

The End of the Campaign Finance Reform Era?

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Abstract

The United States and Canada enacted similar campaign finance reform laws during the early years of the 2000s. Both nations' recent elections were influenced by calls from the political right to repeal major pieces of these laws. In this article I analyze the role campaign finance regulation played in these elections, I assess the consequences from the early-decade reforms for these elections' results, and I speculate on the future of regulation in both nations.

A good argument could be made that campaign finance reform was the defining "good government" issue of the 1990s in many Western democracies. In the United States, legislation aimed at, among other things, subsidizing congressional campaigns, subsidizing television advertising time for candidates, reducing the clout of wealthy donors and self-financed candidates, and reducing the ability of organized interests to run television advertisements percolated for over a decade before the passage of the Bipartisan Campaign Reform Act in 2002. In Canada, the Lortie Commission issued a comprehensive report in 1991, calling for public financing for the political parties, limits on individual and corporate contributions to the parties, an expanded tax credit for small contributions, and limitations on advertisements by organized interests. Many of the recommendations of the Lortie Commission were enacted by the Chrétien government in 2003, and adjustments were made to the Chrétien government's legislation in 2007.

In sum, both nations passed reform laws aimed at limiting the size of contributions to the political parties and reducing the ability of interest groups to influence elections. At the same time, they sought to encourage candidates and parties to become more dependent on individual contributors and less dependent on businesses or other groups. These were efforts intended to increase public confidence in politicians and to reduce the so-called "democratic deficit," the gap between citizens' expectations of the government and their government's performance. The passage of these laws is a remarkable story – in part because of the sheer perseverance of reformers, and in part because of the fact that so many politicians put the public interest (or what they thought to be the public interest) ahead of their own self-interest, voting for legislation that would harm their ability, and their party's ability, to raise money. Many people forecast doom

for the parties behind the legislation – the Democrats in the United States, and the Liberal Party in Canada. Yet, like most major pieces of legislation, the consequences of these bills have been far more complex and nuanced than either their supporters or their opponents might have predicted. Reform supporters have moved on to other issues, without necessarily seeing the dramatic changes they forecast. Opponents have, for the most part, learned to live with these bills, and the apocalyptic scenarios they forecast have, likewise, not come to pass.

In previous work (Boatright 2011), I took advantage of what I called a “natural experiment” in the effects of campaign finance law to address one piece of the response to reform: the adaptations made by interest groups in the two countries. Because the reforms were so similar, it is possible to look at the ways in which similar types of campaign finance regulations play out in different types of institutional settings – that is, how reforms work differently in a candidate-centered system with regular elections than in a party-centered system where elections are called. This natural experiment is a particularly messy one, however, in that there are so many other causes for the financial successes and failures, and electoral successes and failures, of the subsequent elections. Reform may have had something to do with the fundraising successes of Howard Dean and Barack Obama in the United States, and with the successes of the Democratic Party in the 2006 and 2008 congressional races. But most observers would point to the unpopularity of the Iraq War, the financial collapse of 2008, and other failures of the Bush presidency before they would point to campaign finance reform as the culprit. If they were looking for a more secular change, as opposed to a change inspired by unpredictable political events, they might note the development of the progressive blogosphere. Even the massive fundraising numbers of the Obama campaign are only tenuously related to changes in campaign finance law. Likewise, Canadian observers would note that reform in Canada preceded the Liberal Party’s loss of its majority, and then of its control of parliament entirely, but they would be unlikely to claim that reform was the culprit – they would be more likely to blame the Liberals’ ongoing political and legal problems for the Chrétien government’s enactment of the 2003 reform law.

This is not to say that there were no effects of reform; it is only to say that reform effects intersected with a lot of other things, making it more and more difficult as one gets further away from the original stimulus to say what the consequences of reform were. There are a number of well-articulated questions political scientists have sought to ask about campaign finance restrictions; one such example is the question of whether restrictions make a difference in election outcomes or in policy outcomes.¹ While researchers have found some traction in asking this question at the state level, the political complications of the past decade and the porous nature of campaign finance law has likely rendered it impossible to conduct rigorous analysis of such questions at the federal level.

The circumstances of the 2010 American elections and the 2011 Canadian elections, however, make it important to take one last shot at discerning the role of campaign finance reform in these elections. This is so because reform – or more precisely, the repeal of reform laws – was a central theme in both elections. In the United States, the Supreme Court’s *Citizens United v. FEC* decision effectively repealed the electioneering restrictions of BCRA, and went even further, permitting express advocacy by corporations, an activity which had been banned

¹ For a review of such research see Prat, Puglisi, and Snyder 2010.

since 1990. The election featured expenditures in the tens of millions of dollars both by established groups such as the US Chamber of Commerce and new groups such as Karl Rove's new Republican conduit group, American Crossroads. Some, though not all, of these groups' advertisements would have been illegal just two years before. Democrats and Republicans debated through much of the election about whether the Court's decision altered the election. In the mean time, conservative groups seized upon the Court's rulings to renew their efforts to get the Court to overrule state-level public finance laws, BCRA's soft money restrictions, and potentially even the limits on individual contributions.

Meanwhile, in Canada the 2008 election, which resulted in a minority Conservative government, had ended with a messy stand-off between the Conservatives and the three opposition parties over the Conservatives' 2009 budget. The Conservatives had proposed doing away with Canada's public subsidy for parties, and the other parties had responded by threatening a vote of no confidence in the incoming Conservative government, thus either leading to a coalition government (something which has not happened in Canada since World War I) or to another election. When the government was finally brought down in early 2011, Prime Minister Stephen Harper made it known that were he to win a majority in 2011, as he ultimately did, he would go ahead with his plans to abolish public funding for the parties. The election so altered the relative standing of the minority parties, with the Liberals' share of seats diminished, the Bloc Québécois virtually decimated, that even were Harper not to follow through with his plans, the funding available to these parties would be so diminished that they would find it difficult to return to their previous status.

At a minimum, then, the 2010 and 2011 elections present a clear stopping point to the path of campaign finance reform. In neither the US nor Canada do reform forces appear poised either to go forward or to do much to rescue the legislation for which they fought so hard earlier in the decade. At most, these elections represent a backtracking in both countries, to a repeal of those countries' campaign finance reforms. This circumstance makes it important to reevaluate what, exactly, the US and Canadian reform laws wrought and how politicians have responded. In this article, then, I first recap my argument about the effects of reform in the 2000s. I then discuss the role campaign finance law played in the 2010 American elections and the 2011 Canadian elections. I close with a discussion of whether the demise of key aspects of campaign finance law in these countries is indeed imminent, what aspects of the early-decade reform laws are or will be left standing, and what the normative consequences of these elections are.

My main argument in this article is that neither campaign finance regulation nor the potential or actual repeal of these laws had major effects on the outcomes of these elections. These elections may well prove consequential, however, since anti-reform forces were victorious in both elections. The links drawn by conservative politicians in both nations between the costs of public support for candidates and the need for government to reduce its spending has proven attractive as a campaign tool, but this argument is deceptive insofar as it only addresses some aspects of regulation. The overall climate created by these elections will make it difficult to enact minor changes geared towards maintaining the relevance of campaign finance restrictions as the methods of campaigning continue to change over the coming decade.

The Campaign Finance Reform Story, as of 2009

The reforms of the 2000s were not the first instance of a shared path toward regulating campaigns on the part of the two countries. Both the United States and Canada enacted major reforms during the early 1970s. In the US, the 1974 Federal Elections and Campaigns Act amendments (FECA) established limits on the amount of money individuals can contribute to politicians, political parties, registered nonparty political groups (PACs), and in sum, and it also established limits on the amount of money a PAC can contribute to a candidate or a party, although there is no aggregate limit on what PACs can contribute. Another reform bill, the Revenue Act of 1971, established a public funding system for presidential candidates and a small tax credit for political contributions. In Canada, the Election Expenses Act (EEA) of 1974 did not create contribution limits, but it did establish spending limits, increase disclosure, and create a sliding tax credits to encourage individuals to donate (see Stanbury 1989, 355-56). The EEA also began the process of creating restrictions on speech by nonparty groups, although it was some time before a workable system was in place.

It is important to note the coincidence of these two laws because they provide at least anecdotal evidence that the US and Canada have followed similar paths, either because of shared political circumstances or because their politicians observe each other. This same pattern occurred in the adoption in the United States of the Bipartisan Campaign Reform Act (BCRA) of 2002. BCRA was written in response to the two areas where FECA had ceased to be effective. First, beginning in the early 1990s, both major parties began to solicit so-called “soft money,” unlimited contributions from individuals, corporations, or unions to the parties for so-called “party building” purposes. Second, organized interests also began to undertake extensive issue advocacy campaigns. These advertisements did not explicitly direct viewers to vote for or against a candidate (and were thus not limited by FECA), but they did discuss candidates in positive or negative terms and ran during the election campaign. BCRA outlawed soft money contributions and prohibited groups that accept corporate or labor funds from airing radio or television advertisements that name a candidate during the thirty days preceding a primary election or the sixty days preceding a general election. BCRA also doubled individual contribution limits and indexed them to inflation.

In Canada, the Canada Elections Act (CEA) Amendments, which took effect at the beginning of 2004, instituted limits on corporate, labor, and individual contributions, expanded the availability of the political contribution tax credit, and created a public funding system for parties to offset the parties’ losses from the new contribution limits. Other contemporaneous legislation also restricted campaign spending. Bill C-2, which took effect in September of 2000, prohibited nonparty groups (“third parties” in Canadian parlance) from spending more than \$150,000 total and no more than \$3,000 in any riding on election-related advertising after a writ of election has been issued. The Federal Accountability Act, which took effect in January of 2007, completely prohibits contributions by unions or corporations, and further limits individual contributions to no more than \$1,100 per year to any party, party association, leadership contestant, or candidate, indexed to inflation.

There are some parallels between these three major pieces of Canadian reform legislation, and the two major components of BCRA. The prohibition on corporate and labor contributions in the CEA Amendments roughly parallels the soft money ban in that both affect the same types of groups and the same sort of unrestricted spending. Likewise, the third party spending ban in Canada bears some resemblance to the issue advocacy restrictions in the United States, although the Canadian law is stricter and arguably addresses a less consequential group activity. There are, however, some components of the Canadian reforms that have no US parallel. Most notable among these is the public subsidy. The public funding system established under the CEA Amendments, provides a quarterly, inflation-indexed allowance that now stands at 50 cents per vote (or \$2.00 per year) in the previous election to parties that receive at least two percent of the vote nationally or five percent in the ridings they contest. The structure of the subsidy rewards parties for the number of *votes*, not *seats*, they receive; in this sense, it is proportional where the electoral system is not. Parties can still raise money on top of their public funds, subject to contribution limits, but the subsidy was introduced in order to compensate the parties for the money lost when contribution limits were enacted.

The two countries differ in the role of the courts in interpreting campaign finance law. In the United States, the *McConnell v. FEC* decision upheld all of the major components of the law. Subsequent Supreme Court decisions, following the appointments of Justices Roberts and Alito, struck down one smaller component of BCRA (the millionaire's amendment, in *Davis v. FEC*) and diluted the effect of the electioneering restrictions (in *Wisconsin Right to Life v. FEC*) before the *Citizens United v. FEC* decision, discussed later in this article. The judicial response to reform in Canada took the form of several individual cases rather than one omnibus challenge to the law. The nonparty group spending restrictions were challenged in court by the National Citizens' Coalition, a conservative advocacy group, and were subsequently upheld, in *Harper v. Attorney General (Canada)*, by the Canadian Supreme Court in May 2004.² The *Harper* decision was just one of several narrower decisions made by the court; others include the *Figueroa v. Canada* decision of 2003, which removed some of the restrictions on which parties could qualify for public financing, and several other cases that tweaked the law but left its major features intact (for discussion see Manfredi and Rush 2008).

Winners and Losers

Both laws were clearly intended to reduce the power of large contributors and to reduce the potential for quid pro quo arrangements between politicians and contributors. The laws play into a long discussion (in both countries) of the proper balance between candidates, parties, and interest groups. The American reforms, insofar as they cut off a major funding source for the parties, were expected by many to weaken the influence of the party campaign committees on elections. Moreover, because BCRA increased contribution limits for individuals but not for PACs, and because it curtailed interest group spending on advertisements, interest groups were also hurt by the law. Some argued that the candidates least in need of help from groups or parties – that is, incumbents – would be further insulated by BCRA, while others contended that the law would advantage candidates with a broad base or large contributors such as incumbent president George W. Bush. Still others argued that money that had previously gone to the parties

² The Harper named in the case is Stephen Harper, who led the NCC before becoming leader of the Conservative Party.

would now find its way into the accounts of “quasi-party” organizations that would take over many of the parties’ functions. Reform advocates generally did not argue in favor of weakening the parties (although some did argue for reducing the clout of groups), and there were many compelling anti-corruption arguments for the law’s provisions, particularly the soft money prohibition.

The United States has long had a lively debate about whether the two major parties should be strengthened, but generally the argument has been framed in terms of a conflict between the parties and individual politicians. In contrast, much of the Canadian literature on parties has framed the conflict as being between parties and groups.³ Canada has never had a system in which individual candidates can separate themselves from their parties, but the fear of group influence has its roots in a feat that regionally-based groups will destabilize the polity. Thus, the enactment of reform legislation was a clear nod in favor of strengthening the parties at the expense of groups. It should be added, however, that while Canadian parties are much stronger than American parties in terms of their ability to dictate legislative outcomes, they have not been consistently distinct in terms of ideology or political program. As we shall see in our discussion of 2011, this is a particular issue because the popularity of the parties’ leaders may have had more to do with the parties’ showing than the programmatic appeal of the parties. Be this as it may, however, the general thrust of the reform legislation of the 2000s in Canada was to provide a clear advantage to parties at the expense of groups and candidates.

Another way to look at winners and losers, however, is to look at the expected partisan consequences of reform in both countries. In the United States, reform was pushed by the Democratic Party, in part because of ideological commitment and in part because it was an effective issue to use against Republicans. The consensus after BCRA’s passage, however, was that it would hurt the Democrats more than it would hurt Republicans. This was so for three reasons. First, the Democratic Party had been more dependent than the Republican Party on soft money. The Republican Party had a much larger base of large individual hard money contributors throughout the 1980s and 1990s. Second, there was a belief that there was simply a larger number of hard money donors on the Republican side, so Republican candidates would be advantaged by the increase in contribution limits. And third, many of the dominant purchasers of electioneering advertisements during the 1990s were groups such as the AFL-CIO, the Sierra Club, and others who tended to support Democrats.

In Canada, the institution of public financing was intended to reduce the consequences of implementing such strict contribution limits. The Liberal Party had historically been more dependent on large contributions than were other parties, but a public financing system that rewards parties for vote share in the prior election would at least in the short run lock in the Liberals’ position. While some noted that parties on the Canadian right in the 1990s had worked harder to create a fundraising base, the electoral weakness of the Canadian right during the past decade meant that few identified the Liberals as losers. If there was a big loser in the reform legislation, it was the left-wing New Democratic Party, which saw many of its historical connections with organized labor cut off by the new law.

³ For a summary of the American debate, see the chapters in Green and Herrnson (2003); a summary of the Canadian debate on the subject is included in the early chapters of Carty, Cross, and Young (2000).

The Results

Several different books (including Boatright 2011, LaRaja 2008, and Malbin 2006) provide detailed descriptions of the results of reform in the US. For my purposes here, it is important to highlight the more counterintuitive results of reform. In regards to the party/group/candidate conflict, many of the predictions made in the early 2000s did come to pass, but predictions about partisan winners and losers were far off. In the United States, the 2004 election featured a large number of so-called “527” groups, groups that sought to evade BCRA’s restrictions by not soliciting corporate or labor contributions and by not organizing as PACs. Many of these groups courted former soft money donors by touting their ability to engage in voter identification or other things that had previously been the domain of the party committees. Following a crackdown by the FEC in 2005 (see Phillips 2007), however, many of these groups disappeared by the time of the 2006 election, and the impressive fundraising totals of the Obama campaign kept many potential Democratic groups on the sidelines. In Canada, groups were clearly sidelined, but some groups noted that they could reconstitute themselves as political parties, evade the restrictions on groups, and claim the public financing benefits provided to parties. This has something to do with the increased vote share of the Green Party in the elections of 2006 and 2008.

In both nations, however, there was a change in the partisan balance of power between the early 2000s and the latter part of the decade, and this change has much to do with some unexpected consequences of reform. In the United States, the Democratic Party successfully expanded its fundraising base far beyond what many party leaders might have thought possible in the 1990s. Spurred by the loss of soft money, the party dramatically expanded its efforts to raise money from small donors. As Table 1 shows, the Democrats were actually better off without soft money in 2004 and 2006 than they were with soft money in 2000. The 2006 and 2008 totals for the party may be partially consequence of the party’s new majority status in congress – a status that might in fact have more to do with political events than with fundraising – but there were signs even before this that the soft money ban had inspired a new sense of urgency, and that the Howard Dean campaign’s use of the internet had shown the party how to raise small donations. Dean’s effort as DNC chair in 2006 to create a “fifty state strategy” led the party to raise money and invest money in states that it had previously ignored, leading to upset congressional victories in states such as Idaho and Utah. This effort, in turn, led to Barack Obama’s comfortable primary and caucus victories in these states. Just as the Democratic Party did well in its hard money fundraising, many interest groups also succeeded in using PAC money to advertise. Group advertisements declined, but not substantially, and party advertising increased. The average citizen likely did not notice any consequences of BCRA’s electioneering restrictions.

[Table 1 about here]

Obama’s fundraising success was a pleasant surprise for Democrats, and it certainly indicated that the increase in individual contribution limits was not something that had clear partisan implications. Obama’s success, however, provided definitive evidence of another problem with the campaign finance system – the public financing system that had restrained presidential fundraising since the 1970s was clearly on a path to irrelevance. Obama (along with

almost all of the other competitive 2008 primary candidates of both parties) followed in the footsteps of George W. Bush, Howard Dean, and John Kerry in rejecting public matching funds and their corresponding spending limits in the primary. He went still further, however, declining the flat grant for the general election, opting to raise his own money then as well. Obama ultimately outspent Republican nominee John McCain (who took the matching grant) by more than a three-to-one margin during the general election campaign, although the Republican Party made up somewhat for this gap, outspending Democratic Party during this time.⁴

The most important consequence of the 2008 election for the US campaign finance system, then, was not necessarily that reform had any well-defined effects, but that by 2008 it was not clear that existing campaign finance laws, be they the reforms of the 1970s or those of more recent vintage, were relevant. Reform advocates were relatively quiet when Obama announced that he would decline federal funds, and, at least in the short term, the lack of evidence that the gradual dismantling by the courts of BCRA did not appear to have had any clear consequences. In short, there was a lot of evidence of past reform efforts that no longer worked, but little evidence of positive consequences. As conservative activists renewed their efforts to challenge various campaign finance regulations in court, they could now point to the benefits Democrats, as well as Republican, might reap from deregulation. As John McCain, the principal Republican supporter of campaign finance regulation, backed away from his crowning achievement, there appeared to be little hope of any sort of bipartisan cooperation in fixing existing public financing laws, let alone of going any further in regulating campaign spending.

In Canada, with the institution of public financing, none of the parties were forced to expand their donor base, and the Conservative Party, newly unified and drifting towards the political center, maintained its substantial edge over the Liberals in individual contributions. Following Jean Chrétien's forced retirement from the party leadership in 2003 and the Gomery Commission's report on the sponsorship scandal in early 2004, the Liberal Party limped out of the 2004 election with a minority government, then lost their minority government in 2006.⁵ The Conservative Party has governed since, winning a second minority government in 2008. The Conservatives never won over forty percent of the vote in either of those bids, and they survived a few potential attempts to bring down the government when the three minority parties failed to agree on the proper timing to bring about a vote of confidence. As Table 2 shows, none of the minority parties had particularly impressive fundraising numbers, so the subsidy clearly helped those parties more than they helped the Conservatives.

[Table 2 about here]

As long as they did not have a majority in parliament, however, the Conservatives could do nothing radical to the campaign finance system. The 2007 reform bill, the Federal

⁴ Obama raised \$298.1 million for the general election, while McCain accepted the federal flat grant of \$84.1 million. During the full cycle (primary and general) the DNC raised \$206.1 million and the RNC raised \$336.7 million. This, and all other US campaign finance data, taken from the Federal Election Commission, www.fec.gov, or the Center for Responsive Politics, www.opensecrets.org.

⁵ The sponsorship scandal involved a series of kickbacks from Québec advertising firms to the Liberal Party; although neither Chrétien nor Martin were directly implicated, it is generally considered to be a cause of the Liberals' loss of seats in 2004.

Accountability Act, included many adjustments to the CEA amendments, including an inflation adjustment provision for individual contributions and a complete ban on corporate and labor contributions. This was a small adjustment to the CEA amendments, undertaken in part due to requests from corporations, added to a bill that was mostly unrelated to campaign finance. The Harper government showed its hand more fully during the prorogation crisis that followed the 2008 election. Prime Minister Harper requested that the Canadian governor general suspend parliament in December 2008 after the three opposition parties stated their intention to bring down Harper's government and form a coalition government just weeks after the October 2008 election. The immediate impetus for this threat was the Conservative Party's budget, which contained no stimulus funding to confront the recent market crash but which included several small spending cuts, including a provision removing public funding for the parties. The governor general agreed to Harper's request, suspending parliament until January 26, 2009. At that time, the Conservatives introduced a new budget that restored party public funds, and the Liberal Party withdrew its threat to bring down the government.⁶ Despite the fact that the Conservatives backed down, they continued to connect federal funding for parties to the need to reduce the federal budget in the years to come.

By the end of the decade, the status of campaign finance law was unsettled despite the similar reforms in the United States and Canada. The financial crisis of 2008 and the federal stimulus spending that followed led to elections in which budget cutting was in vogue. Although the governmental role in financing elections is small, it was politically popular to argue that subsidizing elections was a waste of money. There was little public consensus that the reform laws should be curtailed – most of the public had no opinion one way or the other – but there was no longer a strong campaign finance reform movement in place to defend the status quo or push for further changes.

The 2010 U.S. Elections

Two noteworthy events happened in early 2010 that showed some of the problems the Democratic Party would have keeping its grip on the House and the Senate. First, on January 19 of 2010, Republican Scott Brown, an obscure State Senator, won a special election in Massachusetts for the seat of recently deceased Senator Edward Kennedy. Brown raised \$16 million during the election; \$13 million of this came from out-of-state donors and \$14 million arrived between January 1 and January 19. Brown's success was clearly a sign that Republican candidates could raise money in small amounts via the internet just as well as Democrats could – it put to rest the presumption many had that the Howard Dean and Barack Obama campaigns foretold an ongoing Democratic advantage. Second, the Supreme Court two days later handed down its 5-4 ruling in the case of *Citizens United v. Federal Election Commission*. The Court's decision definitively overruled BCRA's electioneering provision, ending any uncertainty about the legality of interest group advertisements during the campaign. Furthermore, the Court also

⁶ For full discussion see Russell and Sossin 2009.

overturned a 1990 Supreme Court decision (*Austin v. Michigan Chamber of Commerce*) that had prohibited corporations from engaging in “express advocacy,” directly exhorting voters to vote for or against a candidate. The decision was issued early enough for groups to rethink their 2010 strategy, and it gave time for Republican-leaning issue entrepreneurs (most notably, Karl Rove) to harness the energy of conservatives in order to create so-called “Super PACs,” groups that could raise money in unlimited amounts but used that money solely for making independent expenditures.

It has been tempting to many to say, then, that the Court’s decisions enabled interest groups – and corporate interests in particular – to buy seats in the 2010 election. The fact that Republican gains exceeded so many political scientists’ predictions, coupled with the absence of restrictions on group advertising, has been used by some as evidence of the effect of interest group advertising. At the least, this is an interesting correlation. As Franz, Rivlin, and Goldstein (2006) have noted, however, it is difficult to say whether the law’s restrictions on advertising during the 2000s had any effect, since many groups had already become disenchanted with using television and had begun to invest their resources more heavily in “ground war” activities and in Internet communication – activities which, according to virtually all analyses, are far more cost-effective than advertising. Furthermore, the law did not prohibit using PAC money for advertisements, and many groups were able simply to shift to using PAC money. In short, BCRA merely pushed groups in a direction that they had already been heading. We must be careful not to confuse the effects of legal changes with changes in politics or changes in technology.

What do we make, then, of the explosion in advertising in the 2010 election? We had certainly not seen a decline in advertising in 2008, but interest groups had played a lesser role in the 2008 election than they had in previous years. This is partially a consequence of the fact that the Obama campaign explicitly discouraged Democratic donors from forming parallel groups and of the fact that there was no organized effort by Republicans to develop new fundraising conduits. As the various studies by the Wesleyan Advertising Project have shown, interest group advertising did clearly increase substantially in 2010 (Franz 2010). Few groups took advantage of their new ability to engage in express advocacy, but the sort of issue advocacy advertisements that were prevalent before BCRA had returned in 2010.

The question, however, is not whether there was more advertising in 2010 – there clearly was – but whether the advertisements made a difference and whether the 2010 election effectively erased all of the changes interest groups had made from 2002 through 2008 in adjusting to BCRA. There is little evidence that the increase in corporate advertising made a difference in individual races. As has been extensively documented, incumbent Democrats still handily outspent their opponents in most of the competitive races, and even with interest group advertising factored in, few challengers outspent their opponents. In some of the races where Democratic incumbents lost, the outcome was so lopsided that it is hard to imagine the margin of victory having anything to do with interest group activity.

In general, corporations advertise because they do not have the membership or resources to develop an effective ground game. One of the major consequences of BCRA was to force the parties and the major interest groups to turn their attention to developing extensive member

contacting programs and means of communicating directly with voters. BCRA made lists of names more valuable. In addition, increasing use of the internet made gathering lists of names more important both for get-out-the-vote programs and for fundraising purposes. The sort of social networking efforts pioneered by the Howard Dean campaign and by MoveOn.org were in part an adaptation to BCRA, and these efforts served, in turn as a blueprint for Tea Party groups and for other organizations that sought to use online communication to facilitate off line activism on the part of members. There were several congressional races where pre-election polls were several percentage points off. While polling experts have argued that in these instances the pollsters failed to accurately determine who would vote, another way to look at these races is to say that the ground game in support of one candidate or other outperformed expectations. In races such as Harry Reid's defeat of Sharron Angle in Nevada (where Reid outperformed pre-election polls by 3 to 4 percentage points) it seems evident that a good ground game beats a barrage of advertisements.

This is not to say that Republican candidates did not benefit from ground war activities; instead, it is to say that these sorts of activities were legal under BCRA, and were in fact encouraged by BCRA. The one area where corporate advertising might have played a role, however, was in the expansion of the playing field in 2010. No previous election had seen so many seats in play. A pre-election analysis by the Club for Growth alleged that as many as 110 Democratic seats might be in play. The willingness of groups to advertise early in so many congressional districts may have led to polling results that suggested to Republicans that seats they had never considered vulnerable before were worth a second look.

As many have mentioned, a substantial percentage of these advertisements were legal under BCRA; the main result of *Citizens United* may have been to make corporations feel better about their advertising – to give them a psychological boost.⁷ One could say the same thing about the consequences of the Scott Brown victory. This is, of course, hard to quantify. The biggest business spenders, however, did not necessarily do anything differently than they had done in the past. The Chamber of Commerce, the largest business spender in 2010, had announced its intention to spend lavishly in 2010 long before it became apparent that the Republican Party would be so successful in the midterm elections, long before it was apparent that groups such as Crossroads GPS would also spend heavily in support of Republicans, and slightly before the *Citizens United v. FEC* decision made it possible for corporations to spend unlimited amounts of money on direct advocacy.⁸ The Chamber was only indirectly a beneficiary of the new spending environment, insofar as its favored candidates also received support from groups that did adjust their strategies to take advantage of *Citizens United*, and the Chamber could arguably spend less on some candidates or shift its funds around because of what other groups were doing. It spent money out of its 501 (c)(6) account, just as it had in 2006 and 2008, and the advertisements that it spent this money on were little different in tone from those it had aired in previous elections. The Chamber did not use the so-called “magic words” in its advertisements; in most instances its ads stayed well within the confines of issue advocacy.

The other particularly big spender in 2010, Crossroads GPS, presents a more ambiguous case. Crossroads was formed by Karl Rove to serve as a conduit for large contributions, and it

⁷ See Luo 2010, quoting Trevor Potter.

⁸ See Eggen 2010.

certainly benefitted from the *Citizens United* ruling. Crossroads's original intent, however, was to supplant the Republican National Committee in the election and to serve as a magnet for contributions from people unhappy with the performance of RNC Chair Michael Steele. In this sense, Crossroads is more reminiscent of some of the Democratic 527 groups formed in 2004, and it likely would have been a major factor in the election had the *Citizens United* decision not been handed down.

The Results of the 2010 Election

The Republican Party gained sixty-three House seats and six Senate seats in 2010, establishing a comfortable majority in the House and considerably narrowing the Democratic Party's Senate majority. As many analyses of the election results have argued, the 2010 election produced a Congress that is more polarized than any Congress in recent memory (see, e.g., Tucker 2010); the Democrats who lost were disproportionately among the more conservative members of the party, and many of the Republican Party's moderates had been defeated in 2006 and 2008. This split certainly reduces the possibility of bipartisan cooperation on most legislation, let alone campaign finance legislation. The lack of Republican opposition to the *Citizens United* decision is one indication of the demise of campaign finance regulation as an issue. The Democrats' response to the decision, the DISCLOSE Act, passed the House in 2010 with only two Republican votes; neither of these Republicans is still in Congress, and the DISCLOSE Act has not been reintroduced in the 112th Congress to date.⁹ This seems to be an indication that the two parties are also unlikely to reach common ground on doing anything to repair the presidential public financing system; while the Democratic Senate majority may be reluctant to officially end the program, the two chambers are unlikely to agree on legislation to adjust the matching funds to entice more candidates to accept public funds.¹⁰ Although several bipartisan proposals for adjusting the presidential funding system have been floated in past years, the legislation introduced in the 112th Congress to do this, the Presidential Funding Act, has only one Republican co-sponsor to date.¹¹

The dominant frame for campaign finance regulation among conservatives – that federal subsidies comprise a form of “welfare for politicians” or that limits on spending are inherently a restriction on speech – has been a part of other efforts to curtail various types of regulation. The *Citizens United* decision has also inspired a variety of different efforts to test the Court's views on the constitutionality of other campaign finance regulations. Two months after *Citizens United*, a federal appeals court struck down limits on advocacy spending by unincorporated groups in the *Speechnow.org v. FEC* case. Later in the year, the *Cao v. FEC* case challenged the limit on party contributions to candidates (see Vogel 2011b); an appeals court ruled that limits on party contributions are legal and the Supreme Court denied cert. And in June of 2011, in its combined decision in two cases, *McComish v. Bennett* and *Arizona Free Enterprise Club v. Bennett*, the Supreme Court struck down one particular method of public financing, Arizona's

⁹ A disproportionate percentage of the Democrats defeated in 2010 were among the opponents of the DISCLOSE Act, further indicating the lack of any sort of common ground with Republicans in the 112th Congress.

¹⁰ The House voted in January of 2011 to defund the system; the repeal legislation's author, Representative Tom Cole, stated after the vote, “Right now, this is money we can't afford to waste” (Carney 2011).

¹¹ See the Thomas summary of the bill, HR 414, or Rep. David Price's press release on the bill, at http://price.house.gov/apps/list/press/nc04_price/012511A.shtml.

provision of public funds to candidates who face opponents who have declined the state's public matching funds and have raised above a threshold amount.¹²

A variety of other suits have been filed to challenge other restrictions on contribution amounts and sources (Vogel 2011a), including one (*US v. Danielczyk and Biagi*) that would strike the prohibition on direct corporate contributions to candidates. In many of these challenges, regulation has been framed as “an effort by government to play election favorites” (Smith 2011), and public financing of whatever sort has been described as “taxpayer financing.” At the state level, Minnesota Governor Tim Pawlenty made a point of ending the state's political contribution refund program at the same time that he implemented a large number of budget-cutting measures (Campaign Finance Institute 2009); Ohio legislators appear poised to do away with the state's political contribution tax credit (Naymik 2011); and the Goldwater Institute, petitioners in the pending Supreme Court case to repeal Arizona's public financing provisions, framed their goal in opposing to the law as “the protection of the First Amendment rights of candidates who chose not to participate in the taxpayer-subsidized election finance system” (Goldwater Institute 2011). Finally, some efforts to challenge campaign finance law have not necessarily involved litigation, but have been efforts either to circumvent the law or create organizations that will inevitably face challenge by the FEC. Speechnow.org, for instance, was formed by Club for Growth Executive Director David Keating, a longtime foe of regulation, and the *Citizens United* case revolved around a film that was made primary in order to serve as the vehicle for a legal challenge. In the most recent effort of this sort, James Bopp, an attorney who has frequently litigated challenges to campaign finance law, has formed a group named the Republican Super PAC, which aims to serve as a repository for large contributions that politicians are unable to accept. Bopp's plan is clearly an attempt either to evade contribution limits or bring legal challenge to them (see Cummings 2011a).

While these challenges to campaign finance law have all emerged from the political right, Democratic groups may have little recourse but to follow suit. 527 groups were a Democratic innovation in 2004, created out of concern that the party would be devastated by George W. Bush's fundraising machine; Republicans cried foul but ultimately followed suit. The same pattern appears to be playing out in regard to Super PACs – Republican interest formed them in 2010 while Democrats protested their legality and sought to rein them in legislatively. As the 2012 election approaches, several Democratic Super PACs are being formed (Rutenberg 2011, Cummings 2011b, Vogel 2011c). In sum, the momentum coming out of the 2010 election appears to be on the side of the opponents of regulation; there may well be limits to what can be accomplished, but only the soft money restrictions of BCRA remain standing, and many aspects of campaign finance law that had appeared settled long before 2010 have come unraveled as well.¹³ The election results were not clearly the catalyst for this unraveling nor a clear result of it, but they have certainly hastened the process.

¹² It is important to note that the court pointedly claimed that this decision does not hold that public financing, whether in lump sums or matching funds, is illegal, only that the provision of public funds to candidates based on their opponents' activities is illegal. In this regard, the Arizona program closely resembles BCRA's “millionaire's amendment,” which was struck down by the Court in the *Davis v. FEC* decision.

¹³ For a legal analysis of this unraveling, see Hayward 2011.

The 2011 Canadian Election

The 2011 Canadian election, initially expected to be a sleepy affair, wound up being every bit as consequential as the American elections had been. The election resulted in the first majority government in Canada since 2004, dramatic declines in seat share for the Liberal Party and the Bloc Québécois, and the establishment, for the first time ever, of the New Democratic Party (NDP), traditionally the voice of the left and labor unions, as the official opposition. This was an outcome few would have predicted at the time the election was called.

As Table 2 showed, the Conservative Party has consistently been more successful at raising individual contributions, and since the establishment of public financing for the parties, it has also, by dint of its vote share, received more public money. The prorogation crisis and the general instability of Canadian minority governments made it clear to all parties that they should be prepared for an election at any time. The Conservatives took this to heart in 2010 and early 2011, running a steady stream of advertisements touting the government's performance (Cheadle 2011). When the government finally fell, as a result of the failure of a budget vote in March, the parties were all prepared for an election.¹⁴

Most early predictions of the election results forecast another Conservative minority government; it appeared that little had changed since the last election in the Canadian polity, and the Conservatives had consistently polled at about the same level they had been at preceding the 2008 election.¹⁵ Many experts predicted a low-turnout election. In the early going, the Conservative Party termed the election an "unnecessary" one and repeatedly insinuated that the real purpose of the election was to give the Liberal Party, the NDP, and the Bloc Québécois the opportunity to form a coalition government, an option that most Canadian viewed unfavorably – particularly because of the potential inclusion of the Bloc (Wells 2011; Chase, Galloway, and Taber 2011). The initial squabbling between the parties over the possible outcomes of the election, and the general lack of an overarching theme apart from issues of who would govern, generated little enthusiasm on the part of voters.

Two features of the Canadian system are particularly noteworthy, however. First, despite having a first-past-the-post election system, Canada has never conformed to Duverger's Law in consolidating around two political parties. Past elections have always included at least three, and at times five, parties that were capable of winning multiple seats in parliament. The Liberal

¹⁴ A bit of explanation for readers unfamiliar with the Canadian system: As noted above, coalition governments in Canada are rare. Generally, when no party has won a majority of seats, it forms a government and relies upon one or more of the opposition parties to pass legislation. The government can deem particular votes (such as the annual budget) to be confidence votes, and opposition parties can then choose whether to vote with the governing party, to abstain, or to vote in opposition. Minority parliaments generally do not last very long, but situations arise where one of the opposition parties will decide that it is not in its interest to have another election (that is, it fears it may lose seats if another election is called) and will vote with the governing party or abstain.

¹⁵ Prediction the relationship between vote share and seats in Canada is difficult; it depends on the number of ridings in which the parties are competitive and the way in which the smaller parties split votes. For reference, the Conservatives received 37.6 percent of the vote in 2008, which yielded less than a majority, but the Liberal Party had won a bare majority of seats in 1997 with a 38.5 percent share of the vote.

Party has generally positioned itself slight to the left of the political center, with the Conservatives to its right, the NDP to its left, and the Bloc as a left-leaning separatist option in Quebec. During the 1990s, splits on the right (the existence at the time of two right-wing parties) enabled the Liberals to dominate despite losses on their left flank. The unification of the Canadian right left the Liberals squeezed from both sides. Second, Canadian parties tend not to be overly programmatic; electoral success often revolves around the party leaders and the public's attitudes towards them. The Liberal Party's leader in 2011, Michael Ignatieff, was the third person to lead the party since Jean Chrétien's retirement. Ignatieff did not have a long history in Canadian politics, having spent over a decade teaching political science in the United States.

The Liberal Party has often been able to secure votes from left-leaning citizens by arguing that it has a better chance of winning elections and leading parliament than does the NDP. As the 2011 election progressed, however, the NDP gradually pulled ahead of the Liberals in the polls, in part, according to the media, because of the debate performance of NDP leader Jack Layton, Layton's ability to stay out of the conflicts between Ignatieff and Harper, and simply because Layton was a more affable, positive person (Taber 2011; Simpson 2011). The NDP's surge enabled NDP leaders to reverse the strategic voting claims Liberals had made in the past – the NDP, this time, had a better chance of winning a plurality of the seats than the Liberals, so citizens on the left could vote strategically *and* vote their conscience this time. The NDP also, for the first time, was able to make substantial inroads in Québec, appealing to liberal voters as the most viable way to defeat Harper.

The NDP's surge turned a sleepy election into a particularly exciting one; by all accounts, voting was much higher than expected, especially among younger voters, who voted disproportionately for the NDP (Ibbitson and McCarthy 2011). The NDP siphoned support from the Liberals and the Bloc, splitting votes in a fashion that arguably allowed the Conservatives to pick up a larger number of ridings than they had expected. The Conservatives rode a 39.6 percent share of the vote to a comfortable 167 seat majority (of 308 total seats), the NDP won 30.6 percent of the vote and 102 seats, and the Liberals declined to 34 seats and a 18.9 percent vote total. The Bloc's seat share declined from forty-nine seats to four seats; it received 23.4 percent of the Québec vote (6.0 percent nationally), down from 38.1 in Québec and 10.0 percent nationally in 2008. The NDP, which had previously held one seat in Québec, won 58 of the province's 75 seats, receiving 42.9 percent of the vote there.¹⁶ As a consequence of the election, the Bloc and Liberal leaders stepped down. More importantly, however, Canada finds itself faced with the possibility of a two-party system (see Johnston 2011). Talk since the election of a merger between the Liberals and the NDP has abounded, although there are major obstacles to this taking place any time soon.

Clearly this election had to do with a lot more than the finances of the parties, although the showdown after 2008 over public financing was among the factors that set the stage for the election. Three features of the reforms of the early 2000s had consequences in this election, however:

¹⁶ All Canadian voting and finance data are from Elections Canada, www.elections.ca.

First, the Conservative Party's unhappiness with the public financing of parties was not part of an overarching rejection of campaign finance regulation or of the remainder of the CEA reforms. This may be in part because Canada is more accepting of campaign finance regulation in general – and thus the Conservatives had little to gain by railing against the contribution limits or advertising restrictions – or it may be because the CEA amendments played to the Conservatives' strengths. That is, the institution of contribution limits and the prohibition on corporate and labor contributions came at a time when the Conservatives were simply better at raising money from individuals, and less reliant on corporate or labor funds, than their opponents. Although final fundraising numbers are not in, reports on the volume of advertising by the parties clearly show that the Conservatives had a massive financial advantage, and this advantage could only have come from having a much larger amount in individual contributions. If this is the case, the Conservatives have little reason to revisit the issue of contribution limits.

Second, as was the case in the United States, the restrictions on outside group spending has gradually become less of an impediment for groups interested in playing a role in the election. Canadian groups relied far less on advertising than did American groups before the third party spending limits. This was so for several reasons; most notably, Canadian party discipline renders groups relatively weak, and the multiparty system means that it is difficult for groups to take sides. In the U.S., the proliferation of television viewing options and the rise of the internet had fragmented the audience for advertisements and the electioneering restrictions had pushed groups further towards other methods of communication. In Canada, most large interest groups responded to the election in the same manner that they had responded to the past few elections. Business associations like the Canadian Federation of Independent Businesses released position papers and an election agenda, and advocacy groups such as the Sierra Club and Campaign Life (the major Canadian anti-abortion group) released "report cards" for the parties. These are relatively traditional attempts to communicate with members and to seek media attention without clearly taking sides.

Unhappiness on the left with Stephen Harper led to the creation of several temporary online groups, some linked to established organizations and some not. Perhaps the most visited of these was a website entitled *ShitHarperDid.com*, which received over a million hits during the first week it was up and extensive coverage in the *Globe and Mail* and other newspapers (see Galloway 2011, Houpt 2011).¹⁷ The site featured a variety of satirical videos criticizing Harper, a mixture of absurd comments on Harper and carefully referenced points about Conservative policy, along with links to the four other parties' websites. Another website, *Catch 22 Harper Conservatives*, provided a list of ridings where Conservative candidates might be vulnerable if the other parties did not split the opposition vote in the fashion they had in 2008. A number of other sites analyzing vote splits cropped up, as did several "pair voting" sites, in which citizens could swap votes in order to defeat Conservatives while still making sure that they had enabled a vote to be cast for their preferred party. All of these efforts drew attention despite the strict limits on outside group spending, in part because of media coverage and in part because of the much livelier than usual online opposition to Harper. Most of them sprung up independent of ongoing organizations, although some more established groups (most notably the Canadian Auto Workers) provided links to them from their websites or otherwise spoke enthusiastically about

¹⁷ A sanitized version of the site, entitled *RubbishHarperDid.com*, was introduced after the initial site began to garner media coverage.

them. These efforts may have been in vain, but they were symptomatic of the increase in political activity among younger voters. Moreover, they provided some evidence of the election-specific nature of many Canadian groups – whereas many of the shorter-lived American interest groups have existed primarily as conduits for money, shorter-lived Canadian groups have generally organized around a particular issue or, in this case, a particular message about the candidates and the election

And third, Canada continued to lag behind the United States in the efforts of the parties to raise money and rally supporters online. The newly-formed groups discussed above show that Canadian politics has developed its own version of the US political blogosphere, but the parties' own activities did not necessarily parallel this activism. As one post-election article entitled "Why did we ignore Obama's social media lesson?" put matters, "the upshot was a social media vacuum that was filled by many voters, primarily young adults, who took the election into their own hands" (Tapscott 2011). Many media accounts reflected puzzlement that the parties did not engage voters in the way the Obama campaign had; Jack Layton appears to have been the main beneficiary of online activity, but without the financial support. The party that most aggressively sought to engage in the sophisticated microtargeted internet strategy of the Obama campaign was the Liberals, who purchased the Obama campaign's software and used it to track voters (Wells 2011). Yet the Liberals' online communications did not invite interaction with the public and consisted mainly of press releases. Perhaps this is simply a matter of not having the right candidates, or perhaps it is a matter of the less ambitious fundraising done by the minority parties.

The Results

The results of the election in terms of campaign finance appear relatively unambiguous. Public financing for the parties will disappear, the remainder of the regulations will stay in place. Rhetoric from the Conservative Party and its supporters has long framed this as an important cost-cutting move. The Canadian Taxpayers Federation has referred to the subsidy as a "vote tax." Former Harper advisor Tom Flanagan has argued that the public has never supported the subsidy and that the Liberal Party instituted the subsidy in a particularly undemocratic manner to begin with (Flanagan and Coletto 2010). In a paper written for the Frontier Center, a right-leaning think-tank, Mark Milke (2009) takes particular objection to the fact that the subsidy "subsidizes separatism" insofar as the Bloc Québécois has been arguably the most reliant on the subsidy of any party.¹⁸

There has, however, been some agreement that there is a place for public financing of parties. Flanagan and Coletto (2010) contend that the government should find a way to replace at least some part of the subsidy in order to avoid impoverishing the parties. Jansen and Young (2010), furthermore, point out that the subsidy is only one of several means by which the state

¹⁸ For an example, refer back to Table 2. Eighty-one percent of the money raised by the Bloc derived from the public subsidy, as opposed to less than half of the money raised by the Liberals and Conservatives, and slightly more than half for the NDP. This calculation excludes spending reimbursements by the government and the value of the tax credit for individual contributions. Jansen and Young (2011) present various calculations of the total amount of public money received by the different parties; in all of these the Bloc receives the most public funding and the Conservatives receive the least.

funds the parties; the tax credit and the expense reimbursement also are forms of public funding. The Flanagan and Coletto piece explores a variety of other options for replacing the subsidy, including tax checkoffs or increased contribution limits, but they conclude that these would not come close to replacing the lost income. There are clearly still a variety of means for doing this, and some, such as increasing the tax credit, would reward the parties for reaching out to the public in a way that the subsidy does not. It is noteworthy, however, that even those sympathetic to the Conservatives have continued to express caution lest the Conservatives, the one party that would clearly benefit from removing the subsidy, overplay its hand.

My own back-of-the-envelope calculations of the quarterly subsidy available to the parties after the 2011 election (shown in Table 3) illustrate the changed competitive balance between the parties. Should the subsidy remain in place, the lost vote share for the Liberals would yield approximately \$1.6 million less per year, while the Conservatives would net about \$1.6 million more. In the framework of the parties' overall spending – we can't know the 2011 spending yet, but the proportions for 2008 give us a general sense – this doesn't seem to change the overall dynamic. The NDP would clearly be in a much better financial position, with almost \$4 million in extra money per year. By one measure, the NDP would have the most to lose were the subsidy abolished, since it would sacrifice the most potential income; on the other hand, the NDP has done almost as well as the Liberals at raising money through individual contributions in the past two elections, and has been less reliant on the subsidy in the past.¹⁹

[Table 3 about here]

The US example indicates, however, that predictions about fundraising success are difficult to make. How will the NDP raise money now that it is the largest opposition party? How will the Liberals fare in fundraising given their diminished status? How will the four year break the parties will now have between elections influence fundraising?²⁰ It is difficult to make predictions with any confidence. This means that the Conservatives, a party that has been very cautious in its campaigning under Stephen Harper, would be introducing a fair amount of uncertainty into the next election. Some columnists argued just this during the election, pointing out that the Conservatives are already well ahead financially and the subsidy may keep their opponents from feeling like they have to raise money – or that the Liberals and NDP have to consider a merger (Radwanski 2011a). In short, whereas opponents of regulation in the United States have sought to roll back existing laws, the Conservatives may not have that much to lose from simply allowing the campaign finance regime to remain as it is. Harper did announce in his June 3 throne speech that the party would seek to eliminate the subsidy and to reappoint parliament (Ibbitson 2011).

¹⁹ Again, see Table 2. The NDP raised a similar amount of money to the Liberals in individual contributions in 2004 and 2008, although the Liberals raised about twice as much as the NDP in 2006.

²⁰ The Canadian Constitution stipulates that elections must be called at least once every five years. The timing of elections in a majority government has generally been the prerogative of the governing party. The Conservative Party passed legislation in 2006 establishing fixed election dates on a four-year cycle. There is some uncertainty about whether this legislation is actually binding (see Desserud 2005), and elections were called in 2008 and 2011. The law contains a reference to the ability of the Governor General to dissolve parliament at his or her discretion. In January 2011 the Supreme Court declined to hear a case challenging the government's right to call an election in 2008.

The public financing provisions clearly have influenced the strategies of minor parties as well as the major ones. Fringe parties can qualify for some financial benefits, and issue activists can reorganize as parties in order not only to evade the group spending limits but to receive some financial assistance, including broadcast time, reimbursement of some election expenses, and a tax credit for donors. The clearest case of citizens concerned with a distinct set of issues taking the route of forming a party is the Green Party. The Canadian Green Party qualified for federal funding in 2004 and reached a high water mark of 6.8 percent of the vote in 2008. As some columnists have noted, this is not appreciably less than the Bloc Québécois has received (Radwanski 2011b). Because the Bloc's support is concentrated, however, it wins seats while the Greens did not win seats before 2011. The Greens lost vote share in 2011, although their leader did win a seat for the party in British Columbia. The Greens' strategy of running nationally clearly yielded some benefits in terms of generating funds for the party and establishing its issues, although the party's apparent decision to focus less on vote share and more on winning a seat may be evidence that it had concluded that winning representation was a more important goal (Wente 2011). Without federal funds, however, groups will have fewer reasons to run the sort of national campaigns the Greens ran before 2011.²¹

In sum, there has not been a full rollback of campaign finance reform in Canada, nor should we expect one. Given the rhetoric of the Harper campaign, we should expect changes in the public financing for parties. This may be a relatively simple matter of striking the public subsidy, but there is some indication that the majority party may see fit to do this in at least a slightly compassionate way. The dramatic changes in the nature of the opposition to the Conservatives, however, make it particularly difficult to project what role public financing for the parties will play in the next few years.

Implications

At first glance, it does appear that the recent elections in the United States and Canada represent a stopping point for campaign finance reform in two senses. First, they are about as far out from the two countries early-decade reforms as we can go while still seeking to attribute any consequences to these reforms. Second, both elections produced unambiguous victories for parties that have campaigned on the idea of rolling back these reforms. The elections, then, provide a convenient position from which to look back on the changes over the past decade in both countries and to ask questions that, I would argue, have answers that matter above and beyond the partisan or political aims of anyone in those two countries.

First, what is left of reform in the two countries? In the US, prohibitions on unregulated contributions to the parties still stand, as do the increased and inflation-indexed contribution limits that were added to BCRA as a sweetener. In Canada, the public subsidy has garnered outsized attention in debates over the future of the CEA Amendments; it is, as Jansen and Young

²¹ They will still have some, however. No new party other than the Greens qualified for the subsidy or for expense reimbursement in the 2000s, but, pursuant to the court's *Figuroa v. Canada (Attorney General)* decision, any party, no matter how small, can qualify for the tax credit and for broadcast time.

note, neither the largest form of public financing for the parties nor the most consequential piece of the early-decade reforms in Canada. There is, in other words, a lot left. The difference, however, is that US campaign finance law promises to be unsettled over the next few years because the victories against BCRA have come in the courts and from outside the legislative arena. Although the Supreme Court may be reluctant to continue too much further on the deregulatory path it has set, there will certainly be challenges to coordination rules, state-level public financing provisions, and disclosure rules. Canadian law, on the other hand, can be settled relatively easily given that the Conservatives have limited aims regarding changes in campaign finance law and absolute power to follow through on their goals. Here is an area where institutional differences matter. Although there was substantial intellectual discussion of reform during the 1990s in Canada, there was relatively little political discussion before the comprehensive (and as opponents might say, undemocratic) reforms made by the Chrétien government. Whatever political deliberation is likely to occur over the coming years in Canada, it promises to be brief. In the US, there may well be a large amount of political discussion, but there has been less intellectual discussion and less hope of any end to the discussion in large part because changes over the next decade rely in part on the inscrutable intentions of the Supreme Court.

Second, have the innovations in campaigning and fundraising brought about by the internet made the early-decade reforms obsolete? The two countries have taken very different routes in their use of the internet in campaigning, with the United States developing a candidate-centered model that emphasizes fundraising and the creation of a “movement” sensibility among supporters of a candidate, and to a lesser extent, a less well-defined entity such as the Tea Party. In Canada, the internet has become more and more the province of outside groups, developing a sort of parallel campaign that exists despite the lack of involvement of the candidates or parties. In both countries nonparty groups have to an extent been transformed into temporary coalitions, but in the US these temporary groups have existed for the purpose of fundraising while in Canada they have not. It may seem jejune at this point to continue to say that it is too early to tell, but it is still entirely possible that personalities have dictated the effectiveness of internet use in these countries – that the US has had a few candidates whose campaigns and personal appeals were tailor-made for the sort of movement politics we have seen, while Canada has not. There are many reasons why this might be the case. Perhaps it merely reflects the political strengths and weaknesses of the small number of people who have led Canada’s parties over the past decade. Perhaps it is a consequence of the fact that Canadian party leaders run for nomination within the party, not via appeals to the electorate. Whatever the reason for this difference, the countries appear to be on different paths in regard to the role of the internet in political campaigns.

Third, what sorts of theoretical justifications remain for public financing in either country? This is, in a way, the easiest question to answer. The budget-cutting argument has been popular for obvious reasons – there is little tolerance in either country for spending money to support politicians, let alone politicians with whom voters may disagree – but the facts behind the argument are little changed. The same arguments in favor of public financing can still be made. The amounts spent on public finance in both countries are tiny, and citizens are always called upon to pay taxes to support some government functions of which they do not approve. The Canadian argument against providing federal support for the Bloc Québécois parallels the

arguments that have been made against continuing a US public financing system that supports uncompetitive presidential candidates. The public funding argument, in other words, has not really moved forward or backwards. If American public financing dies, it is more likely to die from inattention than from active malice towards it. In Canada, the more “market-friendly” public financing measures, such as the tax credit or the expenses reimbursement, will almost certainly continue; they just will not be referred to as public financing. The most clearly articulated justification for public financing has always been the claim that private fundraising leads to corruption. Both nations’ reform efforts benefitted from the proximity of political scandals. The last decade, however, has been relatively free of this sort of corruption – perhaps to the detriment of efforts to advance the cause of regulation.

And finally, what of the common criticisms that were raised early in the decade about the likelihood that the two nations’ reforms would insulate incumbents and reduce competition? It seems clear that this has not been the case. The partisan turnover in both countries over the past decade likely would have happened with or without reform. Far from being an argument that these reforms were ineffectual, it can be read as an argument in their favor – they neither restricted competition nor clearly advantaged either side. The purest goals of these reforms were the intent to limit corruption in the electoral process. We cannot measure whether this has been the case, but we can dismiss claims that they would harm the electoral process. In the US case, this might, were it not for the looming spectre of a Supreme Court poised to strike down virtually any campaign finance regulation, lead to a more piecemeal discussion of campaign finance issues. That is, instead of looking to comprehensive packages, reformers might rather target very specific abuses and develop sets of smaller, separable proposals. The disclosure requirements for 527 groups introduced in the US in 2000 are one example of this, as are the various state-level tax credits that exist in the United States. They do not purport to fix *the* problem, but they purport to address particular, well-defined abuses or problems.

Conclusions

The recent elections in the US and Canada may well mark a turning point for the countries’ campaign finance systems, although this turning seems more one of rhetoric than reality. Above I have speculated about the consequences of these elections for the two countries’ political debates. By means of a conclusion, let us also consider what the two elections say about the way in which the scholarly community inside and outside the US and Canada might look at the recent history of campaign finance in both nations. The United States has less governmental regulation of and financial support for the campaign finance system than most Western democracies. A redirection of the debate in the US, therefore, would arguably have little relevance for other nations. In 2008, it was plausible that other nations might look at Barack Obama’s success in galvanizing the American public through his well-financed campaign and wonder whether that might not be possible in their own political systems. That event was arguably more meaningful than an American rejection of limits on interest group spending or public support for presidential candidates would be.

The Canadian example might be more consequential to other countries. The Canadian scholarly literature on campaign finance has long paid more attention to the campaign finance systems of European countries than has the US, so a conclusion that state support for political parties does not work might be seen either as a statement on the limited effectiveness of public financing or a statement by Canadians that they are more interested in a US-style system. One might assume from the literature on comparative campaign finance (see, e.g., Koß 2010) that there has been a steady march towards a greater state role in financing political campaigns. Again, I may be making too much of the intentions of one Canadian political party at one point in time, but the Canadian election and its aftermath may prove to be far more consequential to political scientists in a number of ways than has the recent US election.

These elections do suggest that it is possible to effectively close the book on the attempt over the past decade to discern the effects of these two nations' reform efforts. In doing this, we must acknowledge that the debate over campaign finance regulation is far less settled than it was a decade ago. In closing, I do wish to reiterate why the US-Canada comparison matters here. The coincidence of the two nations' pursuit of similar reforms at similar times has provided a fascinating natural experiment in how similar countries, with different political systems, can digest similar types of reforms. Were one nation to try these reforms, and reject them, we might talk about all sorts of idiosyncrasies in that country. When both nations reject at least some of what they have digested, however, this is perhaps a stronger sign that something larger is going on.

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Table 1: U.S. Party Committee Receipts, 2000-2010
(in millions of US dollars)

| | 2000 | 2002 | 2004 | 2006 | 2008 | 2010 |
|--------------------|--------------------|-------------------|---------|---------|---------|---------|
| Democrats | | | | | | |
| DNC | \$260.6 (136.6) | \$162.1 (94.6) | \$404.4 | \$130.8 | \$260.1 | \$224.5 |
| DSCC | 104.2 (63.7) | 143.4 (95.0) | 88.7 | 121.4 | 162.8 | 129.5 |
| DCCC | 105.1 (56.7) | 102.9 (56.4) | 92.9 | 140.0 | 176.2 | 163.9 |
| Total* | 520.4 (245.2) | 463.3 (246.1) | 824.4 | 602.1 | 961.2 | 815.0 |
| Republicans | | | | | | |
| RNC | 379.0 (166.2) | 284.0 (113.9) | 392.4 | 243.0 | 427.6 | 196.3 |
| NRSC | 96.1 (44.7) | 125.6 (66.4) | 79.0 | 88.8 | 94.4 | 84.5 |
| NRCC | 144.6 (47.3) | 210.8 (69.7) | 185.7 | 176.3 | 118.3 | 133.8 |
| Total* | 715.7 (249.9) | 691.6 (250.0) | 894.3 | 748.2 | 920.5 | 586.6 |

* Totals include other party committees not listed.

Figures for 2000 and 2002 are combined hard and soft money totals. Soft money totals for 2000 and 2002 in parentheses.

Source: Center for Responsive Politics.

Table 2: Canadian Party Fundraising, 2000-2008
(in millions of Canadian dollars)

| Party | 2000 | | | | 2004 | | | 2006 | | | 2008 | | |
|--------------------------|-------|-------|-------|-------|---------------|--------------|--------|---------------|--------------|--------|---------------|--------------|--------|
| | Corp. | Union | Indiv | Total | Contributions | Public Funds | Total* | Contributions | Public Funds | Total* | Contributions | Public Funds | Total* |
| Liberal | 11.9 | <0.1 | 7.0 | 19.0 | 4.7 | 9.1 | 13.8 | 9.0 | 8.6 | 17.6 | 5.9 | 8.7 | 14.6 |
| Canadian Alliance | 6.8 | 0 | 12.0 | 19.6 | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| NDP | 3.2 | 3.0 | 5.8 | 9.0 | 5.2 | 1.9 | 7.1 | 4.0 | 4.6 | 8.6 | 5.5 | 5.0 | 10.5 |
| Progressive Conservative | 2.8 | 0 | 2.8 | 5.6 | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| Bloc Québécois | 0.5 | <0.1 | 1.7 | 2.1 | 0.9 | 2.4 | 2.8 | 0.5 | 3.0 | 3.5 | 0.7 | 3.0 | 3.7 |
| Conservative | -- | -- | -- | -- | 10.9 | 8.5 | 19.4 | 18.6 | 9.4 | 28.0 | 21.2 | 10.4 | 31.6 |
| Green | -- | -- | -- | -- | -- | -- | -- | 0.8 | 1.2 | 2.0 | 1.6 | 1.3 | 2.9 |
| Total | 22.1 | 3.1 | 29.3 | 55.3 | 21.7 | 21.9 | 43.6 | 32.9 | 26.8 | 59.7 | 34.9 | 28.4 | 63.3 |

All numbers in millions of dollars.

Source: Elections Canada.

* Totals from 2004 onward do not include transfers of funds from previous years or federal reimbursements to candidates.

Source: Elections Canada; Adapted from Cross 2004, 147; Sayers and Young 2004.

Table 4: Public Subsidies to Canadian Political Parties, 2004-2011
(in Canadian dollars)

| Party | April 2005– First full payment based on 2004 Election* | July 2006 – First full payment based on 2006 Election | April 2009 – First full payment based on 2008 Election | Projected quarterly payment based on 2011 Election |
|----------------|---|--|---|---|
| Bloc Québécois | \$755,740 | \$727,092 | \$673,781 | \$444,894 |
| Conservative | 1,807,734 | 2,515,737 | 2,543,328 | 2,916,201 |
| Green | 261,847 | 310,867 | 457,790 | 288,111 |
| Liberal | 2,240,772 | 2,096,926 | 1,773,903 | 1,391,588 |
| NDP | 956,692 | 1,212,255 | 1,228,089 | 2,254,237 |
| Total | 6,022,785 | 6,862,877 | 6,676,891 | 7,295,031 |

* This was not the first quarter after the election, but it was the first quarter in which full payments were made to the parties. In the previous two quarters, some parties had received advances, so the quarterly payouts are not proportionate to votes received. These quarterly figures are based on the original provision in the CEA Amendments of \$1.75 per year per vote, with annual inflation adjustments.

Source: Elections Canada for 2005-2009 data; for 2011, the numbers are the author's calculations based on Elections Canada's preliminary report of vote totals and the inflation-adjusted quarterly payout per vote from the last quarter before the election.