IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	Civ. No. 02-0582 (CKK, KLH, RKL)

REBUTTAL EXPERT AFFIDAVIT OF DAVID M. PRIMO

I, David M. Primo, declare the following:

1. I hold the position of Assistant Professor of Political Science at the University of Rochester, Rochester, New York, where I am also affiliated with the W. Allen Wallis Institute of Political Economy. I have also held the position of Acting Instructor in the Department of Public Policy at Stanford University from April 1 to June 30, 2002. I received my Ph.D. in Political Science from Stanford University in June 2002, where my areas of specialty were American politics, political organizations, and political economy. I received my M.A. in Economics from Stanford University in January 2001. I received my M.A. in Political Science as well as a B.A. in political science and economics from Brown University in May 1998. A copy of my curriculum vitae is attached.

2. My research examines how rules and institutions shape policy outcomes and the political process more generally. My work on campaign finance reform has addressed the effect of campaign spending on citizen trust in government as well as the existing state of public opinion on campaign finance reform. This research has been published in two separate research articles and will also be featured in an upcoming encyclopedia of public opinion. In addition, my

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findings have received attention from diverse media outlets. I have also examined the role that corporate political action committees (PACs) play in the national policy process. I am presently working on joint projects probing the effects of state campaign finance laws on various aspects of the electoral process. My research has been published in academic journals including the *Journal of Law, Economics, and Organization* and *Public Choice*, and I have a co-authored book under contract with Brookings Institution Press.

3. My training is in the use of mathematical techniques to study politics. This includes the use of statistical methods as well as theoretical models of the political process. This area of political science is sometimes referred to as positive political theory or formal theory, and its roots are based in the University of Rochester's political science department.[1] Positive political theory is used to study, among other things, how individual preferences get translated into social outcomes.

4. I have been retained by plaintiffs in this case and am being compensated for my services at the rate of $200 per hour, plus out-of-pocket expenses. Neither the amount of my compensation nor the fact that I am being compensated has altered the opinions that I have given and will give in this affidavit and case.

I. CAMPAIGN FINANCE AND CORRUPTION

5. Defendants' expert reports by Jonathan Krasno and Frank Sorauf as well as Robert Shapiro contend that the central justification for restrictions on the financing of campaigns, both in the 1970s and in the BCRA legislation presently under review, is that certain

[1] S.M. Amadae and Bruce Bueno de Mesquita, 1999, "The Rochester School: The Origins of Positive Political Theory," *Annual Review of Political Science* 2:269-96.

forms of contributions or expenditures may lead to the reality or appearance of corruption, thereby overriding First Amendment concerns. For instance, soft money contributions to political parties are argued to have a pernicious effect on the political process, thereby justifying the circumvention of the First Amendment.

6. *Buckley v. Valeo* clearly noted that restrictions on political contributions were acceptable because they struck the proper balance between battling "the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions" and "the rights of individual citizens and candidates to engage in political debate and discussion." In this decision the Court cites *CSC v. Letter Carriers* and notes, "Here, as there, Congress could legitimately conclude that the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.'"[2] Subsequent decisions suggest that demonstrating corruption or the appearance thereof are key elements for sustaining the constitutionality of restrictions on political speech in the form of campaign finance regulations.

7. Defendants' expert Robert Mann argues that a central tenet justifying campaign finance law is that money distorts the political process. A related argument made by experts Krasno and Sorauf is that Americans distrust politicians and political institutions in part because of the suspicions surrounding elected officials and political contributions and expenditures. The news media reinforces this view by portraying the political process as being driven by campaign contributions, a point made by Krasno and Sorauf and one with which I concur.[3] For instance,

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[2] *Buckley v. Valeo*, 424 U.S. 1 (1976).

[3] For instance, a *Wall Street Journal* article on the Crusader military program noted in the fifth paragraph that "[T]wo recipients of United Defense money, Sen. James Inhofe and Rep. J.C. Watts—both Oklahoma Republicans and members of the Senate and House Armed Services (Continued...)

the day after the Senate passed BCRA, the *Washington Post*'s lead story on the issue began, "The Senate yesterday gave final congressional approval to legislation aimed at reducing the flow of big money into American politics, marking the first major overhaul of the nation's campaign finance laws in nearly 30 years."[4]

8. Defendants' experts Shapiro, Sorauf, Krasno, and others argue that campaign finance is an issue of utmost importance to Americans. This is a commonly-held view in many political and academic realms. David Schultz, in introducing an edited volume on campaign finance in the states, writes, "Americans are deeply concerned about the role and impact of money upon politics and government."[5] John McCain, in a statement introducing his proposal for campaign finance to the Senate in 1998, stated, "Mr. President, no Washington pundit thought that the House would actually pass campaign finance reform, but it did. It was not an easy fight. But those in favor of reform prevailed. I hope the majority in the Senate that favors reform will be able to prevail here. A majority in the House passed reform because the American people demand it. Members of the House recognized that the current system is awash in money,

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Committee—have launched efforts to save the program."[3] The article did not mention for many more paragraphs that United planned to build a Crusader plant in Oklahoma. What was framed as a *quid pro quo* was in reality an example of representing local interests. (See Greg Jaffe and Anne Marie Squeo, "Crusader Artillery Gun Becomes the Quarry in Pentagon Showdown," *Wall Street Journal,* May 4, 2001, p. A1.)

[4] Helen Dewar, "Campaign Reform Wins Final Approval; Senate Votes 60-40; Bush Says He Will Sign 'Flawed' Bill," *Washington Post,* March 21, 2002, p. A1.

[5] David Schultz, 2002, "Money, Politics, and Campaign Financing in the States," In David Schultz, ed., *Money, Politics, and Campaign Finance Reform Law in the States*, Durham, NC: Carolina Academic Press, p. 3.

exploited loopholes, and publicly perceived corruption. It is a system that no Member of Congress should take pride in defending."[6]

9. There is no body of work in political science that examines the claim that trust and confidence in democracy is affected by the system of financing campaigns. However, a large literature probes the effect of campaign contributions on policy outcomes. Evidence that campaign contributions caused legislators to alter their voting behavior would support the claim that money corrupts, but such evidence is limited. To be sure, there exist complex methodological challengers inherent in answering the question of money's influence on policy. Namely, it may be that contributions influence legislators, but it also might be that contributors choose to donate to the campaigns of legislators who share their views. A regression analysis must take into account this potentially recursive relationship by considering two equations simultaneously. The first has as the dependent variable campaign contributions and then a set of covariates thought to predict the amount of contributions, including legislator preferences and district characteristics. The second has as the dependent variable a vote or a series of votes on legislation, which are based on very similar covariates in addition to the amount of contributions from a particular interest. To estimate both equations requires the use of an instrument that explains changes in one dependent variable but not the other. Statistical techniques of this sort that attempt to parse this distinction are very sensitive to the exact manner in which the tests are carried out, including the selection of instruments and the way variables are measured. A recent paper on this topic, by Stephen Ansolabehere, John de Fegueiredo, and James M. Snyder, Jr., fails to find a large or meaningful relationship between campaign contributions and legislative

[6] McCain, John. 1998. *Congressional Record.* Vol. 144, No. 18, Sept. 9, 1998. 144 Cong Rec S 10060.

voting, and in a systematic review of the existing literature, demonstrates that an overwhelming majority of studies report weak or nonexistent links between money and roll-call votes.[7] Defendants' experts Stratmann and Mann have propounded contradicting views on the importance of money on roll call votes (see paras. 10 and 11), and the preponderance of the literature suggests that money and roll-call votes are not linked in meaningful ways.

10. One of the researchers who has argued that money does influence policy outcomes is Thomas Stratmann, who has submitted a report for the defense. In his report, Stratmann cites some of his work on the effect of political action committee (PAC) contributions on roll call votes. He writes, "My research shows that campaign contributions are effective in altering politicians' voting behavior."[8] As evidence, he notes that in most of the votes he examined using a method similar to the one described above, campaign contributions increase the probability that a legislator votes on the same side as a contributor, all else equal. However, the reverse of this—that several of the votes did not suggest the influence of money—must be taken into account, as well. Further, Stratmann's analysis regarding how many votes switched as a result of contributions, and whether this shifted the outcome, is inaccurate. In both papers he references, Stratmann compares the *actual* vote to the *predicted* vote had no contributions been offered. But all statistical models contain error (i.e., they do not explain the data perfectly). Therefore, to make a meaningful comparison, one needs to compare the model's *predicted* vote given contributions with the model's *predicted* vote given no contributions. This will provide the model's estimate of how many votes would have changed as a consequence of contributions.

[7] Stephen Ansolabehere, John de Fegueiredo, and James M. Snyder, Jr., 2002, "Why Is There So Little Money in U.S. Politics," Forthcoming in *Journal of Economic Perspectives*.

[8] Stratmann Report, p. 7.

Without replicating his results, I cannot state whether making this correction would strengthen or weaken Stratmann's findings. However, I can state that his results as presented cannot be used to infer how many votes changed due to contributions.

11. Further, Stratmann's position appears to be weakened if not outright contradicted by Thomas Mann's report. Mann writes, "There is little statistical evidence that campaign contributions to members of Congress directly affect their roll call decisions. Party, ideology, constituency, mass public opinion and the president correlate much more with voting behavior in Congress than do PAC contributions."[9] Mann goes on to state that contributions may matter when these other variables are "less significant," but his overall argument is that roll call voting is not where influence (and hence, corruption) exists.

12. In sum, the existing political science literature offers little support for the argument that campaign contributions or the solicitation of campaign contributions corrupt. Mann appears to concur with this assessment and goes on to argue that campaign contributions may instead secure access to legislators or otherwise influence the policy process in indirect ways, such as a legislator's acting on a bill while it is in committee.[10] In fact, Mann argues that the most important (his words) argument for the corrupting influence of soft money is that "soft money has led the parties to become the avenue by which elected officials and large private donors frequently come together...As inducements for large contributions, policymakers grant access and provide opportunities for face-to-face discussions in intimate settings with the party's

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[9] Mann Report, p. 32.

[10] See, for example, Richard L. Hall and Frank W. Wayman, 1990, "Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees," *The American Political Science Review* 84(3):797-820. For an opposing view, see Rogan Kersh, 2001, "Washington Lobbyists, Campaign Funds, and Influence: A Participant-Observation View," Paper Presented at the 2001 Annual Meeting of the Association for Public Policy Analysis and Management.

most prominent public officials."[11] In essence, Mann's argument is that soft money buys access, which is corrupting. While there is debate on this issue among analysts, access in itself is not strong evidence for the corrupting influence of contributions. Contributors often possess valuable information regarding the effects of legislation on a representative or senator's constituents, or the nation as a whole, thereby providing the elected official with relevant data for decision-making. Further, the connection between money and meetings ignores another factor: would the donor have received a meeting in the absence of a contribution? Next, suppose two contributors come to a meeting with the goal of influencing a member's view on bill X, but each has opposing views on X. By construction, access cannot be buying influence.

13. In addition, there is scant evidence in the political science literature that money secures access. A frequently cited paper in the academic literature, by Richard Hall and Frank Wayman, argues that PAC contributions often induce a legislator to act on behalf of interests at the committee stage of legislation, in ways that would not be captured at the roll-call stage. This paper is cited by Mann in his report as part of his discussion on how contributions can affect the legislative process, as well as by Krasno and Sorauf. A significant problem with the results in this paper is that too little information is given about the *substantive* effect of a change in contributions on legislator behavior. The authors' dependent variable is a scale variable, and it is not clear what a unit change in this variable implies for legislator behavior. Similarly, the variable that includes contributions is an interaction term with contributions and an ideology measure. Hall and Wayman present their results in language that does not allow the reader to infer the actual effect of contributions. For example: "In each case, a change in the money support variable from its minimum to its maximum value moves a member approximately one-

[11] Mann report, p. 29.

fourth of the way along the participation scale, almost exactly one standard deviation."[12] Without summary statistics for both the dependent and independent variables, this statement cannot be interpreted substantively. Finally, the model is misspecified in the following way: Whenever interaction terms are included in a model, it is appropriate to include the components of those interaction terms as separate variables. So in the case of Hall and Wayman's paper, separate contribution and ideology terms should have been directly included in the model. For these reasons, this paper does not convincingly demonstrate that contributions produce greater activity on the part of a legislator at early stages of the legislative process.

14. Defense experts Krasno and Sorauf concede that the "money buys access" argument is made with little or no actual data to support the claims when they write, "It is only the absence of systematic data on access that prevents political scientists from searching for relationships between access and policy-makers' behavior."[13] Thus, on both the roll-call vote and access arguments, defendants' experts offer partially contradictory claims, and Krasno and Sorauf concede that political scientists have no statistical basis for claims that money secures access to legislators.

15. Thomas Mann generalizes the concerns about the corrupting influence of contributions on the policy process when he writes, "These new and altered roles in the electoral process for corporations, unions, and political parties raise troubling questions about the integrity of the political process. Congress banned corporate contributions in federal elections out of concerns that concentrated wealth and the advantages of incorporation could distort and corrupt

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[12] Hall and Wayman, p. 811.

[13] Krasno and Sorauf, p. 5.

democratic government. Labor unions were subjected to comparable regulation to neutralize the political benefits that might result from their publicly-facilitated organizational strengths."[14]

16. Claims about "distortion" of the political process must be scrutinized carefully. The last half century of political science and economics research has demonstrated that, in general, outcomes of the political process are dependent on the procedures in place to translate individual preferences into social choices. This was most famously demonstrated by Kenneth Arrow, who proved in 1951 that a preference aggregation rule (e.g., majority rule) could satisfy some reasonable properties only if one individual was making all the choices all the time (i.e., there existed a dictator).[15] What this result suggests is that there is a tradeoff in politics between coherence of policy choice and the concentration of power, and that frequently the rules of the game will affect policy outcomes. For instance, majority rule is considered the epitome of "democratic" rule. Yet majority rule fails to satisfy one of Arrow's properties — transitivity — which states that if a group prefers alternative A to alternative B and alternative B to alternative C, then it must prefer alternative A to alternative C. In other words, to make a claim about "distortions" of the political process, one must be very clear about what it means to distort the process, since in general there is no one policy that is clearly the "choice of the people."

17. I have just demonstrated that there is not a well-developed body of work in the political science literature to support the claim that the U.S. campaign finance system corrupts elected officials. The key claim to analyze, then, is whether any *perceptions* of corruption caused by campaign finance affect Americans' faith or belief in government.

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[14] Mann report, pp. 31-32.

[15] Kenneth J. Arrow, 1951, *Social Choice and Individual Values*, New York: John Wiley & Sons.

II. DEFENDANTS' THEORIES REGARDING CORRUPTION AND CONFIDENCE

18. Defendants' experts make assertions regarding the links among the appearance of corruption, campaign finance law, and Americans' confidence in their government. These are empirical claims that can be analyzed if phrased precisely and if terms are well-defined. This requires informal statements to be cast as hypotheses with precise causal relationships stated.

19. Following are three interrelated claims about how campaign finance affects government institutions. These are intended to represent defendants experts' views as presented in various reports. As support, note Intervenors' Responses to Republican National Committee's Second Set of Interrogatories to Defendants, page 7, which states, "Intervenors contend that the proliferation of soft money leads to actual corruption, the appearance of corruption, and the potential for corruption . . . The prevalence of soft money in the campaign finance system has increased citizens' cynicism, their sense of disenfranchisement, and their perception that their voices, actions, and contributions make little difference in the political process..." See also the reports of Robert Shapiro and Jonathan Krasno and Frank Sorauf.

a. **Hypothesis 1**: Campaign contributions and soft money lead to the appearance of corruption, which has a deleterious effect on confidence in government institutions.

b. **Hypothesis 2**: Confidence in government institutions is inversely related to campaign contributions and soft money.

c. **Hypothesis 3**: Confidence in government institutions is inversely related to the dependence of elected officials on large donors.

20. Hypothesis 1 implies that there is a causal link between campaign contributions, the appearance of corruption, and confidence in government institutions. This link can be represented as follows:

Contributions → Appearance of Corruption → Confidence in Government

21. Hypotheses 2 and 3 state that confidence in government institutions moves in the opposite direction as political contributions, and that confidence erodes as elected officials become more dependent on "big" donors.

22. Defendants' expert Robert Shapiro states, "Assuming that Congress enacted this [soft money] ban to decrease the appearance of corruption, it is important to discern whether the current campaign finance system...does or does not create an appearance of corruption."[16] Shapiro argues that it does. There is evidence against this claim. For example, in a 1997 Center for Responsive Politics poll on campaign finance, fewer than 10% of individuals attributed their dissatisfaction with government to the campaign finance system.

23. Regardless of whether contributions produce an appearance of corruption, however, but the downstream relationship is the central concern. The key question is whether any appearance of corruption caused by campaign finance law translates into lower confidence in democracy or less trust in government. Therefore, we can take Hypothesis 1 as a *maintained hypothesis* that is assumed for the purposes of further examination of related claims. In other words, the analysis proceeds *as if* campaign finance creates an appearance of corruption. The key relationships lie in hypotheses 2 and 3, which link the appearance of corruption caused by contributions to less confidence in government. If the evidence fails to support hypotheses 2 and 3, then logic dictates that any "appearance of corruption" caused by campaign contributions

cannot be affecting American democracy. Since it is via this "appearance of corruption" that campaign contributions are claimed to harm confidence, the argument for weighting this over First Amendment concerns is obviated.

24. Thus far the discussion has focused mostly on the *appearance of corruption*, but of course it also of interest to see how overt instances of corruption are dealt with by the American electoral process. This report will explore the view that the political process is to a large degree "self-regulating," precisely because of the relatively open system of elections we have in the United States. Scandals come to light because of the incentives created by the electoral process.

III. ANALYSIS

25. The standard measure of confidence in government comes from the University of Michigan's National Election Studies (NES), which has asked the following question during its biannual nationwide surveys: "How much of the time do you think you can trust the government in Washington to do what is right — just about always, most of the time or only some of the time?" "Trust" is usually defined as answering just about always or most of the time. Table 1 depicts the complete set of responses from that survey, and Figure 1 represents those figures in a graph. The over-time trend is fairly clear. Whereas in the early 1960s a sizable number of Americans trusted the government to *always* do the right thing, that figure took a hit during the Vietnam era and flat-lined after Watergate. Those who trusted the government to do the right

[16] Shapiro Report, p. 2.

thing most of the time dropped as well. These figures cut across party and demographic lines.[17] There are other questions in the NES that ask about satisfaction with government or whether an individual believes he can influence the political process. However, the trust question gets directly at the issue of confidence and is the one that can most plausibly be linked with corruption or the appearance thereof.

26. Tying aggregate trust data to one-time, specific events such as Watergate or Vietnam in a precise, statistical way is difficult. However, the trends in the data suggest that the late 1960s and 1970s represented a sea change in how *all* Americans viewed the government. This era was of course one of great tumult in the international and domestic arenas, and government missteps almost surely contributed to the erosion of confidence in government.

27. Total congressional campaign spending is used as a measure for analyzing hypothesis 2 because this series provides the most complete and reliable data. To analyze the dependence of contributors on large donors, I employ two variables based on soft money receipts. Caps on hard money contributions are so low that a corresponding measure for these types of donations would not a useful analytical tool.

28. To measure how dependent parties are on soft money *relative to* hard money contributions, which tend to be lower, I calculate the percentage of overall contributions to the major parties that come from soft money in the 1990s, when soft money became increasingly used as a tool for fundraising. These figures are presented in Table 2. The results suggest that both parties have become more dependent on such contributions during the 1990s.

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[17] See John R. Alford, 2001, "We're All in This Together: The Decline of Trust in Government, 1958-1996," In *What Is it About Government That Americans Dislike?*, ed. by John
(Continued...)

29. To establish that soft money contributions are concentrated among large donations, I calculate the percentage of total soft money receipts in the 1997-98 and 1999-00 election cycle that are based on donations of at least $100,000 by organizations, including individuals closely-affiliated with the organizations. (This uses the pro-reform Center for Responsive Politics cutoff of $100,000 and their data for contributions.) In 1997-98, there were 452 such organizations that fit this criterion, and they contributed over 50 percent of total soft money receipts to the parties. In 1999-2000, that number was 526, and they generated approximately 40 percent of soft money revenues. Nearly identical results are obtained if Democrats and Republicans are considered separately. Large donors therefore do contribute a large and significant share of total soft money contributions. This does not imply, however, that soft money is inherently corrupting or a negative influence on democracy. The analogy can be made to so-called concentration indices utilized by economists to measure the concentration of market power in an industry. Without context, one cannot know whether high concentration is automatically a negative. As demonstrated below, this strengthens the argument that contributions have little effect on trust in government, rather than weakens it.

30. When the trust data is combined with the spending and fundraising data, it becomes clear that trust in government and campaign finance are not linked in the way reformers assert. Figures 2 and 3 show the trust measure overlaid with congressional campaign spending as well as the dependence figure. From these figures, it is not possible to argue that campaign finance could be *harming* trust in government. In fact, for congressional campaign spending, the *correlation coefficient* between trust and spending is approximately .25. (Correlation coefficients range from -1 to 1. The closer to 1 the correlation coefficient is, the stronger the

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R. Hibbing and Elizabeth Theiss-Morse, Cambridge: Cambridge University Press.

positive relationship. The closer to -1, the stronger the negative relationship. The closer to 0, the weaker the relationship). This moderately strong relationship is *positive*. This is also seen in the soft money figures. At the very time when soft money contributions were skyrocketing and the dependence of the parties on these contributions was increasing, trust in government was similarly rising. Statistically one cannot observe two series moving in the same direction and assert that one is causing the other. So this data does not imply that campaign spending increases confidence in government. But it strongly refutes the hypothesis that spending is driving a *decrease* in trust at the macro level.

31. This trend holds if data for another question is analyzed. The NES asks, "Would you say the government is pretty much run by a few big interests looking out for themselves or that it is run for the benefit of all the people?" Since the question was first asked in 1964, there has been a steady decline in the percent of respondents who believe that government is run for the benefit of all the people. However, there is a *positive correlation* yet again between campaign spending and the percent of respondents who believe that government is run by a few big interests.

32. This finding is supported by individual-level research conducted by political scientists John J. Coleman and Paul F. Manna, who study the 1994 and 1996 U.S. House elections and find that campaign spending "neither enhances nor erodes trust and efficacy in politics or attention and interest in campaigns."[18]

33. In his report, Derek Cressman writes, "In 1999, only 29% of Americans trusted the government to do the right thing, according to a poll by the Center for Excellence in

[18] John J. Coleman and Paul F. Manna, 2000, "Congressional Campaign Spending and the Quality of Democracy," *Journal of Politics*, Vol. 62, No. 3, p. 757.

Government. The same survey found that 63% of respondents feel that government serves the special interests, while only 25% said it serves the public interest. Just 39% said that they believed our current government meets Abraham Lincoln's goal of government of, by, and for the people, while 54% said we do not have a government of, by, and for the people... The feeling of disenfranchisement is a significant reason for declining rates of voter participation and a barrier to citizens getting involved in federal elections through volunteering or making small contributions. This then exacerbates the undue influence of large donors on the process."[19]

34. This argument looks at a snapshot in time (a 1999 poll) to make a *temporal* argument, which does not allow for accurate inferences. For instance, suppose that trust in government did not change in the last two decades and was at a low level, but that turnout has declined over the same time period. Then it could not be possible that trust in government influenced turnout at the aggregate level. Valid temporal arguments cannot be made by looking at only the final data point in a time series.

35. Krasno and Sorauf are implicitly using the same approach when they write, "Many of them believe that moneyed interests—whether corporations or trade associations or unions or wealthy individuals—use their cozy relationships with policy-makers to exert special influence over government. A majority of Americans, for instance, agree with survey statements such as "government is pretty much run by a few big interests looking out for themselves."[20] This was just as true in 1970 as it is now.

36. In addition, Krasno and Sorauf state, "We think it likely that campaign financing—particularly the huge gifts of soft money given to the parties with the resulting

[19] Cressman Report, pp. 4-5.

[20] Krasno and Sorauf report, p. 7.

skepticism it breeds—is among the developments undermining public opinion in these areas. That means, of course, that banning soft money will not restore public confidence to its highest levels. No single piece of legislation could. But by removing an *obvious* irritant, it is a step in the right direction."[21] These claims are directly contradicted by the empirical evidence just presented.

37. One reason for the trust-related findings is that Americans are simply uninterested in the issue of campaign finance. Shapiro argues, "Critics of reform have emphasized how the public does not seem campaign finance reform as a high priority. The evidence they cite, however, is completely misleading . . . First and foremost, when asked directly about campaign finance reform in different ways, majorities or sizable percentages of the American public have been concerned about this issue and have even considered it a high or even top priority, consistent with the trouble the public has seen in campaign fundraising."[22] Shapiro's evidence, however, uses the least appropriate of the various questions that can be used to assess issue importance.

38. There are generally three ways to ascertain an issue's priority vis-à-vis other policy areas. Polling questions that ask citizens to prioritize a predetermined list of issues typically find that campaign finance is at or near the bottom of the list. These questions are usually phrased as follows — "Of the following issues, which is the most important for government to address?" — and are accompanied by a handful of possible responses. The issue fares even worse in so-called "open-ended" questions, where citizens select the issue without prompting. One commonly asked version of this type of question is, "What do you think are the

[21] Krasno and Sorauf report, p. 21, emphasis added.

[22] Shapiro, p. 10.

two most important issues for the government to address?" Here campaign finance is typically of primary importance to 1-2 percent of the public.

39. Campaign finance is sometimes viewed as a high priority when asked with a poorly-framed question that simply asks people whether they believe an issue should be the highest, a high, a medium, or a low priority for government. This query does not require individuals to face the reality that agenda space is scarce. At any point there are innumerable issues for policymakers to consider, but reality dictates that only a limited number can be considered. Because citizens are not forced to choose between issues, there is no way to know what it means to say that an issue should be a "high priority." Prioritization implies competition for a limited resource. The first two types of questions build-in agenda scarcity. The latter fails to.

40. Shapiro's Tables 1.17 to 1.36 utilize only the last of these methods, while completely ignoring the other two, and the tables do not offer consistent support for the hypothesis that campaign finance matters to Americans. For example, a March 19, 2001 Gallup poll finds that 41% of Americans did not believe that Congress and the President should take time to address campaign finance reform. Therefore, even when considering the most favorable (as well as the least appropriate) evidence, the claim that Americans view campaign finance as a priority is not supported systematically.

41. Shapiro states that "campaign finance has been more salient when campaign finance problems and scandals have been given the kind of attention by political leaders and the news media that these other issues have been regularly given."[23] However, in 2000 alone—when the issue of campaign finance was receiving extensive attention due to Senator John McCain's

campaign for the presidency — the following polls asking open-ended questions found campaign finance to be a priority of on average 1-2% of the public: the Harris Poll, 10/19/2000, 9/8/2000, 7/13/2000, 6/8/2000; 1/6/2000; Fox News Opinion Dynamics Poll 8/9/2000, 5/10/2000, 1/26/2000; ABC News-Washington Post Poll, 2/3/2000; 1/13/2000.

42. Similarly, Enron is now a household name, and even after all the attention Enron received and the links that were made between Enron and the need for campaign finance reform, a January, 2002, Harris poll found that 1% of the public mentioned campaign finance as a policy priority. In an extensive search on the Lexis-Nexis database of polling questions (which draws from the Roper database), I was unable to find any evidence that more than 1-3 percent of those polled responded with campaign finance reform in the open-ended response questions.[24] The Harris Poll question about the two most important issues for government to address has similarly not registered higher than a 3% response for campaign finance in January 1993, February 1994, February 1995, April 1996, May 1997, January 1998, February 1999, August 2000, September 2000, February 2001, June 2001, July 2001, August 2001, and October 2001.[25]

43. Shapiro argues, "When compared with other issues that compete for government and public attention, it is understandable that the issue has not normally been seen the same way as pressing economic problems, crises in health care and retirement income, crime, and war, terrorism, and other international crises." In response, there are two key points to remember. First, campaign finance is consistently at the bottom of priorities, even when the issue is

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[23] Shapiro, p. 10.

[24] See David M. Primo, 2002, "Campaign Finance and Public Opinion: Reformers Versus Reality," *The Independent Review*, Volume 7, No. 2, Fall, pp. 207-219.

[25] Humphrey Taylor, 2002, "The Harris Poll #5: The President's Very High Ratings Continue to Slip Slightly as the Economy Increases in Importance," January 25.

receiving extensive press attention, contrary to Shapiro's claims. Second, unlike an issue such as homelessness, the public's views on campaign finance are in many ways the *raison d'etre* of reform. Public sentiment surrounding the issue is viewed as the reason why reform is important. The public's continued indifference to the issue is therefore an extremely important finding.

44. Shapiro argues that "notwithstanding the public's ongoing cynicism and lack of confidence toward many aspects of political life, substantial percentages of the public have thought that campaign finance reforms can be effective, can reduce the influence of money in politics at least somewhat, can make the public more optimistic about government, and would be good for democracy."[26] Data can be found to support both sides of all of these claims, but as an analysis by the National Association of Business PACs (NABPAC) has suggested, the key is how the questions are asked.

45. For example, a March 2001 Gallup poll cited by Shapiro in Table 1.46 asked, "In general, if new campaign finance reform legislation were passed, do you think it would make our democratic form of government work — much better than it does now, just a little better, about the same, just a little worse, or much worse than it does now?" 59% answered "much better" or a "little better," with 32% believing nothing would change and fewer than 10% arguing that things would get worse.

46. In a February 2002 poll conducted during debates over new campaign finance legislation, CBS News asked, "The House of Representatives recently passed campaign finance reform legislation, which would prohibit or limit various types of campaign contributions. If this legislation passes the Senate, do you think as a result that big business will have less influence on

[26] Shapiro report, p. 10.

government, or will things go on much as they did before?" Nearly two-thirds (61%) responded with the latter. Similar results are cited by Shapiro in his Tables 1.47-1.49.

47. Data from a 1996 NABPAC poll bears out similar results. This suggests that Americans believe that campaign finance laws could *in theory* lead to a better government, but at the same time that laws passed by Congress will do little or nothing to change the functioning of the political system. Therefore, not only do Americans view campaign finance as a low policy priority, they have little faith that new laws passed by Congress will change government. So the justification for BCRA—that the public wants the reform and it will improve citizen-government relations—is unsupported by the data. Americans are concerned about issues other than the "appearance of corruption" allegedly caused by campaign finance, and they do not believe that new campaign finance laws enacted by the Congress will improve the functioning of democracy.

48. While not interested in campaign finance, Americans are sensitive to scandal and corruption and respond through the electoral process. Further, elected officials who desire to remain in office know and anticipate this. Voters respond to actual events and scandals, not vague "appearances." The central idea is that the public responds to actual corruption and events to form its views of American government, with elections being a method of "self-correction" within the democratic process. Elected officials are acutely aware of the self-correcting tendencies of American elections. For instance, political scientists Timothy Groseclose and Keith Krehbiel show that the number of bad checks an elected official wrote during the House banking scandal was inversely related to whether he or she sought reelection or retired.[27] D. Roderick Kiewiet and Langche Zeng show that scandals make elected officials much less likely

to run for reelection, and guarantees that they will not seek *higher* office.[28] Susan Welch and John R. Hibbing find that from 1982-1990, about 35% of the scandal-afflicted retired, resigned, or failed to win reelection. And of those who were successful, their electoral margins suffered.[29]

49. There are therefore two effects of scandals: first, they cause elected officials to change their behavior, by resigning or not seeking reelection. Second, those who decide to run face reduced electoral margins and sometimes defeat. This further suggests that voters weigh the allegations alongside the performance of the member when casting a ballot. When the "appearance of corruption" gets manifested in an actual scandal, there are consequences. Thus built-in to the electoral process is a check against corruption. Perhaps this is why trust in government is unaffected by contributions — the money itself does no harm. In addition, political actors are aware that scandal harms elected officials, so there is an incentive for challengers and opponents to bring allegations to the fore. Many view this as evidence of the unseemly nature of politics, but rather it is the epitome of democratic rule.

IV. CONCLUSION

50. In conclusion, then, this report has made the following findings.

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[27] Timothy Groseclose and Keith Krehbiel, 1994, "Golden Parachutes, Rubber Checks, and Strategic Retirements from the 102d House," *American Journal of Political Science*, Volume 38, Issue 1, February, pp. 75-99.

[28] D. Roderick Kiewiet and Langche Zeng, 1993, "An Analysis of Congressional Career Decisions, 1947-1986," *American Political Science Review*, Volume 87, Issue 4, December, pp. 928-941.

[29] Susan Welch and John R. Hibbing, 1997, "The Effects of Charges of Corruption on Voting Behavior in Congressional Elections, 1982-1990," *Journal of Politics*, Volume 59, Issue 1, February, pp. 226-239.

a. Defendants' expert reports have argued that the constitutionality of campaign finance restrictions depends in part on demonstrating that contributions corrupt or create the appearance of corruption, which in turn harms democracy by causing citizens to distrust their government.

b. The political science literature does not find that campaign contributions corrupt elected officials, either the voting stage or at earlier points in the legislative process. Defendants' expert reports have offered contradictory evidence with respect to roll-call voting and have admitted that political scientists have no systematic data suggesting that money secures access. The remaining link between campaign finance and harms to democracy is the alleged appearance of corruption caused by campaign finance.

c. The empirical evidence fails to support defendants experts' claims that campaign contributions or the system of campaign finance creates an appearance of corruption which in turn causes Americans to distrust government. Most tellingly, confidence in government was increasing at the same time that soft money contributions were skyrocketing and the dependence of parties on soft money contributions was similarly increasing. This is not meant to suggest that contributions increase confidence in government—that would require a different type of analysis—but it does demonstrate that confidence in government is not being harmed by additional soft money receipts. The same relationship exists for congressional campaign spending and public confidence over a much longer time series.

d. There are consequences for elected officials who are embroiled in a scandal related to actual corruption. Researchers have found that such officials tend to resign or not seek reelection, and in cases when they do run for reelection, they suffer at the ballot box. In this respect the American electoral system is self-correcting.

e. Contrary to the claims of defendants' expert Shapiro, Americans view the issue of campaign finance reform as a low priority and believe that theoretically new laws could improve democracy, but that in reality legislation emerging from Congress is likely to have little effect on the U.S. government.

51. An alleged government interest served by BCRA is "restoring Americans' faith in the electoral process and decreasing public cynicism about our system of government" as well as "preventing corruption and the appearance of corruption that results from unlimited financial contributions."[30] This report has found that defense data marshaled on behalf of these claims fails to demonstrate that the system of campaign finance is causally linked to corruption or trust in government. There is little evidence to support the expectation that this reform will serve either government interest.

52. Executed this 7th day of October, 2002, at Rochester, N.Y.

David M. Primo

[30] "Intervenors' Reponses to Republican National Committee's Second Set of Interrogatories to Defendants," page 3.

Table 1. Trust in Government, 1958-2000

QUESTION TEXT: "How much of the time do you think you can trust the government in Washington to do what is right — just about always, most of the time or only some of the time?"

	'58	'60	'62	'64	'66	'68	'70	'72	'74	'76	'78	'80	'82	'84	'86	'88	'90	'92	'94	'96	'98	'00
None of the Time (vol.)	0	**	**	0	2	0	0	1	1	1	4	4	3	1	2	2	2	2	3	1	1	1
Some of the Time	23	**	**	22	28	36	44	44	61	62	64	69	62	53	57	56	69	68	74	66	58	55
Most of the Time	57	**	**	62	48	54	47	48	34	30	27	23	31	40	35	36	25	26	19	30	36	40
Just About Always	16	**	**	14	17	7	6	5	2	3	2	2	2	4	3	4	3	3	2	3	4	4
Don't Know, Depends	4	**	**	1	4	2	2	2	2	3	3	2	3	2	2	1	1	1	1	0	1	1

Source: The National Election Studies
(http://www.umich.edu/~nes/nesguide/toptable/tab5a_1.htm)
** indicates question not asked in survey year.

Table 2. Percentage of Party Funds Raised by Soft Money, 1991-2000

Year	Democrats	Republicans	Total
1991-92	17.0	15.7	16.2
1993-94	26.1	17.6	20.9
1995-96	35.9	24.9	29.1
1997-98	36.7	31.6	33.5
1999-00	47.1	34.9	40.1

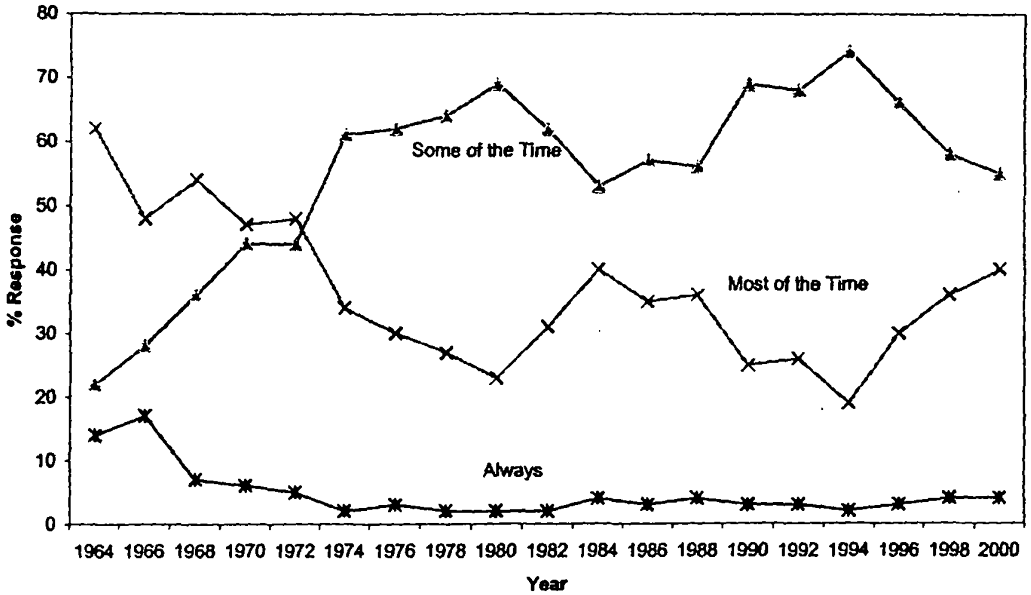
Source: Federal Elections Commission Data

Table 3. Soft Money Fundraising by Party, 1991-2000

Year	Democrats	Republicans	Total
1991-92	36.3	49.8	86.1
1993-94	49.1	52.5	101.6
1995-96	123.9	138.2	262.1
1997-98	92.8	131.6	224.4
1999-00	245.2	249.9	495.1

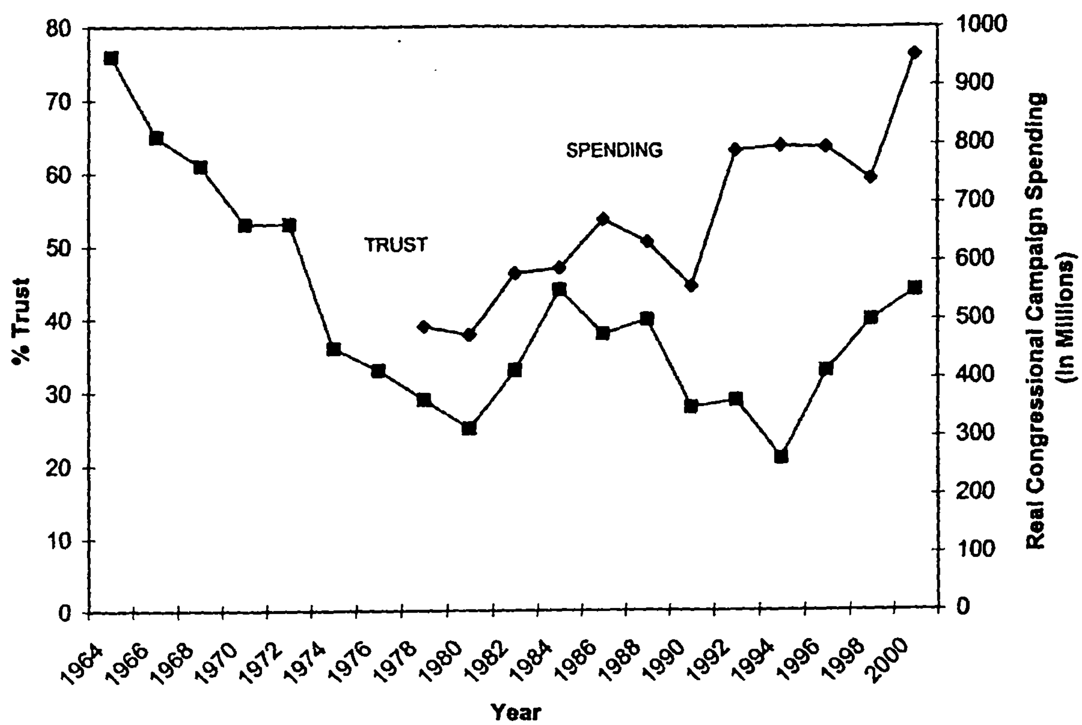
Source: Federal Elections Commission Data

Figure 1. Trust in Government, 1964-2000



Source: National Election Studies, University of Michigan

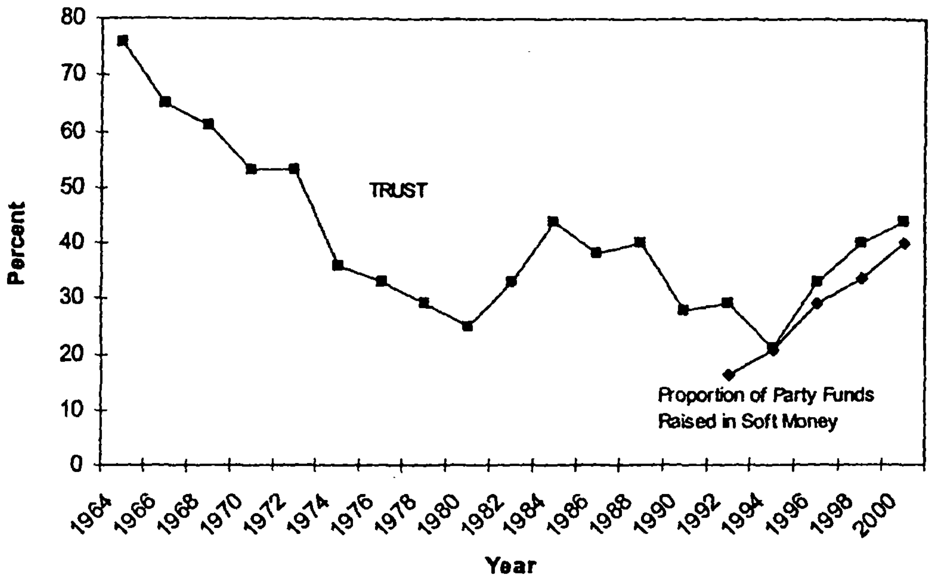
Figure 2. Trust in Government and Campaign Spending



Note: Trust is defined as answering all of the time or most of the time to the question, "How much of the time do you think you can trust the government in Washington to do what is right — just about always, most of the time or only some of the time?" "Trust" is usually defined as answering just about always or most of the time.

Source: National Election Studies (trust data); Federal Elections Commission (spending data)

Figure 3. Trust in Government and Soft Money



Note: Trust is defined as answering all of the time or most of the time to the question, "How much of the time do you think you can trust the government in Washington to do what is right — just about always, most of the time or only some of the time?" "Trust" is usually defined as answering just about always or most of the time.

Source: National Election Studies (trust data); Federal Elections Commission (spending data)

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ACADEMIC APPOINTMENTS

University of Rochester, July 2002 - Present
–Assistant Professor (tenure-track), Department of Political Science
–Research Associate, W. Allen Wallis Institute of Political Economy

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–Acting Instructor, Department of Public Policy

EDUCATION

Ph.D., Political Science, Stanford University, June 2002

M.A., Economics, Stanford University, January 2001

M.A., Political Science, Brown University, May 1998

B.A. with highest degree distinction, Honors Political Science, Brown University, May 1998

B.A. with highest degree distinction, Economics, Brown University, May 1998

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ARTICLES IN PEER-REVIEWED JOURNALS

"Rethinking Political Bargaining: Policymaking with a Single Proposer." *Journal of Law, Economics, and Organization* 18(2):411-427 (October 2002).

"Public Opinion and Campaign Finance: Reformers Versus Reality." *The Independent Review* 7:207-219 (Fall 2002).

"Budgetary Reform and Formal Modeling: A Comment on Gabel and Hager." *Public Choice* 113(1-2):225-230 (October 2002).

"Corporate PAC Campaign Contributions in Perspective." (with Jeffrey Milyo and Timothy J. Groseclose) *Business and Politics* 2:75-88 (2000).

OTHER PUBLICATIONS

"CSN and Steel Antidumping (A)." (with Romain Wacziarg) In David P. Baron, *Business and Its Environment*, 4th ed., Upper Saddle River, NJ: Prentice Hall, pp. 215-217 (2002).

"CSN and Steel Antidumping (B)." (with Romain Wacziarg) In David P. Baron *Business and Its Environment Instructor's Manual*, 4th ed., Upper Saddle River, NY: Prentice Hall, pp. xx-xx (2002).

"Public Opinion and Campaign Finance: A Skeptical Look at Senator McCain's Claims." Briefing Paper No. 60, Cato Institute (2001).

MBA CASES—STANFORD GRADUATE SCHOOL OF BUSINESS

"CSN and Steel Antidumping" (A Case and B Case) (with Romain Wacziarg) 1999.

"GAF and the Politics of Asbestos." (with Keith Krehbiel) 1999.

MANUSCRIPTS/WORK IN PROGRESS

The Plane Truth: Airline Crashes, the Media, and Transportation Policy. Under Contract at Brookings Institution Press. Anticipated January 2003.

"Campaign Finance and Public Opinion." Under contract for publication in *The Encyclopedia of Public Opinion*, to be published 2003 by ABC-CLIO.

"The Effects of State Campaign Finance Regulation on Turnout, Electoral Competition, and Partisan Advantage in Gubernatorial Elections, 1949-1998." (with Tim Groseclose and Jeff Milyo)

"Enforcing Budget Caps in Distributive Politics Bargaining."

"Stop Us Before We Spend Again: Institutional, Partisan, and Economic Determinants of Spending Decisions in the U.S. States."

"A Formal Model of Distributive Politics With an Executive and a Budget Cap."

"Campaign Finance Regulation and Citizen Trust: Evidence From the States." (with Jeff Milyo)

DISSERTATION

Essays on Bargaining and the Politics of Public Expenditures in the United States. June 2002.
Advisor: John Ferejohn
Reading Committee: John Ferejohn, Timothy Groseclose, Keith Krehbiel

CONFERENCE PAPERS

"Enforcing Budget Caps in Distributive Politics Bargaining." Presented at the Annual Meeting of the Midwest Political Science Association, April 25-28, 2002 and the Annual Meeting of the American Political Science Association, August 29-September 2, 2002.

"The Effects of State Campaign Finance Regulation on Turnout, Electoral Competition, and Partisan Advantage in Gubernatorial Elections, 1949-1998." Co-authored with Tim Groseclose and Jeff Milyo. Presented at the Annual Meeting of the Midwest Political Science Association, April 25-28, 2002 and the Annual Meeting of the American Political Science Association, August 29-September2, 2002.

"Public Opinion and Campaign Finance: Reformers Versus Reality." Presented at the Fall Meeting of the Association for Public Policy Analysis and Management, November 1-3, 2001.

"PACs and Policy: A Tale of Two Methods." Poster Presented at the Political Methodology Summer Meeting, July 19-21, 2001.

"A Formal Model of Distributive Politics With an Executive and a Budget Cap." Paper presented at the Annual Meeting of the Midwest Political Science Association, April 19-22, 2001.

"Rethinking Bargaining: General Properties of Single-Proposer Models." Presented at the Annual Meeting of the Public Choice Society, March 9-11, 2001.

INVITED PRESENTATIONS

Invited Panelist, Executive Education Roundtable for Capitol Hill Campus, "Reforming the Debate: Elections, Democracy, and Money," sponsored by the Mercatus Center at George Mason University, July 11, 2001.

New York University, November 2001.

University of Rochester, November 2001.

COURSES TAUGHT

Business and Public Policy, Stanford University, Spring 2002

Business and Politics, University of Rochester, Fall 2002

Introduction to Positive Political Theory, University of Rochester, Fall 2002

RESEARCH POSITIONS

Stanford Graduate School of Business, Prof. Timothy J. Groseclose, April 1999-March 2002

Hoover Institution, Prof. Terry M. Moe, March 2000-September 2000

Stanford Graduate School of Business, Prof. Keith Krehbiel, June 1999-December 1999

Massachusetts Institute of Technology Center For Transportation Studies,
Dr. Joseph Coughlin and Prof. Roger Cobb, May 1998-September 1998

Brown University, Prof. Paul Kellstedt, May 1998-September 1998

HONORS AND FELLOWSHIPS

Humane Studies Fellow, 1999-2000, 2000-2001, 2001-2002

Finalist, Stanford Political Science Teaching Assistant Award, 2001

Brown University Harvey A. Baker Graduate Fellowship, 1998-1999

Phi Beta Kappa, Inducted as a Junior, 1997

Omicron Delta Epsilon (Economics Honor Society), Inducted 1997

Brown University Prize in American Politics, 1998

PROFESSIONAL SERVICE

Chair, Parties Panel, Public Choice Meeting, 2001

Discussant, Courts and Juries Panel, Public Choice Meeting, 2001

Discussant, Legislative Motivation and Accountability Panel, Midwest Meeting, 2002

Stanford Political Science Graduate Admissions Committee, 2001

Stanford Political Science Methodology Faculty Search Committee, 2001-2002

Organizer, Stanford "Pizza and Politics" Graduate Student Presentation Series, Spring 2001

Occasional Reviewer, *American Journal of Political Science, Social Choice and Welfare*

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