”Rhetoric and Reality”: Testing the Harm of Campaign Spending

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Rebecca L. Brown and Andrew D. Martin

Abstract

This is an empirical piece prepared for a conference entitled Testing the Constitution, held at the University of Chicago Law School. Brown and Martin collaborated to design a survey experiment aimed at testing some of the factual claims made by the Supreme Court in Citizens United v. FEC. The paper shows that there is a demonstrable harm to the electorate’s faith in democracy, and argues that these findings supply a government interest, separate from prevention of corruption, in regulating campaign spending.
Introduction

“The appearance of influence or access . . . will not cause the electorate to lose faith in our democracy.” The object of this study is to test this claim, propounded by Justice Kennedy for the Supreme Court, regarding the effects of unregulated campaign spending. The Court was confident, in its important holding in Citizens United v. FEC, that those who may gain favoritism and influence over elected officials through their financial support are no different from any other person who may agree with the policies of a representative and welcome the outcomes that the representative supports. This is simply "democracy," premised on "responsiveness," and signals no harm that would supply a basis for government to interfere with a protected right. The Court's certainty that no harm looms, in the absence of outright corruption, calls all campaign finance regulation into question. Not only must any regulation be aimed at preventing corruption, under this

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2 Rebecca L. Brown is the Newton Professor of Constitutional Law at the USC Gould School of Law. Andrew D. Martin is Dean of the College of Literature, Science, and the Arts and Professor of Political Science at the University of Michigan. We are extremely grateful for the exceptional research assistance of K. Elizabeth Coggins (Colorado College), Christina Kinane (University of Michigan), and Alex Radisich (USC Gould School of Law), without whom we would have not been able to complete this project. Thanks also to Adam Lioz, Abby Wood and participants at the Empirical Legal Studies Conference, “Testing the Constitution,” at the University of Chicago Law School, for helpful suggestions. We would also like to acknowledge Steven S. Smith and Betsy Sinclair at Washington University in St. Louis who directs THE AMERICAN PANEL SURVEY, WASHINGTON UNIVERSITY IN ST. LOUIS, http://taps.wustl.edu (last visited Jan. 26, 2015) and provided support for this project.
3 Citizens United, 558 U.S. at 360.
view, but it must also be necessary to achieve that compelling interest. The Court’s certainty about the absence of social harm from campaign spending, therefore, reaches far beyond the recent holdings, and could have even more far-reaching consequences. This paper challenges the premise of this line of reasoning.

The opening quotation presents a seemingly simple assertion of a priori truth about the role of money in the electoral process. But it masks two critically important and unresolved issues: First, whether an actual loss of faith in democracy would provide a compelling enough government interest to justify restricting campaign spending; and, second, whether it is true that campaign spending does not affect the electorate's faith in democracy. The first is a question of constitutional law and theory; the second is a question of fact.

The Court’s confounding of the two questions has deleterious consequences for the integrity of the analysis of campaign finance laws under the Constitution. While the Court has been quite forceful in challenging the adequacy of most government interests offered to support regulation in this area, it has not been careful to clarify whether its skepticism about government justification rests on the factual assumption that no real harm exists. The Court certainly has sent strong signals that only quid pro quo corruption can justify government restrictions. But it has spoken in the context of rejecting specific alternative kinds of harm that it found insufficient. It has stopped short,

5 See McCutcheon v. FEC, 134 U.S. 1434, 1456-58 (2014) (striking down aggregate limits on individual campaign contributions in part because they were not sufficiently narrowly tailored to achieve the government's stated interest).

6 Citizens United, 558 U.S. at 360-61 (distinguishing influence, ingratiation, and access from corruption on the ground that they do not amount to a quid pro quo exchange of dollars for political favors (citing Buckley v. Valeo, 424 U.S. 1, 26-28, 30, 46-68 (1976))).

7 McCutcheon v. FEC, 134 S. Ct. 1434, 1450 (2014) (noting that the cases have “identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption”).

8 The Court has rejected several proffered government interests as insufficient to justify restrictions on spending, including: “level[ing] the playing field,”; “level[ing] electoral opportunities,”; and “equaliz[ing] the financial resources of candidates,” McCutcheon, 134 S. Ct. at 1450, as well as preventing the “distorting effects of immense aggregations.
however, of saying that, as a theoretical matter, there could never be another government interest that could justify restrictions.\textsuperscript{9} Instead, the Court has offered sanguine assurances of fact, such as the opening quotation, suggesting that corruption is the only potential public harm at issue.\textsuperscript{11} But those assertions rest on no factual evidence.\textsuperscript{12} Thus, the

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of wealth,” \textit{Citizens United}, 558 U.S. at 358, and “protecting dissenting shareholders from being compelled to fund corporate political speech,” \textit{id.} at 361.
\end{quote}

\textit{But see McCutcheon}, 134 S. Ct. at 1450, “[t]he Court has identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption.” In a subsequent case, the Court appeared uninterested in exploring such a theory. In \textit{Western Tradition P’ship, Inc. v Bullock}, 132 S. Ct. 2490 (2012), it summarily overturned a ruling by the Montana Supreme Court finding that a state ban on corporate expenditures was econstitutional under \textit{Citizens United} because it determined, based on an in-depth factual inquiry, that “[Montana’s] sparse population, dependence upon agriculture and extractive resource development, location as a transportation corridor, and low campaign costs” made the state “especially vulnerable to continued efforts of corporate control to the detriment of democracy and the republican form of government.” \textit{Western Tradition P’ship v. AG}, 271 P.3d 1, 11 (Mont. 2011). Based on this factual record, the Montana Supreme Court reasoned that the statute at issue was permissible under \textit{Citizens United} because of Montana’s “unique and compelling interests” in “preserving the integrity of its electoral process,” “encouraging the full participation of the Montana electorate,” and in preserving the independence and impartiality of its judiciary. \textit{Id.} at 11-12. Using only nine sentences, the Court’s majority ruled that Montana’s arguments “were already rejected in \textit{Citizens United}, or fail to meaningfully distinguish that case.” \textit{Bullock}, 132 S. Ct. at 2491. The majority did not explain why the factual record in \textit{Western Tradition} failed to establish the compelling interest in preventing corruption that the Court had found wanting in \textit{Citizens United}.

\textsuperscript{11} There are many others. For example, “independent expenditures do not lead to, or create the appearance of, quid pro quo corruption.” \textit{Citizens United}, 558 U.S. at 360. “Ingratiation and access . . . are not corruption.” \textit{Id.} “Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder’s official duties, does not give rise to such \textit{quid pro quo} corruption.” \textit{McCutcheon}, 134 S. Ct. at 1450 “Nor does the possibility that an individual who spends large sums may garner ‘influence over or access to’ elected officials or political parties.” \textit{Id.} at 1451[\textsuperscript{2L: quoting?}]. “[T]he people have the ultimate influence over elected officials.” \textit{Citizens United}, 558 U.S. at 360.

\textsuperscript{12} Indeed, the Court eschewed the opportunity to develop any such record. When Citizens United was pressing a facial challenge to the constitutionality of § 203 of the Bipartisan Campaign Reform Act, the Government advised the district court that it needed time to develop a factual record regarding the facial challenge to § 203. \textit{Id.} at 396-406 & nn.3-4, (Stevens, J., dissenting). When Citizens United dropped its facial challenge to § 203, the Government dropped its request for a factual record on the issue. \textit{Id.} at 399 n.4. Thus when the Court resolved the constitutionality of § 203--inconsistently with its own rules since the petition did not raise that issue--it denied the
Court has sketched out a landscape that places in the foreground the questions taken up in this paper: Could there be an interest, based on the electorate’s loss of faith in our democracy, to justify restrictions on spending? If so, can the requisite social harm be shown?

Our study seeks to provide a theoretical and empirical basis for answering those questions. It relies on hypothetical real-world situations presenting respondents with facts about specific campaigns and contributions, and then asks how these facts affect their beliefs about their representatives and their trust in the honest judgments of elected officials.

In Part I of this paper, we take up the theoretical question of why an empirical exploration might be relevant to the constitutional analysis of campaign finance restrictions. After all, skeptics might urge, it is immaterial whether unrestricted campaign spending will or will not cause the electorate to lose faith in our democracy, because even if it did, such a loss of faith does not qualify as the kind of *quid pro quo* corruption that the Supreme Court has signaled may be the only relevant government interest available to justify restrictions on campaign finance.\(^{13}\) Part I responds to this contention and argues that there is a constitutional value involved in such a loss of faith, protection of which supplies government with a strong interest.

Part II details the research design and describes the survey experiments in depth. Ultimately, our objective in designing these experiments was to test the following three assumptions made by the Supreme Court in support of its decision in *Citizens United v. FEC*:

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Government the opportunity to create a record detailing whether electioneering communications by corporations cause material social harms. *Id.* at 396 n.2. *See Yee v. Escondido*, 503 U.S. 519, 535 (1992) (“Under this Court’s Rule 14.1(a), only the questions set forth in the petition, or fairly included therein, will be considered by the Court” (internal quotation marks and alteration omitted)).

\(^{13}\) Interestingly, the vote-buying literature in political science has failed to show a robust causal relationship between campaign contributions and votes in Congress. *See*, e.g., Gregory Wawro, *A Panel Probit Analysis of Campaign Contributions and Roll-Call Votes*, 45 AM. J. POLITICAL SCIENCE 563 (2001).
1. The appearance of influence or access caused by campaign spending will not cause the electorate to lose faith in our democracy.  

2. The electorate will not refuse to take part in democratic governance because of money spent on political speech. 

3. Independent expenditures, because of the absence of prearrangement and coordination with the candidate, do not affect the electorate’s faith in democracy. 

As Part III reveals, the results of our study suggest that the Court’s first and third assumptions are incorrect, while they do not refute the accuracy of the second. Part IV draws out our conclusions.

I. The Faith of the Electorate

In the wake of the recent campaign finance decisions, scholars have been devoting attention to sorting out the implications of the theoretical question raised by the analysis. Some have focused on the question whether corruption really is the only legitimate basis for the restriction of campaign spending. That is a question addressed through history, interpretative techniques, and constitutional theory. Robert Post, for example, argues that a central constitutional value, which he dubs “electoral integrity”, is an implicit component of our representative system of government. It anticipates an expectation that elected officials will, in some broad and general way, remain responsive to protean public opinion. The unfettered ability of the public to express its diverse views enables that responsiveness. His theoretical challenge to the Court, therefore,

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14 *Citizens United*, 558 U.S. at 360.
15 *Id.* at 357 [AUTH: not necessary imho]
16 *Id.* at 358 (speaking of an appearance of corruption).
18 Id. at 61.
19 Id. at 60.
urges that electoral integrity is actually prior to and constitutive of free speech rights, and therefore cannot be said to be subsumed by those rights. Protecting electoral integrity, Post concludes, is a compelling interest under the proper structural, theoretical, and historical understanding of the Constitution.  

Others, accepting at least arguendo that the government is limited to preventing “corruption,” have challenged the narrow understanding of corruption as limited to the kind of quid pro quo exchange addressed by bribery laws.  

Lawrence Lessig has conducted a historical inquiry into the original understanding of the concept of corruption as a public harm, and concludes that the Court was mistaken to understand “corruption” in the narrow sense of bribery.  Rather, the framers of the Constitution understood corruption more broadly to include a “collective sense—the corruption of an institution, or a people, and not just a person.”  This kind of corruption arises when an elected official develops an improper dependence on a “tiny slice of a concentrated interest” that

20 Id. at 63.
22 This was Justice Breyer’s approach in dissent in McCutcheon. See McCutcheon, 134 S. Ct. at 1469 (Breyer, J., dissenting) (arguing that the Court in McConnell v. FEC, 540 U.S. 93 (2003), found BRCA’s soft money limits constitutional because they “thwarted a significant risk of corruption—understood not as quid pro quo bribery, but as privileged access to and pernicious influence upon elected representatives.”). Some reject even “corruption” as a battleground for reform, arguing instead that the real problem in democratic politics is the massive inequality in wealth that results in very few people participating as funders in democratic politics. See Guy-Uriel Charles, Corruption Temptation, 102 CALIF. L. REV. 25, 29 (2014) (arguing Lessig’s “real concern is that the private financing of campaigns makes wealth a prerequisite to political participation”); Pamela Karlan, Citizens Deflected: Electoral Integrity and Political Reform, in CITIZENS DIVIDED, supra note 20, at 143 (arguing there are “a variety of structural features” beyond campaign finance regulations that “may better explain why the link between the public and its representatives has frayed”). Still others object to the judiciary’s intervention in defining corruption at all, when to do so “requires a theory of the legislator’s role in a well-functioning democracy,” a complex and delicate determination not unlike matters the Court has declined to consider as political questions. Deborah Hellman, Defining Corruption and Constitutionalizing Democracy, 111 MICH. L. REV. 1385, 1385 (2013).

24 Lessig, supra note 23, at 6.
is not representative of the constituent population.\textsuperscript{26} That kind of dependence could include bribery, but would also embrace an official’s becoming beholden to the small group of “funders” who are essential to a candidate’s ability to proceed through the electoral process and eventually to prevail.\textsuperscript{27} The same theory justifying anti-corruption as a legitimate governmental objective thus applies as well to curbing a corrupting dependency begat by unregulated spending, Lessig urges.\textsuperscript{28}

Our study takes a different tack. To situate our empirical investigation, we argue that the Constitution anticipates a relationship between a representative and his or her constituents, which in turn entails trust on the part of those represented that, at the least, their interests will be valued. Thus, if large infusions of money into campaigns have the effect of causing the electorate to lose faith in a communion of interests with their representative—whether or not it also results in actual disregard of constituent concerns—that is a structural harm of great import to the functioning of the republican form of government. This argument supplies the basis for conducting an empirical study that focuses on perceptions of individual voters.

For decades, constitutional theory scholarship has explicitly recognized that constitutional constraints on the electoral process do not end with an election; a representative, once elected, has obligations toward his or her constituents. John Hart Ely’s important book, \textit{Democracy and Distrust}, established the foundational principle that the Constitution may be violated when representatives fail “to represent”—“the denial to minorities of . . . ‘equal concern and respect in the design and administration of the political institutions that bind them.’”\textsuperscript{29} Ely elaborated in a footnote that by being

\textsuperscript{26} \textit{Id.} at 18.
\textsuperscript{27} \textit{Id.} at 7 (arguing that, instead of being “‘dependent on the people alone,’” as the framers intended, Congress has become dependent on the funders of campaigns) (quoting The Federalist No. 52 at 326 (James Madison)(Clinton Rossiter ed., 1961).
\textsuperscript{28} \textit{Id.} at 18-19 (arguing that an originalist perspective should lead the Court to recognize a compelling interest in remedying "dependence corruption," as it has done for \textit{quid pro quo} corruption).
“represented” he meant that those bound to obey the laws [“are not to be left out of account or valued negatively in the lawmaking process.”]\(^\text{30}\) While his analysis focused specifically on the problem of discrimination, it offers a fuller understanding of representation more generally, by speaking to the question of what duties run to the people in a republican form of government.

The history and intellectual pedigree of the American brand of representation support the notion that representatives have an obligation to take the interests of their constituents into account.\(^\text{31}\) The eighteenth-century understanding of representation in Britain and the American colonies included an important notion referred to as the doctrine of “shared interests.”\(^\text{32}\) That doctrine stipulated that, despite the absence of universal suffrage, the House of Commons in Parliament represented all legitimate “interests”—as opposed to citizens—of the realm.\(^\text{33}\) Not everyone needed to vote because “[t]he interest of the body represented has been precisely the same with that of the body unrepresented.”\(^\text{34}\) The importance of this doctrine lay in the belief that the representatives “cannot betray the People without at the same time betraying themselves.”\(^\text{35}\) “[I]f they act for themselves, (which every one of them will do as near as he can) they must act for the common Interest.”\(^\text{36}\) It is a structural check.

The doctrine of shared interests gave rise to the related theory of virtual representation, which sought to assure the American colonists that, although they were not entitled to vote for members of Parliament, that body was capable of representing them adequately because it shared sufficiently in their interests.\(^\text{37}\) “The security of the

\(^{30}\) Ely, supra note 23, at 82 n.33.


\(^{32}\) John Phillip Reid, The Concept of Representation in the Age of the American Revolution 45 (1989).

\(^{33}\) Id. (quoting John Adams as saying to the Continental Congress, “Reason, justice, & equity never had weight enough on the face of the earth to govern the councils of men. It is interest alone which does it, and it is interest alone which can be trusted.”).

\(^{34}\) Reid, supra note 32, at 45 (quoting historian Thomas Somerville).

\(^{35}\) Id. at 46 (quoting English Whig politician William Pulteney).

\(^{36}\) Id. at 48 (quoting a New Yorker speaking in 1732.

nonelectors against oppression,” it was said, “is that their oppression will fall also upon the electors and the representatives.”

What was good for some was good for all.

The American colonists resisted any claim that their subjection to laws passed by a Parliament for which they had no opportunity to vote was constitutional. Rather, their objection was based on the absence of a foundation for invoking it: the actual lack of shared interests and shared burdens across the vast width of the Atlantic Ocean. They argued that their interests were not the same as those of their fellow subjects in England, nor were the burdens they bore equally inflicted on the Members of Parliament or their electors. “If we are not their constituents, they are not our representatives.”

The concept of shared interests survived under the American Constitution, subsumed into the American theory of republicanism. John Adams captured the idea, with new precision, when he wrote that a representative assembly “should be in miniature an exact portrait of the people at large. It should think, feel, reason and act like them.” Historian Jack Rakove explains that the “portrait” metaphor connoted a notion

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38 Id. at 177 (quoting Daniel Dulany, the foremost American antagonist in the debate over representation).
40 See REID, supra note 32, at 132 (revolutionary issue was whether virtual representation “could constitutionally and legally be extended to a part of the empire in which the protection and security of shared interests, shared burdens, and equal assessments might not operate to the same degree”).
41 See WOOD, supra note 37, at 177.
43 Virtual representation also survived. See WOOD, supra note 37 at 181. Gordon Wood intriguingly suggests that “[w]hatever one may think of the notion of virtual representation as it pertained to the Americans in 1765, no better justification of majority rule has every been made.” Id. at 176.
of sympathy. “Sympathy was most likely to exist,” he writes, “when electors and the elected shared underlying traits; sentiment alone would not do when the allure of power worked its charms.” Thus his analysis lends support to an understanding of sympathy grounded in structural understandings of the representative duty. In the “science of representation sympathy was the highest form of knowledge, but that sympathy could be attained only when the interests of elector and elected were one.”

Madison reaffirmed the core idea of sympathy in The Federalist Papers, when he argued that the doctrine of shared interests would provide a check against tyranny and other bad laws:

[A] circumstance in the situation of the House of Representatives, restraining them from oppressive measures, [is] that they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments of which few governments have furnished examples; but without which every government degenerates into tyranny.

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48 Rakove, supra note 45, at 204. See also Post, supra note XX, at
49 See also Post, supra note 20, at 13-16 (explaining the historical importance of trust between representatives and constituents). Both Madison and Brutus “knew that representative institutions can fulfill the ideal of self-government only if there is ‘reasonable ground for public trust’ that representatives speak for the people who elect them.” Id. at 15.
50 Rakove, supra note 45, at 233. I do not intend to minimize the differences between the Federalists and Anti-Federalists regarding the issue of how to reconcile the sympathy necessary for fair representation with the aristocratic virtue of deliberation. The Federalists did not discount the importance of sympathy, but believed that it could be attained without exact replication of the social traits of all constituents. See generally id. at 203-243 (discussing the "Mirror of Representation" and its 18th-century understanding). [This debate goes well beyond the structural point about sympathy that I am seeking to establish here.
Theorists widely agree that the Constitution envisioned a reciprocal relationship between representatives and the represented, as an essential part of the engine driving self-government. Representatives would have a communion of interests with those they represented, and thus would have a duty not to value those interests at zero. At the same time, the electorate was entitled to trust in that communion of interest as an assurance that participation in self-government would be a meaningful exercise. Any remedy was at the ballot box. While such an arrangement does not suggest the existence of any enforceable right in an individual citizen to particular actions or outcomes in the legislative process, it does, at the very least, dignify the protection of the relationship with the status of a legitimate—if not essential—concern of constitutional government in both the fact of shared interests and the constituents' trust in it.

This two-way relationship is affected by money. One problem with an unlimited flow of funds into campaigns, as sanctioned by recent campaign finance decisions, is that it necessarily disrupts the communion of interests that is a structural element of our system of representative government. Lessig has shown that various characteristics of the electoral system in place at the present time conspire to create a candidate’s dependence on relatively few donors who can supply the funds necessary to proceed and prevail in the election processes. These “funders” need have no relationship with the constituents represented by the official whose election they enabled. Thus, to the extent that the generosity of funders depends on their general satisfaction with the elected official’s job performance, an interest has been interjected between the representative and his or her constituents.

52 See POST, supra note 20, at 10 and sources cited therein. See also Lessig, supra note 24, at 8-9 (noting that the Constitution created “intended dependencies”).

53 Note, in this regard, that both Representatives and Senators are constitutionally required to be inhabitants of the states that they represent. U.S. CONST. art. I, §§ 2, 3.

54 ELY, supra note 29 at 82 n.33.

55 See POST supra note 20 at 13 (“Elections empowered people to ‘choose’ their representatives and thereby to affirm a commonality of interests with those whom they decided to select.”).

56 Lessig, supra note 24, at 3-5 (discussing data showing that, among other things, for the 2008 election cycle 84% of House candidates and 67% of Senate candidates who raised more money won their races).

57 See id. at 4 & n.7 (citing studies showing wealth differentials in policy preferences). As Lessig puts it, "the immediate influence of the money election produces a subtle, perhaps camouflaged bending to keep the funders in the money elections happy." Id.
constituents, distorting the communion of interests contemplated by the Constitution. This distortion is not entirely different from the distortion occasioned by the colonies’ supposed virtual representation in Parliament, which led to the Framers’ insistence on establishing a system of representation under the Constitution that preserved shared interests. Recall that, speaking of the Members of Parliament across the ocean whose judgments were guided by interests vastly different from their own, colonists insisted, “If we are not their constituents, they are not our representatives.”58 The disrespect for a communion of interests robbed the laws of their legitimacy, indeed rendered them "pretended Legislation," in the words of the Declaration of Independence.59

Recent studies have shown that, as a group, affluent Americans have different interests from those of lower-income Americans. 60 Thus, statistically, the assurances occasioned by a requirement of a communion of interests are lost when representatives are systematically diverted to consider the interests of their funders rather than their constituents in making policy judgments. The constituents to whom the official is loyal tend to become the financiers instead of the voters.61 Symmetrically, the electorate’s threat of using the ballot box as a reprisal for any breach of the duty to take their interests into account is dampened considerably by the powerful effect that the financial

58 A Letter from a Plain Yeoman, supra note 43.
59 THE DECLARATION OF INDEPENDENCE cl. 15 (U.S. 1776).
60 See MARTIN GILENS, AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA 77-78 (2012) (finding significant policy differences between the 90th percentile based on income and the remainder); Adam Lioz, Breaking the Vicious Cycle: How the Supreme Court Helped Create the Inequality Era and Why a New Jurisprudence Must Lead Us Out, 43 SETON HALL L. REV. 1227, 1231-34 (2013) (citing several studies from 2011-2013 demonstrating significant differences in the population based on wealth, including on issues related to prioritizing job creation over reducing the deficit; the role of the government in the economy; and the minimum wage). Benjamin I. Page, Larry M. Bartels & Jason Seawright, Democracy and the Policy Preferences of Wealthy Americans, 11 PERSP. ON POL. 51 (2013) (detailing the range of differing policy preferences and priorities between wealthy and average Americans).
61 See Lessig, supra note 21, at 4 (describing how elected officials become dependent on funders); Gilens, supra note 56, at 193 (noting "an important general trend: the strengthening of policy responsiveness for affluent Americans").
contributions make in the election. There is a hollow ring, therefore, in the Supreme Court’s dismissal of such concerns when it said that “[it] is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies.” While that statement is no doubt true, it vastly understates the potential threat to the authentic deliberation based on constituent interests that the Constitution contemplates. If the electorate ceases to be the elected official’s constituency, then the official ceases to be a representative.

More significantly for the goals of this project, the Supreme Court’s minimization of concerns over the influence and access of contributors overlooks the importance of public confidence that their interests are represented. The communion of interests comprises not only the fact of faithful representation, but also the voters’ confidence in it. The essential role played by the “confidence of the people,” as framer James Wilson put it, was self-evident to those of the founding generation. Without trust and confidence, there is no genuine representation. Thus, any protection of the communion of interests essential to the constitutional design would not be limited to proscribing actual disregard or negation of constituent interest; it would also include measures that preserve the constituents’ belief in the communion of interests with their representatives.

The Supreme Court’s emphasis on quid pro quo corruption turns the analysis on its head. While it is true that corruption indeed threatens the communion of interests and thus “is a subversion of the political process,” it is not the case that every subversion of the political process takes the form of quid pro quo corruption. The history and theory underlying the constitutional system of representation show that bribery is a subversion

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62 See Lioz, supra note  at 1251-52 (showing that in 2012 84% of U.S. House and 67% of U.S. Senate who outspent their opponents won their elections; discussing complex, but essential, role of funding and electoral victories).
64 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 49 (Farrand ed. 1966).
65 POST, supra note 20, at 16 & n.101 (Is it not part of your editing process to look at the passage? It is an exact statement of what the book says.
of the political process precisely because it is a particularly egregious example of a failure of representation.\(^67\) It does not, however, exhaust the category.

In short, the theoretical foundation of this study relies on the following argument. The Constitution anticipates and relies upon the public’s confidence that its elected representatives are duty-bound to represent them, which requires that external loyalties or dependencies not divert the judgments that representatives are called upon to make. If the sympathies or interests of the representative are affected such that they no longer can be said to coincide with the sympathies or interests of the constituents, then the requisite constitutional structure has been compromised. This undermines the premises upon which the American experiment in authentic self-government was grounded, and threatens the values of accountability and public participation in the electoral process. Thus, there are powerful reasons to believe that protecting against those harms is a public concern of the highest order and therefore might justify government regulation of campaign finance.

The Court has recognized that, under First Amendment doctrine, the prevention of \textit{quid pro quo} corruption is a compelling government interest sufficient to justify restrictions on the right to make campaign expenditures.\(^68\) The integrity of the political process and proper functioning of democracy are essential concerns of government.\(^69\) The communion of interests, a fundamental and indispensable structural feature of our constitutional democracy, is of a similar order and, therefore, if it is indeed threatened, government should have the power to protect it. While the Supreme Court has never straightforwardly articulated the criteria for finding an interest compelling,\(^70\) it is the case that interests having to do with the integrity of government and the political process have

\(^{67}\) See Buckley \textit{v.} Valeo, 424 U.S. 1, 27 (1976) (if contributions are made in exchange for political favors, "the integrity of our system of representative democracy is undermined").

\(^{68}\) Buckley \textit{v.} Valeo, 424 U.S. 1, 26 (1976). it directly supports

\(^{69}\) \textit{See} Civil Service Comm’n \textit{v.} National Ass’n of Letter Carriers, 413 U.S. 548, 563 (1973) (discussing limitations on political activity by government employees).

\(^{70}\) The Court often avoids an assessment of the strength of government interests by finding that a measure fails the narrow-tailoring requirement of strict scrutiny. \textit{See}, e.g., \textit{McLaughlin v. Florida}, 379 U.S. 184, 197 (1964) (Harlan, J, concurring) (describing Court’s "necessity test" for protecting speech by denying government power to restrict speech broadly if narrower means will suffice).
often been recognized as compelling interests. Protecting the structural importance of the communion of interests, therefore, is an appropriate candidate for recognition as a compelling interest quite separate and apart from the governmental interest in preventing corruption.

Whether unlimited campaign spending can disrupt the communion of interests by destroying the voters’ confidence that they are being represented is a question of fact to which we turn in Part II.

II. Research Design

Any power in the government to restrict the constitutionally protected activity of campaign spending will depend on a showing of harm to the structural interests that the government has a responsibility to protect. Because the Supreme Court has denied the existence of these harms, we have sought to provide an empirical test of the veracity of a series of claims regarding how the source, magnitude, and levels of coordination in campaign contribution affect the faith citizens have in democracy. Our strategy involves using “survey vignettes” to randomly expose respondents of a public opinion survey to various factual scenarios to see how they respond. The advantage of this approach is to “produc[e] more valid and more reliable measure of respondent opinion than ‘simpler’

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72 We are aware of the literature calling into question the value of public opinion surveys to judgments about campaign finance matters. See Nathan Persily and Kelli Lammie, Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law, 153 U. Penn L. Rev. 120 (2004). We hope that our project avoids some of the pitfalls of such an approach by measuring individual reactions to specific factual scenarios, rather than asking respondents about facts in the world.
abstract questions more typical of opinion surveys.\textsuperscript{73} Our study uses panel survey experiments in The American Panel Survey (TAPS) to distill the impact, if any, that the magnitude and source of electoral contributions and the level of coordination between candidates and groups has on citizens’ faith in democracy.\textsuperscript{74} In this Part, we posit our specific hypotheses, survey design, and analytical strategy.

A. Hypotheses

The Court has made testable claims that political spending has little or no effect on citizens’ perceptions of democracy.\textsuperscript{75} If we can show that the public's perceptions of democracy are indeed affected by money in politics, we will call into question the Court's insistence upon the absence of this relationship. Accordingly, we explore whether conditions exist under which campaign contributions do appreciably affect citizens’ faith in democracy. Here, we consider faith in democracy to be the constituents’ perception of elected officials as both representatives of their interests and uncompromised by the pressures of financially endowed special interests.

Specifically, we present three separate, but related, hypotheses.

\begin{enumerate}
    \item \textit{Hypothesis 1:} Citizens experience a decrease in their faith in democracy as the magnitude of reported reelection campaign contributions from organizations increases.
    \item \textit{Hypothesis 2:} The loss of faith in democracy that citizens experience as a result of evidence of reelection campaign contributions is greater if the donor is a for-profit corporation than if it is a non-profit corporation.
\end{enumerate}


\textsuperscript{74} The American Panel Survey (TAPS) is conducted by the Weidenbaum Center on the Economy, Government, and Public Policy at Washington University in St. Louis. \textsc{The American Panel Survey, Washington University in St. Louis}, http://taps.wustl.edu (last visited Jan. 26, 2015). The Appendix contains technical details about TAPS and how our experimental survey vignettes were implemented.

\textsuperscript{75} See Citizens United v. FEC, 558 U.S. at 360 (campaign expenditures in the absence of \textit{quid pro quo} bargains "will not cause the electorate to lose faith in our democracy"). See also McCutcheon v. FEC, 143 S. Ct. at 1450 ("Spending large sums of money in connection with elections ... does not give rise to ... \textit{quid pro quo} corruption").
Hypothesis 3: Citizens experience a decrease in their faith in democracy based on evidence of reelection campaign expenditures on behalf of a candidate, whether or not expenditures are explicitly coordinated with the candidate’s campaign.

B. Survey Experiments

To test these hypotheses we have developed two survey experiments that use vignettes. The first experiment addresses the Court’s claims regarding financial contributions and our first two hypotheses about the impact of the contribution’s magnitude and source. As discussed above, we employ vignettes within our quantitative approach in order to maximize real-world comparability. Respondents are presented with a scenario in which we randomly vary the reported levels and source of monetary contributions to a national Senatorial campaign. While the vignettes are fictional, their framing and structure mimic a short news excerpt that one might find in a national or regional newspaper covering a consequential political race.

Two features randomly vary in the first experimental vignette: 1) the source of the contribution is reported as either the for-profit Ford Motor Company or the non-profit Center for Auto Safety; and 2) the amount of the contribution is either unspecified or listed as $10,000 or $1 million. Consequently, there are six variations of the vignette that are randomly assigned across the respondent sample population. The vignettes are as follows (with variations in the excerpts highlighted in bold italics):

U.S. Senator Frank Martin is in a tight reelection race with a challenger, Andrew Rosen. Recently released campaign finance reports indicate that Senator Martin has received substantial campaign contributions from (The Center for Auto Safety (CAS), a non-profit organization whose mission is “to provide consumers a voice for auto safety in Washington.” / the American automaker Ford Motor Company). The Federal Election Commission reports that (CAS / Ford) (has contributed / contributed $10,000 / contributed $1 million) to Senator Martin’s campaign committee. Martin is currently chair of the Senate Committee on Commerce, Science, and Transportation, which oversees auto safety.

\[^{77}\text{See supra Part II.C and the Appendix for a discussion about the randomization across two survey strobes.}\]
The committee is expected to consider an auto safety bill that would require a new braking safety feature that would be very costly for automakers to implement.

Following the vignette, respondents are prompted to answer three questions using a Likert-style format of predetermined categories (e.g. very likely to very unlikely) and one 4-part grid question with a yes or no response to each part. Features of these questions correspondingly vary with the assigned vignette and are as follows:

1. How likely do you think it is that, if reelected, Senator Martin would vote (for / against) the auto safety bill even if most of his constituents (opposed / favored) it?

2. How likely do you think it is that, if reelected, Senator Martin will give greater weight to the interests of (The Center for Auto Safety / Ford) than to the interests of other constituents?

3. How likely do you think it is that (The Center for Auto Safety / Ford) expects that its contribution will influence Senator Martin’s vote on this bill or on other matters that might come before him?

4. Does the knowledge of (The Center for Auto Safety’s / Ford’s) contribution make it less likely that you will:
   i. vote
   ii. stay informed about candidates and the race
   iii. contribute money to your preferred candidate
   iv. write your Senator after the election to express your views

---

The recorded responses to these questions form the basis for the two dependent variables used to examine our first two hypotheses.79

The second survey experiment addresses our third hypothesis, regarding the Court’s claims regarding coordination between interest groups and candidates. Following the general approach of our first experiment, we employ similarly framed and structured vignettes of short fictional news excerpts. We seek to mimic one of the central case facts of Citizens United by presenting a description of a political film, funded by an interest group, containing negative information about a particular candidate. Respondents are presented with a scenario in which we randomly vary whether or not the interest group coordinated with the candidate’s opponent in producing the described film. The vignettes are as follows (again, with variations in the excerpts highlighted in bold italics):

*Cable television subscribers can now watch “on demand” a new series entitled Election 2014, which includes in-depth information on the two U.S. Senate candidates in the upcoming election, John Walker and Henry Harrison. The series is produced by the interest group, Americans for a Better Tomorrow, which is funded by donations from individuals and corporations.*

*One program in the series, titled “Henry: The Truth,” has drawn much media attention. The program includes interviews with political pundits and scholars, and outlines a handful of scandals allegedly involving candidate Henry Harrison.*

*(Americans for a Better Tomorrow has worked closely with Harrison’s opponent, candidate John Walker, to produce the programs about their Senate race. / Americans for a Better Tomorrow has produced the programs without any help from Harrison’s opponent, candidate John Walker, who is unaware of the series until it was advertised publicly.)*

79 The analytical strategy section, infra Part II.C, details our dependent variable construction.)
Susan Thompson, a spokesperson for Americans for a Better Tomorrow, said that the people have a right to know the full story on candidate Harrison. “This film has one goal: enlightening the public on what we insiders already know about Henry Harrison. It is our patriotic duty.”

Election 2014 will be available for viewing until Election Day on Tuesday, November 4, 2014.

Following the vignette, respondents are prompted to answer two questions using a Likert-style format of predetermined categories (e.g. very likely to very unlikely). These questions seek to determine the correlation between coordination with a campaign and lower levels of citizens’ faith in democracy. They are as follows:

1. How likely do you think it is that, if elected, Senator Walker would comply with a request from Americans for a Better Tomorrow to support or oppose a bill before the Senate?

2. How likely do you think it is that, if elected, Senator Walker will give more weight to the policy preferences of Americans for a Better Tomorrow than to the interests of other constituents?

The recorded responses to these questions form the basis for our final dependent variable, described below in Part II.C.

C. Analytical Strategy

The administration of these two experiments on TAPS provides an advantageous panel research design because of the two opportunities to test the same respondents. By administering our experimental vignettes in both June and August 2014, we were able to obtain between-respondent and within-respondent variation in both experiments.

In the first experiment, we accumulated cross-sectional data within each panel of TAPS (June and August 2014) for between-respondent comparisons given the six different combinations of magnitude and source of contribution. We also extended the variation across both panels to extract data for within-respondent comparisons. Specifically, we administered the vignette twice to each respondent, once in June and
once in August, but randomly varied the contribution amount without changing its source. For instance, a respondent who received the Ford Motor Company and unspecified amount combination in his or her June vignette received the same Ford Motor Company condition, but was randomly assigned an amount of either $10,000 or $1 million. This experimental design allows within-respondent comparison and speaks directly to our third hypothesis that interactions between magnitude and source of campaign contribution have amplified effects on citizens’ faith in democracy.

The vignette random assignment within each panel of TAPS (June and August 2014) also allows us to collect cross-sectional data for between-respondent comparisons given the reported presence of spending coordination in the second experiment. As with the first experiment, we extended the variation across both panels to extract data for within-respondent comparisons. Specifically, we administered the reverse of the June wave vignette (coordination versus no coordination) to respondents in the August wave. Since all respondents received both versions of the second survey experiment over the course of the survey time frame, we were able to compare both between and within respondent reactions to coordination.80

The construction of our dependent variables—all of which tap some aspects of faith in democracy—provides the key feature of both our cross-sectional and panel data analyses. Recall our characterization of faith in democracy as the perception of elected officials as representatives of their constituents’ expressed interests, beholden to the majority-held opinion and uncompromised by the pressures of financially endowed special interests. While this informs the composition of each survey question, this general definition does not immediately provide a scaled variable necessary for quantitative comparisons. However, the Likert-style format of predetermined categories—very likely, likely, neither likely nor unlikely, unlikely, and very unlikely—does allow qualitative survey responses to be quantitatively indexed as our dependent variable. By assigning a monotonically increasing value to each category, we can assess any change in perception as the magnitude and source of contribution or presence of coordination varies across and within respondents.

80 See the Appendix for more details about the randomization methodology.
One approach in generating the measure of faith in democracy would be to construct an additive scale by coding the Likert-style responses with five values in the range [-2, 2] and the yes/no responses with two values (-1, 1), and summing across all responses for a scaled variable with a range of [-16, 16]. However, this approach implicitly assumes that all responses are equally weighted, which is problematic. For instance, the last survey question of the first experiment considers the impact that campaign finance information might have on an individual’s political participation: the potential decrease in likelihood that she will vote, stay informed, contribute money, or write a letter to her Senator. Likelihood of participation in the democratic process helps identify damage to faith in democracy, as an individual who loses faith would be less likely to be politically active. An additive scale of this question indicates that an affirmative answer to any of the four options yields the same amount of loss of faith in democracy. Yet not all forms of political participation are the same, require or demonstrate the same amount of ‘faith in democracy,’ or are indicative of strength in democratic ideals. An individual’s loss of faith might be considered more dramatic if she reported a decreased likelihood to vote than a decreased likelihood of contributing to a campaign. Furthermore, combining these activities with the perception of a representative’s consideration of special interests in political decisions questionably assumes that the two contribute equally to one’s faith in democracy. Consequently, a purely additive scale would not be a reasonable construction for our dependent variable. Moreover, combining response questions across the two experiments would be inappropriate because each question is about a specific vignette.

Instead, we measure faith in democracy in three parts: fidelity, participation, and responsiveness. We use “fidelity” and “participation” as dependent variables for the first experiment, and "responsiveness" for the second. We measure fidelity with respect to the respondents' perception of elected officials as representatives of their constituents’ expressed interests, beholden to the majority-held opinion and uncompromised by the pressures of financially endowed special interests. Here, we do employ an additive scale by coding the Likert-style responses with values in the range [-2, 2] and summing across the five corresponding responses (questions 1, 2, and 3 from the first experiment) yielding a combined score in the range [-6, 6]. Thus, the lowest value of -6 indicates an
individual who expects the reelected official to act in direct opposition to his constituents’ majority-held opinion and submit to the influence of the relevant interest group in all circumstances. Alternatively, the highest value of 6 indicates an individual who expects the reelected official to be uninfluenced by financial contribution and bound by the majority-held opinion of his constituents in all circumstances.

Second, we gauge “participation” in the context of an individual’s likelihood to participate in the democratic process. To accommodate the challenge that all acts of political participation are not equal or performed in isolation from one another, we offer a categorical construction using the four parts of question four. Particularly, we devise sixteen mutually exclusive categories as follows:

<table>
<thead>
<tr>
<th></th>
<th>Faith in Democracy: Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>No Change in Likelihood to Participate</td>
</tr>
<tr>
<td>15</td>
<td>Less likely to be informed</td>
</tr>
<tr>
<td>14</td>
<td>Less likely to vote</td>
</tr>
<tr>
<td>13</td>
<td>Less likely to contribute</td>
</tr>
<tr>
<td>12</td>
<td>Less likely to write a letter</td>
</tr>
<tr>
<td>11</td>
<td>Less likely to be informed and vote</td>
</tr>
<tr>
<td>10</td>
<td>Less likely to be informed and contribute</td>
</tr>
<tr>
<td>9</td>
<td>Less likely to be informed and write a letter</td>
</tr>
<tr>
<td>8</td>
<td>Less likely to vote and contribute</td>
</tr>
<tr>
<td>7</td>
<td>Less likely to vote and write a letter</td>
</tr>
<tr>
<td>6</td>
<td>Less likely to contribute and write a letter</td>
</tr>
<tr>
<td>5</td>
<td>Less likely to be informed, vote, and contribute</td>
</tr>
<tr>
<td>4</td>
<td>Less likely to be informed, vote, and write a letter</td>
</tr>
<tr>
<td>3</td>
<td>Less likely to be informed, contribute, and write a letter</td>
</tr>
<tr>
<td>2</td>
<td>Less likely to vote, contribute, and write a letter</td>
</tr>
<tr>
<td>1</td>
<td>Less likely to be informed, vote, contribute, and write a letter</td>
</tr>
</tbody>
</table>

Finally, for the second experiment, we measure perceptions of "responsiveness" with respect to whether respondents believe that elected officials are likely to comply with interests of groups with whom they coordinate political expenditures. Again, we use
an additive scale by coding the Likert-style responses with values in the range [-2, 2] and summing across the five corresponding responses (questions 1 and 2 from the second experiment) yielding a combined score in the range [-4, 4]. Thus, the lowest value of 4 indicates an individual who expects the reelected official to be particularly responsive to coordinating interest groups. Alternatively, the highest value of 4 indicates an individual who expects the reelected official to be uninfluenced and not responsive to the demands of such groups.

All three of these scales take larger values for higher levels of faith in democracy and democratic processes. The key tests of our hypotheses focus on different levels of faith in democracy based on experimental condition.

III. Results

<table>
<thead>
<tr>
<th>Contributor</th>
<th>Mean Fidelity</th>
<th>Standard Deviation</th>
<th>Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-profit, no amount</td>
<td>-2.39</td>
<td>2.79</td>
<td>195</td>
</tr>
<tr>
<td>Non-profit, $10,000</td>
<td>-2.25</td>
<td>2.64</td>
<td>191</td>
</tr>
<tr>
<td>Non-profit, $1 million</td>
<td>-2.98</td>
<td>2.72</td>
<td>178</td>
</tr>
<tr>
<td>For profit, no amount</td>
<td>-2.75</td>
<td>2.20</td>
<td>197</td>
</tr>
<tr>
<td>For profit, $10,000</td>
<td>-2.19</td>
<td>2.36</td>
<td>184</td>
</tr>
<tr>
<td>For profit, $1 million</td>
<td>-2.56</td>
<td>2.20</td>
<td>201</td>
</tr>
<tr>
<td>Total</td>
<td>-2.51</td>
<td>2.50</td>
<td>1146</td>
</tr>
</tbody>
</table>

Table 1. Summary of levels of fidelity for the six experimental conditions for Experiment 1, First Strobe. One-way ANOVA results for Hypothesis 1, using TAPS survey weights: F=4.64, p=0.01. One-way ANOVA results for Hypothesis 2, using TAPS survey weights; F=0.01, p=0.93.
Table 2. Summary of levels of *fidelity* for the six experimental conditions for Experiment 1, Second Strobe. One-way ANOVA results for Hypothesis 1, using TAPS survey weights: F=3.73, p=0.05. One-way ANOVA results for Hypothesis 2, using TAPS survey weights: F=2.27, p=0.10.

We present our results for each strobe of the survey separately (June 2014 is the First Strobe and August 2014 is the Second Strobe). Tables 1 and 2 contain the results for the fidelity-dependent variable for our first experiment. To test our first hypothesis about the levels of faith in democracy, we use a one-way ANOVA model, which compares the averages in levels of the fidelity variable across the three groups.

Here we find a statistically significant effect. Respondents had the highest level of faith in democracy when $10,000 was the amount contributed, followed next by no mention of amount, and with a contribution of $1 million evoking the lowest average level of faith in democracy. When combining the data and using a repeated-measures ANOVA, the result remains statistically significant, lending strong support for Hypothesis 1 (F=12.58, p<0.001).

We test our second hypothesis, regarding differences in sources of contributions, using the same model, this time comparing the averages in levels of fidelity over two groups. Here the difference is insignificant in both strobos, which means there is no evidence of a difference in levels of fidelity between money that comes from non-profit or for-profit groups.
<table>
<thead>
<tr>
<th></th>
<th>Mean Participation</th>
<th>Standard Deviation</th>
<th>Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-profit, no amount</td>
<td>13.85</td>
<td>3.48</td>
<td>192</td>
</tr>
<tr>
<td>Non-profit, $10,000</td>
<td>13.11</td>
<td>3.93</td>
<td>189</td>
</tr>
<tr>
<td>Non-profit, $1 million</td>
<td>12.93</td>
<td>4.04</td>
<td>174</td>
</tr>
<tr>
<td>For profit, no amount</td>
<td>12.75</td>
<td>4.35</td>
<td>193</td>
</tr>
<tr>
<td>For profit, $10,000</td>
<td>13.21</td>
<td>4.30</td>
<td>184</td>
</tr>
<tr>
<td>For profit, $1 million</td>
<td>13.71</td>
<td>3.68</td>
<td>200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>13.25</strong></td>
<td><strong>4.00</strong></td>
<td><strong>1132</strong></td>
</tr>
</tbody>
</table>

Table 3. Summary of levels of participation for the six experimental conditions for Experiment 1, First Strobe. One-way ANOVA results for Hypothesis 1, using TAPS survey weights: F=0.18, p=0.84. One-way ANOVA results for Hypothesis 2, using TAPS survey weights: F=0.15, p=0.70.
Table 4. Summary of levels of participation for the six experimental conditions for Experiment 1, Second Strobe. One-way ANOVA results for Hypothesis 1, using TAPS survey weights: F=0.55, p=0.46. One-way ANOVA results for Hypothesis 2, using TAPS survey weights: F=3.54, p<0.01.

Tables 3 and 4 contain the results from our first experiment with the "participation" dependent variable, i.e., whether levels of participation in democracy vary with contributions. Unlike the results for the "fidelity" dependent variable, we see an insignificant difference across the three conditions for the first hypothesis in both strobes. In the second strobe we see a statistically significant difference between non-profit and for-profit entities. Yet when we combine the data and estimate a repeated-measures ANOVA, overall we find an insignificant difference (F=2.19, p=0.112), similar to the results for the "fidelity" dependent variable, an insignificant difference between non-profit and for-profit entities. Taken as a whole, there is no evidence in Tables 3 and 4 that the type of entity or dollar amount affects participation in the democratic process.\(^1\)

\(^1\) It is possible that we would have found an effect if we had disaggregated the four components of participation—being informed, writing a letter, contributing, and voting. We leave that exploration for future research.
Tables 5 and 6 contain the results from our second experiment. Here we compared mean levels of the perception of responsiveness based on whether the interest group making an expenditure helpful to the candidate had explicitly coordinated with the candidate or not. Here we see statistically significantly higher levels of perception of responsiveness of the representative to constituent interests when there is no coordination between the contributor and the candidate. In other words, when expenditures are truly independent, citizens are more likely to have higher levels of faith in democracy. When the strobes are analyzed together using a repeated-measures ANOVA, the differences are, indeed, significant (F=114.02, p<0.001).

It is important to emphasize here that, in order to offer effective vignettes to the respondents, our survey painted very clear lines between expenditures that were absolutely uncoordinated with campaigns and those that were explicitly tied to campaigns. There was no room for nuance in our fictional scenarios regarding whether the expenditures characterized as independent in fact were more subtly controlled by campaigns. Thus, our results do not support a conclusion that, in the real world, where such clear boundaries are not possible to draw, citizens have confidence that independent expenditures are truly independent.82 What our results do demonstrate is that it makes a significant difference to respondents whether an entity spending money for political purposes is coordinating with a campaign.

<table>
<thead>
<tr>
<th></th>
<th>Mean Responsiveness</th>
<th>Standard Deviation</th>
<th>Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Coordination</td>
<td>-0.37</td>
<td>1.70</td>
<td>578</td>
</tr>
<tr>
<td>Coordination</td>
<td>-1.10</td>
<td>2.00</td>
<td>568</td>
</tr>
<tr>
<td>Total</td>
<td>-0.72</td>
<td>1.89</td>
<td>1146</td>
</tr>
</tbody>
</table>

Table 5. Summary of levels of responsiveness for no coordination and coordination conditions in Experiment 2, First Strobe. One-way ANOVA results for Hypothesis 3, using TAPS survey weights: F=44.72, p<0.001.

82 See note 93 infra, and accompanying text.
Table 6. Summary of levels of *responsiveness* for no coordination and coordination conditions in Experiment 2, Second Strobe. One-way ANOVA results for Hypothesis 3, using TAPS survey weights: F=39.95, p<0.001.

<table>
<thead>
<tr>
<th></th>
<th>Mean Responsiveness</th>
<th>Standard Deviation</th>
<th>Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Coordination</td>
<td>-0.501</td>
<td>1.78</td>
<td>571</td>
</tr>
<tr>
<td>Coordination</td>
<td>-1.15</td>
<td>1.70</td>
<td>572</td>
</tr>
<tr>
<td>Total</td>
<td>-0.83</td>
<td>1.77</td>
<td>1143</td>
</tr>
</tbody>
</table>

We provide Table 7 to summarize our hypotheses and findings from these analyses.

<table>
<thead>
<tr>
<th>Hypothesis</th>
<th>Hypotheses</th>
<th>Dependent Variable</th>
<th>Finding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Citizens experience a decrease in their faith in democracy as the magnitude of reported election campaign contributions from organizations increases.</em></td>
<td>Fidelity and Participation (Experiment 1)</td>
<td>Support for the hypothesis with fidelity dependent variable (p&lt;0.001). Faith in democracy highest for $10,000 contribution, then when no mention of value, then $1 million contribution. No support for participation dependent variable.</td>
</tr>
<tr>
<td>2</td>
<td><em>The loss of faith in democracy that citizens experience as a result of evidence of reelection campaign contributions is</em></td>
<td>Fidelity and Participation (Experiment 1)</td>
<td>No support for the hypothesis with either dependent variable.</td>
</tr>
</tbody>
</table>
greater if the donor is a for-profit corporation than if it is a non-profit corporation.

<table>
<thead>
<tr>
<th>Hypothesis</th>
<th>Citizens experience a greater decrease in their faith in democracy based on evidence of reelection campaign expenditures on behalf of a candidate, when those expenditures are coordinated with the candidate's campaign, as compared with when the expenditures are truly independent.</th>
<th>Responsiveness</th>
<th>Confirmed (p&lt;0.001).</th>
</tr>
</thead>
</table>

Table 7. Summary of Key Findings for Both Experiments

IV. Implications and Conclusion

The data from our survey experiment indicate that there is a public value implicated in campaign spending that is separate and apart from the *quid pro quo* corruption that the Supreme Court has identified as the sole legitimate focus of remedial legislation. The Court has assumed that, in the absence of such corrupt bargains between candidates and donors, money in politics does not adversely affect the electorate. Our study suggests that this is incorrect. Rather, when given opportunities to give answers that indicate their levels of confidence in the communion of interests between themselves and their representatives, citizens have revealed a statistically significant downward effect on that confidence driven by campaign donations. At unspecified levels of

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83See Citizens United v. FEC, 558 U.S. at 360 (campaign expenditures in the absence of *quid pro quo* bargains "will not cause the electorate to lose faith in our democracy"). See also McCutcheon v. FEC, 133 S. Ct. at 1450 ("Spending large sums of money in connection with elections ... does not give rise to ... *quid pro quo* corruption").
magnitude, or at very large ones, citizens doubt the ability of a representative to follow the wishes of her constituents when they diverge from those of the donor. At moderate levels ($10,000) they retain their faith in the representative relationship. Simply put, it does not take a bribe to corrode their faith in the democratic process. As we sought to demonstrate in Part I above, that faith is not a luxury to constitutional government: it is a necessity.

Our first vignettes posited donations from a corporation to a political campaign, a scenario that is currently prohibited by federal law. Our reason for framing the issue that way was twofold. First, it was a clear story to present to our respondents to get a sense of whether they would perceive a compromise of a legislator's independent judgment, even in the absence of any evidence of corruption. Because it was a sense of harm that we were seeking to substantiate, it was important to have the interests of the campaign donors in our story clear, but with no suggestion of *quid pro quo* corruption. Second, we relied on studies that have demonstrated that the actual differences between those still-prohibited direct contributions and the "independent" expenditures now permitted after *Citizens United* have proven to be illusory.

The Court's jurisprudence has treated direct contributions differently from independent expenditures precisely because it believes the former risk corruption while

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84 See Table 7, *supra*.
85 See *supra* Part I.
86 See *Citizens United v. FEC*, 558 U.S. at 320 (describing prohibition on corporations from using general treasury funds to make direct contributions to candidates under 2 U.S.C. § 441b).
87 See Daniele P. Tokaji and Renata E. B. Strause, *The New Soft Money: OUTside Spending in Congressional Elections*, [eds I don't know how to cite this; it is a report, link here: http://moritzlaw.osu.edu/thene...](http://moritzlaw.osu.edu/thene...#content/uploads/sites/57/2014/06/the-new-soft-money-WEB.pdf] (providing first-hand accounts from legislators and lobbyists about the ways in which lax rules for independent expenditures since *Citizens United* have operated in circumvention of corporate contribution limits and rendered meaningless any difference between independent and coordinated expenditures).
the latter do not. As the factual distinctions between independent expenditures and campaign contributions are breaking down, however, the legal distinction that has so far permitted the prohibition of direct corporate contributions is also at risk. Indeed, in 2014, the Court for the first time struck down a statutory limit on direct campaign contributions, as contrasted with independent expenditures. Consequently, we sought in our study to demonstrate a harm separate from corruption that might apply to both direct contributions and independent expenditures. Our study, therefore, focuses on the perceptions arising from the financial support of a donor to a candidate, and the accompanying governmental interests such perceptions may foster, without reference to the specific provisions of current statutory law.

These results are consistent with the other finding of our study, showing a diminished faith in democracy when, instead of direct contributions to candidates, donors make expenditures that are coordinated with the campaigns of candidates. Our experiments did not raise the possibility that contributions could be nominally separate, but in fact coordinated. Based on our data, however, it would be important to citizens to know whether independent expenditures are actually independent, as they were in our vignette. If there were a suspicion on the part of voters that so-called independent expenditures were tacitly coordinated, as studies increasingly show, then our data suggest that this coordination would impair their faith in the representative relationship.

88 See Buckley v. Valeo, 424 U.S. 1, 52 (1975) ("the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify [the statute's] ceiling on independent expenditures" while sufficient to justify limits on contributions). There is also some difference in the way the Court views the strength of the individual expressive right at stake. See McCutcheon v. FEC, 134 S. Ct. at 1444 (noting expenditure limits may be subject to more exacting scrutiny).
89 McCutcheon v. FEC, 134 S. Ct. at (emphasizing burden on First Amendment rights occasioned by aggregate limits on direct campaign contributions).
90 See discussion supra at note 77, and accompanying text.
91 See note 92, supra.
92 See Table 6, supra.
The Supreme Court has given signs that it cares about the electorate’s faith in democracy.\textsuperscript{93} This study suggests that injury to that faith occurs more widely than the Court has believed, and that drawing the line at corruption as the place where injury occurs is artificial. Our data would support limits on campaign contributions to some reasonable amount, in the interest of preventing an erosion of faith in democracy. Our data would also support strong disclosure and fund-segregation laws ensuring that schemes designed to facilitate independent expenditures on behalf of candidates without limit are, in fact, restricted to those expenditures that are truly independent.

This project thus offers an opportunity for further discussion and analysis of where a valid, or even compelling, governmental interest may lie in protecting and preserving the communion of interests that is a theoretical and historical foundation of our republican form of government under the Constitution.

Appendix

We conducted our survey experiment on the American Panel Survey (TAPS). TAPS is a monthly survey conducted online to a national probability sample of approximately 2,000 adults across the United States. Importantly, the recruited panel closely matches the American population on key demographic characteristics, and most questions focus on the public’s political and economic attitudes.\textsuperscript{94} We designed two survey experiments that were implemented as a part of the June 2014 and August 2014 panels of TAPS. The survey includes a battery of demographic questions, including age, sex, race/ethnicity, marital status, religion, religious service attendance, education, employed, occupation, citizenship, household income, personal income, home ownership, ideological self-identification, and party identification.\textsuperscript{95} One distinct advantage about TAPS is the panel nature of the survey, which is essential for evaluating how opinions

\textsuperscript{93} See text accompanying note 3, \textit{supra}.

\textsuperscript{94} \textsc{The American Panel Survey, Washington University in St. Louis} http://taps.wustl.edu/node/27

\textsuperscript{95} \textsc{The American Panel Survey, Washington University in St. Louis}, http://taps.wustl.edu/node/31
change over time. TAPS uses address-based sampling frame (ABS). The survey has a minimum of 1,550 completed interviews per month, and is conducted by Knowledge Networks, a highly respected and leading online survey research firm located in Palo Alto, CA. All analyses reported in this article are conducted using TAPS post-stratification weights, which include adjustments for internet access.

Respondents were randomly assigned to one of six groups at the outset of the June 2014 strobe of the survey. Figure 1 shows which version of the vignette each group received in the June 2014 strobe of the survey. Within each group, each respondent was randomly assigned into one of two conditions for the August 2014 strobe. In Figure 2 we show how the groups are assigned for Experiment 2 in both the June and August 2014 strobes.

96 The sampling frame comes “from a random selection of residential addresses, stratified using ancillary data on age and ethnic group, a panel of more than 2,000 was recruited” THE AMERICAN PANEL SURVEY, WASHINGTON UNIVERSITY IN ST. LOUIS, http://taps.wustl.edu/technical (last visited Jan. 26, 2015).

97 Knowledge Networks conducts many high profile and widely used studies, including the TESS (Time-sharing Experiments for the Social Sciences) Program, which is funded by the National Science Foundation. <http://www.knowledgenetworks.com/ganp/academia.html> The bibliography available here <http://www.knowledgenetworks.com/ganp/docs/KN-Bibliography.pdf> details over four hundred published studies that use Knowledge Networks data.

98 These weights were supplied to us by TAPS and were constructed according to their Technical Supplement on Sample Design and Weighting, THE AMERICAN PANEL SURVEY, WASHINGTON UNIVERSITY IN ST. LOUIS. http://taps.wustl.edu/files/taps/imce/sampledesignandweighting062012_0.pdf (last visited Jan. 31, 2015).
Figure 1. Randomization for Experiment 1

We conducted covariate balance tests using demographic covariates to ensure that the initial randomization was performed effectively and there were no apparent issues in the formation of the six groups, which is what one would expect from random assignment.
Figure 2. Randomization for Experiment 2