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Douglas M. Spencer

University of Colorado Law School

Alexander G. Theodoridis

University of California, Merced

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“Appearance of Corruption”: Linking Public Opinion and Campaign Finance Reform

Douglas M. Spencer and Alexander G. Theodoridis

ABSTRACT

At present, campaign finance regulations may only be justified if their primary purpose is to prevent quid pro quo corruption or the appearance of corruption. References to the “appearance of corruption” are ubiquitous in campaign finance decisions, yet courts have provided very little guidance about what the phrase means. In this article, we report findings from a broadly representative national survey in which we (1) directly ask respondents to identify behaviors that appear politically corrupt, and (2) indirectly measure perceptions of corruption using a novel paired-choice conjoint experiment asking respondents to choose which of two randomly generated candidates are more likely to do something corrupt while in office. Our findings both support and challenge current campaign finance jurisprudence. Our direct item shows that bribery *is* considered to be the most politically corrupt behavior, while wealthy self-funded candidates are not perceived as corrupting the political system. These findings support the reliance of courts on bribery as the primary justification for campaign finance rules, and the courts’ dismissal of regulations targeting wealthy candidates. However, most of our respondents perceived *many* common behaviors besides bribery to be “very corrupt,” challenging courts’ reliance on bribery as the *sole* justification for campaign finance rules. Our conjoint experiment, designed to force trade-offs between various behaviors, similarly reveals little differentiation across candidate campaign finance profiles, suggesting voters may not distinguish common behaviors in terms of their corrupting role. A normatively positive result in our conjoint analysis is that partisans do not appear to define corruptibility on the basis of in-/out-party signals.

Keywords: conjoint experiment, survey research, campaign finance, corruption

INTRODUCTION

Douglas M. Spencer is a professor of law and public policy at the University of Connecticut School of Law in Hartford, Connecticut, USA. During the Spring 2020 semester he is visiting professor of law at Yale Law School in New Haven, Connecticut. Alexander G. Theodoridis is an assistant professor of political science at the University of California, Merced, in Merced, California, USA.

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MODERN SUPREME COURT JURISPRUDENCE dictates that campaign finance regulations may be justified, but only if the regulations target quid pro quo corruption or the appearance of corruption. Much attention has been paid to the Court’s singular focus on quid pro quo corruption, yet the modifier “appearance of corruption” remains largely undertheorized despite 40 years of case law.

Because there has been no consensus on the relevant sampling frame (appearance to whom?) or the latent interest (what kind of corruption?), the existing research on corruption and campaign finance is predictably mixed. Nationally representative surveys report that most Americans believe corruption

is widespread throughout the government (Gallup 2015) and that campaign contributors have a “great deal” of influence over public policy decisions (Persily and Lammie 2004). Other experimental surveys show that voters evaluate candidates more negatively when they fail to disclose their donors (Wood 2017), or when they receive contributions from outside their home state (Dowling and Wichowsky 2014) or from special interest groups (Dowling and Miller 2016). Survey respondents also report that contributions from corporations and unions are more corrupting than contributions from individuals (Bowler and Donovan 2016). At the same time, survey respondents report equal levels of trust in government, whether or not they are subject to strict campaign finance restrictions (Milyo 2012).

According to the American National Election Studies (ANES), people’s trust in government is driven more by their socioeconomic status and their views of incumbent officials than by their views on campaign finance rules (Persily and Lammie 2004). In a different setting, hypothetical grand jurors in a simulated exercise voted to indict hypothetical candidates on corruption charges for engaging in “behavior that virtually any of the 535 members of Congress engage in every day” (Robertson et al. 2016).

In other research, the correlation between campaign spending and policy outcomes is enough to create a perception of corruption. In policies as disparate as carbon reform, copyright protection, sugar and corn production, cell phone safety, and plastics regulation “the mere suggestion of a link between financial incentives and a particular [policy] outcome significantly influenced the participants’ trust and confidence in the underlying actor or institution” (Lessig 2011). Looking beyond the empirical link, Lessig (2011) and Post (2014) both argue that the appearance of corruption is better understood as the appearance of undue influence, as it was defined in *McConnell v. FEC* (2003), which is a standard that applies to the integrity of the *system* and not to individual *candidates*. According to Post (2014), “It is noteworthy that neither ‘undue influence’ nor the ‘appearance of undue influence’ specifies what it is improper or proper for representatives to do . . . Instead the criterion of ‘undue influence,’ and its correlative expansion into ‘the appearance of undue influence,’ affirms a value that derives from the structural in-

tegrity of our *system* of representation” (emphasis in the original). Lessig (2011) depicts public officials as addicts whose substance is money. This metaphor, he argues, “help[s] us understand a pathology that all of us acknowledge (at the level of the institution) without assuming a pathology that few could fairly believe (at the level of the individual).”

Without more guidance from the Court, the relevance of these legal arguments and empirical findings remains an open question. Is the appearance of corruption more relevant with respect to elected officials or to the democratic process? Are appearances to the general public more relevant than grand jury opinion? Are measures of trust in government a valid proxy for perceptions of corruption? Perhaps more fundamentally, does the phrase “appearance of corruption” merely expand the scope of admissible evidence of (potential) bribery, or does it signal a broader view of corruption altogether? These questions highlight both the measurement challenges and doctrinal uncertainty with regard to campaign finance regulations.

In this article, we seek to inform the doctrinal ambiguity about the “appearance of corruption” by linking public opinion on campaign finance to perceptions of corruption. We report findings from a broadly representative national survey, fielded by YouGov as part of the 2014 Cooperative Congressional Election Study. Our studies (1) directly asked respondents to identify corrupt behavior and (2) more indirectly measured perceptions of corruption through a novel conjoint experiment in which respondents evaluated hypothetical candidates for public office with campaign finance profiles randomly varied. Thus, we present the most comprehensive examination to date of American opinion regarding the extent to which common campaign finance practices are viewed as potentially corrupt. With better measures of public opinion about corruption, such as these, courts might be more willing to lean on the appearance of corruption to justify campaign finance regulations.

Our findings both support and challenge current campaign finance jurisprudence. On the one hand, we find evidence that bribery *is* considered to be the most politically corrupt behavior, which supports the reliance of courts on bribery as the primary justification for campaign finance rules. On the other hand, we find that perceptions of

corruption are much broader among the general public than in the courts. Respondents reported many common behaviors besides bribery to be “very corrupt.” This finding undermines reliance on bribery as the *sole* justification for campaign finance rules.

Our conjoint experiment, designed to force trade-offs between various behaviors, similarly reveals little differentiation across candidate campaign finance profiles, suggesting voters may not distinguish common behaviors in terms of their corrupting role. A normatively positive result in our conjoint analysis is that partisans do not appear to define corruptibility simply on the basis of in-/out-party signals.

UNPACKING THE APPEARANCE OF CORRUPTION

Corruption is a fuzzy concept that is context-specific and difficult to measure (Dawood 2014; Hellman 2013). Because the Supreme Court has drawn a clear line that defines corruption as quid pro quo bribery, there is a risk that the “appearance of corruption” rationale may prove to be hollow. To the extent that public perceptions of corruption include behavior beyond quid pro quo exchanges, public opinion data may be rendered irrelevant as a justification for stricter campaign finance rules. If the public perceives corruption to include the inequality of resources among political candidates, the dependence of candidates on donors, the lack of transparency among politically active organizations, or a general sense that the political system has been captured by special interests, then the “appearance of corruption” rationale would serve as a loophole to circumvent the Court’s campaign finance jurisprudence. On the other hand, if the public’s perceptions of corruption are limited to quid pro quo exchanges and the undue influence of campaign donors, then the “appearance of corruption” rationale could serve as a proxy for actual corruption and ease the evidentiary burden of proving actual corruption, especially in sophisticated cases where corruption is not easily detected.¹

The Supreme Court first articulated its appearance of corruption rationale in *Buckley v. Valeo* (1976). That case was a challenge to the Federal Election Campaign Act (FECA) Amendments of 1974,

which the lower court described as “by far the most comprehensive reform legislation (ever) passed by Congress concerning [federal] election[s]” (*Buckley v. Valeo*, 1975, 831). The D.C. Circuit Court of Appeals upheld the Act and argued that any burdens on First Amendment rights were justified by the state’s “clear and compelling interest in preserving the integrity of the electoral process.” The Supreme Court upheld the Act on appeal, yet it articulated a more narrowly focused state interest to justify the burdens on protected freedoms of speech and association: “the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and on their actions if elected to office” (*Buckley v. Valeo* 1976, 25). Focusing specifically on the appearance of corruption, the Court held: “Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions” (*Buckley v. Valeo* 1976, 25).

Quoting *C.S.C. v. Letter Carriers* (1973), the Court wrote that “Congress [can] legitimately conclude that the avoidance of the appearance of improper influence is also critical if confidence in the system of representative Government is not to be eroded to a disastrous extent” (*Buckley v. Valeo* 1976, 27, internal quotations omitted).

In later cases, the Court has narrowed its campaign finance jurisprudence by holding that “preventing corruption or the appearance of corruption are the *only* legitimate and compelling government interests thus far identified for restricting campaign finances,” *FEC v. National Conservative PAC* (1985, 496–97, emphasis added). In *Citizens United v. FEC* (2010), the Court reiterated this position and explicitly held that any state interest not related

¹Indeed, sophisticated corruption schemes may be the most important target of regulatory interventions, as opposed to sloppier quid pro quo exchanges which are easy to detect and thus less harmful.

to corruption was insufficient to justify a limit on campaign finance.²

Despite narrowing the class of state interests to “preventing corruption or the appearance of corruption,” the Court has expanded the scope of the “appearance of corruption” rationale to include the “appearance of influence.” In *Nixon v. Shrink Missouri Government PAC* (2000) the Court clarified that the “appearance of corruption” rationale is predicated on a concern that elected officials might be unduly influenced by campaign contributors, even if no single transaction would violate federal bribery statutes. “Congress could constitutionally address the power of money to influence government action in ways less blatant and specific than bribery...extending to the broader threat from politicians too compliant with the wishes of large contributors” (*Nixon v. Shrink Missouri Government PAC* 2000, 389–90). The majority argued that if you

leave the perception of impropriety unanswered, the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance. Democracy works only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption. (*Nixon v. Shrink Missouri Government PAC* 2000, 390)

In *McConnell v. FEC* (2003), the Court reiterated this idea by explaining that the state interest to justify limits on campaign finance “is not limited to the elimination of *quid pro quo*, cash-for-votes exchanges, but extends also to undue influence on an officeholder’s judgment, and the appearance of such influence” (150). In *McConnell* the Court upheld the Bipartisan Campaign Reform Act (BCRA) of 2002 which responded as much to concerns about the undue influence of campaign money as to corruption. As the Court acknowledged:

Just as troubling to a functioning democracy as classic *quid pro quo* corruption is the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder. Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight

cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize. The best means of prevention is to identify and to remove the temptation. (*McConnell v. FEC* 2003, 153)

Note that in these cases the Court invoked the appearance of corruption rationale to justify regulations that did not specifically target *quid pro quo* corruption between candidates and their donors; the challenged regulations targeted contributions to party committees, reporting and disclosure requirements, and the regulation of political committees. In some cases (e.g., *Nixon v. Shrink Missouri Government PAC*), the Court invoked the appearance of corruption rationale to justify regulations when the evidence of actual corruption was thin. In all, since the Court first articulated the appearance of corruption rationale in *Buckley* 40 years ago, the Supreme Court has invoked the rationale 22 times since, and lower federal courts have invoked the rationale in 369 cases across 39 states in all federal circuits.³

AMBIGUITIES AND LIMITATIONS

Despite widespread reliance on the appearance rationale, its usage in the courts is often limited to dicta and broad rhetorical arguments. Because the Supreme Court has never articulated a standard to distinguish acceptable influence from undue influence, or a threshold level of confidence in the political system below which democratic governance

²For example, the Court held that the antidistortion rationale “cannot support” a ban on corporate treasury-funded independent expenditures (*Citizens United v. FEC* 2010, 349). The Court also cited research that argued that antidistortion “has been understood by most commentators to be... driven by equality considerations,” (381, quoting Garrett 2009). The Court held that the equality rationale was “extraordinarily broad” and “would authorize government prohibition of political speech by a category of speakers” (381). In *Davis v. FEC* (2008, 741), the Court rejected the argument that campaign finance restrictions are justified to “level electoral opportunities for candidates of different personal wealth.” Most recently, in *McCutcheon v. FEC* (2014, 1450) the Court held that “no matter how desirable it may seem, it is not an acceptable governmental objective to level the playing field, or to level electoral opportunities, or to equalize the financial resources of candidates.”

³Based on authors’ search on Westlaw Edge with the terms: “adv: ‘appearance #of corruption’ and ‘campaign finance’” as of September 8, 2019.

breaks down, the appearance rationale has failed to grow teeth. In *Citizens United* (2010), the Court significantly undermined the appearance rationale by holding that “when *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to quid pro quo corruption” (359). Because the appearance rationale was particularly relevant in cases where quid pro quo corruption was not central, *Citizens United* might be interpreted as eliminating the appearance rationale altogether except, perhaps, in cases where the government prohibits candidates from secretly meeting in dark, smoke-filled rooms with donors. However, the Supreme Court has invoked the appearance rationale in four cases since *Citizens United* and lower courts have referenced the rationale in 170 cases (or approximately 45 percent of all references to the appearance of corruption since *Buckley* in just nine years). How should the appearance rationale be understood, given all of these developments?

Conceptual considerations

The ambiguity about how the appearance rationale should work in a world where quid pro quo is the only definition of corruption is driven more by the Court’s views on corruption than by the Court’s views on appearances. By restricting the definition of corruption to quid pro quo bribery in *Citizens United*, Justice Kennedy intended to clarify the Court’s campaign finance jurisprudence. However, the concept of quid pro quo corruption is actually quite slippery (Gilbert and Barnes 2016) and is difficult to distinguish from ordinary politics (Robertson et al. 2016) or from the political equality argument the Court has explicitly rejected (Dawood 2014). This is true because quid pro quo corruption is a derivative harm (Strauss 1994). The Court does not seem to appreciate that a quid pro quo exchange is only harmful if it violates some expectation about how a public official *ought* to act. Yet the roles and responsibilities of public officials that define how they should act are in large part derived from the system within which the officials work (Hellman 2013; Burke 1997). For example, if the harm from bribery is that public policy is driven by private interests with no electoral accountability, then the political system requires elections and transparency (Issacharoff 2010). If the harm from bribery is that only a few people, or a single person, influence pub-

lic policy, then the system demands that public policy ought to be influenced by many people (Lessig 2011; Gottlieb 1989). If bribery is harmful because the views of those who offer the quid (and receive the quo) are not representative of the general public then the expectation is that public officials ought to represent the average preferences of constituents or the median voter (Stephanopoulos 2015, Gilens 2014; Gilens and Page 2014, Verba, Scholzman, and Brady 1995).

Defining corruption tautologically—exchanging cash for votes is corruption because it corrupts—may lock in a certain set of assumptions about the political system (e.g., cash-for-votes is bad) but it does not clarify why we should be worried about these assumptions. That the Supreme Court is the author of this definition does not necessarily add to its legitimacy (Hansford, Intawan, and Nicholson 2018). Warren (2006) helpfully distinguishes between first-order trust in government officials and second-order trust of democratic institutions. In Warren’s view, first-order trust breaks down when the interests and values of voters are not reflected in their representatives. Second-order trust “depend[s] upon the integrity of *appearances*, not simply because they are an indication of whether officials are upholding their public trust, but because they provide the means through which citizens can judge whether their first-order trust in public officials is warranted” (172, emphasis added).

In other words, the appearance of corruption is not a “reflection of underlying realities” but instead informs the “grounds upon which democratic judgments are made” Warren (2006). Thus, while some regulations that target the structure of campaign finance might turn out to be constitutionally suspect, lawmakers should be given some latitude to regulate the conditions under which that structure is built and enforced (Levitt 2014). By restricting these conditions to just those where a quid pro quo is absent, the Court has created a pernicious bright-line test that represents exactly what the Court purports to be rejecting: the substitution of unaccountable elite preferences for the public will.

Measurement challenges

Further complicating the Court’s “appearance of corruption” rationale is the difficulty in linking public opinion about corruption to campaign finance rules (Grant and Rudolph 2004, 2003).

Also, because campaign finance rules are not randomly assigned, or implemented in a piecemeal fashion, it is difficult for researchers to tease out causal inference in a real-world setting. For example, Persily and Lammie (2004) and Milyo (2012) find that trust in government has varied greatly over time and that an individual's trust in government does not correlate with changes to campaign finance regulations where that individual lives. These findings are highly suggestive, even without a direct link between trust in government and one's understanding of campaign finance. On the other hand, measures of trust in government may not capture the concern about corruption and its appearance at the heart of campaign finance jurisprudence.

Two recent studies use experimental designs to test whether specific aspects of campaign finance are conducive to corrupt behavior. These studies randomly expose respondents to different campaign finance conditions followed by questions about political corruption. Although this kind of randomized exposure is not realistic in the real world, it allows researchers to make stronger causal inferences about the relationship between public perceptions and campaign finance rules than in the studies cited above. Using vignettes, Brown and Martin (2015) find that respondents lose faith in democracy when outside organizations contribute large sums of money (e.g., \$1 million) to candidates, and when outside groups spend money in coordination with individual campaigns. Bowler and Donovan (2016) find that funding sources from corporations and unions are viewed as more corrupting than contributions from individuals, and that the perception of corruption increases as the size of the contribution or independent expenditure increases. By randomly manipulating the details of a campaign's financial support, these two recent studies show that individuals have a relatively sophisticated understanding of the campaign finance system as they are able to distinguish between the corrupting potential of different types of money in politics. These conclusions challenge the findings of earlier research that the public is unable to identify or distinguish relevant features of American campaign finance law.

We build on this recent experimental work in two important ways. First, we use a conjoint experiment to measure perceptions of corruption related to 36 different campaign finance conditions. Because these conditions are all measured in the same Euclidean space, we are able to analyze the relative dif-

ferences between perceptions of corruption related to each condition, and thus understand the relative impact of various proposed campaign finance reforms. Second, we do not impose a particular definition of corruption (e.g., losing faith in democracy), but instead directly analyze the way that individuals classify corruption.

AN EMPIRICAL ANALYSIS OF CORRUPTION'S APPEARANCE(S)

To assess how voters classify different behaviors as corrupt, and to link perceptions of corruption to relevant campaign finance behavior, we fielded a pair of new studies as part of the 2014 Cooperative Congressional Election Study (CCES), a broadly representative national online survey administered by YouGov in October and November, before and after the midterm election. We asked respondents to classify several behaviors on a seven-point scale from "not at all corrupt" to "extremely corrupt." This approach is informative, but does not force respondents to make trade-offs, as respondents are able to say that all of the included activities are corrupt.

To address this, we also employed a conjoint experiment which required respondents to identify which of two hypothetical candidates was *more* likely to do something corrupt in office. Respondents made this assessment based on a summary of each candidate's campaign profile in which the elements were fully randomly assigned.

Classifying corruption

As we discuss above, general perceptions of corruption cannot be used to infer how individuals would judge campaign finance rules. Instead, perceptions of corruption and perceptions of campaign finance must be measured in the same space. In Figure 1 we plot the cross-tabulation of general perceptions of corruption and general beliefs about campaign finance rules among our respondents. In the aggregate, we observe that perceptions of corruption are correlated with perceptions of America's campaign finance system, though the effect size is modest ($\phi_c = 0.31$).⁴ As we discuss above, the

⁴The term ϕ_c represents Cramer's V or $\sqrt{\frac{X^2}{n}}$ where X^2 is the Pearson's chi-square estimate and n is the total number of observations.

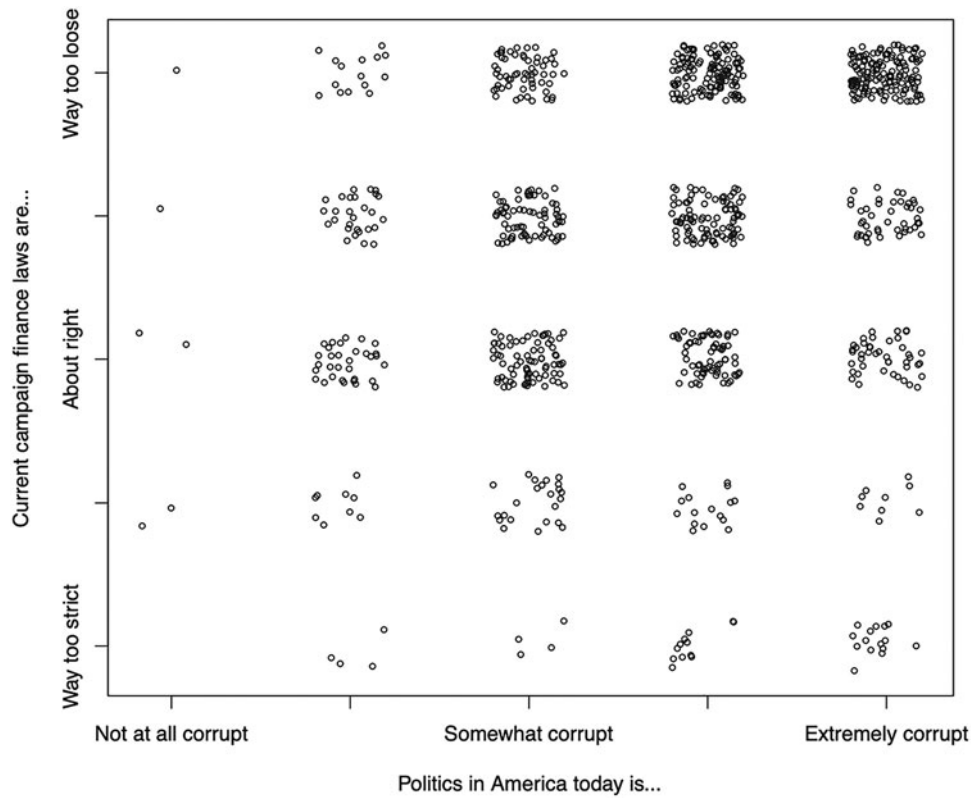


FIG. 1. Cross-tabulation between general perceptions of corruption and general perceptions of campaign finance law. *Notes:* Each point represents one survey respondent. *Source:* 2014 Cooperative Congressional Election Study module (N=1,483).

Court’s campaign finance jurisprudence requires evidence that perceptions of corruption are linked to specific campaign finance rules and not just correlated in the abstract. In order for a campaign finance law to prevent the appearance of corruption, there must be evidence of a nexus between the law and perceptions of corruption. We first attempt to link perceptions of corruption to campaign finance rules by presenting respondents with a list

of actions that have been regulated for the purpose of preventing political corruption. See Table 1. We acknowledge that the list of actions is not exhaustive of all possible corrupt behavior. For example, the list does not include explicit pay-to-play arrangements, self-dealing (or “emoluments”), or extortion. We generated this list based on actions that have been characterized as corrupt by legal scholars and that are connected to existing or proposed

TABLE 1. LIST OF ACTIONS PRESENTED TO SURVEY RESPONDENTS (IN RANDOM ORDER)

The following is a list of different things some people might call corruption. For each, please report whether you think these things are:

<i>Not at all corrupt</i>		<i>Somewhat corrupt</i>		<i>Very corrupt</i>		<i>Extremely corrupt</i>
1	2	3	4	5	6	7
1. An elected official promises to vote a certain way in exchange for a financial contribution.						
2. An elected official accepts money from an organization that does not disclose its donors.						
3. An elected official promotes the interests of campaign contributors, even though these interests do not benefit the public generally.						
4. An elected official is more likely to accept meeting requests from campaign contributors than from non-contributors.						
5. An elected official is more likely to accept meeting requests from lobbyists and special interest groups than from the general public.						
6. One candidate for public office is a multi-millionaire and spends his own money to defeat his opponent.						
7. When an elected official leaves office, he accepts a high-paying job in an industry that he helped while in office.						

Source: 2014 Cooperative Congressional Election Study.

campaign finance regulations; for example, the prohibition on bribery, caps on campaign contributions, regulations limiting revolving-door employment, disclosure requirements, and efforts to level the playing field. Respondents are asked to rate each action on a scale from “not at all corrupt” to “extremely corrupt.”

The purpose of this exercise is to test whether public perceptions of corruption overlap the Supreme Court’s corruption jurisprudence and its heavy focus on quid pro quo bribery. We note that half of the 907 respondents were primed with the statement that “A recent survey by the Pew Research Center reported that most Americans think the federal government is mostly corrupt. We’d like to ask you a few questions about corruption in politics.” This prime was asked early in our survey and was unrelated to the task we asked respondents to complete. However, we were concerned that reading a statement about political corruption might unintentionally bias our results since the statement primed respondents on the very dimension (corruption) that we were measuring. We present the results in Figure 2, with actions

listed in order from most corrupt to least corrupt. As the figure illustrates, the prime had no effect on respondents’ ratings. Quid pro quo bribery is the respondents’ clear choice for most corrupt behavior and is the only behavior that was rated “extremely corrupt” by more than half of the respondents (59%).

The next most corrupt behavior—an elected official that promotes the interests of campaign donors at the expense of the public—was rated “very corrupt” or more by 74% of respondents (39.5% rated as “extremely corrupt”). No other behavior is rated “extremely corrupt” by more than 30%. These findings are remarkably congruent with the Supreme Court’s views on corruption. The focus on quid pro quo exchanges in *Citizens United* matches survey respondents’ perceptions; bribery is an outlier among the various types of corruption. For example, in *McCutcheon v. FEC* (2014, 1450–1451) the Court held that “spending large sums of money in connection with elections... does not give rise to quid pro quo corruption. Nor does the possibility that an individual who spends large sums may garner influence over or access to elected

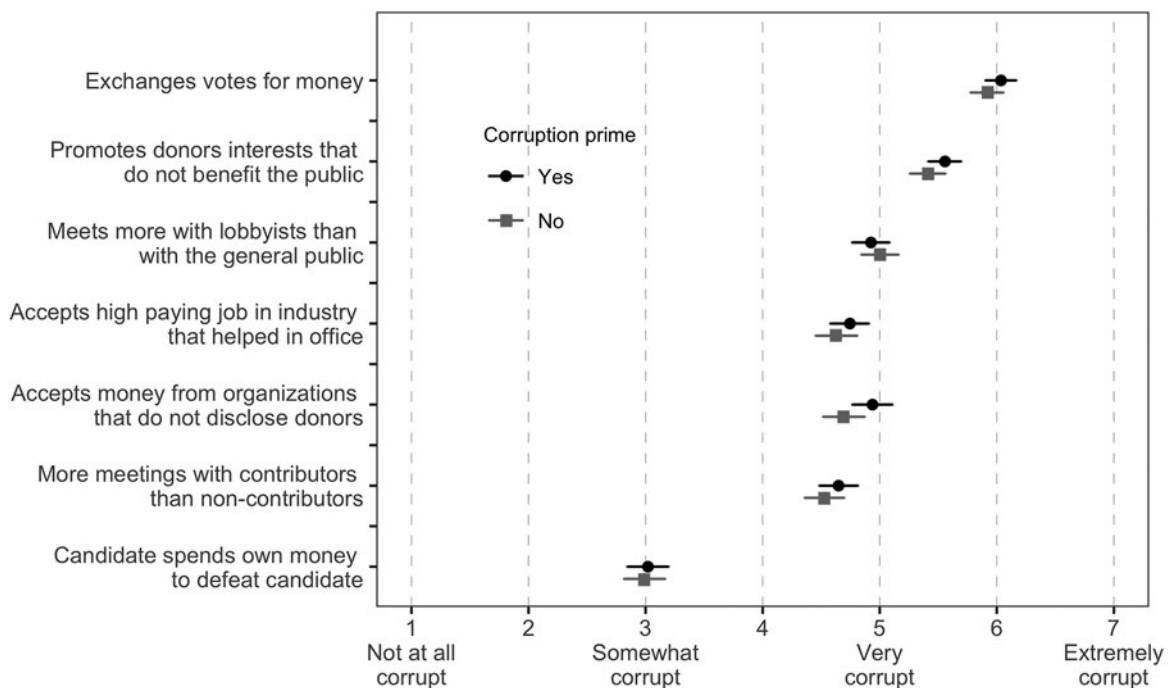


FIG. 2. Perceptions of corruption related to seven specific actions. *Notes:* Survey question: “The following is a list of different things some people might call corruption. For each, please report whether you think these things are ‘not at all corrupt,’ ‘somewhat corrupt,’ ‘very corrupt,’ or ‘extremely corrupt.’” About half of the sample ($N=452$) read a statement that “A recent survey by the Pew Research Center reported that most Americans think the federal government is ‘mostly corrupt.’ We’d like to ask you a few questions about corruption in politics.” Respondents who read this prompt are represented by *gray square*. The remaining respondents ($N=455$) did not see the corruption prime and are represented by *black dots*. Horizontal bars are 95% confidence intervals on 10,000 bootstrap replications of the data. *Source:* 2014 Cooperative Congressional Election Study module.

officials or political parties.” Although the Court held that aggregate contribution limits violated the First Amendment, it analyzed the potential harm of those limits against a quid pro quo standard as well as an undue influence standard. Concerns about undue influence, which have not disappeared in the wake of *Citizens United*, are shared by a super-majority of respondents.

Both outright bribery and the undue influence of campaign donors are rated as distinctly more corrupt than any of the other actions, including leveraging public office for a high-paying lobbying position, accepting money from organizations that don’t disclose their donors, and giving disproportionate access to donors and lobbyists. We note that these other actions are all rated above the midpoint on our seven-point corruption scale, with a majority of respondents reporting that they are “very corrupt.” Even among these high ratings, however, bribery and undue influence stand out among the rest as the most quintessentially corrupt behaviors.

The least corrupt behavior, according to respondents, is self-funding by a wealthy candidate. Nearly half of respondents (49.6%) rated this behavior as “not at all corrupt,” though, as we show below, there are important differences between the perceptions of conservative and liberal survey respondents. The Supreme Court has twice struck down campaign finance regulations aimed at leveling the playing field for challengers to wealthy candidates. In *Davis v. FEC* (2008), the Court struck down a regulation that supplemented the campaign treasury of candidates facing wealthy opponents. The Court also invalidated a matching-funds program in Arizona that automatically released funds to candidates facing privately financed wealthy opposition because “those burdens cannot be justified by a desire to level the playing field” (*Arizona Free Enterprise Club’s Freedom PAC v. Bennett* 2011, 2827). The Court did not view the discrepancies between competing candidate bank accounts to be a “corruption” problem, and generalized their position that no regulation can be justified by a concern that the political playing field is tilted toward one candidate or party.

The remaining four behaviors are statistically indistinguishable from each other, yet survey respondents viewed all of them as “very corrupt.” Granting access to lobbyists and donors at the expense of the general public, accepting money from

organizations that do not disclose their donors, and taking a job in an industry that one helped while in office are not considered to be as corrupt as outright bribery, yet respondents do view these actions as corrupt. One reason may be that respondents were able to rate each behavior independently (we did not ask them to rank them in order), so the responses may suffer from social desirability bias in favor of rating everything as very corrupt. However, we note again that half of the sample was primed with a statement that most Americans think the federal government is “mostly corrupt” and the prime had no effect.⁵

Forced to choose: Conjoint analysis

As our observational results perhaps imply, there may be an inclination among voters to declare most activities corrupt. This makes it difficult to fully differentiate behaviors in terms of just how corrupt they appear. For this purpose, we developed a novel, paired-choice conjoint experimental paradigm. Conjoint experiments are particularly well-suited to measuring opinions when the choice set is multi-dimensional, and where trade-offs may be required. Marketing research has relied on conjoint experiments since the early 1970s (see Hainmueller, Hopkins, and Yamamoto 2013 for an overview of conjoints and their use in political science), to examine which features of a given product are most important to consumers. A conjoint experiment randomly manipulates multiple variables simultaneously, thus leveraging the randomization to “hold other conditions constant” by design. Each respondent to a module of the 2014 CCES was presented four sets of pairwise comparisons showing randomly generated profiles of two candidates for state office. In our 880-person sample, 91% completed all four comparisons, 5% completed three comparisons, 2% completed two comparisons, and 1% completed just one comparison. Before comparing candidate profiles, each respondent read the following prompt (emphasis in the original):

On the next few screens you will see the profile of two people who are seeking elective office. Some

⁵Whether or not respondents live in states with stringent campaign finance laws does not impact their perceptions of corruption with respect to these seven political acts. Witko (2005). See Appendix Figure A3.

candidates are running for the office of state judge and others are running for the office of state legislator. *None of these candidates are running against each other.* Like all candidates, they must rely on others to fund their campaigns and support their candidacies. Sometimes during a campaign, a candidate might engage in corrupt behavior by promising to exchange official acts in their new office for financial support during the election. For example:

- A state legislator may promise to award a future state contract to a large financial supporter.
- A judge may promise to rule in favor of a large financial supporter if the supporter appears in court.

Please read the following candidate descriptions carefully and then indicate which one you think is more likely to do something corrupt in office.

Following the prompt, respondents were presented a pair of candidate profiles and asked to identify which of the two candidates is more likely to do something corrupt once in office. A screenshot of this task appears as Appendix Figure A2. We randomize several characteristics (factors) of the candidates and their campaign from among a set of possible values (levels) for each factor.

We also randomize, at the respondent level, the order in which the factors were presented to respondents. The eight factors were arranged in two blocks. The first block included four factors describing information about each hypothetical candidate (e.g., political ideology). The second block included four factors describing information about the finances of the hypothetical candidate's campaign (e.g., main source of money supporting the campaign). We randomize the order that each block was presented, and the order of factors presented within each block for each pairwise comparison. A visual representation of the choice task appears in Table 2.

First, we randomize whether the candidate is running to be a state legislator or a state judge. Thus, a given respondent may be exposed to both types of candidates. The Supreme Court recently distinguished between judges and politicians when they upheld a judicial campaign finance regulation that would have been unconstitutional in the context of nonjudicial elections. In *Williams-Yulee v. Florida Bar* (2015), the Court held that candidates for judicial office are no different

from candidates for political office, and certainly no more likely to let campaign contributions bias their behavior in office. In our setup we are able to observe respondents' perceptions of corruption when forced to evaluate a judge and a legislator in the same task (although, as a reminder, the prompt clarified that the hypothetical candidates were not running against each other). We also randomly assign each candidate's gender, political ideology, and chances of winning. These personal and electoral characteristics are traditionally used as controls in models of candidate behavior and we have no a priori hypothesis about their impact on perceptions of corruption. Finally, we randomly assign four aspects of the financial support for each candidate: the total money supporting the campaign, the primary source of the candidate's money, whether the primary source of money is out of state, and whether the primary source of money is ideologically motivated.

The inclusion of this range of factors, some of which directly relate to campaign finance and others of which may not, is intended to increase the verisimilitude of the task and, thus, the external validity of our results. This feature allows the conjoint to complement the survey item we discuss above especially well. The range of information provided to describe the target candidates serves a number of purposes: (1) It makes our task more similar to the real-world information environment in which voters evaluate candidates. (2) Relatedly, it makes our task less overtly focused on campaign finance, thus reducing demand effects. And, (3) it allows us to evaluate whether and how non-finance dimensions impact voter estimation of a candidate's propensity for corruption. Provided a set of assumptions, conjoint experiments provide the statistical power to estimate the marginal effect, called the Average Marginal Component Effect (AMCE), of each factor level because each respondent performs the choice task several times (see Hainmueller, Hopkins and Yamamoto 2013 for discussion of necessary assumptions and specification of the AMCE estimand). In this case, each respondent is exposed to four choices between two randomly generated candidates (so eight candidates). This allows us to separately estimate the average marginal effect of 36 different characteristics. We present the results broken down by the self-reported party of the survey respondents in Figure 3. (The pooled results are presented in Appendix Figure A1).

TABLE 2. VISUAL DEPICTION OF CONJOINT EXPERIMENT

	Candidate A	Candidate B	Values									
<i>Information about each candidate</i>												
Office they are seeking	[Value]	[Value]	Stage judge State legislator									
Gender	[Value]	[Value]	Female Male									
Political ideology	[Value]	[Value]	Very conservative Somewhat conservative Moderate Somewhat liberal Very liberal									
Chances of winning	[Value]	[Value]	Leads in the polls by 20% Leads in the polls by 5% Too close to call									
<i>Information about each campaign's financial support</i>												
Total money supporting the campaign	[Value]	[Value]	Around \$200,000 Around \$300,000 Around \$400,000 Around \$500,000 Around \$600,000									
Main source of money supporting the campaign	[Value]	[Value]	12 conditions*									
Where is the main source from?	[Value]	[Value]	State where candidate is running Out of state									
The main source supports	[Value]	[Value]	Only candidates from one party Mostly candidates from one party Equally to candidates from both parties Only this candidate									
Contributions to the campaign by:		IEs advocating for the campaign by:										
<ul style="list-style-type: none"> • One individual • Many individuals • Corporations • Unions • Nonprofit organizations that don't disclose their donors • The candidate's own personal money 		<ul style="list-style-type: none"> • One individual • Many individuals • Corporations • Unions • Nonprofit organizations that don't disclose their donors • Super PACs 										
Which candidate do you think is more likely to do something corrupt once in office?												
	Candidate A											
	Candidate B											
On a scale from 0 to 10, how likely is each candidate to do something corrupt once in office?												
Never do something corrupt	0	1	2	3	4	5	6	7	8	9	10	Almost certainly do something corrupt

*The 12 conditions are listed under "Contributions to the campaign by" at bottom of table.

As is standard with conjoint analysis, the mean for each level within a factor is evaluated in relation to a baseline value. In our analysis, the baseline is a moderate female candidate for the state legislature in a close race who has received \$200,000 in contributions from many individuals. These individuals live in-state and support many candidates from both parties.

Our conjoint analysis yields a few interesting, though in some cases only marginally significant, re-

sults. We see that conservative candidates are less likely to be viewed as doing something corrupt once in office, both by Republican and Democratic respondents ($p=0.036$ and $p=0.067$ respectively). Republican respondents viewed candidates in non-competitive races as the least likely to be corrupt ($p=0.10$) while Democratic respondents viewed candidates with the largest war chests as the least likely to be corrupt ($p=0.012$). The size of one's bank account has no effect on the view of Republicans, a

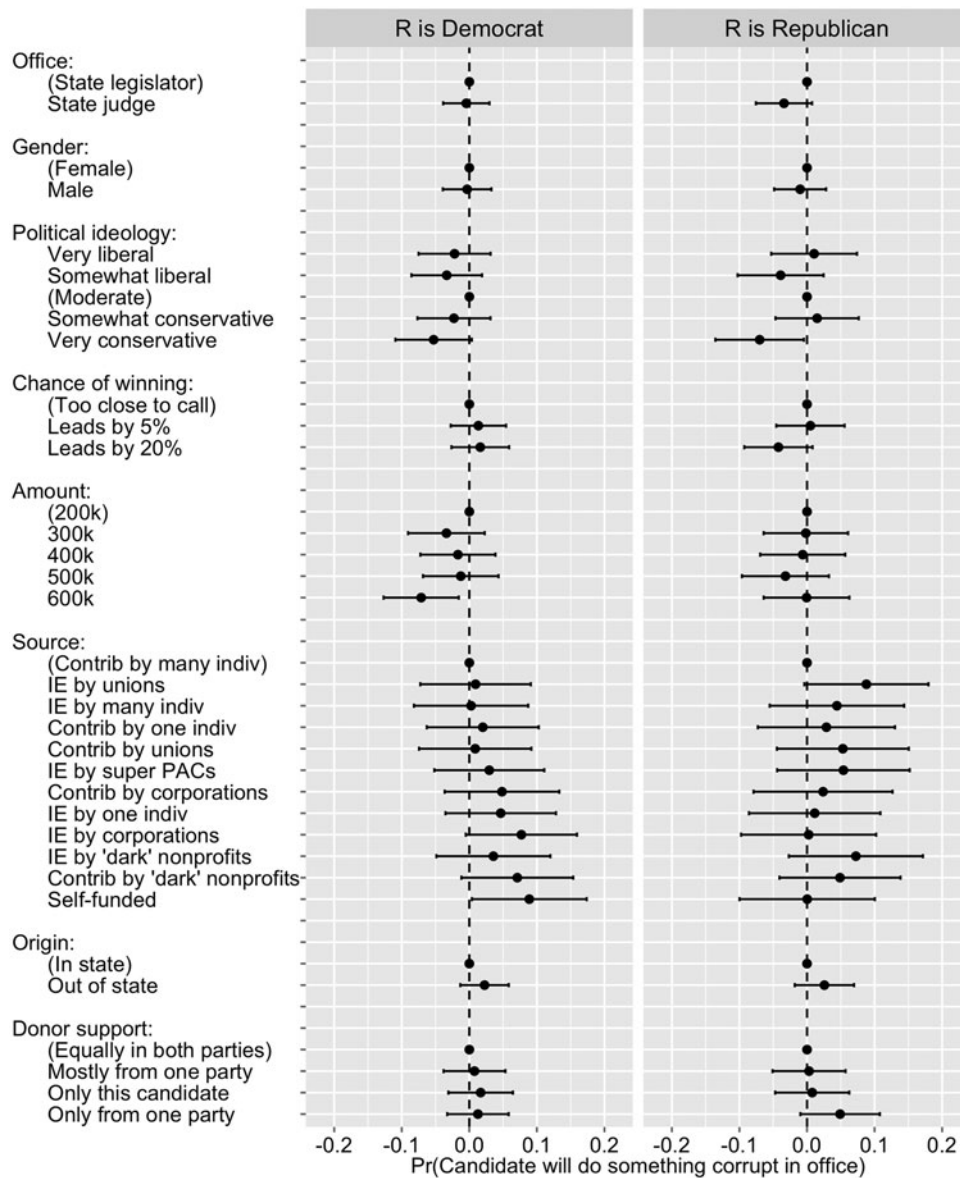


FIG. 3. Conjoint results for all respondents when asked to choose between two candidates which is more likely to do something corrupt once in office. Results presented for self-identified Democrats and self-identified Republicans. *Horizontal* bars represent 95% confidence intervals of estimates. *Source:* 2014 Cooperative Congressional Election Study module (N=880).

finding in tension with the argument that more money in politics creates a perception of corruption between candidates and donors (see Ansolabehere, de Figueiredo, and Snyder 2003).

Democrats and Republicans have somewhat divergent views regarding whether candidates will be corrupted by allegiance owed to their funders, depending on who the funders are. For Republicans, expenditures by unions seem to pose a risk ($p=0.06$), whereas expenditures by corporations are of greater concern to Democrats ($p=0.07$) relative to the baseline of direct campaign finance contributions. This matches elite rhetoric from both sides about threats

to the political system. Democrats are also much more skeptical of wealthy candidates that fund their own election, viewing self-funders as the most likely to do something corrupt in office compared to candidates with any other campaign finance profile ($p=0.04$). Not surprisingly, Democrats are more likely to support contribution limits and publicly financed campaigns.

Perhaps most striking, though, is the lack of consensus (even among co-partisans) regarding corrupting features. Very few of our factor levels stand out in ways that are substantively or statistically significant. This suggests that voters, even

when forced to make choices, do not consistently distinguish certain activities as more corrupt. This leaves us with the conclusion, derived from our direct question discussed above, that most of the activities we examined are viewed as corrupt. Unless courts are inclined to dramatically constrain the behaviors of politicians, this may mean that public opinion is unlikely to provide clear, definitive guidance for courts on what campaign finance behaviors are most corrupting.

One normatively positive, and perhaps somewhat surprising, finding in our conjoint analysis is that Republicans and Democrats do not appear to heavily bias against candidates on the other side in terms of perceiving corruption. Democrats do not view conservative candidates as more corrupt, and Republicans do not view liberal candidates as more corrupt.

CONCLUSION

In this article, we present the findings of a set of studies linking public opinion on campaign finance to perceptions of corruption. Our findings both support and challenge the current campaign finance jurisprudence. Since the Supreme Court's *Buckley v. Valeo* decision in 1976, legislators have been very limited in their attempts to regulate the flow of money into politics. Specifically, the Court has asserted that campaign finance regulations may only be justified if the goal is to prevent corrupt quid pro quo exchanges. We find evidence that bribery is perceived to be among the most politically corrupt behavior, while wealthy self-funded candidates are not perceived as corrupting the political system. These findings support the reliance of courts on bribery as the primary justification for campaign finance rules, and the courts' dismissal of regulations targeting wealthy candidates. On the other hand, we find that perceptions of corruption are much broader among the general public than in the courts. Respondents reported many behaviors besides bribery to be "very corrupt." This finding undermines reliance on bribery as the *only* justification for campaign finance rules.

Using a new conjoint experiment, we confirm that respondents do not meaningfully differentiate between most campaign finance activities in terms of their connection to corruption. Importantly, we do not observe any direct bias against out-party can-

didates. In other words, Democrats do not view conservative candidates as more corrupt *ipso facto*, and Republicans do not view liberal candidates as more corrupt.

Our findings challenge the empirical work of previous scholars who evaluate public opinion data about corruption generally without linking it to public opinion about campaign finance (linking instead to overlapping legal regimes). Like previous research, we caution courts against relying on raw public opinion about political corruption in campaign finance cases. Perhaps most importantly, our findings suggest that there is room for public education campaigns about campaign finance—the cost of campaigns, recent increases in outside spending, the lack of public funding—and the mechanisms by which different campaign finance regulations address deficiencies in the status quo. Our findings add to the literature that shows how public opinion is responsive to details about how campaigns are funded, and how these details can incentivize behavior that is corrupt or appears to be corrupt.

REFERENCES

- Ansolahehere, Stephen, John M. de Figueiredo, and James M. Snyder. 2003. "Why Is There So Little Money in Politics?" *Journal of Economic Perspectives* 17(1): 105–130.
- Arizona Free Enterprise Club's Freedom PAC v. Bennett*. 2011. 131 S.Ct. 2806.
- Bowler, Shaun, and Todd Donovan. 2016. "Campaign Money, Congress, and Perceptions of Corruption," *American Politics Research* 44(2): 272–295.
- Brown, Rebecca, and Andrew D. Martin. 2015. "Rhetoric and Reality: Testing the Harm of Campaign Spending," *New York University Law Review* 90: 1066–94.
- Buckley v. Valeo*. 1975. 519 F.2d 821 (D.C. Cir.).
- Buckley v. Valeo*. 1976. 424 U.S. 1.
- Burke, Thomas F. 1997. "The Concept of Corruption in Campaign Finance Law," *Constitutional Commentary* 14: 127.
- Citizens United v. FEC*. 2010. 558 U.S. 310.
- C.S.C. v. Letter Carriers*. 1973. 413 U.S. 548.
- Davis v. FEC*. 2008. 554 U.S. 724.
- Dawood, Yasmin. 2014. "Classifying Corruption," *Duke Journal of Constitutional Law and Public Policy* 92(2): 102–132.
- Dowling, Conor M., and Amber Wichowsky. 2014. "The Effects of Increased Campaign Finance Disclosure: Evaluating Reform Proposals," Working paper, presented at the annual meetings of the American Political Science Association.
- Dowling, Conor M., and Michael G. Miller. 2016. "Experimental Evidence on the Relationship Between Candidate Funding Sources and Voter Evaluations," *Journal of Experimental Political Science* 3(2): 152–163.

- FEC v. National Conservative PAC*. 1985. 470 U.S. 480.
- Gallup. 2015. "Is Corruption Widespread Throughout the Government in This Country?" *Gallup World Poll*. Sept. 19.
- Garrett, Elizabeth. 2009. "New Voices in Politics: Justice Marshall's Jurisprudence on Law and Politics," *Howard Law Journal* 52: 655–690.
- Gibson, James L. 2012. *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*. Chicago, IL: University of Chicago Press.
- Gilbert, Michael D., and Brian Barnes. 2016. "The Coordination Fallacy," *Florida State University Law Review* 43(2): 399–426.
- Gilens, Martin. 2014. *Affluence and Influence: Economic Inequality and Political Behavior in America*. Princeton, NJ: Princeton University Press.
- Gilens, Martin, and Benjamin I. Page. 2014. "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," *Perspectives on Politics* 12(3): 564–581.
- Gottlieb, Stephen E. 1989. "The Dilemma of Election Campaign Finance Reform," *Hofstra Law Review* 18: 213.
- Grant, J. Tobin, and Thomas J. Rudolph. 2003. "Value Conflict, Group Affect, and the Issue of Campaign Finance," *American Journal of Political Science* 47(3): 453–469.
- Grant, J. Tobin, and Thomas J. Rudolph. 2004. *Expression vs. Equality: The Politics of Campaign Finance Reform*. Columbus, OH: Ohio State University Press.
- Hainmueller, Jens, Daniel J. Hopkins, and Teppei Yamamoto. 2013. "Causal Inference in Conjoint Analysis: Understanding Multidimensional Choices via Stated Preference Experiments," *Political Analysis* 22(1): 1–30.
- Hansford, Thomas G., Chanita Intawan, and Stephen P. Nicholson. 2018. "Snap Judgment: Implicit Perceptions of a (Political) Court," *Political Behavior* 40:127–147.
- Hellman, Deborah. 2013. "Defining Corruption and Constitutionalizing Democracy," *Michigan Law Review* 111(8): 1385–1422.
- Issacharoff, Samuel. 2010. "On Political Corruption," *Harvard Law Review* 124: 118.
- Lessig, Lawrence. 2011. *Republic Lost: How Money Corrupts Congress—and a Plan to Stop It*. New York, NY: Twelve.
- Levitt, Justin. 2014. "Electoral Integrity: The Confidence Game," *New York University Law Review Online* 89: 70–86.
- McConnell v. FEC*. 2003. 540 U.S. 93.
- McCutcheon v. FEC*. 2014. 134 S.Ct. 1434.
- Milyo, Jeff. 2012. "Do State Campaign Finance Reforms Increase Trust and Confidence in State Government?" Presented at the annual meetings of the Midwest Political Science Association.
- Miratrix, Luke W., Jasjeet S. Sekhon, Alexander G. Theodoridis, and Luis F. Campos. 2018. "Worth Weighting? How to Think About and Use Weights in Survey Experiments," *Political Analysis* 26(3): 275–291.
- Nicholson, Stephen P., and Thomas G. Hansford. 2014. "Partisans in Robes: Party Cues and Public Acceptance of Supreme Court Decisions," *American Journal of Political Science* 58(3): 620–636.
- Nixon v. Shrink Missouri Government PAC*. 2000. 528 U.S. 377.
- Orme, Brian K. 2010. *Getting Started with Conjoint Analysis: Strategies for Product Design and Pricing Research*. 2d ed. Madison, WI: Research Publishers LLC.
- Persily, Nathaniel, and Kelli Lammie. 2004. "Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law," *University of Pennsylvania Law Review* 153(1): 119–178.
- Post, Robert C. 2014. *Citizens Divided: Campaign Finance Reform and the Constitution*. Cambridge, MA: Harvard University Press.
- Primo, David, and Jeff Milyo. 2006. "Campaign Finance Laws and Political Efficacy: Evidence from the States," *Election Law Journal* 5(1):23–39.
- Robertson, Christopher, D. Alex Winkelman, Kelly Bergstrand, and Darren Modzelewski. 2016. "The Appearance and Reality of *Quid Pro Quo* Corruption," *Journal of Legal Analysis* 8(2): 375–438.
- Spencer, Douglas M., and Abby K. Wood. 2014. "Citizens United, States Divided: An Empirical Analysis of Independent Political Spending," *Indiana Law Journal* 89(1): 315–372.
- Stephanopoulos, Nicholas O. 2015. "Aligning Campaign Finance Law," *Virginia Law Review* 101: 1425–1500.
- Strauss, David A. 1994. "Corruption, Equality, and Campaign Finance Reform," *Columbia Law Review* 94: 1369.
- Vavreck, Lynn, and Douglas Rivers. 2008. "The 2006 Cooperative Congressional Election Study," *Journal of Elections, Public Opinion, and Parties* 18(4): 355–366.
- Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. 2005. *Voice and Equality: Civic Voluntarism in American Politics*. Harvard University Press.
- Warren, Mark E. 2006. "Democracy and Deceit: Regulating Appearances of Corruption," *American Journal of Political Science* 50(1): 160–174.
- Williams-Yulee v. Florida Bar*. 2015. 135 S.Ct. 1656.
- Witko, Christopher. 2005. "Measuring the Stringency of State Campaign Finance Regulation," *State Politics and Politics Quarterly* 5(3): 295–310.
- Wood, Abby K. 2017. "Show Me the Money: 'Dark Money' and the Informational Benefit of Campaign Finance Disclosure." University of Southern California Legal Studies Working Paper Series, Working Paper 254. Manuscript on file with the author.

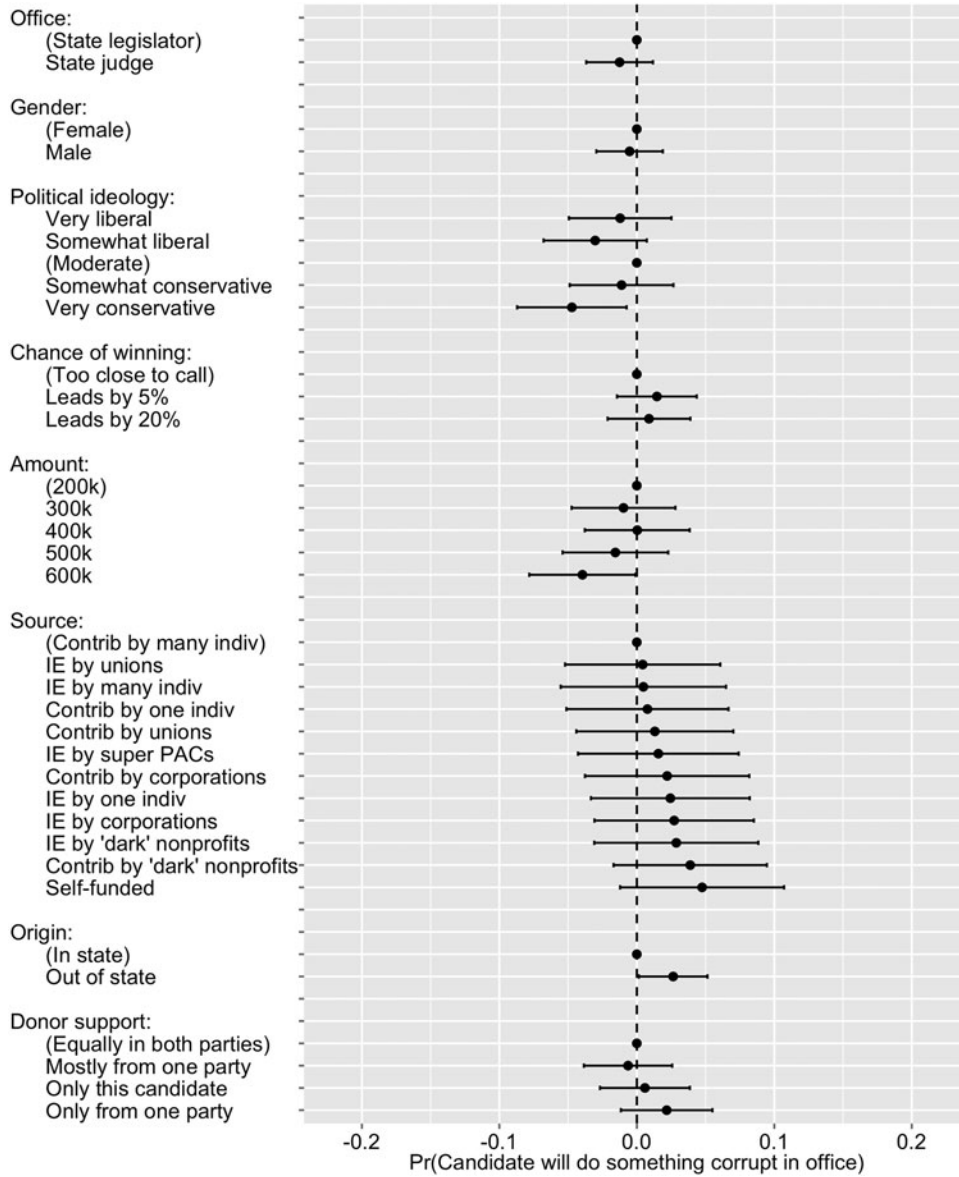
Address correspondence to:
 Douglas M. Spencer
 University of Connecticut
 55 Elizabeth Street
 Hartford, CT 06105
 USA

E-mail: douglas.spencer@uconn.edu

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(Appendix follows →)

Appendix



APPENDIX FIG. A1. Conjoint results for all respondents when asked to choose between two candidates which is more likely to do something corrupt once in office.

(Appendix continues →)

Candidate pair 4 of 4

Reminder: these candidates are **not running against each other**.

	Candidate A	Candidate B
Information about each candidate		
Chances of winning	Leads in the polls by about 20%	Leads in the polls by about 20%
Political ideology	Somewhat Liberal	Very Liberal
Gender	Female	Female
Office they are seeking	State judge	State legislator
Information about each campaign's financial support		
Where is the main source of funds from?	The state where the candidate is running	Another state
The main source typically supports:	Only this candidate	Mostly candidates from one party
Total money supporting the campaign:	Around \$300,000	Around \$500,000
Main source of funds supporting this campaign:	Independent expenditures advocating for the campaign by nonprofit organizations that don't disclose their donors	Independent expenditures advocating for the campaign by Super PACs

Which candidate do you think is more likely to do something corrupt once in office?

- Candidate A
- Candidate B

On a scale from 0 to 10, how likely is each candidate to do something corrupt once in office?

Candidate A

Never do something corrupt

0 1 2 3 4 5 6 7 8 9 10

Almost certainly do something corrupt

Candidate B

Never do something corrupt

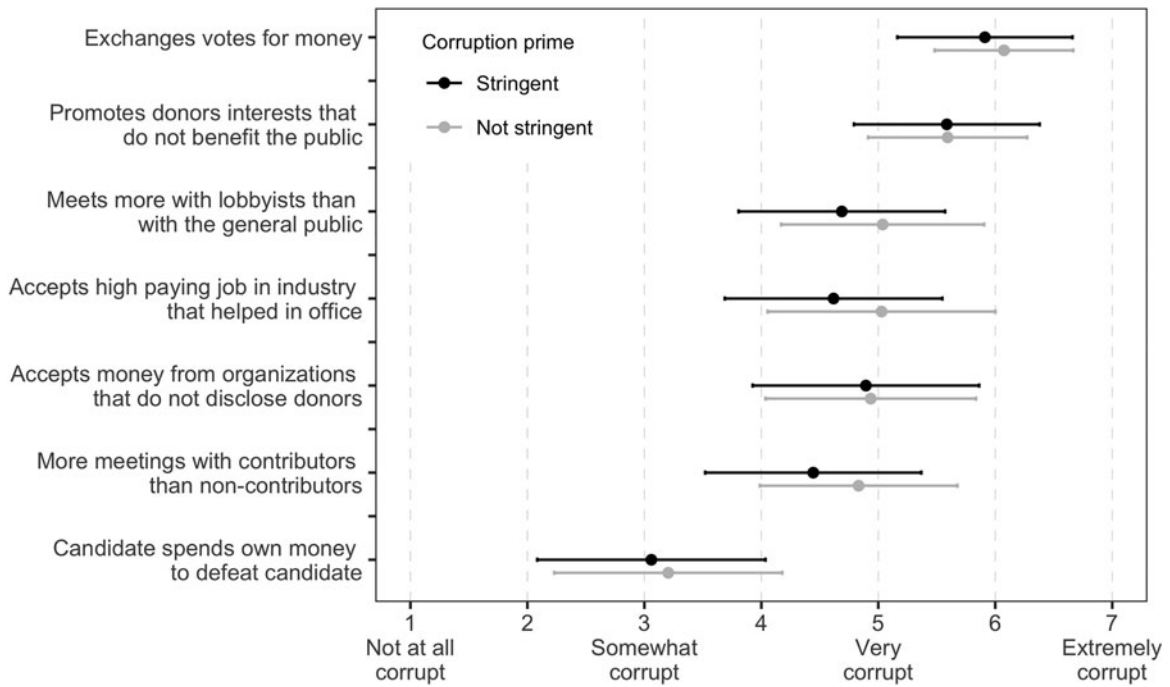
0 1 2 3 4 5 6 7 8 9 10

Almost certainly do something corrupt



APPENDIX FIG. A2. Screenshot of conjoint task asking respondents to identify which, of two candidates, is most likely to do something corrupt in office.

(Appendix continues →)



APPENDIX FIG. A3. Perceptions of corruption with respect to seven specific political acts. Results are broken down by respondents who live in states with “stringent” campaign finance laws versus respondents who live in states without stringent laws. See Witko (2005).