their financial freedom (U.S. Congress 1974c). Once again, this suggests that limiting the autonomy of campaigns prevents them from taking advantage of external institutions while simultaneously preserving the rights of said institutions. Congress pitted ideas about accountability and autonomy within the free market of ideas against one another regarding outside advertising and the question of whether or not the government should consider outside advertisements as produced on behalf of campaigns. However, in an unpublished executive session, Sen. Mark Hatfield (R-OR) pointed out that as long as outside spenders specified their activities as independent, the advertisements would not count against a candidate's budget, making them truly an act of autonomous participation in the free marketplace of ideas (U.S. Congress 1974a).

Restricting Autonomy

The reformation of FECA 1971, FECA 1974, focused on limiting accessibility and autonomy while also opening new avenues for political speech. The most notable changes were hard limits on donations and expenditures. However, despite the Select Committee's objections, Congress created an option for public financing of elections. Because it was optional, no candidates' funds were involuntarily limited (FECA 1974). Other limitations also arose. Major party candidates were to receive a budget of \$20 million, while minor party candidates would receive pro-rated funding based on their percentage of the vote. New parties and independent candidates, however, were to receive no funding. Instead, minor parties, new parties, and independents could take an

increased amount of donations, up to \$20 million in funds (FECA 1974). Additionally, if successful enough, new parties could receive reimbursements to pay off additional campaign loans.

The other notable shift found within FECA 1971 was the bolstering of accountability. Record keeping shifted from the GAO to a new bipartisan organization, the Federal Election Commission (FEC), who would be better monitors and keep stricter records, ensuring campaign activities stay within the law (FECA 1974). Each candidate was also to create a single PAC, making campaign monitoring easier for accountability enforcement and preventing multi-PAC slush funds. Though FECA 1974 placed further restrictions on donations and fundraising, there was more flexibility in spending. Campaigns could now spend more than 60% of their funds on media. Combined with the fact that Congress chose to keep the lowest unit rate, favoring their autonomy and access over broadcasters, candidates had greater access to the free market of ideas through spending and could efficiently spend as much money on advertising as possible.

Political advertisers unassociated with candidates faced extreme restrictions. FECA 1974 curtailed expenditure rights, forbidding expenditures of over \$1,000 that called for the election or defeat of a candidate, pushing many spenders out of the free market of ideas. As a result, greater standards of transparency regarding funding emerged. However, political advertisers were still not required to provide information on where or how to find their expenditure records. Therefore, they had to disclose that they were unassociated with candidates, but not necessarily with whom they were associated (FECA 1974).

The discourses and background ideologies dramatically shifted between 1971 and 1974. According to both Sheingate (2016) and La Raja (2012), the campaign finance reforms of 1974 shifted the focus of regulations away from parties and more toward a candidate-centric model for legislation. This new model focused on creating a free market of ideas designed primarily for the benefit of candidates. Candidates, not parties, were to engage with the media to expose their ideas to the public. If FECA 1971 was an attempt to give candidates more freedom, FECA 1974 was a response saying candidates had too much freedom, placing stricter boundaries on candidates, but with more freedom within said boundaries. Many of the regulations from 1971 attempted to balance the over-institutionalization of campaigns, free speech, and the public's faith in democracy, yet after Watergate, the mentality shifted. There were still arguments for autonomy, but public interest now far outweighed the autonomy of campaigns.

FECA 1974 has become ironically known for two things: the first being a reactive countermeasure to the Watergate scandal, hoping to be strict enough to prevent a reoccurrence. The second, by being so restrictive and easily challengeable, FECA 1974 was contested and overhauled before it could impact a single election. The challenge to FECA 1974 is one of, if not the most important moments in campaign finance history: The Supreme Court case *Buckley v. Valeo*.

1976: *BUCKLEY V. VALEO*: MAKING MONEY SPEECH

FECA 1974 was by no means a popular bill. Between its strict limitations for candidates, donors, and outside spenders, it greatly impeded on the free market of ideas. However, in its writing, FECA 1974 permitted the public to challenge the law. This

did not go unnoticed. The ACLU put out an advertisement in the *New York Times* specifically designed to go against the law. The advertisement created by the ACLU, while challenged by the *Times*, was not subject to the need for candidate approval, as it focused more on political issues than a specific candidate. However, as the ACLU hoped, the *Times's* rejection of their publication gave them grounds for legal action due to harming their right to speech (*ACLU v. Jennings* 1973; Mutch 2014).

This intentionally manufactured case is the foundation for the *Buckley v. Valeo* case, the next step in establishing a theoretical free market of ideas in campaign advertising. *Buckley's* uniqueness comes not only from its historical importance but also from the fact it was very much a proxy-war between Common Cause and the AEI, moderated through a Nixonian court. At the time, four of the nine Supreme Court members were Nixon's appointees, giving his ideology a majority by plurality. Among the appellants was Ralph K. Winter, now with the AEI. The list of appellees, on the other hand, included Archibald Cox, the Watergate prosecutor. Cox received direct support from Common Cause, with John Gardner providing consulting and written testimony. Common Cause hired Lloyd Cutner to represent them (Collins and Skover 2014)².

What Does it Mean to Have Access?

One of the greatest points of contention within the *Buckley* ruling is that the limitations restricted access for candidates and the public. Brice Claggett, one of the appellants, argued that the extreme limitations of FECA 1974 hurt smaller parties.

² Cutner was hired not only on behalf of Common Cause but also the League of Women Voters and the Center for Public Finance of Elections (Collins and Skover 2014).

Spending limits mean little to larger parties if smaller ones cannot spend at all (Oyez n.d.b.). As a result, total financial caps harmed the free market of ideas by disarming less wealthy participants. Winter reiterated this point, arguing that access was, in a sense, the equivalent of speech because, “virtually all meaningful political communications in the modern setting involve the expenditure of money” (Oyez n.d.b.). Winter argued this case with a more conservative approach to the normative idea of autonomy, wherein a government that is involved the least is the best route to success, meaning the state should not control the speech of politicians. It was not just the idea of access that held importance, but the relationship between spending and speaking holds direct and meaningful influence on the ability to obtain access to the free market of ideas. As a result, the right to spend money was an issue of direct access, and any regulation of expenditures was unconstitutional. Congress, which had far more accessible resources (particularly direct mail), were actively limiting the speech of their opponents.

Cutner was not convinced freedom of speech and the public interest was Winter’s—or any of the other appellant’s—motives for challenging the law. Rather, their goal was to obtain more autonomy for corporate powers. In fact, FECA 1974 did not impact the majority of groups challenging it, and they only wished to avoid public financing to have greater influence (Oyez n.d.b.). Daniel Friedman, also representing the appellees, argued that the relationship between money and speech was not direct, but rather indirect. To Friedman, if money were the direct equivalent of speech, all spending would be speaking to the public. However, expenditures serve a variety of purposes, and for this reason, money provides indirect access to speech. Because money was not

the direct equivalent to speech, any limitations on speech were also indirect consequences of greater expenditure limitations, something that is regulatable. Limiting expenditures preserves the free market of ideas by promoting equality and opposing corruption (Oyez n.d.b.).

Autonomy, Accountability, and Freedom of Association

For those who argued that money was the equivalent of speech, accountability through disclosure was the primary deterrent of corruption. As long as everyone knew who was representing who in the free market of ideas, the necessary securities were sufficient. However, the extensiveness of limits was not without criticism. Joel Gora, representing the New York Civil Liberties Union, argued that the level of reporting needed was too restrictive. The disclosure requirements discouraged individual citizens and smaller political parties from participating due to excessive paperwork, making the concerns over accountability impede autonomy, and as a result, freedom of association and the health of the free market of ideas. Even if accountability was the combative effort needed, it could not infringe on the political rights of participation and organization, particularly if expenditures were a form of direct access (Oyez n.d.b.). Cox, who learned his lessons about the challenges of allowing for a Nixonian definition of corruption to be acceptable firsthand, also believed expenditure limits impacted autonomy and accountability. However, with no limits, independent spenders would have too much autonomy, allowing them to support campaigns to the maximum extent possible and then act independently beyond that, essentially providing presidential campaigns with limitless independent resources (Oyez n.d.b.).

The Decision: Drawing Direct and Indirect Lines

In *Buckley*, the Supreme Court tried to make a cohesive decision representing the interests of all parties involved. The Court determined that expenditures were speech, but donations were not. While Post (2014) critiques the Supreme Court for lacking a coherent ideology on campaign finance reform, this decision does align with Hohenstein's (2007) conception of the Court as being focused on speech rights for individuals rather than looking at overarching systems. Additionally, the Court did find a way to let two competing ideas about money and speech exist. Money was direct speech when entering the civic sphere, removing restrictions on expenditures. At the same time, the donations were a limitable form of indirect speech.

The Supreme Court agreed with Winter insofar as there is a direct link between expenditures and speech, meaning that groups could spend unlimited money to reach the public. Discussion of political issues is necessary for a thriving democracy, and expanding expenditures achieves this by increasing accessibility of media through the right to purchase airtime. The appellees pointed out that past legislation provided the right to place spending limits, but those decisions did not address the ability to limit speakers or ideas from being presented to the public. Therefore, fighting corruption was not a suitable justification for limiting freedom of speech (*Buckley v. Valeo* 1976).

Limiting accessibility is not without merits, as one group outspending everyone else presents a problem for political corruption (Teachout 2009) and harms the ability to generate discussion. However, the Supreme Court found no government interest in ensuring monetary equality, meaning there was a downplaying of accessibility through

restraints on the disproportionately powerful. The one exception to this rule is the use of public funds, as every major party receives the same amount of money. Because money was the equivalent of speech, the public financing of elections is equivalent to using public money to foster and enhance speech. Thus, public financing expands accessibility while keeping transparency in accountability. Public financing may restrict autonomy, but the reliance on government funds granted the right to curtail spending. This did not contradict the First Amendment, as government financing was purely optional (*Buckley v. Valeo* 1976).

Yet when looking at indirect speech, regulations were acceptable. The fact that these associations and limitations infringe upon autonomy was justified to ensure those speaking to the public were held accountable. Even if it did limit autonomy, these limits on donations were constitutional, as they are not extreme limitations on freedom of association. The Supreme Court also believed that Congress has the right to set the limits where they wish, meaning that they were not as over-expansive as Gora suggested (*Buckley v. Valeo* 1976; Oyez n.d.b.).

Outside spending received a different form of treatment as well. Assuming there was no express advocacy (directly calling for a candidate's win or defeat), there was no need to regulate advertisements, as the Supreme Court identified these expenditures as less dangerous. To determine what counted as express advocacy, the legal system has historically relied on a footnote within the *Buckley* decision in which the Supreme Court mapped out a series of phrases known as the "eight magic words": "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and

“reject” (*Buckley v. Valeo* 1976:44). As long as advertisements did not include some variation of these phrases, there was no need to report them to the FEC. This worked toward the development of “soft money” in 1979 and reared its head as a major threat in 1996. Yet limiting these sorts of expenditures denied individuals the right to discuss policy and autonomy, as it provided the opportunity to enhance political discussion without the approval of candidates. Additionally, anyone who would be so determined to undermine the democratic process and wished to influence elections would have the tenacity to find a way around any sort of restrictions placed, making extensive attempts at regulation futile.

FECA 1976: THE RETURN TO THE SENATE

To comply with *Buckley*, it was necessary to reform FECA once again. The Supreme Court pushed for rapid action and gave the Senate less than three months to reform FECA. While the reforms of the early 1970s focused on exposure and providing candidates with benefits in the free market of ideas, the new agenda was to protect the rights of citizens (U.S. Congress 1976a). Congress did so by curtailing the rights of corporations and PACs, rather than empowering individual citizens, something frustratingly mentioned through the process (U.S. Congress 1976c).

Autonomy, Acceptability, and Incumbency

One of the largest challenges for reformers was the issue of the incumbency, where incumbents have advantages over up-and-coming candidates due to more public recognition and free media coverage. One way to combat this advantage is with larger war chests. While the Supreme Court may have said there was no federal interest in

financial equality, James L. Buckley (Con.-NY), who filed the lawsuit, saw it differently. Buckley's issue with FECA 1974 was that it benefited incumbents (Hasen 2016). After the lawsuit, though, he argued that despite the Supreme Court saying there was no direct interest, that did not mean that Congress should not consider it (U.S. Congress 1976b). Buckley saw the incumbency advantage amplified elsewhere. First, more well-funded candidates often had additional groups working on their behalf, seemingly suggesting that so-called independent groups are hardly independent. Second, while the Supreme Court supported unlimited spending for candidates, this left poorer candidates at a disadvantage. To offset the advantages of wealthy candidates Buckley proposed increasing donation limits from \$1,000 to \$5,000 (U.S. Congress 1976c).

At first glance, Buckley's approach seems to expand autonomy, but Sen. Dick Clark (D-IA) argued that it was, in fact, a meaningless limit. Most citizens could not afford to give \$1,000, let alone \$5,000, meaning that Buckley's proposed limits quintupled the benefits of wealthy donors. On the other hand, Buckley thought that with no spending limits in place, wealthy donors were going to spend this money no matter what and that this would redirect money to candidates. And because the money went to candidates and official campaigns, the expenditures would be more cohesive and representative of a candidate's policies, giving candidates more autonomy within their campaigns and ensuring acceptability in messages (U.S. Congress 1976c).

Other members of Congress proposed alternative approaches to financial equality, treating the concept as a normative idea, wherein financial fairness bolstered the spirit of democracy. Cannon argued that freedom of association does not allow for

more speech but for the wealthy to drown out the voices of others. He therefore proposed a ban on union and corporate expenditures to create some level of balance (U.S. Congress 1976d). While Cannon emphasized the impact of these changes on candidate influence, it would also inadvertently influence accessibility, preventing outside groups from dominating the airwaves. Cannon also supported limiting the overall power of individual donors, suggesting a maximum individual donation limit of \$25,000 per year (U.S. Congress 1976b; 1976d).

Sen. Alan Cranston (D-CA) was reluctant to embrace these sorts of policies as they limited political organizing. If the common people could not pool their money together, how could they oppose mega-donors who can easily write large checks (U.S. Congress 1976d)? There were other concerns regarding the pooling of money as well. In a letter to President Ford, attorney Phillip Buchen (1976) argued that unlimited fundraising opportunities would favor corporations that could drown out unions. The assistant to the attorney general, Michael Uhlman (1976), opposed limitations on solicitations, arguing they infringe upon autonomy and that seeking to provide balance was not sufficient justification. Buckley expressed similar concerns, claiming that these limitations would do nothing to combat the issue of political bias. However, Sen. Lawton Chiles (D-FL) argued there was a right to restrict autonomy via donations. These restrictions do not impact freedom of association or the central right to partake in the political process. Rather, it prevents wealthy individuals from handing lump sums of cash to candidates. Sen. Sam Nunn (D-GA) supported Chiles as large donations compel

candidates to appeal to corporations rather than the public. And while this did not address bias, it did deal with other aspects of political influence (U.S. Congress 1976d).

Some political actors opposed reformations altogether. A series of letters to Ford shows a franker, more partisan viewpoint behind the concept of autonomy. Fears of institutionalization were actually fears of preventing conservative victories. Max Friedersdorf (1976), the Director of Congressional Relations for the Office of Economic Opportunity, claimed unions would be able to engage in get out the vote (GOTV) efforts that could go unreported, which would directly help the Democratic Party. This, combined with many restrictions on corporate employers, was unconstitutional. In a different letter to Ford, Rep. William Dickinson (R-AL) (1976) discouraged him from signing legislation as it was overly complex and went beyond the demands made by the Supreme Court. House member and head of the National Republican Congressional Committee Guy Vander Jagt (R-MI) (1976) discouraged Ford from signing any legislation before directly speaking with Republican campaign leadership to ensure it did not hurt their chances of victory.

Regulations of 1976

FECA 1976 passed with a primary focus of creating the FEC and its regulatory powers, though there were also new rules regarding spending and fundraising. To prevent them from being overly influential, corporations were only allowed two mail-oriented campaigns per year and could only raise funds from stockholders, executives, and their families. In the same light, union committees could only reach out to union members and their families (FECA 1976). Congress made these changes with the hope of

ensuring some level of fairness in campaigning, as both unions and corporations held access, but corporations could hopefully not out-influence unions, who had extensive records of membership (Buchen 1976). To further limit their power and participation, all PACs created by a union or corporation would be considered part of the same organization and therefore share budget limitations. Congress changed the donation limits so that no individual could give more than \$5,000 to any PAC (FECA 1976). These rules suggest that attempts to limit autonomy were justified as they regulated forms of indirect speech, not direct regulations on involvement in the free market of ideas.

Candidates running for president who took federal funds could use no more than \$50,000 of their own money for expenditures (FECA 1976). This effort was a balancing act between the right to autonomously run campaigns and ensuring accessibility for all. The direct regulations on advertising itself were minimal. Building on the *Buckley* decision's use of the eight magic words as a test of independence, political advertisers relying on express advocacy needed to state their independence to ensure some level of acceptability. Autonomy and accountability were further reinforced by requiring all ads to disclose if campaigns approved their content (FECA 1976). Alexander (1979) also notes additional reforms: broadcasters were no longer permitted to restrict ad lengths. Candidates could air advertisements running any length of time they could afford, assuming the time slots were available. Broadcasters resisted because the length of these advertisements was harmful to public knowledge due to their lack of quality content. However, President Ford and minority parties successfully united to fight for

the right to air advertisements regardless of length, claiming that the concerns over acceptability were not justifications for censorship (Alexander 1979).

FROM 1972 TO 1976: THE FIRST DISCURSIVE SHIFT

The *Buckley* decision, and its subsequent reforms, may be the most monumental moment in recent campaign finance history, so much so that every legal case since has had to wrestle with its rationale (Post 2014; Urofsky 2005; 2020). For this reason, it signifies a discursive shift through the creation of the money-speech paradigm. Table 3.1 outlines the conceptualization of each aspect of the money-speech paradigm in 1976.

Orientation	Right to an Audience
Focus	Autonomy, Accountability, and Access
Concepts	
Autonomy	More spending permission but donations are limited
Accountability	Transparency ensures good actors
Accessibility	Increase in spending limits, Lowest unit rates for candidates
Acceptability	Anything goes

Mutch (2014) notes that the reforms of 1976 meant that individuals had the right to an audience, a radical reformation from 1971 where the right to speak was not the equivalent of a right to the airwaves. However, like the reforms of the early 1970s, candidates and their ability to participate in the free market of ideas is the primary focus. Congress gave the public some consideration, as seen in the largest ideational shift between 1971 and 1976: a change in focus from how to get media access to candidates to how to build an arena that is “best” for producing discourse for “everyone” as driven by direct and indirect speech. Yet “everyone” was framed in terms

of institutions, unions, corporations, and political elite rather than the average voter. That said, the average voter most likely flew under the radar of campaign finance reforms. Most people do not give large donations or spend money on major advertising campaigns. In fact, unless someone was interested in donating more than \$50, none of the regulations would apply.

While reforms did focus on all four concepts involved in the money-speech paradigm, only autonomy, accountability, and accessibility were of serious concern. When money was direct speech and would immediately impact the free market of ideas, there were fewer rules regarding accessibility. Because there was a right to an audience, and media was the easiest way to get an audience, there would be no restrictions on access. Thus, anyone who could afford to enter the free market of ideas could do so, and they could spend as much as they liked—discounting the notion that different viewpoints are necessary for a stronger marketplace of ideas.

Because accountability dealt with issues of indirect speech, disclosure was much more regulatable. While access to the marketplace of ideas was important, even if those involved were not diverse, they still needed to be “good actors” with their sponsors, political ties, and ideological loyalties known. In practice, this only needed to be known by the government and not the public. Advertisements would not have to state where the public could find disclosure information or share their political ties.

Both direct and indirect speech impacted the idea of autonomy. As a result, regulations over autonomy moved in multiple directions at once. While FECA 1976 established clearer spending limits, there were more freedoms within those limits. The

removal of spending limits was not just a right to the media, but also a right for campaigns to do as they wished, making for a form of autonomy pushed further out of the way of government oversight. That said, there were also clearer parameters to permissible behavior. The government put donation limits in place and the number of PACs candidates, unions, and corporations could have was restricted. Corporate and union PACs also faced limits on fundraising practices, with the hope that doing so would ensure that they did not overpower each other³. There was also more room for autonomy within advertisements themselves. With political advertisers no longer under candidate control, opportunities to explore different policies and messaging strategies theoretically emerged. But with this came the requirement to be much more explicit about the associations between candidates and political advertisers. The main way to skirt these limits was through “soft money,” designed primarily for party-building activity, and therefore not part of a candidate or donor’s official expenses. Regulations to provide the best discussion within democracy only applied to express advocacy, and funds spent on issue advocacy were not regulatable, whether they were from “good actors” or not.

Acceptability in advertising content saw no changes, though it was never highly regulated in the first place. The only regulation enacted regarding acceptability was that broadcasters could not limit the time lengths of advertisements. No matter how racially

³ It could very well be argued that these regulations were much tougher on unions than they were on corporations, and there were many accusations of this in early proposals as they often only applied to unions. However, the limitations did end up applying both to unions and corporations, essentially attempting to limit both of their powers.

inflammatory the advertisements were, it was acceptable via First Amendment rights. Additionally, this led to a lack of cohesion in advertising, something condemned by those who wished for more soft money regulations. This, arguably, bolsters the free market of ideas. Organized and efficient state activity often comes with less representation, freedom, and openness (Jepperson and Meyer 1991). These patterns also apply to political advertising: when there is more freedom to produce advertisements, the messages sent to the public may be less cohesive. Simultaneously, more people may have the ability to speak within the free market of ideas, making arguments for cohesion antithetical to open discourse, preserving candidates' rights over the public's rights, something dismissed in the framing of the FECA 1976 debates.

In sum, the shift and core ideas that brought about the regulations of 1976 were that everyone had a right to media and should have as much access as they can afford, while actors must remain autonomous and separate from one another. However, autonomy from each other is far less important than autonomy from government control. There is also no need to directly broadcast this autonomy to the public, though financial disclosure to the government was required. These regulations only applied to express advocacy, and the content and duration of advertisements could not be limited.

1976: CARTER V. FORD

In 1976 both Gerald Ford and Jimmy Carter took public campaign money, limiting their funds and increasing the importance of every dollar in their pockets (Jamieson 1996). This might have contributed to the rise of the 30 to 60-second spot advertisements (Alexander 1979). There were also changes in coordinative practices and

political participation. According to the FEC (1977), 79 PACs involved in the 1976 election held ties to at least 2 of 26 corporations. This, however, did not transfer over to political advertising, as The Kanter Archive shows only one political advertiser other than the candidates and parties.

Campaign Organizing

The Carter campaign spent roughly \$8 million on television advertising. This campaign was so extensive that there was a fear that Carter seemed too ordinary, differing from the public image he was used to fostering (Seifert 2012; Witcover 1977). Simultaneously, the Carter campaign felt the full force of the spending limits, struggling to keep the campaign alive financially. Carter and the DNC relied on the Carter confidant Gerald Rafshoon's advertising firm, Rafshoon Advertising. Despite the growing popularity of the spot ad, Rafshoon favored 5-minute advertisements, which may have increased the financial tensions felt (Jamieson 1996; Alexander 1979). To help with production, Rafshoon relied on the Magus Corporation who specialized in ad placement (Diamond and Bates 1992; Broadcasting 1974). Turner Productions produced one advertisement found within the Kanter Archive. Near the end of the campaign, the DNC also relied on New Sounds Inc., Tony Schwartz's production company (Arton et al. 2012). Schwartz was a party loyalist who created ads for previous campaigns, including the infamous "Daisy" ad from the 1964 elections.

The pro-Carter ads focused on the public and Carter's general concern for their well-being. The advertisements are open-ended enough to let the audience draw their own conclusions rather than provide concrete proposals and ideas (Jamieson 1996;

Seifert 2012). Schwartz's ads differed from Rafshoon's. Rather than focusing on biography and Washington outsider status, Schwartz reworked advertisements he made for Hubert Humphrey's campaign, creating clearer lines about the importance of a Carter presidency (Jamieson 1996; Johnson 2017). While economically efficient, Schwartz's activities oppose FECA's goals of expanding political discourses. If anything, Schwartz's reworking of older advertisements creates an even more limited discourse by rehashing the same material and solidifying political ties. That said, the clear boundaries set up by FECA intentionally avoided the regulation of advertising content, meaning Schwartz worked within the letter, though possibly not the spirit of the law.

Ford's campaign thought the \$21 million in government funds each candidate received would be more than sufficient but quickly discovered otherwise (Alexander 1979; McDougall 1977). While the Ford campaign may have struggled with spending limits, Ford also had the advantage of incumbency resources: additional media time and the use of Air Force One, reducing travel costs (Alexander 1979). Peter Dailey, a veteran of Nixon's campaign advertising team, The November Group, ran the initial campaign, though John Deardorff and Doug Bailey would eventually take over (Diamond and Bates 1992; McDougal 1977). While Deardorff and Bailey had total control of the campaign messaging, it was a difficult position. Ford was not the strongest of campaigners, something consultants regularly told the president to his face. And while the public did not dislike Ford, they were not particularly fond of him either (Witcover 1977). As a result, Ford could never design a clear and consistent message for himself and struggled to separate himself from his ties to Nixon (Howell 1980; Witcover 1977).

When Deardorff took over the campaign there was no infrastructure or plan in place (McDougall 1977). Many of the ads created by Bailey and Deardorff went through a group marked by the FEC as Campaign '76, Ford's in-house advertising agency (President Ford Committee Record n.d.). They also hired Winkler Video to assist in editing and work on ad placement (McDougall 1977). While Ford initially kept his distance from the public, they embraced a media blitz-style campaign near the end of the election, pumping out policy-based advertisements that tackled individual issues without necessarily having a broader agenda. This strategy resulted in total airwave domination as the campaign used all of its money in the last moments of the race (Alexander 1979; Jamieson 1996; Seifert 2012). The media blitz strategy was not only a matter of strategic allocation of resources but also due to the early mismanagements of the Ford campaign, resulting in Bailey and Deardorff lacking the time necessary to craft effective advertisements early on (Witcover 1977).

Outside Spending for Ford

While far more groups supported Ford than Carter, many of those groups were spending small amounts of money, which Alexander (1979) considered relatively inconsequential. In doing so, Alexander downplays the potential role of coordination, notably the controversies surrounding the only political advertiser found within the Kanter Archive, Businessmen for Ford. Businessmen for Ford would contradict the ideological objective of the diversity of thought brought forth in FECA in two different ways: first, within structure and relationship to other PACs; second, its minor relationships with Ford himself.

Charles R. Reade Jr. established Businessmen for Ford with William F. Morrison as the treasurer. The team's first involvement in broadcasting was through a 30-minute advertisement backing Reagan during the Ohio primary (Cox Newspapers 1976). Businessmen for Ford paid Mission Argyle Productions, a television production company, for their advertisements (Broadcasting 1974; 1975). During the general election, Reade established and ran multiple other groups to back Ford: Democrats for President Ford, Independent Voters for President Ford, Senior Citizens for President Ford, and the Anybody but Carter Committee. Reade founded these groups to create pro-Ford media to combat Carter's union support (Reade 1976; Murphy 1976). There may also have been additional ties between Businessmen for Ford and the president. On October 26th, Ford gave a speech at the Businessmen for Ford Rally in Indiana. However, nowhere within any of Reade's California-based expenditure records were there costs to hold a rally in Indiana. Additionally, the official speech transcripts and coverage kept by the Gerald Ford Library had no mention of Reade or his organizations.

Whether Reade had ties to Ford or not, there were concerns of illegal activity on his behalf. Running five different organizations is questionable enough on its own, but all five groups also shared the same base of operations and bank accounts, with Morrison serving as the treasurer for all of them. This seemingly defied federal regulations, opposing the interest in fairness and accountability behind FECA. Direct mail from Businessmen for Ford attempted to inform donors they could give up to \$5,000 to each of Reade's committees. This brought about suspicions of coordination, and consequentially a violation of campaign finance law, as individuals would not be

able to give more than \$1,000 to all five committees combined (Murphy 1976; Schlossburg 1976).

The FEC determined that there was no wrongdoing by Reade and Morrison, disbanding their investigation on the condition the groups fragmented (Emons 1976; Murphy 1976). A week before the 1976 federal election, Reade dissolved all of his groups, excluding Businessmen for Ford, and the only two donors who gave more than \$1,000 were reimbursed (Murphy 1976). While ineffective in terms of fundraising Reade was able to circumvent campaign finance regulations for virtually the entire election cycle. Reade defied ideas about accountability by using multiple groups, something meant to be the stopgap to ensure free speech and autonomy, meaning if Reade had raised the money he wished then the speech of outside political advertisers would have been incredibly concentrated.

CONCLUSION

By 1976, the emerging ideas about campaign finance were settling as a key set of principles emerged to guide the free market of ideas, the money-speech paradigm. The money-speech paradigm paid attention to independence from government control (autonomy), the ability to reach the public via airwaves (access), and transparency (accountability). While there was some concern over advertisement content (acceptability), it was left unregulated. To maintain some level of balance both in terms of the actual mechanics of the free market of ideas (cognitive ideas) and the overall spirit of democracy (normative ideas), the government placed limits on donations. At the same time, there was no limit on spending private funds. Cost control measures

helped ensure that candidates made the most of their funds. Combined, this helped keep the free market of ideas alive by allowing outside speakers to enter the civic sphere while also ensuring the public primarily heard those running for office.

When looking solely at the 1976 election, it is hard to evaluate the effectiveness of the regulations for strengthening democracy. The money-speech paradigm, with its focus on giving candidates as much of a voice as possible, was in its infancy. If the key goals of FECA and *Buckley* were to expand the amount of speech in the civic sphere, particularly by keeping outside spenders accountable and separate from candidates and parties, then there was little room for these measures to be successful. The lack of outside political advertisers means that many of the new ideas in FECA 1976 were left untested. Simply because 1976 marked a discursive shift in ideas does not mean that a behavioral shift accompanied it. Therefore, it is hard to say how much competition and diversity there was within the free market of ideas when the only non-party/non-candidate player was Businessmen for Ford. Though Businessmen for Ford held ties to various groups, Reade's other organizations failed to raise large amounts of money and did not produce political advertisements. But while Reade's efforts may have been inconsequential on practical grounds, it was not until the end of the electoral cycle that his violations ended. Had Reade raised the money he hoped to, and the FEC began its investigation at the same time, then the large-scale coordination the FEC meant to discourage more than likely would have occurred. FEC's success in 1976 came from Reade's lack of fundraising preventing him from having the opportunity to subvert regulations. This is a fortune the FEC would not have again.

One area where there was some success, however, was regarding the idea of accessibility and the right to an audience. Federal funds placed extreme limitations on campaign opportunities, pressuring candidates to innovate how they interacted with the public and ensuring roughly equal resources in doing so. While a single election is hardly enough to make a generalizable claim, FECA's efforts to find some level of fairness in access were successful in 1976. Not only did the campaign funding limits help Carter survive the primary process, arguably offsetting the incumbency advantage Ford held.

Despite the limited number of spenders in 1976, the marketplace of ideas was beginning to take formation with the introduction and establishment of the money-speech paradigm. The following election in 1980 saw a boom in PACs and new challenges to FECA 1976, resulting in further developments in campaign finance law. These, combined with the attitudes of candidates toward campaign spending, helped shape the results of elections, something that would not work in Carter's favor in 1980.

CHAPTER 4: LETTING THE REINS LOOSE, 1980-1988

While the early to mid-1970s saw the formalization of the free market of ideas by creating the money-speech paradigm, it did not see a complete shift in participation within said market. The overall number of PACs skyrocketed before the 1980 election (Huwa 1987). Influencing this was the emergence of Reagan-era neoliberalism. While this political philosophy did not invent deregulation it does emphasize the rights and power that PACs have come to represent (Eow 2007; Mizruchi 1996; Phillips-Fein 2009). To Reagan and his ilk, competition was at its best, or at the very least, its best for their corporate interests when it was least regulated (Phillips-Fein 2009). This interpretation sees competition as existing by default, with markets naturally occurring and self-correcting. So long as competition existed in theory, it was sufficient proof of its existence (Peritz 1996). This approach to the existence of a free market of ideas, one which is more concerned with competition in theory than in practice, is what drives the reforms of the 1980s. In other words, in the 1980s, the free market of ideas was being treated far more like a market. This chapter reflects how this ideology impacts campaign finance reform, influencing speech via political advertisements, and it also tracks a rise in coordination and partisanship.

Changes in the marketplace of ideas come from a multitude of sources. First, the background ideologies that shape discursive institutionalist setups stem not only from external sources such as think tanks, candidates, activist groups, and administrations but also from within the previous legislation's ideas. As a result, moving into the 1980s comes with past legislative changes serving as the background ideology for future

reforms. Second, the cognitive and normative ideas used to set up the original money-speech paradigm, such as the AEI's ideas about private businesses' rights and Nixon's ideas about corruption, became embedded in the systemized set of campaign finance laws. Autonomy, accountability, and accessibility all received major attention, while acceptability saw itself sidelined. The early 1980s introduced a new component to the money-speech paradigm: authorization, the question of who has the right to speak and enter the market, building upon the concept of corporate personhood. This shows the first major changes to the money-speech paradigm and the first chance to look at it more comprehensively.

1978: *BOSTON V. BELLOTTI* AND THE REAGAN COALITION

Nearly immediately after the *Buckley* decision, a new case emerged before the Supreme Court: *First National Bank of Boston v. Bellotti*. The First National Bank of Boston, alongside a series of other corporations such as Gillette and Digital Equipment, wished to spend money on ballot initiatives opposing changes to personal income taxes in Massachusetts. As the legislation stood, they could not do so. However, because money was the equivalent of speech, they claimed they held the right to make expenditures on First Amendment grounds (Mutch 2016). As a form of *corporate* speech, the equating of money and speech aligns with the ideas proposed by Winter and the AEI, seeking bare-bones regulations that made groups appear accountable while allowing for corporate power to be virtually unchecked. In *Bellotti* Francis H. Fox represented the First National Bank of Boston, while Thomas R. Kiley represented Francis X. Bellotti, the attorney general of Massachusetts (Oyez n.d.g.).

Corporate Speech as a Fundamental Right

Fox opened the hearings arguing that corporations hold the right to communicate, so barring them from doing so was unconstitutional as it limits their right to protect their material interests. Further, Fox argued that corporate speech was not just the speech of corporations but also the speech of individuals, so a ban on expenditures prevented individuals from speaking. This argument relies on two ideas within the money-speech paradigm. First, Fox made an argument for autonomy in relation to corruption. Speech was to be free up until it impedes on state interests, which, based on *Buckley*, were all but nil. Second, Fox tapped into the Nixonian idea of corruption, arguing there were no accountability issues. As long as corporations' actions benefit the corporations and not just their shareholders, speech is permissible (Oyez n.d.g.). In short, Fox argued on a set of normative principles, where corporate speech was not an act of corruption, and preventing it from occurring was contradictory to what makes for a stronger democratic process.

Cognitive Ideas and the Issue of Authorization

Kiley would take a far more fragmented approach to his counterpoints, relying on a cognitive conception of speech that emphasized technicalities. Corporations did have the right to speak, but they did not have First Amendment rights for political speech (Oyez n.d.g.). Therefore, there were no concerns regarding corporations' right of accessibility, at least for those without media being a part of their core purpose, as they were not in the realm of qualified speakers for a healthy democracy. The distinction of corporations without core objectives tied to media is a crucial one. By making this

distinction, Kiley highlighted the differences between the press's rights and the rights of private entities, protecting journalistic organizations from facing the same restrictions.

Kiley's distinctions helped shape the idea of authorization that would become the newest piece of the money-speech paradigm, the question of who had a right to enter the free market of ideas. The root of Kiley's argument was that the First National Bank of Boston did not have the right for authorization because of the way they filed their discrimination complaints. Notably, they procrastinated and failed to go through the correct channels for their initial appeals. Had they done otherwise, there may have been no need for a Supreme Court case (Oyez n.d.g.). These are overwhelmingly cognitive ideas, questioning the specific processes and how they are related to the right to speech. However, Kiley occasionally relied on normative ideas, notably that because the corporations in the *Bellotti* case were not media outlets, they do not have First Amendment rights as their goal was not to facilitate democracy (Oyez n.d.g.).

An Emerging Market of Ideas

The Supreme Court sided with Fox, as the state's main interest was to have the most expansive realm of speech possible. This includes a corporation's right to speak through political advertising (Oyez n.d.g.). The Supreme Court also argued that if the state of Massachusetts could censor a corporation's right to political speech, they could therefore censor all speech. The basis for this was that speech was not centered on speakers, as it was during the *Buckley* debates. Rather, it saw the emergence of a new orientation of speech directed toward audiences. This meant that to strengthen public discourse and the free market of ideas, the public should hear as many voices as

possible. Peritz (1996) argues that *Buckley* introduced the concept of the free market of ideas into campaign spending, and *Bellotti* solidified it. *Bellotti's* refocusing of the money-speech paradigm toward audiences reinforces this. With an expansion in authorization and more attention to audiences, the free market of ideas began to actually look like a market.

Ironically, the strength of this speech comes from the introduction of authorization, which was initially brought up to push the Supreme Court in the opposite direction. As a normative idea, the best speech comes from a public that could hear as many sides of an issue as possible (Youn 2011). For this reason, all organizations held the right to engage in political speech, no matter their initial purpose. In the process, authorization doubled down on FECA's defense of a right to corporate expenditures. Yet, there were still limits to authorization and material interests. Future legislation would determine this did not apply to non-profits, limiting their right to raise money (Urofsky 2005).

To make their decision, the Supreme Court relied on not only the First Amendment but also the Fourteenth. Justice Powell argued that corporations had Fourteenth Amendment rights to property, and therefore the right to use said property for speech (*First National Bank of Boston v. Bellotti* 1978). Justice Powell would argue that "[t]he proper question, therefore, is not whether corporations "have" First Amendment rights.... Instead, the question must be whether § 8 abridges expression that the First Amendment was meant to protect" (*First National Bank of Boston v. Bellotti* 1978:776). Corporations held authorization for political speech, and there was a

lack of a legitimate interest in curtailing it. Chief Justice Burger concurred with Powell, arguing that major media conglomerates were more of a threat than corporations, who posed no concern (*First National Bank of Boston v. Bellotti* 1978). To Powell and Burger, there would need to be cognitive and normative reasons to limit corporate speech, something they saw as lacking.

Opposition to the decision also drew their lines on normative grounds. Corporate spending was, in fact, a threat to democracy. The main dissenters were Justices White and Rehnquist. Rehnquist's position is interesting not just because he was one of Nixon's Court picks but also because he spent a great deal of effort questioning of Kiley in the hearings, showing that Kiley may have been somewhat persuasive. White believed that authorization for speech was a default right for corporations, but the need to protect the democratic process was sufficient to curtail their power. While corporations may have had the right to speak, the public is not required to hear their thoughts. Corporate stock owners also did not consent to corporations using their money for political purposes, making political expenditures a misuse of funds (*First National Bank of Boston v. Bellotti* 1978). Rehnquist went further, arguing that even if corporations could allot their funds and reimburse stock owners, there was a vested interest in preserving democratic norms (*First National Bank of Boston v. Bellotti* 1978). Essentially, this position contracts many of the ideas established in the previous era of reforms. White believed that corporations did not hold a right to an audience, and in what was about to become an audience-centric model for speech, corporate influence was to have little power.

While *Bellotti* further legitimated corporate speech, many have treated the decision as overlooked, only gaining importance in recent years (Mutch 2016). This is primarily because *Bellotti* did not apply to federal elections, and many other state-level regulations were limiting corporate speech (Briffault 2011). However, there was a clear and noticeable effect. The *Bellotti* decision introduced a new idea, authorization, to the money-speech paradigm. The introduction of a more audience-centered approach and the issue of authorization quickly found their way into other political discourses, as seen in Congressional hearings.

FECA 1979: LOCAL PROBLEMS, NATIONAL IMPACT

It was not only the Supreme Court that would change campaign finance laws. In 1977 Congress began a series of inquiries regarding spending restrictions. Many local parties and grassroots organizations found donation and spending limits too restrictive, preventing them from engaging in political participation (U.S. Congress 1979b). To rectify this problem, local parties and committees would be able to spend unlimited amounts of money on GOTV efforts and educational materials not designed to aid any specific electoral campaign. While not directly tied to political advertising, this too relied on the ideas of authorization and autonomy. As political groups took greater roles in the democratic process, they gained more freedom to participate. Sen. Claiborne Pell (D-RI) described these reforms as “breath[ing] new life into the political process by easing the bureaucratic obstacles for individuals and committees to participate in political campaigns” (U.S. Congress 1979b:2). There was an overwhelming level of bipartisan

support, to the point that a house bill unanimously passed without any deliberation (U.S. Congress 1979a).

Most of the debates over reform dealt with public financing of House and Senate races. From these discourses, it is possible to infer some of the core ideational concerns behind reform efforts. Reform advocates once again referred to Common Cause to highlight the need for public financing. Rep. Jack Kemp (R-NY) utilized the arguments and decisions from FECA 1976, *Buckley*, and *Bellotti* to discourage further regulation of the FTC (U.S. Congress 1977; U.S. Congress 1978b). This reflects how ingrained past ideas can become within the discursive process, as the ideological concerns permeate other legislative discourses. While the *Bellotti* case was not immediately influential for Supreme Court decisions, it did have an ideological impact on how Congress made sense of corruption and coordination.

Older arguments over corruption are also present in this effort to reform FECA. Rep. Peter Kostmayer (D-PA) presented an op-ed from *The Philadelphia Inquirer* written by former congressman Edward G. Biester Jr. (R-PA). Biester claims that giving special interest groups the right to contribute to politics in the name of openness is nothing more than a weak façade to aid the powerful (U.S. Congress 1978c). Conservative arguments focused much more on normative ideas about strengthening democracy from the overbearing interest of labor and the threat public financing holds to autonomy. Guy Vander Jagt argued that labor's ability to circumvent the law through "educational material" was harmful to the democratic process. It was necessary to curtail their rights (U.S. Congress 1978a). Rep. John Ashbrook (R-OH) also argued there

was a beneficial power to PACs. Within the United States, faith in democratic institutions was low, and PACs could rectify this because “by giving a few dollars to a group that speaks for them, many in this Nation feel that they will be able to retake control of their own lives” (U.S. Congress 1979a: 28618). Rep. Dick Cheney (R-WY) argued that more money was necessary for politics. It meant there would be more information and, therefore, better elections. These arguments overwhelmingly rely on normative ideas relating to autonomy and authorization to make the case that the right to use property is equivalent to freedom of speech. They also hold a conservative slant, where the benefits were designed explicitly for their party and a more deregulated free market of ideas. Yes, ideas would be free-flowing and open to the public, but corporate power would have greater control over the ideas. The same normative benefits of autonomy remained: there was a need to prevent the institutionalization of campaigning to allow for freer and fairer speech. The issue of authorization came into play, arguing that how participation is possible has changed. What these arguments have in common are their overwhelmingly conservative backing and the influence of *Bellotti's* normative ideas. Deregulation and allowing for more loopholes were better because they expanded the marketplace of ideas by giving more opportunities for political advertisers to reach the public, so even if corporate actors gained power, the public was still the primary beneficiary.

Congress enacted the Federal Election Campaign Act of 1979 (FECA 1979) in 1980, once again in time for the upcoming presidential election. While FECA 1979 did not directly focus on political advertising, it still had a noticeable impact. The expanded

allowance for soft money and minor changes in reporting and coordination standards allowed for multiple types of organizations to campaign at once. Not only were political candidates and their parties campaigning, but so too were state parties, local parties, and outside spenders, now with the aid of soft money. In addition, completely independent organizations could obtain and spend unlimited funds to advocate for candidates, as long as they did not coordinate with them (Alexander 1983). These reforms align with the ideological concerns over autonomy, accessibility, and now also authorization.

FROM 1976 TO 1980: THE SECOND DISCURSIVE SHIFT

The changes in campaign finance law between 1976 and 1980 were far more regulatory than ideational. Table 4.1 shows the first discursive shift within the money-speech paradigm. Structurally, FECA 1979 made campaign organizations more hierarchical to help deal with the limited funds, compelling them to act separate from parties (Bibby and Cotter 1980). While FECA 1979 is often associated with creating soft money, it is actually built upon regulations from 1977, allowing for unlimited corporate and union contributions to local parties (Briffault 2011). The regulatory decisions of 1980 expanded upon those of the 1970s. Authorization, both as a normative idea supporting diverse political speech and as a cognitive idea regarding the procedures to obtain the right of access, redefined communication standards, reinforcing the ideas established in *Buckley*. These decisions do not conceive the right to make communication expenditures as a tool of corruption, allowing for a heavy emphasis on autonomy in expenditures and authorization to support its expansion.

Table 4.1: Changes in the Money-Speech Paradigm, 1976-1980

	<i>Buckley/FECA '76</i>	<i>Bellotti/FECA '79</i>
Orientation	Right to an Audience	Audience-Centric
Focus	Autonomy, Accountability, and Access	Accessibility and Authorization
Concepts		
Autonomy	More spending permission but donations are limited.	More spending permission but donations are limited.
Accountability	Transparency ensures good actors.	Transparency ensures good actors.
Accessibility	Increase in spending limits. Lowest unit rates for candidates.	Increase in spending limits. Lowest unit rates for candidates.
Acceptability	No regulation.	No regulation.
Authorization	N/A	Expansion in right to participate.

The marketplace of ideas' shift to an audience-based orientation opened up new possibilities for political advertisers. More political groups would enter the free market of ideas, both in and outside of political advertising. The disclosure requirements and need for accountability stayed, including disclosure of candidate sponsorship and/or approval. That said, Congress loosened the specifics of details when filing FEC reports for the sake of convenience. The most significant change was, as previously stated, the orientation, moving from the right to be heard and to have an audience to the right for the public to hear a large variety of opinions.

1980: CARTER V. REAGAN

While FECA 1979 did not directly expand accessibility, more groups did enter the civic sphere in 1980. Allowing parties, PACs, and unions to participate in political outreach brought in more voices and freed up candidate resources for other purposes, notably political advertising. From 1974 to 1980, the number of PACs roughly

quadrupled, with the largest growth being corporate PACs. In 1974 there were 89 corporate PACs, but by 1980 there were 1,127. Union PACs also saw an increase, albeit a smaller one, going from 201 to 276 (Smith 1982: 37-38).

In 1980, 87.1% of all campaign communications were via direct mail (Alexander 1983:420). That said, television advertisements still played a vital role. Both Reagan and Carter took \$29.4 million in public funds. Reagan would spend \$10.8 million and Carter \$15.8 million on advertising (Alexander 1983:306; 330). However, only Reagan would receive outside support through a series of semi-autonomous groups “speaking” in Reagan’s name.

Campaign Organizing

The Carter administration and the DNC once again used Rafshoon for political advertising, now assisted by Bob Squier. Most of the money went toward airing advertisements early in the election cycle, without testing them in focus groups or saving funds for the end of the election (Jamieson 1996). This left Carter with little funding near the end of the election. Carter was also vocal about his disapproval of outside spending, actively discouraging it. As a result, outside groups spent roughly \$28,000 on his behalf (Alexander 1983:387). Ironically, Rafshoon faced accusations of breaking campaign finance laws by paying the Magus corporation for production material (*New York Times* 1979). Carter’s ads came through the Carter/Mondale Reelection Committee, which relied on Eli Bleich’s firm Mediagroup for production. In terms of content, Carter was now a Washington insider stigmatized for ineffective leadership. He could not run as an outsider and had to invest in winning back his party.

Hampering this was the fact that voters saw Carter's attempts to seem likable inauthentic (Bennett 2013; Seifert 2012).

Reagan ran a more expansive campaign, with his friend Sen. Paul Laxalt (R-NV) at the helm. The Republican Party backed Reagan while coordinating with the National Republican Congressional Committee to produce advertisements focusing on Reagan's image as trustworthy (Busch 2001; Jamieson 1996; Seifert 2012). R.B. Clyne & Co. and Dailey & Associates created the RNC's ads. R.B. Peter Dailey of the November Group ran Clyne & Co. According to the Kanter Archive, Dailey managed Reagan's advertisements via Campaign '80, producing ads for the Reagan/Bush committee and Democrats for Reagan. Watergate investigator Leon Jaworski, who had become frustrated with the Carter administration, founded Democrats for Reagan. The advertisements highlighted Ted Kennedy critiquing Carter (Adweek Staff 2000; Moorehouse 1980). However, where and how Democrats for Reagan spent their money is not entirely clear. While there is a Kanter record of the group producing an advertisement, the only expenditures on record from Democrats for Reagan were a transferal of \$10,000 from the group to the official Reagan campaign after its disbanding.

A Web of Reagan Supporters

Unlike the Carter campaign, Reagan welcomed outside spending with open arms. Outside groups spent \$10.1 million to back Reagan, raising questions of illegal coordination (Alexander 1983:387)¹. Four groups were particularly responsible for

¹ This is a calculation for all expenses, not just political advertising.

television advertising. Americans for an Effective Presidency and the Fund for a Conservative Majority (FCM) were openly tied to one another but claimed to be autonomous from the Reagan campaign (Greenhouse 1982). The National Conservative Political Action Committee (NCPAC) also played a major role in the coordinative efforts, to the point a representative ceased a call with Reagan due to their intention to advertise on his behalf (Jamieson 1996; Huwa 1987). Less financially involved was the Presidential Unity Committee. Several of these groups shared working spaces with the Reagan campaign. Despite this coordination, each organization backing Reagan focused on different political issues. The divide-and-conquer strategy inadvertently feeds into the notion of a free market of ideas as seen through *Bellotti*, as even with heavy coordination, the expanded authorization exposed the public to a range of issues.

Three Republican political operatives, Charlie Black, Terry Dolan, and Roger Stone founded NCPAC with aid from Senator Jesse Helms (R-NC). All three founders held deep ties to the Republican party. Black simultaneously worked for the right-wing lobbying group that backed Reagan in 1976 and 1980, the American Conservative Union. A protégé of Helms, Stone was a student of Nixon's public decision efforts, while Dolan organized Nixon's 1972 reelection campaign (Helms n.d.; Houston 1986; Johnson 2017; Smith 1977). NCPAC's aggressive advertising campaign promoted distrust of Democratic candidates, allowing Reagan's campaign to avoid negative backlash if they created the ads themselves. NCPAC also began attacking Carter early on, over a year before the general election (Alexander 1983; Jamieson 1996; Kern 1989). NCPAC's founders were aware of the risk of the appearance of corruption due to their staunch right-wing

advocacy. When seeking the FEC's advice, the FEC told NCPAC that as long as their actions were not using the same firms as candidates, or based on the information they received from candidates, and no one associated with Reagan made any expenditures their behavior was legal (FEC 1981). However, holding prior associations and other ties to candidates, which may imply loyalty, was permitted. After his defeat in 1976, Reagan helped raise money for NCPAC, and Dolan's brother Anthony worked on the Reagan campaign, later becoming one of Reagan's speechwriters (Appointment of Anthony R. Dolan n.d.; Macpherson 1980; Collection: Baker n.d.). Dolan also ran the Ronald Reagan Victory Fund, which NCPAC deemed its own "project" for Reagan's victory (Macpherson 1980; Collection: Baker n.d.).

Peter Flanigan, a member of the Nixon administration, founded Americans for an Effective Presidency with an anti-union agenda (Alexander 1983; Hornblower 1980). This immediately shows intergenerational ties where the old guard trained the new, further limiting the diversity of voices within the marketplace of ideas as the same actors are in play across multiple elections. According to the Kanter Archive, Americans for an Effective Presidency exclusively used Bailey-Deardorff to produce their advertisements. This means they shared an advertising firm with the Ford administration and had ties to the Reagan campaign. Americans for an Effective Presidency held ties to Reagan through Stuart Spencer. Spencer managed Reagan's campaign for governor but would move on to run Americans for an Effective Presidency, only to go back to working for the Reagan campaign (Relman 1982).

The RNC's head of operations in Missouri, Paul Dietrich, founded The Fund for a Conservative Majority (FCM) (Drew 1983). FCM's advertisements came through their subgroup Citizens for Reagan. Bob Heckman ran both FCM and Citizens for Reagan and would work to gain support for the Iran-Contra Affair (Heckman 1980; White House Diaries 1987). To produce advertisements, FCM used Edmonds and Associates, run by Tom Edmonds. While this was Edmonds' first electoral cycle, he would further help the FCM, Republican Party, and other right-wing organizations (Politicalresources.com n.d.). FEC records show the RNC paying Edmonds for "media supplies," showing additional ties between the mainline party and outside groups. The rest of FCM's expenditures went to local television stations, HML Inc., and Thomson & Associates.

Also connected to the overall consortia was the Presidential Unity Committee, a group authorized by the Reagan campaign. Stan Huckaby, a paid consultant for the GOP, served as the treasurer for the Presidential Unity Committee and Americans for Change (AFC), who held official events at the 1980 Republican National Convention and held fundraisers for Reagan (Collection: Baker n.d.). This brought attention to issues of coordination. However, upon investigation, the FEC claims to have found "no material problems in complying with the Federal Election Campaign Act" (Costa 1981:3).

There were other ties between the outside spenders as well, once again showing a lack of autonomy from both each other and the Republican party. Heckman, Helms, and Black were all associated with the pro-Reagan group Young Americans for Freedom (Helms n.d.; Lauck 1981). Reagan also held receptions honoring the leaders of FCM and NCPAC (Daily Diary 1983; 1986). Most damning, however, would be that NCPAC, FCM,

the Reagan campaign, the GOP, and the Presidential Unity Committee shared the same printing houses for the production of political advertisements (Cox 1982). These associations and links resulted in two accusations of corruption. First, the Carter/Mondale committee went to the FEC, accusing them of not going after Reagan's extensive coordination, which directly opposed the FEC guidelines (1981) set out for NCPAC. Additionally, the use of Reagan's name in multiple organizations was suspect as it made them appear more official (Smith 1980; U.S. Congress 1983). To make these claims the Carter/Mondale committee relied on the ideas of autonomy, authorization, and accountability, claiming that Reagan and his co-conspirators were illegally coordinating. The constant violations of the money-speech paradigm resulted in a corrupt speech within the marketplace of ideas as these groups were not qualified to speak on Reagan's behalf but claimed to do so. However, they could not substantiate their arguments without direct evidence of coordination or a subpoena to obtain it (Carter/Mondale Presidential Committee, Inc. v. Federal Election Commission 1985).

Beyond the Web: The Religious Right's Aid to Reagan

Not every political advertiser was part of the larger entanglement of outside groups. Initially established to oppose gay rights and pornography, the Christian Voice Majority Fund (CVFM) also produced ads (Dochuk 2011; Latus 1983). An offshoot of the Christian Voice Lobby, which was an offshoot of American Christian Cause, Dr. Roger Grant founded the CVFM with Gary Jarmin as its chief fundraiser. Before working with the CVFM, Jarmin worked alongside Black in the American Conservative Union. During his time there, he received direct reimbursements from the Reagan campaign (Oldaker

1977; Smith 1977). While seemingly uncoordinated during the election, Christian Voice was involved in White House affairs and would coordinate with the Reagan administration, with Jarmin directly involved (Young 2016). The CVFM advertisement focused on social issues, primarily Carter's support for gay rights initiatives, instead of Reagan being a proponent of family values (Jamieson 1996).

A Diversity in Content?

In 1980, many of the ideas behind the money-speech paradigm and its goal of creating the basis of a free market of ideas began to emerge. Despite every group holding ties to Reagan in some way or another regarding advertising content, there was a high level of diversity. The public received a large array of information on multiple issues. For instance, NCPAC focused on tax cuts while Americans for an Effective Presidency focused on consumer goods (Jamieson 1996). But all of the groups, excluding the CVFM, were focused on economic concerns. At the same time, it was all from a directly and overtly conservative ideology. This was, in no small part, driven by Carter's anti-expenditure agenda. The fact that the free market of ideas was overwhelmingly a one-sided system providing an array of conservative views left less room for exploration within the civic sphere. In this sense, when examining the free market of ideas, it is very similar to 1976. There cannot be two sides to the free market of ideas if only one side voluntarily participates. The free market of ideas was diverse in terms of content but not in terms of sponsorship. While Carter's defeat came about for many reasons, the tremendous level of spending on Reagan's side and its ability to provide the public with a large amount of well-tested messaging certainly played a vital role.

1982: *COMMON CAUSE V. SCHMITT*

The accusations of corruption made by the Carter/Mondale committee were not the only ones. While not a full discursive shift, the accusations led to further deregulation in *Common Cause v. Schmitt*. Common Cause accused Americans for an Effective Presidency and FCM of political corruption due to their efforts to fundraise for Reagan. Doing this provided Reagan with unlimited spending and stifled the speech of their donors (Oyez n.d.d.). For these groups, there was not the right to so much autonomy they could avoid government oversight. However, Jan Baran, representing the appellees, argued there was, in fact, autonomy for the same reasons as the Carter/Mondale case's dismissal. There was no direct evidence of any collaboration, meaning each organization acted autonomously as none were taking or sharing materials with the Reagan campaign (Oyez n.d.d.). It is hard to measure the success of either argument. The Court ended with a split decision because Reagan's Supreme Court picks, Sandra Day O'Connor, abstained as her husband, John Jay O'Connor, was former member of Americans for Change's finance committee (Drew 1983; Greenhouse 1982).

1984: REAGAN V. MONDALE

By the 1984 election, the number of PACs had grown to 4,345 PACs across all elections (FEC 1985b). Like in 1980, most of the new PACs were corporate PACs. However, the greatest level of growth was among nonconnected PACs (FEC 1989). There was no shift in participation in the free market of ideas, as FEC records and the Kanter Archive once again show only five political advertisers, all of which supported Reagan.

Campaign Organizing

Both Reagan and Mondale used public financing for their election, totaling \$40.4 million (Alexander and Haggerty 1987). Mondale hired Richard Leone, a friend of the Mondale campaign's senior advisors, to handle the advertising via Consultants '84. Consultants '84 worked with various production agencies to handle spot purchases, including Greer & Associates and Rothstein & Company. Among them was Mondale's New York primary campaign manager, Judy Press Brenner (Alexander and Haggerty 1987). Yet the campaign faced major organizational issues leading to the inability to work with everyone they wanted to (Diamond and Bates 1992; Seifert 2012). Almost all the advertisements had production managed by Capitol Video Communications, a new D.C. firm. Capitol Video Communications claimed to be non-partisan, taking on both liberal and conservative clientele, but Joe Rothstein, a founding member, was previously a consultant for Democrat Mike Gravel (Johnson 2017; Young 1984). Mondale's advertisements emphasized the idea of fairness and were policy-centered, but Mondale himself was discussing a larger variety of topics (Alexander and Haggerty 1987; Diamond and Bates 1992). Mondale's support from the Democratic Party came through the Democratic Victory Fund, run by Tim Fenchen, who ran Mondale's pre-nomination campaign (Alexander and Haggerty 1987).

Ed Rollins ran Reagan's reelection campaign, while Ed Libov and Associates and the Tuesday Team handled the advertising. Emphasizing 30-second to 1-minute spot advertisements, they targeted younger voters. They produced 30-minute block advertisements for cable networks as well (Alexander and Haggerty 1987). The Tuesday

Team paid residuals to the actors to avoid corruption accusations, as Reagan was once the president of the Screen Actors Guild. These residuals drastically increased the price of Reagan's advertising (Alexander and Haggerty 1987). The Reagan campaign deemphasized policy and Reagan's right-wing associations, focusing on optimism instead (Seifert 2012).

Before the 1984 election, Reagan had also worked to restructure the RNC, creating the general party chairman's position. Paul Laxalt held the position, increasing coordination between Reagan, the party, and other electoral campaigns. As a result, they developed one large party-wide message (Busch 2001). The RNC provided funds to Reagan's Tuesday Team, while Winkler Video, who managed Ford's production, and Capitol Video, who also managed Mondale's production, were hired for support.

The Old Reagan Coalition

Several political advertisers involved in the 1980 election returned to support Reagan in 1984, limiting the free market of ideas' ability to embrace a large diversity of speakers. NCPAC continued being one of Reagan's biggest supporters, raising the most money of any PAC in 1984 (FEC 1985b). The FEC's records show NCPAC using a large number of firms to aid in production, including Jack Calmes, who worked with other candidates in Oklahoma and helped NCPAC set up a victory party for Reagan (Kochenhour 1984; Sanger 1984). FCM would also continue its work through Citizens for Reagan, becoming the third-largest fundraiser, now exclusively using Edmonds and Associates for advertising (FEC 1985b). However, FCM shifted strategy from the previous election, specifically working toward reaching moderate voters (Kern 1989).

NCPAC and FCM were not the only groups Jesse Helms crafted to help the Republican party. Another group Helms created to help pay off his own campaign's debts, the National Congressional Club (NCC), produced ads. While they did not directly work together, in 1980, the NCC made a large donation to the Reagan campaign and produced negative ads during the Democratic primary. Helms also admitted to talking with Laxalt to reach Reagan indirectly (Drew 1983; Jamieson 1996). Media expenditures primarily went to Jefferson Marketing, with some going to Audiophonics. However, some records are misfiled within the FEC, meaning there may be additional ties.

The New Reagan Coalition

A small number of newer, smaller political advertisers emerged within the 1984 election. Like the large speakers, the smaller ones were also far from autonomous, holding many ties directly to the Reagan campaign. The Ohio-based Citizens for the President '84 was a new, albeit smaller, participant in 1984. Citizens for the President '84 (n.d.) produced a booklet advertising how their group supported Reagan's ideological positions, therefore helping Ohio combat union influence. The booklet contained the ideological goals of both Reagan and Citizens for the President '84 and used images of Reagan meeting with its members. Among their board of governors was Stanley C. Pace of TRW, a military contracting company (Citizens for the President '84 n.d.; Shaw 1985). Reagan later appointed Pace to be the United States National Chairman for United Nations Day (Office of Federal Register 1988). While not highlighted, Jerry Jarrett, whom Reagan directly thanked for funding the "Choosing a Future" conference, was among the board of governors (Citizens for the President '84

n.d.; Reagan 1984). The inclusion of these members can be seen not only as an attempt to communicate to potential donors that there was little autonomy between Citizens for the President '84 and Reagan. This meant that their support could increase their chances of favorable treatment under his presidency. But it also shows that they understood Reagan's messages and goals, allowing their advertisements to reinforce Reagan's messaging. According to their treasurer, Thomas Bayer, most of the money went toward GOTV efforts, literature, and television advertising (Kostrzewa 1985). FEC records show Citizens for the President '84 hired George Ryan Productions to manage their advertising, and George Ryan Productions used Beach Street Videocenter for development. Reagan was at least somewhat aware of their activity, as members of George Ryan received Secret Service clearance to videotape Reagan (Thielen n.d.).

Found within the FEC records but not the Kanter Archive is American Women Supporting the President (AWSP), a Texas-based women's group founded by Marie Lewing Clark, Senya Lemus, Carolyn Tarleton, and Judy Canon, who served as their president. The group's primary goal was to close the gender gap among voters and combat feminist messages (Houston Chronicle 2013; 2016; Smith 1983; Williams 1983). According to an AWSP flyer (1984), "[t]he ultimate aim of the group is to get the true facts about the Reagan-Bush Administration record to women in the United States" (emphasis theirs). This was necessary, according to Canon (n.d.), to address "the shrill voices of a few women's organizations speak[ing] for the majority of American women" and "the endless media coverage anti-Reagan groups are receiving." It is unclear how much AWSP truly spent. The FEC records show AWSP paying local television stations

\$379 to air Pro-Reagan advertisements. However, in a letter to Eliza Paschall, Reagan's liaison to women, Canon (1984a), explained these were efforts to rerun previously aired advertisements. A woman named Leta Schoen aired them within Binghamton, NY.

AWSP claimed to be unaffiliated with the Reagan administration, touting its membership in multiple states across multiple parties. Still, the Reagan administration acknowledged their aid in pushing forward a crime bill. Earlier on, Reagan also received an award from the AWSP (Reagan 1983; Schedule Proposal 1984).

Crisis in Accountability

The 1984 election saw multiple major issues regarding questions of accountability and the autonomous nature of speech. Fundamentally, ensuring accountability punishes campaign finance violations and discourages bad behavior that may distort the free market of ideas. However, there were multiple cases where the existing measures were insufficient. While the majority of deregulation efforts were right-leaning, the Democratic Party was not without scandal. Mondale used state-level PACs to fund his campaign and promote sympathetic delegates in the pre-nomination campaign. This, combined with the increased spending, brought about heavy scrutiny (Alexander and Haggerty 1987).

That said, the right saw more questions of accountability. Citizens for the President '84 came under fire from the FEC (1988) for not properly disclosing information in the required timeframe. The NCC's coordination via Helms was a problem, further compounded by its co-founder, Thomas F. Ellis, owning their production company of choice, Jefferson Marketing. Since the NCC and Jefferson

marketing shared the same base location, they faced accusations of illegal coordination (U.S. Congress 1987).

Diversity in Content

Once again, with heavy coordination, there is diversity in policies covered within advertisements. Both NCPAC and FCM had a change in focus. Ads within the Kanter Archive had NCPAC attacking Mondale's record. The FCM had an advertisement featuring Lee Greenwood singing "God Bless the USA," arguably feeding into Reagan's pro-optimism campaign. Kern (1989) also notes that the FCM's ads were focused not on the far right but on winning over moderate voters. Citizens for the Presidency '84 also kept their word to create Ohio-focused advertisements, highlighting housing costs during the Reagan era.

A Second Victory for Reagan

Reagan defeated Mondale, and while there is debate regarding the importance of political advertising in the election (Diamond and Bates 1992; Kern 1989), the money-speech paradigm's changes were becoming a reality. Authorization kept outside groups within the political process, though they were by no means autonomous. Both major and minor spenders had ties to the Reagan administration, with the smaller groups touting their closeness to Reagan and the larger groups having more direct ties in their staff. More importantly, most of the advertisement producers were, in some way, the product of Jesse Helms. As a result, outside spenders were not generating the large variety of voices that an audience-based free market of ideas desires. What it did generate was, once again, a large variety of right-wing content.

1985-1986: NCPAC AND MASSACHUSETTES

Before the 1988 election, problems regarding campaign finance from 1984 needed resolving. Notably, the DNC believed that actors on the right were breaching the regulations surrounding autonomy, using the government's desire to prevent over-institutionalized campaigning as a mask for illegal coordination. While lower courts determined preventing NCPAC and FCM from spending money on Reagan's behalf was unconstitutional, the FEC and the Democratic Party protested (FEC 1985a). In 1985, the Supreme Court heard the *FEC. v. National Conservative Political Action Committee* case. Charles Nevette Steele, speaking on behalf of the FEC, highlighted the normative arguments of autonomy and accountability, claiming that a balancing act between them to prevent corruption and preserve speech existed within the legal framework. He based this argument on the radical notion that Congress knew what they were doing. Congress was therefore able to anticipate political corruption and took proactive measures to prevent it (Oyez n.d.e). This was important, particularly for Steven Feirson, representing the DNC, who pointed out that corruption is often only analyzable post-election, and autonomy was necessary to incentivize candidates to take public funds.

Robert Sparks, representing NCPAC, argued the exact opposite. Any limitation on expenditures was an absolute violation of the First Amendment, and corruption is not a valid reason for limiting First Amendment rights. The case itself was simply a partisan attack against NCPAC because it was effective (Oyez n.d.e). The basis for Sparks' argument was a strict reading of how legislation forbade outside spending for candidate expenses. Because NCPAC spent money for its purposes and not candidates, their

behavior was, therefore, legal and not corrupt (Oyez n.d.e.). This once again relies on the Nixonian ideas of corruption, as NCPAC was not acting in a way that would benefit a candidate's personal life. This strict reading of legislation emphasized more cognitive ideas of autonomy and accountability, not only because it came with strict disclosure but also because of how little outside spending occurred during the previous legislation. The concerns over independent expenditures currently being made were not part of the processes that Congress was previously considering (Oyez n.d.e.).

The Supreme Court sided with NCPAC, allowing for the expansion of political expenditures by outside groups. Justice Rehnquist, representing the majority opinion, agreed with Sparks on the case's partisan nature, arguing that the FEC would not have pursued NCPAC and FCM if the DNC did not file a claim first (*FEC v. NCPAC* 1985). NCPAC and FCM's expenditures were purely independent as Reagan never directly asked either group to spend money, despite the long-standing history of coordination and close relationships. The result was a radical expansion of autonomy, allowing for more outside spending legally defined as independent. Mutch (1988) identifies this as the legislation that made the goals and objectives of *Buckley* a reality. This suggests that *NCPAC* is not a discursive shift, but rather a solidifying moment, formally locking the ideas within the money-speech paradigm, as well as the idea that money was the functional equivalent of speech, into place. *NCPAC* highlighted the ongoing processes of amassing wealth and power, how groups proved their independence (notably by proving there was no quid pro quo), and that by many actors' standards, there was little concern for corruption.

FEC v. Massachusetts Citizens for Life followed *NCPAC*. *MCFL* focused on the Massachusetts Citizens for Life using their own money for political expenditures in the form of flyers (*FEC v. Massachusetts Citizens for Life* 1986). The FEC identified this as a campaign finance violation. However, because Massachusetts Citizens for Life was a non-profit with no shareholders, the Court decided that many of the restrictions on expenditures did not apply, making a small exception within the legal system for outside groups to spend money without going through PACs (Mutch 2016; Schmidt and Levi 2018). This provided further autonomy to non-profits, allowing them to disclose less financial information.

1988: BUSH V. DUKAKIS

1988 once again saw an overall increase in spending. Both George H.W. Bush and Mike Dukakis took \$46.1 million in federal funds, a 54% increase in spending from 1984 (Alexander and Bauer 1991:11; FEC 1989). The overall number of PACs increased, with a slight decrease in labor PACS (FEC 1989). Due to limited federal funds and laws requiring broadcasters to charge the lowest unit rates possible, both the Bush and Dukakis campaigns bought their media time in bulk to reduce costs (Grove 1988). Combined, Bush and Dukakis spent over \$50 million on advertising, over half of their overall budgets (Alexander and Bauer 1991). Kanter and FEC archives also show the number of additional political advertisers doubling, from 5 to 10. Tables 4.2-4.4 highlight the changes in ties among them. For the first time, both parties had outside spenders creating advertisements on their behalf, meaning the free market of ideas was, at the very least, having some ideas presented from both the Democratic and Republican

parties. There was also a roughly even number of advertisers on both sides of the aisle. However, Bush had more political ties among the outside groups, said groups were more prominent, and there are much clearer records of them airing advertisements. It is also worth noting that with two non-incumbent candidates, many entirely new groups were involved, leading to a larger number of outside voices entering the arena of political advertising.

Table 4.2 Relationships Among Pro-Dukakis Spenders, 1988 (N=4)

Ties to Mondale/DNC	1	25%
Ties to Other Outside Groups	2	50%
Ties to Past Campaigns/Returning Groups	1	25%
No Ties	1	25%

Table 4.3 Relationships Among Pro-Bush Spenders, 1988 (N=6)

Ties to Bush/RNC	3	50%
Ties to Other Outside Groups	2	33%
Ties to Past Campaigns/Returning Groups	2	33%
No Ties	3	50%

Table 4.4 Relationships Among All Outside Spenders, 1988 (N=10)

Ties to Candidates/Parties	4	40%
Ties to Other Outside Groups	4	40%
Ties to Past Campaigns/Returning Groups	3	30%
No Ties	4	40%

Dukakis was the first Democratic candidate to have outside political advertisers support him. This is something vital for an audience-based approach to the free market of ideas. If the goal is to increase the diversity of voices, then there must be, to some degree, views coming from multiple political affiliations. Still, right wing groups spent so much they even outspent the Democratic Party (West 2000a). Additionally, the FEC (1989) saw soft money as an emerging problem, with a greater focus on who was raising money than spending it. According to the Television Bureau of Advertising, roughly \$28

million was spent on political advertising in the 1988 election, only making up 8.4% of all spending (Alexander and Bauer 1991:98).

Campaign Organizing

The Dukakis campaign chose not to run ads based on political ideology and struggled to maintain a consistent message due to tremendous disorganization. The campaign hired John Sasso and David D'Allesandro to rectify the situation (Jamieson 1996; Swint 2008b). Dukakis believed political ads were beneath him, frustrating Ken Swope, his media adviser during the primaries (Drogin 1988). During the general election, the Dukakis campaign relied not on Swope but utilized Riverun, Northern Lights Productions, and 2pop Editorial to create their ads. They would also rely on advertising firm McCaffrey and McCall. The DNC hired Yellin Media, who also managed Dukakis's media purchasing (Grove 1988).

The Bush campaign took a different route, framing a Democratic Presidency as a dismal future, making the Republican party the party of compassion. This included a response to Dukakis's plan to be non-ideological, helping turn the word "liberal" into a slanderous attack (Swint 2008b). At the helm of these initiatives was campaign manager and future founder of Fox News, Roger Ailes, who had previously worked for Nixon and Reagan. Ailes' focus was on streamlining communication within the campaign (Jamieson 1996). Ailes also served as the common link between Bush and multiple outside groups in the 1988 election. The Bush campaign relied on Ailes Productions, Frankenberry, Laughlin, and Constable Inc (who also made ads for the RNC), and a third company listed as Ailes/Frankenberry Productions within the Kanter Archive. Raiford Communications

Inc., a company run by a former employee of Ailes, Jesse Raiford also assisted in creating and the post-production of Bush's ads (Swint 2008a; Associated Press 1992).

Returning Voices and Ties

FEC records show the Texas Democratic Party independently paying for advertisements. While the expenditures were autonomous, the relationship between the Texas Democratic Party and Dukakis went beyond party affiliation. The Kanter Archives show the Texas Democratic Party relying on Raymond D. Strother Ltd., the company of political operative Raymond Strother, to produce their ads. Strother applied to work for Dukakis, but Dukakis rejected him as he felt east coasters would not take Strother seriously due to his heavy Texan accent. Dukakis's running mate, Lloyd Bentsen, was also a friend of Strother's and instructed him to make advertisements about gun control (Strother 2005).

Multiple returning figures aided Bush in 1988. NCPAC had a spiritual successor: The Conservative Victory Committee (CVC). L. Brent Bozell III ran the CVC. Prior to that, he served as the executive director of NCPAC, stepping down in 1987, leaving NCPAC with over \$4 million in debt (*L.A. Times* 1987). The CVC's advertising expenditures went to the Political Advertising Company and Jack Calmes Inc., which NCPAC previously relied on. A newcomer to the world of televised political advertising, but not political campaigns as a whole, the National Right to Life Committee (NRLC) was by no means unfamiliar with the political process or George H.W. Bush. Bush put tremendous effort into appealing to the religious right, solidifying the bonds he established under Reagan. This included the NRLC, a project of the Catholic Church (Dionne 1991; Ferree et al.

2002; Young 2018). In previous elections, NCPAC members openly admitted to spending money on candidates' behalf, so said candidates could deny responsibility for messages (Buchsbaum 1983). FEC records show the NRLC making their expenditures directly to television stations rather than relying on time buyers, leaving production agencies and expenditures unlisted.

Dukakis, Soft Money, and the Lack of Accountability

The new measures designed to expand access and autonomy, particularly soft money, aided Dukakis. Compared to Bush and Reagan, the pro-Dukakis groups were far more autonomous from the official campaign and each other. That said, there was a commonly shared objective: targeting senior citizens. The National Council of Senior Citizens created Seniors for Dukakis, spearheaded by Rep. Claude Pepper (D-FL), to mobilize the senior vote against the Republican Party (Nichols 1988; South Florida Sun-Sentinel 1988; Spears 1988). There was also a second group, Toledo Seniors for Dukakis, though it is unclear how tightly associated these groups were without FEC records. However, while there were no records of Toledo Senior for Dukakis producing or airing advertisements, the advertisements within the Kanter Archive also featured Pepper and shared talking points.

Far more autonomous, skirting accountability with no FEC records and little media coverage, is South Dakotans for Dukakis. Founded by Ben Radcliffe and Caroline Bell, they produced an advertisement claiming Dukakis was better for the agricultural industry than Bush was and that his Vice Presidential pick Lloyd Bentsen's grandfather was from South Dakota (*Argus-Leader* 1988; Komarow 1988). There are, however, no

records of expenditures for any of these groups. Only Seniors for Dukakis had records of television advertisements presented to the public and journalists, (*South Florida Sun-Sentinel* 1988) though this does not necessarily mean the advertisements aired on television. However, despite the seemingly high levels of coordination and crypticness of outside money, none of these groups appear to have had a major presence on airwaves, nor did they face challenges on accountability grounds.

Willie Horton: Acceptability and Autonomy

Many scholars identify the 1988 election as one of the most negative campaigns in U.S. history (Jamieson 1988; Swint 2008b). While Geer (2009) questions if advertisements were the key source of this negativity, they most certainly contributed. Several advertisements focused on Willie Horton, a black man released from prison on furlough under Dukakis's watch. During his time outside of prison, he raped a white woman. The Bush campaign, and more importantly, the Bush campaign's allies, capitalized on this to claim Dukakis was weak on crime. The goal was to focus on Horton so much that people would think Bush was running against him instead of Dukakis. An associate of Ailes funneled one of the ads to the television show *The McLaughlin Group*, further sparking attention and controversy (Mayer 2002). However, these ads did not come from Bush's official campaign, allowing him to escape responsibility for their production, negating any arguments of the campaign being racially inflammatory (Jamieson 1996).

While the Bush campaign did not create the Willie Horton ads, the organizations that made them had questionable levels of autonomy. The Committee for the

Presidency produced advertisements with testimony from Horton's victims (Weinraub 1988). While independent, the group also regularly used the Bush/Quayle logo within their advertisements, irking the Bush campaign as it circumvented their goal of making Willie Horton ads while trying to avoid responsibility (Jamieson 1996; Schwartz 1988). Former L.A. Dodgers and San Diego Padres player Steve Garvey chaired the committee with Fred Karger directing it (Fred Karger for President n.d.; Minor League Baseball). The Dolphin Group, who helped run Reagan's first governor's campaign, managed the time buying (Balzar 1988).

The second and far more prominent political advertiser involved in creating Willie Horton ads was Americans for Bush. Americans for Bush claimed to be autonomous, though that was not the case as James Baker, Bush's campaign manager, had veto power over Americans for Bush's advertisements (Diamond and Bates 1992; Mayer 2002). Both Americans for Bush and the Bush campaign hired Larry McCarthy, a former employee of Roger Ailes. McCarthy also served as the head of the National Security PAC, which underwrote Americans for Bush (Associated Press 1988; Diamond and Bates 1992). Aiding McCarthy was fellow Ailes protégé Floyd Brown, the "mastermind" behind the Willie Horton ads (Mayer 2002; Swint 2008b). Raiford Communications, who aided Ailes on the Bush campaign also produced ads for Americans for Bush.

Ties among these groups were brought into question when presented to the FEC. However, despite explicitly saying that candidates and outside groups could not share resources in 1981, the FEC's board could not agree on whether the ties between

Bush and Americans for Bush were, in fact, illegal coordination. For instance, many of the payments to Raiford were not for direct consultancy but for “technical productions,” which they believed skirted the law (Associated Press 1992; Swint 2008a). Without the ability to agree, the result was that NSPAC, Bush, and everyone else involved faced no penalties for their behavior (West 2000a).

Outside political spenders would follow suit, focusing on the same political images as groups tied to Bush and the same negativity and overt racism, despite a lack of coordination. Conservatives for Freedom, a issue advocacy, aired its own Willie Horton ads. The Texas-based Alamo PAC, run by then judge and future Senator John Cornyn (R-TX), highlighted high school drug use and that Dukakis did not believe in mandatory sentences for drug dealers. Alamo PAC used Sal Russo’s group, Russo Marsh & Associates, to produce their ads. In the past, Russo aided Reagan in his rise to power and would be an intellectual powerhouse of the Tea Party (Gold 2010).

CONCLUSION

In many ways, the campaign finance system of the 1980s was a reinforcement of the previous legislation. To borrow from Pierson (2004:10), the previous reforms were the “rules of the game.” Therefore, the new legislation clarifies the rules made surrounding questions of authorization and autonomy for outside spenders. As mentioned in the previous chapter, there is not necessarily a perfect link between discursive and behavioral shifts. The first major behavioral shift occurs in the 1980s, reinforcing new ideas about campaign spending. It is here that the starkest differences

between spending in the 1976 election and those from 1980-1988 are noticeable. While it is an astonishingly low bar, more speakers were involved in the 1980s than in 1976.

Ideas regarding authorization and accessibility slowly became realized during the 1980s. With greater acceptance of outside groups holding the authorization to speak, even if *Bellotti* did not directly affect federal elections, there came a greater push for outside spenders to have the right to access their resources for communication. As a result, the number of groups that produced advertisements grew. In some ways, this growth is tied to normative ideas of democracy, particularly with an audience-based approach to campaign finance reform. Not only were more groups spending money by 1988, but there was also an increase in partisanship, with political advertisers supporting Democratic candidates finally appearing. If one were to look at partisanship as the key metric of competition in the marketplace of ideas, then there most certainly was an expansion of political thought, though advertisements still overwhelmingly came from right wing groups.

As much as outside spenders claimed to be autonomous, that autonomy only went so far as being autonomous from government control, limiting how beneficial the modern reform system could truly be to audiences. Coordinative practices, which by every metric opposed the normative ideas behind reform laws, regularly received attention but with little consequence. Simultaneously, there were some smaller independent groups, such as the pro-senior groups of the Dukakis era. This coordination came in the form of intergenerational ties as much as it did ties between organizations. While many of the major organizations involved in the 1980 and 1984 elections shared

operative ties (particularly to Jesse Helms), moving into 1988, there was a shift away from these groups and more toward legacy-oriented associations. Groups such as the CVC would hold ties to past groups such as NCPAC, and Bush's administrative ties linked him to both Ailes and Reagan.

Additionally, there being a greater level of bipartisanship does not necessarily mean that there was any significant improvement elsewhere. The right to autonomy from government control and institutionalizing of campaigns allowed for continual deregulation of campaign finance law. As a result, coordination of outside groups, making the idea of autonomy the right to be autonomous from the government, but not much else. Many conservative groups underwrote each other or served as a parent group's militant arm². Meanwhile, Democratic groups struggled to organize, often relying on local parties, and further diminished in strength by the Democratic presidential candidate's continual dislike for finance and advertising. Many of the accusations of illegal coordination were dropped, suggesting that the bare minimum approach to accountability was highly unsuccessful as a stopgap to corruption. Lastly, acceptability, which saw the least amount of attention through the legislative process, is perhaps one of the key areas where discourses weakened due to the extreme racism of the Willie Horton ads in 1988.

The 1980s served as a key transitional period for the money-speech paradigm, starting with *Boston v. Bellotti* and FECA 1979 and ending with *FEC v. NCPAC* and

²This has resulted in many scholars referring to the same organizations but by different names (Diamond and Bates 1996; Jamieson 1996; Swint 2008a).

Massachusetts v. Right to Life. Additionally, the number of groups who gained the right to spend money and how much money they could spend expanded. The use of soft money complemented this and would only continue to gain significance. The result was that while more groups could enter the marketplace of ideas, conservative ideas from coordinated groups held dominance throughout the decade. However, the current state of regulation was still far too restrictive for many corporate interests, who would redouble their efforts for deregulation before the 1992 election.

CHAPTER 5: SPEAK SOFTLY AND CARRY A BIG WALLET, 1992-2000

The conceptions of speech established in *Buckley* and solidified in *NCPAC* and *MCFL* would remain stagnant moving into the 1990s. Money was the equivalent of speech, with a fair amount of autonomy for those holding authorization, as long as they met the minimal transparency guidelines. That said, the FEC's willingness to both identify and enforce alleged acts of corruption was shown to be weaker than ideal. Yet, the story of the 1990s is very much a story of what *did not* happen.

While institutions are by no means static, that does not mean there are always radical fluxes of change. In some cases, institutionalized processes are actively maintained, preserving dominant ideas and ensuring their effective implementation (Schmidt 2008). This makes the 1990s an analysis of what happens when campaign finance laws are established and long-standing. There was the enactment of a free market of ideas with a money-speech paradigm focused on providing the public with a plurality of voices while also showing little concern for coordination and a large allowance for soft money. Political advertisers were to remain autonomous on the grounds that avoiding institutionalization provided greater flexibility in speech. In return, they needed to be accountable to ensure said autonomy would avoid some level of corruption. And while there was an acknowledgment of the idea that speech should have some sort of acceptable content due to the importance of quality information and constructive discourse, there were no barriers to content creation beyond a fear of public backlash. With this understanding, candidates, parties, and interest groups

poured millions of dollars into the next three elections as an ever-expanding number of participants became involved.

The most notable structural change in the 1990s came through the Supreme Court. Between the Supreme Court picks of Reagan and George H.W. Bush, whose picks in part built on Reagan's ideological legacy (Cohen 2019), the majority of Supreme Court members held an ideology akin to Reagan instead of Nixon. Unlike the Nixonians Reaganite Supreme Court members were much more interested in the question of rights for political groups, as opposed to individuals. They also held Reagan's conception of corruption, which identifies the government as the source of social problems and private industry as the solution (Cohen 2019). This was very likely in part due to Reagan's tremendous support from outside spenders in the previous decade. However, even after the defeat of George H.W. Bush, the mentality regarding competition, government, and speech remained, and the shift in partisan control did not radically alter the ideological agenda (Teachout 2020).

This also does not mean there were no reform efforts. In 1990 the Supreme Court heard the *Austin v. Michigan* case, choosing to uphold the law as it stood. In 1996, they heard *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, which brought about smaller changes regarding campaigns and political parties working together. Additionally, the late 1990s saw the beginning of the long battle to push for the Bipartisan Campaign Reform Act, which faced continuous filibustering. There was one significant change to the campaign finance system: the IRS's reinterpretation of campaign finance laws and reporting, expanding the use of soft

money in political advertising. So while new ideas and efforts were emerging during the 1990s, there was no radical discursive shift. Rather, the background ideology for future shifts was beginning to emerge.

1990: *AUSTIN V. MICHIGAN* AND THE QUEST FOR FREEDOM

Bellotti, MCFL, and NCPAC established the ideological basis for the marketplace of ideas. As a result, more political advertisers held authorization to enter the marketplace with some degree of autonomy. Under Michigan law, if the Michigan Chamber of Commerce (MCC) wished to engage in politics, they had to use a PAC allotted for political purposes, not their main treasury funds. The MCC found this legal distinction to breach their right to autonomy, as it infringed on their wish to use their treasury funds for political expenditures (Mutch 2014; 2016). For this reason, the MCC challenged the law. The case eventually went to the Supreme Court, with Richard McLellan representing the MCC and Louis Caruso defending the law.

Caruso's core argument dealt with what Teachout (2009) refers to as "drowned voices," where one group, in this case, the MCC, could spend so much they would dominate media coverage, blocking out smaller voices. The court expressed skepticism over this argument. Justice Antonin Scalia questioned the difference between a corporation and a millionaire, such as Donald Trump spending their money on a political campaign (Oyez n.d.a.). Caruso identified the difference as coming from fears over corruption and accountability. Corporations held separate guidelines under the law, requiring them to be treated differently (Oyez n.d.a.). Both Justices Scalia and Anthony Kennedy opposed this argument. If it was simply a matter of speech and all speech was

equal, then any restrictions would limit the rights a corporation holds. If anything, Kennedy believed, and later, McLellan directly claimed that measures for accountability designed to protect democratic discourses harm them. Requiring the MCC to have a PAC hurt the organization due to the stigmatization of PACs, diminishing the value of the MCC's speech (Oyez n.d.a.). This argument taps into the notions of acceptability, accountability, and their contributions to a free market of ideas. The public's anti-PAC bias prevented the MCC from engaging in honest political discourse as they needed to maintain an additional layer of image control. Were there no expectations of responsibility, then their speech would be far more effective. As a result, the regulatory constraints that actively construct the free market of ideas, ensuring some diversity of speech, were perceived as a perversion of political speech. While not the first acknowledgment of the government getting in the way of public interest, it does reinforce the claim that the government prevents the free market of ideas from flourishing.

McLellan's reasoning followed the same anti-government intervention arguments. There was no state interest in spending limitations, as corruption was insufficient for introducing these additional regulations. In essence, the normative idea of ensuring a democratic body opposed technical processes to build a market of ideas. Because the MCC is purely ideological, McLellan argued that they faced unfair treatment, as its main adversaries, unions, held the advantage of having fewer restrictions. The imbalance of restrictions also meant an imbalance in speech and government favoritism. When pushed, he conceded that unions and other

nonincorporated groups held different federal limitations (Oyez n.d.a). The key reason for the separation of treasury funds from PACs is to ensure fair representation. Not everyone associated with a corporation holds the same political ideology, so preventing a corporation from using its treasury funds protects individuals from having their money spent in a way that does not represent their interests. When Justice White presented this argument, McLellan pointed out that all of MCC's members must subscribe to their goals, meaning there was no disconnect, even if they did not all vote for the same candidate. If anything, setting up a PAC would cost the MCC's members vast sums of money, meaning the anti-corruption efforts may be the real distortion causing misrepresentation. According to McLellan and Justice Scalia, it restricted the MCC's right to free speech (Oyez n.d.a). In essence, requiring a PAC is antithetical to speech via its impeding on the marketplace of ideas by being overly burdensome. Justice Stevens, however, argued that while this is a restriction, it keeps corporate entities from misleading the public (Oyez n.d.a.), helping the state preserve the free market of ideas.

The Austin Decision

Turning to past ideas about speech, particularly the importance of accountability as a normative idea and the cognitive ideas necessary to establish it, the court upheld Michigan's law. The three dissenting opinions all came from Reagan's appointees: Justices Scalia, Kennedy, and O'Connor. Justice Thurgood Marshall claimed the justification for upholding the law was the tremendous wealth held by corporations. In reality, it was just as much about ideas of fairness in elections, wrapped in the image of corruption (Hasen 2016). *Austin* did not expand autonomy, as doing so would impede

accountability. Scalia could not abide by this, calling the restrictions “Orwellian” and an assault on freedom of association. Scalia went so far as to question the law’s motive and whether it was about fairness or just a ploy to boost union and incumbent power (Oyez n.d.a.; *Austin v. Mich.* 1990). Justice Brennan countered Scalia, arguing that these are more than reasonable limitations on autonomy. Corporate powers had their right to speech protected, and so too did their investors. Allowing the MCC to use its general funds for political speech would undercut the rights of donors holding differing opinions, meaning allowing the MCC to spend its treasury funds distorted the public’s views (*Austin v. Mich.* 1990).

The *Austin* decision changed neither the law nor the money-speech paradigm. However, it does signify the openness of Reagan’s appointees to the Supreme Court to embrace interest groups’ rights, though this was still a minority opinion. Their interest in expanding the right to use money as speech in a more corporate fashion signifies a change in the Supreme Court’s approach to decision making. And if nothing else, *Austin* is the first time the notion is defended so fiercely within the courts.

1992: CLINTON V. BUSH V. PEROT

While the *Austin* decision did not change legal conceptions of speech, there were other changes on the material side of regulations. The exploration of the use of soft money resulted in bending the rules focusing on transparency. This came from outside spenders and political parties, who were funneling soft money meant for state-level races into the campaigns of federal candidates (Urofsky 2020). Additionally, political advertisements became less focused on policy and more focused on social issues (West

1993). According to the FEC (1993), since 1988, the overall number of nonconnected PACs increased, while the number of corporate PACs stayed roughly the same (Alexander and Corrado 1995). There was also a massive drop in spending from 1988, with the amount of dollars going into the 1992 election roughly cut in half (Alexander and Corrado 1995). There is no federal record of a group spending more than \$100,000 directly pertaining to any single candidate, making outside spending come from smaller spenders. There was also a decrease in the number of political advertisers. Records show six non-party, non-candidate political advertisers involved in 1992, four fewer than the previous election. However, this decline did maintain a somewhat partisan split, slightly favoring Democrats, with four groups backing Clinton, two backing Bush, and none backing Perot. Tables 5.1-5.3 show that these political advertisers were overwhelmingly newcomers, unassociated with previous campaigns. While the political advertisers were “new” compared to previous elections, there were also more ties between outside political advertisers and candidates. However, looking at the numbers alone is deceptive. Later sections in this chapter show that ties between groups do not translate into allegiances.

Table 5.1 Relationships Among Pro-Clinton Spenders, 1992 (N=4)

Ties to Clinton/DNC	3	75%
Ties to Other Outside Groups	0	0%
Ties to Past Campaigns/Returning Groups	0	0%
No Ties	1	25%

Table 5.2 Relationships Among Pro-Bush Spenders, 1992 (N=2)

Ties to Bush/RNC	2	100%
Ties to Other Outside Groups	0	0%
Ties to Past Campaigns/Returning Groups	1	50%
No Ties	0	0%

Table 5.3 Relationships Among All Outside Spenders, 1992 (N=6)

Ties to Candidates/Parties	5	83%
Ties to Other Outside Groups	0	0%
Ties to Past Campaigns/Returning Groups	1	16.66%
No Ties	1	16.66%

Campaign Organizing

Mandy Grunwald handled Bill Clinton and the DNC’s advertising, making her the first woman to engineer a major party’s presidential campaign (Jamieson 1996; Troy 2015). Grunwald headed the ominously titled Great American Media, a subsidiary of the advertising firm she was a partner of, Greer, Margolis, Mitchell, Grunwald & Associates (Elliott 1992). In the process, Grunwald hired Squier, Eskew, and Knapp Communications (Jamieson 1996). While Squier had backed away from being involved in political communications (Johnson 2017), Knapp and Eskew remained highly invested in the political process, helping produce advertisements.

Clinton’s main issues were healthcare, education, and economic growth, which the public cared far more about than those Bush ran on (Bennett 2013; Jamieson 1996). The Clinton campaign held the ability to produce advertisements that went on the attack rapidly, although they were questionably truthful. The Clinton campaign aired more negative advertisements than any presidential candidate since Eisenhower (Kaid 1994). But these attacks did not air throughout the entire country. Rather than going for national media, Clinton used a state-based strategy, targeting different states at different times, allowing him to use his funds more effectively (Alexander and Corrado 1995; Jamieson 1996).

Bush's reelection campaign involved several familiar faces, including Charlie Black (Alexander and Corrado 1995). Leading the charge for Bush would be a group called The November Company (not to be mistaken for the November Group of Ford's campaign), with Martin Puris at the helm (Elliott 1992). Puris teamed up with Martin Teeter, a GOP pollster and now Bush's campaign manager to run the campaign. They used Murphy, Sipple, and Castellanos for their advertising (Glassman 2004; Kurtz 1992). These three advertising veterans formed the core of Bush's ad team. Bush himself was most familiar with Alex Castellanos, who worked with Bush in 1988 and before that with Jesse Helms (Jamieson 1996). Mike Murphy also held ties to Helms, starting his career in NCPAC. On the other hand, Don Sipple held a background advancing moderate candidates and was far less fond of negative advertising (Kurtz 1992). Combined, they would produce a series of poorly produced, uninspiring ads with inconsistent messaging that was of no help to Bush (Johnson 2017; Kaid 1994). This was in part due to losing one of their central talking points: war. With the Cold War over and the Iraq war now unfavorable to the public, the GOP lost one of their key advertising topics (Buell and Sigelman 2008).

1992 saw the rise of a third highly successful candidate. Ross Perot holds the record for being the most successful independent presidential campaign in recent U.S. history. Perot received almost 20% of the popular vote, translating to no votes within the Electoral College. Perot, a billionaire, self-funded his campaign. With no party allegiance, Perot built a bipartisan campaign staff that included Gerald Rafshoon and Sal Russo (Alexander and Corrado 1995; Loevy 1995). While known for his use of 30-minute

advertisements, Perot's 270 Group produced shorter advertisements, all of which were positive (Kaid 1994; Kolbert 1992). The 270 Group came out of Temerlin-McClain, a major Texan advertising firm that rushed ad production near the end of the election. Perot aired most of his advertisements in the last week of the election, airing three times as many as Bush and one-and-a-half times as many as Clinton (Ramstad 1992; West 1997). Combined, these factors made Perot's campaign simultaneously one of the most connected and the most independent presidential campaigns. In the process, Perot garnered support from some voters associated with the Democratic Party, far more in the Republican Party, and the counties where he campaigned had a higher turnout than most others in their states (Mendez 1996).

Strategically, Perot's advertisements held a consistent pattern: opposing the status quo. Near the end of the presidential debates, he emphasized healthcare in his campaign. Perot chose to focus on the issues of cost and debt, generating a large degree of public dialogue (Jamieson 1996; Kaid 1994). This dialogue's significance is that Perot's ads were perhaps the most successful in doing what the most idealist interpretation of political ads claims to be their primary function: informing the public on policy and to generate discussion.

Questionable Autonomy, Questionable Ties

In 1992, nearly every group that produced political advertisements had ties to an official campaign established through interpersonal relationships rather than overlapping memberships. At first glance, this appears to suggest that there was little autonomy among speakers. The creation of direct ties among those involved within the

free market of ideas, at least in principle, shrinks the market in terms of the number of actors and their independence. However, these ties often consist of interpersonal relationships necessary to understand the ties between groups. Therefore, just because political advertisers are not autonomous does not mean they are also collegial. As a result, a simple numerical analysis fails to encompass the interconnectedness of campaign groups, or in this case, the lack of it. Rather, understanding the nature of groups remaining autonomous from campaigns and governments must also consider the feelings and opinions that actors within political society hold toward one another. To put it in simpler terms: just because candidates and interest groups hold historical ties does not mean they have healthy relationships or that they can even tolerate one another.

In 1992 this was a bipartisan phenomenon. The Independent Committee on Ethics PAC (ICEPAC) claimed to be a non-partisan organization (Roman 1992). However, every media expenditure of ICEPAC's within FEC records is for opposing Bush. One of ICEPAC's founders, Victor Kamber, ran a pro-Clinton advertising group called Americans for Change (not to be mistaken with the pro-Reagan group of 1980) during the primary (Schwartz and Devroy 1992). The Kanter Archive includes an advertisement by ICEPAC attacking Bush for changing his position on women's rights to being more pro-choice just before the election. Jamieson (1996) identifies another, more controversial, advertisement existing, where ICEPAC falsely accuses Bush of cheating on his property taxes (Jamieson 1996; Romano 1992). Bush campaign consultant Tori Clarke accused ICEPAC of being a ploy of the Clinton campaign, though she did not specify their linkage.

However, ICEPAC did hold ties to mainstream Democratic Party figures. For instance, Jim Hightower served as treasurer (Robinson 1992), though post-election, Hightower would become critical of the Clinton administration. This makes ICEPAC close, but not necessarily directly aligned, with the Clinton campaign. The group hired Zimmerman and Markman for their advertising. Before working for ICEPAC, Zimmerman produced ads for several other Democratic campaigns. Zimmerman and Markman would support left-wing and ballot initiatives, becoming the core advertising firm for MoveOn.org (Our Principles n.d.; Robinson 1992).

The political advertiser that Bush had a love-hate relationship with was the Presidential Victory Committee (PVC). Founded by the former head of the National Security PAC, Floyd Brown, PVC spent more money than any other PAC during the 1992 election (Alexander and Corrado 1995). Forrest Communications produced the ads. Bush found Brown's help to be counterproductive and unwanted. Bush saw PVC's work as overly negative, particularly an advertisement that requested people call a hotline to learn facts about Clinton for the cost of \$4.99 a call. Despite Bush's requests, Brown refused to stop airing the advertisement (Berke 1992). While seemingly small in stature (due to both expenditures and participants involved), the actions of PVC show that even large, interconnected groups do not always produce cohesive messages, and diverse opinions do emerge within larger, heavily coordinated structures. However, this is not the norm, nor a full-fledged defense of money-as-speech advocates who argue that more spending means more ideas. Rather, it shows the *possibility* of having some level of autonomy and how it can collide with an official campaign's desire for authenticity

when campaigning has been re-institutionalized, moving from control by parties and candidates to control by wealthy elite groups.

Outside Interests and Clintonian Efforts

Not all autonomous groups had contentious ties with candidates. Clinton actively worked to reduce autonomy between himself and pro-choice groups to bolster his legitimacy, which would negatively affect the free market of ideas. The Clinton campaign courted the National Abortion Rights Action League (NARAL), faxing them about his evolving pro-choice position (Barringer 1992). Clinton also attended the 1992 March for Women's Lives that NARAL organized (de Witt 1992; *The Fight for Our Lives* n.d.). NARAL did eventually support Clinton, but minimally. FEC records show most of NARAL's advertising expenditures going to the support of Russ Feingold, with one left unidentified. However, NARAL also hired Greer, Margolis, Mitchell, Grunwald, & Associates Inc., who also worked with the Clinton campaign to make their advertisements. As a result, neither NARAL's nor Clinton's messages were autonomous or independently produced.

Accountability in Messaging

While ICEPAC's autonomy came under scrutiny by Bush supporters, the Christian Action Network (CAN)'s links to Bush were far more extreme, resulting in a decline in autonomy and challenges for the issue of accountability. Martin Mawyer, who ran CAN, previously pressured Bush into adding anti-gay rhetoric into his campaign platform. This caused schisms within the GOP's pro-choice wing, continuing Bush's propagation of the religious right (Apple 1992; Neil 2018; Oldfield 1996). CAN's advertisements attacked

Clinton on religious grounds, without directly calling for voters to vote for or against him. The FEC argued that, when considering the advertisement as a whole, it was clearly express advocacy and therefore a violation of campaign finance law. However, without explicit express advocacy, the court dismissed the case (Celestini 2018; West 2000a; 2000b). This shows the ability to skirt issues of accountability until after the election was over and the line of reasoning used for accountability was overly reliant on the words involved. The advertisement did not explicitly call for an election result with words but with images instead. This represents a disjointed understanding of the law, the discursive ideas behind it, and the political practices involved. The interpretation held did not necessarily match the demands of the medium.

Content and Target Diversity

The previous sections show how outside political advertisers focused on social issues and massive political attacks. For the liberals, the main topics of interest were abortion and unsubstantiated scandals related to Bush's wealth. For the right, the issues at hand were, once again, tremendous negative attacks, some of which also condemned Clinton for having the audacity to suggest that gay individuals may deserve equal treatment. But to end the story here would ignore the third candidate involved, one that a pro-Clinton group seemingly went out of their way to target: the PAC Rural Americans for Fairness.

The Kanter Archives shows Rural Americans for Fairness producing advertisements to support Clinton. According to Johnson-Cartee and Copeland (1997), portions of the advertisements critiqued Bush, but FEC records list all media

expenditures from Rural Americans for Fairness as anti-Perot. FEC records also show that Montana politician Bruce Nelson established Rural Americans for Fairness. Nelson later served as Clinton's Montana State Executive Director for the U.S. Farm Service Agency (Murray 2017). Rural Americans for Fairness paid Michael Fenenbock's MAX Associates (now the Fenenbock Group), a bipartisan advertising firm for production (Fenenbock and Barrett 2016). According to Fenenbock, the most significant aspect of their advertisement was the use of music, hiring Ed Dingus, a musician who had worked with Janis Joplin, and half of the San Francisco Orchestra to produce it¹. Despite not being autonomous from the Clinton campaign, the advertisement also expanded diversity within the free market of ideas. First, the advertisement's focus was on agricultural issues. Second, Rural Americans for Fairness also targeted Ross Perot. By attacking a different politician and focusing on different policy issues, Rural Americans for Fairness etched a unique spot within the greater crux of the political debate, differentiating themselves from any other political advertiser or candidate.

1992: One Step Forward, One Step Back

With no changes to the money-speech paradigm in almost 20 years, the ideological basis for the free market of ideas was set into play. Notions of free speech and diversity of thought were established, along with the regulations designed to foster deliberation. At the same time, there was far less money spent in 1992, with fewer PACs involved, all of which spent less money. Authorized groups had access, maintained their messages, and were relatively autonomous from each other and campaigns. A fair

¹ Personal correspondence on February 4th, 2020 confirmed the advertisement's airing.

number of issues were covered in advertisements, and the involvement of Ross Perot added further complexity. There was also some degree of public accountability. On the surface, it appears as if the discursive setup of the free market of ideas was successful; however, there were pitfalls.

There are many reasons that 1992 was both progress and a standstill for the free market of ideas. First, Perot's presence diversified the number of presidential candidates by default, and his ads effectively generated discussion. However, rarely do third party candidates gain such a degree of prominence or presence in the marketplace of ideas. Second, there is a lack of connectedness among political advertisers in 1992. The few advertisers involved were relatively autonomous from candidates and one another. This is a stark, but flash-in-the-pan difference seen within the 1992 election cycle, as the coordination of organizations seen during the 1980s had stronger and more positive associations with both Reagan and Bush, and future elections would show constructive relationships that are similar, though not always as strong. And just because there were struggles with PVC and ICEPAC does not mean there was no coordination elsewhere. While Clinton did have some ties to NARAL and Rural Americans for Fairness, it is not clear how close they were at the time of the election, though Rural Americans for Fairness and ICEPAC had ties to greater establishment politics. Bush, however, held strong ties with CAN.

At the same time, the extreme negativity and in some cases, lies of PVC, CAN, and ICEPAC completely breached any norms of acceptability. With Perot being network-less, Clinton having a weak network between groups, and Bush actively severing links of

his own, the diversity of speakers was greater than one would expect. The result was a Clinton victory with a marketplace of ideas that was not exceptionally diverse but still more diverse than previous elections.

1996: CLINTON V. DOLE

After Clinton's success in 1992, he sought reelection in 1996. Perot ran again, but his campaign failed to take off. Replacing Bush was Bob Dole. The possibilities for the free market of ideas that opened up in the 1980s became more prominent in 1996, as the amount of soft money continued to increase. Both Alexander and Corrado (1995) and Joe and Wilcox (1999) suggested that the previous election may become the last regulated campaign, as corporate and labor interests became more vested in campaigning than ever before (Dwyre 1999).

The Supreme Court also heard the *Colorado Republican Federal Campaign Committee v. Federal Election Commission* case. The case identified that, like PACs and candidates, political parties had first amendment rights, meaning the Colorado Republicans were legally allowed to spend money on campaign advertising, as no coordination between parties and congressional candidates occurred (Coon 2018; Urofsky 2020). Magleby (2011) highlights this as a monumental change as it removed spending limits for political parties. However, it meant little for the number of voices within the free market of ideas as it did not grant further authorization. In the mid-1990s Congress began to express a new interest in campaign finance reform, and with that came resistance to change. Representatives Chris Shays (R-CT) and Marty Meehan (D-MA) began initiatives for campaign finance reform in the House of Representatives.

At the same time, Senators John McCain (R-AZ) and Russ Feingold (D-WI) proposed their first version of the BCRA to reel in soft money (Farrar-Myers and Dwyre 2008; Hohenberg 1997; Mutch 1999).

The 1996 election was also the first time there was a decline in the overall number of corporate PACs involved in federal elections, despite soft money becoming more prominent than ever before (FEC 1993; 1997). Most of this outside money went toward supporting Dole. However, the number of non-candidate political advertisers remained constant, with six reported by Beck et al. (1977) and no additional actors identified in FEC records or the Kanter Archive. Tables 5.4-5.6 show the relationships among groups involved.

Table 5.4 Relationships Among Pro-Clinton Spenders, 1996 (N=1)

Ties to Clinton/DNC	1	100%
Ties to Other Outside Groups	0	0%
Ties to Past Campaigns/Returning Groups	1	100%
No Ties	0	0%

Table 5.5 Relationships Among Pro-Dole Spenders, 1996 (N=5)

Ties to Dole/RNC	5	80%
Ties to Other Outside Groups	1	20%
Ties to Past Campaigns/Returning Groups	1	20%
No Ties	1	20%

Table 5.6 Relationships Among All Outside Spenders, 1996 (N=6)

Ties to Candidates/Parties	5	83.33%
Ties to Other Outside Groups	1	16.66%
Ties to Past Campaigns/Returning Groups	2	33.33%
No Ties	1	16.66%

Just because the number of groups involved remained constant does not mean the organization of the free market of ideas remained the same. There was a rise in returning political voices, leaving less room for new actors. At the same time, there was

an increase in autonomy from candidates in terms of personal ties. Moreover, the ties between candidates and political advertisers that remained were positive as they actually liked one another. 1996 also has a far more partisan divide, so while the number of spenders did not change, the allocations of resources most certainly did.

Campaign Organizing

Clinton and the Democratic Party took their reliance on soft money to new heights. One of Clinton's consultants, Dick Morris, devised a plan to begin campaigning in 1995 by using soft money to create issue advocacy advertisements that featured but did not directly endorse Clinton (Kaid 1998; Urofsky 2020). Squier, Knapps, and Ochs returned to produce advertisements for the Clinton campaign through the November 5th Group². 71% of the Clinton campaign's advertisements were negative, making a more negative campaign than 1992, and once again, the most negative in history (Kaid 1998:148). With a heavy focus on Medicare, education, and the economy, the advertisements were able to look at Clinton's record while also looking toward the future, attacking the GOP as opposing change and threatening Medicare in the process (Benoit 1998; Kaid 1998; Just 1997).

By May of 1996, the RNC followed the DNC's strategy and began to flood the airwaves with issue advocacy advertisements of their own (Urofsky 2020). The New Century Media Group, founded by Don Sipple of Murphy, Sipple, and Castellanos, handled the advertisements for both Dole and the RNC. The New Century Media

² Not to be confused with the November Group of Ford's 1976 campaign or the November Company of Bush's 1992 campaign.

Group's base of operations was within the same building as the Dole campaign, putting them under suspicion of illegal coordination (U.S. Congress 1997). Greg Stevens' media consulting firm, Greg Stevens and Associates, produced advertisements for Dole's campaign. Stevens was a protégé of Roger Ailes and Charlie Black and had previously worked for both of Bush's campaigns (Bernstein 2007; Galvin 1998; Johnson 2017). Greg Stevens and Associates came under question for illegal coordination due to his work on Congressional campaigns. The Coalition for Our Children's Future and Citizens for the Republic Education Fund relied on Stevens for advertising (Beck et al. 1997; U.S. Congress 1998).

Dole's campaign advertisements went through three phases of messaging, starting with the economy, followed by a focus on drugs and crime, and ending with attacks on Clinton's various scandals (West 1997). While not to the same degree as Clinton, Dole's campaign was also overly negative. Most of Dole's advertisements highlighted tax reform and his honesty, combatting Dole's image of being a mean-spirited curmudgeon gained in the 1988 election (Denton 1988; Kaid 1998). The negative advertisements were often the work of Castellanos and met resistance from the rest of the campaign (Berk 2000).

Bob Dole and the Terrible, No Good, Very Bad Deluge of Corporate Money

While Dole faced a likeability challenge, he had an asset that Clinton did not: a massive cache of corporate issue advocacy groups supporting him. This came, unsurprisingly, through a series of organizations that were not autonomous from the Dole campaign. Much of the funds also came from soft money, obscuring the

transparency conceptualized as necessary for informative political discourses. And while not direct branches of the campaign itself, they most certainly broke ideational norms at the heart of the free market of ideas. The Nuclear Energy Institute (NEI) wished to store nuclear waste in the Yucca Mountain in Nevada, waging a \$1,000,000 multi-media campaign to defeat Clinton (Beck et al. 1997). In 1995, there was discussion of further regulation of nuclear power, and Dole postponed any vote on the issue until after the NEI held a conference on waste issues (Las Vegas Sun 1996). General Electric and Westinghouse also backed the NEI, both of whom were major soft money donors to the GOP and the DNC, though they favored Dole and used their media coverage to shrink Clinton's lead (Beck et al. 1997; Cohen 1997; Naureckas 1997).

Also tied to Dole was Citizens for a Sound Economy (CSE) (Mayer 2017). Chaired by C. Boyden Gray, CSE pushed for the deregulation of the U.S. economy (Beck et al. 1997). Charles and David Koch, mega-millionaire libertarian donors, founded CSE to spread their ideology disguised as a mass movement, regularly teaming with the American Legislative Exchange Council to push state-level reforms (Hertel-Fernandez 2019; Mayer 2017). Before the election, Bob Dole ran the Better America Foundation, which gave Citizens for a Sound Economy \$50,000 in 1995. For that and signing fundraising letters, CSE provided Dole with its donor information that Dole could use for fundraising (U.S. Congress 1998).

Another major donor for CSE was Sean Noble, a Republican political operative known for giving countless organizations money. Among the groups Noble supported were Grover Norquist's Americans for Tax Reform and many of the Koch family's

projects. While Americans for Tax Reform did not produce advertisements in 1996, they created an offshoot called Women for Tax Reform. Audrey Mullen served as both the president of Women for Tax Reform and the executive director of Americans for Tax Reform. This ties Women for Tax Reform to Norquist and links them to larger organizations he ran, such as the Leave Us Alone Coalition, which involved the NRA and the Christian Coalition (Beck et al. 1997).

Abortion as the Returner's Dominant Narrative

While the previously mentioned groups focused on economic issues and tax reform, half of the political advertisers involved in the 1996 election focused on abortion. As a result, there was a split in policies presented to the civic sphere, covering a political issue emphasized by neither mainstream candidate. Abortion was also a bipartisan issue, meaning that it became a topic discussed from multiple viewpoints.

NARAL continued supporting Clinton through the production company Greer, Margolis, Mitchell Burns, and Associates, the current iteration of the campaign advertising firm used by both Clinton and NARAL in 1992 (now sans Grunwald). NARAL went on the offensive, attacking Dole for his record and aiding other pro-choice groups to run a two-year media campaign for abortion rights (Beck et al. 1997).

On the political right was the Children Protection Fund (CPF), which held direct ties to the GOP. The CPF primarily targeted Congressional elections but did so by attacking Clinton's advocacy for partial-birth abortion. On the CPF's advisory board were Jeb Bush—son of George H.W. Bush and Dole's primary opponent Steve Forbes. The GOP consulting firm BrabenderCox produced the CPF's advertisements. Mary Ellen Bork,

the wife of Robert Bork, whom Reagan attempted to put on to the Supreme Court with Dole's help, ran the CPF (Beck et al. 1997; Chicago Tribute 1987; Roberts 1987).

Having competing and autonomous viewpoints within the free market of ideas is necessary for policy discussion. However, ad content and transparency is also of importance. The smaller, more independent group, the United States Catholic Coalition (USCC), met the former qualifications, but not the latter. The USCC's advertisements featured "blood-drenched fetuses," breaching acceptability to the point where several ABC affiliate stations refused to air their advertisements (Beck et al. 1997:64). The advertisement's issues with both acceptability and transparency ran further. Despite the USCC having "Catholic" in their name, there was no affiliation with either the Catholic Church or the NRLC, something some found deceptive and placing the USCC outside of the realm of punishment of the church (Jamieson 2000; Swomley 1997).

The Decline of Speech in 1996

Despite having the same number of independent speakers as 1992, the 1996 election cycle was radically different, with an immense weakening of the marketplace of ideas. Aside from the expansion in negativity, which harmed the very substance of political speech, the partisan divide among political advertisers resembled the 1980s much more than it did 1992, with pro-Republican speakers dominating the airwaves. The free market of ideas also saw a decrease in unique outside voices, with more groups having ties to returning figures and associations with each other and candidates. The mainstream political consulting firms and political advertisers tied to Dole also had ties to Congressional elections, shrinking the diversity of voices and blurring the lines

between different marketplaces of ideas. The one truly autonomous group, the USCC, also found itself pushed out of the market, but that was primarily a product of its own decisions and the public's general disapproval of blood-drenched fetuses.

The declines in autonomy and accountability mapped out above are very much due to the expanded utilization of soft money. The financing of political speech was further consolidated and coordinated, resulting in a weaker free market of ideas. The only way speech is arguably improved is if one were to follow logic suggested by Scalia in *Austin*: any and all expansions of corporate speech are a net positive, no matter what the cost, with outside groups spending more to use their right to be authorized and to have access to the airwaves. Despite the overwhelming amount of money on the Dole campaign's side, Clinton remained significantly more popular and won in 1996.

2000: GORE V. BUSH

With the boom in soft money of 1996, the 2000 election had large shoes to fill but managed to do so. According to the FEC (2001), there was another decrease in the overall number of corporate PACs and an increase in trade and nonconnected PACs. Labor PACs would once again stay roughly constant in number. The debates to reform FECA were still at a Congressional standstill, meaning money was still easily accessible. However, a new interpretation of the law would emerge elsewhere. In the 1990s, the Sierra Club and other political actors appealed to the IRS: their expenditures should go unregulated because they were solely in the business of issue advocacy. And because money was the equivalent of speech, their expenditures should also be tax-exempt with less need to report their use of money (Mutch 2014). The IRS agreed, allowing for a new

set of organizations, called 527s, to gain prominence. This helped encourage outside groups, particularly those backing the Democratic Party, to test the waters of 527 groups' rights, resulting in a boom in tax-exempt speech with minimal disclosure. Before the 1996 election, this was essentially an untapped resource for corporate power that went into full swing in 2000. Most of the money received by 527s came not from corporate sources but individual mega-donors (Broder 2000; Cigler 2002; Public Citizen's Congressional Watch 2002).

In the 2000 election, 42% of national party money spent was soft money, making it the first election where both parties spent more on advertising to support candidates than the candidates did (Brennan Center for Justice 2004; Urofsky 2020:51). Both parties targeted the same core states: Pennsylvania, Ohio, Missouri, Washington, and Florida (West 2001). But the biggest growth in spending in the soft money era came from outside political advertisers who utilized the new rules regarding authorization to the fullest extent possible, more than tripling their presence from 1996, as twenty-one interest groups produced advertisements in the 2000 election. As a result, when evaluating the strength of speech and the free market of ideas via the number of participants, there seemed to be an improvement in 2000.

Ties to Gore/DNC	9	82%
Ties to Other Outside Groups	4	36%
Ties to Past Campaigns/Returning Groups	1	9.1%
No Ties	1	9.1%

Ties to Bush/RNC	7	70%
Ties to Other Outside Groups	5	50%
Ties to Past Campaigns/Returning Groups	4	44.44%
No Ties	1	44.44%

Ties to Candidates/Parties	16	76.2%
Ties to Other Outside Groups	9	43%
Ties to Past Campaigns/Returning Groups	4	25%
No Ties	2	10%

Tables 5.7-5.9 show a strong bipartisan balance, with only two more groups backing Gore than Bush. At the same time, there was less autonomy among political advertisers in terms of overall numbers and as a percentage. The nature of these ties draws a contrast between political parties. Yes, there were more pro-Democrat groups with ties to Al Gore, but many of these groups were “newer” to the free market of ideas. At the same time, Bush’s supporters were less likely to have direct ties to his campaign and had more ties to groups previously involved in political advertising. Additionally, while Gore and Bush were roughly matched speaker for speaker, dollar for dollar Gore’s supporters outspent Bush’s at a ratio of 7:1 (Corrado 2002).

Campaign Organizing

Al Gore’s campaign used a variety of sources for advertisement production. Many advertisements came from a group called The Campaign Company. The Campaign Company ran an offensive series of political attacks near Election Day and aided the Democratic Party (who bankrolled advertisements for the Colorado Democratic Party) (Weisberg and Saletan 2000). Squier, Knapp, and Eskew also returned to produce advertisements. Eskew had particularly strong ties to Gore, working alongside him

during the 1970s at the Nashville Tennessean, now serving as his senior manager (Jamieson and Waldman 2001; Johnson 2017). According to the Kanter Archive, they also relied on the Century Media Group used by Dole during the primary.

The campaign was overwhelmingly negative. Policy-wise, Gore wanted to focus on climate change, but his advisors actively opposed the notion, saying it would cost him the election (Johnson 2017). One-fourth of his advertisements ended up highlighting environmental issues. Other key issues within his advertisements were the economy, healthcare, education, and Bush's fundamental incompetence (Johnson 2017; Kaid 2002; West 2005).

Mark McKinnon's new firm, Maverick Media, handled advertising for George W. Bush's campaign. McKinnon's background, however, is not with the GOP. McKinnon was with the Democratic Party for most of his life, even working for Dukakis in 1988. By 2000, McKinnon switched parties, and Maverick Media would support Bush and hire former members of Dole's campaign: Alex Castellanos and Scott Howell of Howell & Co. (Johnson 2017). It would be inaccurate to call the Bush campaign's media team an airtight operation. McKinnon hired Juanita Yvette Lozano as a personal assistant. Lozano faced charges for taking confidential material from McKinnon and mailing it to the Gore campaign (Marquis 2001; van Natta 2000). While Maverick Media was Bush's main outlet, he would also use the Bauhaus Media Group, run by Eric Hanken, who aided his father during his presidential run (Bauhaus n.d.).

The advertisements created by the Bush team focused first and foremost on education, followed by Medicare, with the economy, deficit, children, and healthcare

tying for a distant third (Kaid 2002). There was also an effort to portray Gore as untrustworthy (West 2005). The RNC supported Bush using a different firm: Cold Harbor Films. Alex Castellanos ran Cold Harbor Films, again critiqued for controversial negative advertisements contradicting the Bush campaign's general trend of using positive ads (Johnson 2017).

A Lack of Autonomy... Deep in the Heart of Texas

While smaller autonomous political advertisers were involved in 2000, between his father's political involvement and Bush's advisor, Karl Rove, the Bush campaign had strong ties to countless outside groups, many of which were rooted in the conservative movement and Texas politics. Moreover, the lines of autonomy among several of the pro-Bush political groups were minimal in terms of direct coordination. As a result, several of the pro-Bush actors within the free market of ideas may have been capable of providing a diverse set of ideas in terms of policy, but they were by no means a diverse set of speakers.

Less associated with Texas, but perhaps one of the most connected groups, was the Conservative Leadership Institute, founded by Morton Blackwell in 1979. By 2000, Blackwell had the Conservative Leadership PAC (CLPAC) to advocate his agenda. Blackwell's entrenchment within the GOP runs deep; regularly working with the RNC and Reagan (Morton Blackwell n.d.). The Leadership Institute has trained countless political operatives, including leaders of College Republican groups, Grover Norquist, and Karl Rove, as well as politicians such as Mitch McConnell and Mike Pence (Horwitz 2005). This links Blackwell to the Bush administration as well as past and future

Republican presidents. CLPAC hired Howell & Co. to produce their advertisements. The same Scott Howell working for Maverick Media and the Bush campaign ran Howell & Co. and is just as entrenched in Republican politics as Blackwell, working with Rove and Republican senators since the 1990s (Johnson 2017).

Another group that infringed upon the boundaries of maintaining autonomy was Empower U.S. Associations, which focused on Bush's tax plans. John Cox ran Empower U.S. Associations and starred in their advertisements. In the 1990s, the Democratic governor of Texas, Ann Richards (who would run Pro-Choice Vote), appointed Lena Guerra to run the Texas Railroad Commission. Among her duties was regulating oil production. Cox disagreed with the appointment on policy grounds and Guerra being a woman and Hispanic. Cox was not the only one to dislike the appointment. Karl Rove saw Guerra's appointment as a tool to defeat Richards (Slate and Moore 2003). This is not immediate coordination, but rather that the Bush team and Cox had long-standing enemies and shared similar ideas about whom to target for political victory. This creation of a common enemy resulted in them coming to each other's aid in the future. Not only did Cox advocate for Bush, but Bush's national security advisor and later Secretary of State Condoleezza Rice endorsed him when he ran for governor of California (Laurenzo 2018).

American Seniors, Inc. was a front group for Golden Rule Insurance, which sent out deceptive mailings to seniors to profit off Social Security (U.S. Congress 1989). While not directly tied to Bush or Rove, J. Patrick Rooney, the head of Golden Rule Insurance, influenced them in a roundabout way. Rooney advocated for school vouchers,

influencing the position of Texas political powerhouse James Leininger. Leininger was a long-time donor for Bush, and Bush served on the board of Leininger's Texas Public Policy Foundation. Leininger coordinated meetings between the head of the Texas Public Policy Foundation and Grover Norquist (Wallace 2014). American Seniors Inc. also held ties to a second political advertiser, The Republican Leadership Coalition³, as Rooney was also a key donor. Members of the Christian Coalition and Scott Reed, one of Bob Dole's key consultants, ran the Republican Leadership Coalition (Center for Public Integrity 2001). According to p2000.us (n.d.b.; n.d.f.), both American Seniors Inc. and the Republican Leadership Coalition produced and aired an identical political advertisement titled "Wanda."

In Sync with Gore

While not necessarily relying on the same degree of historically deep networks as Bush, Gore's supporters were hardly autonomous, both in terms of their ties and much of their content. Tapping into the notion that Bush was unfit to be a leader was the National Association for the Advancement of Colored People (NAACP). At the time, former Democratic Representative Kweisi Mfume led the NAACP. And while Mfume was critical of the Bush administration, Gore had also spoken at many NAACP conventions while Vice President (Associated Press 1993; Shepard 1999). The Kanter Archives show that Fenton Communications produced the NAACP's advertisements. Established by David Fenton, Fenton Communications has worked with Greenpeace, MoveOn.org, and

³ Not to be mistaken for the Republican Leadership Council, which is discussed later.

other left-leaning progressive groups (Goldberg 2005). After Gore's defeat, Fenton went on to work with him to combat the climate crisis (Fenton n.d.).

Straying from Gore's agenda, but nonetheless tied to him, was the Human Rights Campaign, one of the largest pro-LGBT+ advocacy groups within the U.S. Gore worked with the Human Rights Campaign for some time and was even one of the main stars at their second annual dinner (The Advocate 1998). The Human Rights Campaign endorsed Gore early on, in February of 2000, actively campaigning for him throughout the general election (Annual Report 2001; Connolly 2001).

Parallel Battles

In 2000, the concept of the free market of ideas focused on the benefit of the audience hearing the most information possible. This information ideally comes from multiple political advertisers with differing viewpoints. This was the basis for the expansion of authorization within *Bellotti*, and in 2000 this aspect of authorization found some success. While 1996's small number of outside spenders primarily focused on abortion, the political advertisers in 2000 covered a multitude of issues and included voices advocating for both the Democratic and Republican positions. While there was some overlap with Bush and Gore's agendas, many of these political advertisers chose to focus on policy and social issues not emphasized by either campaign, once again expanding political speech. There were four key areas with voices on both sides of the aisle: healthcare, guns, abortion, and fears over third-party voters. Only healthcare was a major concern of either candidate (Kaid 2002). As a result, these outside debates and narratives produce a more expansive set of discourses for the civic sphere. This, of

course, says nothing of the nature and importance of autonomy among political advertisers. Therefore, operations within the free market of ideas were not necessarily more autonomous, as 2000 saw many political issues discussed but from a strong concentration of voices.

Battle 1: Healthcare

By 2000, the AFL-CIO was a long-time ally of the Democratic Party. In 1996 they spent \$25 million on congressional races and were accused of illegal coordination with the DNC (Beck et al. 1997: 11; Corrado 2002). The AFL-CIO found support through American Family Voices (AFV)⁴ in this endeavor. Mike Lux, who worked for the Clinton administration founded AFV and served as Vice President of People for the American Way, another political advertiser (Blake and Rucker 2014; Influencewatch.org n.d.). AFV was also heavily tied to union activity, receiving a large portion of their funds from The American Federation of State, County, and Municipal Employees (AFSCME). Both the AFL-CIO and AFV produced advertisements focusing on healthcare (Broader 2000; Goldstein et al. 2002; p2000.us n.d.a.).

Multiple groups supporting Bush also talked about healthcare. As previously mentioned, both American Seniors Inc. and its associated group, The Republican Leadership Coalition, aired the same advertisement focusing on Medicare. But Americans for Job Security (AJS) spent more money than any other group in 2000.

⁴ The WiscAds database does not include a storyboard for these advertisements and simply lists the sponsor's name as AFV. However, the Kanter Archive includes a group by American Family Voices. Additionally, Bell et al. (2001) highlight AFV for their advertisements.

Michael Dubke and David Carney founded the AJS through the insurance industry. Both Dubke and Carney previously worked with George H.W. Bush, Dubke on H.W. Bush's presidential campaign, and Carney as political director during his presidency (Mayer 2017; Stone 2014). Then Senate majority leader Trent Lott (R-MS) also supported the AJS (Brennan Center for Justice 2004). The AJS often focused on Gore's prescription drug plan (Bell et al. 2001), though WiscAds has an advertisement focusing on the threat of rising gas prices (Goldstein et al. 2002).

Battle 2: Abortion

Tied to healthcare, but often categorized separately from it, is the issue of reproductive rights. Pro-Choice Vote, run by Cecile Richards, daughter of Anne Richards, the former Texas governor and long-time adversary of Karl Rove, received an \$11.7 million donation during the 2000 election (Public Citizen's Congress Watch 2002). Most of the money went to Planned Parenthood, whose ad focused on the lack of clarity in Bush's position on women's rights (Corrado 2002; Goldstein et al. 2004; Public Citizen's Congress Watch 2002). Opposing them was West Virginians for Life. In 1996, West Virginians for Life challenged campaign finance laws on the grounds of autonomy, successfully arguing for the right to produce materials to influence campaigns within 60 days of an election and publish said material anonymously. They also worked with the RNC to recruit pro-life candidates (*West Virginians for Life v. Smith* 1996; Sunday Gazette 2001). West Virginians for Life produced an advertisement comparing Gore and Bush's views on abortion, claiming Gore supported partial-birth abortions and wanted to use tax dollars to support them (Goldstein et al. 2002).

Battle 3: Guns

Handguns Inc. (later known as the Brady Campaign) attacked the NRA and George W. Bush's record. Sarah Brady, the wife of Reagan's press secretary, James Brady, who was shot in an assassination attempt against Reagan, ran Handguns Inc. Sarah Brady had previous ties to the DNC, speaking at their 1996 convention (Goldstein 2000). Brady also had other ties to Gore, whom she considered a long-time ally in the fight for gun control, despite Gore working to downplay his advocacy (Dao 2000a). Handguns Inc. relied on York Zimmerman Productions to produce their advertisements in opposition to the NRA. They produced advertisements claiming a Bush win would mean NRA officials in the Oval Office (Goldstein et al. 2002).

In opposition to Handguns Inc. was the National Rifle Association (NRA), who hired Edmonds and Associates, the same group used by Fund for a Conservative Majority, to produce television advertisements. The NRA was particularly interested in the Bush campaign, as pointed out by their main combatant Handguns Inc. in the ad airing the leaked video of Kayne Robinson. This resulted in the NRA refusing to officially endorse Bush, fearing that an endorsement would do more harm than good to his campaign, though they would also claim responsibility for Bush's victory (Associated Press 2002; Dao 2000b). Unsurprisingly, their advertisements focused on Gore taking away gun rights (Goldstein et al. 2002).

Battle 4: Nader

In 2000 Democrats had a new fear: what if people disliked Gore so much they chose to support third-party candidate Ralph Nader instead? NARAL took the initiative

on this issue, also receiving aid from Pro-Choice Vote. Like the Human Rights Campaign, NARAL endorsed Gore back in February (Connolly 2000; Public Citizen's Congress Watch 2002). However, their advertisements attacked not Bush, but rather Nader, attempting to prevent a loss due to third-party voting (Goldstein et al. 2002). The Kanter Archive also shows that the group's advertising firm had changed, now tying them to Ratcliffe Strategies.

The Republican Leadership Council (RLC) saw the fears over Nader not as a risk but an opportunity. During the general election, the RLC's strategy was to create advertisements using Ralph Nader's own words to critique Gore, targeting more left-wing voters (Meckler 2000). The RLC also produced an advertisement discussing Gore's willingness to take money from Social Security (Goldstein et al. 2002). Jamestown Associates, a go-to advertising firm for Republican candidates, produced RLC's advertisements.

I Didn't Want to Win, So I Put All of My Votes into Hanging Chads

With 527s and the increase in soft money, the number of authorized political advertisers expanded. As a result, for the first time since 1976, the civic sphere had exposure to a multitude of political ideas covering a large range of topics. These did not come from a series of autonomous voices but rather from interconnected groups. Yet, the shape of autonomy also differed among parties. While there may have been fewer pro-Bush groups with associations, their ties were also far stronger, as seen through the RLC, AJS, and the Conservative Leadership PAC. At the same time, the Youth Christian League and West Virginians for Life were some of the most autonomous, albeit smallest,

political advertisers in the election. It is also worth noting the long-term historical ties, with Gore linked to Handguns Inc. and Bush (and more directly, Rove) to American Seniors Inc. and Empower U.S. Associates, tying them to groups such as Americans for Tax Reform.

As with 1996, the muddling of accountability in speech increased due to the anonymity of 527s. While there has never been complete transparency by outside political advertisers, by 2000, the level of anonymity was greater than ever before. Despite the hidden information and lack of clarity, there was tremendous diversity in content, making the marketplace of ideas more open and competitive in terms of policies discussed. Yes, many groups did stick to both candidates' core interests, but many outside groups began to advocate for their policy interests. These policies were diverse in topic and came from multiple partisan lenses, reflecting the notion of the free marketplace of ideas, as the public was able to engage with multiple issues from multiple angles. From certain perspectives, Schmuhl and Picard's (2006) notion that the public can have a diverse array of ideas come from a series of congealed sources was certainly true. Constructing the money-speech paradigm that focused on preserving the autonomy of those involved in while also protecting the free market of ideas from excessive corporate regulations was successful.

Despite the inclusion of regulations to protect the marketplace of ideas, which Scalia opposed, the 2000 election also reflects many of Scalia and other Reagan appointees' ideas. Authorization was expanded upon, allowing for more groups to become involved in the political process, ensuring they had the right and the financial

means to obtain access to speak. However, as was the case from 1980 to 1988, this is a very specific type of autonomy—an autonomy focused on the notion of preventing government-institutionalized campaigning. Many of the groups involved were by no means autonomous from parties, candidates, and in some cases, even each other. Unsurprisingly, with the rampant expansion of speakers in 2000 came increased coordination.

Scalia's standard also disregards any concerns over transparency and accountability. While the new levels of public spending saw public attention, there was little in terms of responsibility—at least in the short term. The groups producing advertisements faced little consequence for their coordinated efforts within the civic sphere, making it seem as if the minimal stopgaps that were once unsuccessful were hardly effective, if ever even applied during the previous decade.

CONCLUSION

The 1990s show a unique decade for campaign finance. While the 1970s and 80s were about forming the relationship between money and speech, 1992-2000 shows multiple elections under a solid, more-or-less consistent understanding of what speech was. Because of the clear understanding of what qualified as speech, it was easier to work around the limitations. This resulted in going from what is arguably some of the most autonomous speech of any given case (the low spending, low group election of 1992) to one of the most concentrated and least diverse (the high spending, high concentration, particularly on the side of the GOP).

The 1992-2000 elections differ from previous ones as the clear and consistent understanding of the law made for more predictable guidelines within the money-speech paradigm. It also led to a better understanding of where and how to circumvent the norms of the market of ideas. This is due to the lack of lawmakers' involvement during the 1990s, resulting in no change to the money-speech paradigm. While lawmakers had their frustrations and fought for reform, no significant legal changes occurred. Instead, it was the work of political society, now in full control, with their push to create 527s that drove forward the future of political advertising. There were no changes to the money-speech paradigm, as the emergence of 527s relied on a previously established understanding of authorization, autonomy, and accountability. These advertisers, often funded by soft money, led to an expansion of political advertisers before the 2000 election. With the expansion of outside spending, there was also a greater level of diversity in policy material, exposing civil society to more ideas than ever before.

Mutch (2014) suggests that if the key effort for reform in lawmaking society, the *Austin* case, had gone the other way, then the Super PACs created by *Citizens United* would have emerged much earlier. This raises an additional question: if groups could form Super PACs, would they not have used 527s? The answer is a resounding "maybe." The reliance on 527s shows a unique understanding of the money-speech paradigm, and it would most certainly have been a different understanding if *Austin* went in favor of MCC. However, there were many additional reforms to the money-speech paradigm between *Citizens United* and *Austin* that dominated the 2000s.

Without them, one cannot say for certain the consequences of a different ruling in *Austin* would have been different. While there most certainly would have been a new array of chaos dominating the 1990s, this does not mean there would be groups such as Super PACs. Yet as the reform efforts in *Austin* failed, there was a continually growing frustration with the role of private money in politics. This disdain and distrust for private money would spark the next discursive shift, resulting in the Bipartisan Campaign Reform Act of 2002 that reshaped political advertising for the 2000s.

CHAPTER 6: TRYING TO PULL IN THE REINS, 2004-2008

From the late 1980s through 2000, the state of the money-speech paradigm that structures the free market of ideas remained roughly the same. Speech was broadly authorized and designed to be autonomous in terms of government institutionalization, placing few limits on spending. However, the demand for autonomy only applied to the relationship between the government and political actors, not between outside spenders. Broadcasters were to charge candidates the lowest unit rates for airtime to provide access, while disclosure requirements hopefully kept outside spenders in check.

But just because the relationship between money and speech remained constant does not mean that people were content. Congress once again found the public's faith in democracy under threat, with many of the past attempts at reform filibustered. Negative advertisements were plentiful, and broadcast stations were finding loopholes to charge candidates more money. The rise in negative advertisements was complimented by the main point of public attention, the boom in soft money. This soft money funded "sham issue ads." These advertisements targeted candidates but avoided using the "eight magic words¹" mapped out in *Buckley*, and therefore did not qualify as express advocacy. Because they did not qualify as express advocacy, there were fewer disclosure requirements. Starting in 1995, there were efforts to make drastic changes to campaign finance law in what were the earliest renditions of the Bipartisan Campaign

¹ The eight magic words were "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject," and any variation that serves as the functional equivalent.

Reform Act (BCRA), also known as McCain-Feingold, and less commonly as the Shays-Meehan amendment. However, the journey to reform FECA did not come to fruition until the 2000s². The bill became a key piece of reform, attempting to rewrite the rules for how candidates and interest groups could enter the free market of ideas. BCRA introduced two amendments that changed the regulation of campaign advertising: Clearer disclosure requirements crafted by Sens. Susan Collins (R-ME) and Ron Wyden (D-OR), and an amendment to control when outside spenders could air advertisements by Sens. Olympia Snowe (R-ME), Jim Jeffords (I-VT), and Paul Wellstone (D-MN). Most of these efforts saw short-lived successes, and many other efforts were unsuccessful. This chapter analyzes the emergence of a new discursive shift, wherein Congress worked to redefine the money-speech paradigm, only for the Supreme Court to bar their work.

2002: THE ACCEPTABILITY OF THE BIPARTISAN CAMPAIGN REFORM ACT

At the heart of the efforts to reform FECA³, and consequentially reimagine the money-speech paradigm, are many of the same concerns from the 1970s: the need to restore public faith in democracy, balancing the cognitive aspects that ensure that the system can run while maintaining the normative ideas that make up the spirit of democracy. Tied to the public's declining faith in democracy was runaway spending and a boom in negative political advertising, both of which Congress also had a distaste for (Franz et al. 2008; U.S. Congress 2001a). Where FECA and BCRA differ, however, is in

² For a more comprehensive account see Farrar-Myers and Dwyre (2008).

³ BCRA is the 2002 amendment to FECA, entangling it with the web of ideological conflicts stemming from a single bill from 1971.

background ideology. Congress now had 30 years of ideational development related to money, markets, and democracy. This resulted in a clearer understanding of campaign finance law regarding the codification of the relationship between money and speech. Particularly, there was the notion of a right to have an audience and that reforms could take an audience-based approach, helping the public hear every speaker possible. But the Bipartisan Campaign Reform Act is not as bipartisan as its name suggests, as Republican leadership opposed every early draft of the bill (U.S. Congress 1999d). Sen. Mitch McConnell (R-KY), “the self-proclaimed Darth Vader of campaign finance reform,” emerged from his shell to lead the opposition (Farrar-Myers and Dwyre 2008: 28). McConnell argued that issue advocacy was simply another form of speech. Those who opposed it (particularly Democrats) were trying to censor a form of speech they did not like (Farrar-Myers and Dwyre 2008).

Another key difference between the fights over FECA and BCRA was Congress’s shift in focus from PACs to the rise of soft money (U.S. Congress 2001i). As a result, BCRA brought the issue of autonomy into question. However, other aspects were far more vital. As previously mentioned, it is common for discursive institutionalist formations to organize around a set of ideological positions (Sivesind and Wahlström 2017). Traditionally, the dominant idea has been one of autonomy. But acceptability became the focus of attention in BCRA, which focused on negative advertising rather than racially inflammatory language and imagery. With acceptability came questions of who has the right to access the airwaves, how to hold actors accountable, whether groups have the right to be autonomous, and how actors might circumvent the rules.

Old and New Influences

The discursive shift that occurred in Congress used many of the same institutional resources behind FECA to reform it in 2002. Those opposing reforms referenced Joel Gora, and Sen. Chuck Hagel (R-NE) referenced Peter Wallison, who worked for the American Enterprise Institute (AEI) (U.S. Congress 2001b; 2001h). These were the voices often used to continue holding the mantle of deregulation, relying on arguments of openness and the importance of speech. However, some sources advocated for reform, notably the Brennan Center. There was also the occasional reference to the Campaign Finance Institute, founded by Michael Malbin, who had worked for both the Brookings Institute and the AEI (Michael Malbin n.d.; U.S. Congress 2001c; 2001f; 2001h; 2001i).

Autonomy on the Defense

Advocates of BCRA challenged the conventional ideas within the money-speech paradigm, notably that regulations regarding acceptability are necessary for a strong marketplace of ideas. However, their opposition further emphasized the importance of expanding autonomy in terms of donation and spending limits. These arguments favored the importance of the normative idea of autonomy, where the democratic process is at its best when the largest number of actors as possible are involved. This approach aligns with many of the ideas that emerged in *Austin*, particularly from figures like Justice Scalia. For defenders of this idea of autonomy, that more spending is by default a moral good, spending itself is not the source of corruption. McConnell took this argument further, arguing that 527s, soft money spenders, and special interest

groups were all different terms for the same thing: free speech for groups that opposed politicians. Thus, by limiting these groups' right to spend, the ultimate consequence would be denying the public's right to speech (U.S. Congress 1999f; 2001a).

McConnell's argument notes a variety of ideational shifts. As Hacker et al. (2015) describe, ideas do not always take power when they emerge. McConnell's arguments are reminiscent of the ones Scalia made in *Austin*, although they are more refined. This shows the development of the importance of autonomy focused not on the benefits for the public, but for special interest groups, and that by providing interest groups with more freedom, the public receives more information. In essence, McConnell argued that special interest groups have a right to an audience, and the audience benefits from hearing them. McConnell flattened the nuance of any differences between these groups' agendas, wealth, and power of those involved in the process. As a result, advocacy for "special interest groups" contradicts many of the older notions of a democratic spirit, where there was more attention to the importance of a plurality of speakers in the free market of ideas. Similarly, Sen. Orrin Hatch (R-UT) noted, any attempt to limit spending went against freedom of speech, as decided in both *Buckley* and *Bellotti* (U.S. Congress 2001c). Rep. Tom DeLay (R-TX) and Sen. Jeff Sessions (R-AL) argued that not only did this infringe on the spirit of democracy, but it would also directly disincentivize public participation (U.S. Congress 1999b; 1999h; 2000b).

Opponents of reform also emphasized the cognitive ideas surrounding autonomy and authorization. Removing soft money might leave countless candidates underfunded, as hard money limits did not adjust with inflation, potentially leaving

candidates and parties resourceless. Sen. Pat Roberts (R-KS) suggested not only that the money would go elsewhere, but there would also be more of it (U.S. Congress 2001e; 2001g; 2001i). To offset this risk, McConnell proposed raising hard money limits to go along with the removal of soft money. McCain and other reform advocates accepted the compromise (U.S. Congress 2000a; 2001b).

Acceptability v. Autonomy

While historically untouched within the money-speech paradigm due to its difficulty to regulate, BCRA's effort to highlight acceptability resulted in autonomy being a threat to constructive discourse. However, in BCRA, advocates of limits based on acceptability wholly relied on normative ideas, making the case that it was impossible to fully embrace both the democratic spirit and the equation of money and speech. This justifies the right to regulate the free market of ideas, even if it was not an interest directly established within *Buckley*. By limiting autonomy, Congress hoped to create a more constructive marketplace of ideas. Rep. Jay Inslee (D-WA) saw this less as anti-speech and more as pro-trust, protecting democracy from erosion (U.S. Congress 1999e). Sens. Barbara Boxer (D-CA) and Carl Levin (D-MI) expressed the same sentiments, arguing that the appearance of corruption was enough of a reason to expand regulation (U.S. Congress 1999f; 2001a).

The emphasis on normative ideas was complemented by cognitive ideas, framing regulations as producing more technical results. Reform advocates used cognitive ideas to justify limiting expenditures to ensure the public heard a larger number of voices, particularly those of candidates. According to Sen. Chris Dodd (D-CT), expanding

donation limits does not benefit the public. Rather, it amplifies the voices of the ultra-wealthy by providing them the autonomy necessary to further fill the airwaves with advertisements (U.S. Congress 2001a). This would prevent the free market of ideas from working as a marketplace. Rep. Mark Udall (D-CO) argued that this speech also impeded the autonomy of candidates. Expanding outside spending dilutes candidates' campaign messages, limiting their ability to reach the public (U.S. 1999c). To Udall, an unregulated free market of ideas results in the drowning out of what he considers to be the most important voices: those of candidates.

Reformers held multiple technical justifications for these arguments: there is no legal right to run political advertisements, which justifies regulating expenditures to ensure equal opportunities and combat corruption. Furthermore, the government already held the right to regulate the free market of ideas. Because the U.S. government holds the rights to the airwaves, Rep. Tom Udall (D-NM) claimed the government had the right to influence ad content, limiting the appearance of negative advertisements (U.S. Congress 1999c). The opposition to negativity within the free market of ideas aligned with the money-speech paradigm's audience-centric approach, particularly if one argued that negativity in advertisements was inherently destructive. Therefore, limiting negative advertisements would improve the marketplace of ideas by ensuring that candidates provide the public with meaningful substance.

Acceptability v. Accountability

Reform advocates believed that restructuring the free market of ideas to serve the public was doable by emphasizing acceptability and reevaluating accountability

measures, particularly the “eight magic words.” Due to their vagueness and easy workarounds, the Brennan Center had found that the “eight magic words” test was functionally meaningless (U.S. Congress 2002b). Sen. Ben Nighthorse (R-CO) argued that relying on the eight magic words alone avoids much of the greater context of political advertisements, which is far more useful for determining an endorsement (U.S. Congress 1999g). Robert Borski (D-PA) built off this reasoning. Soft money advertisements blurred the lines between what was and was not being said by a candidate, impacting the acceptability of speech due to a lack of clarity (U.S. Congress 1999i). As a result, interest groups avoided seemingly straightforward regulations regarding ad content, creating attack advertisements and were left unchecked.

Meeting the Medium

Much of BCRA deals with the lingering challenges to the marketplace of ideas never fully addressed in past legislation. FECA was sparked by the rise of television advertising, which, at the time, was a relatively new tool for political campaigns. The use of television advertising received attention for its rising costs, challenges to broadcasters, and public ire. What was excluded from these concerns was that television, as a medium, contains both audio and visual components. While not the first medium to use either sound or imagery for campaign communications, the importance of delivering audiovisual messages directly into homes was transformative. While Congress paid some attention to this in FECA’s creation, even proposing that outside spenders be required to inform viewers where to get disclosure information, it was not fully incorporated into the law. BCRA sought to change this, paying attention to

television's audiovisual components to increase accountability and discourage negativity.

The discourses surrounding the audiovisual nature of television were to change candidate behavior within the free market of ideas, impacting their participation within the civic sphere. Sen. Byron Dorgan (D-ND) suggested that candidates would have to appear in ¾ths of any given advertisement, hoping to pressure candidates to ensure substance in their ads and increasing accountability (U.S. Congress 2001c). The most important change attuned to television's audiovisual component is the Collins-Wyden amendment. Collins and Wyden introduced Stand by Your Ad (SBYA) regulations, which compelled ad sponsors to identify themselves. This is the regulation that requires candidates to say, "I am _____ and I approve this message" and outside spenders to say "Paid for by _____" in political advertisements, requiring political actors to identify themselves, informing the public of participation in the marketplace of ideas. Collins and Wyden made a case for their amendment on both cognitive and normative grounds, with the hope of discouraging candidates from creating negative advertisements and making it harder to avoid ramifications if they did (U.S. Congress 2001d). This did not ban advertisements; it restructured the relationship between money and speech, aware of the harms that excessive spending can cause, disincentivizing its worst aspects. This was possible because the Collins-Wyden amendment paid attention to the substance of advertisements, not only in terms of the words but also the audio and visual components. As a result, SBYA legislation introduced

regulations of advertisements' visual elements, making it the first time Congress fully took audio, visual, and text into consideration.

Revising Accessibility: Broadcast Regulations

Media broadcasters also caught the attention of legislators concerned with accessibility. Both Wellstone and Boxer questioned the rules through cognitive ideas, wondering if the regulations to ensure candidate access provided the follow-through necessary. This was partly due to interest groups outspending candidates and limiting their access to airtime (U.S. Congress 1999c; 1999f). Sen. Robert Torricelli (D-NJ) found that the regulations requiring broadcasters to charge the lowest unit rate for airtime insufficient. Broadcasters would bump advertisements that candidates purchased early on at a low rate for ads purchased by other companies at later dates and at a higher cost. Broadcasters were also known to drastically increase the cost of airtime during election season, making campaign finance a way to funnel money from politicians to broadcasters. This worked around the values and regulations within the money-speech paradigm, harming politicians' access to the free market of ideas.

To address this, Sen. Patrick Moynihan (D-NY) suggested that candidates receive free airtime because it benefited the public to help them make an informed decision (U.S. Congress 1999g). Members of Congress were quick to catch on to the personal benefit of free airtime. Torricelli introduced a more popular solution: banning broadcasters from bumping candidate ads and requiring stations to charge the lowest possible rates year-round, subjecting them to random checks (U.S. Congress 2001b; 2001c). This helped ensure that candidates were provided access to the marketplace of

ideas without causing excessive financial harm to broadcasters. These proposals, however, faced opposition from both the left and the right, as Sen. Dick Durbin (D-IL) saw them as price-fixing and Sen. Conrad Burns (R-MT) found the plan to give candidates free campaign money harmful to smaller stations. Additionally, Burns feared that other industries might feel pressured to give candidates free resources (U.S. Congress 2001b; 2001c).

Revising Accessibility: The Rights of Candidates and Interest Groups

It was not just the behavior of broadcasters that cut away from the attention candidates received, but also the rise in advertisements from other sources that competed for airtime and competition. These outside spenders had the autonomy to spend freely and the authorization to engage in the free market of ideas. As a result, Congress sought to balance these interests, giving candidates more airtime but not completely excluding independent spenders (U.S. Congress 2001g). This solution came in the form of the Snowe-Jeffords amendment. The proposal would require that 30 days prior to a primary and 60 days prior to a general election, political advertisers, except for corporations and unions relying on soft money, use PACs to fund political advertisements instead.

While the Snowe-Jeffords amendment was overwhelmingly about the question of access, the debates brought every other aspect of the money-speech paradigm into the fray. For instance, Snowe argued that these limitations limited the use of soft money and combatted corruption by reducing the number of sham issue ads from unaccountable groups (U.S. Congress 2001f). This would restrict the number of political

advertisers acting in bad faith that would reach the public right before an election, preventing overly negative misinformation. The Snowe-Jeffords amendment was not an issue of denying autonomy or restricting authorization. Political advertisers were completely free to spend their money in other ways, and they still had access to the free market of ideas. Rather, the Snowe-Jeffords amendment specified the conditions of authorization to ensure candidates had the best chance of receiving attention within the marketplace of ideas.

Wellstone felt the Snowe-Jeffords amendment did not go far enough, as it excluded other PACs and issue advocacy groups. Sen. Jeff Bingaman (D-NM) supported Wellstone, highlighting the Brennan Center's work showing that the increase in soft money spending correlated with increased negative advertising. This would also aid in supporting Sen. Bill Nelson's (D-FL) concern that soft money advertisements are misleading. Revisions expanding the 30-and 60-day limits to other outside groups passed, creating a proposal based on normative ideas to ensure a productive discourse (U.S. Congress 2001f; 2001g; 2001h). Limiting the organizations that could produce political advertisements right before an election also came with the condition that those who maintained authorization were the most transparent advertisers. These proposals worked together to help support a constructive free market of ideas. Not only was there to be a large number of voices that would benefit the public, but the Snowe-Jeffords amendment (now the Snowe-Jeffords-Wellstone amendment) attempted to ensure that those engaging within the free market of ideas acted in good faith. This also serves as an example of the reliance on cognitive and normative ideas to support further regulation.

Cognitive ideas served as a baseline to achieve the normative goal of preventing bad actors from entering the free market of ideas.

Naturally, Snowe-Jeffords-Wellstone had challengers. Sen. John Breaux (D-LA) wondered what good stripping authorization to participate within the free market of ideas 60 days before an election would do, as it could simply increase early advertising (U.S. Congress 2001g). Rep. Bob Ney (R-OH) and Delay also rejected the amendment because it limited political speech to the use of hard money and reduced the public's exposure to differing policy positions at the most critical points in the democratic process (U.S. Congress 2002a). However, Feingold noted that these limitations were minimal and that the Brennan Center supported requiring unions and corporations to use PACs for political advertisements and 527s to disclose donors, making only the most transparent political actors involved near the end of an election (U.S. Congress 2001h).

Sen. John Kyl (R-AZ) feared that requiring donor disclosure would discourage advocacy, as political donors may not want their names associated with messages (U.S. Congress 2001i). Davis, however, welcomed this challenge. The expanded disclosure requirements were necessary for ensuring a healthy democracy. If issue advocacy political advertisers did not want their names associated with their ads, what did it say about the advertisement's content (U.S. Congress 2002a)? Any content that someone was unwilling to put their name behind was not worth having in a democratic discussion.

The Rise of Normative Ideas of Reform

While Congress did rely on cognitive ideas to support BCRA, they also emphasized acceptability as a normative idea, embracing the spirit of democracy. This is noteworthy for two reasons. First, as previously stated, pushes for acceptability in the marketplace of ideas were essentially dead on arrival during previous crisis moments. Congress often cast acceptability aside for expediency and the belief that regulating content was unconstitutional. Yet in BCRA, regulations over acceptability found success, although later sections of this chapter show that success to be a short-lived success. Second, throughout the deliberative process, reform advocates emphasized campaign finance reform's cognitive ideas. Yet when acceptability took center stage, it was the normative ideas that were the main driving point.

The distaste for political advertisements runs deep within the halls of Congress and may very well be why normative ideas of acceptability were so successful. Soft money strengthened many members of Congress's disdain for advertisements, resulting in Rep. Jim Davis (D-FL) referring to ads as a "cancer" (U.S. Congress 1999a: 1977). Dorgan felt the informative and constructive elements that advertisements promised was not delivered, leaving behind an "orgy of 30-second advertisements in this country [that] is a slash-and-burn and hit-and-run negative attack, often by nameless and faceless people, in many cases by organizations that are not part of political parties" (U.S. Congress 2001c:2609). To them and many other politicians, the flood and the content of outside advertisements is corrosive, not the open source of information in a competing marketplace that Delay and McConnell portrayed them as. As a result,

reform advocates were embracing some of the most robust and straightforward arguments for stronger regulations of the free market of ideas to bolster democracy.

BCRA: Final Decisions

The Bipartisan Campaign Reform Act of 2002 (BCRA 2002) rectified several of the concerns left in the wake of FECA, *Buckley*, *Bellotti*, and *NCPAC*. Parties no longer had access to soft money and had to use hard money for GOTV efforts. Simultaneously, there was a rise in the overall cap on hard money, and the amount of hard money allowed became tied to inflation. Additionally, all coordinated expenditures from outside groups to influence elections qualified as contributions, making them subject to hard money limits (BCRA 2002). Parties received a choice: either they could make independent expenditures or sacrifice some autonomy to coordinate with candidates (Bugh 2018b). So while there were limits on spending for accountability, the amount of hard money parties could freely spend increased.

However, in terms of advertising, acceptability finally received serious consideration, cutting into freedoms related to every other aspect within the money-speech paradigm. Select political advertisers could no longer air advertisements within 30 days of a primary and 60 days of a general election. Additionally, advertisers spending more than \$10,000 during an election were required to reveal their disbursements to the FEC. These restrictions are stricter than those placed upon candidates, whose regulation of advertisements is applied 45 days before primaries rather than 30 (BCRA 2002). Authorization and autonomy faced restrictions in the name

of accountability and acceptability. While *FEC v. Christian Action Network* dismissed the idea of the overall “spirit” of an advertisement determining advocacy, it was taken seriously within BCRA, resulting in a new category of spending: electioneering. Rather than issue or express advocacy, electioneering communications push for electoral results, whether they did or did not include the “eight magic words” (BCRA 2002; Bugh 2018b; Corrado 2006). SBYA legislation also came into effect, ensuring accountability through transparency and hopefully improving acceptability by discouraging negative content (BCRA 2002).

Torricelli was victorious in his fight to ensure candidates held on to timeslots that they paid for and to reinforce the requirement to charge the lowest unit rate. However, the lowest unit rate provision only applied if advertisements had an SBYA statement, visual evidence of candidate sponsorship, and advertisements could not mention their opponent (BCRA 2002). In essence, the reduced rate provisions only applied under the condition that there were sufficient accountability standards and not to negative advertisements⁴. While broadcasters did not have to charge candidates the lowest unit rate, they still had to charge candidates the same rates as they would for other advertisements, preventing price gouging (Urofsky 2005). BCRA (2002) explicitly applied to all forms of broadcast, satellite, and cable communications, but not online

⁴ Some scholars make a distinction between contrast ads (those that compare candidates) and negative ads (those that directly critique a single category), I do not make this distinction for two reasons. First, as Geer (2006) notes, all advertisements that compare candidates have some level of negativity to them. Second, the objective of Congress in passing this legislation was to decrease negative ads, not contrast ads. Therefore, it is reasonable to treat advertisements as either positive or negative.

advertising, which became a massive loophole in later years. There was one addition to the rules for spending and access that did not simply apply to broadcast. To solve the problem of the advantage of immense personal wealth without banning the use of their own money, Congress passed the millionaire's amendment. The millionaire's amendment said that if a Senate or House candidate (not presidential) was running against a wealthier candidate, they were to have greater contribution limits to offset the financial advantage held by their opponents.

2003: *MCCONNELL V. FEC* BEGINS THE UNRAVELING

BCRA stood to cause a massive discursive shift within campaign finance law, reregulating the behavior of actors within the marketplace of ideas. However, the victories reformers attained in BCRA were short-lived. Nearly immediately after its passing, McConnell made his move, initiating the *McConnell v. FEC* case. Aiding McConnell were the NRA and Chamber of Commerce, the ACLU, and the AFL-CIO, who argued BCRA denied them autonomy that prevented them from public engagement, making it a form of (Bugh 2018b; 2018c). The RNC was involved, though they were less concerned with participation in the marketplace of ideas and more interested in their finances, claiming that BCRA's restrictions on soft money would result in financial losses (Bugh 2018c; Urofsky 2005). Leading the case was Kenneth Starr, who claimed that combatting corruption was not enough to justify the restrictions in BCRA (Urofsky 2005).

McConnell moved from the district level to the Supreme Court. By that time, the Supreme Court once again changed. Justice Rehnquist was Nixon's only remaining appointee. Clinton had appointed Justices Stephen Breyer and Ruth Bader Ginsburg,

shifting the court slightly to the left. Several actors from district-level efforts remained involved, including Starr, the NRA, and the ACLU. Joining them was the right-wing Club for Growth who made direct appeals to Justice Rehnquist (Urofsky 2005). Then Solicitor General and staunch conservative Theodore Olson represented the FEC, alongside Vice Solicitor General Paul Clement and Seth P. Waxman. On the other side, Kenneth Starr had support from various lawyers: Floyd Abrams represented McConnell, Bobby Burchfield the RNC, and Laurence E. Gold the AFL-CIO (Liptak 2019; Oyez n.d.h.).

Autonomy on the Offense

BCRA leveraged the importance of acceptability in advertisements as a justification to limit autonomy, going against much of the earlier history of campaign finance reform and expressed conservative ideologies. As a result, autonomy was first issue mentioned within *McConnell*. To make his case Starr tapped into ideas introduced within *Buckley*, claiming that the right to make campaign donations was a matter of freedom. Regulating out of fear of outside influence results in the over-institutionalization of politics that the money-speech paradigm's conception of autonomy means to avoid. Burchfield highlighted *NCPAC* in his defense of the RNC. The free market of ideas was sufficient as it had previously stood, and changing it was contradictory to the fundamental right to receive political donations (Oyez n.d.h.). Both Starr and Burchfield's arguments relied on normative ideas that focus on fundamental rights over the minor technicalities of ensuring a democracy. However, Justice Breyer pointed out that the government had a vested interest in paying attention to technicalities and that corruption is a sufficient cause for regulation (Oyez n.d.h.).

Burchfield resisted, as this overrode the party's right to amass resources as they saw fit (Oyez n.d.h.).

Maintaining his hardline opposition to regulation, Justice Scalia aimed at Olson, questioning whether BCRA banned free speech. Olson did not deny this. Rather, he argued that "the freedom of speech doesn't mean *all* freedom of speech" (emphasis added) (Oyez n.d.h.). Corporations, unions, and interest groups faced restrictions on the right to use money before BCRA, providing precedent, and making the new regulations reasonable (Oyez n.d.h.). There is a stark contrast in the ideological makeup between Olson's and Starr and Burchfield's arguments. Olson's attention to the idea that not all speech was the same was very much an argument rooted in cognitive ideas, highlighting the technical processes involved. Starr and Burchfield, however, focused on broad-sweeping fundamental rights. Olson's reasoning is found elsewhere in his arguments, particularly that the source of money, notably soft money, was more of an issue than the dollar amount. Because people donate money for expenditures, the two are linked together, justifying regulation (Oyez n.d.h.).

Adams questioned the concept of electioneering, challenging how clear the lines between issue and express advocacy are. To Adams, electioneering was an overly broad concept. Many PACs, individuals, and other organizations produced advertisements focused on policy issues rather than candidates (Oyez n.d.h.). Justices Ginsberg, Souter, and Kennedy challenged this argument, as the regulations were easily avoidable. If a political actor were so concerned with an issue that they felt the need to create a political ad, the ad would end up influencing the election (Oyez n.d.h.). In response,

Abrams and Gold aimed at the Brennan Center, specifically, their study showing that most people saw issue advertisements as tools for changing electoral results. Adams took issue with the study because respondents could only answer if an ad were an issue ad or an electoral ad, but not if they were a combination of the two (Oyez n.d.h.).

Authorization Revisited

Authorization and its relation to autonomy also found their way into the *McConnell* hearing. Those in favor of deregulation treated the 30-and 60-day restrictions on outside advertisements as an undue burden. Breyer seemingly found the regulations reasonable, as anyone who wished to air an advertisement could still go through a PAC. But Abrams claimed this would result in a decline of overall speech. The AFL-CIO spent roughly sixteen times the money held within their PAC's treasury on political advertisements. Restricting them from engaging with the free market of ideas would be harmful to their positions. The 30-and 60-day bans slowly evolved into a question of access. While previous arguments over access (see chapter 3) emphasized candidates' rights to be seen and heard, the 30 and 60-day bans would be damaging to outside spenders' right to have their presence given serious consideration. Limiting when political advertisers can engage with the public reduced the percentage of the population they can appeal to (Oyez n.d.h.). Gold went further, arguing that the number of restrictions placed on unions was already on the border of being overly burdensome. Requiring the AFL-CIO to solely go through their PAC would prevent them from acting rapidly (Oyez n.d.h.). He also argued that unions should be able to spend this money because they do not amass wealth as corporations do and that the state's interest was

not who speech comes from but ensuring the public has access to the most information possible (Oyez n.d.h.).

Clements and Waxman disagreed with Gold, citing both *Buckley* and *Austin* to show the right to regulate unambiguous speech. Despite the limitations of the Brennan Center's work, the advertisements in question were very much unambiguous (Oyez n.d.h.). Clements heavily relied on *Austin*, claiming it justified BCRA's limits. Additionally, there was a possibility of this ensuring that the speech was more representative. By requiring groups to run ads through PAC money, which would have to be collected separately, any advertisements produced would only represent members who shared the same political goals (Oyez n.d.h.).

Undercutting a Discursive Shift

The court upheld the majority of BCRA. Electioneering was a legitimate category of expenses and became fully codified, while unions and corporations still needed to use PACs, reinforcing *Austin* (Cohen 2020). However, the technical aspects emphasized within cognitive ideas were not enough to justify limiting First Amendment rights (Urofsky 2020). As a result, parties had the right to continue using soft money, but not for attack ads (*McConnell v. FEC 2003*). The issue of acceptability, which permeated through BCRA, maintained some of its staying power. Justice Stevens, while supporting the measure on First Amendment grounds, felt that workarounds would be inevitable. Parties would be free to coordinate with candidates and make their independent expenditures. Outside political advertisers still faced the 30-and 60-day limitation, which

upheld the interests of accountability and acceptability while limiting authorization and access (*McConnell v. FEC* 2003).

Justices Stevens and O'Connor believed that the same anti-corruption interests that applied to hard money also applied to soft money. Justice Stevens pointed out that limiting the autonomy of donors would help prevent quid pro quo scenarios and that disclosure was necessary for voters to know whom they were voting for. This stands in contrast to the beliefs previously expressed by Kennedy, which favored a more expansive autonomy (Farrar-Myers and Dwyre 2008). Scalia partially dissented and took issue with the eight magic words no longer being a functional test. As a result, speech would become far more limited. Justice Thomas also dissented, claiming that the majority ruling was an attack on the notion of a free marketplace of ideas (Farrar-Myers and Dwyre 2008).

FROM 1988 TO 2003: THE THIRD DISCURSIVE SHIFT

Moving from *NCPAC* to BCRA and its partial dismantling in *McConnell* demonstrates several changes in campaign finance law, resulting in the third discursive shift in the money-speech paradigm. Table 6.1 shows the most important change in the money-speech paradigm is the rise in the importance of acceptability. The new focus on acceptability brought further complexity to an audience-based marketplace of ideas. The audience is entitled to information, but there was a further desire for it to be substantial. Audiences benefited from getting advertisements from candidates right before an election, resulting in more regulations surrounding cost control. There were changes in authorization as well. Before BRCA, unions and corporations held the right to

produce advertisements. Now, their ability to do so with soft money became restricted. This also altered the right to access. Notably, the reintroduction of the right to be heard, and providing outside spenders with less access, should, in theory, provide candidates with more access.

Table 6.1: Changes in the Money-Speech Paradigm, 1976-2003

	<i>Buckley/FECA '76</i>	<i>Bellotti/FECA '79</i>	<i>BCRA/McConnell (2003)</i>
Orientation	Right to an Audience	Audience-Centric	Audience-Centric
Focus	Autonomy, Accountability, and Access	Accessibility and Authorization	Accountability and Acceptability
Aspects			
Autonomy	More spending permission but donations are limited.	More spending permission but donations are limited.	Restrictions on soft money.
Accountability	Transparency ensures good actors	Transparency ensures good actors.	Soft money ban, SBYA legislation.
Accessibility	Increase in spending limits. Lowest unit rates for candidates.	Increase in spending limits. Lowest unit rates for candidates.	Lowest unit rates reinforced, but conditional. Increase in hard money. Restrictions on outside advertisers.
Acceptability	No regulation	No regulation	Reforms are designed to create a healthier experience. Lowest unit rates for positive ads only.
Authorization	N/A	Expansion in the right to participate	Limits on who can spend within 60 days of election.

Accountability changed not only through limits on soft money but also through demands of transparency. The Collins-Wyden amendment reshaped transparency for the television era, something that was long overdue. SBYA statements moved accountability into public spaces rather than stored away in file cabinets at the FEC. People would directly receive information regarding sponsorship that included audio, video, and written elements. Candidates faced further pressure to be visibly present in at least a small portion of each television ad.

Yet, as significant as the changes in accountability were, for the first time in roughly thirty years, acceptability was a valid justification for legislation. The new efforts' success is noteworthy because rather than narrowly focus on racially inflammatory language, it focused on negativity. BCRA's focus on "negativity" was not only a broader effort but one that de-racialized the discourse. Negative content in campaigns has a long history of being tied to race (Swint 2008b), making early acceptability-based efforts to curtail negative advertising unsuccessful. However, without race in the equation, there were legal successes. There are other specific differences between the early reform efforts to influence acceptability and those in BCRA. Early attempts sought to ban content, while BCRA disincentivizes it. Additionally, after thirty years, one would hope that political mindsets would have, at least slightly, changed for the better, making legislators more open to the idea. However, the shift in interest after removing race from the discourse cannot go unacknowledged.

The strong opposition to negativity and desire for acceptability resulted in attempts to influence every other aspect of speech. Autonomy saw new limits out of fear of bad actors and the negativity soft money ads provided. Authorization and access were modified to limit the disruptive elements of advertisements, with limits on who could produce ads just before elections and by only requiring broadcasters to charge the lowest unit rates for positive ads. However, accountability saw an expansion by holding ad sponsors' feet to the fire by making their names and faces appear in advertisements.

2004: KERRY V. BUSH

While BCRA brought about renewed interest in political mobilization efforts, it did not decrease political advertising (Boatright et al. 2006; Kang 2005b). Instead, 2004 saw the emergence of “hybrid advertising,” where parties and candidates shared advertising costs to circumvent regulations (Corrado 2011). The total bill of the 2004 election came out to be over \$620 million, along with a 235% rise in political advertisements, with a greater focus on foreign policy (Devlin 2005; Johnson 2017: 376; West 2005).

59 non-candidate, non-party political advertisers participated in 2004; 92.5% of their ads are negative (Franz et al. 2006: 148)⁵. Tables 6.2-6.4 show striking contrasts from the previous election and between parties. While there was a small difference in outside support in 2000, in 2004, 73% of all outside political advertisers backed Kerry despite Bush and the RNC encouraging outside spenders to create 527s (Cahill 2004). However, the political advertisers that backed Bush were more likely to have direct ties to his campaign, and Kerry held fewer ties than Gore did in 2000. There were also far more groups representing the Democratic Party linked to one another, though not necessarily to the Kerry campaign. 2004 also saw the rise of newcomers, as 2004 was the first election many of the groups supporting Kerry participated in. Only three advertisers tied to Bush or the RNC had participated in previous elections⁶. As a result, the free market of ideas opened up on both ends to various new voices in differing

⁵ Franz et al. (2006) provided the percentage of positive advertisements. I calculated this number by subtracting that from 100.

⁶ Americans for Job Security, the NRA, and West Virginians for Life.

fashions. The political advertisers backing Kerry were new in the sense that they included a larger number of unaffiliated organizations. In contrast, the political advertisers backing Bush were new as this was their first involvement in political advertising.

Table 6.2: Relationships Among Pro-Kerry Spenders, 2004 (N=43)

Ties to Kerry/DNC	7	16%
Ties to Other Outside Groups	26	61%
Ties to Past Campaigns/Groups	10	23%
No Ties	15	35%

Table 6.3: Relationships Among Pro-Bush Spenders, 2004 (N=16)

Ties to Bush/RNC	10	62.5%
Ties to Other Outside Groups	9	56%
Ties to Past Campaigns/Groups	8	50%
No Ties	2	12.5%

Table 6.4: Relationships Among All Outside Spenders, 2004 (N=59)

Ties to Candidates/Parties	17	29%
Ties to Other Outside Groups	35	59%
Ties to Past Campaigns/Returning Groups	18	30.5%
No Ties	17	29%

While BCRA attempted to increase disclosure, particularly for 527s, political advertisers skirted these regulations by claiming their goals were to influence elections in general rather than specific races, making them exempt (Corrado 2006). Political advertisers have traditionally put more resources toward Congressional races, but 2004 saw a shift toward the presidential election. This was partly due to the immense controversy surrounding George W. Bush and resulted in a major spike in outside spending (Franz et al. 2006; Magleby 2006). BCRA's crafters hoped that it would increase hard money and decrease soft money, and while they were correct about hard money, there was also an increase in soft money (Magleby 2006; Mutch 2014).

The both coveted and controversial restriction on authorization 60 days before an election saw minimal results. While many political advertisers placed more advertisements at least 61 days before the election, there ended up being almost as many advertisements within 60 days. Most of these advertisements came from 527s (Boatright et al. 2006; Corrado 2006). These groups nearly entirely circumvented efforts to avoid limits on authorization, with only four groups not airing advertisements within 60 days of the general election. And while Bush may have spent more than Kerry, most groups producing advertisements backed Kerry, resulting in Bush being tremendously outspent (Franz et al. 2006).

Campaign Organizing

Shrum, Devine & Donilon, Inc. ran John Kerry's media campaign. Robert Shrum is a key consultant for the DNC, working with Dukakis and Gore's presidential campaigns. He and Kerry's media advisor Jim Margolis (of the Clinton campaigns) founded Riverfront Media to manage Kerry's advertising (Brodsky 2006). The DNC also used AKP&D Message & Media, founded in part by David Axelrod, and Murphy, Putnam, and Shorr Partners. Axelrod, Greer, and Shorr all did consultant work for the AFL-CIO (Beck et al. 1997). Kerry's ads were mainly positive, differing from past candidates. His key focuses were healthcare, the economy, and taxes (Kaid 2005). The DNC focused on Kerry's military record, allowing him to seem credible and competent to critique George W. Bush over the Iraq war (Swint 2008b).

Bush's campaign once again used Maverick Media. However, they also used The Stevens & Schrieter Group consisting of other team members from 2000. Bush

expanded his network of advertisers through Strategic Perception, founded and run by Fred Davis (Johnson 2017). Bush's campaign shifted away from its positive focus in 2000 to a negative one in 2004. Compared to Kerry, Bush's advertisements were more varied in policy focus (Kaid 2005). According to FEC records, the RNC used Dirt Roads Production and Crossroads Media for their ads. Dirt Road Productions was a company associated with actor and Fresno Mayor Alan Autry. However, Crossroads Media is tied to Bush's adviser Karl Rove and shared office space with Americans for Job Security (Duszak 2013; McIntire 2010). The party's advertisements attacked Kerry for being soft on the War on Terror and too willing to tax the American public. The Republican Party also sponsored a group called There is a Difference, which produced an advertisement touting the party's merits.

Autonomy, Acceptability, and Right-Wing Organizing

The free market of ideas relies on competing voices that create constructive messages for the public. Political organizing on the right undercut this through the blind spots in the money-speech paradigm's conception of autonomy, with coordination not just between outside groups but candidates as well. These advertisers produced some of the most negative advertisements of the 2004 election, contradicting the desire for positive messaging. Bush's backers included some of the most controversial groups within the election, the most famous being the 527 Swift Boat Veterans for Truth (SBVT) (Cahill 2004; Cigler 2006; Zernike and Rutenberg 2004; Yardley 2013). Patrick Byrne, who helped found another political advertiser in 2004, Save American Medicine, also financed SBVT (Davidson and Bernick 2006). SBVT held both financial and personal ties

to the Bush campaign. Karl Rove served as an advisor to SBVT, and Matt Dowd, a spokesperson for the Bush campaign, seemingly claimed that the group was in the campaign's pocket on national television (Cahill 2004; Zernike and Rutenberg 2004). Stevens, Redd, Curcio, & Potholm created SBVT's ads, and Greg Stevens was behind their messages and images (Johnson 2017). SBVT would rely on Mentzer Media Services, who specialize in ad placements (Turque 2012). SBVT attacked Kerry early on, with military veterans who had ties to the Bush campaign providing testimonial that Kerry fabricated and misrepresented his war record (Cahill 2004; Swint 2008). This negativity caused public outrage and sparked groups to campaign on behalf of Kerry (discussed in the following section), showing concerns over acceptability.

While SBVT has more infamy, Cigler (2006) argues that the Progress for America Voter Fund (PFA) held stronger ties to the RNC. Tony Feather, who worked for the Bush campaign in 2004, founded PFA. Feather also ran a consulting firm that fundraised for Bush's official campaign. Chris LaCivita worked for SBVT, the RNC, and the PFA (Weissman and Hassan 2006). Mentzer Media also handled PFA's advertising. PFA also worked with McCarthy, Marcus, Hennings, Ltd., run by the same McCarthy of the Willie Horton ads. As a result, not only was the issue of autonomy as a separation from the state violated by PFA's work, but so too was the unregulated idea of autonomy between political advertisers.

Other right-wing political advertisers also engaged with both contemporary and historical ties, violating the norms of autonomy and acceptability within the free market of ideas. While Citizens United (CU) may be more well known for their Supreme Court

case (see chapter 7), CU is far older. Floyd Abrams, one of George H.W. Bush's tacticians, founded CU, and they have received aid from the Koch family (Citizens United n.d. Manegold 1994; Meyer 2017). The Kanter Archive shows CU relying on The Strategy Group for Media, run by Rex Elsass (Zengerle 2016). A second, smaller political advertiser, Let Freedom Ring, also relied on the Strategy Group. In 2004, CU took issue with the airing of Michael Moore's documentary *Fahrenheit 9/11*, finding it an unfair attack on Bush, while the FEC refused to treat it as such (Johnson and Marr 2004). Also taking issue with *Fahrenheit 9/11* was Move America Forward (MAF), a pro-military organization that emerged in 2004. While it has claimed to be a charity organization designed to support troops, MAF used their money to support political candidates. MAF had three key founders: radio host Melanie Morgan, politician Howard Kaloogian, and political consultant from AalamoPAC Sal Russo (Dreazan and McKinnon 2005).

The Decline of Democratic Autonomy

While the political advertisers connected to Bush and the RNC had limited autonomy, this does not mean that there was less organization on the side of Democrats. If anything, Kerry had some of the strongest organizational ties in the history of Democratic presidential campaigns. As a result, political advertisers backing Kerry were far less autonomous, finding multiple routes to work with one another. Much of this came through America Votes, an organization created to organize liberal causes, share information, and expand GOTV efforts. Multiple political advertisers involved in the 2004 election are associated with America Votes (Boatright et al. 2006; Goldstein et al. 2007).

This massive decline in autonomy between political advertisers shows three things. First, the pro-Democrat organizations were working to catch up to the organizational skills of the political right. Second, in their attempt to catch up, they actively and intentionally worked to contradict the needs and interests of a free market of ideas through coordinative practices. Third, and most significantly, a new form of organizational information sharing, which brought about a drastic increase in the sharing of voter information, political consultants, and time-buyers. This directly contradicts the role of political advertising in the free market of ideas as the same individuals created and crafted messages for multiple political advertisers as opposed to each advertising being (a slightly more) unique voice.

Pro-Democrat political advertisers also had other organizational ties, particularly to labor. The Kanter Archive shows that, like the DNC, the AFL-CIO relied on AKDP Message & Media, while the AFSCME and SEIU relied on The Campaign Group, who aided Gore in 1988 (The Campaign Group n.d.). The AFSCME, SEIU, and AFL-CIO are members of America Votes. FEC records also show the SEIU and Planned Parenthood relying on MacWilliams Robinson and Partners, whose Vice President, Mark Lotwis, was a board member for America Votes (NPR 2008; Payne 2008). MacWilliams Robinson and Partners also worked with three smaller political advertisers unaffiliated with America Votes: The Real Economy Group, Campaign Money Watch, and Compare/Decide/Vote. This does not mean that these smaller groups unaffiliated with America Votes were autonomous. Campaign Money Watch took money from the AFSCME and worked with Kerry to shape BCRA (Everyvoice n.d.; Morain 2008; Public Citizen 2004).

The Media Fund (TMF) is one of the largest political advertisers in 2004 and one of America Votes' biggest financial backers (Crew et al. 2007; Franz et al. 2006). David Ickes, Jim Jordan, and Joe Sandler ran TMF. Combined, this would put TMF at the heart of the organizational practices of the 2004 campaign. Ickes worked for Clinton's campaigns and fundraised for America Votes, while Sandler was advising MoveOn.org. At the same time, Jordan was Kerry's previous campaign manager (Currinder 2005; Swint 2008). McMahon and Squier were one of their main political advertisers, also used by fellow America Votes member The League of Conservation Voters (LCV).

MoveOn.org (MoveOn) is the second major advertiser associated with America Votes. Founded out of frustration with Clinton's impeachment Wes Boyd and Joan Blades, MoveOn became a major fundraising source for the DNC, allowing donors such as George Soros to surpass the maximum donation limits. Zimmerman and Markman produced MoveOn's advertisements, along with Media Strategies and Research, which the AFL-CIO used in 1996 (Beck et al. 1997). Through Media Strategies and MoveOn the limitations of autonomy as defined by coordination with parties and candidates is visible. MoveOn backed multiple smaller political advertisers, who also relied on Media Strategies: Texans for Truth, Real Voices, and Safer Together '04, through their "Win Back Respect" campaign and the director Holly Mosher all worked in some capacity with MoveOn⁷ (Feld and Wilcox 2008; Kurtz 2004; p2004.org n.d.a.; n.d.b.; U.S. Congress 2005; Witt and McCormick 2004).

⁷ One of MoveOn's main leaders even founded Texans for Truth (Feld and Wilcox 2008; Witt and McCormick 2004).

During the 2004 election, MoveOn (and to a lesser extent TMF) faced accusations of being a Democratic slush fund, distorting the media's role in democracy. However, MoveOn's nature is more complex. MoveOn came to prominence in the 2000s through its anti-war stance, very much willing to speak against the Democratic Party, only to slowly shift toward the position of party support (Getter 2004; Hamm 2008; Mercurio 2004). However, the suspicions against them gained more attention after Kerry hired a member of MoveOn's staff, Zach Exley, to run his website, though MoveOn said there would be no further contact between themselves and Exley (Mercurio 2004).

While not as expansive as TMF or MoveOn, the New Democrat Network (NDN) was one of the largest spenders in 2004 and one of the largest recipients of money that would have traditionally gone to the Democratic Party had BCRA not passed (Crotty 2005). Simon Rosenberg, a mentee of Joe Lieberman, ran the NDN. While the initial goal of the NDN was to support moderate Democrats, Rosenberg favored working with groups like MoveOn to support members of the Hispanic Caucus (Klein 2004). While TMF gave NDN roughly \$1.5 million to produce advertisements (Devlin 2005), the Hispanic outreach efforts linked NDN to Kerry. Patricia Gaitán and Lorena Chambers Lopez, both of whom are associated with the NDN, ran Kerry's outreach efforts (p2004.org n.d.c.). The group ran ads in English and Spanish.

An analysis of Kerry supporters and their participation within the marketplace of ideas tells the tales of two extremes. While many of the groups backing Kerry were by no means autonomous, 2004 also saw a record high number of independent groups. As a result, 2004 includes some of the most and least interconnected political advertisers.

Just as much as there was a consolidation of speech on the side of Democrats, the rise in smaller groups also carved the way for other more independent voices—the most independent of them being the 527 GeorgeTheMenace.org (GTM). GTM gained attention for their advertisement featuring a video of Osama Bin Laden using fake subtitles to have him praise Bush for destabilizing Iraq. GTM’s unconventionality came not from their ad content but their sponsorship and origins. Rather than established grassroots organizations, lobbyists, or mega-donors, the sponsors of GTM are something far more dangerous: disgruntled Minnesotans. Frustrated by SBVT’s anti-Kerry messaging, GTM founder Kelley Garry-Marschall and her neighbors wanted to fill their lawns with Kerry’s yard signs. However, because there were too few signs, they produced a political ad instead (McCormick 2004). With the help of a handful of neighbors, including a speech pathologist and an advertising copywriter who wrote the script, GTM raised the money to produce and air the advertisement (McCormick 2004; Zdechilk 2004). GTM remained independent, gathering funds through local grassroots efforts (Zdechilk 2004). GTM’s involvement is small-scale. However, as a 527, GTM also serves as an example of exactly how the free market of ideas is supposed to work: loosening regulations in a way that provides more citizens the ability to make their political voices heard.

Shared Advertisers Within the GOP

It was not just the Democratic Party that saw the emergence of shared advertisers, as the GOP also shrank the free market of ideas in the same way, particularly through the firm Red Sea LLC. Jon Lerner, who would later become an

adviser to future Vice President Mike Pence, ran Red Sea LLC (Croucher 2018). There are differences between Red Sea LLC, TMF, MoveOn, and America Votes, as Red Sea was not as heavily involved in information sharing and did not bankroll other political advertisers.

Softer Voices and Americans United to Preserve Marriage (AUPM) used Red Sea LLC. Cleta Mitchell, a former representative of the NRA, and Israeli lobby advocate Midge Decter ran Softer Voices. Their funding came from Bruce Kovner, a friend of Dick Cheney and chair of the AEI. Bush even thanked Kovner and the AEI for helping him with his re-election (Stone and Gordon 2018; Weiss 2005). Kovner would also help Karl Rove start American Crossroads after Bush left office (Parti 2012). Gary Bauer and Dorie Black founded AUPM to oppose the legalization of same-sex marriage. Bauer worked for the Reagan administration and headed the right-wing Family Research Council (Marcus 2012a; Staff 2017). AUPM shared donors with SBVT, notably Aubrey McClendon and Tom Ward, financial backers of the Seattle Sonics basketball team (Zuckerman 2014).

Accountability Efforts

With the newly increased activity in the free market of ideas came normative violations. There were two key reasons the FEC faced pressure to push for further accountability. First, there was concern over intentional misfiling and illegal coordination to the point of corruption. Second, accountability efforts sparked by the same corruption concerns and extreme negativity. The degree to which violations occurred, and to which there was an attempt to enforce penalties varied. The LCV was found guilty of engaging in express advocacy on Kerry's behalf (Vosdingh 2006a). This is

a minor scandal in comparison to the public's reaction to TMF and MoveOn. While MoveOn is more complex than a Democratic slush fund, it still operates as a Democratic slush fund. MoveOn took large donations specifically designed to advocate for Kerry but did not register as a PAC, violating transparency standards (Vosdigh 2006c). The FEC also targeted TMF for illegal fundraising, fining them \$58,000 for campaign finance violations, the largest sanction in U.S. history (Vogel 2007).

SBVT's negativity, slander, and coordination with the Bush administration pushed Kerry's campaign to file an FEC complaint. Autonomy-wise, there was the issue of coordination, something further amplified by the lack of transparency regarding SBVT's donors. The negativity in SBVT's ads is iconic, resulting in Swint (2008b) classifying 2004 as one of the most negative elections in U.S. history. This signals that the efforts to create accountability and acceptable discourses through SBYA statements were unsuccessful before elections occurred. But SBVT faced legal backlash. Kerry's campaign accused SBVT of creating advertisements not for educational purposes, but express advocacy. The FEC agreed and fined SBVT for their violations (Cahill 2004; Vosdigh 2006c). Like MoveOn, PFA faced criticism for not properly registering as a PAC, though they reached a settlement with the FEC after the election (Vosdigh 2007).

These cases show political advertisers' ability to circumvent efforts to maintain autonomy, acceptability, and accountability within the free market of ideas. Much of this comes from the fact that many of the penalties occurred post-election. As a result, there was little to stop illegal behavior as the election occurred, leaving the free market of ideas untouched when it mattered the most.

An Expansion of Policy

The free market of ideas' fundamental purpose is to provide the public with information to make decisions. The money-speech paradigm guides this, working to outline and create the "best speech" possible. While those who inherently see negativity as a problem for the marketplace of ideas may dislike the advertising trends in 2004, there was an expansion of policy discussion. This is in no small part due to the explosive growth in political advertisers. But just because the marketplace of ideas *could* explore a large variety of policies does not mean that it *did*, particularly on partisan lines. One thing that made political advertisements unique in 2000 was that there were various political issues covered in ads backing both candidates (and Ralph Nader). This did not occur in 2004. Pro-Kerry advertisers put out a more diverse set of policy-centered ads (Benoit et al. 2007).

In contrast, the pro-Bush groups rallied around a central issue: war. But the messages pro-Bush political advertisers produced are far from monotonous. Move America Forward produced advertisements claiming the war was going well, and Softer Voices highlighted how the world was watching. Citizens United took their hatred of Michael Moore to the next level, linking his position on the war and Kerry together (Goldstein et al. 2007). This does not mean that other conservative policies were absent from outside advertising. Americans for Job Security focused on jobs and how mountaintop coal mining restrictions would damage the nation. AUPM attacked Kerry for being "too liberal" (the title of their ad) due to his opposition to the Defense of Marriage Act. Pro-life groups like West Virginians for Life and Breath of Life used the

testimonials of women regretting abortions to highlight Bush's record, and the Club for Growth also went after Kerry over his lack of consistency (Goldstein et al. 2007).

2004: A Victory by Technicality

Despite outmatching and outspending Bush, Kerry lost the 2004 election. Yet Kerry's support was not from purely consolidated powers. Rather, pro-Kerry groups engaged in the marketplace of ideas in two ways: either heavily coordinated with the campaign or major groups like America Votes and TMF or incredibly autonomously. As a result, the idea of having a diverse set of voices express their ideas to the public did occur. Yet because the coordinative efforts that occurred often went unpunished, the more organized side of political advertising remained and was far more dominant with its large budget and networks.

The largest development seen in 2004 was the decline of autonomy through the sharing of firms. While in the 1980s, political advertisers worked with one another and with candidates, it was much more small-scale. A handful of political advertisers became responsible for managing multiple groups' funding and organization, resulting in much less autonomy between political advertisers. This is particularly true of the Democratic Party, as the GOP had no equivalent of MoveOn or TMF in 2004.

BCRA attempted to limit access and authorization for political advertisers within 60 days of the election. But most political advertisers still found their way into the civic sphere. This was not simply due to the law of large numbers, where more political advertisers should mean more groups involved by default. In 2004, 4 of the 59 political advertisers, roughly 6.8%, aired advertisements within the 60-day timeframe. In 2000,

only 2 of the 21 political advertisers, 9.5%, did not air advertisements within 60 days. So while there may be more political advertisers only airing outside the 60-day window, the increase was small, and it actually decreased as a percentage, showing the limitations of the efforts to rework authorization, and consequentially, access.

One of BCRA's main contributions to the free market of ideas was its desire to emphasize accountability. There were multiple lawsuits tied to political advertisers in the 2004 election, focusing on technical filings rather than coordination. The further rise of soft money also muddles the truth behind sponsorship. And while both candidates and outside spenders included SBYA statements in their ads, how useful they are in terms of informativeness is questionable (Gale et al. 2005), and they did not hinder the extreme negativity of groups like SBVT. By all accounts, negativity rose on nearly every level. From the candidates, to parties, to major outside groups, to the small independent spenders, negative advertisements were in constant supply showing a failure in BCRA's attempt to ensure some level of acceptability.

The changes to the free market of ideas in 2004 were generally not the ones desired by Congress. 2004 saw more coordination and less accountability, and the measures to increase acceptability were unfruitful. There was, at the very least, more policy discussion, particularly on the side of Democrats. Unless one completely devalues coordination between groups or holds a similar position to that expressed by Scalia, the goal is to have as many groups producing advertisements as possible. However, if one values positivity in advertisements, accountability of their sponsors, a stricter standard

of authorization, or the ensuring of access for candidates, they will be thoroughly disappointed.

2007-2008: *WISCONSIN RIGHT TO LIFE V. FEC* AND *DAVIS V. FEC*

In 2006, Justice O'Connor left the Supreme Court. Replacing her was Justice Samuel Alito. Shortly after, Chief Justice Rehnquist would step down to be replaced by John Roberts. Both appointees of George W. Bush had worked with Ronald Reagan, causing a further rightward turn of the Court through an embrace of the Reaganite ideology (Cohen 2019). Alito particularly is a key influence behind the hard-right turn favoring deregulation of campaign spending (Hasen 2016). This approach to governance emphasizes that government involvement should be minimal at all costs and that freedom of choice is also for corporate power (Teachout 2020). The reinforcement and expansion of this ideology is a visible influence on the next two Supreme Court cases, *Davis v. FEC* and *FEC v. Wisconsin Right to Life (WRTL)*.

The *Davis* decision targeted the millionaire's amendment that provided less wealthy challengers additional funds a counterbalance to self-financed campaigns. The *Davis* case's setup is peculiar, dealing with self-financing, which did not necessarily fit previous concerns over corruption (Isaacharoff 2011). The Supreme Court decided that providing these funds denied wealthy candidates the right to speech and that there was a lack of government interest to apply such regulation to only a small subsection of cases. As a result, the Supreme Court struck down the millionaire's amendment (Metroka 2018; Mutch 2016).

While *Davis* shows a change in the position of the Court, *WRTL* directly impacted the free market of ideas in presidential elections. The Wisconsin Right to Life committee argued their pro-life advertisements were issue advertisements and did not qualify as electioneering. For this reason, they sought an exemption from the Snowe-Jeffords-Wellstone amendment (Mutch 2016). As a result, the 30-and 60-day bans would only apply on a case-by-case basis and only when advertisements could have no interpretation other than being for electioneering (*FEC v. Wisconsin Right to Life* 2007; Oyez n.d.f.). Because treasury funds are usable for issue advocacy, the Court brought back the possibility of unlimited outside money spent on issue advertisements, even if they were candidate focused (Corrado 2011). Between these two cases, the attempts to realign BCRA found themselves further undone.

Because the Supreme Court saw the need for speech to be autonomous, there was no interest in more financially level playing fields (*Davis*). And the desire to avoid government control also meant that more political advertisers held authorization to reach the public within the 30-day and 60-day limits (*WRTL*). These rulings reinforce the notions of autonomy as being designed to avoid government control and nothing else. As a result, acceptability was deemphasized again within the money-speech paradigm.

2008: OBAMA V. MCCAIN

The number of political advertisers involved in the 2008 election decreased from 59 to 47⁸, with 22 groups backing McCain and 25 backing Obama, a more even split than

⁸ The AARP also produced advertisements, but these critiqued both Obama and McCain, so I excluded the group from the dataset.

the previous election. Both Obama and McCain ran as political reformers, and as a result, far fewer political advertisers had strong ties to either candidate, and many of the connections were far more limited.

Tables 6.5-6.8 show a series of changes in the free market of ideas. While fewer pro-Democrat groups participated in 2008, many returning groups had ties to America Votes, increasing the likelihood of returning political advertisers. As a result, there were fewer new voices engaged within the free market of ideas, and in many ways, both the older and newer voices were less autonomous. The GOP saw an increase in political advertisers, but the extent to which they had ties to one another, McCain, or the RNC decreased. One of the few returning groups, the NRA had an openly tense relationship with McCain (Stein 2008). However, the outside political advertisers were also far more likely to have had ties to participants in the previous election. This, in some ways, places them at odds with McCain and his general dislike of money in politics.

Table 6.5: Relationships Among Pro-Obama Spenders, 2008 (N=25)

Ties to Obama/DNC	7	28%
Ties to Other Outside Groups	21	84%
Ties to Past Campaigns/ Groups	12	48%
No Ties	1	4%

Table 6.6: Relationships Among Pro-McCain Spenders, 2008 (N=22)

Ties to McCain/RNC	7	32%
Ties to Other Outside Groups	8	36%
Ties to Past Campaigns/ Groups	15	68%
No Ties	3	14%

Table 6.7: Relationships Among All Outside Spenders, 2008 (N=47)

Ties to Candidates/Parties	14	29%
Ties to Other Outside Groups	29	62%
Ties to Past Campaigns/ Groups	27	57%
No Ties	4	8.5%

There were also changes in spending patterns. Post-*WRTL*, the number of political advertisers not airing advertisements within the 60-day window increased from 4 to 7 (6.8% to 15%). Despite the growing popularity of digital advertising, the cost of television advertising in 2008 totaled \$700 million. In addition, both McCain and Obama produced more unique advertisements focusing on policy, though Obama did so more than McCain. Foreign policy was also absent in the 2008 election, shifting focus away from Bush's wars (Kaid 2009; Scammell 2014; White 2009).

Campaign Organizing

Barack Obama did not take public financing for his 2008 campaign, making him the first president to solely rely on outside money (Nagourney and Zelney 2008). This provided Obama with the funds necessary to out-pressure McCain (Kenski et al. 2010; Jamieson 2009). Obama's advertising team consisted of former members of AKP&D Message and Media. David Axelrod helmed the campaign with help from John Kupper, David Plouffe, and John Del Cecato. Kupper had previously worked with Obama on his 2004 Senate run. James Margolis also served on his team through his firm GMMB, tying Obama to several past campaigns and the AFL-CIO (Kenski et al. 2010; Jamieson 2009; Vogel 2009). FEC records show how the DNC used established players, now in the form of McMahan, Squier, and Lapp for their advertisements. According to Axelrod, the Obama campaign designed the message of "hope and change" to make Obama diametrically opposed to McCain, framing McCain as a continuation of the status quo. To drive this point home, McCain found himself tied to Bush in attack advertisements (Jamieson 2009; West 2010). By doing so, Obama could attack McCain on his economic

policies and delegitimize his status as a “maverick” (Dover 2010). Both Obama and McCain did place heavy emphasis on taxes and the economy within their advertising, though Obama also focused on healthcare. And while the message of “hope and change” garnered strong media attention and the image of an overall positive campaign, Obama produced far more negative advertisements during the general election than McCain did: 76% of Obama’s ads were negative in contrast to McCain’s 54% (Kaid 2009:216).

Foxhole productions handled McCain’s advertising, working with Strategic Perception as Fred Davis headed McCain’s creative team (Jamieson 2009; Johnson 2017). Smart Media Group, a GOP firm run by Kyle Roberts, managed McCain’s time buying (AAPC n.d.). While McCain’s advertisements were overwhelmingly policy-focused, they still placed more emphasis on image than Obama’s. McCain also placed less emphasis on healthcare and the environment and more on international affairs, terrorism, and defense spending (Kaid 2009). To support McCain, the RNC relied on multiple, including OnMessage Inc. founded by filmmaker Wes Anderson and his brother Curt Anderson (OnMessage Inc. n.d.). OnMessage Inc. served the RNC and was not allowed to coordinate with McCain and produced contradictory advertisements (B. Smith 2008).

The Returning Networks and Offshoots

Competition among speakers within the free market of ideas requires the speakers to be autonomous. Yet in 2009, there was little autonomy from both candidates and between political advertisers, and many of those backing Obama were

older speakers. Obama's tremendous level of union support shows this. Several unions shared established Democratic advertising firms: the AFL-CIO and SEIU both relied on Media Strategies and Research, the UAW used Mundy Katowitz Media, and the AFSCME continued to rely on the Campaign Group. America Votes also contributed to the continued ties on the side of Democratic advertisers, notably the League of Conservation Voters, MoveOn.org, and NARAL (through the Winning Message Action Fund) (Evans 2008h).

Like TMF in 2004, many unions had offshoot organizations that they worked with to help produce messages, reducing autonomy. These offshoots created a stronger group of affiliated organizations sharing resources and messaging and indirectly linking them to Obama. As a result, these groups produced a reduction in the autonomy of speech and provided additional levels of access for unions. The most prominent union in terms of offshoots was the AFL-CIO, who worked with the International Association of Fire Fighters and the California Nurses Association (CNA) (IAFF Local 2498 n.d.; Raine 2009). The CNA also relied on the Public Media Center, who previously worked with Planned Parenthood and NARAL, to produce their ads (Lewis 2005).

The AFL-CIO also had other lobbying groups involved in political advertising under its wing, notably the Alliance for Retired Americans (ARA), who pushed union retirees to vote (AFL-CIO n.d.; Alliance for Retired Americans n.d.). Eddie Coyle served as the group's director and as a board member for America Votes. Michael Buckley served as both the AFL-CIO's and ARA's communications director and was a pledged delegate for Obama at the 2008 Democratic Party convention (Hill et al. 2008). The ARA paid

Jennie Philhower for most productions; however, PoliticsTV Consulting, run by Dan Manatt, also produced and aired their advertisements. Formerly, Manatt had worked on both of Clinton's campaigns (PoliticsTV.com n.d.).

The most intricately linked group is Health Care for America Now (HCAN). Among HCAN's supporters are the SEIU, Planned Parenthood, United Food and Commercial Workers, the AFSCME, Progressive Future, and MoveOn (Healthcare for America Now n.d.; Bosman 2008; Moore 2008). HCAN's co-chairs each had ties to a different major organization. Barbara Coufel was the assistant director of legislation for the AFSCME, Khalid Pitts was the SEIU's director of political accountability, and Jeff Blum was a board member of America Votes (NPR 2008). HCAN produced an ad critiquing McCain's stance on healthcare and preexisting conditions. The firm New Media produced their ads and Buying Time LLC. placed them. Catherine Hendrick, who had worked for the DNC during the 2000 and 2004 presidential campaigns and the Clinton/Gore campaign in 1996, spearheads Buying Time. Before that, she had worked with Shrum and Squier Knapp Dunn Media (Buying Time n.d.).

The ties to Buying Time show a further reduction in autonomy, as Hendrick worked with other political advertisers in 2008. They resemble what Red Sea LLC was in 2004: A firm that multiple political advertisers relied on, but without the top-down organizing and depth of something like MoveOn. Among the groups Buying Time worked with was Gerald Austin and Jeff Rusnak's Bring Ohio Back (BOHB). Previously, Austin had served on the campaign team for Jesse Jackson's 1988 presidential bid. At the time, Rusnak worked as Austin's assistant and would work for the Dukakis campaign,

ultimately tying them to Washington insider circles (Chief Marketer Staff 2004; Evans 2008j; Johnson 2017). BOHB did not just rely on Buying Time, LLC., but also The Tesseract Group, run by Erica Payne. Payne has worked with America Votes and the NDN and has served as the DNC's deputy finance director (Tesseract n.d.).

Beyond these offshoots, there was still little autonomy on the side of those backing Obama. There were very few groups that were less connected to the overall Obama campaign. One of the few unaffiliated advertisers was Truth and Hope (T&H), founded by Bush supporter and mortgage banker Eugene Hedlund (Evans 2008b; Goldstein et al. 2007; 2011). Hedlund paid two sources to produce his advertisements during the 2008 election: the low-budget ad company spotrunner.com and Transire Rubiconem Inc., for which Hedlund served as a mortgage broker (Blankson 2008; Eugene Hedlund n.d.). T&H backed another political advertiser, Mamas for Obama, helping create their advertisement (also using Spotrunner) (Garfield 2008).

McCain's Fragments

As previously mentioned, the political advertisers backing McCain held more ties to past participants than they did McCain. So while the right wing groups involved in the marketplace of ideas may have been autonomous from the campaign, they were anything but new. As much as this is due to McCain's dislike of outside money, it is also due to outside money's dislike of McCain. Missouri Right to Life (MRTL) followed their parent group, the National Right to Life Committee, backing McCain not because he was good, but because Obama has “one of the most zealous anti-life records in the U.S. Senate” (2008:2). MRTL's advertisement starred Jill Stanek, the head of Born Alive Truth,

another political advertiser (p2008.org n.d.b.). The Koch-funded Common Sense Issues (CSI) was also highly critical of McCain, backing Mike Huckabee during the primary (Shaw et al. 2014).

Several of the returning political advertisers took the form of new, or at the very least different, organizations. For example, the AUPM did not produce advertisements in 2008, but the Family Research Council (FRC) did, attacking Obama's position on abortion. This too was a contentious relationship for McCain. He and the FRC had butted heads over abortion in the past but also worked together to oppose Don't Ask, Don't Tell (Leonard 1999; Towle 2010). The FRC used Strategic Media Placement Inc. for their television advertisements, though they also used the Rove-aligned group Crossroads for radio ads. Strategic Media, however, was the buying arm for the Strategy Group, which Citizens United used for media in 2004 (Polticker Staff 2011). Similarly, Our Country Deserves Better (OCDB) was a group that emerged out of the remains of Move America Forward and was associated with one of the first Tea Party groups, the Tea Party Express. Howard Kaloogian ran OCDB, and their vice-chair was Deborah Johns, who also worked for MAF (Evans 2008f; C-Span n.d.; PBS n.d.). Sal Russo was the group's chief strategist, and one of their top coordinators, Joe Wierzbicki, worked for his firm (Washington Post n.d.).

Not every group advocating for McCain was right-wing. The Denver Group was a Democratic group claiming their object was “to keep the Democratic Party Democratic” (PR Newswire 2008). This was less out of love for McCain and more out of a general resentment toward Obama himself. The Denver Group's founder, Heidi Li Feldman, was

an avid supporter of Hillary Clinton, to the point that she continued to push Hillary Clinton to be on the final ballot, threatening to leave the Democratic Party if Clinton was not the nominee (Duclos 2008; Evans 2008c; 2008d; Horowitz 2008). After her defeat, the group would go on to air anti-Obama ads during the general election.

The Sharing of Firms and Consolidated Support

Coordination occurs within campaign advertising is through the sharing of advertising firms and time buyers. These practices allow political advertisers to indirectly connect to one another, members of political society involved in previous elections, and sometimes even candidates. This is not to say that some of the older structures and ties were not expansive, as seen through the American Issues Project's (AIP) sharing of both consultants and firms. Chris LaCivita of SBVT and Tony Feather of PFA ran AIP too, out of fear that McCain would be vastly outspent (Evans 2008a; Herman et al. 2013; U.S. Congress 2015). One of their key financial backers was Harold Simmons, who fundraised for McCain and donated to SBVT in 2004 (Rutenberg and Luo 2008). The Obama campaign accused AIP of taking illegal contributions and creating express advocacy ads, and the FEC found reason to believe the AIP failed to meet disclosure requirements (Herman et al. 2013).

AIP's advertisements came from multiple high-level firms: BrabenderCox; Mentzer Media Services; and McCarthy, Marcus, and Henning. In 2008, BrabenderCox also produced ads for the Republican Federal Committee of Pennsylvania and the Judicial Confirmation Network. The Judicial Confirmation Network was an organizer for the 2004 Bush campaign and worked toward electing Mitt Romney during the primary.

Mentzer Media also served as a way for AIP to build additional ties, as the Campaign Against Government Waste used them for ad creation.

Diversity in Messaging and Negativity

Despite being highly interconnected, the political advertisers backing Obama produced negative ads covering a diverse set of policy issues within the free market of ideas. Unions alone would cover various policy issues, including the Iraq war, taxation, social security, and healthcare (particularly from the SEIU). The AFL-CIO's offshoot, the ARA, had similar sentiments, creating an advertisement that critiqued McCain's willingness to cut social security (Evans 2008i). T&H also sought to reach out to more conservative voters by highlighting Obama's position on guns, the benefits of his policies toward small businesses, and the potential strengths of healthcare reform.

McCain's advertisers invoked tremendous amounts of negativity. The AIP's most famous advertisement, "Know Enough," attacked Obama regarding his past ties to Bill Ayers, associated with the radical group Weather Underground. Other political advertisers backed by BrabenderCox, as well as the Denver Group, attacked Obama for his ties to Reverend Jeremiah Wright (Goldstein et al. 2008). Also fueling the negativity was the National Republican Trust (NRT). NRT's treasurer was formerly the secretary of defense and Clinton whistleblower Paul Leitner (Evans 2008e). Among their ads was one called "A License to Kill." The ad talked about how Obama wanted to give "illegals" driver's licenses and social security numbers and included pictures of 9/11 hijacker Mohammed Atta, resulting in a tremendous breach in the norms over acceptability, with Factcheck.org calling it one of the sleaziest ads of the campaign (Miller 2008).

2008: Hopes for Reform and Changes in Organizing

The diversity of speakers in the free market of ideas during the 2008 election is a stark contrast to 2004, particularly in terms of autonomy and the issue of “loose ends.” Compared to 2004, almost every Democratic political advertiser had some connection to either another political advertiser, the Obama campaign, or the DNC. Frequently this came through the sharing of advertising firms, limiting autonomy. Additionally, most political advertisers did not find themselves under the thumb of an organization like TMF or MoveOn. This is a noteworthy shift, showing that in 2008 Democratic political advertisers were far less hierarchical. As a result, the autonomy between political advertisers shrank, but the connections were often weaker, and there was a looser grip on their overall actions.

The exact opposite scenario happened among pro-McCain advertisers. More political advertisers supported McCain in 2008 than Bush in 2004. There was also more autonomy among political advertisers supporting him. Many of them found McCain an upsetting but necessary second choice at best. These political advertisers, alongside the Denver Group, show the voices backing McCain were much less pro-McCain and much more anti-Obama. However, there were fewer groups with extensive disclosure records backing McCain, suggesting that there is a chance there were greater breaches of autonomy and much greater violations in terms of accountability. Accountability efforts failed elsewhere, as most of the attempts to hold advertisers responsible for violations went unpunished. That said, SBYA statements were still in use, so the accountability to the audience remained intact.

Yet the acceptability norms saw themselves following previous elections' pattern, with the emergence of high levels of negative advertising, though perhaps not as controversial as the previous election. Consequentially, entrance to the public sphere found itself structured to allow for the circumvention of acceptability. Obama's stronger network that was more devoted to supporting him than simply opposing McCain, combined with his solid organization, and a general dislike for the GOP post-Bush, resulted in victory.

CONCLUSION

BCRA and the court cases challenging it show that not only is the road to hell paved with good intentions, but it is also lined with dynamite. BCRA was highly successful in limiting donations. The same is not true for BCRA's attempt to restructure the free market of ideas to increase accountability and acceptability. In part, this is because many of the initiatives placed within BCRA came undone near-immediately to preserve the rights of autonomy and authorization. As a result, the full promise of the discursive shift that BCRA offered was undone before it could occur. The initiatives that remained were of little impact. The rise of 527s and outside groups within political society presented the ongoing issue with autonomy, notably a lack of autonomy between outside groups. Technically there were more independent groups involved, but most groups remained interconnected. For every GeorgeTheMenace.org, there were multiple MoveOns and intergenerational groups, making the new voices fewer and the old voices louder. In some ways, this subverted both the benefits for candidates and the public, as the public now received outside messages, and they were behemoths that

candidates would have to face. There was also a second trend regarding autonomy: the sharing of outside advertising firms. While sharing information and partners with firms is not entirely new, it was far more present in 2004 and 2008. The shared use of firms allows for the ability to share more information and to create a smarter set of political advertisements for more cohesive messages.

That said, the form of the organization and concentration is regularly shifting. 2004 saw a fairly tight grip from both parties, with the right having a slightly tighter one. 2008 showed, excluding the Denver Group, Democrats having a looser, but a more expansive grip, and the Republicans losing grasp altogether. This was in part due to the differing interests of candidates and outside groups. As a result, the advertisers involved were more interconnected than they were in past decades, though the degree of interconnectedness varied. The result is a group of larger, far less autonomous voices providing a consolidated message in the free market of ideas.

While BCRA attempted to disincentive candidates from airing negative advertisements, it did not work in the Presidential election. And once again, the sheer number of groups involved meant that more players were involved in the public sphere, though many of the players were more coordinated. Among the pushes for a shift in accountability was the goal of reducing soft money, though the 527 workaround limited its success. In the past, accountability was also something that the public needed to work to obtain. While the information was available to everyone, the only way to reach it was to head to the archives at the FEC's headquarters (until records became available online). Yet, the introduction of SBYA statements finally created a form of audience-

centered accountability that matched the medium, meaning that the information was directly available to the public at the time of viewing. This is perhaps one of the starkest differences in the money-speech paradigm's attempt to set up a framework for the free market of ideas: accountability was provided within the advertisements themselves, making it seen and heard from the get-go, something not previously required.

The Snowe-Jeffords amendment limiting who could produce advertisements—in other words, reduce authorization 60 days before general elections—was quickly overturned. As a result, the brief attempt to cut back control over outside spenders came and went long before it could have a lasting effect. That said, during its brief time in existence, it was of little use, with more political advertisers avoiding the 60-day window after its undoing. The changes pushed for in BCRA, though greatly undone by *McConnell*, *WRTL*, and *Davis* attempted to limit the number of groups involved ever-so-slightly and generate greater transparency and more constructive advertising content. The exact opposite happened. The number of groups producing advertisements was noticeably larger than it was from 1990-2000, and the ties between them were more concentrated than ever before. While many of the groups sponsoring advertisements were more direct and open about their identities as sponsors, knowledge beyond that remained limited. Numerous violations occurred in the pursuit of avoiding transparency. And the ads themselves became more negative and covered issues. None of these aspects were beneficial toward audiences from the perspective of reform advocates.

Campaign finance scholars regularly see BCRA as one of the most monumental reforms in campaign finance history. In many ways, it is incredibly noteworthy. It was an

effort to create and enact a law that took seven years to fully come into place; it created sweeping reforms to ad production. Most interestingly, it placed acceptability at the center of advertising reform rather than issues such as autonomy or authorization. BCRA also shows how quickly groups are willing and able to fight back against campaign finance reforms, dismantling the norms and ideals Congress attempts to establish before they even have time to set in. As a result, speech was more condensed, though some tests of a healthy marketplace of ideas found success. That said, the long road of reform had not ended, nor was there a lack of explosives. Two sticks of dynamite remained: *Citizens United v. FEC* and *SpeechNow v. FEC*, which would provide the radical reworking of money and messaging that BCRA's advocates desired, but in the exact opposite direction.

CHAPTER 7: SUPER SPEECH! 2012-2016

In 2002, Congress enacted the Bipartisan Campaign Reform Act (BCRA). Among the changes it brought were soft money limitations, outside political advertising, and a focus on acceptability within the marketplace of ideas. One of its key architects, John McCain, knew that BCRA would not be everlasting, but hoped it would endure for some time (U.S. Congress 2001a). Multiple Supreme Court cases: *McConnell v. FEC*, *Wisconsin Right to Life v. FEC*, and *Davis v. FEC* quickly changed BCRA. The legal system, once again, prioritized autonomy above access and acceptability, forbidding interest groups from coordinating with candidates but not one another. The need for transparency in speech was one of the few surviving elements of BCRA, requiring disclosures in filings and Stand by Your Ad (SBYA) statements within advertisements. And while loopholes in authorization efforts led to the creation of 527s, there was still some awareness and consideration of who had the right to speak in the first place.

The undoing of BCRA is very much due to a Reaganite Supreme Court's disinterest in legislating some form of political fairness. This disinterest and the notion that the marketplace of ideas should serve special interest groups rather than the public set the background ideology that shapes the context for the next discursive shift. The *Citizens United v. FEC* and *SpeechNow v. FEC* decisions' use of this disinterest justified an expansion of authorization and autonomy within the money-speech paradigm that favors special interest groups. This chapter examines the final major discursive shift in campaign finance reform, de-emphasizing the importance and benefits for the audience in favor of expanding opportunities for corporate power.

2010: *CITIZENS UNITED V. FEC*: THE BEGINNING OF THE END

As seen in previous chapters, Citizens United (CU) was an established conservative group that attempted to influence the past two elections through political advertisements. But not every ad was the conventional 30-second to 1-minute spot advertisement, the longer 5-minute advertisement that had fallen out of favor, or even the 30-minute informative documentary like the ones aired by Barack Obama or Ross Perot. CU created and distributed *Hillary: The Movie*, a full-length 90-minute documentary critiquing Clinton's policies and character. CU wished to use their treasury funds to air promotional information about *Hillary* within 30 days of the Democratic primary, surpassing the few authorization limits left in the wake of BCRA's destruction. David Bossie, who ran CU at the time, felt this was no different from movies like *Fahrenheit 9/11*, which relied on corporate funds, though the FEC disagreed (Bossie 2016; Bugh 2018a; Mutch 2014).

While seemingly a fight over the right to produce an advertisement to market an even longer advertisement, that was not necessarily the case. Jim Bopp, the chairman of the National Right to Life Committee and the Madison Center for Free Speech, prodded CU to go in the direction they did to further deregulate the law. Bopp was involved with *WRTL* and *McConnell* and pressured CU to make the appeal. Bopp saw CU as an ideal target for challenging campaign finance law as they could be portrayed as a grassroots organization, as they were not a multi-million dollar corporation (Cohen 2020; Hasen 2016; Meyer 2017). This helped push CU to appeal to the Supreme Court, starting the iconic *Citizens United v. FEC* case.

Citizens led to a realignment of participants in the post-BCRA case *McConnell v. FEC*. No longer on the side of government, but rather on the side of deregulation was Theodore Olson, now speaking on behalf of CU. Olson joined forces with his rival in the *McConnell* case, Floyd Abrams, who continued to represent Mitch McConnell. Theodore Waxman once again defended the law and FEC, now with the aid of then solicitor general and future member of the Supreme Court Elena Kagan, and the Deputy Solicitor General, Malcolm Stewart.

Reemphasizing Authorization: A Normative Idea

Due to the importance of authorization, *Citizens United* brought about new attention to *Bellotti*. Olson treated the issue of authorization as a normative idea. There were grounds for expanding authorization as CU's case was the story of the government imposing "a felony for a small, nonprofit corporation to offer interested viewers a 90-minute political documentary about a candidate for the nation's highest office"¹ (Oyez n.d.c.). This parallels both Bopp's ideas and public opinion post-Watergate, wherein corporations are the victims and viewed more favorably (Alexander 1992; Hasen 2016). Like in *Austin*, Olson also argued that going through a PAC was too burdensome, and therefore hurt groups like CU, as they were the "least capable of communication." CU's documentary was also beyond the scope of BCRA, as Congress meant for BCRA to cover short advertisements and not 90-minute documentaries (Oyez n.d.c.).

¹ FEC records show Citizens United raising \$3.7 million and spending \$3 million dollars from 2007-2008.

Justice Breyer questioned Olson's reasoning and whether Hillary was anything more than simply saying "vote for Smith" or using any other key express advocacy phrases² for 90 minutes. To Olson, this was an issue of substance and its relationship to normative ideas surrounding the spirit of democracy. CU's documentary was far more informative than the "short, punchy ads" at the heart of campaign finance regulations (Oyez n.d.c.). *Hillary's* 90-minute format left it open to interpretation, making it a documentary, not an advertisement. Therefore, CU had the right to speak without restriction. The *WRTL* decision, which claimed courts should always err on the side of providing more authorization for speech, not less, proved this point (Oyez n.d.c.).

Constricting Authorization: A Cognitive Idea

Stewart, however, defended the notion that there were still limits to authorization. *WRTL* and BCRA only spoke of electioneering, not length, meaning CU's efforts were regulatable. This would be the logical position, as Congress was aware of candidates airing 30-minute documentary-type advertisements. Even if *Hillary's* content was more diverse, Congress's notions of electioneering did not focus on diversity in subtle content, and *Hillary* was anything but subtle (Oyez n.d.c.). Justice Scalia questioned this argument: is the public not at a disadvantage if they cannot hear the information they want, even from a group like CU (Oyez n.d.c.)? Scalia's argument highlights the subtle shift in ideological focus regarding the regulation of the free market of ideas. Yes, providing more people with more information fits within the previously established, audience-centric frameworks. At the same time, Scalia proposed that the

² I.e., the eight magic words.

source of information is unimportant. Scalia linked the old and new ideas together. Providing corporate power with the right to speak would benefit the public, with no real concern over content, coordination, or drowned voices. However, Stewart noted a flaw in Scalia's reasoning and his advocacy for an interest group-oriented model of speech. The law's basis is tempering corporate influence, not the public's interest in an argument (Oyez n.d.c.).

Kagan also rejected Olson's arguments. Highlighting the *Austin* decision, Kagan argued that courts have never questioned the right to limit corporate speech. Rather, the Supreme Court upheld limits on authorization on normative grounds to prevent corporate domination. They based this on two concerns: quid pro quo corruption and the rights of shareholders (Oyez n.d.c.). Concerns over quid pro quo corruption were not new to the courts, but the idea that expenditures, not just donations, could be corrupt was more novel. Providing groups such as CU the authorization to spend money corroded the right to speak and contradicted the interest in ensuring that shareholders' money goes toward political speech they approve of (Oyez n.d.c.). This concern was central in *Austin*. Scalia questioned this, as although the law never said groups could spend outside money, it never said they could not, either. Kagan and Waxman both stood by the position that corruption is a compelling interest to the courts and that spending would lead to the silencing of diverse opinions and allow for disproportionate corporate influence (Oyez n.d.c.). Even if there was not a perfectly even playing field, the distortion of power caused by overly broad rights to speech via authorization was a compelling and significant problem justifying regulation (Oyez n.d.c.).

The second line of reasoning, that of shareholder rights, was based on the fact that the individual investments are in mutual funds. As a result, it was impossible for investors to know the positions their money was supporting (Oyez n.d.c.). Even if, as Scalia said, this would not apply to most corporations, Kagan saw the compelling interest of avoiding corruption as enough for the state to support limitations (Oyez n.d.c.). While Scalia saw BCRA as a Congressional effort to regulate opposition, Kagan saw it differently. The new limitations enacted in BCRA, particularly the limits on corporate and union money, hurt incumbents more than it helped them, making it perhaps “the single most self-denying thing that Congress has ever done,” essentially removing their incumbency advantage (Oyez n.d.c.).

This did not, as Kennedy suggested, deny corporations who held unique knowledge the right to speak. Rather, it prevented them from engaging in a streamlined path to the mediated debates central to electoral politics. CU could still create a PAC or hire lobbyists (Oyez n.d.c.). Corporations could not create ads through treasury funds, as it sacrificed too much accountability for the purpose of authorization.

Expanded Authorization

In a 5-4 decision, the Supreme Court sided with CU. While *Hillary* is an advertisement, all corporations and unions had the right to speech, including using treasury funds to create political advertisements (Corrado 2014; Torres-Spelliscy 2016). As a result, there was also a need to reevaluate the *Austin* and *McConnell* decisions (Oyez n.d.c.). Roberts found that the *Austin* decision was inconsistent with *Bellotti's* emphasis on the corporation's right to First Amendment protections (United States

Court of Appeals for the District of Columbia Circuit 2010). The importance of political speech also made *Austin* harmful to democracy, as speech had merit in itself no matter the speaker (Oyez n.d.c.).

The Supreme Court took a new position in *Citizens*. Scalia described the change in the money-speech paradigm as highlighting the importance of “speech” rather than “speakers,” further de-emphasizing the importance of where information comes from (United States Court of Appeals for the District of Columbia Circuit 2010). Rather than providing corporations with speech rights, corporations always had the authorization to speech and that the courts had not acknowledged its existence (Mutch 2016). According to Clifford Bob (2019) a fundamental way to secure and maintain power is to justify inequality as a right. Scalia's efforts on the Supreme Court take this to a new level. The fact that authorization had always existed did not simply solidify something as a right but also provided a long-term validity to efforts for corporate domination of speech. This approach continually devalued the audience-oriented aspects of speech, notably because it (as further exemplified in the forthcoming *SpeechNow* case) does less to serve the audience and enhance knowledge and much more to bolster and enhance the rights for corporate speech.

A more cynical interpretation of these changes may suggest that this is simply removing a mask. While this cynicism is understandable, it undercuts the well-established efforts of those who did push to maintain regulations and the voices of dissenters. Justice Stevens, for instance, noticed the shift in market-oriented logic. He and O'Connor had worked in the past to maintain some level of corporate limitations for

this exact reason. It was central to their work on the *McConnell* decision: ensuring Congress's rights to limit the power and authorization of speakers to ensure some level of plurality. Stevens felt that this was, in fact, “so well settled that they needed no special defense” and that while the courts were relying on the notion of a marketplace of ideas, they ignored “the reality of how that marketplace operates” (Oyez n.d.c.).

Yet this case and its renewed and altered imagining of authorization said otherwise. What makes this form and emphasis on authorization different from that of *Bellotti* is that it aligns more with Scalia's views seen in *Austin*. Roughly 20 years later, that view had become far more encoded within the legal system. In their attempt to provide as much speech as possible, the Court devalued the importance of a diversity of speakers and plurality of voices they provide. It is this newly enacted idea that separates *Citizens* from past cases and legislation. The public often sees *Citizens United* as the causal mechanism for the creation of Super PACs. However, a second hearing was also central in their creation: *SpeechNow.org v. FEC*.

2010: SPEECH NOW FOR SPEECHNOW

Before *Citizens*, David Keating, who ran the Koch-backed Club for Growth, established SpeechNow.org (SpeechNow) built solely to make independent expenditures calling for candidates' victories and defeats. Because SpeechNow did not plan on making direct contributions to candidates, Keating wished for them to be exempt from limits on how much money individuals could donate. The FEC rejected this appeal, as SpeechNow planned on engaging in electioneering, and therefore would be required to register as a PAC and follow the established guidelines (Corrado 2014).

Keating brought the concerns to the district court level with the backing of The Institute for Free Speech, a “First Amendment rights” legal group founded by Bradley Smith, former head of the FEC. Keating now serves as their president.

While Keating went to the courts before *Citizens*, the *Citizens* decision happened before *SpeechNow* (Moynan 2018). As a result, many of the ideas central to *Citizens* influenced *SpeechNow*, notably, the inflated importance of authorization and the idea that having a PAC was overly burdensome. Despite not being a corporation, SpeechNow.org faced the same challenges, making *Citizens* applicable (Mellor et al. 2009; 2010). The case made by SpeechNow was, therefore, a “logical extension of these principles” because “If the money an individual spends on his independent expenditures does not corrupt candidates... it is senseless to claim that money coming from other individuals and paying for the same independent expenditures somehow does” (Mellor et al. 2009:34-35). Because SpeechNow only engaged in independent expenditures, a form of speech within the marketplace of ideas, their financial behavior was truly autonomous, and therefore incorruptible.

The FEC stood by their position that SpeechNow was a PAC. Focusing on autonomy and access, the FEC claimed that SpeechNow faced all the pitfalls and risks associated with PACs and should be held accountable as one. Like SpeechNow’s defenders, the FEC saw autonomy at the heart of the case. However, their approach to autonomy was a normative one focused on the nature and value of speech. Tapping into the arguments that succeeded in *Austin* but failed in *Citizens*, the FEC argued there were internal conflicts of interests regarding ensuring that donors are heard (Duncan et al.

2010). Just as Scalia had claimed that most corporations were no more than mouthpieces for those who run them, SpeechNow was just a mouthpiece for Keating (Duncan et al. 2010; Oyez n.d.c.). This fed into larger issues of normative ideas of autonomy and the farcical nature of the more conservative arguments, as highlighted by the continuous failures of past groups that were allegedly autonomous. Many outside groups are constructed not out of genuine concern but as a workaround to BCRA and hold close ties to campaigns through donors and staff members, meaning that even if there was no coordination, they did work on their behalf (Duncan et al. 2010; Rubin 2009). This lack of autonomy then resulted in candidates being able to engage with the civil sphere without any effort or fear of being held accountable for negative advertisements (Duncan et al. 2010). The Brennan Center also wrote in support of this position, highlighting how the argument made by Muller et al. (2009; 2010) assumed that there would be no corruption or appearance of corruption at any time.

Because there was a vested interest in preventing corruption and SpeechNow operated as a PAC did, the FEC argued that the limits were justified (Rubin et al. 2009). Under the current contribution limits, SpeechNow could raise more than sufficient funds to do what they wished and were also set at a level where it was possible to avoid corruption (Duncan et al. 2010). This appeal on the grounds of corruption relied on both the cognitive and normative aspects of discourse and rooted the FEC's argument in an interest group-centric ideology. While focusing on the rights of interest groups, these arguments sought to avoid corruption because it was harmful rather than protecting fundamental rights to the public sphere and the benefits this may provide to audiences.

This shows, if nothing else, a change in the interests and grounds of the debate. The FEC argued not on their terms but rather on Scalia's, reflecting the impact of the ongoing ideational shift and a new understanding of speech centered on authorization and, consequently, autonomy.

The court sided with *SpeechNow*. Relying on the *Citizens* decision, the court ruled that because independent expenditures could not be corrupt, groups that only made independent expenditures were incorruptible and could take unlimited donations (Moylan 2018). Not only did *Citizens* show there was no need to worry about the corruption of expenditures, but *Davis* showed that access was not of concern as there was no government interest in equality of access, and *Buckley* supported the argument that limiting speech via expenditures was far too restrictive on autonomy (United States Court of Appeals for the District of Columbia Circuit 2010).

FROM 2003 TO 2010: THE FINAL DISCURSIVE SHIFT

Citizens shifted the money-speech paradigm's orientations from being audience-centered to interest group-centered. This discursive shift is one of the most drastic ones to occur in campaign finance history, as the marketplace of ideas would favor speech, no matter the source, over speakers providing diverse and accountable voices. This shift comes through the renewed importance of authorization and autonomy, but now with a far more conservative understanding of the marketplace of ideas. Table 7.1 highlights the major ideological shifts and changes in the money-speech paradigm. By looking at the free market of ideas with no consideration for how markets work, the Supreme Court expanded authorization with little concern for autonomy between organizations.

Past discourses on campaign finance law focused on providing the best speech for everyone have questioned who “everyone” truly is (see chapters 3 and 6). The regulations of 2009 and 2010 leave very little room for interpretation when asking this question. While the courts carved out more room for smaller, independent groups, in the process they amplified the rights of larger and more powerful groups.

Acceptability was again discarded, and while accountability measures remained unchanged, the lack of change holds potentially significant consequences. In the past, accountability measures had somewhat evolved alongside the other demands made in reforms (expanding disclosure requirements, SBYA statements, etc.). However, the Supreme Court created no new stopgaps for accountability to go alongside the new expansion of autonomy and authorization. Because the expectations for accountable speech did not develop alongside the other aspects of speech, they became significantly less powerful. While accessibility had remained unchanged, it was seemingly not weakened. However, as discussed in the next section, it would indirectly strengthen the right to access not for outside groups but candidates.

With every discursive shift comes new workarounds for spending that influences the marketplace of ideas. FECA brought about soft money, BCRA the use of 527s, and *Citizens* and *SpeechNow* helped create Super PACs and a surge in dark money. Despite their publicly menacing name, Super PACs are an extension of pre-existing campaign finance laws rooted in *Buckley* (Gora 2013a). Super PACs can take unlimited donations from individuals, corporations, and unions. However, Super PACs must report all their

behavior to the FEC, and expenditures can only call for the direct victory or defeat of candidates (Yeager 2015). Because they are designed solely for independent

Table 7.1: Changes in the Money-Speech Paradigm, 1976-2010

	<i>Buckley/FECA</i> '76	<i>Bellotti/FECA</i> '79	<i>BCRA/McConnell</i> (2003)	<i>Citizens/ SpeechNow</i> (2010)
Orientation	Right to an Audience	Audience-Centric	Audience-Centric	Interest Group-Centric
Focus	Autonomy, Accountability, and Access	Accessibility and Authorization	Accountability and Acceptability	Authorization and Autonomy
Concepts				
Autonomy	More spending permission but donations are limited.	More spending permission but donations are limited.	Soft money ban	Creation of Super PACs
Accountability	Transparency ensures good actors.	Transparency ensures good actors.	Soft money ban, SBYA legislation	SBYA requirement remains.
Accessibility	Increase in spending limits. Lowest unit rates for candidates.	Increase in spending limits. Expand soft money.	Lowest unit rates reinforced, but conditional. Increase in hard money. Restrictions on outside advertisers.	Lowest unit rates reinforced, but conditional.
Acceptability	No regulation.	No regulation.	Reforms are designed to create a healthier experience. Lowest unit rates for positive ads only.	Removal of past limits.
Authorization	N/A	Expansion in the right to participate.	Limits on who can spend within 60 days of election.	Removal of past limits. creation of Super PACs

expenditures, Super PACs are not allowed to coordinate with candidates. However, both scholars and the public question the gap between legality and practice (Dwyre 2020; Katz 2016; Magleby 2014).

Super PACs are not dark money groups by default. Dark money is money received by organizations that do not solely focus on political activity. Therefore, they are regulated by and required to report their financial behavior to the IRS, not the FEC. This results in a delay in transparency, though neither group can coordinate with candidates (Yeager 2015). Dark money, however, is not a completely new occurrence. While it has been involved in politicking for far longer it reached a record high level in 2010 (OpenSecrets n.d.). It is also important to note that in 2012 the dark money and Super PAC phenomena did not overlap (Gora 2013b).

2012: OBAMA V. ROMNEY

While 2008 saw a decrease in spending on television advertising in favor of online ads, 2012 saw a return to the norm, with more money once again spent on television (Scammell 2014). Tables 7.2-7.4 show that 47 political advertisers took part in the 2012 election, showing no change from 2008. However, the partisan alignment resembled 2004 more than it did 2008, with one side drastically outmatching the other, though in 2012 the Republicans outspent and outnumbered the Democrats. Of the 47 political advertisers involved, 31 backed Romney. 18 of the political advertisers, roughly 38%, were Super PACs³. Both Romney and Obama spent roughly 75% of all their funds

³ There were groups with both PACs and Super PACs holding the same name. This number counts only the Super PACs that had advertising related disclosures within their records.

airing and placing advertisements (Tedesco and Dunn 2014). Outside spenders spent \$279 million to support Romney and \$81 million to support Obama. Records categorize the bulk of these expenditures as being for Obama’s defeat (Nelson 2014:125). The ads in 2012 were overwhelmingly negative, in part due to the rise of Super PACs, with several candidate-specific Super PACs building supportive narratives for candidates (Tedesco and Dunn 2014).

In 2012 larger networks based around Super PACs that coordinated with candidates began to take shape, shifting coordination among political advertisers away from candidates and parties and toward the supposedly independent Super PACs. These newly authorized groups provided new tools to subvert the importance of autonomy within the marketplace of ideas. A central way Super PACs did so was by sharing of advertising firms. While not every group associated with a campaign worked within these main groups, those that did held tighter relationships throughout the electoral process.

Table 7.2: Relationships Among Pro-Obama Spenders, 2012 (N=16)

Ties to Obama/DNC	5	25%
Ties to Priorities USA	5	31.25%
Ties to Other Outside Groups	7	43.75%
Ties to Past Campaigns/Returning Groups	9	56%
No Ties	1	6.25%

Table 7.3: Relationships Among Pro-Romney Spenders, 2012 (N=31)

Ties to Romney/RNC	6	19.35%
Ties to Restore Our Future	11	35.48%
Ties to Other Outside Groups	9	29.03%
Ties to Past Campaigns/Returning Groups	7	22.58%
No Ties	3	9.68%

Table 7.4: Relationships Among All Outside Spenders, 2012 (N=47)

Ties to Candidate/Party	11	23.40%
Ties to Candidate's Super PAC	16	34.04%
Ties to Other Outside Groups	16	34.04%
Ties to Past Campaigns/Returning Groups	16	34.04%
No Ties	4	8.51%

The same number of political advertisers engaged in the marketplace of ideas in 2008 and 2012. However, there was an overall decline in the number of political advertisers associated with past presidential campaigns, particularly on the side of Romney. But once again, there were virtually no “new” voices involved in the 2012 election cycle. As a result, the process became more insular, letting a somewhat diverse group of the same actors maintain involvement, rather than expanding the actors as a whole or actively working to prevent large-scale coordination.

Campaign Organizing

Jim Messina ran Obama's reelection campaign with the aid of Axelrod, Plouffe, and Robert Gibbs. The campaign made a point of striking early, targeting Romney's ties to Bain capital, resulting in lasting damage (Johnson 2017; Nelson 2014). FEC records also show the continued use of GMMB for advertising and advising. The DNC's advertising efforts were entirely coordinated with the Obama campaign, spending no money independently (Nelson 2014). While Obama continued to use AKPD for advertising, his official campaign and the DNC also relied on T.V. House Inc. The DNC's ads followed the main point of the Obama campaign—that Romney was not simply a sympathizer with, but a member of corporate America, and occasionally highlighting Romney's pro-life stance.

Mitt Romney went into the general election after a strenuous primary, where nearly every challenger held the lead at some point before dropping out. The recently empowered radical-right Tea Party did not favor Romney and actively sought anyone else's nomination. Yet Romney prevailed partly due to keeping a consistent image and message throughout the process (Coombs 2014). Romney's success was in no small part due to his immense personal wealth, which allowed him to stay engaged throughout the primary, while his less wealthy opponents were more reliant on outside spending (Foreman 2013; Hasen 2016). Despite his victory, Romney found many Republicans unwilling to support him, as voters perceived him as an establishment figure, an out of touch elite, and perhaps worst of all in a competition where image is highly valued, bland and uninteresting (Coombs 2014; Foreman 2013; Miller 2013). To help combat this the Romney campaign would use TargetPoint Consulting to shape his advertisements messaging (McIntire and Luo 2012).

Despite his lack of popularity with voters, major GOP consultants backed Romney. Matt Rhoades, who did opposition research for George W. Bush in 2004 and served as Romney's communications director in 2008, managed the 2012 campaign. Schriefer and Stevens were the main media strategists, though they received help from longtime associates of Romney, Eric Fehrstrom and Beth Myers, who got her start working on Reagan's 1980 campaign (Aitken 2013; Johnson 2017). Most of the media production costs and airing went through a group called American Rambler Productions (ARP). ARP was an incorporated group in Delaware, meaning those involved can remain anonymous (Aitken 2013). However, FEC records point to David Margolis being paid for

media production consulting as well. Romney's ads often focused on the lack of economic success during Obama's first term (Tedesco and Dunn 2014; West 2014). Many of the ads highlighted Obama's perceived failures concerning overregulation, national defense, and the housing crisis. Unlike the DNC, the GOP produced advertisements outside of the Romney campaign (Nelson 2014). According to FEC records, the GOP would use National Media, a group founded in part by Castellanos. During Romney's 2008 primary run, Castellanos served as the campaign's director, resulting in National Media being their main source of advertisements (Johnson 2017).

Candidate Super PACs

The inclusion of Super PACs was the largest change to the marketplace of ideas. These groups, which claimed to be solely autonomous, brought about new forms of coordination of speech. Both Obama and Romney relied on Super PACs designed by former staff members. This part of the overall shift in relationships among political advertisers exemplifies many of the candidate-specific Super PACs' fictional independence. As a result, these groups served as unofficial wings for campaigns within the free market of ideas, once again reducing autonomy and creating new channels to distort the competitiveness and transparency of information. Backing Obama was Priorities USA (PUSA), and backing Romney was Restore Our Future (ROF). Former members of the Obama administration Bill Burton and Sean Sweeny founded PUSA to create more aggressive attack ads (Draper 2012). Not only did PUSA set out to support Obama, but the Obama campaign openly encouraged people to donate to PUSA, despite a vocal condemnation of Super PACs made by Obama in 2010 (Associated Press 2012;

Draper 2012). The bulk of their television media expenditures went to Mundy Katowitz. However, they also relied on Shorr, Johnson, Magnus, as well as Struble Eichenbaum Communications. Karl Struble's ties to the Democratic Party go back to him being a field organizer for Jimmy Carter. However, Shorr, Johnson, and Magnus were more linked to the Obama administration, as Shorr had worked on the 2008 campaign (Johnson 2017).

PUSA became a member of America Votes and is tied to a multitude of political advertisers involved in the 2012 election, both new and returning. As a result, PUSA begins to resemble candidates and political parties of the past, serving as a central hub for coordination among pro-Obama participants. One Super PAC involved was the Unity 2012 Project, which aired its own ads and served as a fundraising arm for other Super PACs. Its treasurer, Diana Rogalla, was a senior adviser to PUSA (Selyukh 2012; Steiner 2012). One of the Unity 2012 Project's main backers was Haim Saban. Saban is a longtime friend of the Clintons, and an advocate of pro-Israeli military policies who made his fortune re-dubbing and editing Japanese television shows for American audiences, including works like the Power Rangers franchise, Digimon, and the Samurai Pizza Cats. (Nathan-Kazis 2012). While FEC records do not show any independent expenditures, they do show joint fundraising efforts with PUSA.

How PUSA differs from past parties and candidates is their ability to directly work with multiple other political advertisers. Both the LCV and the SEIU produced political advertisements independently and in cooperation with PUSA, further strengthening the ties within both America Votes and the larger pro-Obama cluster. As a result, the extensive coordination between the groups shows that the Obama campaign

was inadvertently working with outside groups, but simply under a different name. The WiscAds database (and p2012.org) show the LCV producing television advertisements during the general election. However, FEC records do not show any expenditures for television advertisements supporting Obama or opposing Romney within the timeframe. There are, however, records of media expenditures targeting other candidates using Dixon and Davis and Ralston Lapp Media. Former Obama ad-team member Jason Ralston and PUSA employee John Lapp run Ralston Lapp Media (Ralston Lapp Media n.d.). SEIU's branches went much further than LCV's, as they hired 11 different groups for assistance with their television advertising. Among them were four of the key groups relied on by Obama: Shorr, Johnson, and Magnus; Putnam; Dixon and Davis; and Ralston Lapp.

Republicans engaged in similar patterns of coordination. Carl Forti and Larry McCarthy established ROF to advance Romney's chances of obtaining the presidency. Both Forti and McCarthy worked for Romney's 2008 campaign and the GOP, once again showing how seemingly new and autonomous speakers within the free market of ideas are neither new nor autonomous. Forti worked as an adviser to Crossroads GPS and American Crossroads, and McCarthy worked for the National Security PAC to create the Willie Horton ads (see chapter 4) (Marcus 2012e). ROF's main base of operations also happened to be the same location as TargetPoint Consulting, making for easy access, coordination, and communication (McIntire and Luo 2012). Their main fundraiser, Steve Roche worked with the Romney campaign up until 2011 (Marcus 2012e). FEC records show the group used McCarthy's media production team, McCarthy Hennings Media,

and Mentzer Media Services, whom Swift Boat Veterans for Truth used in 2004. ROF's use of McCarthy Hennings and Mentzer would serve as one of the key continuations and developments throughout the 2012 election. While 2004 and 2008 saw an expansion in the sharing of firms, 2012 brought it to a whole new level. Including ROF, twelve political advertisers involved in the 2012 election relied on McCarthy Hennings, Mentzer Media, or both. As a result, a small number of political consultants gained influence over the messaging of a large number of political advertisers, creating larger coordinated messages that, thanks to ROF, were also now directly linked to the Romney campaign.

While ROF may have been at the heart of Romney's organization, it was not necessarily Obama's main fear. Rather, Obama was far more concerned with a collective of Rove and Koch-backed groups (Johnson 2017). Two groups emerged out of Rove's Crossroads Media: the Super PAC American Crossroads, and its key source of anonymous funding, Crossroads Grassroots Policy Strategies (Crossroads GPS), both of which produced ads and shared space with Americans for Job Security (who returned to produce ads), ROF, and TargetPoint (Mayer 2017; McIntire 2010; McIntire and Luo 2012). Candidates aside, Fowler and Ridout (2012) identified American Crossroads and Crossroads GPS as the two largest spenders for political advertising in 2012. Thus, it is no surprise that the groups used Crossroads Media; however, they also relied on McCarthy Hennings and Mentzer to produce their ads, linking them to ROF.

Extended Coordination

Other financial influences on the free market of ideas also coordinated with Romney and Rove. One example is the Koch-backed Americans for Prosperity (AFP).

Before the 2012 election, AFP worked with multiple Tea Party groups to spark anti-Obama protests. Romney had also given speeches at AFP summits (Mayer 2017; Peters and Woolley n.d.). Like ROF, American Crossroads, and Crossroads GPS, most of AFP's television production and placement went through Mentzer Media and McCarthy Hennings. AFP also used Richard Sales Media (n.d.), a multimedia firm that boasts working with other pro-Romney groups⁴, though not necessarily for the 2012 election.

The Koch family's reach goes further, backing other political advertisers like the American Energy Alliance (AEA) (AEA n.d.) and the American Future Fund (AFF), which also produced political advertisements. The AEA is the Institute for Energy Research's political arm (AEA n.d.). Not only have they received donations from Koch affiliates, but the AEA's president, Tom Pyle, is a former lobbyist for the Koch Foundation (Vogel 2012a). Mayer (2017) describes the AFF, which was in part founded by Larry McCarthy (Evans 2008g), as being to air political attack ads during the general election. Both groups relied on Mentzer Media, and the AFF used Richard Sales as well.

The involvement of Super PACs and the political advertising firms they relied on shifted coordination away from candidates and toward outside spenders. As a result, the free market of ideas was once again shrinking in terms of autonomy between groups while remaining autonomous from the state, parties, and candidates. But there were still other direct ties between candidates and political advertisers unrelated to Super

⁴ American Crossroads and Crossroads GPS did use Richard Sales Media during the 2012 election cycle, but not for presidential races. The 60+ Association, the Susan B. Anthony List, the NRA, and Americans for Job Security are all listed on the Richard Sales Media (n.d.) website as clients; they did not have an FEC records showing the use of Richard Sales Media during the general election.

PACs. For instance, the Truman Project, a PAC associated with the Truman National Security Project, worked with Obama. The Truman Project trains future liberal-leaning politicians with a pro-military slant (Hendrix and Partlow 2018; Mann 2013; Payne 2008). Ian Harrington, a partner at the Truman Project, also worked as a filmmaker for Obama's reelection campaign (Truman National Security Project n.d.). FEC records show the Truman Project hired Adelstein Liston to produce an advertisement opposing Romney. Eric Adelstein worked for the Clinton/Gore campaign in 1992. Ann Liston, however, not only held ties to EMILY's List and the DCCC, but during the 2012 election, she was serving as a senior member of Obama's media team (A.L. Media n.d.a.; n.d.b.). As a result, the group is tied to the Democratic Party and the Obama campaign.

The rise of these outside spenders is associated with the expanding importance of authorization and autonomy, which helped create Super PACs. It also let Super PACs play a pivotal role in allowing coordination, developing networks for information and communication, particularly on the right (Kang 2013). As a result, both parties, but particularly the GOP, saw interest groups and candidates further empowered. Outside spenders coordinated with and built on the same messages as candidates with a greater depth, though there was little room for new actors once again. This means that candidates, particularly Romney, were provided with greater access to the public without doing any of the actual fundraising, spending, and development themselves.

Blurred Boundaries

Changing the marketplace of ideas to emphasize the rights of interest groups led to additional forms of outside coordination as more groups had intricate ties to both

one another and to candidates. However, the forms these took differed both from previous elections and upon partisan lines. Every pro-Obama group involved in the 2008 election is somehow linked back to the DNC or the Obama campaign. That was not the case in 2012, as a small number remained independent. The pro-Romney network was far more complex. While the Romney campaign saw a key cluster of groups backing his organization and many groups separate from this core, some groups on the edges of the core hold links to other outside spenders such as Ending Spending and Veterans for a Stronger America (VSFA).

The Super PAC Ending Spending was run and co-owned by the owner of the Chicago Cubs, J. Joe Ricketts, and his adviser Brian Baker (Corley 2018). Though the group is not necessarily right-leaning, choosing to target “government waste” above all else, Ricketts has given over \$10 million to Republican candidates and tends to attack Democrats far more often (Marcus 2012d; Sullivan 2014). However, what links Ending Spending to Romney is that Baker attended meetings with ROF and worked with McCarthy in the process (Vogel 2012b). Ending Spending’s advertising was done by Mentzer and McCarthy Henning and Smart Media, linking them to several other outside groups⁵.

VSFA was a group tied much less to Romney and much more to his Koch-linked affiliates and the GOP. Joel Arends, who worked for George W. Bush's 2000 campaign, Vets for Freedom, and AFP ran VSFA (NPR 2008; Hastings 2012; PR Newswire 2012;

⁵ Super PAC for America, the Emergency Committee for Israel, and Campaign for American Values PAC also used Smart Media. Further discussion of these groups alongside Campaign for American Values PAC is found later in the chapter.

Weinstein 2012). The VSFA established itself to attack Obama, accusing him of taking too much credit for the death of Osama bin Laden (Hastings 2012; Weinstein 2012). Mentzer Media created their advertisements. So while there were some more clear-cut lines within Obama's smaller network, Romney's much larger one saw many of the "independent" groups ultimately linked back to Romney and his affiliates, even if there was no direct and overt coordination. As a result, the more independent aspects of the speech were continuing to decline on these fronts.

Smaller Clusters and New Offshoots

The anti-Obama side of the free market of ideas saw autonomy decline among both major and minor actors. Many of these political advertisers found themselves in a similar position to the pro-life groups that backed McCain in 2008: yes, Romney was flawed and barely represented their political values at best, but he was not the evil incarnate they made Obama out to be. Among these smaller groups is The Susan B. Anthony List (SBAL). SBAL is more connected to the mainline groups than others in this section; however, they are still more distant than the highly incorporated political advertisers of this chapter's previous sections. SBAL reached the public through two different organizations, a PAC by the same name and a Super PAC called Women Speak Out (WSO). SBAL held ties to both Rove and the Koch network, working with Grover Norquist's Americans for Tax Reform to set up an RNC debate, and Crossroads Media helped with their ad-buying (Duszak 2013; The Bridge Project and NARAL 2013). SBAL's primary donors were Virginia James, who backed the Club for Growth, and Swift Boat Veterans donor Harold Simmons (Marcus 2012c; The Bridge Project and NARAL 2013).

By all accounts, SBAL disliked Romney. When SBAL created a pro-life leadership pledge for the primary candidates, Romney did not sign it, which may have influenced them to make Rick Santorum their first-choice candidate (Haberman 2012; Stansell 2011). That said, SBAL's Vice President, Marilyn Musgrave, did push for McCain to pick Romney as his running mate in 2008 (Greeley Tribune 2008; The Bridge Project and NARAL 2013). Other than Crossroads Media, SBAL relied on FP1 Strategies for ad production. Both groups aired the same ad, "How Will You Answer?" featuring a woman named Melissa Ohden, who claims to be an abortion survivor and used this experience to criticize Obama's pro-choice voting record (Fowler et al. 2017).

Other returning players formed smaller affiliated groups outside of the larger network established through Romney, Rove, and the Koch brothers. The Tea Party Express group, Our Country Deserves Better (OCDB), also returned in 2012. But the advertising firm that helped kickstart the group, Russo, Marsh, & Associates, now had a second project: The Campaign to Defeat Barack Obama (CDBO). Lloyd Marcus, who opposed Romney in the primary, headed the CDBO (Marcus 2011; Steinhauer 2011). Tiffany Ruegner, CDBO's Vice President and former director of field operations for OCDB, would establish a third group: The Women Warriors PAC (Ruegner n.d.). They relied on Sam Shad, not Russo and Marsh, to produce an advertisement.

While these new developments were few, they again show an increase in consolidation within the free market of ideas. Even the political advertisers unassociated with Romney or the RNC were organizing and coordinating with one another. Sometimes, this was with other major players' help, but more often, it was not.

Many of the groups that were “independent” of Romney were not necessarily independent of each other. Additionally, it shows that both the continuation of old campaign finance laws and the new reforms incorporated into the latest version of the money-speech paradigm supporting special interest groups allowed for more external consolidations of power, amplifying smaller voices while still favoring large and established actors. While there was more independence among groups backing Obama, there were fewer overall, once again showing a sign of a decrease in speech.

Saved from Accountability: The Crisis of Acceptability

While the Supreme Court undid most of BCRA's key ideological efforts, cultural concerns over corruption and acceptability remained. And just as much as these concerns remained, so too did efforts to violate these norms within the marketplace of ideas. During the primary, ROF aired an advertisement titled “Saved,” in which Romney's business partner Robert Gay discussed his daughter's disappearance and how Romney brought every employee possible to New York to help find her. ROF took the advertisement directly from Romney's 2008 primary campaign. ROF argued this was legal and not a form of illegal coordination as they purchased “Saved” from the production company, not the Romney campaign (Schultheis 2012). The FEC disagreed and charged ROF \$50,000 (DeCosta-Klipa 2015).

Tom Freiling's Patriot Super PAC (PSP) also breached the notions of accountability that ensure that political actors engage in transparent speech (Spoke.com n.d.). PSP was a non-candidate specific Super PAC, and its willingness to back multiple candidates is where the problem arose. Rep. Allen West (R-FL) accused PSP of being a

“scam PAC,” a PAC that claims to advocate for candidates but uses the money it raises for its purposes instead. West's accusation was rooted in PSP setting out to raise money to support him, but PSP only spent \$5,000 to support West (Martin and Burns 2012). While PSP appears to have remained unaccountable, they did produce an anti-Obama advertisement. PSP hired Ryan Bomberger, an Emmy award-winning director who made a name for himself creating anti-abortion billboards and web campaigns, as well as Fairfax Technologies (PatriotSuperPAC 2012; SoOutLoud.com n.d.).

While pro-Romney forces may have caught attention for violating the norms of accountability, it was Obama's supporters that caught fire for issues of acceptability. PUSA came under intense scrutiny for multiple advertisements, including “Stage,” in which a man named Mike Earnest describes the process of building a large stage, only for Bain Capital executives to appear on it and reveal that they were going to fire all the workers at his plant. As a result, Earnest claimed building that stage was “like building my own coffin.” While famous and controversial, the ad is by technicality inaccurate as it was not Romney, but Bain Capital that profited (Bowers 2012; Fowler et al. 2017).

In some cases, negativity in political campaigns begets more negativity. That is exactly what happened in the case of PUSA's advertisements, as the Romney campaign felt compelled to rebuke PUSA's messages. The Romney campaign made an ad of their own to criticize Obama for the ad “Understands” for capitalizing on a woman's death for political gain, as the Obama campaign first claimed they were not involved but later backtracked (Fowler et al. 2017). But “Understands” was a PUSA ad, and the Obama campaign claimed to have nothing to do with its production. However, they did

acknowledge knowing the story of Joe Soptic, who starred in “Understands” (Tau 2012). This ad holds significance not just for its controversy over acceptability issues, but because it acknowledges the lack of autonomy between campaigns and their so-called independent Super PACs, as it treats PUSA and the Obama campaign as a singular entity.

More independent pro-Obama political advertisers also violated the norms of acceptability. By 2008, Erica Payne left the Tesseract Group. She established The Agenda Project Action Fund (APAF), who, while not part of Obama's circle, were still within the greater collective of left-leaning political society (Netroots Nation n.d.). The APAF's ad “Granny Off the Cliff Part 2” featured an actor dressed as Romney's Vice-Presidential pick, Paul Ryan, pushing “granny” out of a wheelchair and over a cliff, symbolizing the consequences of Ryan's healthcare plan (Fowler et al. 2017). As the title suggests, this was not the first time APAF produced a rendition of the advertisement. They had released an earlier version in May of that year, which Ryan called demagoguery and claimed turned the public against him (Rapoza 2012).

Diversity of Content

As seen in previous chapters, there is not necessarily a correlation between the degree to which political advertisers coordinate with one another and the diversity of policies discussed within the marketplace of ideas. However, compared to 2008, Obama's political advertisements were more focused in terms of policy. Among the 15 policy topics identified by Fowler and Ridout (2013), the Obama campaign covered seven issues in more than 10% of ads (taxes, jobs, education, the deficit, health care, medicine, and women's health). Despite having more speakers on their side in 2012

than they did in 2008, the GOP political advertisers covered even fewer issues. The most common topic of advertisements was jobs, making up 73.5% of pro-Romney ads. Pro-Romney ads only covered five issues more than 10% of the time (the deficit, government spending, taxes, the recession, and health care) (Fowler and Ridout 2013:58). Additionally, all of Romney's top five issues had more coverage than Obama's (Fowler and Ridout 2013). Focusing on these five issues, the pro-Romney groups would end up dominating the media. Of the top nine non-party/candidate groups that aired advertisements in 2012, the only pro-Obama group was PUSA (Fowler and Ridout 2013).

While the Romney campaign put out very few unique advertisements, the groups allegedly independent of the campaign had more diverse messaging and content, creating a more even counterbalance to Obama. Many of the ads produced by groups associated with McCarthy and Mentzer used the same core imagery in their advertisements. The same figures talk, express the same talking points, and rely on the same core graphics pertaining to economic issues. However, the further outside of Romney's core network a political advertiser was, the more likely they were to highlight social issues rather than economic ones. But these political advertisers were rarely able to fully escape the goals and agendas of Romney's network, which would eclipse their messaging opportunities, once again returning to Teachout's (2009) concern over drowned voices. However, now the use of money to block out others' opinions has gone so far as to overshadow and influence partisan allies' speech, influencing the opportunities for outside groups aligned with candidates.

2012 and the Rights of Interest Groups

Despite being outspent, outnumbered, and less organized than in 2008, Obama still won in 2012, in part due to the sheer diversity of voters that the GOP did not account for (Miller 2013). Within the marketplace of ideas there were clear differences in terms of partisan behavior. Obama had fewer political advertisers backing him, with PUSA serving as a central hub for coordination. If one treats PUSA as an unofficial wing of the Obama campaign, a stark decline in autonomy emerges, as nearly every major political advertiser involved, as well as America Votes, becomes closer to the campaign. That said, the more independent groups generally had greater levels of autonomy, and there was far less sharing of advertising firms. In other words, the close groups were much closer, but there were a few more distant groups than there were in 2008. There was also roughly the same level of transparency on the Democratic side, keeping some accountability in place.

The best way to describe the organization of Romney's political advertisers is as one-third well-oiled machine and two-thirds disjointed madness. For this reason, the thoughts and concerns of both Justices Stevens and Scalia turned out to be accurate. Scalia's advocacy for the advancement of authorization and the importance of having information regardless of where it comes from did produce more advertisements for the public to see. At the same time, Stevens's fears that this would lead to amplifying a handful of powerful voices is also true. There was a large Romney/Rove/Koch block of very close-knit groups, similar to Obama and PUSA, but through the sharing of media firms, it was far more extreme. 12 of the 31 pro-Romney advertisers relied on McCarthy

Hennings, Mentzer, or both. The one metric of autonomy the money-speech paradigm emphasizes is separation from government, and to a lesser extent, official political campaigns. Yet through ROF, American Crossroads, and the Koch Network, roughly a third of all the pro-Romney groups were not autonomous from one another.

When moving past the core block into the fringes, multiple patterns emerge. Like McCain, several groups, particularly Tea Party and religious organizations, were less enthusiastic about the idea of a Romney presidency and more interested in stopping Obama. Even without direct ties to Romney, many of the remaining groups were not autonomous and had ties to other smaller political advertisers. Many of the groups outside of the main block also had ties to the core block that made up Romney's more expansive campaign—for instance, Ending Spending's use of Smart Media, or SBAL's ties to Crossroads Media. This resulted in a decline in autonomy and a level of interconnectedness not seen since 1980 when Congress and the Supreme Court first explored the rights to autonomy in full.

The FEC almost always enforces punishments for campaign finance violations post-election. This means that upholding accountability standards for fair practice when the market of ideas operates rarely occurs. However, with the rise of Super PACs and dark money, finances are further hidden from the public, evading the few existing limitations. SBYA legislation remained intact, but that only informs voters of who is speaking, not who the speakers are, what they stand for, or whom they stand with.

The acceptability and nature of ad content shifted. Throughout all political advertisers, Obama's ad content saw some level of variation, while Romney's did not.

The core Romney/Rove/Koch block focused on the major issues that Fowler and Ridout (2013) mapped out. Yet when moving past that block, the messages became more fractured, with groups on the fringes and outside it emphasizing cultural issues⁶.

The reimagining of speech before the 2012 campaign, particularly in terms of authorization and autonomy, developed a system that did not further inform the public, empowering those who were speaking to the greatest extent possible⁷. While the number of political advertisers present within the marketplace of ideas remained the same, there was not an even distribution between candidates resulting in the removal of partisan balance. The introduction of Super PACs allowed political advertisers to strengthen ties amongst each other and made it easier to link themselves to candidates. Independent groups were less independent from candidates and one another. Combined with the extreme partisan divide, these coordinative practices weakened the marketplace of ideas through the new avenues to reduce autonomy and increase coordination. Simultaneously, the discourses produced had more negative and misleading information from more concentrated yet less accountable voices.

2016: CLINTON V. TRUMP

The 2016 election saw the full enforcement of *Citizens*, with corporations and unions now having the full ability to make independent expenditures (Federal Election Commission 2014). Yet on the candidate side, there were drastic changes in spending.

⁶ Such as the American Future Fund, The 60 Plus Association, and the VSFA.

⁷ A more cynical interpretation would be that the campaign finance system was always special interest-oriented, it was just not transparent. However, arguments about what is good for the public had tremendously diminished by 2010 and were not taken anywhere near as much into consideration.

Clinton tremendously outspent Trump, dominating the airwaves with paid advertising, while Trump relied on social media and free airtime to inform voters (Hopkins 2019). Meanwhile, Super PACs were left nearly totally unregulated by the FEC, who made little effort to restrict their behavior beyond barring them from including a candidate's name in their own (Corrado 2019).

The official campaigns of Clinton and Trump were both overwhelmingly negative, though slightly less so than in 2012 (Fowler et al. 2016). Tables 7.5-7.7 map out 2016's drastic decrease in political advertisers: 33 in total, 10 of which backed Donald Trump⁸⁹. The decrease in political advertisers is in part due to Trump's outsider status and the widespread dislike of both candidates (Magleby 2019). However, 2016 also marks the first presidential election where the role of digital media has seriously undercut the dominance of television (Fowler et al. 2021). This is not only due to the growing presence and importance of online, but also the emergence of a new loophole as organizations began placing ads on YouTube instead of television for free media coverage (Jamieson 1992; Zuvich 2016). There was also a decrease in overall outside spending, dropping to \$324 million in 2016 (Hopkins 2019: 190)¹⁰. While in 2012, far more money went to backing Romney, in 2016, the majority of independent

⁸ This number excludes the AARP, which produced a non-specific advertisement, as they did in 2012. Several groups within the Wesleyan Media Project's data were merged into single entities, notably two organizations for both the UFSW and NRA, as well as ProgressNow and ProgressNow Ohio.

⁹ Table 7.5 also has an additional section on political organizations associated with the GOP, but still supporting Hillary Clinton. This category is included within table 7.7's "Ties to Candidate/Party."

¹⁰ This number comes from adding together the 2016 spending subtotals from group and political committee expenditures in table 5-4 (Hopkins 2019:190).

expenditures were to support Hillary Clinton. Despite the decline in spending, advertisers, and both candidates' unpopularity, the number of political advertisers with no ties did not change from the previous election. There was also a drastic increase in political advertisers with ties to candidates and one another, making the fewer voices now involved far more concentrated than in previous elections.

Table 7.5: Relationships Among Pro-Clinton Spenders, 2016 (N=23)

Ties to Clinton/DNC	11	47.82%
Ties to Priorities USA	9	39.13%
Ties to the RNC	2	8.7%
Ties to Other Outside Groups	18	78.26%
Ties to Past Campaigns/Returning Groups	10	43.47%
No Ties	2	8.7%

Table 7.6: Relationships Among Pro-Trump Spenders, 2016 (N=10)

Ties to Trump/RNC	6	60%
Ties to Rebuilding America Now	0	0%
Ties to Other Outside Groups	4	40%
Ties to Past Campaigns/Returning Groups	6	60%
No Ties	1	10%

Table 7.7: Relationships Among All Outside Spenders, 2016 (N=33)

Ties to Candidate/Party ¹¹	19	57.57%
Ties to Candidate's Super PAC	9	27.27%
Ties to Other Outside Groups	22	66.66%
Ties to Past Campaigns/Returning Groups	16	48.49%
No Ties	3	9.1%

Campaign Organization

Hillary Rodham Clinton's campaign relied on a who's who list of political consultants, including Putnam Partners, Dixon and Davis, and Buying Time. However, the two firms she primarily relied on were Grunwald and Associates and MAP Political Communication, who specialize in reaching out to the Latino vote, a central theme

¹¹ This number includes pro-Clinton groups with RNC ties.

throughout Clinton and her supporters' campaigns. Both Clinton and the DNC used GMMB Inc. Clinton's campaign was the least policy-focused presidential campaign since 2000, often focusing more on Clinton herself than Trump in the instances she did discuss policy (Fowler et al. 2016). When she or the DNC did choose to focus on policy, they focused primarily on children, family, and, to a lesser degree, equal pay for women, all to create a better foundation for future workers and families (Fowler et al. 2020). However, much of this was retrospective, looking at Clinton's record rather than explicit plans, and when advertisements did focus on future plans, they were left open-ended.

The reliance on candidate-specific Super PACs continued in 2016. While the general function of these groups is to serve as an indirect link between candidates and other political organizations, both parties did not use them in the same capacity. Priorities USA returned to support Hillary Clinton, with a newly developed and more complex network. While they continued relying on Shorr, Johnson, and Magnus, they also used other advertising firms, notably Targeted Platform Media. It was through Targeted Platform Media that PUSA worked with El Super PAC Voto and the Latino Victory Fund. In doing so, they set out to create their own miniature version of America Votes, which also continued to link PUSA and other groups (Issenberg 2016). PUSA also coordinated with the SEIU, and the LCV used both their main firm, Shorr, Johnson, and Magnus, and Targeted Platform Media. Elsewhere, they received direct money from EMILY's List's Super PAC, Women Vote! and from VoteVets. While PUSA may have had fewer ties to other political advertisers than Clinton did in 2016, those ties were also far closer. As a result, in some ways the trends from 2012 continued in 2016, with extreme

levels of coordination between Super PACs and other outside spenders, even if Clinton did have more ties in a purely quantitative sense.

Despite his alleged wealth, Trump ran an anti-millionaire campaign, emphasizing being a political outsider uninfluenced by megadonors (Magleby 2019). Trump exemplified his semi-outsider status through his advertising strategy. Trump spent very little on political advertising, and roughly half of his media expenditures went to online advertising, bucking conventional wisdom (Hopkins 2019). However, FEC records show Trump primarily relying on two major GOP advertising firms for ad production and purchasing airtime, Jamestown Production and the American Media and Advocacy Group, both of whom the RNC used. Trump also relied upon other media figures and institutions from past elections, including The Strategy Group. Unlike Clinton, Trump's political advertisements, no matter the tone, overwhelmingly focused on policy (Fowler et al. 2016). While Trump attacked Clinton on the grounds of corruption and her malignment of Trump supporters as a basket of "deplorables" and Sen. Bernie Sanders supporters as "basement dwellers," he was far more likely to emphasize her failings on foreign policy. Trump also emphasized women's and family issues, with multiple ads directly mapping out financial benefits for families, child tax credits, and plans for expanding maternity leave (Fowler et al. 2020). Many of the RNC's advertisements were direct copies of Trump's, focusing on nationalistic messages and anti-corruption stances.

Trump too, had a Super PAC directly supporting him, Rebuilding America Now (RAN). Tom Barrack, a longtime ally of Trump, who managed Trump's first major fundraiser, founded RAN to support him (Schleifer 2016). Trump's campaign chair, Paul

Manafort was also central to the establishment of RAN. RAN relied on former Trump campaign manager Ken McKay, directly violating campaign finance law (Balcerzak 2019). RAN (n.d.) saw their goal as being to counter PUSA, showing how conflicts within the marketplace of ideas bring in new actors, not necessarily for the sake of political knowledge but for political competition. However, no political advertisers coordinated with RAN, making them autonomous from non-campaign spenders, undermining their key organizational strengths.

The Greatest, Fanciest, Classiest Autonomy

While RAN remained autonomous from advertisers other than the Trump campaign, other political spenders, backing both Clinton and Trump, were not. Several political organizations would find themselves linked to parties and campaigns. For instance, Women Vote! and the American Federation of Teachers used Bully Pulpit Interactive to produce their advertisements. At the same time, the Clinton campaign used Bully Pulpit for online outreach. ProgressNow, which former members of MoveOn.org founded, used Buying Time LLC for political advertisements. The head of communications for the New Mexico branch of ProgressNow also ran Clinton's campaign in the state (Reichbach 2016). Beyond the Clinton campaign, four political advertising firms were central to the organization of interest groups: Ralston Lapp, SKD Knickerbocker, Targeted Platform Media, and Waterfront Strategies. Including PUSA, 10 of the 23 political advertisers backing Clinton relied on at least one of these firms.

Political advertisers tied to the GOP also backed Clinton. Free the Delegates, a group of official delegates who wished to oppose Trump, and the American Future

Fund, a key backer of Mitt Romney's in 2012, created advertisements to support Clinton. Both of these groups also have strong ties to the GOP's party apparatus and political networks. The American Future Fund even relied on McCarthy Hennings (now McCarthy Hennings Whalen) for advertisements alongside Future45 (discussed later in the chapter). As a result, Clinton received non-autonomous support tied to those actively working to oppose her.

The Trump campaign's ties also came through advertising and data firms, essentially allowing for coordination between groups. While both Trump and Stop Hillary PAC used The Strategy Group for political advertising, coordination with Make America Number 1 (MAN1) caused the greatest controversy. MAN1 used multiple companies to produce advertisements, often labeled simply as "media," not specifying if they were for television, radio, or online advertising. Among them is Cambridge Analytica, founded by Robert Mercer and managed by his daughter Rebekah Mercer, Jacquelyn James-Varga, and Trump confidant Steve Bannon (Fischer 2020). The Trump campaign also used Cambridge Analytica for "data management" and was central to a significant scandal accusing the Trump campaign of illegal harvesting online data. Records also found that Cambridge Analytica directly worked with both the Trump campaign and MAN1 at the same time (Fischer 2020). David Bossie who ran Citizens United initially ran MAN1. Bossie eventually left to work for the Trump campaign, leaving Rebekah Mercer in charge (Balcerzak 2019). Rebekah Mercer would go on to work with advisers from the Trump campaign (Massoglia 2017). FEC records also show that James-Varga served as treasurer (Balcerzak 2019).

While most of the coordinative efforts to back Clinton came through Priorities USA, other outside sources backed Trump's campaign. Future45 and the 45 Committee were two political advertisers backed by the Ricketts Family and their organization Ending Spending (Balcerzak 2019; Magleby et al. 2019). Future45 used both McCarthy Hennings and Mentzer Media, the major firms from the previous election. In this way, Trump's renegade outsider campaign received support from some of the most traditionally involved political advertisers, undermining the diversity of speech in terms of incorporating new and autonomous voices and limiting the truth to him and his supporters being party rogues.

New Forms of Content Diversity

In terms of content, some distinct patterns emerged in 2016. First, family and woman-oriented policies took center stage among candidate advertisements, while the topic received little coverage beyond the ads of Clinton and Trump. Both candidates also emphasized attacking each other: Trump focused on Clinton's email scandal and corruption, while Clinton focused on Trump's crudeness, arrogance, and the danger of him having access to the nuclear codes. These secondary issues dominated many of the advertisements from outside spenders. It is worth noting that there was an increase in advertisements in Spanish. 2016 seems to have the largest number of unique advertisements that aired in Spanish alone. Six political advertisers, PFAW, El Super PAC Voto Latino, the SEIU, iAmerican Action, the Latino Victory Fund, and America Together, only produced advertisements in Spanish. The limited translations available focused not

only on immigration, DACA, and Trump's plan to build a wall, but also on his overall attitude and demeanor, similar to a large portion of advertisements in English.

Some advertisements covered less traditional topics. The Humane Society put out an advertisement attacking Trump on animal rights, making it the first advertisement within the dataset to discuss the issue¹². Free the Delegates created an advertisement that directly called for Trump to step down from his position as the presidential nominee. Yet these organizations were smaller in scope and funding, reaching a much more limited audience, putting some of the most distinct advertisements on the fringes.

The changes in coordination that allowed for favoring the rights and privileges of interest groups had a significant impact on the content of political advertising. PUSA's coordination with groups like VoteVets and Women Vote! did not result in similar messages. In some cases, different political advertisers would run the same ad (Fowler et al. 2020). As a result, there was little diversity in viewpoints on policy or social issues, as there was no variance in the specific advertisements themselves.

2016, the Decline in Speakers and the Rise in Coordination

The 2016 election has a shocking lack of issues surrounding accountability. While there are criticisms of many of the advertisers supporting Trump, and the Cambridge Analytica scandal has dominated political discourses post-election, there were far fewer

¹² FEC records show the Humane Society having one expenditure for political advertisements to support Trump. However, considering how all other expenditures are designated in opposition to Trump and the content of their ad was specifically anti-Trump, this is most likely a misfiling.

smaller scandals than one might expect. The organizational structures of each campaign and its supporters were radically different. The bulk of Clinton's supporters in some way held ties to PUSA or one of a handful of central advertising agencies. It is through these agencies that most of the coordination occurred on the side of Clinton. However, the Trump campaign held fewer organizational ties, and many of these ties were often weaker than those on Clinton's side. Acceptability, at least as traditionally understood by the money-speech paradigm was less of an issue in 2016 than one might expect. Clinton and her supporters would often focus on the crudeness of Trump's character, attempting to make it an issue of electability in itself. This differs from the concept of acceptability within the money-speech paradigm, as it focuses on Trump's overall decorum instead of what is normally regulated by the money-speech paradigm. As such, the attacks on Trump's personality had less to do with ad content and acceptability within the marketplace of ideas and more to do with greater pathologies.

Compared to 2012, 2016 shows a decline in major coordinative spheres. This comes from the decrease in political advertisers and changes in how these advertisers organized. There were far fewer political advertisers involved in 2016, not because of a lack of access or authorization, but through a conscious decision not to become involved. There were no larger "parent groups" similar to MoveOn.org that worked to back Obama. As PUSA worked to pick up some of the slack, they established ties to almost everyone. So instead of having several smaller subsets of political advertisers coordinating with each other, 2016 once again saw one behemoth-sized set of organizational ties, with many members using identical political advertisements. There

was, however, a continuation of the trend of political advertisers backing candidates of the opposite party, as AFF and Free the Delegates took the place of The Denver Group. Yet in terms of diversity in speech, 2016 also saw the emergence of new forms of content. More political advertisers released more identical advertisements and more ads aired in Spanish than ever before, expanding a different avenue of outreach in 2016.

Unlike 2012, 2016 did not see a reconceptualization of the money-speech paradigm or political organizing as a whole. Instead, it saw a decline in the marketplace of ideas due to a drop in participation. As a result, many of the political formations that one might have expected to see, particularly on the GOP's side, were at best lessened and, at worst, wholly removed from the picture. On election night, Trump lost the popular vote but managed to win within the Electoral College, the fifth time this has occurred in U.S. history. And while there are many questions about the role of external forces in influencing the results, the marketplace of ideas declined in 2016.

CONCLUSION

The *Citizens United* and *SpeechNow* cases reimagined the importance of authorization and autonomy, revolutionizing the money-speech paradigm. No longer is it an audience-oriented system, as the notion it should serve interest groups that emerged in the 1990s took over. This is the starkest change from previous decades, allowing for the rise of Super PACs. As a result, the institutional arrangements of political society and the civic sphere changed for the worse. Lawmaking society allowed Super PACs that amassed large sums of money to reshape coordination. This shifted

attention away from 527s, PACs, and soft money and toward political advertisers that served as unofficial wings of political campaigns.

Gora (2013a; 2013b) argues this is beneficial as it provides more communication and is an inevitable expansion upon *Buckley*. If anything, the real threat of reforms is that political parties and candidates could not fundraise to match Super PACs. Yet this is anything but the case. Institutional rearrangements, such as decisions to rework the money-speech paradigm are not inevitable or passive constructions. Rather, they are conscious and intentional reworkings of political and social life (Perrow 2002). While it is often very costly to undo decisions in crisis moments due to the costs associated with path dependency, it is important to remember that they can be undone (Pierson 2004; Starr 2019). The Court had alternative choices and different ideas within campaign finance history to draw upon when making the decision for *Citizens*. For instance, trust and fairness within the political system are vital for a working campaign finance system (see chapter 3), and the Court could very easily have favored them and upheld *Austin* instead of overturning it in *Citizens*. But in 2010, the Supreme Court made a ruling intentionally designed to favor interest groups.

It is necessary to highlight path dependency in this scenario, as the temporal order of events is incredibly important for understanding their impact (Pierson 2004). As previously stated, *SpeechNow* began before but ended after the *Citizens* decision. Had the lower courts made an earlier decision over *SpeechNow*, *Citizens* could not have justified the decision, increasing the likelihood of the court supporting the FEC's position, resulting in Super PACs not being created. An earlier decision on *SpeechNow*

could have led to two possible futures. First, if the Supreme Court made the same ruling in *Citizens* it might have paved the way for future decisions that allowed for Super PACs, a similar form of political organization, or even entirely new coordinative possibilities. Alternatively, an earlier decision in *SpeechNow* could have also influenced *Citizens*, resulting in the Supreme Court upholding the restrictions on authorization. In either situation, corporate power would not have expanded when and how it did before the 2012 election.

This chapter shows the impact of those conscious decisions on all aspects of the public sphere and how they did not lead to a weaker marketplace of ideas. Super PACs combined with hyper-partisanship reshaped political society, expending authorization and the allowance of coordination without changing the overall number of political advertisers, leading to a greater concentration of speakers. The change in partisanship is not attributable to Super PACs¹³ but does allow for more opportunities for political advertisers to coordinate. Coordination with the official but “unconnected” Super PACs PUSA and ROF supplements coordination with parties and official campaigns. In 2012, these Super PACs shared members, and more importantly, advertising firms with multiple other political advertisers. By 2016, PUSA was producing identical advertisements as other groups it coordinated with. While Romney put out very few advertisements himself, ROF and many other groups closely tied to them produced advertisements using the same talking points, and in some cases, the same imagery.

¹³ Stark contrasts are noticeable in 1976 and 1980 when there were no pro-Democratic advertisers, and 2004 when the “stop Bush” mentality was so strong that groups like America Votes were able to organize political advertisers.

And while more distant groups did find more variation and coverage of social issues, even the more distant groups often found themselves tied back to the core bloc, and the messages they wanted to put out were never fully escapable. Trump, unsurprisingly, stands as the anomaly within this example due to his extreme outsider status and dislike and distrust both inside and outside of the Republican Party.

With hyper-partisan messaging covering an increasingly narrow realm of politics, the civic sphere's quality of speech declined. Further hampering the already tumultuous state of the marketplace of ideas is the large-scale coordination and new misinformation levels from highly concentrated and organized political advertisers. This did not consider the rights and benefits of the public exposed to the marketplace of ideas and solely works to advance those with the power to craft it.

CHAPTER 8: CONCLUSION

(OR HOW I LEARNED TO START WORRYING AND FEAR THE SUPER PAC)

Due to its inability to limit the amount of money in politics and prevent donor influence, Domhoff (2014:147) considers the history of campaign finance reform in the United States a “failed history.” Domhoff is correct, but in more ways than he described. Rather than focus on donations, this study inquired into the history of other forms of campaign spending, asking if campaign finance law could bolster the free market of ideas and generate a greater level of speech. Attempts to limit expenditures have failed to ensure some level of diversity in speech in the civic sphere. The ideological makeup of campaign finance laws has weakened democracy, not because of attempts to regulate competition out of existence, but by leaving critical flaws in place that turn the production of advertising into oligopolistic powers. The efforts to develop a campaign finance system that has often attempted to balance both the technical aspects of running a democracy and its overall spirit in the name of public trust has failed to do either. Spending increases continuously, and loopholes develop around the few restrictions, expanding political society’s reach and influence. As a result, campaign money has corrupted politicians, the policymaking process, the airwaves, and the very nature of political speech.

The relationship between campaign finance regulations and speech continually changes. As a result, so does the discursive understanding of the relationship between money and speech. Modern campaign finance law stems from the discursive arguments that emerged in the 1970s during the creation of the Federal Election Campaign Act

(FECA) and the *Buckley v. Valeo* Supreme Court decision. The arguments presented within them focused on giving candidates voices, ensuring that politicians could reach the public as they had the right to be heard. At the same time, there was also an interest, albeit a minimal one, in limiting the power of governing bodies on outside speakers. This was due to Nixon's influence on the Supreme Court and his limited definition of corruption. Said limited definition of corruption was also open to the notion of a free market of ideas, creating an avenue to a legal framework centered around providing audiences with the most information possible. Yet over time, these institutional arrangements changed. Starting with the reworking of FECA in the late 1970s and the *Boston v. Bellotti* case, the importance of having diverse speakers has been continually questioned and de-emphasized. The Reaganite Supreme Court and conservative leaders such as Mitch McConnell actively stripped the government of its ability to regulate and govern. With this came a turn away from the right for politicians to be heard, replacing it with ideas about the rights of the public and ensuring that voters could listen to as many ideas as possible. *NCPAC* solidified this free market of ideas, as PACs became more present in politics. The regulatory environment would start to crumble in the mid-2000s in response to the Bipartisan Campaign Reform Act (BCRA). With the *Citizens United v. FEC* and *SpeechNow.org v. FEC* cases, the free market of ideas that was allegedly focused on providing the public with information from competing sources disregarded the importance of competition, refocusing itself on the benefits of interest groups and their right to be involved with the political process.

These developments highlight several critical concerns for political advertising literature. First, while political advertisements are slightly informative, the information's scope is more limited than some quantitative research may suggest. This is because the deliberative aspects of democracy rely on the diverse representation of competing ideas to further understand political problems, but the concentration of groups prevents this from happening. As a result, the informative aspects of advertisements have an even more limited level of usefulness. Second, there are always few speakers in the realm of political advertising due to the cost of entry, but since both parties had outside political advertisers, diversity within the civic sphere has continually shrunk, amplifying the dangers of having a limited scope.

There are also implications for the campaign finance literature. Critics of campaign finance reform have previously pointed out the continual consolidation of power through the deregulation of donations in the name of freedom of speech. This research builds upon previous findings, showing that, to a large extent, the importance of having a plurality of voices was treated as either unimportant or naturally occurring. As a result, there was a failure to provide necessary protections within the law, preventing said diversity from emerging. New institutionalist theories often think about the taken-for-granted aspects of institutional patterns and what happens when they are not protected. This is particularly true for discursive institutionalist theories, which focus on the causal impact of ideas. As a result, ideas that do not find their way into arguments hold less weight in the institutionalizing process. This project shows that among those concepts is not merely the notion of free speech but also diversity in

voices. Past theorists and lawmakers have argued that there was sufficient proof of competition as long as competition could exist in theory. This was strengthened by the neoliberal turn pushed for by the Reagan administration, which did face some resistance but remained as a default mentality when Clinton took office (Peritz 1996; Teachout 2020). This pattern also exists when looking at the free market of ideas within campaign spending and political advertising. A lack of concern over regulations that ensure competition stems as far back as *Buckley*, which mapped out a lack of government interest in ensuring a level playing field. While there are figures such as Scalia who seemingly have little interest in ensuring the diversity of voices, they often argue that it will, to some degree, come naturally. Whether this position is genuine or a façade holds less importance than one may expect, as neither interpretation actively defends the idea that ensuring a diverse realm of speech is beneficial.

The lack of emphasis on the importance of a diversity of voices was also a weakness for those who felt reforms should keep power in check. Justice Stevens's discussion of treating the need for corporate power to be tempered as a given, as well as reform advocates in both Congress and the Supreme Court, exemplifies this. Those who pushed to limit corporate power overwhelmingly focused on the more cognitive aspects of speech, the technical regulations, and the ability to go through a PAC being sufficient. These arguments rarely engaged with, either out of a lack of concern for their importance or a belief that the arguments will be unfruitful, the normative processes embraced by a democratic spirit. Moreover, when reform advocates emphasized normative ideas, they often focused on cash flow instead of coordination. As a result,

there was less of an explicit emphasis on preventing coordinative efforts and more of an insistence that actors do the proper paperwork to avoid slush funds. As a result, the diversity of speech fell victim to corporate control. In short, *when it is assumed that a diverse set of ideas will naturally emerge or there is a lack of effort to actively defend the notion is when the diversity of ideas is at its most vulnerable.*

THE MONEY-SPEECH PARADIGM REVISITED

The discursive institutionalist approach's focus on ideas helps develop a history of the relationship between money and speech through what I call the money-speech paradigm. The money-speech paradigm treats the relationship between money and speech not as a static entity (money is or is not speech) but as a multifaceted structure with a series of interlocking concepts. The money-speech paradigm demonstrates how the marketplace of ideas is not just a notion of competition in an abstract space, but a series of manufactured regulations designed not simply to let the best ideas emerge but for political dominance. These concepts highlight the multiple dimensions of the best speech in the civic sphere and how money works to achieve these goals. Rather than developing in unison, each concept within the money-speech paradigm finds itself on a different ideational trajectory, occasionally entangled with one another. Table 8.1 shows the evolutions of each aspect relative to legislative actions.

The notion of access, ensuring sufficient channels of speech, was central to the beginning of reform efforts. Access was central to many of the debates and hearings behind FECA 1971, and while there were debates over the specifics, notably how much money could be spent on advertising, the right to access it was never fully questioned.

Table 8.1: Changes in the Money-Speech Paradigm, 1976-2010

	<i>Buckley/FECA '76</i>	<i>Bellotti/FECA '79</i>	<i>BCRA/McConnell (2003)</i>	<i>Citizens/SpeechNow (2010)</i>
Orientation	Right to an Audience	Audience-Centric	Audience-Centric	Interest Group-Centric
Focus	Autonomy, Accountability, and Access	Accessibility and Authorization	Accountability and Acceptability	Authorization and Autonomy
Concepts				
Autonomy	More spending permission but donations are limited.	More spending permission but donations are limited.	Soft money ban.	Creation of Super PACs.
Accountability	Transparency ensures good actors.	Transparency ensures good actors.	Soft money ban, SBYA legislation.	SBYA requirement remains.
Accessibility	Increase in spending limits. Lowest unit rates for candidates.	Increase in spending limits. Expand soft money.	Lowest unit rates reinforced, but conditional. Increase in hard money. Restrictions on outside advertisers.	Lowest unit rates reinforced, but conditional.
Acceptability	No regulation.	No regulation.	Reforms are designed to create a healthier experience. Lowest unit rates for positive ads only.	Removal of past limits.
Authorization	N/A	Expansion in the right to participate.	Limits on who can spend within 60 days of election.	Removal of past limits. creation of Super PACs.

FECA 1971 granted candidates as much speech as they could afford, but there were also efforts to make sure that speech itself was affordable. By requiring broadcasters to charge candidates the lowest unit rate for timeslots, candidates would have the greatest access level. However, broadcasters found workarounds allowing

them to charge more than the lowest unit rate, so BCRA worked to secure the rate, but this would only apply for positive advertisements.

There were also attempts to regulate the length and content of political advertisements. While efforts to control the length were unsuccessful, being contradictory to access (longer ads often cost more money), the content itself was a different story. As a whole, ad content, the concern over acceptability, be it negativity, accuracy, or racism, remained unregulated on First Amendment grounds. Throughout countless debates, the interest of ensuring informative and not blatantly racist commentary within candidate advertisements was a source of contention. However, because of the First Amendment and previous Supreme Court rulings, ad content was not regulatable or censored.

When tied to racism, Congress often pushed the discussion of acceptability aside for the sake of expediency. This resulted in two things. First, acceptability was rarely the core focus of legislative reforms, with BCRA being the only legislation that emphasized the concept. Second, when acceptability was central, Congress worked to regulate the law in a way that did not ban any content but disincentivized negativity. In response to a series of conservative groups' lawsuits, the Supreme Court quickly overturned Congress's attempts to emphasize acceptability within BCRA. And while applying cost control measures to positive ads alone was legally codified, the appeal of airing negative advertisements outweighed the financial disadvantages.

Larger changes are far more noticeable when one shifts their attention toward accountability. The need to maintain some level of disclosure is the closest thing to a

universally agreed upon standard. Even the far-right often contend that there should be some transparency, as it is the absolute minimum necessary for regulation. Ideas about accountability have evolved over the years, balancing the need for open participation and the potential burdensomeness of reporting. As a result, in the late 1970s, soft money emerged, allowing for less reporting with the hope of more participation. But even the groups that did have to report their spending were relatively hidden, as the main way to access this information was through FEC archives, which, while publicly available, were only accessible on the coasts¹. So before the late 1990s², a great deal of travel was necessary for the average concerned citizen to know the funding behind advertisements. However, with BCRA, the audience-oriented aspects of speech would change. Stand by Your Ad legislation pushed accountability efforts onto television, making accountability efforts match modern technological demands. As a result, the public had some information about who was behind the boom in outside advertising, creating a minimal level of accountability within the civic sphere. However, this did little to deter advertisers and participation and is not as informative as it may sound. The public may know Priorities USA aired an advertisement, but they do not necessarily know who or what Priorities USA is.

The two aspects of the money-speech paradigm that saw the greatest changes were authorization and autonomy. The involvement of authorization, allowing for the

¹ While the FEC does keep the main copy of all records, UC Berkeley also has copies of most of the earlier records on microfilm.

² While later records became available online, older records are still only accessible at on-site archives.

legal system to reconsider who could engage within the civic sphere, is monumental. It shifted the money-speech paradigm away from empowering candidates toward providing the public with as much information as possible. When authorization came into consideration, primarily through *Bellotti*, the government began treating the marketplace of ideas as an actual marketplace. As a result, it often dealt with the more technical aspects of the democratic process, meaning authorization determined who can go through which channels and why. This brought about the emergence of corporate and non-profit spending in campaigns. The rules for authorization and the right to speech were intensified in *Citizens United* and *SpeechNow*, resulting in the free market of ideas ceasing to be treated like a market and creating Super PACs, generating corporate fuel for the political process.

This leads to the final aspect, autonomy, which was far more contentious and impactful than authorization. Autonomy was always one of the most controversial issues, as far back as FECA 1971. Reform efforts are driven by fears of the state overregulating outside groups and of illegal coordination with candidates that threatens the spirit of democracy. Coordination among outside groups was never forbidden, limiting the merits of the lack of regulation of autonomous speech. Table 8.2 looks at ties among political advertisers numerically. The number of political advertisers with no ties to any other organization or candidate (as in not sharing any members or firms and having no one who had previously worked with a candidate), past or present, have always been small, staying roughly the same throughout each election. Simultaneously, the number of groups that do have direct ties (as identified by sharing employees,

advertising firms, or time-buyers) has drastically grown, meaning that the independent groups continually take a smaller piece of the pie. In fact, since 1988, the percentage of political advertisers with no ties to candidates, parties, other political advertisers, or those involved with previous elections continuously declined. The one exception to this was the 2004 election, with its drastic rise in the use of soft money and the proliferation of anti-Bush groups.

Table 8.2 also shows that while there was a downward trend in the number of autonomous groups, there was no clear trend in institutional arrangements of non-autonomous ones. From 1992 to 2008, there was generally a decrease in political advertisers with ties to candidates and parties. There was often only a single degree of separation between candidates and other more autonomous political spenders. Additionally, the involvement of the Super PACs Priorities USA and Restore Our Future, which were essentially unofficial wings of Obama and Romney's campaigns, undid most of the thin level of autonomy that previously existed, though Rebuilding America Now not coordinating with any other group negated much of these changes in 2016. When looking at relationships between political advertisers, there was no clear trend regarding their ties to one another or their involvement in previous elections. There was, however, a clear evolution of how political advertisers established relationships among themselves and candidates. Early on, when the number of political advertisers was minimal, coordination occurred mainly through the sharing of employees and constant direct communication. Yet as the regulatory environment became more sophisticated,

Table 8.2: Ties among Political Advertisers, 1976-2016

	1976	1980	1984	1988	1992	1996	2000	2004	2008	2012	2016
Overall Number of Political Advertisers	1	6	5	10	6	6	21	59	47	47	33
Ties to Candidate/Party	0(0%)	6(100%)	5(100%)	4(40%)	5(83%)	5(83%)	16(76%)	16(29%)	14(29%)	11(23%)	19(58%)
Ties to Candidate's Super PAC	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	16(34%)	9(27%)
Ties to Other Outside Groups	0(0%)	3(50%)	2(40%)	4(40%)	0(0%)	1(17%)	9(43%)	35(59%)	29(62%)	16(34%)	22(67%)
Ties to Past Campaigns/Returning Groups	0(0%)	2(33%)	2(40%)	3(30%)	1(17%)	2(33%)	4(25%)	18(31%)	27(57%)	16(34%)	16(48%)
No Ties	1(100%)	0(0%)	0(0%)	4(40%)	1(17%)	1(17%)	2(10%)	17(29%)	4(9%)	4(9%)	3(9%)

so too did coordinative efforts. The sharing of advertising firms and time buyers became a powerful influence in later elections, very much strengthened by the money-speech paradigm's shift toward serving interest groups. The heightened sharing of information resulted in a greater number of stronger links between outside groups and candidates. When violations of autonomy occur, regulators regularly overlook them. When they do not, the punishments are rare, and when enacted, minimal. The historical development of autonomy is the story of continuous decline.

The content of the speech also tremendously suffered. Negative attacks tapping into racist sentiments were left unconstrained, finding their way into the homes of voters during multiple elections. The decline of autonomy and the rise of Super PACs also impacted the informative benefits of ad content. By sharing advertising firms, not only were a select group of individuals in far more control over the creation and distribution of political information. In 2012 these coordinative practices resulted in similarities in the sounds, styles, and talking points of different political advertisers. By 2016 it was common for multiple political advertisers to air the same advertisements.

THE ICEBERG THEORY OF CAMPAIGN FINANCE REFORM

One dominant position regarding campaign finance reform looks at the relationship between the right to spend and personal liberty as a natural and guaranteed process. Because it is guaranteed and naturally occurring, the right to spend money is inevitable. Many advocates of this approach frame campaign spending as hydraulics, where funds shift through different canals going toward different sources: parties, candidates, and other outside groups (Isaacharoff and Karlan 1998). By framing

money as analogous to water, Isaacharoff and Karlan (1998) argue that money in politics can be channeled but does not disappear. Rather, it is a fundamental aspect of the political process. For this reason, campaign finance reform tends to change who acquires and spends money, rather than limiting its acquisition, resulting in parties and candidates spending less money as outside spending expands (Coate 2004; Isaacharoff and Karlan 1998; La Raja and Schaffner 2015).

Yet the hydraulics analogy is incomplete and inaccurate. Hasen (2016) critiques the hydraulics metaphor for assuming that money stays at a constant level when the level of spending fluctuates. However, this critique does not fully encapsulate the issues of the consolidation of institutional power. For these reasons, I contend that rather than viewing campaign finance reforms as the shaping of hydraulics, it makes far more sense to view campaign finance reform as akin to creating icebergs. Chamon and Kaplan (2013) briefly explored the iceberg metaphor where the public sees very little of what is going on and campaign *donations* have an impact on policy decisions. While this is most certainly true, it does not consider the role of reform of *spending* for public outreach. Therefore, a full reimagining of the money-as-water that considers regulations on as an iceberg has much further implications than the problems associated with donations and public visibility. It is not just that only a small portion of icebergs is visible, but also the other properties of icebergs and their formations explain the nature of reform and its operations.

Icebergs form when large chunks of ice move from land into the water. From there, the conditions in which icebergs are formed influence their size, shape, and

compactness (Diemand and Dryak 2019; National Snow and Ice Data Center n.d.). An iceberg provides a far stronger analogy for campaign finance reform than does hydraulics. Rather than merely reworking the channels in which money flows, the campaign finance reforms from 1971-2010 determined the shape of power consolidation. Different reforms influence the size, shape, and depth of the icebergs, making them larger and less visible every time. And with the icebergs continually growing, the threat they hold to democracy is ever-looming. The state of campaign finance regulations has already tremendously weakened political discourses within the civic sphere, and they may only find themselves weaker in the future. Campaign regulations then become the determining factor for how much money is involved in elections and who gets to spend it, changing the size and shape of icebergs. Weaker regulations allow for larger icebergs, consisting of more money and deeper ties, while strong reforms create smaller icebergs (or hypothetically none). The larger the iceberg, the more powerful it is, and the more ice there is “beneath the surface,” creating larger consolidating forces.

The other way that campaign finance reforms are analogous to icebergs is that they have multiple forms and do not stay in place. Rather, they come in different sizes and shapes and will float, ram into one another, and break apart ships in the process. If icebergs represent the consolidation of money, then multiple icebergs represent the emergence of multiple powerful bodies at odds with one another. In this case, ships are analogous to democracy, making the problem of campaign finance the issue of what happens to the democratic process when those with political power can wield undue

influence. When an iceberg runs into a ship, it risks tearing its hull, damaging it, and potentially sinking it. The same is true of campaign spending. When the politically powerful hold that much influence, it undermines the democratic process's safety, potentially tearing it apart and leading Jack and Rose to their representation-less doom.

The money-speech paradigm drives the conceptualization of speech and regulation of expenditures, but the money-speech paradigm does not exist independently. Instead, it reflects upon and contextualizes social processes already embedded within the body politic. Therefore, the shape of the money-speech paradigm is not the sole determining factor of the shape of icebergs. The ideas and interests of members of political society also play an influential role. Just as the Supreme Court's mentality has dramatically influenced the money-speech paradigm, the mentality of candidates and parties toward outside spenders has been influential as well. Those interested in rejecting the role of outside spending often find political advertisers less supportive. Carter's opposition to their very existence left him unarmed in 1976, and in 2008 both Obama and McCain had "anti-corruption" angles to their campaigns, which impacted involvement and the decline of participants from the previous election. 2004 onwards also reflects a second external aspect: outside spender's sentiments toward candidates. When there is an overwhelming need to "stop" a candidate, their opponent finds themselves aligned with a larger number of political advertisers pumping money into the civic sphere, even if that candidate was from a political advertiser's party. The overwhelming desire to stop an opponent is useful, but as all three of these cases suggest, it does not necessarily lead to victory. Few of the groups backing McCain and

Romney were genuinely enthusiastic about the idea of either being president. But the thought of an Obama presidency or reelection was so terrifying that it resulted in massive spending on political advertisements. Sentiments toward candidates can also break apart the consolidation of speech. When political advertisers are less than enthusiastic about their party's nominee, there are fewer coordinative efforts. Similarly, the general dislike of Trump brought in political advertisers to back Hillary Clinton and disincenitized Republican groups, who would normally spend millions to support a candidate, from participating.

Yet the money-speech paradigm serves as a foundational force dictating when and how political advertisers can engage with the public. This is something that campaign finance reform wrestles with, thinking about what makes for the "best speech," but do not take it head-on. As a result, efforts to create a diverse array of political positions and interests for the public to see and hear have regularly fallen flat, failing to limit the size of icebergs and account for the damage they can cause when ramming into the ships of democracy.

BREAKING ICEBERGS: A POLICY PROPOSAL

At the heart of many of the largest controversies and entanglements within campaign advertising was the issue of autonomy. The right and need to be autonomous from governments and parties holds merit, not only out of fears of corruption but also out of the desire to prevent some degree of censorship. But autonomy *between* political advertisers is just as crucial for combatting corruption and ensuring some level of

diversity in speech. Without doing this, icebergs will continue to grow in size and destructive capacity.

To prevent this, legislative bodies and the FEC must rethink what it means to have illegal coordination. It *cannot* simply be a matter of quid pro quo corruption. Those wishing to create a better money-speech paradigm need to account for the sharing of knowledge, consultants, and firms. While there are no perfect solutions, with the lack of autonomy being the greatest threat, it is where the greatest potential for solutions lies. In the past, the legislative process failed to successfully balance the technical aspects of democracy and its spirit. By assuming that the diversity of speech will come about naturally, monopolistic powers emerged within the market of ideas. To ensure a freer and fairer market of ideas, the U.S. government should embrace practices already enacted within economic markets: trust-busting. Future legislative practices should focus on actively breaking apart and limiting the opportunities for large-scale coordination outside of candidates and parties.

While it is impossible to completely break apart all organizations involved, one potential solution would be to limit the number of political organizations that advertising firms could work for within the same electoral race. This prevents dozens of PACs from relying on the same firms, limiting their control over messaging. Barring this form of coordination is a tremendous task. However, the concepts involved and important to it are not alien. The goal here is not to limit the ability to make donations to organizations³ or limit the right to speak (authorization), nor to attempt to regulate

³ A question that deserves an analysis of its own.

any sort of content or talking points. Rather, it embraces the normative concept of the spirit of democracy and ensures that said spirit can flourish, moving away from a special interest group-oriented model of speech and back to one that serves audiences more than ever before.

If the government can prevent coordination through consulting firms, there might initially be fewer political advertisers (which may be of no consequential loss). But over time, more political consulting firms, time buyers, and advertisers will emerge. Yes, early on, many of them will be run by proteges of campaign veterans, but they will still need to hire more technicians and support staff, further expanding the number of individuals involved and their inputs. Over time, with a more extensive and more diverse set of consultants, less coordination would be possible between organizations.

Reconceptualizing autonomy to focus on trust-busting, limiting opportunities for political advertisers, and reimagining corruption in a more expansive mindset also calls for a reevaluation of the FEC. A cynical look at the FEC's use of regulatory power would deem the organization spineless and afraid to be too definitive. A more sympathetic view would say they are overly bound to a very explicit and limited definition of corruption and a legally mandated bipartisan makeup. This, combined with the fact that the Republicans appointed to the FEC are often heavily interested in deregulation, creates a barrier to meaningful enforcement (Dwyre 2015). I contend that both are true, and both are a problem. To fully embrace and create an accountable system, a more holistic view of what it means for coordination to be illegal is necessary not just within the law but also among those who enforce it. Taking a firmer stance on what constitutes

a violation and heavily fining those involved may discourage future violations, or at the very least, ensure the public has a bit more confidence in the democratic process.

With a more expansive view of corruption and stricter limitations on coordination through advertising firms comes a new regulatory target: the advertising firms and consultants themselves. The financing of the electoral process involves exchanging money, which means both those giving and receiving money can be suspect. By this broader interpretation, advertising agencies are themselves fineable. These fines (and fines against all other campaign finance violations) should be far more severe, particularly for organizations that can afford them. This, combined with a higher level of willingness to implement punishments, may discourage violators or damage them so much that they cannot return for future elections. For example, Larry McCarthy very likely has as little concern for the wellbeing of most of his clients as he does the truth, but he can do his best to both make profits and ensure victory by working for multiple political advertisers at once. Punishing him for doing so may not do much for his honesty, but it may make him think twice about working for a candidate and half a dozen PACs involved in a single election.

The FEC already receives most of the data necessary to track this. Candidates and PACs report every expenditure made, so there would be no need to change the disclosure process. This project shows that the FEC records needed to keep track of this information are not just available, but linking the information together is very doable, though painful. The information already exists, and the problem is identifiable, but whether the government enacts the necessary accountability efforts is up for question.

The opposition to these reforms is, in many ways, predictable. Arguments against these proposed reforms will most likely range from the position that no good ever comes from reform to claims that my arguments are antithetical to freedom of speech. This argument stems from the belief that only the government poses a threat to autonomy. This project shows otherwise. It is not simply the government but also other forms of interlocking affiliations that pose a threat. More speech cannot exist without more speakers that operate autonomously from the state and one another. There may also be those who question my proposal's constitutionality, saying that it infringes upon freedom of enterprise. However, anti-trust and anti-monopoly laws are already within the legal system (although often poorly enforced), so the concepts proposed here, once again, are not alien. Additionally, the FEC (1981) has claimed that outside spenders cannot use the same advertising firms as candidates.

This is not the first call to break apart corporate power within the United States, nor will it be the last. There is also a precedent for regulating the free market of ideas to prevent excessive consolidation within the judicial system (Stucke and Grunes 2001). As I constructed the first draft of this conclusion, Zephyr Teachout (2020) published a book proposing similar solutions. Extending these regulatory concerns into the realm of campaign finance further protects freedom of speech and enterprise. Another line of criticism, one that directly defends political consultants, is that they are not corruptible agents. Their receiving of funds does not impact policy⁴, nor are they members of the governing body itself. However, rather than looking at consultants as *corruptible* agents,

⁴ Beyond their influence over election results.

it may make more sense to see them as *corrupting* agents. That is, by creating opportunities for large-scale coordination in terms of the sharing of information and creating knowledge for political communication, the presence of consultants who work with multiple political advertisers enhances political corruption by creating a backchannel for coordination. And while there is little government interest in creating a level playing field, there is an interest in combatting both corruption and the appearance of corruption, something that the sharing of advertising firms represents.

Breaking apart the icebergs is necessary if we wish for democratic ships to have smooth sailing. Critics may suggest that these concerns and proposals are the sign of vast government overreach. But these conceptualizations of reform and its enforcement are historically and legally justified. Not only do they fit within the money-speech paradigm, but they also fit within the realm of compelling government interest. Democracy is often at its best when there is something akin to a free market of ideas, wherein the public has a vast array of ideas to choose from. This is something that needs to be actively protected, not by giving corporate power the most expansive rights possible but by ensuring that a real diversity of speakers is available. At a certain point, without proper protection, freedom of speech becomes the freedom to dominate: to dominate the marketplace of ideas, to dominate financing, to dominate the civic sphere, and to dominate the ideology that shapes the legal framework in the first place. To those who argue there is no compelling state interest in preventing the right to dominate, I ask whom the government serves: the powerful? Or the people?

APPENDIX A: LIST OF POLITICAL ADVERTISERS

	'76	'80	'84	'88	'92	'96	'00	'04	'08	'12	'16
1830 Project Inc										X	
45 Committee											X
60 Plus Association										X	
ACORN									X		
Affiliated Construction Trades Foundation								X			
AFL-CIO							X	X	X		
AFSCME								X	X		
Alamo PAC				X							
Alliance for Retired Americans									X		
American Bridge 21st Century										X	
American Crossroads										X	
American Energy Alliance										X	
American Family Voices							X				
American Federation of Teachers											X
American Future Fund										X	X
American Issues Project									X		
American Patriots Coalition								X			
American Principles in Action										X	
American Seniors, Inc.							X				
American Women for Supporting the Pres.				X							
Americans for an Effective Presidency		X									
Americans for Job Security							X	X		X	
Americans for Peace Through Strength								X			
Americans for Prosperity										X	
Americans United to Preserve Marriage								X			
America's Next Generation										X	
Andrew Jackson Democratic Women of Washington County								X			
Authors and Illustrators for Children										X	
BET									X		
BOLD PAC											X
BornAliveTruth.org									X		
Brave New PAC									X		
Breath of Life								X			

	'76	'80	'84	'88	'92	'96	'00	'04	'08	'12	'16
Bring Ohio Back								X	X		
Businessmen for Ford	X										
California Nurses Association									X		
Campaign for American Values PAC										X	
Campaign to Defeat Barack Obama										X	
CatholicVote.org										X	
Children Protection Fund						X					
Christian Action Network					X						
Christian Voice Moral Fund			X								
Citizen Engagement Laboratory										X	
Citizens Against Government Waste									X		
Citizens for a Sound Economy						X					
Citizens for the President '84			X								
Citizens United								X	X		
Clean Air Project							X				
Club for Growth								X			
Coalition to Protect Americans Now							X				
Committee for the Presidency				X							
Committee for Truth in Politics									X		
Committee to Re-Examine America's Priorities								X			
Common Sense Issues									X		
Communities for Quality Education								X			
Compare/Decide/Vote								X			
Concerned Citizens for a Safer America								X			
Conservative Leadership PAC							X				
Conservative Victory Committee				X							
Conservatives for Freedom				X							
Crossroads GPS										X	
Defenders of Wildlife									X		
Democrats for Reagan		X									
Emergency Committee for Israel										X	
Empower U.S. Association							X				
El Super PAC Voto											X
Ending Spending										X	

	'76	'80	'84	'88	'92	'96	'00	'04	'08	'12	'16
Environment Action Fund								X			
Fair Share Action										X	
Family Research Council									X		
Fenton Social Change Agency											X
Fifty Second Street Fund											X
Fight Back Campaign/Org								X			
Free The Delegates											X
Freedom Defense Fund									X		
Fund for a Con. Majority/Cit. for Reagan		X	X								
Future45											X
GeorgeTheMenace.org								X			
Great America PAC											X
Greater New Orleans Republican Fund								X			
Handguns Inc./Brady Fund							X	X			
Healthcare for America Now									X		
Hispanic Leadership Fund										X	
Holly Mosher								X			
Human Rights Campaign							X	X			
Humane Society											X
IAFF									X		
iAmerican Action											X
IBEW								X			
IBEW Local 76					X						
ICEPAC					X						
Independent Voters of America								X			
John A. Yarmuth								X			
Judicial Confirmation Network									X		
Latino Victory Fund											X
Latinos por la Reforma									X		
Leading Illinois for Tomorrow											X
League of Conservation Voters								X	X	X	X
Let Freedom Ring								X	X	X	
Local Voices										X	X
Make America Number 1											X
Mamas for Obama									X		
Matthew 25 Network									X		
Missouri Right to Life PAC									X		
Mothers Opposing Bush								X			

	'76	'80	'84	'88	'92	'96	'00	'04	'08	'12	'16
Move America Forward								X			
MoveOn								X	X	X	
NAACP							X				
NARAL/Winning Message Action Fund					X	X	X		X		
National Congressional Club			X								
National Republican Trust									X		
National Right to Life Committee				X							
National Security PAC/Americans for Bush				X							
Natural Resources Defense Council								X			
NCPAC/Ronald Regan Victory Fund		X	X								
NEA								X			
Nebraska Purple Brigade								X			
New Democratic Network								X			
NextGen California Action Committee											X
NRA							X	X	X	X	X
Nuclear Energy Institute						X					
Numbers USA										X	
Operation Truth								X			
Our Country Deserves Better									X	X	
Patriot Super PAC										X	
People for the American Way							X			X	X
PhForAmerica.com									X		
Planned Parenthood							X	X	X	X	
Power PAC									X		
Presidential Unity Committee		X									
Presidential Victory Committee					X						
Priorities USA										X	X
Progress for America Voter Fund								X			
ProgressNow											X
Progressive Future									X		
Public Campaign Fund's Money Watch								X	X		
Real Economy Group								X			
Real Voices PAC								X			
Rebuilding America Now											X
Reform America Now											X

	'76	'80	'84	'88	'92	'96	'00	'04	'08	'12	'16
Republican Federal Committee of PA									X		
Republican Jewish Coalition									X	X	
Republican Leadership Coalition							X				
Republican Leadership Council							X				
Right to Life MI											X
RightChange.com									X		
Running for Change								X			
Rural Americans for Fairness					X						
Safer Together '04/Win Back Respect								X			
Save American Medicine								X			
Secure America Now										X	
SEIU								X	X	X	X
Seniors for Dukakis				X							
Sierra Club/Save Our Environment							X	X			
Softer Voices								X			
South Dakotans for Dukakis				X							
Special Ops Opsec Education Fund										X	
Stop Hillary PAC											X
Stronger America Now								X			
Super PAC for America										X	
Susan B. Anthony List										X	
Swift Boat Veterans for Truth								X			
Texans for Truth								X			
Texas Democratic Party				X							
The Agenda Project										X	
The Denver Group									X		
The Media Fund								X			
The National Air Traffic Controllers Association								X			
The Nat'l. Boricua Human Rights Network								X			
There is a Difference								X			
This Vote Counts											
Thomas Peterffy										X	
Toledo Seniors for Dukakis				X							
Truman National Security Project										X	
Truth and Hope								X	X		
Truth PAC											X

	'76	'80	'84	'88	'92	'96	'00	'04	'08	'12	'16
Unite Here Tip State and Local Fund										X	
Unity 2012										X	
United Auto Workers								X	X		
United Food and Commercial Workers									X		X
United States Catholic Coalition						X					
Veterans for a Stronger America										X	
Vets for Freedom									X		
Victory 2016 Committee											X
VoteVets Action Fund									X		X
Vote Your Values										X	
West Virginians for Life							X	X			
Women for Tax Reform						X					
Women Speak Out										X	
Women Vote!											X
Women Warriors PAC										X	
Youth Christian League							X				

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VITA

Nathan was born in and spent most of his life in the greater Chicagoland area, where from an early age he took an interest in electoral politics, and at an even earlier age an interest in television. It should be no surprise then that he became a political sociologist who studies the intersections of politics, media, and culture. In 2013 he completed his BA in sociology from DePaul University and in 2015 he earned his MA in sociology from Northern Illinois University.

Nathan's scholarship in sociology is vast, with peer-reviewed publications in *Poetics, Young, Society & Animals, and Symbolic Interaction*. His dissertation, *Turning Money into Speech* traces the history of how campaign finance reform influences the production of political advertisements to examine the development and strength of political speech. To complete his dissertation, Nathan won the Habenstein Dissertation Fellowship and the Research Training Award from the Department of Sociology at the University, as well as the Dissertation Research and Travel Award from the Graduate School at the University of Missouri.