In the Shadows of Sunlight:
The Effects of Transparency on State Political Campaigns

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Abstract

In this paper we investigate whether strict transparency laws influence the behavior of political donors at the state level. Channeling the late Justice Brandeis, we ask: to what degree does sunlight "disinfect" the political process? We utilize several data sources on state campaign spending and political competition to model the origin of transparency laws and to measure their effect. Specifically, we analyze the effect of strict disclosure laws on the proclivity of candidates and other organizations to run political attack ads. We also measure the effect of strict disclosure on the behavior of donors and campaigns. We find weak evidence that strict disclosure laws may inhibit the production of political attack ads. We also find evidence that stricter disclosure laws mitigate the effects of laws that make it easier to spend in elections.

Keywords: Campaign finance, disclosure, transparency, state politics, political advertising.

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1 Introduction

Americans currently live in a society in which the government makes almost all of its proceedings and decisions easily accessible to anyone who is interested, for whatever reason they might be interested. We can request resumes of appointees, research individual campaign contributions, and receive protection if we report our own officials for their malfeasance. The modern-day presumption of government transparency is so prevalent that it is sometimes easy to forget its recent vintage. This paper investigates the relationship between a particular type of transparency – modern campaign finance disclosure laws – and campaign behavior. We are especially interested in the effect of transparency on political advertisements as well as on the amount and type of money spent in support of political campaigns. Though most campaign finance disclosure laws were enacted in the 1970s, there have been an important set of developments in many states with regard to the growing ubiquity of the Internet. During the 2000s, many states required candidates to file campaign finance forms electronically and also increased the online accessibility of data. During this same time period, the collaborative Campaign Disclosure Project scored all fifty states with regard to the content of their disclosure laws, their online accessibility and usability, and the nature of their electronic filing programs (Alexander et al., 2003). We exploit the between-state variation in these disclosure scores by empirically testing the behavior of political donors to changes in disclosure law and practice. We find suggestive evidence that strict disclosure laws may inhibit the production of political attack ads, and we also find evidence that strict disclosure laws may mitigate the effects of laws that make it easier to spend in elections.

This is increasingly relevant today, in the wake of the Supreme Court's decision in *Citizens United v. FEC* (CU).[1] In the immediate aftermath of CU, scholars and commentators made sharply divergent predictions about the effects of bans on corporate campaign spending. Nearly all anticipated that corporate money would flood into campaigns, distorting our political process. Underlying the predictions about increased expenditures was an assumption that other election laws and regulations will not change. In fact, Congress responded to CU almost immediately, though it shied away from directly revising the Bipartisan Campaign Reform Act at the heart of the case.[2] Instead, signaling a belief that disclosure would counteract the effects of CU, Congress' first move

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[1]558 U.S. ____ (2010).
[2]Pub. L. 107-155.

was to debate the DISCLOSE Act that aimed to decrease the attractiveness of independent expenditures by corporations that are now permitted to spend from their general treasuries.[3] The trend of weakening campaign finance restrictions paired with strengthened transparency requirements is a persistent one, and we observe it at both the state and federal level.

2   Campaign Finance Disclosure

In 1910, the United States Congress passed the Federal Corrupt Practices Act.[4] The FCPA was largely toothless, in part because in drafting it, Congress did not provide for how information on campaign finance would be collected. Consequently, the Act was openly flaunted by candidates. In 1925, the Act was reformed to require that all multi-state political committees make quarterly reports on all contributions of $100 or more. However, failing to learn from its earlier oversight, Congress did not provide guidance about information gathering, storage, or dissemination. Like its predecessor, the amended FCPA was ineffectual (Sunlight Foundation, N.d.). Not until 1967 were campaign finance disclosure reports actually gathered under the FCPA, and not until 1972 with the passage of the Federal Election Campaign Act was disclosure rendered meaningful.[5] Nearly every disclosure law since the 1970s is predicated, in some way, on FECA. For a more in-depth examination of the history of campaign finance disclosure laws, see Corrado (1997).

In recent years, courts have rolled back various campaign finance laws, though disclosure is rarely a victim. In fact, in most cases, courts rely on disclosure as a justification for invalidating restrictions on political donations and campaign spending. This emerging doctrine of "deregulate and disclose" motivates our foray into the effects of disclosure laws and whether they have the remedial qualities that courts ascribe to them.

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[3]Title I, sec. 211 would "require corporations, labor unions, and section 501(c)(4), (5), or (6) organizations–as well as section 527 organizations–to report all donors who have given $1,000 or more to the organization during a 12-month period if the organization makes independent expenditures or electioneering communications in excess of $10,000." Section 212 states that "if a covered organization makes a disbursement for campaign-related activity, the CEO must file a statement with the FEC certifying that the expenditure was not made in coordination with a candidate, that funds designated by the donor not to be used for campaign-related activity have not been used for any campaign-related activity, and that the spending has been fully disclosed and made in compliance with law." And Section 214 would require the CEO or highest ranking official of a union or organization that makes a disbursement for an independent expenditure or electioneering communication to "appear on camera to say that he or she 'approves this message,' just like candidates have to do now." The DISCLOSE Act (H.R. 5175) was approved by the House of Representatives on June 24, 2010 but the Senate failed to invoke cloture on the motion to proceed to the bill (S. 3628), essentially killing the bill.

[4]2 U.S.C. §241. For more detailed history of campaign finance disclosure laws, see Briffault (2010).

[5]Briffault (2003) claims this is the case because the enforcement mechanism was strong enough to have teeth.

Perhaps the most pithy and celebrated statement on transparency comes from Supreme Court Justice Louis Brandeis whose thoughts on the topic were published in a 1914 edition of *Harper's Weekly*. At the heart of Brandeis' argument was a metaphor that "sunlight is said to be the best of disinfectants" (Brandeis, 1914). In this paper, we explore this exhortation. We ask, to what degree does sunlight "disinfect" the political process? Do strict transparency laws prevent unhealthy fiduciary relationships between government and wealthy individuals or organizations? Or do transparency laws have any effect on spending behavior at all? These questions are motivated by different political theories about the role of transparency in the political process. Campaign finance disclosure laws are understudied in political science,[6] and the strictly normative approach taken in most of the legal literature is ill-suited to evaluating their impact. The approach we take here is different, drawing on a rigorous empirical review of the laws and their impacts to inform our proposals for disclosure laws.

3   Theories of Disclosure

Despite deep ideological disagreements about how money is raised and used in political campaigns, disclosure laws consistently find strong support from across the political spectrum. A classic example is found in the *Citizens United* decision. Whereas the Supreme Court invalidated the federal ban on independent expenditures from an organization's general treasury on highly partisan grounds, the Court almost unanimously agreed (8-1) that disclosure requirements for entities who fund independent electioneering communication are constitutionally valid under the First Amendment.[7]

While the case for disclosure is "almost certainly overstated" (Briffault, 2003), its potential advantages have allure. Disclosure directly increases information that is available to the general public, arguably combats corruption, and possibly reduces the amount of money in politics.[8]

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[6]For any general subject in public law, the general trend has been to focus on the federal system. Electoral institutions are no different. Primo and Milyo (2006) is a rare exception, though their focus is on public opinion and government performance, rather than campaign finance. One recent book covers several aspects of state-level electoral institutions, but it leaves disclosure laws unexamined. (Cain, Donovan and Tolbert, 2008)

[7]Only Justice Thomas dissented on the point of disclosure, arguing that the First Amendment protects anonymous free speech and that disclosure might lead to retaliation by one's political nemeses.

[8]There is a countervailing position, espoused by Ackerman and Ayres, that anonymous donations would have greater anti-corruption benefits than disclosure, because officeholders would not know who paid for their campaigns and therefore would not bend policy to repay big donors with beneficial policies (Ackerman and Ayres, 2002).

4   Effects of transparency laws

The existing literature on transparency laws in general and campaign finance disclosure laws in particular focus on the informational function of transparency laws, which work to deter corruption. The U.S. Supreme Court in *Buckley v. Valeo* explained both roles of transparency laws:

> "First, disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive, and thus facilitate predictions of future performance in office. Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election."[9]

We identify an additional function, which is the instrumental role played by campaign finance disclosure laws in a jurisprudential world that conceives of campaign spending as constitutionally protected. By this reasoning, disclosure laws are instrumentally aimed at reducing the amount of money in politics. We evaluate each of these theories in turn.

4.1   Deterrent Role of Disclosure

Transparency laws are particularly useful when unethical, illegal, or market-distorting behaviors are difficult to detect and therefore difficult to enforce. When governments face a challenging regulation problem, such as health care fraud, endemic bribery in government, or "bad behavior" on the part of candidates or donors, transparency laws are often more feasible to pass and enforce than laws regulating the "bad behavior" itself. Because such "bad behavior" is usually hidden from public view, the role of transparency in these contexts is to increase the probability of detection of the behavior, which then serves to deter the behavior in the first place (Rose-Ackerman, 2008; Becker,

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[9]424 U.S. 1 (1976) (per curiam) at 66-67. The court includes a third role, which is basically enabling enforcement of these laws against those who break them, but we think that this role of disclosure laws serves to augment deterrence, so we do not include it here.

1968). The increase in visibility then allows for oversight and detection with minimum effort on the part of the overseer.[10] Increased transparency makes it easier for the overseer to bring adverse consequences on the actor committing the "bad behavior", which should result in at least partial deterrence of that behavior.

What would qualify as "bad behavior" in the campaign finance context? We think the list is comprised in part of behavior that donors and candidates may conduct under the cloak of anonymity, but will hesitate to conduct once their identities become public. We consider two behaviors as fitting this description: first, actually violating campaign finance rules; second, funding attack ads. Actual violations of campaign finance rules are difficult to observe and outside the scope of this paper.[11] However, the tone of political advertising is measurable and is the basis of our first hypothesis:

> *Hypothesis 1: Strengthening disclosure laws before an election will reduce the percentage of "attack ads" in state-level elections.*

4.2 Instrumental Role of Disclosure

Deterring "bad behavior" is only one reason that we might see campaign finance disclosure laws. There might also be an instrumental use of transparency laws to reduce the amount of money in politics. As early as 1962, the President's Commission on Campaign Costs claimed that "full and effective disclosure is the best way to control excessive contributions on the one hand and unlimited expenditures on the other. Publicity has a cleansing and policing power far more powerful than that of limitations."[12] In recent years, the courts have made regulating the amount of money involved in campaign finance difficult by slowly deregulating campaign finance. As a result, at least partly under the belief that transparency laws erect a barrier to campaign finance, interest groups, presidential commissions, and legislators have called for stricter disclosure laws.

In *Citizens United*, the Court invalidated a ban on corporate independent expenditures. At the time of CU, twenty-four states had a ban on corporate independent expenditures, and some of them

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[10]This is a similar logic to the creation of procedural constraints discussed by McCubbins, Noll and Weingast (1987) in the congressional oversight context.

[11]A simple difference-in-differences analysis over time of all reported campaign finance violations could reveal a change in the trends before and after a change in transparency law. We have not gathered data on campaign finance violations, however, and leave this question to others to explore.

[12]on Campaign Costs (1962) in Briffault (2010).

prevented independent expenditures from other groups, like unions, as well. Even among states with bans, some independent expenditures could occur in the form of individual expenditures (at a minimum) or other group-based expenditures, like from 527. The opinion in CU was interpreted by most states that had bans as invalidating their bans on corporate *and* union expenditures.
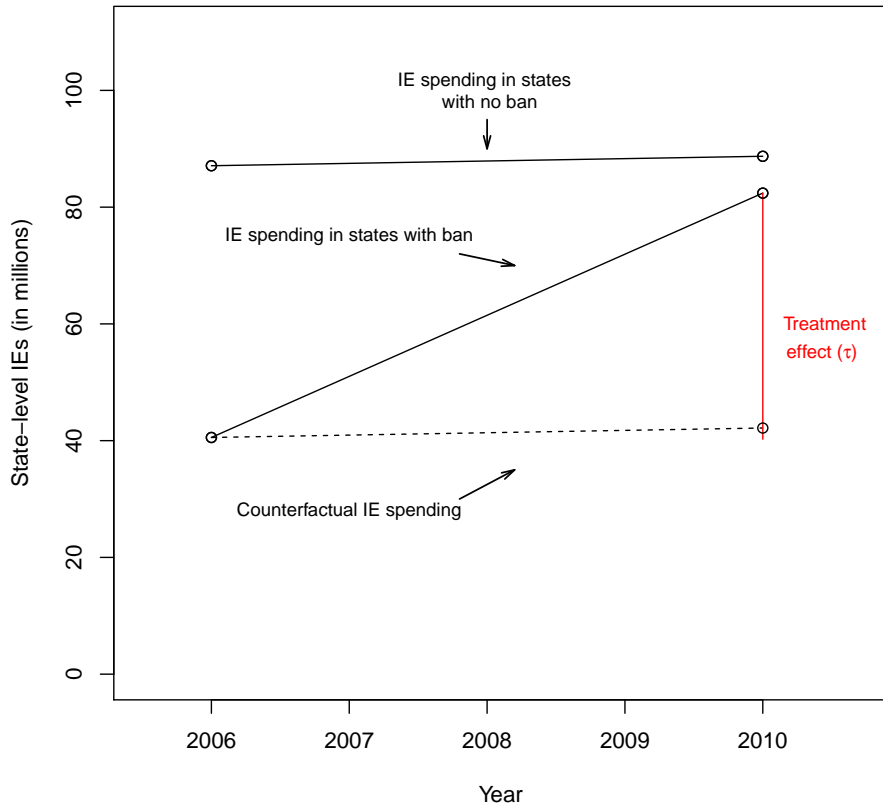

Figure 1: Raw difference-in-difference (with no controls) of independent expenditures (IEs) in states with and without a ban on corporate IEs before and after *Citizens United*. Data source: *National Institute on Money in State Politics*. Assuming parallel time trends, the treatment effect (marked by τ) represents the naive treatment effect of *Citizens United*. This figure is taken from Spencer (2011).

Figure 1 plots the overall independent expenditures on state races in eighteen states before and after *Citizens United*. The difference in IE spending between states whose IE ban was invalidated by the law (12) and states who never had an IE ban (6) is smaller after the CU decision than before. The gap between the interstate differences before and after the law is a naive measure

of the "treatment effect" of *Citizens United* and suggests that the CU opinion led to spending increases on the order of 100%. Note that these preliminary findings evaluate all state races with no controls. Regardless, the degree to which IE spending changes over time is due, in part, to donor elasticity. Our second hypothesis builds on this theory of donor elasticity by identifying the effect of an additional transaction cost of strict disclosure laws, holding constant a state's ban on IEs:

> *Hypothesis 2: Holding constant a state's ban on independent expenditures, stricter disclosure laws will decrease independent expenditures in a state-wide election campaign.*

The underlying theory is one of a second-best solution for addressing money in politics. In an environment in which outright IE bans are permitted, we anticipate that the bans do far more work to restrict independent expenditures than disclosure associated with such expenditures. When the direct pathway of a ban is unavailable, disclosure laws offer an alternative mechanism and play an increasingly important role in reducing money in politics.

5   Our Data

Unfortunately, the data to measure our hypotheses are frustratingly incongruous. Many careful independent researchers have compiled important data related to disclosure, campaign spending, political competition, and advertising. These data, however, are often not available in overlapping years. This means that we are unable to systematically evaluate relationships between our variables of interest over time, and our analysis below is limited to particular cases where data are available. See Figure 2 for our summary of the data we have used so far. In fact, the only years for which we have multiple data sources are 2002-2008, and in many cases there are holes that prevent meaningful analysis. For example, independent expenditure data is not available before 2006, state disclosure scores are not available in 2006, and advertising data is not available in 2008.[13] This fact alone precludes our analyzing more than two successive gubernatorial elections as we are always limited to just two time periods. The rest of this section describes data sources for the main explanatory and dependent variables.

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[13]One important finding of our research is that state campaign finance data are in need of improvements. In many cases, states just do not make important data available to the public. Nevertheless, some important projects are currently underway; for example, the National Institute on Money in State Politics project to compile every independent expenditure in all 50 states going back to 2006. Researchers are in desperate need for more projects like this one.

Attack Advertisements

		Candidate	Party	Ind. Group	Coordinated
1	N	213,963	49,228	28,463	463
	Percent	.73	.16	.9	.1
2	Attack	.22	.60	.71	.70
	Not attack	.77	.40	.29	.30

Table 1: *Source: Wisconsin Advertising Project.* Data represent the percent of political advertisements whose primary purpose was to attack a candidate. Numbers are reported for all gubernatorial races in 2000, 2002, 2004, and 2008. In Panel 1, we report the breakdown of attack ads by the four specified sponsor types. In Panel 2, we report the cross tabulation of attack ads by the four sponsor types.

5.1 Disclosure

Disclosure scores are available for all fifty states for the years 2003-2008 via the Campaign Disclosure Project.[14] The scores are calculated using a 300-point system awarded in four categories: (1) disclosure laws, (2) electronic filing programs, (3) disclosure content accessibility, and (4) online usability. The points are converted into a letter grade, and only the letter grade is reported. We converted the letter grades into an ordinal numeric scale (0 for 'F' and 11 for 'A').

5.2 Advertising

The Wisconsin Advertising Project has studied political advertisements in the 100 largest media markets in the United States every two years since 2002 and in the largest 75 media markets in 1996 and 2000. Unfortunately, data are not made available for four years after each election, so the most recent available year is 2008. Advertisements are coded across numerous variables: length in minutes, sponsor, whether the primary purpose is to attack a candidate, etc. We are specifically interested in the proclivity of sponsors to run attack ads. In Table 1 we report cross tabulations of the attack ad variable on each of the four ad sponsor types: candidates, parties, independent groups, and independently funded ads that ran in coordination with a campaign.

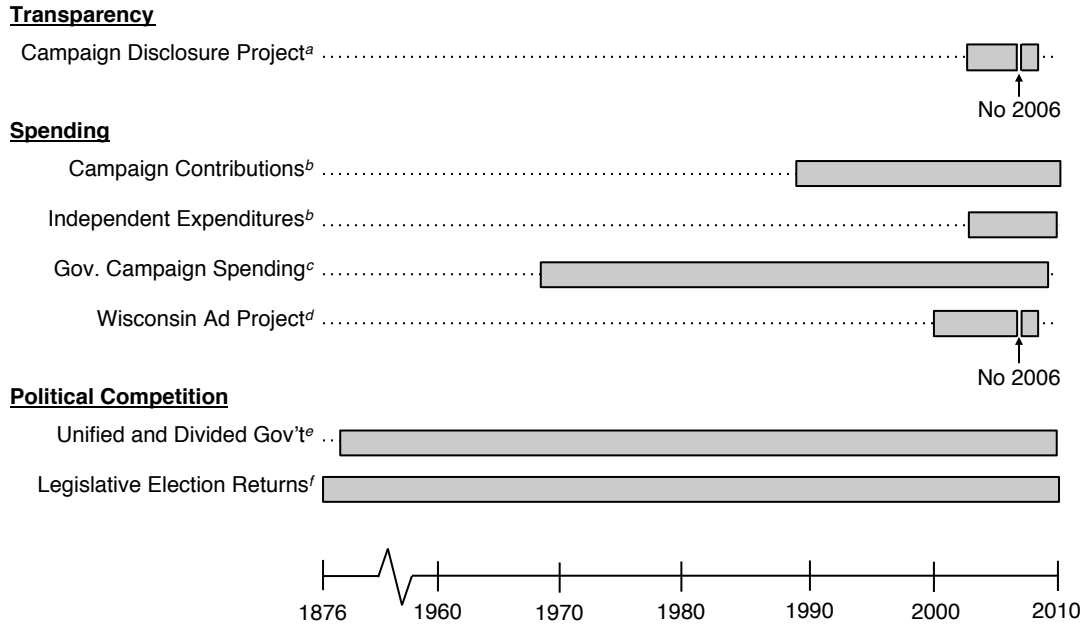[14] *See* http://www.campaigndisclosure.org/

Figure 2: Sources on which we rely and the years for which data from each project is available. [a]The Campaign Disclosure Project evaluated and graded each of the 50 states on their campaign finance disclosure requirements and online access. Data is available for the years 2003, 2004, 2005, 2007, and 2008 and can be downloaded at: http://campaigndisclosure.org/. [b]The National Institute on Money in State Politics maintains a database of campaign contributions and independent expenditures to various state offices. Campaign contribution data are available for all 50 states for the years 1989-2010 and can be downloaded at http://www.transparencydata.com/bulk/. Independent expenditures data are available for 11 states for the years 2006-2010 and can be downloaded at http://www.followthemoney.org/database/iemap.phtml. [c]Thad Beyle and Jennifer M. Jensen (Jensen and Beyle, 2003) compiled the Gubernatorial Campaign Finance Database, from which candidate-level annual expenditures are available for every year between 1968-2009. Download data at http://www.unc.edu/~beyle/guber.html. [d]The Wisconsin Ad Project coded political advertisements in the nation's 75 largest media markets in 2000 and in the 100 largest media markets in 2002, 2004, and 2008. Data is available at http://wiscadproject.wisc.edu/download.php. [e]Data on the composition of state government institutions has been compiled by several authors (Burnham, 1996; De Figueiredo Jr and Bergh, 2004; Snyder Jr. et al., 2006, 2010) and extend from 1885–2010. [f]Legislative election returns have also been compiled by various authors. We are grateful to James Snyder who generously shared his data on state election returns (1876-2010) with us (Snyder Jr. et al., 2006, 2010).

5.3 Independent Expenditures

Independent Expenditures data are available from National Institute for Money in State Politics, which has an ongoing project to collect independent expenditures. They currently have data from 2006 - 2010 for 18 states, chosen mostly because of the ease of access of information from those states. They are therefore not randomly selected into our sample. The data contains expenditure-

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level data, which we use to aggregate up to the state-election level.

6 Methodology

To measure the effect of strengthening campaign finance transparency laws on the incidence of attack ads, we examine the effect of disclosure laws on the incidence of attack ads over time. Specifically, we are interested in the effect Y_i of strengthening campaign finance transparency laws such that

$$Y_i = \begin{cases} Y_{1i} & \text{if } \mathrm{T}_i = 1 \\ Y_{0i} & \text{if } \mathrm{T}_i = 0 \end{cases}$$

where T_i represents the treatment of improving transparency laws. The effect of T_i is determined by calculating the difference $Y_{1i} - Y_{0i}$. Because we are limited to observed differences in attack ads, and because transparency law strength was not randomly assigned to states, we face a selection problem and must make additional assumptions, as we discuss below.

We employ a difference-in-differences identification strategy where Y_{1ast} is the average number of attack ads as a fraction of total ads, a, in state s at time t in states with bans on direct corporate independent expenditures, and Y_{0ast} is the average number of attack ads as a fraction of total ads, a,[15] in state s at time t in states with no bans. To estimate Y_{ast}, we use the following regression

$$Y_{ast} = \alpha + \gamma \mathrm{T}_s + \delta 2008_t + \lambda(\mathrm{T}_s \cdot 2008_t) + \theta W_{st} + \epsilon_{ast} \tag{1}$$

where 'T_s' is a dummy for states with a change in transparency laws, '2008_t' is a time dummy that equals 0 at the 2004 election and 1 for the 2008 election, W_{st} are a set of control variables (see below) and ϵ_{ast} is the error term. We interpret this model to solve for the population difference-in-differences where λ is the causal effect of interest and

$$\lambda = \{E[Y_{ast}|\mathrm{T}_s = 1, 2008_t = 1] - E[Y_{ast}|\mathrm{T}_s = 1, 2008_t = 0]\}$$
$$-\{E[Y_{ast}|\mathrm{T}_s = 0, 2008_t = 1] - E[Y_{ast}|\mathrm{T}_s = 0, 2008_t = 0]\}$$

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[15]This is also the probability that any given campaign ad is an attack ad.

A difference-in-differences approach assumes that the time trend would be the same for the treatment and control groups if the treatment group had not been treated. In our case, we assume that the percentage of attack ads in control states is determined by a constant year effect common to all control states. We further assume that any unobserved confounding variables are time invariant (Angrist and Pischke, 2009). The main feature of state politics that would influence both the incidence of attack ads and a state's propensity to strengthen its transparency laws can be described as political culture. Measures of political culture are inherently difficult, so for the purposes of this analysis, we consider political culture a potential unobserved confounder. However, political culture changes very slowly, and it is not likely to change enough to affect our results in the four years under analysis. Therefore, our main unobserved threat, political culture, is, by assumption, time invariant between 2004 and 2008.

We run a similar difference-in-differences analysis on whether disclosure laws affect levels of money in politics.

7 Findings

We are still building our dataset: merging political competition data to spending data, matching Wisconsin Ad data, and waiting for more independent expenditure data to be made available. Nevertheless, we have performed some preliminary analysis.

7.1 Deterrence Findings

In order to test whether disclosure laws prevent bad behavior, we conduct a difference-in-differences analysis on the four states in the data that met two criteria: they held gubernatorial elections in 2004 and 2008, and they did not have a ban on independent expenditures. The former restriction was due to data shortages[16], and the latter was because a common source of attack ads is thought to be independent expenditures. With no ban on independent expenditures in either period, the states in our sample can be expected to follow similar trends. The four states that made the cut are Delaware, Utah, Vermont, and Missouri. The first three states stayed at the lowest disclosure scores – 0 and 1 – over the time period. Missouri changed from 4 to 8 between the two elections. Its change was

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[16]There was no state-level campaign advertising data collected in 2006, that we are aware of.

mainly a result of mandatory electronic filing, requiring reporting of contributions and independent expenditures greater than \$10, and improving public accessibility of the information generated by campaign finance disclosure.[17] Califonia Voter Foundation (2008) We therefore analyzed the data as a difference-in-differences design, comparing the difference in Missouri in 2004 and 2008 with the difference in the other three states in 2004 and 2008.
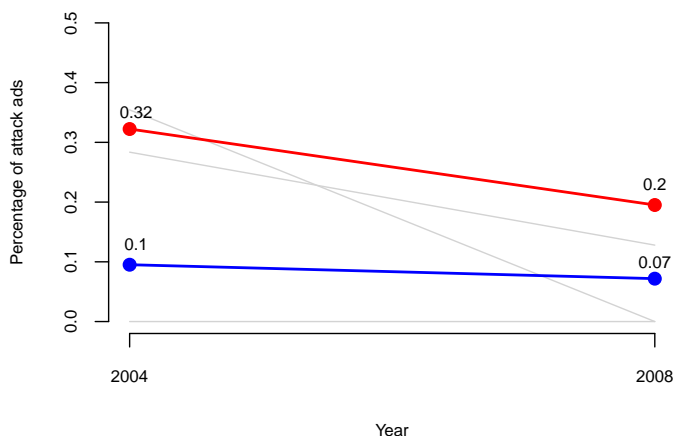
The basic findings are shown in Figure 3.

Figure 3: Probability of an attack ad, 2004 and 2008 gubernatorial elections. Red line is Missouri, which drastically strengthened disclosure between 2004 and 2008. Blue line is average of control states, each of which is shown in gray.

The average trend for the control states, shown by the blue line, is basically flat. The average percentage of attack ads in control states in both time periods is very low, from 10% of all ads to 7% over the time period. Surprisingly, the average percentage of attack ads in the control group is always below the average percentage of attack ads in our treated state. In 2004, Missouri's disclosure score was higher than all of the control states combined, at 32% of all ads run for the gubernatorial race, and it had more attack ads than the control state average in 2008 as well (20%).

It is clear that Utah, which had no attack ads in either period, is driving the effect for the controls. Attack ads in Delaware drop even more drastically than they do in Missouri, and the trend in Vermont is parallel, but lower than, the trend in Missouri. Nevertheless, we observe that our treated state, had a noticeably stronger reduction in the percentage of gubernatorial campaign

[17]Grading State Disclosure also cites increased penalties for violating the law, which, seemingly due to timing, were not actually captured by the grading scheme but would have earned it an even higher score.

attack ads than the average control state – the difference in differences is 0.09, or 9%. This is suggestive evidence that disclosure laws may inhibit political actors and their supporters from running attack ads.

7.1.1 Conditioning on Covariates

In difference-in-differences analysis, we assume that confounding variables are all time-invariant. The analysis above makes no allowance for other sources of variation in the percentage of attack ads in a gubernatorial election, such as differing costs of running ads, the ad sponsors, and the relative strength of the candidates' treasuries.[18] We are able to observe such confounders, so we now turn to include them in our analysis using regression difference-in-differences including control variables and year fixed effects. Note that we do not include the outcome for the gubernatorial elections themselves, because that could be considered post-treatment. The data for this analysis is from the campaign season itself.[19] The results of those statistical models are shown in Figure 2.

The included covariates are *the estimated cost of the ad*, the *difference between Democrat and Republican spending in the state*, and the *sponsor* of the ad, which is either an interest group or candidate, with party-sponsored ads as the dropped variable. Heteroscedasticity-consistent standard errors, clustered on the state, are reported for the regression estimates. As we observe in Table 2, the coefficient of interest, Tr $*$ 2008 Election, indicates that in each specification, the percentage of attack ads in Missouri decreased more than the percentage of attack ads in states that similarly lacked a ban in independent expenditures but had much more lax disclosure laws. While only one of the four has a p-value approaching traditional levels of significance, the findings are consistent in their direction.

Using the limited available data on campaign advertising, we are unable to conclude that the increase in disclosure requirements that we observe nationwide serves to deter bad behavior. The trends are in the right direction, but once we cluster our standard errors, they are indistinguishable from zero.[20]

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[18]Future analysis will incorporate more explicitly historical party power within states.

[19]The results we present here were conducted using ordinary least squares regression, but they are almost identical using logit regression. We choose to report our results in OLS for ease of interpretation.

[20]At this early stage, we have not come down firmly on whether we should cluster our standard errors or not. There is an argument for not clustering – after all, if there is no intra-state correlation over time, we do not need to do so (and the results are all highly significant with p-values of ≈ 0 if we do not cluster). We present this so plainly to the panel in hopes of feedback on this precise point.

Table 2: Difference in Differences Analysis of Attack Ads in States without IE Bans

	Model 1	Model 2	Model 3	Model 4
Intercept	0.09	0.12	0.12	0.81**
	(0.10)	(0.10)	(0.09)	(0.07)
Improved Disclosure (Tr)	0.23†	0.23†	0.22†	0.14*
	(0.10)	(0.10)	(0.07)	(0.03)
2008 Election	-0.02	-0.02	-0.03	0.06
	(0.09)	(0.09)	(0.06)	(0.04)
Tr * 2008 Election	-0.10	-0.11	$-0.10^\dagger$	-0.04
	(0.09)	(0.09)	(0.04)	(0.03)
log (est. cost of Ad)		-0.04**	$-0.00^\dagger$	$-0.01^\dagger$
		(0.00)	(0.00)	(0.00)
Dem spend - Rep spend			0.00	-0.00
			(0.00)	(0.00)
IG sponsored ad				-0.81*
				(0.18)
candidate sponsored ad				-0.73**
				(0.06)
N	76564	76564	76564	76564
R^2	0.04	0.04	0.04	0.31
adj. R^2	0.04	0.04	0.04	0.31
Resid. sd	0.42	0.42	0.42	0.36

Standard errors, in parentheses, are robust and clustered at state level

† significant at p < .10; * p < .05; ** p < .01; *** p < .001

7.1.2 Alternative Explanations

Of course, the competitiveness of the elections could be an important alternative explanation that we should control for. It could be that increased levels of competition lead to more attack ads, *ceteris paribus.* We are in the process of gathering polling data leading up to the 2008 elections for all four states, in order to control for this possible alternative explanation.

7.2 Instrumental Role of Transparency

From Figure 1, we know that independent expenditures increased after CU. One immediate response from the legislature was to propose campaign finance disclosure measures. At least outwardly, this response seems predicated on the belief that disclosure laws are a second-best solution for reducing money in politics. Bans are expected to keep money out of politics, but once they are ruled unconstitutional, the clamor for disclosure increased.

Do we see that disclosure laws affect the amount of money in politics? Does the strengthening of campaign disclosure requirements serve to mitigate the increases in independent expenditures that we observe after the Citizen's United opinion? To test this question, we analyze independent expenditures in the 2006 and 2010 gubernatorial elections in states that had bans on corporate independent expenditures before the Citizens United decision. Because there are limited number of independent expenditure data available at the state level so far, only two states fit this description: Iowa and Michigan. Iowa had a ban on corporate independent expenditures. Michigan had a ban on both corporate and union expenditures. Because independent expenditures can come from many sources – 527s and individuals, for example – we still expect to see some expenditures in states with corporate or union bans. But because corporations and unions are responsible for so much campaign activity, we anticipate that adding corporations and unions back into the independent expenditure game will increase the level of independent expenditures that we see at the state level.[21]

In our analysis on independent expenditures and disclosure laws, we search for heterogeneous treatment effects. Here, both states are "treated" by the CU opinion, but we anticipate different treatment effects based on disclosure score. Because both Iowa and Michigan had a ban before the CU decision, we expect their independent expenditures to increase in the 2010 election from their 2006 levels. However, because they have different disclosure scores across the entire time period – Iowa has a score of 3 out of 11 and Michigan is 10 out of 11 – we anticipate that the CU decision will cause a greater increase in independent expenditures in Iowa than it will in Michigan, where the strict disclosure laws work to counter the effects of CU. The change in per capita independent expenditures is shown in Figure 4.

We see that Michigan's level of independent expenditures per capita was relatively unaffected by the passage of CU, with a before-and-after mean of 0.78 and 0.79, respectively. Iowa, which had weak disclosure laws, saw a drastic change in independent expenditures per capita, from almost no independent expenditures per capita in 2006 (the mean was 0.05) to over 250 times that level in

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[21]The text of the bans was as follows. For Michigan: "A corporation, joint stock company, domestic dependent sovereign, or labor organization shall not make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of a contribution pursuant to section 4(3)(a)." (s.169.254, passed 1976, then interpreted by Michigan Secretary of State as unenforceable after CU.) For Iowa: "It is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office." (Title 1, Subtitle 2, Chapter 68A Subchapter 5 s.503, passed 2003, repealed by SF 2354, 2010.)
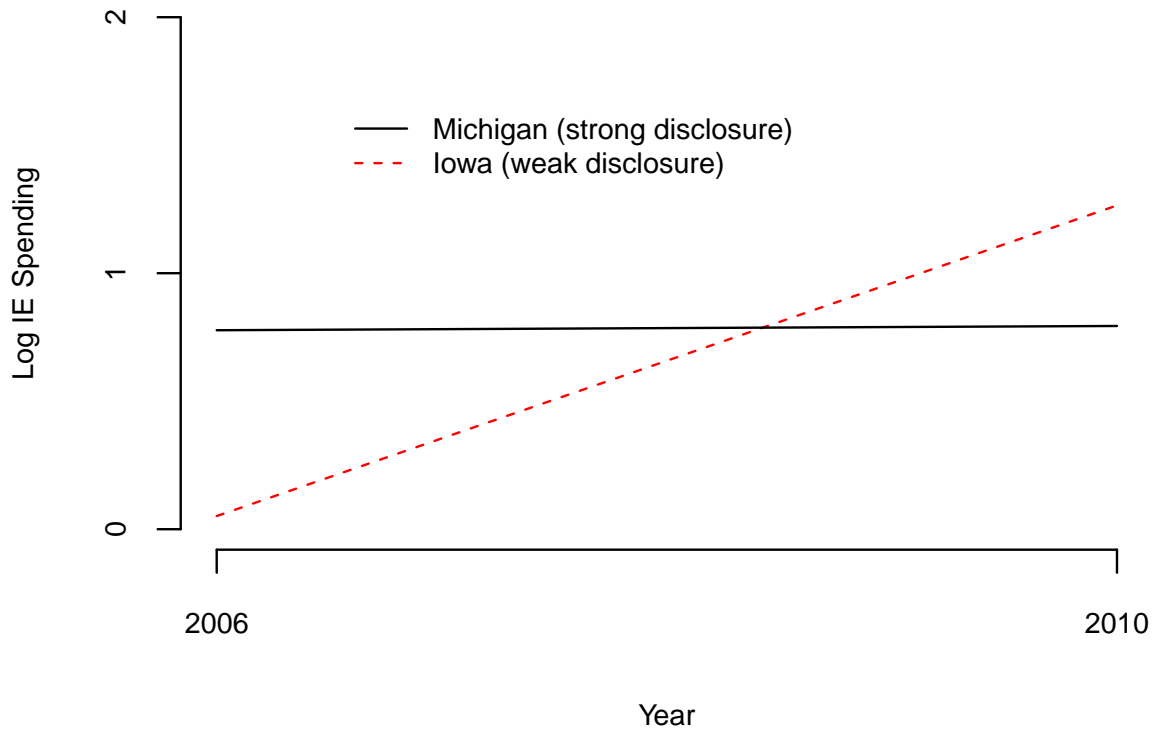
Figure 4: Independent expenditures (IEs), weighted by state population, before and after *Citizens United*. IE data source: *National Institute on Money in State Politics*. Both Michigan and Iowa had corporate bans on IEs that were invalidated by the Court's ruling in *Citizens United*. Michigan's disclosure score was strong in both time periods, while Iowa's was very weak. Disclosure data source: *Campaign Disclosure Project*.

2010 (1.26 per capita).[22] This is particularly striking for two reasons. The first is that Michigan has a strong labor and a strong corporate presence, and the second is that Michigan had a ban on both corporate and labor IEs before the CU decision was passed. This is suggestive that strong disclosure laws can help to mitigate the effects of CU.

7.3   Future Analysis: Elasticity of Contributor Involvement

One potential consequence of strong disclosure laws is that they could discourage political activity entirely for some subset of people who would otherwise be involved in politics, but for the cost of participation itself. The cost of disclosure can manifest itself in two ways. One is as a transaction

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[22]Obviously, a per-capita dependent variable is a linear transformation of the raw amount of IEs, so the relationship, in terms of the differences, holds when we look at unweighted, or "raw" measures of independent expenditures, but the line for Michigan is above the line for Iowa in both periods.

cost, by making disclosure so burdensome that candidates do not pursue small-money donors and instead, given the fixed cost of disclosure for any given contribution, focus their energies where the net gain (money received minus administrative costs related to disclosure) are highest. In the mean time, small-amount political contributors (or spenders, in the independent expenditure context) will be left out of the political game. What makes disclosure burdensome? Requiring disclosure of even very small contributions, requiring addresses or phone numbers, shortening the time frame for reporting, and similar administrative burdens.

Another cost manifests as risk and might result in people opting out rather than (or in addition to) being passed over by campaigns. The risk-related mechanism manifests itself when public disclosure makes a contributor vulnerable to personal harassment for the person's support of politically unpopular candidates, parties, or ballot initiatives. A recent example concerns the Proposition 8 battle in California in 2008. Proposition 8 was a ballot initiative and constitutional amendment on the state-wide ballot with the self-explanatory title "Eliminates Right of Same-Sex Couples to Marry". The battle between the two groups was dramatic and expensive, and after both sides made their disclosures, the addresses of contributors to the pro-Proposition 8 groups were geo-tagged by enterprising gay-rights activists. This resulted in some pro-Prop 8 contributors reporting harassment. While disclosure is still required in these cases, in other cases, exceptions have been carved out to general disclosure requirements. In *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87 (1982), the Supreme Court held that in light of the history of harassment against the socialist party and its members by both private citizens and the government, a state-level campaign finance disclosure law could not constitutionally be applied to them.[23]

We are currently working on a series of quantile regressions that estimate the effects of disclosure across the entire distribution of participants in campaign finance. That will help us estimate the transaction cost aspect of an increase in disclosure requirements.

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[23]Crucially, both of these types of disclosures can currently be avoided by contributing to a 501(c)4 organization which then gives to a political action committee, because the donation cannot be traced, since the 501(c)4 is not required by law to disclose contributions.

8 Discussion and Conclusion

A common response to the Citizens United decision was dismay. From the President to law scholars, the assumption was that the "floodgates" to corporate expenditures on behalf of favored candidates had been opened. The immediate response from federal legislators was to push for more transparency in the campaign finance realm, perhaps on the justification that if we cannot stop corporate money from flooding into elections, at least we can know who is running what attack ads and who is spending the most. This push for transparency was not questioned by the public – if anything, the Op-Ed pages seemed supportive. The assumptions that Americans make about how transparent our government should be are naturally extended to even private citizens in a quasi-public sphere, as they campaign for office. As we summarize in our opening sections, this degree of transparency is rather recent, and its limits have not been fully explored by scholars, particularly in state-level analysis.

Our first test is on whether disclosure actually deters attack ads in state-level gubernatorial campaigns. We compare states in pre-CU elections and find that among states with an unrestricted independent expenditure environment, the state that strengthened its disclosure laws saw the greatest decrease in attack ads. The evidence is not as strong as we would like it to be, given our hypotheses. This is in part due to the data limitations we faced in conducting the analysis, which resulted in an inability to find statistical significance at traditional levels once we controlled for intra-state correlation over time using clustered standard errors. Admittedly, we do not know whether such intra-state correlation is a concern, but the most conservative approach is to assume it exists and correct for it. Nevertheless, because attack ads are "bad behavior" (even if rational), our findings provide weak evidence that transparency can deter behavior that is socially undesirable, that "sunlight" does indeed disinfect. This result contributes to a long line of literature on deterrence and the would-be violators' concerns about their wrongdoings being exposed.

Our second test is on a more instrumental purpose of campaign transparency laws, that of reducing the amount of money in politics. If a ban on independent expenditures is the preferred solution, and that solution is taken off the table by the court, can disclosure laws fill the gap? To test this, we find two states that have the same ban status pre-CU – both had their bans invalidated by the Court – but varied on the strength of their disclosure laws. We find a striking contrast in

independent expenditures between the two states. After the states no longer have the "first best" option of banning independent expenditures from the largest group that might make them, they must rely on their disclosure regimes to help keep money in politics from growing rapidly. The state with the strongest transparency sees a minor change of only a penny per capita. The state with weak transparency sees a strikingly large increase in independent expenditures after its ban is invalidated. This is evidence that strong disclosure *can* step in to help restrain independent expenditures in a de-regulated campaign finance environment.

We are expanding this project in several directions. We are testing the elasticity of response to changes in disclosure laws. We are adding controls to the test of the effect on independent expenditures. We are awaiting more data on independent expenditures to add to our analysis of the effect of disclosure laws on independent expenditures. A separate project analyzes the effect of CU on money in politics.

Plenty of open questions remain that would be more easily answered with more complete data. Researchers looking for interesting data projects to start should look no further than state campaign finance. To pick one piece of low-hanging fruit, if we had state-level advertising data for 2006 – when 34 states had gubernatorial elections, we could test our deterrence hypothesis on a much larger dataset and hopefully reach more solid conclusions.

Our findings inform the debate about special interest spending and how campaign finance laws influence the institution of electoral funding beyond the effects of one particular type of campaign finance law (bans on independent expenditures by corporations). Whether or not *Citizens United* has altered the American political landscape is an empirical question. To the extent that disclosure laws mitigate the effects of CU (for better or for worse), our analysis at the state level highlights the need for a broader conversation about the entire bundle of incentives facing corporations and other entities contemplating campaign finance.

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