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How Citizens United vs FEC Impacted the Quality of Democracy

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**HOW *CITIZENS UNITED* v. *FEC*
IMPACTED THE QUALITY OF DEMOCRACY**

AN HONORS COLLEGE THESIS

BY

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ABSTRACT

In 2010 the United States Supreme Court delivered an opinion in *Citizens United v. Federal Election Commission* which reversed decades of federal campaign finance law. The Court held that corporations, unions, and other entities could not be subject to federal campaign finance laws that restricted these organizations from engaging in independent expenditures using general treasury funds – i.e., advocating for the election or defeat of a specific candidate for federal office. Two months later, in *SpeechNow v. Federal Election Commission*, the U.S. Court of Appeals for the District of Columbia extended the ruling to apply to non-profit organizations. The result of this pair of rulings was the creation of the “Super PAC” – a type of political action committee that can spend unlimitedly on expressly advocating for the election or defeat of a candidate for federal office. A wealth of scholarship emerged in the aftermath of *Citizens United*. One of these bodies of literature contended over whether Super PACs were de facto extensions of the parties, or whether the Super PAC represented a novel entity that could be used by party outsiders to challenge the party insiders. I investigated the ability of party outsiders and factions to fundraise before and after the 2010 ruling to determine whether *Citizens United* created an opening for party outsiders. I used a database consisting of over 100 million contribution records from the Federal Election Commission to review a list of candidates for federal office and their numerical ideology scores. I used a modified z-score to standardize the ideology of candidates, and then conducted a comparative analysis of the percentage of total contributions that went to extreme candidates in Republican Presidential primaries both before and after 2010. I found that extreme candidates were indeed better off after *Citizens United*.

A K N O W L E D G E M E N T S

I had no idea what I was in for when I took on this project. From beginning to end, everything took one year and seven months. I have grown both as a student and as a person in the process. None of it could have been feasible without the consistent aid and support of my brilliant advisor – Dr. Anke Grosskopf, who responded to emails on Friday nights, Sunday mornings, and remained interested and enthusiastic about the work from start to finish. I am deeply thankful for her time over these last nineteen months. A special thanks to my co-advisor, Dr. Jeremy Buchman, who provided insightful advice throughout the project. Lastly, I would also like to thank Lindsey, who kept with me while I worked on this weekend after weekend, after weekend.

I'm John Dowling, III, and I approve this message.

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CHAPTER I

OPENING STATEMENT

Electoral competition and representation are two cornerstones of democratic government. The ability of various citizens to compete for the chance to represent and enact into law the will of the people is paramount to the very fabric of the United States. These values are not the only ones that society has strived for years to maintain. From time to time, our nation experiences a period of a transformational value conflict in which attempts are made to reconcile one value with another. In the case of campaign finance, the value conflict has been framed largely as a clash between equality and liberty (e.g., Kang, 2010a). On the one hand, proponents of equality argue that the government ought to regulate the amount of influence that certain speakers should have in the context of political campaigns and in the interest of leveling the playing field; on the other hand, proponents of liberty argue that such regulation infringes upon certain individuals' right to freedom of speech under the First Amendment. In 2010, this value conflict resurfaced when the United States Supreme Court issued a decision in a pivotal case that reshaped the terrain of campaign finance forever. The case was *Citizens United v. Federal Election Commission* (552 U.S. 1278 (2010)). This thesis addresses one of the consequences of that decision. Before doing so, however, I provide a concise briefing on campaign finance law to situate the ruling in the context of the overall legal category.

1.2 Understanding Campaign Finance Law

Campaign finance is one of the most confusing areas of American law. The vast maze of rules governing campaign finance includes FEC, IRS, and FCC regulations, state and federal statutes, and constitutional law, all of which form a nexus of largely vague parameters that even some of the most adept lawyers consider a legal minefield riddled with ambiguity (Kang, 2010a, p. 1164). Several of the laws and rules carry strict criminal liability under federal felony statutes which over time have contributed to the evolution of campaign finance as an industry in its own right. In 2010, the U.S. Supreme Court handed down a decision in *Citizens United v. Federal Election Commission* (552 U.S. 1278 (2010)) which reinvigorated a national debate over campaign finance reform in both the popular media as well as in scholarly circles. Contrary to much of the popular criticism following the decision, which portrayed the ruling as, for example, having “opened the floodgates for special interests to spend without limit in our elections” (Obama, 2010), the fact is that the decision in *Citizens United* merely extended a pre-existing judicial doctrine which had been steadily deregulating the world of campaign finance (Fishkin & Gerken, 2015; Gerken, 2014; Kang, 2010a). To understand the significance of *Citizens United*, the decision must be viewed in the context of the legal history of campaign finance.

In 1971, Congress passed the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101 (1972). FECA, in combination with its 1976 amendments, heralded the first time that Congress set limits on political contributions and expenditures; established the Federal Election Commission (FEC) to which rule-making authority was delegated; established spending limits; and mandated disclosure of campaign expenditures. Since the passage of FECA nearly fifty years ago, a series of court cases have steadily challenged its provisions. Some federal courts have upheld FECA provisions, some have struck them down, and some have applied those precedents.

All of these cases can essentially be conceived of as rules on source and size restrictions. This process began in 1976.

In 1976, FECA was first challenged before the U.S. Supreme Court in *Buckley v. Valeo* (424 U.S. 1 (1976)). In *Buckley*, the Supreme Court held, *inter alia*, that FECA provisions capping candidates' own expenditures violated freedom of speech. *Id.* However, the Court did not find FECA provisions limiting contributions to campaigns to be unconstitutional. *Id.* As a result, the Court created a campaign finance world in which "politicians' appetite for money would be limitless but their ability to get it would not" (Gerken, 2014, p. 906). Then, in 1990, the Supreme Court held in *Austin v. Michigan Chamber of Commerce* (494 U.S. 652 (1990)) that corporations did not have a right under the First Amendment to engage in independent expenditures using general treasury funds.¹ The Court in *Austin* held further that non-profit organizations could be subject to the same prohibitions on independent expenditures. *Id.*

Twelve years later, Congress passed the Bipartisan Campaign Reform Act (BCRA) (2 U.S.C. § 441, et seq. (2002)) which, in relevant part, prohibited political parties from raising and spending "soft money" – that is, money not spent in direct support of a specified candidate (i.e., "express advocacy").² Moreover, the BCRA established and defined the concept of an "electioneering communication" – any broadcast, cable, or satellite communication...that refers to a clearly identified candidate for Federal office and... is made within sixty (60) days of a general election...or thirty (30) days of a caucus or primary election." 52 U.S.C. § 30104 (f)(3)(A)(i)(II). The section of this law reading "refers to a clearly identified candidate for federal office" is where the phrase "express advocacy" is derived – that is, directly advocating for the

¹ "Independent expenditures" are those made in support of a candidate for federal office but without any coordination or consultation with the campaign committee or its agents.

² The Bipartisan Campaign Reform Act (2002) is also known as the "McCain-Feingold Act."

election or defeat of a candidate for federal office. Under the BCRA, if an entity engaged in express advocacy, then that entity fell within the regulatory scope of the FEC and contributions limits applied. Due to the nature of political parties, they coordinate with campaign committees, and therefore they are subject to contribution limits under the BCRA. The BCRA did not, however, prevent non-profit organizations known as “527s” from raising or spending soft money.³ As a result, the prominence of 527s grew significantly as they began receiving the contributions that had previously gone directly to the formal parties. This rechanneling of funds from parties to 527s that resulted from the BCRA is an example of an enduring concept in campaign finance research and literature known as the “hydraulics” of campaign finance reform – that is, the power of money in politics cannot be destroyed, only channeled through alternative avenues in pursuit of the same ends (Issacharoff & Karlan, 1999).

In 2003, provisions of the BCRA were challenged as unconstitutional in *McConnell v. Federal Election Commission* (540 U.S. 93 (2003)). In *McConnell*, the U.S. Supreme Court held as constitutional provisions of the BCRA prohibiting corporations and labor unions from using general treasury funds to engage in independent expenditures. *Id.*

The prominence of 527s in federal elections was first highlighted in the 2004 cycle where aggregate 527 receipts reached over \$558,000,000 million (adjusted to real 2016 USD) (527s | OpenSecrets, 2017a). The parties and their heavyweight donors, having lost the ability to raise and spend soft money via the formal party organizations with the passage of the BCRA, gravitated toward 527s in order to achieve the same goal: amassing and dispensing large sums of money in pursuit of electoral victory (Gerken, 2014). Moneyed interests began using 527s to

³ So-called “527s” derive their name from section 527 of the Internal Revenue Code (26 U.S.C. § 527) which codifies requirements for tax-exempt status of certain political organizations.

finance so-called “issue ads” where political issues could be addressed and viewers could be urged to vote in particular ways, but 527s could not engage in “express advocacy” – that is, expressly advocating for the election or defeat of a clearly identified candidate for federal office.

Then, in 2010, in *Citizens United*, the U.S. Supreme Court delivered two seminal rulings. First, it held that corporations and unions could not be subject to prohibitions on independent expenditures as mandated by FECA and upheld in *Austin*. Here, *Citizens United* reversed *Austin* when the Court held that “government may not, under the First Amendment, suppress political speech on the basis of the speaker’s corporate identity” (*Citizens United*, 558 U.S. 1278 (2010)). Second, the Court in *Citizens United* struck down the BCRA provisions barring corporate independent expenditures, which, in effect, overruled this part of *McConnell*. The U.S. Supreme Court in *Citizens United* did not, however, review such bans on non-profit groups. Nevertheless, two months later, in *SpeechNow v. Federal Election Commission* (559 F.3d 686 (2010)), the U.S. Court of Appeals for the District of Columbia relied on the ruling in *Citizens United* in holding that 527 organizations engaging in independent expenditures could not be subject to FECA and BCRA provisions restricting source or size of receipts, nor size of expenditures. *SpeechNow* overruled so much of *Austin* that upheld limits on non-profits’ expenditures. *Id.* The D.C. Circuit further held that private individuals making contributions to 527s could not be subject to monetary limits either. *Id.* The ruling in *Citizens United* and its doctrinal extension in *SpeechNow* gave birth to the “Super PAC” – a derivative of a 527 and a type of political action committee that can raise and spend unlimited sums of money on express advocacy at any time, so long as they do not coordinate with campaigns or their agents.

In 2012, Barack Obama ran for re-election against Mitt Romney as we witnessed the first election cycle in which Super PACs were engaged. That year, the aggregated funds raised by

Super PACs were over \$828 million (Super PACs | OpenSecrets, 2017b). The following presidential election cycle made history with aggregated Super PAC receipts totaling more than \$7.1 billion (Super PACs | OpenSecrets, 2017c). To put these figures into perspective, consider this: in 2012, Super PACs spent more than double what political parties spent on campaigning, and in 2016, Super PACs spent about the same (Outside Spending | OpenSecrets, 2013a, 2017a). Evidently, Super PACs have become one of, if not the most, prime spending vehicle employed in federal elections.

1.3 Avenue of Inquiry & Thesis Outline

One can sympathize with those who claim too much money is flowing into and out of these entities. Nevertheless, the sheer amount of money begs the question of whether Super PACs are merely vehicles for exercising free speech, or whether they are vehicles for the ultra-wealthy to exercise a highly disproportionate amount of political influence. This inquiry, albeit attractive, is normative in nature, and one that I refrain from reviewing in this thesis. Instead, I conduct an empirical analysis to determine how Super PACs have been used by and for “party rebels” to amass funds and exert political influence. This question can be answered empirically and contributes to what we know about the practical operations of Super PACs, party outsiders, and campaign finance more generally.

The outline of this work is as follows: Chapter 2 features a nuanced review of the relevant literature containing both similar and competing accounts of scholarly answers to the aforementioned research question, and a hypothesis is developed and presented. Following the literature review, Chapter 3 sets forth the variables in the hypothesis, the data used to fuel them, and the parameters of the research design. In Chapter 4, I set forth the results of the analysis and

discuss the implications of those findings. I then address the design limitations and set forth a number of avenues for future and further research. Finally, in Chapter 5, I conclude.

CHAPTER II

LITERATURE REVIEW

In seeking to answer the question *how have Super PACs been used by and for party rebels and factions in the 2016 Republican primary in pursuit of amassing funds and martialing political influence*, this work builds on an array of prior research and relevant scholarly literature. First, a review of literature on democratic theory establishes a benchmark for undertaking an examination of the court’s ruling in *Citizens United* in the context of the American political arrangement. Second, a nuanced summary of two competing schools of thought that emerged in the campaign finance literature is presented – the “Party Network School” and the “Shadow Party Power School.” Third, a survey of scholarly research on factions in politics and within parties lays out the presence and type of organized interests that can and arguably do enjoy the benefits of Super PACs. The hypothesis is developed and advanced based on the logical and empirical strengths and weaknesses of each school of thought.

2.2 Democracy: Parties, Competition, Representation, and Candidate Selection

The concepts of electoral competition and representation are inextricably intertwined tenets of democratic theory. While scholars have clashed over the definitions of these terms, there is a general consensus that representation and competition are and ought to be inherent in any democratic system. Essentially all contemporary democracies provide for electoral competition, albeit to varying degrees, yet a significant point of difference between them is the process through which each system selects its candidates, and these systems all have different

consequences for the level of competition and representation they experience (Craig, 2016; Hazan & Rahat, 2001, 2010; Rahat, Hazan, & Katz, 2008). Research has consistently demonstrated the consequences of various aspects of candidate selection methods. Hazan & Rahat (2010) found that inclusiveness and participatory openness impacted representativeness of candidates, internal party nomination competitiveness, and responsiveness. Hazan & Rahat (2001) also found that the level of internal party democracy was correlated with the power of incumbents, internal competition, candidate representativeness, and intra-party conflict. Rahat, Hazan, & Katz (2008) further demonstrated the impact of intra-party democracy and candidate selection methods on inclusive participation, competition, and representativeness. Similarly, Katz (2001) found that inclusiveness impacted the level of internal party democracy. Moreover, Craig (2016) demonstrated that the strength of political parties over internal candidate selection affects the representativeness of the lists of candidates that are produced. In this regard, scholars have often characterized the United States as an oddity in the candidate selection process due to its relatively open and decentralized nature (see for instance Craig, 2016; Gallagher & Marsh, 1988).

2.3 United States: “The Outlier.”

Juxtaposed with its European counterparts, the United States clearly fits the bill for what scholars like Craig (2016, p. 799) have referred to as an “outlier” in the candidate selection process. One of the chief reasons underlying the distinction is the degree of direct control that political parties in Europe exercise over candidate selection compared to the control of American political parties over same. The reason behind this phenomenon, as described by Hazan & Rahat (2010), is that the candidate selection process in the United States is governed by state and federal law. In Europe, however, it is predominantly the parties themselves that dictate their

internal candidate selection methods (Hazan & Rahat, 2010). In the United States, virtually any citizen can run for federal office on the ticket of any party, provided they secure enough signatures and have reached a certain age. Such is not the case in the vast majority of European countries where political parties exercise a significant degree of direct control over candidate selection (Craig, 2016; Rahat & Hazan, 2001).

Democratic theorists have emphasized the permeable design of liberal democracies (e.g., Dahl, 1956; Truman, 1951), lending attending to the plethora of avenues available for citizens to advance particular policy agendas (Urbinati & Warren, 2008, p. 392). The candidate selection process in the United States, as described above, is exemplary of such a permeable design. At first glance, such an open and decentralized system, somewhat out of the hands of the two preeminent political parties, might seem to land in lockstep with romanticized notions of democracy. After peeling back a few layers, however, the extant literature reveals a candidate selection system susceptible to takeover by factions and insurgent movements unrepresentative of the party label under which they operate (e.g., Brady, Han, & Pope, 2007; Craig, 2016).

2.4 Intra-Party Democracy, Power and Influence of Parties Over Candidate Selection

Before addressing the role of factions in presidential primaries, it is necessary to unwind the notions of intra-party democracy and the role of parties in the candidate selection process. Unsurprisingly, an assessment of the quality of any democratic system is not confined to the extent to which the will of the majority is realized through law and policy (Rahat, Hazan, & Katz, 2008, p. 663). Important to note here is that democratic theory itself is not limited to discussions of entire polities and their constituents, but extends to lower electoral, competitive, institutional, and organizational levels (e.g., parties). From this idea stems the notion of parties themselves being internally democratic (e.g., Rahat, Hazan, & Katz, 2008). The distinction

between democracy at the larger and lower level can be understood as “system level democracy” and “intra-party democracy”, respectively (Rahat, Hazan, & Katz, 2008). For the purpose of examining factions in presidential primaries, I focus on the latter.

Research has documented the effect of the structure of intra-party competition on electoral outcomes. Ansolabehere, Hansen, Hirano & Snyder (2007), for example, found that the structure of intra-party competition may affect the incumbency advantage. Findings like these are reminders that the dynamics of competition within parties do indeed matter because they determine whether or not winners and losers in these contests are actually representative of the party as a whole. As mentioned above, particular candidate selection arrangements have unique consequences for the levels of competition and representation that a political system experiences. Such relationships include the impact of inclusiveness and participatory openness on candidate representativeness (Hazan & Rahat, 2010); the level of internal party democracy on the power of incumbents, internal competition, candidate representativeness, and intra-party conflict (Hazan & Rahat, 2001); the impact of intra-party democracy on inclusive participation, competition, and candidate representativeness (Rahat, Hazan, & Katz, 2001); the impact of inclusiveness on the level of internal party democracy (Katz, 2001); the impact of the strength of political parties over internal candidate selection on candidate representativeness (Craig, 2016); and the impact of intra-party democracy on parties’ ability to govern democratically (Reiter, 2004). One of the salient functions of candidate selection systems is the inherent vetting process through which candidates must trek (Katz, 2001, p. 277). Some have suggested, however, that one of the consequences of relatively open internal candidate selection arrangements is the production of candidates and officeholders unrepresentative of the party (e.g, Craig, 2016; Hazan & Rahat, 2001, 2010; Rahat, Hazan, & Katz, 2008).

In an incisive analysis of the importance and function of political parties, Katz (2001) articulated four such factors:

First, a party's candidates define and constitute its public face in an election; second, candidates are the main recruitment pools for parties; third, representatives represent individual constituencies as well as larger constituencies; and fourth, candidacy is valuable because of the constraints, influence, and power that can be exercised by candidates, and even more so because of the constraints, influence, and power that can be deployed if that candidate is elected. (p. 278).

Rahat, Hazan, & Katz (2008, p. 664) parallel Katz's (2001) assessment of the importance of political parties in positing that intra-party democracy has the potential to "impede the advancement of system level democracy." If the the two preeminent parties in the United States – the DNC and RNC – exercise such a comparatively miniscule degree of direct control over candidate selection, then who or what does?

2.5 Framing and Understanding the Consequences of *Citizens United* and Super PACs

Departing from the notion that the candidate selection process in the United States is vastly open and susceptible to takeover by factions and insurgent movements unrepresentative of the broader party electorate (Rahat, Hazan, & Katz, 2008; Rahat & Hazan, 2001, 2010; Masket, 2009; Brady, et al., 2007; Craig, 2016; Gallagher & Marsh, 1988; Geer, 1988), two classes of scholarly literature have emerged which offer divergent appraisals of how the ruling in *Citizens United* impacted this phenomenon. First, the "Party Network School" (Bedlington & Malbin, 2003; Desmarais, La Raja, & Kowal, 2014; Hernsson, 2009; Koger, Masket, & Noel, 2009, 2010; Skinner, Masket, & Dulio, 2012, 2013), and second, the "Shadow Party Power School" (Ansolabehere & Snyder, 2000; Brooks & Murov, 2012; Christenson & Smidt, 2014; Farrar-

Myers & Skinner, 2012; Fishkin & Gerken, 2015; Gerken, 2014; Issacharoff & Karlan, 1999; Kang, 2005, 2013; Nelson, 2013; Olsen & Scala, 2016; Opensecrets, 2017a). The bone of contention between the two camps is whether outside groups like 527s and Super PACs benefit the parties and campaign committees, or whether they erode their ability to conduct campaign operations.

2.6 The Party Network School

The Party Network School is a conglomerate of scholarly research and literature which collectively asserts that outside committees such as 527s work together with the parties and campaign committees and are part and parcel of what is to be understood as a “political party.” This school contends that 527s are de facto extensions of the formal parties. Moreover, it posits the existence of an “extended party network” or an “expanded party network” (EPN), composed of a multifarious collection of actors including interest groups, media, and candidate committees that work in tandem in pursuit of parallel objectives (Koger, Masket, & Noel, 2009). This collection of actors, according to the Party Network School, is essentially a service industry of political professionals that cater to the ambitions of the parties – i.e., a group of insiders.

Koger, Masket, & Noel (2009) advanced the notion of an extended party network (EPN). The authors employed social network analysis to study lists of names transferred between political organizations and found two separate and distinct networks of personnel – one Democratic and one Republican – that worked to “funnel” information to the top of their respective party sitting at the apex of each EPN. These findings are consistent with Skinner (2005), who illustrated that a host of consultants, attorneys, lobbyists, and other personnel and committees work as “subcontractors” for the DNC and the RNC. Moreover, Skinner (2005) found that American political parties can be understood as two separate and distinct masses, one

Democratic and one Republican, each of which is composed of a range of interests, groups, and personnel that work to assist the larger goals of the entire camp.

Bedlington & Malbin (2003) substantiated the notion of the EPN concept by finding that campaign committees were responsible for a significant percentage of party donation receipts. Although their work predates the coining of the phrase “extended party network” (Koger, Masket, & Dulio, 2009), Bedlington & Malbin (2003) found that in 2000, campaign committees were responsible for approximately 80% of DNC donation receipts, and just under 90% of RNC donation receipts (p. 133). The picture painted by Bedlington & Malbin (2003) was clearly one of internal party cooperation. Again, regarding internal party cooperation, Koger, Masket, & Noel (2010) sought to identify factions within the Democratic and Republican parties and the extent to which these factions cooperate. Using social network analysis again, the authors identified two “expanded party networks” – one for each major party. Koger, Masket, & Noel (2010) further found that rival factions did in fact cooperate to a significant degree by, for example, sharing membership lists.

On the topic of 527s specifically, Skinner, Masket, & Dulio (2012) used employment history data to investigate the personnel links between 527s and other politically-oriented organizations. Skinner, Masket, & Dulio (2012) found that “[527s] [were] in a position to facilitate collective action among virtually all key party actors” (p. 78). They concluded that 527s were highly central to political party networks (p. 78). The authors contended further that restrictions on party expenditures to candidates hampered the parties’ ability to direct large sums of money to specific candidates, and 527s have become the chief vehicle for carrying out this function (p. 79). The following year, Skinner, Masket, & Dulio (2013) conducted a companion investigation. This time around, they examined the staffing of the largest active 527s in the 2004

and 2006 election cycles and found that 527s played an integral role in conducting the operations that the BCRA prohibited the parties from doing themselves (e.g., raising “soft money”). The authors concluded that 527s do not undermine the party system, and that 527s function as “arms” of the parties (p. 152). Evidently, the narrative portrayed by Skinner, Masket, & Dulio (2012, 2013) is that outside groups like 527s are part and parcel of the EPNs and assist the DNC and the RNC in campaigning. Their findings echo that of Herrnson (2009), who studied campaign spending of parties, party-connected groups, and allied PACs in federal elections between 1996 and 2007 and found significant coordination between 527s and the parties.

In an additional work, Desmarais, La Raja, & Kowal (2014) investigated the role of EPNs in supporting candidates and shaping electoral outcomes. Consistent with Koger, Masket, & Noel (2010), Desmarais, La Raja, & Kowal (2014) studied contributions to House campaigns and identified two EPNs – one Democratic and one Republican – both of which are composed of a diverse group of separate and overlapping interests that finance campaigns. They found that candidates supported by “densely interconnected partisan communities have a greater likelihood of winning compared to those with similar campaign resources and political backgrounds, but without EPN backing” (p. 208) – i.e., so-called party “insiders” were better off than party “outsiders.” These findings are consistent with other works which found no correlation between campaign resources and likelihood of electoral victory (e.g., La Raja, Schaffner, 2013).

Evidently, this camp is best understood as a group advancing the contention that modern political parties are composed of a highly diverse range of actors, interests and entities that seek to advance the goals of the parties sitting at the apex of each respective EPN. As is made clear by their data, this school is predominantly concerned with studying personnel to draw conclusions about the role of 527s in the campaign arena. As such, the Party Network School asserts that

groups like 527s, on balance, offer a beneficial function to parties. In terms of answering the research question of *how have Super PACs been used by and for party rebels and factions in the 2016 Republican primary in pursuit of amassing funds and martialing political influence*, the Party Network School collectively asserts that outside groups would assist the parties by conducting operations that the BCRA prohibits them from conducting, and thus offer a benefit to the parties.

2.7 Strengths and Weaknesses of the Party Network School

In evaluating the relative costs and benefits of the Party Network School through a logical and empirical lens, I consider two aspects of the data studied. I address each of these separately. First is timing of the data, and second is the type of data.

The data used by the Party Network School is mostly drawn from the 2002, 2004, and 2006 federal election cycles – the first three cycles succeeding the passage of the BCRA. As such, this school offers insight into the immediate effects stemming from the introduction of 527s into the campaign finance arena.

Nevertheless, the data used by the Party Network School, while valuable, may no longer hold water in the modern milieu of campaign finance. The data from the 2002, 2004, and 2006 election cycles are over a decade old. The campaign finance landscape has undergone various shifts and developments since 2006 (Fishkin & Gerken, 2015) including, for example, the rulings in *Citizens United* and *SpeechNow* which deregulated 527s and gave birth to the Super PAC. This is cause for concern for two reasons. First, given the significance of the 2010 rulings with respect to the massive change in how 527s are treated under federal law, the trends identified by the Party Network School using the 2002-2006 data may no longer apply because the campaign finance regulatory framework has changed. Second, the picture painted by the Party Network

School in terms of the cooperative and coordinating relationship between parties and 527s may have been affected by the deregulation of 527s that resulted from the 2010 rulings. Furthermore, Koger, Masket, & Dulio (2010) conceded that the data used was by no means exhaustive or all-inclusive (p. 49). Moreover, Skinner, Masket, & Dulio (2012, 2013) noted that 527s are only one kind of entity that parties used to aid in adapting to the changing electoral environment (p. 152). As a result, the data used by this school focuses largely on only one type of outside vehicle: 527s. Therefore, the conclusions forwarded by this school may fail to capture trends and political activity of outside groups other than 527s. Lastly, while social network analysis is indeed an innovative research method, Koger, Masket, & Noel (2010) have admitted that it is incomplete (p. 653).

The second aspect of the Party Network School's data is the type, which is mainly personnel data. The Party Network School contends that 527s are de facto extensions of the formal parties. This research uses social network analysis to demonstrate that modern political parties are comprised of a multitudinous and diverse collection of entities, interests, and, most importantly, personnel, all of whom work to advance the goals of the parties. The Party Network School is set apart from other campaign finance research by this emphasis on personnel and people. The school argues that the personnel overlap exhibited by the data reveals cooperative party networks and thus 527s, in the Party Network School's estimation, should be considered beneficial extensions of the parties.

Although this group of research offers a unique review of personnel overlap to highlight links between 527s and parties, the major explanatory disadvantage lies in the school's assumption that all of the people and 527s studied simply work together and in unison in an effort to assist the party sitting at the top of each EPN – i.e., the school assumes that all of these

people are party “insiders.” In this school’s view, the only democratically troubling concern is the possibility of actors who might operate beyond the parameters of the EPNs. At issue here is the Party Network School’s failure to explicitly define what might constitute a party “insider” or “outsider.” In failing to do so, the school is unable to account for the presence of factions within each EPN. This is a major disadvantage. In assuming that everybody within each EPN simply works together, the school disregards strong factional divisions within each EPN. The presence and function of factions is discussed below.

2.8 The Shadow Party Power School

The second of the two camps encompasses a group of research which contends that the increasing trend of deregulating outside groups’ ability to conduct political operations is causing the power of politics to shift away from parties and campaign committees and into the hands of relatively unaccountable entities such as 527s and Super PACs. Interestingly, proponents of this school do not disagree with proponents of their intellectual counterpart – the Party Network School – in conceptualizing a political party. Indeed, one work (Fishkin & Gerken, 2015) even cites Koger, Masket, & Noel (2009) in arguing that “a party today is best understood as a loose coalition of diverse entities, some official and some not, organized around a popular national brand” (Fishkin & Gerken, 2015, p. 187). Nevertheless, this common point of departure is only one of a few similarities among the two camps. In short, the Shadow Party Power School is united by four tenets: outside groups lack transparency; power of outside groups to influence public opinion; scope of functions carried out by outside groups; and the financial power of outside groups.

Political parties ought to be the venues through which the electorate enjoys greater accountability from their representatives (Ansolabehar, et al., 2000). When the vast majority of

campaign operations are conducted by outside groups, accountability and transparency decrease (Brooks & Murov, 2012). Ansolabehere et al. (2000) suggested that regulating the flow of money to and from parties and campaign committees would only cause that money to flow into the hands of unaccountable entities. This suggestion overlaps with one of the most highly regarded works in the campaign finance literature which advanced the concept of the “hydraulics of campaign finance reform” – that is, money in politics cannot be destroyed, only channeled through alternative means (Issaccharoff & Karlan, 1999). Nevertheless, although Ansolabehere et al.’s (2000) work predates the passage of the BCRA, which gave rise to the prominence of 527s in politics, their wisdom is no less apparent in the subsequent campaign finance landscape, as their contention has been echoed by many works even years later (e.g., Fishkin & Gerken, 2015; Gerken, 2014; Nelson, 2013). Nevertheless, if regulating the flow of money to and from parties and campaign committees can cause outside groups to have comparatively more power, then it follows that deregulating the outside groups directly would also empower outside groups relative to parties and campaign committees. Such is exactly what the Shadow Party Power School contends was the result of the rulings in *Citizens United* and *SpeechNow*.

The first tenet of the Shadow Party Power School is transparency. This school posits that the identity of those funding Super PACs is all but clear (Brooks & Murov, 2012; Fishkin & Gerken, 2015; Gerken, 2014). Even a cursory glance at the top-spending Super PACs in 2016, for example, reveals a catalogue of ambiguously-titled groups to which no obvious candidate can be associated (Super PACs | OpenSecrets, 2017c). Figure 2.1 lists the top-spending Super PACs in the 2016 cycle. Viewers of ads funded by Super PACs are thus unable to readily associate a particular ad or funder with a particular candidate (Brooks & Murov, 2012). The issue then, as this school asserts, is that Super PACs have the power to attack candidates without the risk of a

negative backlash on the image of the candidate that the Super PAC actually supports (Brooks & Murov, 2012). Brooks & Murov (2012) demonstrated the power of negative attack ads. While the parties, campaign committees, and Super PACs are all required to disclose their identity when showing an advertisement, the parties and campaign committees do not enjoy the luxury of hiding behind an ambiguous label. As a result, according to the Shadow Party Power School, Super PACs are more powerful than parties and campaign committees in this regard because Super PACs can run ads without the fear of a negative backlash.

Figure 2.1 – List of top 20 Super PACs spending in the 2016 federal election cycle.

Name of Super PAC	Independent Expenditures (in 2017 USD)
Priorities USA Action	\$133,407,972
Right to Rise USA	\$86,817,138
Senate Leadership Fund	\$85,994,270
Senate Majority PAC	\$75,389,818
Conservative Solutions PAC	\$55,443,483
Get Our Jobs Back	\$50,010,166
House Majority PAC	\$47,470,121
Congressional Leadership Fund	\$40,125,691
Women Vote!	\$33,167,285
Freedom Partners Action Fund	\$29,728,798
Granite State Solutions	\$24,267,135
Future45	\$24,264,009
Rebuilding America Now	\$21,194,739
Club for Growth Action	\$19,181,962
America Leads	\$18,578,852
Our Principles PAC	\$18,327,047
League of Conservation Voters	\$15,689,081
Ending Spending Action Fund	\$14,849,164
Make America Number 1	\$13,454,894
Independence USA PAC	\$13,387,635

Source: (Super PACs | OpenSecrets, 2017c).

Notes: The source of this data is OpenSecrets.Org, which compiled the data from FEC disclosures. The figures are current as of April 3, 2017.

Secondly, the capacity of Super PACs to actually influence public opinion is well-documented. Research has vividly demonstrated the influence of Super PACs in various

presidential and primary races at the federal level (e.g., Christenson & Smidt, 2014) and the power to influence public opinion (e.g., Brooks & Murov, 2012; Christenson & Smidt, 2014).

Third, this school argues that outside groups – including and especially Super PACs – have taken over a substantial portion of functions traditionally carried out by the parties (Farrar-Myers & Skinner, 2012, p. 23; Fishkin & Gerken, 2015; Gerken, 2014; Nelson, 2013; Olsen & Scala, 2016, p. 23). As Fishkin & Gerken (2015) observed:

Outside groups – groups that are neither official party entities nor candidate campaigns – have taken over a startling array of the core party functions. These groups do not just run campaign ads. They mobilize voters, test messages, organize donors, maintain comprehensive voter databases, employ long-term campaign workers, and make major strategic choices in individual campaigns. (p. 176).

Fishkin & Gerken (2015) further highlight the growing influence of Super PACs in shadow campaigns – that is, the increasing outsourcing of political operations to unaccountable groups (p. 188).

The fourth tenet of the Shadow Party Power School is, well, power. This school argues that the power of Super PACs to engage in express advocacy without limit has created a situation in which the parties and campaign committees are being challenged by a relatively minute group of wealthy interests who employ Super PACs in pursuit of whipping influence in elections. As one scholar stated, “[t]he legal capacity of Super PACs to receive uncapped contributions enhanced the capacity of very wealthy individuals to exercise influence in electoral politics and even finance presidential campaigns almost by themselves” (Kang, 2013, p. 1917). This notion of outside groups becoming somewhat more powerful relative to the parties was established previously by Kang (2005), when he argued that the notion of the hydraulics of campaign

finance reform advanced by Isaccharoff & Karlan (1999) was wrong. Kang (2005) argued that campaign finance reform measures, instead of simply shifting *money* into alternative avenues, actually shift *power* into alternative avenues.

In 2012 – the first year in which the Super PAC was engaged in presidential elections – aggregated funds raised by Super PACs were over \$828 million (Super PACs | OpenSecrets, 2017b). In the following presidential election cycle this figure reached increased by a factor of eight, reaching over \$7.1 billion (Super PACs | OpenSecrets, 2017c). To put these figures into perspective, consider this: in 2012, Super PACs spent more than double what political parties spent on campaigning, and in 2016, Super PACs spent about the same (Outside Spending | OpenSecrets, 2013a, 2017a). Of course, the argument could be made that although Super PACs are indeed able to engage in express advocacy without monetary limits, they pose no substantial threat to the parties and campaign committees because they are forbidden from coordinating with candidates. This argument, while theoretically attractive, cannot be sustained under the weight of political reality. Research has vividly demonstrated that the legal definition of “coordination” fails to capture the coordination that occurs in practice (Fishkin & Gerken, 2015; Garrett, 2012; Gerken, 2014; Farrar-Myers & Skinner, 2012; Nelson, 2013). Scholars have referred to this phenomenon as “functional coordination” (e.g., Farrar-Myers & Skinner, 2012). Perhaps one of the most incisive and even embarrassing reviews of functional coordination was Nelson’s (2013), which illustrated via case study the obvious functional coordination between campaigns and Super PACs with the spouses of candidates working for the Super PACs which supported the spouse’s campaign. In any event, this school highlights the storm of money being poured into Super PACs and the fear that they challenge the power of political parties and campaign committees.

2.9 Strengths and Weaknesses of the Shadow Party Power School

In evaluating the strength and weaknesses of this school from a logical and empirical standpoint, I consider method and data and scope of explanatory value.

First, in terms of method and data, the Shadow Party Power School examines data derived from FEC disclosures that contain information on expenditure amounts of Super PACs and identity of donors funding them. By and large, this school avoids a review of personnel and instead focuses on “following the money,” so-to-speak. The school points out the cavalcade of funds that have been poured into Super PACs and argues that the idea that Super PACs only engage in independent expenditures devoid of any coordination with campaign committees is a fairytale. Noting the documented presence of functional coordination (Farrar-Myers & Skinner, 2013), the Shadow Party Power School asserts that the massive sums of money spent by Super PACs must be considered coordinated expenditures, which raises concerns for how powerful Super PACs are and have become. The methods and data used here are instructive as to where the money is flowing. The source of the data – the FEC – lends credibility to the veracity of the figures.

Second and last, I consider the scope of the Shadow Party Power School’s explanatory value. As stated above, this school essentially neglects a review of personnel and concentrates almost exclusively on the flow of funds to and from outside groups. The result is a group of research that makes claims about legal entities but is not in a position to draw conclusions about personnel operating them. Indeed, a few works in this school have discussed persons and directors of some of these entities (e.g., Nelson, 2013), but the majority of them have been used merely to demonstrate the presence of functional coordination (e.g., Nelson, 2013). While the

Shadow Party Power School does address the presence of party “outsiders” (e.g., Fishkin & Gerken, 2015; Gerken, 2014), it nevertheless fails to offer a workable definition to that effect.

Overall, the Shadow Party Power School maintains that the ruling in *Citizens United* deregulated 527s insofar as conducting political operations was concerned. The relative margin for operability of 527s compared to the parties and campaign committees was augmented by *Citizens United* and its daughter ruling in *SpeechNow*. This school argues further that the deregulation of outside groups hampers the ability of the parties and campaign committees to control the message and theme of a campaign, decreases transparency in federal politics, and offers too much power to small groups unrepresentative of the broader party electorate. In terms of answering the research question of *how have Super PACs been used by and for party rebels and factions in the 2016 Republican primary in pursuit of amassing funds and martialing political influence*, the Shadow Party Power School would assert that Super PACs degrade the power of the parties and campaign committees.

Before diving into the hypothesis and the gap in the literature, I review factions in the context of the American political arrangement and explain how the rulings in *Citizens United* and *SpeechNow* changed the ability of factions to fundraise for campaigns.

2.10 Factions: Role and Presence in Presidential Primaries

Given the lack of direct control that parties exercise over candidate selection and the openness by which such processes are characterized (e.g., Craig, 2016), scholars have highlighted the existence of intra-party cleavages as well as the presence of intra-party competition during elections. In 2005, Pew Research Center (2005) identified three subsets within the Republican electorate: Enterprises (comprising about 9% of the general population); Social Conservatives (comprising about 11%); and Progovernment Conservatives (comprising

about 9%). In a study examining information exchange between party organizations, media outlets, 527s, and interest groups, Koger, Masket, & Noel (2010) established the presence of various factions within each of the two major parties. Similarly, in a thorough review of the forces underlying the 2016 Republican presidential primaries, Olsen & Scala (2016) profiled and identified four separate factions in the Republican party: moderates and liberals (comprising about 25-30% of the Republican electorate); somewhat conservative voters (comprising about 35-40%); very conservative evangelicals (comprising about 20%); and very conservative secular voters (comprising about 5-10%). Noel (2016) delivered a finding consistent with Olsen & Scala (2016) in identifying two internal factions within the conservative wing of the Republican party: social traditionalists and free-market libertarians.

Although the word “faction” carries more than one meaning, a landmark study by Belloni & Beller (1976) summarized that a faction can best be understood as follows:

As groups involved in conflict, as groups struggling against one another or against the whole in a fundamentally political competition within the party...competing for control and capture of the apparatus and directorship of the party organization...expressing and furthering distinct interests in mutual competition – whether personal political ambitions, or substantive policy or ideological interests. (p. 545).

While the aforementioned works have indeed provided evidence of the presence and function of factions in presidential *general* elections, the literature is not as vocal on the role of factions in presidential *primaries*. In their seminal study on factionalism, Belloni & Beller (1976) found that factions composed a significant portion of political operations and thus should be considered an investigatory priority. In an effort to lay out a conceptual framework for the study

of factions, Boucek (2009) expanded on Belloni & Beller's (1976) work, showing that political parties were inherently composed of internally competing interests (Boucek, 2009, p. 455).

Crucial to note here is the distinction between primary elections and general elections with respect to the practical operations of competing interests. Given that political parties consist of various, internally competing interests (Boucek, 2009, p. 455) that are by and large inherently partisan, it follows that in a general election the goals of separate, internal interests would be aligned to get their party's candidate elected (Koger, Masket, & Noel, 2009, 2010; Skinner, Masket, & Dulio, 2012, 2013). It would be during the *primaries*, however, that rival interests would jockey on the intra-party level for a chance to secure a nomination for their camp's preferred candidate.

2.11 Factions and Insurgencies as Unrepresentative Competitors in Presidential Primaries

In the United States, political parties are the venues through which competing interests can seek to gain a foothold in positions and institutions of power (Katz, 2001, p. 278). Given that political parties are, at least in theory, charged with performing the vital democratic function of facilitating representation of party members, the openness by which the primaries are characterized (e.g. Craig, 2016), and the existence of an electoral market demand for extreme interests, the fear then is that parties can be hijacked by factions unrepresentative of the party label under which they operate. The permeable design of modern liberal democracies emphasized by Dahl (1956) and Truman (1951) and the existence of an array of avenues available for citizens to advance particular policy agendas noted by Urbinati and Warren (2008, p. 292) serve only to validate this fear.

In a study of nine candidate selection systems, Rahat, Hazan, & Katz (2008) found that parties which were most internally democratic produced lists of candidates that were least

representative of the broader electorate, and did not experience high levels of competition. This study, however, was based on a proportional representation electoral system. While these findings may not be directly transferrable to a single member district system such as that of the United States, the findings may suggest that a similar phenomenon is occurring in the United States. Similarly, Craig (2016) conducted a three-part case study examining examples of factions that could potentially erode the power of parties – that is, hijack a party and use it as a vehicle to gain power and advance policy agendas inconsistent with the best interests of that party’s members. In her study, Craig (2016) illustrated that the vast openness of the primary process in the United States allows comparatively extreme activist interests to mobilize support for extreme candidates.

Craig’s (2016) finding is supported by studies on voter turnout which have highlighted the existence of comparatively extreme primary electorates (e.g., Brady, Han, & Pope, 2007). That is, voters in primary elections tend to be more ideologically convinced compared to general election voters. Moreover, others have shown that voters in primary elections are unrepresentative of the broader party electorate (e.g., Geer, 1988), substantiating the existence of an electoral market demand for the “extreme” (or unrepresentative) activist interests described by many (Craig, 2016; Brady, Han, & Pope, 2007; Olsen & Scala, 2016, p. 20; Farrar-Myers & Skinner, 2012, p. 13). Consistent with Craig’s (2016) assessment, Masket found that “the candidate selection process [in the United States] works systematically to produce polarized partisan office holders” (2009, p. 51). Implicit here is that the vastly open and decentralized candidate selection process of primaries in the United States (Craig, 2016; Gallagher & Marsh, 1988; Masket, 2009), coupled with the electoral market demand for comparatively extreme interests (Brady, Han, & Pope, 2007; Craig, 2016; Geer, 1988) facilitates an environment in

which unrepresentative candidates can compete for a presidential nomination and have a realistic shot at securing it (Brady, Han, & Pope, 2007; Craig, 2016; Masket, 2009; Rahat, Hazan, & Katz, 2008). But how did the ability of factions to compete in presidential primaries change after *Citizens United*?

2.12 Extreme Factions: Funding then and now.

Prior to *Citizens United* and the advent of the Super PAC, moneyed interests generally used PACs and 527s to finance and conduct campaign operations (Desmarais, La Raja, & Kowal, 2014; Koger, Masket, & Noel, 2009, 2010; Skinner, Masket, & Dulio, 2012, 2013). Research in the Party Network School has shown that connected partisan networks worked to springboard candidates into electoral victory (Koger, Masket, & Noel, 2009, 2010; Skinner, Masket, & Dulio, 2012, 2013; Skinner, 2005). The cooperation and interconnectedness of these entities allowed them to benefit from economies of scale – synergy – resulting in the creation of both financial and practical barriers to entry, hindering and complicating the chances for ideologically extreme factions to win elections. The benefits conferred upon candidates who were supported by these partisan networks were documented by Desmarais, La Raja, & Kowal (2014). These researchers found that candidates supported by “densely interconnected partisan communities have a greater likelihood of winning compared to those with similar campaign resources and political backgrounds, but without [extended party network] backing” (Desmarais, La Raja, & Kowal, 2014, p. 208). That was before 2010.

After the rulings in *Citizens United* and *SpeechNow* the Super PAC was born. Now, competitors no longer need to rely on the network of support from dug-in groups and players in Washington because Super PACs allow anyone with enough money to conduct similar campaign operations. As Fishkin & Gerken (2015) observed:

Outside groups – groups that are neither official party entities nor candidate campaigns – have taken over a startling array of the core party functions. These groups do not just run campaign ads. They mobilize voters, test messages, organize donors, maintain comprehensive voter databases, employ long-term campaign workers, and make major strategic choices in individual campaigns. (p. 176).

This observation is consistent with a common trend in the campaign finance literature that has emerged since *Citizens United*, which is that presidential campaign committees have increasingly been found to outsource to Super PACs the operations traditionally conducted by campaign committees themselves. Such operations include buying ads (Farrar-Myers & Skinner, 2012; Fishkin & Gerken, 2015, p. 188; Olsen & Scala, 2016, p.17), hiring campaign workers, and running GOTV efforts (Fishkin & Gerken, 2015, p. 188). The reasoning here is that Super PACs are far less restricted than campaign committees, and while coordination between campaign committees and Super PACs is illegal, research has shown that the legal definition of “coordination” fails to capture the coordination that occurs in practice (Fishkin & Gerken, 2015; Garrett, 2012; Gerken, 2014; Farrar-Myers & Skinner, 2012; Nelson, 2013). Scholars have referred to this phenomenon as “functional coordination” (e.g., Farrar-Myers & Skinner, 2012). As Farrar-Myers and Skinner (2012) incisively articulated:

Candidates may end up not needing to worry about raising enough funds for their own campaigns in small contributions from donors if instead Super PACs can effectively functionally coordinate their activities so as to derive benefits for their candidates. Candidates could easily become beholden to the large contributors who finance the Super PACs that support them. (p. 23).

Evidently, Super PACs have changed the electoral landscape, at least at the federal level,⁴ insofar as campaign operations are concerned. As mentioned above, there are essentially two reasons for this. First, Super PACs can spend unlimitedly on express advocacy through independent expenditures so long as they do not coordinate with campaign committees. This sets Super PACs apart from traditional PACs in essentially three ways: first, while both of the entities can spend unlimitedly, PACs are subject to contribution limits which means that they must solicit many many more potential contributors than must Super PACs who can simply have one donor who provides hundreds of millions of dollars, for example; second, Super PACs are legally prohibited from engaging in coordinated express advocacy. However, as described above, research has shown that Super PACs nevertheless engage in “functional coordination” which essentially makes coordination a moot point; third, when PACs fund advertisements, viewers almost always know who that PAC supports. Super PAC funders, however, typically remain mystified under ambiguous titles.⁵ Therefore, unlike PACs, Super PACs are able to hide behind these names and not risk a negative backlash on the candidate they support (Brooks & Murov, 2012).

In sum and substance, the literature points to the idea that factions have been empowered by the rulings in *Citizens United* and *SpeechNow* to raise disproportionate funds despite being unrepresentative of the broader party electorate.

2.13 Power Vacuum: The Gap in the Literature

After reviewing the competing schools of thought and the associated strengths and weaknesses I was able to identify a gap in the literature. The Party Network School draws conclusions from personnel investigations to collectively assert that outside groups like 527s are

⁴ Note: I only review campaign finance changes at the federal level in this thesis. State-level changes may or may not be consistent with what is observed at the federal level.

⁵ See Figure 2.1 for list of ambiguously-titled Super PACs in the 2016-2016 cycle.

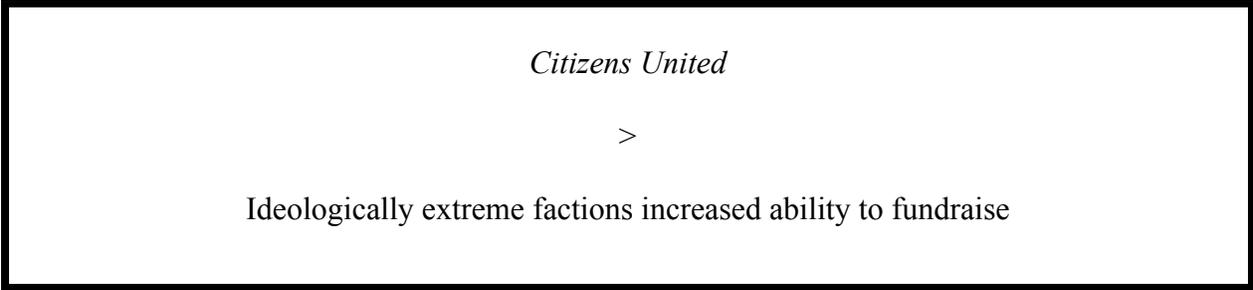
de facto extensions of the parties and offer to them the functions that the BCRA forbid parties from conducting, such as raising and spending “soft money.” Conversely, the Shadow Party Power School reviews the flow of funds and contends that the rulings in *Citizens United* and *SpeechNow* deregulated outside groups to such an extent that the outside groups are now in positions to martial influence in elections to an unprecedented degree. Interestingly, both schools fall short in the same regard. That is, neither of the two schools offers workable definitions of party “outsiders” or party “insiders.” Voilà the gap in the literature. In other words, both schools agree that outside groups like 527s and Super PACs are powerful entities that can engage in various electioneering activities. The Party Network School makes no meaningful distinction between 527s and the party, and although the Shadow Party Power School does make this distinction, it identifies no further, finer, nor nuanced line(s) of demarcation beyond simply “party” and “outside groups.”

Therefore, given the gap in the scholarly literature, the well-documented presence of factions within the parties, could it be the case that 527s and Super PACs have become the primary vehicle through which minority factions are attempting to gain control of the entire party? Assuming that is the case, are minority factions using Super PACs with more success than mainstream party “insiders”?

2.14 Model & Hypothesis

In light of the foregoing review of the literature, the gap identified therein, and the concluding inquiry, I offer the following hypothesis: *Citizens United* increased the ability of ideologically extreme factions to fundraise. Figure 2.2 displays the research model which depicts the hypothesis.

Figure 2.2 – Research Model



CHAPTER III

DATA & ANALYSIS

3.1 Research Design

I sought out to study the effects of *Citizens United* on the quality of democracy in the United States political arrangement. As stated in Chapter Two, I hypothesized that *Citizens United* increased the ability of ideologically extreme factions to fundraise. To test this hypothesis, I operationalize the three variables, two independent and one dependent. In this chapter, I set forth each of these variables and the data used to fuel them. I then discuss the decisions behind each choice of data selection, variable selections, measures, and coding.

3.2 *Citizens United*: Moderator Variable

First, *Citizens United v. FEC* (552 U.S. 1278 (2010)) is the 2010 event that reversed decades of campaign finance law by overruling parts of *Austin v. Michigan Chamber of Commerce* (494 U.S. 652 (1990)). Although *SpeechNow v. FEC* (559 F.3d 686 (2010)) was a more proximate cause of the birth of the Super PAC, the D.C. Circuit in *SpeechNow* merely extended the ruling in *Citizens United* which ultimately produced the Super PAC. Therefore, I treated *Citizens United* as the cause behind the birth of the Super PAC. In any event, this is the moderator variable. I coded for this legal-political event using a binary indicator, expressed as a number 0 for prior to *Citizens United* and a number 1 for after the ruling. Since I have posited that *Citizens United* increased the ability of ideologically extreme factions to fundraise, I needed

to compare their fundraising ability before and after the ruling. This variable allowed me to separate the datasets that I used for comparison.

3.3 Measuring the Ideology of Candidates

The second independent variable is ideology. This was the most complex of the three. The nature of my hypothesis is such that I need to show in the first instance that if *Citizens United* did in fact increase ideologically extreme factions' ability to fundraise, then the data from after 2010 should have reflected an increase in campaign receipts to ideologically extreme campaigns or to the Super PACs and PACs that expressly supported them. To accomplish this, I needed to separate candidates based on ideology. Indeed, political ideology is a moving target that tends to change with time and experience. To have conducted this study by focusing only on liberal v conservative ideologies, for example, would have revealed very little, if anything, about factions themselves. As such, it was necessary to dig deeper, to undertake an examination of relative ideologies *within* a major political camp. Ample research has pointed out the internal factional divisions present in the Republican Party (DiSalvo, 2009; Olsen & Scala, 2016; Pew Research, 2005; Ragusa & Gaspar, 2016). Since the literature is more vocal on the Republican Party, I chose to review only internal divisions within the Republican Party.

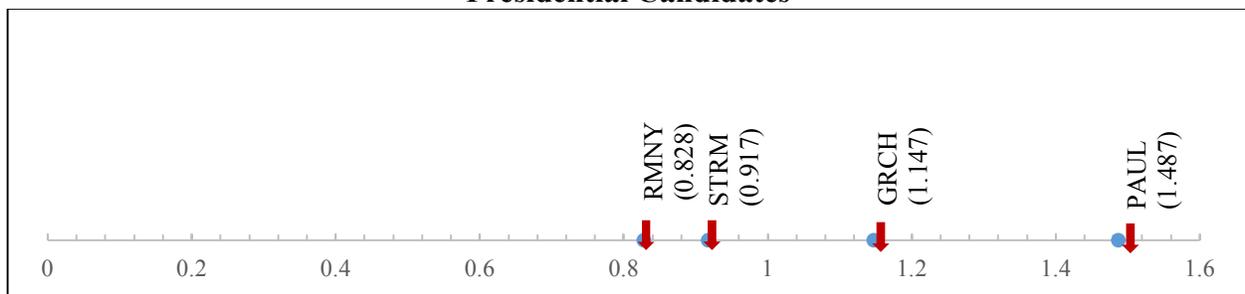
But how does one quantify, measure or compare candidate ideology? A cursory comparison of two candidates such as Jeb Bush and Ted Cruz would likely conclude with agreement that there exists an ideological spread between the two. But what about comparing Jeb Bush and Marco Rubio? Or Ted Cruz and Rand Paul? Clearly, a statistical approach was requisite. To achieve this, I adopted the method devised by Adam Bonica of Stanford University called the Database on Ideology, Money in Politics, and Elections (“DIME”) (Bonica, 2016). Bonica (2016) devised an empirical method for comparing candidate ideology based on the

ideology of *contributors*. DIME not only offers an appropriate and robust method for comparing candidate ideology, but it offers pre-packaged, readily available information gleaned from its databank consisting of over 100 million contributions records spanning from 1979 to 2016 (Bonica, 2016).

3.4 “CFscores”

Each candidate in the database is assigned an ideology score labelled a “CFscore” and expressed as a number on a scale, with negative two (-2) being more liberal ideology score, zero (0) being the most moderate, and positive two (+2) being more conservative. Figure 3.1 displays an example of the scaling.

Figure 3.1 – Visual Example of CFscore scaling Method displaying 2012 Republican Presidential Candidates



The CFscores are based on campaign finance data from the FEC between 1979 and 2016. Much of the literature and methodology that scores candidate ideology is based in large part on roll call voting records. The major drawback of such methods is that they fail to account for the ideological score of candidates who had no congressional or otherwise legislative voting record, such as Donald J. Trump or Chris Christie. Fortunately, the DIME database scores candidates based on the ideology of that candidate’s *contributors*, so candidates with no previous roll call voting record are still scored and scaled just as appropriately as those with roll call vote histories.

Furthermore, the measure has the added advantage of accurately locating candidates across different years, levels of government, and offices sought in the same ideological space.

However, since the CFscore measures and compares candidates in the same ideological space, and since the mainstream, moderate, or median ideology score changes over time, it was necessary to restrict the analysis to exclusive cycles. In order to correct for this, I used a standardization function in Microsoft Excel.

3.5 Adjusting CFscores for Specific Cycles using a Modified Standardization Function (Modified Z-score).

In order to accomplish the task of measuring which candidates were considered extreme in each specific election cycle, I restricted the main dataset to only include any Republican candidate who (1) ran for federal office in one of the presidential primary cycles under review, and (2) received at least twenty-five (25%) percent of the vote in their respective race. The result of including all Republican candidates for federal office is a scale on which all candidates in a given cycle fall, including the presidential candidates. In other words, I looked at the extremity of the ideology of each candidate relative to the party at large in that cycle, rather than restricting the review to only the primary candidates. However, the CFscores for each of those candidates were still scaled in relation to all of the other candidates from 1979 to 2016. Therefore, it was necessary to standardize the CFscores based on only the candidates in a specific cycle. To achieve this, I considered using a standard z-score function that would take the CFscore of each candidate in a cycle, and calculate the number of standard deviations that CFscore was from the mean, like this:

$$z = (cfscore - \mu) / \sigma$$

where μ is the mean, and σ is the standard deviation.

However, since I was dealing with a scale, I figured measuring distances from the mean to be uninformative. Rather, a candidate's distance from the *median* would be more illustrative of that candidate's comparative ideology score. Therefore, to standardize each candidate's CFscore

in relation to the rest of the Republican candidates that ran for federal office in a given cycle, I calculated the median absolute deviation (MAD) using the following formula:

$$\text{MAD} = (m * (\text{absolute value} * (\text{cfscore} - m * (\text{cfscore}))))^6$$

where m is the median.

I then used the MAD as the divisor in the following modified z-score formula to standardize the cfscores for each cycle:

$$\begin{aligned} \text{Modified Z-score} &= (\text{cfscore} - m) / \text{MAD} \\ &= (\text{cfscore} - m) / (m * (\text{absolute value} * (\text{cfscore} - m * (\text{cfscore})))) \end{aligned}$$

where m is the median.

Critical to note here is that the values produced by the modified z-score formula above are not rendered in their mathematical absolute value – meaning they can be negative. However, candidates with a negative modified z-score cannot be considered extreme because the negative value means they are to the left of the median CFscore, which typically means they are more “moderate” or even left-leaning. However, the purpose of this study is to review ideologically extreme candidates within the Republican party, so I elect to consider only extreme candidates with a positive modified z-score.

3.6 Outcome Variable: Ability to Raise Funds

The dependent variable is ability to fundraise. First, I adopted the assumption that a candidate’s ability to fundraise directly translated into the act of fundraising. In other words, the significance of undertaking a nearly year-long campaign in a presidential primary is so intense that a candidate is expected to maximize his or her fundraising. Therefore, I incorporate here the

⁶ For those seeking to replicate this method, the exact formula entered into Microsoft Excel was this: =MEDIAN*(ABS*(CFSCORE – MEDIAN *(CFSCORE))).

assumption that if a candidate has the *ability* to fundraise at a certain level, the candidate *will* fundraise at that level. To express this outcome variable, I first calculated the sum of all of the following variables in each cycle-specific Republican presidential primary:⁷

- i. total campaign receipts;
- ii. total party coordinated expenditures;
- iii. total contributions made on behalf of the candidate; and
- iv. non-party independent expenditures made in support of the candidate.

Since I am only studying the Republican Presidential primaries, this composite of sums includes only all contributions and expenditures for presidential candidates that were transacted before the date of each cycle's specific Republican National Convention.⁸ This allowed me to strike out all contributions that went to that cycle's nominee in the general election. This composite is expressed as TC_E , where E indicates one of four election cycles (this variable is developed more fully in Chapter III, Section VII). Second, I calculated the percentage of those aggregated receipts that went to extreme candidates (PTC_{EX}). Next, I compared the percentages that extreme candidates received before and after *Citizens United* to reveal whether the hypothesis is confirmed or denied – i.e., whether ideologically extreme factions' ability to fundraise increased after *Citizens United*.

Given the nature of my hypothesis – i.e., that *Citizens United* increased something – I needed to review data from both before and after the ruling. Moreover, I decided to investigate presidential primaries. Therefore, I selected four presidential primaries to review: two before and two after the 2010 ruling. The first pair included the 2004 and 2008 Republican presidential primaries (control group), and the second pair included those of 2012 and 2016 (treated group). I

⁷ The source of the data for said campaign and Super PAC receipts is OpenSecrets.Org, which is the same data source used by DIME.

⁸ The cutoff dates for each cycle's Republican National Convention are listed in Appendix II.

investigated only the presidential primaries of the Republican Party. Indeed, even if my hypothesis was confirmed, and setting aside all other design limitations, a claim about all ideologically extreme candidates would not be available since I only reviewed the Republican Party. I leave it up to further research to extend this study to include additional parties. That said, if my hypothesis is confirmed, even with strong statistical significance, I would only be able to make a modest general claim about Super PACs and ideologically extreme candidates in the Republican primaries, at best.

Nevertheless, the decision to examine and include data from these four election cycles is grounded in two factors. First, the first pair of election cycles acted as the control group, providing data for a time period in which the Super PAC was not part of the political equation. The second pair of election cycles acts as the treated group, where extreme candidates had the opportunity to receive Super PAC support. Second, by examining two cycles for each group, the effect of random variation and one-off events was reduced.

3.7 Computation and Comparison

In order to test the hypothesis, I needed to compare the figures from before and after *Citizens United* to determine if an increase did in fact exist. In order to achieve this, I assigned the figures the following shorthanded variables:

First, total contributions, TC^9 , in election cycle E , where E is one of four cycles – 2004, 2008, 2012, or 2016.¹⁰ So, the TC for election cycle 2016 would be expressed as TC_{2016} .

Next, the contributions, C , in cycle E that went to Republican candidate R . Each R is assigned a shorthand four-letter personal identifier displayed in Figure 4.1 in Chapter IV. So, for example, to show that George W. Bush received \$100 million in contributions in 2004, I wrote $C_{2004}BUSH = \$100$ million.

Next, the percentage of total contributions, PTC , in election cycle E that went to candidate R is expressed as PTC_{ER} .

Next, the percentage of total contributions, PTC , in election cycle E that went to extreme candidates, X . This is expressed as PTC_{EX} .

For the hypothesis to be confirmed I was looking for the values of PTC_{2004X} and PTC_{2008X} to both be less than those of PTC_{2012X} and PTC_{2016X} .

Figure 3.2 – A Confirmed Hypothesis

$$PTC_{2004X} \text{ and } PTC_{2008X} < PTC_{2012X} \text{ and } PTC_{2016X}$$

⁹ TC values are composites sums of the following four (4) separate observations listed in DIME: total campaign receipts (total.receipts); total party coordinated expenditures (party.coord.exp); total contributions made on behalf of candidate (comm.cost.for); and non-party independent expenditures made in support of the candidate (non.party.ind.exp.for). These values do not include transactions made on or after the date of each cycle-specific Republican National Convention.

¹⁰ The large differences in TC values across cycles is offset by examining percentages, which allows for cross-cycle comparison.

CHAPTER IV

RESULTS & DISCUSSION

In Chapter III all of the variables, parameters, data selections, codes, and modifications were set forth. In this chapter, I first present the results of the analysis and explain the implications of the findings. Second, I engage in a discussion as to the larger implications of the study, the design limitations, and avenues for further and future research.

4.2 Results

I examined the fundraising ability of ideologically extreme factions and candidates in four election cycles: 2004, 2008, 2012, and 2016. Figure 4.1 displays each of the candidates that ran in the election cycles under review. By performing the modified z-score function on each of the Republican candidates for federal office with at least 25% of the vote, a list of each presidential candidate was produced which is set forth fully in Appendix I. From those lists, I used the modified z-score cutoff of zero point nine (0.9) to separate extreme candidates from the rest of the heard. The result of that line of demarcation was the following list of extreme candidates and their corresponding percentage of total contributions in Figure 4.2.

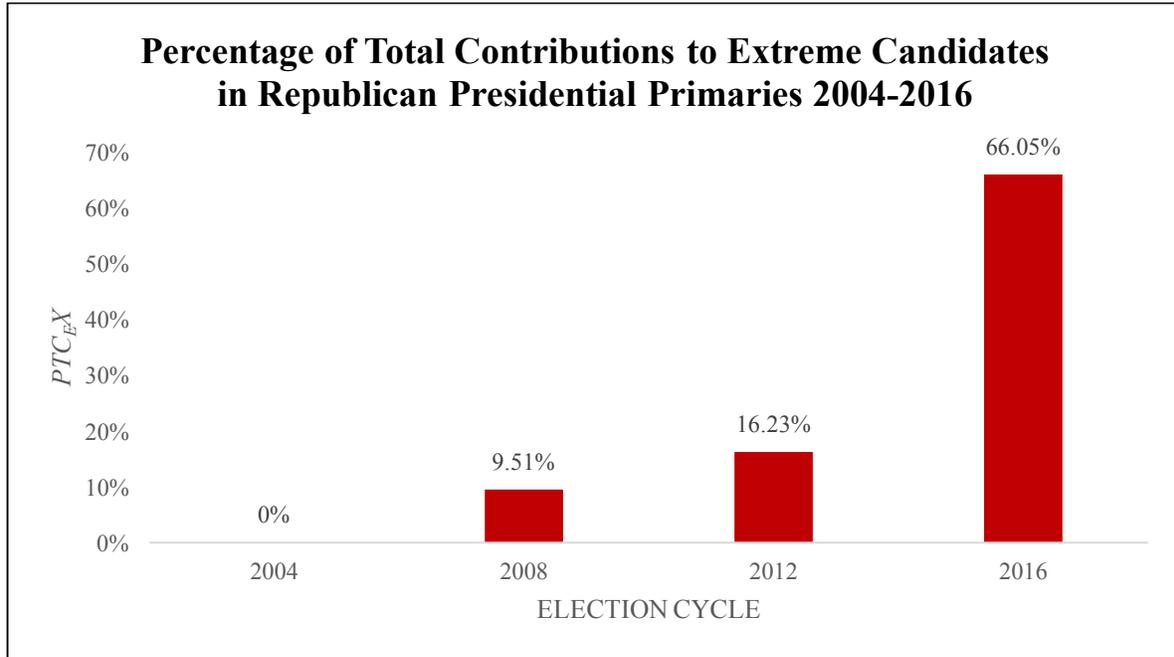
Figure 4.1 – Candidates who Competed in each Cycle under Review

Year	Candidates	Year	Candidates
2004 (2)	Blake Ashby [ASHB]	2012 (4)	Newt Gingrich [GRCH]
	George W. Bush [BUSH]		Ron Paul [PAUL]
	-		Mitt Romney [RMNY]
	-		Rick Santorum [STRM]
Year	Candidates	Year	Candidates
2008 (8)	Fred Thompson [TMSN]	2016 (10)	Jeb Bush [BUSH]
	Rudy Guiliani [GIUL]		Ben Carson [CRSN]
	Mike Huckabee [HUCK]		Chris Christie [CRST]
	John McCain [MCCN]		Ted Cruz [CRUZ]
	Mitt Romney [RMNY]		Carly Fiorina [FIOR]
	Ron Paul [PAUL]		Mike Huckabee [HUCK]
	-		Rand Paul [PAUL]
	-		Marco Rubio [RBIO]
	-		Rick Santorum [STRM]
	-		Donald J. Trump [TRMP]

Figure 4.2 – List of Extreme Candidates and their PTC_{ER}

Cycle	Candidate	PTC_{ER}
2004	-	0%
2008	PAUL	4.86%
	FRED	2.09%
	HUCK	2.56%
2012	GRCH	14.38%
	PAUL	1.85%
2016	CRUZ	2.72%
	CRSN	26.02%
	RBIO	18.09%
	TRMP	14.21%
	PAUL	5.01%

After calculating the PTC_{EX} for each cycle, the following results were produced in Figure 4.3:

Figure 4.3 – PTC_{EX} 2004 through 2016

Evidently, the values of PTC_{2004X} and PTC_{2008X} are both less than the values of PTC_{2012X} and PTC_{2016X} . Therefore, the hypothesis is safely confirmed.

4.3 Discussion

The results of the analysis provide empirical evidence that directly support the claim asserted by the Shadow Party Power School that so-called party “outsiders” are in a better position to fundraise after *Citizens United*. Both the Shadow Party Power School and the Party Network School addressed the roll of outsiders and insiders with respect to various legal entities and their associated fundraising ability and campaign functions. Neither of the two schools adequately defined party outsider or party insider. To refresh the reader’s memory, this is exactly the gap in the literature that I sought to fill. In so doing, I used the CFscores of the studied candidates to separate party outsiders from party insiders, but I used the term “extreme” to refer to outsiders. The results of the analysis provide vivid evidence to support the Shadow Party Power School’s argument that so-called party “outsiders” are in a better position to fundraise

after *Citizens United*. Figure 4.3 clearly indicates an increase in the PTC_{EX} with a rapid spike after 2012. This makes sense. The first presidential election cycle in which Super PACs were engaged was 2012. It would follow intuitively that the Super PAC and the inherent campaigning and financial power therein would not have been adequately grasped by campaigners until after at least one cycle of experience. By 2016, it appears there had been enough experience with the legal entity to make use of it properly.

Looking again the PTC_{2016X} displayed in Figure 4.3, it is clear that more than two thirds of total contributions went to extreme candidates. Where as in previous cycles this figure had not even scratched twenty-five percent, the most recent cycle featured a 400% increase in the percentage of total contributions that went to extreme candidates since 2012. Thus, it would appear that extreme candidates are in a better position to fundraise as time goes on.

What is more, these findings suggest that a larger phenomenon is occurring in the United States political landscape: Extreme candidates who are inherently unrepresentative of the broader party electorate are getting more of the campaign funds. I found that these individuals are attracting fundraising sums in excess of those raised by non-extreme candidates. Therefore, the findings suggest that *Citizens United* increased the fundraising ability of minority candidates and factions – i.e., minority groups within the Republican Party. In other words, these findings support the argument that *Citizens United* empowered minority factions and candidates within the Republican Party to raise disproportionate funds despite being unrepresentative of the broader party electorate. What this means for democracy will always be controlled by how one defines *democracy*. Nevertheless, if one adopts the assumption that a more democratic United States is one in which minority factions within the Republican Party do not attract the bulk of campaign funds, then these findings may disappoint.

4.4 Grains of Salt: Limitations of the Research Design

While I attempted to construct an airtight research design, it is by no means impenetrable to critique. There are a number of limitations to the research design that need to be disclosed in order to understand what the findings say, and what they do not.

First, I reviewed four (4) Republican Presidential primaries. The 2004 cycle only included two primary contenders, one of whom was the incumbent president. Ample research has testified to the so-called incumbency advantage (e.g., Ansolabehere, et al., 2007). What is more, when George W. Bush ran for re-election in 2004, the United States was engaged in a number of wars and foreign policy entanglements to such an extent that President Bush may (and probably did) have had a stronger incumbency advantage. Secondly, Bush's sole competitor in 2004 did not even garner 1.0% of the TC_{2004} , which resulted in the PTC_{2004X} to yield a figure zero. In retrospect, I should have chosen the 2000 cycle instead of the 2004 cycle, as the 2000 cycle did not feature an incumbent presidential candidate.

Second, John Kasich was not included in the DIME database for the 2016 cycle. Had he been included, the median of the CFscores and the median absolute deviation for the 2016 dataset might have been different by a minor degree. Additionally, a brief speculation as to John Kasich's ideology might safely lead one to conclude that Mr. Kasich would not be considered an extreme candidate. Therefore, had he been included in the 2016 dataset, the PTC_{2016X} may have been reduced by a minor degree. Nevertheless, given the comparatively massive size of PTC_{2016X} , it is highly unlikely that including Mr. Kasich would reduce PTC_{2016X} to a number that would reverse the findings. Had the missing candidate been a financial heavyweight such as Jeb Bush, Donald J. Trump, or Ben Carson, that would have been cause for concern. This, however, was not the case. Therefore, this limitation is weighted very lightly.

Third, the modified z-score cutoff that I selected was zero point nine (0.9). This is admittedly a subjective figure. However, I could devise no purely objective method for separating candidates without using some figure such as this.

Fourth, the DIME database did not include CFscores for Donald J. Trump, Carly Fiorina, Jeb Bush, or Chris Christie for the 2016 cycle. Therefore, I was charged with making a judgment call as to whether to include each of their contributions in *PTC_{2016X}*. In so doing, I believe I safely placed Donald J. Trump into the extreme (outsider) category, and Carly Fiorina, Jeb Bush and Chris Christie into the non-extreme (insider) category. I leave it up to the reader to disagree.

4.5 Avenues for Further and Future Research

Overall, this study was limited in that I only reviewed four election cycles. There was an incumbent president in the first cycle, and not all candidates were scored in the last cycle. Moreover, I only studied Republicans. Perhaps a future inquiry including the Democrat Party as well would yield more fruitful results. Furthermore, I relied on the assumption that the ability to fundraise directly translated into the act of fundraising. Relying on this assumption created a backbone of rationale for my hypothesis, particularly the outcome variable (ability to fundraise). I maintain that this assumption was necessary. However, perhaps future researchers may devise a more insightful measure of ability to fundraise. Moreover, a future researcher on this topic would be well-advised to include additional election cycles to allow for a larger sample size.

CHAPTER V

CLOSING ARGUMENTS

5.1 Summation

Electoral competition and representation are two championed cornerstones of American democracy. When courts deliver opinions that have implications for those cornerstones, viewers and commentators naturally react. This thesis represents an empirical test of one of those reactions. The U.S. Supreme Court's ruling in *Citizens United v. Federal Election Commission* (552 U.S. 1278 (2010)) reversed decades of federal campaign finance law that prohibited corporations, labor unions, and other entities from engaging in independent expenditures using their general treasury funds. Two months later, the U.S. Court of Appeals for the District of Columbia extended that ruling in *SpeechNow v. FEC* (559 F.3d 686 (2010)) when the D.C. Circuit held that non-profit organizations seeking to make independent expenditures on expressly advocating for the election or defeat of a clearly identified candidate for federal office could do so without limit. This pair of rulings gave birth to the Super PAC – a type of political action committee that can spend unlimitedly on advocating for the election or defeat of a specific candidate for federal office.

In the aftermath of these rulings, a body of scholarship emerged that studied various consequences of the rulings. One of these was whether Super PACs were merely an additional legal mechanism for party insiders to continue to conduct campaign and electioneering operations, or whether the Super PAC represented a novel legal entity that challenged the power

of party insiders. In this thesis, I examined whether party outsiders' ability to fundraise increased after *Citizens United* and the introduction of the Super PAC. The results of the analysis indicated vividly that party outsiders were indeed in a better position to fundraise after *Citizens United*. These findings provide empirical evidence to support the claim advanced by the Shadow Party Power School that *Citizens United* empowered outside groups at the expense of the party insiders. As for the impact of *Citizens United* on the quality of democracy, these findings support my hypothesized argument that *Citizens United* empowered minority factions and candidates within the Republican Party to raise disproportionate funds despite being unrepresentative of the broader party electorate.

To cycle back to normative concerns addressed in the opening of Chapter I, campaign finance has largely been framed a clash between two separate but equally compelling democratic values: liberty and equality. Is one to view the findings as a victory for liberty? Or as a loss for equality? Perhaps one need not confine himself to such diametric terms. The U.S Supreme Court in *Citizens United* predicated part of its opinion on the reasoning that the government ought not to restrict speech on the basis of the speaker's corporate identity (552 U.S. 1278 (2010)). While the popular argument at the time was that the Court "opened the floodgates" for corporations to spend without limit in our elections, ample empirical research demonstrated that this was not the case (e.g., LaRaja & Schaffner, 2013). Rather, the court in *SpeechNow* took the *Citizens United* precedent and applied it to non-profit organizations – 527s (559 F.3d 686 (2010)). It was these entities that became the Super PACs through which over a billion dollars have been spent on elections. One of the results of these rulings is that extreme candidates appear to be better off at fundraising than they were prior to 2010. But if party outsiders are better off than party insider

candidates, does that suggest that *Citizens United* created a campaign finance arena in which minority factions and interests end up taking over the party nomination process? Probably not.

Research has illustrated that primary electorates tend to be more partisan than general electorates (Brady, Han, & Pope, 2007; Geer, 1988). If Super PACs empowered ideologically extreme candidates to compete with party insiders, then the result can be framed as *Citizens United* having merely increased the electoral supply of candidates which partisan primary electorates seem to demand. If all of the benefits of having support from the formal parties and 527 information networks (Koger, Masket, Noel, 2012, 2013; Skinner, Masket, Dulio, 2012, 2013) are effectively challenged by the power of Super PACs, then party outsiders are now simply able to compete with party insiders more effectively. From this view, it would appear that *Citizens United* had a positive impact on the quality of democracy in the United States.

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APPENDIX I

2016 Republican Presidential Primary

NAME	cf.score	modified z score	<i>TC</i> _{2016R}	<i>PTC</i> _{2016R}
CRUZ	1.297	2.082	\$6,654,775.62	2.72
CRSN	1.4	2.851	\$63,606,615.95	26.02
RBIO	1.151	0.993	\$44,224,029.5	18.09
TRMP	n/a	-7.597	\$34,740,677.93	14.21
BUSH	n/a	-7.597	\$34,696,569.26	14.19
STRM	0.917	-0.754	\$23,552,730.52	9.63
PAUL	1.385	2.739	\$12,256,204.21	5.01
FIOR	n/a	-7.597	\$12,079,684.58	4.94
CRST	n/a	-7.597	\$8,415,486.91	3.44
HUCK	1.103	0.634	\$4,264,646.14	1.74
		Total:	\$244,491,420.6	-

2012 Republican Presidential Primary

NAME	cf.score	modified z score	<i>TC</i> _{2012R}	<i>PTC</i> _{2012R}
RMNY	0.828	-1.319	\$323,038,185	73.61005593
GRCH	1.147	0.993	\$63,124,454.3	14.38404135
STRM	0.917	-0.674	\$44,560,472.8	10.15390455
PAUL	1.487	3.457	\$8,127,505.41	1.851998171
		Total:	\$438,850,617.5	-

2008 Republican Presidential Primary

NAME	cf.score	modified z score	<i>TC</i>_{2008R}	<i>PTC</i>_{2008R}
PAUL	1.487	5.879	\$5,014,288.66	4.86333988
GIUL	0.483	-5.154	\$7,781,743.65	7.547484158
TPSN	1.096	1.582	\$2,158,175.07	2.093205955
HUCK	1.103	1.659	\$2,647,446.01	2.567748016
MCCN	0.669	-3.11	\$35,128,672.7	34.0711687
RMNY	0.828	-1.363	\$50,373,482.9	48.85705329
		Total:	\$103,103,809	-

2004 Republican Presidential Primary

NAME	cf.score	modified z score	<i>TC</i>_{2004R}	<i>PTC</i>_{2004R}
BUSH	0.863	0.027	N/A	>99%
ASHB	n/a	0.809	N/A	<1.0%
