

Public Funding of Non-Legislative Elections

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This précis sets out a framework for studying the impact of public election funding on public policy outcomes. I focus on non-legislative elections—gubernatorial, judicial, and commission—and zero in on policy impact. The motivations for reform are far more expansive; chief among them is minimizing the “appearance of corruption” in an effort to improve citizen perceptions of government and increase turnout. This anti-corruption rationale is also cited by the courts in upholding the constitutionality of campaign finance reforms. That said, my research with Jeff Milyo (Primo and Milyo 2005, 2006) has demonstrated that campaign finance reforms historically have had little to no impact on either turnout or perceptions of government. In fact, public funding sometimes has a small negative effect on such measures. While future work might explore the impact of new public funding regimes on trust, political efficacy, and turnout, I am skeptical that these laws will have any appreciable systematic and long-lasting impact on these aspects of politics.

We also might reasonably ask why it makes sense to focus on public policy outcomes. After all, existing research in the congressional literature has found virtually no impact of campaign contributions on policy, in part because campaign contributions are far too small to be buying influence (Ansolabehere et al. 2003, Milyo et al. 2000). There are at least three responses.

First, institutional environments vary. By focusing at the state level, we can study commissions and courts, whose members are sometimes elected and are in many respects easier targets for contributors than legislators. For example, while members of Congress are high-profile individuals whose actions are carefully scrutinized by the press, a trial court judge makes decisions that will, for the most part, fly under the radar.

Second, the variation across states affords us the opportunity to conduct a wider range of analyses than possible at the federal level. Public funding systems vary significantly across states, and even across offices within a given state. This cross-sectional variation, when combined with temporal change, makes the state level an attractive arena for inquiry.

Third, methodological limitations make it difficult to find an impact of contributions on legislator decisions. Do contributions change legislator votes, or do legislator votes attract contributions from like-minded interests? Disentangling these effects has proved a formidable task. These same methodological issues, however, are also present in state-level decision-making. Namely, does money flow to judges or commissioners who already share the views of contributors, or do the contributions alter the positions of those elected officials? Caution is therefore the watchword when attempting to link contributions and elite decision-making directly. However, by harnessing the variation in laws at the state level, we can overcome some of the methodological limitations faced when studying the contributions-policy link.

So how should we approach the issue? Public funding can impact policy outcomes in two ways: by altering the membership of the institution in policy-relevant ways, and by altering the behavior of members. A change in the electoral environment may lead both to the selection of different individuals to a given post, as well as changes in the types of individuals who run for office. Meanwhile, stricter limits on campaign contributions, tied to the acceptance of public funds, may reduce any inappropriate influence that occurs in the campaign contribution process. While both pathways are important, candidate entry and electoral outcomes may be too far removed from policy decisions to yield significant insights. After all, scholars are still struggling with the question of whether federal campaign spending has any impact on election outcomes, though the preponderance of the evidence is on the side of no impact (e.g., Levitt 1994, Gerber

1998, Milyo 1998; for evidence of impact, see Erikson and Palfrey 2000). For this reason, I direct attention to the behavior of government officials.

Turning to institutions and policy outputs, there are several ways to approach the problem. The first is to ask whether campaign contributions are likely to have an impact on particular institutions. Before thinking about whether *public funding* can alter the impact of contributions on public policy, we should establish whether *private campaign contributions* actually alter policy. I am not optimistic about being able to tease out these effects, for reasons discussed above, but this is certainly something worth discussing.

A second approach, and the one I will argue for here, is to compare the policy outputs of similarly-situated states with differing campaign finance rules. Then, using a technique known as differences-in-differences analysis, discussed further below, we can isolate the impact of public funding on these outputs. This analysis will answer the question, Does public funding change policy outcomes? An affirmative answer suggests that campaign contributions alter the process in at least some institutional environments. A negative answer tells us that one of two situations is the case: campaign contributions do not impact policy, or public funding failed to sever the contributions-policy link in this instance. Even learning this would represent a significant advance.

It will be useful to first lay out the differences among the institutional environments in which decision-makers operate. This will provide some leverage for thinking about how to proceed in answering questions about the impact of public funding on public policy. Then, I will suggest a methodological approach for addressing the impact of contributions on policy. Finally, I will make some preliminary institution-specific suggestions.

Comparing Institutions

It is in non-legislative settings where we are most likely to detect the impact of campaign contributions on public policy. Legislators are simply not the best targets for interest groups seeking to influence policy. First, legislatures are relatively large bodies, making it unclear what any single legislator can accomplish. Even legislators on important committees can only do so much to help an interest. Moreover, these elected officials deal with expansive policy areas that often involve many competing interests, again making influence difficult. Finally, careful media scrutiny of legislative decision-making makes currying favor a challenge.

Contrast this with a typical public commission, which focuses on a narrow public policy area. In this context every decision-maker is crucial, media attention to outcomes is sporadic, and the interests are typically small in number but have intense preferences. Trial courts are very similar to commissions in these respects. Both, therefore, are institutions in which campaign contributions could exert significant influence.

Table 1 summarizes the relevant factors for comparing the potential impact of campaign contributions on policy. I expect that campaign contributions are most likely to have an impact in situations where the scope of any given policy decision is narrow, the number of decision-makers is small, the number of (organized) interests involved is small and there is an asymmetry in the “power” of interests, and there exists little media coverage of decisions. Legislators and governors are the least likely to be influenced. Trial court judges and commissioners are the most likely to be influenced, and appellate judges fall somewhere in between.

Table 1. Factors Affecting the Impact of Campaign Contributions on Policy

Type of decision-maker	Institutional Feature				Potential impact of contributions
	Number of decision-makers	Scope of policy	Number of interests	Media coverage	
Legislator	Many	Expansive	Many	Large	Low
Governor	One	Expansive	Many	Large	Low
Appellate Judge	Few	Expansive	Many	Medium	Medium
Commissioner	Few	Narrow	Few	Small	High
Trial Judge	One/Few	Narrow	Few	Small	High

Studies of legislatures therefore represent the “toughest” test of the impact hypothesis, while studies of commissions and trial courts are the “easiest” test. The advantage of the toughest test is that evidence of influence in legislatures suggests that such influence is present elsewhere, as well. The advantage of the easiest test is that if we find little influence in courts or commissions, we can be more confident that influence is nonexistent in other domains, as well. In addition, detecting influence in trial courts or commissions would be a significant finding in its own right.

The Fundamental Endogeneity Problem in Assessing the Impact of Money on Public Policy and a Possible Solution: Differences-in-Differences Analysis

In all cases, when analyzing the impact of campaign contributions on the decisions of elected officials, the problem of endogeneity will rear its ugly head. This problem, which has not been solved in the existing literature on Congress (at least in my view), occurs because individuals who receive campaign contributions may already agree with the views of those giving the contributions. To get at the problem, we must be able to find variables that predict contributions *and* are unrelated to behavior, and vice versa. This is easier said than done.

One possibility is to move away from a focus on the micro-level to an emphasis on systemic changes. For instance, we could direct attention to a specific policy output—say, a spending or tax policy that benefits a narrow interest—and examine how it changes before and after a reform in otherwise similar states. This mode of analysis, known as differences-in-differences, helps address the endogeneity problem. The drawback is that we cannot get direct evidence of a link between contributions and policy change. However, this approach seems especially well-suited to addressing changes in public funding, given the problems with micro-level studies of the contributions-policy link.

My view, then, is that an attempt to directly measure the impact of campaign contributions on policy outcomes will not get us as far as looking at changes in policy and changes in campaign finance law. The intuition behind differences-in-differences, which is common in economics (see Bertrand et al. 2004 for a recent discussion of the motivation behind and problems with this estimator), is this: If you compare policy outcomes in two states that are otherwise similar, except that one gets a “treatment” of reform at time t , then the policy differences between the states before and after t is attributable to the treatment. If campaign contributions influence decision-making, then a state which changes from a system with few limits on contributions to one with partial or full public funding should realize a different pattern of policy outputs than a non-reform state. If we observe no contrast between the states, we can infer from this that public funding had no effect on policy outcomes. One theoretical pitfall is that campaign contributions may have previously moved policy to x , but now x is in a gridlock zone (i.e., the governor and the legislature will not agree to a change in x). For this reason, this approach might work best with one-shot policy decisions (damage awards, commission rulings on a license application, etc.).

The advantage of public funding as a treatment is that in many cases we should be able to see its effects almost immediately. If campaign contributions are part of either a long-term contract or a spot market for favors, the elimination (or severe reduction) of contributions should alter that market. In situations where previous decisions do not constrain the present, the impact of public funding should be felt almost immediately if contributions alter policy. I will now turn to some starting points for thinking about different institutions.

Institution-Specific Suggestions for Research

Commissions

Commissions can both enact generally-applicable regulations and issue decisions regarding particular firms or individuals, with the latter representing easier targets for contributors. Unlike legislators or governors, some commissioners are appointed and others are elected, allowing us to compare states in this regard. If they differ systematically in their outputs, this may be suggestive evidence that campaign contributions matter, and that public funding would be likely to have an impact. If little evidence of influence is found when elected and appointed commissioners are compared, then public funding is unlikely to have a significant impact on outcomes. The same principle applies to the lower courts. Of course, there is an endogeneity problem here. States with differing procedures for commission appointments may vary in other important ways; this would have to be accounted for in any analysis.

A specific institution that may merit study is the Arizona Corporation Commission, which regulates corporations, securities, utilities, pipeline safety, and railroad safety, among other areas. Public funding is currently in place for the commission, and in principle it would be possible to examine whether its behavior changed before and after public funding, compared with another (similar) state's similarly charged commission.

The Courts

Trial Court Judges

There is some evidence that states with elected judges tend to produce higher tort awards than states with appointed judges, implying that campaign contributions have an impact. It is difficult to separate out constituency effects and contribution effects because judges who are elected may be more inclined to issue large awards to constituents at the expense of out-of-state defendants (Tabarrok and Helland 1999).

There are two ways to proceed. First, we can examine lawyers who give money to those who do not in terms of their success rate before judges, holding case factors constant. Second, in cases where damages are sought, we can compare the average award in states that are otherwise comparable, except one changes to a public funding system at time t and the other does not. The problem with trial court elections is that none, based on my reading of state laws, are publicly funded.

At a minimum, we can still examine how contribution limits impact judicial behavior in states with elected judges, as a way to establish whether we would expect public funding to have an appreciable effect. For instance, if states where contribution limits are nonexistent result in the same pattern of tort awards as states with strict contribution limits, then this is evidence that public funding is unlikely to do much to “improve” judicial decisions.

Appellate Judges

Appeals courts are a different animal, because their decisions in many cases set precedents. As a consequence, many diverse interests are likely to have a stake in these courts' decisions. Also, appellate courts are more likely to tackle “hot-button” social issues like abortion and gay marriage; it is unlikely that a judge's decision will be swayed on these issues by

campaign contributions. Also, it is difficult to measure the policy output of an appeals court. One possibility is to categorize decisions by policy area and determine whether decisions in a given area favor any interest (or set of interests). Public funding's impact on this pattern of decisions can then be assessed in ways previously discussed.

Governors

My sense is that it will be very difficult to examine the impact of public funding on gubernatorial behavior independent of legislative behavior, because the two are so closely intertwined. One approach is to examine how policy outputs changed when a state moved from no public funding of gubernatorial elections to public funding of gubernatorial elections but held constant the rules for legislative contests. However, I argue that public funding is unlikely to have a significant impact on gubernatorial decision-making because many governors (like legislators) have aspirations to national office. If they are influenced by contributions, they will still have an incentive to maintain close ties with contributors after public funding is enacted. In other words, there is little reason to expect a difference in the behavior of governors before and after public funding is implemented.

Conclusion

In sum, I think that the best prospects for understanding the impact of public funding on policy outcomes in non-legislative settings is to compare policy outcomes before and after reform, and in turn compare these changes with what we observe in states without such a reform. This requires a different methodology than the one typically used at the federal level, but it takes advantage of the institutional variation within states, the differing rules across states, and changes over time. This type of variation is simply not possible at the federal level, so the states present an opportunity for understanding the impact of campaign finance reform on policy.

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