Chapter Six
Regulating Elections

Draft 2.1

In the spring of 1993, President Clinton backed down from one of the most divisive issues of his young presidency — the nomination of Lani Guinier to head the civil rights division of the Justice Department. Even though the civil rights division's job is to step into the middle of racially-based controversies, the nominee to head this division has rarely rated attention on the front page of the newspapers. What was it, then, that made Guinier objectionable to enough senators that Clinton was forced to abandon his friend's nomination?

Guinier's nomination inspired a firestorm of protest because of her legal writings about how legislatures are elected and organized in the United States.¹ In the matter of elections, she argued that the American tradition of electing members of legislatures through single-member districts severely disadvantaged racial minority candidates. As a remedy for this bias, she advocated a variant of proportional representation called cumulative voting.²


²In the matter of how legislatures are organized, Guinier argued that the standard majority requirements further diminished the influence of racial minorities, even beyond that proportional to their strength in the legislature. So, she also advocated for mechanisms that would encourage majority-race legislators to include minority-race legislators in ruling coalitions. Such proposals
The senatorial attack on Lani Guinier highlighted, at least for a moment, the regulation of congressional elections. Regardless of how one evaluates the particulars of Guinier's arguments, in one important respect she was right and her senatorial adversaries were wrong. She was right in noting that no way of electing a legislature (or even organizing one) is neutral. Choices must be made about how to structure electoral competition, including how to group candidates into districts, if districts are used at all. While it is difficult to structure electoral competition for Congress to resist popular tidal waves, the details of the electoral system certainly influence the details of representation, including precisely how large the majority will be, how vigorously elections will be contested, and what the precise racial, sexual, or ideological composition of Congress will be.

Ironically, at the same time many senators were attacking Lani Guinier for her supposed support of manipulating the electoral system in favor of racial minorities, the Senate was considering campaign finance reform legislation that would (arguably) manipulate the electoral system in favor of incumbent senators. In 1993, the Senate passed a campaign finance reform provision that would have capped the amount of money congressional candidates could spend in running for office. It further would have taxed the campaign receipts of any candidate unwilling to abide by these limits. Because research has long shown that challengers must usually out-spend incumbents in order to have any chance of winning, this provision was seen by Republicans (who were the minority party in Congress at the time) as a mechanism for locking-in the incumbency advantage, and thus Democratic control of Congress.

are beyond the subject matter of this chapter, and so I will not pursue them here.
Both the Guinier and the campaign finance episodes bring us into the realm of regulating congressional elections. In some respects, regulating congressional elections is just like regulating anything else: rules are promulgated to induce a certain type of behavior; agencies are established to police the rules; and political pressures are brought to bear in writing the rules and enforcing them. But, in one important respect, regulating congressional elections is fundamentally different, since the regulators are also frequently the regulated. Also, because the regulation of congressional elections can have such important consequences and because it encourages self-seeking behavior, it is a subject that elicits more popular attention than most formal, structural matters affecting the federal government.

The rest of this chapter is about how congressional elections are regulated. The first section lays out some basics that precede even campaign finance laws or drawing election districts. The second section explores issues affecting congressional districts, including a discussion of how proportional representation might work if applied to Congress. The third section turns its attention to election financing, both behavior under the current system and prospects for reform.

In this chapter, it is important to keep in mind the grand theme of this book: Congressional behavior is primarily the result of political actors striving for political advantage. Since the electoral system determines who wields the most authoritative power in the American system, it is here where the scramble for political advantage is most often acute.

I. Running for Congress 101: The Basics
The Constitution is the starting point for understanding the regulation of congressional elections. Members of the House must be 25 years old and citizens of the U.S. for seven years. Senators must be 30 years old and U.S. citizens for nine years. Both House members and senators must reside in the states they represent. The practice of representatives residing in the districts they represent is a custom, but it is not constitutionally-mandated. Given the highly-particularistic view of representation in the United States, it is not surprising that this custom has emerged, and that an incumbent MC feels compelled to move when his district's lines are changed to exclude his residence.

The Constitution gives both houses of Congress the right to judge outcomes of elections to their respective chambers. Consequently, courts have infrequently commented on electoral matters, even though they began doing so more often in the last half of the twentieth century. Therefore, while Supreme Court pronouncements on electoral matters since the 1960s have shaped the electoral landscape in two areas we will discuss below — congressional districting and campaign finance — it was virtually mute before then. Consequently, there are still areas of electoral regulation that the Court has never ruled on.

After the Constitution, the next important basic building block in regulating elections is federalism. Although Congress is a national institution, many important regulations are imposed on congressional candidates by the states. These regulations include "resign-to-run" laws,

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Neither chamber of Congress has been eager to enforce the Constitution's electoral rules, even when violations have been clear. The most frequently-cited example of this was Henry Clay's election to the Senate in 1806, at the age of 29.
restrictions on access to the ballot, the method of nomination for office, and the timing of primaries and the general election. Other regulations are primarily national in origin, most notably campaign finance regulations. The regulation that got Guinier noticed — the drawing of legislative districts — is actually shared between the states and the federal government, since Congress has mandated single-member districts in various laws since 1842 and prohibited the dilution of minority votes since the Voting Rights Act of 1965, but still left it to the states to draw the districts.

In Article I, Section IV, the Constitution gives the states the right to regulate the "times, places, and manner" of holding congressional elections, but also reserves for Congress the right to overturn any of these state-passed regulations.\(^4\) Congressional intervention into election laws has been minimal, confined to the following provisions in recent years: \(^5\)

- Members of the House must be elected from single-member districts.
- If a state loses representatives after a census, but the state is unable to redistrict in time for the next election, all that state's representatives shall be elected at-large in the state; if the state gains seats in the House but cannot redistrict in time, the additional member(s) shall be elected at-large.

\(^4\) Before the popular election of senators, accomplished in the 17th Amendment, Article I Section IV prohibited Congress from regulating where senators were elected, which effectively prohibited Congress from determining where state capitols were located.

Candidates for at-large House seats shall be nominated in the same manner as candidates for governor in the state.

Congressional elections shall occur in the Tuesday after the first Monday in November of even-numbered years.

Voting for representatives must be by written, printed, or machine ballot.

With Congress mute on so much of election law, states have dominated, producing wide variation in the details of how members of Congress are elected. Among the most significant of these laws are filing fee and petition requirements for getting on the ballot. They range from Indiana, which simply requires a candidate to pledge loyalty to his or her party, to Florida, which requires candidates to post a filing fee of over $5,000. Another important law passed by states is the filing date to run for Congress. In 1996, for instance, someone running for Congress from Illinois would have to file to run for office no later than December 18, 1995. That same person could wait until July 23, 1996 if he or she were a resident of Hawaii. Finally seven states, all but one being from the south, maintain a runoff primary system. Under such a system, to get nominated, a candidate must receive a majority of votes in a primary. If no one receives a majority, then a runoff is held a few weeks later between the top two candidates, with the winner of that election becoming the party nominee. Most states, however, maintain a plurality system,
in which the person with the most votes is nominated, even if he or she does not receive a majority.\textsuperscript{8}

A modicum of economic reasoning reveals that all of the rules discussed in the previous paragraph should have identifiable effects on the outcomes of congressional elections. For instance, filing fees serve as a fixed cost in running for election, much the way that fixed costs serve as a barrier to entry for companies trying to get into a new market. As these barriers rise in congressional elections, two things happen: First, challengers are discouraged from running against incumbents, and so incumbents face fewer high-quality candidates. Second, because incumbents are more easily reelected, fewer of them retire instead of facing an overly-costly reelection battle. In a study of the electoral effects of ballot access rules in the 1980s, Ansolabehere and Gerber (1996) discovered that states with the highest barriers had triple the number of uncontested races compared to states with the lowest barriers, and that retirement rates for members of Congress from states with low ballot access barriers were about three times higher compared to members who represented high-barrier states.

\textsuperscript{8}Louisiana is known for having its own unique system. In that state, all candidates for Congress, regardless of party, are put on a single "primary" ballot. If one candidate receives a majority in the primary, he or she is elected to Congress. If not, the top two candidates are required to compete in the general election. A useful biennial reference book for state-by-state ballot access requirements is the \textit{Book of the States}, published by the Council of State Governments.
The timing of filing deadlines has a different effect on the quality of electoral competition. As we discussed in Chapter Four, much of the fate of incumbents running for reelection is in the hand of challengers, with high-quality challengers posing a greater threat than low-quality challengers. In states with late filing deadlines, potential high-quality challengers have more time to see whether a challenge to the incumbent is likely to payoff. Likewise, in states with late filing deadlines, incumbents have a greater opportunity to retire from office, rather than run again, if the political signs turn negative in the election year.

This is a pattern that Jacobson and Dimock (1994) found when they researched the electoral effects of the 1992 "House Bank Scandal." Very briefly, the House Bank Scandal involved a number of House members writing bad checks on their bank accounts and then not being held accountable for their overdrafts. From our perspective, what is important is that the names of everyone who had written bad checks, and the number of checks they had written, was published in April of 1992, right in the middle of the filing season for Congress. Among the incumbents who wrote more than 100 bad checks, but who were from states with filing deadlines before April 15, 21% faced a high-quality challenger in the party primary. Among incumbents who wrote more than 100 bad checks, but were from states with filing deadlines after April 15, 57% had primary battles against high-quality challengers.

Finally, the effects of a runoff primary are easily illustrated through the use of a single-dimensional spatial model in Figure VI-1. There are three candidates in this example — A, B, and C. Voters are located uniformly along the dimension as shown. They all vote, and they all vote sincerely. In Round 1, no candidate receives a majority. While each candidate receives a similar
number of votes, A receives the most. Therefore, if this were a plurality election, A would be the nominee. However, this is a runoff example, so C, who receives the fewest votes is knocked out. In Round 2 the competition is between A and B. Because B is closer to the median voter, B is the nominee.

Fig. VI-2 Runoff systems always end up pitting two candidates against each other if no one receives a majority in the first round. The end result is that the most extreme candidate in Round 1 cannot receive the nomination in either round. This does not mean that the candidate closest to the median will always get the nomination, as the example in Figure V-2 shows. Here, the median candidate is "squeezed" on both sides by more extreme candidates. In the second round, candidate C (the slightly less extreme of the two extremists) gets the nod.

II. Congressional Districting

Because new congressional districts must be redrawn after each decennial census, redistricting is the most prominent state-controlled process that governs congressional elections. The drawing of strangely misshapen districts — gerrymandering — is the electoral manipulation that voters are likely to know the most about. In the late twentieth century, the Supreme Court and the Congress entered into the redistricting game — the Court, by mandating certain equal-population criteria, and the Congress, by the passage of the 1965 Voting Rights Acts and subsequent reauthorizations of the act.

There is nothing in either democratic theory or practice that mandates that members of a legislature be elected from districts. The practice is so firmly rooted in American political history that when someone such as Lani Guinier suggests otherwise, he or she is ripe for attack from
political enemies. Guinier's writings were stimulated by the difficulties in finding ways of drawing legislative districts in the United States to bring ethnic minorities into legislatures in numbers closely proportional to their numbers in the population without violating other representational principles that Americans also hold dear. Because non-district-based representation systems continue to be proposed as remedies for specific shortcomings in how Americans elect legislatures, we will conclude this section with a discussion of Guinier's favorite system, the method of cumulative voting.

**Districting: Some General Principles**

We begin by introducing five principles of districting that either govern current court rulings and legislation or are frequently mentioned as desirable features of districting schemes. These principles are compactness and contiguity, equal population, the preservation of existing political communities, partisan fairness, and racial fairness. After discussing each in turn, we will then turn our attention to conflicts among the principles and the decision rules that usually resolve these conflicts.

The principles of compactness and contiguity are geometric. A contiguous district is one whose pieces all are connected to each other. A system with contiguous districts is virtually synonymous with geographically-based districting, since such districts aggregate voters according to similar geography rather than similar political characteristics.

Natural geography, of course, often conspires against contiguity. For instance, Staten Island, a part of New York City with a population of 379,000, is too small to have a member of the House all its own. Therefore, it must be joined with another part of New York state to make
a district. The problem, of course, is that there is no land connection between Staten Island and the rest of New York state. The fact that Staten Island is part of a non-contiguous congressional district is a concession to geographic reality.

Yet, it is also possible to manipulate such "natural" geographic discontinuities. How, for instance, should Staten Island be joined to the rest of New York? In 1991, it was joined with the precincts in Brooklyn that were connected to Staten Island over the Vezzanno-Narrows Bridge, in a second-best concession to the principle of contiguity. Yet, in the 1970s, Staten Island was included in a district with the lower tip of Manhattan. In this case, the only connection between the two parts of the district was a ferry ride across the harbor.

Compactness can be defined as "homogeneous and located within a limited definite space without straggling or rambling over a wide area." Compact districts are valued because they benefit both sides of the representation equation, the representative and the represented. When a district is compact, and not strung out over a great distance, then contact between representatives and voters is facilitated. Great distances don't need to be traversed for a representative to visit his or her constituents, for instance. In addition, when a district is compact, it is easier for constituents to know who their representative is — they are less likely to be confused by assuming that a representative who attends to a problem in a neighboring community will also attend to problems in one's own.

Fig. VI-3 One major problem with compactness, theoretically, is recognizing it when it exists. To illustrate this problem, Figure VI-3 shows six stylized congressional districts, each of which is roughly the same area. Intuition tells us that certain of the districts, such as the circle and triangle, are less "straggling and rambling" than some of the others, such as the puzzle piece and the
serpent. Yet, beyond intuition, political scientists, mathematicians, geographers, and lawyers have been stymied in developing a rigorous definition of compactness. Thus, each district pictured in Figure VI-3 would be considered "compact" by some formal definition that has been proposed and used to judge districts. For figures of equal area, a circle will always be the most compact district. The conflict comes over judging districts that aren't circles, that is, all real-life districts.

The greatest practical obstacle to compactness is the actual distribution of population. As we will discuss later, modern congressional districts are meant to encompass people, not geography per se. If states' populations were distributed equally across the landscape and state boundaries corresponded to neat geometric shapes, then the only problems in judging whether districts were compact would be the theoretical ones.

But, consider two real-life examples, the congressional districts drawn after the 1990 census in Iowa and Nebraska. (See Figure VI-4.) The population of Iowa is distributed fairly equally across the state, with the exception of a moderate-sized city in the center (Des Moines) and a slight shading of the population toward the south and east. Iowa's 1990 congressional districts are therefore fairly good real-life approximations to the simple notion of compactness.

Nebraska's 1990 districts vary tremendously in size. Yet, it is difficult to judge the overall districting scheme as violating principles of compactness when we consider how the population of Nebraska is distributed. Nebraska's population is concentrated heavily in the east, particularly around the city of Omaha, and somewhat less around the state capitol of Lincoln. Imposing literal geographic compactness on Nebraska would yield districts with wildly unbalanced populations, violating another principle — equal population — that we will discuss next.

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9See Young (1987) for a review of mathematical measures of compactness.
The meaning of equal population is self-evident. With districts of equal population, the opinion of a voter in one district is often said to be "worth" the same amount as that of a single voter in another district.

A number of difficulties emerge with this simple view of population equality. First, as an historical matter, what the Constitution tries to equalize is not the voting power of individual voters, but the voting power of states. Districts are nowhere mentioned in the Constitution, and it was not until 1842 that Congress passed a law requiring the use of single-member districts for election to the House. Until that time, it was common for House members from some states to be elected either at large, with several members elected from a single district that encompassed an entire state, or in multi-member districts, with more than one member being elected from one of several districts in a state.

While Congress regularly passed laws requiring nearly equal populations among congressional districts, from the 1840s to the 1910s the House never barred membership to anyone because they were elected from unequally-populated districts. For years, the Supreme Court acquiesced to malapportionment, as well. For instance, as late as 1946, the Court ruled, in Colgrave v. Green (328 U.S. 549) that if Congress failed to pass a law mandating equally-populated districts, and if this failure violated basic tenants of democracy, then such violation should be dealt with by the people voting Congress out of office.\(^{10}\) The emergence of a legally-mandated and enforceable rule about equal population did not occur until the case Baker v. Carr (369 U.S. 186) in 1962, which we discuss below.

\(^{10}\)The case of Colgrave v. Green involved Illinois, where district populations varied from 112,000 (the 5th District) to 914,000 (the 7th District).
The requirement that each state receive at least one member of the House is an important constraint that produces a serious malapportionment of members among the smallest states. In 1990 Montana had 799,065 residents while Wyoming had 453,588; both had a single House member.

Before the equal population revolution of the 1960s, the biggest obstacle to equally-populated congressional districts was the state legislatures that drew them. The range of populations among some congressional districts was massive, including Illinois's range of 112,000 to 914,000 in the 1940s and Georgia's range of 272,154 to 823,860 in the 1960s. The population imbalance among congressional districts in the twentieth century always benefitted rural districts. That is, rural districts tended to be smaller than urban districts. Because the relative power of a voter in an electoral system is inversely related to the number of voters in a system, rural voters tended to win out against urban voters.

The Supreme Court began considering legislative districting cases in the 1960s, gradually altering the "political question" doctrine that had kept it from deciding cases such as *Colgrove* in earlier years. That is, the court eventually decided to make a distinction between protecting political rights and wading in on politically-divided policy questions. Because voting is a political right, the Supreme Court became more willing to take action when it was presented with what it considered a discriminatory set of legislative districts.

The first districting cases accepted by the Supreme Court concerned state elections. In *Baker v. Carr*, 369 U.S. 186 (1962), the Supreme Court took on the Tennessee legislature, whose largest House district was 23 times larger than its smallest, and whose largest Senate district was six times larger. In *Gray v. Sanders*, 372 U.S. 308 (1963), the Supreme Court struck
down Georgia's county-unit system for electing governors, articulating the "one person-one vote" doctrine that has governed apportionment cases ever since. Finally, in *Wesberry v. Sanders*, 376 U.S. 1 (1964), the Supreme Court entered the issue of congressional districts, ruling that Georgia's districts did not pass constitutional muster.

Having articulated a one person-one vote doctrine, the question that next arose was "how much variance is allowed in the population of congressional districts?" Do states need to draw districts that are precisely equal in population, even splitting up precincts to achieve such equality, or, is some variance allowed? While no court has ever ruled that perfect equality is required, line-drawers have an incentive to approach equality, since federal courts do seem to favor population equality when they are forced to decide among competing plans that are contested in court.

The principle of *preserving existing political communities* means that existing political boundaries — such as cities, counties, precincts within a city, etc. — will be respected when districts are drawn. Sometimes it also means that identifiable demographic communities (racial communities, religious communities, etc.) will be kept together, even when they extend beyond a single political boundary. Iowa's 1990 districts (see Figure VI-4) are an example of districts drawn to respect existing political boundaries. In this case, Iowa has a law that requires congressional districts to respect county boundaries.

In some ways it is difficult to square this principle with tenants of liberal democracy, which are those most associated with the rational choice theory that motivates this book. That is, the principle of preserving existing political communities elevates collectives of individuals over the individuals themselves. Still, if one wanted to enhance the representation of individuals *as individuals*, there are some strong arguments for keeping existing communities intact. For
instance, existing political subdivisions, such as counties, already have political groups that are organized to influence politics within those subdivisions. Political parties often have precinct, ward, and town committees. Etc. Citizen groups usually center their activities around the communities where their members live. Because political participation is costly, and individuals rarely have the resources to organize effective mass political activity alone, making legislative districts coincide with existing political communities may facilitate contact between voters and their representatives, since voters can rely on organizations that already exist in order to make their desires known.

While the previous three principles describe the forms of electoral systems, the next two are about the outcomes of elections. The first of these is partisan fairness. Partisan fairness can be divided into two related ideas, symmetry and proportionality. Symmetry demands that if the Republicans receive X percent of the vote and consequently receive Y percent of the seats in Congress, then the same relationship should pertain to the Democrats. Presumably, in theory, if both parties receive the same number of votes in the election, then the legislature should be split 50-50. On the other hand, proportionality requires that there be a one-to-one correspondence between the percentage of votes received for a party's congressional candidates and the percentage of seats the party receives in Congress.

Of these two components of partisan fairness, symmetry is easier to achieve than proportionality. To see the difficulty of maintaining strict proportionality with a system of single-member districts, consider the following extreme example: Imagine that the Democrats were to win every district in one election with exactly 51% of the vote. Thus, they would have a bare majority of votes and all the seats. Now, suppose that in the next congressional election, 2% of
the vote shifted in favor of the Republicans, allowing them to win with 51% of the vote in each
district. In this case, the Republicans would now have garnered all their seats and a bare majority.
This system is symmetrical — 51% of the vote yields all the seats for either party — but not even
close to proportional.

Fig. VI-5 The previous paragraph proposes an extreme case for the purpose of illustration. What is
the actual case in the United States? Figure VI-5 illustrates the proportionality of the system by
showing a scatterplot based on House elections from 1946 to 1996, with the percentage of seats
won by the Democrats on the y-axis and the percentage of votes received by Democratic
candidates on the x-axis. The dotted line is at a 45-degree angle, which is where the scatter
would lie if the American system were proportional. The solid line fit through the scatter is the
least-squares best fit to the data. The slope of this line is approximately 1.8, meaning that each
one percent increase in the Democrats' votes has yielded, on average, a 1.8% increase in the
number of Democratic seats in the House. (This 1.8:1 ratio is one measure of the "swing ratio.")

It is tempting to use Figure VI-5 to estimate whether the House electoral system also
passes the symmetry test. To do this, one would check to see whether the regression line runs
through the 50-50 point. Simple inspection reveals this is not the case — at 50% of the vote, the
line predicts Democrats will receive about 55% of the seats. However, because there have been
so few elections since 1946 when Democrats have received half the vote or less, a rigorous
statistical test of this regression would conclude that House districts have, on the whole, treated
Democrats and Republicans symmetrically. Because the paucity of House elections fought in the
50% range, more sophisticated statistical techniques are needed to uncover whether there has
been symmetry in House districts for this century. The most sophisticated studies have indicated
that House districts have mostly treated the two parties symmetrically in this century, with perhaps a small bias in favor of Republicans early in the century, and a small bias favoring Democrats in more recent years.

Perhaps the most controversial districting principle in recent years has been that of racial fairness. As a general principle, it has garnered widespread support across the country only in the past two or three decades. Even then, there continues to be dissention over how, in practice, to implement this principle, as was evidenced in the nomination controversy surrounding Lani Guinier.

Laws governing the implementation of the principle of racial fairness center on the Voting Rights Act (VRA) of 1965 and its various reauthorizations. The 1965 act outlawed legislative districts that diluted minority voting power. Before the 1965 VRA, southern states employed a host of mechanisms to mute the ability of black voters to influence local politics, including poll taxes, literacy tests, and outright physical intimidation. Racially-biased districts helped also to keep down minority participation. A good example of this type of districting was Mississippi's congressional districts drawn following the 1960 census, shown in Figure VI-6. The map in Figure VI-6 shades Mississippi's counties according to the proportion of their population who were African-American. Note that blacks lived in higher proportions in western Mississippi, close to the Mississippi River. Note, too, that districts tended to be oriented east-to-west. By dispersing the premoninantly black western counties into four congressional districts, the Mississippi legislature created a series of districts, only one of which had a majority black population — the 1st, with 51%. All this despite the fact that 42% of Mississippi's population was Africa-American in 1960 and despite the fact that two majority-black districts could have
been drawn by respecting county boundaries, and containing more equal populations than the actual plan. Figure V-7 shows this hypothetical districting of Mississippi with two majority-black congressional districts — the first (62% black) and the second (52% black).

Controversy over the VRA arose after the most egregious cases of racial vote dilution were addressed and more difficult issues emerged. One precipitating event in the further controversy over implementing the principle of racial fairness came in 1980 when Supreme Court ruled, in *Mobile v. Bolden*, that in order to successfully challenge a districting plan, minority voters had to show that the plan *intentionally* diluted minority votes. When Congress extended the Voting Rights Act in 1982, it altered the burden of proof in redistricting cases, so that minority voters only had to show that districting plans had the *effect* of diluting minority votes, regardless of intent. Coupled with a change in how the Justice Department implemented another section of the Voting Rights Act, states in the post-1990 redistricting round were induced to craft plans that maximized the number of districts in which racial minorities were a majority. These were called *majority-minority districts*.

Many redistricting plans that emerged following the 1990 census were challenged by white voters, who claimed that districts that maximized the chance of electing African-Americans to the House violated *their* civil rights. The most important Supreme Court case was *Shaw v. Reno*, in which a 5-4 majority ruled that if a district was drawn *primarily* with race in mind, it was constitutionally suspect. This case threw open to review a series of districting plans in Florida, Illinois, Louisiana, Texas, and North Carolina.

*Districting: The Conflict of Principles*
Considered separately and abstractly, there is little controversy about the principles of compactness, contiguity, equal population, the preservation of existing political communities, partisan fairness, and racial fairness. They become controversial upon implementation, however, since they each tend to conflict with each other. In Table VI-1, I give some examples of how each of these principles might conflict with each other. (Table VI-1 provides only limited examples.)

The principle that is most difficult to maintain in practice is compactness and contiguity, particularly compactness. This is a special problem in the United States, since the most intuitive standard that most Americans use to judge legislative districts is compactness: districts that are gangly or have ragged edges are immediately suspected of being manipulative.

Compactness has been a central issue in voting rights cases ever since the *Shaw v. Reno* case, when a Supreme Court majority expressed dismay over the "bizarrely shaped" districts that were being drawn to enhance the number of majority-minority districts. Figure VI-8 shows the districts from two states, Georgia and North Carolina, that gained notoriety for their creative district-drawing. (Notice particularly the 1st and 12th districts of North Carolina and the 11th district of Georgia.)

The American political vocabulary has a name for districts that are especially misshapen — the *gerrymander*, named after Elbridge Gerry. Gerry was the governor of Massachusetts who drew a state senate district in 1811 that joined together two far-flung Federalist enclaves in order to carve out a Jeffersonian district between them. Figure V-9 shows that district. The irony, of course, is that compared to the districts in V-8, the original gerrymander was pretty tame.
Gerrymanders were originally drawn to favor one party over another, by creating a few districts in which the disfavored party’s supporters were concentrated, allowing the favored party to win a few more districts. Through a combination of court cases and an effective use of technology by legislatures, gerrymanders have emerged to protect more than just parties — including incumbents and members of racial groups.

Alternatives to districting

The United States inherited from England a tradition of district-based representation. Yet, when we survey western-style democracies, we discover that this form of representation, while widespread, is not the only way to choose members of the national legislature. Japan, for instance, elects members to the lower house of its parliament (the Diet) through a series of multi-member districts. Israel operates with a party list system. Under this system, the country's many political parties each offer up a list of candidates, rank-ordered from 1 to \( n \), where \( n \) was the number of people in the parliament (the Knesset). Voters do not vote for candidates directly, but vote instead for one of the parties. The more votes a party gets, the more candidates they can send to parliament, with the allocation of seats to parties following closely the proportion of the vote. This is probably the simplest form of proportional representation.

Reformers in the United States have long advocated various forms of proportional representation, whereby voters express support for parties, rather than individual candidates, and seats are divided among parties in proportion to their support in the electorate. Others have advocated variants of multi-member district elections. Proportional representation is often favored by people, such as Lani Guinier, who want to assure greater proportionality between
population characteristics, such as race, and membership in Congress without drawing bizarrely-shaped districts.

A prominent variant of multi-member district elections which functions much like proportional representation was that favored by Guinier, called cumulative voting. The idea behind cumulative voting is that it gives voters the opportunity to register not only their preferences among candidates, but also the intensity of those preferences.

Under cumulative voting, legislators run in multi-member districts. Voters choose individual candidates, with a twist: unlike most multi-member district elections, where one can vote only once for a candidate, voters under cumulative voting may either spread out their votes among a series of candidates, or bunch-up (i.e., cumulate) their votes on one candidate. For instance, in a district with three representatives, a voter would be allowed to cast three votes however she wished, including casting all three votes for a single candidate if she preferred.

Here is an example about how cumulative voting might work. Suppose there was a racially-polarized electorate of 100 people, 70 whites and 30 blacks, who could elect 10 representatives to a legislature. Under cumulative voting, each voter would get 10 votes to cast across all candidates in the race. Assume that 10 black and 10 white candidates ran for office. The easiest strategy for voters to pursue would be for each voter to allocate one vote to each candidate of his or her own race. This would result in each of the white candidates receiving 70 votes (one from each white voter) and the black candidates each receiving 30 votes (one from each black voter). (See Table VI-2.) Thus, the entire legislative delegation would be white, since all ten of the white candidates would receive more votes than any of the black candidates.
Black voters could do better, however, if they could coordinate their strategies. For instance, if the black voters all agreed to spread their votes evenly among the first four black candidates — candidates A, B, C, and D — then these four candidates would each receive 75 votes, with the white candidates each receiving 70 votes. The four black candidates would each be elected, with six of the ten white candidates also being chosen, presumably by lot. Faced with such a strategy, white voters could also organize, for instance, adopting a strategy of spreading their votes as evenly as possible among 9 of the 10 white candidates. As Round 3 in Table VI-2 indicates, such a strategy would end up with each of the white candidates receiving 77 or 78 votes, the black candidates each still receiving 75 votes, and the legislature now consisting of 9 whites and 1 black. (Again, we leave unstated the strategy that voters use to coordinate their voting strategies and how the tie is broken among the four black candidates with 75 votes.)

One can imagine a number of strategies emerging within each racial community, as it tried to improve its chances against the other community. Eventually, however, voters would be driven to try and achieve the strategy summarized by Round 4: the black voters would evenly spread their votes among 3 candidates and the white voters would evenly spread their votes among 7 candidates. All candidates would receive 100 votes; the legislature would consist of 7 white and 3 black — a mirror of the entire society.

I leave unspecified how the black voters would evenly distribute their votes among these four candidates. For instance, the first 15 black voters could each give 3 votes apiece to candidates A and B and 2 votes apiece to candidates C and D; the next 15 voters could then give 2 votes apiece to candidates A and B and 3 votes apiece to C and D. Other strategies are possible too. *Which* strategy is adopted is not so important as there being some strategy adopted.
Note a couple of things about the cumulative voting system. First, there is a tendency for the composition of the legislature to reflect the sharp cleavages in society. In this example, we chose that cleavage to be race, but in principle it could be anything — social class, religion, economic interest, etc. Second, cumulative voting allows the composition of the legislature to mirror society without drawing bizarrely-shaped districts. Finally, the cleavages that are reflected in the legislature are those that voters care to organize around, not the ones the legislature chooses to privilege. For instance, in the example we worked through, should the society no longer be racially polarized, but now polarized around religion, then the legislature would tend to reflect religious divisions, with racial composition being determined almost randomly.

The purpose of this section has not been to argue for the clear superiority of cumulative voting (or any proportional system) over the Anglo-American system of “first past the post.” Even if it was such an argument, the Anglo-American system is so ingrained in most Americans that it is difficult to imagine a state legislature doing something else. Rather, the purpose has been to illustrate another method of electing legislators that may respect certain widely-shared districting principles better than the status quo. There may be other systems, too. As American society becomes more complex, and the representative system is subjected to more constraints, certain forms of proportional representation may provide a creative solution to increasingly intractable problems.

III. Campaign Finance

The second major way congressional elections are regulated is in the area of campaign finance. In Chapter 4, we discussed the effects of campaign spending on election outcomes, including a
number of anomalies in how spending seems to affect outcomes. [**NB: Still need to add the section the previous sentence mentions.**] In this section we discuss how campaign finances are regulated, reforms of campaign finance that have been proposed, and the likely effects that such reforms would have on electoral competition.

How campaigns are financed has elicited perennial controversy in American politics. Campaign finance was linked to the issue of civil service reform following the Civil War, since so much campaign money was funneled through political appointees — one estimate reported that 75% of contributions to Republican candidates for Congress in 1868 came through assessments to officeholders who owed their positions to patronage. Once such contributions were made illegal, the parties shifted their focus in fundraising to corporations and wealthy individuals. Increasing popular alarm over reliance on such a small donor base led eventually to two laws, the Corrupt Practices Acts of 1911 and 1925, which regulated contributions to and expenditures of congressional candidates.

The Corrupt Practices Acts were paper tigers, in large part because the limits to spending were set ridiculously low, which led candidates and their supporters to search actively for ways around them. (For instance, the 1925 law limited the spending of Senate candidates to $25,000, $5,000 for House candidates.) It became common for a candidates to report that they had no contributions or expenditures in their election efforts, arguing that their campaign committees had operated without their "knowledge or consent."

The next period of great concern over campaign finance began in the 1960s, culminating with the passage of the Federal Election Campaign Act (FECA) in 1971; the FECA was significantly amended in 1974, in the wake of the Watergate scandal. The 1974 amendments were
so thorough that we can treat this as the beginning of the modern era of federal campaign finance regulation. The FECA contained a number of provisions that pertained generally to all candidates for federal office — the House, Senate, and the presidency — and a number that pertained only to Congress or to presidential campaigns.

Tab. VI-3 The FECA established spending limits, expenditure restrictions, contribution limits, and reporting requirements for congressional candidates. It also established a system of public financing for presidential campaigns. Provisions of the FECA are summarized in Table VI-3.

Essentially, the FECA provided that candidates for the House could spend no more than $70,000 in the general election; Senate candidates were subject to a variable limit that increased as a function of state population. The FECA limited how candidates could spend their funds, as well. For instance, House candidates were limited to $52,150 in media expenses, $31,290 of which could go for radio and television. All expenditures had to be reported to the Federal Elections Commission (FEC) and made public at regular intervals during the campaign season. Finally, the FECA outlawed direct contributions to candidates by corporations or labor unions, but did allow these bodies to sponsor "political action committees" (PACs) to raise money and disburse it among candidates for electoral purposes.

The FECA was almost immediately challenged in federal court, reaching the Supreme Court in 1976 through a case called *Buckley v. Valeo* (424 U.S. 144-235). James Buckley, a Conservative Party senator from New York, challenged the FECA on constitutional and administrative grounds. Buckley argued that the disclosure provisions over-reached Congress's authority to regulate its elections. Perhaps most significantly, however, Buckley argued that the spending and contribution limits conflicted with First Amendment guarantees of free speech.
In the *Buckley* decision, the Supreme Court upheld the contribution and spending reporting requirements, in general. It also upheld the limit on the size of campaign contributions, arguing that the limits did not unduly restrict the overall political expression of contributors. It struck down, however, restrictions on expenditures by candidates and restrictions on expenditures by independent political groups. The Court wrote that "a restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." Finally, although the Court agreed that it was permissible to restrict the size of contributions to campaigns, it was unconstitutional to restrict the size of contribution a candidate could give to his or her own campaign.

The *Buckley* decision also addressed the issue of public financing of campaigns. The Court denied the constitutionality of campaign spending limits in general, but it did allow them under one special condition: It was permissible to restrict how much a candidate spent in a campaign if such a restriction was a precondition for the receipt of public campaign funds. In particular, the spending limits that were imposed on presidential campaigns were ruled permissible because they applied only to candidates who applied for and received federal funds. A presidential candidate is allowed to break the limits, the Court ruled, if he or she is willing to forego public funds. (Cases where presidential candidates refused federal campaign funds included John Connolly (1976), Ross Perot (1992), and Steve Forbes (1996).)

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12Even though only presidential campaigns are eligible for public funding under the FECA, the prevalence of public financing of elections among subsequent congressional reform proposals makes this part of the decision also relevant for congressional elections.
This part of the *Buckley* decision is important because it establishes a pre-condition for the restriction of how candidates spend their campaign funds in congressional elections. Congress could limit how much a congressional candidate spent in a campaign *only* if it offered federal campaign funds *and* the candidate received the funds. The same would apply, for instance, if Congress wanted to restrict how much candidates could spend on radio and television advertising.

*(Unintended) consequences of the FECA*

It is usually difficult, if not impossible, to state clearly the "intent" of a piece of legislation. This is certainly true of the FECA. Some, particularly reformers and their followers, argue that the FECA was enacted to "clean-up" the campaign finance system, to force candidates to broaden their bases of support in seeking campaign contributions, to diminish the role of money in elections, to diminish the role of "special interests" in elections, and to elevate the will of "the people" over that of "the bosses." More skeptical observers argue that the FECA was intended to limit electoral competition by reducing the amount of money available to campaigns and by increasing the administrative burden on small parties and underdog candidates. Whatever the "true intent" of the FECA, provisions of the Act — aided by the *Buckley* decision — have changed the way that campaigns are run in the United States.

In understanding how the FECA has changed the electoral landscape, it is important to recall that the FECA is applied to the most ambitious politicians in the United States and their supporters. These politicians are intent upon winning elections, and have an incentive to discover and exploit loopholes and strategic opportunities that the campaign finance laws provide.
Likewise, individuals and groups who try to influence government decisions also have an incentive to exploit the campaign finance system to their advantage.

Four developments bear special attention in discussing the consequences of modern campaign finance regulation: the rise of political action committees (PACs), "millionaire candidates," "soft money," and independent expenditures in congressional elections. The first development is the growth of an old organizational form that was given new life under the FECA. The last three developments grew out of the Buckley decision and its protection of the political expression rights of individuals.

*Political Action Committees*. Political action committees got their start in the 1940s when Congress denied labor unions the right to use their own resources for direct political activity. This restriction led the Congress of Industrial Organizations (CIO) to create an organization called The Political Action Committee, in 1943. When the CIO merged with the American Federation of Labor in 1955, to form the AFL-CIO, they established its successor, the Committee on Political Education (COPE). PAC and COPE both raised money from union members and distributed it among sympathetic candidates.

Eventually business groups and other private associations also got into the political action committee business, but it wasn't until after the FECA that PACs reached full flower. The 1971 FECA encouraged labor unions and corporations to create separate entities, with funds segregated from the parent organization, that could raise money for political candidates. While unions and corporations are not allowed to contribute their own funds directly to candidates, they are allowed to use their funds to establish and administer PACs.
Tables VI-4 and VI-5 document the growth in political action committees. The FEC categories used in Tables VI-4 and VI-5 are mostly self-evident. Because the trade/membership/health category consists mostly of private professionals (such as doctors, dentists, lawyers, etc.), and the cooperative category consists mostly of agricultural producers, they are often grouped together with corporate PACs when researchers wish to describe the extent of business-related money in politics. Non-connected PACs are often the most politically controversial, since it is the category that contains most of the well-known, highly-ideological PACs.

The number of PACs reach an equilibrium of about 4,000 in 1984. A growth in PAC spending has continued, however, although there are signs that spending may have reached a plateau in the early 1990s.

PACs elicit much concern among the public and journalists, although the source of that concern is often poorly-focused and vague. Some object simply to the amount of money PACs raise and disburse, which seems to be the least of the problems that PACs generate. While sums approaching $200 million — the amount contributed to all political candidates by PAC in 1994 — are substantial, the amount of money given by PACs to candidates is still only a couple of dollars per voter. Also, PAC dollars are still dominated by individual contributions. In the 1994 congressional election, for instance, PACs contributed a total of $144 million to House and Senate candidates, compared to individual contributions of $292 million.

PACs do behave differently from individuals, however, and this different behavior provides some insight into how relatively well-off organizations consider politics compared to the relatively-well-off individuals who contribute to campaigns. But, to understand this behavior, we
need to consider *why* someone — a group or an individual — might contribute to a political candidate in the first place.

It is helpful to divide the motivation for making political contributions into two types. On the one hand, some contribute to political candidates because of an agreement on political issues; a contribution may be a show of solidarity with a cause, a policy, a party, etc. While winning is nice, it isn't the primary point of such contributions. We can call these *consumption-oriented* contributions.

On the other hand, some people contribute to political candidates not because of an intrinsic agreement on issues, but rather because of a desire to achieve something else out of politics, such as access to decisionmakers. It may make sense to contribute to a political candidate you normally disagree with, if such a contribution would give you access to the candidate once the candidate is in office. This is especially true if the candidate is assured of reelection, such as an electorally safe incumbent. In such a case, if you contribute to the candidate's opponent, you don't increase the chance that someone who agrees with you will win office, but you surely decrease the chance of the winner giving you an audience should you seek something out of government. We can call these *investment contributions*.

PACs tend to be investment contributors, individuals tend to be consumption contributors. The dominance of investment behavior among PACs is evidenced in their preference for incumbents over challengers. For instance, in the 1992 congressional election, PACs favored incumbents over challengers by a ratio of nearly 8:1; individuals favored incumbents by a ratio of only 2:1. The investment mentality is also illustrated by the tendency of PACs to favor
contributions to candidates in close elections — that is, to where small contributions have a
greater chance of swaying outcomes — compared to individuals.

Therefore, if there is normative concern about the relative influence of PACs compared to
individuals in congressional elections, the concern is best directed at the strategic advantages that
PACs hold over individuals in the electoral arena. Individuals clearly aren't powerless in the
political contribution game — they dominate in sheer numbers and money, after all. Individual
contributions aren't focused as well as PAC contributions are to influence outcomes, however, nor
is the average individual as well situated to follow-up a contribution with a visit to a congressional
office as a PAC is.

Even if reformers sometimes over-state the evil consequences that PACs bring to
congressional politics, their growth since the early 1970s is further evidence that people who try
to influence politics will find new ways to do so when old doors are barred. In particular, the
growth of PACs in congressional elections is the direct result of two other restrictions placed on
campaign finance: (1) the limitation of $1,000 that an individual can give a candidate (individuals
may give unlimited amounts to PACs) and (2) the public financing of presidential elections, which
prohibits politically-interested groups from contributing to the presidential candidates of their
choice, after the conventions are over.

Millionaire candidates. The 1971 FECA sought to limit the sway that personal fortunes
could have over elections by restricting what candidates could contribute to their own campaigns.
In the Buckley decision, the Supreme Court identified this as a direct assault on the First
Amendment and ruled it unconstitutional. A direct consequence of this decision has been to
disadvantage millionaire friends of candidates, but to advantage millionaires who want to be candidates.

Tab. VI-6 The reliance on the personal fortunes of candidates in congressional elections is illustrated in Table VI-6, where we report sources of campaign receipts for the 1994 congressional election. In 1994, as in most years, the candidates themselves were a significant source of campaign money among challengers and open seat contestants. Indeed, among Senate challengers, candidate contributions to their own campaigns almost equaled contributions from all other individuals combined.

The data in Table V-6 suggest one reason why candidates may rely on their own personal fortunes to run for office: incumbents dominate the PAC contribution market. Thus challengers and open seat candidates, particularly those without widespread name recognition to begin with, must rely on their own resources to jump-start their campaigns.

The virtual monopoly that incumbents hold over PAC contributions gives wealthy individuals an advantage in running for federal office — a fact that reformers often use to argue for the elimination of PACs. This monopoly, combined with the restriction on contributions from other people, gives wealthy people an advantage, particularly in running for open seats or to challenge incumbents. This advantage is particularly ironic, however, since the $1,000 contribution limit was, in part, justified on the basis of requiring candidates to build widespread supporter/contributor bases when they ran for office. What could be a narrower contributor base than when the candidate is the only major source of funds?

Independent expenditures. While the Supreme Court has allowed some regulation of how federal candidates finance their campaigns, the Buckley decision makes it clear that the Court
would have little tolerance for heavy regulation of individuals and groups who want to influence congressional elections independent of the campaigns themselves. Concern over these "independent expenditures" has waxed and waned as the amounts have fluctuated over time. Some of the concern has arisen because much independent spending has been ideologically-driven and some commentators simply disagree with the groups doing the spending. This was the cases, for instance, when the National Conservative Political Action Committee (NCPAC, pronounced "Nick-Pack") poured so much money into the 1980 congressional and presidential elections.

In addition to this sort of ideological concern, independent expenditures raise two other interesting issues. First, there are the matters of accountability and negative campaigning. While there may be benefits in certain situations to waging a negative campaign (see Chapter 4), candidates often worry that the strategy of "going negative" could backfire. Some candidates worry about being tarred with the negative image of a mudslinger. Independent groups can remove this burden from a candidate. They can make outrageous charges against an opponent, in support of a particular candidate. The benefitted candidate can then distance himself from the mudslinging. Voters who may want to punish mudslinging are limited in their response — they can vote against the candidate who is supposed to benefit from the mudslinging, but they can't vote against the group actually doing the mudslinging.

Second, there is the matter of evading the intent of campaign finance laws. Here, we return to a theme of this section: Because campaign professionals view their jobs as winning elections, they have incentives to probe the bounds of campaign finance law for weaknesses and loopholes that make doing their job easier. As greater scrutiny is given to what the candidates themselves do, there are incentives among campaign professionals to encourage independent
expenditures. Of course, because independent expenditures, by definition, can't be closely
coordinated with the strategies of individual campaigns, they are probably less effective in
benefitting individual candidates. But, if there are fewer restrictions on how groups raise and
spend money "independent" of individual campaigns, then eventually independent spending on
behalf of candidates could come to dominate direct spending by candidates.

_SOFT money._ Related to the issue of independent expenditures is "soft money." The FECA
allows the political parties to raise unlimited amounts of money from groups and individuals for
"party-building" activities. Such activities could include fairly innocuous things as voter
registration drives and advertising generally on behalf of a party's platform. Of course, there is a
fine line between working generally to bolster the fortunes of a party and working specifically to
bolster the fortunes of a party's candidates.

The amount of soft money raised by the parties has risen significantly over the past two
decades. Its growth also raises the issue of the evasion of campaign finance limits, particularly
since individuals may give unlimited amounts of money to the political parties for these activities.

Leaving aside this obvious issue, the rise of soft money has the potential to change the
balance of power between individual candidates and the national parties. Candidates labor under
a system of restrictions in how they raise money that doesn't apply to political parties. If parties
continue to get better in raising soft money contributions and targeting their spending on behalf of
candidates, the groundwork will have been laid for parties to demand greater loyalty from their
members when they get elected to Congress.
Campaign finance reform

Campaign finance reform is a perennial favorite of voters and politicians. Polls regularly report that voters are disgusted with the current state of campaign finance; virtually every year some campaign finance reform is considered in Congress, to no avail. In this final section we review some of the more popular proposed reforms and discuss who would likely benefit from their enactment. In beginning this discussion, the reader should bear in mind the history of campaign finance reform thus far and the difficulty in predicting with certainty the effects that reform will have.

While reformers are a creative bunch, and have proposed a wide series of campaign finance reforms in recent years, we will focus here on three hardy perennials: limits on expenditures, limits on political action committees, and public financing of elections.

Expenditure limitations. Many citizens believe that too much money is spent on elections and, therefore, would like to limit it somehow. One way of addressing this point is to question its premise — that "too much money" is spent on elections. How would one judge what is too much money in elections? Compared to what is spent on public relations in the private sector, for instance, campaign spending is a drop in the ocean. For instance, in 1992, total campaign spending for Congress, in all elections, amounted to $119 million. In that same year, American companies spent $44 billion in advertising. The largest advertiser, Proctor and Gamble, alone spent $2.2 billion. (The amount of money spent on congressional campaigns approximately equalled all Industrial materials.)

The Buckley decision placed heavy limits on the ability of Congress to control how much candidates spend on their congressional campaigns. Indeed, the Court ruled that Congress may
The forms of evil range from simple corruption — such as promising political favors in exchange for a contribution — to the diversion of a candidate's time away from the substance of politics and governing.

One could argue that the modern presidential campaign finance system would be a good model to use to judge the anti-corruption claim. Certainly, Watergate hasn't repeated itself. However, the number of presidential candidates who have fallen under that system is so small, compared to the number of congressional candidates in any given year, that experience with the presidential system is only of limited utility.
are high in any case. Therefore, judgements and predictions about the effects that limiting expenditures would have on political corruption are mostly a matter of personal tastes and prejudices.

Reducing campaign corruption would surely not be the only effects of limiting campaign spending. Scholars and (especially) politicians have worried that spending limits would affect who the winners and losers were in elections. At first blush, it seems obvious how these effects would work. On further consideration, however, such effects are not so cut-and-dried.

Incumbents running for reelection regularly spend more money than their opponents. This spending gap is frequently cited as a major source of the "incumbency advantage" in congressional races. Thus, if spending limits were set sufficiently low, so that they actually constituted a real constraint on spending, then the limits would have the greatest effect on incumbents, narrowing the spending gap between incumbents and challengers.

Fig. VI-10 Figure VI-10 illustrates how this analysis typically works. The graph summarizes the relationship between campaign spending in House races and election outcomes. In particular, the x-axis indicates the ratio between incumbent and challenger spending in the 1994 House race; the y-axis indicates the percentage of the vote received by the incumbent. The solid line graphs out the average relationship between the two variables, calculated using simple linear regression.

In Figure VI-10, we have indicated what the average ratio of incumbent-to-challenger spending was in 1994 — roughly 5.3:1. This translates into an average vote share for the incumbent of just over 60%. Because the incumbent's vote share rises (on average) as this spending ratio rises, if we close the spending gap between incumbents and challengers, we also

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close the vote share gap. Thus, if spending were limited in such a way that the average incumbent would now spend only twice what the average challenger spent, then the average incumbent would receive only 56% of the vote. Likewise, if challenger and incumbent spending were set to be equal, then incumbents would receive, on average, a 54% vote share. So, equalizing spending would not equalize votes, on average, but it would push more incumbents into the vulnerable range, and presumably push more below the 50% threshold.

We have illustrated in Figure VI-10 formally what incumbents worry about informally — that by limiting spending, incumbents would lose much of their electoral advantage. Hence, incumbents tend to oppose spending limits. Not all incumbents oppose them, however. In particular, before they gained control of the House in the 1994 election, Republicans (incumbents and challengers alike) tended to favor spending controls more than did Democrats, since Republicans tended to be challengers and Democrats tended to be incumbents. Of course, the 1994 election changed this situation.

The analysis illustrated in Figure VI-10 is the starting point for understanding how election outcomes might be changed if spending were limited, but it's only a starting point. That is because this analysis does not take into account the strategic behavior of congressional candidates if they were faced with spending limits. Remember, the goal of candidates is to win elections, within the constraints of the law. With spending limits, candidates would be encouraged to seek other ways of winning votes that did not cost money, or that were more efficient uses of money. Two obvious methods of substitution present themselves. The first is volunteer labor. Before the rise of mass media, the most successful politicians were those who could marshal volunteers to distribute literature, hold signs, and get people to the polls on election day. Spending limits would
once again put a premium on having connections with pools of potential volunteers, such as labor unions, churches, and retirement centers. The second obvious way to change behavior would be to shift into more efficient uses of campaign money. Studies of candidate spending habits have suggested that incumbents, especially, use significant portions of their campaign coffers for non-campaign activities — they have nicer campaign offices, give more elaborate parties, and own more cars than they need to get reelected. Thus, spending limits, to a degree, would simply serve to make campaigns leaner operations.

On the whole, both of these substitutions — to volunteer labor and to more efficient uses of money — would, on net, benefit incumbents. Incumbents, by definition, already have ties into the community, developed through years of electioneering. And, they have already won election in the district, so they presumably already know what the most effective uses of their campaign dollars might be; most challenger still need to learn that. Therefore, while spending limits might still diminish the incumbency advantage somewhat, the most important effects of limits would be to change behavior altogether, and in such a changed environment, incumbents would still be advantaged.

Because of the *Buckley* decision, it is impossible for Congress simply to impose spending limits on national elections. Therefore, limits are always bundled with possible inducements to candidates to accept those limits. These inducements typically involve some sort of campaign subsidies, whether they be outright public funding of campaigns (see the discussion below) or subsidies of particular campaign costs. (A popular cost subsidy is reduced postage or television advertising rates for candidates who agree to limit their expenditures.)
Political action committees. In the eyes of reformers, and most of the public, money contributed to congressional candidates by political action committees is suspect. It is often referred to as "special interest money." Political scientists who study campaign finance tend not to be so alarmed by the activity of PACs, for two reasons. First, individual contributions dominate PAC contributions, even among incumbents. Second, studies have repeatedly failed to find PAC contributions systematically changing the voting habits of MCs. Research has shown, rather, that PAC contributions are primarily effective through two avenues. First, contributions grant PAC representatives access to legislators during the bill-drafting stage. Second, because PACs are more strategic in their contributions than individuals, their contributions to candidates can have a greater effect, on the margin, in affecting electoral outcomes. Through this second avenue PACs are influential, not because they buy the votes of legislators, but because their contributions might help to elect more candidates who already support their side of the issues.

Reform groups such as Common Cause support the greater regulation of PACs — or their elimination altogether — because of their supposed corrupting influences on elections. Members of Congress who have become interested in this issue have responded out of different motivations, however. Because PACs tend to contribute more readily to incumbents than to challengers (see Table V-6), the party out of power tends to favor hobbling PACs more than the party in power. Therefore, when the Republicans were the minority party for decades, Republicans tended to champion PAC reform. Once the Republican party gained control of both houses during the 104th Congress, Republicans began to obstruct attempts to rein-in PACs. This pattern of behavior suggests why reforming PACs may end up being the most-discussed, yet least-successful, reform topic.
Public financing. Proposals to finance campaigns publicly range from total subsidies for major party nominees to matching fund schemes. Reform organizations favor public financing both intrinsically and because of the secondary benefits it would provide. For those who believe the search for campaign money corrupts politics, public financing is an obvious solution. For those who believe that too much money is spent on campaigns, or is spent on the wrong things, public financing becomes the vehicle through which other types of policy changes are allowed.

Support and opposition within Congress for public financing of campaigns derives from two sources — from lofty political principles and from narrow self- (or party-) interest. Many supporters simply agree with reform organizations about the corrupting influence of money on politics. At the same time, support is also concentrated among Democrats, who tend to support domestic government spending programs more generally, and who often believe that Republicans share a long-term fundraising advantage over Democrats. Opposition to public financing is centered not only among those who oppose government spending generally, but also among those who worry about the intrusion of the State in political competition. The presidential system of financing elections already advantages the major parties, and it is likely that a congressional system would advantage them, too. But, also, Republicans have tended to oppose public financing because it has generally been Democrats who have crafted the plans, and they are distrustful that Democratic proposals would treat them neutrally.

As with spending limits, it is possible to analyze the probable effects of public financing both strategically and non-strategically. Suppose, for instance, a public finance plan included one-for-one matching of individual contributions, up to a certain limit. The matching feature might encourage candidates to cut-back on their fundraising efforts, since they could raise as much as in
the past with less effort. Yet, because each unit of effort in individual fundraising would now be
twice as effective as before, candidates might put more effort into individual fundraising, resulting
in more money being poured into campaigns, not less. Depending on the marginal returns to a
unit of effort put into PAC fundraising, a matching feature might encourage less PAC fundraising
and more individual fundraising.

IV. Conclusion

Elections don't just happen in the United States — they are planned, structured, and regulated. It
would be too extreme to argue that the outcomes of congressional elections are determined by
these plans, structures, and regulations. It is not too extreme to suggest that elections are
materially influenced by how the states and the federal government organize electoral
competition. The fact that House elections are run in single-member districts is an important
contributor to the resilience of the two-party system; under a proportional system, there would be
more opportunity for minor parties to win seats in Congress, and thus to establish themselves
permanently. The reliance on single-member districts has virtually determined the strategies that
states have adopted to respond to the Voting Rights Act. Reliance on private financing of
elections provides an opportunity for incumbents to reinforce whatever natural advantages they
may already have in their districts. Etc.

Because the details of how electoral competition is organized has such a strong influence
on congressional politics, it is no surprise that popular reforms often meet stiff opposition in
Congress. And, because competition for national office is so intense, it should come as no
surprise that candidates will always search for how to gain advantage under any new, reformed system, and therefore that the history of electoral reform is also one of unforeseen consequences.
Figure VI-1
One-dimensional example of a primary runoff

Round 1

A  B  C
A's supporters  B's supporters  C's supporters

Round 2

A  B
A's supporters  B's supporters
Figure VI-2
A Run-off Primary that Knocks Out the Median Voter as a Candidate

Round 1

A

B

C

A's supporters

B's supporters

C's supporters

Round 2

A

C

A's supporters

C's supporters
Figure VI-3
Stylized Legislative Districts

Figure VI-4
Congressional Districts in Iowa and Nebraska Following the 1990 Census
Figure VI-5
Votes and Seats in House Elections, 1946 – 1996
Figure VI-6
Mississippi's Congressional Districts in the 1960s
Figure VI-7
An Alternative Districting of Mississippi in the 1960s
Figure VI-8
House Districts in Georgia and North Carolina, 1992 election
Figure VI-9
The Original Gerrymander

a. The actual map

b. The cartoon
Figure VI-10
Campaign spending and the vote in House races in 1994
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<td>Equality may produce unwieldy districts; compactness may undercut equality</td>
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<tr>
<td>Respect existing political communities</td>
<td>Existing political divisions may be unwieldy</td>
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<td>Partisan fairness</td>
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<td>Racial fairness</td>
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<td>Votes received in each round</td>
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<td>1</td>
</tr>
<tr>
<td><strong>Black candidates</strong></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>30</td>
</tr>
<tr>
<td>B</td>
<td>30</td>
</tr>
<tr>
<td>C</td>
<td>30</td>
</tr>
<tr>
<td>D</td>
<td>30</td>
</tr>
<tr>
<td>E</td>
<td>30</td>
</tr>
<tr>
<td>F</td>
<td>30</td>
</tr>
<tr>
<td>G</td>
<td>30</td>
</tr>
<tr>
<td>H</td>
<td>30</td>
</tr>
<tr>
<td>I</td>
<td>30</td>
</tr>
<tr>
<td>J</td>
<td>30</td>
</tr>
<tr>
<td><strong>White candidates</strong></td>
<td></td>
</tr>
<tr>
<td>K</td>
<td>70</td>
</tr>
<tr>
<td>L</td>
<td>70</td>
</tr>
<tr>
<td>M</td>
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<td>70</td>
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<tr>
<td>O</td>
<td>70</td>
</tr>
<tr>
<td>P</td>
<td>70</td>
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<tr>
<td>Q</td>
<td>70</td>
</tr>
<tr>
<td>R</td>
<td>70</td>
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<tr>
<td>S</td>
<td>70</td>
</tr>
<tr>
<td>T</td>
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Table VI-3

<table>
<thead>
<tr>
<th>Original provisions</th>
<th>Affect of <em>Buckley v. Valeo</em></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expenditure limits</strong></td>
<td></td>
</tr>
<tr>
<td>Overall spending limit (Congress, president)</td>
<td>Struck down, except as condition to receive public funding</td>
</tr>
<tr>
<td>Limits on candidates' own resources</td>
<td>Struck down entirely</td>
</tr>
<tr>
<td>Limit on media expenditures</td>
<td>Struck down entirely</td>
</tr>
<tr>
<td>Independent expenditure limits</td>
<td>Struck down entirely</td>
</tr>
<tr>
<td><strong>Contribution limits</strong></td>
<td></td>
</tr>
<tr>
<td>Individual limits: $1k/candidate/election</td>
<td>Affirmed</td>
</tr>
<tr>
<td>PAC limits: $5k/candidate/election</td>
<td>Affirmed</td>
</tr>
<tr>
<td>Party committee limits: $5k/candidate/election</td>
<td>Affirmed</td>
</tr>
<tr>
<td>Cap on total contributions individuals could make to all candidates: $25k</td>
<td>[<em>Struck down</em>]</td>
</tr>
<tr>
<td>Cap on spending &quot;on behalf of candidates&quot; by parties</td>
<td>Affirmed</td>
</tr>
<tr>
<td><strong>Federal Election Commission</strong></td>
<td></td>
</tr>
<tr>
<td>Receive reports; implement FECA</td>
<td>Upheld</td>
</tr>
<tr>
<td>Appointed by Congress</td>
<td>Violates separation of powers</td>
</tr>
<tr>
<td><strong>Public funding (presidential elections)</strong></td>
<td></td>
</tr>
<tr>
<td>Check-off system to fund system</td>
<td>Upheld</td>
</tr>
<tr>
<td>Partial funding during primaries; total funding during general election</td>
<td>Upheld</td>
</tr>
<tr>
<td>Spending limits as price of participating</td>
<td>Upheld</td>
</tr>
<tr>
<td><strong>Disclosure</strong></td>
<td></td>
</tr>
<tr>
<td>All expenditures</td>
<td>Upheld</td>
</tr>
<tr>
<td>Contributions over $200</td>
<td>Upheld</td>
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### Table VI-4
The Growth of Political Action Committees, 1974 to 1996

<table>
<thead>
<tr>
<th>Year</th>
<th>Corporate</th>
<th>Labor</th>
<th>Trade/Membership/Health*</th>
<th>Non-Connected</th>
<th>Cooperative</th>
<th>Corp. without stock</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>1974</td>
<td>89</td>
<td>201</td>
<td>318</td>
<td></td>
<td></td>
<td></td>
<td>608</td>
</tr>
<tr>
<td>1976</td>
<td>433</td>
<td>224</td>
<td>489</td>
<td></td>
<td></td>
<td></td>
<td>1146</td>
</tr>
<tr>
<td>1978</td>
<td>785</td>
<td>217</td>
<td>453</td>
<td>162</td>
<td>12</td>
<td>24</td>
<td>1653</td>
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<tr>
<td>1980</td>
<td>1,206</td>
<td>297</td>
<td>576</td>
<td>374</td>
<td>42</td>
<td>56</td>
<td>2551</td>
</tr>
<tr>
<td>1982</td>
<td>1,469</td>
<td>380</td>
<td>649</td>
<td>723</td>
<td>47</td>
<td>103</td>
<td>3,149</td>
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<tr>
<td>1984</td>
<td>1,682</td>
<td>394</td>
<td>698</td>
<td>1,053</td>
<td>52</td>
<td>130</td>
<td>4,009</td>
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<tr>
<td>1986</td>
<td>1,744</td>
<td>384</td>
<td>745</td>
<td>1,077</td>
<td>56</td>
<td>151</td>
<td>4,157</td>
</tr>
<tr>
<td>1988</td>
<td>1,816</td>
<td>354</td>
<td>786</td>
<td>1,115</td>
<td>59</td>
<td>138</td>
<td>4,268</td>
</tr>
<tr>
<td>1990</td>
<td>1,795</td>
<td>346</td>
<td>774</td>
<td>1,062</td>
<td>59</td>
<td>136</td>
<td>4,172</td>
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<tr>
<td>1992</td>
<td>1,735</td>
<td>347</td>
<td>770</td>
<td>1,145</td>
<td>56</td>
<td>142</td>
<td>4,195</td>
</tr>
<tr>
<td>1994</td>
<td>1,660</td>
<td>333</td>
<td>792</td>
<td>980</td>
<td>53</td>
<td>136</td>
<td>3,954</td>
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<tr>
<td>1995</td>
<td>1,674</td>
<td>334</td>
<td>815</td>
<td>1,020</td>
<td>44</td>
<td>129</td>
<td>4,016</td>
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*Until 1978, this category contains all other PACs.


*Top money-raisers in 1992:*
Corporate: AT&T PAC, $2.8 million.
Labor: Democratic Republican Independent Voter Education Committee, $9.4 million.
Trade/Membership/Health: NRA Political Victory Fund, $6.0 million.
Non-Connected: Emily's List, $4.1 million.
Cooperative: Committee for Thorough Agricultural Political Education of Associated Milk Producers: $1.5 million.
Corporation without Stock: Aircraft owners and Pilots Association PAC, $1.1 million.
<table>
<thead>
<tr>
<th>Election year</th>
<th>Corporate</th>
<th>Labor</th>
<th>Non-connected</th>
<th>Trade/Membership/Health</th>
<th>Cooperative</th>
<th>Corp. without Stock</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>$21.6</td>
<td>$14.2</td>
<td>$5.2</td>
<td>17.0</td>
<td>1.5</td>
<td>0.7</td>
<td>60.2</td>
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<tr>
<td>1982</td>
<td>29.4</td>
<td>20.9</td>
<td>11.0</td>
<td>22.9</td>
<td>2.2</td>
<td>1.1</td>
<td>87.6</td>
</tr>
<tr>
<td>1984</td>
<td>39.0</td>
<td>26.2</td>
<td>15.3</td>
<td>28.3</td>
<td>2.6</td>
<td>1.5</td>
<td>113.0</td>
</tr>
<tr>
<td>1986</td>
<td>50.0</td>
<td>31.0</td>
<td>19.4</td>
<td>34.6</td>
<td>2.7</td>
<td>2.6</td>
<td>139.8</td>
</tr>
<tr>
<td>1988</td>
<td>56.2</td>
<td>35.5</td>
<td>20.3</td>
<td>41.2</td>
<td>2.7</td>
<td>3.3</td>
<td>159.2</td>
</tr>
<tr>
<td>1990</td>
<td>58.1</td>
<td>35.7</td>
<td>15.1</td>
<td>44.8</td>
<td>3.0</td>
<td>3.4</td>
<td>159.1</td>
</tr>
<tr>
<td>1992</td>
<td>68.4</td>
<td>41.3</td>
<td>18.1</td>
<td>53.7</td>
<td>3.0</td>
<td>4.0</td>
<td>188.7</td>
</tr>
<tr>
<td>1994</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>1996</td>
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Table VI-6
Sources of campaign receipts for congressional races, 1994

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<tr>
<th></th>
<th>Incumbents</th>
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<th>Challengers</th>
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<th>Open Seats</th>
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<tbody>
<tr>
<td></td>
<td>$ (mill.)</td>
<td>%</td>
<td>$ (mill.)</td>
<td>%</td>
<td>$ (mill.)</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>House</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Individuals</td>
<td>95.1</td>
<td>51.2</td>
<td>33.8</td>
<td>62.1</td>
<td>25.6</td>
<td>58.0</td>
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<tr>
<td>PACs</td>
<td>88.5</td>
<td>47.7</td>
<td>7.8</td>
<td>14.3</td>
<td>10.7</td>
<td>24.1</td>
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<tr>
<td>Candidate</td>
<td>1.9</td>
<td>1.0</td>
<td>12.6</td>
<td>23.2</td>
<td>7.9</td>
<td>17.9</td>
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<tr>
<td>Other loans</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
<td>0.3</td>
<td>0.03</td>
<td>0.1</td>
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</table>

<table>
<thead>
<tr>
<th>Senate</th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Individuals</td>
<td>61.0</td>
<td>66.6</td>
<td>43.4</td>
<td>53.2</td>
<td>33.0</td>
<td>75.8</td>
</tr>
<tr>
<td>PACs</td>
<td>23.3</td>
<td>25.5</td>
<td>3.9</td>
<td>4.8</td>
<td>9.8</td>
<td>22.5</td>
</tr>
<tr>
<td>Candidate</td>
<td>7.3</td>
<td>7.9</td>
<td>34.3</td>
<td>41.9</td>
<td>0.7</td>
<td>1.6</td>
</tr>
<tr>
<td>Other loans</td>
<td>0.0</td>
<td>0.0</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
</tr>
</tbody>
</table>

Note: Candidate sources include candidate contributions and candidate loans.