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June 25, 2024

Sean J. Cooksey
Chairman
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

Petition for Rulemaking to Strengthen Political Parties

Dear Chairman Cooksey:

I am writing on behalf of my client Ken Martin, in his capacity as Chair of the Minnesota Democratic Farmer-Labor Party. Pursuant to 11 CFR § 200.2(a)(1) and 5 USC § 55(e), Chairman Martin and the Minnesota DFL Party respectfully seek amendments to sections under Title 11 of the Code of Federal Regulations in order to strengthen political parties and thereby preserve our democratic system.

In June of 2016, Chairman Martin and the Minnesota DFL Party petitioned the Commission to initiate a rulemaking to provide state and local party committees with regulatory relief. On October 7, 2016, the Commission made the Minnesota DFL Party's petition available for public comment.¹ In response to the party's petition, the Commission received numerous comments which were almost unanimously in support of the request to provide regulatory relief by the Commission to state and local party committees. After six years of inaction on this petition, Chairman Martin, in September of 2022, sent a letter to the Commission urging it to engage in a rulemaking procedure to address the issues raised by its petition. By this letter, Chairman Martin seeks to renew the party's efforts to petition the Commission on these issues. Therefore, to the extent that the prior 2016 Commission is still pending, the Minnesota DFL Party hereby revokes its prior petition and, by this letter, is filing a new Petition for Rulemaking.

¹ 81 Fed. Reg. 69721 (Oct. 7 2016).

Very little has changed since Chairman Martin’s Petition in 2016 as it pertains to state and local party committees with regards to the challenges in the American political system. State and local party committees continue to compete for resources with a growing number of unregulated non-profits and political committees that can spend unlimited sums from unlimited sources in close proximity, and in some cases, in direct coordination with federal candidates.² However, state and local party committees continue to struggle under the restrictions imposed by the Bipartisan Campaign Reform Act (“BCRA”).³

Under the BCRA, state and local party committees, which are often run by part time, volunteer officers and in many cases, minimal staff, are subject to the most complex and burdensome laws and rules of any entity regulated by the Federal Election Campaign Act. In most cases, the burdens of the BCRA are statutory. In other cases, the burdens placed upon state and local party committees are a direct result of Commission regulations. These burdens were highlighted by our 2016 petition and the original petition is incorporated herein by reference and attached for your convenience.⁴

While the BCRA and Commission regulations present many challenges, the Minnesota DFL Party would like to highlight the a few of the priority issues outlined in our original petition and subsequent comments where the Commission can make a considerable difference in providing relief to state and local party committees:

- 1) Amend 11 C.F.R. § 300.33(d)(3) by omitting the phrase “Federal election activities” to conform the regulation to the statutory provision found at 52 U.S.C. § 30101(20)(A)(iv) and its own regulation found at 11 C.F.R. § 100.24(b)(4).
- 2) Reconsider and revise the definitions of “get out the vote activity” and “voter registration” found at 11 C.F.R. §§ 100.24(a)(2) & (3).
- 3) Codify a modernized standard to determine compliance with the volunteer requirements related to mailings undertaken by state or local parties in accordance with the “volunteer mailing exemption” found in 52 U.S.C. §§ 30101(8)(B)(ix) & (9)(B)(viii), as well as the Commission’s regulations at 11 C.F.R. § 100.87 and 100.147.

² See Federal Election Commission Advisory Opinion 2024-01 (Texas Majority PAC); *Trump’s Ground Game is No Longer In Our Hearts* at https://www.thebulwark.com/p/trump-campaigns-get-out-the-vote-plans?utm_campaign=post&utm_medium=email&triedRedirect=true

³ See e.g. *The Minnesota GOP is broke and struggling to contain the fringe*, at <https://minnesotareformer.com/2023/12/08/the-minnesota-gop-is-broke-and-struggling-to-contain-the-fringe/>; *Why Some State Republican Parties Are Struggling to Raise Money*, at <https://www.npr.org/2023/08/07/1192537176/why-some-state-republican-parties-are-struggling-to-raise-money>.

⁴ The Minnesota DFL also provided written comments to the Commission’s Notice of Availability by letter of Counsel on January 30, 2017. This letter is also incorporated by reference into this Petition and attached for your convenience.

Chairman Martin and the Minnesota DFL Party look forward to working with the Commission in connection with this renewed call for action by the Commission in connection its Petition. If you have any questions, feel free to contact me at reiff@sandlerreiff.com or at 202-479-1111.

Sincerely,

A handwritten signature in black ink, appearing to be 'NR', written over a faint, larger signature.

Neil Reiff

Counsel to the Ken Martin, Chair,
Minnesota Democratic Farmer Labor Party

SANDLER REIFF

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ROSENSTEIN & BIRKENSTOCK, P.C.

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COMMISSION

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OFFICE OF GENERAL
COUNSEL

June 14, 2016

Matthew Peterson
Chairman
Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, D.C. 20463

Petition for Rulemaking to Strengthen Political Parties

Dear Chairman Peterson:

I am writing on behalf of my client Ken Martin, in his capacity as Chair of the Minnesota Democratic Farmer-Labor Party. Pursuant to 11 CFR § 200.2(a)(1) and 5 USC § 55(e), Chairman Martin and the Minnesota DFL Party respectfully seeks amendments to sections under Title 11 of the Code of Federal Regulations in order to strengthen political parties and thereby preserve our democratic system.

We write to you today in the wake of the two-year anniversary of the Commission's June 4, 2014 forum in which representatives of the two major parties, as well as minor party representatives, asked for regulatory reform in order to overcome burdens the Commission's regulations imposed on political parties by the Bipartisan Campaign Reform Act of 2002 ("BCRA").¹ Although we appreciate the opportunity the Commission provided for state party representatives to explain the problems and need for change in the Commission's restrictive and overly broad regulations for state parties, we believe it is time for the Commission to follow up on this forum with a notice of proposed rulemaking to respond to the issues raised during the forum.

At the forum, Chairman Martin spoke out about state party challenges and proposed resolutions to these problems by distributing the "Legislative Recommendations for Campaign Finance Reform," a document the Association of State Democratic Chairs' Committee on

¹ See FEC Chairman Goodman and Vice Chair Ravel Host Political Party Forum, Federal Election Commission (June 4, 2014), www.fec.gov/press/press2014/news_releases/20140604release.shtml (providing link to audio recording of the forum); www.fec.gov/press/press2014/news_releases/20140416release.shtml (announcing forum).

Campaign Finance Reform developed.² Since we believe the need for reform is even more urgent now than it was in 2014, and these recommendations have been subject of supportive resolutions by many Democratic state parties, we are again attaching them in a call for help and offer of proposed resolutions to solve current challenges. At the 2014 forum, Martin expressed that "it's my sincere belief that if we do not address the growing imbalance of political money flowing toward unregulated shadow organizations, we may very well see the end of political parties at the state and local level."³ Two years later, the 2016 presidential race may serve as a warning that political parties are starting to lose their strength even on the national level, demonstrating the need for greater attention and resources available for parties to build strength on the state and local level.

State and local party committees play a critical role in the American political system.⁴

First, they play an important role in our democracy by pursuing political goals that a majority of Americans support.⁵ Second, these committees are well situated to perform grassroots political activity in order to support the party's national political and electoral interests, which can help to ensure consistency and cohesion in party goals.⁶ While it used to be common practice for state parties to pay for communications featuring candidates from the top to the bottom of the party ticket, these are now largely replaced by single candidate communications – and only when the party is able to allocate their scarce resources to the cause.⁷ Third, state parties have traditionally worked to increase voter turnout through voter contact methods such as voter registration and get-out-the-vote.⁸ Through strapping the hands of political parties and limiting their ability to perform these functions, current laws have weakened political parties, leading to subsequent issues such as: less civic engagement and lower voter turnouts, greater political polarization, and the decrease in disclosure of money related to political spending.⁹

² See Committee on Campaign Finance Reform, *Recommendations & Resolution in Support of Reasonable Campaign Finance Regulation of State and Local Party Committees*, ASSOCIATION OF STATE DEMOCRATIC CHAIRS.

³ Audio at 6:35, http://www.fec.gov/audio/2014/20140604_FORUM.mp3; see also Pls.' Motion for Summ. J. at 5-6 Rep. Party of La. v. FEC, No. 15-cv-1241-CRC-SS-TSC (D.C. Dist. Ct. Feb. 11, 2016), Doc. 33 [hereinafter "Pls. Motion for Summ. J."].

⁴ See generally Ian Vandewalker and Daniel I. Weiner, *Stronger Parties: Reforming America's Engines of Participation* BRENNAN CENTER FOR JUSTICE, (2015), https://www.brennancenter.org/sites/default/files/publications/Stronger_Parties_Stronger_Democracy.pdf.

⁵ Committee on Campaign Finance Reform, *supra* note 2, at 1; see also Joseph Fishkin and Heather Gerken, *The Two Trends that Matter for Party Politics* 89 NYU L. REV. Online Symposium 32 (2014), available at <http://www.nyulawreview.org/issues/volume-89-symposium/two-trends-matter-party-politics>.

⁶ *Id.*

⁷ See *Dollars and Sense: How Undisclosed Money and Post McCutcheon Campaign Finances Will Affect the 2014 Election and Beyond*, Prepared Joint Testimony of Neil Reiff and Donald McGahn Before the Senate Committee on Rules and Administration, 5-6 (April 30, 2014), http://www.rules.senate.gov/public/?a=Files.Serve&File_id=2d880938-1bb3-4375-8c0d-9b133ce6b95d [hereinafter "Joint Testimony of Reiff and McGahn"].

⁸ See *id.*

⁹ Vandewalker and Weiner, *supra* note 4, at 1.

Current Commission regulations are counter to their initial intent and litigation indicates the Commission must regulate to redefine federal election activity under new law.¹⁰

Under the BCRA, campaign activity on behalf of state and local candidates was federalized through the use of the then-new term "federal election activity."¹¹ When the BCRA was passed, this was characterized as a narrow measure to prevent the circumvention of campaign finance reform;¹² in 2006, the Commission revised its rules defining "federal election activity" and specifically explained it did not want to define this term to be overly broad.¹³ In 2008, a U.S District Court and subsequently, the U.S. Court of Appeals rejected the Commission's approach to defining federal election activity¹⁴, but did not reference First Amendment arguments against overbroad definitions.¹⁵ In response to this litigation, in 2010 the Commission revised its definition of federal election activity to mean virtually any state and local party activity.¹⁶ However, the Court has confirmed that it has "identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption,"¹⁷ and has defined this kind of corruption to only be in the context of "quid pro quo."¹⁸ In the Court's most recent review of federal campaign finance laws, it expressed its skepticism of circumvention rationales; therefore, the Commission should reconsider the sheer overbreadth of its BCRA regulations.¹⁹

¹⁰ See generally Pls. Motion for Summ. J., *supra* note 3.

¹¹ "Prohibited and Excessive Contributions: NonFederal Funds or Soft Money," 67 Fed. Reg. 49064, 49066 (July 29, 2002).

¹² *McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003).

¹³ In discussing its definition of "federal election activity," which the Commission defined to include voter registration and get-out-the-vote, the Commission also noted that:

Moreover, in the Commission's extensive enforcement experience, general exhortations to register to vote and to vote are so common in political party communications that including encouragement to register to vote and to vote would be overly broad, is not necessary to effectively implement BCRA, and could have an adverse impact on grassroots political activities.

Definition of Federal Election Activity, 71 FR 8926, 8929 (Feb. 22, 2006). See Pls. Motion for Summ. J., *supra* note 3, at 6-7.

¹⁴ *Shays v. Fed. Election Comm'n*, 508 F.Supp.2d 10 (D.D.C. 2007), *aff'd*, 528 F.3d 914 (D.C. Cir. 2008) (Shays III).

¹⁵ Pls. Motion for Summ. J., *supra* note 3, at 7 (citing *Shays v. Fed. Election Comm'n*, 528 F.3d 914 (D.C. Cir. 2008)).

¹⁶ See Definition of Federal Election Activity, 75 Fed. Reg., 55257 (Sep. 10, 2010).

¹⁷ *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1450 (2014).

¹⁸ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 359 (2010).

¹⁹ See *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1458 (2014); see also Pls.' Motion for Summ. J., *supra* note 3.

The Commission's regulations are overly broad, and because virtually any state and local party activity is classified as federal election activity, state parties are becoming muzzled in their ability to perform classic functions such as inform voters of voting information.²⁰

The BCRA places a preliminary limitation on state and local employees by requiring that they be paid for with federal funds if more than 25% of their time is in connection with federal elections; this restriction loses its purpose under the Commission's sweeping interpretation of this work to classify as "federal election activities."²¹ As a result, for example, a state employee could be spending 100% of her time on a door-to-door voter identification project for a state or local candidate, yet under the current law, she would have to be paid for exclusively with federal funds for performing this locally-directed activity.²² This restriction is neither logical nor is it productive in order to enable state and local parties to conduct business and maintain their traditional roles within society. In addition, the Commission's regulation regarding staff salaries is broader than the statutory language. The Commission's regulations cover activities "in connection with a federal election" as well as "federal election activities"²³ However, the relevant BCRA provision only requires that activities "in connection with a federal election" are subject to the 25% threshold.²⁴ Under this regulatory scheme, if a paid staffer spends more than 25% of their time in a given month working on mailings for a state or local candidate that otherwise count as "federal election activity," the mailing can be paid for with a combination of federal and Levin funds, but the employee's salaries and benefits must be paid for exclusively with federal funds. This has led many party committees to refrain from allowing their staff to work on state and local activities or hiring staff to work on state or local candidate activities that otherwise qualify as "federal election activity." In fact, as a recent study reported, both Republicans and Democrats have curtailed their local efforts and ceased to do statewide mailers due to federal restrictions imposed on them.²⁵ Thus, the Commission should amend the payroll rule to conform with the statutory language. Surely, if Congress intended to include "federal election activity" in this statutory provision, they would have done so at the time of the passage of the BCRA.

As a result of the burdensome regulations imposed on state and local party activity, candidates are losing the incentive they historically have had to work with state and local party committees.

While current law prevents state and local parties to provide candidates with the financial support they need, it permits outside groups to accrue deep pockets of undisclosed funds that they may use to support candidates. For instance, while a Super PAC receiving unlimited funds

²⁰ See Joint Testimony of Reiff and McGahn, *supra* note 7, at 5.

²¹ See *id.*; 52 U.S.C. § 30101(20)(A)(iv).

²² See *id.*

²³ 11 C.F.R. §§ 106.7(c)(1); 106.7(d)(i),(ii), 300.33(d)(1), (d)(2).

²⁴ 52 U.S.C. § 30101(20)(A)(iv).

²⁵ Raymond J. La Raja and Johnathan Rauch, *The State of State Parties - and How Strengthening Them Can Improve Our Politics*, BROOKINGS 10-11 (Mar. 2016), <http://www.brookings.edu/~media/research/files/papers/2016/03/08-state-parties-la-raja-rauch/states.pdf>.

from corporations and other donors can spend millions of dollars to fund an independent expenditure that advocates for the election of a state candidate,²⁶ a state or local party committee may not use their own funds for this and could only air the same advertisement through the use of federal funds and subject to federal limitations. Further, while these Super PACs may have close relations to the individual candidates they support, they may not share the overall interests of the party and may be spending millions of dollars to push their own agenda and achieve targeted, issue-specific goals.²⁷ As one study has shown, while outside contributions to state candidates have increased in the 2000s, party spending has remained stagnant and significantly lower.²⁸ Unless the Commission takes action and amends its regulations, party committees will eventually become irrelevant and unable to compete in a system that enables outside and single issue groups to accept and spend unlimited amounts of money to support candidates who may not reflect mainstream party interests.

Rulemaking to provide regulatory relief for political parties would be responsive to bipartisan requests and consistent with both academic research and recent actions by the Senate and House of Representatives.²⁹

As noted above, this petition for proposed rulemaking comes at the two-year anniversary of the Commission's June 2014 forum in which state party representatives of different parties came together with the shared concern that state and local parties are losing their ability to maintain their traditional role in society due in part to the Commission's burdensome regulations. Additionally, there is growing literature and support from political legal and policy experts that effective political parties are critical to the functioning of our democracy.³⁰ Further, on the federal level, the Senate and House of Representatives have recently given national party committees greater financial strength by increasing contribution limits for new administrative accounts.³¹ The need for action is of increasing importance as the Commission is currently involved in one ongoing lawsuit challenging several BCRA provisions related to state and local party committees.³²

²⁶ *Spechnow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010); *McCutcheon*, 134 S. Ct. at 1450.

²⁷ See Pls.' Summ. J. Reply & Opp'n at 2-3 *Rep. Party of LA v. FEC*, No. 15-cv-1241-CRC-SS-TSC (D.C. Dist. Ct. May 11, 2016), Doc. 57 (citing Trevor Potter, *Follow the Money*, THE CAMPAIGN LEGAL CENTER (Apr. 21, 2016), http://www.campaignlegalcenter.org/sites/default/files/Trevor%20Potter%20-%20Goldstone%20Forum%20Lecture_0.pdf).

²⁸ La Raja and Rauch, *supra* note 25, at 9.

²⁹ Memorandum from Commissioner Lee E. Goodman on Regulatory Relief for Political Parties (Oct. 20, 2015).

³⁰ Memorandum from Commissioner Lee E. Goodman on Regulatory Relief for Political Parties (Oct. 20, 2015) (citing Vandewalker and Weiner, *supra* note 1; Neil Reiff and Don McGahn, *A Decade of McCain-Feingold*, CAMPAIGNS AND ELECTIONS (Apr. 16, 2014); Peter J. Wallison and Joel M. Gora, *Better Parties, Better Government* AMERICAN ENTERPRISE INSTITUTE (2009); LARRY J. SABATO AND BRUCE A. LARSON, *THE PARTY'S JUST BEGUN: SHAPING POLITICAL PARTIES FOR AMERICA'S FUTURE* (2d ed.) (Longman, 2002)); see also La Raja and Rauch, *supra* note 25.

³¹ Consolidated and Further Continuing Appropriations Act, 2015, Pub. Law No. 113-235.

³² See *Republican Party of Louisiana v. Fed. Election Comm'n*, No. 15-CV-01241 (CRC), 2015 WL 7574753 (D.D.C. Nov. 25, 2015); Richard L. Hasen, *The Supreme Court's Next Big Fight Over Money in Politics*, THE ATLANTIC (May 7, 2016), <http://www.theatlantic.com/politics/archive/2016/05/supreme-court-soft-money/480978/>.

We believe that we are presenting this petition for proposed rulemaking at an appropriate time in light of the Commission's 2014 forum and subsequent discussion this past fall when Commissioner Lee E. Goodman made efforts to be responsive to state party requests. At the October 29, 2015 open meeting, Commissioner Goodman presented a Memorandum on Regulatory Relief for Political Parties and attached Resolution of the Federal Election Commission Commencing Work on a Notice of Proposed Rulemaking Focused on Strengthening Political Parties that contained proposed resolutions to state party challenges. We believe this proposed resolution is an excellent starting point for bipartisan conversations on how to amend the Commission's regulations to provide needed relief to state and local party committees.

While we understand that many of the issues that affect the parties were caused by legislation, we hope that the Commission will find common ground to review how its regulations could be modified to provide some regulatory relief to state and local parties to enable them to function effectively and ensure that party candidates reflect each party's interests - and not the desires of corporations and undisclosed donors who currently influence politics through unlimited contributions to outside groups.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neil Reiff', written over a light blue horizontal line.

Neil Reiff
Rachel Provencher
Counsel to the Ken Martin, Chair,
Minnesota Democratic Farmer Labor Party

List of Exhibits Attached

- A) Committee on Campaign Finance Reform, *Recommendations & Resolution in Support of Reasonable Campaign Finance Regulation of State and Local Party Committees*, ASSOCIATION OF STATE DEMOCRATIC CHAIRS.
- B) Memorandum from Commissioner Lee E. Goodman on Regulatory Relief for Political Parties (Oct. 20, 2015); Resolution of the Federal Election Commission Commencing Work on a Notice of Proposed Rulemaking Focused on Strengthening Political Parties, Nov. 15, 2015, http://www.fec.gov/agenda/2015/documents/mtgdoc_15-54-a-1.pdf.
- C) Ian Vandewalker and Daniel I. Weiner, *Stronger Parties: Reforming America's Engines of Participation* BRENNAN CENTER FOR JUSTICE (2015), https://www.brennancenter.org/sites/default/files/publications/Stronger_Parties_Stronger_Democracy.pdf.
- D) Raymond J. La Raja and Johnathan Rauch, *The State of State Parties - and How Strengthening Them Can Improve Our Politics*, BROOKINGS (Mar. 2016), <http://www.brookings.edu/~media/research/files/papers/2016/03/08-state-parties-la-raja-rauch/states.pdf>.

EXHIBIT A



ASSOCIATION OF STATE DEMOCRATIC CHAIRS

COMMITTEE ON CAMPAIGN FINANCE REFORM LEGISLATIVE RECOMMENDATIONS FOR CAMPAIGN FINANCE REFORM

CRITICAL PRIORITIES

The following recommendations need urgent action by Congress and are critical to the long-term survival of state and local political parties. Without these changes it is inevitable that state and local political parties will be made irrelevant in future electoral cycles as it will become more and more difficult to compete with outside groups and independent expenditures.

Simplify rules for volunteer exempt activities.

Under current law, state parties do not have any authority to spend money on campaign activities that count as in-kind contributions to the campaign of our presidential nominee, if the nominee accepts public funds. And in targeted races for U.S. Senate and House, state parties give up their coordinated expenditure authority for such spending so that it can be used by the DSCC and DCCC. Spending for some activities does not count as an in-kind contribution. In addition, there are a specific set of activities—mail, literature/visibility, phone banks and slate cards—which state parties can spend money on, without counting as an in-kind contribution, under certain strict conditions and requirements. These conditions are unnecessarily confusing and complex, prevent state parties from supporting their candidates *even using 100% hard money*, and should be simplified.

- Mail and visibility—under current law, can be paid for by state parties only if mailing was prepared by volunteers, did not use commercial lists and no funds were transferred by national parties. Visibility/literature must be distributed by volunteers and cannot be paid for in any part with national party funds. All of these conditions should be eliminated. The current slate card exemption, which has different requirements than the current campaign material exemption would be merged into one exemption.
- Phone banks—under current law, must be staffed by volunteers and can be paid for by state parties, under this exemption, only for the presidential campaign and not for congressional races; and no national party funds can be used. State parties should be allowed to pay for phone banks other than autocalled, without limit, in all federal races. The restriction on use of national party funds should be lifted.
- Paid and volunteer canvassing should be covered under the exemption.
- The costs of campaign rallies paid for by state parties should be covered under the exemption.
- The costs of all voter-registration and get-out-the-vote drives should be included in the exemption.

Repeal Levin Amendment or create reasonable definitions for “Federal election activity”

Under McCain-Feingold, how state parties pay for their activities is determined, in large part, by the extent to which such activities are classified as “Federal election activity” under that law. After extensive hearings and careful consideration, the FEC in 2002 issued thoughtful, practical yet rigorous regulations defining these activities. These definitions have been challenged by so-called “reform” organizations in a series of court cases which have forced the FEC in some cases to modify its definitions and in other cases have left the definitions in a state of confusion and uncertainty. Under the most recent iteration of the definition of “get-out-the-vote” almost all campaign activity is subsumed within the definition pulling most campaign activity within the definition even if no federal candidates are referenced in the communications.

The Levin Amendment is too complicated to administer and several state parties have decided to just federalize their get-out-the-vote programs due to the complexity of administering and complying with the Levin Amendment. In addition, due the continual expansion of the definitions of "get-out-the-vote" as well as the additional problems created by the concept of "federal election activity," Congress should consider repealing these provisions and allow party committees to undertake activities in accordance with rules in place prior to the passage of McCain-Feingold.

- Prior to the passage of McCain-Feingold, parties were able to pay for communications that referenced federal and non-federal candidates with a combination of federal and non-federal funds in the same ratio as the amount of time and space devoted to each candidate in a particular communication. In addition, generic communications and issue advocacy were paid for according to a ballot composition ratio that was established at the beginning of each two-year election cycle.

Under the Federal Election Activity rules, any communication that ostensibly references a federal candidate must be paid for exclusively with federal funds. This requirement was essentially targeted towards television and radio advertising but has affected all modes of communication including mail, phones and canvassing. These rules have created a disincentive for state and local candidates to appear in joint programs or materials with federal candidates due to the complete federalization of those materials.

Congress should clarify that such grassroots materials should be subject to allocation based upon the time and space devoted to federal and non-federal candidates.

Index state party limits for inflation like all the other limits.

When McCain-Feingold was passed, the limits on individual contributions to candidates and to state parties were doubled. The limits on what an individual can contribute to national parties were also increased, as were the aggregate limits on what an individual could contribute to candidates and to other committees in a 2-year cycle. All of these limits were indexed to inflation except for (i) the \$10,000 limit on individual contributions to state parties and (ii) the \$10,000 limit on contributions of Levin funds.

Both of these state party limits should be indexed to inflation. Why should state parties be treated worse than individual candidates or national parties? There is no policy justification for such discriminatory treatment.

IMPORTANT PRIORITIES

The following priorities reflect important, but not critically urgent, needs of state parties to ensure long-term operational success. These issues should be addressed at some point by Congress as they have serious impacts on state and local political parties.

Simplify Levin fundraising rules

Sen. Carl Levin (D-Mich) introduced an amendment to McCain-Feingold that was intended to preserve some resources for state party grassroots activities. Under this amendment, a state party could use contributions accepted under state law, up to \$10,000 per donor, and use it to pay a portion of the costs of activities promoting the party that did not mention any federal candidate and did not involve any broadcast advertising.

In the House, this amendment was further modified so that no state or local party could help any other state or local party raise these non-federal funds; state and local parties could not engage in joint fundraising to raise these funds; and the national party could not provide the federal, hard money share to match these non-federal funds for the allowable activities. In addition, funds solicited by a federal candidate or officeholder cannot be used as Levin funds. These House-added restrictions have rendered the so-

called “Levin amendment” completely useless. The restrictions serve no discernible policy purpose and should be eliminated.

Standardize solicitation rules for party officials and federal candidates and officeholders

The ostensible purpose of McCain-Feingold was to prevent the appearance of corruption of federal candidates and officeholders by large contributions and contributions from corporations and unions (soft money). Yet, the law puts greater restrictions on solicitations by party officials than it does on solicitations by the federal candidates and officeholders themselves.

For example, federal officeholders can attend state and local party fundraising events even when non-federal funds are being raised; national party officers cannot. Federal officeholders can attend fundraising events for state and local candidates if certain disclaimer language is used; national party officers cannot. Federal officeholders can raise contributions for non-profit organizations as long as their principal purpose is not voter registration or GOTV; national and state party officers cannot solicit any such contributions. **National and state party officers and employees should be treated no more strictly than federal officeholders and candidates in terms of their ability to solicit contributions.**

Payment of Staff Payroll and Benefits

Under McCain-Feingold, employees who work more than 25% of their time in connection with federal elections must be paid for exclusively with federal funds. However, the FEC has interpreted this statute to not only include federal activity but also “federal election activities.” Therefore, merely working on generic or non-federal activity has triggered federal payroll requirements. For example, if a state party hires employees to go door-to-door to do a voter identification project for a state or local candidate, those employees must be paid exclusively with federal funds. This has created a disincentive for party committees to engage in non-federal voter id or non-federal get-out-the-vote projects, even if there are no competitive federal races on the ballot. **Congress should either repeal this provision or clarify that it did not intend for the provision to include “federal election activities.”**

Repeal mandatory monthly filing for state party committees

Under current law, state party committees must file FEC reports monthly if they spend funds on “federal election activity.” This has imposed a huge burden on state parties. **State parties should be allowed to file quarterly; alternatively the thresholds for triggering monthly filing should be narrowed.**

Amend disclaimer provisions

The requirement that every communication by a party committee state that it is “not authorized by any candidate or candidate’s committee” whenever 441a(d) authority is not being used should be eliminated. The phrase is misleading, because it is required to be used with many communications that are authorized by candidates but don’t require 441a(d) authority; and it is unnecessary, particularly in broadcast advertising that also has to state that the party committee is responsible for the content of the advertising. **A specific authorization disclaimer should be required only when 441a(d) authority is being used or when a party is disseminating a communication as an independent expenditure.**

Increase registration thresholds for local party committees.

Under current law, any local party committee that spends more than \$1,000 a year on activities promoting a federal candidate, or more than \$5,000 on the above-described exempt activities, must register with and file reports with the FEC; maintain multiple accounts; and subject itself to the 270 pages of complex regulations issued by the FEC. Few local party committees have the resources to file FEC reports and comply with all of these rules. For that reason campaign finance lawyers currently advise most local party committees to stay out of federal races—just don’t do anything to help your Member of Congress. Local committees should not have to register, report and comply with all the federal rules if they engage in only a modest amount of federal activity. **The registration thresholds for local party committees should be raised to \$5,000 per year for expenditures and \$25,000 on exempt activities.**



ASSOCIATION OF STATE DEMOCRATIC CHAIRS

ASDC Meeting
Campaign Finance Resolution
Hilton New Orleans Riverside | New Orleans, LA
Saturday, November 23rd, 2013

The following resolution will be considered by the Association of State Democratic Chairs on November 23, 2013.

Submitted by: Ken Martin, Chair, Minnesota DFL Party

Resolution in support of Reasonable Campaign Finance Regulation of State and Local Party Committees

WHEREAS, the Association of State Democratic Chairs (ASDC) believes that Democratic state and local party committees are essential partners to Democratic elected officials and Democratic national party committees;

WHEREAS, state and local party committees play a vital role in the American political system and are particularly suited to grassroots political activity in support of the party's political and electoral goals;

WHEREAS, regulatory hurdles put in place over the past several years have served to hinder state and local parties from effectively participating in the political process

WHEREAS, these hurdles include old and cumbersome rules governing the ability of parties to engage in grassroots political activity, amendments to Federal campaign laws that have federalized most of the parties' electoral activities and recent court decisions that have increased the power of outside organizations to spend unlimited, unregulated and, in many cases, undisclosed funds in connection with state and federal elections;

WHEREAS, based upon the complexity of federal law, parties are increasingly subject to a higher level of regulation than other political organizations and are more likely to be audited or fined by the Federal Election Commission for reporting errors as well as the inadvertent use of non-federal funds for activities that have been federalized under recent changes to federal campaign finance law;

WHEREAS, these developments have put an inordinate burden on state and local party committees without proper justification and have served to lower the effectiveness of party committees in the political process;

WHEREAS, candidates at all levels of office have little incentive to work with parties due to structural barriers to association created by unnecessary and burdensome regulations;

WHEREAS, the current campaign finance laws have created serious financial problems for state and local

party committees as campaigns and donors seek out organizations that have fewer obstacles to participation in the political process;

WHEREAS, the decrease in regulation of outside groups is a primary cause of the current state of extreme politics in America;

WHEREAS, state and local party committees play an essential and moderating role in American politics by espousing mainstream political ideas that appeal to a majority of Americans in contrast to single issue organizations that support radical one issue agendas;

WHEREAS, unless the law is changed, party committees will eventually become irrelevant and unable to compete with the unlimited availability of resources of outside groups; and

WHEREAS, the ASDC has established a Committee on Campaign Finance Reform tasked with making recommendations to enhance the role of party committees in federal and state elections without affecting either contribution limits to parties or creating unlimited expenditures by party committees;

THEREFORE BE IT RESOLVED that the ASDC endorses the recommendations put forth in the Committee on Campaign Finance Reform report entitled "Legislative Recommendations for Campaign Finance Reform."

and **BE IT FURTHER RESOLVED**, that the ASDC, will work with members of Congress, the national party committees, and the Obama administration to amend federal campaign finance laws to ensure the vitality of state and local party committees by lifting some of the unnecessary and burdensome regulations that continue to hinder their development.

Adopted: November, 23 2013

New Orleans, Louisiana

EXHIBIT B

2015 OCT 20 PM 1:37

MEMORANDUM

2015 OCT 20 PM 1:37

October 20, 2015

AGENDA ITEM

To: The Commission
From: Commissioner Lee E. Goodman
Re: Regulatory Relief for Political Parties

For Meeting of 10-29-15

In 2014, I convened a forum at the Commission to identify and discuss regulatory issues facing political parties.¹ The event was well attended by representatives of the two major parties, as well as minor parties. At that event, party representatives spoke unequivocally about several counterproductive and unduly burdensome aspects of Commission regulations and called upon the Commission to act to provide meaningful reform.

Meanwhile, a growing consensus of political scientists, policy experts and political practitioners—ranging from the Cato Institute and American Enterprise Institute to the Brennan Center— has recognized both the importance of effective political parties and that legal reform is necessary to strengthen their role in our democracy.² While the Senate and House of Representatives have acted in recent months to strengthen the national party committees financially,³ we at the Commission must do our part to free parties from onerous regulatory burdens that are deterring citizen participation in the political process without providing any significant protection against corruption.

A majority of Commissioners have expressed a commitment to support the political parties as democratic institutions and to address unnecessary regulatory burdens. While there is much talk about the Commission's disagreements on regulatory issues, political party regulatory reform offers the Commission an opportunity to work together in a bi-partisan way to address the concerns of all political parties. I hope that my colleagues will join me in this constructive opportunity to strengthen some of the most grassroots institutions in American politics.

¹ The forum was held on June 4, 2104. See www.fec.gov/press/press2014/news_releases/20140604release.shtml (providing link to audio recording of the forum) and www.fec.gov/press/press2014/news_releases/20140416release.shtml (announcing forum).

² See, e.g., Ian Vandewalker and Daniel I. Weiner, *Stronger Parties: Reforming America's Engines of Participation* (Brennan Center for Justice, 2015) (collecting authority); Neil Reiff and Don McGahn, "A Decade of McCain-Feingold," *Campaigns and Elections* (Apr. 16, 2014); Peter J. Wallison and Joel M. Gora, *Better Parties, Better Government* (American Enterprise Institute, 2009) (collecting authority); Larry J. Sabato and Bruce A. Larson, *The Party's Just Begun: Shaping Political Parties for America's Future* (2d ed.) (Longman, 2002).

³ Consolidated and Further Continuing Appropriations Act, 2015 (permitting national party committees to raise additional funds, subject to higher contribution limits, for new administrative accounts).

Accordingly, I propose that the Commission adopt the attached Resolution and commence drafting a notice of proposed rulemaking addressing several regulatory reforms to strengthen political parties as democratic institutions. The regulatory reforms to be addressed are:

- (1) **Party Coordinated Communications**—Free political parties to discuss issue advertisements with candidates and republish parts of candidate materials in party materials. Also, permit political parties to distribute volunteer campaign materials without triggering coordination limits.
- (2) **Volunteer Activities**—Expand political party freedom to engage in volunteer activities such as volunteer mail drives, phone banks, and literature distribution.
- (3) **Federal Election Activity**—Free political parties to register voters and urge citizens to vote on behalf of state and local candidates free from FEC regulation. Also, allow state and local parties to employ people to engage in state and local get-out-the-vote activities with state funds.

Attachment

**RESOLUTION OF
THE FEDERAL ELECTION COMMISSION
COMMENCING WORK ON A NOTICE OF PROPOSED RULEMAKING
FOCUSED ON STRENGTHENING POLITICAL PARTIES**

WHEREAS, a growing consensus in political science literature, policy experts and political practitioners recognizes the importance of effective political parties as democratic institutions and the advisability of legal reform to enhance political efficacy of political parties; and

WHEREAS, Congress recently passed legislation aimed at strengthening political parties; and

WHEREAS, in 2014, representatives of several political parties attended a forum on political parties at the Commission and advised the Commission that its current regulatory burdens are onerous, unnecessary, and counterproductive to democratic participation; and

WHEREAS, a majority of Commissioners have expressed interest in assisting political parties through regulatory revision; and

WHEREAS, the Commission has not undertaken a rulemaking focused on political parties in over a decade; and

WHEREAS, initiating a rulemaking and receiving public comment on potential revisions to regulations that burden political parties will benefit political parties and the people of the United States;

IT IS RESOLVED THAT the Commission directs the Office of General Counsel to draft a notice of proposed rulemaking, no later than December 30, 2015, proposing the following revisions to Commission regulations for public comment and further Commission consideration:

- (1) Party Coordinated Communications (11 CFR 109.37):
 - a. Delete 11 CFR 109.37(a)(2)(iii) to eliminate mere candidate references from the definition of coordinated communications by political parties, leaving only express advocacy and republished candidate materials as coordinated communications;
 - b. Amend 11 CFR 109.37(a)(2)(i) to permit parties to incorporate parts of candidate campaign materials into party communications, adding the following italicized language “...unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b) or the campaign materials do not expressly advocate the election of the candidate and are incorporated as a subordinate part of the political party communication.”;

- c. Amend 11 CFR 109.37(a)(3) to permit candidates to provide political parties, in addition to positions on legislative or policy issues, “*candidate biographical information*” without triggering the conduct prong;
- d. Amend 11 CFR 109.37(a)(3) to permit candidates to provide political parties “*opinion poll results purchased by the candidate or candidate’s authorized political committee*” without triggering the conduct prong, provided the provision of such polling data is treated as a contribution by the candidate’s authorized committee to the political party and allocated pursuant to 11 CFR 106.4(e);
- e. Insert a new provision or subsection in 11 CFR 109.37 clarifying that political parties may use all information obtained from any publicly available source, even if such information is material to the creation, production, or distribution of a party communication, without the use of such information constituting coordination;
- f. Insert a new provision in 11 CFR 109.21 and 11 CFR 109.37 clarifying that costs of political party communications for grassroots campaign materials pursuant to 11 CFR 100.24(c)(4) (e.g., “buttons, bumper stickers, handbills, brochures, posters, and yard signs”) and for Internet communications, that are not public communications under 11 CFR 100.26, are exempt from the definition of party coordinated expenditures.

(2) Party Volunteer Activity (11 CFR 100.87, 100.88, 100.89, 100.47, 100.148, 100.49):

- a. Amend 11 CFR 100.87, 100.147 (with corresponding edits to 11 CFR 100.88(a), 100.48) to clarify that volunteer phone banks sponsored by political parties are campaign materials exempted from the definition of contribution on the same basis as brochures, newsletters, tabloids and similar communications;
- b. Amend 11 CFR 100.87, 100.147(a) (with corresponding edits to 11 CFR 100.88(b), 100.148, 100.89(a), 100.149(a)) to clarify what constitutes volunteer mail by adding the following italicized sentence: “*For purposes of this paragraph, the term direct mail means any mailing(s) performed wholly by a commercial vendor.*”;
- c. Amend 11 CFR 100.87(c) to clarify that a candidate may transfer funds to a political party to engage in volunteer activity benefitting that candidate, by adding the following italicized language at the conclusion of the second sentence: “*...or if the funds originate from an authorized committee.*” (and make corresponding edits to 11 CFR 100.89(c), 100.149(c));
- d. Amend 11 CFR 100.87 in the first paragraph to clarify that all volunteer activities are exempt from the definition of contribution by inserting the following italicized words: “The payment by a state or local committee of a political party of the costs of *any volunteer activity* or of campaign materials ...” and in subparagraph (d) by inserting the following italicized words in the title: “Distribution of materials *and other activities* by volunteers,” and the following language in the first sentence of text: “Such materials are distributed *or such activities are conducted* by volunteers”

(3) Federal Election Activity (11 CFR 100.24):

- a. Amend 11 CFR 100.24(a)(2)(ii) to narrow the circumstances under which party efforts to register voters constitute federal election activity by editing the language of the regulations as follows: “Activity is not voter registration activity ~~solely because if it includes a brief exhortation to register to vote, so long as the exhortation is~~ incidental to a communication, activity, or event.”;
- b. Amend 11 CFR 100.24(a)(3)(ii) to narrow the circumstances under which party efforts to turn out voters to the polls constitute federal election activity by editing the language of the regulations as follows: “Activity is not get-out-the-vote activity ~~solely because if it includes a brief exhortation to vote, so long as the exhortation is~~ incidental to a communication, activity, or event.”;
- c. Amend 11 CFR 100.24(a)(2)(ii), 100.24(a)(3)(ii) to add a new subsection (C) as follows: “*A mailer or phone call urges the election of one or more state or local candidates and discusses the merits of the state or local candidacy, does not mention a federal candidate, and in connection with the state or local candidate message informs the recipient ‘You should vote on November 4 at the Washington Middle School between the hours of 8 am and 6 pm.’*”;
- d. Amend all regulations regarding the payment of party employees with federal funds (including 11 CFR 106.7(c)(1), 106.7(d)(i), (ii), 300.33(d)(1), (d)(2) and others) to clarify that party employees must be paid with federal funds only if they perform activities “in connection with a Federal election,” a well defined term, by conforming the language of all party employee regulations to the language of 52 USC 30101(20)(A)(iv) and the language of 11 CFR 106.7(e)(2) and 100.24(b)(4), by striking everywhere it appears “on Federal election activities or,” a phrase that does not appear in the statute or the apportionment regulation.

IT IS FURTHER RESOLVED THAT the Office of General Counsel may edit these provisions and other affected regulations as necessary to effectuate the substantive intent of this resolution and harmonize other regulatory provisions.

IT IS FURTHER RESOLVED THAT the Commission, in consultation with the Office of General Counsel, will work together and consider other ways to clarify its regulations to accomplish the objective of strengthening political parties, including but not limited to supplemental explanations and justifications, audit standard setting, enforcement policy, and interpretative guidance.

EXHIBIT C

**STRONGER
PARTIES,
STRONGER
DEMOCRACY:
RETHINKING
REFORM**

By Ian Vandewalker & Daniel I. Weiner

**BRENNAN CENTER
FOR JUSTICE**

at New York University School of Law

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The statements made and views expressed in this report are the sole responsibility of the Brennan Center. Any errors are the responsibility of the authors.

ABOUT THE AUTHORS

The order of author attribution is alphabetical.

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Daniel I. Weiner serves as senior counsel for the Brennan Center's Democracy Program, where his work focuses on money in politics. Prior to joining the Brennan Center, Mr. Weiner served as senior counsel to Commissioner Ellen L. Weintraub at the Federal Election Commission and as a litigator in the Washington, D.C. office of Jenner & Block, LLP. He received his J.D. *cum laude* from Harvard Law School in 2005, after which he clerked for the Hon. Diana E. Murphy on the United States Court of Appeals for the Eighth Circuit. He graduated *magna cum laude* from Brown University in 2001.

STRONGER PARTIES, STRONGER DEMOCRACY: RETHINKING REFORM

Introduction

Political parties are a core ingredient of representative democracy.¹ A robust debate has recently developed, however, concerning whether organized parties can still provide the sorts of democratic benefits they traditionally supplied to our political system and, if not, what to do about it. This paper examines these questions from the perspective of campaign finance law. We ask whether there are changes that can be made to the rules governing party fundraising and spending that will enhance parties' democratic strengths without expanding the risks associated with unfettered money in politics.

Over the last century, parties have been changed, and some would say undermined, by significant legal and societal forces. These include the expansion of party nominating primaries, institutional shifts in Congress and state legislatures, and the emergence of television advertising as the key medium for political persuasion.² Today, elections are far more focused on individual candidates than on the parties. And in recent years, even the parties' important supporting role has been increasingly eclipsed, as financial resources have flowed outside formal party institutions to new, purportedly independent entities like super PACs.

Campaign finance law, many argue, has played an important role in these changes. In particular, the balance of power is said to have shifted more quickly away from parties in the last decade thanks to both the heightened fundraising restrictions in the Bipartisan Campaign Reform Act of 2002 (BCRA),³ also known as the McCain-Feingold law, and the Supreme Court's elimination of restrictions on purportedly independent non-party groups, most notably in *Citizens United v. FEC*.⁴ The resulting accelerated waning of organized parties is blamed for a host of problems, ranging from greater polarization and gridlock, to instability caused by the weakness of party leaders, to vanishing transparency in political spending, to declining participation by ordinary voters. One often-proposed solution is to allow parties to accept bigger checks: to deregulate party fundraising by repealing or significantly altering not only much of BCRA, but also the older framework of federal contribution limits and restrictions in place since passage of the original Federal Election Campaign Act (FECA) in 1974.⁵

Others dispute that the parties have been significantly weakened.⁶ They note that party committee fundraising has been relatively steady since BCRA, and contend that party leaders in Congress exert a historically high amount of control over their caucuses. This camp sees polarization and gridlock as the products of broader political forces, such as Americans' residential sorting by political views, to say nothing of strategic choices by party leaders. They question whether changes to campaign finance regulation can fix these problems, and are especially skeptical of many calls for deregulation.

This is an important debate, but it tends to obscure two threshold questions: *First*, what is a party? When practitioners in the field speak of parties, they are usually referring to the institutions

run by the traditional party establishments — e.g., the Democratic and Republican National Committees and the two major parties' respective congressional committees, as well as the many state and local party committees. But a growing number of scholars argue for a broader conception of the parties as diffuse networks connected to a common brand, encompassing both established party organizations and a variety of other individuals and entities affiliated with them, including ostensibly independent but party-aligned super PACs and 501(c) nonprofit groups. Clarity on this point is important, because the broader one's conception of the parties, the less it makes sense to think of them as competing with other political actors so much as themselves encompassing an array of competing interests. Since the various factions within parties differ in their democratic character — some include party activists and organizers while others are controlled by elite donors — the result of this intraparty competition has potentially significant effects on the parties' contribution to the health of the republic.

Second, what is the ultimate goal of efforts to “strengthen” parties? For example, many argue that strengthening traditional party leaders will promote the stability and compromise necessary for divided government to function. Others advance different goals, like empowering the so-called party faithful (i.e. the party's rank-and-file activists and volunteers) to make wider party networks more accountable to ordinary voters. While there is significant tension between such objectives, a common thread running through the arguments of many party-boosters is the need for parties to raise more money. Yet, as a consequence of the Supreme Court's *McCutcheon v. FEC* ruling and the recent roll-back of national party contribution limits by Congress,⁸ party committees can already accept vastly larger contributions than they could just a few years ago. Such changes may have strengthened the parties in some sense, but they have not necessarily enhanced the attributes that make organized parties attractive as political actors.

Hanging over all such discussions, moreover, are familiar concerns about corruption and political misalignment. It has long been understood that large contributions to parties, like those to candidates, pose an inherent risk of *quid pro quo* corruption and its appearance. There are many examples in American history of corruption scandals in which the *quid* took the form of contributions to a political party. The more money a small class of wealthy donors can give to the parties, the greater the danger that the parties, dependent on those contributions, will sell policy outcomes in exchange. In addition, there is a growing body of evidence to suggest that the views of the donor class (which has always been small and unrepresentative of the public at large) have an outsized impact on policy decisions, creating misalignment between public opinion and policy outcomes. Too often, middle and working class voters already find themselves shut out of the policymaking process. Sweeping deregulation of party fundraising risks exacerbating such problems.

All of these concerns — especially the perennial threat of corruption — have driven decades of campaign finance regulation directed at the parties. One need not advocate wholesale abandonment of this traditional regulatory paradigm, however, to realize that the current system is not enough, especially in an era dominated by an activist Supreme Court majority hostile to many of its central components.

Ultimately, legitimate concerns about corruption and misalignment resulting from party fundraising must be balanced against the reality that party institutions *do* play a salutary role

in our democracy, one that risks being eclipsed in the new era of unlimited fundraising by both party-affiliated and truly independent outside groups. Not only do the parties offer a number of avenues for political engagement by their core supporters, they also continue to drive voter registration and turn-out efforts on a scale that few other political actors can replicate. As presently constituted, moreover, organized parties plainly are more transparent than the shadow parties and other outside groups competing with them for resources.

Whether the wholesale lifting of party contribution limits would enhance these positive attributes is an open question but, in any event, there are other ways to strengthen traditional party organizations that do not raise comparable corruption and misalignment concerns. We advocate for targeted reforms to *build up the institutional parties as meaningfully transparent organizations that function as engines of broad participation in politics*. This approach eschews complete deregulation of party fundraising, instead embracing other, more targeted measures to strengthen organized parties, including:

- Making public financing available to parties;
- Raising or eliminating coordinated spending limits and other limits on party contributions to candidates;
- Lessening federal regulation of state and local parties;
- Relaxing certain disclosure requirements whose burdens outweigh their benefits while strengthening others; and
- Relaxing certain restrictions on contributions to parties.

A thoughtful policy agenda combining one or more of these measures stands the best chance of producing a more inclusive, fair and transparent democracy. This is not intended as a single package of reforms, but rather as a set of discrete suggestions, and some combinations may not be desirable.⁹

This paper is in no way intended to be the final word on party financing reform, to say nothing of the larger challenges parties face. However, our hope is that it will provide a framework to guide the discussion of policies that will make the parties better at what they do best: facilitating ordinary citizens' engagement with the political process.

How Parties Benefit Our Democracy

Parties have long been considered an essential element of our democracy, offering ordinary citizens various avenues to participate in politics,¹⁰ providing informative cues to voters,¹¹ furnishing a majoritarian counterbalance to narrow special interest groups,¹² and acting as a moderating force responsive to public opinion in their pursuit of broad governing coalitions.¹³ The recent explosion in outside spending since *Citizens United* has also fostered a growing body of literature warning of the parties' decline relative to other political actors like super PACs and nonprofit 501(c) entities, and predicting a variety of negative consequences for our politics and government.¹⁴

To be sure, this positive narrative about the parties' role in our democracy is at least partly contested, notably with respect to the supposed link between weak parties and political polarization and gridlock.

Some commentators argue that stronger parties could continue to play a depolarizing role, through at least two mechanisms. First, parties with sufficient financial resources push their candidates to the center, by spending selectively on the campaigns of those candidates who toe the party line, which is by necessity moderate, since parties want to appeal to a broad range of voters.¹⁵ Second, in their quest to win elections and legislative majorities, parties support already-moderate candidates (especially those in competitive races) no matter what their actual positions.¹⁶ This gives candidates the freedom to compromise, knowing they will be protected by party money against attacks from ideological purists.¹⁷ The decline of the major parties, it is argued, has inhibited their ability to enable compromise and moderation in both of these ways.

But others counter that, at least recently, the parties themselves have helped to drive polarization, largely because their members and strongest supporters are more ideologically homogenous than they once were.¹⁸ For example, rather than blaming outside groups, several scholars have attributed recent gridlock in the federal government to strategic decisions by Republican leaders to engage in "constitutional hardball" in opposition to Democrats, in the hopes of political payoff in future elections.¹⁹ Others have argued that it is actually the Democratic Party establishment under President Obama that has most contributed to polarization by moving to the left.²⁰

This debate about the parties' effect on polarization is important, but it can sometimes obscure the other reasons we might prefer traditional party institutions to super PACs, nonprofit organizations, and other outside groups.

First, parties are relatively transparent.²¹ Federal law requires party committees to disclose the identities of all donors of more than \$200 and other financial information;²² many states have analogous rules.²³ And bans on contributions from corporations and unions ensure that most party money is traceable to an actual human being.²⁴ In contrast, just at the federal level, almost one-third of outside spending since *Citizens United* has come from "dark money" groups that do not disclose any of their contributors.²⁵

Second, parties are accountable. As repeat players who are run by elected officials and depend on a kind of brand loyalty among members of the public, the major parties are naturally concerned about their long-term reputations and credibility. Too often, outside groups, on the other hand, can pop up, spend millions without disclosing their donors, and disappear — often after trafficking in the sort of negative attacks that a candidate or party might deem too risky.²⁶

Third, parties continue to derive their funding from a broad donor base.²⁷ Outside groups, in contrast, are increasingly funded by a tiny coterie of mega-donors. Almost 60 percent of all super PAC spending since 2010, for instance, can be traced to just 195 individual donors and their spouses.²⁸

Finally, traditional party institutions remain to at least some degree grassroots-driven. Unlike mega-donor-driven super PACs and other outside groups, established party organizations offer ordinary citizens multiple avenues to engage with the political process, including through donating, volunteering, and attending events.²⁹ These same institutions, moreover, have longstanding expertise in registering voters and mobilizing them on election-day.³⁰ While outside groups are starting to develop their own voter registration and turnout operations,³¹ their ability to fully replicate this historic function of the parties remains in doubt.

In short, organized parties, while far from perfect, are still comparatively transparent, accountable and democratic institutions. And so the prospect of their decline should be a source for concern even for those who broadly favor regulating them.

The Parties in Decline?

But are the parties actually growing weaker? The narrative of political party decline as outside groups' spending mushrooms has become conventional wisdom among many scholars and practitioners. This trend is usually attributed to the one-two punch of: 1) BCRA, which placed stricter limits on party fundraising starting in 2003; and 2) the Supreme Court's deregulation of outside groups, culminating in 2010 when *Citizens United* paved the way for the creation of super PACs and other groups that can raise and spend unlimited funds on elections.³² These developments created a system in which party committee fundraising remains subject to contribution limits, while outside group fundraising is not. With their fundraising so handicapped, it is argued, the parties are too weak to provide the democratic benefits discussed above, which outside groups are ill-equipped to replicate.

At the outset, however, it bears remembering that the shift in power away from parties has far deeper roots than the events of the last two decades. Throughout the twentieth century, American elections became progressively more candidate-centered for a host of reasons. The adoption of primary elections gave party elites less control over nominees, and advances in communication technology allowed candidates to reach voters through advertising (especially on television) without needing armies of party operatives to go door to door.³³ In addition, there were power shifts in Congress and many state legislatures, and party loyalty became a less important source of clout than the development of an officeholder's own distinctive political brand.³⁴ By the end of the last century, in short, candidates were already the clear stars of the political scene, with parties taking on a supporting, albeit still important, role.

The question now is not whether parties can be restored to primacy; rather, it is whether changes to campaign finance law in the last decade will topple the party committees entirely from their place as the main vehicle for election spending other than candidates.

That BCRA has had some impact in this regard is relatively clear. While the national parties have been subject to contribution limits since the 1970s, for many years they had the capacity to raise "soft money" — funds outside the limits and prohibitions of the FECA — to use for certain purposes, including generic advertising, voter registration and "get out the vote" (GOTV) activities.³⁵ BCRA banned the use of soft money. To prevent circumvention of that ban, moreover, the law also instituted restrictions on state and local party fundraising for activities connected to federal elections (such as voter registration and GOTV) that also impact state and local races.³⁶

Although the parties were able to replace soft money with revenue raised under contribution limits, BCRA halted the dramatic upward trend in party fundraising that had been taking place under the soft money system.³⁷ As a result, according to election lawyers Neil Reiff and Don McGahn, party revenue has not been able to keep up with the cost of campaigns, leaving the parties at a competitive disadvantage.³⁸ Reiff and McGahn note that the toll on state and local party organizations — especially smaller ones — has been particularly severe.

To be sure, the current fundraising advantage of outside groups over parties was not part of BCRA's original design. As enacted, the law coupled new party regulations with stronger limits on outside spending, including a prohibition on corporate and union "electioneering communications," ostensibly issue-related communications referencing candidates by name in the run-up to an election.³⁹ But this part of BCRA was stripped away by the Roberts Court, beginning in 2007 with *FEC v. Wisconsin Right to Life*.⁴⁰ The controlling justices in *WRTL* carved a huge exemption into BCRA's limitations for ostensibly independent ads not containing "express advocacy" (explicit calls to vote for or against a candidate) or its "functional equivalent."⁴¹

Several years later, *Citizens United* finished what *WRTL* started, striking down all limits on putatively independent expenditures by corporations (and implicitly unions).⁴² Citing this reasoning, the United States Court of Appeals for the District of Columbia Circuit eliminated *all* federal contribution limits as applied to organizations that purport only to make independent expenditures. That decision, coupled with a series of misguided rulings and sustained gridlock at the Federal Election Commission, led to the creation of super PACs and the rise of other, even more shadowy organizations that can raise unlimited funds to influence voters.⁴³

Thanks to these decisions, outside spending in federal elections has skyrocketed. While total federal election spending in 2012 was about double the total from 2000, reported outside spending *increased by a factor of 20*.⁴⁴ Outside groups spent almost \$2 billion between 2010 and 2014 — more than two-and-a-half times what they spent in the previous 18 years.⁴⁵ Almost a third — more than \$600 million — has come from dark-money groups who disclose none of their donors.⁴⁶ Congress, the FEC, and other federal agencies like the Internal Revenue Service and the Securities Exchange Commission could mitigate at least some of the consequences of these trends, but so far have done nothing.⁴⁷

The same Supreme Court that made possible this new reality with respect to outside spending has largely refrained, at least until recently, from deregulating party committees. The same year it decided *Citizens United*, the Court summarily affirmed a lower court decision upholding BCRA's prohibition on soft money fundraising⁴⁸ — although, as discussed below, last year's *McCutcheon v. FEC* is likely to benefit parties.

It is no surprise, then, that while outside spending has skyrocketed, traditional party committee spending has remained mostly flat.⁴⁹ Data from the Campaign Finance Institute shows the dramatic shift in spending power in House and Senate elections.⁵⁰ Over four election cycles from 2006 to 2012, party committee independent expenditures hovered slightly under a quarter of a billion dollars in each cycle. In 2006 and 2008, the parties spent several times more than outside groups on independent expenditures. In 2010, outside group spending shot up to \$195 million, nearly catching up to the parties. By 2012, outside groups easily overtook

the parties; their spending in congressional elections was twice as high as party expenditures at almost half a billion dollars. The trend appears to be continuing: in competitive Senate races in 2014, outside groups spent almost four times what the party committees spent.⁵¹

Commentators have blamed stagnant party committee spending relative to that of outside groups for a host of problems, including declining political participation,⁵² polarization and gridlock,⁵³ and waning transparency.⁵⁴ Such arguments are often melded with calls to change the way formal party fundraising is regulated, such as by doing away with or significantly raising the contribution limits on parties.⁵⁵ As explained below, however, it is not necessarily accurate to think of “the parties” as consisting only of formal party organizations. Before turning to the issue of reform, it is necessary to address the threshold question of what exactly a party is.

What is a Party?

When political practitioners discuss “the party” they usually mean the constellation of committees making up their party’s legal apparatus — entities like the Democratic and Republican National Committees, the party congressional committees, and state and local party committees.⁵⁶ The much-remarked upon “decline” of parties relative to other political actors applies to them.

A growing number of scholars, however, argue that parties are made up of far more than the institutional party organizations, and that it is better to think of them as complex networks, including both the formal party structure and an array of “shadow party” organizations run by those connected to party leadership.⁵⁷ Under this view, many super PACs, dark-money entities, and other types of outside groups are actually components of the party network.

A perfect example of this phenomenon is the Senate Majority PAC, a super PAC that was the biggest non-candidate, non-party spender in 2014’s most competitive Senate races.⁵⁸ Senate Majority PAC’s stated objective is a Democratic majority in the Senate; it spent money in the same races the Democratic Senatorial Campaign Committee prioritized; it is run by people with longstanding and close ties to Sen. Harry Reid (D-Nev.), leader of the Senate Democrats; and Reid has reportedly solicited donations for the group.⁵⁹ The group has also recently become embroiled in the ethics scandal surrounding Sen. Robert Menendez (D-N.J.). Donations to the shadow party are alleged to be one of the things of value used by Dr. Salomon Melgen to bribe Menendez.⁶⁰

Another top spender in the midterms were two Republican-aligned sister groups founded by Karl Rove, the dark-money nonprofit Crossroads GPS and the super PAC American Crossroads, which spent approximately \$48 million in the 2014 cycle.⁶¹ Both groups have consistently backed Republicans, are run by a former longtime aide to Senate Majority Leader Mitch McConnell, and are associated with the Republican brand.⁶²

These examples illustrate a broader point, one made by, among others, the noted election lawyer and prolific commentator Bob Bauer: the questions of how healthy the parties are, and what should be done to mend them, are inextricably linked with one’s definition of “party.”⁶³ While traditional party committees may be struggling to compete, the parties as branded networks of affiliated interests are by some measures stronger than ever.⁶⁴

Critically, however, competition for resources does not take place solely between the parties and other actors; it also happens *within* party networks themselves. This intraparty competition interests us as much as competition between party committees and other entities, because many party-aligned groups suffer from a number of the same deficiencies (lack of transparency, reliance on a small coterie of mega-donors, etc.) as their truly independent counterparts. Whether party committees ought nevertheless to be remade in their image depends on a second question: what is the actual goal of reform?

What is the Goal of Reforms to Strengthen Parties?

Advocates for strengthening parties tend to offer a variety of justifications. Some argue that party organizations should be strengthened to enhance the marketplace of ideas and foster greater electoral competition.⁶⁵ Others point to the fact that party committees are transparent and, as longstanding institutions with established brands, relatively accountable for their political activities.⁶⁶ Still others note that it is traditional party organizations that have shown the most inclination to invest in voter engagement and encourage participation by the grassroots.⁶⁷ Finally, as noted above, stronger parties are often portrayed as mechanisms for improved governance, exerting a stabilizing influence by discouraging extremism and political fragmentation.⁶⁸ This last argument usually focuses specifically on empowering party leaders who, the argument goes, have as their primary goal to organize winning coalitions, making them more amenable to political compromise than most insurgents.⁶⁹

There is plainly significant tension between such varying objectives. A common thread running through the arguments of most party boosters, however, is money, specifically the assertion that parties with more money will provide more of whatever benefit is being discussed.

If money alone is the benchmark, however, there is a reasonable argument that the work of reform is mostly done. The Supreme Court's 2014 decision in *McCutcheon v. FEC* eliminated aggregate contribution limits on how much an individual donor can give to all political committees (including both candidate and party committees) over a two-year cycle.⁷⁰ Before *McCutcheon*, an individual donor could give no more than \$74,600 to all party committees in a given election cycle. Afterward, that same donor could give a combined \$1.2 million to all the national and state committees of either party, which are then permitted to transfer unlimited funds among themselves.⁷¹

In addition, the new campaign finance provisions passed late last year in the continuing resolution omnibus, or "CRomnibus," budget deal allow national party committees to raise large sums for certain purposes, including conventions, building funds, and legal proceedings.⁷² The new CRomnibus limits effectively allow the national parties to collect checks from individual donors that are several times larger than what was legal after *McCutcheon*. Both parties moved almost immediately to take advantage of these new limits.⁷³ Although the use of these funds is supposedly restricted, the fungibility of money means that the new limits will very likely free up additional cash for new election spending.⁷⁴

In total, for the 2016 cycle, a single individual donor can give more than \$2.5 million to the state and national committees of one party. That is roughly 35 times higher than what the same donor could give at the beginning of 2014.⁷⁵ And of course, that total does not include the unlimited funds that shadow party organizations can raise.

But will these changes actually enhance the specific benefits that parties are supposed to afford the political system? Take party leaders. Allowing national party organizations to raise more funds could strengthen party leaders to some degree. But leaders must now compete with mega-donors for influence within their party networks — donors who still have the option of favoring truly independent outside groups with narrower agendas if party leaders fail to do their bidding.⁷⁶ If the goal was truly to strengthen party leaders, and only them, a different package of reforms might have been preferable.

Moreover, other experts reject strengthening party leaders entirely as an underlying goal. Legal scholars Joseph Fishkin and Heather Gerken, for example, suggest that the real reason to strengthen institutional parties is to enhance political pluralism and accountability, by empowering the parties' rank-and-file members (the so-called party faithful).⁷⁷ It is the party faithful, they contend, who hold the elite accountable to ordinary voters, an especially critical function in an era of networked parties whose other institutions, such as super PACs, are dominated by mega-donors.⁷⁸ In this respect, *McCutcheon* and *CRomnibus* do not seem to help at all. If anything, lifting party contribution limits could end up compounding the damage from *Citizens United* by further sidelining the party faithful, whose views are often very different from those of the party's elite wealthy backers. These recent changes have also lessened the clout of small donors, bringing us back toward the conditions of the soft money era, when both parties relied primarily on a handful of major funders.⁷⁹

For these and other reasons, Thomas Mann and E.J. Dionne argue forcefully in a recent paper that redirecting large contributions “to the parties will not improve either the responsiveness or the efficiency of the political system.”⁸⁰ In fact, it is fair to ask whether wholesale deregulation of party fundraising could actually undercut the attributes of parties that make them attractive as political actors.

The Risks of Corruption and Misalignment

Fears of undercutting the parties' more democratic characteristics are an outgrowth of the traditional case for limiting contributions to party committees, which focuses on the related risks of corruption and political misalignment. Party fundraising, especially from large donors, can foster both the reality and appearance of *quid pro quo* corruption, which undermines the integrity of our democratic institutions. Big-money fundraising by the parties also raises broader concerns about policy being driven by the preferences of the elite political donor class rather than the electorate as a whole, an already well-documented phenomenon that would only be exacerbated by further deregulation.

The *quid pro quo* corruption risk inherent to party fundraising has been recognized for decades. Parties and their candidates and officeholders have long been understood to be inextricably linked.⁸¹ Thanks to this unity of interests, the degree of gratitude a candidate is likely to feel to a large party contributor may not be so different than the degree of gratitude she would feel to a large contributor to her own campaign, especially in cases where the candidate and party are collaborating in their fundraising efforts. This spirit of cooperation extends, as law professor Michael Kang has noted, to “both ends of any hypothetical *quid pro quo* exchange — campaign finance fundraising and policymaking activity.”⁸² It can also transcend any one officeholder's conduct. Instead, a group of officeholders can accept donations and spend them

to the mutual benefit of all members of the group, in exchange for the group's entire bloc of votes — conduct amounting to a type of "group-level corruption."⁸³

In short, parties cannot be thought of as simply another flavor of civic group. They are, in many respects, governmental actors in their own right, creating the risk that party contributions, like candidate contributions, will be exchanged for policy.

The corruption risk arising from the unique role of parties in American politics has been evident throughout our modern history. Many notorious scandals involved donations to parties in circumstances that raised a strong suspicion of an exchange for government favors. Examples include the Teapot Dome⁸⁴ and Democratic campaign-book⁸⁵ scandals of the early twentieth century and the Nixon-era "milk money"⁸⁶ and ITT⁸⁷ scandals. The Clinton White House faced scrutiny over DNC contributions from Chinese interests, which were potentially connected to waivers the administration gave to satellite companies using Chinese rockets.⁸⁸ More recently, there have been intimations that a wealthy Ecuadorian family received favorable immigration treatment after donations to a joint fundraising committee that benefitted the DNC and state Democratic Party committees.⁸⁹

Party donations that are suggestive of *quids* for government action have occurred at the state level as well. Gov. Chris Christie (R-N.J.), for instance, has faced criticism for his party fundraising from investment advisors seeking to do business with his state. Several investment firms landed nine-figure pension investment deals around the same time their executives made large contributions to the Republican Governors Association (RGA) and state and federal party committees.⁹⁰ Christie was in the leadership of the RGA over the period in question, and the association spent heavily on his gubernatorial campaigns. Likewise, in Connecticut, the CEO of a large state contractor solicited his employees to give to the state Democratic Party expressly for the purpose of benefiting Gov. Dannel Malloy; contributions directly to Malloy would have been prohibited by the state's pay-to-play law.⁹¹

Beyond explicit bribery and apparent *quid pro quo* exchanges, moreover, large donations to political parties often provide wealthy donors with significant access to and influence over those in power.⁹² There are numerous examples of the parties peddling such access and influence in exchange for party donations, such as: the "President's Club" programs of the Kennedy and Johnson presidencies, in which donations of \$1,000 or more to the Democratic Party purchased the opportunity to have dinner with the president,⁹³ Clinton-era practices like allowing large DNC donors to spend the night in the Lincoln Bedroom,⁹⁴ as well as both parties' pervasive use of access to top elected leaders as a fundraising tool today.⁹⁵

The specter of the parties peddling access and influence in exchange for large party donations points to a second overarching concern related to party fundraising: its capacity to drive misalignment between citizens and their government. Because parties are so integral to governing, big-money party fundraising — like big-money candidate fundraising — can help to create a disconnect between the policies enacted by the government and those favored by the electorate. A recent detailed study of the influence of campaign contributions on legislative activity in the states found that "the effect is equal on influence whether the legislator is spending time raising money for his own election campaign or raising money for his caucus."⁹⁶ Large contributions, especially from repeat donors, foster relationships

between elected officials and donors that confer advantages on the donor when public policy is made.⁹⁷

Other recent examinations of misalignment by political scientists have shown evidence that state parties are more responsive to the policy preferences of the wealthy than low-income citizens.⁹⁸ Researchers have also identified correlations between the policy preferences of members of Congress and their donors, as opposed to the voters they represent.⁹⁹

In short, even if allowing parties to raise more money in large donations would in fact enhance certain of their positive attributes, those benefits must be balanced against the risks associated with making the parties more dependent on a smaller class of wealthy funders.

The soft money experience of the 1990s and early 2000s is illustrative of the kind of dependence that can arise. Before BCRA, when the national parties could raise money outside FECA's limits and prohibitions for many purposes, approximately 46 percent of party revenue came from contributions of \$20,000 or more.¹⁰⁰ In 1998, less than 2,000 donors gave 78 percent of all soft money.¹⁰¹ In 1996, the Democratic National Committee raised almost \$25 million — 20 percent of its \$122 million in soft money — from just 168 individuals.¹⁰² Corporations and unions also took advantage of soft-money accounts, especially heavily regulated companies. For example, Microsoft, inactive in politics until it was hit with an antitrust suit, gave six-figure contributions to each party in the final three pre-BCRA cycles, hitting a high of \$1.9 million for the Republicans in 2002.¹⁰³

Even many of BCRA's critics have acknowledged that its passage was motivated by legitimate concerns, which — for a time — it did help to address.¹⁰⁴ Inasmuch as the broad-based, relatively democratic and transparent characteristics that BCRA fostered in parties remain some of their chief selling points, a return to the soft-money era could be profoundly problematic.¹⁰⁵

Engines of Democratic Participation

So what is the alternative? If we are to avoid exacerbating the risks of corruption and misalignment while strengthening the parties' democracy-enhancing capacities, where should the focus be? As discussed, the recent shift in resources away from traditional party organizations toward outside groups has taken place as much within as outside of broader party networks. It is the party committees that have traditionally functioned as engines of democratic participation, both in terms of their own internal structure and the resources they devote to fostering broader political participation. A reform agenda focused on strengthening these institutions through targeted measures could also reinforce many other benefits of strong parties, including those, like stability and competition, extolled by skeptics of regulation. Thus, while such an agenda is unlikely to satisfy everyone, it should encompass significant common ground.

As "sites of democratic mobilization and engagement,"¹⁰⁶ traditional party organizations provide opportunities for large numbers of people to be active in politics. Party committees, especially at the state and local level, offer multiple points of entry to the political process for ordinary citizens.¹⁰⁷ Driven in part by contribution limits, they must attract vast numbers of contributors and volunteers. They also offer grassroots political activists a natural home for organizing and coalition-building. Shadow-party groups do not share these participatory features because, like other outside groups, they tend to be controlled by small groups of insiders, expert consultants, and mega-donors.

The contrast can be clearly seen in the difference between fundraising for party committees and shadow-party super PACs. For example, the two biggest non-candidate spenders of the most competitive Senate races in 2014 were a party committee, the Democratic Senatorial Campaign Committee (DSCC), and its affiliated shadow super PAC, the Senate Majority PAC. The DSCC took in 44 percent of its contributions from small donors of \$200 or less, while Senate Majority PAC received less than one tenth of one percent of its funds from small donors.¹⁰⁸ Of the \$46 million that Senate Majority PAC spent in total, \$36 million came from just 23 donors who each gave half a million dollars or more, according to FEC data. The average itemized Senate Majority PAC contribution of over \$170,000 was more than 127 times larger than that of the DSCC.¹⁰⁹

Even more importantly, traditional party organizations have historically played a key role in getting voters to the polls on Election Day, and they continue to be experts at voter registration and get-out-the-vote activities.¹¹⁰ In a time of historically low turnout, the parties' capacity to mobilize ordinary voters is one of their most important democratic functions.¹¹¹ While there are reports that shadow party groups are trying to replicate some of these voter registration and GOTV functions,¹¹² there is no indication that they can fully do so.

Despite these downsides, shadow parties appear increasingly ascendant. As two of BCRA's leading critics, Robert Kelner and Raymond La Raja, pointed out last year, "[i]n some critical respects, the parties are becoming dependent on outside groups, ceding power to organizations that operate with little or no disclosure and that often have narrow political agendas."¹¹³ Gerken and Fishkin, who have not been similarly critical of BCRA, nevertheless agree that "[w]hat were once relatively porous, diffusely organized official parties are being displaced by hierarchical, closed shadow parties beholden almost entirely to donors."¹¹⁴

The need to halt and reverse this trend is an area of common ground for both skeptics and proponents of campaign finance regulation. Measures to strengthen institutional party organizations as engines for grassroots political participation will not satisfy those who would like to see party organizations largely or entirely deregulated. But such measures will boost those organizations, often by removing legal constraints on their operations. The remainder of this paper will explore specific policies that could be enacted to strengthen the parties to enhance their ability to foster democratic participation.

Possibilities of Reform

As we argue above, a reform agenda that seeks to accentuate the democracy-building attributes of formal party institutions without unduly exacerbating the risks of corruption and misalignment should attract support across the ideological spectrum.¹¹⁵ While our conversations with diverse scholars and practitioners in the field revealed a range of views, there was more common ground than might otherwise be expected. The following recommendations are based in part on these conversations, as well as the Brennan Center's own longstanding policy analysis.

Enact Targeted Public Financing: The best way to increase the resources of the institutional parties without exacerbating the risks of corruption and misalignment is to empower small donors with matching public funds.

A system of party financing in which small private contributions are multiplied and matched by public funds would give the parties a powerful incentive to rely on a broad base of contributors rather than a few wealthy benefactors.¹¹⁶ For example, donations of up to \$500 could be matched on a five-to-one basis, making them worth as much as \$3,000 to the recipient committee. The institutional parties would be rewarded for soliciting civic participation by as many Americans as possible.¹¹⁷ And party supporters, knowing their contribution is matched, would be more likely to give.¹¹⁸

Public financing would add to party committees' bank accounts, which should be welcomed by those who believe that richer parties will engender political competition, transparency, accountability, and voter mobilization. Furthermore, because party leaders will control the money, their ability to use finances to exert a moderating influence will be strengthened, without leaving average Americans from all walks of life out of the picture.

Public financing for parties is the norm in democracies around the world.¹¹⁹ It promises the advantages of the successful candidate financing systems in place from Arizona to New York City, where candidates have been freed from the pressure to please big donors to fund their campaigns.¹²⁰ In fact, public financing for parties has an advantage over candidate-based systems, in that it ensures that the great majority of funds will go to competitive races, since that is where parties focus their efforts.

By making relatively small contributions more valuable, a matching system would alleviate both corruption and misalignment concerns. Less reliance on large contributions from a handful of wealthy donors would mean fewer incentives for elected leaders to perform special favors and systematically skew policy.

It must be noted that there is some evidence from candidate contributions that small donors are highly ideological, leading some to worry that greater dependence on them might exacerbate political polarization and associated gridlock.¹²¹ The evidence as to whether small donors are especially polarized relative to the donor class as a whole is mixed, however.¹²² Moreover, the type of public financing system proposed here would give a large swath of the electorate an incentive to participate, potentially expanding beyond the class of small donors that has already been studied. New York City's system, for example, has broadened the donor base for participating candidates, encouraging more contributions from communities that traditionally do not contribute to campaigns.¹²³ And because the parties have enduring brands that discourage them from diverging too far from public opinion, an infusion of cash from even very ideological small donors is less likely to drive them toward the extremes than might be the case with individual candidates.

Public financing alone is certainly no cure-all for the problems plaguing our campaign finance system. To be effective, it requires certain other conditions — including reasonable, fully enforced contribution limits — to incentivize participation. But where such conditions are present, small donor public financing could potentially strengthen party committees financially while rewarding them for engaging a large portion of the public but without exacerbating the corruption and misalignment concerns that party fundraising often engenders. If anything, by broadening the party donor base, public financing positively counteracts those risks, resulting in a healthier democracy.

Lift or Eliminate Limits on How Much Parties Can Contribute to Their Own Candidates, Including Limits on Coordinated Spending: Another way to strengthen traditional party organizations is to raise or eliminate limits on their ability to contribute to their own candidates, including through coordinated spending.

Limits on party contributions to candidates are a longstanding feature of federal campaign finance law and the laws of a number of states. Since the Supreme Court decided *Buckley v. Valeo*¹²⁴ in 1976, moreover, it has been axiomatic that spending coordinated with a candidate is a form of contribution to that candidate; thus, spending coordinated between parties and their own candidates is limited.¹²⁵ The principal justification for such measures is that they are necessary to prevent party committees from being used by others, such as individuals or PACs, to circumvent candidate contribution limits.¹²⁶

Such anti-circumvention concerns remain legitimate, especially in cases where contributions to traditional party committees are subject to very high or no limits. Thus, for example, we do not recommend allowing national party committees to use funds raised pursuant to the new, much higher CRomnibus contribution limits to pay for coordinated expenditures. Nor do we think it would be advisable to lift federal coordinated spending limits before addressing the Federal Election Commission's pervasive enforcement failures, including its virtually complete failure to enforce laws restricting coordination between outside groups and both candidate and party committees.¹²⁷

Where traditional party committees themselves are subject to reasonable, fully-enforced contribution limits, however, limiting how they can spend their money in support of their own candidates makes less sense, especially in an era of unlimited fundraising by party-affiliated outside groups.¹²⁸ Not only do such limits inhibit party committees' ability to spend their money effectively, they also make grassroots organizing more difficult, for example by making it harder for parties to share their email and fundraising lists. And while federal law permits candidates to make unlimited cash and in-kind transfers to parties,¹²⁹ candidates may be reluctant to give lists and other resources to the parties because, once such resources are in the hands of a party committee, coordinated spending limits will restrict how much candidates can benefit from them.

Lifting coordinated spending limits could foster greater cooperation between candidates and traditional party organizations. That would give the latter a distinct advantage over shadow parties, who must maintain at least some separation between themselves and the candidates they support, bestowing greater leverage on funds comprised of a far greater percentage of small donations. Freeing party organizations from restrictions on coordinated spending — which is often defined according to legal standards that can be difficult to interpret and apply — could also alleviate a significant administrative and compliance burden.¹³⁰ And because all money spent would still have been raised pursuant to hard money limits, the additional corruption and misalignment risks would be small.

Conceivably, measures to raise or eliminate limits on party contributions to candidates could be cabined in certain ways to encourage even more grassroots participation, for example, by applying the new rules only to funds raised in small-dollar increments or only to spending for activities like voter registration and GOTV, as opposed to ads.¹³¹ These limitations could

further encourage broad participation, expanding the role of party committees as agents of civic engagement. Even without such conditions, however, lifting coordinated spending and other limits on what parties can contribute to their own candidates may make sense where a reasonable and fully-enforced framework of party contribution limits is in place.

Roll Back Federalization of State and Local Party Activities: A third avenue for reform is to relax some of BCRA's federalization of state and local party activities.

BCRA's passage was prompted in significant part by the excesses of soft-money fundraising by national party committees like the DNC and RNC. Because state and local party activities frequently impact federal races, however, Congress deemed it necessary to apply federal campaign finance law to their activities in a number of circumstances.¹³² As a consequence, even activities substantially related to state and local elections — including voter registration drives and GOTV activities — are considered federal election activity (FEA) and must be paid for with federally-compliant funds.¹³³ Because federal law tends to impose more restrictions than the laws of most state and local jurisdiction, state and local party fundraising has been burdened, making it harder for these parties to keep pace with the rising cost of elections.¹³⁴

One way to lighten the regulatory burden on state and local parties is to narrow BCRA's definition of FEA.¹³⁵ One option would be to exclude the most common tools of grassroots, retail politics, such as slate cards, volunteer phone-banks, and door-to-door canvassing.¹³⁶ While such activities unquestionably benefit federal candidates, and therefore raise corruption concerns, their tendency to foster greater engagement on the part of both party activists and ordinary voters may be sufficient to justify lighter regulation. Another option is to raise the monetary threshold at which state and local party committees become federal PACs,¹³⁷ which was never indexed to inflation and thus is now substantially lower in real terms than it was when enacted. Tellingly, the six members of the Federal Election Commission, who otherwise agree on little, unanimously voted to recommend this change to Congress.¹³⁸ Like raising or eliminating limits on party contributions to candidates, such targeted deregulation of state and local parties could help them to play a greater role in mobilizing ordinary citizens, without significantly exacerbating corruption and misalignment concerns.

Raise Contributor Disclosure Thresholds: A fourth reform to strengthen parties would be to loosen certain disclosure requirements, even as others are strengthened.

“Effective disclosure,” as the Supreme Court held in *Citizens United*, advances vital First Amendment interests by allowing voters “to make informed decisions and give proper weight to different speakers and messages.”¹³⁹ Nevertheless, one of *Citizens United's* most troubling legacies has actually been a tidal wave of dark-money spending by outside groups that do not disclose their donors, including a number of shadow party groups. Our entire political system, including the parties, would be healthier if such loopholes were closed.¹⁴⁰

At the same time, at the federal level, traditional party committees, unlike many shadow parties, must disclose all donors who gave more than \$200 — the threshold established in the original FECA, which was inexplicably not indexed to inflation.¹⁴¹ And unlike super PACs and 501(c) organizations, party committees cannot accept corporate donations, which can obscure the source of the money.¹⁴² Thus, even as policymakers work to ensure greater disclosure from

outside groups, relaxation of disclosure requirements for traditional party organizations might also be appropriate.

In particular, as both Spencer Overton and Mark Schmitt have suggested, policymakers should consider exempting more small donors from disclosure.¹⁴³ While disclosure of large contributions and expenditures facilitates a more informed citizenry, there is some evidence that disclosure of small donations can discourage donors from giving, acting as a barrier to entry in politics.¹⁴⁴ And requiring small donors to be disclosed places significant recordkeeping and reporting burdens on grassroots-driven organizations like the traditional party committees (to a much greater degree than is true with respect to shadow parties, which often have only a handful of major donors to disclose).

To be sure, there are legitimate reasons to require disclosure of even small donors.¹⁴⁵ Nevertheless, at least at the federal level, disclosure thresholds could be raised significantly (to, say, \$1000 cumulatively per election cycle) without greatly increasing the *quid pro quo* corruption risk or depriving the public of critical information about a candidate's major backers — especially if aggregate reporting (for example by employer, industry, and geographic location) were still required. Indeed, such a change would simply recognize that the original thresholds put in place by Congress in the mid-1970s are now worth substantially less in real terms due to inflation.

Index Contribution Limits and Consider Other Reforms: Finally, while we do not recommend lifting party contribution limits at this time, certain modest reforms may be appropriate. For example, such limits should always be indexed to inflation and not applied to transfers from candidates (as is already the case at the federal level).¹⁴⁶

Policymakers could also consider broader measures to raise party contribution limits for specific party activities that enhance grassroots participation, such as voter registration and GOTV. Voter mobilization accounts with higher contribution limits could balance the corruption and misalignment concerns raised by large contributions with the guarantee that the money will be spent engaging the public. A targeted lift of contribution limits would, like the other reforms proposed above, give the parties more resources to do their most important work: stimulate participation.

We are nevertheless hesitant to advocate further significant increases to the federal party contribution limits at this time. First, without effective enforcement, selectively higher limits are an invitation to circumvention. Until the FEC improves its enforcement record, the agency cannot be trusted to ensure that parties will not employ accounting tricks and other tactics to get around restrictions placed on the use of funds from higher-limit accounts. Moreover, thanks to the CROmnibus rollback and the Supreme Court's *McCutcheon* decision, party committees can already raise very large sums of money.¹⁴⁷ We are not ready to say that the benefits of adding yet more high-limit accounts on top of the CROmnibus accounts would outweigh the additional corruption and misalignment risks. Once the excesses of CROmnibus and the FEC's structural problems are addressed, new higher-limit voter mobilization accounts may become a viable policy option.

Conclusion

In *McConnell v. FEC*, its landmark decision upholding most of BCRA, the Supreme Court famously noted that “[m]oney, like water, will always find an outlet.”¹⁴⁰ The Court’s point was not that campaign finance laws are futile, but that it is imperative for such laws to evolve as circumstances warrant. Notwithstanding the profound jurisprudential and societal changes that have taken place since *McConnell* was decided, this basic insight is as true now as it ever was.

For much of the post-*Buckley* era, culminating in BCRA’s 2002 passage, campaign finance law focused on the dangers of unfettered party fundraising and, in doing so, sometimes failed to take full account of the central role that traditional party organizations play in mobilizing ordinary citizens to participate in politics. The problems associated with this one-sided approach have grown more acute thanks to the Roberts Court, which swept away limits on many non-party organizations, to the benefit of shadow-party super PACs and 501(c) entities dominated by mega-donors. This paper has sought to offer ideas on how to restore a degree of balance, without losing sight of the legitimate goals BCRA and other laws limiting party committee fundraising were intended to serve.

Importantly, our proposals do not depend on overturning *Citizens United* or other recent decisions by the Roberts Court. The Court has contributed to, but it is not solely responsible for, the widening gulf between the wealthiest donors, whose clout is greater now than at any time since Watergate, and the rest of an increasingly disengaged citizenry. Enhancing the most democratic and participatory facets of party politics is critical under the Court’s current jurisprudence, but it would still be important if the Court were more deferential to legislative efforts to reign in money’s influence on the electoral process.

To be sure, more inclusive parties will not fix all of our democracy’s problems. But they are one component of a healthier political system. This is a point of common ground across the ideological spectrum, one that has the potential to serve as the basis for a practical and achievable reform agenda in the near term.

ENDNOTES

- 1 E.E. Schattschneider put the point in stark terms with his often-quoted pronouncement: “modern democracy is unthinkable save in terms of the parties.” E.E. SCHATTSCHNEIDER, *PARTY GOVERNMENT* 1 (1942).
- 2 See, e.g., JOHN H. ALDRICH, *WHY PARTIES? A SECOND LOOK* 256-57, 280-85 (2011).
- 3 Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, §§ 101-02, 304, 116 Stat. 81, 81-87, 97-100.
- 4 558 U.S. 310 (2010).
- 5 Federal Election Campaign Act of 1971, Pub. L. No. 92-225, §§ 203-07, 86 Stat. 3, 9-11 (1972).
- 6 See THOMAS E. MANN & E.J. DIONNE, JR., *THE FUTILITY OF NOSTALGIA AND THE ROMANTICISM OF THE NEW POLITICAL REALISTS* 15-19 (2015), <http://www.brookings.edu/research/reports2/2015/06/futility-nostalgia-romanticism-new-political-realists-mann-dionne> (summarizing the debate and arguing that the parties have not been weakened by campaign finance regulation).
- 7 *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014).
- 8 Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. 113-235, 128 Stat. 2130, 2772-73 (2014) (creating new accounts for national party committees with higher contribution limits).
- 9 For example, as discussed further below, combining an increase in contribution limits with the elimination of coordinated spending limits would pose too a great risk of circumvention of the candidate contribution limits. Likewise, lax enforcement — as currently exists at the federal level — renders many targeted deregulatory reforms unworkable in practice, and should not be undertaken until robust enforcement of remaining laws can be guaranteed.
- 10 See, e.g., Douglas D. Roscoe & Shannon Jenkins, *Changes in Party Structure and Activity, 1980-2008*, in *THE STATE OF THE PARTIES: THE CHANGING ROLE OF CONTEMPORARY AMERICAN PARTIES* 287, 295-96 (John C. Green et al. eds., 2014) (discussing local parties’ use of volunteers).
- 11 BRUCE E. CAIN, *DEMOCRACY MORE OR LESS* 77 (2015); JOHN H. ALDRICH, *WHY PARTIES? A SECOND LOOK* 47 (2011).

- 12 See, e.g., Nolan McCarty, *Reducing Polarization by Making Parties Stronger*, in SOLUTIONS TO POLITICAL POLARIZATION IN AMERICA 136, 143 (Nathaniel Persily, ed., 2015) (“Strong political parties have autonomy from and bargaining advantages over special interest groups.”); Michael A. Fitts, *The Vices of Virtue: A Political Party Perspective on Civic Virtue Reforms of the Legislative Process*, 136 U. PA. L. REV. 1567, 1603-07 (1988).

- 13 E.g., BRUCE E. CAIN, DEMOCRACY MORE OR LESS 77 (2015); Neil Reiff & Don McGahn, *A Decade of McCain-Feingold*, CAMPAIGNS & ELECTIONS, Apr. 16, 2014, <http://www.campaignsandelections.com/magazine/us-edition/445782/a-decade-of-mccainfeingold.shtml>; Raymond J. La Raja, *Why Soft Money Has Strengthened the Parties*, in INSIDE THE CAMPAIGN FINANCE BATTLE 69 (Anthony Corrado et al. eds., 2003).

- 14 E.g., Ray La Raja & Brian Schaffner, *Want to Reduce Polarization? Give Parties More Money*, WASH. POST, July 21, 2014, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/07/21/want-to-reduce-polarization-give-parties-more-money/>; Neil Reiff & Don McGahn, *A Decade of McCain-Feingold*, CAMPAIGNS & ELECTIONS, Apr. 16, 2014, <http://www.campaignsandelections.com/magazine/us-edition/445782/a-decade-of-mccainfeingold.shtml> (pointing to rising outside spending as justification for party deregulation).

- 15 See, e.g., Robert Kelner & Raymond La Raja, *Opinion: 10-year-old Ruling Led to Campaign Cash Profusion*, THE RECORD (N.J.), Apr. 14, 2014, <http://www.northjersey.com/opinion/opinion-10-year-old-ruling-led-to-campaign-cash-profusion-1.981084>; John Samples, *‘Soft Money’ Aids Democracy*, CATO INSTITUTE (Sept. 30, 2000), <http://www.cato.org/publications/commentary/soft-money-aids-democracy>. The empirical evidence on whether parties actually behave this way is mixed. One study from 1990 found that the level of party support affected members’ voting records. Kevin M. Leyden & Steven A. Borrelli, *Party Contributions and Party Unity: Can Loyalty Be Bought?*, 43 W. POL. Q. 343, 351-52 (1990). A 2014 study of state legislatures found that members are rewarded for loyalty with financial support when the party is in the majority. Michael Barber et al., *Party Loyalty and Campaign Contributions*, Paper presented at the Center for the Study of Democratic Politics Money in Politics Conference, Princeton University (May 16, 2014), http://michaeljaybarber.com/s/Barbe_Canes-Wrone_Godbout-final.pdf. Studies of Congress, on the other hand, find no or minimal effects. David M. Cantor & Paul S. Herrnson, *Party Campaign Activity and Party Unity in the U.S. House of Representatives*, 22 LEG. STUDIES Q. 393 (1997); Stephen Ansolabehere & James M. Snyder, Jr., *Soft Money, Hard Money, Strong Parties*, 100 COLUM. L. REV. 598, 611-12 (2000).

- 16 Timothy P. Nokken, *Ideological Congruence Versus Electoral Success: Distribution of Party Organization Contributions in Senate Elections, 1990-2000*, 31 AM. POL. RES. 3 (2003); David F. Damore & Thomas G. Hansford, *The Allocation of Party Controlled Campaign Resources in the House of Representatives, 1989-1996*, 52 POL. RES. Q. 371 (1999).
- 17 Ray La Raja & Brian Schaffner, *Want to Reduce Polarization? Give Parties More Money*, WASH. POST, July 21, 2014, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/07/21/want-to-reduce-polarization-give-parties-more-money/>.
- 18 See, e.g., Lee Drutman, *Can Unlimited Contributions to Political Parties Really Reduce Polarization*, WASH. POST, June 23, 2015, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/06/23/can-unlimited-contributions-to-political-parties-really-reduce-polarization/> (responding to argument by La Raja and Schaffner).
- 19 Jacob S. Hacker & Paul Pierson, *Confronting Asymmetric Polarization*, in SOLUTIONS TO POLITICAL POLARIZATION IN AMERICA 59, 60 (Nathaniel Persily, ed., 2015) (collecting examples like increased use of filibuster, government shut down, and refusal to confirm executive appointments); Thomas B. Edsall, *Would Stronger Parties Mean Less Polarization?* N.Y. TIMES, Oct. 21, 2014, <http://www.nytimes.com/2014/10/22/opinion/would-stronger-parties-mean-less-polarization.html> (quoting political scientist Thomas Mann describing Republicans as engaging in a strategy of opposing President Barack Obama “even when he takes a position previously advocated by conservatives”); Richard H. Pildes, *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 CALIF. L. REV. 273 (2011).
- 20 See, e.g., Peter Wehner, *Have Democrats Pulled Too Far Left?*, N.Y. TIMES, May 27, 2015, <http://www.nytimes.com/2015/05/27/opinion/have-democrats-pulled-too-far-left.html>.
- 21 See Raymond J. La Raja, *Richer Parties, Better Politics? Party-Centered Campaign Finance Laws and American Democracy*, 11 FORUM 313, 324 (2013).
- 22 52 U.S.C. § 30104.
- 23 *State Campaign Finance Disclosure Requirements 2015-2016 Election Cycle*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/Portals/1/documents/legismgt/elect/StateCampaignFinanceDisclosureRequirementsChart2015.pdf> (last updated July 17, 2015).
- 24 See, e.g., 52 U.S.C. § 30118(a).

- 25 According to data collected by the Center for Responsive Politics for non-party outside spending over the 2010, 2012, and 2014 cycles. See *Outside Spending by Group*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/outsidespending/summ.php?disp=O>. Significant spending by groups that disclose only some of their donors means that less than half of non-party outside spending comes from fully transparent groups. *Id.*
- 26 See, e.g., Jonathan Weisman, *Tax-Exempt Group's Election Activity Highlights Limits of Campaign Finance Rules*, N.Y. TIMES, July 16, 2012, <http://www.nytimes.com/2012/07/17/us/politics/hope-growth-and-opportunity-shows-limits-of-disclosure-rules.html>; Kim Barker & Theodoric Meyer, *What Happens When a Dark Money Group Blows Off IRS Rules? Nothing.*, PROPUBLICA, Apr. 25, 2014, <http://www.propublica.org/article/what-happens-when-a-dark-money-group-blows-off-irs-rules-nothing>; Chris Megerian, *Two Groups that Used Secret Political Donations Haven't Paid Penalties*, L.A. TIMES, Jan 16, 2014, <http://articles.latimes.com/2014/jan/16/local/la-me-secret-money-20140117>. Negative attack ads are not, to be sure, the unique province of outside groups. When candidates and parties run such ads, however, stronger disclaimer and disclosure requirements foster at least a measure of accountability.
- 27 For example, the DNC and RNC both typically take in between a quarter and half of their individual contributions from small donors of \$200 or less. *National Party Committees' Receipts, 1999-2014*, CAMPAIGN FINANCE INSTITUTE, http://www.cfinst.org/pdf/historical/Donors_Party_National_2000-2014.pdf.
- 28 DANIEL I. WEINER, BRENNAN CENTER FOR JUSTICE, *CITIZENS UNITED FIVE YEARS LATER 5* (2015), <https://www.brennancenter.org/publication/citizens-united-five-years-later>.
- 29 See, e.g., Joseph Fishkin & Heather K. Gerken, *The Party's Over: McCutcheon, Shadow Parties, and the Future of the Party System*, 2014 SUP. CT. REV. 175, 205 (2014).
- 30 See LARRY J. SABATO & HOWARD R. ERNST, *ENCYCLOPEDIA OF AMERICAN POLITICAL PARTIES AND ELECTIONS* 162-63 (2007).
- 31 See, e.g., Trip Gabriel, *'Super PACs' Take on New Role: Organizing Voters*, N.Y. TIMES, July 7, 2015, <http://www.nytimes.com/2015/07/08/us/politics/super-pacs-take-on-new-role-organizing-voters.html>.
- 32 See, e.g., Paul Blumenthal, *Citizens United, McCain-Feingold Fueled Congress' Shutdown Politics*, HUFFINGTON POST, Oct. 16, 2013, http://www.huffingtonpost.com/2013/10/16/citizens-united-shutdown_n_4108252.html (arguing that BCRA weakened the official party committees).

- 33 L. SANDY MAISEL & MARK D. BREWER, *PARTIES AND ELECTIONS IN AMERICA: THE ELECTORAL PROCESS* 379 (6th ed. 2012); *see generally* MARTIN P. WATTENBERG, *THE DECLINE OF AMERICAN POLITICAL PARTIES 1952-1996* (1998).
- 34 *See* JOHN H. ALDRICH, *WHY PARTIES? A SECOND LOOK* 256-58 (2011).
- 35 *See* Trevor Potter & Glen Shor, *Lessons on Enforcement from McConnell v. FEC*, 3 ELECTION L.J. 325, 326-28 (2004) (describing the development of the soft-money system).
- 36 52 U.S.C. § 30125(a)-(b).
- 37 Robert Kelner, Covington & Burling, *The Truth About National Political Party Fundraising*, INSIDE POLITICAL LAW (July 31, 2012), <http://www.insidepoliticallaw.com/2012/07/31/the-truth-about-national-political-party-fundraising>.
- 38 Neil Reiff & Don McGahn, *A Decade of McCain-Feingold*, CAMPAIGNS & ELECTIONS, Apr. 16, 2014, <http://www.campaignsandelections.com/magazine/us-edition/445782/a-decade-of-mccainfeingold.shtml> (arguing against the soft money ban).
- 39 Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, §§ 203-04, 211-12, 116 Stat. 81, 91-94.
- 40 551 U.S. 449 (2007).
- 41 *Id.* at 469-76 (Roberts, C.J., controlling opinion).
- 42 *Citizens United*, 558 U.S. at 365. In fact, many supposedly independent expenditures permitted by the Court actually are not independent of candidates or parties according to any common-sense meaning of the word. *See* CHISUN LEE, BRENT FERGUSON & DAVID EARLEY, BRENNAN CENTER FOR JUSTICE, *AFTER CITIZENS UNITED: THE STORY IN THE STATES* (2014), <https://www.brennancenter.org/publication/after-citizens-united-story-states>; DANIEL P. TOKAJI & RENATA E.B. STRAUSE, *THE NEW SOFT MONEY* 63-69 (2014), <http://moritzlaw.osu.edu/thenewsoftmoney/wp-content/uploads/sites/57/2014/06/the-new-soft-money-WEB.pdf> (discussing cooperation between campaigns and outside groups).
- 43 *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); *see also* FEC Advisory Opinion No. 2010-11 (Commonsense Ten), July 22, 2010, <http://saos.fec.gov/aodocs/AO%202010-11.pdf>; Daniel I. Weiner, *The FEC Deadlocks (Again) on Dark Money*, BRENNAN CENTER FOR JUSTICE, Aug. 1, 2014, <http://www.brennancenter.org/blog/fec-deadlocks-again-dark-money>.

- 44 *The Money Behind the Elections*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/bigpicture/>; *Total Outside Spending by Election Cycle, Excluding Party Committees*, CENTER FOR RESPONSIVE POLITICS, http://www.opensecrets.org/outsidespending/cycle_tots.php. The outside spending comparison does not count unreported dark money due to a lack of data.
- 45 DANIEL I. WEINER, BRENNAN CENTER FOR JUSTICE, *CITIZENS UNITED FIVE YEARS LATER* 4 (2015), <https://www.brennancenter.org/publication/citizens-united-five-years-later>.
- 46 *Id.* at 7.
- 47 *Id.* at 7-9.
- 48 Republican Nat'l Cmte. v. FEC, 698 F. Supp. 2d 150 (D.D.C. 2010) (three judge court), *summarily aff'd*, 130 S. Ct. 3544 (2010).
- 49 See Robert Kelner, Covington & Burling, *The Truth About National Political Party Fundraising*, INSIDE POLITICAL LAW (July 31, 2012), <http://www.insidepoliticallaw.com/2012/07/31/the-truth-about-national-political-party-fundraising>.
- 50 *Historical Stats*, CAMPAIGN FINANCE INSTITUTE, <http://www.cfinst.org/data/historicalstats.aspx> (compare figures from “Political Party Contributions, Coordinated and Independent Expenditures for Congress, 1976-2012” with “Non-Party Independent Expenditures in House and Senate Elections, 1978-2012”).
- 51 IAN VANDEWALKER, BRENNAN CENTER FOR JUSTICE, *ELECTION SPENDING 2014: OUTSIDE SPENDING IN SENATE RACES SINCE CITIZENS UNITED* 5 (2015), <https://www.brennancenter.org/publication/election-spending-2014-outside-spending-senate-races-citizens-united>. A study of competitive House races in 2012 found that outside groups outspent the parties by a small margin, \$89 million to \$80 million. SUNDEEP IYER, BRENNAN CENTER FOR JUSTICE, *POST-ELECTION ANALYSIS: 2012 TOSS-UP HOUSE RACES* (2013), <http://www.brennancenter.org/publication/post-election-analysis-2012-toss-house-races>.
- 52 Raymond J. La Raja, *Richer Parties, Better Politics? Party-Centered Campaign Finance Laws and American Democracy*, 11 FORUM 313, 323 (2013) (“A major study of voter turnout indicates that its decline between 1960s and 1990s was significantly attributable to weaker efforts by parties to mobilize voters.”).
- 53 Richard Pildes, *How to Fix Our Polarized Politics? Strengthen Political Parties*, WASH. POST, Feb. 6, 2014, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/02/06/how-to-fix-our-polarized-politics-strengthen-political-parties/>.

- 54 Robert Kelner, Covington & Burling, *The Truth About National Political Party Fundraising*, INSIDE POLITICAL LAW (July 31, 2012), <http://www.insidepoliticallaw.com/2012/07/31/the-truth-about-national-political-party-fundraising>.
- 55 See, e.g., Richard H. Pildes, *Romanticizing Democracy, Political Fragmentation, and the Decline of American Government*, 124 YALE L.J. 804, 839 (2014) (suggesting, inter alia, raising caps on donations to parties); Raymond J. La Raja, *Campaign Finance and Partisan Polarization in the United States Congress*, 9 DUKE J. CONST. L. & PUB. POL'Y 223, 257-58 (2014) (arguing for a return to the soft-money system to strengthen parties). The Republican National Committee, the Republican Party of Louisiana, and others also initiated a lawsuit in 2014 seeking to allow the parties to operate non-contribution accounts that could accept contributions of unlimited size and make only independent expenditures — in a sense, in-house super PACs. Complaint, RNC v. FEC, 64 F. Supp. 3d 195 (D.D.C. 2014) (No. 1:14-cv-00853-CRC). The remedy sought would have instituted a regime similar to the soft-money system, with donors able to give unlimited amounts of money to be spent on certain types of campaign activity. In December 2014, the suit was voluntarily dismissed, but the Republican Party of Louisiana challenged the soft money ban again in 2015. See Kenneth P. Doyle, *New Challenge Filed to Party 'Soft-Money' Limits*, BLOOMBERG BNA, Aug. 4, 2015, <http://www.bna.com/new-challenge-filed-n17179934349/>.
- 56 Michael Kang, *The Hydraulics and Politics of Party Regulation*, 91 IOWA L. REV. 131, 142-43 (2005).
- 57 Joseph Fishkin & Heather K. Gerken, *The Party's Over: McCutcheon, Shadow Parties, and the Future of the Party System*, 2014 SUP. CT. REV. 175, 187 (2014) (“[A] party today is best understood as a loose coalition of diverse entities, some official and some not, organized around a popular national brand.”); Diana Dwyre & Robin Kolodny, *Political Party Activity in the 2012 Elections: Sophisticated Orchestration or Diminished Influence?*, in THE STATE OF THE PARTIES: THE CHANGING ROLE OF CONTEMPORARY AMERICAN PARTIES 207 (John C. Green et al. eds., 2014).
- 58 IAN VANDEWALKER, BRENNAN CENTER FOR JUSTICE, ELECTION SPENDING 2014: OUTSIDE SPENDING IN SENATE RACES SINCE *CITIZENS UNITED* 8 (2015), <https://www.brennancenter.org/publication/election-spending-2014-outside-spending-senate-races-citizens-united> (noting Senate Majority PAC spent \$47 million in 11 races, second only to the Democratic Senatorial Campaign Committee’s \$55 million).
- 59 IAN VANDEWALKER, BRENNAN CENTER FOR JUSTICE, ELECTION SPENDING 2014: 9 TOSS-UP RACES 17 (2014), <http://www.brennancenter.org/publication/election-spending-2014-9-toss-senate-races>.

- 60 See Matea Gold, *Menendez Indictment Marks First Big Corruption Case Involving a Super PAC*, WASH. POST, Apr. 2, 2015, http://www.washingtonpost.com/politics/menendez-indictment-marks-first-big-corruption-case-involving-a-super-pac/2015/04/01/f42f4aee-d8d9-11e4-8103-fa84725dbf9d_story.html.
- 61 *American Crossroads/Crossroads GPS*, CENTER FOR RESPONSIVE POLITICS, <http://www.opensecrets.org/outsidespending/detail.php?cmte=American+Crossroads%2FCrossroads+GPS&cycle=2014>.
- 62 T.W. Farnam, *Head of Crossroads GPS Once a McConnell Aide, Now His Political Ally*, WASH. POST, Oct. 30, 2012, http://www.washingtonpost.com/politics/decision2012/head-of-crossroads-gps-once-a-mcconnell-aide-now-his-political-ally/2012/10/30/9f17ea2a-1329-11e2-ba83-a7a396e6b2a7_story.html.
- 63 Bob Bauer, *Defining the Parties Down*, MORE SOFT MONEY HARD LAW (May 8, 2014), <http://www.moresoftmoneyhardlaw.com/2014/05/defining-parties>.
- 64 THOMAS E. MANN & E.J. DIONNE, JR., *THE FUTILITY OF NOSTALGIA AND THE ROMANTICISM OF THE NEW POLITICAL REALISTS* 19 (2015), <http://www.brookings.edu/research/reports2/2015/06/futility-nostalgia-romanticism-new-political-realists-mann-dionne> (arguing that parties have not been weakened relative to outside spending, but rather have adapted to use outside groups as vehicles for their own spending).
- 65 Joel M. Gora, *Democracy Will Thrive Post-McCutcheon*, N.Y. DAILY NEWS, Apr. 2, 2014, <http://www.nydailynews.com/opinion/democracy-thrive-post-mccutcheon-article-1.1743508>.
- 66 *E.g.*, Ray LaRaja & Brian Schaffner, *Want to Reduce Polarization? Give Parties More Money*, WASH. POST, July 21, 2014, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/07/21/want-to-reduce-polarization-give-parties-more-money/>.
- 67 Marc E. Elias & Jonathan S. Berkon, *After McCutcheon*, 127 HARV. L. REV. FORUM 373, 379 (2014).

- 68 See, e.g., Neil Reiff & Don McGahn, *A Decade of McCain-Feingold*, CAMPAIGNS & ELECTIONS, Apr. 16, 2014, <http://www.campaignsandelections.com/magazine/1705/a-decade-of-mccain-feingold>; Nathaniel Persily, *Bringing Big Money out of the Shadows*, N.Y. TIMES, Apr. 2, 2014, <http://www.nytimes.com/2014/04/03/opinion/bringing-big-money-out-of-the-shadows.html> (outing parties as an antidote to “[p]olitical polarization...fueled in part by the rise of independent,often undisclosed money”); Ray La Raja, *Cromnibus Pays Off for Parties*, MASSPOLITICSPROFS, Dec. 17, 2014, <http://blogs.wgbh.org/masspoliticsprofs/2014/12/17/cromnibus-pays-parties/> (pointing to the “unique role” of parties in helping to “aggregate diverse interests in the polity, frame electoral choices, and organize governing”); Richard H. Pildes, *Romanticizing Democracy, Political Fragmentation and the Decline of American Government*, 124 YALE L.J. 804, 830 (2014) (arguing that parties must be strengthened to counter “political fragmentation,” which “has drained partisan elected leaders of much of the power to control, unify and discipline members of their own party”).
- 69 See, e.g., Nathaniel Persily, *Stronger Parties as a Solution to Polarization*, in SOLUTIONS TO POLITICAL POLARIZATION IN AMERICA 123, 126-27 (Nathaniel Persily, ed., 2015) (describing a pro-party approach designed to reign in extremists by seeking to “embolden party leaders and to increase their strength relative to extremist outside groups”).
- 70 134 S. Ct. at 1462 (plurality opinion).
- 71 52 U.S.C. § 30116(a)(4)-(5); see also *McCutcheon*, 134 S. Ct. at 1472 (Breyer, J., dissenting).
- 72 Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. 113-235, 128 Stat. 2130, 2772-73 (2014); see also Nicholas Confessore, *G.O.P. Angst Over 2016 Led to Provision on Funding*, N.Y. TIMES, Dec. 13, 2014, <http://www.nytimes.com/2014/12/14/us/politics/gop-angst-over-2016-convention-led-to-funding-provision.html>
- 73 Carrie Levine, *Capitalizing on a Political Contribution Cap Hike*, CENTER FOR PUBLIC INTEGRITY, Feb. 4, 2015, <http://www.publicintegrity.org/2015/02/04/16711/capitalizing-political-contribution-cap-hike> (giving examples of party contributions in excess of the old limits made just weeks after the new limits were passed by Congress).
- 74 The prospect of weak enforcement (the statutory language contains no definitions) is another concern. After all, soft money was supposed to be devoted to party building but the vast majority of it was spent on sham issue ads designed to influence elections. See CRAIG B. HOLMAN & LUKE P. MCLOUGHLIN, BRENNAN CENTER FOR JUSTICE, *BUYING TIME 2000* 64 (2001), <http://www.brennancenter.org/sites/default/files/publications/Buying%20Time%202000.pdf>.

- 75 A small part of the increase over prior limits is due to the FEC's biannual inflation adjustment to some contribution limits.
- 76 See Robert K. Kelner, *The Practical Consequences of McCutcheon*, 127 HARV. L. REV. FORUM 380, 384 (2014) (suggesting that new fundraising vehicles enabled by *McCutcheon* may not be controlled by the parties but by “influential members of Congress or even by individual major donors”).
- 77 Joseph Fishkin & Heather K. Gerken, *The Two Trends that Matter for Political Parties*, 89 N.Y.U. L. REV. (ONLINE SYMPOSIUM) 32, 45 (2014).
- 78 *Id.* Similarly, Joel Gora and Peter Wallison argue for stronger parties to assist electoral challengers. PETER J. WALLISON & JOEL M. GORA, BETTER PARTIES, BETTER GOVERNMENT 106 (2009). While stronger party establishments could conceivably help general election challenges, however, they might have the opposite effect in primaries.
- 79 See MICHAEL J. MALBIN & SEAN A. CAIN, CAMPAIGN FINANCE INSTITUTE, THE UPS AND DOWNS OF SMALL AND LARGE DONORS 4 (2007), http://www.cfinst.org/books_reports/SmallDonors/Small-Large-Donors_June2007.pdf; Stephen Ansolabehere & James M. Snyder, Jr., *Soft Money, Hard Money, Strong Parties*, 100 COLUM. L. REV. 598, 607 (2000).
- 80 THOMAS E. MANN & E.J. DIONNE, JR., THE FUTILITY OF NOSTALGIA AND THE ROMANTICISM OF THE NEW POLITICAL REALISTS 5 (2015), <http://www.brookings.edu/research/reports/2015/06/futility-nostalgia-romanticism-new-political-realists-mann-dionne>.
- 81 See, e.g., *McConnell v. FEC*, 540 U.S. 93, 145 (2003) (recognizing the “special relationship and unity of interest” between parties and their candidates); Michael S. Kang, *The Brave New World of Party Campaign Finance Law*, 101 CORNELL L. REV. (forthcoming 2015).
- 82 Michael S. Kang, *The Brave New World of Party Campaign Finance Law*, 101 CORNELL L. REV. (forthcoming 2015).
- 83 *Id.*
- 84 ROBERT E. MUTCH, BUYING THE VOTE: A HISTORY OF CAMPAIGN FINANCE REFORM 257 (2014) (one of the oilmen who procured government leases without competitive bidding had given a large amount to the RNC).

- 85 *Wagner v. FEC*, No. 13–5162, ___ F.3d ___, 2015 WL 4079575, at *8 (D.C. Cir. July 7, 2015) (describing scheme in which Democratic Party representatives convinced government contractors to buy souvenir convention books at inflated prices “in proportion to the amount of Government business he had enjoyed”).
- 86 J. ANTHONY LUKAS, *NIGHTMARE: THE UNDERSIDE OF THE NIXON YEARS* 121-23 (1999) (some of the money pledged in exchange for dairy price supports went to an RNC fundraising dinner).
- 87 Ciara Torres-Spelliscy, *How Much Is an Ambassadorship?* 16 *CHAP. L. REV.* 71 (2012) (noting that ITT contributed to the 1972 Republican National Convention around the same time Nixon intervened to have an antitrust suit against the company settled); J. ANTHONY LUKAS, *NIGHTMARE: THE UNDERSIDE OF THE NIXON YEARS* 130-34 (1999).
- 88 ELIZABETH DREW, *THE CORRUPTION OF AMERICAN POLITICS: WHAT WENT WRONG AND WHY* 96, 106 (1999).
- 89 Frances Robles, *Ecuador Family Wins Favors After Donations to Democrats*, *N.Y. TIMES*, Dec. 16, 2014, <http://www.nytimes.com/2014/12/17/world/americas/ecuador-isaias-obama-campaign-robert-menendez-hillary-clinton.html>.
- 90 David Sirota, *Chris Christie's Political Team Was in Direct Contact with Pension Overseer During Campaign*, *INT'L BUS. TIMES*, Aug. 15, 2014, <http://www.ibtimes.com/chris-christies-political-team-was-direct-contact-pension-overseer-during-campaign-1659108> (collecting examples of contributions coinciding with awards of pension investments); Lee Fang, *Pensiongate? Christie Campaign Donors Won Huge Contracts*, *THE NATION*, Mar. 18, 2014, <http://www.thenation.com/article/178862/pensiongate-christie-campaign-donors-won-huge-contracts>. Several businesses with state contracts also donated to the RGA under Christie's leadership; donations by those business directly to Christie would apparently violate New Jersey's pay-to-play law. David Sirota, *Chris Christie Raised Cash from New Jersey Contractors for Republican Governors Association*, *INT'L BUS. TIMES*, Nov. 3, 2014, <http://www.ibtimes.com/chris-christie-raised-cash-new-jersey-contractors-republican-governors-association-1717787>.
- 91 Jon Lender, *Election Agency Probes Legality of NU Chief's Solicitation for Malloy*, *HARTFORD COURANT*, Feb. 1, 2014, http://articles.courant.com/2014-02-01/news/hc-lender-probe-nu-donations-0202-20140131_1_malloy-governor-dannel-p-nu-chief; Christine Stuart, *Election Regulators Call NU Solicitation 'Egregious'*, *CT NEWS JUNKIE*, Sept. 16, 2014, http://www.ctnewsjunkie.com/archives/entry/election_regulators_call_nu_solicitation_egregious/. Other state contractors have also given to the state party. Mark Pazniokas, *Connecticut Democrats Return Questioned \$10,000 Contribution*, *CONN. MIRROR*, Dec. 12, 2013, <http://ctmirror.org/2013/12/12/connecticut-democrats-return-questioned-10000-contribution/>.

- 92 Referring to possible bad publicity due to big donors in the outside money context, one GOP operative said, “If they’re going to give a million, we’ll find a way to deal with them.” Kenneth P. Vogel, *Rise of the Showboat Donor*, POLITICO, May 27, 2014, <http://www.politico.com/story/2014/05/anthony-scaramucci-mega-donors-107091.html>.
- 93 SEAN J. SAVAGE, *JFK, LBJ, AND THE DEMOCRATIC PARTY 155-57* (2004) (recounting use of the President’s Club program to benefit the DNC and organization of dinners by a television executive interested in protection against antitrust actions).
- 94 See *McConnell*, 540 U.S. at 150-52 (“The record in the present cases is replete with similar examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations. . . . So pervasive is this practice that the six national party committees actually furnish their own menus of opportunities for access to would-be soft-money donors, with increased prices reflecting an increased level of access.”).
- 95 See, e.g., Jonathan Weisman, *G.O.P. Error Reveals Donors and the Price of Access*, N.Y. TIMES, Sept. 24, 2014, <http://www.nytimes.com/2014/09/25/us/republicans-corporate-donors-governors.html> (describing RGA and DGA documents revealing forms of access to elected officials available to donors of various amounts).
- 96 LYNDA W. POWELL, *THE INFLUENCE OF CAMPAIGN CONTRIBUTIONS IN STATE LEGISLATURES: THE EFFECTS OF INSTITUTIONS AND POLITICS* 153 (2012); see also *id.* at 62 (discussing benefits to individual legislators of raising money for their party).
- 97 ROBERT E. MUTCH, *BUYING THE VOTE: A HISTORY OF CAMPAIGN FINANCE REFORM* 40 (2014) (recounting testimony from the investigation of the 1904 life insurance scandal in which a senator testified that contributions put “candidates under more or less of a moral obligation not to attack the interests supporting”); LAWRENCE LESSIG, *REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS — AND A PLAN TO STOP IT* 107-14 (2011) (discussing importance of relationships as opposed to quid pro quo exchanges in the Washington influence industry); Nick Stephanopoulos, *Aligning Campaign Finance Law*, 101 VA. L. REV. (forthcoming 2015).
- 98 Elizabeth Rigby & Gerald C. Wright, *Political Parties and Representation of the Poor in American States* (Apr. 6, 2011), https://rooneycenter.nd.edu/assets/40430/rigby_wright_responsivenesspaper_04_06_11.pdf (explaining the difference is greatest for Democratic organizations in states with high income inequality). The authors draw no conclusion about the cause of this differential responsiveness, but find evidence that the fact that the affluent are more likely to vote did not adequately explain their observations. *Id.* at 22.

- 99 Jesse H. Rhodes & Brian F. Schaffner, *Economic Inequality and Representation in the U.S. House: A New Approach Using Population-Level Data* (Apr. 7, 2013), <http://people.umass.edu/schaffne/Schaffner.Rhodes.MPSA.2013.pdf> (finding members of Congress are more responsive to the wealthy than their poor constituents); Michael Barber, *Representing the Preferences of Donors, Partisans, and Voters in the U.S. Senate* (Feb. 4, 2015), http://static1.squarespace.com/static/51841c73e4b04fc5ce6e8f15/t/54d24b75e4b00dd8790cf694/1423068021478/paper_poq_unblinded.pdf (finding that senators' ideological preferences reflect the preferences of the average donor better than any other group studied).
- 100 MICHAEL J. MALBIN & SEAN A. CAIN, CAMPAIGN FINANCE INSTITUTE, *THE UPS AND DOWNS OF SMALL AND LARGE DONORS 4* (2007), http://www.cfinst.org/books_reports/SmallDonors/Small-Large-Donors_June2007.pdf. After BCRA's passage, the large contribution portion dropped to 20 percent.
- 101 Stephen Ansolabehere & James M. Snyder, Jr., *Soft Money, Hard Money, Strong Parties*, 100 COLUM. L. REV. 598, 607 (2000).
- 102 Seth Gitell, *Making Sense of McCain-Feingold and Campaign-Finance Reform*, THE ATLANTIC, July 1, 2003, <http://www.theatlantic.com/magazine/archive/2003/07/making-sense-of-mccain-feingold-and-campaign-finance-reform/302758/>.
- 103 *Top Soft Money Donors*, CENTER FOR RESPONSIVE POLITICS, <http://www.opensecrets.org/bigpicture/softtop.php>.
- 104 Neil Reiff & Don McGahn, *A Decade of McCain-Feingold*, CAMPAIGNS & ELECTIONS, APR. 16, 2014, <http://www.campaignsandelections.com/magazine/us-edition/445782/a-decade-of-mccainfeingold.shtml>.
- 105 See Michael S. Kang, *The Brave New World of Party Campaign Finance Law*, 101 CORNELL L. REV. (forthcoming 2015) ("It is difficult to believe that de-regulating the parties to engage in the same type of courting and solicitation of the very wealthy as Super PACs will do anything to correct the ongoing distributional shift of the campaign finance system toward the interests of the very wealthy.").
- 106 Joseph Fishkin & Heather K. Gerken, *The Party's Over: McCutcheon, Shadow Parties, and the Future of the Party System*, 2014 SUP. CT. REV. 175, 204 (2014).
- 107 *Id.*
- 108 IAN VANDEWALKER, BRENNAN CENTER FOR JUSTICE, *ELECTION SPENDING 2014: OUTSIDE SPENDING IN SENATE RACES SINCE CITIZENS UNITED 8* (2015), <http://www.brennancenter.org/publication/election-spending-2014-outside-spending-senate-races-citizens-united>.

- 109 “Itemized” contributions are those of more than \$200 over an election cycle. While revenue from smaller contributions can be reported in bulk, donations of more than \$200 must be reported along with the donor’s name and other information. 52 U.S.C. § 30104(b)(3)(A).
- 110 See LARRY J. SABATO & HOWARD R. ERNST, *ENCYCLOPEDIA OF AMERICAN POLITICAL PARTIES AND ELECTIONS* 162-63 (2007).
- 111 Charlotte Alter, *Voter Turnout in Midterm Elections Hits 72-Year Low*, TIME, Nov. 10, 2014, <http://time.com/3576090/midterm-elections-turnout-world-war-two/>.
- 112 See, e.g., Trip Gabriel, *‘Super PACs’ Take on New Role: Organizing Voters*, N.Y. TIMES, July 7, 2015, <http://www.nytimes.com/2015/07/08/us/politics/super-pacs-take-on-new-role-organizing-voters.html>.
- 113 Robert Kelner & Raymond La Raja, *McCain-Feingold’s Devastating Legacy*, WASH. POST, Apr. 11, 2014, http://www.washingtonpost.com/opinions/mccain-feingolds-devastating-legacy/2014/04/11/14a528e2-c18f-11e3-bcec-b71ce10e9bc3_story.html.
- 114 Joseph Fishkin & Heather K. Gerken, *The Party’s Over: McCutcheon, Shadow Parties, and the Future of the Party System*, 2014 SUP. CT. REV. 175, 212 (2014).
- 115 Cf. THOMAS E. MANN & E.J. DIONNE, JR., *THE FUTILITY OF NOSTALGIA AND THE ROMANTICISM OF THE NEW POLITICAL REALISTS* 23 (2015), <http://www.brookings.edu/research/reports2/2015/06/futility-nostalgia-romanticism-new-political-realists-mann-dionne> (“Policy changes that significantly increase the number of voters and small donors while capping the amounts wealthy individuals can give would still provide an important counterforce to the plutocratic trends in our politics.”).
- 116 Other forms of public financing could also be considered. Richard Pildes has suggested grants to parties rather than matching small private donations. Richard H. Pildes, *Focus on Political Fragmentation, Not Polarization: Re-Empower Party Leadership*, in *SOLUTIONS TO POLITICAL POLARIZATION IN AMERICA* 146, 152, 155 (Nathaniel Persily, ed., 2015). Bruce Cain recommends experimenting with vouchers. Bruce Cain, *Two Approaches to Lessening the Effects of Partisanship*, in *SOLUTIONS TO POLITICAL POLARIZATION IN AMERICA* 157, 159-62 (Nathaniel Persily, ed., 2015).
- 117 See ADAM SKAGGS & FRED WERTHEIMER, *EMPOWERING SMALL DONORS IN FEDERAL ELECTIONS* 14-15 (2012), <http://www.brennancenter.org/publication/empowering-small-donors-federal-elections> (explaining benefits of a small-donor multiple-match public financing system for federal candidates).

- 118 See SUNDEEP IYER, ELISABETH GENN, BRENDAN GLAVIN & MICHAEL J. MALBIN, DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS (2012), <http://www.brennancenter.org/publication/donor-diversity-through-public-matching-funds> (finding that the small-donor matching system in New York City has advanced the diversity of campaign donors and encouraged engagement).
- 119 See generally Magnus Ohman, International IDEA, *Introduction to Political Finance*, in FUNDING OF POLITICAL PARTIES AND ELECTION CAMPAIGNS: A HANDBOOK ON POLITICAL FINANCE (Elin Falguera et al. eds., 2014), <http://www.idea.int/publications/funding-of-political-parties-and-election-campaigns/loader.cfm?csModule=security/getfile&pageID=64347>.
- 120 MICHAEL G. MILLER, SUBSIDIZING DEMOCRACY: HOW PUBLIC FINANCING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE 40-41 (2014); ANGELA MIGALLY, SUSAN LISS & FREDERICK A.O. SCHWARTZ, JR., SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE 13-16 (2010), <http://www.brennancenter.org/publication/small-donor-matching-funds-nyc-election-experience>. Although the existence of unlimited outside spending is still a potential avenue for large donor influence.
- 121 See, e.g., Richard H. Pildes, *Focus on Political Fragmentation, Not Polarization: Re-Empower Party Leadership*, in SOLUTIONS TO POLITICAL POLARIZATION IN AMERICA 146, 155 (Nathaniel Persily, ed., 2015) (expressing concern that matching small donations will “exacerbate polarization and fragmentation”). Inasmuch as polarization is an issue for matching funds, the effect may be possible to address in designing the public financing system. Examples like Michelle Bachman, who raised large amounts of money from small donations with polarizing rhetoric, tend to depend on out-of-state contributions. A public financing system can blunt this effect by only matching donations from in-state or in-district. See Adam Bonica, *Leadership, Free to Lead*, BOSTON REV., July 22, 2011, <https://www.bostonreview.net/bonica-small-donors-polarization>.
- 122 See THOMAS E. MANN & ANTHONY CORRADO, PARTY POLARIZATION AND CAMPAIGN FINANCE 15-16 (2014), http://www.brookings.edu/~media/research/files/papers/2014/07/polarization-and-campaign-finance/mann-and-corrado_party-polarization-and-campaign-finance.pdf (summarizing evidence and arguing that small donors are unlikely to be more polarized than the large donors who currently dominate); Raymond J. La Raja & David L. Wiltse, *Don't Blame Donors for Ideological Polarization of Political Parties*, 40 AM. POL. RESEARCH 501 (Dec. 2012), at 519, 524. (“It appears that major donors (giving excess of US\$200) appear somewhat more ideological than small donors....”); Michael J. Malbin, *Small Donors: Incentives, Economies of Scale, and Effects*, 11 FORUM 385, 395-97 (2013) (critiquing arguments that small donors are especially polarized and noting that the incumbents from both parties with the most small-donor receipts were randomly distributed across their party’s ideological spectrum).

- 123 SUNDEEP IYER, ELISABETH GENN, BRENDAN GLAVIN & MICHAEL MALBIN, DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS (2012), <http://www.brennancenter.org/publication/donor-diversity-through-public-matching-funds>.
- 124 424 U.S. 1 (1976).
- 125 52 U.S.C. § 30116(d)(4).
- 126 FEC v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431, 451-52 (2001).
- 127 See Eric Lichtblau, *F.E.C. Can't Curb 2016 Election Abuse, Commission Chief Says*, N.Y. TIMES, May 2, 2015, <http://www.nytimes.com/2015/05/03/us/politics/fec-cant-curb-2016-election-abuse-commission-chief-says.html>; Fredreka Schouten, *Two FEC Officials Implore Agency to Curb 2016 Election Abuse*, USA TODAY, June 8, 2015, <http://www.usatoday.com/story/news/politics/elections/2016/2015/06/08/fec-commissioners-ravel-and-weintraub-petition-campaign-finance/28674981/>. Under these circumstances, we therefore do not endorse the recent proposal to eliminate party coordination restrictions as part of the appropriations process. See Paul Blumenthal, *Mitch McConnell Rider Could Roll Back Campaign Finance Laws*, HUFFINGTON POST, Dec. 1, 2014, http://www.huffingtonpost.com/2014/12/01/mitch-mcconnell-campaign-finance_n_6251380.html.
- 128 See ANTHONY J. CORRADO, MICHAEL J. MALBIN, THOMAS E. MANN & NORMAN J. ORNSTEIN, REFORM IN AN AGE OF NETWORKED CAMPAIGNS: HOW TO FOSTER CITIZEN PARTICIPATION THROUGH SMALL DONORS AND VOLUNTEERS 49 (2010), http://www.brookings.edu/-/media/research/files/reports/2010/1/14-campaign-finance-reform/0114_campaign_Finance_reform.pdf (critiquing the current system of limited coordinated spending and unlimited independent spending); THOMAS E. MANN & E.J. DIONNE, JR., THE FUTILITY OF NOSTALGIA AND THE ROMANTICISM OF THE NEW POLITICAL REALISTS 23 (2015), <http://www.brookings.edu/research/reports2/2015/06/futility-nostalgia-romanticism-new-political-realists-mann-dionne> (noting that eliminating caps on coordinated party spending could be part of a constructive policy package).
- 129 52 U.S.C. § 30116(a)(4).
- 130 One interviewee cautioned, however, against creating a new, highly fact-dependent definition of “coordination” only for parties, such as the one proposed in 2014 by Senate Majority Leader Mitch McConnell, arguing that the confusion and uncertainty likely to result from having two different standards would outweigh any benefit, particularly for state and local party organizations. Telephone Interview with Neil Reiff, Founding Member, Sandler Reiff Lamb Rosenstein & Birkenstock (Feb. 12, 2015).

- 131 Michael Malbin has argued “the parties should be able to make unlimited coordinated expenditures – but only from contributions they raise from donors who give them \$1,000 or less.” Press Release, Campaign Finance Institute, CFI’s Malbin Calls for “A Third Approach” to Party Coordination, Dec. 8, 2014, http://www.cfinst.org/Press/PReleases/14-12-08/CFI%E2%80%99s_Malbin_Calls_For_%E2%80%9CA_Third_Approach%E2%80%9D_to_Party_Coordination.aspx. Spencer Overton has argued that the state has an interest in increasing political participation, distinct from the anti-corruption interest, and suggested allowing “parties to make unlimited coordinated expenditures in support of candidates but only from small donors who give \$200 or less.” Spencer Overton, *The Participation Interest*, 100 GEO. L.J., 1259, 1299-1300 (2012).
- 132 *McConnell*, 540 U.S. at 97 (“Recognizing that the close ties between federal candidates and state party committees would soon render § 323(a)’s anticorruption measures ineffective if state and local committees remained available as a conduit for soft-money donations, Congress designed § 323(b) to prevent donors from contributing nonfederal funds to such committees to help finance ‘Federal election activity’”).
- 133 There is an exception for “Levin” funds, but that it is rarely used. 52 U.S.C. § 30125(b).
- 134 Byron Tau, *Last Call for State Parties?*, POLITICO, Feb. 16, 2014, <http://www.politico.com/story/2014/02/last-call-for-state-parties-103559.html>; Neil Reiff & Don McGahn, *A Decade of McCain-Feingold*, CAMPAIGNS & ELECTIONS, Apr. 16, 2014, <http://www.campaignsandelections.com/magazine/us-edition/445782/a-decade-of-mccainfeingold.html>. Ironically, moreover, in one of the few states that has stricter limits for parties, advocates have argued that BCRA’s federalization of state and local party activities actually functions to preempt these more stringent laws. See Jon Lender, *Agency Sues to Force Democratic Party to Comply with Subpoena for Malloy Documents*, HARTFORD COURANT, Aug. 6, 2015, <http://www.courant.com/politics/hc-subpoena-enforcement-0807-20150806-story.html>.
- 135 See Michael J. Malbin, *McCutcheon Could Lead to No Limits for Political Parties — With What Implications for Parties and Interest Groups?*, 89 N.Y.U. L. REV. (ONLINE SYMPOSIUM) 92, 100 (2014) (suggesting removing federal contribution limits on state parties’ registration and GOTV activities).
- 136 These are examples of mechanisms that local parties use to engage ordinary citizens.
- 137 See 52 U.S.C. § 30101(4)(C).

- 138 See FEDERAL ELECTION COMMISSION, LEGISLATIVE RECOMMENDATIONS OF THE FEDERAL ELECTION COMMISSION 2013 (2013), <http://www.fec.gov/law/legrec2013.pdf>. We are indebted to Commissioner Lee Goodman for pointing this area of agreement out to us.
- 139 *Citizens United*, 558 U.S. at 371.
- 140 DANIEL I. WEINER, BRENNAN CENTER FOR JUSTICE, *CITIZENS UNITED FIVE YEARS LATER* 7 (2015), <https://www.brennancenter.org/publication/citizens-united-five-years-later>.
- 141 52 U.S.C. § 30104(b)(3)(A).
- 142 52 U.S.C. § 30118(a).
- 143 MARK SCHMITT, POLITICAL OPPORTUNITY: A NEW FRAMEWORK FOR DEMOCRATIC REFORM (2015), <https://www.brennancenter.org/publication/political-opportunity-new-framework-democratic-reform>; Spencer Overton, *The Participation Interest*, 100 GEO. L.J., 1259, 1300-01 (2012).
- 144 Raymond J. La Raja, *Political Participation and Civic Courage: The Negative Effect of Transparency on Making Small Campaign Contributions*, 36 POLITICAL BEHAVIOR 753 (2013) (describing survey responses indicating donors were less likely to give if they knew their names could be made public).
- 145 See e.g., *Nat'l Org. for Marriage v. McKee*, 669 F.3d 34, 41 (1st Cir. 2012) (disclosure of even relatively small donors can further the state's informational interests by "ensur[ing] that the electorate will have access to information regarding the driving forces backing or opposing" a candidate or ballot initiative); *Delaware Strong Families v. Attorney General of Delaware*, No. 14-1887, ___ F.3d ___, 2015 WL 4289460 (3d Cir. July 16, 2015) (same).
- 146 See 52 U.S.C. §§ 30116(a)(4), 30116(c).
- 147 The FEC's enforcement shortcomings play a role here as well, since the Commission cannot be relied upon to enforce the safeguards against circumvention of base contribution limits — like earmarking and anti-proliferation rules — that the *McCutcheon* plurality posited as alternatives to aggregate limits. See *McCutcheon*, 134 S. Ct. at 1455-56 (plurality opinion); Daniel I. Weiner, *McCutcheon's Anti-Circumvention Folly*, BRENNAN CENTER FOR JUSTICE BLOG, Apr. 9, 2014, at <http://www.brennancenter.org/blog/mccutcheon-anti-circumvention-folly>.
- 148 540 U.S. at 224.

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EXHIBIT D

The state of state parties—and how strengthening them can improve our politics

By Raymond J. La Raja and Jonathan Rauch



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INTRODUCTION AND SUMMARY

A mountain-state Republican Party official wants to send out mailers encouraging voters to go to the polls and vote for Republican candidates. But this traditional get-out-the-vote effort is not so simple. He reminds himself that the party has federal candidates on the ballot, which triggers a requirement to use tightly restricted federal money, which he doesn't have enough of. So he resorts to a workaround: he removes from mailers any information that tells people when or where to vote. "You drop 'Vote November 8,'" he says, explaining his less-than-ideal solution. "You just say, 'Vote for this candidate.' It is affecting our ability to effectively deliver our message and our product."

In the same state, a Democratic Party official has a different problem. Merely suggesting that people vote for particular candidates can count as a contribution to those candidates, triggering tight restrictions on supporting candidates even when volunteers are doing the campaign work. Her workaround: doing get-out-the-vote campaigns without naming candidates. "I feel I should be allowed to give our candidates as much help and support as possible. How awesome it would be if I could use the candidates' names—and how silly it is that I can't do that!"

Historically, and still today, state parties act as a counterforce against highly motivated, ideologically extreme minorities of the sort that are polarizing and fragmenting American politics.

The rules state parties labor under may or may not be silly, depending on your point of view; but they are increasingly costly in an age when burgeoning outside groups face no such restrictions.

Historically, and still today, state parties act as a counterforce against highly motivated, ideologically extreme minorities of the sort that are polarizing and fragmenting American politics. Today, however, state party organizations are falling behind, partly because the nature of politics has changed but partly, also, because of disadvantages imposed on them by well-meaning laws and policies.

With an eye toward understanding how to strengthen the Democratic and Republican state parties, we surveyed all 100 of them, receiving responses from 56. (Complete survey results are in the appendix.) We compared those results to two earlier surveys of state parties, one from 2000 (by one of the authors) and the other from 1999. We also conducted detailed interviews with 15 state-party leaders (mostly executive directors, plus a few chairs; eight Republicans and seven Democrats). Our questions: how are state parties doing; what are they doing; what are their prospects; and what is their potential? Our findings include:

- To paraphrase Mark Twain, rumors of the death of state parties are greatly exaggerated. Embattled as never before, state parties are struggling to remain relevant amid growing political competition, yet they are putting up a spirited defense and adapting intelligently by focusing on areas of comparative advantage such as grassroots mobilization and voter data.
- The state parties' problem is less a decline in *absolute* resources and standing than a decline in *relative* resources and standing. Keeping pace with the rapid inflow of money and messaging from outside groups and other non-traditional actors is a severe challenge.
- State parties provide important benefits to the political system as a whole, and they retain untapped potential to reduce long-term polarization and extremism by balancing the influence of purist groups.
- Restrictions intended to constrain state parties' activities and fundraising do exactly that—with the perverse effect of weakening the parties and strengthening unaccountable outside groups. Our findings suggest that outside groups have less influence in states where the party committees have more freedom to raise money.
- Much can be done to bolster the state parties by removing rules that unnecessarily and counterproductively tilt the playing field against them. We recommend raising or eliminating limits on contributions to state parties, eliminating restrictions on state parties' ability to coordinate activities with candidates, narrowing overbroad federal regulation, and pruning other rules. Making contributions to state parties tax-deductible also deserves consideration.

POLITICAL PUBLIC GOODS: WHY STATE PARTIES MATTER

Upon learning of our research, a political scholar recently asked: Do state parties actually do anything on their own? It's a fair question. One longtime national-level Democratic Party observer told us, "I observe state parties as vassal states usefully acquired by political actors when they need them."¹ In recent years, some political scientists have argued that parties today are best thought of not as formal, bounded organizations, but as far-flung networks of politicians, activists, and influencers.²

There is some truth in both of those views. The lines that once demarcated formal parties have blurred; politics now centers not on party organizations, but on candidates. Nonetheless, if one point comes through clearly in our

¹ To encourage candor, we conducted our interviews with state and national party officials on a not-for-attribution basis, and we report only aggregate survey results.

² See, for example, Kathleen Bawn, Martin Cohen, David Karol, Seth Masket, Hans Noel, and John Zaller, "A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics," *Perspectives on Politics* 10:3 (2012): 571-97.

survey and interviews, it is that state parties remain distinctive nodes in American politics, with their own priorities, infrastructures, and mindsets. They have neither dissolved into activist swarms nor been acquired by campaigns.

State party officials perceive themselves as playing a different role than either campaigns or outsiders: often cooperative, sometimes competitive, occasionally subservient, but in any case, distinct. “We carry the brand,” one Democratic state party official told us. “We are the stewards of the brand, regardless of what progressive organizations out there may be doing. We’re the ones that exist forever.” State party officials stress that campaigns and outside groups come and go, but state parties are repeat players. “The super PACs might not always be around, but state parties will,” a southern Republican said. Another Republican said, “A lot of these third-party groups are just a bank account with a few people controlling it. A party has a history. It’s an identity that you’re part of.” The imperative of winning and holding power over the long term leads state parties to resist bridge-burning tactics and extremism. One Republican state party leader complained that outside conservative groups attack and sometimes defeat incumbent Republicans in primaries—only to walk away in the subsequent general election, leaving the party scrambling to defend a weak contender. The party can’t afford that kind of solipsistic behavior.

...[O]utside conservative groups attack and sometimes defeat incumbent Republicans in primaries—only to walk away in the subsequent general election, leaving the party scrambling to defend a weak contender.

Most state parties today are very reluctant to choose sides in the nomination process; they believe that the political blowback from playing favorites, or from being accused of playing favorites, outweighs any gains. In our survey, 83 percent said they never or rarely favor candidates in competitive primary elections, and only 6 percent said they often do so. This inability or reluctance—whichever it may be—to act as gatekeepers has weakened today’s state parties relative to the state party establishments of yore, which often effectively vetted nominees. That said, state parties are not out of the business of shaping the candidate field. Acting more like gardeners than gatekeepers, they recruit and advise in ways that gently encourage and assist electable candidates while steering away from losing battles and embarrassments. “We don’t twist arms,” said one Democratic executive director. “But we might say, ‘This is a really tough primary. You’re a great candidate; would you consider running for this other slot?’”³

In our survey, state parties almost universally said they “sometimes” or “often” recruit candidates for state legislatures; 67 percent said they do it often. Recruiting for other offices, from gubernatorial and congressional down to local, is also quite common, although less so than for the state legislature, which is the farm system for higher office. Building a bench of talent pays off over long time-horizons, something state parties pay attention to, whereas outside groups, if they recruit at all, will often shop for quick payoffs and agenda-driven candidates. The bench-building role is particularly important in states where the party is in distinct minority, with little short-term hope of gaining a majority: minority status tends to put off outside groups or other funders.

³ This approach is a distant echo of the post-Civil War period until the 1890s, when state party leaders, at their discretion, rotated candidates for the party nomination from office to office to avoid internecine conflict between county-level parties. See David Brady, Kara Buckley, and Douglas Rivers, “The Roots of Careerism in the U. S. House of Representatives,” *Legislative Studies Quarterly* 24:4 (1999): 489-510.

...[S]tate parties are far more transparent and accountable than interest groups, both because they are heavily regulated and because they face reputational accountability to voters.

As their leaders are quick to point out, state parties are far more transparent and accountable than interest groups, both because they are heavily regulated and because they face reputational accountability to voters. Unlike candidates and outside groups, they are integrative in function, organizing multiple constituencies and mobilizing voters for state, local, and federal elections simultaneously. During the campaign season, state parties provide candidates with core services such as training campaign staff and volunteers, conducting opposition

research, and analyzing voter data. Some state parties serve as hubs for coordinated campaign activities, often physically combining staffs from candidate campaigns, legislative caucuses and committees, and the state party in the same offices. Parties may even make agreements with candidates to place campaign staff on the state party payroll. The permutations of such coordination arrangements are many and vary from campaign to campaign and place to place, but collectively they demonstrate that the state parties are able to deploy resources and contest races across the ballot more efficiently than candidates can do on their own. Our survey revealed that coordination both up and down the party hierarchy is common: 82 percent of state parties said they sometimes or often coordinate fundraising and campaigning with the national party; 80 percent coordinate with county parties.

Parties also spend in support of multiple candidacies, from governors' races to county elections: the share saying they sometimes or often contribute to campaigns ranged from 88 percent (for state legislative candidates) to 43 percent (for local candidates). By contrast, most other players—candidates, activists, and interest groups—have highly targeted goals aiming at a particular office or policy agenda. Strong candidates at the top of a ticket who get nonparty support may have coattails, but that is not the same as building durable infrastructure. “We like to say we have overfed jockeys with an underfed horse,” a Democrat told us. “We need to build out the infrastructure to feed that horse.” She went on to describe a new initiative to increase turnout in safely gerrymandered congressional districts. Asked why the party bothers chasing “surplus” voters in safe districts, the official reminded us that running up Democratic turnout helps statewide office-seekers. This kind of three-dimensional thinking is a distraction for most candidates and groups, but imperative for building a state party.

Given their interest in sustainable success and their integrative function, one might expect state party organizations to exert a moderating influence on politics. Evidence suggests that they do. Ray La Raja and Brian F. Schaffner, in their new book *Campaign Finance and Political Polarization: When Purists Prevail*, show that parties' influence is centripetal, tugging politicians away from extremist agendas and toward the center. In states where more funding flows through parties, the authors find, legislatures tend to be less polarized.⁴

Our data are consistent with that finding. When asked whether they generally prefer a hypothetical gubernatorial nominee whose views are to the left of “a typical voter from your party,” to the right of the typical party voter, or similar to the typical party voter, the vast majority of state party leaders, 70 percent, preferred a more centrist

⁴ Raymond J. La Raja and Brian F. Schaffner, *Campaign Finance and Political Polarization: When Purists Prevail* (University of Michigan Press, 2015).

candidate.⁵ By contrast, ideological factions within the party and activist groups outside of it frequently seek to drive politics toward ideological extremes. We heard further confirmation of the parties' depolarizing tendency in our interviews: state party directors see their jobs as winning and sustaining majorities, not just scoring ideological points. A state party director who had previously worked for a conservative outside group provided a telling example. In his current role, he said, he is a Republican first and a conservative second—a reversal of his previous priorities. "It is not the party's role to get rid of moderate Republicans," he told us. In his new role, he has found himself asking his former colleagues, "Do you really need to whack so-and-so?"

...[P]arties' influence is centripetal, tugging politicians away from extremist agendas and toward the center.

Finally, state parties provide a cumulating base of voter data, expertise, volunteer networks, and other forms of transferable political capital: assets that can be passed along from campaign to campaign and banked over time. In contrast, individual candidates and agenda-driven interest groups are not reliably motivated or able to build lasting political infrastructure.

For all those reasons, we believe that state parties are distinct from other actors in the political universe; that they can and often do represent a counterforce against tendencies toward political fragmentation, polarization, and extremism; and that writing them off as irrelevant or as interchangeable with other political actors is a mistake. Straddling, as they do, the worlds of formal and informal politics, and touching, as they do, the entire range of political actors, and integrating, as they do, both short-term priorities and longer-term goals, state parties are important nodes of the political equivalent of civil society: the tissue of civic and cultural organizations that creates social capital by building connections, trust, and cooperation across diverse individuals and groups.

That is not to say that state parties are any kind of magic bullet; as political realists, we do not believe in magic bullets. It is to say that state parties provide some positive social externalities—indirect benefits to society—and that their deterioration is reason for concern.

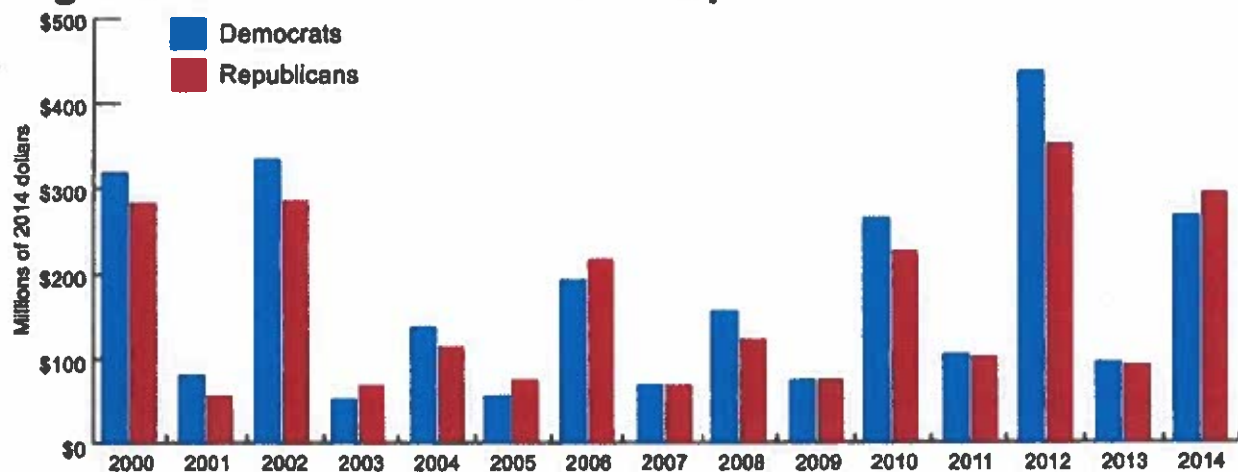
SURVIVING BUT FALLING BEHIND: HOW THEY ARE FARING

What, then, is the current state of state parties? Our survey, our interviews, and available financial data allow us to view that question from several angles, all of which return the same answer: in absolute terms, state parties are holding their own, but in relative terms—that is, compared with the political competition—they are losing ground.

State party officials generally regard the 2002 Bipartisan Campaign Reform Act (commonly known as McCain-Feingold) as a serious blow. McCain-Feingold blocked national parties from raising large-dollar contributions and sending them to the states, and it also imposed complex federal restrictions on state parties' fundraising and electioneering activities.

⁵ The preference for mainstream candidates was especially pronounced—80 percent—among Republican state parties. One in four Democratic party leaders preferred candidates who are somewhat more conservative than the typical party voter, presumably to improve electability in relatively conservative states.

Figure 1. Contributions to state parties

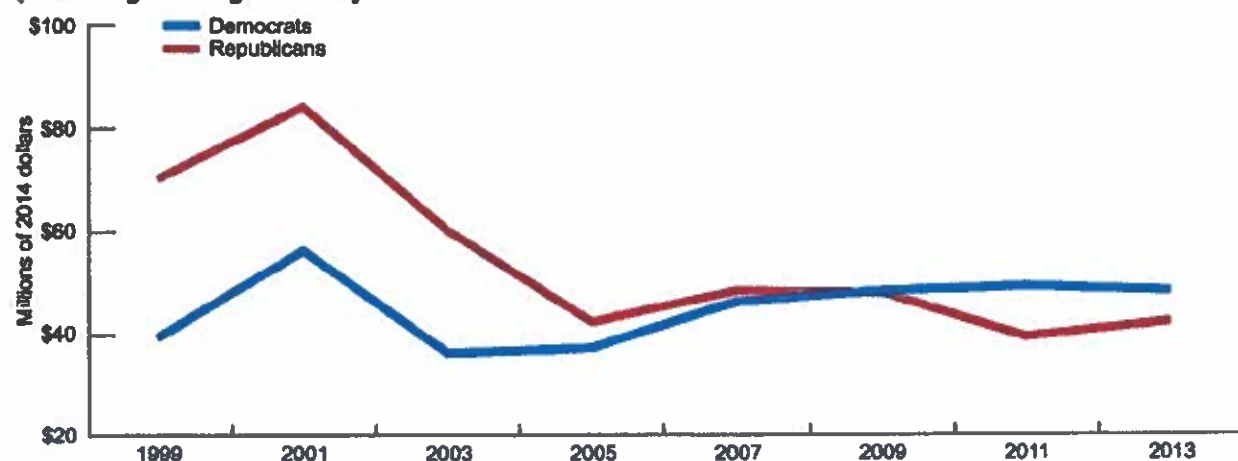


Source: National Institute on Money in State Politics

As Figure 1 shows, inflation-adjusted contributions to the state parties contracted sharply in the mid-2000s, after McCain-Feingold; they then gradually recovered to their previous levels (which, in off-years, was relatively low to begin with). However, state parties' off-year operating expenditures, shown in Figure 2, may be a better gauge of the parties' underlying organizational strength. By this measure (again using constant dollars), Republicans show a severe post-2002 hit and no subsequent recovery. In 2001, the year before McCain-Feingold was passed, the combined 50 Republican state parties' operating budgets summed to \$84 million; the total in 2013 was half that amount.⁶ The 50 Democratic parties, whose off-year operating spending did not approach Republican levels prior to McCain-Feingold, have recovered to their 2001 peak, and now hold steady at about \$48 million.

⁶ These financial data come from "Reports of Receipts and Disbursements" (Federal Election Commission Form 3), line 21 (operating expenditures for the year-end filing).

Figure 2. State party operating expenditures, 1999-2013 (off-cycle years)



Source: Federal Election Commission

Table 1. State party infrastructure and activities

	La Raja 2000	Aldrich 1999	La Raja, Rauch, Stoddard 2015
INFRASTRUCTURE			
Party headquarters permanent	98%	98%	96%
State party chair salaried	23%	25%	20%
Party employs full-time executive director	-	91%	87%
Party employs communications director	-	51%	73%
Operating expenditures (2014 dollars)*	\$140M	-	\$90M
Typical nonelection year staff (FTE)	7.3	7.5	6.7
POLITICAL ACTIVITIES AND SERVICES**			
Conduct opposition research	91%	-	82%
Conduct public opinion polls	36%	-	59%
Organize campaign events	95%	-	91%
Train campaign professionals	87%	-	87%
Conduct voter registration drives	-	60%	72%
Participate in get-out-the-vote drives	-	60%	91%
Advertise on TV and radio	-	-	51%
Send mass direct mailers	-	98%	87%
Disseminate messages online (social media)	-	-	89%
POLITICAL CONTRIBUTIONS**			
Party contributes to governor	-	89%	84%
Party contributes to congressional	-	85%	77%
Party contributes to state leg.	-	92%	88%
Party contributes to local	-	70%	41%
COORDINATION**			
National party	82%	-	82%
Local parties	-	-	80%
Interest groups	-	-	27%
Share data	-	-	68%
RECRUITING AND NOMINATIONS**			
Recruit candidates for governor	-	52%	67%
Recruit candidates for U.S. House	-	55%	65%
Recruit candidates for state legislature	-	78%	96%
Recruit candidates for local offices	-	26%	70%
Provide primary support to favored candidates	17%	-	17%
Number of Observations	94	65	56

*Figures (in millions of dollars) from Federal Election Commission, year-end reports for 2001 and 2013

**Choices are *never, rarely, sometimes, often*; the column provides percentages for *sometimes plus often*.

Sources: John H. Aldrich, "Southern Parties in State and Nation," *Journal of Politics* 62:3 (2000), p. 643; Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* (University of Michigan Press, 2008).

As important as how state parties are doing financially is *what* they are doing operationally. Table 1 compares our survey results with those of two previous surveys, one by La Raja in 2000 and the other by the political scientist John Aldrich in 1999.⁷ (The two earlier surveys, of course, predate McCain-Feingold.) Where comparable questions were asked, the story is mostly one of stability, with change around the edges. More state parties today employ communications or public relations directors than did so at the turn of the century (a finding consistent with what several party directors told us, which is that the round-the-clock news cycle requires them to raise their media game). State parties' monetary contributions to local candidates are down, but their involvement in recruiting for local races is up; as in the past, the state parties recruit for all offices but pay special attention to state legislative slots.

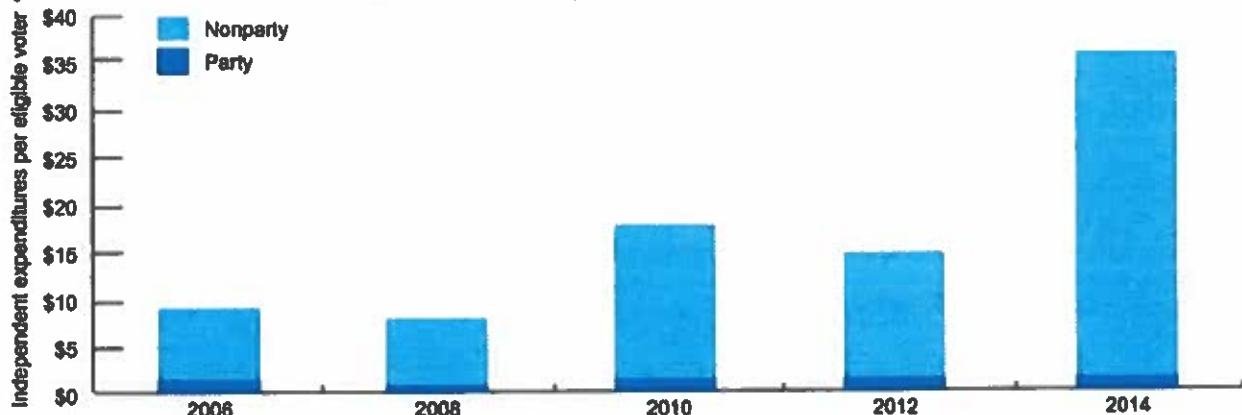
Party infrastructure has changed little. Staff sizes and operating expenditures (in constant dollars) are about the same, perhaps down a bit. Almost all state parties have permanent headquarters and full-time executive directors. The large majority, now as in 2000, do not pay their state party chairs, instead relying on volunteer leaders (a practice we suspect is archaic). As the table shows, there has not been much change in patterns of contributions to candidates or in the prevalence of activities involving research, campaign events, training, and recruitment.

Yet, when asked directly how their party is doing, or how state parties generally are doing, party officials resoundingly say: *We're in trouble!* Typical responses:

- "We believe we are fighting for our lives in the current legal and judicial framework, and the super PACs and c(4)s [outside groups] really present a direct threat to the state parties' existence" (southern Republican)
- "I think the state parties will continue to decline because of all the legal restraints we have unless people really concentrate on how to strengthen them" (southern Democrat)
- "The internal conversation we've been having is, how do we keep state parties alive? Campaign-finance reform has hurt us to the point where we're almost disabled in many states" (mountain Democrat)

⁷ See John H. Aldrich, "Southern Parties in State and Nation," *Journal of Politics* 62:3 (2000): 643; Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* (Ann Arbor: University of Michigan Press, 2008).

Figure 3. Independent spending in six states (AK, CA, MA, ME, OH, WA), per eligible voter



Source: National Institute on Money in State Politics

Note: Data include all independent spending targeting state and local elections. Parties include all state party committees and state legislative caucuses.

- "Especially since McCain-Feingold, the state parties have decreased in their ability to accomplish their mission. You have super PACs that have filled the vacuum" (mountain Republican)

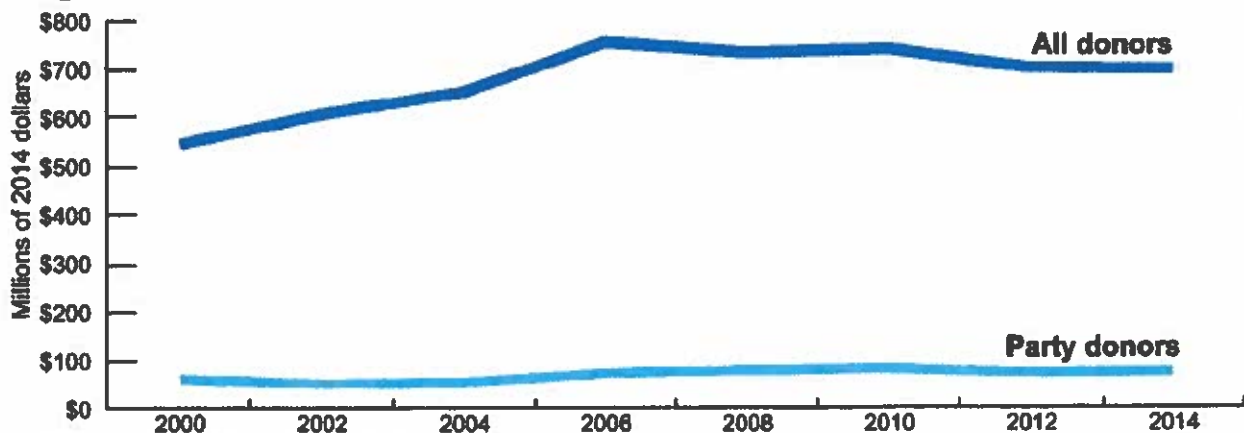
Super PACs and other independent-expenditure groups have indeed filled a vacuum. Using data collected in six states by the National Institute on Money in State Politics, Figure 3 shows that party organizations account for a very small portion of independent expenditures in statewide races. The vast majority of independent spending comes from non-party groups, whose expenditures are growing rapidly and which are often not based in the states where they spend.

Outside money is not only more plentiful than party money, it tends to be qualitatively different, too. Most outside money is spent on political advertising and is narrow in focus. Most of it targets particular races; outside donors often seek to influence specific policies and have little incentive to build durable party infrastructure that benefits all candidates. And outside money is much less heavily regulated; unlike the parties, outside groups have faced few constraints on how much they can raise from donors since the *SpeechNow.org v. FEC* decision in 2010.

To protect themselves from the onslaught of independent expenditures, candidates have intensified their fundraising efforts. For example, Figure 4 demonstrates that legislative candidates are relying more than ever on non-party sources of financing and reveals the gap between contributions given by non-party and party organizations. In the modern era, candidate-centered politics and campaign-finance laws encourage candidates to seek donations from individuals and interest groups rather than rely directly on the party for support. Consequently, candidates have long garnered most of their funds from outside the party; non-party donors give approximately ten times as much to legislative candidates as the parties give. Furthermore, the gap between what parties gave to candidates and the amount they received from other donors widened significantly between 2000 and 2006. Recent work by La Raja and Schaffner indicates that non-party giving tends to come from highly ideological individual donors who want to support like-minded candidates; in contrast, candidates supported by the parties tend to be more moderate.⁹

⁹ Campaign Finance and Political Polarization: When Purists Prevail, op. cit.

Figure 4. Contributions to state house candidates



Source: National Institute on Money in State Politics

Note: Data include all contributions to candidates for state house or state assembly. Parties include all state party committees and state legislative caucuses.

A TILTED PLAYING FIELD: EFFECTS OF REGULATION

Many exogenous changes in the political landscape have affected the fortunes of parties. But law and public policy have played their part, too, by placing state parties at a disadvantage—in a variety of ways.

Our survey results confirm that federal and state election laws distort the political marketplace to the detriment of the state parties and to the benefit of outside groups.

All state parties are subject to federal regulation, and most also are regulated by their states. As a result, the state parties must maintain separate accounts for state and federal moneys, which must be raised under different rules. The activities they can perform with each kind of money are also frequently circumscribed by Byzantine rules. Under McCain-Feingold's broad definition of "federal election activity," most voter mobilization and registration activities—core state party functions—are swept under

tight federal regulation. The effects of all these rules are often bewilderingly complicated, as was vividly depicted by Byron Tau in *Politico*:

Under the rules, for example, state-party-run phone banks for federal candidates had to be staffed only by volunteers. They could make calls only for presidential elections—not congressional races. Mail, campaign literature and get-out-the-vote operations around federal races were regulated by similarly strict rules, conditions and requirements regulating volunteer time, coordination with the national party and what kind of funds could be spent.⁹

Moreover, state parties face a variety of federal and often state reporting requirements, while outside groups operate largely in the dark. One expert in election law observed that "state parties are the most regulated entities in campaign finance."

Our survey results show that the rules significantly affect the activities of the state parties. Among our respondents, about 60 percent said that federal campaign-finance laws sometimes or often hinder their ability to support state and local candidates; 40 percent said the same of state laws, which are less restrictive than federal laws in many states. One mountain-state Republican called federal laws "incredibly cumbersome to operate." A northeastern Democrat said, "We usually have to hire an entire team just to manage the federal laws." The costs of compliance are high; among our survey respondents, 64 percent reported employing more than one person to deal with legal compliance; 24 percent had three or more. "I have to pay for two lawyers every month on retainer because there are so many questions and so many ways to get into trouble," a southern Democrat told us.

Compliance not only absorbs resources, it also leads to workarounds, contortions, and political opportunities forgone. "I have to think it through like a lawyer, not what's most effective for the overall effort," a midwestern Republican complained. The stories we mentioned at the beginning of this paper were not unusual. Other examples:

- A Republican state party we spoke with was forced by federal restrictions to curtail its voter-registration efforts.

⁹ Byron Tau, "Last Call for State Parties?" *Politico*, February 18, 2014.

- "Most of the time we can't do a statewide mailer," because only hard federal dollars can be used if the mailer increases turnout, a northeastern Democrat told us.
- A Democrat said the state party has given up asking its federal politicians (such as the U.S. senator) to help fundraise for state legislative elections. "It becomes a [regulatory] nightmare, so we just don't do it anymore."

Getting voters to the polls, reaching statewide audiences with party messages, and harmonizing the electioneering efforts of state and federal candidates are exactly what healthy parties ought to be doing. State and federal laws should be designed to promote such activities, not suppress them.

Our survey results confirm that federal and state election laws distort the political marketplace to the detriment of the state parties and to the benefit of outside groups. We compared states in two categories: those that limit individual donations to state parties, and those that allow state parties to raise state funds without restriction. We found that the less restrictive rules are associated with stronger state parties and weaker outside groups in two ways. One is more-robust staffing. State parties that can accept unlimited donations have larger staffs: 7.9 on average, compared with 4.9 in restrictive states.

Perhaps more interesting is that permissive rules seem to weaken the influence of outside groups. As Table 2 shows, Independent expenditures are less prevalent in states where more money can flow to the parties. In unlimited states, 26 percent of party leaders said that outside spending is "rarely" or "never" an important factor in races for governor, compared to only 5 percent in restrictive states. In unlimited states, only 23 percent said that "almost half" or "more than half" of ads are sponsored by independent groups; in the restrictive states, 65 percent said outside ads played such a big role. Similarly, party leaders in restrictive states are more likely to say that independent spending is "somewhat harmful" or "very harmful" (19 percent) than are their counterparts in unlimited states (6 percent).

We acknowledge that circumscribing state parties' behavior is what money rules are designed to do, and that some such rules may well be justified. But those who favor such rules should, by the same token, acknowledge the costs: constraints on party activities tilt the playing field toward private actors. Crimping the flow of money to state parties

Table 2. Independent spending in states with and without limits on individual contributions to parties

	Limited %	Not limited %
Portion of paid political advertising sponsored by independent groups		
Almost none	10	19
Less than half	25	58
More than half	60	19
Almost all	5	4
Whether outside independent spending is helpful or harmful		
Very helpful	5	13
Somewhat helpful	62	71
Neither helpful nor harmful	14	10
Somewhat harmful	14	6
Very harmful	5	0
How often independent spending is important factor in gubernatorial elections		
Never	0	3
Rarely	5	23
Sometimes	30	40
Often	65	33
N	20	31

does not reduce private influence in the political system; at best it merely moves private influence elsewhere, and at worst it substantially increases private influence by moving it to less accountable, less regulated channels.

Some, while acknowledging the cost of today's rules, may nonetheless believe that weakening parties relative to private groups is a price worth paying for steering large-dollar contributions away from the formal political system. They may view private money *inside* the political system as creating more danger of corruption, or of the appearance of corruption, than does private money *outside* the political system. We disagree, for several reasons.

First, parties are inherently the least corruptible of our political institutions. Unlike candidates or special interests, they think multi-dimensionally rather than about specific races or interests; they collect money from many sources and disperse it among many constituencies; they take a relatively long view of politics and are accountable for stewardship of the brand. They are thus, so to speak, relatively hard to "buy." If money is going to go anywhere—and it must go somewhere—parties offer the best home for it.

Second, if the goal is to persuade the public that the political system is not corrupt, then crafting rules that encourage billionaires and special interests to create their own shadowy political networks is an odd way to accomplish it.

Third, corruption (or its appearance) is not the only thing that matters. Governing matters as much, probably more. Much of what healthy parties do—taking a longer view of politics, harmonizing the interests of office-seekers, creating financial and political ties between office-holders, prioritizing sustainable victories over protest politics—encourages moderation and makes governing easier. Systematically favoring outside groups and activists that have purist worldviews and parochial agendas has the opposite effect.

FRENEMIES: STATE PARTIES AND OUTSIDE GROUPS

Are outside groups competitors and adversaries to traditional party organizations? Or supporters and auxiliaries? Well, it's complicated.

Our survey and interviews found that state party leaders' attitudes toward outside groups are nuanced and conflicted. On the one hand, party officials regard the groups as competitors for resources and political oxygen. On the other hand, they recognize that, in a world where their own hands are tied, outside groups often provide important assistance.

Among our survey respondents, 52 percent say outside-group spending is often a key factor in congressional races, and 45 percent say the same about gubernatorial races. Even for state legislative races, 30 percent told us that independent spending by outside groups frequently plays a major role.

Is this outside activity helpful, harmful, or neither? A majority of respondents, 77 percent, rated the efforts of independent groups as "somewhat helpful" or "very helpful"; only 12 percent said such groups were harmful.

At the same time, state parties rarely coordinate their activities with those of outside groups, and our interviews found state party leaders speaking of even sympathetic outside groups as undependable and often problematic allies. One source of friction, previously mentioned, is the groups' parochialism and short attention spans; our interview subjects also mentioned several others:

Messaging. “They attack Republicans with stupid issues,” one southern Democratic state party director told us, speaking of left-leaning super PACs and other outside groups. “In 2014, Democratic messaging was very inconsistent because they aren’t trying to have a positive party-related message; they’re more candidate-specific.” It’s a frequent concern. One mountain-state Republican told us: “I would say the major effect of our state campaign-finance laws is that the 527s [a type of outside group] do messaging for candidates. Candidates can’t rely on these 527s, but they almost have to. The candidates themselves would rather be controlling their own message.” Texas Republican Senator Ted Cruz stated the problem concisely when he said of the various outside groups backing his 2016 presidential campaign, “I’m left to just hope that what they say bears some resemblance to what I actually believe.”¹⁰

Brain drain. State parties and outside groups often draw upon the same reservoirs of political talent. While that can help them stay on the same page, it also poses a recruitment challenge. In one swing state where Americans for Prosperity has built a large field organization, a Republican state party director told us: “Those are the same people that we might have hired, or who might otherwise have been a volunteer for our side. So recruiting for our efforts becomes more difficult, because they absorb more of the talent in our state.”

Waste and duplication. Up to a point, parties and outside groups can loosely harmonize their efforts, but they generally cannot formally coordinate campaign activities. A mountain-state Republican recounted how the state party and a sympathetic outside group sent similar mailings to the same list, while voters on other lists received nothing. “Had that money come to the state party, we would have been able to send it to the entire universe of people we want to send it to.”

Reputational damage. Voters may blame a “stupid attack” by an outside group on a candidate or party. Moreover, as outside groups move into shoe-leather roles like voter mobilization and data collection, they can cause confusion and anger among the rank and file. A Democratic state party director told us she had just spoken with a local volunteer who was “very angry” about an outside organizer whom the volunteer had mistakenly assumed was connected to the state party.

Fundraising. Last but certainly not least, there is competition for money. Precisely because parties’ integrative mission spans multiple campaigns and constituencies, donors tend to see giving directly to either candidates or pressure groups as more efficient ways to influence outcomes. As one Republican told us, “A lot of donors are hesitant to give to the party because they don’t know which candidate will receive the benefit. They say, ‘You have to help every Republican and I don’t like some of them.’”

State parties therefore start at a natural disadvantage in the fundraising sweepstakes. The multiplicity of outside groups further fragments the marketplace. “A lot of these outside PACs are competitive with us,” said a Republican state party director. “The baby is now being split into ten parts.” A western Republican spoke of “too many cooks in the kitchen.” A southern Democrat said, “It’s like if you go shopping and there are more kinds of milk: you’re splitting up the money more.”

This is not to say that outside groups and state (or, for that matter, national) parties play a zero-sum game. Party and independent fundraising can be complements, not substitutes, and state party leaders understand that competition is

¹⁰ Nick Corasaniti and Matt Flegenheimer, “As TV Ad Rates Soar, ‘Super PACs’ Pivot to Core Campaign Work,” *New York Times*, December 22, 2015.

a fact of life and can add value. “There is competition for dollars, but competition helps me work harder and makes me justify to donors that we’re a good investment of their dollars,” one southern Republican told us.

THE “LANE” STRATEGY: HOW STATE PARTIES ARE COPING

How are state parties meeting their legal and political challenges? No two are alike, but a general pattern is discernible. A term that came up more than once in our interviews was “lanes”: a loose, tacitly recognized form of specialization.

On both sides of the aisle, state parties told us they have ceded the airwaves to candidates and, especially, private groups. Airtime is simply too expensive for state parties to use scarce regulated dollars on. “TV isn’t our most effective lane to be in,” a southern Democrat told us. “The TV waves are generally flooded by the super PACs. We’d be wiping out our entire budget on a week of TV.” In our survey, only half the party respondents said they “often” or “sometimes” advertise on TV or radio. State party leaders rue their ebbing influence over messaging, but they seem resigned to it.

On the other hand, mobilization, always a party preoccupation, has grown more central. “State parties are focused more and more on field efforts because super PACs dominate airwaves,” a Democrat told us. “It’s all about turnout,” one mountain state Republican said. Outside groups have recently moved into the mobilization game, in some cases setting up multi-state field operations.¹¹ Parties, however, can still do “GOTV” (get out the vote) relatively efficiently because they can mobilize for entire slates of candidates, collaborate with candidate campaigns and legislative caucuses, and draw upon established volunteer and social networks.

A more recently acquired lane—though a contested one, especially on the Republican side—is the gathering, analysis, and distribution of voter data. When a Democratic campaign lawyer told us that “data is the currency of the American political system right now,” he spoke for a multitude of officials in both parties. “Unlike PACs, a party has an army of volunteers,” a western Republican said. “Ideally every single one of them is out talking to voters. It’s one of the few things we have as a party that’s very valuable to have.” In a southern state, a Republican said the state party is “the sole and de facto keeper of all voter data. That has become one of our core missions, is just data.” Understanding as much, many states employ full-time data professionals. Gatekeeping policies vary. Some state parties provide data to all candidates running in party primaries; others set (usually low) viability thresholds. Some charge campaigns for access, while others provide it gratis. One state chair said that access is entirely within her discretion, though, she said, “I’ve been very generous in my policy.”

Private competitors, in the form of both interest groups and for-profit companies, are moving in on this turf, with potentially significant implications if data collection or access becomes fragmented. To judge by our interviews, Democrats see data fragmentation as a problem still on the horizon, because the party’s data capability remains well ahead of its outside competitors’. On the Republican side, however, state party leaders—insisting on confidentiality—spoke with concern about the rise of private players, notably the Koch network’s private data arm, i360 (whose website describes the organization as “the leading data and technology resource for the free market political advocacy community”). As of now, such outside groups and companies are generally sharing their data with the party, but “I’m not convinced that they’re always our friend,” one state party leader told us. State parties tend to view their data as a political public good. “We give away our system for free, and not just to nominees,” one Republican state director said. “If you’re a candidate for office, we provide you with the data for your district and we provide it

¹¹ See, e.g., Corasaniti and Flegenheimer, *op. cit.*

equally for all candidates. If i360 became the platform of choice, then maybe one candidate can afford to buy i360 data and another can't." A southern Republican complained that, despite data-sharing arrangements with the Koch network, he had seen no data come in. "If we were all working off the same data we'd be a lot stronger," he said.¹²

A third comparative advantage is more defensible from private competition—and surprisingly important: the United States Postal Service. The sample ballots and big glossy postcards we all receive during campaign season remain an electioneering staple. Under federal law, parties (national and state) qualify to send mail at the

non-profit rate, a significant discount. As a result, the state parties dominate the direct mail "lane." Even in today's age of digital communications, this mundane function turns out to matter. We heard many comments like these: "That is gold for state parties." "One of the greatest advantages you have over outside groups or campaigns." "It's a huge, huge asset to us." Describing how he capitalizes on this advantage, one mountain-state executive director explained that he can pull together a group of ten targeted races and do a "massive buy from mail vendors, with five or six staggered pieces," covering ten districts at lower cost and with higher efficiency than any campaign could manage. "That's very much a way the state party stays relevant," he said.

The lane strategy does not imply that state parties are becoming narrow specialists and that mail, mobilization, and data are all that they do. Far from it. The parties continue to perform multiple other functions: recruiting, training, social-media messaging, research, and so on. Rather, the lane strategy is a hybrid of specialization and conglomeration. By carving out niches in what a state director called "the mechanics of politics," the parties aim to preserve market share without giving up the parties' traditional integrative function.

Whether this hybrid business model is sustainable is a question we can't answer. We can say, though, that offering multiple political services to all comers, while also maintaining an edge in several competitive specialties, is likely to be a challenge.

REACHABLE FRUIT: RECOMMENDATIONS

Fortunately, much can be done to strengthen the state parties, and much of which is not very hard. State parties are among the most accessible of political reform targets, and they are eager for help. Some suggestions follow, but first a few words about the premises on which our recommendations are based.

Premise one is, as we have argued, that state parties provide political public goods; yet, like many providers of positive externalities, they cannot readily capture all the value they create and so tend to be under-resourced relative to candidates and outside groups.

¹² In 2015, tension between the Republican National Committee and the Koch organization flared into public view when an RNC official was quoted as saying, "It's very dangerous and wrong to allow a group of very strong, well-financed individuals who have no accountability to anyone to have control over who gets access to the data when, why, and how." A subsequent data-sharing agreement patched up the dispute. See Jon Ward, "The Koch Brothers and the Republican Party Go to War—with Each Other," *Yahoo! Politics*, June 11, 2015; Matea Gold, "Koch Network Strikes New Deal to Share Voter Data with RNC-Aligned Firm," *Washington Post*, July 29, 2015.

Under federal law, parties (national and state) qualify to send mail at the non-profit rate, a significant discount. As a result, the state parties dominate the direct mail "lane."

Premise two, also as argued already, is that state parties, although not on the critically endangered list, are falling behind political competitors that face significantly fewer political and legal disadvantages. The playing field is not level, and the tilt is growing.

...[L]imits on contributions to state parties should be greatly raised or eliminated altogether.

Premise three may be more controversial: Given the lack of political consensus about campaign-finance law, the Supreme Court's rejection of limits on independent political advocacy, and the realities of political hydraulics (money will always flow into the system somehow), we believe that super PACs, "dark money" nonprofits, and other powerful outside groups are here to stay and will

remain less regulated than parties or candidates. If so, there is no longer any point handcuffing the state parties. Tightly restricting their fundraising and activities just pushes money into darker channels.

Accordingly, we suggest change in four overlapping departments: contribution limits, coordination rules, tax treatment, and other regulatory reforms.¹³

First, federal and (where they exist) state limits on contributions to state parties should be greatly raised or eliminated altogether. This change—what La Raja and Schaffner have called building canals, not dams—would divert some significant flow of money away from outside groups and into state parties. The result would not be to eliminate outside groups, by any stretch. But, as one national party official put it, "I think a lot more money would move back into the party system," and something closer to a natural equilibrium between state parties and their outside competitors could be restored.

There is, we acknowledge, a lot of daylight between raising limits on contributions to state parties and eliminating limits altogether. One can make a case for either approach. Eliminating limits would give state parties something close to real parity with their competitors. It would also turn them into collectors and clearinghouses for campaign money, moving them to the center of the political system and bringing more "dark money" toward accountability and transparency. On the other hand, a no-limits system might make the state parties reliant on six-figure checks, creating an appearance of corruption and marginalizing small-dollar donors. Among state party officials we talked to, all favored raising today's pointlessly punitive contribution limits, but they split on the advisability of eliminating limits altogether. We lean toward eliminating limits but believe either approach would greatly improve upon the status quo.

To those who see residual purpose in tight contribution limits, we might reply: Not for long. Struggling to cope with outside groups, state parties have hit on the strategy of establishing their own super PACs to receive and spend large quantities of unregulated money. Colorado Republicans are currently in court defending such an organization, the Colorado Republican Independent Expenditure Committee. State party leaders across the country, and from both parties, are closely watching the outcome.

Asked whether state-party-associated super PACs are the wave of the future, party officials we talked to said, in effect: Maybe, but if so, it's a pity. "It's unfortunate that that's what we're reduced to," one Republican official told us. "It's somewhere else for activity to take place other than in the party committee itself. It's only enhancing the

¹³ For purposes of the present paper, we confine our recommendations to state parties. Similar arguments could be applied to national parties, but those raise questions outside our present remit.

problem of a divide between where the money is going and the volunteers and the candidates." Echoing that view, a Democratic official said, "That's just a workaround. It just makes them [state parties] more about being vessels and less about being effective organizations. We need a bigger fix than that."

Second, for similar reasons, today's restrictions on state parties' freedom to coordinate their own activities with those of candidates and outside groups make no sense and should be removed. Coordinating the efforts of candidates, activists, and party strategists, across multiple ballot lines, is exactly what state parties should be doing. Depriving them of this integrative role reduces the influence, their fundraising capacity, and their ability to broker political truces and compromises.

The standard objection to raising contribution limits and ending coordination bans is that Donor Smith could then write a big-dollar check to a state party with the understanding that her money would be spent on the campaign of Senator Jones, thereby circumventing limits on contributions to candidates and turning the parties into passive conduits for earmarked funds. In our view, putting state parties in this middleman or clearinghouse role, thereby incentivizing big-dollar donors to deal with them, is not a bug but a feature. It would enhance the party committees' centrality to the political process, increase their leverage with candidates and donors, and provide a relatively accountable place for money to go—all of which add stability and transparency to our political system. By contrast, pushing that money into off-books, narrowly parochial, and frequently extreme private groups provides no such public benefits.¹⁴

If taxpayers can deduct contributions to universities, foundations, and interest groups, why not allow a deduction for contributions to state parties?

A third suggestion ventures into tax treatment, which is uncharted but intriguing territory. If state parties are already treated like nonprofits for mailing purposes, why not for tax purposes as well? If taxpayers can deduct contributions to universities, foundations, and interest groups, why not allow a deduction for contributions to state parties? Supporting the state parties, after all, provides at least as much social benefit as, say, giving to Yale (which, although an admirable institution, is not an underfunded public good).

To our knowledge, deductibility of state-party donations is a new idea; we foresee objections. Like other tax deductions, this one is regressive, favoring those in higher tax brackets. It would also breach the traditional prohibition on electioneering and other overt political activity by tax-favored nonprofits, leading to possible slippery-slope effects if other political organizations demand deductibility.

Still, the potential upside makes the idea worth considering and debating. Tax-deductibility is easy to administer and well understood. Precisely because it is worth more to those in higher tax brackets, it would help nudge big-dollar donors away from unaccountable outside groups. And we know from the nonprofit mail rate how far a modest pecuniary advantage can go in preserving the viability of state parties.

¹⁴ Allowing more money to flow through state parties may also attract donors who have an interest in party building rather than solely in supporting particular candidates. They would give to party knowing that there is a party "tax" in which a portion of funds goes to party infrastructure and down-ballot races.

...[T]here is no shortage of regulatory adjustments that could improve the flow of oxygen to state parties without challenging existing campaign-finance paradigms at all.

Finally, we recommend regulatory changes. We concur with Ian Vandewalker and Daniel I. Weiner, who, in a report for the progressive-leaning Brennan Center for Justice, argue for rolling back the “federalization” (i.e., federal regulation) of state and local party activities: for example, by narrowing the definition of federal election activity that must be paid for with federally compliant funds. “Such targeted deregulation of state and local parties could help them to play a greater role in mobilizing

ordinary citizens, without significantly exacerbating corruption and misalignment concerns,” the authors conclude.¹⁵

Many other needlessly complex and restrictive rules could likewise be pruned or junked. In 2013, the Association of State Democratic Chairs proposed a list of regulatory changes that draws support from state parties on both sides: indexing state-party contribution limits for inflation, revoking bans on national party officials’ raising money for state parties, allowing quarterly rather than monthly reporting, and so forth.¹⁶ Even if one is unprepared to reconsider campaign-finance mainstays like contribution limits and coordination bans, there is no shortage of regulatory adjustments that could improve the flow of oxygen to state parties without challenging existing campaign-finance paradigms at all.

No reform is easy or uncontroversial, and, as we re-emphasize, none is a cure-all. One experienced Democratic Party observer, while sympathetic to strengthening parties in general and state parties in particular, argued that their relative weakness is fundamentally a political phenomenon and that policies disadvantaging them are more an effect than a cause of their decline. “At the end of the day,” he said, “parties are strong or weak for reasons unrelated to legislative or policy efforts to strengthen or weaken them.” His caveat has merit, but it argues for having realistic expectations of policy change, not for preserving the skewed status quo. Making the policy environment more party-friendly should produce more of the public goods that we think parties provide. Even if we are proven wrong, and if empowering state parties is hopeless, the changes we suggest would, at a minimum, provide more transparency and accountability than the status quo.

At a time when state parties face so many challenges in the political marketplace, disadvantaging them in the policy realm makes no sense. In the search for sensible, bipartisan, and doable political reforms, state parties offer low-hanging fruit—especially compared with notional constitutional amendments and elaborate public-financing schemes. Strengthening state parties, or at the very least relieving them of some of the pointless burdens with which they are now saddled, is a realistic path toward a better balanced, more effective, and more accountable political system.

¹⁵ Ian Vandewalker and Daniel I. Weiner, *Stronger Parties, Stronger Democracy: Rethinking Reform* (Brennan Center for Justice at New York University School of Law, 2015).

¹⁶ Association of State Democratic Chairs, “Resolution in Support of Reasonable Campaign Finance Regulation of State and Local Party Committees” (2014). Available at <http://www.azdem.org/sites/azdems/files/PDFs/StateCommittee/Resolutions/2014-04%20In%20Support%20of%20Reasonable%20Campaign%20FinanceRegulation.pdf>. See also: Prepared joint testimony of Neil Reiff and Donald McGahn before the Senate Committee on Rules and Administration, April 30, 2014, “Dollars and Sense: How Undisclosed Money and Post-McCutcheon Campaign Finance Will Affect the 2014 Election and Beyond.” Available at http://www.rules.senate.gov/public/?a=Files.Serve&File_id=2d880938-1bb3-4375-8e0d-9b133ce6b95d

APPENDIX. 2015 SURVEY RESPONSES

Note: Responses are given as percentages unless otherwise indicated

INFRASTRUCTURE & STAFF						
	N	No	Yes			
Does your state party organization have a permanent headquarters?	56	4	96			
Dem	34	6	94			
Rep	22	0	100			
Does your organization employ an executive director?	56	13	87			
Dem	34	12	88			
Rep	22	14	86			
Does your organization employ a communications or public relations director?	56	27	73			
Dem	34	15	85			
Rep	22	45	55			
	N	Unpaid Volunteer	Receives regular stipend	Receives full-time salary		
Which best describes the compensation of your organization's Party Chair?	56	73	7	20		
Dem	34	71	9	21		
Rep	22	77	5	18		
	N	Average staff #				
Approximately how many staff members does your organization employ during a non-presidential election year?	55	6.8				
Dem	33	7.8				
Rep	22	5.1				
How many staff and/or consultants do you have who assist with campaign compliance and reporting?	55	2				
Dem	33	2.2				
Rep	22	1.8				

ACTIVITIES AND SERVICES	N	Never	Rarely	Some- times	Often
Please estimate how often officials or staff employed at your organization do the following . . . Conduct opposition research	47	2	6	57	34
Dem	28	0	7	54	39
Rep	19	5	5	63	26
Please estimate how often officials or staff employed at your organization do the following . . . Conduct public opinion polls	47	17	47	28	9
Dem	28	18	43	29	11
Rep	19	16	53	26	5
Please estimate how often officials or staff employed at your organization do the following . . . Organize campaign events	46	0	4	30	65
Dem	28	0	7	25	68
Rep	18	0	0	39	61
Please estimate how often officials or staff employed at your organization do the following . . . Train campaign professionals who work for individual candidates	47	6	6	26	62
Dem	28	7	0	25	68
Rep	19	5	16	26	53
Please estimate how often officials or staff employed at your organization do the following . . . Conduct voter registration drives	47	9	19	45	28
Rep Rep	28	11	21	39	29
Rep	19	5	16	53	26
Please estimate how often officials or staff employed at your organization do the following . . . Participate in Get Out The Vote efforts	46	0	0	9	91
Dem	27	0	0	7	93
Rep	19	0	0	11	89
Please estimate how often officials or staff employed at your organization do the following . . . Advertise on television or radio	47	13	36	32	19
Dem	28	18	32	36	14
Rep	19	5	42	26	28

Please estimate how often officials or staff employed at your organization do the following . . . Send mass direct mailers	47	0	13	17	70
Dem	28	0	21	18	61
Rep	19	0	0	16	84
Please estimate how often officials or staff employed at your organization do the following . . . Disseminate messages online, such as through email or social media	47	0	0	11	89
Dem	28	0	0	11	89
Rep	19	0	0	11	89

RECRUITMENT AND NOMINATIONS					
	N	Never	Rarely	Some- times	Often
How often does your organization recruit candidates for the following offices? Local or county	49	2	29	29	41
Dem	29	3	28	28	41
Rep	20	0	30	30	40
How often does your organization recruit candidates for the following offices? State legislature	49	0	4	29	67
Dem	29	0	7	21	72
Rep	20	0	0	40	60
How often does your organization recruit candidates for the following offices? Governor	49	14	18	22	45
Dem	29	7	10	21	67
Rep	20	25	30	25	20
How often does your organization recruit candidates for the following offices? Congress	49	12	22	24	41
Dem	29	3	17	24	55
Rep	20	25	30	25	20
How often does your organization support favored candidates in competitive primary elections?	54	57	26	11	6
Dem	32	47	34	13	6
Rep	22	73	14	9	5

	N	Somewhat more conservative	Typical party vote	Somewhat more liberal		
In a hypothetical primary election for governor, which of the following candidates would you prefer to see win your party's nomination?	49	20	69	10		
Dem	28	25	61	14		
Rep	21	14	81	5		

POLITICAL CONTRIBUTIONS						
	N	Never	Rarely	Some- times	Often	
How often does your organization contribute to, or spend independently to support, candidates in the following races? Local and county	49	16	43	31	10	
Dem	28	7	46	32	14	
Rep	21	29	38	29	5	
How often does your organization contribute to, or spend independently to support, candidates in the following races? State legislature	49	6	6	29	59	
Dem	28	4	7	32	57	
Rep	21	10	5	24	62	
How often does your organization contribute to, or spend independently to support, candidates in the following races? Governor	49	4	12	20	63	
Dem	28	4	11	25	61	
Rep	21	5	14	14	67	
How often does your organization contribute to, or spend independently to support, candidates in the following races? Congress	49	6	16	35	43	
Dem	28	7	14	32	46	
Rep	21	5	19	38	38	

COORDINATION WITH OTHER COMMITTEES						
	N	Never	Rarely	Some- times	Often	
How often does your organization coordinate with the following groups on fundraising, campaigns, events or other efforts? The national party	50	4	14	42	40	
Dem	28	7	14	36	43	
Rep	22	0	14	50	36	

How often does your organization coordinate with the following groups on fundraising, campaigns, events or other efforts? County party organizations	50	0	20	30	50
Dem	28	0	18	36	45
Rep	22	0	23	23	55
How often does your organization coordinate with the following groups on fundraising, campaigns, events or other efforts? Independent outside groups	49	37	37	16	10
Dem	27	33	33	15	19
Rep	22	41	41	18	0
How often does your organization share mailing lists, email lists or other voter databases with candidates, other party committees or interest groups?	54	4	28	41	28
Dem	32	0	28	34	38
Rep	22	9	27	50	14
How often does your party caucus in the state legislature help to run candidate campaigns?	55	7	7	27	58
Dem	33	6	6	21	67
Rep	22	9	9	36	45

IMPACT OF CAMPAIGN FINANCE LAWS	N	Never	Rarely	Some- times	Often
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How often do federal campaign finance laws hinder your abilities to support state and local candidates or conduct party activities?	54	9	31	33	26
Dem	32	6	28	34	31
Rep	22	14	36	32	18

How often do your state's campaign finance laws hinder your abilities to support state and local candidates or conduct party activities?	55	27	36	16	24
Dem	33	24	33	18	24
Rep	22	23	41	14	23

INDEPENDENT EXPENDITURES	N	Never	Rarely	Some- times	Often
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In your state, how often is independent spending by outside groups an important factor in the following races? Local and county	50	30	42	26	2
Dem	29	31	34	34	0
Rep	21	29	52	14	5

In your state, how often is independent spending by outside groups an important factor in the following races? State legislature	50	2	22	46	30
Dem	29	0	14	52	34
Rep	21	5	33	38	24
In your state, how often is independent spending by outside groups an important factor in the following races? Governor	50	2	16	36	46
Dem	29	4	14	38	45
Rep	21	0	19	33	48
In your state, how often is independent spending by outside groups an important factor in the following races? Congress	50	2	10	36	52
Dem	29	3	7	28	62
Rep	21	0	14	48	38

	N	Almost none	Less than half	Almost half	More than half
During the most recent statewide election campaign, approximately what portion of all paid political advertising was sponsored by independent outside groups?	51	16	45	35	4
Dem	29	24	31	41	3
Rep	22	5	64	27	5

	N	Very helpful	Some-what helpful	Neither helpful nor harmful	Some-what harmful	Very harmful
Do you believe independent spending by outside groups intended to aid your party's candidates tends to be helpful or harmful?	52	10	67	12	10	2
Dem	31	10	65	13	10	3
Rep	21	10	71	10	10	0

GOVERNANCE STUDIES

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January 30, 2017

Mr. Neven F. Stipanovic
Acting Assistant General Counsel
Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, D.C. 20463

RE: REG 2016-03: Political Party Rules

Dear Mr. Stipanovic:

On behalf of our client, Ken Martin, in his capacity as Chair of the Minnesota Democratic Farmer-Labor Party, we write to comment on REG 2016-03, the Federal Election Commission's Rulemaking Petition for Political Party Rules. We would like to first thank the Commission for submitting our June 14, 2016 Petition for Rulemaking to the Federal Register, and for providing this opportunity to comment.

In the wake of the 2016 presidential race, we write to you with increased urgency to take advantage of this chance to create rules that will strengthen political parties. State parties have been struggling increasingly over the years, with both the media and public showing criticism and concern for the number of candidates at odds with the political parties they represent; while *state parties have had their hands strapped due to burdensome federal regulations that limit their actions even in state and local elections, outside groups have been able to pour money into elections at all levels of government.*¹ One immediate and alarming consequence of this

¹ This trend has been on the rise since 2010, notably the same year that the Commission revised its definition of federal election so broadly that it essentially reaches any state and local party activity, and the same year the Supreme Court struck down limits on independent expenditures by corporations in *Citizens United v. Federal Election Commission*. See Definition of Federal Election Activity, 75 Fed Reg., 55257 (Sep. 10, 2010); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 359 (2010). For example, from 2006 to 2012, party committee independent expenditures have remained relatively stagnant, at nearly a quarter of a billion dollars per cycle. While in 2006 and 2008 parties spent *several times more than* outside groups on independent expenditures, outside group spending raised to \$195 million in 2010, and by 2012, outside groups' spending on congressional elections was twice as high as party expenditures, and in 2014, *outside groups spent nearly four times what party committees spent in competitive Senate races*. Ian Vandewalker and Daniel I. Weiner, *Stronger Parties: Reforming America's Engines*

being that politicians are assuming office who may have little connection to their constituents through the traditional state party structure, and instead may be more beholden to outside groups whose interests may be narrow, self-serving, or even against candidates' parties' interests. For the sake of brevity, we hereby incorporate by reference the comments and discussion of our initial petition filed on June 14, 2016.

Included as an exhibit to our June 14, 2016 Petition for Rulemaking was Commissioner Lee E. Goodman's Memorandum on Regulatory Relief for Political Parties and attached Resolution of the Federal Election Commission Commencing Work on a Notice of Proposed Rulemaking Focused on Strengthening Political Parties, which contained proposed resolutions to state party challenges.² Since Commissioner Goodman has provided clear resolutions by drawing upon his expertise and position as a Commissioner, we would like to further describe and comment on some of the challenges he references drawn from Mr. Martin's and our own expertise and positions as the Chair and Counsel, collectively, of the Minnesota Democratic Farmer Labor Party ("DFL").

1. Restrictions on Party Coordinated Communications Should be Alleviated

Current regulations on party coordinated communications with candidates are incredibly restrictive and confusing for political parties and candidates. As Chair to the DFL, Mr. Martin can attest that like parties across the country, federal law has prevented the DFL from engaging in certain communications due to burdensome administrative and compliance requirements; one of the many effects has been the loss of opportunities to develop stronger relationships between the party and candidates.

For example, in that regard we support Commissioner Goodman's proposals to both narrow the scope of party coordinated communications to only include those communications that expressly advocate the election or defeat of federal candidates. In addition, we support Commissioner Goodman's proposals to allow more substantive interaction with candidates to ensure that candidates and their parties can more efficiently discuss candidate positions. To be sure, the Supreme Court has ruled that independent party communications may not be limited³

of Participation BRENNAN CENTER FOR JUSTICE 6-7 (2015), [https://www.brennancenter.org/sites/default/files/publications/Stronger Parties Stronger Democracy.pdf](https://www.brennancenter.org/sites/default/files/publications/Stronger%20Parties%20Stronger%20Democracy.pdf) (last accessed January 25, 2017).

² Memorandum from Commissioner Lee E. Goodman on Regulatory Relief for Political Parties (Oct. 20, 2015); Resolution of the Federal Election Commission Commencing Work on a Notice of Proposed Rulemaking Focused on Strengthening Political Parties, Nov. 15, 2015, http://www.fec.gov/agenda/2015/documents/mtgdoc_15-54-a-1.pdf (last accessed January 25, 2017).

³ Colorado Republican Fed. Campaign Comm. v. Fed. Election Comm'n, 518 U.S. 604, (1996).

but coordinated party committees can.⁴ However, allowing the party to utilize private or public information in their possession to advocate for its candidates will not increase the likelihood of corruption in the political system and will allow parties to not have to duplicate research it may already have on hand in order to properly function.

In addition, we support Commissioner Goodman's proposal to codify and clarify that non-public communications, including grassroots campaign materials and canvassing are not covered by the Commission's rules. Any uncertainty on this issue would have a chilling effect on party committees. Additionally, as Commissioner Goodman and two of his colleagues recently reiterated, it is a longstanding Commission policy that such grassroots efforts remain outside of the Commission's rules.⁵

2. Rules Should be Simplified and Modernized for Volunteer Exempt Mail Activities⁶

We believe that the Commission must recognize that its previous approaches to regulating volunteer activities, especially with respect to volunteer exempt mail, does not comport with the modern realities of political campaigning.⁷ In 2010, the Commission attempted to create an Interim Enforcement Policy to provide parties with guidance as to how much volunteer activity is necessary to be in compliance with the statute's requirements that unlimited

⁴ Colorado Republican Fed. Campaign Comm. v. Fed. Election Comm'n, 518 U.S. 604 (1996).

⁵ Advisory Opinion 2016-21 (Great America PAC), Concurring Statement of Vice Chair Caroline C. Hunter and Commissioners Lee E. Goodman and Matthew S. Petersen.

⁶ Committee on Campaign Finance Reform, *Recommendations & Resolution in Support of Reasonable Campaign Finance Regulation of State and Local Party Committees*, ASSOCIATION OF STATE DEMOCRATIC CHAIRS.

⁷ On March 11, the Commission opened discussion on four drafts of an interim enforcement policy on the "Volunteer Materials" Exemption as related to campaign mailings. Federal Election Commission, Weekly Digest, Issue 2010-10, March 12, 2010, available at <http://fec.gov/press/press2010/20100312Digest.shtml>. *Each of the four drafts acknowledged the need to provide the public with clear guidance and notice on how the Commission interpreted the Act's volunteer materials exemption with respect to volunteer mail.* See Federal Election Commission Proposed Interim Enforcement Policy, Draft A at 3 (March 10, 2010); Draft B at 3; Draft C at 3; Draft D at 3. See also Matters Under Review 5598 (Swallow for Congress), 5824 and 5825 (Pennsylvania Democratic State Committee), 5837 (Missouri Democratic State Committee), 4851 (Michigan Republican State Committee). 4754 (Republican Party of New Mexico), 4538 (Alabama Republican Party), 4471 (Montana State Democratic Committee), 3248 (New York Democratic Party), 3218 (Blackwell for Congress Committee), 2994 (Wyoming State Democratic Party), 2559 (Oregon Republican Party), 2337 (Texas Republican Congressional Committee), 2288 (Shimzu for Congress), available at <http://eqs.fec.gov/eqs/searcheqs> (search by MUR number) (last accessed January 26, 2017).

volunteer exempt mail be undertaken with the assistance of volunteers.⁸ However, after seeking public comment on draft policies on the volunteer materials exemption, the Commission did not issue any guidance.⁹ We implore the Commission to provide clear, commonsense guidance that takes modern campaigning and technology into account so that party committees can realistically utilize these exemptions with respect to volunteer mailings.

We additionally encourage the Commission to clarify 11 C.F.R. § 100.87(c) as Commissioner Goodman has proposed in order to ensure that authorized committees may transfer funds to state parties for volunteer activities without such transfers being deemed to be “earmarked” by the Commission.¹⁰ In MUR 6691 (Lampson for Congress), the Commission’s General Counsel (“OGC”) interpreted the regulation to mean that a candidate’s transfer of funds to a party committee engaged in volunteer mail activity benefitting that candidate met the test for earmarking found in the Commission’s regulations.¹¹ Consequently, the OGC recommended that the Commission disallow the use of the volunteer materials exemption under the anti-earmarking provisions found in section 52 U.S.C. §§ 30101(8)(B)(ix)(3) & (9)(B)(viii)(3) & 11 C.F.R. §§ 100.87(c) & 100.147(c). This is a bizarre result and surely the statute and regulation were not written for this purpose, but rather to prevent *donor earmarking*. To be sure, payments made by candidates to a party committee are legally defined as “transfers” and not “contributions.” 52 U.S.C. § 30114(a)(4). Therefore, such transfers are not, by the plain language of the statute and Commission regulations, covered by the provision. Thus, we believe that incorporating Commissioner Goodman’s proposed language to clarify that funds transferred by an authorized committee are not covered by this provision would provide the necessary clarity to prevent such a peculiar interpretation of this rule in the future.

3. The Definition of “Federal Election Activity” Should be Redefined so State and Local Activities Are Not Regulated by Federal Law

State and local parties have been severely limited in their ability to engage in state and local activities due to the overly-broad definition of “federal election activity.” The Commission

⁸ 52 U.S.C. §§ 30101(8)(B)(ix), (9)(B)(viii); 11 CFR §§ 100.87, 100.147.

⁹ After seeking public comment, the Commission placed the draft Interim Enforcement Policy on the April 29 agenda; however, it was not discussed. Open Meeting Agenda, Thursday April 29, 2010, Audio Recording at 0:50 (stating the Interim Enforcement Policy would be held over for the next open meeting), available at <http://fec.gov/agenda/2010/agenda20100429.shtml> (last accessed January 26, 2017); see Federal Election Commission, Open Meeting Agenda, Thursday, May 27, 2010, available at <http://fec.gov/agenda/2010/agenda20100527.shtml> (the Interim Enforcement Policy did not appear on the next open meeting agenda).

¹⁰ Memorandum from Commissioner Lee E. Goodman on Regulatory Relief for Political Parties (Oct. 20, 2015); Resolution of the Federal Election Commission Commencing Work on a Notice of Proposed Rulemaking Focused on Strengthening Political Parties, Nov. 15, 2015 at 2.

¹¹ First General Counsel's Report, MUR 6691 (Lampson for Congress) at 11.

should reevaluate its revised rules promulgated in 2010 to determine whether these rules have unnecessarily covered too many types of communications and have otherwise stifled party activities at the state and local level. Although we acknowledge that the Commission promulgated these amendments in response to litigation that was brought against it,¹² the Commission should re-evaluate whether its regulations went too far and whether a re-examination of these definitions are in order in light of the deleterious effects it has had upon political party committee activity at the state and local level. Specifically, the Commission should determine whether its determination that a get-out-the-vote activity is not covered by the regulations only if an exhortation is not “incidental” to a communication and whether there is an alternative way to regulate state and local activities. To be sure, state party committees have struggled to determine when such communications are “incidental” and should not be required to ask for an advisory opinion for each communication it wishes to disseminate to determine whether it meet a standard that has yet to be defined or clarified by the Commission.¹³

4. The Commission Must Correct its Incorrect Application of the Regulation Relating to Party Payroll

The sweeping definition of “federal election activity” also impacts state party staffing decisions. Since federal law requires that employees who work more than twenty-five percent of their time in connection with federal elections and federal election activities be paid for with *federal funds*,¹⁴ state party committees are required to pay for most, if not all of their staff

¹² [Shays v. Federal Election Commission, 528 F.3d 914 \(DC Cir. 2008\)](#) (“Shays III”).

¹³ To the extent that the Commission may decide to keep the “incidental” test, we support Commissioner Goodman’s proposal to add that the provision of additional voting information that is “incidental” to a communication, activity, or event would not constitute Federal Election Activity. Commissioner Goodman’s proposed clarification of federal election activity appears to derive from proposals and comments related to Advisory Opinion Request 2014-16 (AOR 2014-16), where the Connecticut Democratic State Central Committee requested clarification on whether certain mailings were considered federal election activity. Commenters argued and some draft opinions concluded that certain communications that included information regarding the location of polling places and the time polling places were open were not federal election activity since they were “incidental” to the entire communication.

We believe that this proposed conclusion in AOR 2014-16 was not supported by existing regulations and must be done through an amendment to the regulations as opposed to the Advisory Opinion process. Consequently, if there is a consensus to expand the scope of the “incidental” exemption by amending the regulation, we support such a change. See Memorandum from Commissioner Lee E. Goodman on Regulatory Relief for Political Parties (Oct. 20, 2015); Resolution of the Federal Election Commission Commencing Work on a Notice of Proposed Rulemaking Focused on Strengthening Political Parties, Nov. 15, 2015 at 3 (proposing amendments to 11 C.F.R §§ 100.24(a)(2)(ii), 100.24(a)(3)(ii), and proposing adding in a new subsection (C)).

¹⁴ 11 C.F.R. § 300.33(d)(3); see 11 C.F.R. § 100.24 (definition of “Federal election activity”).

exclusively with federal funds, even if that employee does not spend any time on federal elections. For example, if an employee spends more than twenty-five percent of their time engaging in voter identification activity for a state or local candidate, they must be paid exclusively with federal funds. This is facially contrary to the statute which only requires such an allocation if an employee spends more than twenty-five percent of their time in connection with federal elections.¹⁵ Despite this divergence, the Commission did not provide any principled explanation as to why it was required to, or expanded the regulation past the statutory requirement when it promulgated its regulations in 2002.¹⁶

Predictably, state and local candidates are hesitant to work with state party committees on such projects when payment is incompatible with the state or local campaign financing laws that should regulate such activities. Although the Commission may be limited on what it could do to correct systemic and structural problems created by statute, it can at least follow the statute when promulgating its own regulations. This is one clear case of that. Here, the Commission has failed to follow the statute and this failure has had profound effects on party committees' ability to fund and staff state and local grassroots efforts. The Commission must amend 11 C.F.R. § 100.24 to properly track the language of the statute so that only activities that are *in connection with a federal election* are counted towards the twenty-five percent threshold required to pay for an employee exclusively with federal funds.

Conclusion

To briefly summarize, the Commission is well positioned to take advantage of this opportunity to strengthen political parties and our country's democratic process. Current federal law creates complicated and overly burdensome requirements for state parties to adhere to, while outside groups face fewer restrictions and are able to funnel money into politics in favor of their narrowed interests. We hope the Commission will revisit the proposals that Commissioner Goodman offered in his October 2015 memorandum, and make the necessary changes to help our political system and strengthen our political parties.

Sincerely,



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¹⁵ 52 U.S.C. §§ 30101(20)(A)(iv); 30125(b)(1).

¹⁶ See Definition of Federal Election Activity, 75 Fed. Reg., 55257 (Sep. 10, 2010).