

BUNDLE UP: THE CHILLING ROLE OF FUNDRAISING BUNDLERS IN AMERICAN POLITICS

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I. INTRODUCTION

Running a political campaign is an expensive endeavor. The 2020 federal election cost \$14.4 billion, rendering it the most expensive presidential election in United States history and more than twice as expensive as the 2016 presidential election.¹ While there is plenty of media coverage and concern surrounding Political Action Committees (“PACs”), they are not the political fundraising force they used to be. PACs accounted for only four percent of funds from the 2020 election cycle, down from nine percent in the previous cycle.² The largest source of funds for the 2020 election was large individual donations, accounting for over forty-two percent of total giving.³

Under the Federal Election Campaign Act (“FECA”), donations to candidates are capped.⁴ For federal elections in 2021-2022, FECA limits individual contributions to \$2,900 per election.⁵ Nonetheless, top donors often contribute hundreds of thousands, if not millions, of dollars to their preferred candidates. This is possible because of a form of fundraising called “bundling,” in which donors compile individual donations and present candidates with the large aggregate sum.⁶ Bundlers who collect and deliver contributions act as cash conduits, allowing them to amass far more money than the law allows individuals to give directly.

Contribution caps for a candidate’s joint fundraising committee are higher than those for individual candidate donations. For example, an individual could donate \$721,300 to President Joe Biden’s “Biden Victory Fund.”⁷ Bundlers can thus exert influence by taking credit for multiple

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¹ Karl Evers-Hillstrom, *Most Expensive Ever: 2020 Election Cost \$14.4 Billion*, CTR. FOR RESPONSIVE POL. (Feb. 11, 2021, 1:14 PM), <https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16>.

² *Id.*

³ *Id.*

⁴ 52 U.S.C. § 30116(a)(1)(A).

⁵ *Contribution Limits*, FED. ELECTION COMM’N., <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits> (last visited Jan. 3, 2022).

⁶ Peter Overby, *Explainer: What Is a Bundler?*, NPR (Sept. 14, 2007), <https://www.npr.org/templates/story/story.php?storyId=14434721>.

⁷ BIDEN VICTORY FUND, <https://secure.joebiden.com/onlineactions/K3W1hrzem0S9ecZxawBI4g2> (last visited Mar. 17, 2021) (The \$721,300 is allocated as follows: first \$2,800 to Biden for President, then \$35,500 to the Democratic National Committee; the next \$150,000 is split equally among the Democratic state parties from AZ, CO, FL, GA, MI, MN, NC, NE, NH, NV, OH, PA, TX, VA, and WI; the next \$110,000 is split equally among the Democratic state parties from AL, DE, KS, LA, MA, MD, MS, NJ, NY, VT and WV; and the next \$210,000 is split equally among the Democratic state parties from

individuals who reach the limits of their allowable contributions. Donors gain clout, attention, and other rewards from candidates by bundling funds to the far ends of contribution limits.

This Note begins by delving into the legislative history of campaign financing and explaining the rise and risks of bundling. While the practice of bundling donations is not new, it has escalated in recent elections to become one of the most prominent forms of fundraising.⁸ Wealthy business leaders and other well-connected fundraisers who can coax donations from their internal networks are vitally important to a candidate's success. Campaigns encourage the practice by rewarding top bundlers with perquisites ranging from access to the candidate to appointments for high-ranking government positions.⁹ A combination of opaque campaign finance laws and coveted rewards for top fundraisers gives bundlers more power than ever. Wealthy individuals who bundle large contributions earn inordinate influence with candidates and their advisors. For decades, there has been concern surrounding the influence of wealthy donors in politics. Judges worry about quid-pro-quo corruption. The electorate worries about government accountability and whether to trust elected officials. Voters want and deserve to know who may be trying to influence their vote. Yet still, politicians are deep in the pockets of business executives, financial elites, and private interests while providing little transparency to their constituents.

This Note next discusses who bundlers are. Understanding bundlers and the risks of accepting bundled funds requires understanding bundler demographics and motivations. Bundlers represent a small fraction of the American public—mainly wealthy white males—and their motivations for fundraising vary.¹⁰ Some are incentivized by material goals, others by policy or social factors.¹¹ Curtailing the influence of these wealthy donors relies on awareness of the benefits at stake.

This Note then details the rewards that top bundlers enjoy. Cushy ambassador positions, roles within an administration, and access to a president's inner circle are just some of the exclusive privileges given in exchange for bundled funds.¹² Fortunately for bundlers and the candidates they support, the current regulatory landscape has paved the way for this exchange.

This Note proceeds to explore the case history and regulations that inform campaign fundraising. Critics see bundling as an end run around contribution limits and disclosure requirements. Opponents from both inside and outside the Federal Election Commission ("FEC") have called for additional regulations and heightened disclosure laws.¹³ There is currently

AK, AR, CT, DC, HI, ID, IN, KY, ME, MO, MT, ND, NM, OK, OR, RI, SC, TN, UT, WA, and WY. Any additional funds will be allocated to the DNC.) (last visited Mar. 17, 2021).

⁸ See Brody Mullins, *Donor Bundling Emerges as a Major Ill in '08 Race*, WALL ST. J. (Oct. 18, 2007), <https://www.wsj.com/articles/SB119267248520862997>.

⁹ *Id.*

¹⁰ PETER FRANCA, JOHN C. GREEN, PAUL S. HERRNSON, LYNDY W. POWELL & CLYDE WILCOX, *THE FINANCIERS OF CONGRESSIONAL ELECTIONS* 4 (Columbia University Press, 2003).

¹¹ *Id.*

¹² See Fred Schulte, John Aloysius Farrell & Jeremy Borden, *Obama Rewards Big Bundlers with Jobs, Commissions, Stimulus Money, Government Contracts, and More*, CTR. FOR PUB. INTEGRITY (June 15, 2011), <https://publicintegrity.org/politics/obama-rewards-big-bundlers-with-jobs-commissions-stimulus-money-government-contracts-and-more> (last updated May 19, 2014 at 12:19 pm ET).

¹³ See generally Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 302 (2010).

no requirement that candidates provide any information about their bundlers. Voluntary disclosure by candidates has been sporadic at best and nonexistent at worst. Most campaign finance reformers stress that disclosure of bundler contributions provides valuable information to voters.¹⁴ Opponents argue that disclosure chills speech and infringes on First Amendment rights.¹⁵ Research suggests that the risk of chilled speech may be overstated.¹⁶

Despite the obstacles, there are reasonable and achievable options to mitigate the influence of bundled money on politics. This Note concludes by examining possible campaign finance reforms. Some reforms operate to make bundling less desirable for the bundlers or for the candidates, such as by increasing transparency and enforcement. One recommendation is to minimize the rewards given to bundlers by reforming the process by which ambassadors are nominated and appointed. Other options decrease the attractiveness of big money generally—for example, by shifting campaign fundraising away from large donations and toward multiple smaller donations through use of the public financing system and online fundraising platforms such as ActBlue and WinRed. Or, by implementing regulations that reduce the cost of elections overall, such as advertising restrictions and shorter campaign periods, thus minimizing reliance on large donations in the first place. Closing disclosure loopholes could also make the process more transparent. Finally, reforms could increase the enforcement power of the FEC. These reforms could reduce the potentially corrupting influence of bundlers.

Perhaps the most daunting hurdle for any campaign finance reform is convincing legislators to act against their own self-interest. Legislators may resent the time they must spend wining and dining wealthy donors, but they may feel that their political careers depend on the donors' support. Nonetheless, and despite indications to the contrary, the candidate with the most votes, not the most money, wins. Thus, it is realistic and possible to shift the balance of political power back toward ordinary citizens.

II. WHAT IS BUNDLING?

A. BACKGROUND

Bundling is a form of fundraising in which individuals—often elite, wealthy, and well-connected—collect and pool contributions from their networks and present them to political candidates in a tidy bundle.¹⁷ Volunteer fundraising is hardly a new aspect of campaign funding. Asking supporters to gather donations from their own contacts is effective and efficient, not only for raising money, but also for expanding a candidate's circle of supporters.

¹⁴ *Id.* (discussing the importance and benefits of disclosure).

¹⁵ See generally Allison Hayward, *Is That a Bundle in Your Pocket, Or . . . ?*, THE FORUM, Apr. 2008 (discussing negative ramifications of increased bundler disclosure).

¹⁶ See Abby K. Wood & Douglas M. Spencer, *In the Shadows of Sunlight: The Effects of Transparency on State Political Campaigns*, 15 ELECTION L.J. 302 (2016).

¹⁷ Overby, *supra* note 6.

It was not until the 2000 presidential primary race, when candidate George W. Bush opted out of the federal public financing system, that bundling became organized.¹⁸ Bush was the first major presidential candidate to opt out during the primaries since the program began in 1976.¹⁹ The public funding program has undergone very few changes in the past twenty-five years.²⁰ In 2020, candidates opting in to the program would have been bound to a \$103 million spending limit for the general election.²¹ This is a paltry amount considering that the two 2020 presidential frontrunners spent close to two billion dollars during the election cycle.²² Following Bush's lead, the majority of presidential contenders have since opted out of the public financing system. In 2008, Hillary Clinton, Barack Obama, John McCain, Rudy Giuliani, and Mitt Romney all opted out.²³

Although Bush's 2000 presidential campaign launched the bundling boom, the stage was set decades prior. The Watergate scandal ushered in a new era of campaign finance reform. In 1974, Congress created an independent agency, the FEC, to regulate FECA.²⁴ The 1974 amendments to FECA set limits on the amount of money that any one individual could give to a candidate and established a public financing system, in the form of matching funds, for presidential candidates.²⁵ The amendments were adopted largely in response to post-Watergate perceptions that special interests had gained too much influence. The amended FECA was intended to restrain campaign spending, curb the influence of wealthy donors, and preserve transparency in federal elections.

Not long after Congress amended FECA, key provisions in the amendments were contested in *Buckley v. Valeo*.²⁶ FECA was challenged on the grounds that mandatory spending and contribution limits restricted the free speech of candidates and their supporters.²⁷ The Supreme Court upheld contribution caps but overturned spending caps, except for those pertaining to publicly financed presidential candidates.²⁸ The Court stated that, since FECA's "primary purpose" was to avoid corruption, contribution limits were justified.²⁹ The Court also found that political contributions are a form of speech in that contributions communicate a donor's support for the donee:

A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying

¹⁸ Tarini Parti, *Will 2012 Be the End of the Presidential Public Financing System?*, CTR. FOR RESPONSIVE POL. (Aug. 5, 2011, 12:10 PM), <https://www.opensecrets.org/news/2011/08/the-end-of-presidential-public-financing>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Presidential Spending Limits for 2020*, FED. ELECTION COMM'N., <https://www.fec.gov/help-candidates-and-committees/understanding-public-funding-presidential-elections/presidential-spending-limits-2020> (last visited Mar. 18, 2021).

²² Sean McMinn, Alyson Hurt & Ruth Talbot, *Money Tracker: How Much Trump And Biden Have Raised In The 2020 Election*, NPR (Dec. 4, 2020), <https://www.npr.org/2020/05/20/858347477/money-tracker-how-much-trump-and-biden-have-raised-in-the-2020-election>.

²³ Parti, *supra* note 18.

²⁴ *Mission and History*, FED. ELECTION COMM'N., <https://www.fec.gov/about/mission-and-history> (last visited Apr. 27, 2022).

²⁵ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 9033.1.

²⁶ See *Buckley v. Valeo*, 424 U.S. 1 (1976).

²⁷ *Id.*

²⁸ *Id.* at 143.

²⁹ *Id.* at 26–27.

basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing.³⁰

Using this logic, the Court differentiated contributions, as expressions of support, from expenditures, as expressions of political messages to the public.³¹ Thus, since the Court equated campaign spending to campaign speech, restricting campaign spending would be an improper constraint on First Amendment rights.³² The hard rules established in *Buckley* remain relevant today.

FECA and *Buckley* only regulate “hard-money” donations which are contributions made to a specific election or candidate, as opposed to “soft-money” donations which are contributions made to a political party.³³ Soft-money remained unregulated and uncapped until 2002, when Congress passed the Bipartisan Campaign Reform Act, commonly known as the McCain-Feingold Act, or BCRA.³⁴ The BCRA restricted soft-money donations in an effort to rid elections of large contributions from corporations, unions, and individuals.³⁵ Meanwhile, the cost of running for president has soared, and Congress has neglected to update the public financing system to keep up.³⁶ The money available to candidates through public financing is far less than what it costs to run a successful modern electoral campaign.³⁷

Once presidential candidates started to turn down public funding, they became dependent on private funding, and the value of bundlers to a presidential campaign increased exponentially. In 2000, bundlers raised “at least \$55.8 million; in 2004, at least \$79 million; in 2008, a minimum of \$76.25 million; and in 2012, the floor was \$186.5 million.”³⁸ Candidates sometimes coin catchy honorific titles for their high-producing fundraisers. Bush dubbed those who raised over \$100,000 for his campaign “Pioneers,” and those who raised over \$200,000 “Rangers.” Moreover, those who raised an additional \$50,000 for the Republican National Committee earned the title of “Super Rangers.”³⁹ These fundraisers could buy special souvenirs, including pins and cufflinks, and were invited to presidential cookouts.⁴⁰ Hillary Clinton called her bundlers “HillRaisers,” and Rudy Giuliani, an avid

³⁰ *Id.* at 21.

³¹ *Id.* at 23.

³² *Id.*

³³ Gordon Scott, *Soft Money*, INVESTOPEDIA, <https://www.investopedia.com/terms/s/softmoney.asp> (Apr. 14, 2022).

³⁴ Bipartisan Campaign Reform Act of 2002 Pub.L. No. 107–155, 116 Stat. 81–116.

³⁵ *Id.*

³⁶ Parti, *supra* note 18.

³⁷ *Public Funding of Presidential Elections*, FED. ELECTION COMM’N, <https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections> (last visited Feb. 4, 2022).

³⁸ *The 10 Things They Won’t Tell You About Money in Politics*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/resources/10things/02.php> (last visited Jan. 3, 2022) [hereinafter *10 Things*].

³⁹ Peter Overby, *Explainer: What Is a Bundler?*, NPR (Sept. 14, 2007), <https://www.npr.org/templates/story/story.php?storyId=14434721>.

⁴⁰ *Id.*

baseball fan, called his bundlers “All-American Sluggers,” with those who raised over \$1 million earning the title of “All-American Team Captains.”⁴¹

B. WHEN IS BUNDLING ILLEGAL?

There is a fine line between aggregating donations from one’s network into a legal bundle and illegally coercing people into donating. It is illegal for a bundler to give money to family, friends, or employees with the expectation that they will then donate that gifted money to a candidate. Consider *United States v. Whittemore*.⁴² F. Harvey Whittemore, an attorney, developer, and active Nevada lobbyist and political fundraiser, promised to raise \$150,000 for Senator Harry Reid’s reelection campaign.⁴³ Four days before the campaign finance filing deadline, Whittemore had not raised the promised amount.⁴⁴ To uphold his pledge to Reid, Whittemore transferred \$145,000 to relatives and employees.⁴⁵ Then, each recipient donated the statutory maximum contribution to the Reid campaign.⁴⁶ At trial, the recipients testified that Whittemore encouraged them to contribute to Reid’s campaign and, in some cases, even explicitly stated that the money was meant to cover a contribution to Reid.⁴⁷ The jury convicted Whittemore of making excessive campaign contributions and making them under others’ names.⁴⁸ On appeal, Whittemore argued that the money was an “unconditional gift,” and the recipients’ subsequent contributions were donations of their own money given of their own free will.⁴⁹ The Ninth Circuit rejected this argument.⁵⁰ It concluded that the key issue was “the source of the funds, regardless of the status of the funds under state property law at the time of the donation.”⁵¹ The jury found that Whittemore knew he was the “true source” of the contributions and that he had caused the contributions to be made.⁵² Thus, Whittemore’s transfers of money to the recipients constituted contributions under federal law.⁵³ While it is perfectly legal to bundle others’ money, bundling one’s own money through intermediaries is illegal.

Individuals are not the only source of bundled funds; corporations and other organizations can bundle contributions as well. A company will sometimes instruct its employees when, where, and to whom to send contributions.⁵⁴ It is not illegal for an entity to encourage or ask for

⁴¹ *Id.*

⁴² *United States v. Whittemore*, 776 F.3d 1074, 1076 (9th Cir. 2015).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 1076–77.

⁴⁷ *Id.* at 1077.

⁴⁸ *Id.*

⁴⁹ *Id.* at 1079.

⁵⁰ *Id.* at 1080.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ John C. Bonifaz, Gregory G. Luke & Brenda Wright, *Challenging Buckley v. Valeo: A Legal Strategy*, 33 AKRON L. REV. 39, 50 (1999). Per Bonifaz et al., some of the techniques that corporations use to encourage employees to contribute include reimbursing donations by giving employees bonuses or making charitable donations to match employees’ contributions. Although there is anecdotal evidence of this occurring, strong legal proof requires whistleblowers from within the corporation who are willing to risk their jobs by reporting the illegal activity.

contributions from those on its payroll. However, as Larry Makinson, executive director of the Center for Responsive Politics, said, “It can be illegal if an employee is told that political contributions are necessary for promotions or job security.”⁵⁵ It is also illegal to reimburse someone for donations made to a political campaign.⁵⁶

Michigan Attorney Geoffrey Fieger was indicted after reimbursing \$127,000 to his employees and associates for bundled campaign contributions to Senator John Edwards’s 2004 presidential bid.⁵⁷ By nature, bundling has the potential to be coercive, especially in a workplace setting. Some of the funds aggregated by bundlers come from people who want nothing but to please the bundler, whether the bundler is their boss, family member, friend, or an influential member of society. The following section discusses the identity of bundlers.

III. WHO ARE BUNDLERS?

A. DEMOGRAPHICS

A study of over two thousand people donating to the 2008 presidential candidates found that bundlers and other individual fundraisers were largely responsible for the contributions given during that cycle.⁵⁸ Those fundraisers came from a relatively small universe. Fifty-six percent of the disclosed bundlers came from just three industries: law, finance, and real estate.⁵⁹ These were followed by business services, homemakers, and entertainment (television, music, and movies).⁶⁰ Of those designated as homemakers, exactly half had a spouse working in law, finance, or real estate.⁶¹ Furthermore, industry contributions varied by political party.⁶² Republicans received more than Democrats from financial, banking, insurance, real estate, and lobbying industries.⁶³ Democrats received more from the legal and entertainment industries.⁶⁴

Most donors to presidential and congressional candidates do not resemble the general population. Political donors are “overwhelmingly . . . rich, well-educated, middle-aged, white males; and the word *overwhelmingly* is not an exaggeration.”⁶⁵ It does not come as a surprise that most donors are

⁵⁵ David Mark, *Bundling for Dollars (Inside Politics)*, 23 CAMPAIGNS & ELECTIONS 10, 11 (2002).

⁵⁶ See *United States v. Hsu*, 669 F.3d 112 (2d Cir. 2012). Norman Hsu was found guilty of violating various campaign laws after recruiting “straw donors”—individuals recruited to donate to campaigns only to be reimbursed by Hsu after the fact. The campaign finance violations are only one aspect of the strange and complicated case of Norman Hsu.

⁵⁷ Mullins, *supra* note 8.

⁵⁸ Press Release, CAMPAIGN FIN. INST., *Fundraising Central: Majority of Presidential Bundlers and Other Fundraisers Hail from Only Five U.S. Industries* (Dec. 20, 2007), http://www.cfinst.org/press/PRelases/07-12-20/Fundraising_Central_Majority_of_Presidential_Bundlers_and_Other_Fundraisers_Hail_from_Only_Five_U_S_Industries_Lawyers_and_Law_Firms_Three_Finance_Industries_and_Real_Estate.aspx.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ DAVID MAGLEBY, JAY GOODLIFFE & JOSEPH A. OLSEN, WHO DONATES IN CAMPAIGNS?: THE IMPORTANCE OF MESSAGE, MESSENGER, MEDIUM AND STRUCTURE 40 (2018) (emphasis in original).

wealthy; after all, to give money, one has to have money. Age is another predictable factor in donors' profiles. Approximately half are sixty-one years of age or older.⁶⁶ On the other hand, women and people of color are underrepresented.⁶⁷

In sum, the average political donor looks decidedly different from the average American citizen. When individuals representing the same group or industry circumvent contribution limits, they are evading the intent of Congress and the courts to keep corrupting influences out of politics. Whose interests do lawmakers cater to when the same small demographic is frequently awarded special political appointments and access to policymakers?

B. MOTIVATIONS

Peter Francia et al.'s book *The Financiers of Congressional Elections* identifies three main categories of donors: Investors, Ideologues, and Intimates.⁶⁸ Investors are strongly motivated by material incentives and are thus concerned with whether a candidate will benefit their business or industry.⁶⁹ Ideologues are motivated by policy issues and want to support a cause, influence the government's perspective, or bolster a political party.⁷⁰ Ideologues are also the largest category, representing over one third of all political donors.⁷¹ Intimates are motivated by social factors such as attending events, socializing with candidates and prominent donors, and earning recognition for their contributions.⁷² Francia labels the remaining percentage of donors Incidentals, as they do not have consistent motivations and do not donate as frequently.⁷³ Granted, many bundlers have more than one motivation for contributing.

Consider Donald H. Gips, a telecommunications executive who raised over \$500,000 for President Barack Obama's 2008 presidential race.⁷⁴ After Obama's victory, Gips led hiring for the Obama administration.⁷⁵ He was later appointed ambassador to South Africa.⁷⁶ Throughout his ambassadorship, Gips retained stock in his telecom company, which received \$13.8 million in government stimulus contracts.⁷⁷ Another executive at Gips's company, who raised \$100,000 for Obama, was appointed as chair of the presidential advisory committee on telecommunications.⁷⁸ Gips falls into the Investor category. His contribution ultimately benefited his company, and because he was responsible for hiring other members of Obama's White

⁶⁶ *Id.* at 44.

⁶⁷ *Id.* at 46–47.

⁶⁸ FRANCIA ET AL., *supra* note 10.

⁶⁹ *Id.* at 48–49.

⁷⁰ *Id.* at 50.

⁷¹ *Id.* at 48–49.

⁷² *Id.* at 52.

⁷³ *Id.*

⁷⁴ Schulte et al., *supra* note 12.

⁷⁵ *Id.*

⁷⁶ *Id.* When qualifying his connection and experience with South Africa, Gips said he had “visited South Africa over a decade ago [and] fell in love with its people, its story, and its beauty.”

Id.

⁷⁷ *Id.*

⁷⁸ *Id.*

House, he could assure that key positions were held by people whose views were likely to align with his economic interests.

Ideologues are less concerned with benefits to themselves and more concerned with candidates' policies and political affiliations. As one Ideologue explained, "I give politically because I want to try to influence the public policy decisions that are made."⁷⁹ Ideologues have strong opinions about environmental policy, abortion, Second Amendment rights, affirmative action, and so forth.⁸⁰ They choose to donate to candidates who share their views.

Intimates are those who value invitations to events on the White House Lawns and photo opportunities with candidates and other political elites. Extravagant political fundraising events are often attended or hosted by Hollywood actors and famous athletes.⁸¹ The opportunity to rub elbows with celebrities and society elites is a big draw for Intimates. Other Intimates give solely because of their connection to a bundler.

Bundlers generally recruit from Intimates, such as the bundlers' personal network of colleagues, friends, and family. They may give because they want to support the bundler, not necessarily the candidate or any particular cause. These recruits can become habitual sources of support for bundlers when they earn valuable social perquisites from contributing. Political fundraising events are often elegant affairs attended by society's upper echelon.⁸² Events hosted or attended by celebrities sometimes feature special performances.⁸³ Fundraising events serve a dual purpose—they are both ideologically and socially beneficial. While the bundler may be most interested in earning an audience with the candidate (or at least recognition, as sometimes the candidate is not in attendance), recruits gain value from each other. These events are attended by lawyers, financiers, high-end real estate agents, businesspeople, consultants, and others who can afford not just the price of admission, but also the price of each other's services.⁸⁴ Thus, for many recruits, their contribution has social and economic value far beyond the amount deducted from their bank account. As described next, bundlers also reap rewards for their work.

IV. BUNDLERS' REWARDS

A. AMBASSADORSHIPS

In addition to souvenirs, access to candidates and advisors, and invitations to events at the White House, top bundlers are sometimes rewarded with additional favors, notably, "presidential appointments,

⁷⁹ FRANCIA ET AL., *supra* note 10, at 51.

⁸⁰ *Id.* at 50–51.

⁸¹ See David Wright, *Tom Hanks, Jennifer Aniston and Ben Affleck Among Celebrities Donating to 2020 Democrats*, CNN (July 16, 2019), <https://www.cnn.com/2019/07/16/politics/2020-democrats-second-quarter-2019-celebrity-donors/index.html>; see also *Jay-Z and Beyonce Hold Next Round of Celebrity-Hosted Fundraisers*, ABC, <https://abcnews.go.com/Politics/OTUS/photos/hollywoods-fundraisers-obama-sarah-jessica-parker-16323201/image-17260614> (last visited Jan. 3, 2022).

⁸² In the course of my past employment, I planned and attended these types of events.

⁸³ See David D. Kirkpatrick, *To Those Who Gave Much, Much Will Be Given*, N.Y. TIMES (Jan. 15, 2009), <https://www.nytimes.com/2009/01/16/us/politics/16donors.html>.

⁸⁴ *Supra* note 82.

government contracts, [and other] opportunities to influence agency decisions.”⁸⁵ Being an ambassador is very prestigious. There are few other political jobs that come with lavish housing in a foreign country, a staff of housekeepers and chefs, and a job description that includes hosting parties for foreign diplomats.

Presidents appoint many of their top donors as ambassadors, sometimes regardless of a lack of relevant experience or qualifications. As a result, the quality of diplomatic relations suffers, posing a potential threat to U.S. foreign relations. President George H.W. Bush selected one of his top donors as ambassador to Barbados.⁸⁶ His selected candidate lacked not only diplomatic experience but also a relevant employment history and a college degree. President George W. Bush’s nominee for ambassador to Spain spoke no Spanish.⁸⁷ The nominee’s most significant credential, aside from donating over \$100,000 to Bush’s campaign, was that he formerly owned the Seattle Mariners baseball team.⁸⁸ President Obama’s nominee for the Hungarian ambassadorship had previously worked as a producer for the daytime soap opera *The Bold and the Beautiful*.⁸⁹ More than half of President Obama’s ambassador appointees were bundlers who raised over \$500,000.⁹⁰ President Trump appointed the owner of the New York Jets football team as ambassador to the United Kingdom.⁹¹ He had donated over \$450,000 to Trump’s 2016 presidential campaign.⁹²

The legality of this tradition is questionable. The 1980 Foreign Service Act states that ambassadors should possess “useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of that country and its people.”⁹³ The Act explicitly states that “contributions to political campaigns should not be a factor.”⁹⁴ However, it appears that presidents have largely ignored that part of the law. In recent decades, about one third of presidential ambassador appointments have been “political appointments” as opposed to “career appointments.”⁹⁵ Political appointees are those who come from *outside* the State Department or careers in the Foreign Service.⁹⁶ Career appointees come from within the State Department’s professional diplomatic corps.⁹⁷ Political appointments are usually justified by reference to the appointee’s success in their own, often unrelated, industry.⁹⁸ During his presidency, Trump pushed the ratio of political to career appointees even

⁸⁵ Overby, *supra* note 39.

⁸⁶ Ryan Scoville, *Unqualified Ambassadors*, 69 DUKE L.J. 71, 74 (2019).

⁸⁷ *Appointments—George W. Bush*, AM. FOREIGN SERV. ASS’N, <http://www.afsa.org/appointments-george-w-bush> (last visited Mar. 19, 2021); *Bush’s Baseball Ambassadors*, MOTHER JONES (July/Aug. 2004), <https://www.motherjones.com/politics/2004/07/bushs-baseball-ambassadors>.

⁸⁸ *Bush’s Baseball Ambassadors*, *supra* note 87.

⁸⁹ Scoville, *supra* note 86, at 73.

⁹⁰ Schulte et al., *supra* note 12.

⁹¹ Scoville, *supra* note 86, at 73.

⁹² *Id.*

⁹³ 22 U.S.C. § 3944.

⁹⁴ *Id.*

⁹⁵ Schulte et al., *supra* note 12.

⁹⁶ Scoville, *supra* note 86, at 75.

⁹⁷ *Id.*

⁹⁸ *Id.* at 73.

further—approximately forty-three percent of his ambassadorship appointments were political.⁹⁹

Research indicates that the tradition of appointing major donors as ambassadors has detrimental political effects. The average political appointee is less qualified than the average career appointee and less effective in office.¹⁰⁰ Evidence shows that political appointees tend to underperform and are associated with reduced quality in an embassy's political and economic reporting.¹⁰¹ This divergence is getting worse. As average campaign contributions have risen, the qualifications of the donors appointed to ambassadorships have fallen.¹⁰² There is plenty of anecdotal evidence supporting this. For example, several of Trump's political appointees faced scrutiny for making partisan comments or were chastised for other public blunders.¹⁰³ A 2012 report conducted by the Office of the Inspector General notes that the ambassador to the Bahamas, who was a major donor and political appointee of President Obama, presided over “an extended period of dysfunctional leadership and mismanagement . . . which . . . caused problems throughout the embassy.”¹⁰⁴ This suggests that when presidents are driven by loyalty to major donors instead of attention to an appointee's credentials and experience, the results are detrimental both at home and abroad. There is cause for concern that the increasing cost of elections, and the subsequent dependence on big donors, is “indirectly degrading the quality of U.S. diplomatic representation overseas.”¹⁰⁵

In light of the obvious donor-to-ambassador pipeline and the international headaches caused by less-than-qualified ambassadors, the Biden White House signaled that it would be less generous with donor ambassadorship appointments than its predecessors.¹⁰⁶ Before Biden took office, reports were that he was “tempering ambassadorial expectations of his big-dollar donors.”¹⁰⁷ In addition, the Democratic Party was pushing for diversity in Biden's cabinet.¹⁰⁸ President Biden's core fundraising base is largely white men.¹⁰⁹ Thus, if he wants to diversify international ambassadors, he will have to stray from his donor pool.

⁹⁹ *Appointments—Donald J. Trump*, AM. FOREIGN SERV. ASS'N, <http://www.afsa.org/appointments-donald-j-trump> (last visited Jan. 3, 2021).

¹⁰⁰ Scoville, *supra* note 86, at 78.

¹⁰¹ *Id.* at 145.

¹⁰² *Id.*

¹⁰³ See Carol Morello, *A Rash of U.S. Ambassadors' Opening Their Mouths and Sticking Their Feet In*, WASH. POST (June 7, 2018), https://www.washingtonpost.com/world/national-security/us-ambassadors-open-their-mouths-and-stick-a-foot-in-it/2018/06/07/40d7862c-69aa-11e8-9e38-24e693b38637_story.html (Richard Grenell, Trump's U.S. ambassador to Germany, was reprimanded for promoting partisan views when he told German businesses investing in Iran to “wind down operations immediately,” and again when he stated he wants to “empower” conservatives throughout Europe. David Friedman, the U.S. ambassador in Jerusalem, also provoked outrage when he told news media that American Republicans support Israel more than Democrats do).

¹⁰⁴ Office of Inspections, ISP-1-12-08A, *Inspection of Embassy Nassau, The Bahamas* (Jan. 2012) <https://www.stateoig.gov/system/files/184725.pdf>.

¹⁰⁵ Scoville, *supra* note 86, at 78.

¹⁰⁶ See Matt Viser & Anne Gearan, *Ambassador sweepstakes underway as figures jockey for plum posts*, WASH. POST (Feb. 15, 2018), https://www.washingtonpost.com/politics/biden-ambassadors-jockeying/2021/02/13/5e3a0f60-6d34-11eb-9f80-3d7646ce1bc0_story.html.

¹⁰⁷ *Id.*

¹⁰⁸ Hans Nichols, *Biden trimming diplomatic posts for top donors*, AXIOS (Jan. 31, 2021), <https://www.axios.com/biden-diplomatic-posts-donors-fdaebf88-5c0a-4f5e-a843-b78e305ed064.html>.

¹⁰⁹ *Id.*

Due to partisan disagreements in the Senate, largely about matters unrelated to the nominees, the Biden administration ended 2021 with significantly fewer confirmed ambassadors than recent predecessors.¹¹⁰ Nonetheless, several major Biden donors were among those appointed to gilded ambassadorships thus far. Coveted posts in Europe—including Austria, Belgium, France and Monaco, Slovenia, Sweden, and Switzerland—were all filled by donors.¹¹¹ Notable appointees also include David L. Cohen, a former Comcast executive who hosted a Biden campaign event raising over \$700,000, as ambassador to Canada; Thomas Nides, Managing Director and Vice Chairman of Morgan Stanley, as ambassador to Israel; Caroline Kennedy, daughter of President John F. Kennedy, as ambassador to Australia; and Michelle Kwan, retired Olympic figure skater, as ambassador to Belize.¹¹² At the start of 2021, news outlets predicted that President Biden would return to the traditional ratio of roughly thirty percent political nominees and seventy percent career appointments.¹¹³

B. ADMINISTRATIVE POSTS AND ACCESS

Over the years, as the number of bundlers and the amounts they bundle have skyrocketed, so have the political favors. During President George W. Bush's eight years in office, he rewarded approximately 200 bundlers with posts in his administration.¹¹⁴ President Obama appointed 184 bundlers to his administration in his first term alone.¹¹⁵ Altogether, Obama rewarded about one third of his bundlers or their spouses with roles in his administration.¹¹⁶ Notably, of the top-tier Obama bundlers (namely those that raised over \$500,000), nearly 80% were appointed to positions that the White House defines as "key administration posts."¹¹⁷ Aside from official roles within the administration, big bundlers earn extraordinary access to the White House for everything from meetings with officials to social events. In the early months of the Obama administration, visitor logs listed approximately 800 visits from bundlers.¹¹⁸ The more money donated, the more frequently a name showed up on the list.¹¹⁹ The revelation that money can buy power and access is not new. Donors in the very top echelon of a president's fundraisers are not just *likely* to get a key role or extraordinary

¹¹⁰ *Senate confirms big slate of Biden ambassadors to end 2021*, CNBC (Dec. 18, 2021), <https://www.cnn.com/2021/12/18/senate-confirms-big-slate-of-biden-ambassadors-to-end-2021.html>.

¹¹¹ See *Biden Administration: Ambassadors*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/biden/ambassadors> (last visited Jan. 2, 2022); See also *List of United States Ambassadors appointed by Joe Biden*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_United_States_Ambassadors_appointed_by_Joe_Biden (last visited Jan. 2, 2022).

¹¹² Jonathan Tamari, *Philly's David L. Cohen confirmed as U.S. ambassador to Canada*, THE PHILA. INQUIRER (Nov. 2, 2021), <https://www.inquirer.com/news/david-l-cohen-confirmed-ambassador-canada-20211102.html>; *Our Relationship - Ambassador Thomas R. Nides*, US EMBASSY IN ISR., <https://www.state.gov/nides-thomas-r-state-of-israel-july-2021> (last visited Jan. 2, 2022); Jeff Zeleny, *Biden picks Michelle Kwan to be ambassador to Belize and Caroline Kennedy to be ambassador to Australia*, CNN POL., (Dec. 16, 2021) <https://www.cnn.com/2021/12/15/politics/michelle-kwan-caroline-kennedy-ambassador/index.html>.

¹¹³ Nichols, *supra* note 108.

¹¹⁴ *10 Things*, *supra* note 38.

¹¹⁵ *Id.*

¹¹⁶ Schulte et al., *supra* note 12.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

access—it is almost guaranteed.¹²⁰ The quality of the reward can be bought. In general, the donors who are awarded positions within an administration donated more money than the donors who merely received an invitation to the presidential Super Bowl party.¹²¹ Ambassadorships, administrative posts, and other benefits are made possible because of loopholes in the current regulatory landscape, as discussed next.

V. REGULATING BUNDLERS

A. CURRENT REGULATORY LANDSCAPE

FECA requires candidates for federal office to disclose when they receive two or more bundled contributions from federally registered lobbyists that, when combined, exceed a certain threshold amount within a “covered period” of time.¹²² In 2020, the lobbyist bundling disclosure threshold was \$19,000.¹²³ However, the FEC regulations leave a loophole—the vast majority of bundlers are not federally registered lobbyists.¹²⁴ Thus, presidential candidates are under no obligation to reveal the activities or identities of the majority of their bundlers. Voluntary disclosure has varied among candidates in the past, but most candidates release at least some information.¹²⁵

In *Buckley v. Valeo*,¹²⁶ the Supreme Court explained that its concern regarding large campaign contributions was that they would be used to “secure political quid pro quo,” leading to corruption. Fifteen years later, in *McCormick v. United States*,¹²⁷ the Supreme Court refined the *Buckley* ruling, holding that campaign contributions “cross the line into illegal bribery or extortion only if made in return for an explicit quid pro quo agreement from an official to perform or not perform a specific act.”¹²⁸ Thus, while the Court considered campaign donations to be free speech, it acknowledged that, at certain thresholds, donations can function as bribes.¹²⁹ The requirement for an explicit quid pro quo agreement is the legal shield that protects many bundlers from crossing that line.

¹²⁰ See *id.* (noting that the percentage of bundlers and their spouses that receive a role within the administration is much higher for the bigger-dollar bundlers).

¹²¹ See *id.* (comparing the rewards given to those who donated over \$500,000 with those who donated over \$200,000); see also *10 Things*, *supra* note 38 (“It is clear that bigger bundlers get more recognition.”).

¹²² 11 C.F.R. § 104.22.

¹²³ *Id.* § 110.17(e)(2); *Lobbyist bundling disclosure threshold increases (2020)*, FED. ELECTION COMM’N., (Feb 13, 2020), <https://www.fec.gov/updates/lobbyist-bundling-disclosure-threshold-increases-2020>.

¹²⁴ Thomas J. Spulak, *Most Effective Bundlers Are Not Registered Lobbyists*, THE HILL (Feb. 7, 2012, 1:04 AM), <https://thehill.com/opinion/op-ed/105180-most-effective-bundlers-are-not-registered-lobbyists/amp>.

¹²⁵ See *Hillary Clinton’s Bundlers*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/pres16/bundlers> (last visited Jan. 3, 2022); see also *Volunteer Fundraisers*, DEMOCRATIC NAT’L COMM., <https://joebiden.com/asmfr200830jkl/#> (last visited Apr. 27, 2022). Both the 2016 Clinton campaign and the 2020 Biden campaign released information about bundlers who raised over \$100,000. The Trump campaign released no information about its bundlers from 2016 or 2020.

¹²⁶ *Buckley v. Valeo*, 424 U.S. 1, 26 (1976).

¹²⁷ *McCormick v. United States*, 500 U.S. 257 (1991).

¹²⁸ Illisa B. Gold, *Explicit, Express, and Everything in Between: The Quid Pro Quo Requirement for Bribery and Hobbs Act Prosecutions in the 2000s*, 36 WASH. UNIV. J. L. & POL’Y 261, 262 (2011).

¹²⁹ See *McCormick v. United States*, 500 U.S. 257 (1991).

The explicit agreement standard is a paper-thin shield. The Supreme Court has valid reason for concern about quid pro quo corruption, but quid pro quo agreements are not the only source of corruption. In fact, among both Democrats and Republicans, there is almost unanimous agreement that this is a “hopelessly stunted perspective of a much richer disease.”¹³⁰ Even without an explicit quid pro quo arrangement, a political system that is almost exclusively funded by “direct contributions from a tiny fraction of the wealthiest one percent of the population” has been corrupted.¹³¹

To find proof, one need look no further than the policies enacted by our government. On the one hand, in one of the largest empirical studies of actual government decisions, data demonstrates a strong connection between enacted public policy and the preferences of the economic elite.¹³² On the other hand, there is a “miniscule, near-zero, statistically non-significant” connection between the average voter’s preferences and public policy.¹³³ Clearly, twenty-first-century corruption rears its head in subtler and more cunning ways than just explicit quid pro quo.

B. VOLUNTARY DISCLOSURE

Aside from the Court’s corruption concerns, the lack of disclosure regarding bundlers is a concern for voters. When voters are left in the dark about a candidate’s financiers, they lack vital information about a candidate’s allegiances. It is impossible to wholly evaluate a candidate without knowing to whom or to what industries the candidate may be indebted. Voters thus scarcely understand a candidate’s real policies or corruptibility. Current regulations do not require candidates to disclose information about their bundlers, but most voluntarily do to some extent.

Voluntary disclosure is problematic for many reasons. The first pertains to frequency and timing. Candidates are required to release information about their registered lobbyist bundlers on a monthly basis, allowing constituents to regularly monitor a candidate’s financial backing.¹³⁴ When bundlers are not registered lobbyists, disclosure is voluntary, and candidates can choose to release information as infrequently as they want.¹³⁵ There are also no rules about when that information needs to be publicized. President Biden released the list of bundlers from his 2020 campaign only days before the election.¹³⁶ At that point, millions of Americans had already voted via vote-by-mail ballots. Biden’s list consisted of 818 names.¹³⁷ Even the most diligent of investigative journalists, let alone a regular voter, would have been unable to thoroughly evaluate that list prior to election day.

¹³⁰ Lawrence Lessig, *The Clintons, ‘Citizens United’ and 21st-Century Corruption*, THE WASH. POST, May 9, 2015, at A17.

¹³¹ *Id.*

¹³² See generally Martin Gilens & Benjamin I. Page, *Perspectives on Politics*, 12 AM. POL. SCI. ASS’N 564 (2014) (finding that the preferences of economic elites have more impact on policy change than the preferences of average citizens).

¹³³ *Id.* at 575.

¹³⁴ 11 C.F.R. § 104.22(5).

¹³⁵ See generally *Id.*, which only mandates that candidates disclose federally registered lobbyists.

¹³⁶ Fredreka Schouten, *Joe Biden Discloses Names of Elite Fundraisers*, CNN POL. (Nov. 1, 2020), <https://www.cnn.com/2020/11/01/politics/joe-biden-bundlers-released/index.html>.

¹³⁷ *Volunteer Fundraisers*, *supra* note 125.

The second problem with voluntary disclosure is scope. Candidates are free to choose what information, and how much of it, they provide. Biden released the name, city, and state of each of his bundlers.¹³⁸ Anyone looking at the list, however, would be hard pressed to actually identify who “Jennifer Anderson from Los Angeles, California,” is.¹³⁹ Without the additional information required under other campaign finance regulations, such as street addresses or employment information, it is often extremely difficult to ascertain who an individual is. In addition, the amount a bundler amassed is often provided as a range—for example, \$100,000 to \$250,000; \$250,000 to \$500,000; and over \$500,000. Who in the first category raised \$100,000, and who raised \$250,000? If someone is identified in the last category, did they contribute \$500,001? One million dollars? Ten million? Recent campaigns have released just one list with no more specific delineation than that everyone on the list raised at least \$100,000.¹⁴⁰ We know that the more a bundler collects, the better the chance that the bundler will be rewarded with an influential favor. Thus, it is important that voters can differentiate the \$100,000 fundraisers from the \$10 million ones.

The final problem with voluntary disclosure is quality. There is no way to know if a candidate’s disclosure includes all of their bundlers or omits some. There is no way to know if the information such as the bundler’s city, state, or employer is accurate. For example, some of the employers listed are single-purpose entities, not actual corporations that have employees.¹⁴¹ Some bundlers are listed simply as “self-employed” with no reference to a specific industry or company name.¹⁴² There is nothing preventing a bundler from self-reporting a misleading city or state. For example, a bundler from a small suburban town may list the adjacent large city as his home city in order to preserve some level of anonymity.

C. ARGUMENTS AGAINST DISCLOSURE

Critics of increased bundler disclosure argue that the benefits of the information gained is marginal compared to the burdens of disclosure.¹⁴³ Donors may be concerned with having their personal information readily available for others to find and potentially abuse. Critics fear that the FEC database and other sources of donor information are misused by “prospective employers, private investigators, nosy neighbors, and ne’er-do-wells.”¹⁴⁴ This fear of exposure may discourage people from donating to a candidate or party, undermine privacy rights, or enable disclosure-related harassment. The Supreme Court is sympathetic to fears of harassment originating from political disclosure and has held that the First Amendment prohibits the government from enforcing disclosure where the disclosure will subject one

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See generally *Hillary Clinton’s Bundlers*, *supra* note 125; see also *Barack Obama’s Bundlers*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/pres12/bundlers.php> (last visited Jan. 3, 2022).

¹⁴² See generally *Hillary Clinton’s Bundlers*, *supra* note 125; see also *Barack Obama’s Bundlers*, *supra* note 141.

¹⁴³ Hayward, *supra* note 15, at 6.

¹⁴⁴ Eric Wang, *Disclosure’s Unintended Consequences*, THE HILL (Sept. 13, 2013), <https://thehill.com/blogs/congress-blog/technology/323135-disclosures-unintended-consequences-#ixzz2fNXQZWhx>.

to a “reasonable probability” of “threats, harassment, or reprisals.”¹⁴⁵ However, in general, the Court says that as long as disclosure has a “substantial relation” to a “sufficiently important government interest,” disclosure does not violate the First Amendment.¹⁴⁶

Another frequent argument against disclosure is that it chills participation, and we should want to encourage, not discourage, engagement in the political process.¹⁴⁷ If the chilling effects outweigh the informational benefit, as some critics argue, then required disclosure is a detriment to the electorate. This perspective that mandatory disclosure fails to better inform voters relies on the assumption that the detrimental effects of chilled speech outweigh the relative gain of information. Data does not support this assumption.¹⁴⁸ Rather, evidence shows that the chilling effects of disclosure are negligible.¹⁴⁹ People continue to contribute regardless of disclosure requirements. Chilling effects are negligible even among groups most vulnerable to backlash—high-spending contributors and ideological outliers.¹⁵⁰

Another group that warrants consideration is small-dollar donors. The fear of exposure, coupled with the knowledge that small donations are not likely to significantly affect an election, may deter contributions. Details of small donations and expenditures are not generally informative to voters. Thus, for small contributors, the value of the disclosure may not be outweighed by the chilling effect. The important consideration is not whether disclosure has *any* chilling effect, but whether, on balance, the chilling effects *outweigh* the informational gains. As evidenced above, disclosure does not noticeably chill speech and, thus, it need not provide a great deal of information to still constitute good policy. In light of the limitations of voluntary disclosure, new methods of regulating campaign finance are critical. The final section of this Note considers several options.

VI. SUGGESTIONS FOR REFORM

A. PUBLIC FINANCING

One possible large-scale reform option is to update, or require the use of, the public financing system. For many years, the public financing system worked to level the playing field and to limit the influence of wealthy individuals.¹⁵¹ Among the most cited rationales for public funding are “to

¹⁴⁵ *Brown v. Socialist Workers Comm.*, 459 U.S. 87, 88 (1982) (quoting *Buckley v. Valeo*).

¹⁴⁶ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 366–67 (2010) (quoting *Buckley v. Valeo*).

¹⁴⁷ Hayward, *supra* note 15, at 4.

¹⁴⁸ See Wood & Spencer, *supra* note 16 (finding that in state elections, fewer than one donor per candidate is likely to refrain from future donations when those future donations are subject to increased disclosure and visibility).

¹⁴⁹ *Id.* at 315.

¹⁵⁰ *Id.* The study indicates that big contributors tend to be repeat contributors. The study does not find that these contributors are deterred, at least not at statistically relevant levels, from contributing in the future when disclosure requirements increase. *Id.* Although the results do not reach definitive statistical levels, it appears that enhanced disclosure does not deter this high-spending group. In addition, “research suggests that conservatives, whether measured in terms of absolute ideology or ideological distance from one’s neighbors, are not measurably more deterred than their liberal neighbors and compatriots.” *Id.* at 316.

¹⁵¹ Parti, *supra* note 18.

control the growth of spending, to diminish the role of ‘special interest’ contributors looking for political favors, to enhance electoral competition, and to improve representation.”¹⁵² Currently, taxpayers can designate three dollars to go into the public financing fund, called the Presidential Election Campaign Fund, by checking a box on their income tax return.¹⁵³ In recent decades, however, very few people elect to contribute.¹⁵⁴ The Presidential Election Campaign Fund is now merely a relic of a formerly effective system. The Fund can only provide candidates with a fraction of the amount necessary to run a successful campaign. Even Senator Bernie Sanders, a staunch advocate for campaign finance reform and keeping big money out of politics, said, “Nobody can become president based on that system.”¹⁵⁵ Neither Trump nor Clinton chose public financing in 2016.¹⁵⁶ Trump raised over \$430 million for his winning campaign.¹⁵⁷ Clinton raised approximately \$770 million.¹⁵⁸ If either candidate had opted in to the system in 2016, they each would have qualified for up to just \$48 million for the primary and \$96 million for the general election, leaving them hundreds of millions of dollars short of what they were able to raise themselves.¹⁵⁹ The program needs to be updated to align with the expense of running a modern campaign in order to be a viable financing option for candidates.

Public funding programs have the potential to combat many of the ills caused by big money. Primarily, a public financing system is a way to subsidize a candidate’s campaign spending. In light of the exponentially increasing cost of running for president, this may be a compelling incentive for many candidates. Public funding also has the potential to alleviate some of the major defects in American elections, including “high average costs, low average competition, the appearance of corruption, and the burden that fundraising places on campaigns.”¹⁶⁰ By providing candidates with the money to run their campaigns and capping spending at the amount provided, public funding systems reduce the overall cost of elections. In addition, availability of public funds abates a candidate’s reliance on bundlers and special interest donors. This makes it less likely that a candidate’s big donors will gain undue political influence. Finally, candidates spend an inordinate amount of time fundraising. Subsidies allow incumbents more time to do the

¹⁵² MICHAEL G. MILLER, *SUBSIDIZING DEMOCRACY*, 12–13 (2014).

¹⁵³ *Public Funding of Presidential Elections*, FED. ELECTION COMM’N., <https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections> (last visited Jan. 3, 2022).

¹⁵⁴ Aravind Boddupalli & Erin Huffer, *Rethinking The Presidential Election Campaign Fund*, TAX POLICY CTR. (July 25, 2019), <https://www.taxpolicycenter.org/taxvox/rethinking-presidential-election-campaign-fund> (“The share of filers who check the box has declined from about 28 percent in 1976 (the first presidential election year for which funds were available) to 4 percent in 2018.”).

¹⁵⁵ Marilyn W. Thompson, *The Price of Public Money*, THE ATLANTIC (May 27, 2016), <https://www.theatlantic.com/politics/archive/2016/05/the-price-of-public-money/484223>.

¹⁵⁶ *Id.* Maryland Governor Martin O’Malley was the only 2016 presidential contender to seek public funds.

¹⁵⁷ *2016 Presidential Race*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/pres16> (last visited Jan. 3, 2022).

¹⁵⁸ *Id.*

¹⁵⁹ Thompson, *supra* note 155.

¹⁶⁰ MILLER, *supra* note 152, at 18. American elections tend to be uncompetitive because incumbents consistently win over new challengers by wide margins. This is because new candidates who do not have an established funding network struggle to raise sufficient funds. As a result, they cannot keep pace financially with the incumbent, which causes turnover to be unlikely and difficult.

job they were elected to do instead of spending time raising money for their reelection campaigns. It also allows challengers greater control over how they spend their campaign time.

One way to guarantee use of public financing is to make the program mandatory. Any individual running for president would be required to opt in to the system and would not be allowed to fundraise privately. Subsidies are already a popular tool in many state elections. In fact, nearly half of states already use some form of voluntary public funding.¹⁶¹ The state systems vary, but one commonality is that all participating candidates must abide by spending limits.¹⁶² The state systems are both a helpful blueprint from which to create a federal program and proof that public funding is a practicable alternative. Public financing holds great potential to reduce, or perhaps even eliminate, the reliance on bundlers and other private donors who may expect favors in return for their contributions.

B. CAMPAIGN LENGTH

One reason elections in the United States are so expensive is that the candidates typically begin campaigning far in advance of election day.¹⁶³ Reducing the length of campaigns would reduce the amount of money candidates need to run, thus reducing the need to rely on bundlers. Many other countries designate an official campaign season. Their laws establish the length of campaign periods, thereby barring candidates from embarking on excessively long and expensive campaign trails. In Mexico, campaigns start ninety days before election day.¹⁶⁴ In France, presidential campaigns are typically two weeks long.¹⁶⁵ Restricting campaign advertising to a limited period would significantly reduce the amount of money needed to run a campaign.

On October 21, 2015, then Vice President Joe Biden announced that he would not be running for president in 2016 because he was “out of time” to mount a winning campaign.¹⁶⁶ Election day was 384 days away.¹⁶⁷ It likely costs millions of dollars to run advertisements for a year and a half. This figure could be cut significantly if presidential hopefuls were limited to a finite time during which they could spend money advertising their candidacy. The United States’ ultramarathon style of campaigning is inevitably expensive, not to mention exhausting for candidates and voters alike. A regulation defining an official campaign season and limiting the amount of time a candidate has to spend money would reduce the amount a candidate needs to raise and limit the potentially corrupting influence of large political donations.

¹⁶¹ *Id.* at 21.

¹⁶² *Id.*

¹⁶³ Danielle Kurtzleben, *Why are U.S. Elections So Much Longer Than Other Countries?*, NPR (Oct. 21, 2015), <https://www.npr.org/sections/itsallpolitics/2015/10/21/450238156/canadas-11-week-campaign-reminds-us-that-american-elections-are-much-longer>.

¹⁶⁴ *Id.* In Mexico, general election campaigns must stop three days prior to the election. Mexico also has a sixty-day “pre-campaign” season during which candidates compete to earn the nomination.

¹⁶⁵ *Id.*

¹⁶⁶ Gabriel Debenedetti & Nick Gass, *Biden Not Running for President*, POLITICO, <https://www.politico.com/story/2015/10/biden-215013> (last updated Oct. 21, 2015).

¹⁶⁷ Election day was November 8, 2016.

C. ADVERTISING RESTRICTIONS

Restrictions on advertising time and placements could also reduce the cost of running a campaign. Under the Canada Elections Act, candidates can only purchase six and a half hours of airtime.¹⁶⁸ A similar limitation in the United States could result in significantly lower campaign costs. Estimates indicate that, in the 2020 presidential campaign, Trump spent 41% of his advertising costs, over \$174 million, on broadcast TV ads.¹⁶⁹ Biden is estimated to have spent 44% of his advertising budget, over \$249 million, on broadcast TV ads.¹⁷⁰ Both candidates also spent millions of dollars on local and national cable ads, as well as satellite TV ads.¹⁷¹ Television advertising is one of the largest items in a campaign budget.¹⁷² A regulation limiting the amount of airtime a candidate can purchase would considerably lessen the cost of their campaign.

One option for limiting advertising time is to implement an overall time limit on broadcast TV ads. For example, each candidate could be allocated ten hours total of broadcast TV time for the duration of their campaign. This would allow the candidate to divide their allotted time as they wish. A candidate could use all ten hours in the last sixty days of their campaign or spread it out over a couple of months. Another option would be to restrict political ads to certain times. For example, political ads on broadcast TV could be confined to air only from 5:00 PM to 8:00 PM. Regulations could also be implemented restricting the placement of political ads—for example, prohibiting political ads during children’s programming or sports broadcasts or, alternatively, permitting political ads only during news broadcasts. More restrictive legislation could even eliminate political advertising on broadcast TV completely or eliminate it during a set time period, say, sixty days, preceding the election. This would force candidates to rely on other, less expensive, advertising mediums, such as digital and radio.

Further, political ads are not distributed evenly across markets. Over 8,800 presidential ads ran in Miami, Florida, prior to the 2020 presidential election compared to just over 3,700 airings in Charlotte, North Carolina, even though the population of Charlotte is almost double the population of Miami.¹⁷³ It is logical for a candidate to run more ads and spend more money in swing states and battleground counties. Regulations capping the number of total ad airings would require candidates to place their ads strategically instead of inundating certain markets. Alternatively, regulations could cap political ad airings per market to prohibit flooding the market with advertisements. Regulations limiting ad placements could go a long way toward reducing the amount of big money in politics.

¹⁶⁸ *Regulation of Campaign Finance and Free Advertising: Canada*, LIBRARY OF CONGRESS, <https://www.loc.gov/law/help/campaign-finance-regulation/canada.php> (last updated Dec. 30, 2020).

¹⁶⁹ *Presidential General Election Ad Spending Tops \$1.5 Billion*, WESLEYAN MEDIA PROJECT (Oct. 29, 2020), <https://mediaproject.wesleyan.edu/releases-102920/#table1> (Table 1).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* (Table 4). The population of Charlotte is approximately 857,425. The population of Miami is approximately 454,279.

D. CHALLENGING *BUCKLEY V. VALEO*

Unfortunately, the above three suggestions—mandating public financing, delineating a specified campaign period, and restricting advertisements—would likely be challenged on First Amendment grounds. In *Buckley*, the Court established that spending money for political campaigns is a form of speech protected by the First Amendment.¹⁷⁴ If money equals speech, then reforms that dictate when, where, or how much a candidate can spend are unconstitutional. In later cases, the Court solidified this stance 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.”¹⁷⁵ More recently, the Court expanded the scope of the “appearance of corruption” rationale to include the “appearance of influence.”¹⁷⁶ The current circumstances surrounding campaign spending demonstrate the need to revisit *Buckley* in light of modern-day varieties of corruption and influence.

Today, our public elections are supported largely by private financing. Due to the considerable cost of running a presidential campaign, those with money, or access to money, dominate the fundraising process and invariably choose the candidates that go on to govern the country. In this system, those who cannot raise enough money almost always lose. The economic elite do not merely influence which candidate names appear on the ballot; they *select* which names appear on the ballot. The general population is excluded from this critical part of the election process. The existing system undermines and corrupts the right to vote and the right to engage in meaningful and equal participation. Equal protection rights are meant to protect all Americans, not just well-financed candidates and their wealthy contributors. *Buckley* overlooks this important issue.

The constitutional question posed by campaign finance regulations (such as mandating public financing, delineating a specified campaign period, and restricting advertisements) is also about protecting the First Amendment rights of the candidates and voters who are left behind in the fundraising process. For now, *Buckley* still stands. However, there are many other viable reform options that do not require constitutional upheaval.

E. AMBASSADORSHIPS

Under the Appointments Clause, the president has exclusive power to nominate ambassadors.¹⁷⁷ A foreign ambassadorship is one of the most sought-after, and most common, rewards given to high-volume bundlers after a presidential campaign. It is no coincidence that relatively underqualified bundlers obtain appointments in the most attractive countries for tourism.¹⁷⁸ A regulation that establishes qualification requirements for

¹⁷⁴ *Buckley v. Valeo*, 424 U.S. 1, 55 (1976).

¹⁷⁵ *FEC v. National Conservative PAC*, 470 U.S. 480, 496–97 (1985).

¹⁷⁶ See *Nixon v. Shrink Mo. Gov't Pol. Action Comm.*, 528 U.S. 377 (2000); see also *McConnell v. FEC*, 540 U.S. 93, 93 (2003).

¹⁷⁷ U.S. Const. art II, § 2.

¹⁷⁸ Johannes Fedderke & Dennis Jett, *What Price the Court of St. James? Political Influences on Ambassadorial Postings of the United States of America*, 30 *GOVERNANCE* (OXFORD) 483, 492 (2017)

nominees could impede the ease with which a president can promote donors to ambassadors. Over the years legislators have made various attempts at this. Representative Patsy Mink (D-HI) introduced a bill in 1973 providing that anyone who “contributes more than \$5,000 to the political campaign of a presidential candidate shall be ineligible to serve as an ambassador.”¹⁷⁹ Adjusted for inflation, that contribution limit today would disqualify anyone who contributes more than roughly \$32,000. Senator Charles Mathias (R-MD) offered a bill to require that at least eighty-five percent of all occupied ambassadorships be filled by career appointees, as opposed to political appointees.¹⁸⁰ Some variation of either or both propositions would be beneficial in assuring that the president cannot simply hand critical ambassador positions to favored campaign donors.

Critics of this approach may argue that congressional restrictions would unduly restrict the president’s power under the Appointments Clause. In *Myers v. United States*,¹⁸¹ the Supreme Court noted that Congress has the power to prescribe “reasonable and relevant qualifications and rules of eligibility of appointees” as long as the specific qualifications “do not so limit selection and so trench upon executive choice as to be in effect legislative designation.” There are many “reasonable and relevant”¹⁸² restrictions that Congress could implement. Congress could impose a limitation only upon those who both (1) make an election contribution in excess of a specified amount to the nominating president and (2) lack training and experience pertaining to the country of nomination. Such a rule would be reasonable because it would likely only affect nominations motivated by past financial support and would be narrowly tailored only to affect nominees who exhibit multiple risks of incompetency. Further, the rule is relevant because it would assure that ambassadors are knowledgeable about the country to which they are appointed.

While the Appointments Clause grants the president power to nominate ambassadors, the Senate must approve the appointments.¹⁸³ The Senate is thus complicit in approving unqualified bundler nominations. They have the power to reject unqualified ambassadors but virtually never do.¹⁸⁴ This would be an easy place to begin. The hurdle would be convincing senators to change the status quo. The Senate is extremely deferential to the president when it comes to ambassadorship appointments.¹⁸⁵ Instead, senators could use the power conferred upon them by the Constitution to carefully scrutinize candidates’ qualifications on a case-by-case basis. Giving adequate consideration to nominees could go a long way in eliminating the current quid pro quo of dollars for diplomat nominations. It would also discourage corruption, encourage meritocracy, and strengthen U.S. foreign relations.

(noting that political appointees are more likely to be awarded ambassadorships in Western Europe, the Caribbean, and Central and North America).

¹⁷⁹ H.R. 9555, 93d Cong. (1973).

¹⁸⁰ See 120 Cong. Rec. 33,484 (1974).

¹⁸¹ *Myers v. United States*, 272 U.S. 52, 128–29 (1926).

¹⁸² *Id.*

¹⁸³ U.S. Const. art II, § 2.

¹⁸⁴ ELMER PLISCHKE, UNITED STATES DIPLOMATS AND THEIR MISSIONS 48 (1975) (reporting that less than 3% of ambassadorial nominees from 1778 to 1975 failed to be appointed).

¹⁸⁵ *Id.*

F. ONLINE ORGANIZATION

Even if the barriers to sufficiently reform, or mandate the use of, the Presidential Election Campaign Fund are too high for lawmakers to overcome, Americans can change the system themselves. While wealth has long been among the biggest influences on politics, organization is an equally powerful tool. Online fundraising platforms such as ActBlue and WinRed indicate that the idea behind public financing—gathering numerous small donations—works. This is a potentially successful response to a political environment that is disproportionately dominated by the wealthy.

Donors across income levels are pooling small donations to aggregate amounts that have the potential to rival those of large donors. In September 2020 alone, ActBlue processed \$758 million.¹⁸⁶ The exponential growth¹⁸⁷ of online fundraising platforms has the potential to fundamentally reshape money in politics on all levels. Donations through ActBlue are directed not just toward presidential elections, but also down the ballot to Senate races and state legislative candidates and parties.¹⁸⁸ Online platforms democratize fundraising by giving small donors a chance to rival the influence of larger donors. Between July and September 2020, there were 31.4 million donations made through ActBlue.¹⁸⁹ The average contribution was \$47 per donation, and most donors gave more than once.¹⁹⁰ Thus, small-dollar donors can be a renewable resource for candidates as hopeful electees extract multiple contributions from the same donor throughout their campaigns. WinRed is a growing source of revenue for the Republican party, though still behind the Democrats' fundraising behemoth, ActBlue.¹⁹¹ Online grassroots donors may be the path to a democratic process that is empowered by the people, as opposed to one that is enabled by the ultra-wealthy.

G. DISCLOSURE LOOPHOLES

Campaigns disclose their contributions and expenditures per reporting obligations.¹⁹² The reports are filed with campaign finance regulators who then publicize the data.¹⁹³ Intermediaries such as the media, political opponents, and campaign finance watchdog groups then summarize,

¹⁸⁶ Elena Schneider, *ActBlue's Stunning Third Quarter: \$1.5 billion in Donations*, POLITICO (Oct. 15, 2020), <https://www.politico.com/news/2020/10/15/actblues-stunning-third-quarter-15-billion-in-donations-429549>.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ See Zach Montellaro, *GOP raises over \$620M through WinRed in third quarter*, POLITICO (Oct. 15, 2020), <https://www.politico.com/news/2020/10/12/gop-raises-over-620m-through-wired-in-third-quarter-428983>. WinRed reported that, as of October 2020, donors had contributed over \$416 million in the 2020 election cycles. The platform also reported that 317,000 donors had contributed to that sum. Although these figures still linger far behind the contributions reported by ActBlue, WinRed has seen monumental growth since the platform first launched in mid-2019. More than 90% of Republican House and Senate members are now on the platform. WinRed President Gerrit Lansing also said that “[f]or the top []40 fundraising House and Senate campaigns (and national party committees), WinRed has processed 52 percent of all fundraising since the platform launched earlier this cycle.” *Id.* This widespread adoption indicates that there is growing support for the platform. Republicans are hopeful that the platform will soon close the gap between Democratic and Republic fundraising.

¹⁹² Abby K. Wood, *Campaign Finance Disclosure*, 14 ANN. REV. L. & SOC. SCI. 11, 13 (2018).

¹⁹³ *Id.*

package, and present the data to the public.¹⁹⁴ Many groups, including lobbyist bundlers, “who receive or spend above a regulatory minimum must register with the campaign finance regulator.”¹⁹⁵ Candidates are currently required to report bundled contributions by filing FEC form 3L—Report of Contributions Bundled by Lobbyist/Registrants and Lobbyist Registrant PACs.¹⁹⁶ As the name suggests, however, the form, and thus the disclosure requirement, only applies to registered lobbyists.

Additional disclosure requirements are necessary to eliminate the loophole that makes disclosure of bundled contributions mandatory only for registered lobbyists.¹⁹⁷ If candidates disclosed the same information about all their bundlers, regardless of lobbyist status, voters would gain a more complete picture of them, their loyalties, and their conflicts. Candidates could file a disclosure for any individual, corporation, or group from which the candidate has received two or more bundled contributions in excess of a fixed amount, say, \$15,000. To eliminate guesswork for voters, the form could include the name, address, and employer of not just the bundler, but also the individual donors who gave to the bundler. Each donor’s contribution and the aggregate bundled contributions should be included as well. This format would easily link the bundler and their contributors. Closing this loophole would provide voters with valuable details about a candidate’s financial backing. In addition, because the form and filing process are already in place, this would be an easy change to implement.

H. FEC ENFORCEMENT

Bundlers do not always have corrupt intent. The majority bundle donations lawfully and ethically without ulterior motives. The remedy for the minority that do have bad intentions may not be adding more regulations into the mix but, rather, improving enforcement of current laws.

It is the FEC’s responsibility to enforce campaign finance laws.¹⁹⁸ However, the Commission is repeatedly immobilized by a lack of quorum.¹⁹⁹ From July 2020 to December 2020, the FEC, short of quorum, amassed a backlog of 446 cases.²⁰⁰ Although most political donors follow campaign finance laws even without the oversight of a functioning enforcement body, the concern is over those that do not. To guard against opportunists, the President and the Senate have to prioritize maintaining an FEC quorum.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Federal Election Commission Instructions for FEC Form 3L*, FED. ELECTION COMM’N., (Mar. 2009) <https://www.fec.gov/resources/cms-content/documents/fecfrm3li.pdf>.

¹⁹⁷ See 11 C.F.R. § 104.22(6)(b) (stating the current regulation for reporting requirements for lobbyist/registrant bundled contributions).

¹⁹⁸ *Mission and History*, *supra* note 24.

¹⁹⁹ See Brian Naylor, *As FEC Nears Shutdown, Priorities Such As Stopping Election Interference on Hold*, NPR (Aug. 30, 2019) <https://www.npr.org/2019/08/30/755523088/as-fec-nears-shutdown-priorities-such-as-stopping-election-interference-on-hold> (discussing an FEC shutdown due to lack of quorum in August 2019).

²⁰⁰ Brian Naylor, *The Federal Election Commission Can Finally Meet Again. And It Has A Big Backlog*, NPR (Dec. 24, 2020), <https://www.npr.org/2020/12/24/949672803/the-federal-election-commission-can-finally-meet-again-and-it-has-a-big-backlog>. In July 2020, one Commissioner resigned, thus leaving the FEC without a working quorum of four Commissioners. *Id.* Following Senate action in December 2020, the FEC reached a quorum—it had three Democrats, two Republicans, and one Independent.

When a Commissioner resigns, or their term expires, the President should promptly nominate a new Commissioner for Senate approval. Otherwise, the FEC will continue to have long idle periods, leaving the door wide open for campaign finance violations.

Even if the FEC can maintain a quorum long enough to get through its backlog of enforcement issues, those who know the agency best are still wary of how much it can accomplish. Adav Noti, former FEC associate counsel, notes that the FEC structure leads to mostly “partisan deadlocks in all but the most trivial of cases.”²⁰¹ The FEC is run by six Commissioners.²⁰² By law, no more than three can represent any one political party, and at least four votes are required to take any official action.²⁰³ As such, the Commission is frequently divided along party lines.

The For the People Act of 2021, also known as H.R. 1, proposes viable solutions to the shortcomings of the current FEC. The bill reduces the FEC to five Commissioners, with no more than two from any one political party, and at least one political independent.²⁰⁴ This would diminish the likelihood of every vote ending in a tie and make the agency more effective. Gridlock in the FEC harms honest candidates who rely on the Commission to provide clear and consistent rules. H.R. 1 also, among other reforms, proposes a bipartisan process for vetting Commissioner nominees, assigns a real Commission leader who is accountable to the President, and ends the practice of allowing commissioners to stay in office after their six-year term expires.²⁰⁵ The bill passed in the House but died in the Senate in March 2021.²⁰⁶ A compromise proposal keeping many of the key provisions from H.R. 1, called the Freedom to Vote Act, was introduced in September of 2021 but was ultimately rejected in the Senate.²⁰⁷ Dysfunction at the enforcement agency makes it more difficult to follow the laws and easier to break them. More needs to be done to curtail partisan stalemates and hold leadership accountable. Both the For the People Act and the Freedom to Vote Act would improve the efficiency of the FEC and its enforcement power. Corrupt donors will continue to prosper until there is genuine threat of retribution.

I. PRISONER’S DILEMMA

In a New York Times article titled “The Billionaire’s Buyout Plan,” Warren Buffett, one of the most successful investors in the world, famously offered his own suggestion for political finance reform. Buffet postulates a bill that would raise the individual contribution limit but prohibit contributions from all other sources, including corporations.²⁰⁸ It is improbable that such a bill would pass, considering Congress’s reliance on large donations. With this in mind, Buffet suggests that an “eccentric

²⁰¹ *Id.*

²⁰² *Leadership and Structure*, FED. ELECTION COMM’N., <https://www.fec.gov/about/leadership-and-structure> (last visited Jan. 3, 2022).

²⁰³ *Id.*

²⁰⁴ H.R. Res. 1 § 6002.

²⁰⁵ *Id.*

²⁰⁶ H.R. Res. 1, 117th Cong. (2021).

²⁰⁷ S. Res. 2747, 117th Cong. (2021).

²⁰⁸ Warren Buffett, *The Billionaire’s Buyout Plan*, N.Y. TIMES (Sept. 10, 2000), <https://www.nytimes.com/2000/09/10/opinion/the-billionaire-s-buyout-plan.html>.

billionaire” make an offer to donate one billion dollars if the bill fails to the political party that cast the most votes toward passing the bill.²⁰⁹ He hypothesizes that, “[g]iven this diabolical application of game theory, the bill would sail through Congress and thus cost [the eccentric billionaire] nothing.”²¹⁰ The billionaire’s promise would induce legislators to support the bill, even if only to prevent the money from being awarded to the other side. Buffet’s conjecture spotlights just how much large contributions unduly influence congressional votes. While the Billionaire Buyout Plan is merely a “fanciful thought experiment”²¹¹ aimed at exposing the absurdity of the current political financing system, it exposes a profound reality: one of the greatest barriers to finance reform is convincing politicians to pass legislation that is against their self-interest. Perhaps the way to convince politicians to do so is to force them into a prisoner’s dilemma.²¹² Regardless, without campaign finance reform, Buffet warns us that “we are well on our way to ensuring that a government of the moneyed, by the moneyed, and for the moneyed shall not perish from the earth.”²¹³

VII. CONCLUSION

It is concerning that insiders can exchange stacks of campaign contributions for powerful government positions and insider access. Once industry shills have bought their way in, they can influence regulatory agencies to benefit their own interests. When bundlers are rewarded with positions such as ambassadorships, their inexperience and lack of qualifications can make them more foreign relations nuisances than diplomats. Despite the rise of bundlers as sources of campaign funding, little has been done to curtail the influence of these wealthy individuals on our elections. Many bundlers are well-intentioned political advocates who strive to make a difference and to be involved in the political process. However, disclosure loopholes, a lack of regulation, and seductive rewards create a tempting environment for bundlers with less pure intentions to flourish.

The intent of political donation limits is to curb the “corrupting influence of large contributions.”²¹⁴ However, when individuals from the same demographic group, industry, or special interest group bundle contributions that are far greater than the law allows, they have circumvented the intention of the regulations. Candidates receiving the donations know the aggregated source of the funds and are, thus, subject to the exact corrupting influences the Court claims to so revile. In addition, by organizing bundles, donors escape the disclosure requirements that are in place to provide the electorate with critical information regarding special interests that may affect public policy.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² The prisoner’s dilemma is an application of game theory that illustrates the conflict between individual and group rationality. It demonstrates why a group of individuals, each acting in their own self-interest, makes choices that result in a suboptimal outcome for the group as whole. See generally Steven Kuhn, *Prisoner’s Dilemma*, STAN. ENCYCLOPEDIA OF PHIL. (Winter ed. 2019), <https://plato.stanford.edu/archives/win2019/entries/prisoner-dilemma/>.

²¹³ Buffet, *supra* note 208.

²¹⁴ *Buckley v. Valeo*, 424 U.S. 1, 55 (1976).

Politicians depend on the funds raised by these wealthy fundraisers. Any candidate vying for the White House faces the impossible choice between turning down needed contributions and accepting checks with strings attached. In American politics, spending money to influence elections is a well-established practice. Money is necessary to sustain a political campaign but can be deleterious if left unregulated. Campaign finance regulations aim to reduce corruption in elections. Yet bundlers have quietly maintained their stronghold on the election process despite evidence of questionable practices. The grip of these wealthy donors will certainly only tighten as election costs continue to skyrocket. Additional regulations and disclosure requirements are necessary to curtail what is currently a shadowy but real and present danger. In the face of corruption, “sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”²¹⁵

²¹⁵ LOUIS BRANDEIS, *OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT* 92 (1914).