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The effects of campaign finance spending bans on electoral outcomes: Evidence from the states about the potential impact of *Citizens United v. FEC*

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ABSTRACT

This paper seeks to understand the effect of campaign finance laws on electoral outcomes. Spurred by the recent Supreme Court decision, *Citizens United v. Federal Election Commission (2010)*, which eliminated bans on corporate and union political spending, the study focuses on whether such bans generate electoral outcomes that are notably different from an electoral system that lacks such bans. We look to two key electoral dynamics that such bans might influence: the partisan balance of power and the success of incumbents. Using historical data on regulations in 49 American states between 1968 and 2009 we test alternative models for evaluating the impact of corporate spending bans put in place during this period. The results indicate that spending bans appear to have limited effects on election outcomes.

Political reformers place a great deal of hope in the expectation that laws preventing corporations from funneling large sums of money into politics will curtail their influence in government. A recent landmark decision, *Citizens United v. Federal Elections Commission (FEC)* (2010), which allows both corporations and unions to spend unlimited funds on electioneering, raises the specter that such groups will now have more leverage than ever to shape the nation's politics and policy.[1] The reaction to this ruling was swift and chiefly alarmed about the prospect of amplified political influence by corporations. The editors of the *New York Times* echoed hundreds of news editorials throughout the nation when they called *Citizens United* a "radical decision, which strikes at the heart of democracy" (New York Times, 2010). The chief concern of critics is that absent the restrictions on campaign spending, corporate wealth will distort American politics (Dworkin, 2010; Hasen, 2010).

While concerns over the potential effects of nullifying spending bans are understandable, such concerns also seem to be based on the assumption that campaign finance restrictions are relatively effective at limiting influence. Yet, we possess remarkably limited knowledge about the efficacy of laws that regulate corporate or union expenditures. The vast majority of research on campaign finance focuses on the effect of *candidate* spending on congressional election outcomes (e.g., Jacobson, 1978, 1980, 1990; Krasno and Green, 1988). Additionally, scholars tend to focus on the consequences of *contribution* limits to U.S. candidates, but no studies to our knowledge have observed how *spending* restrictions might affect macro political outcomes.

Constraints on political spending by selected groups may have any number of notable outcomes for the conduct of elections and the making of public policy. While all of these potential outcomes merit attention, in this paper, we take the first step of examining whether and to what extent laws aimed at restricting corporate spending affect

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[1] See *Citizens United v. Federal Elections Commission* 558 U.S. 310 (2010). The Court ruled that domestic corporations and labor unions may spend unlimited sums to influence elections, except for donating money to candidates and parties.

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electoral outcomes.[2] In other words, we ask a question of fundamental importance for the democratic system: do bans on unlimited corporate spending affect which candidates receive more votes and which party wins more elections? To answer this question, our analysis exploits the fact that prior to the 2010 Court decision, states were given the authority to regulate whether corporations could engage in unlimited campaign spending to influence elections for state offices. Immediately prior to *Citizens United*, 28 states permitted corporations to spend money independently in state elections. Even more important is that many of the states that did have corporate and/or spending bans in place prior to the 2010 decision had enacted those bans during a period for which we have political data. Thus, state-level variation makes it possible to compare outcomes before and after such prohibitions were enacted.

Our approach allows us to contribute to the discipline's broader understanding of the efficacy of campaign finance laws by focusing on rules that constrain election spending by interest groups. Moreover, it addresses directly the likely effects of a highly controversial Supreme Court case, *Citizens United v. FEC*, which potentially affects national, state and local elections. Based on theoretical expectations about partisan preferences of corporations, we expected the presence (or absence) of bans to shape partisan control of legislatures and incumbent electoral advantages. However, we find that spending bans have little or no impact on these outcomes, confirming some previous findings about the marginal impact of campaign finance rules on various political outcomes (see, for example, Ansolabehere et al., 2003). The paper concludes with some insights for why political spending bans may not have shaped these particular outcomes in the American states, while pointing to reasons why interest groups may continue to spend money in pursuit of certain goals.

1. Background on campaign finance restrictions on corporations and labor unions

Efforts to restrain the ability of corporations to finance politics began at the turn of the 20th century as progressive reformers sought to curtail the influence of large corporate trusts. Congress passed the Tillman Act of 1907, which barred corporations from making contributions in connection with a federal election. Laws prohibiting labor union contributions came in 1943 under the Smith-Connally Act, which spurred labor unions to innovate by setting up political action committees (PACs) to collect individual contributions from members for political purposes. A few years later, the Taft-Hartley Act of 1947 enshrined the temporary wartime provisions of Smith-Connally and went further, by declaring that both corporations and labor unions could not *spend* funds from their general treasuries for federal electioneering.

The Watergate scandal involving, among other things, slush funds from corporations and wealthy interests for President Nixon's reelection campaign led to a series of amendments in 1974 to the Federal Election Campaign Act (FECA) of 1971. These new rules set strict limits on how much PACs and individuals could contribute to candidates and parties, and underscored existing prohibitions on corporate and union financing of federal elections. However, under many state laws the national party committees could raise corporate and union money – commonly called soft money – for party-building activity. Congress eventually banned party soft money under the Bipartisan Campaign Reform Act (BCRA) of 2002. This legislation spurred the creation of various political organizations, established under sections 527 and 501(c)4 of the federal tax law, which could accept corporate and union contributions. Under BCRA, these 527 and 501(c)4 organizations – financed by wealthy individuals, ideological groups, corporations and unions – were free to advocate for political issues so long as they did not explicitly call for the election or defeat of a federal candidate, or invoke the name of federal candidates in the weeks before an election.

The decision in *Citizens United v FEC* put an end to these restrictions on outside spending in elections, both at the federal and state level. In 2008, a non-profit corporation called Citizens United released a documentary criticizing Hillary Clinton, who was then running for president. When the organization advertised its documentary in broadcast outlets the FEC claimed it violated the electioneering provisions of the BCRA. The case made its way to the Supreme Court, in which a 5–4 majority said there was no practical way to distinguish between media corporations (which were exempt from BCRA) and other corporations. More to the point, it argued that corporations – and labor unions – were covered by the First Amendment. Henceforth, corporations and labor unions could spend freely to influence elections, so long as they did not coordinate their activity with candidates and political parties.

2. The effect of campaign finance restrictions on electoral outcomes

The contentious regulatory history over keeping corporate money and labor union out of politics makes this study especially relevant. Thus, we examine whether the presence or absence of prohibitions on political spending influences electoral outcomes. Robust debates continue to roil journals in the profession about whether campaign finance restrictions have an impact on political outcomes (see Mann, 2003, for a review). Empirical work has focused largely on the consequences of *candidate* spending on individual election outcomes, rather than the effect of spending activity by corporations or unions on aggregate political outcomes. This is a curious gap in the literature because even prior to the *Citizens United* decision, U.S. interest groups possessed strong protections on free speech, which enabled them to engage in a variety of activities to influence elections, including issue advocacy and voter mobilization. While much work has traced the strategies of

[2] While we initially sought to assess the impact of a ban on labor union spending, the limited variation of campaign finance laws regarding unions makes this effort exceedingly difficult. Only one state, New Hampshire, had a spending ban on unions but not on corporations. In contrast, 9 states had spending bans on corporations but none on unions. The consequence is that we cannot distinguish the independent effect of a spending ban on labor unions from contexts in which a spending ban exists for both labor unions and corporations.